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Hijacking Counterterrorism:
The Rise of National Anti-Terrorism Laws After 9/11

By

Stephen Smith Cody

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requirements for the degree of

Doctor of Philosophy

in

Sociology

in the

Graduate Division

of the

University of California, Berkeley

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Abstract

Hijacking Counterterrorism:
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Stephen Smith Cody

Doctor of Philosophy in Sociology

University of California, Berkeley

Marion Fourcade, Chair

In less than a decade 142 countries enacted or reformed more than 260 counterterrorism laws worldwide. The new laws, viewed as a whole, represent a broad expansion of state powers to investigate, detain, prosecute, and imprison individuals. This dissertation is the first effort to document the rise of counterterrorism laws worldwide and evaluate their impact on individual rights. Drawing on national legal data collected in collaboration with the Program on Terrorism and Counterterrorism at Human Rights Watch, the work reveals that counterterrorism develops out of a confluence of power politics and cultural ideas in world society. It also shows that state officials frequently use counterterrorism laws to secure their authority and cloak repressive enforcement tactics in rule of law.

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Chapter 1

Introduction

In September 2002, Billy Collins, the poet laureate of the United States, read his poem “The Names” to a special session of Congress held in Federal Hall in New York City. It was only the second time that Congress convened a session outside of the capitol building since moving to Washington. The first time Congress had celebrated the bicentennial of the founding of the nation in Philadelphia. Vice President Dick Cheney and House Speaker Dennis Hastert presided over the event, which was held to remember the 9/11 terrorist attacks. They stood before a large American flag. The location was selected for its historical significance. George Washington took the first oath of office on the balcony of the Federal Hall building. More than 250 house members and about 50 senators attended the session to show their solidarity with New York citizens and their commitment to combating terrorism.¹ Collins began to read:

Yesterday, I lay awake in the palm of the night.
A soft rain stole in, unhelped by any breeze,
And when I saw the silver glaze on the windows,
I started with A, with Ackerman, as it happens,
Then Baxter and Calabro,
Davis and Eberling, names falling into place.
As droplets fell through the dark...²

As Collins’s continued his words evoked the tragedy itself: “Names rising in the updraft of buildings.” And, at the same time, the poem resonated with more universal themes of personhood and loss: “The bright eyed daughter. The quick son. Alphabet of names in a green field.” Written after the United States began military operations in Afghanistan, but before the invasion of Iraq, before the photographs of abuse at Abu Ghraib, before the Office of Legal Counsel released the torture memos, before the military commissions at Guantanamo, and before revelations about the scale of coercive interrogation, Collins’s words nevertheless seem to foreshadow larger human costs: “Names silent in stone. Or cried out behind a door. Names blown over the earth and out to sea... So many names, there is barely room on the walls of the heart.” As the session closed, the audience joined the Stuyvesant High School Chamber Choir in singing “God Bless America.” Some members of the divided congress held hands.³ The nation and the world stood united against a common darkness.

The following work explores some of the costs of the “war against terrorism.” While state efforts to combat terrorism have always had consequences for those suspected of terrorism, the rise of counterterrorism as a near-universal agenda after 9/11 has consequences far beyond individual suspects. Counterterrorism laws have significantly expanded the authority of state officials to investigate, detain, prosecute, and imprison a wide array of individuals with minimal judicial oversight or due process. This work is a

¹ Carl Hulse. 2002. “Congress at Ground Zero: The Special Assembly,” *New York Times*, 7 September.

² See Appendix: 1.1 for complete poem.

³ Carl Hulse. 2002. “Congress at Ground Zero: The Special Assembly,” *New York Times*, 7 September.

first effort to understand this fundamental transformation at a global level by systematically compiling, coding, and analyzing national counterterrorism laws worldwide. The research documents the proliferation of national laws around the world and seeks to evaluate the potential consequences of this legal diffusion for individual rights worldwide.

The study is more than a descriptive account of the rise of counterterrorism laws after 9/11 or a sociological analysis of a contemporary human rights issue. Animated by a series of questions related to the construction and globalization of law, the study seeks to illuminate processes of transnational lawmaking. How are legal categories socially constructed within and across states? How do dominant states and international organizations reshape national law? What role does culture play, if any, in the transnational migration and transformation of law? How do legal changes worldwide transform domestic politics? Counterterrorism offers a window into these complex questions. The growth of counterterrorism is one of the most rapid transformations of law in the last century. Understanding its origins and consequences promises to shed light on the dynamics of global lawmaking.

The work bridges scholarship in international relations, neoinstitutionalism, and law and society by interrogating the relationships between states, international organizations, and global scripts. It proceeds in seven chapters. Following this introduction, it begins with a discussion of terrorism and counterterrorism as objects of empirical investigation. Next, the analysis charts the proliferation of counterterrorism laws worldwide. The third chapter shows how these new laws are a response to increasing insecurities faced by sovereign states. The fourth chapter looks at the structure of the new laws and their potential impact on individual rights before turning to their actual enforcement in chapter five. The study concludes with a review of the central arguments advanced throughout this work. The following provides a brief overview of each empirical chapter.

The second chapter, “Interrogating Terrorism,” makes two interrelated arguments about terrorism as a research category and then proceeds to examine lawmakers’ understandings of terrorism worldwide. First, the chapter argues that terrorism as a conceptual category lacks any universal meaning. A survey of academic definitions of terrorism yields common elements, including the illegitimate use of violence, the goal of inspiring terror beyond the act itself, and the pursuit of a larger political goal. However, these commonalities offer limited analytic leverage in studies of political violence. Due to the variety of understandings of terrorism and the many subjective assessments that are required to differentiate terrorism from other forms of political violence, operationalizing and measuring abstract definitions of terrorism is extremely difficult in the empirical world. Formulations of terrorism vacillate between overly broad definitions, which seek to represent themselves as objective and universal, and narrow definitions, which remain hopelessly subjective. In either case, the abstractions are rarely useful for answering specific research questions. The chapter therefore holds that scholars should abandon efforts to build any universal conception terrorism.

Second, the chapter contends that scholars should redirect attention towards the concrete policies and practices of counterterrorism law. Historically situated and discrete, legal provisions are ripe for empirical investigation. They offer opportunities to develop conceptual frameworks grounded in actual categories of practice. They are more amenable to comparative analysis and provide greater analytic leverage as compared with generalized abstractions.

The chapter then takes a modest step towards a more empirically grounded approach to studying terrorism by evaluating the substance of legal definitions of terrorism in national counterterrorism laws worldwide after 9/11. Circumventing abstract debates, the analysis traces actual legal language in new counterterrorism provisions in order to identify patterns in lawmakers' understandings of terrorism worldwide. The analysis reveals that lawmakers' conceptions of terrorism vary substantially across the globe. Yet an overwhelming number of the laws include overly broad and ambiguous language that can open the door to potential state abuse.

The third chapter, "The Rise of Counterterrorism Laws Worldwide," documents the proliferation of counterterrorism laws after 9/11 and argues that the United States and the United Nations played central roles in cultivating counterterrorism as a global script and a mandate of global membership. The chapter bypasses reductionist debates pitting power-centric realists against culture-centric constructivists by demonstrating that dominant states and organizations help to foster global understandings that independently influence transnational processes of lawmaking. Power politics and cultural ideas can simultaneously shape the development of transnational law.

Drawing on data compiled in collaboration with Human Rights Watch (HRW), the chapter shows that in less than a decade more than 140 countries enacted or reformed national laws under the auspices of fighting terrorism. While previous scholarship on counterterrorism focused on individual case studies or comparisons between a few select states, this work levels up the analysis to include 193 countries worldwide. It offers the first systematic look at counterterrorism across the globe and documents one of the most dramatic legal developments in the last century.

The chapter also shows that new laws are not simply rational responses to new threats. Few states face increasing levels of fatal political violence in the post-9/11 era. The chapter, therefore, seeks to identify the institutional and cultural forces that generate counterterrorism as a transnational legal project. It argues that the United States and the United Nations helped to institutionalize counterterrorism as a mandate of global membership through mandatory reporting, training programs, and foreign assistance. In turn, these actions helped to cultivate counterterrorism as a legitimate global script. Counterterrorism transformed from a valid domestic pursuit into a requisite of global membership.

The fourth chapter, "Counterterrorism as Cerberus," explains why national lawmakers embraced counterterrorism. It argues that counterterrorism provides a legal arsenal that help lawmakers to confront the increasing insecurities of the modern era. Gains in

international law, evolving military technologies, and new social movements threaten to usurp sovereign control of domestic politics in many places around the world. Counterterrorism offers a means for state officials to hold off forces of globalization and at the same time provides legal mechanisms capable of repressing local opposition movements. Counterterrorism can guard the state from two sides. While one head of counterterrorism defends the state against foreign threats, the other can restrict local civil liberties and crack down on domestic political dissent. Even absent reasonable fears of political violence or immediate political returns, officials worldwide adopt counterterrorism laws as a means to protect their sovereign authority.

The chapter further argues that this widespread agreement on counterterrorism builds on a decades old trend towards more punitive state policies worldwide. Counterterrorism laws extend law-and-order politics that prioritize social control, often targeting new immigrants, ethnic and religious minorities, and political organizers. New legal standards, institutions, and procedures for investigating suspects of terrorism-related crimes expand state authority at the cost of individual rights. In stressing the security of the nation over personal liberties, the laws signal the triumph of a truly global penal logic.

The fifth chapter, “Counterterrorism and Individual Rights,” shows how formal language in recent counterterrorism laws heighten criminal penalties, restrict due process protections, and curtail civil liberties. The chapter argues that these restrictions on individual rights stand as a rare exception to the increasing priority given to the ontological status of individuals after the Second World War (Frank and Meyer 1998; Frank and McEneaney 1999; Frank, Camp and Boutcher 2010). In contrast to developments in other areas of law, where the rights of individuals have become paramount, national counterterrorism statutes regularly restrict or eliminate the rights of individuals in defense of the national community. Using data on the content of the new laws, the chapter illustrates that counterterrorism laws severely restrict individual rights on a global scale.

The chapter further contends that this formalization of legal exceptions in terrorism cases can also be read as an indicator of the true dominance of individual rights in the modern period. The reality that lawmakers’ must carve out special legal spaces where individual entitlements do not apply lays bare the hegemony of individual rights. On balance, the new laws may in fact reinforce the priority given to individuals in society. In drawing a fundamental distinction between terrorism suspects as individuals only worthy of punishment and the rest of society, which is made up of individuals worthy of rights, the new laws normalize global scripts about the importance of individual rights even as they construct formal mechanisms to suspend the individual rights of terrorism suspects.

The sixth chapter, “Counterterrorism Enforcement,” moves beyond an analysis of formal laws to examine actual state practice. Drawing on enforcement data from 64 countries collected by the Associated Press in 2011, the chapter shows that more than 110,000 arrests and 35,000 convictions occurred under counterterrorism laws in the decade following 9/11 (Mendoza 2011). The analysis spotlights legal changes in the rules governing pre-trial detention, administrative detention, and judicial procedures that allow

officials to hold terrorism suspects without charge and suspend judicial review.

The chapter also reveals an uneven pattern of counterterrorism enforcement. A handful of states are responsible for the overwhelming number of arrests and convictions worldwide. Moreover, less democratic regimes are more likely to detain and prosecute individuals under new counterterrorism laws. The results suggest that counterterrorism can veil the aggressive enforcement tactics of authoritarian regimes in the rule of law. Counterterrorism laws can legitimate abusive regimes as partners in the global war against terrorism even as they provide legal tools to surveil, capture, and imprison domestic political opponents, democratic activists, and judicial reformers. The chapter concludes that new laws provide dangerous cover to repressive regimes.

The concluding chapter reviews the central arguments advanced in each chapter. It argues that the rise of counterterrorism law after 9/11 represents a troubling expansion of state authority. Lawmakers worldwide can hijack counterterrorism to curtail civil liberties. Nevertheless, recent debates on counterterrorism provide some reassuring signs that the courts, democratic institutions, and civil society can serve as bulwarks against abuse.

Appendix 1.1: "The Names"

By Billy Collins, poet laureate of the United States.

Yesterday, I lay awake in the palm of the night.
A soft rain stole in, unhelped by any breeze,
And when I saw the silver glaze on the windows,
I started with A, with Ackerman, as it happened,
Then Baxter and Calabro,
Davis and Eberling, names falling into place
As droplets fell through the dark.
Names printed on the ceiling of the night.
Names slipping around a watery bend.
Twenty-six willows on the banks of a stream.
In the morning, I walked out barefoot
Among thousands of flowers
Heavy with dew like the eyes of tears,
And each had a name --
Fiori inscribed on a yellow petal
Then Gonzalez and Han, Ishikawa and Jenkins.
Names written in the air
And stitched into the cloth of the day.
A name under a photograph taped to a mailbox.
Monogram on a torn shirt,
I see you spelled out on storefront windows
And on the bright unfurled awnings of this city.
I say the syllables as I turn a corner --
Kelly and Lee,
Medina, Nardella, and O'Connor.
When I peer into the woods,
I see a thick tangle where letters are hidden
As in a puzzle concocted for children.
Parker and Quigley in the twigs of an ash,
Rizzo, Schubert, Torres, and Upton,
Secrets in the boughs of an ancient maple.
Names written in the pale sky.
Names rising in the updraft amid buildings.
Names silent in stone
Or cried out behind a door.
Names blown over the earth and out to sea.
In the evening -- weakening light, the last swallows.
A boy on a lake lifts his oars.
A woman by a window puts a match to a candle,
And the names are outlined on the rose clouds --
Vanacore and Wallace,
(let X stand, if it can, for the ones unfound)

Then Young and Ziminsky, the final jolt of Z.
Names etched on the head of a pin.
One name spanning a bridge, another undergoing a tunnel.
A blue name needled into the skin.
Names of citizens, workers, mothers and fathers,
The bright-eyed daughter, the quick son.
Alphabet of names in a green field.
Names in the small tracks of birds.
Names lifted from a hat
Or balanced on the tip of the tongue.
Names wheeled into the dim warehouse of memory.
So many names, there is barely room on the walls of the heart.

Chapter 2

Interrogating Terrorism

Abstract

Terrorism lacks *a priori* meaning. Definitions of the term vary widely in scholarly work. While there is widespread agreement that terrorism minimally requires 1) the use of illegitimate violence, 2) to create fear beyond a specific act, 3) with the intent of achieving some political end, these common elements offer only modest analytic leverage in studies of political violence. Due to the subjective assessments involved in defining terrorism, it is difficult to operationalize the concept as a useful analytic category. Scholars should therefore redirect attention towards the concrete policies and practices of counterterrorism. This chapter takes a modest step in that direction by evaluating legal definitions of terrorism in national counterterrorism laws worldwide after 9/11. The analysis reveals that lawmakers' definitions of terrorism vary substantially around the world. Yet an overwhelming number of the laws include overly broad definitions that can open the door to potential state abuse.

When Gertrude Stein returned to Oakland, California, and searched without success for her childhood home she reported in her memoir: “There is no there there” (Stein 1937[2004]: 289). An academic researcher searching for the core meaning of terrorism among the many definitions available in the literature might say the same. The diversity of conceptualizations strongly suggests that terrorism lacks any universal definition. Does terrorism require political or ideological motivations? Does it require targeting non-combatants? Does it require the intent to terrorize the population at large? Does state violence qualify as terrorism? No consensus emerges on these key distinctions. In fact, numerous international attempts to agree on a single working definition have failed to generate a common definition (Romaniuk 2010; Saul 2006; Scheppele 2011; Setty 2011; Young 2006). Yet state officials increasingly wield the label in politics, often employed as a catchall description for violence that offends domestic sensibilities. The field of terrorism studies has swelled recent decades (Stampnitzky 2011). However, labeling something terrorism often obscures more than it clarifies. The uncritical use of the term as an analytic in social science research can distract from underlying processes and practices that should be the focus of most empirical investigations.

The following chapter contains two interrelated arguments. First, it argues that terrorism provides limited analytic leverage in sociolegal scholarship because of its vague, inconsistent, and subjective character. Second, it contends that scholars should consequently shift away from terrorism as a research category and reorient their studies towards the concrete policies and practices of counterterrorism, which are ripe for empirical investigation and more amenable to comparison. The chapter proceeds in five parts. First, it begins with a review of previous sociolegal work on terrorism. Next, it examines academic definitions of terrorism, identifying some common elements in scholarly formulations. It argues that the usefulness of these common elements is limited because they rely on so many difficult subjective assessments on the part of researchers. Third, the work turns to statutory definitions and finds equally inconsistent and murky formulations. This section shows that definitions of terrorism vary widely even within state jurisdictions. Fourth, drawing on content coding of national counterterrorism laws in 142 countries, the chapter maps definitions of terrorism worldwide. It finds a lot of variation in lawmakers’ formulations of terrorism. Many states have resisted the model language promoted by the United Nations. Ambiguity seems the greatest commonality in the definitions. Many laws include overly broad language or offer no definition of terrorism. The conclusion argues that the broad scope of definitions poses a significant danger to civil liberties around the world.

Sociolegal Approaches to Terrorism

Sociolegal scholars began writing on terrorism decades ago (Crenshaw 1981; Gibbs 1989; Turk 1982). Yet sociologists largely ceded the domain of terrorism studies to political scientists, doctrinal legal scholars, and policy wonks until recently.⁴ In the

⁴ Few sociologists made terrorism an object of study before the 9/11 attacks in the United States (Turk 2004). Jeff Goodwin (2006: 2027) writes: “Before 9/11, terrorism research was the exclusive preserve, with very few exceptions, of small networks of political

decade following the September 11th attacks, funding for sociolegal research on terrorism substantially increased, opening the floodgates to a range of new scholarship. In the United States, where much of the research on terrorism and counterterrorism occurred, the National Science Foundation, the Department of Homeland Security, the National Institute for Justice, and the Department of Defense all offered new sources of financial support (LaFree and Ackerman 2009). A similar trend occurred in European academic circles, where grants for terrorism research multiplied (Eder and Senn 2008, cited in LaFree and Ackerman 2009).

With greater financial backing, researchers scrambled to develop new theories and empirical projects to identify the origins and causes of terrorism (LaFree and Ackerman 2009). New studies, which often sought to develop predictive models of terrorism, tended to view terrorism as pathology and explain its emergence with reference to processes of socialization, ideology, demographics, group formation, and social structures (Borum 2003; Bloom 2005; Juergensmeyer 2003; Silke 2008; Victoroff 2005). It was taken for granted that terrorism was maladaptive, an illness in need of a cure, an ideology to be neutralized, or a malignant outgrowth to be cut from the social body. Ignoring the dynamic functions of political violence, scholars at times reduced terrorism to a static evil. To varying degrees, research failed to recognize the fluidity and ongoing social construction of terrorism.

Sociologists, on the whole, adopted more critical views of terrorism studies. Recognizing terrorism as yet another form of social practice, albeit one associated with violent and often tragic consequences, sociologists sought to trace its variation across time and social space. Scholarship challenged reified conceptions of terrorism (Alexander 2004; Black 2004; Goodwin 2004; Tilly 2004), linked terrorism with dynamics of the world system (Bergesen and Lizardo 2004), explored the role of economics in producing terrorist social movements (Smelser 2007), and illustrated the emergence of the terrorism studies as a contested field of expertise (Stampnitzky 2010). These studies conveyed an awareness of the socially constructed nature of terrorism and illuminated its vast and irregular conceptual terrain. Categories of political violence deemed terrorism and social meanings associated with these categories were seen as evolving. Nevertheless, sociologists, while adopting more reflexive approaches, continued to labor in largely unconnected sinkholes, investigating terrorisms of their own design.

After 9/11, terrorism-related studies proliferated along with sources of funding to support them, creating a burgeoning interdisciplinary domain. However, variation in authors' understandings of terrorism and their divergent research agendas prevented the formation of any recognizable scholastic field. Definitional issues plagued academics seeking to build unified research agendas. As a result, research splintered into a wide range of relatively independent projects loosely tied to political violence.

scientists and non-academic 'security experts,' relatively few of whom were interested in social-science theory.”

Against Terrorism as an Analytic Category

Defining terrorism is challenging. Scholars level forests writing about how to do it.⁵ A review of the terrorism literature in the 1980s identified more than one hundred distinct definitions (Schmid and Jongman [1988] 2008).⁶ Today a similar review would likely yield an even greater number of definitions as public officials and the media refer to wide-ranging activities as terrorism, including radical environmental activism, illegal narcotics smuggling, and anti-abortion violence. Due to the inconsistency of definitions in research, authors frequently begin by settling on a workable definition in their work (Badley 1998; Gibbs 1989; Goodwin 2006; Hoffman 2006; Lacqueur 1977; Smelser 2007; Saul 2006; Young 2009).

Historical accounts offer one avenue for researchers to clarify their conceptualizations of terrorism, though tracing historical lines to the origins of terrorism often seems akin to identifying original sin. Authors inevitably discover the first bite of the forbidden apple in different places. Laura Donohue (2005) identifies early terrorism in Ancient Egypt, Greece, and Rome. Audrey Kurth Cronin (2002) finds that it begins in the first century B.C.E. with the Zealots-Sicari Jewish revolts against Roman rule. Michael Burleigh (2005) starts his analysis with the Irish Fenians. Bruce Hoffman (2006) locates the origins of modern terrorism in the head-rolling *regime de la terreur* in France.

⁵ A few examples of admirable attempts include: Badley, Thomas J. 1998. "Defining Terrorism: A Pragmatic Approach." *Terrorism and Political Violence* 10(1): 90-107; Gibbs, Jack P. 1989. "Conceptualization of Terrorism." *American Sociological Review* 54:329-40; Goodwin, Jeff. 2006. "A Theory of Categorical Terrorism." *Social Forces* 84(4):2027-2046; Perry, Nicholas J. 2004. "The Numerous Federal Legal Definitions of Terrorism: The Problem of Too Many Grails." *Journal Legis* 30:249-255; Saul, Ben. 2006. *Defining Terrorism in International Law*. Oxford University Press; Schmid, Alex. 2004. "Terrorism: The Definitional Problem." *Case Western Reserve Journal of International Law* 36:375-419; Schmid, Alex P. and Albert J. Jongman. [1988] 2008. *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, and Literature*. Transaction Publishers; Tiefenbrum, Susan. 2004. "A Semiotic Approach to a Legal Definition of Terrorism." *ILSA Journal of International and Comparative Law* 9:359-402; Weinberg, Leonard, Ami Pedahzur, and Sivan Hirsch-Hoefler. 2004. "The Challenges Conceptualizing Terrorism." *Terrorism and Political Violence* 16(4):777-794; and Young, Reuven. 2006. "Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and Its Influence on Definitions in Domestic Legislation." *Boston College International and Comparative Law Review* 29(1):23-106.

⁶ Unresolved conceptual issues related to terrorism include, but are not limited to, the boundary between terrorism and political violence, whether terrorism requires intent, whether terrorism is different from other types of crimes, whether political terrorism, whether the degree of violence matters, and whether international terrorism, or indigenous terrorism reference unique form of terrorism (Schimid and Longman 2008: 29).

The movement of history itself is partly to blame for the variation in scholarly conceptions. “Many terrorisms exist, and their character has changed over time and from country to country” (Laqueur 2003: 22). Revolutionary anarchists, separatists, and antimonarchical movements all embraced the term during different periods. Khalid Sheik Mohammed, the confessed mastermind of the 9/11 attacks, recently proclaimed: “If terrorism is to throw terror into the heart of your enemy and the enemy of Allah, we thank Him, the Most Merciful, the Most Compassionate, for enabling us to be terrorists.”⁷ His statement shows how claims to terrorism shift over time. It is an unstable and highly politicized label (Burke 2009).

Shifts in understandings of terrorism in the 20th century underscore its mercurial character. In the 1930s, terrorism became associated with Stalin’s “Great Terror” and the state repression of fascist regimes (Hoffman 2006). In the 1940s and 1950s, national liberation movements complicated definitions by referring to themselves as “freedom fighters” (Hoffman 2006). By the 1980s, in the midst of cold war politics, terrorism was often applied to state-sponsored actions, such as Iran’s alleged support of the violent campaigns of Islamic Jihad or Libya’s reported backing of the bombing of Pan Am Flight 103.⁸ In the last three decades, the boundaries of terrorism have become even more obscure with the emergence of “narco-terrorism,” “cyber-terrorism,” “eco-terrorism,” “anti-abortion terrorism,” and “radical Islamic terrorism.” In the face of such historical contingency, lawmakers, policy experts, and researchers frequently continue to treat terrorism as a known quantity, either adopting a “know it when you see it” approach or simply assuming a stable, ahistorical meaning.⁹

A Diversity of Definitions

The voluminous literature on political violence shows widespread irregularity in definitions of terrorism. No consensus exists on how to define the phenomenon or measure its effects. Left to navigate the murky bogs of terrorism studies without clear channels of understanding, scholars’ map out the contours of terrorism in different ways.

⁷ The Guardian. 2003. “We Left Out Nuclear Targets, for Now,” 3 March.

⁸ Islamic Jihad claimed responsibility for suicide car bombings of the U.S. Embassy and Marine Headquarters in Beirut in 1983, an attack on an Israeli military installation in Sidon, and an in-flight bombing of a French airliner in 1989. Iran’s reported involvement in capture of 52 American hostages in 1979 was also described as state-sponsored terrorism. Likewise, former Libyan dictator Muammar Qaddafi was deemed a sponsor of terrorism based on his alleged support of an attack on a Berlin nightclub popular with U.S. service personnel. Libyan rebels later described Qaddafi as a terrorist during the Arab Spring uprisings in 2011, which led to his killing. Other examples include bombings by North Korean state agents in 1987, actions by the Afghan state security agency in Pakistan, and the involvement of the United States in Central America.

⁹ The “know it when I see it” approach will be familiar to many as the threshold test for pornography described in the concurring opinion of United States Supreme Court Justice Potter Stewart in *Jacobellis v. Ohio* 378 U.S. 184 (1964).

Almost every article or book written on terrorism begins with a section defining the author’s understanding of terrorism. Scholars strive to clarify for readers what types of political violence fall under their analysis. While generally containing a few core elements, these definitions reveal significant differences. The influential definitions of terrorism below demonstrate the common elements and variation across scholarly work.

Table 2.1: Academic Definitions of Terrorism¹⁰

Black (2004)	“Pure terrorism is self-help by organized civilians who covertly inflict mass violence on other civilians.”
Bergesen and Lizardo (2004)	“[T]he use of violence by nonstate groups against noncombatants for symbolic purposes, that is, to influence or somehow affect another audience for some political, social, or religious purpose.”
Burleigh (2005)	“Terrorism is a tactic primarily used by non-state actors, who can be an a cephalous entity as well as a hierarchical organization, to create a psychological climate of fear in order to compensate for the legitimate political power they do not possess.”
Carr (2003)	“[T]he contemporary name given to, and the modern permutation of, warfare deliberately waged against civilians with the purpose of destroying their will to support either leaders or policies that the agents of such violence find objectionable.”
Crenshaw (1981)	“The premeditated use or threat of symbolic, low-level violence by conspiratorial organizations.”
Cronin (2002)	“[A]t a minimum, terrorism has the following characteristics: a fundamentally political nature, the surprise use of violence against seemingly random targets, and the targeting of the innocent by nonstate actors.”
Ganor (1998)	“Terrorism is the intentional use of or threat to use violence against civilians or against civilian targets, in order to attain political aims.”
Goodwin (2004)	“Terrorism is the strategic use of violence and threats of violence by an oppositional political group against

¹⁰ Goodwin (2006) provides a similar compilation of academic definitions.

	civilians or noncombatants, and is usually intended to influence several audiences.”
Hoffman (2006)	“[T]errorism is the deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change... Terrorism is specifically designed to have far-reaching psychological effects beyond the immediate victim(s) or object of the terrorist attack. It is meant to instill fear within, and thereby intimidate, a wider ‘target audience’... Terrorism is designed to create power where there is none or to consolidate power where there is very little. Through the publicity generated by their violence, terrorists seek leverage, influence, and power. They otherwise lack to effect political change on either a local or an international scale.”
LaFree and Ackerman (2009)	“[T]hreatened or actual use of illegal force directed against civilian targets by nonstate actors in order to attain a political goal through fear, coercion, or intimidation.”
Laquer, Walter (2003)	"Terrorism constitutes the illegitimate use of force to achieve a political objective when innocent people are targeted."
Tilly, Charles (2004)	The “asymmetrical deployment of threats and violence against enemies using means that fall outside the forms of political struggle routinely operating within some current regime.”
Turk, Austin T. (2004)	“[O]rganized political violence, lethal or nonlethal, designed to deter opposition by maximizing fear, specifically by random targeting of people or sites.”

Varied definitions underscore the diversity of meanings attributed to terrorism. Terrorism ranges from “self-help” (Black 2004) to “warfare waged against civilians” (Carr 2003). It can encompass a wide array of violence, including “asymmetrical violence” (Tilly 2004), random targeted violence (Turk 2004), or “violence used against noncombatants for symbolic purposes” (Bergesen and Lizardo 2004). Definitions of terrorism depend on the discretion to scholars, who can employ and measure the term to very different ends. Besieged by conceptual fuzziness and practical ambiguity, formulations rely on subjective determinations of what constitutes political action, violence, and fear. Such variability and inconsistency in researchers’ interpretations make terrorism a challenging conceptual category around which to build a robust research agenda. The threshold between terrorism and other forms of political violence is almost always highly contested.

Complex subjective assessments undergird all formulations of terrorism. Definitions flow from our identities and experiences, making them vulnerable to personal and political biases. Without a serious degree of academic reflexivity, definitions of terrorism can serve as little more than rationalizations of private politics. Nevertheless, the category of terrorism cannot simply be tossed aside because it involves subjective assessments and some conceptual fuzziness. This is true of all research analytics. The question becomes one of terrorism's pragmatic usefulness to researchers as compared with other conceptions. Towards this end, it is important to identify shared understandings of terrorism in order to build a basic framework that can be evaluated as a research tool in the empirical world.¹¹

Terrorism, according to the definitions above, minimally involves at least three core elements.¹² First, terrorism names *illegitimate violence*. All the definitions above incorporate this idea in some manner. In some cases, the idea of illegitimacy is captured by the use of violence against innocents, primarily described as civilians, noncombatants, or victims (Black 2004; Bergesen and Lizardo 2004; Carr 2003; Cronin 2002; Ganor 1998; Goodwin 2004; Hoffman 2006; Lafree and Ackerman 2009; Lacqueur 2003). By definition, the killing, maiming, or terrorizing of innocents cannot be legitimate. In other instances, scholars articulate the idea of illegitimacy with reference to asymmetries of power, reflecting an awareness and sensitivity to the symbolic power of some groups to define innocence in history (Burleigh 2005; Tilly 2004; Turk 2004). Regardless of how definitions capture this element, terrorism embodies the idea of illegitimate violence from the perspective of the person or group classifying the violence as such. Terrorism, then, labels actions abhorred by a social body. It names acts that violate sociological norms and sensibilities. A suicide bombing, a lynching, an assassination, or a state ordered killing can all be acts of terrorism, or not, depending on social understandings of these events.¹³ Ideas about what constitutes profane violence and legitimate violence constantly change. In the last instance, terrorism is wholly sociological, entirely determined by the outcome of symbolic struggles within society over what types of violence are socially acceptable.

Second, terrorism *terrorizes*. Designed to inspire fear, the psychological impact of an act of terrorism is what conceptually differentiates it from other forms of political violence. This idea recurs throughout definitions of terrorism. In some cases, authors presume that targeting innocents invariably terrorizes publics. In other cases, definitions reference the psychological dimension of terrorism by alluding to its symbolic impact (Bergesen and

¹¹ This work makes no attempt to develop a comprehensive typology of terrorism. The author finds such universal typologies generally to be both ahistorical and relatively useless. The work rather seeks to identify any common denominators among the variable definitions.

¹² Definitions may explicitly or implicitly include these elements.

¹³ An injured soldier can detonate a grenade to cover his comrades' escape, citizens can execute a deposed dictator, a drone can target a military leader in an armed conflict, and a court can order the death of a serial killer. The meaning of all these acts will change with the subjectivities of those interpreting the events.

Lizardo 2004; Crenshaw 1981), apparent randomness (Cronin 2002; Turk 2004), or strategic use (Goodwin 2004). Alternative definitions reference the intent to cultivate fear (Burleigh 2005; Hoffman 2006; LaFree Ackerman 2009; Turk 2004), threaten enemies (Ganor 1988; Goodwin 2004; Tilly 2004), destroy civilian will (Carr 2003), or deliberately exploit and maximize fear (Hoffman 2006; Turk 2004). In all cases, violence alone fails to satisfy the terrorism threshold. Perpetrators of terrorist violence must have larger psychological aims.

Third, *political ideology* motivates terrorism. Acts of terrorism must seek to service politics.¹⁴ Terrorist violence aspires to political change. It tries to alter the status quo, weaken opposition, and initiate novel processes of social engineering. Often terrorism aims at nothing less than the birth of a new society. This political dimension of terrorism sometimes remains obscured in definitions because recognizing such foundational political ambition on the part of terrorists also means acknowledging, if not legitimating, their alternative worldviews. To see violence as political, instrumental, and aspirational, makes it more difficult to classify it as profane, random, and illegitimate. Definitions of terrorism, therefore, vary in the extent to which they admit the role of political ideology. Nonetheless, most definitions explicitly reference the political nature of terrorism (Cronin 2002; Ganor 1998; Goodwin 2004; Hoffman 2006; Lafree and Ackerman 2009; Laqueur 2002; Tilly 2004; Turk 2004). Still others allude to the politics underpinning terrorism (Bergesen and Lizardo 2004; Burleigh 2005; Carr 2003). Truly random violence cannot be terrorism because perpetrators lack the requisite political intention. Terrorism is always political.

Terrorism, at a minimum, then requires the use of violence deemed illegitimate in order to terrorize a broader audience and promote a political ideology.¹⁵ This basic framework, however, does not get the analyst very far. The limited conceptual agreement prompts more questions than it answers: What counts as violence? Is it limited to violence against innocent individuals? What does it mean to be innocent? Who decides if violence is

¹⁴ Politics used in its broadest sense. Terrorism seeks to transform relations of power, restructuring social, religious, or economic relations.

¹⁵ Alex Schimid and Albert Jongman ([1988] 2008) advance a consensus definition that underscores the variation and convoluted state of academic understandings of terrorism. They argue that sixteen elements unify scholarly definitions of terrorism: “Terrorism is an [1] anxiety-inspiring method of repeated [2] violent action, employed by (semi-) [3] clandestine individual, group, or state actors, for [4] idiosyncratic, criminal, or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets. The [5] immediate human victims of violence are generally chosen [6] randomly (targets of opportunity) or [7] selectively (representative or symbolic targets) from a target population, and serve as message generators. [8] Threat-and violence-based [9] communication processes between terrorist (organization), (imperiled) victims, and main targets are used to [10] manipulate the main target (audience(s)), turning it into a [11] target of terror, a [12] target of demands, or a [13] target of attention, depending on whether [14] intimidation, [15] coercion, or [16] propaganda is primarily sought.” If this is clarity then efforts to operationalize and measure terrorism are likely doomed.

legitimate? What is the threshold for terror? Who must experience such terror? What does it mean to act in the service of a political goal? Who decides what political goals meet the threshold to be deemed terrorism? These questions and many others plague researchers attempting to operationalize and measure terrorism.

Mapping and analyzing terrorism requires investigators to unpack and interrogate complicated webs of subjective understandings in specific contexts in order to construct any useful analytic research category. Given the complexity of its component parts, this often creates a near insurmountable obstacle, particularly for researchers seeking to understand terrorism beyond specific locales. No single definition can encompass all the acts that have historically been called terrorism (Laqueur 1987). Yet formulations of terrorism that are too broad sacrifice both specificity and consistency, adopting vague boundaries that grant wide latitude to researchers to interpret political violence differently. In this case, latent judgments can decide the parameters of scientific categories and data may reflect personal politics more than intersubjective agreement. The shared elements of abstract definitions of terrorism provide only limited analytic leverage in studying forms of political violence.

Given the conceptual fog enveloping academic definitions of terrorism, analysts should be wary of attempts to construct or operationalize any academic definition as a universal measure of terrorism. Conceptual formulations can be useful for thinking through the complexities of political violence, but the subjective assessments necessary to define terrorism make generalizations difficult. Scholars should abandon efforts to mold definitions detached from the real world and instead redirect their attention to the definitions used by policymakers and law enforcement. No one can fashion a perfect typology of terrorism. It would enviably fail to recognize the constant evolution of the phenomenon. The challenge is to account for the variation in understandings of terrorism within and across states. In this endeavor, the study of legal definitions offers one productive avenue for researchers. Counterterrorism laws provide a way to map national understandings of terrorism as a form of political violence. The next section reviews statutory definitions of terrorism, identifying significant variation even within single jurisdictions.

Statutory Definitions of Terrorism

Definitions of terrorism vary in the policy world. Carried along and shaped by historical currents, legal language exists at the mercy of politics. The following section illustrates the variation in statutory definitions of terrorism at the domestic and international level. Laws exhibit the same diversity of meanings as observed in academic conceptions. Yet their anchors in legal practice can make them more worthy of study. Mapping definitions can reveal empirical patterns in lawmakers' understandings of terrorism worldwide and also demonstrate its historically contingent character. Statutes can show inconsistencies in officials' understandings of what constitutes terrorism across national jurisdictions and also spotlight the broad scope of activities that can be considered terrorism.

Lawmakers' formulations of terrorism reflect a wide spectrum of understandings even within single jurisdictions. Nicolas Perry (2004), for example, identified twenty-two definitions of terrorism under Federal Law in the United States. The U.S. Department of State, the Central Intelligence Agency, and the United States Law Code, operate under a single definition of terrorism. However, the Department of Defense, the Federal Bureau of investigation, and the U.S. House of Representatives Permanent Select Committee on Intelligence employ different standards.

Table 2.2: Definitions of Terrorism for Agencies in the United States

Department of State (2010)	“[P]remeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience.”
Central Intelligence Agency (2010)	“[P]remeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience.”
U.S. Code, Title 22, Section 2656f(d) (2010)	“[P]remeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience.”
Department of Defense (2010)	“The calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological.”
Federal Bureau of Investigations (2010)	“[T]he unlawful use of force or violence against persons or property to intimidate or coerce a Government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”
United States House of Representatives Permanent Select Committee on Intelligence (2010)	“Terrorism is the illegitimate, premeditated violence or threat of violence by subnational groups against person or property with the intent to coerce a government by instilling fear amongst the populace.”

Conflicting definitions of terrorism can result in confusion and uncertainty (Perry 2004). Under the State Department standard, for example, terrorist violence must be “premeditated” and “directed against noncombatants.” But this is not true of the Department of Defense definition, which drops both requirements. In fact, under the Department of Defense standard, no actual violence need occur for an action to be deemed terrorism. If perpetrators intend to coerce or intimidate others, “threats of

unlawful violence” can be terrorism. The definition used by the Permanent Select Committee on Intelligence goes a step further. Even threats of violence against property can satisfy the threshold to be called terrorism. In theory, a political demonstrator threatening to break a window or destroy a police blockage could be convicted as a terrorist. The broad scope and inconsistency of domestic definitions of terrorism highlights the lack of conceptual clarity and shifting meaning of term within national jurisdictions.¹⁶

Domestic definitions of terrorism also transform with movements of history. During the Cold War, for example, terrorism became shorthand to describe state-sponsored violence. Lawmakers focused on campaigns by sovereign states. The Soviet Union and the United States fashioned definitions to construct the other as a backer of terrorism. However, after the fall of the Berlin Wall, the emergence of Al-Qaeda, and the attacks of 9/11, the meaning of terrorism changed. States were no longer the primary agents of terror. Instead nonstate actors increasingly appeared as the quintessential terrorist. The focus of security experts in the United States shifted from rogue states to individuals operating in small-scale transnational networks (Benjamin and Simon 2002; Sageman 2008). State agencies became increasingly concerned about terrorist cells and homegrown terrorists.¹⁷ New counterterrorism legislation empowered police to increase domestic surveillance operations.¹⁸ Statutory definitions of terrorism evolved to mirror new concerns. The USA PATRIOT ACT, for example, expanded the definition of terrorism to encompass domestic acts, paving the way for increased policing of local populations (Setty 2011).¹⁹ The Cold War concerns about sovereigns sponsoring terrorism dissipated.²⁰ The new threat of terrorism came from “subnational groups” and “clandestine agents.” As understandings of terrorism changed, lawmakers exercised their symbolic power and rewrote legal definitions.

¹⁶ The diversity of definitions also allows officials to select definitions to meet specific agency goals (Setty 2011).

¹⁷ See New York Police Department. 2007. “Radicalization in the West: The Homegrown Threat”; Bergen, Peter and Bruce Hoffman. 2010. “Assessing the Terrorist Threat,” Bipartisan Policy Center; Toni Johnson. 2010. “Threat of Homegrown Islamist Terrorism.” Council on Foreign Relations; Jenkins, Brian Michael. 2010. “Terrorist Radicalization in the United States Since September 11, 2001.” RAND Corporation.

¹⁸ In the United States, counterterrorism efforts targeted Arabs, Muslims, and other of Middle Eastern descent (Volpp 2002).

¹⁹ Under section 802 of the USA PATRIOT ACT, terrorism includes “acts dangerous to human life that are a violation of the criminal laws of the United States or of any State [that] appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping; and occur primarily within the territorial jurisdiction of the United States.” See U.S. Public Law 107-56 (2001).

²⁰ Discussions of state-sponsored terrorism today usually relates to threats from weapons of mass destruction.

Fragmented understandings of terrorism extend far beyond the jurisdiction of the United States. The international community has never reached agreement on a common definition of terrorism. For decades, officials in bodies of the United Nations have labored without success to build a consensus on what constitutes terrorism (Boulden and Wiess 2004). Multilateral counterterrorism efforts have sought to build on a number of working definitions. Informed by the current sixteen international legal instruments on terrorism, these working definitions have circulated in United Nations committees and other international bodies. However, states remain free to willfully disregard them.

Security Council Resolution 1373 illustrates the lunacy of the current situation. Under Chapter VII of the U.N. Charter, Resolution 1373 mandates cooperation among all states in combating terrorism, but it fails to provide any binding definition. States must decipher for themselves what acts of political violence rise to the level of terrorism. The international formulations of terrorism in Table 2.3 underscore their enforcement dilemma. The definitions exhibit significant variation. In fact, their most striking commonality is their lack of legal precision and clarity.²¹

Table 2.3: International Definitions of Terrorism

League of Nations (1937)	“All criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.”
United Nations (1992)	"An anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby - in contrast to assassination - the direct targets of violence are not the main targets."
The Arab Convention for the Suppression of Terrorism (1998)	“Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources.”

²¹ Reuven Young (2006) has argued that definitions of terrorism tend to share at least nine common characteristics. However, a review of counterterrorism laws around the world suggests that such commonalities exist primarily as a result of conceptual vagueness, which allows an analyst to find commonality in ambiguity. To take the first of Young’s nine common characteristics, he argues that terrorism measures commonly proscribe what types of outcomes may constitute terrorism. For example, acts may criminalize acts causing death, serious bodily injury, or serious property damage as terrorist acts. However, Young ignores the fact that often under the broad language of these provisions any outcome may constitute terrorism, from blocking traffic to detonation of a weapon of mass destruction.

International definitions also reflect historical changes. The League of Nations (1937) definition, developed just prior to the outbreak of World War II, centers on terrorist acts committed against states. Later definitions, such as the United Nations (1992) definition, move away from state centered conceptions, expanding the definition of terrorism to include acts by groups and individuals. The two conceptions encompass very different forms of violence and underscore the overly broad character of terrorism definitions. More recent efforts to agree on a definition of terrorism have deadlocked over conflicts with the Organization of the Islamic Conference (OIC), which has sought to create an exception for national liberation movements.²²

As shown by the definitions above, terrorism includes a wide assortment of criminal acts. Any actions calculated to terrorize, inspiring anxiety, or threatening to advance a criminal agenda that seeks to sow panic can constitute terrorism. While reflecting the three core elements of illegitimate violence, terror, and political motivation, these vague provisions hardly provide conceptual clarity to lawmakers, local enforcement agencies, or scholars. International definitions offer a conceptual umbrella capable of sheltering a staggering number of actions and meanings.

Abstract definitions of terrorism often yield few dividends for researchers due to their detachment from the empirical world. Thus rejecting the search for a universal typology of terrorism makes logical sense. It is not a particularly useful endeavor for answering most compelling research questions. Legal definitions offer more leverage in efforts to understand the empirics of terrorism and counterterrorism, particularly on a global scale. Although legal definitions of terrorism remain fragmented and historically contingent, they improve on the ephemeral imaginaries of pure academic conceptions because they frequently reflect concrete practice. They must not be unreflexively employed as universal analytics, but they offer real insight into national lawmakers view of terrorism and allow for comparisons across national jurisdictions.

The following section takes a modest step towards developing a more empirically grounded analysis of conceptions of terrorism by examining formal definitions of terrorism enacted in counterterrorism legislation worldwide after 9/11. By focusing on legal instruments, the research avoids the conceptual abyss that is frequently characteristic of terrorism studies. Terrorism is not taken for granted, but rather evaluated as a socially constructed category. The data reveal that legal definitions vary considerably across contexts and show significant ambiguity.

Mapping Definitions of Terrorism

The following section compares legal definitions of terrorism in national counterterrorism laws worldwide with the goal of identifying patterns of collective understanding. Legal

²² See U.N. Document A/68/478 (2011).

definitions can serve as powerful symbols of social understandings.²³ In this case, the laws provide a means to interrogate global ideas about what constitutes terrorism. The section begins by illustrating the substantive variation in legal definitions of terrorism. Next, drawing on four typologies developed through exploratory factor analysis, the section maps the distribution of definitions of terrorism worldwide. The section does not attempt to identify a true definition of terrorism.²⁴ Instead, it illuminates patterns in lawmakers' understandings of terrorism and highlights the potential consequences of these understandings for practices of combating terrorism. The section concludes with comparative qualitative assessments of the actual language in the legal definitions in a number of dissimilar states. Viewed collectively, the analysis shows that definitions of terrorism in national counterterrorism laws are dangerously vague, which permits state officials to use them against a broad spectrum of individuals.

Laws enacted after 9/11 exhibit substantial variability in their formulations of terrorism. Lawmakers worldwide are split on whether harm to property constitutes terrorism, whether threats to public order are enough to constitute terrorism, whether ideological motivations are required, whether terrorizing a population matters, and whether political speech should be exempt from terrorism related prosecutions. These are major and consequential differences. They reflect fundamental divides in the ways that state officials conceptualize terrorism. Table 2.4 breaks down the substantive differences in the laws for 142 countries worldwide.

²³ Emile Durkheim's *The Division of Labor in Society* (1997[1893]) provides a classic example of how changes in formal law reveal underlying social dynamics.

²⁴ The author rejects the idea that seeking a "true" definition of terrorism serves a useful purpose in this work.

Table 2.4: Differences in State Legal Definitions of Terrorism After 9/11, (N=142)

	Number of Countries		Number of Countries
Define terrorism	132	Do not define terrorism	10
Include harm to property	79	Do not include harm to property	63
Include harm to public order	88	Do not include harm to public order	54
Prohibits public disruptions	40	Does not prohibit public disruptions	102
Reference ideological motivations	39	Do not reference ideological motivations	103
References fear or terror	108	Do not reference fear or terror	36
Exempts national liberation movements	2	Do not exempt national liberation movements	140
Exempts dissent or advocacy	15	Do not exempt dissent or advocacy	127

The table shows the variation and vagueness of legal provisions. Eighty-eight countries, for example, define terrorism as any acts that threaten “public order.” Yet lawmakers rarely provide any guidelines for interpreting what constitutes such a threat to public order. As a result, some local officials have read the laws to prohibit blocking traffic or participating in political demonstrations. Along similar lines, forty states ban any acts that cause “public disruptions,” but few provide definitions of what constitutes a public disruption. In thirty-six countries, counterterrorism measures exclude any requirement that the criminalized acts cause terror, which all but eliminates the conceptual distinction between terrorism and other forms of political violence.²⁵ Such nebulous definitions generate widespread concern among human rights advocates because they lend themselves to expansive interpretations and potential abuse. The most striking finding is that ten countries have enacted counterterrorism laws without providing any definition of terrorism.

²⁵ When laws fail to require any intention to influence a public audience, it is often particularly difficult to differentiate terrorism from other criminalized acts. Yet under many of the laws different legal procedures and protections apply to suspects detained on terrorism-related charges.

The variation in legal definitions of terrorism also underscores their greatest commonality, which is their vagueness. By relying on language that criminalizes harm to public order, bans public disruptions, and makes property crimes potential acts of terrorism, the new laws make legal provisions applicable to wide array of circumstances. However, identifying the broadness of the definitions is only part of the sociolegal challenge. It is also important to search for other commonalities underlying the laws.²⁶

Factor analysis allows the analyst to reduce a larger number of variables into a smaller group of factors. Thus, the linear simultaneous equation model underlying factor analysis can serve a useful tool to identify groupings in a set of variables. In this case, exploratory factor analysis of the content coding of counterterrorism laws permits the analyst to identify common elements in the language of the laws. Rather than serving as abstract or generalized definitions of terrorism, these typologies reflect actual legal understandings in the empirical world.

Exploratory factor analysis identifies four typologies of terrorism worldwide after 9/11.²⁷ The *standard definitions* of terrorism require an ideologically motivated act that causes a public disruption or harm to property. These definitions also require that acts intend to terrorize. The *expanded standard definitions* extend the standard definition to include threats to public order. This set of definitions exhibit greater flexibility, allowing for a broader array of acts to be criminalized under these laws. The third definitional grouping, *undefined definitions*, goes even further by dropping the definition of terrorism all together. These laws allow officials to deem virtually any action to be terrorism. Finally, the *democratic standard* includes those laws that explicitly create an exemption for political protest. This final set of definitions show more robust protections for speech than the standard definitions.

These four empirically grounded typologies can used to compare definitions across states. However, the typologies are not mutually exclusive. Legal definitions in many countries bridge these categories. Therefore, many states do not fit precisely into any single grouping. For example, a counterterrorism law might include all the features of a

²⁶ Exploratory factor analysis offers one avenue to search for other commonalities underlying a set of variables (Allison 1999; Kim and Muller 1978; Walkey 2010).

²⁷ Using permanent component factoring, the analysis identifies four groupings underlying the complete set of dichotomous content variables. Factor 1 reflects a default grouping and centers on four characteristics of definitions of terrorism: ideological motivation, harm to property, public disruption, and exceptions for national liberation movements. It also shows some aggregation around the definitional provision requiring that terrorist acts inspire fear or terror. Factor 2 reveals a primary aggregation around definitions inclusion of provisions on threats to the public order. Factor 3 centers on whether or not states' define terrorism at all. Finally, factor 4 distills an association among the variables with regard to the inclusion of a provision exempting political protest (See Appendix 2.1 for the factor loadings, rotation matrix, and scoring coefficients).

standard definition and also incorporate an exemption for political speech. In this instance, the structure of the law would fit the democratic standard and the standard model, but as a hybrid the definition would not be placed into either category. The countries identified in Table 2.8 represent only pure forms of the typologies. This explains why a significant number of states do not appear in the table. States with laws exhibiting qualities from multiple typologies are excluded. Nevertheless, by specifying characteristics of the different definitions, one can generate lists of countries adopting particular definitions, which provides a sense of the geographic distribution of definitional models worldwide. The table below lists countries adopting each definitional model.²⁸

Table 2.8: Countries Adopting Model Definitions of Terrorism

Democratic	Standard	Expanded	Undefined
Antigua Australia Bahamas Belgium Belize Canada Ghana Greece Liechtenstein Nepal St. Kitts and Nevis Seychelles Tanzania Zambia	Antigua Australia Belize Croatia Cyprus Ethiopia Ghana Grenada Iraq Israel Kenya Netherlands Zambia	Armenia Australia Bahamas Bahrain Bangladesh Bosnia and Herzegovina Peru Rwanda Saudi Arabia Slovakia Zimbabwe	Andorra Bulgaria Cape Verde East Timor Gambia Italy Kuwait Niger Senegal Uruguay

No clear pattern emerges from the lists of countries in Table 2.8. Each typology includes democratic and undemocratic states, developed and underdeveloped states, and states from various geographic regions. Countries as diverse as Canada, Nepal, and Seychelles include language that protects political speech from being deemed terrorism. On the other end of the spectrum, countries as different as Australia, Bangladesh, and Slovakia passed expansive laws that criminalize threats to public order. Finally, countries as dissimilar as Andorra, Kuwait, and East Timor enacted counterterrorism laws without explicit definitions of terrorism. The distribution suggests that variation and ambiguity are the greatest commonalities in definitions of terrorism worldwide. Table 2.9 shows the variation of definitions by region.

²⁸ See Appendix: 2.2 for the specifications of each definitional model.

Table 2.9: Distribution of Factor Definitions Across Regions

Region	Democratic	Standard	Expanded	Undefined
Australia & Oceania	1	1	1	0
Central America & Caribbean	4	3	2	0
Central Asia	0	0	0	0
Eastern Europe	0	1	2	1
Middle East and North Africa	0	3	2	1
North America	1	1	1	0
Russia & Independent States	0	0	1	0
South America	0	0	1	0
South Asia	2	0	1	0
Southeast Asia	0	0	0	1
Sub-Saharan Africa	2	5	2	4
Western Europe	3	1	0	2

The regional breakdown of the definitions illustrates deviations in legal language across the globe. While counterterrorism laws are on the rise after 9/11, the specific content of the laws varies and often reflects internal contradictions. Australia, for example, includes an exemption for political speech and also criminalizes threats to public order. Similarly, the United States has enacted laws expanding domestic spying, sanctioning coercive interrogation, and allowing indefinite detention, but has staunchly resisted restrictions on speech (Roach 2011). The distribution shows a wide spectrum of understandings with regard to terrorism itself. Moreover, the countries not listed deviate on some variables from the ideal typologies, suggesting a significant number of hybrid laws. The diversity showcases a global willingness to enact laws with broad definitions of terrorism.

The diversity of definitions is particularly surprising given global reporting requirements. The U.N. Committee on Counter-Terrorism provides recommendations to U.N. member states. Under the counterterrorism mandate created by Security Council Resolution 1373, member states must submit counterterrorism reports demonstrating their compliance with these mandates. However, despite these reporting requirements and the availability of

model language, few countries adopt U.N. model provisions verbatim.²⁹ Countries embrace counterterrorism in principle and their reports testify to their commitment to cooperation. Yet national lawmakers have resisted reforms to bring their laws in line with U.N. guidelines. The table below shows the limited number of states adopting the language of U.N. Model laws.

Table 2.10: Countries with Laws Reflecting Model U.N. Legislation Provisions

U.N. Model Legislation	U.N. Model Legislation with Political Speech Exception
Jamaica Kyrgyzstan Maldives Pakistan Palau St. Kitts and Nevis Tajikistan Tanzania Tunisia United Kingdom Uzbekistan	Jamaica St. Kitts and Nevis Tanzania

The analysis shows no clear pattern with respect to the types of definitions enacted by countries after 9/11. Similar legal understandings of terrorism exist among very different kinds of states. Likewise, similar kinds of states exhibit very different legal understandings. The data suggests that conceptions of terrorism in actual law reflect the same variation and vagueness as abstract definitions in academic work. Legal construction in itself does not displace the fog of terrorism. However, by empirically charting formulations of terrorism in national counterterrorism laws, this chapter moves away from taken for granted abstractions in terrorism studies and towards a more historical and sociologically grounded analysis.

The variability in legal definitions of terrorism calls attention to the problem of working from *a priori* conceptions. Scholars must resist the uncritical use of terrorism as an analytic category in research. Collective concepts, like terrorism, are fictions, but they are “efficient fictions” with which we act and think (Bourdieu 1999). They are true in their effects.³⁰ Terrorism is the product of somewhat arbitrary processes of social construction.

²⁹ In part this can be explained by the fact that many countries enacted new counterterrorism laws before the U.N. Committee on Counter-Terrorism made model legislation available in 2006.

³⁰ They are pragmatically true, rather than transcendently so. Invoking the language of “efficient fictions,” Bourdieu embraces a similar view of “truth.” The American pragmatist William James said: “the true is the name of whatever proves itself to be good

It is a symbolic creation that emerges from chance and history, rather than existing as an innate cognitive schema coded into society or a universal understanding imparted for all time. Like all collective concepts, terrorism is contested. Conceptions of terrorism cannot be passed over as objects of analytic scrutiny. Recognizing the constructed nature of terrorism urges scholars to come to terms with terrorism and counterterrorism as an ever-changing historical phenomenon. Instead of seeing terrorism as static, scholars can recognize it as a social invention that changes in relation with other social constructions and institutions worldwide. Acknowledging the social construction of terrorism also allows analysts to see the potential impact of definitions of terrorism across time and space. The next section explores the consequences of legal definitions of terrorism worldwide.

The Potential Impact of Terrorism Definitions

Definitions of terrorism have real effects in the world. The following section looks more closely at definitions of terrorism in specific states in order to demonstrate their potential to be abused by officials. Overly broad formulations permit officials to investigate, detain, and prosecute individuals for acts that would not generally be viewed as acts of terrorism. After 9/11, lawmakers scrambled to enact new counterterrorism laws with their own statutory language. The result has been inconsistent and ambiguous legal provisions in many jurisdictions that are ripe for abuse. In some cases, legal language criminalizes even nonviolent actions that neither terrorize nor intimidate domestic populations. In other cases, new laws exclude any definition of terrorism, giving a free hand to investigators and prosecutors to deem any act of political violence an act of terrorism.³¹ These broad definitions of terrorism represent a significant danger to civil liberties worldwide.

In Saudi Arabia, for example, the legal definition of terrorism includes any acts deemed to be “mischief on earth.”³² According to the law, “terrorism in all of its forms and manifestations, including incitement to terrorism, which is considered by Shariah to fuel unrest, is a criminal offence punishable by reprimand.”³³ Under the legal standard, almost any action can be held by officials to fuel unrest and thus constitute terrorism.

in the way of belief” (Menand 1997). It is what is useful in a given social setting, and yet its constructed nature does not make it any less real in its effects.

³¹ According to the laws compiled for this research, ten countries had enacted laws that did not include a definition of terrorism in 2009: Bhutan, Brazil, Bulgaria, Cape Verde, East Timor, Gabon, Guinea-Bissau, Italy*, Kuwait, Niger, Paraguay, and Uruguay. It is possible that state definitions of terrorism appeared in other legislation or criminal codes in these countries. *As a member of the European Union, Italy is bound by legal interpretations of terrorism set forth in the European Court of Human Rights and therefore has a *de facto* legal definition.

³² The definition builds on Islamic Jurisprudence where unlawful violence or corruption may be referred to as forms of mischief on earth. See Quran 5:32; 2:11.

³³ See U.N. Document S/2007/67 (2007).

Individuals can also be prosecuted and convicted as terrorist accomplices if they are found guilty of inciting actions deemed mischief by the state.³⁴

In Qatar, any felony committed for a “terrorist purpose” is considered terrorism, but the definition of “terrorist purpose” encompasses a broad array of activities, including damaging national unity, injuring the public, or harming the environment:

A purpose is said to be a terrorist purpose when the motive for using force, violence, threat, or causing terror, is obstructing application of the provisions of the Amended Provisional Constitution or the Law, breaching the public order or exposing the public safety and security to danger or damaging the national unity that results or could have resulted in injuring the public, or terrifying them, exposing their life, liberty or security to danger, harming the environment, public health, the national economy, public or private utilities, establishments, or properties, or seizure thereof or hindering their functions, or obstructing or hindering the public authorities from exercising their duties.³⁵

The breadth of definitions should be of particular concern given the severity of penalties for those convicted of terrorism. In Qatar, the punishments include the death penalty and life imprisonment.³⁶ The 2004 counterterrorism law removes all judicial discretion and mandates capital punishment if the crime causes a death or involves weapons.³⁷ Further, under Article 4 of the Qatar law, any individual or entity that provides financial or logistical support or raises money for activities determined to be terrorist crimes is also subject to punishment.³⁸

In Jordan, a 2006 counterterrorism law held that any acts that cause “damage to infrastructure” and are intended to “disrupt public order” or “endanger public safety” could be deemed terrorism.³⁹ Under the language of the law, participants in public demonstrations can be treated as suspected terrorists if any property damage occurs during their protest.⁴⁰

The Middle East is not alone in criminalizing a range of activities under the auspices of counterterrorism. Countries in every region of the world have enacted ambiguous anti-terrorism measures after 9/11. In Belarus, any acts with the aim of “causing public panic or exerting influence on decision-making by government bodies or hindering political or other public activity” can be deemed terrorism.⁴¹ In Tunisia, “any offense, whatever its

³⁴ See U.N. Document S/2007/67 (2007).

³⁵ Qatar’s Law No. 3 of 2004 on Combating Terrorism, Article 1.

³⁶ Qatar’s Law No. 3 of 2004 on Combating Terrorism, Article 2.

³⁷ Qatar’s Law No. 3 of 2004 on Combating Terrorism, Article 2.

³⁸ Qatar’s Law No. 3 of 2004 on Combating Terrorism, Article 4.

³⁹ Jordan’s Law No. 55 of 2006, Article 2.

⁴⁰ Amnesty International. 2006. “Jordan’s Anti-terrorism Law Opens Door to New Human Rights Violations.”

⁴¹ Belarus’s Law on the Fight Against Terrorism (2001), Article 359.

motive, and whether part of an individual or collective effort, will be considered terrorist if it is capable of terrorizing a person or a group of persons; or of spreading terror amongst the population.”⁴² A 2006 law in El Salvador omits any definition of terrorism, but defines relatively straightforward terms such as “explosives,” “firearms,” “airplanes in flight,” and “public transportation network.”⁴³

New counterterrorism laws also expand the scope of state policing authority by criminalizing threats of violence. Under Canada’s 2001 Anti-Terrorism Act, terrorism includes: “a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counseling in relation to any such act or omission.”⁴⁴ The inclusion of threats of action increases the potential applicability of the laws, particularly since the threshold for threatening action is left undefined. The addition of threats to recent terrorism related statutes generates greater uncertainty about the scope of new laws and increases the possibilities for officials to abuse anti-terrorism to silence political opposition.

The U.N. Committee on Counter-terrorism recommends that definitions of terrorism require that acts cause panic or terror.⁴⁵ However, over a quarter of the states enacting new counterterrorism laws failed to reference terror or fear in their definitions.⁴⁶ Under these legal definitions, political violence can be deemed terrorism without aiming to inspire fear in a broader audience. This lack of a terror requirement eliminates one of the core distinctions generally used to distinguish acts of terrorism from other criminal acts. It also points to the overreach of some of the laws.

Broad definitions of terrorism can have serious consequences with regard to the enforcement of other sections of the counterterrorism laws. Definitions of terrorism as mischief, or acts damaging to national unity, or threats to public order, allow prosecutors to target a wide array of activities under counterterrorism provisions that prohibit the encouragement or incitement of terrorism. Over fifty countries include such statutory

⁴² Tunisian’s Anti-Terrorism Act of 2003. The former criminal code, enacted in 1993, provided a more succinct definition: “Any offense connected to an individual or collective enterprise whose objective is to cause harm to persons or property, through intimidation or terror, shall be considered terrorist.”

⁴³ Spain’s Ley Especial Contra Actos de Terrorismo (2006), Artículo 4.

⁴⁴ Canada’s Anti-Terrorism Act of 2001, §83.01(1). The law explicitly excludes: “an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law.”

⁴⁵ The mandate that laws include this psychological dimension reflects broad consensus among terrorism experts worldwide (Schmid and Longman [1998] 2008; Young 2006).

⁴⁶ 36 of 142 countries enacted anti-terrorism laws that did not reference fear or terror in their definitions of terrorism.

language.⁴⁷ Under these laws, a person who encourages or organizes political protest that officials deem to threaten public order or damage national unity can be prosecuted on charges of terrorism. Combining vague definitions of terrorism with auxiliary provisions in the laws gives prosecutors wide latitude to bring terrorism related charges and also places them a strong bargaining position with regard to criminal pleas.

Many of the definitions can also be employed to limit speech. The United Arab Emirates, for example, criminalizes any statements that recommend or advertise terrorist acts or objectives.⁴⁸ Under Article 2 of the law, terrorist acts include every act or omission of criminal design intended to cause terror or breach public order.⁴⁹ Therefore, a person can be prosecuted for terrorism for distributing protest fliers if officials later determined that the protest had a criminal design intended to breach public order. Article 8 of the law further criminalizes possession or acquisition of “any documents, publications or tapes whatever their kind containing recommendation or circulation of a terrorist act if they are prepared for distribution or briefing others,” as well as the possession or acquisition of “any means of printing, taping or publicity” used for producing them.⁵⁰ A person engaged in political organizing could be convicted under multiple provisions of the law.

Counterterrorism laws also provide discretion to limit speech, including political speech in democratic states. The 2006 Terrorism Act in the United Kingdom, for example, criminalizes public statements encouraging terrorism and the distribution of “terrorist publications” that glorify terrorist acts or are made to be useful in the commission or preparation of terrorist acts.⁵¹ A few states, including the United States, have resisted counterterrorism laws that restrict speech. Nevertheless, only about one in ten countries enacting explicit exemptions to protect dissent, protest, or political advocacy in their statutory language.⁵²

The potential impact of counterterrorism worldwide is significant. Laws passed after 9/11 define terrorism in vague language or not at all. They criminalize a wide range of activities under guise of combating political violence. Property damage, public disruptions, and felonies committed with a terrorist purpose can all be deemed acts of terrorism. Legal reforms also make threats of violence a potential offense, expanding the scope of the laws. In some countries, the legal language eliminates any terror requirement, providing wide discretion to limit speech and empowering zealous prosecutors to aggressively seek accomplice liability. Viewed as a whole, the broad provisions in new counterterrorism laws represent a potential threat to civil liberties worldwide.

⁴⁷ 53 of 142 countries enacted anti-terrorism laws that prohibited the encouragement or incitement of terrorism.

⁴⁸ United Arab Emirates’s Federal Law No. 1 of 2004, Article 8.

⁴⁹ United Arab Emirates’s Federal Law No. 1 of 2004, Article 2.

⁵⁰ United Arab Emirates’s Federal Law No. 1 of 2004, Article 8.

⁵¹ The Council of Europe Convention on the Prevention of Terrorism actually requires states to criminalize “public provocation” of terrorism.

⁵² 15 of the 142 countries enacting counterterrorism laws included such exemptions.

Discussion

This chapter argues that terrorism lacks any *a priori* meaning. A survey of academic definitions of terrorism yields common elements, including the illegitimate use of violence, the goal of inspiring terror beyond the act itself, and the pursuit of a larger political goal. However, these commonalities offer only modest analytic leverage in studies of political violence. Due to the wide assortment of understandings of terrorism and the many subjective assessments required to differentiate one formulation of terrorism from other forms of political violence, operationalizing and measuring abstract definitions of terrorism is nearly impossible. On the whole, therefore, general definitions of terrorism make poor analytics for answering most research questions.

Scholars should redirect attention towards the concrete policies and practices of counterterrorism law. Historically situated and relatively discrete, legal provisions are ripe for empirical investigation. They offer opportunities to develop conceptual frameworks grounded in actual categories of practice. In addition, they are more amenable to comparative analysis and provide greater analytic leverage as compared with general abstractions.

This chapter takes a modest step towards the development of an empirically grounded approach to studying terrorism by evaluating the content of legal definitions of terrorism in national laws worldwide. Circumventing debates about a universal definition of terrorism, the analysis traces actual language in legal provisions around the world in order to identify patterns in lawmakers' understandings of terrorism. The analysis reveals two key findings. First, definitions of terrorism show tremendous variation worldwide. Lawmakers do not simply adopt U.N. model language. The analysis identifies four distinct typologies in legal understandings of terrorism, but it also shows substantial overlap among them. Countries exhibit a wide array of legal standards. There are many hybrid definitions that encompass elements of different typologies. Resisting reforms that would generate common legal language, national lawmakers pass laws with a diversity of definitions. The common elements in these laws do not map onto particular geographic locations, levels of development, or political systems. The findings suggest that a range of legal instruments undergird the global rise in counterterrorism.

Second, counterterrorism laws often include broad and ambiguous definitions of terrorism, which grant wide discretion to police and prosecutors to target an array of activities. In fact, the greatest commonality in definitions of terrorism is their ambiguity. This suggests the potential for abuse as the vague definitions of terrorism permit officials to target individuals engaged in a wide array of activities, including forms of political protest. A comparative assessment of counterterrorism provisions shows that the new laws represent a potential threat to civil liberties worldwide.

Appendix 2.1: Permanent component factoring generated the following factor loadings, rotation matrix, and scoring coefficients.

Factor loadings (pattern matrix) and unique variances, (N=131)

Variable	Factor 1	Factor 2	Factor 3	Factor 4	Uniqueness
Defines Terrorism	.1113	-.0536	.9452	-.0777	.0852
Ideological motivation	.6829	-.1097	-.3102	-.0365	.4241
Intention to cause terror	.5990	.1437	.1818	-.4478	.3870
Includes property harm	.6652	.0650	.0087	.1128	.5405
Causes public disruption	.5921	.0712	.0530	.2774	.5645
Threatens public order	.1824	.7632	-.1258	-.3649	.2352
Political protest exception	.0156	.5508	.1219	.7326	.1448
National liberation exception	.5408	-.4413	.0340	.2175	.4643

Factor Rotation Matrix

	Factor 1	Factor 2	Factor 3	Factor 4
Factor 1	.9637	.2278	.1394	.0006
Factor 2	-.1879	.8152	-.0358	.5466
Factor 3	-.1267	-.0655	.9826	.1186
Factor 4	.1414	-.5284	.1171	.8289

Scoring Coefficients (method = regression; based on varimax rotated factors)

Variable	Factor 1	Factor 2	Factor 3	Factor 4
Defines Terrorism	-.06035	-.04399	.89695	0.01654
Ideological motivation	.38673	.03834	-.23191	-.11770
Intention to cause terror	.18686	.39575	.25866	-.27541
Includes property harm	.33145	.06527	.04042	.12488
Causes public disruption	.31199	-.02696	.05719	.26744
Threatens public order	-.07333	.77186	-.08607	.05854
Political protest exception	.00323	.01172	.01234	.87964
National liberation exception	.37442	-.36781	-.00409	-.04033

Appendix 2.2: Specifications for Definitional Models

Democratic	The definition of terrorism includes an exemption for political speech.
Standard	The definition of terrorism requires an ideological motivation, includes acts that caused public disruptions, includes acts that caused harm to property, and requires that the act inspire fear or terror.
Expanded	The definition of terrorism includes threats to public order.
Undefined	The enacted counterterrorism law after 9/11 fails to define terrorism.

Chapter 3

The Rise of Counterterrorism Laws Worldwide

Abstract:

In less than a decade more than 140 countries worldwide enacted or reformed national counterterrorism laws. The proliferation of new anti-terrorism measures is one of the most dramatic legal developments in the last century with potential consequences for civil liberties worldwide. This chapter shows that after 9/11 the United States and United Nations helped to institutionalize counterterrorism as a mandate of global membership through mandatory reporting, training programs, foreign assistance, and law enforcement cooperation. Counterterrorism transformed from a valid domestic pursuit into a requisite of global membership. These actions cultivated counterterrorism as a global script, which lawmakers embraced as a defense against increasing insecurities faced by sovereign states.

Less than a decade after 9/11, over 140 countries worldwide had enacted more than 250 new laws to combat terrorism. One of the most dramatic legal changes of the last century with potential consequences for civil liberties worldwide, the massive rise of the laws has largely escaped systematic analysis. Previous studies of counterterrorism are either stand-alone case studies or comparative works that analyze shifts in anti-terrorism politics and policies among a few select states (Alexander 2002; Hocking 2003; Hocking and Lewis 2007; Donohue 2008; Volcansek and Stack 2011). These works illuminate the role of domestic actors and institutions in constructing, promoting, and enacting counterterrorism laws under specific national regimes. Yet they downplay the influence of foreign states, international organizations, and world society in the establishment of new laws. They also generally examine counterterrorism lawmaking in isolation from transnational processes. This chapter builds on these nationally based studies by offering a global view of the waves of counterterrorism laws crashing down on the shores of states worldwide. By documenting the proliferation of counterterrorism laws in 193 countries, the chapter explains how the United States and the United Nations cultivated global scripts after 9/11 that facilitated the widespread enactment of new laws. The chapter strives to bypasses reductionist debates pitting power-centric realists against culture-centric constructivists by demonstrating that dominant states help foster global understandings that independently inform transnational processes of lawmaking.

The chapter proceeds in five main sections. First, drawing on data collected in collaboration with the Program on Terrorism and Counterterrorism at Human Rights Watch (HRW), the chapter documents the proliferation of counterterrorism laws between 1970 and 2009. It argues that 9/11 rapidly accelerated counterterrorism lawmaking worldwide and that the new laws were not responses to escalating political violence. Second, the chapter argues that counterterrorism has become increasingly global after 9/11. Third, the chapter reviews coercive and normative theories to explain the global diffusion of the laws. The section argues that both power politics and cultural ideas shaped the emergence of global counterterrorism. Fourth, the chapter compares counterterrorism lawmaking before and after 9/11 to show that lawmakers' motivations for passing counterterrorism laws have changed. The section demonstrates that before 9/11 lawmakers often enacted laws to respond to local political violence. However, after 9/11, counterterrorism developed into a mandate of global membership. The chapter concludes that the promotion of counterterrorism through mandatory reporting, training programs, foreign assistance, and law enforcement cooperation helped it develop into a global script.

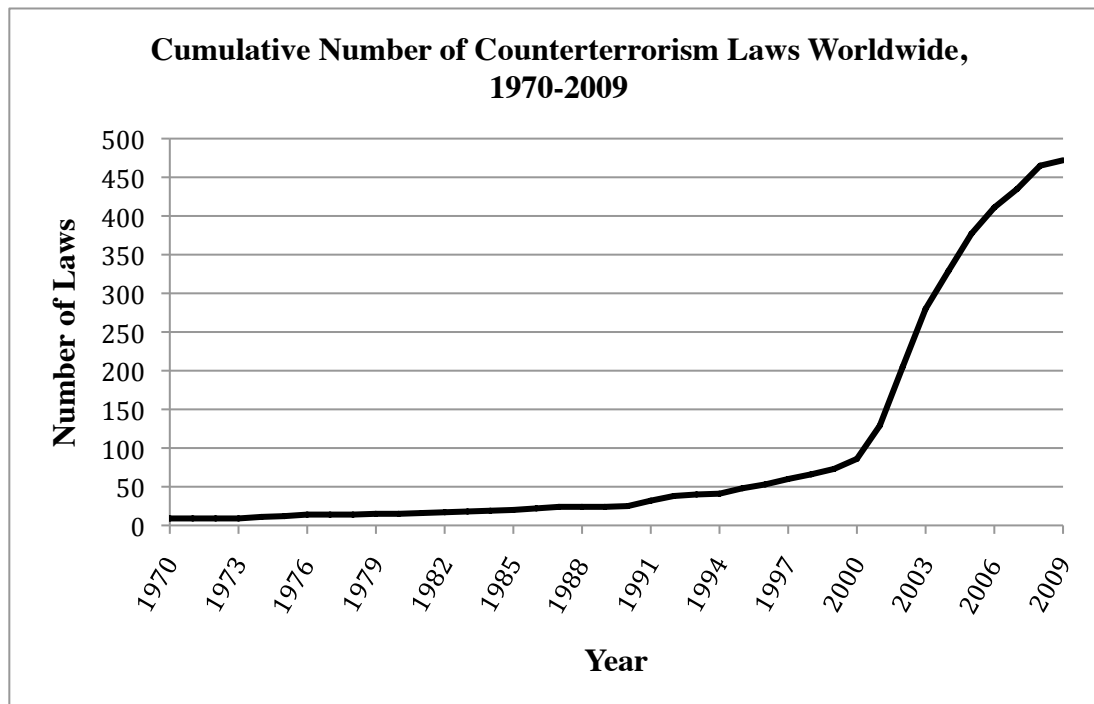
The Rise of Counterterrorism Laws After 9/11

Following the attacks on the Twin Towers of the World Trade Center in New York City, the Pentagon in Washington, D.C., and the devastating crash of United Airlines flight 93 near Shanksville, Pennsylvania, nearly three-quarters of all states worldwide enacted or revised laws to target and prosecute individuals suspected of terrorism-related offenses.⁵³

⁵³ According to data collected for this study, 142 of 193 states enacted or revised counterterrorism statutes following the 9/11 attacks in the United States.

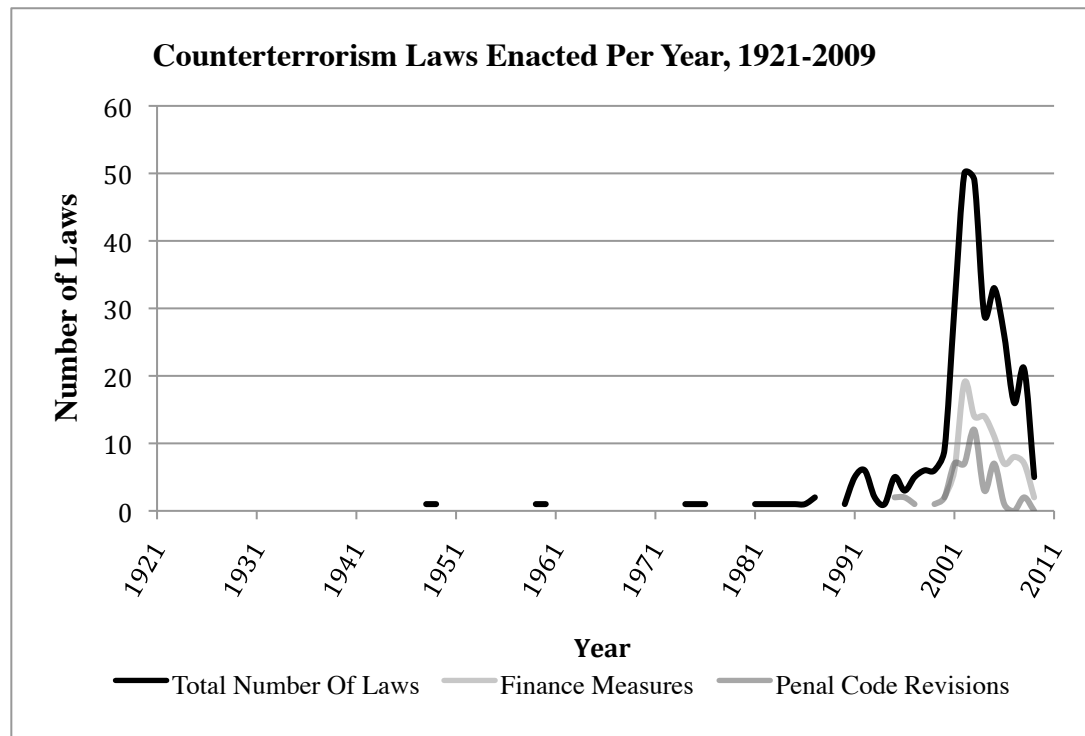
Many of these laws significantly expand the capacity of governments to combat activities related to terrorism. They establish new screening procedures for immigration and asylum petitions, allow greater monitoring of domestic communities, increase the ability of states to track and freeze financial assets, alter judicial protections in efforts to ease paths to prosecution, create new security courts, and in a few cases, even permit the indefinite detention of suspected terrorists. In a range of countries, from small-island nations to global superpowers, counterterrorism transforms law enforcement practice, granting new powers to investigate and detain individuals. The graph below illustrates the massive rise of the laws in recent decades.

Graph 3.1: The Rise of National Counterterrorism Laws Worldwide, 1970-2009



The aggregate number of counterterrorism laws worldwide substantially increased after 2001 and new laws were not confined to any singular type of state. Democracies and authoritarian regimes rewrote penal codes. Developed and developing countries drafted and passed novel legislations. Even countries with virtually no history of political violence embraced reforms, passing comprehensive counterterrorism provisions that altered policing powers and procedural protections. Counterterrorism laws existed prior to 9/11, but 2001 ushered in a new stage in their development. Countries passed new anti-terrorism financing measures, amended criminal codes, and enacted new counterterrorism statutes. Graph 3.3 documents the various types of laws enacted per year between 1921 and 2009.

Graph 3.2: Types of Counterterrorism Reforms Per Year, 1921-2009.



Countries enacted counterterrorism measure in the decades leading up to 9/11. However, the September 11th attacks significantly accelerated anti-terrorism lawmaking in a number of areas. State lawmakers amended criminal codes to formalize terrorism offenses and heighten penalties for convictions. They also passed numerous laws targeting terrorist financing and terrorist organizations, often freezing the assets of organizations believed to be involved in sponsoring terrorism. Lawmakers also compiled terrorist watch lists and restricted immigration. Concerns about terrorism justified significant cutbacks in the number of individuals granted asylum in many countries (Roach 2011).

The proliferation of the laws occurred independent of changes in levels of political violence in most states. Lawmakers in many states with low levels of political violence scrambled to enact new counterterrorism measures after 9/11. According to Global Terrorism Database (GTD), the number of terrorist incidents resulting in 15 or more casualties has remained relatively stable since the early 1990s.⁵⁴ While it is tempting to explain the rise of counterterrorism laws as strategic reactions to a new breed of terrorist or a fundamentally changed security environment, this work found little evidence to support such a position.⁵⁵ On the whole, data on levels of political violence suggests these

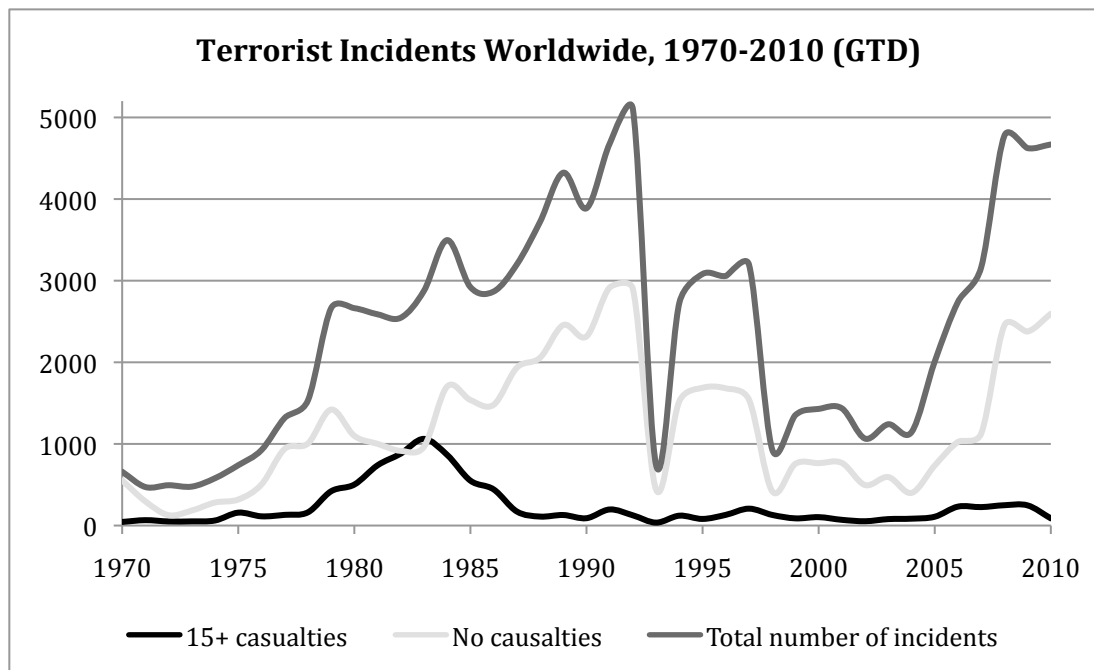
⁵⁴ The analysis distinguishes between incidents of terrorism causing more than 15 casualties as a way to account for changes in the discursive use of the term. The 15-casualty threshold is used to capture severe acts of political violence deemed terrorism.

⁵⁵ There is no shortage of books and articles proclaiming a new and more dangerous era of terrorism, including many by respected scholars in the field (Laqueur 2001).

reforms were not responses to increases in incidents of “terrorism.” New laws, viewed on the whole, were rational responses to mounting violence.

Incidents of terrorism resulting in substantial casualties actually peaked in the 1980s when domestic counterterrorism laws were far less common. The cumulative number of terrorism incidents has fluctuated widely for decades and bear little correspondence to patterns of legal reform. A lull in incidents of terrorism characterized the new millennium. Yet this was a particularly active period for counterterrorism lawmaking.

Graph 3.3: The Total Number of Terrorist Incidents Worldwide, 1970-2010 (GTD).



According to GTD data, the total number of terrorism incidents worldwide increases after 2005. However, the change largely reflects intense and localized incidents of terrorism in Afghanistan and Iraq. Overall increases in terrorism remains modest or nonexistent in most states. Further, among a great majority of states, escalating political violence in other countries does not generate greater local insecurity. Most acts of terrorism in recent years occur in a handful of countries. Therefore, the dramatic proliferation of counterterrorism reforms in the last decade does not appear to be a calculated response to rising terrorist violence worldwide.

Counterterrorism as Global

Counterterrorism never existed as a wholly national project. Multilateral collaboration characterized even early attempts to fight terrorism. Efforts to defeat anarchists in the 19th century, for example, involved widespread international cooperation. The same is true of efforts to suppress anti-colonial movements in the 20th century. Nevertheless, in a world increasingly connected by international organizations, advocacy networks, inter-

governmental organizations, and professional associations, counterterrorism has become even more embedded in multilateral global processes in recent decades.

Studies of counterterrorism continue to emphasize domestic state actors as the primary agents of legal construction. Often analysts view counterterrorism law as altogether determined by domestic struggles. Works assume that state officials operate in autonomous spheres and make calculated responses to changing security threats. These approaches exaggerate the independence of local lawmakers. National actors continue to play central roles in the development of security law, often exploiting strategic opportunities and policy windows that frequently follow acts of political violence. But domestic legal reforms rarely develop within a single national field (Katzenstein 1996). Isolationist myths are not new. Yet they seem particularly untenable in a world of advanced communications and global professional communities. Though embedded in local political struggles, counterterrorism, then, must be understood as a product of ongoing global construction.

The transnational character of counterterrorism should not be exaggerated, however. National culture, institutions, and regulations continue to limit the wholesale adoption of global models of counterterrorism in spite of the forces of globalization encouraging homogenization. Local politics matter. They continuously reshape global understandings, often through the medium of international organizations, expert communities, and advocacy networks. Significant variation persists in the adoption of laws and reveals the profound influence of national politics in some locales. National counterterrorism often diverges from prescriptions of globalizing models, even as local laws are cloaked in the legitimacy of those same models.

International relations theory and sociological institutionalism provide useful frameworks for understanding such localized counterterrorisms and the dynamics creating them. Below I review three major theoretical approaches to international relations: neorealism, institutionalism, and constructivism. Theories of international relations can be broadly categorized as either coercive or normative.⁵⁶ Realism and institutionalism are coercive frameworks. They focus on the role of power in shaping relations. In contrast, constructivism offers a framework centered on the development and impact of norms across states. Constructivists seek to explain relations with reference to normative understandings of actors. All three of these theories explain the relations of states, and the construction of transnational law, with reference to networks between states and institutions (Dobbin et al. 2007).⁵⁷ Sociological institutionalism moves beyond these network-based approaches to recognize the influence of global ideas and models circulating throughout the international sphere. It helps account for processes of legal diffusion occurring beyond the conscious direction of state officials.

⁵⁶ Authors have also described the divide as interest-based or norm-based (Koh and Hathaway 2004).

⁵⁷ Neorealism as formulated by Kenneth Waltz ([1959] 2001, [1979] 2010) develops a more structural approach in which states seek relative power due to the lack of a central authority in the international system.

The global rise of counterterrorism laws can be explained in part by neorealism and sociological institutionalism approaches. The United States, as a dominant world player, used its influence after 9/11 to encourage the adoption of counterterrorism laws. Moreover, adopting states appear to have submitted to U.S. persuasion in large part because it served their domestic political interests. In this sense, states enact counterterrorism laws as a calculated and strategic response to power relations. Therefore, the power-centric narrative fails to capture the complete story of the counterterrorism. The degree and speed with which new laws were enacted worldwide offers support for sociological institutionalism, and particularly world society scholars. Counterterrorism confronted virtually no resistance after 9/11. It emerged as a global script and a key signal of membership in the world community. An overwhelming number of states passed new laws and affirmed their commitment to counterterrorism as a central feature of global cooperation. The global proliferation of counterterrorism thus suggests that power politics and cultural ideas can simultaneously influence processes of legal diffusion.

Neorealism

Neorealists argue that relative differences in state power explain state behavior (Mearshimer 2001; Waltz [1979] 2010). Due to the anarchic nature of the international environment, states experience constant insecurity (Waltz [1979] 2010). This leads them to seek relative power even at the cost of absolute gains. Under the logic of realism, states then only participate in legal regimes, join international organizations, or cooperate with other states to the extent that such participation consolidates their position vis-a-vis their competitors.

Under this view, state officials participate in multilateral cooperation on counterterrorism only to improve their structural position in the world relative to other states. State coercion serves as the central explanation for diffusion of legal provisions worldwide. Domestic political actors adopt counterterrorism law to preserve their relative position. The most powerful states in the international system promote and popularize their agendas through carrot-feeding, arm-twisting, and threatening other states with their weapons because it extends their relative advantage over other states.

The dominance of a state in the international system provides opportunities for the state to shape model laws, international organizations, and multilateral relationships to serve its own interests. By shaping international understandings and institutions related to counterterrorism a state may reinforce its ideology and position vis-a-vis competing nation-states. Under a neorealist conception, counterterrorism models circulating throughout international networks are almost entirely products of coercion that serve the interests of the powerful. States adopt such counterterrorism models only when it serves their strategic interest in gaining or preserving their relative power.

If neorealists are correct, states should behave as indistinguishable, self-interested actors. Here neorealism runs against empirical evidence on counterterrorism laws. The passage

of counterterrorism measures often generates few relative gains. Yet an overwhelming number of states have enacted counterterrorism measures absent any clear dividends with regard to their relative power or status in the international system. States pass laws without reasonable fear of terrorism, clear incentives, or evidence of coercion. This edges against the idea that states only engage in international legal cooperation for strategic rewards relative to other states. While power politics clearly play a significant role in shaping the proliferation of counterterrorism, neorealism fails to adequately explain the proliferation of cooperative institutions dedicated to counterterrorism or the rise of the laws themselves.

Institutionalism

Institutionalism, another coercive theory of international relations, holds more promise for explaining the proliferation of counterterrorism laws (Keohane and Nye 1997; Keohane 1993). In line with neorealism, institutionalists argue that states are self-interested rational actors. But they reject the idea that states always seek relative gains. According to Robert Keohane, institutions allow states to constrain other states' behavior. They offer some assurances of compliance and mechanisms of control. They facilitate the "making and keeping of agreements through the provision of information and reductions in transaction costs" (Keohane 1993). Following this logic, counterterrorism laws may develop when states, which are embedded in connective and constraining institutions, forego relative gains in order to achieve more absolute returns, such as a the long-term prevention of terrorist attacks.

Institutionalism affirms a vision of rational, self-interested state actors interacting with each other in a relatively transparent transnational field (Keohane and Nye 1977). However, it makes space for a diversity of institutional actors, including international organizations, non-governmental organizations, and social movement organizations. Still, institutionalism depicts a system of international relations largely governed through power politics. Institutions, often established and managed by more powerful states, guarantee a level of stability and compliance that makes more long-term calculations about absolute gains both possible and desirable. Yet institutionalism fails to recognize the importance of ideas, historical relationships, and contingent state preferences in the development and maintenance of international relations. In short, institutionalism struggles to explain normative dimensions of transnational cooperation. Constructivist theories address these theoretical gaps and provide a more dynamic account of the emergence and development of counterterrorism in the post-9/11 era.

Constructivism

According to Martha Finnemore (1996), one of the early architects of constructivism, "States are embedded in dense networks of transnational and international social relations that shape their perceptions of the world and their role in that world. States are socialized to want certain things by the international society in which they and the people in them live." International relations depend on the development of states normative orientations.

Under a constructivist framework, state preferences change through their dynamic transnational interactions. They are not billiard balls. The constellation of forces in the international system trains and constrains state behavior. International organizations and other transnational actors shape power and politics (Barlett and Finnemore 1999). Even more significantly, the dynamics of transnational fields condition states' preferences and strategies. Constructivism, then, deviates from more coercive approaches in its focus on the power of norms and ideas, rather than simply power politics. Yet it leaves room for power politics premised upon these normative understandings.

In focusing on the micro-foundations of law, constructivism offers a theory of transformation by explaining how ideas and institutions evolve over time. Building on Max Weber's insight that ideas can be "switchman of history," constructivism moves away from the pure power calculations of neorealism to recognize the impact of culture.⁵⁸ Moreover, because it is founded in an ongoing empiricism, constructivism need not appeal to some transcendental idea about the universal self-interest of states or the common consequences of international anarchy to explain state decision-making. Constructivists adopt a critical stance with regard to the investigation of law by developing a historically grounded understanding of lawmaking.

Constructivism also offers a vision of transnational lawmaking that encompasses more than domestic politics without dismissing the importance of local actors and institutions. It retains a space for what Harold Koh (1997) has called "norm entrepreneurs," granting agency to transnational actors and their ideas. For constructivists, participation in legal processes can be transformational. Ongoing interaction, interpretation, and internalization of law may change what actions and definitions are possible for states and other transnational actors (Koh 1997).⁵⁹ Terrorism experts, for example, may promote ideas or elaborate models of practice that not only transform counterterrorism law but also alter possibilities for what can be imagined, refined, and undertaken in the future.⁶⁰ In short, constructivism can account for the feedback loops forever present in processes of social invention.

⁵⁸ Weber, Max. [1915] 1958. "The Social Psychology of the World Religions." Pp. 267-301 in Gerth, H.H. and C.W. Mills (eds) *From Max Weber: Essays in Sociology*. Oxford University Press.

⁵⁹ Ian Hacking's theory of dynamic nominalism promotes the idea that "human beings and human acts come into being hand in hand with our invention of the ways to name them" (Hacking [1983] 2006). It complements Koh's theory of norm entrepreneurs. For Hacking, "Social change creates new categories of people, but the counting is no mere report of developments. It elaborately, often philanthropically, creates new ways for people to be" (Hacking [1983] 2006). Thus, as states interpret and internalize the meanings and categories of law, and specifically counterterrorism law, these new categories likewise create new institutions to manage the branded, to discipline, control, and incapacitate them. "[I]f new modes of description come into being, new possibilities for action come into being in consequence" (Hacking [1983] 2006).

⁶⁰ Efforts to redefine torture represent one such example (Mayer 2008)

Constructivism, nevertheless, exhibits some shortcomings. It takes for granted the fact that legal diffusion occurs through relational networks. This assumption proves useful if one sets out to index the various mechanisms and actors that construct law. However, it also narrows the scope of analysis and can blind researchers to more dispersed pressures and global scripts circulating in world society. In contrast, sociological institutionalism has developed a more open conceptualization of legal policy diffusion that accounts for non-network based social forces.

Sociological Institutionalism

Sociological institutionalism complements and extends constructivism by recognizing the role of global ideas in diffusion of law and policy. According to sociological institutionalism, professions and associations around the globe develop models of appropriate practice (Meyer 2010). These models build on claims of collective goods and influence actors at various levels. Even beyond the networks in which they are developed, global ideas impact cognitive understandings of individuals, structures of organizations, and state policies worldwide (Strang and Meyer 1993). “No place now escapes education, rational organization, science, social science, and the at least symbolic recognition of the rights and powers of expanded human individual” (Meyer 2009: 49).

These global models or scripts reverberate as waves throughout the world (Meyer and Rowan 1977; Drori et al. 2003; Meyer 2000, 2010). In contrast to dominant frames in international relations theories, they do not rely on networks and organizational structures for diffusion. Instead, analysis emphasizes those environmental factors, historical contexts, and cultures in which actors are embedded.⁶¹ Sociological institutionalists point to cultural theorization of global practices (Strang and Meyer 1993). They argue that global scripts may have widespread empirical impacts on organizations and states regardless of whether those entities explicitly adopt policies based on those scripts. In other words, laws diffuse because actors emulate fashionable models of legal practice, often without consciously doing so.⁶² Lawmakers do not make rational calculations. Instead, they react to what John W. Meyer has described as “ether” in the transnational space (Meyer et. al. 1997).

Sociological institutionalism also draws attention to the disjunctures between ceremonial enactment of global models and norms on the ground (Boyle 2002; Hafner-Burton and Tsutsui 2005). Global scripts, embodying inconsistencies, can be adopted in haphazard ways and also deviate from local activities. Global scripts become aspirational, reflecting

⁶¹ Building on the phenomenological approach of Berger and Luckmann (1966), sociological institutionalism underscores how the social construction of reality can shape actions and the adoption of laws.

⁶² In contrast to historical institutionalism, which stresses the channeling effect of past institutional arrangements (Skocpol 1979), sociological institutionalism generally places less emphasis on path dependencies. Though it highlights the role of international organizations in the construction and reproduction of global culture (Strang and Meyer 1993).

ideals beyond what is practical. As such, they can influence national lawmaking, even as the lofty goals they embody only loosely couple with local understandings and practices on the ground. Lawmakers can copy institutionalized blueprints worldwide without legal enforcement following suit. Sociological institutionalists emphasize the ritualized nature of international relations, but also recognize the divide between substance and ceremony (Frank, Hardinge, and Wosick-Correa 2009; Hafner-Burton and Tsutsui 2005).

Rejecting the rational orientation of neorealism and the actor-centered approaches of institutionalism and constructivism, sociological institutionalism see the legitimacy conferred by a wider global-institutional environment as a primary force driving the diffusion of law worldwide.⁶³ It offers a compelling framework for understanding how global models and elaborated cultural practices influence counterterrorism law beyond the inter-state coercion and advocacy networks.

Table 3.1: Theories of Transnational Relations.

	Network-centered (relational-agent)	Model-centered (structural)
Coercive	Keohane (institutionalism)	Waltz (neorealism)
Normative	Finnemore (constructivism)	Meyer (sociological institutionalism)

Theories of international relations isolate and compartmentalize lawmaking processes. The rise of counterterrorism law, however, complicates these explanations and reflects elements of each of these theories. In particular, the proliferation of new laws worldwide shows that power-centric and culture-centric explanations need not be at odds. In the case of counterterrorism, dominant states and institutions, often employing coercive policies and persuasive incentives, cultivated a global consensus on counterterrorism. The United States and the United Nations were especially instrumental to this effort. They institutionalized counterterrorism through mandatory reporting requirements, training programs, and foreign assistance. In part through these efforts, counterterrorism emerged as a powerful global idea with independent effects. Counterterrorism increasingly came to be seen as a collective good and an essential part of national security. States embraced it for pragmatic reasons and also to demonstrate global solidarity.

⁶³ The theory also explains the non-diffusion of legal forms that fail to secure backing in dominant global institutions and articulate a collective good that transcends private interests.

Legal Diffusion

The globalization of law operates through different mechanisms. Scholars have explained the diffusion of law and policy focusing on the significance of government networks (Slaughter 2002),⁶⁴ advocacy networks (Keck and Sikkink 1998),⁶⁵ policy entrepreneurs (Koh 2004),⁶⁶ epistemic communities (Haas 1992),⁶⁷ dominant economic ideas (Dobbin 1993),⁶⁸ coercive institutional incentives (Hafner-Burton and Tsutsui 2005),⁶⁹ and the elaboration of global cultural models (Meyer et al. 1997).⁷⁰ All these explanations recognize the role of transnational actors in processes of diffusion that are not simply a reflection of domestic interests (Dobbins et al. 2007).

Sociological institutionalism offers a useful platform for understanding legal diffusion without coercion. Scholars have documented the diffusion of global models in a wide variety of contexts, including education (Meyer and Ramirez 2000; Baker and LeTendre 2005; Meyer and Schofer 2006), environmentalism (Meyer et al. 1997; Frank Longhofer, and Schofer 2007), science (Drori et. al. 2003), laws regulating sex (Frank, Hardinge, and Wosick-Correa 2009; Frank, Camp and Boutcher 2010) and war (Hironaka 2005). These studies illustrate the role of global scripts in diffusion by showing the adoption of equivalent structures across diverse contexts.

Sociological institutionalism builds on the insights of previous work. DiMaggio and Powell (1983) in “The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields” argue that the central mechanism for diffusion is isomorphism, which is to say that institutions imitate each other and thus begin to look similar. Institutions copy models based on external pressure from hegemonic players (coercive isomorphism), competitive pressure (competitive isomorphism), or normative agreement in the structure of fields (normative isomorphism).

DiMaggio and Powell failed to recognize that the form of ‘diffusability’ itself constituted one defining part of institutional and organizational transformation (Fourcade 2006). The reproduction of certain forms of knowledge or organization helps to construct objects of

⁶⁴ Governmental agencies use diplomatic, political, and military power to shape law.

⁶⁵ Translational activists, motivated by shared normative commitments, impact the development of preferences, identities, and social contexts, which spurs policy diffusion and shapes its character.

⁶⁶ Legislative experts design novel policies that state lawmakers adopt.

⁶⁷ Agreement within professional communities cultivates law.

⁶⁸ Dobbin’s credits the breakdown of economic orthodoxy for the rise of Keynesian economics after the great depression.

⁶⁹ The authors show that states are more likely to improve their human rights when promised preferential trade arrangements in exchange for such improvements.

⁷⁰ The authors’ study on the transformation of global education demonstrates that the expansion of mass school reflected a widespread belief that educational opportunity was central to modernity. The authors argue that such policy diffusion was unrelated to economic, social, or political influences (Meyer et al. 1997).

diffusion as legitimate or desirable. For example, the enactment of counterterrorism laws that include specific exemptions for political speech may delegitimize other legal measures that restrict political speech, or vice versa. The form and content of the laws helps to structure the ongoing processes of legal diffusion. Sociological institutionalism, and the literature on the globalization of law, generally treats legal objects of diffusion as invariable at the moment of adoption. Doing so obfuscates multifaceted forces and institutions that emerge alongside the formal laws in processes of diffusion. It may also cause researchers to misrecognize legal recursivity in cycles of lawmaking. The diffusion of counterterrorism produces a wide assortment of discourses, organizations, and practices that inform the process of diffusion itself. In short, understanding which types of diffusion actually diffuse in different times and places matters (Fourcade 2006).

Researchers, then, must look beyond formal processes of diffusion towards the recursivity in transnational lawmaking (Halliday and Carruthers 2007; Liu and Halliday 2009). Laws are produced within national legal jurisdictions, but also in international bodies, transnational social movements, and professional circles. The globalization of law involves cycles of ongoing construction at the global, national, and local level. These various processes inform and reinforce each other. Rather than studying the globalization of counterterrorism *per se*, the researcher, then, also needs to understand the globalizing forces steering the diffusion of counterterrorism.

The following section shows that states, often acting in concert with international organizations like the United Nations, established counterterrorism as a legitimate state goal decades before the September 11th attacks. Yet, counterterrorism remained peripheral to the global security agenda until after 9/11. Counterterrorism efforts existed, but they were often unilateral or bilateral actions and generally proceeded in a piecemeal fashion. However, following 9/11, U.S. and U.N. actions cultivated counterterrorism as a global script and helped to transform counterterrorism into a mandate of global membership.

Global Counterterrorism Before 9/11

Counterterrorism emerged as a powerful international norm long before September 11 2001. International collaboration on counterterrorism officially began in 1937, when members of the League of Nations concluded the Convention for the Prevention and Punishment of Terrorism. Though at that point in history multilateral cooperation was largely symbolic. The convention on terrorism never even entered into force. Of the 24 signatories, only India ratified it. The practical import of the convention was limited, if it had any practical import at all. Nevertheless, the convention still served a purpose. It helped to establish terrorism as an important and legitimate security concern, albeit one that states preferred to pursue independently.

After the Second World War, the League of Nations transformed into the United Nations. During the first couple decades of the postwar period, terrorism took a backseat to other areas of transnational cooperation. The U.N. sponsored few actions related to terrorism and the topic retreated as a fundamental security issue in the world. Anti-terrorism

activities still existed as domestic concerns, but they were not a frequent topic among nation-states or a source of widespread cooperation.⁷¹ Occasional references to terrorism showed up in U.N. bodies, but they served more as symbolic gestures than pragmatic efforts at fostering new counterterrorism practices.⁷²

Attention to counterterrorism as a legal agenda rekindled in the early 1970s. A rising number of hijackings prompted a series of new anti-terrorism conventions and discussions among world leaders.⁷³ After members of the Black September group killed eleven Israeli athletes at the 1972 Olympic games in Munich, counterterrorism took center stage for a while at least.⁷⁴ New debates on terrorism erupted with U.N. forums serving as the main theaters. The renewed interest in anti-terrorism also served as fodder for the politics of the day, which is to say counterterrorism emerged as a contested Cold War terrain.

The political divisions on counterterrorism mirrored Cold War alliances. Discussions of terrorism became yet another place where larger political contests between the United States and the Soviet Union were enacted. The competing worldviews hampered progress towards a uniform set of legal standards, but the lack of agreement also stoked the fires of debate on counterterrorism. Countries could fashion counterterrorism to serve domestic goals. It rapidly became an enduring part of the U.N. agenda. New resolutions set up global reporting requirements, though reporting remained highly politicized and haphazard given the lack of any consensus definitions on terrorism. Nevertheless, reporting kept counterterrorism in public discourse and helped to foster a global consensus on the importance of multilateral cooperation.⁷⁵

Terrorism increasingly became visible as a state goal, and state officials continued to redefine it to suit their ends. In U.N. debates, for example, members of Third World Block introduced the idea of state terrorism, explicitly linking the idea of state terrorism to the domination of people under colonial and foreign power. The strategy paved the

⁷¹ During this period few states enacted anti-terrorism laws. Those that did, including Egypt, Spain, and Turkey, did so in response to domestic terrorist threats. In contrast, more recent laws, such as those in Canada, the Netherlands, Russia, and the United States, resonate with greater concerns about international terrorism.

⁷² For example, in one of few references to terrorism during this period, the Security Council in 1948 condemned the killing of a UN mediator in Palestine by Jewish extremists (Romainuk 2010).

⁷³ For example, the General Assembly passed the Convention for the Suppression Unlawful Acts Against the Safety of Civil Aviation (Montreal Convention) in 1971.

⁷⁴ The actions of Black September, a Palestinian paramilitary group, resulted in support for a number of European counterterrorism units in Germany (GSG 9 der Bundespolizei), France (Groupe d'Intervention de la Gendarmerie Nationale), and the United Kingdom (Special Air Service).

⁷⁵ For example, U.N. Resolution 3034 passed in December 1972, mandating formal procedures for reporting. A few years later the 1979 Iran hostage crisis spurred the enactment of the 1979 International Convention against the Taking of Hostages.

way for liberation movements that sought to challenge state rulers. As a part of their Cold War efforts to gain support in the Third World, the Soviet Union spearheaded an effort to introduce the topic of state terrorism to the U.N. General Assembly. By constructing U.S. interventions in the Third World as forms of state terrorism the Soviets sought to gain traction among the nonaligned states. Given the divisive Cold War agendas at play, it is not surprising that international dialogues on state terrorism did little to reconcile political divisions on the topic. The debate did, however, affirm an increasingly broad vision of terrorism. They also fortified the importance of counterterrorism as a global security issue.

In the 1980s, a series of hijackings, which included TWA flight 847 from Athens to Rome, Egypt Air 648 from Athens to Cairo, and Air India Flight 182 from Montreal to London, prompted more U.N. resolutions and international conventions on terrorism. As discussions of the topic proliferated international institutions, states increasingly recognized terrorism as a significant danger to peace and security.⁷⁶ In a rare show of solidarity, the Soviet Union and the United States both supported General Assembly Resolution 40/61 in 1985, which unequivocally condemned all terrorist acts.⁷⁷ Adopted with unanimous support, the resolution signaled the solidification of a global consensus on combating terrorism.⁷⁸ Counterterrorism had become a visible and valid international norm. The fact that nation-states did not agree on the definition of terrorism only made the norm more appetizing to state officials hungry to pursue a wide variety of domestic activities under the guise of fighting global terrorism.

The consensus on counterterrorism also hastened processes of institutionalization. The number of terrorism experts grew significantly in the decades after the 1972 Munich killings (Stampnitzky 2011). Experts found burgeoning financial and political support. State officials, often working through bodies of the UN or other regional organizations, developed more bilateral and multilateral agreements to cooperate on counterterrorism (Romaniuk 2010; Boulden and Weiss 2004). Between 1972 and 2000, member states

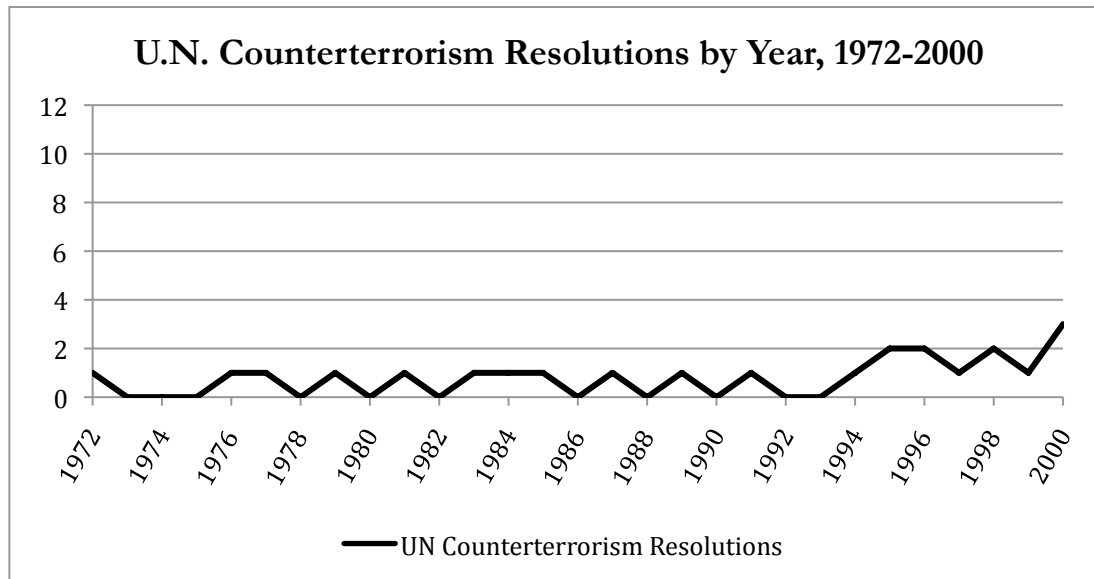
⁷⁶ In the United States, for example, the Reagan administration passed the Act to Combat International Terrorism as well as the Omnibus Anti-Terrorism Act during this period (Deflem 2010).

⁷⁷ The General Assembly Resolution enacted on December 9, 1985: “Unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security...” Further, the resolution urged states “to co-operate with one another more closely, especially through the exchange of relevant information concerning the prevention and combating of terrorism, the apprehension and prosecution or extradition of the perpetrators of such acts, the conclusion of special treaties and/or the incorporation into appropriate bilateral treaties of special clauses, in particular regarding the extradition or prosecution of terrorists.” See A/Res/40/61 (1985).

⁷⁸ The implications of Resolution 40/61 extended far beyond that proscribed in the text. The International Maritime Organization, for example, began a series of training programs, regional seminars, and workshops that helped to organize coalitions of state and non-state actors (Romaniuk 2010).

enacted a stream of resolutions on counterterrorism.⁷⁹ The resolutions served as formal directives, and, equally important, as recurring affirmation of a growing agreement on the necessity of counterterrorism.

Graph 3.4: Number of Counterterrorism Specific Resolutions Per Year, 1972-2000, (U.N. Counter-Terrorism Committee).



In spite of new resolutions, conventions, workshops, and U.N. General Assembly debates that accompanied them, no international definition of terrorism took hold (Young 2006). The lack of conceptual clarity played a key role in facilitating cooperation, providing transnational actors the freedom to engage in processes of counterterrorism institution building while circumventing politically debilitating debates. International agreement on counterterrorism helped to transform it into a global script. States disagreed on what constituted terrorism, but virtually all states viewed counterterrorism as a collective good. Ambiguous conceptions of terrorism help to explain the widespread acceptance of counterterrorism as a legitimate state goal prior to 9/11.

Global Counterterrorism After 9/11

Two core mechanisms explain the globalization of counterterrorism after 9/11. First, the United States played a role, encouraging and incentivizing the adoption of counterterrorism laws. Second, international organizations, and particularly the United Nations, promoted reforms. They elaborated global models of counterterrorism that swept across nation-states. In the post-9/11 era, these global models increasingly came to be viewed as a necessary part of global membership. Counterterrorism allowed lawmakers to signal their allegiance to the global norms. Countries also latched onto the new laws as a partial solution to increasing insecurities created by globalization. Revising national counterterrorism laws allowed state leaders to accomplish a multiplicity of ends, not least

⁷⁹ Twenty new resolutions were passed during this period.

of which was defending their sovereign authority against international law and grassroots political opposition.

After 9/11, counterterrorism transformed from a legitimate activity of individual states to a mandate of global membership. States with almost no history of terrorism enacted comprehensive anti-terrorism reforms.⁸⁰ The transition from local to global suggests a meaningful change in the factors motivating new laws. The forces driving reforms shifted from concerns about local political violence to reputational concerns and potential aid from the global community. Unilateral and local agendas centered on suppressing violence gave way to more multilateral and global agendas focused on securing state power.

Before 9/11, a state's history of terrorism was the best predictor of its likelihood of enacting counterterrorism laws.⁸¹ Controlling for rule of law, democracy, gross domestic product, level of development, education, population, international non-governmental organizations, national non-governmental organizations, and region, the number of fatal terrorist attacks in a state shows a significant correlation with the number of laws enacted to combat terrorism. Intuitively, this makes sense. Local lawmakers respond to fatal political violence. Regression analysis suggests that states confronting more frequent attacks are more likely to pass laws to try and prevent them. The regression table below illustrates the relationship.

⁸⁰ For example, Canada has faced few threats of terrorism since the Front for the Liberation of Quebec in the early 1960s, but it has enacted a series of counterterrorism laws, increased bilateral cooperation with the United States, and made counterterrorism a centerpiece of its national security (Deflem 2010).

⁸¹ Drawing on data from the Global Terrorism Database, the threat of terrorism was measured using a cumulative count of the number of terrorist incidents in each state. The regression analysis controlled for rule of law, education, GDP per capita, development, population, democracy, and region.

Table 3.2: OLS Regression on the Number of Counterterrorism Laws Before 9/11.

VARIABLES	The Number of Counterterrorism Laws Enacted Prior to 9/11
INGOs	-0.00074 (0.00040)
NGOs	0.00017*** (0.000047)
Rule of Law Estimate	-0.028 (0.11)
Education Index (World Bank)	-1.16 (0.83)
GDP per capita (constant 2005 dollars)	-0.000010 (6.0e-06)
Human Development Index Value	1.63 (1.15)
Population	-3.7e-07 (3.2e-07)
Democracy Index Score	-0.066 (0.041)
Fatal Terrorist Attacks	0.00028*** (0.000064)
Region	-0.0086 (0.017)
Constant	0.51 (0.48)
Observations	144
R-squared	0.280
Standard errors in parentheses	
*** p<0.001, ** p<0.01, * p<0.05	

The number of non-governmental organizations operating in a state was also significantly correlated with the number of legal reforms before 9/11. This relationship also makes logical sense. The presence of more non-governmental organizations suggests a more robust civil society, which may be more capable of holding political leadership accountable for lawmaking. Prior to 2001, then, the passage of national counterterrorism measures exhibit understandable relationships with local non-government organizations and fatal terrorist attacks.

After 9/11, however, a state's history of terrorism is no longer a significant predictor of its likelihood to enact counterterrorism laws. Local lawmakers stop enacting laws in response to political violence. Instead, states appear to respond to expectations circulating in world society. The number of international non-governmental organizations, a

common measure of links to world society, emerges as the best predictor of a state's chances of passing counterterrorism reforms after 2001. The number of local non-governmental organizations also remains significant.

Table 3.3: OLS Regression on Number of Counterterrorism Laws After 9/11, 1970-2010.

VARIABLES	The Number of Counterterrorism Laws Enacted After 9/11
INGOs	-0.0048**
	(0.0017)
NGOs	0.00068**
	(0.00020)
Rule of Law Estimate	0.062
	(0.48)
Education Index (World Bank)	1.44
	(3.55)
GDP per capita (constant 2005 \$)	3.3e-06
	(0.000025)
Human Development Index Value	0.69
	(4.89)
Population	1.6e-07
	(1.4e-06)
Democracy Index Score	0.047
	(0.18)
Fatal Terrorist Attacks	0.00026
	(0.00027)
Region	0.091
	(0.073)
Constant	0.057
	(2.06)
Observations	144
R-squared	0.207
Standard errors in parentheses	
*** p<0.001, ** p<0.01, * p<0.05	

The regression analysis suggests that the relationship between counterterrorism law and political violence shifted after 9/11. Counterterrorism transformed from a national project centered on preventing local acts of political violence and satisfying local constituencies to a transnational project centered on reaping rewards from world society. Lawmakers' sights turn outward after 2001. They emulate and elaborate global scripts and the expectations of the world community.

The change, however, does not mark a triumph of global ideas over national politics. National political agendas continue to shape global counterterrorism. After 9/11, the United States, the United Nations, and other international organizations play a central role in the cultivation and promotion of global scripts, which rapidly developed into a primary mechanism driving the rise of counterterrorism laws. Dominant states and institutions spur forward global counterterrorism even as local lawmakers adapt these global models to suit local needs, frequently passing laws that reinforce state authority.

United States

Following the September 11th attacks, lawmakers in the United States led the initial charge to draft and promote new legislation in the “war against terrorism.” President George W. Bush signed the expansive USA PATRIOT ACT into law on October 26, 2001, less than two months after 9/11.⁸² Few legislators or staffers even read the statute. Yet it significantly reshaped the policing powers of the U.S. state, easing restrictions on law enforcement and foreign intelligence officials to investigate and detain persons suspected of terrorism-related offenses. In addition, the reform and others like it set the stage for similar legislation in other states.

Revisions to detention and interrogation standards in the U.S. opened the door to more widespread changes in other places.⁸³ In the years since the establishment of indefinite detention at the Guantanamo Bay Military Facility officials in a number of countries have cited U.S. practice there to defend administrative detention provisions in their own counterterrorism laws.⁸⁴ Despite the increasing human rights concerns raised by advocates, foreign officials, and lawmakers in recent years, the U.S. State Department and the U.S. Department of Homeland Security actively promoted similar counterterrorism reforms in other countries through training programs, foreign assistance, and law enforcement cooperation.

⁸² United States’ Public Law 107-56

⁸³ For example, the authorization of new interrogation techniques by the U.S. Secretary of Defense Donald Rumsfeld in December 2002, which followed a request by the Staff Judge Advocate of Guantanamo Bay Lieutenant Colonel Diane Beaver, ignited widespread debate on the proper legal standard for interrogations in the war against terrorism. The competition over the legal standard for interrogations reshaped law at the national and transnational level, casting doubt on the previously established international standard prohibiting coercive interrogation techniques under customary law, the Geneva conventions, and principles of humanitarian law. The Rumsfeld authorization opened the door to the legalization of harsher techniques in foreign states, including water boarding, sleep deprivation, and prolonged isolation.

⁸⁴ Numerous state leaders, including Zimbabwe’s Robert Mugabe, Russia’s Vladimir Putin, Bashar al-Assad of Syria, and Iran’s Mahmoud Ahmadinejad, have cited U.S. detentions at Guantanamo to deflect attention from their own human rights violations. See Human Rights Watch. 2012. “Letter to President Obama: End Detention Without Trial and Close Guantanamo.”

The Federal Bureau of Investigation (FBI), Customs and Border Protection (CBP), and Diplomatic Security (DS) organized training programs to share U.S. counterterrorism approaches and techniques after 9/11 (Nadelmann 1993). The government also funded a series of international academies to teach counterterrorism enforcement (Romaniuk 2010). The programs stressed new conceptions of terrorism, which members of the Bush Administration had redefined as acts of war rather than criminal acts, in an effort to shift the focus from international human rights standards to the less restrictive legal standards governing armed conflicts.

The U.S. also strategically increased foreign assistance to persuade states to engage in counterterrorism. In 2007, for example, the Department of Defense created African Command (AFRICOM), substantially increasing counterterrorism assistance to the region in the process. U.S. foreign assistance increasingly became a means to promote U.S. models of counterterrorism and encourage more widespread counterterrorism reforms. States in the developing world responded to the new incentives, often pairing their willingness to enact reforms with pleas for capacity building assistance. Counterterrorism reform became something that poor states could leverage to gain more foreign assistance.

The new investigative authority for terrorism-related offenses also reoriented police functions towards counterterrorism activities. New funding and advanced surveillance technologies realigned police institutions with military and intelligence agencies (Deflem 2010). Although law enforcement operations continued to be organized unilaterally or bilaterally, it became more common for subnational policing institutions to independently build alliances with other subnational policing forces (Deflem 2010). The New York Police Department, for example, created liaisons in various regions of the world as part of their efforts to develop a more professionalized counterterrorism policing capacity (Wacquant 2009; Deflem 2010). This type of cooperation fell short of generating any supranational counterterrorism forces, but significantly extended the influence of U.S. law and order practices and counterterrorism models.

By directly funding counterterrorism initiatives and indirectly funneling support through back channels, the United States catalyzed many of the earliest post-9/11 legal reforms. However, the U.S. did not simply strong-arm weaker countries or persuade them with promises of foreign assistance. If this had been the case, one would expect relative uniformity in the language of the new laws.⁸⁵ In fact, new laws reveal a wide array of provisions and understandings that generally expand states' authority.

⁸⁵ Lawmakers in the developing world often resist the legal phrasing drafted by officials in core countries. For example, U.S. law evolved from viewing terrorism as a criminal activity to a strategic form of warfare, but many countries refused to adopt this warfare interpretation and continued to treat terrorism as criminal behavior.

Lawmakers did not copy U.S. counterterrorism models verbatim, but the role of the U.S. in promoting counterterrorism should not be underestimated. U.S. foreign assistance, sponsored trainings, and law enforcement partnerships all elaborated global models of counterterrorism, legitimating it as a global practice. In part as a cumulative effect of these actions, counterterrorism was transformed from a domestic concern into a global one. The United Nations and other international organizations also contributed to this internationalization of counterterrorism.

International Organizations

International organizations facilitate transnational cooperation, lowering transactions costs and helping to solve coordination problems among various actors (Abbott and Snidal 1998). They are not, however, merely passive efficiency-enhancing bodies. International organizations attain autonomy as transnational actors and often assume active and independent functions in the construction of law. They create and disseminate information, ideas, norms, and expectations. These normative contributions can be their most lasting legacies. This is the case with counterterrorism.

Global cooperation on counterterrorism has elaborated norms rather than constructed lasting enforcement regimes.⁸⁶ States have hesitated to outsource their counterterrorism enforcement to other states.⁸⁷ They have resisted changes that involved ceding enforcement control to international organizations. Nevertheless, the progression of counterterrorism has necessarily involved greater multilateral collaboration. In this process, the United Nations has played a central role facilitating and coordinating novel counterterrorism efforts.⁸⁸

Less than a month after the twin towers collapsed in New York City, the U.N. Security Council took decisive action to prevent future acts of terrorism. The five permanent members enacted Resolution 1337, which created the Committee on Terrorism and Counter-Terrorism (CTC).⁸⁹ Passed under Chapter VII of the U.N. Charter, which made the resolution mandatory for all members, the U.N. CTC began operating at break-neck speed.⁹⁰ Consolidating previous reforms and affirming counterterrorism as a fundamental part of the U.N. mission, the committee rapidly emerged as the most important international institution promoting counterterrorism law worldwide.

⁸⁶ In some domains, such as financing and maritime security, robust enforcement regimes have developed, but unilateral and limited bilateral cooperation tend to be the norm in law enforcement and intelligence (Romaniuk 2010).

⁸⁷ Generally, lawmakers have used counterterrorism as a means to defend sovereignty against other states, international organizations, and even local political opposition.

⁸⁸ Both the IMF and the World Bank have been active in the last decade instituting new financial controls to prevent terrorist financing (Andreas and Nadelmann 2008). However, the UN bodies remain main venues for debates and new initiatives on terrorism and counterterrorism.

⁸⁹ The resolution was a United States initiative (Johnstone 2008).

⁹⁰ Within an organization often accused of moving at a glacial pace.

Under Security Council Resolution 1337, the U.N. CTC required states to implement wide-ranging counterterrorism reforms from new financial controls to the regulation of communications technologies.⁹¹ Mandatory reporting requirements stood out among the directives as a particularly noteworthy development. Compliance with the reporting requirements of Resolution 1337 exceeded all previous attempts by subsidiary organs of the United Nations (Romaniuk 2010). By 2003, every recognized U.N. state except Vatican City had submitted at least one report. One CTC expert rating countries in 2003 on the existence of legislation, the administrative capacity of states to enforce mandates, the presence of regulatory frameworks, and states' participation in international conventions and institutions, found that thirty countries had achieved good compliance, sixty countries were making progress towards compliance, seventy countries lacked the ability to comply (Johnstone 2008).⁹² The same report found that only twenty countries were materially able but unwilling to comply with U.N. counterterrorism mandates (Johnstone 2008).

Mandatory reporting requirements urged state officials to interpret the U.N. guidelines, establish national legal standards for terrorism investigations and prosecutions, and lay out counterterrorism action plans. Countries that never previously considered creating counterterrorism laws had to either draft new laws or explain why they had elected to skirt their obligations under the U.N. Charter. Once established, new national laws guided future interactions related to security and granted more leeway to domestic police forces. Experts at the CTC acted as a type of norm entrepreneur, cultivating national laws in a dynamic and constitutive process with national lawmakers.⁹³

The U.N. CTC reporting requirement transformed counterterrorism from a domestic activity open to lawmakers within their geographic borders into an obligation of global membership. Mirroring the agreement to fight against the “scourge of war”⁹⁴ that birthed the United Nations, counterterrorism evolved into a near global mandate. Reporting created reputational incentives for reforms. Counterterrorism became a way for countries to signal their positive relationship to the world community. In response to country reports, staff at the U.N. CTC coordinated technical assistance and aid to implement counterterrorism reforms worldwide.⁹⁵ The promise of technical assistance and capacity building encouraged less developed countries to leverage counterterrorism in their efforts to solicit more foreign aid.

⁹¹ The resolution did not define terrorism.

⁹² Johnstone (2008: 285) citing an unpublished U.N. CTC report. The specific countries in each category were not provided.

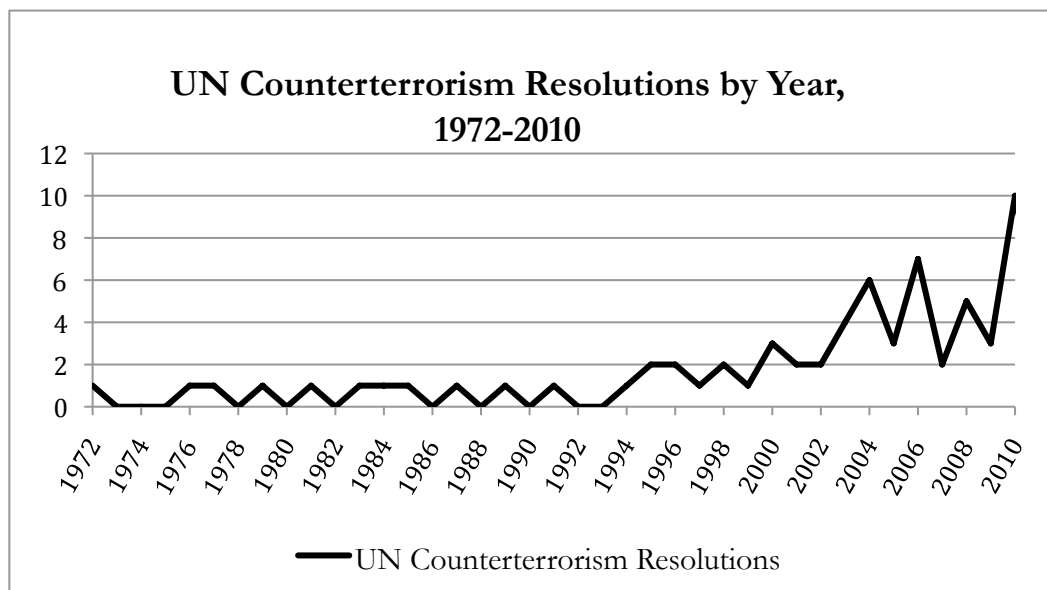
⁹³ Koh (1997) discusses how norm entrepreneurs transform transnational law.

⁹⁴ The Preamble of the United Nations Charter reads: “We the peoples of the United Nations are determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind...”

⁹⁵ The U.N. CTC, however, lacked resources to monitor counterterrorism implementation (Boulden and Weiss 2004).

Other U.N. organs also took an active role promoting counterterrorism after 9/11. The Counter-Terrorism Committee Executive Directorate (CTED), for example, organized regular working groups and panel discussions on counterterrorism strategy (Boulden and Weiss 2004). The Secretary-General became directly involved in counterterrorism by establishing the Counter-Terrorism Implementation Task Force (CTITF) in July 2005.⁹⁶ The CTITF sought to build more coherent counterterrorism policies by coordinating representatives of over twenty UN bodies working on counterterrorism (Romaniuk 2010). The task force campaigned for counterterrorism across the entire UN system.⁹⁷ Following the creation of the CTITF, the Secretary-General published the widely circulated and influential *United Against Terrorism* report in 2006, outlining a global counterterrorism strategy and initiating a series of negotiations in the General Assembly.⁹⁸ The attention to counterterrorism also resulted in an increasing number of U.N. resolutions after 9/11.

Graph 3.5: Number of Counterterrorism Specific Resolutions Per Year, 1972-2010, (United Nations Counter-Terrorism Committee).



⁹⁶ See U.N. Document [A/RES/64/235](#) (2010).

⁹⁷ The U.N. counterterrorism agenda faced challenges for ignoring human rights, supporting military action against Iraq, and lacking democratic legitimacy because many of the actions emerged from the non-democratic Security Council. However, the challenges and ongoing contestation legitimated counterterrorism and expanded the number of players shaping transnational counterterrorism practice. The challenges expanded the active participation of the NGO sector, which began briefing United Nations officials, attending regional meetings, and publishing widely on issues of counterterrorism.

⁹⁸ United Nations. 2006. "Uniting Against Terrorism: Recommendations for a Global Counterterrorism Strategy." Available at <http://www.un.org/unitingagainstterrorism/>.

U.N. officials also organized meetings with regional organizations, such as the Organization of American States (OAS) and the Organization for Security and Cooperation in Europe (OSCE). In March of 2003, more than 65 regional organizations met in New York to discuss and strategize in regard to transnational counterterrorism cooperation (Romaniuk 2010). These regional organizations proved especially useful when unavoidable debates on definitions of terrorism arose and fragmented coalitions in the broader United Nations context. Regional organizations provided greater flexibility to lawmakers, allowing for counterterrorism proliferation without forcing any global agreement on legal limits or standards in the new laws.⁹⁹ After 9/11, the U.S., U.N., and other international organizations transformed counterterrorism from a legitimate norm to a necessity of global membership.

The active promotion of counterterrorism by the United States and the United Nations helped to establish it as a global script. Beyond the coercive politics and incentives, counterterrorism emerged as a powerful cultural idea. It became widely viewed as a collective enterprise in the international system and an important feature of the global national security agenda. Counterterrorism developed into a common good, which encouraged the diffusion of new laws worldwide.

Discussion

The fight against terrorism appears a paradigmatic new challenge of national security. From Belfast to Mumbai, Chechnya to Palestine, Indonesia to Colombia, officials hold out counterterrorism as a top priority. In less than a decade, most of the world's lawmakers have drafted and passed new measures that often restrict domestic legal protections and heighten penalties for those convicted of terrorism-related crimes. The change marks one of the most significant developments in transnational law in the last century with potential consequences of civil liberties worldwide. One can no longer evaluate national counterterrorism in isolation from world society.

This chapter documents the rise of counterterrorism laws worldwide. Viewed collectively, the laws are not rational responses to new threats. Before 9/11, the number of terrorism incidents experienced in a state correlated with its likelihood of passing anti-terrorism laws. But this is no longer the case. After 9/11, lawmakers enact counterterrorism laws irrespective of a country's history of terrorism. The change suggests that the global rise of counterterrorism reflects more than local concerns about political violence. Counterterrorism has diffused as a powerful idea throughout world society.

Moving beyond power-centric and culture-centric explanations of legal proliferation, the chapter argues that the rise of counterterrorism law simultaneously involves power

⁹⁹ Appendix: 3.1 shows the diversity of regional organizations that have enacted agreements in the last few decades. It provides some sense of the vast reach and importance that these organizations have taken on in the proliferation of counterterrorism laws, discourses, and practices.

politics and cultural ideas. In the last decade, the United States and United Nations helped to institutionalize counterterrorism as a mandate of global membership through mandatory reporting, training programs, foreign assistance, and law enforcement cooperation. These actions reinforced counterterrorism as a global good and a requisite of participation in the international community. They established it as a global model, which lawmakers rapidly embraced. The analysis therefore supports the central claims of both neorealists and sociological institutionalists and suggests that these positions need not be fundamentally opposed.

Lawmakers enact new counterterrorism laws for complex reasons. Some pursue reputational returns, while others capitalize on counterterrorism as a means to expand domestic powers of surveillance and detention. The lack of any international agreement on proper standards for counterterrorism grants tremendous leeway to state officials to pursue a wide array of activities under the auspices of fighting terror.¹⁰⁰ After 9/11, terrorism serves as a pretext for the consolidation of state power in many places. Counterterrorism lawmaking can solidify official's authority and control, enabling state leaders to fend off challenges from globalization and local social movements. As counterterrorism has transformed from a valid domestic pursuit into a requisite of global membership, state leaders increasingly use it to fashion legal provisions that can be used to secure their authority. In the decade after 9/11, counterterrorism has simultaneously evolved into a global collective good and a mechanism for expanding sovereign power.

¹⁰⁰ According to Mathieu Deflem (2010: 8), “[T]he world of counterterrorism involves many differences and potential clashing among the manifold strategies against terrorism as they are defined in the variable terms of national security, legality, warfare, and crime control.”

Appendix 3.1: Counterterrorism Actions Taken by Regional Organizations

Organization	Convention	Year	Purpose	Significance
Organization of American States (OAS)	Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persona and Related Extortion	1971	Increase regional cooperation on terrorism.	Predates many other regional and U.N. conventions
Organization of American States (OAS)	Inter-American Convention Against Terrorism	2002	Increase cooperation in financing, border control, law enforcement, legal assistance, and extradition.	Calls for the observation of human rights in counterterrorism efforts
Council of Europe	Convention on the Suppression of Terrorism	1997	Facilitate extradition	Removes the “political offence” exception for terrorism offenses
The Organization for Security and Cooperation in Europe (OSCE)	Bucharest Plan of Action	2001	Build political support, enhance capacity, identify threats, foster cooperation, promote human rights	Promotes counterterrorism cooperation among 56 members, mostly European
European Union Council	EU Counter-Terrorism Strategy	2005	To prevent radicalization and expand surveillance mechanisms	Expand European cooperation on counterterrorism

Organization	Convention	Year	Purpose	Significance
Police working group on terrorism (PWGT)		1976	Facilitate police cooperation	Promotes police cooperation
Organization of African Unity (OAU)	Convention on the Prevention and Combating of Terrorism	1999	Outlines areas of cooperation, jurisdiction, and extradition	Offers definition of terrorism that excludes struggles of national liberation
African Union	Plan of Action	2002	Establishes common reporting schedules and research center	Establishes African Center for the Study and Research on Terrorism
African Union	Protocol on the Prevention and Combating of Terrorism	2004	Establishes Peace and Security Council	Promotes counterterrorism cooperation
Gulf Cooperation Council (GCC)	Permanent Anti-Terrorism Committee	2006	Emphasizes structural causes of extremism and the role of media in radicalization	Distinguishes terrorism from national liberation struggles
Association of Southeast Asian Nations (ASEAN)	Convention on Counter-Terrorism	2007	Builds on U.N. Conventions.	Promotes counterterrorism cooperation
Asia-Pacific Economic Cooperation (APEC)	Counter-Terrorism Task Force; Action Plan	2003; 2008	Concerned with capacity building through partnerships.	Promotes counterterrorism cooperation
Pacific Islands Forum (PIF)	Nasonini Declaration on Regional Security	2002	Builds on recommendations of U.N. Resolution 1337	Promotes counterterrorism cooperation

Appendix 3.2: U.N. Resolutions on Counterterrorism, 1972-2011 (Source: U.N. Counter-Terrorism Committee)¹⁰¹

<u>A/RES/66/105</u> [draft resolution: <u>A/66/478</u>]	9 December 2011	Measures to eliminate international terrorism
<u>A/RES/66/50</u> [draft resolution: <u>A/66/412</u>]	2 December 2011	Measures to prevent terrorists from acquiring weapons of mass destruction
<u>A/RES/66/12</u> [draft resolution: <u>A/66/L.8</u>]	18 November 2011	Terrorist Attacks on Internationally Protected Persons
<u>A/RES/66/10</u>	18 November 2011	United Nations Counter-Terrorism Centre
<u>A/RES/65/221</u>	21 December 2010	Protection of human rights and fundamental freedoms while countering terrorism
<u>A/RES/65/74</u>	8 December 2010	Preventing the acquisition by terrorists of radioactive sources
<u>A/RES/65/62</u>	8 December 2010	Measures to prevent terrorists from acquiring weapons of mass destruction
<u>A/RES/65/34</u>	6 December 2010	Measures to eliminate international terrorism
<u>A/RES/64/297</u>	8 September 2010	The United Nations Global Counter-Terrorism Strategy
<u>A/RES/64/235</u>	14 January 2010	Institutionalization of the Counter-Terrorism Implementation Task Force
<u>A/RES/64/177</u>	24 March 2010	Technical assistance for implementing the international conventions and protocols related to terrorism
<u>A/RES/64/168</u>	22 January 2010	Protection of human rights and fundamental freedoms while countering terrorism
<u>A/RES/64/118</u>	15 January 2010	Measures to eliminate international terrorism
<u>A/RES/64/38</u>	12 January 2010	Measures to prevent terrorists from acquiring weapons of mass destruction
<u>A/RES/63/185</u>	3 March 2009	Protection of human rights and fundamental freedoms while countering terrorism
<u>A/RES/63/129</u>	15 January 2009	Measures to eliminate international terrorism
<u>A/RES/63/60</u>	12 January 2009	Measures to prevent terrorists from acquiring weapons of mass destruction
<u>A/RES/62/272</u>	15 September 2008	The United Nations Global Counter-Terrorism Strategy

¹⁰¹ <http://www.un.org/terrorism/resolutions.shtml> (Accessed March 23, 2012)

<u>A/RES/62/172</u>	20 March 2008	Technical assistance for implementing the international conventions and protocols relating to terrorism
<u>A/RES/62/159</u>	11 March 2008	Protection of human rights and fundamental freedoms while countering terrorism
<u>A/RES/62/71</u>	8 January 2008	Measures to eliminate international terrorism
<u>A/RES/62/46</u>	10 January 2008	Preventing the acquisition by terrorists of radioactive materials and sources
<u>A/RES/62/33</u>	8 January 2008	Measures to prevent terrorists from acquiring weapons of mass destruction
<u>A/RES/61/171</u>	1 March 2007	Protection of human rights and fundamental freedoms while countering terrorism
<u>A/RES/61/172</u>	1 March 2007	Hostage-taking
<u>A/RES/61/86</u>	18 December 2006	Measures to prevent terrorists from acquiring weapons of mass destruction
<u>A/RES/61/40</u>	18 December 2006	Measures to eliminate international terrorism
<u>A/RES/60/288</u>	20 September 2006	The United Nations global counter-terrorism strategy
<u>A/RES/60/158</u>	28 February 2006	Protection of human rights and fundamental freedoms while countering terrorism
<u>A/RES/60/78</u>	11 January 2006	Measures to prevent terrorists from acquiring weapons of mass destruction
<u>A/RES/60/73</u>	11 January 2006	Preventing the risk of radiological terrorism
<u>A/RES/60/43</u>	6 January 2006	Measures to eliminate international terrorism
<u>A/RES/59/290</u>	15 April 2005	International Convention for the Suppression of Acts of Nuclear Terrorism
<u>A/RES/59/195</u>	22 March 2005	Human rights and terrorism
<u>A/RES/59/191</u>	10 March 2005	Protection of human rights and fundamental freedoms while countering terrorism
<u>A/RES/59/80</u>	16 December 2004	Measures to prevent terrorists from acquiring weapons of mass destruction
<u>A/RES/59/46</u>	16 December 2004	Measures to eliminate international terrorism
<u>A/RES/58/187</u>	22 March 2004	Protection of human rights and fundamental freedoms while countering terrorism

<u>A/RES/58/174</u>	10 March 2004	Human rights and terrorism
<u>A/RES/58/81</u>	8 January 2004	Measures to eliminate international terrorism
<u>A/RES/58/48</u>	8 January 2004	Measures to prevent terrorists from acquiring weapons of mass destruction
<u>A/RES/57/220</u>	27 February 2003	Hostage-taking
<u>A/RES/57/219</u>	27 February 2003	Protecting human rights and fundamental freedoms while countering terrorism
<u>A/RES/57/83</u>	9 January 2003	Measures to prevent terrorists from acquiring weapons of mass destruction
<u>A/RES/57/27</u>	15 January 2003	Measures to eliminate international terrorism
<u>A/RES/56/160</u>	13 February 2002	Human rights and terrorism
<u>A/RES/56/88</u>	24 January 2002	Measures to eliminate international terrorism
<u>A/RES/56/1</u>	18 September 2001	Condemnation of terrorist attacks in the United States of America
<u>A/RES/55/158</u>	30 January 2001	Measures to eliminate international terrorism
<u>A/RES/54/164</u>	24 February 2000	Human rights and terrorism
<u>A/RES/54/110</u>	2 February 2000	Measures to eliminate international terrorism
<u>A/RES/54/109</u>	25 February 2000	International Convention for the Suppression of the Financing of Terrorism
<u>A/RES/53/108</u>	26 January 1999	Measures to eliminate international terrorism
<u>A/RES/52/165</u>	19 January 1998	Measures to eliminate international terrorism
<u>A/RES/52/133</u>	27 February 1998	Human rights and terrorism
<u>A/RES/51/210</u>	16 January 1997	Measures to eliminate international terrorism
<u>A/RES/50/186</u>	6 March 1996	Human rights and terrorism
<u>A/RES/50/53</u>	29 January 1996	Measures to eliminate international terrorism
<u>A/RES/49/185</u>	6 March 1995	Human rights and terrorism
<u>A/RES/49/60</u>	17 February 1995	Measures to eliminate international terrorism
<u>A/RES/48/122</u>	14 February 1994	Human rights and terrorism
<u>A/RES/46/51</u>	9 December 1991	Measures to eliminate international terrorism
<u>A/RES/44/29</u>	4 December 1989	Measures to prevent international terrorism

<u>A/RES/42/159</u>	7 December 1987	Measures to prevent international terrorism
<u>A/RES/40/61</u>	9 December 1985	Measures to prevent international terrorism
<u>A/RES/39/159</u>	17 December 1984	Inadmissibility of the policy of State terrorism and any actions by States aimed at undermining the socio-political system in other sovereign States
<u>A/RES/38/130</u>	19 December 1983	Measures to prevent international terrorism
<u>A/RES/36/109</u>	10 December 1981	Measures to prevent international terrorism
<u>A/RES/34/145</u>	17 December 1979	Measures to prevent international terrorism
<u>A/RES/32/147</u>	16 December 1977	Measures to prevent international terrorism
<u>A/RES/31/102</u>	15 December 1976	Measures to prevent international terrorism
<u>A/RES/3034(XXVII)</u>	18 December 1972	Measures to prevent international terrorism

Chapter 4

Counterterrorism as Cerberus

Abstract

Counterterrorism is not primarily a response to escalating political violence. It is a defensive reaction to the increasing insecurities facing sovereigns. Gains in international law, evolving military technologies, and new social movements threaten to usurp sovereign control of domestic politics. Counterterrorism law provides a chance to develop a legal arsenal that can be used to hold off forces of globalization and also repress local movements that challenge the authority of lawmakers. Counterterrorism acts as a *Cerberus* of the state, guarding against threats to sovereign power. Building on the global proliferation of law-and-order policies in recent decades, counterterrorism also signals a new transnational penalty. It marks the emergence of a truly global punitive logic.

National counterterrorism laws are not primarily responses to escalating violence.¹⁰² Global counterterrorism is rather a political response to increasing insecurities facing sovereigns in world society. The globalization of business, law, and security increasingly endanger the lawmaking control of state officials. Even absent reasonable fears of political violence or immediate political returns, lawmakers embrace global counterterrorism because it offers a good solution to the acute precariousness they experience in a rapidly shifting world. Lawmakers can embrace global scripts as a means to resist global erosion of their power. Counterterrorism provides a legal arsenal that can help lawmakers to assert their authority against global institutions and also resist domestic social movements. It acts as a *Cerberus* of sovereignty, guarding against threats from above and below.¹⁰³ While one head defends the state against foreign threats, the other can restrict local civil liberties and crack down on domestic political opposition.

The following chapter proceeds in four parts. First, it documents the increasing insecurities of sovereigns in world society. Recent changes to international commercial law, national security law, and international criminal law, illustrate the erosion of state authority. New social movements also threaten to usurp sovereign control of domestic politics in many places around the world. As a result, state officials feel increasingly insecure and embrace counterterrorism as a means to protect their authority. Second, the chapter argues that the widespread agreement on counterterrorism builds on a longstanding trend towards more punitive policies worldwide. Counterterrorism represents a recent evolution of state instruments of social control that build on penal policies that emerged decades ago in criminal law. Third, the chapter argues that counterterrorism has now become a new global penalty. While serving as a defense against the confluence of forces eroding the power of local lawmakers, counterterrorism also exports its penal logic worldwide. New legal standards, institutions, and procedures for investigating and detaining suspects expand state authority law at the cost of individual rights. The fourth section highlights some recent changes in national statutes that exemplify the punitive character of the new laws.

Sovereign Insecurities

Globalization has created a web of complex and countervailing forces that challenge sovereign authority (Evans 2000; Fligstein and Merand 2002; Keck and Sikkink 1998). The following section describes recent changes to commercial law, national security law, and criminal law that generate new insecurities for lawmakers. A comprehensive list of globalizing forces that threaten sovereignty in the modern age could be endless, including examples ranging from grassroots organizing to corporate monopolization.¹⁰⁴ This

¹⁰² Drawing on data from the Global Terrorism Database (GTD), the previous chapter shows that political violence is not a significant predictor counterterrorism lawmaking.

¹⁰³ Cerberus is a multi-headed dog that guards the gates of the underworld in Greek and Roman mythology.

¹⁰⁴ Human rights law, for example, also delivers a “sovereignty cost” (Moravcsik 2000). Bowing before international human rights regimes means foregoing domestic political discretion and control. However, lacking mandatory reciprocity, human rights law often

chapter adopts a more modest approach and concentrates on a few exemplars situated at the nexus of law, policing, and punishment. The examples show the ongoing construction of law beyond the state, illuminating a few of the global threats to sovereignty that can motivate officials to embrace counterterrorism.

Global law has existed in some form for centuries.¹⁰⁵ However, the constellation of international institutions has grown more robust and stable in recent decades, accelerated by processes of globalization that hasten the interpenetration of domestic and international politics (Katzenstein et al. 1998; Koh 1997). Transformations in international law increasingly challenge and commandeer the authority of local officials.¹⁰⁶ The encroachment of international law is particularly noteworthy with regard to commerce. While officials often hesitate to cede sovereignty in areas of human rights and environmental regulation, they seem far less resistant to the development of private contract law regulating international commercial transactions. State officials, viewed collectively, protect rights of contract and private property with vigor and determination, following the legal maxim *pacta sunt servanda*.¹⁰⁷

The deference given to independent tribunals deciding commercial legal disputes is relatively new. During the development of the Westphalian system, for example, private commercial courts were routinely seen as threats to the integrity of states and aggressively integrated into the domestic court system (Cremades and Plehn 1984). Lawmakers rejected the idea of supranational judicial forums, which they viewed at odds with the basic idea of sovereign jurisdictions. State courts were seen as the appropriate venues for resolving commercial conflicts. However, as communications and shipping technologies speed up processes of commercial globalization and enlarge the volume of international transactions, states are more likely to sanction semi-autonomous lawmaking among private commercial bodies. In recent decades, national jurisdictions have loosened their historical stranglehold on commercial law.¹⁰⁸

lacks enforcement mechanisms. Its impact on sovereignty is therefore more controversial. A number of scholars have demonstrated the disconnection between formal ratification and the practical consequences of human rights law (Hathaway 2002; Hafner-Burton and Tsutsui. 2005; Hafner-Burton et al. 2008).

¹⁰⁵ A system of structured rules between independent sovereigns and legal frameworks for governing private international relations developed after The Thirty Years War of 1648.

¹⁰⁶ Scholars of international law often differentiate between interstate law, or public international law, and private international law. In reality, the divide is rather nebulous and therefore called international law here. States regularly negotiate law bearing on private conduct and private international law regularly shapes relations between states. International law can pose a potential threat to sovereignty with regard to direct relations between states as well as relations among nonstate actors operating in transnational contexts.

¹⁰⁷ Under the doctrine of *pacta sunt servanda*, agreements must be honored and executed in good faith.

¹⁰⁸ Independent legal tribunals have even become the fallback mechanism to resolve commercial disputes between states themselves. In the last two decades, bilateral

The internationalization of commercial arbitration offers a good illustration of the recent shift in judicial supervision of private business law. International contracts typically include arbitration provisions that require parties to a dispute to submit their grievances to a neutral body of independent judges. These contract clauses allow parties to avoid adjudication in the home jurisdiction of opposing parties, which might be biased in favor of them. The arbitrations also provide a greater level of confidentiality.¹⁰⁹ Generally, arbitration proceedings are not public and decisions often remain sealed. Businesses can avoid airing dirty secrets and maintain greater control of the dispute process.

International commercial arbitration has become big business in recent decades. Various institutions and ad hoc courts have evolved to serve an increasing number of international commercial entities.¹¹⁰ As independent arbitration tribunals proliferate states regularly relinquish sovereign control over business transactions occurring on their soil. By enforcing the legal orders of international arbitrators, domestic courts in many cases effectively surrender their judicial authority to global lawmakers and international judges. They act as administrators of justice rather than arbitrators. The change underscores the modern weight of private international contract law, which now frequently trumps national law.

To say that the rise of international commercial law ushers in new supranational legal structure would be an exaggeration. International arbitration does not wholly transform states from active regulators into passive spectators. International commercial law remains fragmented, scattered, and inconsistent, providing numerous opportunities for local judges to shape and interpret transnational precedents and oppose the imposition of international decisions. Yet the internationalization of commercial law cultivates new insecurities for sovereigns. Its irregularity is precisely its power. It breeds competition, encourages forum shopping, and forces states to cede judicial control or risk capital flight. Rather than supplanting national law, it constantly probes and reinvents it, carving out new legal spaces governed by hybrids of public and private regulation. As a result,

investment treaties (BITs) securing the right to international arbitration in legal dispute exploded worldwide (Guzman 2006).

¹⁰⁹ Although arbitration must occur in a particular state, parties often predetermine the rules and regulations that will govern a dispute, effectively preempting local law in the jurisdiction where the arbitration takes place.

¹¹⁰ Powerhouses of international commercial arbitration include the International Chamber of Commerce (ICC), the International Court of Arbitration (ICA), the American Arbitration Association (AAA), the London Court of International Arbitration, the World Intellectual Property Organization (WIPO), the International Centre for Settlement of Investment Disputes (ICSID), and the World Trade Organization (WTO). Regional arbitration bodies also structure the domain, including Commercial Arbitration and Mediation Center for the Americas (CAMCA), the European Court of Arbitration, The Common Court of Justice and Arbitration of the Harmonization of Business Law in Africa (OHADA), among others.

officials struggle to maintain their exclusive control of private legal transactions. National lawmaking authority continues to exist, but it is more precarious.

Changes in national security law also foster new insecurities, particularly with regard to rules governing military actions. The number and nature of military interventions create new concerns about the sanctity of territorial sovereignty. From Somalia to Bosnia, Rwanda to Kosovo, East Timor to Libya, foreign states have shown a new willingness to undertake operations in foreign states. This has been particularly true of states with more advanced military technologies that allow them to engage in military interventions without committing substantial numbers of troops. The United States, for example, has engaged in military interventions in Afghanistan, Colombia, Iraq, Haiti, Liberia, Philippines, Pakistan, Yemen, Syria, and Libya in only the last few years.¹¹¹ The U.S. operation to kill Osama bin Laden in Pakistan in May of 2011 offers a recent example of a state willing to ignore the sovereign boundaries in pursuit of a high priority military target.¹¹²

Beyond direct military interventions, the frequent use of unmanned aerial vehicles, or drones, to surveil and target terrorist suspects also creates new anxieties. In 2011, U.S. officials carried out hundreds of strikes in at least half a dozens countries.¹¹³ Thousands of drones are currently in operation by the United States alone, and more are on the way.¹¹⁴ If a new arms race develops in the 21st century, it will likely involve the development and production of drone technology. Other states, including China and Russia, are already developing their own drone programs, and NATO has advocated more armed drone surveillance programs (Dempsey 2012).

A number of national security experts have commented on the ways drones change the nature of warfare (Benjamin 2012; Singer 2009; Sutherland 2012). With drone technology, states can now engage in military missions without risking military personnel.¹¹⁵ Interventions can therefore appear costless, requiring little sacrifice from members of the armed forces or domestic populations (Singer 2009). Drones change the risk-calculation. They can assuage officials' fears of public backlash to military interventions.¹¹⁶ Moreover, missions that do not require boots on the ground can allow

¹¹¹ U.S. involvement in clandestine operations and military advising extend far beyond this list of states.

¹¹² The continued use of rendition offers another example. States forcibly remove subjects from national jurisdictions usually without the permission of state authorities. Barbara Olshansky (2007) documents the use of rendition by the United States in the war against terrorism.

¹¹³ Singer, Peter W. 2012. "Opinion: Do Drones Undermine Democracy," *New York Times*, 21 January.

¹¹⁴ In 2012, the United States alone operated at least 7000 drones worldwide.

¹¹⁵ Many of the drones operated in Afghanistan, for example, are piloted from Creech Air Force base in Nevada.

¹¹⁶ After the Blackhawk down incident in Somalia, the United States has demonstrated considerable hesitation about even small-scale military operations. However, the

executives to circumvent internal checks on their military power, giving lawmakers greater freedom to engage in interventionist foreign policy.¹¹⁷

National security law increasingly treats physical sovereignty as less important, viewing a wider array of military interventions as potentially legal.¹¹⁸ Optimistically, this change reflects a growing international consensus that rights of sovereignty require communal responsibilities to prevent root causes of suffering, react to atrocities, and rebuild communities ravaged by violence. Still, the dramatic rise in drone operations hints at a less positive interpretation. It may be that new military technologies, so called “push-button” warfare (Mayer 2009), isolate local publics from the risks and consequences that have traditionally been associated with military actions in foreign states, granting more leeway to officials to breach sovereign boundaries.

The war against terrorism offers malleable rationales for interventions worldwide. Only days after the Twin Towers fell, for example, U.S. officials authorized agents of the C.I.A. to kill any Al Qaeda operatives or allies anywhere in the world (Mayer 2009). By redefining acts of terrorism as acts of war, U.S. officials also managed to circumvent human rights law and adopt the more permissive legal standards governing armed conflicts.¹¹⁹ New legal definitions of material support for terrorism and terrorist organizations gave officials more flexibility to target civilian suspects abroad.¹²⁰ In September 2011, for example, U.S. officials sanctioned the targeted killing of American born Anwar al-Awlaki.¹²¹

The U.S. also now sanctions “signature strikes” which permit drones to kill individuals based on intelligence that indicates any behavior deemed suspicious.¹²² The war against terrorism, especially combined with new military technologies, continues to transform national security law, redefining permissible grounds for interventions into foreign territories. In the process, sovereign boundaries are becoming less sacred and less secure.

development of drones outfitted with hellfire missiles allow lawmakers to intervene without placing citizens at risk.

¹¹⁷ The Obama Administration argued in 2011 that the 60-day deadline for the authorization of military force or a declaration of war did not apply to the Libyan conflict because no military forces were on the ground. Therefore, he argued the drone and bombing campaigns did not require authorization under the War Powers Resolution.

¹¹⁸ The expansion of self-defense doctrine would be one example.

¹¹⁹ Officials could also toggle back and forth between criminal law and humanitarian law standards depending on which legal standard proved most useful.

¹²⁰ Under international humanitarian law a state may legally target a foreign terrorism suspect if the targeted individual is a known member of a terrorist group engaged in armed conflict and the force must be a military necessity (Solis 2010).

¹²¹ Mazzetti, Mark, Eric Schmitt and Robert F. Worth. 2011. “Two-Year Manhunt Led to Killing of Awlaki in Yemen.” *New York Times*, 30 September.

¹²² Miller, Greg. 2012. “CIA Seeks New Authority to Expand Yemen Drone Campaign.” *Washington Post*, 18 April.

The development of international criminal law also creates new sovereign insecurities. On March 14, 2012, nearly a decade after it opened its doors, the International Criminal Court (ICC) recorded its first verdict and conviction.¹²³ The court found Thomas Lubanga, a former Congolese warlord in Congo, guilty of conscripting children under the age of 15 to serve as soldiers.¹²⁴ The conviction showed the potential reach of international tribunals as an international institution pierced the veil of sovereignty. In recent years, the ICC has taken actions against a series of powerful national lawmakers. In 2010, prosecutors issued an arrest warrant for Sudan's president, Omar Hassan al-Bashir. In the same year, they launched an investigation into post-election violence in Kenya, charging high-ranking government officials in 2011.¹²⁵ The ICC also issued recent arrest warrants for Muammar Gaddafi, Saif Gaddafi, and Abdullah Al-Senussi of Libya, though it closed the case against Muammar Gaddafi following his death.¹²⁶ In 2012, prosecutors at the ICC launched new investigations in Afghanistan, Colombia, Honduras, Georgia, Guinea, Korea, and Nigeria, suggesting an expanding geographic scope for future prosecutions.

Debates will continue to rage about the effectiveness of the ICC and the ramifications of its activities.¹²⁷ However, at a minimum, the court offers an alternative to state criminal adjudication in some instances. In doing so, it usurps judicial authority from states unwilling to prosecute violators of international law.¹²⁸ It also challenges the idea that sovereignty will prevent the prosecution of government officials responsible for serious human rights violations.¹²⁹ The promotion of universal jurisdiction statutes in some states further reinforces the idea that state leaders can be held accountable beyond their home jurisdictions.¹³⁰ Most war crime prosecutions still occur in domestic courts, often following the collapse of repressive regimes, such as the prosecution of Hosni Mubarak

¹²³ See Case of *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-2842.

¹²⁴ ICC. Press Release ICC-CPI-20120314-PR776 (2012).

¹²⁵ The ICC prosecutor, Luis Moreno Ocampo, indicted the Deputy Prime Minister Uhuru Kenyatta, Industrialization Minister Henry Kosgey, Education Minister William Ruto, Cabinet Secretary Francis Muthaura, radio executive Joshua Arap Sang and the former police commissioner Mohammade Hussein Ali.

¹²⁶ The other two remain at large at the time of writing.

¹²⁷ Kofi, Anna. 2009. "Op-ed: Africa and the International Court." *New York Times*, 29 June.

¹²⁸ Under the doctrine of complementarity, a state's own investigation into criminal conduct can be determined to be insufficient by prosecutors at the ICC, particularly if significant evidence exists of a crime.

¹²⁹ Article 5 of the Rome Statute of the International Criminal Court provides jurisdiction to prosecute individuals for genocide, crimes against humanity, war crimes, and crimes of aggression. Article 121 further outlines the procedure for amending these crimes. If amended, only parties who agree to the new amendment are bound to amendments. However, nationals of non-signatory states may still be subject to jurisdiction if they commit crimes in states that have ratified the agreement.

¹³⁰ Universal jurisdiction can provide opportunities for prosecuting individuals whose crimes occurred outside of the sovereign jurisdiction of the prosecuting state.

in Egypt or Saddam Hussein in Iraq, but the increasing activities of international tribunals call attention to new insecurities facing states in world society. Sovereigns no longer have exclusive control of criminal prosecutions in all cases.

The previous section describes recent changes in transnational commercial law, national security law, and criminal law. These developments strongly suggest that lawmakers confront new insecurities in the post-9/11 era. International commercial arbitration, new rules governing military engagement, and more international prosecutions are only a few of the many changes that make the position of lawmakers less secure. Globalization has sped up processes of institutional transformation in many places, generating new challenges to state authority. In response, lawmakers seek to identify new means to maintain their authority and embrace counterterrorism as a mechanism to strengthen their sovereign control against global forces and domestic populations. Counterterrorism then represents a recent evolution of state instruments of social control. It builds on a global trend towards more punitive responses to political instabilities.

The Age of Punishment

A new age of punishment began nearly four decades ago in the United States as a backlash to the social turbulence of the 1960s (Garland 2001; Simon 2007).¹³¹ Counterterrorism builds on this punitive movement. Although violent crimes declined during the post-civil rights era, conservative politicians began to campaign on a law and order message.¹³² Prison terms increased and parole was abolished in many places (Tonry 1996).¹³³ Popularized by right wing think tanks and promoted by various organs of the U.S. state, including the Department of Justice and Department of State, these zero-tolerance policies migrated from the United States across Atlantic to Europe and then to the rest of the world (Newburn 2002; Wacquant 2009a). U.S. style policing and prohibitions became the dominant form of global practice (Andreas and Nadelmann 2008; Deflem 2004, 2010).¹³⁴ Prison populations increased (Dikötter and Brown 2007; Gottschalk 2006; Western 2006). Rehabilitate models of punishment declined. Law enforcement concentrated more on social control and incapacitation.¹³⁵

¹³¹ According to Bruce Western, social protest and the denigration of white privilege fueled the punitive sentiments of the white majority in the United States (Western 2006).

¹³² In the U.S. context, the crime policies that followed from these campaigns disproportionately incarcerated black men (Tonry 1996; Western 2006; Wacquant 2005).

¹³³ Often long prison terms resulted from sentences for non-violent drug convictions.

¹³⁴ In some states, officials turned to law and order policies in order to contain the unrest resulting from the widespread denigration of historical social safety nets (Garland 2001; Wacquant 2008, 2009a; Western 2006). The policies targeted marginalized groups (Wacquant 2009a, 2009b).

¹³⁵ Local institutions and cultures condition these patterns of punishment and sometimes contest the diffusion of global punitive logic (Dood and Webster 2006; Johnson 2007; Whitman 2005).

After 9/11, officials recast this punitive turn as a response to terrorism (Simon 2007). Renewed calls for local security legitimated local deployments of new policing protocols, legal standards, and even rules of engagement for military personnel engaged in the war against terrorism. The expanded scale of counterterrorism served a new defensive function. Officials saw counterterrorism as a means to reassert state sovereignty against simmering forces of supranational governance or local opposition. Counterterrorism provided a quick fix to internal social unrest and external threats to sovereign control. With limited and relatively weak political opposition, low costs, and the ability to play on common fears of violent attacks, counterterrorism laws augmented existing systems of penal regulation without requiring fundamental shifts in social or economic organization of societies.

Counterterrorism, like other forms of penal regulation, falls unevenly on society. It targets marginal or oppositional groups, leaving elites and mainstream society relatively untouched by increased disciplinary technologies and practices. On the whole, counterterrorism policing does not impact privileged segments of society. Some of the most vocal and sustained opposition to counterterrorism practices emanate from locations where it impacts the more general population, such as airport security screenings. Generally, though, counterterrorism does not require collective sacrifices. It is done *for* mainstream society, but not *to* mainstream society. This selective use of counterterrorism helps to explain its proliferation in light of the vague array of activities that can be deemed terrorism under new laws. Powerful groups in society rarely feel threatened by the expansion of the laws, which tend to serve their interests in preserving political and sovereign power.

With the decline of the social welfare programs, state officials lost social policy tools to manage domestic unrest (Piven and Cloward 1993; Wilson 1996; Wacquant 2008).¹³⁶ Counterterrorism offers an attractive alternative to social welfare spending. While no longer politically feasible to expand social programs to pacify political protest in most states, investments in counterterrorism face little political opposition. In the new age of punishment, lawmakers increasingly look to punitive policing and mass incarceration as mechanisms for quelling domestic disturbances, rather than enacting social policies to address the structural poverty or inequality that might foster such unrest. Counterterrorism provides legal cover for lawmakers to expand policing and punishment.

¹³⁶ As the expansion of *laissez-fair* ideology and the promotion of unregulated markets creates more global instability, states worldwide continue to slash social welfare safety nets and privatize social services, leaving a larger portion of many societies at the mercy of global market forces (Wacquant 2008). The resulting public anxieties and market volatility increasingly threatens lawmakers' control of local processes and populations. Counterterrorism offers a partial solution to the dilemma of sovereign insecurity, providing legal tools that help lawmakers resist evolving global forces and simultaneously extend their control of domestic communities. It also supports market deregulation by fortifying private property rights, often elevating property damage to terrorism.

In general, the adoption of strict law and order reforms has accompanied deregulation of the economy worldwide (Wacquant 2009a). Countries have imported variants of the punitive counterterrorism provisions popularized in the United States seeking to maintain greater control of local populations during processes of deregulation that often increase social instability. In some countries, such as Brazil, Argentina, and South Africa, a rise in mass incarceration has paralleled these reforms (Wacquant 2009a). Yet, even as deregulation produces new insecurities for sovereigns, inspiring more counterterrorism surveillance and control, it remains strangely immune from state efforts at increased control and regulation. Lawmakers cannot halt deregulation without risking investment and overall growth. However, while they cannot assert their authority against the market, they can use the post-9/11 counterterrorism consensus to expand their authority with regard to the penal apparatus of the state. Counterterrorism has thus become a means for states to reinforce their control in the face of greater inequalities and social instability.

Global Penalty

In the age of punishment, counterterrorism has emerged as a tool of national lawmakers and also a new form of penalty. By emphasizing security over liberty, criminal sanctions over social support, stability over freedom, exclusion over solidarity, social control over social provision, and duties over rights, counterterrorism builds on previous law and order policies and advances punitive solutions to social instabilities. Counterterrorism has expanded the reach of previous prohibitions and punishments. It transforms penalty from a domestic activity targeting internal threats to a seemingly indispensable requirement of global cooperation, channeling substantial resources to combat a poorly defined global enemy. The following section argues that counterterrorism serves as a productive force after 9/11, which plays on social insecurities to promote punitive reforms worldwide.

While embodying a punitive logic, counterterrorism is not simply a repressive force. Counterterrorism laws may legitimate repressive tactics, but they also produce new categories, discourses, institutions, and social agents.¹³⁷ The power of counterterrorism lies in its productive potentialities. It fosters new institutions and legal standards that generally expand the power of ruling state officials. Penalty is not only punitive. It is also generative. Counterterrorism facilitates the growth of new mechanisms of social control.

¹³⁷ For example, a counterterrorism law that permits prolonged detentions for terrorism suspects produces a new category of detainee (e.g., unlawful enemy combatants), a new discourse limiting the procedural rights of those detainees (e.g., unlawful enemy combatants can be indefinitely detained), new protocols for policing (e.g., increased surveillance such as wiretapping), new procedures for processing suspects (e.g., unlawful enemy combatants do not have the same constitutional rights), new agents to administer the policies (e.g., counterterrorism agents, interrogators, and guards), new institutions (e.g., counterterrorism agencies), and even new physical structures (e.g., special detention facilities for terrorism suspects).

Counterterrorism thrives on social anxieties, which generate and validate its existence. The laws and practices of counterterrorism are founded on the insecurities of local and global communities. According to David Garland, “The risky, insecure character of today’s social and economic relations is the social surface that gives rise to our newly emphatic, overreaching concern with control and to the urgency with which we segregate, fortify, and exclude.” (Garland 2001:194). Officials play on public fears to justify spending scare resources on counterterrorism activities. They argue that stripping certain individuals of previously venerated rights promises greater security. Counterterrorism plays on a sense of impending danger after 9/11 to promote policies of punishment and social control.

Counterterrorism also promotes the punitive reconstruction of states worldwide, refashioning practices of policing and prosecuting suspects to grant greater investigative authority to law enforcement and erode legal obstacles to prosecutions of terrorism-related offenses. It normalizes new disciplinary technologies of surveillance and eclipses previous guarantees of individual rights. These changes are not limited to any single state or region. Counterterrorism extends a rubric of punishment to global society, making social control paramount. It legitimates new punitive measures on the basis of fleeting but omnipresent dangers.

After 9/11, counterterrorism developed into a global penalty. Lawmakers around the world embraced it as a means to secure their sovereign control against destabilizing forces of globalization. The costs to individual liberties from this development are significant. Overly broad definitions, expanded surveillance, prolonged detention, special terrorism tribunals, and increased punishments signal the triumph of a punitive logic and a continuation of the age of punishment. The following section details the effects of the new laws in particular states to show the severe consequences of counterterrorism.

Counterterrorism as Cerberus

Counterterrorism acts as a Cerberus of sovereignty. While one head defends the body of the state against foreign terrorist threats, the other noshes at local civil liberties and chomps down on domestic political protest and speech. Counterterrorism does far more than prevent the escalation of political violence. It institutionalizes legal categories, defines new security dilemmas, and shapes local enforcement practices. Lawmakers may enact national counterterrorism measures as solutions to immediate problems of state insecurity, but they add up to a global transformation in the field of national security with dire consequences for civil liberties worldwide. The following section illustrates how the broad scope of counterterrorism extends penalty by empowering officials to detain a wide range of individuals. Counterterrorism also transforms privacy law, creates new judicial processes, and approves harsh new punishments.

New laws empower state officials to arrest a wide array of actors. Nonviolent demonstrators, members of oppositional movements, and social reformers can all be targeted. For example, a court in Bahrain convicted twenty-one opposition leaders under

its counterterrorism statute in June 2011.¹³⁸ In 2007, authorities in El Salvador prosecuted political protestors as terrorists who had blocked roads to challenge a water decentralization plan.¹³⁹ Similarly, the Chilean government has held pro-Mapuche activists in prolonged detention under its anti-terrorism provisions.¹⁴⁰ These examples underscore the problem of vague counterterrorism provisions that permit state officials to investigate and imprison social reformers under the guise of combating terrorism.

Journalists have faced particular scrutiny in many places.¹⁴¹ In Ethiopia, eleven journalists were convicted under a 2009 anti-terrorism law, including opposition supporters and two Swedes who were sentenced after entering the country illegally to report on human rights violations. Likewise, a number of journalists were among the hundreds convicted based on alleged associations with anti-government groups in Turkey.¹⁴² Journalists also face prosecution under the anti-propaganda provisions in some anti-terrorism statutes, which criminalize the distribution of materials deemed harmful to the security of the state.

Counterterrorism laws also transform privacy standards and impose intensive surveillance regimes that extend the control of state authorities. Australia's Crimes Act specifically designates "security zones" where police can question, search, or seize property without reasonable suspicion of involvement in terrorism.¹⁴³ In the United States, the USA PATRIOT Act expands the reach of the Foreign Intelligence Surveillance Act (FISA), allowing broad access to electronic records and changing the notice requirement for physical searches. Legislation enacted in Italy authorizes the use of preventative wiretaps and other intrusive forms of surveillance.¹⁴⁴ Indonesian reforms now allow police to monitor mail and telephone communications.¹⁴⁵ Counterterrorism forces in Hungary can search homes, mail, or electronic data, and make secret audio or

¹³⁸ Human Rights Watch. 2012. "No Justice in Bahrain."

¹³⁹ Human Rights Watch. 2012. "In the Name of Security: Counterterrorism Laws Worldwide since September 11."

¹⁴⁰ Human Rights Watch. 2004. "Undue Process: Terrorism Trials, Military Courts and the Mapuche in Southern Chile."

¹⁴¹ Russia denies journalists access to zones where counterterrorism operations are taking place, and threaten prosecutions for reporting on terrorism related law enforcement. The use of counterterrorism laws against journalists highlights their potential chilling effect on a free press.

¹⁴² Human Rights Watch. 2012. "In the Name of Security: Counterterrorism Laws Worldwide since September 11." Turkey's revised 2006 counterterrorism law also criminalizes the production of "propaganda" related to suspect terrorist organizations. Under the provision, individuals printing flyers for a political rally could be prosecuted.

¹⁴³ Human Rights Watch. 2012. "In the Name of Security: Counterterrorism Laws Worldwide since September 11."

¹⁴⁴ Patane, Vania. 2006. "Recent Italian Efforts to Respond to Terrorism at the Legislative Level." *Journal of International Criminal Justice* 4(5):1166-80.

¹⁴⁵ Human Rights Watch. 2012. "In the Name of Security: Counterterrorism Laws Worldwide since September 11."

video recordings.¹⁴⁶ The amended Unlawful Activities Act in India authorizes arbitrary searches and arrests.¹⁴⁷ Counterterrorism laws vastly enhance the legal authority of states to violate rights to privacy and expand grounds for searches and seizures.

Warrantless searches and arrests, common under many of the new laws, often target marginalized local communities. In the United Kingdom, more than half a million people were stopped and searched between April 2007 and October 2010.¹⁴⁸ The effort did not result in a single successful prosecution for terrorism.¹⁴⁹ Critics of stop-and-search practices in the United Kingdom argue that they disproportionately targeted Muslims. Similar patterns of ethno-religious profiling are apparent in other countries as well. In Uzbekistan, for example, the government intensified searches and arrests of those associated with the conservative Islamist movement Hizb ut-Tahrir. Counterterrorism efforts in the United States have disproportionately targeted Muslims and persons of Arab or Middle Eastern descent (Volpp 2002). The patterns of targeted enforcement are even more concerning because many of the laws include immunity provisions that insulate police from prosecutions for injuries, property damages, or deaths that result from counterterrorism operations.

Counterterrorism laws also create special terrorism courts or sanction the use of military tribunals to prosecute terrorism cases.¹⁵⁰ The military commissions at the Guantanamo Bay Military Facility stand out as the most notorious example. However, other countries also have terrorism courts. Turkey reformed its special aggravated felony courts in 2004 to restrict the rights of suspected terrorists in crimes against the state. Yemen operates a special criminal court to hear cases of terrorism. Russia revised its penal code in 2009 to end jury trials for suspected terrorists.¹⁵¹ Countries often create these alternative judicial mechanisms in violation of international law standards. They provide a mechanism for state officials to expand their control and circumvent local courts.

¹⁴⁶ Schepple, Kim Lane. 2012. "The New Hungarian Secret Police," *New York Times*, 19 April.

¹⁴⁷ Human Rights Watch. 2010. "Back to the Future: India's 2008 Counterterrorism Laws."

¹⁴⁸ Human Rights Watch. 2010. "United Kingdom – Without Suspicion: Stop and Search under the Terrorism Act of 2000." Section 44 of the Terrorism Act of 2000 permits individuals to be stopped and searched.

¹⁴⁹ Ibid.

¹⁵⁰ By dropping the purpose requirement as a necessary element for terrorist-related convictions and criminalizing associations with organizations suspected of supporting terrorism, states further expand the scope of prosecution. Dozens of countries require only recklessness to convict a defendant under material support for terrorism provisions. Moreover, laws often make associating with a terrorist organization a crime, and sometimes include political opposition groups on official lists of terrorist organizations.

¹⁵¹ Paulsworth, Sarah. 2010. "Russia Constitutional Court Upholds Ban on Jury Trials for Terrorism Suspects." *Jurist*, April 20.

The sentences proscribed in counterterrorism laws reveal their underlying punitive logic. New laws almost universally increase sentences for those convicted of terrorism-related crimes. At least 30 countries include the death penalty as a possible consequence of conviction.¹⁵² Under the Syrian penal code, for example, a person can be put to death for acts of terrorism that result in destruction of a public building.¹⁵³ The increased punishments associated with terrorism convictions provide another means for state officials to exercise their control over disruptive factions of society. Opposition leaders and reformers can be sentenced to years behind bars for actions deemed to support terrorism. In this manner, counterterrorism helps officials guard their sovereign control and engenders more punitive policies worldwide.

Discussion

Lawmakers in more than one hundred countries enacted counterterrorism laws that expanded policing powers after 9/11.¹⁵⁴ New legal standards, institutions, and procedures gave law enforcement more authority in societies worldwide. For the most part, these changes were not responses to changes in levels of political violence. Lawmakers enacted many of the new measures as a defense against evolving insecurities in the global era. Increasingly threatened by the expansion of global governance and the emergence of local social movements, counterterrorism has allowed lawmakers to develop a legal arsenal to solidify their social control. New laws fortify and expand penal policies that officials use to watch, silence, and imprison suspect populations. In the post-9/11 era, counterterrorism has come to serve as a *Cerberus* of sovereignty, defending the state against the encroachment of global forces and internal political threats.

Drawing on examples from commercial law, national security law, and criminal law, this chapter illustrates some of the new insecurities facing states. The dismantling of the social welfare state in recent decades has crippled the ability of most officials to manage unrest with entitlement programs, leaving them with few legislative tools to assuage social instabilities. Counterterrorism offers these lawmakers a means to secure their authority through the penal arm of the state, while also holding off scorn from the global community. Officials worldwide can legitimate actions aimed at pacifying political opposition by arguing that such actions are necessary to combat terrorism. In this manner, lawmakers gain more social control locally and simultaneously defend their legitimate authority globally.

¹⁵² The list of countries sanctioning capital includes a number of states most active in counterterrorism enforcement, including China, India, Pakistan, and the United States.

¹⁵³ Such penal provisions augment counterterrorism measures enacted in 2012 that criminalize the creation of, participation in, or financing of terrorist groups. Under these laws, defendants face 10 to 20 years of either prison time or hard labor, or more severe punishments if their activities sought to change the regime or the structure of the state.

¹⁵⁴ Human Rights Watch. 2012. "In the Name of Security: Counterterrorism Laws Worldwide since September 11."

The expansion of counterterrorism after 9/11 builds on law-and-order policies that gained traction years earlier. New laws export a similar penal logic. They prioritize social control over social provision. They criminalize rather than support communities, often targeting new immigrants, ethnic and religious minorities, journalists, and political organizers. They stress the security of the nation over individual liberties. On the whole, the laws promote penalty worldwide. Counterterrorism marks a triumph of a global penal logic. Under the guise of combating new forms of political violence, counterterrorism strengthens the penal apparatus of the state, eroding domestic legal protections and securing the authority of lawmakers worldwide.

Chapter 5

Counterterrorism and Individual Rights

Abstract

This chapter shows that the formal language of recent counterterrorism laws heightens criminal penalties, restricts due process protections, and curtails civil liberties worldwide. When viewed as a whole, laws place the security of the nation before the rights of individuals and stand as a peculiar counterexample to the increasing priority placed on the ontological status of individuals after the Second World War. However, counterterrorism also serves an important expressive function. In developing legal exceptions to individual rights, counterterrorism laws also normalize these rights. The new laws draw a fundamental distinction between individuals worthy of rights and individuals worthy of punishment, but they do not directly challenge the idea of rights. The laws can reinforce the rights of individuals in society, even as they selectively strip away the legal protections of terrorism suspects.

Institutions around the world have increasingly granted priority to the ontological status of individuals (Boli 2005; Frank, Meyer, and Miyahara 1995; Frank and Meyer 1998, 2002, 2007; Frank and McEneaney 1999; Frank, Hardine, and Wosick-Correa 2009; Frank, Camp, and Boutcher 2010). In areas as diverse as education, environmental regulation, human rights, and the regulation of sex, scholars have documented an increasing focus on the rights of individuals and a corresponding decline in protections of the family, community, and nation (Meyer et al. 1997; Frank and Meyer 1998; Franck and McEneaney 1999; Meyer and Ramirez 2000; Baker and LeTendre 2005; Schofer and Hironaka 2005; Frank, Longhofer, and Schofer 2007; Frank, Hardinge and Wosick-Correa 2009). Legal systems worldwide have reflected this trend, protecting the rights of individuals vis-a-vis groups (Frank, Camp, and Boutcher 2010). In recent decades, legal rights are increasingly associated with individuals rather than corporate entities.¹⁵⁵

Counterterrorism, however, appears to buck this trend. The overwhelming majority of counterterrorism laws roll back individual protections. They expand the power of state officials to investigate, detain, interrogate, prosecute, and imprison individuals with minimal judicial oversight, public transparency, or due process. They strip individuals of rights to privacy, rights to freedom, rights to legal representation, and rights to due process. The growth of counterterrorism worldwide creates legal mechanisms that expand policing authority and broaden the authority of officials to restrict or suspend the domestic legal protections. Lawmakers defend these actions as steps taken to protect the nation. Counterterrorism then stands as a rare exception to the sacred status of individuals.

Upon closer inspection, however, counterterrorism laws also serve important expressive functions that can reinforce global ideas about the priority of individuals. Rather than challenge individual rights in general, counterterrorism laws divide society into individuals worthy of rights and individuals worthy of punishments. The laws target only terrorism suspects. These special individuals can be profiled, targeted, tracked, and detained without taxing the underlying priority on individual rights in general. Their rights may be restricted or suspended because they are preemptively guilty.

On balance, counterterrorism does not shift the ontological focus back to groups. It reinforces the status of individuals in general by showing that suspected-terrorists are individuals *out of place*.¹⁵⁶ Liminal and polluted, these people are no longer fully part of society and thus can be denied the rights of citizens. In the words of Victor Turner (1967), they exist “betwixt and between.” They are individuals separated from society.

¹⁵⁵ Some social movements continue to lobby for the recognition of group rights, particularly the rights of indigenous populations or ethno-racial minorities. However, these calls are often couched in terms of the entitlements of the individuals involved in the struggle. The recent willingness of U.S. Federal Courts to protect the status of corporations stands as another possible exception to the general trend, although corporate rights are defended in terms of the rights of legal persons.

¹⁵⁶ This idea derives from Mary Douglas (1966) work on pollution. In her classic formulation, Douglas describes dirt as matter out of place.

They maintain a special status as persons worthy of punishment but not worthy of rights. Creating special mechanisms to handle suspected-terrorists without recognizing them as complete individuals then reaffirms the priority of individuals in society at large, even as it strips terrorism suspects of legal rights guaranteed to other members of society. It normalizes individual rights for the rest of society.

Drawing on content coding of national counterterrorism laws, this chapter shows that global counterterrorism law since 9/11 heightens criminal penalties, restricts due process protections, and curtails civil liberties worldwide. The changes to formal laws occur throughout the world and challenge global scripts that sanctify individual rights. Nevertheless, in carving out exceptions to legal protections of individual rights, the laws also reinforce the ontological status of individuals by normalizing individual rights as the legal default in societies worldwide.

The chapter proceeds in five parts. It begins with an overview of sociolegal studies on counterterrorism and argues that work too often ignores global dimensions of law. Next, it describes the increasing priority given to individuals after the Second World War. The third part of the chapter shows that recent counterterrorism laws substantially restrict individual rights. They represent an uncommon example of laws placing corporate entities above individuals. The fourth part of the chapter discusses the potential implications of the new laws. The chapter concludes with a discussion of the ways counterterrorism measures can strengthen global scripts promoting individual rights, even as they strip suspects of these same rights.

Global Sociolegal Research

No sociolegal work to date has evaluated the rise of counterterrorism law on a global scale. Research on counterterrorism law has been confined to national case studies or comparative studies and often failed to recognize the social construction of law. The following section briefly reviews previous work on counterterrorism and argues that investigations of counterterrorism law should look beyond national jurisdictions to understand the full impact of new laws on individual rights. The limited scope of most studies of counterterrorism risks underestimating the significant curtailment of legal protections worldwide.

Until recently sociologists largely ceded the domain of counterterrorism studies to political scientists, doctrinal legal scholars, and policy wonks.¹⁵⁷ Rather than offering systematic assessments, studies in these fields centered on policy agendas or normative arguments (Deflem 2010). The work generally failed to recognize the constructed nature

¹⁵⁷ According to Austin Turk (2004), few sociologists even made terrorism an object of study before the 9/11 attacks in the United States. The few sociological works appearing in print have focused on conceptions of terrorism (Alexander 2004; Black 2004; Goodwin 2004; Tilly 2004), world systems explanations for terrorism (Bergesen and Lizardo 2004), the emergence of the terrorism studies as a contested field of expertise (Stampnitzky 2011), or advanced critical perspectives on terrorism (Smelser 2007).

of the categories and practices involved in counterterrorism. By highlighting the ongoing processes involved in the social construction of law, sociolegal scholarship offers needed perspectives.¹⁵⁸

Case studies and comparative works dominate counterterrorism studies (Bianchi and Keller 2008; Donohue 2008; Giraldo and Trinkunas 2007; Hocking 2004; Yonah 2002).¹⁵⁹ These works are useful. By design these studies concentrate on a narrow conglomeration of policy options within demarcated political fields at particular historical moments. They often provide a rich empirical analysis of local, regional, and national political contestation, illuminating domestic and interstate policy negotiations. The comparative orientation also captures most international cooperation, which occur primarily through unilateral and bilateral agreements (Romaniuk 2010; Deflem 2010). Moreover, detailed case studies can demonstrate the complex and constitutive character of lawmaking, drawing attention to the constellation of discourses, practices and institutions that construct and perpetuate law.

Case studies and comparative approaches may overlook, underestimate, or obscure the impact of global forces. By confining legal analysis to specific national or comparative contexts researchers may fail to recognize antecedents of counterterrorism lawmaking in other arenas or exaggerate the autonomy of state lawmakers.¹⁶⁰ Restricting analytic attention to comparative studies risks missing the impact of international networks (Beckfield 2010; Keck and Sikkink 1998), transnational professional circles (Stampnitzky 2011), bilateral policing partnerships (Deflem 2010), wide-reaching legitimation pressures (Hurd 1999; Merry 2003), and global scripts (Meyer 2000).

The growth of law worldwide has become an important outcome variable and a notable measure of political change (Halliday and Carruthers 2007; Frank et al. 2009, 2010). Formal law exercises power, and embodies it, in different ways. It legitimates and naturalizes social categories, and in so doing often translates into political and social power. It serves as an important form of capital in symbolic and material struggles within the state and beyond it (Bourdieu 1987, 1993; Dezalay and Garth 1996). Various actors, including social movement leaders, state officials, and everyday citizens, evoke law as a valuable resource in struggles for political, social, and cultural recognition. After all, law not only sanctions the state's monopoly on the legitimate use of physical violence, but

¹⁵⁸ Sociolegal studies tend to focus on micro-dynamics and mezzo-level complexities in particular jurisdictions. They often concentrate on cases in Western democratic states, where legal institutions and traditions may be more firmly established and data more widely available. This work levels up and extends the analysis to examine counterterrorism law as a global phenomenon, building on the work of other transnational sociolegal scholars (Dezalay and Garth 1996; Frank 1997, 1999; Boyle and Meyer 1998; Merry 2003; Schofer 2003; Schofer and Hironaka 2005; Fourcade and Savelsberg 2006; Frank et al. 2009, 2010; Halliday 2009).

¹⁵⁹ The bias towards national legal analysis is understandable given the practical and linguistic challenges of compiling and coding laws from around the world.

¹⁶⁰ Global forces often constrain lawmakers within and across national jurisdictions.

also its monopoly on the use of symbolic violence.¹⁶¹ Law defines the accepted limits of social action (Bourdieu 1987). Further, cultural meanings often infuse law and condition subjective worldviews. This can be especially relevant during moments of exogenous shocks, crises, rupture, and episodes of contention (Boyle and Meyer 1998; Fourcade-Gourinchas and Babb 2002; Edelman et al. 2010). Formal law, then, has productive and constrictive functions. It produces and legitimates social categories, and thereby often defines the limits of social practice. It conditions individuals' understandings of social possibilities. In short, formal law both demarcates objective relations and cultivates subjectivities on a global scale. Even recognizing disjunctures between formal law and actual legal practice, it is an important source of social regulation (Boyle and Meyer 1998; Cohen 1985; Durkheim [1893] 1995; Edelman 1992).¹⁶²

National lawmakers in recent years have used the war against terrorism to justify new laws in dozens of countries. These laws add up to a global transformation in the field of national security with potential consequences for individuals worldwide. Building on previous studies of world society and the globalization of law, this chapter evaluates the impact on these laws on civil liberties.

The Rise of Individual Rights

Individual rights became paramount after the end of the Second World War (Frank and Meyer 1998).¹⁶³ Wall street traders and economists came to describe the economy in terms of the needs and choices of individual consumers, investors, and stockholders. Political systems came to emphasize voter choice as the mark of democracy, freedom, and egalitarianism. Autonomous choices of individuals even came to define cultural systems. The individual increasingly emerged as the fundamental actor in world society, entitled to recognition and rights.¹⁶⁴ And as people around the world began to claim individual rights as universal, core institutions of global society were organized to reflect the sacred status of individuals (Elliot 2007).¹⁶⁵

¹⁶¹ In its most basic sense, symbolic violence here refers to the power of the state to impose its categories of understanding on local populations.

¹⁶² Identifying and analyzing state counterterrorism practice is a logical and important step in assessing legal change. Drawing on arrest and detention data for over fifty countries, chapter 6 examines counterterrorism practice in more depth.

¹⁶³ In the aftermath of the war, the development of human rights law both reflected and reinforced the growing prominence of the individual.

¹⁶⁴ According to David Frank and John Meyer, "The individual person, bounded and authoritative, is increasingly culturally defined as the root element and primary actor in reality" (Frank and Meyer 1998: 301).

¹⁶⁵ According to John Boli, "an important trend in culture work of the present era of globalization has been self-sacrificing efforts to protect, shield, and promote these sacred entities. Moral guardians, activists, and entrepreneurs discuss and elaborate the sacred entities' vulnerabilities and protection needs, their rights and justified expectations" (Boli 2005: 395).

The postwar celebration of individuals continues to organize social life after 9/11. Individuation changes institutional structures worldwide. As individuals gain greater ontological standing a wide array of personal rights, capacities, preferences, interests, and tastes are made legitimate (Frank and Meyer 1998).¹⁶⁶ The rise of human rights law is a prominent example. Individuals can claim rights under international treaties or the universal declaration of human rights regardless of the protections provided by their national jurisdictions. Thus, the idea of human rights has developed into a global script that may constrain state actions. According to John Boli, “Given the primacy of the sacred individual, the ideology of human rights has become a master theme, seeping into ever more domains and incorporating an ever growing array of rights” (Boli 2005: 395).

The priority of individual rights is evident in gradual shifts from state sovereignty to individual sovereignty in some areas of international law.¹⁶⁷ For example, the responsibility to protect (R2P) doctrine in humanitarian law places the rights of individuals above the rights of the sovereign. Similarly, beginning with the Nuremberg Trials, countries have ceded sovereignty to international criminal tribunals, including the International Criminal Court (ICC), the International Court of Justice, International Criminal Tribunal in Rwanda, and the International Criminal Court for the Former Yugoslavia.¹⁶⁸ Campaigns for universal jurisdiction offer another example of the extension of individual rights.¹⁶⁹ Officials have also ceded sovereignty to regional courts, such as the Court of Justice for the Andean Community, under the auspices of protecting individual rights (Alter and Helfer 2010). The International tribunals that prioritize the rights of individuals underscore the modern trend towards individuals.

Counterterrorism law, however, appears more immune to the postwar individualization than other areas of global law. Counterterrorism purports to guard the security of nations by restricting or suspending individual rights, reversing the trend of sanctifying the ontological status of individuals. Counterterrorism lawmakers argue that acts of terrorism have consequences beyond the individuals involved. Terrorism strikes at the core of

¹⁶⁶ “Individualization disembedded persons from corporate bodies and rendered them as existentially equal across collective boundaries” (Frank et al. 2010).

¹⁶⁷ Chapter 4 provides a more in-depth discussion of the relationship between national sovereignty and the rise of counterterrorism laws.

¹⁶⁸ A number of states, including the United States, have resisted the creation of these criminal courts by citing threats to their sovereignty. Though many of these same states have been willing to cede sovereignty in other areas, such as international commercial arbitration (See Dezalay and Garth 1996).

¹⁶⁹ After the Second World War, lawmakers worldwide recognized that states were not always the proper sentinels of their citizens. Universal jurisdiction emerged as a way to allow national courts to exercise jurisdiction over persons accused of committing crimes beyond the boundaries of the state, regardless of their nationality or relation to the prosecuting state. Universal jurisdiction exists as a mechanism to bring to trial alleged criminals in foreign courts. Nine countries currently exercise some form of universal jurisdiction, including Australia, Belgium, Canada, the Czech Republic, France, Germany, Israel, Spain, and the United Kingdom.

society. It offends collective sensibilities. Under this rationale, a number of states treat terrorism as an act of war against the nation rather than a crime perpetrated against individuals. In contrast to other areas of law, terrorism-related offenses are rarely framed in relation to the rights of the individual victims.¹⁷⁰ As violence serving politics beyond victims, terrorism threatens society as a whole. It has been collectivized and formulated as a threat to groups. Therefore, under the guise of terrorism, lawmakers can restrict or eliminate individual rights.

Restricting Rights

Formal counterterrorism laws include language that severely restricts individual rights with potentially dangerous consequences for civil liberties worldwide. Using a series of three statistical indices to assess the substantive content of the new laws, this chapter shows that new laws expand policing, heighten punishments, reduce procedural protections, and threaten civil liberties. Cross-tabulation tables further show that these effects appear across all regions of the world.

The first index, *the penalty index*, combined two dichotomous variables measuring if: 1) laws increased the policing power of the state; 2) laws heightened penalties for those convicted of terrorism or supporting terrorism. The calculated cronbach alpha coefficient for the index is .78.¹⁷¹

The second index, *the procedural index*, combines five variables measuring if the law: 1) extended the time a detainee may be held without charges; 2) allowed for incommunicado detention; 3) restricted legal access to representation; 4) eliminated judicial challenges; and 5) modified trial procedures to curtail due process protections. This index is employed as a rough measure of how a country altered procedural due process protections. However, the index should not be read as a baseline indicator of procedural protections in a given state. A country might enact a law with no procedural changes and receive a low rating on the index even though it had few procedural guarantees. Similarly, a country might enact a series of procedural changes, rolling back domestic procedural guarantees, and receive a high rating on the index, even though it provided significant procedural protections. The index serves only as a relative measure of change in levels of protection. It does not capture the absolute level of procedural protection in a given state. The calculated cronbach alpha coefficient for the index is .75.

The third index, *the restricted liberties index*, combined seventeen dichotomous variables, listed below, into a measure of the potential for the laws to restrict individual

¹⁷⁰ There is a striking difference between anti-terrorism laws and sexual offenses laws, for example, which increasingly center on the rights of individual victims (Frank, Hardinge, and Wosick-Correa 2009; Frank, Camp, and Boutcher 2010).

¹⁷¹ The cronbach alpha is a coefficient of reliability and a common measure of the internal consistency of an index. The threshold for interpreting the coefficient varies, but an index with a result above .6 or .7 is generally considered to have good internal consistency.

liberties in a given country. The dichotomous variables included in the index are listed below. The calculated cronbach alpha coefficient for the index is .82.

- 1) Definition includes prohibitions on public disruption
- 2) Allows freezing terrorist assets
- 3) Allows imprisonment for membership in a terrorist organization
- 4) Defines material support as a crime
- 5) Limits free speech
- 6) Expands policing powers
- 7) Extends the time a detainee may be held without charges
- 8) Allows for incommunicado detention
- 9) Restricts legal access to representation
- 10) Eliminates judicial challenges
- 11) Restricts detainees' access to evidence
- 12) Modifies trial procedures
- 13) Establishes special security courts
- 14) Establishes Administrative Detention
- 15) Definition includes harm to property
- 16) Heightens penalties
- 17) Allows the death penalty

By sorting countries into groups based on their index ratings, I was able to generate lists of the countries that enacted the most restrictive counterterrorism measures. The rating scales offer evidence of dissemination of restrictive measures across a wide range of states and regions. The groupings, however, do not reflect a relative ranking of states based on absolute levels of protection for individual rights.

Exploratory Analyses

Counterterrorism increases state policing, limits procedural protections, and criminalizes new activities, such as the material support for terrorism. However, the extent of reforms varies across nation-states. The following section analyzes cross-sectional data on the content of counterterrorism laws in 2009. Using statistical indices, the work evaluates the substantive provisions in new counterterrorism laws worldwide. It also examines the distribution of counterterrorism.

Lawmakers enacted over two hundred and fifty new counterterrorism measures worldwide after 9/11. Nearly one hundred of these laws included provisions criminalizing material support for terrorism. In many cases, these provisions lacked any intent requirement, which meant that people who recklessly provide financial or material support to individuals later detained on terrorism-related crimes could be convicted under new laws. Countries increased financing laws targeting terrorism-related activities in most states. The aggregate effect of new laws substantially expanded the policing power of states. The table below provides counts of the number of countries enacting new laws, criminalizing material support for terrorism, and increasing the policing powers of the state.

Table 5.1: Counterterrorism Laws Worldwide.

Countries enacting counterterrorism laws prior to 9/11.	51
Number of laws enacted by those states.*	59
Countries enacting counterterrorism laws after 9/11. **	142
Number of laws enacted by those states.*	261
Number of countries criminalizing material support to terrorism.***	95
Countries enacting counterterrorism finance laws.	75
Countries enacting counterterrorism finance provisions.	137
Counterterrorism laws increase the policing power of the state.	119

N=193 Countries

*Includes substantive amendments to legislation and changes to the criminal code.

**Includes countries enacting terrorism specific finance laws.

** Legal provisions criminalizing the act of providing financial support are included in the count.

Penalty Index

The penalty index shows that counterterrorism laws on the whole heightened penalties for those convicted on terrorist-related offenses. The laws also increased policing powers. More than two-thirds of the countries in the sample received the maximum score on the penalty index, indicating their counterterrorism laws increased the policing power of the state and raised penalties for those convicted of committing or supporting terrorism.¹⁷²

This data can be read as evidence of a global attack on individual rights. On the one hand, the widespread changes to policing hint at a rollback of individual privacy guarantees for suspects. On the other hand, the heightened penalties suggest an increase in state-sanctioned punishments for convicts. In both cases, the state appears to prioritize national security above individuals involved in, or suspected of involvement, in terrorism-related crimes.

¹⁷² 98 of 146 countries for which data was available reported increased policing powers and heightened penalties for those convicted of terrorism-related crimes.

Table 5.2: Cross-tabulation of Country-level Scores on the Penalty Index by Region, 2009.

Region	0	1	2	Total
Americas	6 (20.69)	5 (17.24)	18 (62.07)	29 (100.00)
Asia	2 (08.70)	5 (21.73)	16 (69.57)	23 (100.00)
Europe	0 (0.00)	3 (10.34)	26 (89.66)	29 (100.00)
Middle East/ North Africa	4 (21.05)	2 (10.53)	13 (68.42)	19 (100.00)
Sub-Saharan Africa	14 (43.75)	2 (06.25)	16 (50.00)	32 (100.00)
Russia and New States	1 (12.50)	1 (12.50)	6 (75.00)	8 (100.00)
Oceania	1 (16.67)	2 (33.33)	3 (50.00)	6 (100.00)
Total	28 (12.32)	20 (13.60)	98 (67.12)	146 (100.00)

The penalty index also demonstrates that proliferation of restrictive provisions in counterterrorism laws is not limited to any particular region of the world. A significant number of states in each region enacted laws that increased policing and criminal penalties. In the Americas, the Middle East, and Oceania approximately eighty percent of states made punitive changes to their laws. In the Former Soviet Bloc and Asia, the percentage approached ninety percent of states. In Europe, every state enacted some reforms. The number of states passing new measures in Sub-Saharan Africa seems comparatively low at around fifty percent. However, this figure may be artificially low due to a lack of reliable information on laws in the region. Alternatively, it may reflect a lack of states' capacity. Regardless of the explanation, the region still had more countries pass new measures than any other. In short, the data illustrates the extensive reforms and their potential wide-reaching impact on individual rights.

Procedural Index

The procedural index allows for further exploration of variation in the content of the laws. By sorting countries by their index rating and generated a list of countries in each rating category, one can construct a ranking of countries based on severity of procedural changes in their laws. The rankings are a cumulative score based on the counts of the dichotomous variables in the index. For example, a country scoring a zero on the procedural index ranking would *not* have extended time a detainee can be held without charges, allowed incommunicado detention, restricted legal access to representation, eliminated judicial challenges, or modified trial procedures to curtail due process protections.¹⁷³ A country scoring a five on the index would have accomplished all these in their reforms.

The ranking list shows the exceptional nature of changes in the United States, which altered its procedural protections more than any other state.¹⁷⁴ In part, the U.S. appears as an outlier because it had more procedural protections in place before enacting new counterterrorism measures that restricted some of those protections. More information is also available on legal changes made in the United States. The ranking should not be interpreted as an absolute measure of the procedural protections in the listed countries. Even after 9/11 the US has robust procedural protections compared with a large number of states. Nevertheless, the ranking suggests the pervasive assault on legal protections across the world.

¹⁷³ The substantive nature of changes to administrative and judicial procedures varies by state. In Australia, for example, a 2004 Counterterrorism law grants police the authority to detain an individual suspected of terrorism for up to four hours of questioning, with the possibility of a 20-hour court ordered extension. Italy's 2005 Counterterrorism law provides 12 additional hours without a court order, for a total of 24 hours. Other states allow suspected detainees to be held for longer durations. Several countries, including France and the Philippines, have extended potential pre-charge detention periods to a few days. Under a 2006 French Counterterrorism law, police may, with court approval, hold a person up to a total of six days without charges. In the Philippines, under a 2007 law, police may detain individuals suspected of having committed a terrorism without a warrant or review for up to three days, up from a 36 hour maximum for other serious crimes. In a few cases, new counterterrorism legislation grants major increases. Trinidad and Tobago allows the detention of a person involved in terrorism for up to 14 days without charge, as long as a judge approves. Without the anti-terrorism statute a person must be charged within 48 hours of arrest.

¹⁷⁴ It should be noted that more information is available on US law than most other states. Moreover, human rights advocates have widely publicized procedural changes in US laws because the US has been at the center of human rights controversies in the war against terrorism.

Table 5.3: Country List By Procedural Index Rating, 2009.

1	2	3	4	5 (most restrictive)
Afghanistan	Algeria	Bahrain	Nepal	United States
Australia	Ethiopia	India	Qatar	
Bangladesh	France	Jordan	Singapore	
Canada	Gambia	Papua New	Spain	
Colombia	Indonesia	Guinea	Tajikistan	
Ghana	Israel	Peru	United	
Greece	Italy	Philippines	Kingdom	
Ireland	Kenya	Russia		
Kyrgyzstan	Lithuania	Rwanda		
Portugal	Marshall	Senegal		
Seychelles	Islands	Sri Lanka		
Slovakia	Mexico	Tunisia		
Trinidad and Tobago	Netherlands	United Arab		
	Niger	Emirates		
	Pakistan	Zambia		
	Palau			
	Tanzania			
	Turkey			
	Uganda			

Examining the distribution of countries by their rating on the procedural index suggests a pattern of widespread legal diffusion across different types of states. Countries receiving a four on the index scale include European democracies like Spain and the United Kingdom, authoritarian regimes like Qatar,¹⁷⁵ and transitional states like Nepal, Singapore, and Tajikistan. Other rating categories appear equally diverse in terms of political systems and level of development. Category one includes states ranging from Australia and Afghanistan. Category two includes the Netherlands and Nigeria. Category three includes Papua New Guinea and the United Arab Emirates. The rankings thus offer evidence that political structure and development are not determinative in which countries enact new counterterrorism laws.

The procedural index ranking excludes states that scored a zero on the procedural index scale. Receiving a zero may reflect a lack of information on a state's laws, a lack of legal reform, or reforms that did not significantly alter existing procedural protections in the state.¹⁷⁶ The cross tabulation of the procedural index rating by region offers a sense of the

¹⁷⁵ Under a 2003 referendum, Qatar is scheduled to transition from an absolute monarchy to a constitutional monarchy following legislative elections in 2013.

¹⁷⁶ If a state lacked procedural guarantees prior to enacting a new counterterrorism law there would be no need to restrict or suspend legal provisions in the state. Therefore,

total number of states enacting reforms and any regional patterns in the procedural restrictions of national laws. The table demonstrates that while the majority of states worldwide did not change their procedural guarantees, a significant number did make changes that restricted individual protections.

Table 5.4: Cross Tabulation of Procedural Index Rating by Region, 2009.

Regions	0	1	2	3	4	5	Total
Americas	22 (78.57)	3 (10.71)	1 (03.57)	1 (03.57)	0 (0.00)	1 (03.57)	28 (100.00)
Asia	12 (52.27)	3 (13.04)	2 (08.70)	3 (13.04)	3 (13.04)	0 (0.00)	23 (100.00)
Europe	20 (86.96)	5 (21.74)	3 (13.04)	0 (0.00)	2 (08.70)	0 (0.00)	23 (100.00)
Middle East/ North Africa	10 (55.56)	0 (0.00)	3 (16.67)	4 (22.22)	1 (05.56)	0 (0.00)	18 (100.00)
Sub-Saharan Africa	22 (68.75)	1 (03.13)	6 (18.75)	3 (09.38)	0 (0.00)	0 (0.00)	32 (100.00)
Russia and New States	6 (75.00)	0 (0.00)	1 (12.5)	1 (12.50)	0 (0.00)	0 (0.00)	8 (100.00)
Oceania	4 (66.67)	1 (16.67)	0 (0.00)	1 (16.67)	0 (0.00)	0 (0.00)	6 (100.00)
Total	96 (66.21)	13 (08.97)	16 (11.03)	13 (08.97)	6 (04.13)	1 (0.69)	145 (100.00)

The prominence and extent of procedural restrictions varies by region. In the Americas less than a quarter of states made changes. The same is true of states in the Former Soviet Bloc. In Sub-Saharan Africa, one in three states passed counterterrorism reforms restricting individual procedural guarantees. In Europe, the Middle East, and North Africa approximately forty percent of countries made changes to their legal procedures. Finally, almost half of states in Asia enacted reforms, which tended to be more restrictive

some countries can receive a zero on the procedural index rating, suggesting few restrictions to procedural protections, even though the state provides few procedural guarantees.

changes than in other regions. On the whole, the changes suggest a meaningful shift in domestic legal protections around the world.¹⁷⁷

The proliferation of procedural changes across states supports world society arguments on the diffusion of global scripts. There is some national variation in the legal measures. However, world society scholars recognize that local institutions shape the adoption of global scripts (Meyer and Rowan 1977; Meyer 2000, 2010). In general, the laws demonstrate uniformity in their restriction of domestic procedural protections. The migration of the laws therefore supports world society theories of policy diffusion.

In regard to individual rights, the roll back of procedural protections is clear. While no country enacted a counterterrorism law that increased domestic procedural protections for suspected terrorists, a significant number elected to protect national security by restricting or suspending previously existing protections of individual rights. Common changes included extending the period of time a suspect may be held without charges, limiting judicial oversight of suspected terrorist, allowing incommunicado detention, sometimes in undisclosed locations, and denying habeas rights. According to the procedural index ratings, counterterrorism again appears as a peculiar counterexample to the increasing priority of the ontological status of individuals. Counterterrorism laws significantly curtail domestic legal protections.

Restricted Liberties Index

A similar pattern of restricting individual protections appears in the data when the more robust restrictiveness index is used to sort countries. The restrictiveness index includes seventeen dichotomous variables on structural features of the counterterrorism measures and provides information on a broader array of counterterrorism elements.¹⁷⁸ As a more

¹⁷⁷ The lower rates of procedural reforms compared with punitive reforms likely reflects the existence of fewer procedural guarantees in many states prior to the creation of the new laws.

¹⁷⁸ The measures capture formal legal changes that restrict civil liberties. Laws restrict detainees' rights to access legal counsel or visit family during the period before official charges. France, for example, has denied suspected terrorists access to counsel where under regular procedures such access would be immediate. France's 2004 Anti-terrorism law amends the code of criminal procedure to allow police to deny a detainee access to a lawyer for up to 72 hours in terrorism and drug-trafficking investigations. The new provision eliminates the state's previous presumption of innocence in criminal proceedings of suspected terrorists. Turkey offers another example. It also modified the previous right of detainees to access counsel. Under a 2006 provision, courts may authorize a 24-hour delay in the provision of legal counsel. These restrictions on detainee's access to counsel also apply to terrorist suspects held incommunicado. Spain, Israel, Jordan and Tunisia provide still other examples. Spain allows detentions from five to ten days. Israel bars detainees' access to legal counsel for ten days based on police authority and an additional twenty days with a court order. In Jordan and Tunisia,

inclusive scale, the index incorporates a greater number of states and offers a wider ratings spectrum. The scale ranges from 0-17 based on a cumulative count of dichotomous variables indicating restrictive reforms in the laws of each state.¹⁷⁹ The table below sorts countries based on this more comprehensive index.

Table 5.5: List of Countries by Rating on the Restrictiveness Index, 2009.

1 (least restrictive)	Argentina, Guinea, Lebanon, Liberia, Liechtenstein, Nicaragua, Switzerland, Vietnam.
2	Burundi, Latvia, Saint Lucia.
3	Albania, Bulgaria, Estonia, Mauritania, New Zealand, Saint Vincent and the Grenadines, Saudi Arabia, Tonga, Vanuatu.
4	Armenia, Bahamas, Bosnia and Herzegovina, Finland, Guatemala, Mauritius, Montenegro, Panama, Poland, Samoa, Serbia, Sweden.
5	Brunei, Cambodia, Czech Republic, Denmark, Dominica, El Salvador, Germany, Hungary, Maldives, Malaysia, Marshall Islands, Moldova, Oman, Portugal, Norway, San Marino, South Africa, Syria.
6	Afghanistan, Antigua and Barbuda, Belgium, China, Colombia, Croatia, Cuba, Georgia, Guyana, Jamaica, Mexico, Saint Kitts and Nevis, Thailand, Ukraine, Uzbekistan,
7	Belarus, Canada, Cyprus, Grenada, Kazakhstan, Iraq, Ireland, Palau, Papua New Guinea, Pakistan, Romania, Seychelles, Slovenia, Sudan, Turkmenistan, Zimbabwe.
8	Barbados, Lithuania, Netherlands, Philippines, Slovakia.
9	Gambia, Indonesia, Tanzania, Trinidad and Tobago, Turkey.
10	Bangladesh, France, Kenya, Russia, Rwanda, Sri Lanka, Tunisia, Uganda.
11	Algeria, Israel, Jordan, Peru, Spain, Tajikistan, United Arab Emirates.
12	Bahrain, India, Zambia.
13	Nepal, Qatar, Singapore, United Kingdom.
14 (most restrictive)	United States
15	---
16	---
17	---

The restrictiveness index affirms the findings of the other two indices. Again, the data shows that a wide variety of states enacted counterterrorism laws that restrict the rights of individuals. The ratings sorted states with different political systems and levels of development into similar categories. At the least restrictive end of the scale, Switzerland

detainees can be denied legal representation for the entire pre-charge period, a maximum of thirty days in Jordan and potentially indefinite period in Tunisia.

¹⁷⁹ No state reached the maximum rating score of 15. The United States had the highest rating on the index, scoring a 14. This is probably due to the existence of more robust legal protections and availability of data on changes to counterterrorism within the United States.

shares the category with Liberia. The Netherlands sits beside the Philippines in the middle range of the scale. And, again, the United States occupies its own category as an outlier at the most restrictive end of the ratings scale. The index then offers more evidence that counterterrorism laws substantially restrict the rights of individuals.

Discussion

The empirical analysis of the content of the laws demonstrates that formal language in recent counterterrorism measures heighten criminal penalties, restrict due process guarantees, and curtail civil liberties worldwide. Lawmakers place the security of nation before the rights of individuals. In this sense, laws represent a counterexample to the increasing priority given to individual rights in the postwar period. In contrast to developments in human rights, humanitarian law, environmental regulation, and the regulation of sex, where the rights of individuals have become paramount, national counterterrorism statutes regularly restrict or suspend the rights of individuals in defense of the national community. Counterterrorism looks like an anomaly to the rise of the individual documented by World Society scholars.¹⁸⁰

Upon close interrogation, however, what appears to be a rare retreat from the increasing protection of individuals in global society turns out to be a more complicated constellation of forces that may actually reinforce the idea of individual rights, even as specific laws strip suspects of individual protections. The formalization of counterterrorism laws may fortify the trend towards individual rights because the legal restrictions of rights only apply to special individuals. The effects of the laws do not fall evenly on society. By dividing society into individuals worthy of rights and individuals worthy of punishment, counterterrorism invents a new category of persons. Terrorism suspects are not complete individuals entitled to the same rights as the rest of society. They are pathological individuals only worthy of punishment. Counterterrorism enforces a preemptive logic that presumes guilt and restricts rights. Laws situate suspects as rare types of persons, which occupy a liminal social position. Counterterrorism does not challenge the idea of individual rights for members of society as a whole. In fact, by stripping only terrorism suspects of their rights, counterterrorism affirms the importance and validity of individual rights for the rest of society.

¹⁸⁰ While counterterrorism at first glance appears to challenge world society scholars' contention that the ontological status of individuals is paramount, the widespread adoption of counterterrorism laws supports world society arguments that globalization will proceed in a relatively uniform manner across states informed by cultural models circulating in the global community (Meyer et al. 1997; Meyer 2000; Meyer and Jepperson 2000; Krucken and Drori 2009). Scholars in the world society tradition have documented the diffusion of universalizing models in education (Meyer and Ramirez 2000; Baker and LeTendre 2005; Meyer and Schofer 2006), environmentalism (Meyer et al. 1997; Frank Longhofer, and Schofer 2007), science (Drori et al 2003) and war (Hironaka 2005). Therefore, counterterrorism complicates and supports the world society literature.

Human rights advocates argue that the creation of novel counterterrorism measures often weaken individual rights.¹⁸¹ There is no question that new laws significantly curtail local procedural protections and civil liberties. Yet the formalization of legal standards that limit individual rights can also be read as an indicator of the true dominance of individual rights in the modern period. Lawmakers' need to carve out exceptions to the sacred status of individuals lays bare the true hegemony of individual rights. This is not to discount the consequences of suspending domestic protections in individual cases. Suspected terrorists lose their standing as full persons in many jurisdictions with dire results. This is particularly concerning because counterterrorism enforcement often targets marginal members of society, including new immigrants, ethnic and religious minorities, and political opposition leaders. Still, the rise of counterterrorism law shows the overall robustness of individual rights worldwide. If the war against terrorism had created a real state of exception, then the need for courts and legislatures to justify state practice aimed at the defense of the nation would be unnecessary.¹⁸² The large-scale roll back of individual rights indicates the global power of rights.

Counterterrorism displays a remarkable ability to multitask. As laws expand throughout the world, they bolster global scripts about the importance of individual rights even as formal mechanisms in the laws suspend individual rights for terrorism suspects. The laws simultaneously sanctify individual rights and demonize suspects. On the one hand, counterterrorism laws extend the reach of the penal apparatus of the state into lives of individuals and communities deemed suspicious by state officials. The laws permit enforcement agents to profile, surveil, and selectively isolate persons identified as potential threats. On the other hand, exceptions carved out by the new laws reinforce and normalize the rights of the general population. By holding out the laws as reserved for pathological members of society, lawmakers assure the general public that their rights are not in jeopardy. Only suspect individuals willing to engage in profane acts of terrorism will be subject to the laws. The laws divide society into those worthy and unworthy of individual rights, but they do not challenge the legitimacy of individual rights as a common good.

The punishments proscribed in counterterrorism laws also serve to reinforce the legitimacy of individual rights for the public at large. In his essay *Two Laws of Penal Evolution* (1901), Emile Durkheim argues that punishment occurs for its own sake in primitive societies, where the phenomenon is rooted in vengeance and performed through violence, but as society grows more complex and specialized punishment serves purposes beyond reprisals and causing pain.¹⁸³ For Durkheim, punishment is fundamentally

¹⁸¹ See Human Rights Watch. 2012. "In the Name of Security: Counterterrorism Laws Worldwide since September 11."

¹⁸² Carl Schmitt ([1932]1996) famously theorized the state of exception. More recently Giorgio Agamden (2005) discussed its application to the war against terrorism.

¹⁸³ The expressive function of punishment also appears in other works by Durkheim. In *The Division of Labor* ([1893] 1997), for example, he shows that as individuals became more autonomous in modern society they also became more interdependent. If solidarity is a social fact, Durkheim argues, one could measure its external manifestations in the

communicative. It expresses social mores, shields collective values, and preserves the moral order. “Society punishes not because punishment of itself affords it some satisfaction, but in order that the fear of punishment may give pause to those who are evilly inclined” (Durkheim [1901] 1983: 60). Punishments for terrorism reflect a similar logic. In cycles of social invention, punishment safeguards decent people, who are defined precisely as those people who are not in need of punishment.¹⁸⁴ Punishment embodies and expresses a collective sentimentality, reflecting back to society its own morality and moral outrage even as it draws boundaries and reinforces that morality. In the case of counterterrorism, punishment affirms the pathological qualities of suspects. Punishment does not prevent crime or halt criminality. Instead it etches into the social landscape symbolic boundaries, circling the wagons of society around a collective consciousness. For Durkheim, punishment is primarily expressive, not instrumental. The punishment of terrorists helps to distinguish between pathological suspects and those in society worthy of rights.

The heightened punishments reserved for terrorists in new laws affirm the standing of the rest of society.¹⁸⁵ In this sense, the increased penalties may not indicate a general retreat from the priority given to individuals, but express to the larger society which individuals

law. Durkheim theorized that as history progresses, and specialization in the market intensifies, restitutive laws aimed at repairing relations and organizing social exchange would increasingly replace repressive laws aimed at punishing perpetrators. Similar to the story of the evolution of punishment, social complexity drives the innovation of new social forms, but the expressive function of punishment endures and conditions the innovation. The rise of restitutive law marks the growth of ‘organic solidarity,’ which makes individuals more reliant on society because they are more interconnected and depend on each other for basic needs, and also spotlights a shift in the social form of punishment. For Durkheim, the ‘cult of the individual’ that emerges from economic specialization and the accompanying regulation through punishment in modern societies provides the foundation of law.

¹⁸⁴ “We may state, without being paradoxical, that punishment is above all intended to have its effect on honest people. Since it serves to heal the wounds inflicted upon collective sentiments, it can only fulfill this role where such sentiments exist, and in so far as they are active” (Durkheim [1901] 1983: 69).

¹⁸⁵ According to Philip Smith (2008), “All punishment have a signifying or expressive dimension, albeit with varying degrees of centrality and reflexivity. They are intended to say something about the nature of society, the qualities of the criminal, the features of a good society, the evils of crime, or the properties of the criminal justice system itself.” (Smith 2008: 37). In his book *Punishment and Culture* (2008), Smith confronts the shortcomings of Durkheim’s consensual vision of social relations by shifting the analysis of society as a whole to an analysis of the contingency of social events within societies. He accounts for the role of rituals, myths, and social exclusions in processes of classification that reproduce hierarchies, attempting to integrate structuralist and post-structuralist insights and re-imagine punishment as pollution, mythologies, collective representations, and totems. His analysis shows that even in contested modern societies punishment can serve powerful expressive functions.

are worthy of rights in post-9/11 societies.¹⁸⁶ Rather than eroding the rights of individuals in the general population, new laws can reinforce their dominance by recognizing of the legal rights of everyday people as opposed to terrorism suspects.¹⁸⁷ Inventing a category of persons who exist beyond normal law permits state officials to circumvent judicial protections designed to protect individuals in the criminal justice system.¹⁸⁸ At the same time, the special status of terrorism suspects also buttresses the individual entitlements of those not suspected of terrorism. The very need to construct detours around existing domestic legal protections for those detained on suspicion of terrorism hints at the strength of individual rights, not their weakening.

However, overbroad language in counterterrorism laws allows state officials to target a multiplicity of persons as possible terrorism suspects. Ethnic and religious minorities or opposition leaders frequently become targets.¹⁸⁹ In this sense, new counterterrorism measures represent a clear and present danger to individual liberties around the globe regardless of their larger effects on individual rights. The fact that counterterrorism laws can reinforce the hegemony of individual rights worldwide should not distract from their potential to sanction and legitimate violence against suspect individuals. Counterterrorism laws offer lawmakers new legal tools to repress more marginal segments of society.

¹⁸⁶ Punishment in complex societies encompasses more than the symbolic or functional maintenance of the social order (Garland 1989, 2001; Simon 2007; Wacquant 2009b). Discourses and practices of punishment create new categories in society and reaffirm others, disciplining and eliminating elements viewed as polluted, unruly, or disruptive.

¹⁸⁷ Suspected terrorists face harsher penalties and fewer entitlements than the rest of society. Marked as different by their apparent willingness to engage in acts deemed uniquely evil by the state, the policing and judicial arms of the state can treat them differently. However, this different treatment affirms the ontological status and rights of “normal” individuals. Counterterrorism can inadvertently champion individual rights by inventing narrow exceptions to public rights. In so doing, counterterrorism normalizes rights even as it denies legal rights to those detained and tried on suspicion of terrorism.

¹⁸⁸ Under some laws, the new category is an explicit legal designation such as “enemy noncombatant.”

¹⁸⁹ In the United States, for example, the New York Police Department in collaboration with the Central Intelligence Agency selectively monitored Muslims in the Northeast, including college students at Yale, Columbia, the University of Pennsylvania, Syracuse, New York University, Rutgers, and various campuses at the State University of New York. Hawley, Chris. 2012. “NYPD Monitored Muslims All Over the Northeast.” *Associated Press*, 18 February.

Chapter 6

Counterterrorism Enforcement

Abstract

This chapter looks beyond the formal language of counterterrorism laws to examine actual state practice. Global forces and scripts pressed states to enact counterterrorism reforms after 9/11, but local political institutions decisively shaped their use. Drawing on enforcement data from 64 countries, the analysis shows dramatic and uneven increases in counterterrorism arrests and convictions in the last decade. The data reveals that a handful of states are responsible for most counterterrorism enforcement worldwide and less democratic regimes are more likely to detain and prosecute individuals under new laws. The analysis suggests that counterterrorism measures are used to legitimate abusive practices in more totalitarian regimes. New counterterrorism laws cloak repressive enforcement in the rule of law.

In the past four decades counterterrorism has emerged as a central feature of national security law. States worldwide have adopted new legal standards and approaches to combat the threat of terrorism. Publicly state officials claim that the laws protect citizens, defend freedom, and prevent tyranny. Yet the enactment of the new laws has transformed state power in ways that raise suspicions about these claims. By extending the policing apparatus and surveillance of the state, counterterrorism alters the relationship between publics and their governments, raising concerns among civil libertarians, human rights advocates, and policymakers about the use of new laws to silence legitimate political dissent.

This chapter examines counterterrorism practice in 64 sovereign states in the decade following 9/11. In spite of the relative similarity in counterterrorism reforms, the analysis shows a wide disparity in their use. A handful of states worldwide are responsible for the overwhelming majority of counterterrorism arrests and convictions. Furthermore, less democratic regimes appear more willing to detain and convict individuals under the new laws than more democratic regimes, which on the whole enforce the laws more sparingly. In general, evidence suggests that states with poor records of protecting civil liberties employ the laws more liberally than states with more robust legal protections. The data therefore support the claims of human rights advocates, who argue that counterterrorism provides legal cover for repressive state practices.

The chapter proceeds in four parts. First, it begins with an overview of recent legal provisions related to the detention and prosecution of suspected terrorists. It spotlights legal changes in the rules governing pre-trial detention, administrative detention, and judicial procedures. The section highlights the mechanisms in formal laws that have the potential for misuse, offering examples of legal reforms that expand policing authority and restrict domestic procedural protections. Next, the chapter briefly discusses the gap between laws on the books and laws in practice, a frequent topic of investigation in sociolegal scholarship. Third, relying on data compiled by the Associated Press (AP) in 2011, the chapter shows that arrests and convictions under counterterrorism laws increased dramatically in the decade after 9/11.¹⁹⁰ Turkey, Pakistan, Nepal, Israel, and China account for eighty-five percent of the arrests made under counterterrorism laws. Turkey alone is responsible for approximately one-third of all counterterrorism arrests between 2001 and 2011. The chapter concludes with a discussion of how undemocratic regimes hide behind counterterrorism, using it to legitimate repressive policies.

¹⁹⁰ Some of the individuals arrested have been self-proclaimed killers, such as Khalid Sheikh Mohammad, who repeatedly confessed his role in terrorism, claiming responsibility for the 1993 World Trade Center Operation, 9/11, the Shoe Bomber Operation that sought to down two American airplanes, and the bombing of a nightclub in Bali, Indonesia. However, a significant number of journalists and political organizers have also been arrested under new counterterrorism measures.

National Standards

Counterterrorism laws after 9/11 changed legal protections around the world and fundamentally altered the rules governing detentions and prosecutions in many locations. While widespread dissemination of mechanisms expanding policing powers have delivered a new array of surveillance techniques and technologies, local institutions and cultures continue to mediate the growth and structure of new security regimes. The following section highlights some of the legal changes to rules governing detentions, prosecutions, and restrictions on speech in order to frame the discussion of actual state practices globally.

Arrests and Detentions

After 9/11, lawmakers generally granted greater leeway to law enforcement agencies to arrest persons of interest in terrorism-related crimes. Under new counterterrorism provisions, thousands of individuals have been questioned and detained in recent years for activities deemed suspicious by police (Human Rights Watch 2012a; Olshansky 2007). The preemptive logic of counterterrorism encourages law enforcement to use profiling techniques, regularly targeting marginal segments of society with enhanced surveillance.¹⁹¹ In the United Kingdom from 2007 to 2011, for example, police stopped and searched more than 500,000 individuals, mostly ethnic minorities.¹⁹² The searches did not result in a single conviction for a terrorism-related crime.¹⁹³ Under Australia's 2005 Crimes Act, some police can demand the production of documents without judicial authorization when investigating a serious terrorist offense on any reasonable grounds.¹⁹⁴ In addition to increased searches, counterterrorism also changed the rules governing administrative detention in many places.

Once a trademark of totalitarian regimes, administrative detention has become an accepted legal practice in at least a dozen states, including a number of developed democracies.¹⁹⁵ New provisions expand the authority of state officials to hold suspects preemptively in efforts to prevent future terrorist activities.¹⁹⁶ These individuals may never face criminal charges and in some cases may be denied any recourse to the

¹⁹¹ Counterterrorism policing in seeking to prevent criminal acts before they occur inherently involves criminalizing individuals before they have committed acts of terrorism.

¹⁹² Human Rights Watch. 2012. "In the Name of Security: Counterterrorism Laws Worldwide since September 11."

¹⁹³ Ibid.

¹⁹⁴ Australian's Anti-Terrorism Act (2005), No. 144.

¹⁹⁵ Human Rights Watch. 2012. "In the Name of Security: Counterterrorism Laws Worldwide since September 11."

¹⁹⁶ Administrative detention is also described as prolonged detention or indefinite detention. The basic idea is that states detain individuals on the suspicion of terrorism-related activities without providing access to the traditional justice system.

courts.¹⁹⁷ Further, administrative detention now operates independently of normal criminal adjudication. Access of family and legal counsel may be severely restricted, especially when detainees are held in custody by military or intelligence officials. While administrative detention existed prior to 9/11, the development of widespread legal norms explicitly authorizing such practices extends the reach of policing agents.

A wide range of states enacted new laws permitting administrative detention after 9/11, including Australia, Israel, Russia, China, and the United States.¹⁹⁸ Under Australian law (2003), security forces may hold a person suspected of terrorism for up to one week to gather intelligence.¹⁹⁹ Israeli defense forces can detain Palestinian residents of the West bank or Gaza found to be participating “directly or indirectly in hostile acts” for two weeks without judicial review.²⁰⁰ Reforms to Russia’s criminal code permit suspects to be held without charge for 30 days.²⁰¹ Chinese reforms permit authorities to detain suspects of terrorism or corruption for up to six months.²⁰² While authorities must contact the detainee’s counsel or family within 24 hours, they are not required to disclose the reason for detention or the location where the detainee is being held.²⁰³ Finally, officials in the United States authorized indefinite detention at the Guantanamo Bay Military Facility, where hundreds of suspected terrorists have been held without trial in the last decade (Smith 2007).²⁰⁴

Restrictions in access to legal counsel often accompanied the expansion of administrative detention. For example, reforms to Spain’s code of criminal procedure allow terrorism

¹⁹⁷ U.S. officials, for example, have denied enemy combatants access to legal counsel or the courts when held at detention facilities abroad, such as the Bagram detention facility in Afghanistan.

¹⁹⁸ Other states have drafted new laws that have not yet gone into effect. For example, a draft counterterrorism law in Saudi Arabia would allow investigators to hold terrorism suspects for 120 days without judicial review. With court permission, a detainee could be held indefinitely.

¹⁹⁹ Australia’s Legislation Amendment Act of 2003 amends the Australian Security Intelligence Organization Act 1979, reinstating suspects the right to contact a lawyer. The security unit must also get consent from Attorney General and judicial authorization from the courts.

²⁰⁰ Israel’s Incarceration of Unlawful Combatants Law, no. 5762/2002. Under 2006 reforms to the criminal procedure code, Israeli citizens can be detained without judicial review for a maximum of four days.

²⁰¹ Russian’s Code of Criminal Procedure (2004), Article 100(2).

²⁰² Human Rights Watch. 2012. “In the Name of Security: Counterterrorism Laws Worldwide since September 11.”

²⁰³ Ibid.

²⁰⁴ In addition to detentions at Guantanamo Bay, the USA PATRIOT ACT (2001) permits suspected terrorists, including citizens, to be held for up to seven days without recourse to the courts (See United States’ Public Law, 107-56).

suspects to be denied access to counsel for 13 days with judicial authorization.²⁰⁵ In France, access to legal counsel can be delayed for 24 hours for high security suspects.²⁰⁶ Laws enacted in 2002 in Mauritius and Gambia permit police to deny access of legal counsel to individuals arrested on terrorism-related charges for 36 hours.²⁰⁷ The limitation of contact between detainees and lawyers eliminates a key safeguard against coercive police interrogation and torture.

Under new counterterrorism laws, individuals can also be detained without being informed of charges for days, weeks, or even months in some instances. New rules on detention before trial increase police authority and restrict detainee's recourse to the courts. A 2002 Uganda law allows terrorism suspects to be held without charge for a maximum of 48 hours.²⁰⁸ Under the Philippines's *Human Security Act of 2007*, police may detain suspected terrorists for up to three days.²⁰⁹ Indonesia's *Elimination of Terrorist Crimes* (2003) establishes a seven-day detention period under which a person suspected of a terrorist offense may be held without charge or judicial oversight.²¹⁰ The *Anti-Terrorism Act* (2005) in Trinidad and Tobago authorizes the detention of persons involved in terrorism for up to two weeks without charge if a judge determines they are likely to interfere with a state investigation.²¹¹ Amendments in 2009 of Pakistan's Anti-Terrorism Law, for example, increase the period a suspect could be held from 30 to 90 days.²¹² In some cases, the length of detention is completely unclear. In Tunisia, for example, the *Law in Support of International Efforts to Fight Terrorism* (2003) appears to allow for indefinite detention without judicial review or access to counsel.

²⁰⁵ Human Rights Watch. 2005. "Setting an Example? Counter-terrorism Procedures Under Spanish Law."

²⁰⁶ Human Rights Watch. 2012. "In the Name of Security: Counterterrorism Laws Worldwide since September 11."

²⁰⁷ *Ibid.*

²⁰⁸ U.S. State Department's Bureau on Democracy, Human Rights, and Labor report from March 6, 2007.

²⁰⁹ Criminal defendants accused of non-terrorism related crimes face a maximum of 36 hours under the Revised Penal Code, Article 125. However, under the Philippines' Human Security Act of 2007 police can obtain written authorization from the Anti-terrorism Council in order to detain a person for longer periods.

²¹⁰ Indonesia's Law No. 15/2003 on the Elimination of Terrorist Crimes, §28. Previously Indonesia limited detention without charge to a single day. Indonesian criminal law also provides for an extended investigatory period before formal charges must be filed. This period is normally 30 days, though the Attorney-General may authorize a single 30 day extension. For terrorism offenses, the investigatory period may be extended up to a maximum of six months (See Indonesia's Law No. 15/2003 on the Elimination of Terrorist Crimes, §25(2)).

²¹¹ Trinidad and Tobago's 2005 Anti-terrorist Act, §23(4). The previous law required charges to be issued within 48 hours of arrest.

²¹² Pakistan's Ordinance Number XXI of 2009, which amended the Anti-Terrorism Act of 1997.

When viewed as a whole, counterterrorism legal reforms substantially expand the authority of police to make arrests. Under new counterterrorism laws, enforcement agents are empowered to develop new predictive models that often mean regular and intense scrutiny of communities pathologized by the state. Certain immigrant communities, ethnic and religious minorities, and individuals espousing oppositional political ideologies increasingly find themselves under the gaze of the state and more often in its custody. The new practices, however, are not limited to surveillance, harassment, and detention without trial. Thousands of individuals are also convicted and sentenced under counterterrorism laws each year worldwide.

Prosecutions

In 2009, Dilshat Perhat, an ethnic Uighur operating a website in China, was arrested and convicted by Chinese authorities after he voluntarily reported that someone had posted calls for a political demonstration on his site.²¹³ Despite erasing the posting after discovering it and promptly reporting the comment to authorities, he received a five-year prison sentence.²¹⁴ Two student protesters in Turkey were convicted in 2012 for membership in an armed group for raising a banner that read, “We want free education, we will get it,” and participation in other non-violent political demonstrations.²¹⁵ A federal court in Ethiopia convicted three journalists of conspiracy to commit terrorism and participation in a terrorist organization in 2012 based primarily on evidence that they wrote online articles critical of the government and discussed political protests.²¹⁶

Beyond changes to rules governing detention, new counterterrorism laws also scaled back procedural rules for trying suspected terrorists. Generally speaking, they have restricted detainees’ access to legal counsel and often prohibited them from bringing legal challenges to their detention. Some states also created new terrorism courts with special rules governing rules of evidence and courtroom practice. Intended to ease the path to criminal prosecution, these legal revisions suspend or restrict due process guarantees and often serve as a means to circumvent international protections or avoid public scrutiny. For example, under revisions to the French criminal code (2004), law enforcement may deny terrorism suspect’s access to legal counsel for up to 72 hours.²¹⁷ Previously the presumption of innocence entitled detainees to contact a lawyer immediately when taken into custody.

The expansion of policing and detention practices indicates a retreat from international human rights commitments worldwide. Reforms in France and the United Kingdom, for

²¹³ Mendoza, Martha. 2011. “35,000 Worldwide Convicted of Terror,” *Associated Press*, September 5.

²¹⁴ *Ibid.*

²¹⁵ Human Rights Watch. 2012. “In the Name of Security: Counterterrorism Laws Worldwide since September 11.”

²¹⁶ *Ibid.*

²¹⁷ Human Rights Watch. 2008. “Preempting Justice: Counterterrorism Laws and Procedures in France.”

example, appear to conflict with previous human rights commitments, such as the European Convention on Human Rights²¹⁸ and the International Covenant on Civil and Political Rights,²¹⁹ which require authorities to inform individuals of charges and provide prompt access to a judicial review.²²⁰ By remaking the standards regulating arrests, detentions, and prosecutions, new counterterrorism laws open the door to repressive enforcement and abuse. The empirical sections below demonstrate that has been the case in a number of states.

Enforcement Worldwide

Police arrested at least 110,000 individuals under national counterterrorism measures in the years since 9/11.²²¹ These arrests resulted in more than 35,000 convictions.²²² Defenders of the increases in counterterrorism enforcement argue that arrests and convictions foil criminal plans to commit political violence against innocent non-combatants living around the world, but the empirical record suggests that enforcement has also been employed to silence dissenters and thwart social movements for political change. The following section reviews counterterrorism practices in 64 countries between 2001-2010 and demonstrates that a few states are responsible for the overwhelming number of arrests and convictions worldwide.²²³

Practices of counterterrorism enforcement mirror increases in the number of formal laws. Historically, as laws proliferate so do the number of arrests and convictions under them. The graph below shows the cumulative number of arrests and convictions across 64 states worldwide. The cumulative count illustrates ongoing use of national counterterrorism laws and also provides evidence of the climbing total number of arrests and convictions post-9/11.

²¹⁸ European Convention on Human Rights, Article 5.

²¹⁹ International Covenant on Civil and Political Rights, Article 9.

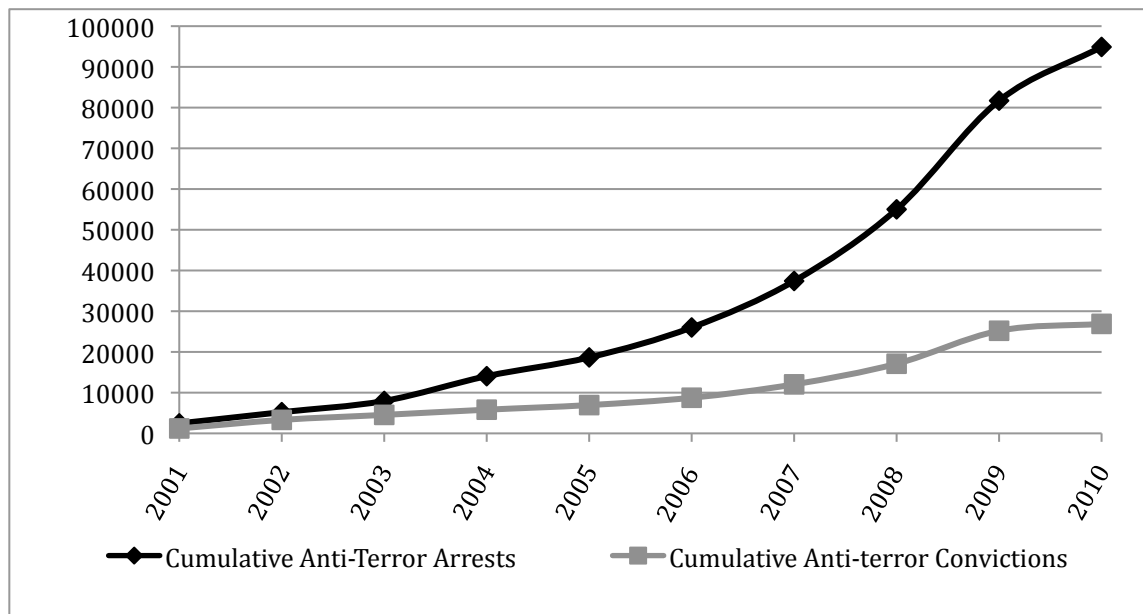
²²⁰ The European Convention for the Protection of Human Rights and Fundamental Freedoms entered into force September 3, 1953. International Covenant on Civil and Political Rights entered into force March 23, 1976.

²²¹ Medoza, Martha. 2011. "35,000 Worldwide Convicted of Terror," *Associated Press*, September 5. In the article, the Associated Press identified 119,044 arrests worldwide.

²²² *Ibid.*

²²³ See Appendix 6.2 for a list of the 64 countries. The list also includes Northern Ireland and the Cook Islands.

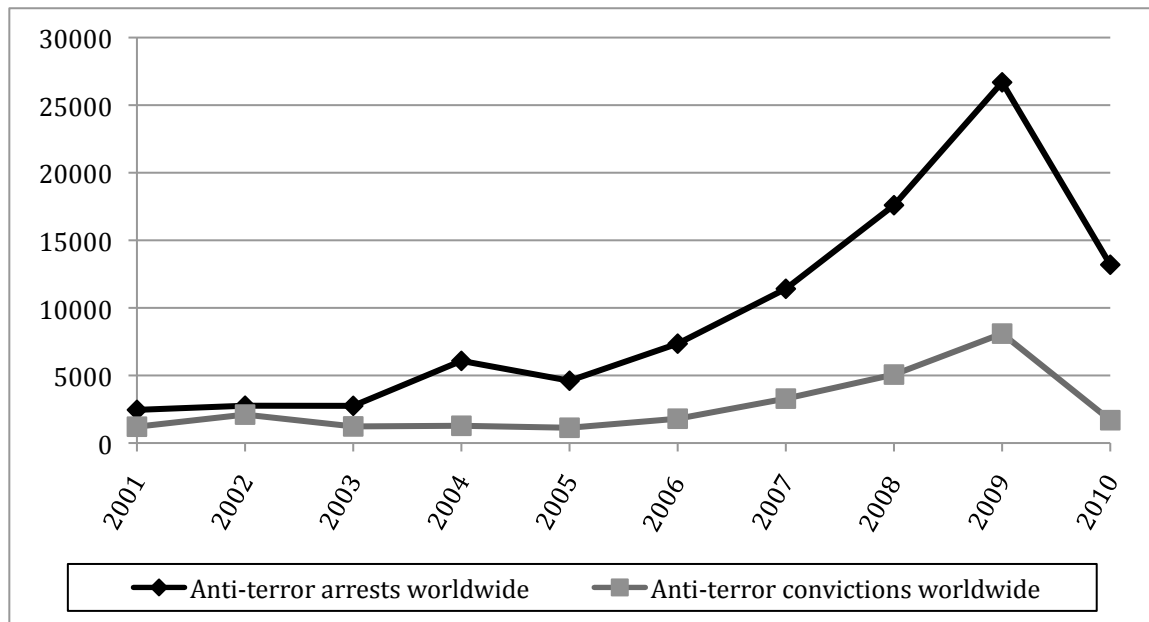
Graph 6.1: Cumulative Arrests and Convictions Under Counterterrorism Laws Worldwide, 2001-2010 (AP).



The graph, however, does not show the complete picture. It glosses over annual fluctuations in enforcement that suggest an uneven pattern of development in counterterrorism practice worldwide. During 2001-2003, the number of arrests hovered between 2,500 and 3,000 arrests per year worldwide. This figure more than doubled in 2004 to over 6,000 arrests. After a slight decline in 2005, the data climb again to more than 7,300 arrests in 2006. In 2007 and 2008, there is a dramatic increase to over 11,000 and 17,000 arrests respectively. The explosive trend continues into 2009, when countries in the sample reported more than 26,000 arrests. However, arrests retreat again in 2010 to just over 13,000 in large part due to unavailability of data on enforcement in Turkey.²²⁴ The long-term trend remains unclear from the available data. The decline in 2010 may suggest the beginning of a migration back to pre-9/11 levels of enforcement.

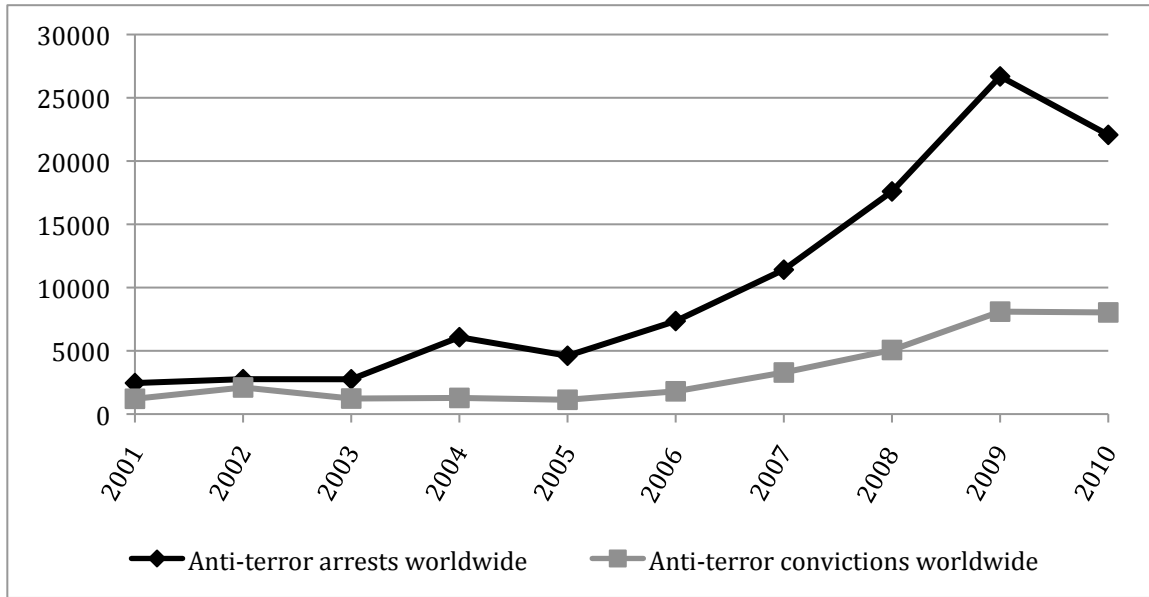
²²⁴ The 2010 decline can be explained by the unavailability of data for Turkey, one of the key enforcement states. If the level of counterterrorism enforcement in Turkey remained stable between 2009 (8877 arrests; 6345 convictions) and 2010 then the total number of arrests worldwide would top 22,000 (13192 arrests worldwide + 8877 arrests in Turkey) and the total number of convictions would top 8,000 (1690 convictions worldwide + 6345 convictions in Turkey).

Graph 6.2: Counterterrorism Arrests and Convictions Worldwide, 2001-2010 (AP).



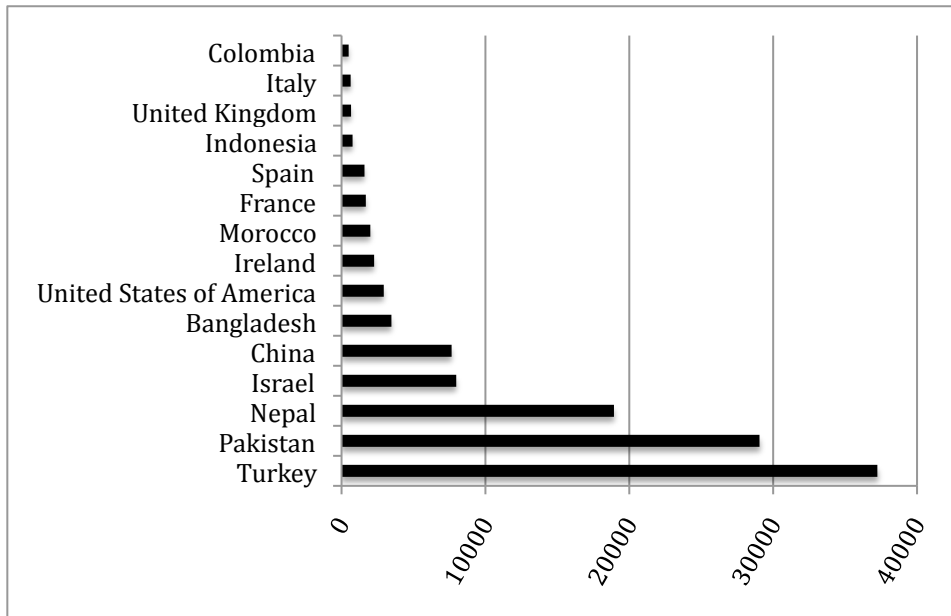
The contrast between Graph 2 and Graph 3 shows the consequential impact of a single key state on global counterterrorism enforcement. Graph 2 reflects available data and excludes arrests and convictions in Turkey in 2010. The missing data exaggerates the actual drop in counterterrorism enforcement worldwide. In Graph 3, the analysis assumes a stable level of counterterrorism enforcement in 2009 and 2010 for Turkey. The resulting graph corrects the precarious decline, pointing out the significance that a single state can make in the overall levels of global practice. This suggests that global trends in enforcement are largely determined by the practices of a handful of states.

Graph 6.3: Counterterrorism Arrests and Convictions Worldwide Assuming a Constant Level of Enforcement by Turkey in 2009 and 2010, 2001-2010 (AP).



As indicated by comparison of Graph 2 and Graph 3, the overall trend towards more counterterrorism practice conceals significant differences in the level of enforcement among states. A few states are responsible for the majority of counterterrorism arrests and convictions across the globe. Turkey, for example, accounts for nearly a third of all the arrests worldwide since 9/11. The significance of Turkey is particularly striking given the number of states worldwide that have enacted new counterterrorism laws. Most states have laws on the books, but a few states constitute the vast number of arrests and detentions worldwide. Adding Pakistan's numbers, the two countries together account for more than half of the reported arrests. The top five countries account for 85 percent of the total number of arrests.

Graph 6.4: Cumulative Number of Counterterrorism Arrests, 2001-2011 (AP).



The data reveals a similar story with regard to criminal convictions under counterterrorism measures. More than half of all convictions for terrorism-related offenses reported by the countries in the sample occurred in two countries, Turkey and China. The top six countries account for almost 90 percent of the total number of convictions.²²⁵ To put that in perspective, the total number of convictions for Turkey and China was more than four times the number of counterterrorism convictions in all reporting countries ranked below six.²²⁶ The table below demonstrates the precipitous drop in the total number of arrests and convictions as one looks down the country rankings.

²²⁵ The first six countries account for 30,735 of the 35,117 reported convictions worldwide.

²²⁶ Excluding the first six countries, there were 4382 convictions under counterterrorism laws. Turkey and China accounted for 20,673 convictions.

Table 6.1: Cumulative Number of Counterterrorism Arrests and Convictions by Country, 2001-2010, (AP)

Country	Arrests	Country	Convictions
Turkey	37242	Turkey	12897
Pakistan	29050	**China	7776
Nepal	18934	Bangladesh	3466
Israel	7971	*Pakistan	2905
**China	7649	United States of America	2568
Bangladesh	3466	Tunisia	1123
United States of America	2934	Peru	864
Ireland	2264	Spain	839
Morocco	2000	Indonesia	684
France	1687	Italy	460
Spain	1594	Ireland	357
Indonesia	765	India	209
United Kingdom	660	France	187
Italy	632	Azerbaijan	175
Colombia	493	United Kingdom	126
India	485	Thailand	56
Azerbaijan	199	Germany	52
Macedonia	175	Belgium	39
Chile	108	Montenegro	35
Mexico	86	Netherlands	35
Germany	77	Mexico	29
Uganda	75	Ukraine	27
Belgium	70	Australia	26
Netherlands	67	Denmark	25
Montenegro	45	Macedonia	19
Australia	35	South Africa	18
Portugal	35	Hungary	14
Denmark	27	Canada	13
Georgia	23	Greece	13
Greece	23	Serbia	12
Kyrgyzstan	23	Chile	10
Austria	22	Uganda	10
Romania	19	Costa Rica	9
Hungary	17	Sweden	9
New Zealand	17	Lithuania	8
Serbia	14	Georgia	7
Guatemala	13	Portugal	7
Norway	13	Finland	3
Sweden	12	Austria	2

Slovakia	7	Argentina	1
Bulgaria	5	Croatia	1
Cyprus	3	Guatemala	1
Poland	3	Afghanistan	0
Slovenia	3	Albania	0
Argentina	1	Algeria	0
Lithuania	1	Andorra	0
Armenia	0	Angola	0

* The number of convictions for Pakistan was calculated based on a reported ten percent conviction rate for the total number of individuals arrested.

**The reported number of arrests in China is lower than the reported number of convictions in China, which suggests some error or misrepresentation in the data.

Counterterrorism practice clearly varies from state to state. Nepal, Pakistan, and Turkey reported more than 85,000 arrests for terrorism-related crimes between 2001 and 2010.²²⁷ At the same time, more than a quarter of the countries included in the sample failed to make a single arrest.²²⁸ According to the country ranking above, nearly seventy percent of reporting countries made at least one arrest under their counterterrorism provisions.²²⁹ Sixty-five percent of them reported at least one conviction.

The wide disparities in the number of arrests and convictions, however, shine little light on the reasons for such differences in enforcement. Do divergent practices reflect differences in populations? Do they reflect regional differences? Do they reflect political differences? More specifically, are less democratic states more likely to adopt more severe counterterrorism tactics? Do enforcement patterns mirror the strength of rule of law in given states? Do brutal histories of terrorism explain more liberal and aggressive enforcement? Are states more integrated into global society disposed to show more restraint? The aggregate numbers of arrests and convictions testify to variation among states, but they do not reveal social forces driving this variation.

Shielding Democracy

Drawing on the cumulative counts from the country-level data for each country, the analysis below explores the relationships between enforcement and various country-level indicators using Ordinary Least Squares (OLS) regression analysis. The model below examines counterterrorism practices in over 40 countries by exploring relationships between the total number of arrests and convictions (2001-2010) and country-level

²²⁷ Eleven states reported making more than 1000 arrests during this period. An additional eight states reported making between 100 and 1000 arrests.

²²⁸ 18 countries (N=64) reported no arrests under their anti-terrorism laws during this period.

²²⁹ 46 countries in total (N=64).

indicators of terrorism, democracy, development, rule of law, and organizational associations.²³⁰ The analysis also controls for the region and population of states.

Table 6.2: OLS Regression of Counterterrorism Arrests and Convictions, 2001-2010, (AP Data).

VARIABLES	(1) Counterterrorism Arrests	(2) Counterterrorism Convictions
Region (UNDP)	54.1 (430)	-1.54 (116)
Fatal Incidents of Terrorism (GTD)	3.30* (1.33)	0.37 (0.48)
Democracy Index (EIU)	-3,600* (1,386)	-1,002* (387)
Human Development Index (UNDP)	-11,639 (14,933)	1,022 (5,262)
Rule of Law Estimate (WB)	3,820 (2,670)	614 (771)
NGOs (UIA)	0.45 (0.89)	-0.021 (0.33)
IGOs (UIA)	1.23 (7.15)	1.41 (2.62)
Population (UNDP)	-0.0056 (0.0047)	0.0019 (0.0016)
Constant	30,655* (12,986)	5,594 (4,495)
Observations	46	41
R-squared	0.333	0.326
Standard errors in parentheses		
*** p<0.001, ** p<0.01, * p<0.05		

The model shows a significant relationship between the number of counterterrorism arrests and two variables: 1) the number of fatal incidents of terrorism and 2) the level of democracy.²³¹ The correlation between arrests and previous fatal attacks in a country suggests that a country's history of terrorism impacts domestic counterterrorism

²³⁰ For a detailed description of the independent variables see the methodological appendix. The data was compiled from a number of well-known sources including the United Nations Development Program (UNDP), the World Bank (WB), the Union of International Associations (UIA), the Economist Intelligence Unit (EIU), and the Global Terrorism Database (GTD).

²³¹ The threshold for statistical significance is a p-value of below .05.

enforcement. The result makes intuitive sense. Countries with brutal experiences of terrorism appear more willing to arrest persons on terrorism-related offenses than countries with fewer historical experiences of violent domestic attacks. A continuing presence of terrorists groups within the boundaries of the state or a greater sensitivity to terrorism might explain an underlying causal link between historical violence and more aggressive enforcement by the penal arm of the state.

Edging against the explanation that states are responding to ongoing threats of terrorism, the regression model finds that a history of terrorism does not correlate with an increase in the number of convictions for terrorism in a state. If ongoing terrorist activities explain increases in enforcement, one would expect higher numbers of convictions because many of those arrested would presumably be involved in the activities deemed terrorism and would be found guilty in court. The data suggests this is not the case. The relationship between terrorist incidents and convictions for terrorism is not statistically significant, suggesting that law enforcement and the courts are not simply reacting to domestic terrorist activities.

According to the model, then, states with more pronounced histories of terrorism appear more likely to arrest individuals on suspicion of terrorism, even if they are no more likely to actually convict them. That said, the low coefficient also suggest a relatively weak impact of previous terrorism on counterterrorism enforcement. States experiencing higher historical levels of terrorist violence are only slightly more likely to arrest persons under counterterrorism laws. The regression results therefore cannot be considered conclusive.

The second significant result is that more democratic states are less prone to arrest and convict suspects under their counterterrorism laws, controlling for region, population, level of development, rule of law, and associational ties to global society. As the democracy rating of a country increases, state police will be significantly less likely to arrest people under its counterterrorism laws. Suspects are also less likely to face successful prosecution. This finding supports arguments that counterterrorism can veil illegitimate state action, particularly in countries with fewer political and civil protections. However, the democracy index encompasses a number of domestic factors that complicate the analysis. The regression analysis below provides a more detailed break down of the variables and suggests that counterterrorism enforcement correlates with a country's protection of civil liberties. States with fewer protections are more likely to arrest and convict individuals under their counterterrorism laws.

Civil Liberties

The regression table below isolates the component parts of the democracy index to probe the dynamics of the statistical relationships in the table above. The Economist Intelligence Unit (EIU) Democracy Index is comprised of data on five spheres of state activity: the civil liberties, the electoral process and pluralism, the functioning of government, the political participation, and the political culture. Each variable evaluated in the regression mode below. Other control variables in the model remain the same.

Table 6.3: OLS Regression of Anti-terrorism Arrests and Convictions, 2001-2010 (AP).

VARIABLES	(1) Counterterrorism Arrests	(2) Counterterrorism Convictions
Region (UNDP)	295 (435)	-4.64 (103)
Fatal Incidents of Terrorism (GTD)	2.56* (1.25)	0.28 (0.36)
Civil Liberties (EIU)	-3,972*** (1,070)	-2,298*** (381)
Electoral Process and Pluralism (EIU)	605 (1,007)	736* (300)
Functioning of Government (EIU)	1,654 (1,007)	450 (298)
Political Participation (EIU)	-236 (947)	535 (284)
Democratic Political Culture (EIU)	-620 (1,274)	-935* (423)
Human Development Index (UNDP)	-16,786 (16,624)	-2,424 (4,534)
Rule of Law Estimate (WB)	1,128 (2,990)	1,085 (711)
NGOs (UIA)	0.28 (0.87)	0.19 (0.25)
IGOs (UIA)	2.97 (6.48)	0.40 (1.91)
Population (UNDP)	-0.0097* (0.0043)	-0.000098 (0.0013)
Constant	30,403 (16,340)	13,576** (4,144)
Observations	46	41
R-squared	0.555	0.710
Standard errors in parentheses		
*** p<0.001, ** p<0.01, * p<0.05		

The component parts of the EIU Democracy Index reveal that the protection of civil liberties in a country is the greatest predictor of the propensity of state officials to make arrests under counterterrorism laws. The Civil Liberties Index assigns countries a rating based on independent survey and World Value Survey data intended to evaluate the existence of a free press, an independent judiciary, voluntary associations, religious tolerance, equality under the law, basic security of persons and property, and the use of

torture by the state.²³² According to the model, countries with more robust civil liberties are significantly less likely to arrest individuals under counterterrorism laws, suggesting that less democratic regimes use counterterrorism laws more liberally even controlling for the terrorist violence in a given state.

The existence of civil liberties guarantees in a country is also a significant predictor of the number of convictions under laws intended to guard against terrorism. States with restricted media, less independent judiciaries, and fewer personal security guarantees appear more likely to convict individuals of terrorism-related crimes. The higher number of convictions may reflect the higher number of arrests in these states. However, the correlation also suggests that countries with fewer legal protections are significantly more likely to convict individuals of terrorism under their laws irrespective of their history of terrorism. The elevated enforcement in states with fewer protections offer more antidotal evidence of abuse documented by various human rights organizations, particularly in countries like China, Pakistan, Nepal and Turkey.²³³

The Democratic Political Culture Index and the Electoral Process and Pluralism Index are also significant predictors of terrorism convictions in the model, lending support to the idea that those locales sympathetic to non-democratic leadership or places with more limited electoral participation are more likely to adopt aggressive counterterrorism practices.

The Political Culture Index evaluates public support for non-democratic rule and the separation of church and state. The significant correlation and substantial negative coefficient indicate that public support for non-democratic alternatives appears to facilitate counterterrorism enforcement. In places where citizens report affinities with non-democratic governance, judiciaries seem more likely to convict those indicted for terrorism-related crimes. The result lends further support to arguments that totalitarian regimes use counterterrorism to a greater extent than more democratic regimes.

The Electoral Process and Pluralism Index measures electoral freedom, suffrage, citizen's access to politics, and the independence of political parties. Where the government exercises more control over politics, limiting political mobilization and voter participation in the political process, one can observe more vigorous counterterrorism enforcement. The finding suggests that less democratic regimes may arrest and convict individuals under novel counterterrorism measures as a part of ongoing efforts to maintain control of their citizenry. Counterterrorism appears to be a tool of electoral suppression in some cases.

Although the significant relationship between civil liberties, democratic culture, and pluralism does not offer definitive proof of state abuse of counterterrorism laws, the correlations suggest that new counterterrorism measures are used more often by less

²³² See Appendix 6.1 for more detail about the specific questions asked as part of the indices.

²³³ See Human Rights Watch reports at <http://www.hrw.org/topic/counterterrorism>.

democratic states. Counterterrorism laws can provide cover for repressive state tactics and it appears that repressive states are more inclined to use counterterrorism laws. The regression analysis thus suggests more abusive states may use counterterrorism to cloak repressive law enforcement in rule of law.²³⁴

Discussion

Previous chapters documented the rise of counterterrorism laws worldwide and highlighted the potential for lawmakers to abuse them. This chapter moves beyond a substantive analysis of the formal laws to evaluate actual practices in the war against terrorism. Drawing on data from 64 countries on the arrests and convictions under anti-terrorism measures (2001-2010), the analysis shows an uneven pattern of enforcement that deviates from the relatively uniform passage of laws across states. While an overwhelming number of countries have enacted new laws, only a minority has taken counterterrorism enforcement to extremes, arresting and convicting tens of thousands of individuals.

Merging data on counterterrorism arrests and convictions with a series of country-level indicators of democracy, development, global integration, and rule of law, the analysis interrogates global patterns of enforcement. The data show that robust protections of civil liberties in a state are the most significant predictor of counterterrorism enforcement. Countries with more media censorship, less autonomous judiciaries, and fewer due process protections are more likely to detain and prosecute individuals for terrorism-related offenses. Further, states with more democratic political cultures and greater electoral freedom are less likely to arrest and convict persons under counterterrorism reforms. The results suggest that counterterrorism enforcement operates independently of local threats of political violence in many contexts. Democracy appears to be a bulwark against lawmaker abuse of counterterrorism statutes.

Officials in jurisdictions with robust procedural and due process protections still use counterterrorism lawmaking as a means to justify the expansion of executive power and sanction previous illegal techniques such as indefinite detention and waterboarding (Donohue 2005, 2008; Mayer 2009; Schepple 2010, 2011; Roach 2011). Nevertheless, democratic institutions and culture seem to resist political efforts to usurp and redirect state authority. Even in places where local populations have experienced brutal histories of political violence, democratic institutions and culture help to thwart the widespread deployment of the penal apparatus of the state under the auspices of fighting terrorism.

²³⁴ Studies on the ratification of human rights treaties similarly show that states with poor records of protection often are the most likely to ratify treaties, in part to signal to the global community their commitment to human rights (Hathaway 2002; Hafner-Burton and Tsutsui 2005). In the same manner, a commitment to counterterrorism signals membership in world society. Countries mark themselves as participants in the global effort against terrorism. In the case of counterterrorism, the enactment of counterterrorism law actually provides a legal arsenal that can be employed against political foes.

For less democratic states, however, counterterrorism represents a potential double assault on individual rights. On the one hand, legal reforms legitimate totalitarian regimes as partners in a global effort against terrorism, making it more difficult to sanction their repressive tactics. On the other hand, new counterterrorism laws provide new tools for officials to watch, detain, and prosecute persons of interest, including political foes, activists, or judicial reformers.²³⁵ In some cases foreign aid even accompanies their reforms. Repressive regimes can gain financial rewards for creating legal mechanisms that expand their authority.

The data presented in this chapter spotlight a number of states with extraordinarily high levels of enforcement. However, these states likely represent only a portion of the countries engaged in aggressive counterterrorism enforcement. Associated Press journalists gathered voluntary reports on counterterrorism arrests and convictions in countries with established freedom of information act laws. The sample of countries therefore selects against more abusive regimes, which are less likely to provide accurate statistics on law enforcement. The sampling bias translates into a systematic undercount of the most aggressive, and potentially abusive, counterterrorism enforcement systems.

The gulf between counterterrorism laws on the books and counterterrorism in practice will not shock sociolegal scholars, who have documented the decoupling of formal law and actual practice in various domains (Boyle and Meyer 1998; Edelman 1992; Galanter 1974; Meyer and Rowan 1997; Weick 1976).²³⁶ Counterterrorism is yet another example. Numerous states have enacted only paper laws.²³⁷ Others aggressively use new counterterrorism laws to arrest and convict thousands of individuals.²³⁸ However, the divide between paper law and real law should be of particular concern with regard to

²³⁵ In July 2012, for example, Syrian President Bashar al-Assad endorsed three new counterterrorism laws expanding the reach of his security forces. The laws criminalize the creation of, participation in, or financing of terrorist groups. The criteria for terrorist groups remains ill-defined. Persons convicted under them face 10 to 20 years of either prison time or hard labor, or more severe punishments if their activities sought to change the regime. They can also receive a death sentence if victims of their acts were killed or disabled.

²³⁶ Early in the twentieth century, Roscoe Pound (1910) famously distinguished between “law in books” and “law in action.”²³⁶ Karl Lewellyn, following his lead, distinguishing between “paper rules” and “real rules” in his classic work on jurisprudence (Lewellyn [1962] 2000). The gap between the four corners of the law and its implementation motivates much current sociolegal inquiry, including the gap between transnational law and national practice. For example, recent studies of global legal change illustrate striking variation in the enforcement of laws worldwide (Hafner-Burton and Tsutsui 2005; Hathaway 2002; Cole 2005).

²³⁷ Approximately one quarter of the countries in the sample never reported a single arrest of a suspected terrorist or a single terrorism-related conviction.

²³⁸ Bangladesh, China, Israel, Nepal, Pakistan, Turkey, Tunisia, and the United States are the most aggressive enforcers of counterterrorism.

counterterrorism because paper laws can help to legitimate actions previously held illegal under international and customary laws. The laws also generally make the consequences of conviction severe. In at least 30 states, convicted terrorists face the death penalty.²³⁹ Given the high stakes, international organizations, human rights groups, and national security scholars should closely monitor counterterrorism enforcement.

²³⁹ A number of the most aggressive enforcers sanction capital punishment for terrorism convictions, including China, India, Pakistan, and the United States.

Appendix 6.1: Questions on the Democracy Index

I. Electoral process and pluralism

1. Are elections for the national legislature and head of government free?
2. Are elections for the national legislature and head of government fair?
3. Are municipal elections both free and fair?
4. Is there universal suffrage for all adults?
5. Can citizens cast their vote free of significant threats to their security from state or non-state bodies?
6. Do laws provide for broadly equal campaigning opportunities?
7. Is the process of financing political parties transparent and generally accepted?
8. Following elections, are the constitutional mechanisms for the orderly transfer of power from one government to another clear, established and accepted?
9. Are citizens free to form political parties that are independent of the government?
10. Do opposition parties have a realistic prospect of achieving government?
11. Is potential access to public office open to all citizens?
12. Are citizens free to form political and civic organizations, free of state interference and surveillance?

II. Functioning of government

13. Do freely elected representatives determine government policy?
14. Is the legislature the supreme political body, with a clear supremacy over other branches of government?
15. Is there an effective system of checks and balances on the exercise of government authority?
16. Government is free of undue influence by the military or the security services?
17. Foreign powers do not determine important government functions or policies.

18. Special economic, religious or other powerful domestic groups do not exercise significant political power, parallel to democratic institutions?
19. Are sufficient mechanisms and institutions in place for assuring government accountability to the electorate in between elections?
20. Does the government's authority extend over the full territory of the country?
21. Is the functioning of government open and transparent, with sufficient public access to information?
22. How pervasive is corruption?
23. Is the civil service willing and capable of implementing government policy?
24. Popular perceptions of the extent to which they have free choice and control over their lives?
25. Public confidence in government?
26. Public confidence in political parties?

III. Political participation

27. Voter participation/turnout for national elections? (Average turnout in parliamentary and/or presidential elections since 2000; Turnout as proportion of population of voting age).
28. Do ethnic, religious and other minorities have a reasonable degree of autonomy and voice in the political process?
29. Percent of parliament who are women in parliament?
30. Extent of political participation? (Membership of political parties and political non-governmental organizations)
31. Citizens' engagement with politics?
32. The preparedness of population to take part in lawful demonstrations?
33. Adult literacy?
34. Extent to which adult population shows an interest in and follows politics in the news?
35. The authorities make a serious effort to promote political participation?

IV. Democratic political culture

36. Is there a sufficient degree of societal consensus and cohesion to underpin a stable, functioning democracy?
37. Perceptions of leadership; proportion of the population that desires a strong leader who bypasses parliament and elections.
38. Perceptions of military rule; proportion of the population that would prefer military.
39. Perceptions of rule by experts or technocratic government; proportion of the population that would prefer rule by experts or technocrat.
40. Perception of democracy and public order; proportion of the population that believes that democracies are not good at maintaining public order.
41. Perception of democracy and the economic system; proportion of the population that believes that democracy benefits economic performance.
42. Degree of popular support for democracy.
43. There is a strong tradition of the separation of church and state?

V. Civil liberties

44. Is there a free electronic media?
45. Is there a free print media?
46. Is there freedom of expression and protest?
47. Is media coverage robust? Is there open and free discussion of public issues, with a reasonable diversity of opinions?
48. Are there political restrictions on access to the internet?
49. Are citizens free to form professional organizations and trade unions?
50. Do institutions provide citizens with the opportunity to successfully petition government to redress grievances?
51. The use of torture by the state?
52. The degree to which the judiciary is independent of government influence. Consider the views of international legal and judicial watchdogs. Have the courts ever issued an

important judgment against the government, or a senior government official?

53. The degree of religious tolerance and freedom of religious expression. Are all religions permitted to operate freely, or are some restricted? Is the right to worship permitted both publicly and privately? Do some religious groups feel intimidated by others, even if the law requires equality and protection?

54. The degree to which citizens are treated equally under the law.

55. Do citizens enjoy basic security?

56. Extent to which private property rights protected and private business is free from undue government influence.

57. Extent to which citizens enjoy personal freedoms, such as gender equality, right to travel, choice of work and study.

58. Popular perceptions on human rights protection; proportion of the population that think that basic human rights are well-protected.

59. There is no significant discrimination on the basis of people's race, color or creed.

60. Extent to which the government invokes new risks and threats as an excuse for curbing civil liberties.

Appendix 6.2: Countries Represented in the Associated Press Data on Counterterrorism Arrests and Detentions Worldwide, 2001-2010.

Argentina (1)
Armenia (1)
Azerbaijan (1)
Australia (1)
Austria (2)
Bangladesh (3)
Belgium (2)
Bulgaria (2)
Canada (3)
Chile (1)
China (3)
Colombia (3)
Cook Islands (1)
Costa Rica (1)
Croatia (1)
Cyprus (2)
Denmark (2)
Dominican Republic (1)
Estonia (1)
Finland (1)
France (2)
Georgia (1)
Germany (2)
Greece (2)
Guatemala (1)
Hong Kong (1)
Hungary (2)
India (1)
Indonesia (1)
Ireland (2)
Israel (1)
Italy (1)
Kyrgyzstan (1)
Latvia (1)
Lithuania (2)
Luxembourg (1)
Macedonia (1)
Mexico (1)
Montenegro (1)
Morocco (4)
Mozambique (1)

Nepal (3)
Netherlands (1)
New Zealand (1)
Nigeria (1)
Northern Ireland (1)
Norway (1)
Pakistan (6)
Poland (1)
Portugal (1)
Peru (5)
Romania (2)
Serbia (7)
Slovakia (2)
Slovenia (2)
South Africa (1)
South Korea (1)
Spain (1)
Sweden (2)
Thailand (1)
Tunisia (5)
Turkey (1)
Uganda (3)
United Kingdom (2)
Ukraine (1)
United States (8)

Data sources:

- (1) Freedom of Information requests by Associated Press
- (2) Europol
- (3) Country Law Enforcement Data
- (4) Amnesty International
- (5) United Nations
- (6) Pak Institute for Peace Studies (PIPS)
- (7) US State Department
- (8) Transactional Records Access Clearinghouse

Chapter 7

Conclusion

Counterterrorism became a central feature of the national security landscape after 9/11. It transforms legal standards and practices in domestic surveillance, policing, criminal investigations, and prosecutions worldwide. Defended as a response to new threats of political violence, the previous chapters advance a series of arguments showing that counterterrorism has more complicated origins and also entails serious costs for human rights worldwide. By way of a conclusion, this chapter reviews the central arguments of each chapter and ends with a hopeful observation.

The first empirical chapter, “Interrogating Terrorism,” forwarded a critique of the category of terrorism. Drawing on scholarly and statutory definitions, it shows that terrorism lacks any universal meaning. Formulations of terrorism depend on a large number of subjective assessments about the character of political violence. What forms of violence rise to the level of terrorism? Is terrorism limited to violence against non-combatants? How does one define non-combatants after 9/11? Can the state commit terrorism? Who decides if state sanctioned violence constitutes terrorism? Does terrorism require terror? What is the threshold for terror? Who sets the threshold? How is it evaluated? These questions, along with many others, plague researchers attempting to operationalize and measure terrorism. Therefore, the chapter contends that terrorism scholars should turn their attention to the empirical world and abandon the project of constructing a general definition of terrorism. Views of terrorism are always outgrowths of history, politics, and culture. The challenge is to study their evolution in ways that will prove useful to lawmakers and inform future practice.

Examining a diverse number of scholarly definitions of terrorism, the chapter identifies three core characteristics. Terrorism employs illegitimate violence, creates terror, and serves a larger political goal. These elements provide a basic framework, but they offer only modest analytic leverage in studies of political violence. The limited conceptual agreement prompts more questions than it answers. Given the conceptual fuzziness, the chapter contends that scholars should look to the concrete definitions of terrorism in national counterterrorism laws. Legal provisions provide opportunities to evaluate understandings of the term in historical contexts, offering more analytic power to draw comparisons between states and to map changing understandings over time.

Circumventing the abstract debates on the meaning of terrorism, chapter two maps legal definitions of terrorism worldwide. The analysis reveals that lawmakers’ formulations of terrorism vary considerably across states. Absent a consensus definition of terrorism, lawmakers have developed their own statutory language after 9/11. The greatest commonality in definitions of terrorism is their vagueness. As a result, an overwhelming number of counterterrorism laws worldwide include overly broad definitions of terrorism that can open the door to potential state abuse.

In chapter three, “The Rise of Counterterrorism Laws Worldwide,” the work turns to the global dimensions of counterterrorism, offering the first systematic look at the proliferation of national counterterrorism laws after 9/11. Drawing on data collected in collaboration with the Program on Terrorism and Counterterrorism at Human Rights Watch, the chapter shows that more than 140 countries enacted or amended over 250

national counterterrorism laws in the decade after 9/11. The global rise of counterterrorism laws stands as one of the most dramatic legal developments of the last century with potential implications for individual liberties worldwide.

The chapter also shows that power politics and cultural ideas can simultaneously shape the development of transnational law. Debates between realists and constructivists can ignore or undervalue the relationships between politics and culture. In the case of counterterrorism, the United States and the United Nations helped to institutionalize counterterrorism as a mandate of global membership through mandatory reporting, training programs, and foreign assistance. These efforts also cultivated counterterrorism as a legitimate global script to be enacted by states worldwide. Even absent clear political rewards or reasonable fears of political violence, lawmakers across the globe embraced counterterrorism as a collective good.

The fourth chapter, “Counterterrorism as Cerberus,” digs deeper into the motivations of lawmakers, explaining why they were quick to enact counterterrorism laws, even when history suggested that they faced few risks of political violence. The chapter argues that lawmakers rarely pass laws in response to rising levels of political violence. They enact them for more pragmatic reasons. In particular, lawmakers adopt new measures as a means to confront increasing insecurities of the global age. By developing new legal provisions that grant more state authority, lawmakers are able to secure their power against increasingly robust international legal regimes that threaten to usurp their judicial authority. The new laws also provide a legal arsenal to use against internal threats. Counterterrorism offers a means for state officials to hold off forces of globalization and at the same time provides legal mechanisms capable of repressing local political dissent. After 9/11, counterterrorism serves as a Cerberus of sovereignty, guarding the state from two directions. While one head of counterterrorism shields against foreign interventions, the other can restrict domestic civil liberties and dampen local social movements.

The chapter further argues that the global consensus on counterterrorism after 9/11 compounds a worldwide trend towards more punitive approaches to managing social instabilities. Counterterrorism laws build on law-and-order politics that emerged in the United States after the civil rights movement and migrated across the world in recent decades. The new statutes prioritize social control and punishment, frequently targeting more marginal members of society. Under new laws, immigrants, ethnic and religious minorities, and political organizers increasingly find themselves under more intense surveillance, subject to detention without charge, and facing more severe penalties when convicted of criminal offenses. Counterterrorism laws export penal logics worldwide with dire consequences for suspect populations.

The fifth chapter, “Counterterrorism and Individual Rights,” shows how this global penalty bears down on the rights of individuals. Examining the substantive provisions of the new laws, the chapter demonstrates that recent counterterrorism laws heighten criminal penalties, restrict due process protections, and curtail civil liberties. The restrictions are particularly striking in light of the increasing deference paid to individual rights since the Second World War. Counterterrorism law stands as a rare exception to

developments in other areas of law, where individual rights became supreme in recent decades. In contrast, counterterrorism laws severely limit individual legal guarantees on a global scale.

However, while threatening individual rights, the development of counterterrorism also suggests their dominance. The need to carve out legal exceptions reveals a broad consensus on the sacred status of individual entitlements in the global era. New laws, and the debates that surround them, reinforce and normalize the priority given to individual rights in society. The laws do not challenge individual rights in general, but rather draw a distinction between terrorism suspects and the rest of society. Suspects are only worthy of punishment. Other individuals in society are worthy of rights. In this manner, counterterrorism strips individual protections from suspects, even as it legitimates the larger importance of rights worldwide.

The final empirical chapter of this work, “Counterterrorism Enforcement,” looks beyond the formal language of the laws to examine actual state enforcement. It shows that enforcement agencies worldwide arrested more than 110,000 individuals under counterterrorism laws in the decade after 9/11, resulting in more than 35,000 convictions. The chapter also reveals that the overwhelming majority of these arrests and convictions occurred in just a handful of states. Turkey, Pakistan, Nepal, Israel, and China were the greatest enforcers of counterterrorism statutes. Collectively, these six countries accounted for eighty-five percent of the total number of counterterrorism arrests in the last decade and over ninety percent of the convictions under counterterrorism laws. Dozens of other countries also detained and prosecuted individuals under antiterrorism statutes, but the aggregate number of arrests and convictions were far more limited.

Enforcement data also shows that less democratic regimes detained and prosecuted more individuals than democratic ones. The result strongly suggests that new counterterrorism laws provide legal cover to repressive regimes worldwide. Numerous qualitative examples testify to ongoing state abuse under counterterrorism laws, which have been used to arrest hundreds of journalists, demonstrators, and political opposition leaders. Although violations of human rights law have also been documented in numerous democratic states, the analysis shows that democratic institutions do safeguard societies against more widespread abuses.

In summary, chapter two urges a shift towards research on the concrete policies and practices involved in counterterrorism and maps the legal definitions of terrorism worldwide. Chapter three documents the proliferation of national counterterrorism laws after the September 11th attacks, showing how transnational law can develop out of a confluence of power politics and global culture. Chapter four argues that lawmakers embrace counterterrorism as a response to new insecurities of the global era. Chapter five demonstrates that counterterrorism laws restrict and suspend individual rights. Finally, chapter six reveals that a few undemocratic regimes are responsible for the overwhelming number of counterterrorism arrests and convictions. The overall take home point is that the rise of counterterrorism laws worldwide represents a significant threat to individual

liberties worldwide. Lawmakers frequently hijack counterterrorism provisions for purposes other than preventing political violence.

To conclude on a slightly more hopeful note, the rise of counterterrorism also showcases the power of courts, lawyers, and society to resist the erosion of domestic legal protections even during times of crisis. There are many examples of individuals and civil groups successfully challenging counterterrorism laws in recent years. Military lawyers in the United States refused to prosecute detainees at Guantanamo, resulting in significant reforms to the military commissions.²⁴⁰ A number of prominent courts, including the European Court of Human Rights and the United States Supreme Court, invalidated counterterrorism provisions that violated constitutional and international law. After the brutal killing of seventy-seven people, including many teenagers, in Norway last year, the Prime Minister promised to respond with more openness and more democracy, explicitly rejecting calls for stricter counterterrorism laws.²⁴¹ These examples testify to the possibilities of transforming counterterrorism in the future. As this work makes clear, counterterrorism is forever evolving. It is therefore possible to build new policies and practices that are more responsive to human rights concerns and more respectful of gains made in international law.

²⁴⁰ A number of Judge Advocate Generals (JAGs) resigned from the military commissions at Guantanamo in protest of the unjust proceedings, including Stuart Couch, Morris Davis, Fred Borch, Robert Preston, John Carr, Carrie Wolf, and Darrel Vandeveld.

²⁴¹ Store, Jonas Gahr. 2012. "Learning from Norway's Tragedy." *New York Times*, 19 July.

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Methodological Appendix

Studying counterterrorism with public sources will always be an imperfect endeavor. National security agencies are not known for transparency. Even the U.N. Committee on Counter-Terrorism has developed a reputation for secrecy, frequently refusing to make public their recommendations and correspondences with member states. Add to this general lack of public information the logistical obstacles of identifying national laws in countries worldwide, the challenges of finding dependable translations of major provisions, and the reality that counterterrorism laws are constantly being revised and amended, and you have a perfect storm to navigate as a researcher. This work strives to overcome these significant hurdles by triangulating data in different domains. Specifically, the data for this work is developed from four main sources: 1) an archive of national counterterrorism laws; 2) content coding of national counterterrorism laws; 3) data on arrests and convictions under counterterrorism laws from 2001 to 2010; and 4) various country-level indicators compiled from the Global Terrorism Database, the World Bank, the United Nations, Economist Intelligence Unit, and the Union of International Organizations. The following sections provide an overview of each of the sources of data to complement methodological discussions in the individual chapters.

Archive of Counterterrorism Laws

Between June 2009 and December 2009, I built an archive of counterterrorism laws worldwide in collaboration with staff at the Program on Terrorism and Counterterrorism at Human Rights Watch (HRW). The compiled data included 193 countries recognized by the United Nations. For each country, I reviewed all documents in the country file at HRW. Researchers in the Program on Terrorism and Counterterrorism at HRW began compiling national counterterrorism laws after 9/11. The director of Program on Terrorism and Counterterrorism, Joanne Mariner, generously provided access to the accumulated archive of national counterterrorism laws at HRW. The collection primarily included counterterrorism laws enacted after the 9/11 attacks, but some laws enacted before 9/11 were also included. HRW staff obtained copies of the laws from in-country HRW staff, foreign embassies, the U.S. Department of State, terrorism experts, and human rights advocates. I reviewed and cross-referenced these documents with any legislation, documents, reports, or other texts obtained from six independent data sources:

- 1) The United Nations Office on Drug Control (UNODC) legislation database;
- 2) The Legislationline Database;
- 3) The Interpol Terrorism Database;
- 4) The CODEXTER country profiles;
- 5) The Foreign Law Guide Database; and
- 6) The United Nations Counter-Terrorism Committee (U.N. CTC) country reports.

Copies of counterterrorism laws, translations of legal provisions, drafts of new legislation, government reports detailing counterterrorism actions, and country profiles from these independent sources were added to the HRW archive. The U.N. CTC country reports proved especially useful in identifying potential laws because every recognized U.N. state, except Vatican City, submitted at least one country report following the September 11th

attacks.²⁴² The country reports documented states' counterterrorism strategies and provided English translations of the major provisions of counterterrorism measures. When U.N. CTC country reports lacked information on national counterterrorism measures, I also searched Globalex and the Library of Congress to identify country specific research guides for the national law of each state. I also searched for national laws on WorldCat, the Max Planck Institute, and the Peace Palace Archives. The result was the most comprehensive archive of counterterrorism laws available in 2009.

While offering the most complete compilation of counterterrorism measures worldwide, the completed archive still undercounts the total number of laws. Many new counterterrorism provisions fall under immigration or financial regulation statutes. These were not always reported in U.N. CTC reports or made available through the legislative databases. Therefore, the archival data underestimates the aggregate number of counterterrorism measures enacted in recent decades. This systemic undercount of the law supports arguments about the proliferation of the laws after 9/11.

The archival data was used in the content coding of the laws and also provided valuable context for the analysis. Documents in the counterterrorism law archive also helped to inform analysis on the relationship between national lawmakers and the U.N. Committee on Counterterrorism. In addition to the laws, the archive also provided dates for earlier counterterrorism laws, even when the text of these laws was not available. The cumulative counts of the enactment of counterterrorism laws were prepared based on the reported passage of laws in the U.N. CTC reports and other documents in the archive. Unfortunately the text of most of the earlier laws were unavailable and therefore the content coding of the laws was limited to reforms after 9/11 and focused on the substantive content of a country's counterterrorism law at the end of 2009.

Content Coding

In order to assess the substantive content of the counterterrorism laws, I coded the texts of the archived counterterrorism laws with a focus on seven categories. The categories were developed in collaboration with staff in the Program on Terrorism and Counterterrorism at HRW and the content coding for this work also provided data for the 2012 report: "In the Name of Security: Counterterrorism Laws Worldwide since September 11."²⁴³ Countries were the primary unit of analysis for the content coding.²⁴⁴

- 1) Definitions of terrorism;
- 2) Definitions of terrorist organizations;

²⁴² Vatican City preferred not to disclose its divine counterterrorism plan.

²⁴³ The HRW report was drafted by the former director of the Program on Terrorism and Counterterrorism, Joanne Mariner, and completed by HRW senior counterterrorism researcher, Letta Tayler.

²⁴⁴ The content coding strove to capture the substance of counterterrorism law in a given country at the end of 2009. Due to data limitations, it was not possible to code each individual law. The coding reflects the ruling law at the time of coding.

- 3) Prohibitions on material support for terrorism;
- 4) Limitations on speech that ostensibly incites, legitimates, or lends support to terrorism;
- 5) Expanded police powers;
- 6) Procedures for administrative detention;
- 7) The imposition of heightened penalties for terrorism-related offenses.

For each category, I created a series of dichotomous variables to provide accurate counts of the substantive features of the laws and allow for statistical analysis. When the archive contained multiple laws for a single country, I used the most recent counterterrorism statute or legal code for the content analysis. The content coding was completed between June and December of 2009. If the most recent statute or legal code did not contain any information on a given variable, I reviewed the previous statute or legal code and used those standards in the coding under the assumption that the previous legal standard would be applied in practice. If no previous legal standard existed, the variable was left blank. Below is a complete list of the dichotomous variables coded within each category. Although parts of the study reference laws enacted after 2009, all regression models reflect the coding of state counterterrorism laws in 2009.

Content Coding Variables

I. Counterterrorism Laws

Country ID number
 Country name
 Prior to 9/11 (binary code)
 The number of pre-911 CT laws
 (includes substantive revisions of criminal codes)
 After 9/11 (binary code)
 The number of post-9/11 CT laws
 (includes substantive revisions of criminal codes)
 Finance law(s) (binary code)
 The number of CT finance laws
 (includes CT laws with substantive sections on CT finance)

II. Years for the Counterterrorism Laws

Country ID number
 Country name
 Year of CT law I
 Year of CT law I amendment
 Year of CT law II
 Year of CT law II amendment
 Year of CT law III
 Year of CT law III amendment
 Year of CT finance law
 Year of CT finance law amendment

Year of criminal code dealing with terrorism
Year of criminal code dealing with terrorism amendment (Most recent)

III. Legal Definitions of Terrorism in Counterterrorism Laws

Country ID number
Country name
Defines terrorism (binary code)
Definition includes harm to property or physical infrastructure (binary code)
Definition includes harm to public order or safety (binary code)
Definition includes prohibitions on public disruption (i.e. prohibits blocking traffic) (binary code)
Definition specifically references political, religious, or ideological motivations (binary code)
Definition includes manufacturing fear, panic, or terror as a characteristic (binary code)
Definition creates an exemption for national liberation/self-determination (binary code)
How broad is the language? (Ordinal scale: 1= limited to specific acts with no ambiguous terms; 2= focused on specific acts with one ambiguous term; 3= focused on specific acts but includes two or more ambiguous terms; 4= focused on few specific acts and employs ambiguous language; 5= Fails to identify any specific acts and employs ambiguous language).

IV. Terrorist Organizations

Country ID number
Country name
Defines a terrorist organization (binary code)
Allows freezing of terrorist assets (binary code)
Allows imprisonment for membership (binary code)
Possibility of challenging designation (formal mechanism exists) (binary code)

V. Material Support Provisions

Country ID number
Country name
Defines material support as a crime (binary code)
Requires knowledge and intent (binary code)
Requires only knowledge (binary code)
Requires neither knowledge nor intent (recklessness is sufficient) (binary code)

VI. Limitations on Speech

Country ID number
Country name
Limits speech (binary code)

VII. Expands Police Powers

- Country ID number
- Country name
- Expands policing powers (binary code)
- Extends the time a detainee may be held without charges (binary code)
- Allows for incommunicado detention (binary code)
- Restricts legal access to representation (binary code)
- Restricts family visitation (binary code)
- Eliminates judicial challenges (binary code)
- Restricts detainees' access to evidence (binary code)

VIII. Trial Procedures

- Country ID number
- Country name
- Modifies trial procedures (binary code)
- Establishes special security courts (binary code)
- Tries suspects in military courts (binary code)

IX. Administrative Detention

- Country ID number
- Country Name
- Establishes Administrative Detention (binary code)

X. Penalties

- Country ID number
- Country Name
- Heightens penalties (binary code)
- Allows the death penalty (binary code)
- Allows the death penalty for non-capital acts (binary code)

Using countries as the unit of analysis, the content coding captures the substance of counterterrorism laws in each country at the end of 2009. The coding in some instances reflected information obtained from provisions in different statutes. It compiles the different provisions in an attempt to present the actual state of counterterrorism laws in a given national jurisdiction. In attempting to accurately record the state of counterterrorism laws in 2009, the coding at times included legal standards from multiple statutes or criminal codes. On the whole, these multiple laws tended to complement each other, addressing different legal issues related to terrorism. For example, one law might focus on counterterrorism financing provisions and other might focus on new rules for terrorism investigations. When two laws included similar language or overlapping provisions, the provision passed last in time was used in the coding, which were generally more specific.

I also created two dichotomous variables to measure the presence or absence of legislative activity with regard to terrorism before and after the 9/11 attacks. The first variable indicated whether a state had enacted any counterterrorism laws before 9/11. The second variable indicated whether a state had enacted any counterterrorism laws after 9/11. Drawing on documents from the completed counterterrorism archive, I code the variables based on reforms to criminal codes or the enactment of terrorism specific statutes. For example, if a U.N. CTC report indicated that a country had enacted two anti-terrorism laws prior to 9/11, I would code for the variable as “1” to indicate that lawmakers had taken legislative action with regard to terrorism before September 11, 2001. If I found no references to any counterterrorism laws enacted during a given period then I would code the corresponding variable as a “0.” The U.N. Committee on Counter-Terrorism encouraged all states to report any counterterrorism actions in their country reports. The variables, therefore, capture most of counterterrorism laws enacted worldwide, particularly in the post-9/11 period.

In order to assess the level of lawmaking activity, I built ordinal variables to capture the number of counterterrorism measures enacted before 9/11 and after 9/11. If documents from the counterterrorism archive showed that a country enacted two new counterterrorism laws before 9/11, then I would code the pre-9/11 ordinal variable as “2.” Likewise, if a country reported three new counterterrorism laws after 9/11 then I would code the corresponding variable as “3.” These additional variables were based on supporting documents in the archives rather than content coding the laws in a given state. They are used as broad measures of counterterrorism activity prior to 9/11 and after 9/11.

Finally, I also used the documents in the counterterrorism archive to record the year each counterterrorism law was passed in each country. These lists included laws enacted before 9/11 as well as laws passed after 9/11. The result was a list of how many laws were enacted in each country by year, which was used to calculate cumulative counts and document the proliferation of counterterrorism measures worldwide.

Coding the laws sometimes presented problems of translation. The U.N. CTC reports provided translations of recent counterterrorism provisions, which proved useful for the substantive coding of laws passed after 9/11.²⁴⁵ The reports rarely provided translated text of previous laws that had been amended, repealed, or substantially reformed. The difficulty of finding translations of previous laws prevented the construction of a longitudinal dataset that used laws as the primary unit of analysis. For the post-9/11 reforms, I used translations of major provisions provided by national officials in the U.N. CTC reports or UNODC documents. On a few occasions, I also relied on translated text of the laws in recent law review articles.

Counterterrorism laws changed constantly during the period of data collection and analysis. Some of the laws used in the analysis have been amended or invalidated in the time since the coding. The data from this dissertation, therefore, should not be used as a

²⁴⁵ The U.N. CTC country reports were not available before October of 2001, when the U.N. created the Committee on Counter-Terrorism.

current rendering of counterterrorism law in any single state. The work sacrifices some national precision in order to capture global trends in counterterrorism lawmaking. The content coding provided the most comprehensive information on the substance of counterterrorism laws worldwide in 2009.

Arrests and Convictions Data

Gathering reliable data on counterterrorism enforcement is often challenging, particularly in countries where information on criminal detentions and prosecutions is not public. For the analysis in chapter IV, I relied on data collected by a team of 140 Associated Press (AP) journalists in 2011. The journalists collectively gathered information on annual counterterrorism arrests and convictions in 64 countries between 2001 and 2011. The AP team coordinated requests for information on counterterrorism enforcement in 105 countries with freedom-of-information laws. Journalists working in-country, generally fluent in the national language, and familiar with national legal system made and followed up on the freedom-of-information act requests. They also vetted the data. Collectively, the AP was able to obtain the number of arrests and convictions under counterterrorism laws for the decade following 9/11. Although the reporting countries represent a minority of states worldwide, they also represent more than three-quarters of the world population. The data on counterterrorism enforcement therefore covers most people around the globe. I obtained the data from Martha Mendoza, who coordinated the investigative project. She kindly provided spreadsheets of the total number of arrests in each country for each year, 2001-2011. In addition, she provided copies of many of the government documents that reported the numbers.

Country-Level Data

After completing the content coding of the archived laws in 193 countries, I converted the data into a Stata format.²⁴⁶ I merged the content coding with country level indicators from a number of sources, including the Global Terrorism Database, the World Bank, the United Nations, the Economist Intelligence Unit, and the Union of International Organizations. In most cases, I used country-level indicators from 2009. However, in a few instances, I created aggregate measures. For example, instead of using incidents of terrorist violence from any single year, I added the number of terrorist incidents in a given country between 1970-2010. The resulting variable was a better measure of the level of political violence present in a state overtime.

Dependent Variables

Counterterrorism Content Codes: I measured the substantive features of the laws using a series of dichotomous variables. These variables were organized around seven substantive categories. The dichotomous variables are listed above.

²⁴⁶ Stata is a statistical software package widely used in the social sciences. I used stat-transfer software to convert from excel files and Stata 9 for the analysis.

Counterterrorism Measures Before 9/11: I examined counterterrorism measures before 9/11 using a dichotomous variable and an ordinal variable that captures the number of counterterrorism measures enacted in each country prior to 9/11. In some analysis, these were also used as control variables.

Counterterrorism Measures After 9/11: I examined counterterrorism measures following 9/11 using a dichotomous variable and an ordinal variable that captured the number of counterterrorism measures enacted in each country after to 9/11. In some analysis, these were also used as control variables.

Independent Variables

History of Terrorism: I measured a country's history of terrorism using data from the Global Terrorism Database (GTD), which includes information on more than 82,000 domestic and international terrorist attacks between 1970 and 2007.²⁴⁷ The GTD database identifies and records terrorism incidents from wire services, foreign broadcast services, US State Department reports, US and foreign newspaper reports, and information generated by staff. In the GTD data, terrorism is defined as events involving "the threatened or actual use of illegal force and violence to attain a political, economic, religious or social goal through fear, coercion or intimidation." Because I am using cross-sectional data on the content of the laws, I collapsed the years of the GTD database creating a cumulative count for each individual country across the years 1970-2010. This count acted as an estimate of the domestic impact of terrorist in a country. For the purposes of this general measure, all terrorist incidents in the GTD were treated as equivalent events. For example, three independent bombings of an oil pipeline in Sudan that caused no fatalities would be counted the same as three car bombings in Iraq resulting in two-dozen fatalities. However, I also created independent measures for terrorist incidents causing more than one casualty and terrorist incidents causing more than 15 casualties. I used these measures of fatal terrorist incidents as a means to adjust for the increased rhetorical use of terrorism after 9/11.

Economic Development: I measured the level of development in a country using Gross Domestic Product (GDP) per capita and the Human Development Index. I reported GDP from 2009 in constant 2005 dollars. I also used the 2009 Human Development Index rating for each country.²⁴⁸ The two separate measures yielded similar results.

Rule of Law: I included the World Bank Rule of Law Estimate (2009) as a way to capture general confidence in the rules of society. In particular, the variable measures the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. The rule of law estimate was generally employed as a control measure.

²⁴⁷ For more information on GTD visit <http://www.start.umd.edu/gtd/>

²⁴⁸ For more detailed technical information about the indicators consult the websites of the respective source agencies at <http://hdr.undp.org/en/statistics>.

Population: I included the Human Development Reports Population total for both sexes (thousands) (2009) as a control variable.

Education: I included the Human Development Reports Education Index (2009) as a control variable.

Gender: I included the UN Gender Inequality Index (GII) as a control variable.

Democracy: I measured democracy using the Economist Intelligence Unit's Index of Democracy (2008). The index measures the current state of democracy worldwide for 165 independent states based on five categories: 1) electoral process and pluralism; 2) civil liberties; 3) the functioning of government; 4) political participation; and 5) political culture. The index also categorizes countries within one of four types of regimes: 1) full democracies; 2) flawed democracies; 3) hybrid regimes; and 4) authoritarian regimes. In the analysis of counterterrorism enforcement, I also broke down the index and used the measures of the individual categories to provide a more nuanced analysis of the features of a society that correlated with greater counterterrorism enforcement.

Influence of the World Polity: I measured the influence of the world polity on a given country by the number of INGOs and NGOs in a state. Data from the Union of International Associations (2007) was used to measure the number of organizations.