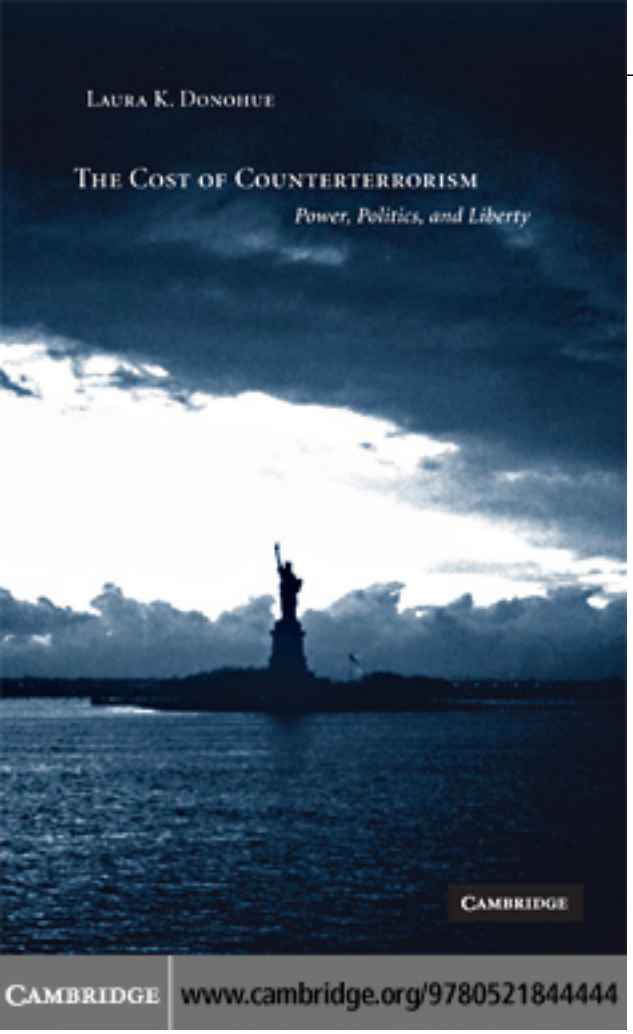
Laura K. Donohue
The Cost of Counterterrorism
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The Cost of Counterterrorism

In the aftermath of a terrorist attack political stakes are high: legislators fear being seen as lenient or indifferent and often grant the executive broader authorities without thorough debate. The judiciary's role, too, is restricted: constitutional structure and cultural norms narrow the courts' ability to check the executive at all but the margins. The dominant "Security or Freedom" framework fails to capture this dangerous aspect of counterterrorism: rapidly expanding executive authority that shifts the balance of power between the branches of government. This book recalculates the cost of counterterrorist law to the United Kingdom and the United States, arguing that the damage caused is significantly greater than first appears. Donohue warns that the proliferation of biological and nuclear materials may drive each country to take increasingly extreme measures, with a resultant shift in the basic structure of both states.

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The Cost of Counterterrorism

Power, Politics, and Liberty

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Dedicated to
Tansel
Jasmine and
Ayla Rose

Contents

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Laura K. Donohue
Stanford, California
December 10, 2007

1

The Perilous Dichotomy

> "In times of danger, the weight of concerns for public safety increases relative to that of liberty concerns, and civil liberties are narrowed. In safer times, the balance shifts the other way and civil liberties are broadened."
>
> Judge Richard Posner, US Seventh Circuit Court of Appeals, 2006

> "Civil liberties are a vital part of our country, and of our world. But the most basic liberty of all is the right of the ordinary citizen to go about their business free from fear or terror."
>
> Prime Minister Tony Blair, 2001

> "I think that the [1974] Terrorism Act helped to both steady opinion and to provide some additional protection. I do not regret having introduced it. But I would have been horrified to have been told at the time that it would still be law nearly two decades later . . . It should teach one to be careful about justifying something on the ground that it is only for a short time."
>
> Baron Jenkins of Hillhead, former UK Home Secretary, 1991

Six days after the attacks on the World Trade Center and the Pentagon, Representative James Sensenbrenner, Chair of the House Judiciary Committee, stepped out of the shower in his home in Wisconsin and overheard a familiar voice on television: Attorney General John Ashcroft was calling on Congress to pass the administration's antiterrorism legislation within a week. Sensenbrenner, for whom this bill came as something of a surprise, immediately got on the telephone to demand a copy of it. The draft, which arrived by fax, numbered hundreds of pages and included, *inter alia*, the indefinite suspension of the writ of habeas corpus in the United States. Sensenbrenner sat down on his porch and put a red line through the measure.[1]

The next six weeks became an exercise in high politics.[2] The executive branch sought significantly broader powers and insisted on haste. In the Senate, the administration's bill bypassed committee markup and went straight behind closed doors. The House held only one hearing, at which Attorney General

Ashcroft served as the sole witness.[3] At 3:45 a.m. on October 12, the morning of the vote, the final bill reached print. The 342-page document amended fifteen federal statutes.[4] Legislators, many of whom were unable even to read the text, were given only the opportunity to vote thumbs up or thumbs down – with no chance of further amendment.[5] Dennis Hastert, the Speaker of the House, ruled out of order the one legislator who tried to debate parts of the act.[6]

Nevertheless, the legislation commanded nearly 80 percent of the vote: 337 Representatives voted for the measure, and only 79 objected. The numbers in the Senate were even more extreme: 96 cast their vote in favor, whereas only 1 – Russ Feingold, a Democrat from Wisconsin – objected. Ashcroft later announced to the Senate Judiciary Committee, "[T]o those who scare peace-loving people with phantoms of lost liberty, my message is this: your tactics only aid terrorists, for they erode our national unity and diminish our resolve. They give ammunition to America's enemies, and pause to America's friends. They encourage people of good will to remain silent in the face of evil."[7]

Despite Ashcroft's admonition, the 2001 USA PATRIOT Act did have an immediate and far-reaching erosive effect on civil liberties.[8] To make the statute more palatable, Congress placed sunset provisions on some of the most intrusive powers, setting them to expire December 31, 2005. But in July 2005, the House of Representatives voted not just to renew them but also to make permanent fourteen of the sixteen temporary powers – narrowly defeating an effort to limit the provisions to another four years.[9] Although the 2006 USA PATRIOT Improvement Act incorporated some protections for individual rights, it also expanded counterterrorist powers – and attached antidrug measures unrelated to the terrorist threat.[10]

This pattern is a common one. In the aftermath of a terrorist attack, the immediate assumption is that the incident occurred because the state lacked the information and authority necessary to avert it. The executive branch therefore seeks broader powers. And the political stakes are high: legislators are loath to be seen as indifferent to the latest atrocity or, worse, as soft on terror. Accordingly, the legislature grants the executive broader authorities, often under abbreviated procedures and without careful inquiry into what went wrong. Government officials claim that the new powers will be applied only to terrorists. To make the most extreme provisions more palatable, the legislature appends sunset clauses. But in the rush to pass new measures, legislators rarely incorporate sufficient oversight authorities. New powers end up being applied to nonterrorists – often becoming part of ordinary criminal law. And temporary provisions rarely remain so – instead, they become a baseline on which future measures are built. At each point at which the legislature would otherwise be expected to push back – at the introduction of the measures, at the renewal of the temporary provisions, and in the exercise of oversight – its ability to do so is limited. The judiciary's role, too, is restricted: constitutional structure and cultural norms narrow the courts' ability to check the executive at all but the margins.

This pattern is lost in the dominant paradigm that shapes how we think about counterterrorist law. "What is the tradeoff between security and freedom?" is

the question that is posed most often. The assumption is that security and freedom align on a fulcrum, so that elevating one sends the other plummeting toward the ground. The dichotomy assumes that, when threatened, a state may deprive individuals of certain rights. And it implicitly limits the range of choices to only two: security, on the one hand; on the other, the freedom traded away.

These assumptions are troubling. Some rights are fundamental to liberal democracy and cannot be relinquished. Setting such rights to one side, the security or freedom framework fails to capture the most important characteristic of counterterrorist law: it increases executive power, both in absolute and relative terms, and, in so doing, alters the relationships among the branches of government with implications well beyond the state's ability to respond to terrorism. But this is not the framework's only omission. Missing, too, are the broad social, political, and economic effects of counterterrorism. The dichotomy also glosses over the complex nature of both security and freedom. The resulting danger is that the true cost of the new powers goes uncalculated – to the detriment of the state.

Focusing on these costs does not mean that no benefits accrue from counterterrorist law. Indeed, it is important to recognize where security is gained. In the six years following 9/11, no major al Qaeda attack has occurred on American soil, and in Britain, intelligence agencies and law enforcement have successfully broken up a number of terrorist cells.[11] This does not mean that every counterterrorist measure introduced has been responsible for these gains, but calculating such benefits is essential to instituting a strong counterterrorist regime. Sometimes this information is in the public domain; other times it is not. Statistics on the number of terrorist operations interrupted as a result of wiretapping operations are not provided in open source documents; nor is information gleaned from interrogation made widely available. Although this data may be visible to intelligence analysts at the National Security Agency or at Government Communications Headquarters and to interrogators at the US Department of Defense or the UK Ministry of Defence, it may not be available even to those with high-level security clearances.

This book, however, is not about the security benefits of counterterrorist law. Instead, it focuses on its costs, which the assumptions in the security or freedom dichotomy ignore. Here it suggests that the damage caused to the United States and the United Kingdom by antiterror legislation is significantly greater than it first appears. These two countries, moreover, are setting global counterterrorist norms and risk the transfer of these detrimental effects to other liberal, democratic states. Furthermore, it is in response to conventional attacks that both states' counterterrorist regimes have developed. The proliferation of biological and nuclear materials and their impact on the calculus behind the security side of the equation – together with a growing willingness on the part of extremists to sacrifice themselves – may drive the two countries to take increasingly drastic measures. The result could be a shift in the basic structure of both states.

SECURITY AND FREEDOM WITHIN CONSTITUTIONAL CONSTRAINTS

The constitutional structures of the United States and the United Kingdom shape what each country means by "security or freedom." In America, security and freedom tend to be treated as separate and distinct: policy considerations set against preexisting political rights. Thus, Judge Richard Posner, an eminent scholar and member of the federal judiciary, argues that, in dangerous times, concern about security grows and civil liberties narrow.[12] Constitutional rights must be adjusted to meet the demands of security. For Posner, it is a zero-sum game: "[O]ne would like to locate the point at which a slight expansion in the scope of the right would subtract more from public safety than it would add to personal liberty and a slight contraction would subtract more from personal liberty. . . . [T]hat is the point of balance . . . [which] shifts continuously as threats to liberty and safety wax and wane."[13]

Professors Adrian Vermeule and Eric Posner also posit "a basic tradeoff between security and liberty. Both are valuable goods that contribute to social welfare, so neither good can simply be maximized without regard to the other."[14] They write that "in some situations, rational policymakers can increase security at no cost to liberty, or increase liberty at no cost to security. But it is plausible to assume that advanced liberal democracies are typically at or near the frontier already. In these circumstances," they suggest, "an appreciable increase in security will require some decrease in liberty, and vice-versa."[15] In other words, terrorism, one type of security threat, forces choices to be made that may restrict civil liberties.

This security-freedom framework marks not just the academic realm, but the public discourse as well. Former Attorney General Alberto Gonzales, for example, directed the US Attorneys to focus on "how we as a government achieve the balance between individual rights and national security."[16] The legislature routinely couches the issue in similar terms.[17] And although this dichotomy tends to be used to justify incursions into individual rights, it also serves as the dominant framework for opponents of expanded executive authority. Thus Professor David Cole argues, "[W]hen we balance liberty and security, we should do so in ways that respect the equal dignity and basic human rights of all persons and not succumb to the temptation of purchasing security at the expense of noncitizens' basic rights."[18]

In the United Kingdom, scholars and policymakers tend to consider security versus freedom not as a policy matter set against previously established constitutional rights, but as a case of competing rights. On the day of the World Trade Center attack, Prime Minister Tony Blair told the press, "[W]e have got to exercise the power and vigilance to ensure that [mass terrorism is] restrained and defeated. Now, I don't believe that is to act in contradiction of our civil liberties. I believe it is in part pursuing the basic civil liberty that people have to go about their business free from terror."[19] The Attorney General, Lord Peter Goldsmith, later explained, "[M]any . . . rights . . . are qualified and require a balance to be struck against the rights of others or the rights of society as a

whole."[20] He continued, "I would suggest that the greatest challenge which free and democratic states face today is how to balance the need to protect individual rights with the imperative of protecting the lives of the rest of the community."[21]

This framework – of competing rights – is not unique to the post-9/11 world. In the early 1970s, when Westminster assumed direct control of the province of Northern Ireland, William Whitelaw, the Secretary of State for Northern Ireland, defended the 1974 Prevention of Terrorism Act by saying that, although it infringed parliamentarians' "shared concept of civil liberties. . . . [,] that is the price which the House has always accepted must be paid for protecting the most fundamental liberty of all – the liberty not to be killed or maimed when going about one's lawful business."[22] The Reverend Ian Paisley, the leader of Northern Ireland's Democratic Unionist Party, explained, "Where there is a terrorist situation in any country, the rights of the individual in the community have to be surrendered to a degree in order that his real rights may be defended and eventually maintained."[23]

To some extent, this framing of the issue – as one of competing rights – reflects the constitutional structure of the United Kingdom, where, in contrast to the United States, measures introduced by the legislative body do not have to comport with a written constitution. As Professor Albert Dicey, the British jurist and constitutional scholar, famously explained, Westminster has "the right to make or unmake any law whatever; and . . . no person or body is recognized by the law of England as having a right to override or set aside the legislation of Parliament."[24] Parliamentary supremacy means that Westminster can change any of its laws at will. Some statutes do carry special significance (such as the 1215 Magna Carta, the 1628 Petition of Right, and the 1689 Bill of Rights), but the statutes work together with case law and nonlegal rules to form the British constitution.[25] Throughout English history, rights have been woven through this constitution, creating a complex system of implicit legal protections.

Further complicating rights in English law is Britain's relationship with the continent, the European Community, and European jurisprudence. In the 1970s, English courts began to refer to the European Convention on Human Rights (ECHR) as an aid to statutory interpretation in English cases – particularly where the statute being considered by the court was intended to implement the Convention.[26] Judges were required to prefer an interpretation that rendered English law compliant with the Convention – rather than one that resulted in an apparent breach of it. But there were limits: where English law clearly departed from the ECHR, the courts did not defer. Instead, they simply applied the statute in question.[27] Where a statute was clear, the courts did not need to consider the Convention.[28] And although this requirement applied at the level of statutory interpretation, no commensurate requirement at the administrative level demanded that officials consider the Convention in exercise of their discretion.[29]

In regard to common law, the connection between English law and the ECHR was more attenuated. There were no clear rules requiring the courts to interpret

common law in a manner consistent with the ECHR. Nevertheless, a number of judges have considered the ECHR to be consistent with – indeed, influenced by – English common law and so have drawn on European jurisprudence in their interpretation of the common law – a practice, however, by no means consistent among judges.[30]

European Communities (EC) law also connected Britain to European jurisprudence. The 1972 European Communities Act expressly incorporated EC law into the domestic realm.[31] Two years later, the European Court of Justice found that, because all members of the EC had ratified the ECHR, it was applicable to interpretations of EC law.[32] This precedent has been applied broadly – even where the ECHR has had only a secondary relationship to the issue in question.[33] Then, under the 1992 Maastricht Treaty, member states became required to act in accordance with the ECHR.[34]

Finally, in 1998, British law made reference to the ECHR even more explicit, incorporating it directly into domestic law. The Human Rights Act (HRA), which came into force in October 2000, carries the same status as any other act of Parliament. Yet it influences statutory interpretation: "So far as it is possible," all British legislation must be read or given effect by the courts in a manner compatible with the ECHR.[35] This binds English law even more closely to the Convention, but it is English courts, not Strasbourg, that make this determination.[36] In the event that Parliament does pass a contradictory measure, the courts cannot strike it down. Instead, the judiciary declares the legislation incompatible with the 1998 statute.[37]

As a constitutional matter, then, English law provides a variety of ways whereby the state protects a broad range of individual rights. The social-democratic tradition in Britain, for instance, celebrates – along with the right to free speech and freedom of religion – the right to welfare and the right to employment. Like the British common law and the ECHR, it also embraces the right to security – making the debate over security and freedom, as I have said, a contest over *which* rights should prevail.

The United States and United Kingdom thus interpret security or freedom in a manner that reflects their constitutional differences. Yet in both states, the dichotomy prevails. And in both countries, because this dichotomy ignores in its narrow terms of reference the fundamental and far-reaching effects of counterterrorism, it stifles the counterterrorist debate.

THE SHIFT IN POWER AMONG THE BRANCHES OF GOVERNMENT

The single most defining feature of counterterrorist law is hypertrophic executive power – power sought with increasing urgency when the terrorist threat is viewed through the lens of war. Much of the debate about whether certain powers can be granted, in fact, often turns on whether the struggle against terrorism is seen as war, as law enforcement, as some sort of Hegelian synthesis between the two – or as *sui generis*.[38] As a practical matter, though, states tend to use both national security and law enforcement structures to respond to the

terrorist challenge. And regardless of which approach dominates, the structure is almost a constant: the executive gains strength while the relative authority of the legislative and the judicial branches diminishes.

The War Model Versus Criminal Law

On September 11, 2001, the United Kingdom's defense forces moved into high alert. Air traffic control halted all civil flights over central London. Security increased at government buildings, and police forces were placed on full alert. Prime Minister Tony Blair "offered President Bush and the American people our solidarity, our profound sympathy, and our prayers."[39] This was "not a battle between the United States of America and terrorism, but between the free and democratic world and terrorism." Blair continued, "We, therefore, here in Britain stand shoulder to shoulder with our American friends in this hour of tragedy, and we, like them, will not rest until this evil is driven from our world."[40] Nine days later, he flew to Washington, D.C., to meet with Bush. Blair explained to the press en route, "This has been the work of allies from the very beginning, united in these two objectives . . . Firstly to find and bring to account those responsible for the particular terrorist atrocity in the United States and secondly to devise the right agenda for action at an international level."[41] On September 20, 2001, Blair sat in the House of Representatives as President Bush addressed a joint session of Congress.

Like Blair, President Bush called for an end to terrorism. "[T]he only way to defeat terrorism as a threat to our way of life," Bush pronounced, "is to stop it, eliminate it, and destroy it where it grows."[42] It would be an international struggle: "This is not . . . just America's fight. And what is at stake is not just America's freedom. This is the world's fight. This is civilization's fight. This is the fight of all who believe in progress and pluralism, tolerance and freedom." He turned to acknowledge the British prime minister: "America has no truer friend than Great Britain."[43] His words echoed Sir Winston Churchill, who 55 years before had stood on US soil and sanctioned the "special relationship" between the two countries.[44] "Once again," Bush said, "we are joined together in a great cause – so honored the British Prime Minister has crossed an ocean to show his unity of purpose with America." He nodded at Blair, "Thank you for coming, friend."[45]

As the United Kingdom subsequently participated in military action in Afghanistan and Iraq, it appeared to be taking the same line as the United States in the global war on terror. When asked on September 12 whether he considered there to be a state of war, Prime Minister Blair declined to answer.[46] Four days later, after President Bush referred to it as war, Blair concurred: "Yes, whatever the technical or legal issues about the declaration of war, the fact is that we are at war with terrorism. What happened on Tuesday was an attack not just upon the United States but upon the civilized world." He estimated that two to three hundred Britons had died, making it "the worst terrorist attack on British citizens that there has been since the Second World

War."[47] The United Kingdom subsequently offered military support to the coalition forces in Afghanistan and, more controversially for the British public, Iraq.[48]

But these foreign policy decisions obscured important differences between the two nations, foremost of which was the primary lens through which the two countries viewed the terrorist threat. In the United States, a war model dominated. President Bush announced on September 15, 2001, that the United States was at war.[49] Three days later, Congress authorized the president "to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States."[50] The country subsequently attacked Afghanistan and Iraq. The executive instituted a wide range of wartime measures: categorizing "enemy combatants"; transferring terrorist suspects to a newly built military prison in Guantánamo Bay, Cuba; forming military tribunals in lieu of domestic criminal courts; and using the military to carry out a wide range of surveillance programs on US soil. In the security or freedom balance, the Department of Defense (DoD) placed exceedingly heavy emphasis on the former. Preexisting political rights, like al Qaeda, were the enemy – prompting DoD later to assert in its National Security Strategy, "Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism."[51] This troika was to be guarded against, as even peaceful institutions were transformed into national security threats. Outside of DoD, massive bureaucratic shifts occurred: the formation of the Department of Homeland Security proved to be the largest domestic reorganization since World War II, bringing under one umbrella 22 agencies and more than 170,000 government employees.[52] Much of the subsequent debate about whether certain measures were acceptable centered on whether this war model was appropriate.

In contrast, outside of engaging in direct military action in Afghanistan and Iraq, as a domestic matter Britain answered the attacks of 9/11 – and, indeed, of July 7, 2005 – in a more restrained fashion, placing law enforcement above defense force capabilities. The British Government framed the issue as a "struggle" or "fight" against terrorism.[53] The Ministry of Defence would not suddenly begin collecting information on British subjects, nor would widespread detention follow. Not that extraordinary powers were not adopted – indeed, as I discuss in Chapter 2, the government introduced the indefinite detention of noncitizens and, later, control orders. But the new powers stopped short of drastic wartime measures. Sir Ken Macdonald, the Director of Public Prosecutions, explained, "London is not a battlefield. Those innocents who were murdered on July 7, 2005 were not victims of war." He emphasized, "We need to be very clear about this. On the streets of London, there is no such thing as a war on terror."[54] Although Britain did develop new bureaucratic structures to respond to the Islamist threat, the scale was more limited than the

one adopted across the Atlantic. As discussed in subsequent chapters, the state largely continued or intensified counterterrorist policies already in place.

To the extent that the language used by the two countries' political leadership is more than just rhetoric, the distinction between the two approaches matters in at least two ways. First, the language used reflects the source of the authority sought by the executive branch. The British Government, for instance, did not claim royal prerogative in defense of its subsequent counterterrorist agenda. In contrast, the US president cited his authority as commander in chief and the powers conferred in Article II of the US Constitution as a basis for domestic and international action. (Section 2 of Article II states: "The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.") As validation, the president pointed to Congress's 2001 Authorization for the Use of Military Force.

Second, depending on the approach, the range of powers sought may expand or contract – the former where war dominates, the latter where crime takes precedence. For the war model sees terrorism as a curse on liberal democracy, a threat to "civilization." It emphasizes that acts of terrorism are more than criminality: they are an attack on the very institution of government.[55] Terrorists are enemies of the state. *Raison d'etat* dictates that, to defend itself, the government can adopt a wide range of measures, which may include missile strikes either in response or as a preemptive measure.[56] The military, not law enforcement, takes the lead. Waiting for reasonable suspicion and hard evidence risks making the state vulnerable, and so broader powers to detain, search, and interrogate suspects; place citizens under surveillance; and restrict speech prevail.[57]

Despite these broad distinctions, it would be a mistake to put too much emphasis on the war v. crime approach. Neither the war nor the crime model holds wholly true. The former incorporates a range of criminal law responses. And a state may treat some terrorist organizations as national security threats – and others as criminal organizations. Thus, US State Department Legal Adviser, John Bellinger, explained in February 2007, "The United States does not believe that it is engaged in a legal state of armed conflict at all times with every terrorist group in the world . . . Nor is military force the appropriate response in every situation across the globe. When we state that there is a 'global war on terror,' we primarily mean that the scourge of terrorism is a global problem that the international community must recognize and work together to eliminate. Having said that," he added, "the United States does believe that it is in an armed conflict with al Qaida, the Taliban, and associated forces."[58]

Countries also change their approach over time. To some extent, the Clinton administration could be said to have followed a law enforcement model: the executive responded to the 1993 World Trade Center bombing and the 1998 East African bombings by pursuing terrorist suspects through the courts. When asked on Jim Lehrer's *Newshour* in 1998 whether this was "an ongoing war" or "a new war," Sandy Berger, President Clinton's National Security Adviser,

replied that it was "a multifaceted effort." He explained that "part of that is law enforcement. Part of it is beefing up our intelligence. Part of it is stronger laws."[59] By the time 9/11 occurred, some 26 individuals had been found guilty by regular judges, in ordinary criminal courts, of complicity in these attacks.

In similar fashion, the United Kingdom has not always taken a measured approach to terrorism: from 1922 to 1972, the Northern Ireland government viewed Republican violence as an attack on the state itself, and in 1971, the Home Secretary declared that Britain was "at war with the IRA" – language echoed by Brian Faulkner, the Northern Ireland Prime Minister.[60] But in 1976 British policy shifted back to one predominantly of law enforcement. Northern Ireland's Secretary of State William Whitelaw instituted a policy of "Ulsterization" and criminalization: it returned control to security forces in the province and began to treat terrorists as criminals, not as political activists. Calling the violence "war" and the terrorists "enemies" elevated their status. In dropping the Special Category status for Republican and Loyalist prison inmates, Prime Minister Margaret Thatcher's government stripped them of their prisoner of war designation. Although over the next three decades British soldiers and special forces remained active in Northern Ireland – as of 9/11, there were still approximately 15,000 troops in the province, a number that had dropped by March 2007 to 8,500 – as a political matter a law enforcement approach dominated.[61] The state emphasized that terrorism is a violent, criminal act, a form of private power – not unlike organized crime.[62]

Neither model is exclusive. It would be more accurate to say that, although a broad framing may influence the source of authority claimed and the extremity of measures sought, as a purely descriptive measure, the United Kingdom and the United States tend to use military or criminal authorities as each state finds most useful.[63] Thus, Prime Minister Blair's Official Spokesman explained in April 2007 that Blair had always made it clear that, where necessary, military responses to terrorism were appropriate – as well as were political means.[64] The reason neither model fits is because terrorism is neither war nor crime. It is something different.[65] Yet its general effect on the state is remarkably constant.

The Expansion of Executive Authority

Surveillance measures in the United States enacted following September 11 offer a powerful example of the tendency of counterterrorist law to expand executive power (see also Chapter 4). For the DoD was not the only executive entity to engage in counterterrorism. The 2001 USA PATRIOT Act also increased the powers available to the Federal Bureau of Investigation (FBI) and the Department of Justice. It eliminated the wall between intelligence gathering and prosecution and expanded the state's ability to make use of the Foreign Intelligence Surveillance Act. Special administrative warrants, with fewer requirements than for ordinary criminal law investigations, could be obtained and used to collect information on Americans or non-US citizens. The USA PATRIOT Act also gave the government the authority to enter and search premises without notice.