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BALANCING FEAR: WHY COUNTER-TERROR LEGISLATION WAS BLOCKED AFTER THE OKLAHOMA CITY AND LONDON BOMBINGS

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Abstract: This article scrutinizes the legislative reactions to the Oklahoma City Bombing and the 2005 London Bombings to try to decipher why counter-terror legislation was substantially blocked after these attacks. It finds that the partisan composition of the government and executive approval ratings are critical to the passage of counter-terror laws. In light of the recent slew of counter-terror legislation passed worldwide, cases where counter-terror legislation has been blocked have become critically important. To this end, this article asks, "Why does counter-terror legislation get blocked when it does?" To answer the question, three variables are tested: partisan composition of the government, public opinion-based mass fear levels, and executive approval ratings. To test the variables, two cases are evaluated: the passage of diluted counter-terror legislation after the Oklahoma City Bombing in 1995 and after the 2005 London Bombings. In evaluating the cases, legislative debates and executive statements that occurred after the terror attacks are examined and then compared to cases from the UK in 1974 and the US in 2001 where counter-terror legislation quickly passed. The article concludes that executive approval ratings and the partisan composition of the government have the most explanatory power in determining whether terror attacks will lead to broad counter-terror legislation or not.

Keywords: London bombings, counter-terror legislation, USA, United Kingdom.

In our post-9/11 world, democratic governments' responses to terror attacks are viewed as predictable. An attack occurs, the polity convulses in a fit of rage and fear, the

chief executive gathers additional powers for himself, and civil liberty-abridging counterterror legislation is easily passed. This supposedly archetypal response to terrorism is not as common as many have come to believe. Indeed, many times the chief executive has attempted to pass new legislation after a terror attack only to find himself stifled by the parliament or legislature. This article explores such cases.

What happens when legislation forwarded by the executive gets blocked by the legislature after terrorist attacks? The theory supported here holds that the executive is presented with an *opportunity* by the crisis created by a terrorist attack, but that he is *constrained* by levels of mass fear, public satisfaction ratings, and political institutions.

This article will be organized in the following manner. First, the theory will be summarized. Second, why the passage of counter-terror legislation should be expected in the UK Blair case will be examined.

Third, the case of Tony Blair's own Labour Party blocking his counter-terror legislation after the 7 July 2005 London bombings will be investigated. Fourth, the case of the Oklahoma City bombing, where the Republican Party blocked Bill Clinton's counter-terror legislation for over a year, will be examined.

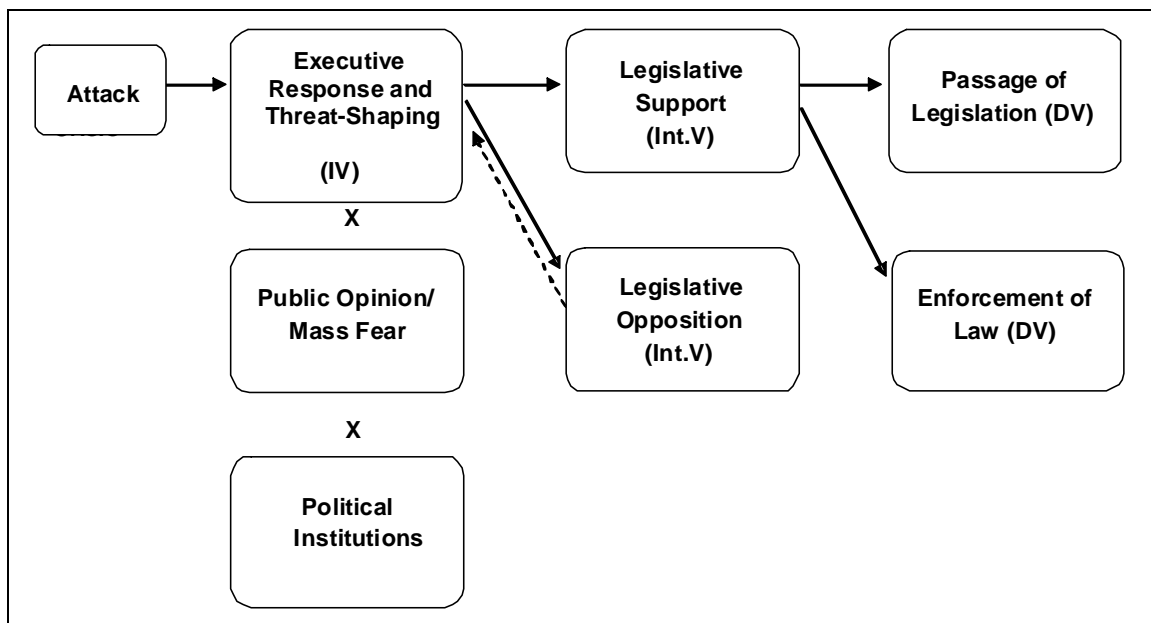
The Oklahoma City case will bolster findings from the Tony Blair case. Finally, conclusions about why we see variation in the passage of civil liberty-abridging legislation, the central question of this study, will be stated.

1. THE DESCRIPTION OF THEORY

After a terrorist attack occurs, the government seems to convulse in a quick and forceful reaction. But the theory that is forwarded and supported here shows that the process of reaction is much more complex and that those reactions vary much more greatly than public perception holds. As depicted in Figure 1, the theory begins with the terrorist attack. That attack is viewed as an exogenous variable, that

is, something that occurs outside of the governmental process. It gets the process going, but does not determine how that process will transpire. An important point made by this study is that the nature of legislative responses to terror attacks cannot be predicted by the nature of the attack or by the number of fatalities. The limited reaction to the 7 July bombings in London, the 2004 bombings in Madrid, and numerous other attacks are testament to that fact.

Figure 1: The Depiction of the Theory



The executive’s role, the independent variable, has two components. First is what I call the *executive response*. At this stage the executive decides generally how to respond to the attack. He could try to seek new legislation, seek to deport immigrants (among other options) or not seek to respond at all. The executive forwards his plan by employing the second component of the independent variable: *executive threat-shaping*. Executive threat-shaping, defined simply as how the government’s chief executive shapes the terror threat, is the mechanism by which the executive pushes his counter-terrorist agenda. Though this study is focused solely on the civil implications of this strategy, the way that the executive attempts to shape the terror threat colors the state’s international response to terror as well. Note that a critical distinction in executive threat-shaping strategies is whether the leader shapes the threat as an act of war or a crime.

The executive’s response and threat-shaping strategies are constrained by two broad factors. First is *public opinion/mass fear*. In this study, mass fear levels, public willingness to forego liberties and executive approval ratings as well as other factors are measured using public opinion trend analysis. These factors work either to constrain or to enable executive action. The second constraint variable is *political institutions*. This variable encapsulates the following three factors: whether a government is run by a presidential or parliamentary system, level of partisan competition and government composition/party in power. Though all of these constraint variables will be looked at, two will be shown to have especially strong explanatory power: approval of the executive and the government’s partisan composition. The *legislature*, the theory’s intervening variable, enters the picture in the next stage of the process. It can either *support* or *block* the

executive’s proposed legislation. If it attempts to block the new counter-terror laws, an interplay between the executive and legislature may occur wherein the executive tries to push the legislature to pass new legislation by shaping the threat accordingly. This give-and-take is depicted by the dashed line in Figure 1. The final stage is *passage of civil liberty-abridging legislation and enforcement of civil liberty-abridging legislation*. These two outcomes are the dependent variables of this theory.

2. WHY SHOULD WE EXPECT LEGISLATION TO PASS IN THE LONDON BOMBINGS CASE?

Why should we expect counter-terror legislation to have been passed after the bombings of 7 July 2005? There are myriad reasons why we should expect legislation to have passed in this case. First, in the British system the prime minister controls government. That means that as long as the prime minister is head of government, all legislation that he proposes should pass parliament. Indeed, Tony Blair’s counter-terror legislation after the London Bombings, which sought to prolong detentions for terror suspects from 14 days to 90 days, was the first

legislation that had been blocked by parliament in Blair’s eight-plus years in power to that date.

Second, the Bush administration successfully passed extensive counter-terror law after the terrorist attacks of 11 September 2001. If a system that has many more checks on executive power was able to pass legislation, then we can infer that the Blair government should have been able to push through its bill. Third, the United Kingdom has a much more extremist Muslim population than does the United States. For one, recall the arrests of 24 suspected terrorists who allegedly were plotting to blow up ten airliners flying from London to the United States on 10 August 2006.¹ Further, a 2006 poll in the *London Telegraph* found that 4 in 10 British Muslims wanted Islamic Law implemented in the United Kingdom; that same year a poll in the *Sunday Times* found that 1 in 5 British Muslims sympathized with the London bombers². Fourth, the UK has passed counter-terror legislation many times will be seen later in this article. Fifth, Britain was at war with terrorists in Iraq and Afghanistan already, making the case for more domestic strictures on terrorists, thus, should not have been difficult.

Table 1: Case Selection Chart

	<i>Threat Shaped as War</i>	<i>Threat Shaped as Crime</i>
Legislation Quickly Passed	George W. Bush, 9/11 Ariel Sharon, second intifada Harold Wilson, 1974 Birmingham bombing	Yitzchak Rabin, first intifada
Legislation Substantially Blocked	Tony Blair, 7/7/05	Bill Clinton-1995 Oklahoma City bombing Bill Clinton-1993 World Trade Center bombing

Finally, consider the cases in Table 1. As is evident, most threats that are shaped as war lead to the quick passage of civil liberty-abridging legislation. To these, we could add many cases, including, for instance, AB Vajpayee’s passage of the Prevention of Terrorism Act (PoTA) after the 2001 Parliament bombing in India³, as well as anti-terror laws passed in Canada, Australia, New

Zealand, and Japan after 11 September⁴. Tony Blair was the only executive who both shaped the threat as war and was substantially blocked in his attempt to pass anti-terror law, making his case a critically important one.

3. THE 7 JULY 2005 LONDON BOMBINGS

Why did the legislature block the Blair government's efforts to enact a new set of counter-terror laws? Before testing the theory described above, it is worth highlighting that British parliament has passed civil liberty-abridging legislation in the past. For example, eight days after the Irish Republican Army (IRA) bombed pubs in Birmingham, killing 21 people and wounding 160, the parliament adopted the 1974 Prevention of Terrorism Act.⁵ At the time, Prime Minister Harold Wilson plainly described the attacks as an act of war⁶. The bill passed through the House of Commons and House of Lords with remarkable speed despite the slim majority that Harold Wilson's Labour Party enjoyed. Indeed, the previous month's election had given the Labour Party a slim three-seat majority⁷.

Parliament's ability to block Blair's post-London Bombings bill is curious because Blair enjoyed a greater majority in Parliament, the London Bombings killed significantly more people, and the new laws Blair proposed would not have been much different from laws that had already been passed time and again by previous governments. One further cannot argue that Britain was not at war in 2005 and was in 1974. Both Tony Blair, as will be seen below, and Harold Wilson shaped the terrorist threat as a war, and British forces are today still at war in Iraq and Afghanistan with Islamist extremists.

3.1. The Attacks

On the morning of 7 July 2005, as rush hour was drawing to a close, a series of explosions carried out by radical jihadist suicide bombers hit the London public transportation system. At 8:50 a.m. a bomb exploded on a subway train leaving Edgware Road station killing seven people and wounding 40. At the same time, a bomb exploded on a train traveling between Liverpool Street and Aldgate Station killing ten people and wounding over a hundred. In the deadliest attack of the day, also on the tube and also at 8:50 a.m., 27 people were killed and dozens injured when a bomb exploded on the Piccadilly line train near King's Cross station. About an hour later, at 9:47 a.m., a bomb exploded on the upper deck of the No. 30 bus as it traveled through

Tavistock Square; fourteen people were killed and dozens wounded⁸. All told, 56 people, including the four bombers, were killed and over 700 wounded due to the attacks on July 7, 2005⁹. Two weeks later to the day, on July 21, 2005, four more bombers failed to carry out an identical attack targeting three underground stations and a bus. The bombers were thwarted by the failure of their bombs to fully explode¹⁰.

The first reports about the bombings held that the attackers were Britons of Pakistani origin who were born, raised and radicalized in the United Kingdom¹¹. But whereas three of the bombers were British nationals of Pakistani origin who lived in West Yorkshire (the fourth was a Jamaican-born British national), their radicalization had strong foreign connections¹². Two of the bombers visited Pakistan in 2004. Further, an al-Qaeda member that had entered England via a Channel port two weeks before the blasts, left Britain a few hours before the bombings. Moreover, the explosives used in the bombings were similar to those used by al-Qaeda¹³. A year after the bombings, al-Qaeda's spiritual leader Ayman al-Zawahiri claimed that two of the bombers had been trained for suicide operations at an al-Qaeda camp¹⁴.

Though there are tensions between Britain's Muslim and Christian populations, the attacks were not as "home-grown" as initially reported. Indeed, terrorism analyst Peter Bergen stated a year after the bombings that, "the London attacks were a classic al-Qaeda operation and not the work of self-starting terrorists as has been repeatedly suggested in the media"¹⁵. It turns out, then, that this was one case of international terrorism that was framed by the media as an attack by local elements. The response to the London attacks, thus, may have been more muted due to this local-framing by the media (as opposed to the media framing the attack as perpetrated by foreign forces and part of a larger war)¹⁶. As will be seen below, this media framing had little to do with how Tony Blair sought to shape the threat.

3.2. Executive Response

At the time of the bombings, Tony Blair was hosting the meetings of the Group of Eight (G-8) in Scotland. That day, he made a statement framing the threat of terrorism as war, stating:

“It is important ... that those engaged in terrorism realize that our determination to defend our values and our way of life is greater than their determination to cause death and destruction to innocent people in a desire to impose extremism on the world. Whatever they do, it is our determination that they will never succeed in destroying what we hold dear in this country and in other civilized nations throughout the world”¹⁷.

Blair’s statement framed the conflict against terror as a worldwide one. He implied that the world was entangled in a war between civilized nations and extremist terrorists. The threat magnitude was thus large, but, Blair suggested, the government would protect its people.

Three days later Blair made a speech wherein he spoke of his “revulsion” at the terrorist attacks. Blair outlined what had transpired during the attacks and named the probable perpetrators as “Islamic extremist terrorists, of the kind who over recent years have been responsible for many innocent deaths in Madrid, Bali, Saudi Arabia, Russia, Kenya, Tanzania, Pakistan, Yemen, Turkey, Egypt[,] Morocco” and on 11 September. Blair asked for additional anti-terror legislation, noting that Parliament had already pledged to pass further counter-terror legislation earlier in the year. He also set the tone for future statements when he stated that, “If, as the fuller picture about these incidents emerges and the investigation proceeds, it becomes clear that there are powers which the police and intelligence agencies need immediately to combat terrorism, it is plainly sensible to reserve the right to return to Parliament with an accelerated timetable.” He closed by lauding the Muslim community of Britain saying that, “We will work with you to make the moderate and true voice of Islam heard as it should be”¹⁸. Blair’s statements framed the conflict as one between innocent civilians and Islamic extremists, he stated that liberty-security tradeoffs would have to be made, and that Muslims in England should be tolerated. Blair’s linking of the 7 July attacks to 11 September and other terror attacks from around the world, implied a high magnitude of threat.

Two weeks after the London bombings, Blair stated that he would not give “one inch” to terrorists and that he sought to confront them

on “every level.” He also stated that, “September 11 for me was a wake up call. Do you know what I think the problem is? That a lot of the world woke up for a short time and then turned over and went back to sleep again.” Meanwhile, Conservative Party leader, and head of Blair’s opposition, stated that, “One of the principle objectives of the terrorists is to divide us, one from another. So far ... they have failed in that objective. ... [W]e believe it is so important that we approach these difficult issues in a spirit of consensus, with the objective of reaching agreement wherever we possibly can”¹⁹. This speech was Blair’s most urgent yet and it framed the threat as an urgent issue that cannot be ignored. It is important to note that at this stage, Tory rhetoric supported Blair.

Three and a half months after the London bombings, the Blair government unveiled new counter-terror legislation that would allow the British government to detain terror suspects for three months without charge, make the glorification or encouragement of terrorism an offense, and outlaw attending terror training camps in the UK or abroad. The proposed bill would have greatly affected free speech in Britain. According to Guardian columnist Seamus Milne, “under the terms of the bill, anyone who voices support for armed resistance to any state or occupation, however repressive or illegitimate, will be committing a criminal offense carrying a seven-year prison sentence”²⁰. The legislation was introduced about one month after a video of one of the 7 July bombers was released that linked him to al-Qaeda²¹.

3.3. Legislative Opposition

In this section, Blair’s attempts to pass a 90-day detention will be focused on. Blair received strong opposition to his legislation almost immediately after he presented it. On 3 November 2005, Blair made the case for his legislation by stating that, “We have got to decide whether the civil liberties of people who are terrorism suspects should come before the civil liberties of the vast majority of people in this country. I say the civil liberties of those law abiding people should come first.” Blair’s legislation was already struggling to pass due to a coalition between ministers of parliament on the right and the left that were fed up with Tony Blair’s rule²². The Conservatives, Liberal Democrats, and Labour rebels that

opposed Blair's legislation proffered a compromise: a 28-day detention period²³.

Blair convinced Labour MP David Winnick to re-table the "rebel" Terrorism Bill amendment that would have set the detention limit at 28 days. Still, ministers in Blair's own party were disappointed with the Prime Minister's legislation and criticized him by saying that his politics were not in line with those of the Labour Party²⁴. By 6 November 2005, Blair was convinced that his legislation would not pass. He withdrew negotiations on the 90-day limit and told the Home Secretary, Charles Clarke, to seek a compromise over the detention issue, as well as over separate plans to criminalize religious hatred and outlaw the glorification of terrorism²⁵.

After attempts to magnify the terrorist threat once again backfired—Blair called the potential blocking of the 90-day detention, a "defeat for the security of the country" and accused Parliament of "woeful complacency"—the Prime Minister finally accepted that his bill would not pass²⁶. Yet the very next day, on 8 November 2005, Blair once again tried to push through the 90-day detention limit, this time with a sunset clause. The Prime Minister stated that, "If we are forced to compromise, it will be a compromise with this nation's security." Blair pointed to a *Times* (of London) poll that found that 64% of the British public supported the 90-day rule. The head of the Conservative Party, Michael Howard countered that, "if you want to look for a precedent for 90 days, I suggest you find it in the apartheid regime in South Africa when the 90-day rule was one of the most notorious aspects of that regime"²⁷.

It is important to note here that Blair's strategy for passing his terrorism legislation included repeatedly pointing to the fact that the police requested the 90-day detention limit. In essence, Blair was arguing that it was not he who desired this law, but rather heads of police that had asked for it. This strategy was ineffective as it shifted the process from one of an executive demanding legislation from the legislature to one of the executive asking the legislature, on behalf of experts, for legislation. Further, Parliament never fully understood why the police "required" the 90-day detention limit²⁸. Effectively, Blair had stopped pushing the anti-terror legislation as a solution to a threat and, instead, was pushing the legislation

as a tactical tool to help law enforcement. This formulation of the threat proved weak as it was easier for ministers of parliament to oppose the police than it was to oppose Blair and the public he purportedly represented. The reasoning behind Blair's bill was hidden in a letter from Andy Hayman, the assistant commissioner for the Metropolitan Police, rather than pronounced publicly and repeatedly by the Prime Minister²⁹.

As expected, Blair's counter-terror legislation was blocked—the first legislation Blair had proposed in eight-plus years of power to be blocked—when 49 members of his own party joined the opposition to defeat the bill. In its stead, Parliament passed the 28 day detention limit proposal³⁰. Statements such as those of one Tory Member of Parliament who shouted, "We aren't a police state" trumped Blair's calls that the 90-day limit was necessary to protect the country from terrorism³¹. The fallout from the blocked passage of Blair's anti-terror bill eventually led to Tony Blair's resignation, which he announced would occur within a year on 7 September 2006³².

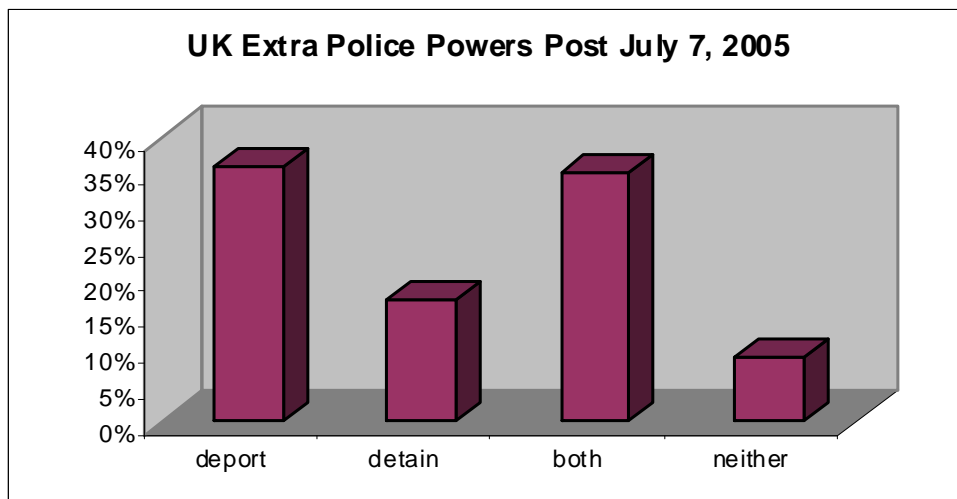
3.4. What Happened?

How did Tony Blair's own party block his anti-terror legislation? In order to answer this question, we will now examine each variable described in Figure 1 to decipher the main cause behind Tony Blair's counterintuitive fate. As detailed above, the independent variable in this article's theory is executive response and threat-shaping. Blair clearly tried to push a civil liberty-reducing response and did so by shaping the terror threat as a broad and urgent one. He continued to forward this response months after the 90-day detention period was turned down by parliament. For example, on March 21, 2006, Blair made a speech where he framed the battle between terrorists and democracies as "a clash about civilization." He stated that, "this is not a clash between civilizations. It is a clash about civilization. It is the age-old battle between progress and reaction, ... between optimism and hope on the one hand; and pessimism and fear on the other"³³. So, Blair did push counter-terror legislation and he did frame the terror threat accordingly. Still, he faced strong legislative opposition, had to fall back on using the police as an excuse for his counterterror agenda, and finally was thwarted in his anti-terror efforts.

Could the institution of parliamentary government have been the cause of Blair's demise? As established above, this cannot be the case. Parliamentary political systems actually allow prime ministers to pass law much more easily than executives in presidential systems. Moreover, the analysis in a previous study on the variant responses of presidential and parliamentary systems' reactions to terror attacks³⁴, showed few differences if any between the two systems' responses to terrorism. Furthermore, counter-terror laws have been repeatedly passed in Britain and have passed quite quickly, as seen in the above case on the 1974 Prevention of Terrorism Act. The only way that prime ministers can have their legislation blocked is if they lose their ruling coalitions. In this case,

it appears that Blair lost his, despite the continuation of Labour rule. But it was not due to institutional constraints. Next let us turn to findings on public opinion and mass fear. First, did the public desire that the government gain extra-police powers after the July 7, 2005 bombings? The answer is yes. An ICM/ News World survey polled respondents using the following prompt: "There are a number of people living in Britain who the authorities have identified as posing a potential terrorist threat. Do you think extra powers should or should not be made available to deport or detain them?" As Figure 2 demonstrates, 88% of respondents to the 17 July 2005 poll said that their government should have extra powers to deport or detain terrorists, or to do both.

Figure 2. UK Extra Police Powers



An alternate explanation for the blocked legislation may be that fear levels did not rise after the attacks. After all, many pundits pointed to the famed "stiff upper lip" of Londoners and their stoic, balanced response to terrorism³⁵. Yet, as Figure 3 demonstrates, mass fear levels in Britain did rise after the

London bombings by 20 percentage points³⁶. Though fear levels receded precipitously within a year of the attacks, this drawdown of fear levels is a common occurrence. Mass fear levels after terror attacks occur generally spike and then recede. Therefore, Britons responded rather typically to this terror attack³⁷.

Figure 3. Percent Fearful of Terrorism in UK, 2004-2006

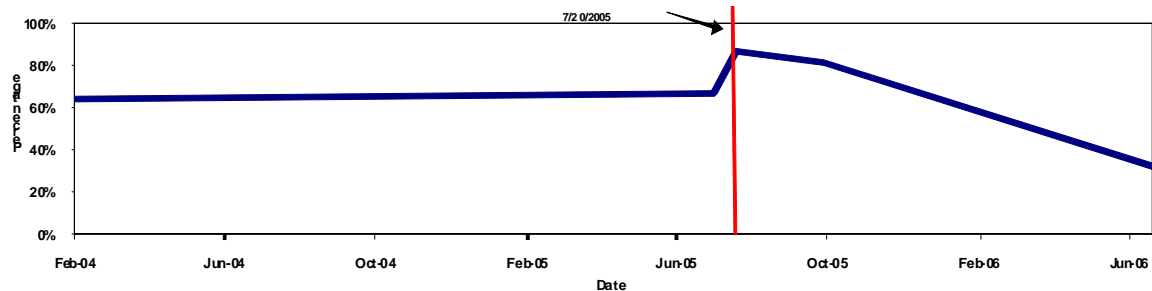
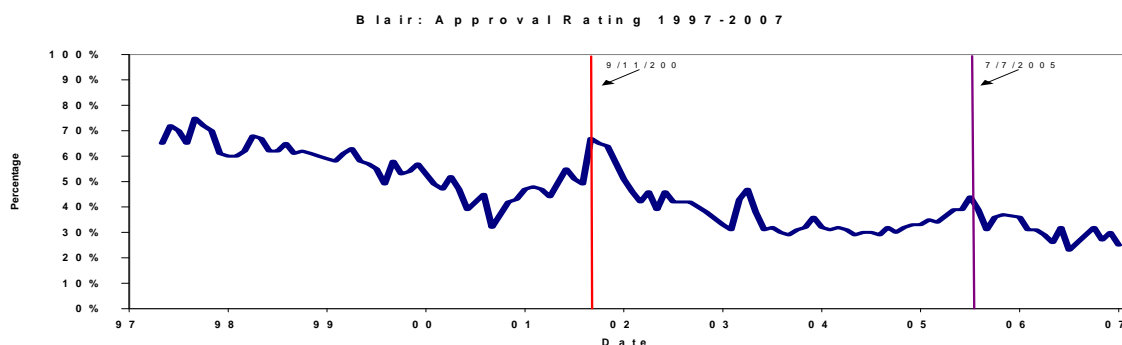


Figure 4. Blair: Approval Rating, 1997-2007



The important poll figure in explaining this case is Blair's approval rating. Figure 4 compiles data acquired from the Ipsos-MORI Political Monitor on the Prime Minister's approval ratings. Surprisingly, Blair saw no rally 'round the leader effect' after the 7 July 7 bombings. His approval ratings, already at 39%, moved upward slightly due to the bombings but then dipped back down to 39% a month later. Without sufficient public support, Blair did not have a strong enough mandate to pass further civil liberty reductions. Notice in Figure 4 Blair *did* see a surge in his support after the 11 September 11 attacks. Thus, not all terror attacks yield increased support for the executive.

3.5. Contributing Factors: Executive Mandate and Previous Legislation

There are two other contributing factors for the failure of Blair's post-London bombings anti-terror legislation. The first is that in addition to Blair's low approval ratings, he did not have a strong mandate. Though it is true that the partisan composition of the House of Commons clearly favored the Prime Minister, as Labour held the majority in parliament, his

party was not behind him. Statements like those above about Blair's actions not being indicative of the Labour Party's platform are testament to that fact; so too, of course, is the fact that Blair's own ministers of parliament voted against him on the anti-terror bill. Though Blair's approval ratings had been low for at least a year before the bombings, his party may have felt pressure from the opposition due to its recent electoral gains. Indeed, Labour had lost 47 parliamentary seats in the 2005 election. The election losses, coupled with the Blair's low approval ratings, drove home the fact that the British public was growing weary of Blair's rule of Labour; his mandate, thus, was weak and his party chose to stand against him for this reason.

A second reason why Blair's legislation was blocked is that anti-terror legislation had just been contentiously passed in March 2005. The March legislation made house arrests for terror suspects, without charge or trial, legal³⁸. These house arrests, called control orders, forbid a terror suspect from using the phone or Internet³⁹. The control order law came into effect only after raucous debate in the House of

Commons and a rare hold-up in the House of Lords⁴⁰.

Blair's leadership of the Labour Party had basically become synonymous with the new "security state" that Great Britain had become. His parliament passed the 2005 Serious Organized Crime and Police Act, which prohibited protestors from demonstrating within one kilometer of Parliament. He also spearheaded the creation of the national system of license-plate recognition cameras and, in 2006, the national identity card system⁴¹. Under Blair, certainly due to the very real threat of terrorism, Britain has become a surveillance state, in which there is one closed-circuit TV camera for every 14 citizens⁴². Blair's rule had incrementally, but radically changed the nature of government in Britain; government was now more pervasive, intrusive and powerful. The public's distaste for this outcome was made clear in the debates over the 2005 pre-London bombings terror bill, and eventually led to the defection of Labour Party members and the ouster of Tony Blair. Blair's weak mandate, exhibited most obviously in his low approval ratings but also in Labour Party electoral losses, and previous legislative actions led to the blocked passage of his anti-terror legislation.

4. THE OKLAHOMA CITY BOMBING

Let us now turn to a second case of counter-terror legislation being substantially blocked by a legislature in order to assess the results of the London Bombings case. The subsequent case examines the blocked passage of President William Clinton's counter-terror legislation after the 19 April 1995 Oklahoma City bombing. Like in the previous case, compromise legislation was eventually passed, in the form of the Antiterrorism and Effective Death Penalty Act (AEDP) of 1996. Still, the AEDP was not passed until a year after the Oklahoma City bombing—and three years after the first World Trade Center bombing.

Here I examine the Oklahoma City bombing looking at executive threat-shaping after the bombing, the legislative debate that transpired, the content of the counterterror legislation proposed, and the reasons for the stalled passage of the post-terror attack legislation.

The case will be examined, once again, by going through the variables the theory described above.

4.1. Executive Threat-Shaping: A Moving Target

On the morning of April 19, 1995 at 9:03am, Timothy McVeigh, an anti-government extremist, drove a rented Ryder truck full of homemade explosive into the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma. The resulting explosion destroyed half of the nine-story federal building and damaged twenty-five surrounding buildings. It also took the lives of 168 people and wounded 674 more⁴³. The Oklahoma City bombing was the largest terrorist attack to date on US soil.

In the immediate hours after the Oklahoma City bombing, Middle Eastern terrorists were thought to have been the perpetrators of the attack. In fact, it was reported on the *CBS Evening News* that a government source had stated that the bombing had, "Middle Eastern terrorism written all over it"⁴⁴. As will be shown below, the fact that a white, US-born, anti-government extremist was behind the attack drastically changed the way in which Clinton framed the threat. Instead of calling for a war against terrorists, Clinton called for the crimes of a narrow group of anti-government extremists to be contained. Clinton's framing of the threat as a crime clearly did not make his proposed counter-terror legislation appear urgent.

On 21 April 1995, Clinton made broad threats against the potential bombers, calling the bombing, "an attack on the United States." He declared that he would consider military retaliation if the bombers turned out to be foreigners. "There is no place to hide," Clinton announced. "Nobody can hide any place in this country, nobody can hide any place in this world, from the terrible consequences of what has been done"⁴⁵. Still, Clinton preached tolerance stating: "This is not a question of anyone's country of origin. This is not a question of anybody's religion. This was murder, this was evil"⁴⁶. Counter-terror legislation had already been introduced in February 1995 under the Omnibus Counterterrorism Act, but the bill had stalled in Congress; now it appeared that passage of new counter-terror legislation would be inevitable⁴⁷.

Four days after the bombing, with the news out that the perpetrator was not a Muslim but rather a right-wing extremist, Clinton spoke in Oklahoma City at the post-bombing memorial prayer service. He tried to calm the families of the victims by recalling the words of a widow whose husband was murdered when Pan American flight 103 was bombed in 1988. She said that, “The hurt you feel must not be allowed to turn into hate, but instead into the search for justice.” But only a few paragraphs later, Clinton asserted that, “one thing we owe those who have sacrificed [i.e., the victims] is the duty to purge ourselves of the dark forces which gave rise to this evil.” Clinton continued to frame the conflict as one between regular Americans and members of irrational hate-groups. He was not attempting to shape the threat as a war, but rather as an important internal struggle between those Americans who follow the rule of law and those who believe it does not apply to them. Indicative of his even-keeled message, Clinton declared that, “we will stand against the forces of fear. When there is talk of hatred, let us stand up and talk against it”⁴⁸. The importance of the conflict seemed to recede as Clinton now assailed militia groups, right-wing extremists and even “the influence centers in our culture—the entertainment industry, the sports industry”⁴⁹.

Clinton’s blunted rhetoric was also present in a 5 May 1995 speech at Michigan State University in which he defended the American government, arguing that Americans have more freedom than most people in the world, and recanted the limits on government imposed by the Constitution. He further stated that, “Our founding fathers created a system of laws in which reason could prevail over fear”⁵⁰. That said, he continued to state that Americans were vulnerable due to the existence of “evil” ultra-right paramilitary groups and pushed the terror threat as one with a great magnitude. He did this by playing on Americans’ worst fears, “No one is free in an America where parents have to worry when they drop off their children for day care, or when you are the target of assassination simply because you work for the government,” he said⁵¹.

Even with the threat shaped as a crime that needed to be contained, the passage of liberty-abridging counter-terror laws appeared certain after the bombing⁵². Yet, on April 24, 1995

Irish Times article that doubted the passage of Clinton’s new law proved prescient. It stated:

“while the mood in the US can be compared to that in Britain in 1974 when parliament rushed through the Prevention of Terrorism Act in the wake of the Birmingham bombings, it is by no means certain the Republican majority in Congress will favor a curtailing of civil liberties, especially when targeted against groups that are more likely to have Republican sympathies”⁵³.

4.2. The Proposed Legislation and the 1996 Antiterrorism Act

Before delving into the year-long debate between the President and Congress over new antiterror legislation, let us first look at the content of the legislation that Clinton proposed, and that was eventually passed. Looking at the legislation here will provide context for the legislative debate that transpired. Clinton’s proposed counter-terror legislation contained the following provisions that made it into the final legislation, which was passed one year after the Oklahoma bombing.

The 1996 Antiterrorism Act, “established a special court that would use secret evidence to deport noncitizens accused of association with terrorist groups; it gave the executive branch the power to criminalize fundraising for lawful activities conducted by organizations labeled ‘terrorist’; it repealed the Edwards amendment, which prohibited the FBI from opening investigations based on First Amendment activities; and it resurrected the discredited ideological visa denial provisions of the [1952] McCarran-Walter Act to bar aliens based on their associations rather than their acts”⁵⁴.

The legislation allowed the FBI to gather information more freely on paramilitary groups⁵⁵, but increased wiretapping authority was blocked by Republicans in Congress who were worried about the curtailment of civil liberties⁵⁶.

Basically, the act allowed the Department of State to designate groups as “terrorist,” and thus made granting visas to their members and providing these groups with humanitarian aid or donations a crime⁵⁷. Americans banks would also have to freeze the funds of the members of any organization deemed as

terrorist⁵⁸. Further, under the Act the government could “invoke ... secret evidence provisions whenever the attorney general determine[d] that public disclosure of the evidence against an alleged ‘alien terrorist’ would ‘pose a risk to the national security of the United States or the security of any person’”⁵⁹. The bill impacted mainly Muslims who were accused of association with terrorist groups⁶⁰.

4.3. The Debate: Republicans Defend Civil Liberties against Security-Minded Democrats

With the terror threat shaped as a marginal one, Clinton’s anti-terror legislation, originally proposed in February 1995, appeared out of place. The President was harping on the threat of hate speech and right-wing zealots⁶¹, while forwarding legislation that made it easier to deport immigrants allegedly linked to terror groups⁶². Five days after the bombing, the Senate passed a symbolic resolution condemning the bombing and praising the President for the rapid aid he helped the victims receive. The resolution also vowed that the Senate would “expeditiously approve” new counter-terrorism legislation⁶³. On April 27, 1995, the Senate leaders of the majority Republican Party introduced an updated anti-terror bill to the judiciary committee. Amending the previously proposed counter-terror bill, the new, proposed bill would add tags made of microscopic particles to raw materials that could be used for bomb making, allow the military to participate in domestic criminal cases, give the FBI more leeway in conducting electronic surveillance, and stiffen penalties for attacks on federal employees⁶⁴.

Though the American public was in a state of fear and Clinton was pushing new legislation, Republican Senator Bob Dole, the majority leader in the Senate, counseled patience. Dole stated, on an ABC news program, his view that, “we better move slowly on the legislation we’re considering, make certain we get it right so we can sit here a year from now ... and say we did the right thing ... instead of getting caught up in emotion and going too far and maybe end up trampling on” an innocent person or group’s rights⁶⁵. In response to the Republican Party’s sense of calm, Clinton publicly argued on 2 May 1995 that America’s open society was vulnerable “to the forces of organized evil,” while U.S. Treasury officials

asked Congress for increased funding and legal authority to combat what they described as a war on the federal government⁶⁶. By the end of the month, Clinton declared that, “Congress has a right to review this legislation to make sure the civil liberties of American citizens are not infringed ... but they should not go slow. Terrorists do not go slow, my fellow Americans. Their agenda is death and destruction on their own timetable”⁶⁷. In response, Senator Dole threatened to “pull down” the counter-terror bill if President Clinton did not rein in Democrats who had added 67 amendments to it⁶⁸.

Three days later, on 7 June 1995, seven weeks after the Oklahoma City bombing, the Senate overwhelmingly passed Bill Clinton’s counterterror legislation in a 91-8 vote⁶⁹. The bill contained a key provision fought for by Republicans that limited the appeals of death row inmates in Federal courts⁷⁰. Two weeks later, the House Judiciary Committee approved the legislation⁷¹, but it would rot in the House for a year before it would finally be passed. A coalition of far-right and far-left members of the House of Representatives stymied the bill on grounds of civil liberties and gun ownership rights⁷².

Clinton’s anti-terrorism bill had been heralded by House Democrats, such as Dick Gephardt, who stated on 15 May 1995: “We must do more than merely convicting those responsible for this horrific act of violence, and bringing them to swift and certain punishment. We must serve warning to all who would use extremist means to advance their extremist ideas: We will use the full force of our laws to find them, to punish them, and to rid our society of their hateful acts. And when those laws aren’t enough, we’ll write tough new laws to rein in their wanton bloodshed and terrorism.”⁷³

While House Republicans counseled patience, some Democrats repeatedly stated that the passage of new counter-terror legislation was both necessary and urgent⁷⁴.

Despite the Democrats’ claims of urgency, an unlikely coalition of special interest groups made up of the American Civil Liberties Union (ACLU), the National Rifle Association (NRA), and Arab and Muslim groups, joined together to block the bill in the House. House Republicans were also uneasy about passing a bill aimed against anti-government libertarians

and gun owners. Meanwhile, House Judiciary Committee chairman Henry Hyde (a Republican) excised the legislation of its roving wiretap provision and tucked into it Republican Party Contract with America crime provisions that relaxed laws on habeas corpus and allowed for speedier death penalties⁷⁵.

On March 13, 1995, the Republican House majority voted 246-171 to weaken Clinton's antiterrorism bill. House members said that they feared the federal government more than they feared terrorists⁷⁶. Finally, the anti-terror legislation, now called the Anti-terrorism and Effective Death Penalty Act of 1996, was passed by the House on 15 April 1996. Democratic Representative Charles Schumer complained that, "this bill should be called the better-than-nothing anti-terrorism bill"⁷⁷. In his weekly radio address, the President bitterly complained that House Republicans had gutted the counter-terror bill, largely by removing its provision for roving wiretaps "under pressure from the Washington gun lobby"⁷⁸. The House gave its final approval for the bill in a bipartisan 293-133 vote on 18 April. Rep. Henry Hyde stated that the compromise legislation, "maintains the delicate balance between freedom and order"⁷⁹. Five days after the one-year anniversary of the Oklahoma City bombing, Clinton signed the new counterterrorism bill⁸⁰.

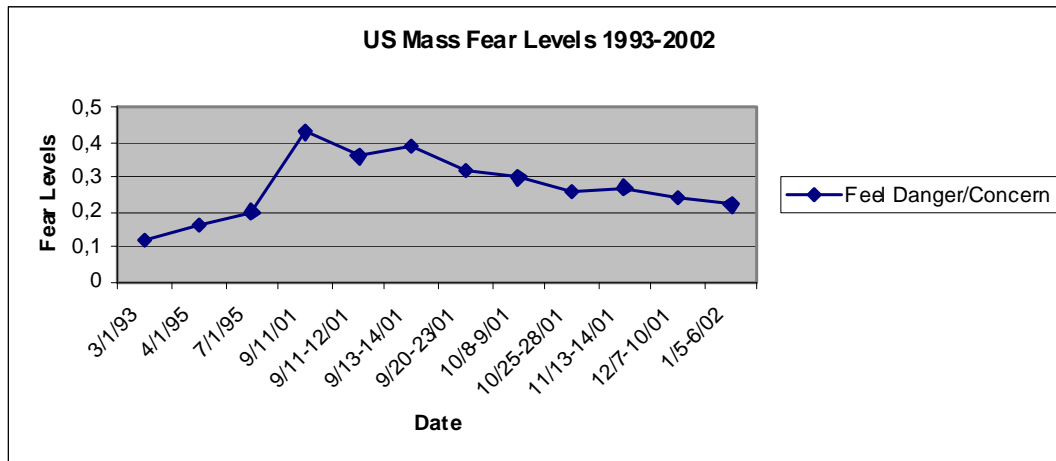
4.4. Why Was Clinton's Anti-terror Legislation Blocked for One Year?

There are numerous reasons for why it took Clinton's proposed anti-terror legislation over one year to pass through Congress. We will evaluate those reasons looking first at executive response and threat-shaping, then public opinion and mass fear, and finally institutional variables. The way in which President Clinton shaped the terror threat certainly hurt his legislation's cause. He shaped the threat as a crime and though he continually spoke to the urgency of the terror threat, his framing of the conflict as one between law-abiding Americans and anti-government hate groups and right-wing extremists did not resonate with Congress or the public. One might argue that he had no choice in shaping the threat as such, but he could have pointed more often to the 1993

World Trade Center bombing, the original cause for the proposed legislation, as well as the 1993 siege of the Branch Davidians in Waco, Texas. Instead, the President pointed fingers at right-wing personalities such as Rush Limbaugh and at the right to bear arms, a strategy which alienated the majority Republican Congress.

On the public opinion front, mass fear levels were high after the Oklahoma City bombing, but the nature of public opinion surveys makes it difficult to tell whether or not there was a bump in mass fear levels. At best, available data allows us to surmise that there was a rise in fear levels after the bombing and conclusively state that fear levels were high. This is because polling on terrorism tends to occur after terror attacks occur. That said, as Brigitte Nacos notes, terrorism rises and recedes very quickly as a salient issue in the mind of Americans. She notes that after the 1985 TWA hijacking, 13 percent of Americans saw terrorism as the most important problem facing their country according to a CBS/*New York Times* survey, whereas six months earlier terrorism had not been mentioned at all as an important problem facing America and six months later, less than 1 percent of respondents mentioned terrorism when faced with the same query⁸¹.

Figure 5 combines data from polls asking Americans about whether they *personally* felt danger from terrorism⁸². It clearly shows a rise in terror fears after Oklahoma City, though obviously not as high as the fear levels after the attacks of 11 September. Note that the first poll in Figure 1 was conducted after the first attack on the World Trade Center in 1993. In addition to this data, polls asking Americans how worried they were that they or someone in their family would become victims of terrorism found that 42 percent of Americans were very or somewhat worried about this scenario in April 1995, a figure which receded to 35 percent a year later and 27 percent two years later⁸³. Moreover, in the days after the Oklahoma bombing, 84 percent of Massachusetts residents polled by *The Boston Herald* believed that it was "very likely" or "somewhat likely" that an incident similar to the Oklahoma City bombing would occur in the US in the next few years⁸⁴. It is safe to say, then, that fear levels were high after the Oklahoma City bombing.

Figure 5

There was also a public demand for government action after the Oklahoma bombing. This is indicated by polls that show that Americans were willing to trade liberties for security after the Oklahoma City bombing. An April 1995 *Los Angeles Times* survey found that 49 percent of Americans thought that it was necessary for the average person to give up civil liberties in order to bolster security after the Oklahoma City bombing compared to 43 percent who thought that curbing liberties was unnecessary.

Just as in the previous case, however, approval ratings were not in the executive's favor. President Clinton's approval rating after the Oklahoma City bombing was a paltry 45 percent according to the Harris Interactive poll. Moreover, Clinton's approval ratings saw no 'rally effect' after the terrorist incident in Oklahoma. Indeed, his average approval rating for 1995 was 47%, similar to his 46% average rating from the previous year⁸⁵. Here it is important to emphasize that once again approval ratings seem to have played a big part in determining the fate of an executive's counterterror legislation.

All three political constellation variables contributed in explaining why Clinton was unable to push through his counter-terror bill through Congress. Recalling that these variables are legislative composition, party competition and political institution, let us look at the first one. In 1994, President Clinton's party lost more seats than in any midterm election since 1946: Democrats lost 54 seats and control of House for the first time in 40

years as well as nine Senate seats⁸⁶. The historic shift of power emboldened the GOP to

challenge Clinton, and also was indicative of a weak executive mandate. Party competition, as measured by temporal proximity to an election, also had something to do with why the legislation was blocked, as 1996 was a presidential election year and the head of Senate Republicans, Bob Dole, was running for president. Finally, the bicameral nature of the American legislature played a strong role in halting the quick passage of counter-terror legislation. As explained above, the Senate quickly passed Clinton's anti-terror bill after Oklahoma City, but the House halted its passage for a full year. Although many scholars have posited that presidential systems are more likely to lead to abuses of power, due to the presence of a more powerful executive⁸⁷, here the legislative-executive antagonism inherent in the American system and particularly the existence of the bicameral legislature served as a strong check against executive power.

CONCLUSION

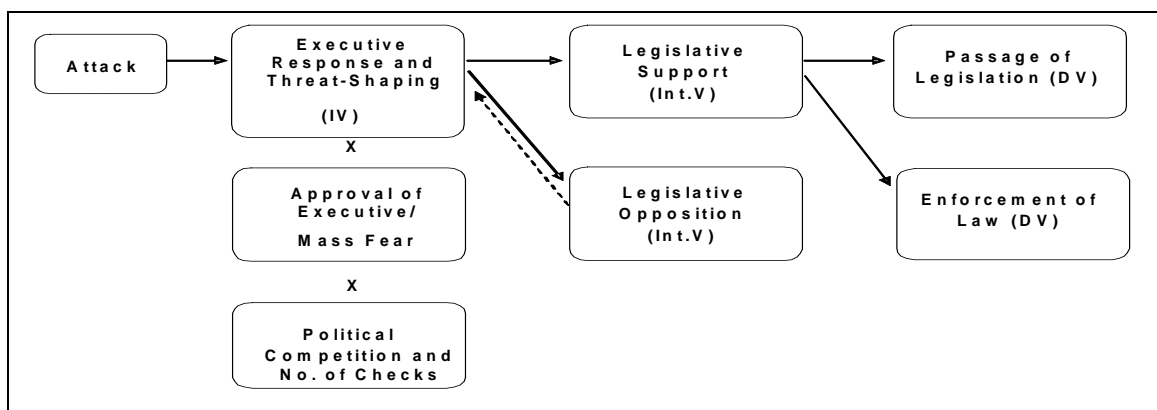
In the majority of cases where large terrorist attacks lead to executives pushing for broad counterterror legislation, the executives get their way. The cases in this article exhibited the value of the following five factors. First, executive threat-shaping was once again bolstered as the independent variable in pushing counterterror legislation. Though both Clinton and Blair were blocked in their initial pursuits of legislation, they both eventually got most of what they wanted from their respective

legislatures though with a time delay. Shaping the terror threat as a law enforcement issue, or a crime, proved to be a hindrance to passing anti-terror law. Both Clinton and, at times, Blair framed the terror threat as a criminal matter and this framing simply made the threat appear less urgent and important. Second, also bolstering the importance of the executive in pushing post-terror attack responses, executive approval ratings proved to be critical in determining whether or not anti-terror laws would be passed. Neither case saw a rally ‘round the leader’ effect after the terror attack and both leaders examined had poor approval ratings both before and after the attacks. That said, mass fear levels, though a constant across cases, were clearly important in pushing the threat.

Third, the executive’s mandate proved to be particularly important in these cases. Even with a favorable partisan composition of the government, Blair’s mandate was weak given poor election results and a poor approval rating. Clinton’s mandate, also given poor election results and a poor approval rating, was also weak. Fourth, political competition was heightened in the Clinton case, and arguably in the Blair case. For Clinton, impending elections emboldened opposition Republicans. For Blair, growing unrest within the Labour Party and calls for Gordon Brown to replace him as leader of the party created internal political competition. Finally, political institutions, previously found to be unimportant in the passage of counterterror legislation, were critical in shaping the Oklahoma City bombing case. The bicameral nature of the American legislature, rather than the presence of an office of the executive, created a strong and sufficient check on Bill Clinton’s counterterror bill.

Given these findings, the above theory can be revised to look as it does below. In Figure 6, all of the variables remain the same with the exception of the constraint variables that appear below the executive response and threat-shaping independent variable. Instead of generally showing public opinion and mass fear levels constraining the executive, it has now been shown that executive approval ratings and mass fear levels constrain executive action. Furthermore, the political institutions variable has exhibited that proximity to elections, composition of government, temporary right-left government coalitions, and bicameral legislatures can stymie the passage of anti-terror legislation. The political institutions variable is here revised as political competition and number of checks on the executive. Political competition means both temporal proximity to election and internal competition within a party that, in a parliamentary system of government, may lead to a leadership change or the calling of a new election. Checks on government can come in the form of a bicameral legislature, a temporary coalition, or an opposition party controlling the legislature. Other cases may show that other checks are important, but it is clear that the more checks on the executive, the harder it will be for him to pass legislation. That said, these checks, such as the partisan composition of the legislature and temporary coalitions, are not necessarily etched into institutions. Rather some are institutional but most are borne out of the regular legislative process. By defining this constraint variable as “political competition and number of checks,” I have taken account of the findings made here while allowing for future idiosyncratic outcomes in other cases.

Figure 6: Revised Theory



Although stating that increased checks on government executives can stop civil liberty-abridging legislation sounds heartening, most of the time counterterror laws get quickly passed after major terror attacks. The main factor behind the blocked passage of counterterror laws appears to be weak executive mandates, which allowed existing checks to take effect and new checks—in the form of right-left coalitions—to form. It remains to be seen whether a strong, well-liked executive can be blocked in his pursuit of liberty-reducing laws after a terror attack. Perhaps increased awareness about the debate surrounding trades of liberty-for-security in response to terrorism will embolden both members of government legislatures and their publics to stop chief executives from passing liberty-abridging laws. But what may ultimately be necessary is the rise of government leaders who have the strength to counsel patience and emphasize the values of our liberties after terror attacks occur. After all, terror attacks are fleeting, though terrible and tragic, events. But, the loss of liberties they too frequently portend can be permanent.

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- ⁸¹ Nacos, Brigitte L. *Terrorism & the Media: From the Iran Hostage Crisis to the Oklahoma City Bombing*. (New York: Columbia University Press 1994), pg. 70.
- ⁸² The data comes from March 1993 and April 1995 Gallup/CNN/USA Today polls asking respondents, "Do you personally feel any sense of danger from terrorist acts where you live and work, or not?" and CBS/New York Times polls from 9/11/2001 to early January 2002 which asked Americans, "Would you say you personally are very concerned about a terrorist attack in the area where you live, or not?"

⁸³ Data comes from April 1995 and April 1996 Gallup/CNN/*USA Today* polls and an April 1997 Yankelovich/Time/CNN poll which asked respondents: “How worried are you that you or someone in your family will become a victim of a terrorist attack similar to the bombing in Oklahoma City?”

⁸⁴ Miga, Andrew. “Terror fears hit home,” *The Boston Herald*, 30 April 1995.

⁸⁵ Holland, Keating. “Clinton Approval Rating at All-Time High,” CNN.com, 16 January 1997, <http://www.cnn.com/ALLPOLITICS/1997/01/16/poll.clinton/>.

⁸⁶ Campbell, James E., “The Presidential Pulse and the 1994 Midterm Congressional Election,” *The Journal of Politics*, Vol. 59, No. 3 (Aug., 1997), pp. 830-857.

⁸⁷ On this point, see the discussion in Rubin, “Freedom and Order,” chapter 5.