

## Introduction

---

In the aftermath of the September 11 attacks on America, governments across Europe declared their unity in the face of Al-Qaeda. Yet Jean-Louis Bruguière, the leading French counterterrorist investigator, was not feeling much solidarity with his British counterparts. The UK government and security agencies were allowing a senior radical cleric, Abu Qatada, to roam free in London. Although Qatada was suspected of being at the centre of Al-Qaeda recruiting in the UK, he was not arrested in the months after 9/11. In late 2001, Qatada disappeared, and Bruguière declared his frustration: ‘I can say that if he was in France, he would already have been arrested in this business. This was not the case because he was in Britain, and Britain apparently permits this sort of activity.’<sup>1</sup> Reflecting on this criticism some years later, a senior British government counterterrorism official conceded that the French authorities were right to take action against radical preachers and that they had done so earlier than the British. Yet many aspects of the French approach would not be appropriate for the UK, he added: ‘The [British] security services are actually law-abiding organisations. They – unlike the French, I suspect – would not disrupt through harassment.’<sup>2</sup>

This episode forms part of a broader pattern. When faced with similar threats, Britain and France have often responded differently. It is not immediately clear why this should be the case. The two countries are both western European liberal democracies and members of the European Union with broadly comparable police, intelligence and military resources at their disposal. As this book will show, both states face threats from Islamist terrorism, which are similar in key respects. Furthermore, policymakers in the UK and France share a perception that their countries are ‘designated target[s] at the heart of a Europe under threat’, facing an

<sup>1</sup> Quoted in Canadian Broadcasting Corporation, ‘The Recruiters’, broadcast 9 June 2002.

<sup>2</sup> Interview with a former senior UK government official [UK-A], London, 4 November 2005.

## 2 Introduction

enemy that is ‘intent on inflicting mass casualties without warning’.<sup>3</sup> While this similar threat perception has led Britain and France to converge in some respects, such as their increasing emphasis on preventive counterterrorism, the two states have continued to display significant differences in their responses to transnational jihad; particularly in their anti-terrorist legal regimes, their police and intelligence operations against militant networks, and their co-ordination and reform of counterterrorist agencies. What explains these differences in approach? In this book, I argue that distinctive norms, institutions and organisational routines, which were formed in the past in France and the UK, continue to cast an influential shadow over the development of counterterrorism in the two countries, leading them to make divergent responses to a similar threat.

Only the narrow English Channel physically separates Britain and France, but on key areas of counterterrorism, they have often been poles apart. Take, for example, the co-ordination and reform of counterterrorist agencies, which is the first area of policy and practice considered in this book. While the UK’s main security agencies have worked closely together to fight terrorism, France’s police and intelligence services have been divided over who should take the lead against the threat. On the other hand, France has brought intelligence agencies and judicial actors far closer together for terrorism cases than would ever be possible in the UK. These differences in inter-service co-operation have significant consequences. Police and intelligence agencies need to co-ordinate their activities and share information in order to uncover and prevent potential terrorist attacks. The connection between intelligence and justice is crucial for the authorities’ ability to convict and imprison terrorist suspects, although an overly close relationship between these two domains can undermine civil liberties. Britain and France’s different choices in these areas have important implications for national security and for society.

No less significant are the differences between the two countries’ legal regimes for the detention and trial of terrorist suspects, which is the second area examined in this book. While both states emphasise a criminal justice response to terrorism, they implement it in very different ways. Britain has mainly used its ordinary courts to deal with suspected Al-Qaeda terrorists, but the government also added controversial new powers to its legal toolkit, such as control orders, which allowed the authorities to exercise extensive

<sup>3</sup> French Government, *Prevailing Against Terrorism: White Paper of the Government on internal security in the face of terrorism* (Paris: Documentation Française, 2006), Official English translation, pp. 32–3; HM Government, *Pursue, Prevent, Protect, Prepare: The United Kingdom’s Strategy for Countering International Terrorism*, Cm 7547 (London: TSO, March 2009), p. 6.

control over terrorist suspects without bringing them to trial. The introduction of such powers, which stand outside normal judicial procedures, has been highly contested in the UK and has given rise to repeated and sometimes inconsistent reforms of anti-terrorist legislation. On the whole, the trend has been for the British government to take on flexible powers for itself, but to be considerably restrained in its use of these powers. By contrast, France's legal response to terrorism has been consistent and has not required constant reform. The French authorities have relied on special courts and exceptional counterterrorism procedures *within* their judicial system. The centrepiece of their legal response to terrorism is a group of investigating magistrates – a type of judge of which there is no equivalent in the English legal system. Such magistrates direct law enforcement investigations into terrorism, thus bringing together elements of the judicial and the executive arms of the state. Overall, as will be outlined below, the French authorities have been more draconian in their application of flexible anti-terrorism powers than the British.

France and the UK have also shown significant differences in their approaches to counterterrorist operations, which is the third area examined in this study. During the 1990s, the contrast was particularly stark. While France cracked down on militant Islamist networks that had repeatedly attacked it, the UK did not feel threatened by the Islamist radicals on its soil. The British police and intelligence services monitored these activists but essentially gave them free rein to promote and fund terrorist campaigns in other countries. When the Al-Qaeda threat to the UK rose in the years after the September 11 attacks, the British security agencies began to mount extensive and forceful arrest operations against suspected terrorists. These actions signalled a degree of convergence with the French approach, but significant differences remained. The French security agencies have always been prepared to carry out indiscriminate raids in Islamist circles, arresting as many as 160 people in one fell swoop. The British police, on the other hand, have been more targeted in their arrest operations. Moreover, while France has consistently taken a zero tolerance approach against supporters of Islamist terrorism, the British authorities continued to show considerable restraint, even after 9/11. The use of London's Finsbury Park mosque for some years as a major meeting point for extremists was tolerated until 2003, while a number of militant recruiters and preachers went unchallenged until 2004 or in some cases 2007.<sup>4</sup>

<sup>4</sup> On the Finsbury Park mosque, see the comments by a former senior police officer, Peter Clarke, below p. 268 and Sean O' Neill and Daniel McGrory, *The Suicide Factory: Abu Hamza and the Finsbury Park Mosque* (London: Harper Collins, 2006), pp. xxi-xxii, 66–94, 221–9.

4 Introduction

The different paths taken by Britain and France in their legal and operational responses to terrorism have important consequences. If the state does not take sufficiently robust action, it can leave society overly vulnerable to terrorist attacks. Yet excessively draconian measures may have even more pernicious effects, diminishing the legitimacy of the state in the eyes of its citizens and feeding the alienation that can lead to more terrorism in years to come. British and French responses to this dilemma have implications not only for European security but also for the domestic security of the United States. Britain, France and other western European countries are a major source of homegrown Islamist terrorism, a target of attacks and a base for terrorist operations against the American homeland.<sup>5</sup> With western Europe becoming a key battleground for Al-Qaeda-inspired terrorists, there has been a keen interest on both sides of the Atlantic in how European states respond to the dilemmas posed by this threat.<sup>6</sup>

This book compares British and French counterterrorism from 1995 to 2011, a period in which they first faced different and then similar levels of threat from Islamist terrorists. For several years prior to 9/11, France faced a threat from an Algerian terrorist group, *Le Groupe Islamique Armé*. In 1995 and 1996, this group and its sympathisers carried out a series of attacks in France, killing fourteen people and wounding over 230. As the activities of Algerian militants were supplemented by a growth in transnational terrorist networks in the following years, France undoubtedly faced a greater threat from Islamist terrorists than did Britain and other European countries during the 1990s. This greater threat level was an important reason why France was more active against Islamist terrorism than Britain and other Europeans between 1995 and 2001.

However, the threat level was never the only factor influencing French and British counterterrorism. This became clearer after September 11, 2001 when the overall level of threat posed by Islamist terrorism to the two countries began to converge. While jihadist groups continued to threaten France, Islamist-inspired terrorists now expanded their attack planning against the UK as well. One of their plots finally succeeded in July 2005 when a British-based cell with ties to militant camps in Pakistan launched suicide attacks on London, killing fifty-two people and injuring more than 700. Overall, in the years since 9/11, France and Britain have faced a similar type and level of threat from Islamist terrorism. French and British decision-makers' perceptions of the threat have also been similar in key respects, such as their common view of the terrorists' capabilities and

<sup>5</sup> Oliver Roy, 'Europe's response to radical Islam', *Current History* 104 (November 2005), 360.

<sup>6</sup> For a discussion of the keen US interest in this, see below, the Conclusion.

unrestrained intent to cause mass casualties. This similar threat perception has led the two states to converge in some ways, notably by reinforcing the preventive nature of their anti-terrorist legal regimes and by arresting large numbers of suspected Islamist terrorists. As outlined above, however, significant differences have remained between Britain's and France's approaches to inter-agency co-ordination and reform, anti-terrorist legislation, and operations. Given that they have been facing a similar threat from Islamist terrorism and have perceived it similarly, why have France and the UK continued to display substantial differences in their responses to that threat?

To answer this question, I focus on the influence of historical legacies that operate at three distinct, but related, levels. At the level of society or the political community, norms concerning security and liberty have a strong influence on national responses to terrorism. At the level of the high institutions of state, there are certain inter-institutional conventions governing relations between the judiciary and the government, which also play an important role. Finally, at the level of professional security agencies, the organisational routines of police and intelligence services have a considerable impact on responses to terrorism. The character of these norms, institutions and routines differs significantly between Britain and France, leading these two neighbouring European states to take divergent approaches to key aspects of counterterrorism.

Considering the role of domestic norms, my research indicates that the most influential elements of French society (such as government, political parties and the media) show a large degree of consensus on the appropriate balance between security and liberty. The predominant view in France is that the security of the Republic supersedes other considerations. In Britain, by contrast, influential actors propagate radically different, competing ideas on how society should seek to balance national security and the civil liberties of individuals. As we shall see, this norm competition has been a moderating influence on the British authorities, constraining both their legislative and operational responses to terrorism. In France, on the other hand, the normative consensus on the pre-eminence of security has given the French authorities space to make a more draconian legal and operational response than their British counterparts. As Chapter 2 will outline, the different normative contexts of France and the UK have their origins in the two countries' distinctive historical experiences and in how these histories are interpreted today. Such norms are deep-seated forces that cannot be easily overturned.

Institutions are a second historically grounded source of divergence between Britain and France. There are contrasting inter-institutional conventions in the two countries governing the relationship between the

6 Introduction

judiciary on the one hand and the government and its security agencies on the other. France has a long-standing civil law system and a statist tradition which accords positive value to the state and the Republic. In this context, French investigating magistrates, which constitute a special category of judge, have been able to work directly with both police and intelligence agencies on Islamist terrorism cases to prepare evidence for court. As we shall see, this integration of security agencies and elements of the judiciary may compromise the checks and balances of the judicial system. But since it facilitates the conviction of terrorist suspects, it has won the confidence of the French government, which has been content to rely on exceptional counterterrorism measures within the judicial system, obviating the need for regular legislative reform. In Britain, by contrast, the adversarial legal system and strict notions of judicial independence have combined to keep police and intelligence work more distant from judicial actors. Such conventions help to maintain checks and balances and the legitimacy of the justice system, but they have had a negative effect on the British authorities' ability to convict terrorist suspects. Against this background, the government tried to circumvent the ordinary judicial system by introducing control orders and other administrative powers. Yet, faced with considerable opposition, the government struggled to maintain control of the agenda and repeatedly introduced legislative reforms, some of which were inconsistent with its previous policies.

Thirdly, at the level of professional security agencies, I argue that counterterrorist police and intelligence services follow certain long-standing routines, which exercise a key influence on how they organise to face a threat. A large body of research tells us that organisations in general tend to rely on pre-existing repertoires of action. These routines are usually the product of particular historical circumstances and are not self-evident responses to the current environment. Thus different organisations may adhere to different routines even when facing a similar problem. For example, the French police and intelligence agencies have relied on informal routines to co-ordinate their investigations into Islamist terrorism. These routines have tended to favour 'bottom-up' organisational change, independent initiatives by individual agencies and, in some cases, fierce inter-service rivalry. In Great Britain, by contrast, the police and intelligence agencies with chief responsibility for counterterrorism have tended to use formal routines to co-ordinate their investigations. These routines have helped to form a British proclivity for 'top-down' organisational reform and an ability on the part of the main security agencies to work closely together on investigations into Islamist terrorism.

In sum, this book seeks to show how an interaction between perceived threats and certain legacies of history helps to shape the development of



Figure 1: The formation of counterterrorist (CT) policy and practice

counterterrorist policy and practice. More specifically, it argues that decision-makers’ threat perceptions are filtered through the distinct norms, institutions and routines of France and the UK, which creates different approaches to inter-agency co-ordination and reform, anti-terrorist legislation, and operations in the two cases (see Figure 1).

Debating explanations of counterterrorism

Apart from accounting for the British and French cases, the argument presented here can also contribute to the development of a broader debate on the factors that shape the formation of counterterrorist policies in liberal democratic states.<sup>7</sup> Why do states respond to terrorism in the particular ways they do? Scholars offer a range of different explanations.<sup>8</sup> Some argue that the nature of a state’s counterterrorist policy depends on the nature of the threat that it is facing. Jeremy Shapiro and Daniel Byman, for example, emphasise that the most dangerous Islamist terrorists threatening the United States are found not within the country, but in other regions of the world. The nature and location of this threat, they argue, leads America to direct its pursuit of terrorists abroad, which naturally favours a military, more than a criminal justice, response. By contrast, since leading European states face significant internal threats from Islamist terrorism, they place more emphasis on using intelligence and law enforcement tools against

<sup>7</sup> By liberal democracy, I mean a system of government in which the people elect their leaders, with protections for individuals’ rights based on the rule of law and an independent judiciary. See Larry Diamond, *Developing Democracy: Toward Consolidation* (Baltimore: Johns Hopkins University Press, 1999), pp. 2–3, 10–12.  
<sup>8</sup> Notwithstanding the studies discussed below, this question has received relatively little attention in the counterterrorism literature, which has tended to focus more on descriptive case studies and assessments of effectiveness. For a literature review, see Frank Foley and Max Abrahms, ‘Terrorism and counterterrorism’, in Robert Denmark *et al.* (eds.), *The International Studies Encyclopedia* (Oxford: Wiley-Blackwell, 2010).



8 Introduction

these foes on their own soil.<sup>9</sup> Following a similar view, many analysts, commentators and policymakers believe that differences in the character or level of the terrorist threat are a sufficient explanation for the differences between states' counterterrorist policies.<sup>10</sup>

Notwithstanding their emphasis on threats, Shapiro and Byman also highlight the importance of a second factor – state capability. In their view, the United States' unmatched military capabilities 'lead naturally to a much greater tendency to use force'. Since European states do not have the capability to effectively combat terrorists abroad with military force, 'they have made a virtue out of necessity and have concentrated on fighting terrorism at home' with police and intelligence services.<sup>11</sup> From an International Relations (IR) theory standpoint, such analyses take an implicitly realist perspective in their emphasis on threats and capabilities.<sup>12</sup>

At the other end of the IR scholarship spectrum, some authors have argued that cultural factors are the most important influence on the formation of counterterrorist policies. For Wyn Rees and Richard Aldrich, the differences between American and European responses to terrorism stem not from different threats or capabilities, but from their contrasting 'strategic cultures'. The US belief in the superiority of American values and the justified nature of its global leadership serves to legitimise a national security culture that privileges military force in several fields, including counterterrorism. Across the Atlantic, by contrast, the authors observe a 'regulatory' and legal-minded European culture, informed by both EU integration and leading states' experiences of domestic terrorism. This strategic culture, they argue, has led Europeans to focus on criminal justice responses to terrorism and adherence to international law.<sup>13</sup> Peter Katzenstein offers a more specific cultural

<sup>9</sup> Jeremy Shapiro and Daniel Byman, 'Bridging the transatlantic counterterrorism gap', *Washington Quarterly* 29:4 (Autumn 2006), 36–7, 40, 43.

<sup>10</sup> Rohan Gunaratna, 'The post-Madrid face of Al-Qaeda', *The Washington Quarterly* 27:3 (Summer 2004), 91–2, 94–5; Ludo Block, 'Evaluating the effectiveness of French counterterrorism', *Terrorism Monitor* 3:17 (8 September 2005), p. 6; Marc Perelman, 'How the French fight terror', *Foreign Policy*, 19 January 2006: [www.foreignpolicy.com/articles/2006/01/18/how\\_the\\_french\\_fight\\_terror](http://www.foreignpolicy.com/articles/2006/01/18/how_the_french_fight_terror). Several of the French practitioners interviewed for this study also explained the evolution of France's counterterrorist system solely with reference to the threats that it has faced (see Chapter 1). For a critical discussion of such explanations, see Mariya Y. Omelicheva, 'Combating terrorism in Central Asia: explaining differences in states' responses to terror', *Terrorism and Political Violence* 19:7 (September 2007), 375, 383–4.

<sup>11</sup> Shapiro and Byman, 'Bridging the transatlantic', 40.

<sup>12</sup> For an IR realist account of the role of threats in world politics, see Stephen M. Walt, *Origins of Alliance* (Ithaca, Cornell University Press, 1987).

<sup>13</sup> Wyn Rees and Richard J. Aldrich, 'Contending cultures of counterterrorism: transatlantic divergence or convergence?', *International Affairs* 81:5 (September, 2005), 908, 910, 913–16, 919.



explanation in his focus on the role played by norms of appropriate behaviour. Comparing Germany and Japan, he outlines the two countries' different self-conceptions and norms, arguing that these factors explain why Germany has made a more active response to terrorism than Japan, both at home and abroad.<sup>14</sup>

Other authors emphasise the importance of institutions. Writing about the United States and Germany, respectively, Martha Crenshaw and Giovanni Capoccia argue that the diffused structures of power within these countries constrain the development of their counterterrorist policies.<sup>15</sup> In her study of the American case, Amy Zegart also highlights this institutional factor and adds that a change-resistant culture within the leading intelligence agencies was a second reason why the US government failed to adapt to the rise of new terrorist threats after the Cold War.<sup>16</sup>

This book seeks to build on the insights provided by these studies into the role of culture, norms and institutions in shaping state responses to terrorism. Yet such studies are not without their problems. Rees and Aldrich highlight the importance of different strategic cultures in Europe and America, but others would argue that their different capabilities and threat environments are the real driving forces behind their divergent counterterrorist policies. It seems reasonable to suggest, as Shapiro and Byman do, that a largely external threat begets an external military response, whereas a significant internal threat brings forth a criminal justice response. Yet Rees and Aldrich do not treat different threats and capabilities as alternatives to their cultural hypothesis. Their analysis would need a more detailed consideration of these factors in order to respond persuasively to this point. A similar objection can be raised against Peter Katzenstein's argument for the effect of norms on German and Japanese counterterrorism. Since the attacks of September 11, 2001, Germany has faced a considerably higher level of threat from Islamist terrorism than Japan. Katzenstein readily admits this, and it leads him to include a second factor – 'differences in the magnitude of threat' – in his theoretical discussion.<sup>17</sup> However, this threat-level factor features little in his empirical analysis. The main focus of the article is to show that the

<sup>14</sup> Peter J. Katzenstein, 'Same war – different views: Germany, Japan, and counterterrorism', *International Organization* 57:4 (Fall 2003), 731–60.

<sup>15</sup> Martha Crenshaw, 'Counterterrorism policy and the political process', *Studies in Conflict & Terrorism* 24:4 (2001), 329–37; Giovanni Capoccia 'Germany's response to 9/11: the importance of checks and balances', in Martha Crenshaw (ed.), *The Consequences of Counterterrorism* (New York: Russell Sage Foundation, 2010), pp. 285–334.

<sup>16</sup> Amy Zegart, *Spying Blind: The CIA, the FBI and the Origins of 9/11* (Princeton University Press, 2007), pp. 45–54, 121–7.

<sup>17</sup> Katzenstein, 'Same war – different views: Germany, Japan, and counterterrorism', 735–6.

10 Introduction

different norms of the two countries explain among other things why Germany's response to terrorism is more active than Japan's. Yet Katzenstein's relative neglect of the threat-level variable may undermine his argument. He presents considerable evidence for the role of norms, but how can we be sure that Germany's more active stance is not simply due to the greater threat that it faces? In sum, the drawback of these studies is that the authors compare country cases that do not allow them to respond fully to objections and alternative hypotheses that focus on the nature of the threat.

Given that there is something of an impasse between these rival explanations of counterterrorist policies, I suggest that a comparative analysis of British and French responses to Islamist terrorism can help to move this debate on. It is one thing to know that states with different capabilities in different continents, facing different threats, will respond differently to terrorism. It is another thing to learn that two comparable, neighbouring states facing similar threats still show significant differences in their responses to these threats. This, I will argue, is what one discovers by comparing France and the UK. Both are western European liberal democracies, based on the rule of law, and members of the European Union and NATO. As 'middle powers' possessing comparable military, diplomatic and financial capability, both states endeavour to use these capabilities to maximise their international influence.<sup>18</sup> They also have comparable resources and capability in terms of police and intelligence services. Lacking a totalitarian period in their modern histories, they do not display the complications in their attitude towards the use of force that are associated with states that do have such a legacy.<sup>19</sup> As Chapter 1 will outline, they both have significant previous experience of terrorism, albeit different types, and they currently face a similar threat from Islamist terrorism. Yet, despite these similar characteristics, the UK and France still display significant differences in their counterterrorist policies and practices.<sup>20</sup>

<sup>18</sup> This approach contrasts with the era of the German 'trading state', for example. See Peter Katzenstein, 'Coping with terrorism', in Judith Goldstein and Robert O. Keohane, *Ideas and Foreign Policy: Beliefs, Institutions and Political Change* (Ithaca: Cornell University Press, 1993), p. 266. On Britain and France as middle powers, see for example Barry R. Posen, *The Sources of Military Doctrine: France, Britain and Germany between the World Wars* (Ithaca: Cornell University Press, 1984), pp. 194, 243.

<sup>19</sup> See Katzenstein, 'Same war – different views: Germany, Japan, and counterterrorism', 736, 740, 743.

<sup>20</sup> To understand why states respond differently to terrorism, this study uses the 'most-similar' method of case selection. I have selected two cases with many similar general characteristics (possible 'independent variables'), but which nevertheless display variation on the 'dependent variable' – their counterterrorist policies and practices. See Alexander George, 'Case studies and theory development: the method of structured, focussed