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THE CHANGING ARCHITECTURE OF THE NATIONAL SECURITY STATE

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1 INTRODUCTION

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Fulfilling its citizens' desire for security has always been seen as a classic task of the state as well as a justification for its existence. This argument dates back a long time in the history of political ideas, at least to Hobbes' description of the *Leviathan*. To absolve itself of that task, the state developed instruments to deal with external threats—mainly the military—and to provide internal security; it is the latter aspect that this chapter focuses on. The distinction between the two spheres of external and internal security, however, is more analytical than grounded in reality, for—as will become evident in the discussions below—mutual influences evidently exist between the two. But a further reason to distinguish their analysis is that the tasks of the military and the police have classically been separated in the modern Western state (Reinhard 1999: 363–370).

Much has been written about the relationship between the state and physical force, from Thucydides' account of the Peloponnesian war to Charles Tilly, whose phrase that "war makes states and states make war" (1990) remains influential but contested. On the domestic side, though, Max Weber's definition of the modern state as possessing a monopoly of legitimate physical force is generally accepted. The shape of modern states and the tasks they fulfill, however, have been subject to substantial change in the century since Weber coined that phrase.

In recent years, the transformations of the state that this Handbook covers have not left the area of domestic security unaffected, either. However, as will be argued below, here we find a deviation from the well-known pattern that research has shown to dominate most other policy areas, in which the state has been delegating tasks to other actors and has been taking on a more "hands-off" approach (Genschel and Zangl 2008, 2014): in the field of domestic security, state involvement—measured by such indicators as manpower, legislation, and budgets—has increased substantially. The domestic national security state,

in other words, has grown at a time when state involvement experienced a reversal of the trend of growth that had characterized the decades after World War II; while other dimensions of the state shrank, the elements of the state concerned with domestic security have experienced growth and structural change.

2   THEORETICAL PERSPECTIVES ON THE NATIONAL SECURITY STATE

The "national security state" is a concept that has several meanings, ranging from the realist state concept in the study of international relations to the concrete construction of the US security system in 1947—when the National Security Act set up institutions such as the National Security Council and the Central Intelligence Agency (CIA) as foundations of the national security state—to a general understanding of the institutions that in any state are charged with the conduct of security policy (Ripsman and Paul 2010: 10–12).

In this chapter, the term "national security state" will focus on the latter meaning, with special emphasis on the domestic sphere, that is, the maintenance of internal security. As mentioned earlier, this is a distinction in terms of the instruments the state predominantly uses (police, not military) and at whom its efforts are directed (inhabitants of the state territory, not outsiders). This distinction is analytical, because the *internal* security sphere is not necessarily independent from the *external* security sphere: threats from abroad can influence the national security state substantially.

The "Garrison State"

Harold Lasswell's theory of the "garrison state" (Lasswell 1941, 1962) was perhaps the most influential attempt at predicting influences from *outside* threats on the *internal* workings and structures of the state. The predicted "world of 'garrison states'—a world in which the specialists on violence are the most powerful group in society" (Lasswell 1941: 455) was to be the consequence of totalitarian systems challenging established democracies, and the ensuing permanent threat (especially from aerial warfare) was theorized to lead to a "socialization of danger," which required the nation to become "one unified technical enterprise" in response (Lasswell 1941: 459). In that state, "authority will be dictatorial, governmentalized, centralized, integrated" (Lasswell 1941: 455)—a system resembling George Orwell's *1984*, which was indeed influenced by Lasswell's writings (Friedberg 2000). Large-scale coercion would be used by the military-police elites, who would take over from the relatively mixed elites who had dominated in the nineteenth century. These new military-police elites would above all need "skill in the manipulation of symbols in the interest of morale and public relations" (Lasswell 1941: 455). All this mobilization would be necessary in order to extract the resources needed for defense, and, as Lasswell added later, the fact that the advent of repression had been delayed thus far was due to the "huge techno-scientific advance" that had allowed "the supply of consumer goods" to be maintained (Lasswell 1962: 66). Still, he doubted this would be continued into the future, and

he thus concluded, "however reluctantly, that the garrison hypothesis provides a probable image of the past and future of our epoch. We would prefer it to be a self-disconfirming hypothesis" (Lasswell 1962: 67).

Lasswell was heavily influenced in his outlook by the rise of authoritarianism in the 1930s—he published the first essay on the "garrison state" in 1937—and subsequently by the mobilization effort of World War II. But by the 1970s it had become clear that developments were unfolding differently from his predictions. Reviewing Lasswell's theory, Raymond Aron critically pointed out that "bargaining experts"—such as lawyers and administrators—continued to hold top positions in the political elite of industrialized democracies, and that they had not, as predicted, been replaced by the "managers of violence" (Aron 1979: 349). The militarization experienced during World Wars I and II had been substantially reversed, and in spite of the nuclear threat, no practical preparation for such a war—for example, building shelters for a substantial part of the population—took place. He concluded: "In brief, the industrialized world is more removed than ever before from the garrison state" (Aron 1979: 355).

After the end of the Cold War, Aaron Friedberg went on to analyze the reasons why "Lasswell was wrong" (Friedberg 1992: 113) and why the US had not turned into a garrison state. He pointed to the importance of "countervailing pressures," chief among them Americans' adherence to liberalism and skepticism against state intervention (Friedberg 1992: 142). He noted that by keeping defense spending in check and emphasizing individual liberty, they had prevented the overstretch of an exhausted economy and the development of a militarized society, thereby forestalling two of the main causal factors in the breakdown of the US' adversary, the superficially strong "garrison state" of the Soviet Union (Friedberg 1992: 142).

The "Preemptive State"

Liberalism thus prevented the emergence of an almighty state under Cold War conditions. But liberalism—in the American sense—has also contributed to the state's taking on more and more new tasks in most areas of modern life, ranging from ensuring the safety of technical systems to preventing diseases and managing many aspects of economic and social security. However, turning a state based on the traditional rule of law into a "preemptive" or "preventative state," which prevents societal ills through preemptive action, risks undermining the very foundations of the liberal state, as scholars from public law have argued (e.g. Denninger 1990; Grimm 1994). Originating in the legal regulation of technical safety and environmental protection, the idea of the "prevention principle" has spread to many other areas of policy-making, challenging traditional practices. However, it is particularly dangerous when applied to the field of domestic security, as it threatens to undermine the restrictions to state executive power on which liberal democracy is based (Denninger 2008).

In the past, police and law enforcement were allowed to take preventative action as well, but that mandate was restricted to a "concrete danger" to public safety based on individual suspicion. Such restrictions on executive action are central for the balance between civil liberty and state power. Once laws become more focused on prevention, however, they emphasize the goals to be achieved rather than the description of measures to be taken.

As a consequence, executive and administrative actions become less predictable and more based on *ad hoc* assessments (Grimm 1994: 199). This causes a rise in the power of the state and a reduction in the protection of the individual against illegitimate state action, as states no longer try to protect their citizens from *concrete* dangers but also from *potential* ones. Thus, the citizens' relationship to the state changes: traditionally, the citizen could avoid state involvement in his or her personal life by complying with rules. But in the new era, this option no longer exists, for in the "preventative state" every citizen is a potential risk, and thus behaving in an inconspicuous way can become particularly suspicious (Huster and Rudolph 2008: 17).

While the rule of law threatens to sanction behavior that violates legal rules, the preventative state aims to anticipate norm violations and prevent them from happening. In order to do that it must collect comprehensive information about each individual citizen and build up executive capacity to effectively avert every plausible threat that could emerge from such norm violations. But such a transformation changes the very character of the state that now needs to regard all of its citizens as potential violators of legal rights who need to be watched with suspicion. As theorists of the "preventative state" warn, such a state does not protect the liberty of its citizens but instead threatens to undermine it, in addition to undermining democratic checks and balances and the rule of law (Grimm 1994; Denninger 2008).

3   TRANSFORMATIONS

Unlike most of the transformations of the state discussed in this Handbook, those affecting the national security state can be linked to a specific date, namely September 11, 2001—or "9/11," as it is often referred to—which is when the terrorist attacks on the United States (US) took place. While those attacks did not cause the transformations directly—some technological and structural changes were already under way, caused by leaps in information and communication technology (ICT) and supranational integration, respectively—the issue of domestic security was thrown into sharp relief on that day. 9/11 thus served as a trigger to devote a much greater share of state resources to the quest for domestic security. Spending in this area is notoriously opaque, for security reasons, but it is estimated that in 2013 the US spent some $52.6 billion on the 16 agencies—among them the CIA and the National Security Agency (NSA)—that make up the country's intelligence community and which together employ 107,035 people (Gellman and Miller 2013). To parse these numbers further, a quarter of this manpower and a third of the spending are devoted to counterterrorism programs (Gellman and Miller 2013).

The consequences of 9/11 with regard to the national security state are numerous and have been discussed extensively in the literature (e.g. Caidi and Ross 2005; Patman 2009; Held 2010). This section will, in a generalized fashion, discuss three particular developments that stand out: the structural change blurring the borders between domestic and foreign security policy; the amalgamation and blending of police, secret service, and military tasks; and the rising use of high tech—especially in the field of ICT—as a tool of the national security state. Together they have transformed the situation in this field substantially, even when compared to the state of the field only three or four decades back.

Structural Change: Blurring the Borders Between the Domestic and the Foreign

Although the airplanes used as weapons in the attacks of September 11, 2001 had started on US domestic territory, the events were perceived by the US and most of the international community as a foreign attack. Since the terrorists had been foreign nationals, defining their attacks as a foreign-guided attack was plausible.[1] This view was strengthened by the link existing between the attackers and radical Islamic ideology, and the protection the Afghan Taliban regime extended to the terrorist supporters. But this new threat from individual or small groups of terrorists could not be countered by the traditional means of protecting territorial integrity at national borders, since armies, airplanes, and battle ships were of limited help. The defense against potential new attacks thus had to take place at territorial border controls, harbors, and airports, and therefore by means traditionally in the realm of the police forces.

   As a result, the decades-long process in which the importance of these borders had declined through processes of economic integration was reversed, and borders changed their character (Andreas 2003). Challenges to the governance of migration had already arisen from European integration and the internal market project in the 1980s, and both have since contributed to a process of tighter regulation, digitization, and securitization (Broeders and Hampshire 2013). This process intensified as border control mechanisms that had focused on illegal immigration and drug trafficking were now reorganized to identify and refute potential terrorists among the many tens of millions of travelers crossing countries' borders every year. To do this without interrupting economically important transactions and tourism, processes of black-, green- and grey-listing travelers were employed (Andreas 2003). Increasing the number of personnel working in this area and employing new technological solutions were the preferred strategies for making border controls as reliable as possible, because even a small number of false negatives—that is, unidentified terrorists—could cause serious harm. However, since the fortification of borders and the detailed control of both goods and persons crossing them threaten to interrupt the exchange of goods and thereby endanger economic welfare, squaring that circle is an ongoing challenge. An example from the month after September 2001 may serve as an illustration: the attempt to exclude threats at the Canadian-American border led to mile-long queues and the interruption of supply chains that caused the closure of several factories in the automobile industry (Andreas and Biersteker 2003). The changing nature of borders and the blurring of the distinction between domestic and foreign policy thus results in costs both for business and individuals, making it clear that the quest for increased security exacts a price in terms of economic welfare.

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[1] At that point the problem of so-called *home-grown terrorism*—where domestic citizens with or without a migratory background commit attacks—did not yet exist. It emerged later, e.g. in the UK and in Germany.

Organizational Change: Centralization and the Amalgamation of Police, Secret Service, and Military Tasks

The changing nature of borders and the evaporation of distinct domestic and foreign policy areas was also reflected in a shrinking distinction between internal and external security on the executive level of the state. The long-established distinctions between police work (law enforcement), domestic secret service work (protecting the constitutional order), and military tasks (protection against external threats) increasingly began to dissolve. These developments have been debated under headings such as *homeland security* in the US or *new security architecture* in Germany. Besides organizational changes, these developments have also been the cause of changes in state power structures, especially in federal states. Generally speaking, they led to a centralization of competences, which has often been justified by functional requirements. According to that argument, due to the central role that information—about persons, organizations, facts, etc.—plays, a unitary organizational structure is required, for only a comprehensive database and consistent access to data allows effective use of that information for state security.

The changing security structure can be observed in the further centralization of bureaucratic competences and in a strengthening of the federal level in federal countries such as the US and Germany (Lange 2008). In the US, for example, the new Department of Homeland Security was established to "prevent terrorist attacks within the United States [and] reduce the vulnerability of the United States to terrorism" (Homeland Security Act of 2002 [116 Stat. 2135]: Sec. 101). Twenty-two agencies, with a total of 180,000 workers in departments ranging from the Customs Service and Immigration Services to the Coast Guard and the Secret Service, were brought under this new department, when previously they had been under half a dozen different departments (Kettl 2004). The extension of competences of the German *Bundeskriminalamt* through the BKA Act of 2008 (BGBl. 2008 I # 66: 3083–3094), the establishment in 2003 of the Joint Terrorism Analysis Centre (JTAC) in the UK (Hennessy 2010: 374 f.) and the National Counterterrorism Center (NCTC) in the US (Best 2011) are further illustrations of that trend, and similar developments can be found in most other OECD countries.

By sharing work that was formerly delegated specifically to the police, the secret service, and the military, boundaries have been broken down in an effort to enhance efficiency. However, this has caused practical problems of coordination, and it is also problematic from a constitutional point of view. The separation of tasks between these areas and their separate agencies is linked to the restriction of state powers and the protection of civil liberties. However, over the last decade a growing number of executive fora have sprung up where forces are joined to analyze both internal and external security matters, often under the name of a "national security council" (Werkner 2011: 80 f.). Consequently, more and more institutions share a self-interest in strengthening and extending all aspects of domestic security, which may lead to budget-maximizing behavior. This goes beyond the area of the state, for in the private sector a dynamic new industry has emerged to provide tools and instruments for surveillance and control technologies. This new industry has been labeled the "security economy" (OECD 2004) or the "surveillance-industrial complex" (ACLU

2004) and was already estimated to have an annual turnover of between US$100 and 120 billion a decade ago (OECD 2004: 9).

Technological Change: Increasing Reliance on Information Technology

In parallel with the general spread of ICT in society over the last two decades, agencies of the national security state have increasingly come to rely on such technologies for help with their work. They have built up enormous capacities to store data and link it with other data. Using data and signal intelligence has thus come to play an ever more important role in this area, which has contributed to worries regarding data protection; combined with the difficulty—as well as unwillingness—to distinguish between domestic and foreign sources of data, this has led to substantial political controversy (as evidenced by the secret material leaked by former NSA contractor Edward Snowden in the summer of 2013).

As mentioned above, ICT use was a popular way of dealing with the exponentially growing cross-border flows which—especially in Europe—were linked to increasing economic and political integration (Broeders and Hampshire 2013). Different types of data sources flowed together to police borders, from visa application systems, entry-exit systems, criminal watch lists, and—after 9/11—also from Passenger Name Records (PNRs) provided by air carriers and RFID-equipped passports. More and more countries also started to collect DNA data from criminals—the United Kingdom (UK) leads the field here with 6.97 million subject profiles—or one in nine inhabitants—on record as of March 2012 (Home Office 2013). In addition, existing databases that had been built up separately were joined together—as in Germany, where a new anti-terror database links 334 separate databases and 511 protocol files and grants common access to all data stored in this new database to 38 different state agencies (Busch 2010: 409–410). If technologies like closed-circuit television (CCTV) and automatic number plate recognition are added to the picture, it is thus possible to produce quite detailed profiles of people's habits and character traits, as a UK House of Lords inquiry remarked critically (House of Lords 2009: vol. 2, 16).

When the Internet emerged as an encompassing technology in the 1990s, states saw their sovereignty threatened and feared that governments would lose influence now that they no longer controlled communications networks, especially if strong encryption became widespread (Nelson 1998). But much effort and expense has been put both into the ability to monitor communication and to read it: the NSA has built a surveillance network with the capacity to read 75 percent of all US Internet traffic (Gorman and Valentino-Devries 2013), and there are reports that the agency has been able to break as well as weaken encryption standards commonly used in Internet communication (Ball et al. 2013), which has as yet unclear consequences for the Internet economy and e-commerce.

The vast build-up of ICT resources, however, creates its own problems, since information overload has become an acute challenge for counterterrorism intelligence (Priest and Arkin 2011). This is not new: directly after 9/11 it was emphasized that "it was not the lack of information so much as the lack of analysis of information which created the surprise element of the attacks" (Lyon 2003: 121).

4 National Measures

To illustrate the transformations described in the previous section, this section looks at select cases of national measures and adds to the information given above by putting it in context. The focus will be on legislative and institutional change as well as political contentiousness.

The United States

As the country most directly affected by the attacks of September 11, 2001, the US' policy reaction flowed from the interpretation that the country was involved in a "war on terror" that demanded harsh countermeasures. Within six weeks, the 300-page long USA Patriot Act (HR 3262) was passed with overwhelming majorities by Congress. It drastically extended executive powers in such areas as the definition of terrorist associations, wiretapping rights, house searches, information on financial transactions and military tribunals, and it authorized US state agencies to demand extensive information from foreign nationals traveling through the US. The CIA—the intelligence service for operations abroad—was now allowed to work on domestic affairs as well. Initially restricted to four years, the Patriot Act was extended for another five years in March 2006, with only very minor changes, and again in 2011. Publicized criticisms of the extension of state powers and the substantial restriction of civil rights and liberties had little effect, as the terrorist attacks had strengthened public opinion support for the Bush administration's course (Braml 2003).

The fortification of border protection through technical means could tap into political support around the issue of immigration. Biometric data and comprehensive databases were employed in the US-VISIT System (United States Visitor and Immigration Status Indicator Technology) to prevent the immigration of terrorists, criminals, and illegal immigrants. Other measures were more contentious, such as the indeterminate detention of several hundred persons suspected of terrorism in Guantánamo Bay—a US marine base in Cuba without access to the American legal system—or the Bush administration's unclear attitude towards the use of torture when questioning detainees. These practices were also heavily criticized internationally, and thus they undermined the moral position of the US as a defender of the rule of law. Given that these practices were likely to help terrorist adversaries find further support in the Islamic world, there remained substantial doubt about these strategies' effectiveness (cf. Wattellier 2004).

In spite of widespread public support, the state also encountered some political defeats in trying to increase state involvement in security matters. The attempt to introduce a general and unforgeable identity card was rejected, above all because it triggered skepticism about a further strengthening of state powers. The Bush administration had tried to pass the Real ID Act in 2005 in an omnibus bill together with essential military spending and Tsunami help in order to overcome legislative resistance within Congress (cf. Ni and Ho 2008). Still, many of the states—including a number of those governed by the Republican Party—refused to introduce the respective standards for ID cards, and the measure has still not been implemented.

The Federal Republic of Germany

Legislative reaction to 9/11 in Germany was even quicker than in the US; four of the principal attackers had lived in Hamburg for an extended period of time and attended institutions of higher education there, as well, so the German government felt a particular obligation to respond to the attacks. Before the month was out, Security Package I had been passed and was soon followed with Security Package II in January 2002. Both omnibus bills contained a multitude of individual regulations that strengthened state capacity in the fight against terrorism, such as the abolition of the religious privilege in the law of associations, the outlawing of foreign terrorist associations in penal law, the facilitation of data exchange between the various security agencies, and an increase in funding for domestic security tasks and their agencies (Busch 2007). In contrast to the US, however, Germany continued to define terrorism as a criminal act (a practice established in the 1970s).

A five-year sunset clause was attached to the breaking down of barriers between the domestic secret service (the *Bundesnachrichtendienst*), the military secret service, and the *Bundeskriminalamt*, the German equivalent of the FBI. The measures had been largely non-contentious between the different parties in the German parliament, but critical reactions came from civil rights groups and data protection offices both on the federal level and the state, or *Land*, level. The federal data protection commissioner questioned the proportionality of the measures and warned that "more surveillance … will not automatically lead to more security, but always to less liberty" (cited after Busch 2010: 408).

Two changes of government in the years after 9/11 did not lead to any substantial alterations in this area; the temporary legal measures were extended twice without much controversy. While the consensus between Christian Democrats and Social Democrats is repeatedly challenged by the more civil-rights oriented Greens and Liberals, this criticism is most acute when either of the latter two parties is in opposition (cf. Busch 2003, 2007, 2010). It should be noted, however, that that consensus has so far not had to withstand large successful terrorist attacks on German territory. The Constitutional Court struck down parts of the security measures as unconstitutional: the Air Security Bill of 2005—which authorized the shooting down of passenger airplanes if these were being used as attack weapons—and the 2007 Law on Data Retention of Telecommunications Data (implementing a 2006 EU directive).

The United Kingdom

The UK has had experience with Northern Irish terrorism for decades and with transnational terrorism in the attacks on London public transport in July 2005. The highly centralized structure of the unitary British state, with its dominance of government over parliament, facilitated a quick reaction to 9/11: on 13 December 2001, the Antiterrorism, Crime and Security Act of 2001 was passed. Even though the Terrorism Act of 2000 had been passed only a year earlier, the new law contained numerous regulations further extending the state's rights to collect information as well as the police's capacity to identify individuals and their authorization to access electronic communication data with the help of telecommunication companies and internet providers (Moran and Phythian 2008). The

home secretary was authorized to detain foreigners suspected of terrorism for an indeterminate time, in line with the perception that terrorism was a threat coming from outside the country. Additionally, the position of Minister of State for Immigration, Citizenship and Counter-Terrorism was created, and the individual holding this office was, before 2002, in charge of asylum and immigration issues.

The powers of the British state in the area of antiterrorism policy had already been considerable compared to other European states (Grote 2004). Political factors such as strong one-party government, a weak political opposition, and a constrained judiciary contributed to the executive's empowerment and enabled it to implement its measures against terrorism in a practically unrestrained manner (Haubrich 2003: 28). Fighting terrorism stood above everything else, as Prime Minister Tony Blair declared in the parliamentary debate of the Prevention of Terrorism Act 2005:

> I think that the civil liberties of the subject are extremely important, but I think that there is one basic civil liberty, which is the right to life. I think that freedom from terrorism is the most important consideration, which must be uppermost in our minds.

> (*Hansard*, 9 March 2005: col. 1513)[2]

Substantial political consensus around this exists between the main parties, and the securitization of domestic policy goes even further, as a minister in charge at the Home Office discussed before an inquiry of the House of Lords: "CCTV, DNA database and the whole range of these other elements are not there as a response of exceptional threats and exceptional circumstances … I think that is routine in the 21st century" (House of Lords 2009: vol. 2, 12). A "National Antiterrorism Strategy" (HM Government 2009) and the so-called e-Borders Programme (Amoore 2006) confirm this further. With no written constitution offering protection, the executive abrogated international conventions such as Article 9 of the General Declaration of Human Rights and Article 5 of the European Convention on Human Rights and detained terrorism suspects for years without charge. While this met with strong criticism from the Law Lords, the government continued the practice of internment without trial by executive order.

Comparative Analysis

The terrorist attacks of September 11, 2001 opened the floodgates of the national security state. While structural and technological developments had already led to gradual change before, this event became literally a call to arms. States reacted quickly and comprehensively, with legislative and institutional measures to fight transnational terrorism. The executives dominated, and little time was taken for deliberation or consultation. In many countries, security agencies used this *window of opportunity* to introduce measures they had wanted to see in legislation for a long time; this was, for example, evident in the volume of regulations that had been rejected by Congress in previous bills but passed in the Patriot Act (Donohue 2008).

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[2] http://www.publications.parliament.uk/pa/cm200405/cmhansrd/vo050309/debtext/50309-03.htm

Yet substantial differences between national security states' reactions can also be found. The extent of interference in citizens' fundamental rights varies considerably between states (Haubrich 2003; Crenshaw 2010), as does governments' success in implementing desired measures. Differences can best be explained by institutional and historical factors. Among the former one can count the differences between federal and unitary political systems, with the latter facing fewer veto points to the implementation of government policy. In federal systems, central governments generally face more obstacles; if competences are neatly delineated, the central government has few possibilities to force the states to introduce measures they reject. In cooperative federal countries, bargaining opportunities and political barter may help. The UK, the US, and Germany, respectively, illustrate these categories. Written constitutions and strong constitutional courts are further institutional variables that help explain differences in reactions: their presence directly protects citizens' fundamental rights and can restrict government plans, for example, by declaring certain measures unconstitutional.

Historical experience influences developments in the area under consideration here in the form of lessons drawn from the past. Whether or not one conceptualizes the task at hand as a war has consequences for the spectrum of reactions considered acceptable (Katzenstein 2003). Prior experience with—more national forms of—terrorism thus plays an important role, as does existing legislation that introduces path dependencies into the set of possible strategies for the national security state. As detailed case studies can show, anti-terror legislation that existed prior to 9/11 is a major influence on the reactions after the attacks (Wiegand 2011).

5 International Cooperation

Given the international impact of transnational terrorism, attempts to fight it through increased international cooperation were at the top of the political agenda from an early stage. However, while international and supranational cooperation does exist and has had some influence on national reactions, they are minor when compared to the national determinants of security-state developments described in the previous section. The goals of domestic national security require a degree of international cooperation if they are to be successfully achieved. But a number of obstacles have presented themselves in this area, leading to a practical level of supra- or international delegation that is clearly lower than in other policy areas, such as economic or trade policy.

Many policy reactions in antiterrorism policy center on flows of information. An example of successfully using international institutions to further that policy agenda is the US' lobbying of the International Civil Aviation Organisation (ICAO). ICAO governs regulations about international travel documents, and the US government managed to include the integration of so-called RFID (radio-frequency identification) chips into the organization's recommendations about passports. RFID chips can store data (such as digitized photographs or biometric data), they can be read remotely, and they make it almost impossible to forge passports. In 2003, the recommendations were accordingly amended, and the US and many other countries quickly added the new technology to their passport—in spite of the security problems inherent in that technology (Weinberg 2007: 800–802).

Agreement in other areas of international cooperation proved more difficult, especially when it came to agreements between the US and the European Union. Through the Aviation and Security Act of September 2001, the US had legally obligated all airlines touching its territory to submit comprehensive information about their passengers, the so-called Passenger Name Records or PNR. Since these contain highly personal data, a conflict with European data protection regulations ensued. Ultimately, the US managed to impose its will in terms of data access and storage, but only after a lengthy conflict (Busch 2012). Relations between both sides were soured when the Europeans discovered that the US government had managed to obtain detailed records of worldwide financial transactions in its quest to track terrorist funding. This had happened through court ordered access to the US computing center of the Society for Worldwide Interbank Financial Telecommunication (SWIFT), an industrial cooperative located in Belgium that conducts up to 12 million transactions between 200 countries with a daily turnover of up to US$6 trillion (Lichtblau and Risen 2006).

In spite of the shared goal of fighting transnational terrorism, a broad spectrum of interactions, ranging from cooperation to conflict, has thus been visible on the international level. Different, deeply rooted attitudes about data protection have contributed to this, particularly between countries on opposite sides of the Atlantic; in addition, little delegation to the supra- or international level has taken place in the area of domestic security policy, since states have little incentive to delegate in this manner. Whether compromises or political developments will move positions closer and lead to more cooperation remains to be seen. The handling of PNRs—now also intended to be used in the EU—is an example that shows positions are not immutable.

6   Consequences

The terrorist attacks of 9/11 were the most important political moment since the fall of the Berlin Wall. If "terrorism is about the politics of threat magnification" (Katzenstein 2003: 734), then these attacks were highly successful: they put the fight against terrorism on center stage in both foreign policy and domestic politics, with clear consequences for the national security state. Most OECD states, on which Part III of the Handbook concentrates, have existed in a "perpetual state of yellow" (Priest and Arkin 2011: xix) ever since 9/11. Indeed, the color-coded terrorism indicators invented in the US and the UK by authorities intent on quick communication have never dropped below the "substantial" level in either country and have mostly oscillated between "severe" and "critical."

Although countries reacted differently to the attacks—the US declared a "war on terror," while others (like Germany or Japan) classified the attacks as "crime" or spoke of a "crisis" (Katzenstein 2003)—the polarization of political debate was a defining characteristic of states' responses. The blunt alternative President George W. Bush posed to nations in his speech before Congress on 20 September 2001—"Either you are with us, or you are with the terrorists"—also influenced domestic discourse in many states, stifling the debate about possible alternative reactions to a strengthening of the security state.

The massive reactions described in this chapter have to be assessed in terms of their effects and their effectiveness. The quick and comprehensive legislation following (and, in

some cases—such as the UK Terrorism Act of 2000—also predating) the attacks resulted, on the one hand, in a strengthening of penal provisions (mainly new criminal offenses) as a means of deterrence or retribution, and, on the other hand, in a considerable extension of state competences, not least with regard to the collection and use of information. As comparative studies show, the strengthened penal provisions have only been used in a small number of cases—very few people have been convicted under the new antiterrorist laws (Haubrich 2006: 413). The extension of state capacities and data collection for the purpose of antiterrorism, in contrast, has grown drastically and now extends far beyond anything previously imaginable. A clear buildup of state surveillance and control mechanisms has taken place, even though assessments have cast doubt on their effectiveness (NRC 2008).

Consequences also have to be assessed in terms of how these security measures have affected the working of the democratic political systems that they were intended to protect. Past experiences have shown there to be effects: a comprehensive study of Germany's experience with 1970s terrorism found a "loss of distance" between the legislature and the executive, disadvantaging the former and benefiting the latter (Berlit and Dreier 1984: 261); the control function of Parliament declined as the legislature attempted to support the executive in its fight against terrorism. Similar effects can be detected in various countries in the years since 9/11, as the executive has shifted the balance of power in its favor, prompting fears that (at least parts of) the security state may be out of control. Power of authority has been interpreted extensively—for example, in the case of US National Security Letters (issued by government agencies to demand specific information and whose existence the recipient may not reveal), which have become a standard tool of investigation and whose use has increased more than sixfold to about 50 000 per year since 9/11 (Donohue 2008: 236–242). The sweeping surveillance of Internet communication by intelligence agencies was uncovered by whistleblower Edward Snowden in the summer of 2013 and criticized widely. Other flagrant cases of the abuse of the sweeping powers granted by anti-terrorism legislation have also occurred, with the most drastic probably being the UK government's unfounded use of anti-terrorism powers to freeze an Icelandic bank's assets in Britain with the purpose of compensating UK depositors during the financial markets crisis of 2008 (*Financial Times* 2008).

Many countries have established periodic independent reviews of their security measures and these measures' effects. This is a positive sign of defense mechanisms against an overbearing executive. For example, the UK's Independent Reviewer of Terrorism Legislation (2012) has recommended liberalizing the rules governing terrorist detention and port and border controls; a similar review in Germany in the summer of 2013 also advocated substantial changes in the application of counterterrorism measures (BdI and BdJ 2013); and, as far back as 2007, a review by the US Department of Justice found that the FBI's use of National Security Letters violated statutes, guidelines, and policies, which caused the Department of Justice to recommend changes (USDJ 2007). Whether these recommendations will be followed by executive actions remains to be seen. Still, they make it clear how difficult it is to monitor legislative intentions in the implementation of laws by the executive, and they also highlight that national security state action runs the risk of undermining the very values of democratic societies that it is intended to protect.

Theories of transformations of the state have argued that the modern state is metamorphosing from a "monopolist of authority" to a "manager of authority" that lets go of direct involvement (Genschel and Zangl 2008, 2014). But the national security state, as this

chapter has argued, may be seen as a counterexample to this general trend. In this area, the state has further consolidated and concentrated its involvement, as various indicators demonstrate: manpower has risen considerably, as pointed out earlier; in the decade after 9/11, the US and UK's respective intelligence budgets have at least doubled (Hennessy 2010: 373; Priest and Arkin 2010); and legislative activity has been extensive. During the post-9/11 period, there have been no terrorist attacks on a scale comparable to those of 9/11—with hundreds or thousands of deaths—but whether this is a direct result of effective preventative action by security state measures is unknowable to an academic reviewer. Terrorism has always been a statistically insignificant cause of death (Katzenstein 2003: 734; Zenko and Cohen 2012: 83), and thus this finding is in line with expectations, whether or not one believes in the effectiveness of the national security state.

However one assesses this causal relationship, which involves a comparison between the widespread securitization of public life and the extensive counterterrorism effort (in terms of manpower employed and budget spent), on the one hand, and the objective threat (in terms of actual lives lost), on the other hand, one must conclude that the national security state has been able to impose its priorities and exert power over society in a substantial way, especially given that austerity and economic hardship have enforced cuts elsewhere.

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