

2 American Responses to Terrorism

A Historical Perspective

By actions which compel general attention, the new idea seeps into people's minds and wins converts. One such act may, in a few days, make more propaganda than thousands of pamphlets. Above all, it wakens the spirit of revolt; it breeds daring.

—Peter Kropotkin, Russian anarchist, *The Spirit of Revolt*

From ancient times, terrorists have resorted to acts of indiscriminate violence as a means to achieve both political and religious objectives. Ironically, many of the early terrorist atrocities were carried out in the Middle East region, which today is believed to be the primary breeding ground for much of modern-day terrorism. During the first century A.D., two Jewish groups, the Zealots and the Sicarii, sought to inspire insurrection among the oppressed Jewish populace in Judea to expunge their Roman occupiers and “purify” Jewish religious institutions from the infiltration of Roman influences. Their revolt was, in part, driven by a staunchly held belief in a messianic doctrine, which maintained that a period of unimaginable woe was the precondition for attaining paradise and divine intervention. Not content to idly wait for the precondition to arise naturally, the Zealots and Sicarii instigated conflict by perpetrating terrorist violence against their Roman occupiers to “make oppression so intolerable that insurrection was inevitable, and, subsequently to frustrate every attempt to reconcile the respective parties.”¹ Hence, the Zealots and Sicarii encouraged rebellion by

playing on the psychology and religious zeal of the Jewish population and by effectively manipulating “mass expectations that a cataclysmic messianic deliverance was imminent.” Their deadly terrorist methods included assassination, hostage taking, and the slaughtering of prisoners; moreover, “[t]heir atrocities occurred on the most holy days to exploit the potential for publicity therein, and . . . to demonstrate that not even the most sacred occasions could provide immunity.”²

Another early Middle Eastern terrorist group, the Assassins, also had dual objectives in mind when committing terrorist acts. The Assassins contended that Islam had been corrupted from within and murdered prominent Muslim leaders in cold blood, usually on holy days, as a means to demonstrate their outrage and to bring about publicity that they hoped “would result in attention to their cause, recognition that it was just, and the bringing about of a new, cleansed, and revitalized theological and social order.”³ As their name suggests, the Assassins’ sole terrorist strategy involved “[d]ramatically staged assassinations [that drew] immense attention to a cause.”⁴ This was a uniquely useful strategy at a time when the basis of power was personal. Thus, when a sultan or emir fell at the hands of the Assassins, his troops were disbanded and the land was in disarray, assuring yet another victory for the purification of Islam.

Centuries later, in 1793, the terms *terrorism* and *terrorist* are believed to have officially become part of contemporary vernacular as a result of the Reign of Terror inflicted during the French Revolution. Initiated by the newly formulated French government and ostensibly designed to protect the reforms instituted during the revolution, the Reign of Terror primarily targeted those suspected of treasonous undertakings. Eventually, thousands were summarily convicted of traitorous crimes and guillotined, while hundreds of thousands were arrested and detained.

Less than a century later, Russian revolutionaries spoke of assassinations as a “destructive and terroristic activity” designed to provoke the Russian masses into revolution. Interestingly, early Russian revolutionaries eschewed the tactic of indiscriminate violence and employed their terroristic strategies in a reasonably organized fashion, mandating that they

be carried out with discrimination and clear purposes in mind. Authorities were targets, not ordinary citizens. But even then the method had to be justified. And the justification was that the authorities' monopoly on power gave the revolutionaries no other choice, and that, in overturning mass tyranny, which was responsible for mass deaths, assassinations were actually life-saving and moral.⁵

From these early roots, terrorism evolved and branched out to include not only ideological objectives but nationalist goals as well. The character of its potential victims also gradually expanded to include members of the general public, especially those who were perceived to have benefited from supporting the enemy regime. The callous mind-set of nondiscrimination among victims likely finds its roots in the immortal words of French anarchist Emile Henry, who, after throwing a bomb into a crowded Paris café, proclaimed, "there are no innocents."

After World War II, as Walter Reich recounts,

guerilla warfare related to decolonization predominated, although terrorism occurred in a number of areas. . . . [N]ationalist-separatist terrorism was prominent among the Palestinians, Basques, Armenians, Croatians, Sikhs, Tamils, and others. . . . Recently, in the 1980s, terrorism in the name of another cause, religion, reemerged with particular force and ardor in the Middle East, primarily in Lebanon and Iran, with its special characteristics and justifications, thus bringing the history of terrorism full circle to its beginnings in that convulsed corner of the world.⁶

The most recent statistics compiled by the U.S. Department of State in its annual Patterns of Global Terrorism report offer a chilling overview of terrorist exploits around the globe during the year 2001. Although the number of terrorist incidents declined from 426 to 346, the number of deaths attributed directly to terrorist activity totaled 3,547, the highest annual death toll from terrorism ever recorded. Perhaps not surprisingly, 90 percent of those fatalities occurred as a result of the September 11 attacks. In addition, despite

widespread trepidation about the impending inclusion of nuclear, biological, and chemical weapons in the terrorist arsenal, the report reveals that an overwhelming number of terrorist acts are still committed using “traditional” methods and weapons, such as bombing, kidnapping, arson, and murder. Sadly, the September 11 commercial airliner hijackings stand in sharp contrast as a tragically inventive method to inflict massive harm on innocent civilians.

The Department of State report also discloses that, while declining, state-sponsored terrorism is nevertheless a source of significant concern.⁷ Iraq, for example, was the only Arab-Muslim country to refuse issuing a statement condemning the 9/11 attacks. Iraqi leaders then added injury to insult by cruelly speculating that the resulting misery and death inflicted upon Americans following 9/11 was merely America “reaping the fruits of [its] crimes against humanity.” Against this backdrop of hard-line anti-American sentiment, it is not at all surprising that, according to the report, Iraq provided encouragement and financial support for myriad terrorist groups, thus, perhaps, lending credence to its inclusion in President Bush’s designated “axis of evil.” Other countries such as Iran, Sudan, and Syria also persist in their support and sponsorship of such terrorist groups as al Qaeda, Hizballah, HAMAS, and the Palestine Islamic Jihad, despite numerous threats and sanctions from the global community.

This brief foray into the historical roots of terrorism certainly cannot do justice to its complex and abundant history. Instead, this synopsis is primarily offered to aid in understanding that terrorist attacks against governments and innocent civilians in pursuit of religious or nationalist ideologies are not a new phenomenon. Indeed, such conduct and the justifications for it have a long, rich, and sadly enduring history. The principal purpose of this chapter, rather, is to identify several significant terrorist events throughout recent history that have impacted the United States or its interests and to consider how America’s governmental institutions formulated and executed responses to those unprovoked and random acts of violence. This retrospective analysis will reveal that measured responses by America’s political, legislative, and judicial branches *within* the framework of its existing system have traditionally epitomized America’s global stand against terrorism. Such fundamental yet calculated and decisive reactions stand as an apotheosis of how

America might fashion long-term responses to address not only the circumstances surrounding the events of September 11 but the challenges that will inevitably arise in this new age of global terrorism.

Of course, this conclusion begs the question of how the tragedy of 9/11 could have transpired if America's governmental mechanisms were, in fact, devising and implementing appropriate and effective responses to the worldwide terrorist threat. The answer to this query is threefold: First, no amount of counterterrorism planning and preparation can predict and intercept every single instance of terrorist behavior. To date, the U.S. Department of State has identified thirty-three terrorist groups as Foreign Terrorist Organizations (FTOs). Most of these FTOs are subdivided into a complex web of factions and cells that operate somewhat autonomously, although often ultimately receiving instructions from a supreme leader. These groups are tremendously successful in their efforts to recruit members from the alienated and marginalized segments of society. They aggressively prey upon gullible individuals thought to be searching for some semblance of order and meaning in their lives.⁸ Hate, vengeance, and violence against a powerful oppressor afford a sense of purpose to the directionless masses, who often embrace terrorist ideologies with such zeal that many consider it an honor to sacrifice their lives to promote these beliefs. Attempting to formulate rational responses to address and prevent behavior that is so stubbornly irrational is a recipe for disaster. Indeed, although difficult to accept as a truth, martyrdom in the name of religious or political ideology is, in the end, an insidious and deadly disease without a cure.

Second, the events of September 11 do not reflexively suggest that America's political, legal, and judicial institutions failed to adequately prepare for terrorist strikes. Alternatively, the attacks could signify that U.S. counterterrorism efforts have been so effective that terrorist elements are compelled to attempt even more extreme measures to exact vengeance and to draw attention to their causes. Professor Yonah Alexander predicted such a deadly escalation in 1999, when he observed that, although ironic, "bringing terrorism under substantial control in the foreseeable future through national and international legislation, increased security and enforcement measures as well as preemptive and punitive military strikes might, in fact, hasten the advent of more daring types of terrorism."⁹

Finally, to the extent that weaknesses in America's institutions are deemed contributory factors to the 9/11 disaster, two secondary, yet critical, inquiries remain. That is, what degree of modification is required to redress any perceived inadequacies, and can such a fine-tuning process be accomplished in accordance with America's fundamental beliefs and principles as a nation? Dramatically overhauling long-standing constitutional standards and the institutions that breathe life and meaning into these ideals is ahistorical, disparages two centuries of time-honored equal justice principles, and dangerously limits America to a tunnel-vision reductionist approach that focuses on specific types of terrorism by predefined groups—a view that will eventually leave the United States unprepared for more generalized, and potentially more deadly, terrorist attacks.

Terrorism in Recent History

Shortly after the September 11 attacks, the U.S. Department of State published a document entitled "Significant Terrorist Incidents, 1961–2001." Although this compendium does not purport to be an exhaustive list of terrorist acts committed during that forty-year span, it does highlight the most noteworthy occurrences. Among the more notorious terrorist incidents are many that either implicated or directly impacted U.S. interests. They include the following:

- In January 1975 a bomb exploded in a Wall Street bar in New York City, killing 4 people and injuring 60 more. A Puerto Rican nationalist group (FALN) claimed responsibility for the explosion.
- The Iran hostage crisis began in November 1979, when Iranian radicals seized the U.S. Embassy in Tehran and took 66 American diplomats hostage. Although 13 hostages were quickly released, the remaining 53 were held until the crisis ended in January 1981.
- A four-hundred-pound suicide truck bomb exploded outside the U.S. Embassy in Beirut in April 1983. The attack,

which was initiated by the Islamic Jihad, killed 63 people and injured 120.

- In October 1983 the Islamic Jihad struck again in Beirut, this time destroying the U.S. Marine barracks and killing 241 Americans.
- The *Achille Lauro*, an Italian cruise ship, was hijacked in the Eastern Mediterranean Sea in October 1985. One wheelchair-bound U.S. passenger, Leon Klinghoffer, was murdered and his body thrown overboard. Four Palestinian Liberation Front terrorists were eventually apprehended and charged with the hijacking. As will be explored later in this chapter, the *Achille Lauro* incident sparked much international debate and military action aimed at determining the appropriate jurisdiction to prosecute the captured hijackers.
- Pan American Airlines flight 103 was blown up over Lockerbie, Scotland, by suspected Libyan terrorists in December 1988. All 259 passengers, most of whom were Americans flying home for the holidays, were killed.
- In February 1993 the WTC in New York City was badly damaged by a truck bomb planted by Islamic terrorists. Six people died and 1,000 were injured in the explosion.
- The federal building in Oklahoma City, Oklahoma, was destroyed by a massive truck bomb parked outside of the building in April 1995. Although suspicions first turned toward international terrorists, it was soon discovered that Americans Timothy McVeigh and Terry Nichols, both right-wing extremists, planned and executed what was then the largest terrorist attack on American soil. On that day 166 people lost their lives and hundreds more were injured.
- In February 1997 a sniper opened fire on tourists at an observation deck on the Empire State Building in New York City. One person, a Danish national, was killed and several others, including American visitors, were injured. The sniper, who turned the gun on himself, claimed in a note to be exacting revenge for the “enemies of Palestine.”
- Two nearly simultaneous bombings occurred at U.S.

Embassy sites in east Africa in August 1998. At the U.S. Embassy in Kenya, 12 U.S. citizens were killed, along with 279 Foreign Service Nationals and Kenyan citizens, and thousands were injured. At the U.S. Embassy site in Dar es Salaam, Tanzania, 10 Foreign Service Nationals and Tanzanian citizens were killed, while 7 people were injured.¹⁰

What these deadly episodes of terrorism violence indicate quite clearly is that, prior to September 11, America was certainly no stranger to terrorist acts at home and abroad. These appalling statistics are also a tragic reminder that, even prior to that fateful morning in September 2001, American lives have been lost on a large scale as a direct result of terrorist assaults. Yet, none of these incidents triggered the type of comprehensive overhaul of America's governmental institutions currently being proposed and implemented in the wake of September 11. Is it possible that America's political, legislative, and judicial infrastructure in its pre-September 11 iteration was more than equal to the task of combating terrorism? The next sections will examine in further detail four of the terrorist incidents mentioned in the previous list and will explain how each was resolved within America's existing political, legal, and judicial framework, without resorting to a fundamental restructuring of the system. This analysis provides the factual foundation for a compelling argument that revamping our system in ways that ignore fundamental principles of equal justice is unprecedented and, indeed, unwarranted.

The *Achille Lauro* Hijacking

On Monday, October 7, 1985, a group of armed men took control of an Italian cruise ship, the *Achille Lauro*, in the Mediterranean Sea shortly after the ship departed Alexandria, Egypt, en route to another Egyptian city, Port Said. The hijackers identified themselves as members of the Palestinian Liberation Front and, as ransom, demanded that Israel release a group of fifty imprisoned Palestinians. The hijackers threatened to begin executing the hostages and stressed that Americans would be the first victims of their brutality if these demands were not met.¹¹ Because of its

patently multinational scope—that is, an Italian cruise ship seized in international waters with an explicit threat to American lives—the hijacking launched crisis management initiatives among the various national security departments in both the United States and Italy. From the outset, the United States advocated a “firm stance” toward the hijackers, which meant that negotiations were quite simply out of the question. When speculation arose that an American hostage had possibly been murdered a day after the hostage crisis began, the U.S. government initiated internal discussions concerning a number of tactical approaches, including military rescue operations, designed to secure the release of the remaining hostages and to bring the terrorists to justice.

Although U.S. plans to carry out a military rescue operation on the *Achille Lauro* were squarely in accordance with a 1958 convention to the law of the sea that allowed any state to board and seize a ship “under the dominant control of pirates,” the military intervention strategy nevertheless encountered a stumbling block—the involvement of the Italian government. The *Achille Lauro* was, after all, an Italian cruise ship, and, contrary to the wishes of the U.S. government, the Italian government expressed its desire to use its *own* military force to effectuate rescue, but only in case of “extreme necessity.” In fact, Italy confirmed that it had already deployed forces in preparation for that possibility. To further solidify its jurisdictional dominance, the Italian government cautioned the United States against taking any action without consulting Italian officials, who, again contrary to the U.S. position, favored opening a dialogue with the terrorists so as to possibly facilitate a bloodless solution to the crisis.

Later, as the ship sailed toward Egypt, yet another sovereign nation was interpolated into an already contentious political dilemma. With the express consent of the Italian government, and *despite* America’s disinclination to negotiate with the terrorists, Egyptian officials and Palestinian emissaries (assigned by Yasir Arafat) opened a dialogue with the hijackers as the *Achille Lauro* sat anchored off the coast of Port Said. Shortly after making contact with the hijackers, the negotiations evolved swiftly and the captors agreed to release the ship under two conditions: first, they demanded that five governments with direct involvement in the incident (including the United States) agree not to bring any charges

against the hijackers or pursue extradition for any crimes committed aboard the ship; second, the hijackers requested that they be given safe passage and, in due course, be released to the custody of the Palestine Liberation Organization (PLO), a group that was notorious for its use of terrorist violence to accomplish its objectives.

These demands presented both political and legal conundrums for the United States due to mounting uncertainty as to whether crimes had been committed aboard the ship, despite assurances from the *Achille Lauro* captain that everyone aboard was in good health. Perhaps more importantly, however, surrendering the hijackers to the PLO granted more recognition to the terrorist entity as a legitimate governing body than the United States had previously extended in its Middle East policy.

Consideration of these critical issues was promptly set aside when it was learned, much to the surprise of the American government, that the hijackers had indeed relinquished control of the ship pursuant to a guarantee by the Italian and Egyptian governments that they would be granted safe passage. Evidently this compromise was reached without the apparent or express consent of the other sovereign nations involved in the crisis. In addition, it is unclear how much either Italy or Egypt knew about the death of American passenger Leon Klinghoffer when they offered safe passage to the terrorist hijackers.¹² What is apparent, however, is that once the United States discovered the senseless and exceptionally brutal murder aboard the ship, a collective sense of outrage erupted in the United States, which evolved into a national plea for justice, demanding that the hijackers not be allowed to get away with murder. The U.S. government agreed and declared, "there must be no asylum for terrorists." Nevertheless, recognizing the jurisdictional legal limitations of the case, the United States elected initially to take a diplomatic approach and strongly urged Italy to extradite the terrorists from Egypt to Italy, where they could face justice.

Although both Italy and Egypt acknowledged that a prosecutable crime took place aboard the *Achille Lauro*, political considerations took center stage as both countries feared that extradition of the terrorists might disrupt fragile Middle East relations and cause embarrassment for the PLO. Angered by this diplomatic rebuff and worried that the hijackers might ultimately evade justice, the U.S. government devised a plan to intercept and capture the terrorist

hijackers wherever they might be and to extradite them to the United States for trial. Thus, when clandestine electronic surveillance revealed the terrorists were departing Egypt for parts unknown on an EgyptAir plane, President Reagan signed a national security directive authorizing interception of the aircraft with the expectation that the United States would obtain custody of the terrorists and return them to the United States for criminal proceedings. This strategy resulted in jurisdictional complications, however, when U.S. forces intercepted the plane and forced it to land in Italy. That is, because the *Achille Lauro* was an Italian cruise ship, as soon as the terrorists touched down on Italian soil, Italian law enforcement officials were required by law to act on information that related to criminal activity. Thus, by attempting to bring the hostages to justice in America, the United States had inadvertently forced legal jurisdiction upon Italy.

Once again, tension arose between Italy and the United States, and a standoff ensued at the Italian airport while diplomatic channels between the two countries attempted to resolve which country would retain legal jurisdiction over the terrorists.

During these conversations . . . American officials explained their intention to take custody of the four hijackers, who were responsible for the death of a U.S. citizen. Italian officials replied that the hijackers were now on Italian soil. Italian law . . . did not allow them . . . to discard information that these hijackers had committed crimes on an Italian ship. The Italian government was obliged to entrust the matter to the Italian judicial system.¹³

After hours of tense negotiation, both countries finally agreed that Italy would assume jurisdiction over the hijackers subject to specific demands from the United States that they be punished to the full extent of the law. After securing this commitment, U.S. officials were particularly jubilant because, in the years preceding this event, it seemed that the United States could not, despite its best efforts, effectively retaliate against terrorist strikes. For the moment, the *Achille Lauro* incident represented an apparent victory over terrorism, despite the fact that the terrorists would not be prosecuted on U.S. soil. This initial enthusiasm waned over time as criminal

proceedings against the terrorists languished in Italian courts, and, once again, concern increased in the United States regarding the Italian government's pledge to bring all of the hostages to justice. Indeed, pursuant to a 1984 Act of Congress, which gave the United States authority to prosecute the takers of U.S. hostages at home or abroad, proceedings were eventually instituted in the U.S. federal court to secure arrest warrants for the four hijackers and their alleged ringleader, Adul Abbas, charging each with hostage taking, piracy, and conspiracy.

Despite repeated requests from the U.S. government to keep Abbas in custody until he could be extradited to the United States, the Italian government freed Abbas, claiming to have insufficient evidence of his involvement in the hijacking scheme to detain him further. As might be expected, U.S. officials deemed this a tremendous setback in their campaign against terrorism and suspected that the Italian government's decision to release Abbas had been politically motivated and dictated by its fear of PLO reprisals on Italian soil if Abbas were arrested and extradited to the United States.¹⁴ In due course, partial victory over terrorism was achieved when three of the four remaining hijackers were tried in Italian courts and received jail sentences ranging from fifteen to thirty years. Charges against the fourth hijacker were later dismissed when it was determined that he was a minor at the time of the criminal acts.

Although the optimal result—prosecution, conviction, and punishment of all those responsible for the *Achille Lauro* hijacking—was not achieved, the death of Leon Klinghoffer was at least partially vindicated through the persistent diplomatic efforts of the U.S. government, combined with strategically targeted military operations and criminal proceedings. In addition, Leon Klinghoffer's survivors filed a civil lawsuit against the PLO, which was settled for an undisclosed sum of money after a lengthy negotiation process.

Pan American Flight 103: The Bombing over Lockerbie

On December 21, 1988, thirty-one thousand feet above the town of Lockerbie, Scotland, a Pan American Boeing 747 was carrying 243 passengers en route from London to New York. Most of the travel-

ers aboard were Americans flying home for the holidays. Unbeknownst to the passengers and the sixteen flight crew members, in addition to the normal luggage stowed in the plane's cargo compartment, a deadly plastic explosive known as Semtex was surreptitiously concealed in one of the suitcases. The bomb had been skillfully positioned inside a hollowed out cassette player, which was then packed in a suitcase with other innocuous pieces of clothing. No one had been alerted to anything suspicious about Pan Am flight 103, nor had anyone inspected the inside of the suitcase or the contents of the cassette player.

Shortly after 7:00 P.M., a preset timer triggered the detonator, transforming the Semtex explosive into a ball of superheated gas. Because the bomb was located near the wall of the aircraft, when it discharged its lethal payload, the blast ripped a hole in the fuselage the size of a basketball. After the explosion,

the floor buckled and the frame cracked at a point just forward of the wings. The front of the plane—the cockpit, first-class, and the business-class cabins—was bent back to the right, and in separating, knocked off the number 3 engine, inboard on the right side. Within three seconds after the explosion, the airplane had broken open and begun spilling passengers into the air.¹⁵

There were no survivors of the Pan Am flight 103 bombing. In the aftermath of this horrifying tragedy, the victims' families grieved inconsolably and yet simultaneously demanded answers from Pan Am, the U.S. government, and some as yet unknown foreign government responsible for the bombing. Their main question was: How could this have happened? The U.S. government, on the brink of transition from the Reagan to the Bush administration, provided little solace to the anguished families by offering half-hearted promises to root out the responsible parties and to bring them to justice.

The first step in the investigation revealed that Pan Am, which boasted of implementing one of the tightest security programs in the industry in the wake of an earlier TWA hijacking, had, in fact, hastily assembled a security program that failed to comply with new Federal Aviation Administration (FAA) regulations in many

critical respects. For example, the FAA guidelines recognized the potential for bombs being placed in unaccompanied checked luggage and, therefore, mandated that all baggage at high-risk airports be matched with passengers *actually* boarding planes. Pan Am summarily rejected that FAA regulation, arguing that it would cause unnecessary delay. Instead, Pan Am substituted an X-ray machine system at the Frankfurt airport (a high-risk facility) to screen all luggage transferring from another airline onto a Pan Am flight. Unfortunately, this seemingly innocuous deviation from the FAA regulation offered a prime opportunity for terrorists whose weapon of choice was plastic explosives, which could not be viewed through the X-ray machines.

When Pan Am's fatal security miscalculation came to light, the victims' families demanded compensation from the airline for the loss of their loved ones. The law in effect in 1988 limited recovery for airline crashes to a uniform standard of compensation, which, at that time, was \$75,000. To exceed that amount, the families of the victims would have to demonstrate that the airline engaged in "willful misconduct" that led to the fatal crash. Fearing that possibility and attempting to circumvent an onslaught of civil litigation, the airline struck preemptively, offering each of the families an immediate \$100,000 cash payment in exchange for the relinquishment of any rights to file lawsuits related to the crash in the future. Almost no one accepted the airline's offer, and, as expected, multiple lawsuits against the airline ensued.

On the governmental front, after mounting pressure from the families of the victims, a newly elected President Bush convened a commission to determine the exact cause of the explosion. After a lengthy investigation, the commission concluded in a 182-page report that the destruction of Pan Am flight 103 was quite likely the result of a dangerously flawed aviation security system and, thus, may have been preventable. Although the commission could not determine precisely how the explosive was placed on the aircraft, there was credible evidence that terrorists, aware of the lax airport security screening procedures at the Frankfurt airport, left extra unaccompanied luggage containing the bombing device to be loaded on the airplane by unwitting airline workers. Finally, the commission explained that it could not attribute responsibility for the deadly explosion to any particular country or group, although a

criminal investigation was ongoing. What was particularly noteworthy about the commission's findings, however, was the passionate statement it made concerning America's long-term terrorism policies. The commission concluded:

Pursuing terrorists and responding swiftly and proportionately to their acts against humanity must become U.S. policy in deed as well as in word. What is required is effective action, not simply strong rhetoric. [The United States] needs a more vigorous policy that not only pursues and punishes terrorists, but also makes state sponsors of terrorism pay a price for their actions.¹⁶

Nearly three years later, after a painstaking multinational investigation, the United States and Britain announced criminal charges against two Libyan intelligence officers, Abdel Basset Ali Al-Megrahi and Lamem Khalifa Fhima, for the Pan Am flight 103 bombing. The two men were indicted in a U.S. federal court on 193 felony counts, even though they had yet to be arrested and extradited to the United States. Law enforcement officials believed the suspected terrorists were in Libya and also speculated that the bombing of flight 103 had been condoned by high-level officials in the Libyan government. Using diplomatic channels, the United States immediately initiated discussions with other countries to coordinate an international response to the alleged state-sponsored terrorism. Included within the range of proposed responses was the possibility of military action against Libya. For their part, Libyan officials unequivocally denied any involvement in the bombing yet, at the same time, made it clear that surrendering the suspects to the United States for criminal proceedings was highly unlikely, thus setting the stage for a possible military showdown with the United States.

In January 1992, after Libya failed to respond to repeated requests to hand over the suspects to the custody of the United States, Britain, or France, the UN Security Council unanimously adopted a resolution urging Libya to provide a full and effective response to the demands for the suspects' surrender. The UN resolution had numerous international implications. For example, if Libya failed to comply with the resolution, its noncompliance could

form the basis for a subsequent resolution calling for limited sanctions against Libya, which could include cutting off international air links and imposing an embargo on certain aircraft parts. Those countries demanding the surrender of the suspects were especially careful not to characterize their requests as an “extradition” because none of the countries had extradition treaties with Libya. Instead, the requests were expressed as urgent appeals to Libya, a known state sponsor of terrorism with little concern for the pursuit of truth and justice, to forthwith deliver the suspects to a country where they could be fully and fairly prosecuted for their crimes.

Despite these appeals for surrender, two months later the UN was compelled to impose sanctions against Libya for its continued refusal to deliver the suspects. Nearly eighteen months later, in 1993, in the face of Libya’s unrelenting obstinacy, those UN sanctions were strengthened to include a limited freeze on Libyan financial assets overseas. Naturally, after such a lengthy period of time, many observers were skeptical that UN sanctions could serve as an effective tool for bringing terrorists to justice, but most nevertheless praised the international cooperative effort to effectuate a fair and just resolution to this tragic situation.

Finally, after nearly ten years of sanctions, threats, proposals, and counterproposals, the United States and Britain announced a plan to convene a Scottish court in the Netherlands to try the two Libyan intelligence officers on criminal charges in connection with the bombing. This extraordinary proposal entailed removing an entire court and legal system from one country and assembling it in another country for the sole purpose of prosecuting the suspects. If accepted, the innovative proposal would allow the Scottish courts to try the suspects using Scottish judges and law. Because the “traveling court” plan complied with the most recent demands of Libyan leader Moammar Gadhafi (who had resorted to bargaining for the suspects’ surrender), it was considered the most viable resolution to the lengthy pursuit of justice. This outcome was also welcomed by the victims’ families because it appeared that, after an interminable delay, justice was finally at hand. More important for the families, however, was the fact that the criminal proceedings would allow them to gain access to crucial evidence that could form the basis for civil lawsuits against Libya pursuant to recently enacted federal leg-

isolation that permitted citizens to sue foreign countries designated by the Department of State as sponsors of international terrorism.

In April 1999 Libya finally acquiesced and surrendered the suspects for trial in the Netherlands. While the commencement of the criminal proceedings was a tremendous and long-awaited victory for the victims' families, their triumph was somewhat overshadowed by concerns regarding the unfamiliar Scottish judicial process. Many were doubtful that Scottish law could provide the justice they were seeking and expressed skepticism as to whether critical evidence linking the Libyan government to the flight 103 disaster would ever see the light of day. The U.S. government allayed these concerns by reassuring the families that such evidence would not be overlooked and even made oblique references to the possibility that Moammar Gadhafi could be tried as a war criminal if the Scottish trial somehow failed to produce the just result that the families so eagerly desired.

The two suspects were duly charged in the "largest mass murder trial in Scottish legal history" with conspiracy to murder, murder, and contravention of the Aviation Security Act of 1982.¹⁷ A three-judge panel heard the case, sitting without a jury. On January 31, 2001, more than thirteen years after flight 103 exploded over Lockerbie, the judges delivered their verdict, sentencing Al-Megrahi to life in prison and acquitting Fhima because the evidence of his involvement in the plot was deemed too speculative. Perhaps as expected, Libya denounced the guilty verdict as a "political decision," and appeals by the convicted terrorist ensued shortly after the verdict. To date, none of these appeals has been successful.

One obvious question is whether this trial and its result brought the necessary closure to the victims' families. Although many applauded the verdict, for some it was a foreign legal proceeding in a foreign jurisdiction that, when juxtaposed against the intense pain and overwhelming personal loss endured in the decade since the tragedy, was profoundly inadequate. Recognizing that the Lockerbie verdict was only a small measure of victory for the families, the current Bush administration has vowed that Lockerbie is not over and continues to press Libya to accept responsibility for the tragedy and compensate the victims' families. In the further pursuit of justice using traditional legal resources, more than two hundred fami-

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lies became plaintiffs in dozens of civil lawsuits against Libya. That litigation was ultimately consolidated into a single case before a federal court in New York. In total, the plaintiffs sought more than \$1 billion from the Libyan government. In August 2003, Libya agreed to settle the civil litigation by paying \$10 million per victim to the families. The settlement is, however, structured with \$4 million being paid immediately and the subsequent amounts being dependent upon the lifting of sanctions against Libya and its removal from the U.S. State Department's list of state sponsors of terrorism. A separate civil suit against Pan Am ended in 1992, with the airline paying the families \$500 million.

In what can now be deemed the tragic precursor to 9/11, on February 26, 1993, a bomb exploded in an underground parking lot of the WTC complex in New York City, killing six people, injuring thousands, and causing hundreds of millions of dollars in damage. An investigation later revealed that the perpetrators of this attack, some of whom were "graduates" of terrorist training camps on the Afghanistan-Pakistan border, planted a homemade bomb inside a van in the parking garage of the WTC earlier that day. Further investigation into the explosion led to the discovery of a pervasive global conspiracy that aggressively promoted and encouraged terrorist activities against the United States. In this instance, although one of the conspirators, Ramzi Yousef, subsequently indicated that the terrorists had apparently planned to topple the city's tallest tower onto its twin in a cloud of cyanide gas and kill thousands of people, the cyanide gas in the bombing device burnt out in the heat, and the loss of human life was minimal and far less than expected by the deadly attackers. The apparent masterminds of this treachery, Ahmad Ajaj and Ramzi Yousef, learned how to construct explosive devices in terrorist training camps in Afghanistan and Pakistan. Upon mastering these skills, the two designed a "terrorist kit," complete with notes and manuals demonstrating bomb construction, materials describing how to plan and execute a successful terrorist operation, and videotapes advocating terrorist acts against the United States. Shortly after the blast at the WTC, one of the conspirators claimed

responsibility for the bombing, explaining that the terrorist violence was undertaken in retaliation for America's support of Israel. The perpetrators also warned that future, more deadly acts of terrorist violence were being planned against the United States.

In September 1993, Ajaj and Yousef and several others were indicted on various charges related to their participation in the bombing plot.¹⁸ The trial, which took place in the U.S. federal district court, lasted six months and involved over one thousand exhibits and two hundred witnesses. Each defendant was convicted and sentenced to 240 years in prison.

Although the loss of life in this case cannot compare to the death toll in the wake of 9/11, there are numerous other parallels that make this case ripe for comparison to the events of 9/11. For instance, the backgrounds, beliefs, and motivations of the perpetrators were similar, as was the symbolic target of their lethal attacks. The similarities cease, however, when examining America's response to these different, yet strikingly similar acts of violence. Quite simply, the first WTC bombing case illustrates how America's criminal justice system can be effectively employed to root out the perpetrators of violent attacks against American citizens, to process them fairly through the criminal justice system, and to exact punishment for their crimes. This is undoubtedly what America's founding fathers envisioned when they established a government committed to equal treatment and justice for all. The wholesale transformation of time-honored institutions and principles in the aftermath of 9/11 ignores America's long-standing tradition of working *within* its governmental framework to protect its citizens, secure its borders against the terrorist element, and bring wrongdoers to justice for their crimes. What more can be asked or expected of America's governmental institutions? Perhaps, more importantly, if more is expected, can it be accomplished without contravening cherished principles that make America a free, open, and democratic society?

The Oklahoma City Bombing

Because of the history of terrorist attacks and threats against the United States by perpetrators of Middle Eastern descent, when the

Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, was severely damaged by a massive truck bomb on April 19, 1995, suspicions ran high that this attack originated from a similar foreign source. When the smoke cleared, 168 people had perished and several hundred were injured in what was, at the time, the worst terrorist attack ever on American soil. A couple of days after the explosion, an American, Timothy McVeigh, while being detained for a traffic violation, was identified as one of the alleged bombers and eventually was charged with several capital offenses, including conspiracy to use a weapon of mass destruction with death resulting, use of a weapon of mass destruction with death resulting, destruction of government property by means of an explosive with death resulting, and first-degree murder. McVeigh's ex-army buddy, Terry Nichols, was also questioned and later indicted in connection with the bombing.

Fearing that the horrific events would preclude impartial treatment by jurors in Oklahoma, early in the trial prosecutors requested and were granted a change of venue to Denver, Colorado. In addition, because of the unprecedented loss of life on American soil and the premeditated and deliberate nature of the crimes, prosecutors elected to seek the death penalty against McVeigh, the apparent mastermind of the plot. According to the prosecutor's theory, McVeigh rented a truck, packed it with ammonium nitrate and fuel oil, and detonated this explosive combination in front of the Oklahoma City federal building. Although his motives were somewhat sketchy initially, prosecutors suspected that McVeigh, a Gulf War veteran with ties to antigovernment groups, was outraged by the 1993 FBI siege of the Branch Davidian compound in Waco, Texas, and sought revenge against the government for that debacle.

Nearly two years after the bombing, McVeigh faced trial in federal court in Denver. Following twenty-eight days of testimony, McVeigh was found guilty on all counts and sentenced to death by lethal injection. Despite the intense media scrutiny and the raw emotions surrounding the trial, by most every account McVeigh received a fair trial. After several years of legal appeals, a request by McVeigh that no further appeals be taken, and a stay of the execution occasioned by an FBI admission that several documents in the case had not been turned over to defense teams, McVeigh was finally put to death for his crimes on June 11, 2001.

It bears emphasizing that, although militant and extremist groups abound *within* the borders of the United States, upon discovering that the Oklahoma City bombing had been carried out by a “home-grown” terrorist, no military orders were issued, no constitutionally infirm legislation was enacted, and there was certainly no discussion of widespread profiling and rounding up of members of militia organizations for indefinite detention. Instead, there was a recognition that this deadly act of terrorism was a single criminal act that could be appropriately addressed by the governmental institutions already in place. Thus, the apprehension, prosecution, conviction, and execution of Timothy McVeigh represent yet another example of America’s criminal justice system effectively responding to terrorism within the framework of its founding charter and, in the end, exacting the highest degree of punishment for crimes committed against American citizens.

Responses to Terrorism

The U.S. counterterrorism policy is as follows:

- Make no concessions to terrorists and strike no deals.
- Bring terrorists to justice for their crimes.
- Isolate and apply pressure to countries that sponsor terrorism to force them to change their behavior.
- Bolster the counterterrorism capabilities of those countries that work with the United States and require assistance.

Accepting this policy at face value, it does not require a great leap of imagination to recognize that each of these objectives can be accomplished within America’s current political, legislative, and judicial framework. Yet, in the wake of the 9/11 terrorist attacks, the U.S. government, among other things, enacted sweeping legislation with relatively little congressional debate, engaged in military strikes that effectively toppled the Taliban regime in Afghanistan, threatened to expand military responses to the “axis of evil,” indefinitely detained hundreds of “enemy combatants” at Guantanamo Bay, Cuba, and thousands of people of Middle Eastern descent in America, and proposed the creation of a Department of Homeland Security.

rity that is, according to President Bush, the most significant transformation of the U.S. government in over half a century. In short, America has seemingly reconstructed its system of justice to such a degree that even U.S. citizens cannot be certain that they will receive the protections of the Constitution upon arrest or detainment.

Without a doubt, the events of September 11 were incomprehensibly tragic, but the question of great moment is whether our responses are equally incomprehensible when critically examined through America's historical prism. Of course, a compelling argument can be made that 9/11 was an extreme escalation of unprovoked terrorist violence warranting an equally severe rejoinder. But, a careful assessment of America's history reveals that, in turbulent times, political, legislative, and judicial overreaction can yield wholly unexpected results that disrupt the delicate constitutional balance established at America's founding. For instance, as explored in chapter 1, the internment of Japanese American citizens during World War II was a profound overreaction to the threat posed by Japan during the war. The resulting apologies and reparations, although long overdue, seemingly acknowledge this abominable treatment. A similar period of American excess and overreaction is now known in history books as the era of McCarthyism.

On June 29, 1940, in response to the emerging communist threat, Congress enacted the Alien Registration Act, which made it illegal for anyone in the United States to advocate, abet, or teach the desirability of overthrowing the government. The act also required alien residents over fourteen years of age in the United States to register and file a statement of their political beliefs. The act was implemented through the House Un-American Activities Committee (HUAC), which had been established in 1937 to investigate right- and left-wing political groups. One of the primary targets of HUAC's scrutiny was the Hollywood motion picture industry. To further its patently nonsensical investigation, HUAC compelled people to "name names" of others in Hollywood who held left-wing views and blacklisted anyone who refused to cooperate. Eventually, over 320 people were blacklisted in Hollywood and effectively prevented from working in the motion picture industry.

The act was also used to eviscerate the American Communist Party, as its leadership and members were routinely arrested and jailed for violating provisions of the act. In the early 1950s, a senator

from Wisconsin, Joseph McCarthy, became chairman of the Senate's Government Committee on Operation and pledged to investigate and root out communist subversion in the government. Scores of people were questioned about their political pasts and warned that proving their absolute rejection of communism meant providing the names of others who might be communists or communist sympathizers. Thus began the communist conspiracy witch-hunt and hysteria that resulted in lost jobs, severed relationships for thousands of people, and eventually the removal of books from library shelves that were authored by communists or communist sympathizers. At the time, former president Harry S. Truman said of the Eisenhower administration:

It is now evident that the present Administration has fully embraced, for political advantage, McCarthyism. I am not referring to the Senator from Wisconsin. He is only important in that his name has taken on the dictionary meaning of the word. It is the corruption of truth, the abandonment of the due process law. It is the use of the big lie and the unfounded accusation against any citizen in the name of Americanism and security. It is the rise to power of the demagogue who lives on untruth; it is the spreading of fear and the destruction of faith in every level of society.¹⁹

Is our government moving in the direction of another era of McCarthyism? Perhaps it's too early to draw any concrete conclusions, but there are some compelling indicators that strongly suggest that trend. For example, such actions as the recent expansion of powers for the executive branch via the Office of Homeland Security and the issuance of a military order, the notion of "guilt by association" that has resulted in the arrest and detention of thousands of people of Middle Eastern descent, and the expansion of powers for the FBI to pursue those thought to be connected to terrorism, even removing restrictions on the FBI for domestic spying on groups and Internet activities, all point to a country acting on fear rather than logic. All of this creates a mood of overreaction and hysteria, when calm, reasoned discourse on America's future should be the order of the day. Of course, taking immediate steps to secure U.S. borders and interests abroad from further terrorist violence continues to be

a rational security response. But the failure to identify the real causes of terrorism and to, on some level, accept that no amount of planning and preparation can thwart the most determined suicidal terrorist is likely to lead to a nation where perpetual fear of the terrorist threat spirals out of control and fundamental principles of equality, liberty, and due process of law become sideline spectators in the name of security.

In an article entitled "Global Terrorism: Searching for Appropriate Responses," Majid Tehranian posits that "every major tragedy in world history has presented an opportunity for reflecting and reconstructing a more just and peaceful world order."²⁰ Tehranian further explains that terrorism is the weapon of choice for weak, disenfranchised individuals, motivated and driven to terrorist violence by a modern world order that constantly emphasizes the growing disparity between the haves and the have-nots worldwide. Moreover, the relative ease of communication facilitated by technological advance means that most of us now live in a global fishbowl, where social and economic gaps are graphically revealed through the global communication infrastructure. As a result, weaker marginalized groups, often with extreme fundamentalist leanings, rebel against what they perceive as postmodern elitism and excess, utilizing "shock terrorism" as a means to strike out against a more powerful, yet vulnerable enemy. Such striking inequalities breed resentment that is externalized by violently attacking icons that promote or benefit from the disproportionate distribution of wealth.

Therefore, terrorism will not be thwarted or even diminished until the proliferation of small arms; biological, chemical, and nuclear weapons; and the powerful social, economic, and political schisms that cultivate the terrorist mentality are appropriately addressed.

In the end, the 9/11 attacks were representative of a tragic, although familiar, dynamic where, according to Tehranian, the aim of terrorists is to "paralyze 'the enemy' into submission by indiscriminate violence against 'guilty and innocent,' 'civilian and soldier.' What they often achieve is a mobilization of public opinion against terrorism's indiscriminate violence. But terrorism also can polarize societies and foster security or police states infringing upon civil liberties."²¹ Indeed.

America fought a public "war" on terrorism in the past with very

limited success. During much of the Reagan administration, Moammar Gadhafi, the leader of Libya, was the target of our antiterrorist agenda. However, despite efforts to isolate him politically and economically, terrorist activities believed to be generated by Libyan hatred of the United States and its military actions continued to flourish. The most notable of these terrorist incidents was the previously discussed bombing of Pan Am flight 103 over Lockerbie, Scotland.

In light of these harsh realities, it is evident that combating terrorism requires much more than ratcheting up security, surveillance, and suppression. Diminishing terrorist violence entails globally examining the causes of terrorist activities and formulating remedies that specifically address those motivations. On the interrelationship of cause and effect, scholars and policy analysts have observed that there is a strong correlation between U.S. involvement (meddling?) in international situations and an increase in terrorist activity directed toward the United States. For example, in an eerie foreshadowing of events to come, the fundamentalist Islamic terrorists who perpetrated the first bombing of the WTC boldly declared that they were attempting to kill 250,000 people by collapsing the towers in order to punish the United States for its policies in the Middle East. Of course, they were not successful in destroying the towers or in taking as many lives, but, as we now know, their continued motivation inspired by hatred for American policies eventually resulted in the destruction of the towers and thousands of lost lives.

Does this mean that the United States should simply capitulate to the demands of extremists and adopt an across-the-board policy of nonintervention abroad? Absolutely not. Instead, a diplomatic multilateralist approach that takes into account the strong sense of alienation felt by large sectors of our global community might result in innovative foreign policy changes that reduce the number of attacks and lessen the number of lives sacrificed to the whims of extremists.