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**SONDERBARE SONDERWEGE:  
GERMANY AND 9/11**  
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## **SONDERBARE SONDERWEGE: GERMANY AND 9/11**

Peter J. Katzenstein

### **INTRODUCTION**

Big events in world politics provide students of international relations and comparative politics with the closest thing to a natural experiment. September 11 is no exception. The attacks on the World Trade Center and the Pentagon are like a strong beam of light. This paper argues that the light gets filtered by national lenses that create distinctive political responses. Conceptions of self, historical memory, and institutional practices drive these different responses. The American war on terrorism reflects an idiosyncratic constellation of these factors. Even the closest allies of the United States do not view 9/11 as a conflict between global networks of terrorists linked to evil states that support them and an international alliance of good states bent on prevailing in a prolonged struggle. Internationalizing the war on terrorism based on America's understanding will be a Herculean task. For the response of others depends on how foreign governments conceptualize the events of 9/11, how they think about war and crime, and what they consider to be the appropriate measures to cope with each. Such considerations determine whether and how 9/11 will be construed as a threat to state security. A question that is self-evident for the United States as the target of the attacks is more pressing politically and interesting intellectually for states that are affected only indirectly.

A comparison with Germany, against the background of the United States, illustrates the point. In Washington's view the September 11 attack was an act of "war" that required and justified a military response. Although the German government initially went along with this view, in part perhaps because Germany was a central staging area for the attack, after the defeat of the Taliban government it became clear that in German eyes 9/11 was a "crime" for which military instruments were largely unsuitable. What was required instead was patient police cooperation, intelligence sharing, perhaps international legal proceedings, and careful attention to the underlying social and economic causes of terrorism and to its political and diplomatic remedies. A war of words in Washington D.C. culminating in a speech by Vice President Cheney that suggested a stunning shift in U.S. policy from insistence on UN-mandated inspections of Iraq to regime change, opened the door for a populist response by Chancellor Schröder, who won a narrow election victory running an anti-war and anti-American campaign.

The difference in the American and German responses is not surprising. Under conditions of uncertainty, as Mary Douglas and Aaron Wildavsky argued long ago, the selection of risk is foremost "a matter of choice between social institutions."<sup>1</sup> Such choices and institutional practices are often shaped by conceptions of self and historical memories.

Both factors help explain the enormous difference that separates German and American approaches to security, expressed, respectively, in broad "societal" and narrow "military" terms.<sup>2</sup> In post-1945 Germany, the concept of "terror" has historical connotations that are linked not only to extremist groups but also to the state that had abused its power for unspeakable evil in the 1930s and 1940s.<sup>3</sup> Terrorism is typically viewed not as a military problem but as a policing problem, and it is typically placed in a broader political and social perspective that seeks to

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<sup>1</sup> Douglas and Wildavsky 1982, p.198.

<sup>2</sup> Buzan, Waever, and de Wilde 1998; Alagappa 1998.

<sup>3</sup> Kramer 2002, 1.

comprehend and cope with both its manifestations and its roots. And with the use of military force—not to speak of the unilateral use of military force, a political taboo for reasons of both history and identity—and an operational impossibility because it lacks the military capability, Germany typically favors international police action and economic incentives over military force.

This difference matters politically. In light of Germany's approach to counter-terrorism, disagreement with the United States is unavoidable on a crucial point: the conflation in U.S. policy of the war on terrorist networks with global reach, specifically Al Qaeda and allied groups,<sup>4</sup> and the war on the axis of evil that President Bush's 2002 State of the Union and subsequent interviews by high-ranking members of the administration as well as written documents have identified as possible targets of U.S. preemptive, unilateral military strikes. Germany strongly favors an engagement strategy for altering Iran and North Korea's policies on the spread of weapons of mass destruction. And Chancellor Schröder has refused to participate in military action against Iraq even if such action were to be sanctioned by the United Nations. German policy amounts to a refusal for the United States to use NATO for preemptive strikes against Iraq.

The Chancellor's policy has caused a serious deterioration in U.S.-German relations and poses risks for Germany's diplomatic isolation that is unusual, to say the least, in the last half century. Overlooked in the high-profile diplomatic row is another fact that helps us understand better why 9/11 occurred, what Germany is doing to prevent a recurrence, and what these actions portend for German-American cooperation. History and conceptions of self until 9/11 encouraged a policy that was blind to the risk of exporting the problems of terrorism to others. Germany was remarkably unconcerned with the harmful international consequences of its domestic counter-terrorist policies. After 1949 it adopted a policy that focused police attention only on terrorist acts committed on German territory. Since a clause of the German Basic Law, informed by the religious persecutions of the 1930s and 1940s, prohibited the government from banning any faith-based group, even one advocating and supporting terrorist activities abroad, the police did not concern itself with the possible terrorist threats that extremist groups, including religious ones, operating in Germany created for other countries. "It was considered bad politics," writes Jane Kramer, "to suggest that Germany was buying the enviable safety within its borders by providing a safe haven for the kind of fanatics who don't think twice about the safety of other people, even, demonstrably, other Muslims."<sup>5</sup> Religious groups thus were exempted from the crackdown on secular extremism that occurred in the 1970s and 1980s. Yet in the 1990s it was religious groups that engaged in new forms of terrorism. Germany thus betrayed a distinctive narrowness in outlook and inwardness in orientation. On questions of counter-terrorism Germany's beggar-thy-neighbor policy thus is explained by the effects of historical experiences on self-conceptions rather than by a cold-blooded calculation of a narrow conception of self-interest that it undoubtedly expressed.

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<sup>4</sup> Deibert and Stein 2002. Steven Erlanger and Chris Hedges, "Terror Cells Slip through Europe's Grasp," *The New York Times*, 28 December 2001, A1, B4-B5. Christopher Cooper and Ian Johnson, "Tracking Terrors with More Aplomb," *The Wall Street Journal* 29 April 2002, A13-A14. Christopher Cooper, "Al Qaeda Mixes Attacks, Misinformation," *The Wall Street Journal*, 17 June 2002, A3. David Johnston, Don Van Natta Jr., and Judith Miller, "Qaeda's New Links Increase Threats from Far-Flung Sites," *The New York Times*, 16 June 2002, A1,A10.

<sup>5</sup> Kramer 2002, 3.

The paper discusses in sections 1 and 2, respectively, Germany's counter-terrorism policy before and after 9/11. Section 3 concludes by drawing out some implications of the paper's argument for the United States.

## 1. GERMAN COUNTER-TERRORISM POLICY BEFORE 9/11

Although Germany is a comparatively peaceful country, it experienced serious episodes of political terrorism in the 1970s and 1980s that had both domestic roots and international ramifications. Rather than viewing national security through military lenses, on the basis of their historical experience—military catastrophe in the first half of the twentieth century and the success of a trading state in the second—Germany has come to view security in broader political and economic terms. Abroad, multilateral, international police cooperation has been the preferred weapon to combat terrorism. At home, Germany adopted in the 1970s and 1980s a high-tech approach to policing that was supported by far-reaching security laws.

In Germany, terrorist acts and violent demonstrations accounted for about 15,000 crimes against state security in the 1980s—that is, about 0.33 percent of all recorded criminal acts. Disproportionately large were the 5 to 10 percent of the country's police resources committed to defending state security. Between 1970 and 1979 there were 649 attacks that killed thirty-one people and injured ninety-seven. In addition, 163 people were taken hostage. Between 1980 and 1985 the number of terrorist acts increased to 1,601.<sup>6</sup> Virtually all of this terrorism was home-grown, the activities of various generations of the Red Army Faction (RAF), the Revolutionary Cells (RZ) and other groups. Foreign terrorist groups mattered much less. To be sure, as early as the 1950s Serbs and Croats were waging armed struggle on the streets of Frankfurt. And in the 1980s and 1990s various factions within the Turkish and Kurdish populations, such as the Grey Tigers and the PKK, have also been engaged in bloody conflicts that have killed German bystanders. The symbols of German state and society were unfortunate collateral damage, never the primary targets of foreign terrorist attacks. The German police never focused on foreign terrorists the way it did on German, and especially left-wing, terrorism. On this point the difference with the United States and the September 11 attack is striking.

Germany's security policy distinguishes strictly between internal and external security. "National security" as the meeting ground for both does not exist. Counter-terrorism policy is shaped by two basic lessons of history that have shaped how policymakers and the public think about issues of state security. The Weimar Republic taught one lesson. Germany's lawful state (*Rechtsstaat*) and its democratic system with teeth (*streitbare Demokratie*) will not permit the enemies of constitutional democracy to use the cover of the rule of law to attack the foundations of the polity. Nazi Germany taught a second lesson. The security forces of the state need to be under firm parliamentary control, and the gathering of intelligence needs to be severely circumscribed. The peculiarity of the German approach to internal security and counter-terrorism in particular rests in the inescapable contradictions between these two lessons of history and the way they have been institutionalized and practiced. In comparison to most other European countries, Germany is known for its "strong state" approach to counter-terrorism, so much so that many European partner countries in the 1970s and 1980s in particular could hardly conceal their unease as the German government adopted some tough counter-terrorist legislation, most notably Article 129a, to cope with the attacks of the RAF and like-minded groups. At the same time Germany has a liberal asylum policy, extends far-reaching freedoms to religious

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<sup>6</sup> Katzenstein 1996, 155.

associations, imposes strict limitations on the intelligence gathering of the police and other government agencies, and opposes strongly the death penalty. In Europe, for example, Germany is probably unique in having the internal intelligence service separated into seventeen different organizations in Germany's federal system. The police have focused most of their attention and resources on investigating and combating left- and right-wing extremist organizations. Other kinds of terrorist or subversive threats are treated less carefully. Instead of a "militarization" of internal security, a greater integration between Germany's different police forces, or a creation of a German or European FBI, the Minister of the Interior of Schleswig-Holstein, Jörg Ziercke, favored strengthening the European Police Agency, or Europol.<sup>7</sup> In the understanding of Germany's political class and public, the moral foundation of its polity requires a secure system of norms that are legally guaranteed and firmly anchored in a human rights tradition.

In Germany terrorism and mass protest reinforced a modernization and expansion of police powers as part of the Social Democratic reform program of the 1970s. Rather than reacting to terrorism, proactive police work sought to prevent terrorist threats, thus blurring the line that separates normalcy from emergency and weakening the tenets of liberal government. Improved methods of data collection, storage, retrieval and use were considered the most promising avenue for police work. On questions of internal security, Germany went high-tech.

The police developed novel methods of computer matching as part of its counter-terrorist campaign.<sup>8</sup> Large amounts of statistical data were scanned into computers in the effort to identify overlapping clusters of suspicious traits in particular population segments. For example, the police used the files of utility companies to identify customers who paid their bills in cash or through third parties. This group was narrowed down further by running data checks on lists of residence and automobile registrations as well as receipts of social security and child-care payments. The people that remained in this "drag-net" were potential suspects. They tended to be young, single, and unregistered, had no automobiles, and paid their utility bills in cash. If they lived in large apartment complexes with underground garages and unrestricted direct access to four-lane highways, even during rush hour, changed their locks as soon as they moved in, kept their curtains closed, and received little or no mail, they were put under direct police surveillance. As much as five percent of the West German adult population appear to have been covered by some form of police surveillance system in the 1980s. Computer systems for potential terrorists were, of course, much smaller. One such system, Apsis, reportedly contained the names of 33,000 individuals in the late 1980s. We do not know how many other computer systems were developed for similar purposes. In brief, preventive or "intelligent" police work, conducted in the name of enhancing internal security, was informed by abstract social categories that the police had defined. It was not informed by any evidence that a specific individual had been involved in a criminal act.

The fact that Germany's police was preoccupied with homegrown terrorism in no way diminished the relevance of the international dimension. Terrorists, after all, are helped greatly by having guaranteed access to safe territories from which they can operate. Abetting states offer such territorial safe havens. Germany's Red Army Faction (RAF) had international links that were less consequential for its attacks than for the survival of some of its cadres after the organization's decline.<sup>9</sup> In the 1970s some RAF members received training in Palestine Liberation Organization (PLO) camps that operated under the auspices of the Syrian government

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<sup>7</sup> Jansen 2001, 2.

<sup>8</sup> Katzenstein 1990, 43-48. Katzenstein 1996, 160-61.

<sup>9</sup> Katzenstein 1990.

in Lebanon's Bekaa Valley. The links between the PLO and RAF became an international drama when PLO terrorists hijacked a Lufthansa plane in 1976 to force the release of the top RAF leadership from a high-security prison in Germany. When special forces flown in from Germany stormed the plane in Mogadishu and freed the hostages, the imprisoned RAF leaders committed suicide. Still, there was a deep divide that separated the members of these two groups. Lack of access to PLO camps would have impeded the RAF's operation. However, it would not have stopped the RAF from its bombing and kidnapping campaigns in Germany.

More consequential and politically explosive was the fact that Germany's unification quickly led the German police to a number of "retired" members of the RAF who, hosted by the East German secret police, the Stasi, had been living incognito in the German Democratic Republic (GDR).<sup>10</sup> In the 1970s the GDR appears to have been an important transit country for RAF members as they traveled abroad to elude the investigations of the West German police. To this day it remains unclear whether the Stasi looked at these erstwhile members of the RAF, and then good socialist citizens, as comrades-in-arms deserving of support now that their dangerous mission had ended, or as potential weapons that could be redeployed in the Federal Republic should the occasion warrant it. One thing is certain: without the support of the GDR state bureaucracy—which provided new identities, false papers, apartments, and jobs—former RAF members, whether active, semi-retired, or retired, would have had an exceedingly difficult time surviving in Germany or anywhere else in central Europe. With the crumbling of the Berlin Wall and the disintegration of the GDR, former supporters of the RAF were robbed of the protective cocoon the GDR had provided.

Germany's counter-terrorism policy has been consistently international in its orientation, in line with its general approach to questions of national security. As early as the 1960s Germany had become a champion of a deepening and broadening of police cooperation in Europe and beyond. By the early 1970s German criticism of Interpol as cumbersome and ineffective had become vocal, particularly with respect to upgrading its information technologies and documentation center. Persistent German pressure eventually resulted in the creation of a European secretariat of Interpol in 1986. The primary locus for police cooperation was, however, the European Community. It was again German pressure over a period of twenty years that led, in the Maastricht Treaty, to the creation of Europol, an institution designed to facilitate cross-border policing with limited powers of initiating its own investigations. And while Germany's policy has become more cautious in favoring Europeanization on politically sensitive issues such as asylum and immigration, during the 1994 German presidency of the EU the jurisdiction of Europol was increased considerably. The German approach has, therefore, consistently favored international, European over national approaches and institutionalization over informal arrangements.<sup>11</sup>

This tradition of Germany's counter-terrorist policies has left discernible traces in police practice, in legislation, and in the political commitment to international policing. The strategy of preventive policing initiated in the 1970s signaled a substantial increase in police powers. And, in the interest of enhancing internal security, Germany's legal statutes were changed. Revised in 1976 and 1986, Article 129a gives state officials broad discretionary powers. The Article forbids the "support" of and, until changes in 2002, "advertisement" for terrorist organizations; under certain conditions, it permits the arrest of individuals even in the absence of any suspicion of criminal activity. Mere suspicion that an individual is supporting a criminal organization

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<sup>10</sup> Georg Mascolo and Michael Sontheimer, „Kunstvolle Legende“, *Der Spiegel* 47/1998, 48-50.

<sup>11</sup> Katzenstein 2002, 9-12.

constitutes a criminal act and thus provides legal ground for the issuing of search and arrest warrants. In fact, Article 129a subjects criminal intent rather than criminal behavior to legal prosecution. This extension of the government's coercive powers beyond criminal conduct is an important part of pro-active police practice in Germany. Finally, throughout the 1990s Germany's governments have remained strong supporters of an increasing institutionalization of police cooperation as part of the accelerating process of Europeanization in the 1990s. Considering this impressive arsenal of police powers, legal instruments, and international police cooperation, the fact that Germany was one, if not the, major staging area in Europe for the September 11 attack is noteworthy and in need of explanation.

## 2. GERMANY AND THE WAR ON TERRORISM

September 11 had a big effect on Germany. This is not surprising. The evidence is clear that terrorists used Germany as a major staging area for the September 11 attacks.<sup>12</sup> Three of the four pilots of the planes attacking the World Trade Center and the Pentagon came from Hamburg. German solidarity with New York and America was very strong. A quarter of million people showed up at a demonstration for New York in front of the Brandenburg Gate, the largest of scores of such demonstrations that occurred all over the country. Germany had a legislative history of forceful counter-terrorist policies. And the government was fully aware of both its own and Germany's vulnerability.

Three members of a terrorist cell in Hamburg were centrally involved in the September 11 attacks; the German police have issued arrest warrants for two others still at large. At least two other cells in Germany have also been linked to Osama bin Laden.<sup>13</sup> September 11 thus had a profound impact on Germany. After Adenauer's *Westpolitik* and Brandt's *Ostpolitik*, 9/11 is the capstone to a third reorientation of German foreign policy.<sup>14</sup> After the end of the Cold War and culminating with the deployment of German troops in the Kosovo war, Germany had resolved (sort of) the issue of the use of force in a multilateral operation, with the precise balance of United Nations, NATO and European support to be decided on an ad hoc basis. September 11 was a watershed because with its decision to deploy German troops in Afghanistan, Germany assumed military responsibility beyond German and NATO borders. Although a minority in the Social Democratic Party, the Greens and the former Communists (the PDS) were evidently dissatisfied, Chancellor Schröder, in a forceful Reichstag speech on October 11 declared Germany's "unrestricted solidarity" with the United States, advocated an "irrevocable" change in Germany's position, and committed Germany to military operations in defense of freedom, human rights, and for the restoration of stability and security. A month later, a small group of the Chancellor's opponents in the SPD and the Green Party were close to breaking up the coalition government by opposing the deployment of 3,900 German troops as part of the coalition fighting the Taliban in Afghanistan. In one of Germany's rare no-confidence votes, the government won by only ten votes. Support for Germany's military participation in the Gulf war and in Kosovo was, respectively, 17 percent in March 1991 and 19 percent in March 1999; in September 2001, 58 percent favored Germany's military participation in the war against terrorism, a figure that by

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<sup>12</sup>John Tagliabue and Raymond Bonner, "German Data Led U.S. to Search for More Suicide Hijacker Teams," *The New York Times*, 29 September 2001, A1, B3.

<sup>13</sup>Ian Johnson, "Role of Germany as Terror Base Grows," *The Wall Street Journal Europe*, 24 September 2001, 1, 6.

<sup>14</sup>Mauil 2001.

November 2001 had dropped to 35 percent.<sup>15</sup> As matters turned out, the German military is involved in surveillance around the Cape of Africa, and Germany has played a central role in the political, policing and economic reconstruction of Afghanistan. It has only a modest military role, a division of labor that suits evidently both the German and the U.S. governments.

The solidarity with the United States and the international orientation of Germany's counter-terrorist policy was evident in NATO. After the September 11 attack it took the Permanent Representatives at NATO only two meetings and thirty hours to invoke the mutual defense clause in Article 5, provided that the attack had been launched from abroad.<sup>16</sup> This astonishingly quick action was made possible by the decisions taken at the Washington Summit in April 1999, and in accordance with the requirements of the new strategic concept slowly implemented since then. Article 24 of the Washington summit communiqué had stated that beyond an armed attack on the territory of allies, alliance security is also affected by other risks of a wider nature. It made specific reference to acts of terrorism, thus creating a new trigger for invoking Article 5 and declaring political solidarity without necessarily guaranteeing collective military action. While NATO documents had previously referred to terrorism as a criminal offense, the April 1999 declaration changed that. Terrorism was now conceived of as a threat to the alliance members' territorial integrity and equated with an armed attack. The 1999 declaration contained clear standards: "armed attack," "directed from abroad," and "within the geographic scope covered by the NATO treaty." Unambiguous standards made possible quick action after September 11. The upgrading of Russia's role in NATO, a subject of prolonged discussion throughout the 1990s, followed easily after President Putin's wholehearted support of the United States in the wake of 9/11.<sup>17</sup>

Much has changed since the fall of 2001. Forgotten are the days when the German Chancellor risked his political career and office in a vote of non-confidence for the American President to whom he pledged "unrestricted solidarity." And long gone is the time when NATO invoked Article 5 in its first-ever mobilization of its collective defense against the 9/11 attack. The dramatic change in transatlantic relations has two primary sources: differences in capabilities and differences in meaning. The prolonged negotiations over the wording of the UN Security Council Resolution 1441 of November 8, 2002 was prompted largely by asymmetries in military capabilities and the wide-spread perception that the Bush administration was shifting even further toward unilateralism and the adoption of a strategy of preemption. Germany was no more than a bystander to the process of diplomatic bargaining at the UN.

There exist also deep differences in the meaning of 9/11. These differences are striking in the case of the United States and Germany. For Americans, 9/11 is a "day of infamy" when thousands perished in the attacks on the World Trade Center and the Pentagon. For Germans, in sharp contrast, 9/11 is the day the Berlin Wall fell in 1989. Differences in interpretation generate different approaches to the war on terrorism. American policy has made the war on terrorism primarily a war against evil states in which unilateral American action is preferred to cumbersome multilateral consultation and cooperation. Since the defeat of the Taliban

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<sup>15</sup> Jürgen Hogrefe et al., „Die Neue Allianz“, *Der Spiegel*, 41/2001: 24. Ralf Beste et al., Abmarsch in die Realität, *Der Spiegel*, 46/2001, 22. Steven Erlanger, "Germany Ready to Send Force of 3,900; Not Clear if They Would Be Combat Soldiers," *The New York Times*, 7 November 2001, B4.

<sup>16</sup> Tuschoff, n.d. (2002). Judy Dempsey, "Nato quick to set historical precedent," *Financial Times*, 14 September, 2001, 8. Judy Dempsey, "EU doubts grow over 'switch' in Nato role," *Financial Times*, 19 September 2001, 4. "NATO Agrees to All of U.S. Aid Requests," *International Herald Tribune*, 5 October 2001, 10.

<sup>17</sup> Michael Wines, "NATO Plan Offers Russia Equal Voices on some Policies," *The New York Times*, 23 November 2001, A1, A30.

government in Afghanistan, German policy has instead supported strongly a war conducted against global networks of terror, carried out multilaterally and informed by existing legal rules and conventions.

During the German election campaign in September 2002, Chancellor Schröder's anti-Americanism was opportunistic and deployed with far less finesse than Foreign Minister Fischer's. Fischer mobilized his party and won the election for the Red-Green coalition on an anti-war platform that did not undercut German support for the principle of multilateralism either in Europe or in the UN. The Chancellor spoke instead of German unilateralism ("der deutsche Weg"), relinquished to France the pivotal position in the Atlantic Alliance, and committed himself to work against a possibly unanimous UN Security Council should the UN find, at some future date, that international military action against Iraq might be warranted. But Schröder's anti-Americanism also expresses principled support for the United States. It is waged in support of an international order that the United States had painstakingly built after World War II. In that order Germany had not only regained its economic prosperity and political standing but had also achieved national unification, even though the majority of Germans no longer believed in unification. Today Germany understandably is loath to cooperate in the dismantling of an order from which it has gained so much. Just as understandable, however, is a shift in American policy that reflects a seismic shift in America's sense of vulnerability.

Germany also took important counter-terrorist measures at home, which tilted the balance between liberty and security toward the former without, however, creating the necessity, as had been true in the 1970s, for the Constitutional Court to adjudicate irreconcilable conflicts. Specifically, the German Parliament passed two counter-terrorism laws. The main provisions in both were not triggered by the September 11 attacks but had been debated widely before.<sup>18</sup>

The first law tightened airport security and withdrew the constitutional provision forbidding the government to ban religious groups that advocate terrorism. Shortly after the law took effect on December 8, 2001, the government moved against twenty religious associations and conducted more than 200 raids. The main target was the Cologne Caliphate, whose leader, Metin Kaplan, had been convicted in November 2000 to a four-year sentence in connection with the murder of a rival in Berlin. He had also planned an airplane attack on the Ataturk mausoleum in 1998 and had close ties to Al Qaeda.<sup>19</sup> The first counter-terrorism law also proposed insertion of a new Article 129b into Germany's criminal code, henceforth permitting the prosecution of individuals who supported terrorist acts committed in other countries. This was a highly contentious issue, as the smaller coalition party of the SPD, as well as a faction of the SPD, objected strongly. The political logjam was broken only after the explosion of a truck on April 11, 2002 outside a Tunisian synagogue, the oldest in North Africa, had killed nineteen tourists, twelve of whom were German. When Al Qaeda claimed credit for the attack more than two months later, not many were surprised. The circumstantial evidence had pointed to strong links of the suicide driver to groups operating in Canada and Germany, groups that had presumed links to Al Qaeda.<sup>20</sup> In Berlin, the political reaction was almost instantaneous. Parliament quickly

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<sup>18</sup> Lepsius 2002.

<sup>19</sup> Steven Erlanger, "Germany, under New Antiterrorist Law, Bans a Radical Muslim Group," *The New York Times* 13 December 2001, B5. Douglas Frantz, "Terror Plan Born in Germany and Aimed at Turkey Gets New Scrutiny," *The New York Times*, 5 February 2002, A12. Desmond Butler, "Germany May Extradite Islamic Militant to Turkey," *The New York Times*, 26 May 2002, A6. Jürgen Dahlkamp and Georg Mascolo, "Griff in die Watte", *Der Spiegel*, 27/2002, 30-31.

<sup>20</sup> Dominik Cziesche et al., "So Gott Will", *Der Spiegel* 17/2002: 108-27. Chris Hedges, "Tunisian Killed in Synagogue Blast Was Unlikely Convert to Militancy," *The New York Times*, 9 June 2002, 22.

passed Article 129b, complementing Article 129a, which had been enacted in 1976. Henceforth membership in and the assistance of a terrorist organization operating abroad that goes beyond purely verbal support is a criminal offense. This is the legal instrument that puts teeth into the efforts of the German police to arrest foreign terrorists operating from Germany.<sup>21</sup>

The second counter-terrorism law adjusts over 100 regulations in seventeen laws and five administrative decrees. The gist of the changes is to strengthen the government's preventive approach to terrorism. It became effective on January 1, 2002.<sup>22</sup> The law gave Germany's various security organizations the power to access the telephone, banking, employment and university records of individuals. In addition to their original mandate of collecting general overview information on the activities and tendencies of radical groups intent on subverting Germany's constitutional order, the primary mission of the security organizations has been redefined to include also the surveillance of the activities of individuals who are threatening to undermine the idea of international understanding and world peace. Identity papers of foreigners will include new biometric information such as fingerprints and face recognition data, a provision that may soon be extended to the identification cards of all German citizens once Parliament has specified guarantees against possible abuses of the new police powers. Further investigative powers have been granted to the two federal security organizations, the Federal Criminal Police, and the Federal Border Police, and cooperation between local and regional police organizations has also been improved. Germany's immigration laws have been rewritten to further enhance information on foreigners, including voice recordings of asylum seekers to be stored for a decade, and online access of the police to the data of the immigration and naturalization services. Because of the strong opposition of the smaller of the two parties forming the coalition government, some controversial measures, such as the expansion of the investigative powers of the three federal intelligence services, have a sunset clause of five years.

Although Germany was a major base of operation for Al Qaeda, German laws had previously prevented arrests without serious suspicions of illegal activities. In contrast to more than twenty arrests made by Belgian, British, French, Italian, Spanish, and Bosnian police officials, Germany's first arrest came on November 28, almost ten weeks after the September 11 attack.<sup>23</sup> By late April 2002, however, the German police was able to make numerous arrests, among them eleven members of the Al-Tawhid movement, a little known Palestinian group with links to Al Qaeda, and eight members of a group apparently controlled by Abu Musaab Zarqawi, a top Al Qaeda operative who is in hiding, perhaps in Iran.<sup>24</sup>

Police practice has also changed. In the largest operation ever mounted by the federal police, 600 officers were put to work in cooperation with the FBI to investigate the plot. Within two weeks the police in five regional states were reactivating the dragnet approach that the police had

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<sup>21</sup> Ulrich Deupman and Holger Stark, Die Stauffenberg-Lücke, *Der Spiegel* 17/2002: 24-26.

<sup>22</sup> Steven Erlanger, Shocked Germany Weakens Cherished Protections, *The New York Times*, 1 October 2001, B1, B4. Büllsbach 2002, 4-5.

<sup>23</sup> Chris Hedges, "A European Dragnet Captures New Clues to bin Laden's Network," *The New York Times*, 12 October 2001, B10. John Tagliabue, "More Arrests and Charges in Assault on Terror Ring," *The New York Times*, 11 October 2001, B4.

<sup>24</sup> Georg Mascolo, Dietmar Pieper and Andreas Ulrich, 'Bruchstückhafte Anhaltspunkte,' *Der Spiegel* 40/2001, 27-29. John Tagliabue, German Police Arrest Associate of Hijacker Cell, *The New York Times*, 29 November 2001, B1, B6. Hugh Williamson, "Police in Hamburg Arrest September 11 Suspect," *Financial Times*, 29 November 2001, 1. Hugh Williamson, "Palestinian Cell 'had US and Israeli targets in Germany,'" *Financial Times*, 25 April 2002, 3. Edmund L. Andrews, "German Officials Find More Terrorist Groups, and some Disturbing Parallels," *The New York Times* 26 April 2002, A12. Georg Bönisch, Dominik Czesche, Georg Mascolo, Holger Stark, „Ziele in Deutschland“, *Der Spiegel* 18/2002, 94-98.

used in the 1970s and had stopped using around 1980 due to growing political opposition. Codified legally in 1988, it had remained unused until the fall of 2001. The statistical profile of potential suspects consisted of men aged twenty to thirty-five, from the Middle East, enrolled in engineering schools and without prior criminal convictions. The operation turned out to be a flop; after several months not a single “sleeper” terrorist had been identified.<sup>25</sup> Published reports about the arrest of seven suspected members of a new cell in Hamburg did not fit the statistical profile. One member was fifty-one years old; another was a German citizen; and several had not been university students.<sup>26</sup>

Why key terrorist cells were operating from Germany appears to be self-evident, at least in retrospect.<sup>27</sup> Germany has more foreign residents than any other society in Europe, including three million Muslims. Berlin has the third largest Turkish population in the world. The crackdown with which the French government answered a spate of terrorist bombings in the 1990s dispersed some Algerian cells to surrounding countries, including Germany. And large numbers of asylum seekers were admitted to Germany in the 1980s and 1990s, including many from countries whose governments waged war on religious fundamentalist movements. Statistical data released by the Office for the Protection of the Constitution suggest that in the late 1980s, foreigners living in Germany who belonged to radical organizations (117,000) were more numerous than German members of these organizations (85,000). Compared to 10,400 far-right German extremists, twenty Islamic organizations with a total of 32,000 members were under observation by the Office for the Protection of the Constitution in 2001. 27,500 of these were members of a radical Turkish organization, Milli Görüş; in addition there were twelve Arab Islamic extremist organizations with 3,100 supporters, including the Muslim Brotherhood, Hamas, Hizbollah, and the Algerian groups FIS and GIA. Some estimates suggest that as many as 10 percent of these might be prepared to commit violent crimes.<sup>28</sup> The German police force estimates that there are about one hundred radicals currently living in Germany who received training in Osama bin Laden’s camps in Afghanistan or Pakistan.<sup>29</sup> In September 1998 it arrested a suspected senior financial operative and arms supplier of Al Qaeda, Mamduh Mahmud Salim and extradited him to the United States. And on December 25, 2000 in Frankfurt, it also arrested four Algerians armed with guns and explosives; a fifth man was picked up the following April in Karlsruhe. These arrests were all part of a sting operation to prevent an Al Qaeda attack on Strasbourg planned for December 2001.<sup>30</sup>

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<sup>25</sup> Jansen 2001, 7-8. Hugh Williamson, German Police Confirm Report on Suspects, *Financial Times* 25 September 2001, 2. Iain Johnson, “A Top German Cop Who Pioneered Profiling in the ‘70s Sees Methods Make a Comeback,” *The Wall Street Journal*, 10 December, 2001. WSJ.com—From the Archives, accessed December 11. Dominik Cziesche, Holger Stark, Andreas Wassermann, „Gigantischer Aufwand“, *Der Spiegel* 11/2002, 52-54.

<sup>26</sup> Hans Leyendecker, Auffällig konspirativ, *Süddeutsche Zeitung* 5 July 2002, 6.

Douglas Frantz, German Police Quiz Roommate of Top Hijacker, *The New York Times*, 4 July 2002, A1, A6.

<sup>27</sup> See Steven Erlanger, In Germany, Terrorists Made Use of a Passion: An Open Democracy, *The New York Times*, 5 October 2001, B6; and Hugh Williamson, More bin Laden Suspects Held in Europe, *The Financial Times*, 11 October 2001, 6.

<sup>28</sup> See „Angriff auf den Staat im Staate“, *Der Spiegel*, 24 September 2001, 39:28–29. Hugh Williamson and Jimmy Burns, “Al-Qaeda Smuggling in Members,” Germany Warns, *Financial Times*, 25-26 May 2002, 2.

<sup>29</sup> „Lieb, nett und niemals böse“, *Der Spiegel*, 24 September 2001, 39:22. Hugh Williamson, German “Police Confirm Report on Suspects,” *Financial Times*, 25 September 2002, 2.

<sup>30</sup> “Islamic Militants A Growing Threat in Germany,” *Agence France Press*, 13 September, 2001, <http://web.lexis-nexis.com/universe/printdoc>, accessed 2/4/02, 3:15pm. Edmund L. Andrews, “Germans Try 5 Algerians Accused of Plotting French Attack,” *The New York Times*, 17 April 2002, A12.

Germany's various security organizations were not totally unprepared for 9/11, but they often felt powerless. The head of the Command Center of the Swat-Team/Surveillance Unit of the Federal Criminal Investigation Office (*Bundeskriminalamt*) in Wiesbaden, Klaus Jansen, refers to Germany as a "place of rest" (*Ruheraum*) for terrorists.<sup>31</sup> The Federal Security Service (*Bundesnachrichtendienst*) and the Office for the Protection of the Constitution prepared a long study in 1997 that addressed the threat that foreign extremist and terrorist groups posed for Germany.<sup>32</sup> In 2000, after more than a year of investigation, the Federal Criminal Investigation Office submitted to the Office of the Federal Prosecutor a report detailing various connections between Osama bin Laden and Germany.<sup>33</sup> Such reports were not sufficiently alarming, however, to shake the liberal legacy of Germany's post-Nazi history. History and memory continue to have a powerful effect on policy. The current generation of political leaders takes pride in having learned the lessons of Germany's Nazi past. Since terrorism was defined only with reference to attacks inside Germany, cooperation with foreign intelligence and police services necessarily has been limited. Only two notable terrorist acts perpetrated by Muslims have occurred in Germany—the assassination of Israeli athletes by Palestinian gunmen during the Munich Olympic Games in 1972 and the bombing of a Berlin nightclub in 1986. Court proceedings in the latter case have dragged out for fourteen years. In short, the prominence of the anti-authoritarian 1968 generation in positions of political power in the 1990s has strengthened a liberal asylum policy and generous social-assistance programs that have made Germany an attractive location for "sleeper" cells of terrorist organizations.

### 3. THE UNITED STATES RESPONSE IN COMPARATIVE PERSPECTIVE

Even under the best of circumstances, that is, without two inexperienced leaders facing very important and close elections, the United States would confront great difficulties in cooperating with Germany and its European allies. The outburst of anti-Americanism in Germany and the tough and prolonged bargaining with France about the wording of the UN Security Council resolution in the fall of 2002 heightened U.S. impatience, reinforcing the belief in the Pentagon and the Vice President's office that the allies of the United States were attempting to blunt the unilateral and preemptive use of military force that the administration had begun to advocate. After a quick victory over the Taliban, the United States and the European states have found themselves at odds over numerous issues affecting police cooperation. Without exception, all European countries are deeply concerned about the indeterminate detention of an unknown number of enemy combatants in Guantanamo. They are legally bound and politically committed to refuse cooperation in judicial proceedings should suspected terrorists, if convicted, receive the death penalty. A contentious issue in negotiations between the United States and France, Spain, and Germany, among others, this is a serious hurdle in the negotiations of an EU-U.S. extradition and judicial cooperation agreement that commenced in the spring of 2002. Besides the thorny issue of extradition in cases involving the death penalty and trials by special tribunals, Germany is also calling for strong guarantees to ensure stringent data protection.<sup>34</sup> In contrast to the Cold

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<sup>31</sup> Jansen 2001, 3.

<sup>32</sup> „Angriff auf den Staat im Staate“, *Der Spiegel*, 24 September 2001, 39:29.

<sup>33</sup> „Lieb, nett und niemals böse“, *Der Spiegel*, 24 September 2001, 39:21.

<sup>34</sup> Michael Mann, "EU sets tough terms for judicial treaty," *Financial Times*, 27-28 April 2002, 3. Steven Erlanger, "German Chancellor Hopes to Release Evidence Soon," *The New York Times*, 12 June 2002, A26. Georg Mascolo and Gerhard Spörl, „Wichtige Details“, *Der Spiegel* 24/2002, 154.

War, the war on terrorism will test alliance cohesion in ways that touch the depth of a country's security ideology and judicial philosophy. The great diversity that exists even among the closest allies of the United States, as this paper has illustrated, will very likely doom any effort to impose one country's political logic on a plural world.

There is no reason to believe that conceptions of self and historical memory are any less powerful in shaping the American approach to the War on Terrorism than they have proven for America's closest allies. For Americans, September 11 was a second "day of infamy." Al Qaeda had learned from its bungled 1993 attempt. It apparently acted alone rather than, as in 1993, with the suspected assistance of Iraq.<sup>35</sup> The attack was carried out by foreigners who had entered the U.S. unobtrusively and did not survive the attack, not by radicals associated with the mosques in the New York area who made their escape. And it used a daringly new weapon of mass murder.<sup>36</sup> Out of the clear blue sky enemies staged a surprise attack on the United States more devastating than the one on Pearl Harbor, whose image it evoked. For more than half a century and with a broad arsenal of sophisticated weapons systems, U.S. security policy had aimed to prevent the recurrence of another surprise attack. Seeking to extend that policy, one of the most important political priorities of the Bush administration before 9/11 was to prevent possible future attacks with a costly and yet untested national missile defense system. The mountain of rubble in lower Manhattan and the charred Pentagon symbolize the shattering of the American yearning for invulnerability.<sup>37</sup>

After a chaotic day and after one hasty video-conference with his closest advisors, the response of the President on the evening of September 11 was to frame the attack as an act of war waged on the United States that his administration had no choice but to respond to.<sup>38</sup> The "war on terrorism," to which George Bush rallied the nation, broadened subsequently to the conflict with the "axis of evil," reversing virtually all of the President's political priorities. Gone is the belief in small and decentralized government, the Powell doctrine of unambiguous political objectives and clear exit routes for military campaigns, the eschewing of nation-building in poor countries, and the plea for a balanced budget and fiscal frugality. The United States is mobilizing on all fronts for war—military, diplomatic, juridical, economic, organizational, and psychological—and it is doing so on a broad scale and with the assistance of a heterogeneous coalition of states. When a serious conflict appears to divide "us" from "them," national security is a potent symbol in American politics. Theodore Lowi argued persuasively during the Cold War that this symbol is both culturally activated and strategically deployed.<sup>39</sup> War permits officials to rally support for programs and policies that otherwise would encounter domestic opposition. The response is not unlike that at the height of the Cold War, shaped by a Manichean vision of the world and a sharply shifting balance in domestic politics away from civil liberties to national security.

Like Germany in the 1970s, and again since September 11, the United States has created new governance mechanisms to deal with its altered security needs and conceptions of legitimate

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<sup>35</sup> Mylroie, 2001. Dwyer et al., 1994. Parachini 2000. "Hiding Out in the U.S.A.?" *Newsweek* 25, October, 2001 [www.msnbc.com/news/647811.asp?cp1=1](http://www.msnbc.com/news/647811.asp?cp1=1) accessed 2/5/02, 9:27AM.

<sup>36</sup> Mylroie, 2001. Dwyer et al., 1994. Parachini 2000. "Hiding Out in the U.S.A.?" *Newsweek* 25, October, 2001 [www.msnbc.com/news/647811.asp?cp1=1](http://www.msnbc.com/news/647811.asp?cp1=1) accessed 2/5/02, 9:27AM.

<sup>37</sup> Heymann 2001/2002.

<sup>38</sup> The most authoritative published day-by-day account of the reaction of the Bush administration is in a series of eight articles that Dan Balz and Bob Woodward published in the *Washington Post* between January 27 and February 3, 2002.

<sup>39</sup> Lowi 1969, 157-88.

authority. The Department of Homeland Security will become a case study in U.S. pluralist politics as various constituencies fight over the largest reorganization of the federal government in half a century.<sup>40</sup> Dealing with internal security is a profoundly political issue about the proper balance between security and liberty. In the United States as throughout the industrial world, liberal rights are being curtailed. Everywhere new structures for internal security are being created, and old ones are being centralized. Police, judicial and political practices dealing with criminal surveillance are overhauled as the secrecy of telephone, banking, employment and university records is being eroded. Since 9/11, acting within the letter of the law, scores of suspects in the United States have been arrested and detained in solitary confinement as “material witnesses.” Legal proceedings are conducted in total secrecy. Laws governing wiretapping, immigration, asylum, and extradition are being rewritten. Security of airports and other public facilities are tightened. New restrictions are imposed on religious groups. Intelligence agencies are granted greater leeway. Rules of international police cooperation are being redefined. And all of this is occurring in an atmosphere of fear and without significant public debate. Supreme Court Justice Sandra O’Connor was surely correct when she argued after September 11 that, “we’re likely to experience more restrictions on our personal freedom than has ever been the case in our country.”<sup>41</sup>

The same was true of Germany during its extended campaign against domestic terrorism in the 1970s and 1980s. In seeking to protect the state against terrorism the legal power of the police expanded greatly. Citizen rights became more constricted. Yet history has proven wrong dire predictions made by many scholars and journalists at the time about the rise of a new type of German police state. In the understanding of Germans, and in the views of casual visitors and informed observers, Germany is today a more liberal polity than it was at the beginning of the 1970s. Changes in legal statutes and informal police practices are only one part in the broader social transformations of societies and states. In crisis situations, as was true of the early 1970s and, again, after the September 11 attack, prior changes in legal statutes and police practice matter greatly. They define the baseline of what state officials and citizens consider normal and proper police conduct. But this is far from constituting the totality of experiences that make Germany a significantly more liberal polity today than a generation ago, despite the existence of more restrictive security laws. It is easy to underestimate the importance of John Ashcroft; it is also easy to overrate his importance.

The U.S. “war” on terrorism results primarily from the institutionalization of U.S. “national security” during the Cold War. The war against the Taliban was for the United States a response that followed naturally from a security policy that had been institutionalized since the Japanese attack on Pearl Harbor. Many political factors came together to produce this distinctive outcome: a virulent anti-communism, shared also by the American trade-union movement, sharply at odds with developments in Europe though not in West Germany; powerful economic interests in what President Eisenhower famously called the military-industrial complex; a Republican party always eager to show the Democrats to be “soft on communism”; the hot wars in Korea and Vietnam; and the Cold one with the Soviet Union. Although in the short-term it may do little to interfere with the Al Qaeda sleeper cells already in place around the world, in the medium-term the elimination of an uncontested territorial space for the planning of terrorist operations will surely restrict the activities of Osama bin Laden and his close associates and impair Al Qaeda’s overall effectiveness. Fighting a “war” against an enemy whose preferred staging area for

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<sup>40</sup> Carter 2001/2002. Donohue 2001.

<sup>41</sup> Greenhouse 2001.

planning operations are the societies of the closest allies of the United States, including Germany, including our own society, will be difficult. It risks fighting societies, such as Germany, that are each endowed with distinctive historical memories and different self-conceptions. The recent shrill tones in American-German relations will probably not be the last in the relations between the United States and its main allies. America's Manichean vision of international life will be tested, and tested severely, by a complicated, messy, and contested series of counter-terrorist campaigns.

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