Reforming Counterterrorism: Institutions and Organizational Routines in Britain and France

Frank Foley [a]
[a] Stanford University,

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FRANK FOLEY

This article seeks to explain why two states faced with a similar terrorist threat, perceiving it in a similar way, and drawing the same broad implications for their counterterrorist investigations, have nevertheless put in place significantly different types of organizational reforms in response to that threat. The study shows that although France and Britain have embraced a common preventive logic in the face of Islamist terrorism, the changes that they have made to the coordination of intelligence, law enforcement, and prosecution in that context have differed because of contrasting organizational routines and interinstitutional conventions in the two states. An analysis of the British and French cases shows that law enforcement can be preventive but that western states are likely to pursue different ways of bringing security agencies and the law together to prevent and prosecute terrorism. The organizational and institutional factors that give rise to such divergent practices have important consequences for the ability of a state to develop a coordinated operational response to terrorism and convict terrorist suspects of crimes in a court of law.

Many western states currently face similar threats from a number of terrorist networks affiliated with, or inspired by, al Qaeda's transnational jihad. Yet they have often displayed significant differences in their counterterrorist policies and practices adopted in response to these threats. This article focuses on reforms to the coordination of domestic counterterrorist agencies. What accounts for the different types of reforms and the varying degrees of interagency cooperation that we observe in different states? The counterterrorism literature has hitherto failed to provide systematic answers to such questions due to a lack of theory-guided comparative research.[1] The article seeks to explain the differences between Britain and France's organizational reforms in the face of Islamist terrorism—two country cases that I argue are a fruitful starting point for the development of a broader explanation of divergence and convergence between western states' responses to terrorism.

The study focuses on the coordination of organizations that perform the distinct counterterrorist functions of intelligence collection, law enforcement, and prosecution. Effective coordination of these agencies matters in the campaign against Islamist terrorism, as one episode in the United Kingdom illustrates. In January 2003, the British authorities arrested a number of men that they believed were planning to use poisons in a terrorist attack on the U.K. Recipes and the ingredients for making a number of poisons were uncovered, and one of the suspects stabbed and killed a police officer during the operation. Although Kamel Bourgass was convicted of this murder and of a poison-related offense, he was not found guilty of the main terrorist-related charge—conspiracy to murder with poison— and the eight other men on trial with him were acquitted of all conspiracy charges.[2] The evidence presented in court proved insufficient to secure the convictions sought. The fallout from this result brought the British government and police into disrepute and shook public confidence in the state's motives. Many assumed that the government had willfully inflated the terrorist threat in the case in order to boost support for its planned invasion of Iraq, which took place just a few months after the men were arrested.[3] The whole episode showed how in

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[1] Exceptions are Peter J. Katzenstein, "Same War—Different Views: Germany, Japan, and Counterterrorism," *International Organization* 57, no. 4 (Fall 2003): 731–60; Amy Zegart, *Spying Blind: The CIA, the FBI and the Origins of 9/11* (New Jersey: Princeton University Press, 2007); and Michael Kenney, *From Pablo to Osama: Trafficking and Terrorist Networks, Government Bureaucracies and Competitive Adaptation* (University Park, PA: Penn State Press, 2007). For a review, see Frank Foley and Max Abrahms, "Terrorism and Counterterrorism," in *The International Studies Compendium*, eds., Robert Denemark et al. (Oxford: Wiley-Blackwell, forthcoming 2010).

[2] Michael Jacobson, *The West at War: U.S. and European Counterterrorism Efforts, Post September 11* (Washington DC: Washington Institute for Near East Policy, 2006), 78, 84.

[3] Peter Clarke, "Learning from Experience—Counter Terrorism in the UK since 9/11," speech to the Policy Exchange, 24 April 2007, available at http://www.policyexchange.org.uk/publications/publication.cgi?id=15.

most democratic societies, it is not enough to simply prevent terrorism. The state must also prosecute successfully through the courts, thus demonstrating that its draconian actions are necessary in each case and are not simply part of a cynical attempt to advance its own interests. Coordination between intelligence, law enforcement, and prosecution—with the aim of gathering and presenting compelling evidence—is thus crucial for most contemporary democracies facing Islamist militancy where the obligation is certainly to prevent, but also to prosecute, terrorism.

To understand how such interagency coordination works in different cases, we must trace the connections between four types of organizations: intelligence services, the police, prosecution agencies, and judicial bodies.[4] In the context of a similar threat from Islamist terrorism, Britain and France have been making changes to how these four types of organizations work (or do not work) together. Embracing a preventive logic of counterterrorism, both states have made organizational reforms that enable the gathering of court-admissible information at an earlier stage of terrorism investigations. Apart from this common element, however, Britain and France have displayed major differences in the types and methods of organizational reform that they have pursued. The degree of interagency cooperation in each case has also varied. First, the British have used formal or top-down methods of reform and have made balanced changes that modified, but did not upset, the equilibrium between the counterterrorist responsibilities of the intelligence and police agencies. These agencies have strengthened their close and regularized cooperation in this context. France, on the other hand, relied on informal methods of reform, driven by entrepreneurial actors within the counterterrorist system. These actors set in train unbalanced changes which boosted the counterterrorist responsibilities of an intelligence agency at the expense of the police's anti-terrorist unit. This led to renewed competition and coordination problems between the two agencies concerned. Second, the British and French reforms have involved contrasting approaches to the linking of the intelligence-policing world with the prosecutorial and judicial sphere. France has developed an extensive form of cooperation between the diverse actors in these fields, including intelligence officials, prosecutors, and judges. Cooperation between the equivalent actors in Britain remains relatively restrictive, however, with its reform efforts being more modest than France in this respect. I operationalize the concepts used in this comparative analysis below and provide evidence in support of my claims in each area. This is based on an analysis of official documentation and a series of interviews with government, police, intelligence, and judicial officers.

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[4] Concerning judicial bodies, I study the role of certain types of judges in investigations, in charging, and in the assembly of a case of evidence for court. The primary role of judges—as adjudicators in a judicial process—is beyond the scope of this article.

This study shows that Britain and France face a similar threat from Islamist terrorism, they perceive it in a similar way, and they have drawn the same broad implications from this assessment for their counterterrorist investigations. So why have the two states nevertheless introduced significantly different types of organizational reforms in response to that threat? I consider three possible explanations. Balance of threat theory would expect that the external threat environment and a state's perception of such threats are the key drivers of counterterrorist policy. While I find that British and French threat perceptions do account for their common shift to a preventive logic in terrorism investigations, this factor proves inadequate for explaining the major differences in the types and methods of organizational reform that they have pursued. The variation in these reforms is best explained, rather, by a focus on the contrasting organizational routines of the two countries' counterterrorist agencies and the different interinstitutional conventions of the British and French states. Combining insights from organization theory and the "new institutionalist" literature, I trace how routines and institutions, formed in previous times, continue to shape France and the U.K.'s responses to the current threat posed by Islamist terrorism.

The most important element of my case selection in this research is to select states that have faced a similar level of threat from Islamist terrorism[5] during at least a part of the period under study: 1995–2007.[6] Since the mid-1990s, France has been a target for Algerian and transnational Islamist groups, which have been motivated by a mix of hostility toward the French state in particular and a universal antagonism toward the West in general.[7] During the 1990s, Islamist militants were active in both France and Britain but those in France posed a greater threat to their host nation, as evidenced by criminal trials and a series of bombings that were carried out in 1995 and 1996 on French territory. In the period after the September 11, 2001 attacks on America, however, evidence from numbers of arrests, charges, and convictions indicated that France and Britain now faced a similar level of threat

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[5] "Islamism" generally refers to a political ideology that calls for the establishment of Islamic states. This article focuses on Islamist terrorist groups or networks that combine this ideology with a hostility toward leading western powers, including France and the United Kingdom. For Osama Bin Laden's combination of these two elements and a record of his hostility to Britain and France, see Bruce Lawrence, ed. *Messages to the World: The Statements of Osama Bin Laden* (London: Verso, 2005), 23–25, 73, 136, 163, 174. On this and other types of Islamism, see Fawaz A. Gerges, *The Far Enemy: Why Jihad Went Global* (New York: Cambridge University Press, 2005); and Oliver Roy, *Globalized Islam: The Search for a New Umma* (New York: Columbia University Press, 2004).

[6] Other elements of the rationale behind this case selection are that France and the United Kingdom are both western European democracies, based on the rule of law, they both have significant previous experience of terrorism (albeit different types) and possess a comparable capability in terms of domestic police and intelligence services.

[7] Jeremy Shapiro and Benedicte Suzan, "The French Experience of Counter-terrorism," *Survival* 45, no. 1 (Spring 2003): 79–80, 86–87.

from Islamist terrorists.[8] Britain was also attacked by al Qaeda-inspired militants in July 2005. French and British-based Islamist terrorists have displayed a similar tactical approach of simultaneous bombings aimed at maximizing casualties, and there is no significant divergence between their respective abilities to access and use explosive materials in attacks. With Britain and France also facing a similar mix of foreign terrorists and locally-based groupings, it is reasonable to conclude that the two countries have faced a similar type and level of threat from Islamist terrorism since 2001. I analyze why they have pursued different organizational reforms in response to that threat in an article comprising four sections.

The first section outlines the analytical expectations of balance of threat theory, organizational routine theory, and the new institutionalist literature, and applies their insights to the study of British and French counterterrorism. A second section then describes France and Britain's reforms to the coordination of their counterterrorist agencies and traces the sources of their respective approaches to this task. Next, a theory-guided explanation of these trends in comparative perspective is offered in the third section. A complex picture of strengths and weaknesses emerges in the two cases, shedding light on the conditions under which states can develop a coordinated operational response to terrorism and organize their agencies in a way that facilitates the production of sufficient evidence to convict terrorist suspects in court. The implications of these findings for both theory and practice are outlined in the concluding section.

THEORETICAL EXPECTATIONS: THREE DRIVERS OF COUNTERTERRORIST REFORM

In this section, balance of threat, organization, and institutional theories are considered in turn. I delineate and operationalize the key concepts drawn from each theory and consider how they manifest themselves in the cases of British and French counterterrorism.

Threat Perception and a Preventive Logic of Counterterrorism

An untested assumption in media, practitioner, and some academic circles is that the nature of a state's response to terrorism depends on the nature of the threat it is facing.[9] For example, some analysts and practitioners explain

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[8] For example, in Britain 460 people were arrested as part of investigations into Islamist terrorism between 2001 and 2004, while in France, 406 people were taken into custody in such investigations between 2002 and 2005.

[9] For a discussion of this assumption, see Mariya Y. Omelicheva, "Combating Terrorism in Central Asia: Explaining Differences in States' Responses to Terror," *Terrorism and Political Violence* 19, no. 7 (September 2007): 383–87.

the evolution of France's counterterrorist system solely with reference to the threats that it has faced.[10] We can test this conventional assumption in a systematic way by reformulating it in the language of neorealist balance of threat theory. Evaluating this theory against the French and British cases, I find that a sophisticated neorealist view—focused on threat perceptions rather than threats—can account for a part of the trends observed.

Deviating from the structural realist focus on the balance of power, Stephen Walt theorizes that states balance against threats.[11] He also argues that policy makers' threat perceptions play an important role in shaping states' behavior and that this variable should be added to the realist research program. Similar to Thomas Christensen, Walt's approach is to graft a perceptual variable onto traditional realist accounts of the objective strategic environment.[12] Another neorealist, Fareed Zakaria, has taken this innovation a step further by abandoning the analysis of the objective strategic environment in favor of an analytical focus solely on decision makers' perceptions of this environment.[13] Adopting Zakaria's approach, I hold that features of (or changes in) the objective threat environment impact on policy only insofar as the state's officials perceive them. In this context, we could hypothesize that a state's counterterrorist policy is a function of its perception of the type and level of terrorist threat it faces. This threat perception hypothesis, drawn from balance of threat theory, is consistent with the rational choice paradigm and with strategic choice theory in particular, which expects that actors will "survey their environment and, to the best of their ability, choose the strategy that best meets their subjectively defined goals."[14] Based on a modified version of Walt's operationalization, the threat perception variable is measured

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[10] This view was expressed by several of the French counterterrorist practitioners interviewed. See also, Ludo Block, "Evaluating the Effectiveness of French Counter-Terrorism," *Terrorism Monitor* 3, no. 17 (September 2005): 8; and Marc Perelman, "How the French Fight Terror," *Foreign Policy*, January/February 2006, available as a web exclusive at http://www.foreignpolicy.com/story/files/story3353.php.

[11] Stephen M. Walt, *Origins of Alliance* (Ithaca, NY: Cornell University Press, 1987).

[12] Stephen M. Walt, "Testing Theories of Alliance Formation: The Case of Southwest Asia," *International Organization* 42, no. 2 (Spring 1988): 280–81; Stephen M. Walt, *Revolution and War* (Ithaca, NY: Cornell University Press, 1996), 18–19, 22, 36, 40–41; and Thomas J. Christensen, "Perceptions and Alliances in Europe, 1865–1940," *International Organization* 51, no. 1 (Winter 1997): 65–68. See also F. Gregory Gause III, "Balancing What? Threat Perception and Alliance Choice in the Gulf," *Security Studies* 13, no. 2 (Winter 2003/2004): 275, 280–82.

[13] Fareed Zakaria, *From Wealth to Power: The Unusual Origins of America's World Role* (Princeton, NJ: Princeton University Press, 1998), 24, 42. On post-Waltzian foreign policy neorealism (also known as "neo-classical" realism), which has been developed by Walt and Zakaria among others, see Colin Elman, "Horses for Courses: Why Not a Neorealist Theory of Foreign Policy," *Security Studies* 6, no. 1 (Autumn 1996); Gideon Rose, "Neoclassical Realism and Theories of Foreign Policy," *World Politics* 51, no. 1 (October 1998); and Randall Schweller, review of *From Wealth to Power*, by Fareed Zakaria, in *American Political Science Review* 93, no. 2 (June 1999), 497–98.

[14] David A. Lake and Robert Powell, "International Relations: A Strategic-Choice Approach," in *Strategic Choice and International Relations*, eds., David A. Lake and Robert Powell (Princeton, NJ: Princeton University Press, 1999), 6–7. In contrast to organizational routine theory (see below), theories within the rational choice paradigm expect that actors will carry out considered calculations, with evaluations of other actors' behavior being crucial to their choices. See Margaret Levi, "A Model, A Method, and A Map:

here in terms of three indicators: the perceived offensive capability of the enemy, his perceived proximity, and his perceived intentions.[15]

Public statements, as well as interviews with French and British government and police officials, indicate that decision makers in both states have a similar perception—across the three indicators—of the Islamist terrorist threats facing them. In terms of offensive capability, they both assess Islamist terrorists as being capable of accessing or manufacturing conventional explosive materials, and they predict that the militants are likely to deploy successfully some form of unconventional weapon in the future. Officials in both states see Islamist terrorism as a proximate threat and assess that a mix of both foreign and locally-based operatives pose a threat to their countries.[16] Finally, they perceive the intentions of the Islamist terrorists facing them as hostile and unrestrained. For example, Peter Clarke, the head of the London Metropolitan Police's terrorism investigations branch between 2002 and 2008, said "Suicide has been a frequent feature of attack planning and delivery. There are no warnings given and the evidence suggests that on the contrary, the intention is frequently to kill as many people as possible."[17] Similarly, France's national counterterrorism doctrine indicates how French officials are concerned that the "trademark" of Islamist terrorism is "the use of simultaneous explosions" with its "top priority [being] to cause as many immediate casualties as possible."[18]

Britain and France both regard terrorism as a crime. Yet the conventional logic of criminal investigations is that a crime takes place and then the police investigate it after the fact. However, with a common perception of Islamist militancy as a form of terrorism that seeks to maximize casualties, the expectation on police and the intelligence services has not been to investigate terrorist crimes, but to prevent them from happening in the first place. Thus, as we will see below, officials from both the British and French counterterrorist agencies say that when facing Islamist terrorism, they had to change from the conventional crime-solving approach to what may be called a "preventive logic." In terms of the law, this means making it an offense to "prepare" or "participate in" terrorist activity, broadly defined. As

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Rational Choice in Comparative and Historical Analysis," in *Comparative Politics: Rationality, Culture, and Structure*, eds., Mark Irving Lichbach and Alan S. Zuckerman (Cambridge: Cambridge University Press, 1997), 23, 26.

[15] See Walt, *Origins of Alliance*, 19; and Walt, "Testing Theories of Alliance Formation," 280–81.

[16] Such views were expressed by a French police counterterrorist official [FR-E], interview with author, Paris, 4 July 2006; and by a Metropolitan Police counterterrorist officer [UK-I], interview with author, London, 21 November 2005. Interviewees are distinguished alphabetically in this article; for example: "UK-A," "UK-B," "UK-C," etc. See also French Government, *France Facing Terrorism: White Paper of the Government on Internal Security in the Face of Terrorism* (Paris: Documentation Francais, 2006), 35–37; and the comments of the then head of MI5, quoted in "MI5 tracking '30 UK Terror Plots,'" *BBC News Online*, 10 November 2006, available at http://news.bbc.co.uk/1/hi/uk/6134516.stm.

[17] Peter Clarke, "Learning from Experience."

[18] French Government, *France Facing Terrorism*, 31–32.

the indications of such "preparation" are less substantial than is the case after a crime has actually been committed, the agencies need to make extra effort to gather sufficient evidence to convict suspects in court. Thus, in terms of the planning of counterterrorist investigations in both France and Britain, the preventive logic has implied that the gathering of judicial or court-admissible evidence starts earlier in the counterterrorist process; at the stage during which intelligence is still being gathered. It has also implied that intelligence itself is increasingly gathered in ways that enable its judicial exploitation. As will be outlined below, this has had implications for the coordination of intelligence and police agencies. Indeed these changes to the planning of investigations in the two countries constitute an adaptive response to the perceived threat environment, broadly consistent with the rational choice theoretical perspective.[19] The British and French cases also contradict the belief (found most commonly in the United States) that law enforcement agencies are by nature reactive and ill suited to preventing terrorism.[20]

A focus on threat perception—drawn from balance of threat theory and located within the rational choice paradigm—thus explains a part of the impetus driving counterterrorist coordination reforms in France and Britain. However, as will be shown below, since it only accounts for the commonalities in these states' responses, balance of threat theory proves inadequate for explaining the major differences between the reforms pursued in the two cases. I argue that a combination of organizational and institutional features particular to the two states best accounts for these varied outcomes.

The Organizational Routines of Counterterrorist Agencies

Organization theory—and the literature on routines in particular—is a resource largely untapped by students of counterterrorist agencies.[21] This

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[19] For a rationalist view of adaptive responses to the environment in another context, see Robert O. Keohane, "International Institutions: Two Approaches," *International Studies Quarterly* 32, no. 4 (December 1998): 381, 386–87. For critiques of this approach, see Paul Pierson, "The Limits of Design: Explaining Institutional Origins and Change," *Governance* 13, no. 4 (October 2000): 476–86; and Mark Blyth, "Structures Do Not Come with an Instruction Sheet: Interests, Ideas and Progress in Political Science," *Perspectives on Politics* 1, no. 4 (December 2003): 696–97.

[20] For a scholarly example of this view, see Matthew Kroenig and Jay Stowsky, "War Makes the State, but Not as It Pleases: Homeland Security and American Anti-Statism," *Security Studies* 15, no. 2 (April–June 2006): 265. The authors write that "Law enforcement agencies are reactive, structured to catch and prosecute people who have already committed a crime." This view is echoed by many U.S. security analysts and practitioners and appears to be largely based on their experience of the FBI. See, for example, Richard A. Posner, *Countering Terrorism: Blurred Focus, Halting Steps* (Lanham: Rowman and Littlefield, 2007), 106–25, 145, 231; and the analysts quoted in Gary Thomas, "CIA Identity Flap Sparks Debate over Need for New Domestic Intelligence Agency," *Voice of America*, 30 September 2003, available at http://www.iwar.org.uk/news-archive/2003/09-30-5.htm.

[21] Exceptions to this are Michael Kenney's concept of organizational learning and Amy Zegart's use of organization theory to explain "adaptation failure." See Kenney, *From Pablo to Osama*, 3–7, 222–27;

article develops a novel concept of counterterrorist organizational routines in comparative perspective and shows the diverse and surprising ways in which such routines shape reforms to agency coordination in different states. My starting point is James March's insight that organizational action stems less from a logic of consequences (the considered weighing of alternatives, envisaged by rational choice theory) and more from a logic of appropriateness. This means that organizations tend to resort to preexisting repertoires of action on the basis of a recognition of a situation "as being of a familiar, frequently encountered, type."[22] The situation (or "stimulus") facing them thus evokes a response that has been developed "*at a previous time* as an appropriate response for a stimulus of this class."[23] Where organizational responses are marked by the appearance of such regular patterns of action (and the absence of consequence-weighing), March considers them to be instances of "routinized" activity.[24] Such organizational routines are collective in nature; they involve interaction between multiple actors within and across organizational units.[25] Given these characteristics, I adhere to the widely accepted definition of organizational routines as *recurrent interaction patterns*.[26] This definition is also appropriate for my analytical focus on how routines function as coordination mechanisms.[27]

Organizational routines thus embody long-standing patterns of interaction that continue to have their effects long after the historical circumstances which gave rise to them have faded away. This is important for understanding how organizations respond to feedback from the external environment. Markus Becker writes that "routines may adapt to experience incrementally in response to feedback about outcomes, but they do so based on their previous state." In other words, organizational routines can change but they do so in a "path dependent" manner. This means that—quite apart from the

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and Amy Zegart, "September 11 and the Adaptation Failure of u.s. Intelligence Agencies," *International Security* 29, no. 4 (Spring 2005): 89–97.

[22] See the "Introduction to the Second Edition" in James G. March and Herbert A. Simon, *Organizations* (Cambridge MA: Blackwell, 1993), 8. March's own work stresses the importance of the logic of appropriateness over the logic of consequences. See, for example, Barbara Levitt and James G. March, "Organizational learning," *Annual Review of Sociology* 14 (1998): 320.

[23] James G. March and Herbert A. Simon, *Organizations* (New York: Wiley, 1958), 139; italics added.

[24] Ibid., 142.

[25] Markus C. Becker, "Organizational Routines: A Review of the Literature," *Industrial and Corporate Change* 13, no. 4 (August 2004): 645, 646–47.

[26] A number of influential articles use this or a similar definition. For a review and discussion, see ibid., 644–46, 663–64; and Brian T. Pentland and Henry H. Rueter, "Organizational Routines as Grammars of Action," *Administrative Science Quarterly* 39, no. 3 (September 1994): 484, 487–88. For a different approach, see Levitt and March, "Organizational Learning," 320. Levitt and March offer a broader definition, which includes elements (such as "rules") that I regard as antecedents of routines (see below).

[27] Given this focus, the article does not devote attention to another important function of routines— how they enable organizations to embed knowledge into collective action. For a discussion of "knowledge-laden" routines in a security context, see Lynn Eden, *Whole World on Fire: Organizations, Knowledge and Nuclear Weapons Devastation* (Ithaca: Cornell University Press, 2004), 3, 55–57. See also Kenney, *From Pablo to Osama.*

external environment—choices made in the past also have "feedback effects," which favor the continuation of certain routines and make the development of others less viable.[28] If an organization accumulates experience of a certain routine and has some success with it, this may make it unrewarding to change later on, even if the proposed reform entails a superior procedure.[29] Actors also tend to reproduce organizational routines in habitual and unreflective ways.[30] Such routines are all the more powerful because they are not up for debate and are taken for granted in their particular contexts. For example, it will be shown below how certain investigatory procedures, which are regarded as completely normal in France, are rejected as unpalatable in the British context. It is through these path-dependent and habit-based mechanisms that historically grounded routines shape organizations' responses to contemporary challenges.

The literature stresses that organizational routines are context-dependent and may "strongly differ" from setting to setting.[31] The routines of counterterrorist agencies are no exception, and the key differences between them may be captured in the concepts of *formal* and *informal* organizational routines. In this article, a formal routine is indicated by the presence of regularized interaction patterns between agencies, based on rules laid down by a central authority. Conversely, an informal organizational routine is indicated by the presence of irregular interaction patterns between agencies, based on interpersonal relationships.[32]

I argue that the British counterterrorist agencies display a set of formal organizational routines, while their French counterparts' routines are informal in nature. We can best understand this variation by shifting the analysis back one step to consider the antecedents of organizational routines. I identify three initial conditions, which give rise to particular organizational routines among counterterrorist agencies (each of which is followed by its two, contrasting ideal types). These antecedents are (1) the number of counterterrorist agencies in the state (few/many); (2) the nature of their respective mandates (distinct/overlapping); and (3) the distribution of authority between organizational units (concentrated/dispersed).[33]

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[28] Becker, "Organizational Routines," 653.

[29] The literature calls this a "competency trap." See Levitt and March, "Organizational Learning," 322.

[30] Organization theorists differ on whether actors reproduce routines in unreflective ways or as a result of "effortful accomplishment." See Becker, "Organizational Routines," 648–49. As will be discussed below, the empirical cases examined here support a qualified version of the former thesis.

[31] Becker, "Organizational Routines," 651.

[32] In both settings, interpersonal relationships and practices may be an important oil which facilitates smooth collaboration on the carrying out of particular tasks. The key distinction, however, is that the quality of interaction is *dependent* on interpersonal relations in an informal routines setting, whereas in a formal setting the quality of interaction does not depend on such relationships.

[33] These three antecedents are the sources of the variation between British and French counterterrorist organizational routines. A number of other plausible antecedents—ranging from task and informational uncertainty to the nature of the (terrorist) adversary—are controlled for by the selection of the two country

This implies an overall analysis based on Becker's three-fold conceptual framework, which comprises the antecedents, characteristics, and outcomes of organizational routines (see Figure 1).[34] There are two steps to this analysis. First, in the following paragraphs, I outline the antecedents that gave rise to different organizational routines in the French and British cases. Second, in the case studies' section of the article, I will consider these organizational routines as an independent variable and trace their effects on the dependent variable of this research—reforms to the coordination of counterterrorist agencies.

Antecedents	Types (Independent Variable)	Outcomes (Dependent Variable)
(1) number of agencies (2) nature of mandates } (3) distribution of authority	Formal / Informal →	Diverse reforms to coordination of counterterrorist agencies

FIGURE 1 Counterterrorist Organizational Routines

My analysis concentrates on the organizational routines that are formed between intelligence, police, prosecutorial, and judicial bodies as they coordinate their work on counterterrorism. Although these various agencies constitute different organizational units, they are linked by the interaction between them.[35] What were the diverse antecedent conditions of the French and British cases, which gave rise to different counterterrorist organizational routines in these two states?[36] France has traditionally had four national agencies and two Paris units with overlapping mandates in the areas of domestic counterterrorist intelligence and law enforcement. Throughout the period under study here (1995–2007), the two national domestic intelligence services, the *Renseigements Généraux* (RG) and the *Direction de la Surveillance du Territoire* (DST) shared the responsibility for gathering intelligence on suspected terrorists on French territory. The DST also works on law enforcement—known as "judicial investigations" in France—a mandate that it shares with the anti-terrorist section of the *Police Judiciare* (the detective division of the French national police). The Paris police division houses its own section of

cases. My selection of antecedents is also based on the insight that "enabling and constraining structures . . . such as hierarchy, division of labour, and a myriad of task and situation-specific particulars . . . give rise to [organizational routines]." See Pentland and Rueter, "Organizational Routines as Grammars of Action," 491.

[34] Markus Becker, "A framework for applying organizational routines in empirical research: linking antecedents, characteristics and performance outcomes of recurrent interaction patterns," *Industrial and Corporate Change* 14, no. 5 (September 2005): 823–27.

[35] Becker, "Organizational Routines," 647.

[36] As centralized (as opposed to federal) states, the key counterterrorist competences and agencies of both France and the United Kingdom are centralized in their respective capitals. Beyond this basic common denominator, however, the distribution of authority between and within government and the counterterrorist agencies functions differently in the two cases.

the RG intelligence agency—the *Renseigements Généraux de la Préfecture du Police* (RGPP), while Paris also has its own *Section Anti-Terrorist* (SAT), a unit of counterterrorist police investigators. Units of the *Gendarmerie Nationale*, a military body with domestic policing duties, also have a mandate to gather intelligence and carry out judicial investigations into terrorism. Finally, prosecutors, and in particular, investigating magistrates (*juges d'instruction*) have the power to direct the French security agencies' judicial investigations into terrorism.

France's several counterterrorist agencies have overlapping mandates, and they are not encumbered by rules and procedures enforced by a central authority.[37] Instead, authority is dispersed among several agencies with a nongovernmental actor—the investigating magistrates—enjoying considerable power. These conditions have given rise to a set of informal organizational routines between the French counterterrorist services, characterized by ad hoc interactions that are often reliant on interpersonal relationships. For instance, the intelligence services favor cooperation with different law enforcement agencies at different times. Among other examples, a former DST officer described how the RGPP intelligence service sometimes sends its actionable information to the Paris SAT, but at other times to the DST. He added "that, once again, is a question of [relations between] men, a question of opportunity."[38] This forms part of a broader pattern whereby the interactions between the agencies depend on interpersonal relations between key officials. As Bernard Carayon concluded in his parliamentary report on the French intelligence agencies in 2003, "the co-ordination of the intelligence services remains pragmatic . . . They don't exchange enough of the substance of their capabilities, even if it is often the same men who, for twenty or thirty years, have assured the continuation of the exchanges."[39] As we will see below, however, such informal routines, based on interpersonal relations, have their advantages when it comes to bridging the divide between intelligence and justice.

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[37] A small coordination unit (UCLAT) centralizes information from different agencies on terrorism, but according to one former and two current French counterterrorist officials (interviews by author), it lacks authority and the agencies tend not to use this unit when cooperating with each other. Similar views are expressed by a former counterterrorist officer in Stéphane Berthomet and Guillaume Bigot, *Le jour où la France tremblera* (Paris: Éditions Ramsay, 2005), 130–31. See also Nathalie Cettina, *L'antiterrorisme en question* (Paris: Éditions Michalon, 2001), 129–30.

[38] Former DNAT and DST counterterrorist investigator [FR-H], interview with author, Paris, 16 February 2007. Several interviewees said that the Paris RGPP is a crucial gatherer of terrorist intelligence. It should be noted that all of the former officials interviewed for this article were in post until at least 2004 (with one exception: [FR-N]).

[39] Bernard Carayon (Rapporteur spécial), 'Rapport sur le projet de loi de finances pour 2003—Secrétariat Général de la Défense Nationale et Renseignement,' *Commission des finances, de l'économie générale et du plan*, Rapport N° 256, Annexe 36 (Paris: Assemblée Nationale, October 2002), 21. Mr Carayon is a center-right member of the National Assembly, and close to the government, which has been formed by the center-right for the last two successive parliaments (2002–2007 and 2007–).

In Great Britain from the early 1990s until 2006, responsibility for domestic counterterrorist intelligence and law enforcement, in contrast to France, lay with relatively few agencies: one domestic intelligence service—MI5 (or the "Security Service")—and two specialist branches of the London Metropolitan Police, which had distinct mandates from one other. The police's "Special Branch" gathered intelligence on terrorism, while its "Anti-Terrorist Branch" was responsible for law enforcement and had a mandate that covered all of Great Britain.[40] A central authority—the government—issued clear guidelines for the agencies' counterterrorist work, which stated from 1992 that MI5 was the "lead agency" on terrorism intelligence and that Special Branch's role was to "assist" MI5 in this area.[41] These guidelines also stated that Special Branch must provide all of its terrorism intelligence to MI5.[42] On the other side, the police have always had a clear lead on counterterrorist law enforcement. With a clear understanding of which service had the lead role in which context, the police and intelligence agencies developed procedures for regularized cooperation between their units. In contrast to the irregular exchanges of the French agencies, MI5 and the police appear to begin with an assumption that their officers will be regularly doing operations together. For example, MI5 desk officers have a mandate to task operatives from both their own agency and from police Special Branch. According to a senior police officer, when individual desk officers are rotated to new assignments, the coordination of this work continues because the arrangements behind it are "institutionalized," as he put it.[43] In this context, it is quite normal for MI5 and Special Branch agents to be tasked to work together on the recruitment or handling of informants, as indicated by the cases of Jamil el-Banna and Reda Hessaine.[44]

Both in statute and in practice, there is a clear division of labor between the British law enforcement and intelligence services working on counterterrorism. While MI5 has a clear lead on intelligence collection, the

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[40] Bradley W. C. Bamford, "The United Kingdom's 'War Against Terrorism,'" *Terrorism and Political Violence* 16, no. 4 (Winter 2004): 741–42; and Peter Clarke, "Learning from Experience."

[41] See, for example, "UK Special Branch Guidelines," *Statewatch* 4, no. 6 (November 1994), available at http://www.statewatch.org/news/2004/mar/special-branch-1995.htm. Outside London, a network of provincial Special Branches also had a mandate to gather terrorism intelligence, but their resources and involvement paled in comparison to that of the Metropolitan Police Special Branch. See Her Majesty's Inspectorate of Constabulary, *A Need to Know:* HMIC *Thematic Inspection of Special Branch and Ports Policing* (London: Home Office, January 2003), 19, 30.

[42] Home Office, Scottish Executive and Northern Ireland Office, *Guidelines on Special Branch Work in the United Kingdom*, March 2004, 8.

[43] Former senior counterterrorist officer of the Metropolitan Police [UK-C], interview with author, London, 14 December 2005. This officer also had experience of working in MI5, as he was seconded there for a period.

[44] For details on the joint MI5-Special Branch handling of Reda Hassaine and their attempts to secure the cooperation of Jamil el-Banna, see Sean O' Neill and Daniel McGrory, *The Suicide Factory: Abu Hamza and the Finsbury Park Mosque* (London: Harper Collins, 2006), 137–41; and Vikram Dodd, "Four Years in Guantanamo—the man who said no to MI5," *The Guardian*, 4 April 2007.

agency—unlike its French counterpart—has no competence to make arrests or do police-type investigations. Counterterrorist law enforcement remains the exclusive competence of the British police. When particular cases reach a critical point, MI5 and police investigators meet in an "operational group joint-committee," which is always chaired by a police officer. It is the police who have the final say on whether, when, and how the suspects will be arrested.[45] In sum, Britain has had relatively few counterterrorist agencies, each of which have distinct mandates and are subject to direction by a central authority. These conditions have given rise to a set of formal organizational routines between the British agencies, characterized by their regularized interaction patterns, which have developed in the context of government rules and guidelines.

The clear differences between the British agencies' formal organizational routines and the informal routines of their French counterparts provide a good basis on which to test the influence of this variable. I argue below that the empirical data on these cases confirms the significant impact of organizational routines on counterterrorist reform.

Interinstitutional Conventions at the State Level

While a focus on organizational routines is apposite for analyzing interactions between intelligence and police agencies, I argue that institutional theory provides a more appropriate approach to studying how the "high" institutions of state are configured and the effects of such configurations. I introduce the concept of *interinstitutional conventions* as a tool to analyze the relationships between the government (or executive), the judiciary, and the legislature. Although scholars have highlighted how domestic institutions shape responses to terrorism, insights from the "new institutionalist" literature have rarely been applied to the study of counterterrorism.[46] I now outline this theoretical perspective before going on to show how a combination of organization and institutional theories helps us to understand the complex influences on counterterrorist reform in western states.

Institutionalists, as Lynn Eden puts it, "do not assume rational, efficient or adaptive outcomes," but stress instead "how older ways of understanding and acting persist" and shape governments' solutions to the problems they

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[45] Former senior U.K. government official [UK-A], second interview with author, London, 25 January 2007; and former senior counterterrorist officer of the Metropolitan Police [UK-C], interview with author, London, 14 December 2005.

[46] The exception is Katzenstein, "Same War—Different Views: Germany, Japan, and Counterterrorism." On the United States' institutions and their influence on counterterrorist policy, see Martha Crenshaw, "Counterterrorism Policy and the Political Process," *Studies in Conflict & Terrorism* 24, no. 4 (September–October 2001): 329–37; and Kroenig and Stowsky, "War Makes the State, but Not as It Pleases." On the Spanish case, see Rogelio Alonso and Fernando Reinares, "Terrorism, Human Rights and Law Enforcement in Spain," *Terrorism and Political Violence* 17, no. 2 (Winter 2005): 265, 268, 274–75.

face.[47] Similar to organization theorists, the concept of path dependency is also stressed by institutionalists, who argue that "choices made at one point in time create institutions that generate recognizable patterns of constraints and opportunities at a later point." Thus Walter Powell argues that outcomes cannot be explained simply by "the preferences of actors . . . but must be explained as the product of previous choices."[48] Indeed, these previous choices have been theorized as "critical junctures" or "critical founding moments of institutional formation that send countries along broadly different developmental paths."[49] Institutionalists see such paths as self-reinforcing processes, which may become locked-in or resistant to radical reform. The theory expects "isomorphic change" meaning that change, when it does take place, will be compatible with and follow the same logic as the existing institutional order.[50]

Although different schools of new institutionalist thought have emerged, there is broad agreement that institutions can be defined as comprising formal rules, procedures, and norms.[51] Illustrative examples, cited by Hall and Taylor, include "the rules of a constitutional order," "the standard operating procedures of bureaucracy," and the norms or "conventions governing trade union behavior."[52] If institutions are comprised of rules, procedures, and norms, however, the third of these three elements needs to be specified further. There is a danger of simply conflating norms and institutions, such that the latter loses its status as a variable that can be considered independently of the wider political culture of a society.[53] To counteract this risk, the reference to norms in my definition of institutions is restricted to

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[47] Eden, *Whole World on Fire*, 51.

[48] Walter W. Powell, "Expanding the Scope of Institutional Analysis," in *The New Institutionalism in Organizational Analysis*, eds., Paul J. Di Maggio and Walter W. Powell (Chicago: University of Chicago Press, 1991), 188–89. See also the discussion of this point in Eden, *Whole World on Fire*, 50–52.

[49] Kathleen Thelen, "Historical Institutionalism in Comparative Politics," *Annual Review of Political Science* 2 (June 1999): 387–92. See also Kathleen Thelen, "How Institutions Evolve: Insights from Comparative Historical Analysis," in *Comparative Historical Analysis in the Social Sciences*, eds., James Mahoney and Dietrich Rueschemeyer (Cambridge, Cambridge University Press, 2003), 217–20.

[50] Thelen, "Historical Institutionalism in Comparative Politics," 386. Much of the recent institutionalist literature has rowed back on its initial focus on continuity and endeavored to also explain institutional change.

[51] Peter A. Hall and Rosemary Taylor, "Political Science and Three New Institutionalisms," *Political Studies* 44, no. 5 (December 1996): 938, 939–40, 942–43, 947–48. This review distinguishes between the "historical," the "sociological," and the "rational choice" schools of new institutionalist thought. All three would accept that institutions are comprised of rules and procedures. The rational choice school rejects the inclusion of norms in the definition, but sociological and historical institutionalists by and large include this element in their definitions.

[52] Ibid., 938.

[53] Works by John Ikenberry and Jeffrey Checkel, for example, have been criticized for conflating norms and institutions. See the discussions in Kathleen Thelen and Sven Steinmo, "Historical Institutionalism in Comparative Politics," in *Structuring Politics*, eds., Sven Steinmo, Kathleen Thelen, and Frank Longstreth (Cambridge: Cambridge University Press, 1992), 2, 29n9; and Kelly Kollman, "Same-Sex Unions: The Globalization of an Idea," *International Studies Quarterly* 51, no. 2 (June 2007): 333.

those norms that pertain to and are embedded in an "immediate institutional situation."[54] Within these confines, such norms may be either *regulatory* (specifying standards of appropriate interinstitutional behavior) or *constitutive* (defining the professional identities of actors within these institutions).[55] Beyond this immediate institutional context, however, norms which pertain to "fundamental beliefs about politics" and society are not entailed in my definition of institutions.[56] With these provisos in mind, the variable of interest to this article is formulated as *interinstitutional conventions*. This is defined as the formal rules, standard operating procedures, and norms that govern the relationships between individuals across the various institutions of state.[57]

With institutions varying from state to state, I submit that the key differences between them, relevant to counterterrorism, may be operationalized with reference to the concepts of *separating* and *integrating* interinstitutional conventions. The designation of a particular political setting under one or other of these labels depends on two indicators: (1) the level of interaction between different institutions of state—in this case—between the judiciary and the government (and agencies responsible to the government), and (2) the formal rules, standard operating procedures, and norms which regulate such interactions between institutions.[58]

The historical development of a civil law, inquisitorial system in France, and a common law, adversarial system in England[59] has left these two countries with contrasting interinstitutional conventions relevant to counterterrorism. The French inquisitorial system, reinforced by judicial reforms made in 1986, gives prosecutors, and in particular a Paris-based team of investigating magistrates (*juges d'instruction*), the power to direct the French security

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[54] Peter Hall, *Governing the Economy: The Politics of State Intervention in Britain and France* (New York: Oxford University Press, 1986), 278.

[55] Peter J. Katzenstein, "Introduction: Alternative Perspectives on National Security," in *The Culture of National Security: Norms and Identity in World Politics*, ed. Peter J. Katzenstein (New York: Columbia University Press, 1996): 5; and Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (Autumn 1998): 891.

[56] Hall, *Governing the Economy*, 278. This follows Peter Hall's distinction between ideas embedded in an "immediate institutional situation" and "fundamental beliefs about politics." Beyond the field of organizational reform, other areas of counterterrorist policy such as legislative reform are more likely to be affected by broader political norms pertaining to fundamental concepts such as torture, habeas corpus, liberty, and security.

[57] This draws on Hall, *Governing the Economy*, 19.

[58] This approach differs from those "separations of powers" arguments that limit their attention to veto points and formal constitutional rules. See, for example, Kroenig and Stowsky, "War Makes the State, but Not as It Pleases," 246–47, 266–67. Such approaches fail to capture the important cross-national variation that arises not just from formal rules but also from the informal procedures and normative standards of institutions.

[59] The legal system of England and Wales is distinct from that of Scotland. As the vast majority of Islamist investigations in Britain are concentrated in the former jurisdiction, I concentrate on this system, usually referring to it as the "English" legal system for simplicity's sake.

agencies' carrying out of law enforcement investigations into terrorism. In other words, the integrating interinstitutional conventions of the French state permit a section of the judiciary to work directly with security agencies that fall under the executive responsibility of the government.

Whereas inquisitorial systems, such as France's, hold that one of the roles of judges is to lead police investigations, the common law world understands the judicial function more narrowly as the adjudication of issues, primarily at trial.[60] In this context, the U.K.'s achievement of a high level of cooperation between police and intelligence organizations does not extend to include the judicial sphere. In contrast to France, British law enforcement officers do not collaborate directly with members of the judiciary. The absence of such cooperation is explained by a separating interinstitutional convention, rooted in English common law tradition, which places a premium on the judiciary maintaining its independence from the government and its agencies' management of security issues. English prosecutors, meanwhile, have far less authority over police investigations than do their French equivalents, which meant that traditionally, there was also a low level of collaboration between the Crown Prosecution Service (CPS) and the British police.[61] For many years, therefore, counterterrorist intelligence and police work in Britain was a closely knit but separate world from the judicial and prosecutorial sphere.

The different interinstitutional conventions of the two cases can be traced back to the contrast between France's statist tradition and certain anti-statist elements in the British concept of judicial independence.[62] As we will see below, French statism enables a unity of effort among different branches of the state against terrorism that is not so readily achievable in Britain.

Combining Organization and Institutional Theories in Security Studies

Despite the related academic origins of organizational routine theory and new institutionalism, they have developed into two distinct literatures in

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[60] Jacqueline Hodgson, *French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime in France* (Oxford: Hart, 2005), 66.

[61] Jacobson, *The West at War*, 44.

[62] On French statism and its "state-centred conception of justice," see Robert Elgie, *Political Institutions in Contemporary France* (Oxford: Oxford University Press, 2003), 71–74; and Hodgson, *French Criminal Justice*, 14–22, 30. Notwithstanding the independence of investigating magistrates from government, the positive normative value attached to the State and the Republic in France has provided conditions in which these magistrates have voluntarily allied themselves closely with the government and its security agencies against terrorism. On judicial independence in Britain, see David Judge, *Political Institutions in the United Kingdom* (Oxford: Oxford University Press, 2005), 223–26. On the effects of anti-statism on U.S. counterterrorism, see Kroenig and Stowsky, "War Makes the State, but Not as It Pleases."

recent years.[63] In this context, there are at least two reasons why this arti-
cle maintains the conceptual distinction between them, even as it combines
their insights in an empirical explanation. First, although the two schools
of thought have common expectations regarding path dependency, they
differ on the mechanisms through which historical legacies affect current
outcomes. On the one hand, a focus on organizational routines draws atten-
tion to recurrent patterns of interaction, which are often implicit in working
life and whose effects derive from the power of habitual practices rather
than from any normative force. Interinstitutional conventions, on the other
hand, tend to be articulated more explicitly and to have more normative
standing than routines.[64] Second, maintaining the distinction between or-
ganizational routines and institutional conventions helps to avoid the error
of some culturalist approaches which—through broad conceptualizations—
attempt to explain everything with one concept but run the risk of explaining
nothing.[65] In contrast to such studies, this article employs more specific con-
cepts than the notion of culture since this enables the formulation of more
precise hypotheses. Thus, I argue that a focus on organizational routines pro-
vides the best explanation of states' different approaches to reforming the
coordination of intelligence and police agencies for counterterrorism. How-
ever, when considering changes in how these security agencies are linked
to prosecution and justice, I emphasize interinstitutional conventions (rules,
procedures, and a delimited concept of norms) as the best explanation for
the cross-national variation observed.

Distinguishing between organizational routines and interinstitutional
conventions also allows us to better grasp the interactions between them.
In France, for example, collaboration between a section of the judiciary and
security agencies that report to the government has become part of the in-
formal organizational routines of French counterterrorism. It is important to
clarify, however, that the origin of this routine judicial participation in police

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[63] For example, since the 1950s James March has been important for the development of both
organizational routine and institutional theory. See his works cited above (in notes 22 and 23), and
James G. March and Johan P. Olsen, "The New Institutionalism: Organizational Factors in Political Life,"
American Political Science Review 78, no. 3 (September 1984): 734–49. For a review that indicates
how the organizational routines literature has developed in recent years without reference to "new
institutionalism," see Becker, "Organizational Routines." For an indication of the breath of institutionalist
literature, which does not refer to organization routine theory, see Hall and Taylor, "Political Science and
Three New Institutionalisms."

[64] For example, Cohen and Bacdayan "distinguish routines from 'standard operating procedures'
which are more explicitly formulated and have normative standing." See Michael D. Cohen and Paul
Bacdayan, "Organizational Routines Are Stored as Procedural Memory: Evidence from a Laboratory Study,"
Organization Science 5, no. 4 (November 1994): 555.

[65] Works by Jeffrey Checkel and Colin Gray, among others, have been criticized for conflating
norms, institutions (and other factors) under the label of culture. It has been argued that such broad
conceptualizations lack analytical bite and are unfalsifiable. See the discussion of these authors in Kollman,
"Same-Sex Unions: The Globalization of an Idea," 333; and Theo Farrell, "Culture and Military Power,"
Review of International Studies 24, no. 3 (July 1998): 408.

investigations is not at the lower organizational level, but at the high level of the institutional conventions that regulate relations between different arms of the state. It is differences between the British and French states—not just their counterterrorist organizations—which are proving significant for the different ways in which they coordinate their agencies' operational responses to terrorism. Organization theory can explain a part of these developments but it needs to be combined with a theory of state institutions.[66]

FRENCH AND BRITISH REFORMS TO COUNTERTERRORIST AGENCY COORDINATION

This section will trace the processes by which Britain and France's divergent organizational routines and interinstitutional conventions have shaped their reforms to the coordination of their respective counterterrorist agencies. To understand the significance of these developments, it is important to first consider a key distinction between the two modes of information-gathering under study here. Intelligence can take into account any source, and it can be of varying degrees of reliability. Law enforcement investigations, on the other hand, are geared toward the gathering of evidence, which is to be admitted to a judicial process or trial. In this context, the source of the information becomes important and the reliability of evidence must be tested according to judicial rules of evidence. In sum, whereas intelligence can be anything that helps the authorities to build up a picture of a target, evidence gathered during law enforcement investigations must meet higher standards since it is the basis for deciding the guilt or innocence of individuals in a court of law.

Reforms to the coordination of counterterrorist agencies are operationalized here along three dimensions. First, attention is paid to whether the method of reform is formal or informal. This designation is partly based on whether reforms are officially announced (involving the creation of new bodies, for example) or whether they simply happen in practice without being formalized at an official level. It also depends on which actor initiates the change and on the extent to which the reform is coordinated across all relevant agencies. We miss a lot if we restrict ourselves to considering formal, officially announced institutional reforms only. The French case demonstrates that there are other, more informal, methods by which significant changes to the coordination of counterterrorist agencies can be introduced.

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[66] On new institutionalism as a theory of the state, see Hall and Taylor, "Political Science and Three New Institutionalisms," 937–38. With regard to combining theories, Amy Zegart also links an analysis of organizational characteristics to an examination of the "decentralized structure of the u.s. federal government," although her treatment of the second factor is not set out in general theoretical terms, which means that it is not readily applicable to other cases. See Zegart, "September 11 and the Adaptation Failure of u.s. Intelligence Agencies," 88–100.

Second, I am interested in whether the reforms favor *extensive* or *restrictive* forms of cooperation. This designation depends on how many different types of agencies involved in responding to terrorism (from intelligence and police to prosecution and the judiciary) have links and coordinate their activities. For example, two police agencies may work very closely together, but if they do not also cooperate with intelligence or judicial actors, for example, this would indicate a rather restrictive form of cooperation. On the other hand, where police agencies do cross this divide and work directly with judicial or other types of actors, this would indicate an extensive form of cooperation. Finally, observations will also be made on whether counterterrorist reforms are *balanced* or *unbalanced* in the two cases. This is judged with reference to how the reforms divide operational responsibility between the intelligence and police arms of the state.

Overall, the following account of France and the U.K.'s respective counterterrorist reforms between 1995 and 2007 is, in both cases, divided into two parts: (1) intelligence and police agencies, and (2) the relationship between the intelligence-policing sphere and the world of prosecution and justice.

France (1): An Informal Shift to Intelligence Service Primacy

When an Algerian Islamist threat to France emerged in the mid-1990s, the investigating magistrates conducted a number of related investigations and built up a broad picture of the terrorist networks active in the country. As Shapiro and Suzan have shown, this small and specialized group became the type of terrorism experts that it is difficult to create in normal judicial institutions, with individual magistrates even specializing in specific classes of terrorism, such as separatist or Islamist.[67] Thus, in contrast to Britain, there is a section of the French judiciary that not only does not keep a distance from the government and the police's management of investigations and security issues, but actually takes a leading role in the area.[68] The investigating magistrates' expertise, public reputation, and their power to decide which agencies do judicial/law enforcement investigations enabled them to take ownership of the counterterrorism issue from the government during the 1990s.[69] From 1993, through the terrorist attacks of 1995 and 1996, until 1998, the investigating magistrates gave the vast majority of judicial investigations into cases of Islamist terrorism to the anti-terrorist unit of the national police's detective division (the *Police Judiciare*) and to the Paris police's *Section Anti-Terrorist*

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[67] Shapiro and Suzan, "The French Experience of Counter-terrorism," 78, 82.

[68] Investigating magistrates eventually submit the results of their inquiries to a court, where the case is then heard by a panel, presided over by a non-investigating judge, who has not been involved in the case before that point.

[69] Shapiro and Suzan, "The French Experience of Counter-terrorism," 78–79; and former Investigating Magistrate and Prosecutor and current Member of the French National Assembly [FR-N], interview with author, Paris, 5 July 2006.

(SAT).[70] In this context, it was the practice for an intelligence service, such as the RG or DST, to communicate its information to one of these police services, which was then charged with carrying out the law enforcement part of the inquiry. According to a former investigating magistrate, however, there could often be breakdowns in communication or a failure to take responsibility at some point in this chain.[71]

Against this background, the investigating magistrates began to use their authority—together with certain senior agency officials—to make informal alliances and ad hoc changes that reshaped the organization of French domestic counterterrorism.

In 1998, when circumstances left the DNAT,[72] the anti-terrorist unit of the *Police Judiciare,* busy with Corsican terrorism, the investigating magistrates specializing in Islamist militancy struck up an alliance with the *Direction de la Surveillance du Territoire* (DST)—an intelligence agency that also has a judicial police competence in the areas of national security and terrorism. The DST itself carried out an internal reform that year in which it created a unit dedicated to judicial investigations—the *Unité Enquete Judiciare.* This strengthened its ability to carry out law enforcement tasks in the area of counterterrorism. A former DST officer said that as the DNAT left Islamist terrorism to one side, the DST "profited from this moment to use the terrain, to monopolize the terrain and develop properly its judicial investigation structure."[73] By itself, however, this DST initiative would not have made much impact if it did not win the backing of the investigating magistrates. The magistrates, seeing that the DNAT was busy working on separatist terrorism and recognizing the efforts of the DST, decided to work directly with the intelligence agency on Islamist terrorism.[74] Some also saw an opportunity to improve on the existing system of dispersed responsibility between the intelligence and police agencies. "It didn't work," said a former investigating magistrate. "So we said: 'That is finished. You intelligence officers will now work under our orders . . . [You] are going to have the hat of a judicial police officer, and so you will depend on us, magistrates or prosecutors.'"[75]

Beginning in 1998, this significant change—a breakdown of the separation between justice and intelligence—was not done through the formal

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[70] Senior counterterrorist official of the *Police Judiciare* [FR-O], interview with author, Paris, 9 February 2007; and senior official of the French national police and Interior Ministry [FR-I], interview with author, Paris, 5 February 2007

[71] Former Investigating Magistrate and Prosecutor and current Member of the French National Assembly [FR-N], interview with author, Paris, 5 July 2006.

[72] *Division Nationale Anti-Terroriste* (DNAT).

[73] Former DNAT and DST counterterrorist investigator [FR-H], interview with author, Paris, 16 February 2007.

[74] Gilbert Thiel, an Investigating Magistrate specialized in terrorism [FR-K], interview with author, Paris, 22 February 2007

[75] Former Investigating Magistrate and Prosecutor and current Member of the French National Assembly [FR-N], interview with author, Paris, 5 July 2006.

creation of new structures but relied instead on the informal development of interpersonal confidence between individuals. Investigating magistrates, such as Jean-Francois Ricard, interacted personally with intelligence officials to assuage the latter's concerns about sharing sensitive information.[76] A "climate of confidence" developed between the two sides, according to a former senior DST official. "I have not had serious problems with magistrates," he said, "everything is done naturally."[77] The leading counterterrorist investigating magistrate, Jean-Louis Bruguière, developed good relations in particular with Louis Caprioli, who was head of counterterrorism at the DST from 1998 to 2004. Apart from facilitating the sharing of information between the DST and the investigating magistrates, such interpersonal relationships also paid off for the DST as the magistrates tasked its new *Unité Enquete Judiciare* with carrying out the vast majority of judicial investigations into Islamist terrorism after 1998. As a former police and DST officer said: "He [Bruguière] knew Mr. Caprioli well. They had good contacts. So he gave more cases to the DST." This establishment of direct relations between justice and the intelligence agency was "not at all a political choice or a high-level decision," he added. "It was more a reality of the terrain."[78] Not only was it not a political choice, but the government was against the idea of the DST working directly under the control of the judiciary. According to a former investigating magistrate, "the political power wanted to keep its intelligence services to itself, saying 'it's a privilege of the executive; intelligence officers cannot go to see the magistrates who are in another sphere.'"[79] Nevertheless, the will of the magistrates and senior DST officials prevailed little by little, according to one of their number, Gilbert Thiel. "It was the choice of Jean-Louis Bruguière to work more and more with them [the DST]," he said, "after, it was Bruguière who decided to reserve for them a sort of monopoly of the treatment of Islamist cases."[80]

Although the magistrates, with the support of senior DST officials, made this change in ad hoc fashion in response to the circumstances of 1998, it has had significant implications. Consistent with organizational routine theory's expectation of path dependency, the 1998 reform had "feedback effects" which have shaped the organization of French counterterrorism over the last decade. As the DNAT focused on separatist terrorism and the magistrates gave

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[76] This testimony on Ricard is based on an interview with a French official, cited in Shapiro and Suzan, "The French Experience of Counter-terrorism," 83.

[77] Former senior DST counterterrorist intelligence official [FR-F], interview with author, Paris, 30 January 2007.

[78] Former DNAT and DST counterterrorist investigator [FR-H], interview with author, Paris, 16 February 2007.

[79] Former Investigating Magistrate and Prosecutor and current Member of the French National Assembly [FR-N], interview with author, Paris, 5 July 2006. This was corroborated by a second judicial source. See Investigating Magistrate specialized in terrorism [FR-M], interview with author, Paris, 22 February 2007.

[80] Gilbert Thiel, an Investigating Magistrate specialized in terrorism [FR-K], interview with author, 22 February 2007.

the DST almost all of the Islamist cases, the latter specialized in this class of terrorism to the extent that, as the years went on, there was "no reason" for magistrates to task other services with less expertise in this area, said one former investigator. The DNAT's specialists in Islamist terrorism began to leave the service in order to go to the DST and the Paris *Section Anti-Terrorist* (SAT). "I myself [left the DNAT] and went to the DST just after that moment," he recalled.[81] Thus, even when separatist terrorism declined in importance and the DNAT became available again for Islamist cases especially after 2001, the DST's expertise and informal alliances with the investigating magistrates allowed it to continue dominating the field of Islamist investigations. As one police officer explained, "certain magistrates prefer to work with this or that service. It's a question of methods and of human rapport, and that explains why sometimes it is more the DST which is tasked than us, or vice versa . . . it's true that for the tasking of certain cases, we depend on the magistrates."[82] A "police officer who has worked with [Jean-Louis Bruguière] for a long time" was less circumspect when quoted in *Le Monde* on the question of alliances within French counterterrorism: "Bruguière is a politician with neither faith nor law. His aim is to be the boss. He can sacrifice an investigation for his alliances."[83]

The main change to the organization of French domestic counterterrorism over the last decade—a shift to DST primacy in alliance with investigating magistrates—was set in train by Bruguière and other practitioners but never officially announced. Bearing the mark of French counterterrorism's informal organizational routines, this change simply happened in practice without being formalized or recognized at the government level.[84]

France (2): Bridging the Judicial-Intelligence Divide

As the DST worked directly with investigating magistrates after 1998, France developed a selective but, nevertheless, extensive form of counterterrorist cooperation which bridged the gap between the disparate worlds of intelligence and justice. Exploring how this cooperation functions offers further insights into the conditions that have shaped and reinforced France's approach to counterterrorist reform.

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[81] Former DNAT and DST counterterrorist investigator [FR-H], interview with author, Paris, 16 February 2007.

[82] Counterterrorist investigator of the *Police Judiciare* [FR-G], interview with author, Paris, 9 February 2007.

[83] Quoted in Piotr Smolar, "Jean-Louis Bruguière, un juge d'exception," *Le Monde*, 6 January 2005.

[84] This case (and the British case discussed below) supports a qualified version of the understanding of organizational routines as unreflective (see above, note 30). It indicates that entrepreneurial agents may perform organizational routines in innovative ways while still reproducing the underlying routine (in the French case—a routine of informal interaction between agencies).

As was discussed above, the shift to DST primacy over the last decade owed much to France's informal organizational routines and the particular circumstances of 1998. However, this change was also underpinned by French officials' perception of the terrorist threat. Given their experience of a plane hijack by Algerian Islamists in 1994 and the repeated use of no-warning bombs in the 1995 attacks, French officials have since the mid-1990s perceived the intentions of the Islamist terrorists facing them as unrestrained and focused on maximizing casualties.[85] This perception, which has been reinforced by 9/11 and the evolution of Islamist terrorism since then, has led French officials to adopt a preventive logic of investigations. That logic (of gathering intelligence in ways that enable its judicial exploitation)—brought to an extreme perhaps—could even lead a state to turn its counterterrorist law enforcement over to an intelligence agency. Looking back to 1998 and considering the evolution of terrorism since then, it is precisely this preventive logic that underpins French officials' justifications of the shift to DST primacy in judicial/law enforcement investigations of Islamist terrorism. "We can pass fairly easily from intelligence to the judicial part," said an investigating magistrate. "It's a great advantage of efficiency . . . because [it allows] an intelligence agency working under cover to take its judicial police 'hat,' do a *proces-verbal* (report for a magistrate) and then *Poof*!—we can go to arrest the people very well."[86] It should also be noted that, in the late 1990s, officials began to perceive a broadening of the Islamist terrorist threat to France beyond the Algerian issue and diaspora to take in networks with greater international connections.[87] According to a former senior DST official, this meant that prevention often had to start abroad, which suited the DST as an intelligence agency with international links. "The DST has done a work of prevention . . . a work of anticipation," he said, "[to] find the terrorists before they commit an attack." It was necessary for the DST to develop its judicial investigation competence in 1998, he continued, because it was "the only one" to perceive the international travel and links of many Islamist terrorists. When these suspects returned from Afghanistan or Pakistan, "we had done the intelligence inquiry and we transformed it into the judicial [investigation] . . . in order to arrest them."[88]

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[85] For example, French officials believed that the militants who carried out the 1994 plane hijack intended to crash the aircraft in central Paris (the hijackers were prevented from doing so when French special forces seized the plane while it was on the ground in Marseille). See Shaun Gregory, "France and the War on Terrorism," *Terrorism and Political Violence* 15, no. 1 (Spring 2003), 131; and Shapiro and Suzan, "The French Experience of Counter-terrorism," 80.

[86] Investigating Magistrate specialized in terrorism [FR-M], interview with author, Paris, 22 February 2007.

[87] Senior official of the French national police and Interior Ministry [FR-I], interview with author, Paris, 5 February 2007. See also Shapiro and Suzan, "The French Experience of Counter-terrorism," 79, 86–87.

[88] Former senior DST counterterrorist intelligence official [FR-F], interview with author, Paris, 30 January 2007.

The DST is the only western intelligence agency that also has a competence to carry out judicial/law enforcement investigations under the direction of a magistrate (and thus contribute to the assembly of a case of evidence that is then presented before a court).[89] The integrating interinstitutional conventions of the French state permit and enable close cooperation between judicial actors and security agencies that report to the government. While this had traditionally manifested itself in the investigating magistrates' joint work with the police, the magistrates found no barriers to their extension of it to the DST intelligence service in 1998. The DST has maintained a distinction between the work of its intelligence agents and the work of its law enforcement investigators in the *Unité Enquete Judiciare*. However, there is close communication between these two types of personnel within a framework where intelligence, naturally enough for an intelligence agency, remains the organizing principle. "Formally, they are separated," said one senior police official, "but they depend on the same boss. They are of the same house, of the same doctrine, of the same culture."[90]

It is the DST's intelligence agents who carry out the preliminary surveillance of individuals and extract information from this intelligence work in order to prepare a report for the public prosecutor.[91] This report will usually present an account of the movements and contacts of the suspect in France and also abroad in some cases. The DST's report to the prosecutor on Djamel Beghal of 7 September 2001, for example, contains a range of detailed information on the suspect's activity in Afghanistan; who he met, where he traveled, and how he received training in explosives.[92] This detail is based on intelligence and the confidential sources of the information are not given. The report states only that the information presented is "based on the elements in our possession."[93] Assuming he is satisfied with the information presented in such a report, the public prosecutor refers it to an investigating magistrate who, in Islamist cases, usually goes back to the DST and retasks them for the law enforcement phase—the judicial investigation. As a former senior DST official explained, "At this point, we change our hat and there are specialized DST personnel who work on the judicial investigation" with the magistrate. However, he added, the DST's intelligence agents also continue

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[89] Antoine Garapon, "Is There a French Advantage in the Fight Against Terrorism?" *Analyses of the Real Instituto Elcano* (ARI no. 110/2005), 1 September 2005; and Marc Perelman, "War on terror à la française," *International Herald Tribune*, 27 January 2006. Although the DST merged with another agency in July 2008 (see below), I will refer to it as the "DST" here, both for simplicity sake and because its intelligence and judicial investigations continue as before.

[90] Senior counterterrorist official of the *Police Judiciare* [FR-O], interview with author, Paris, 9 February 2007.

[91] Former senior DST counterterrorist intelligence official [FR-F], interview with author, Paris, 30 January 2007.

[92] Direction de la Surveillance du Territoire, *Bordereau D'Envoi à Monsieur le Procurer de la République (*Objet: Djamel Beghal), Paris, 7 September 2001 (copy in author's possession).

[93] Ibid.

their own work "with clandestine sources" and can communicate any new information they find to the DST's judicial investigation unit.[94]

Joint DST-magistrate investigations and personal interactions between the two sides have fostered a climate of confidence in which the intelligence agency shares quite detailed information with the magistrates, such as that found in the Djamel Beghal file. As one former magistrate said, it means that in France "the information of the intelligence agent can be exploited at the judicial level."[95] This cooperation is important for the charging and trial of terrorist suspects in France. When the investigating magistrate is making his decision on whether or not to charge an individual, he has access to and can take into account purely "administrative" intelligence material given to him by the DST (this is information collected by the intelligence agency in an administrative capacity, before they were working in a judicial framework).[96] When such cases come to trial, information collected by the DST during the judicial investigation phase—including intercept (material from telephone-tapping)—can be used as evidence of guilt or innocence.[97] French counterterrorist practitioners are proud of their model of counterterrorism, although some worry that it relies on informal alliances and personal interactions between individuals. As one police officer has been quoted as saying "There is a very good anti-terrorist system in France—but it relies on people."[98]

Overall, however, the investigating magistrates' joint work with the DST is seen as working well and has contributed to the confidence that French officials have in the ability of their judicial system to charge and secure the convictions of terrorist suspects.[99] Indeed, by intercepting a number of terrorist plots and avoiding any significant attacks since 1996, France has provided a unique example of intelligence capability merging with legal instruments to prevent and prosecute terrorism.[100] Relying on this informal judicial-intelligence cooperation, the French government did not undertake

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[94] Former senior DST counterterrorist intelligence official [FR-F], interview with author, Paris, 30 January 2007.

[95] Former Investigating Magistrate and Prosecutor and current Member of the French National Assembly [FR-N], interview with author, Paris, 5 July 2006.

[96] Gilbert Thiel, interview with author, 22 February 2007. The magistrate actually relies mainly on judicially-authorized material, but his ability to access and take into account earlier or more sensitive intelligence, gives him a greater information base for his decision.

[97] Ibid.; and Shapiro and Suzan, "The French Experience of Counter-terrorism," 83.

[98] Nathalie Cettina, "The French Approach: Vigour and Vigilance," in *Confronting Terrorism: European Experiences, Threat Perceptions and Policies*, ed. Marianne van Leeuwen (The Hague: Kluwer Law International, 2003), 85.

[99] Author interviews. See also the confident conclusion of France's official counterterrorism doctrine and review of capability: French Government, *France Facing Terrorism*, 53, 54.

[100] Plots intercepted include a planned attack on Strasbourg in December 2000 and two separate conspiracies to strike targets in Paris in late 2002 and September 2005. See Gregory, "France and the War on Terrorism," 139; and Guillaume Parmentier, "France," in *Counterterrorism Strategies: Successes and Failures of Six Nations*, ed. Yonah Alexander (Washington DC: Potomac, 2006), 52.

any top-down structural reorganization of its counterterrorist agencies, neither after its own bombings of 1995–96 nor after the 9/11 attacks on America and subsequent Islamist terrorist attacks on Spain, Britain, and Algeria. Following his election as President of France, Nicolas Sarkozy pushed through a merger of the two main domestic intelligence agencies—the DST and the *Renseigements Généraux* (RG)—in July 2008. However, it remains to be seen if the French counterterrorist agencies will be subject to a greater degree of central authority under Sarkozy than before.[101]

France's model of interagency cooperation is selective, since the DST intelligence service bypasses both the police and formal interagency forums in order to work directly with investigating magistrates. It is nevertheless an extensive form of cooperation since those DST officers and magistrates bring together the disparate worlds of intelligence and justice. In doing this, they ensure the links between all the key points in the counterterrorist process: connecting intelligence gathering to arrest operations, the assembly of a case of evidence, and finally the presentation of that evidence to a trial court. This unique model has come about because the integrating interinstitutional conventions of the French state enable judicial and intelligence actors to work together in ways that would not be possible in many other countries, including Britain.

Britain (1): Intelligence and Police Strengthen Their Close, Formal Relationship

As with the French case, I now consider the U.K.'s reforms to its counterterrorist intelligence and police agencies, before later turning to the connections between this sphere and the prosecutorial/judicial world. In the former area, the government and agency leaderships implemented a range of top-down reforms to the coordination and capabilities of their police and intelligence services after 2001. The trigger for this was a perceived rise in the threat from Islamist terrorism to the United Kingdom in the years after 9/11. The domestic intelligence agency, MI5, was given funding by the government to almost double its personnel from 1,900 to 3,500 over a four-year period and to set up regional bases around Britain.[102] A new "Joint Terrorism Analysis

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[101] The merger of the RG and DST into the *Direction Centrale du Renseignement Intérieur* (DCRI) was a formal restructuring that departed from France's previous reliance on informal changes to the organization of counterterrorist agencies. It was not motivated by counterterrorist concerns, but by Mr. Sarkozy's emphasis on the need to economize and reduce duplication of activities. However, the new President was unable to tackle other areas of duplication and overlapping mandates, such as the DST's sharing of counterterrorist law enforcement with the national police. For background, see Gérard Davet and Isabelle Mandraud, "La ministre de l'intérieur présente le nouveau visage des services de renseignement français," *Le Monde*, 13 September 2007.

[102] "MI5 expands to meet terror threat," *BBC News Online*, 22 February 2004, available at http://news.bbc.co.uk/1/hi/uk/3510611.stm; and Frank Gardner, "One year on—Is the UK any safer?" *BBC News Online*, 3 July 2006, available at http://news.bbc.co.uk/1/hi/uk/5140958.stm.

Centre" (JTAC) was established, drawing together one hundred officials from eleven security and government agencies, in order to provide a joined up analysis of British terrorism intelligence and enhance the accuracy of threat assessments.[103] Changes were also made to the relationship between MI5 and the two key specialist units of the London Metropolitan Police: "Special Branch" (a police unit which gathered intelligence on terrorism) and "Anti-Terrorist Branch" (which was responsible for law enforcement investigations into terrorism nationwide). In 2006, the Anti-Terrorist Branch was expanded and reformed to become the "Counter Terrorism Command." More than just a rebranding of the branch, British police officers say that this reform is an institutional recognition of changes that began in the years after 9/11 concerning how the agencies relate intelligence collection to law enforcement.

Traditionally, according to one police officer, "under UK legislation, you'd make a complete difference between the intelligence and the evidential field." MI5 worked purely on intelligence, he said, police Anti-Terrorist Branch worked purely on law enforcement (the evidential field), and police Special Branch "straddled the line" between the two, working on both intelligence and evidence.[104] MI5 did not usually gather information in a way that would allow it to be easily transformed into evidence suitable for a trial.[105] As alleged facts gleaned through MI5 sources were effectively useless for court purposes, this meant that such facts had to be independently proven by police. As a police officer recalled, MI5 would communicate the intelligence to the London Metropolitan Police and "our job would be to find a way of attributing that to an open source."[106] This task—finding independent evidential proof for that which intelligence sources indicated—was primarily the responsibility of police Special Branch, according to another officer. "That was part of the case management," he said.[107] "Evidential questions . . . were not given to the Anti-Terrorist Branch (ATB) to work on until a very late stage" (before arrests were to be made), he added. Indeed, he continued, "the broad judgment then was that the investigators had a different role . . . the Anti-Terrorist Branch was post incident. An Anti-Terrorist Branch officer had no real expectation to be involved before the bomb went off."[108] The head of the ATB between 2002 and 2008, Peter Clarke, did not go quite as far as this officer, but he did admit that during the years of the Irish Republican Army (IRA) terrorist campaign, the ATB would sometimes be briefed about a terrorist plot at a late stage "after there had been a great

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[103] Intelligence and Security Committee, *Annual Report 2002–2003*, Cm 5837 (London: TSO, 2003), 18.

[104] Metropolitan Police counterterrorist officer [UK-E], interview with author, 17 July 2006.

[105] Based on interview with "Former MI5 officer," quoted in Jacobson, *The West at War*, 45.

[106] Metropolitan Police counterterrorist officer [UK-E], interview with author, 17 July 2006.

[107] Metropolitan Police (Special Branch/Counter Terrorism Command) officer [UK-B], interview with author, London, 26 January 2007.

[108] Ibid.

deal of [information gathering] by the intelligence agencies." Waiting "until the terrorist is at or near the point of attack," he said, gave the police "the strongest evidence—to capture the terrorist with the gun or the bomb."[109] This approach was sustainable, he said, because Irish terrorism "operated within a set of parameters." Among other features, IRA operatives "had no wish to die," and they often issued warnings prior to bombs being exploded which, though "cynical," did have the effect of "restricting casualties," he said.

Clarke believed, however, that contemporary Islamist terrorism was "the reverse of many of these characteristics": suicide bombing as a tactic, no warning given, and an intention "to kill as many people as possible." According to the police chief, this change in the nature of the terrorist threat "has changed everything" in how the police try to counter it.[110] It is no longer tenable to wait until after—or even just before—a terrorist crime is committed. Suspected terrorists are now being arrested earlier, which requires that earlier attention is also given to evidence questions. Clarke and the British counterterrorist agencies perceive Islamist terrorism in a similar way to their French counterparts, and like the French, they interpreted it as meaning that they had to switch to a preventive logic in terrorism investigations. In both cases, that logic has implied that the gathering of court-admissible information starts earlier in a given counterterrorist inquiry than had been the case before the advent of Islamist terrorism. This change has manifested itself in two forms in the United Kingdom. First, MI5 has changed its procedures so that it gathers more intelligence in a way that enables the information to be converted into court-admissible evidence. This change, which began in the mid-1990s, really took hold after 2001, according to one Metropolitan Police officer: "After 9/11," he said, "of necessity, the Security Service were beginning to have to conduct this stuff in an evidential way, having to keep logs etcetera. It was no good not recording what was happening. You'd have to evidentially bind that down."[111] For example, recordings made by MI5 and the police with bugging devices in February 2004 were later heard in a prominent court case and were important for the conviction of five suspects.[112] MI5's resources for seeking legal advice were also increased in this context.[113]

A second, related change stemming from the preventive logic was that MI5 began to work more intensively with the law enforcement officers of

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[109] Peter Clarke, "Learning from Experience."

[110] Ibid.

[111] Metropolitan Police counterterrorist officer [UK-E], interview with author, 17 July 2006; and Jacobson, *The West at War*, 44. The first stimulus for this change was MI5 being given responsibility to monitor serious crime in 1996.

[112] MI5 may admit the results of bugging devices (placed in cars or homes, for example) to court cases. This must be distinguished from telephone taps or intercept, which it does not admit to court. See "Fertilizer Bomb Trial: Bugged Talk," *BBC News Online*, 30 April 2007, available at http://news.bbc.co.uk/1/hi/uk/6466817.stm.

[113] Jacobson, *The West at War*, 43–44.

the Anti-Terrorist Branch (ATB). According to Peter Clarke, the ATB began to "work [with MI5] in every case from a much earlier stage than would ever have happened in the past."[114] Another police officer added that "the senior [ATB] investigating officer would have access to the intelligence" now to a greater extent than in the past.[115] "Operation Crevice" in 2004 was a significant example of police ATB being involved at an earlier stage of an intelligence operation as it worked directly with MI5 to gather court-admissible evidence for at least two months before the suspects were arrested.[116] These developments had implications for the role of Metropolitan Police Special Branch. In the past, MI5 concerned itself less with converting intelligence into evidence, Special Branch effectively covered this area, while the police ATB usually only came in at the end of the intelligence inquiry. After 9/11, however, according to one police officer, as MI5 began to move "forward" into the evidential sphere and police ATB began to move "back" into the intelligence sphere at an earlier stage of inquiries, the question was asked, do we still need Special Branch in the middle straddling the line between the two?[117]

The answer was no. Against the background of these changes on the ground since 9/11, the Metropolitan Police decided to merge Special Branch with Anti-Terrorist Branch into a reformed division called the Counter Terrorism (CT) Command. Launched in October 2006, the new Command is said to bring together in one agency the traditionally distinct métiers of the two old branches: intelligence work and law enforcement. Reflecting the greater involvement of the Anti-Terrorist Branch in the intelligence sphere, the head of the ATB, Peter Clarke, was made the head of the new Counter Terrorism Command.[118] For one Special Branch officer, this reform shows that the organization of the Metropolitan Police's work on terrorism intelligence and evidence has "fundamentally changed." Rather than Special Branch developing intelligence and only later addressing evidential questions with the ATB, "that is no longer Special Branch separate from the Anti-Terrorist Branch," he said. "That is now one unit that is now recognizing that operational and evidential questions have to be addressed from Day One."[119] Although the intelligence collection and analysis traditionally done by Special Branch continues to be a part of the police mandate under the new CT Command, Special

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[114] Peter Clarke, "Learning from Experience."

[115] Metropolitan Police counterterrorist officer [UK-E], interview with author, 17 July 2006. See also, Jacobson, *The West at War*, 43.

[116] Peter Clarke, "Learning from Experience." See also, "Timeline: Operation Crevice," *BBC News Online*, 30 April 2007, available at http://news.bbc.co.uk/1/hi/uk_politics/6207348.stm.

[117] Metropolitan Police counterterrorist officer [UK-E], interview with author, 17 July 2006.

[118] Metropolitan Police Service, "New Counter Terrorism Command Launched," MPS Bulletin 514, October 2006 available at http://cms.met.police.uk/news/major_operational_announcements/new_counter_terrorism_command_launched.

[119] Metropolitan Police (Special Branch/Counter Terrorism Command) officer [UK-B], interview with author, London, 26 January 2007.

Branch officers perceive a reduction in their role here as they become "far more focused on operational support," as the officer put it. He added: "Some Special Branch officers who have experienced both regimes, will sometimes talk a little wistfully about what's been lost and having become more of 'a glorified crime squad.'"[120] This phrase indicates that the police's intelligence collection personnel may now be increasingly focused on particular groupings and on the gathering of information that will be used in court.

Such testimony ties in with statistical evidence that indicates that the British government is funding a major expansion of the intelligence collection and analysis capabilities of MI5, while making a smaller increase to Special Branch and the other intelligence assets of the British police.[121] However, as MI5 has increased its role and become the clear leader on the intelligence side, this has been balanced out by an enhancement of the role of those on the law enforcement side—the Anti-Terrorism Branch/Counter Terrorism Command. The CT Command had 1,500 officers in October 2006, which represents a doubling of the Metropolitan Police's staff devoted to counterterrorism between 2001 and 2006.[122] Law enforcement officers also have earlier and greater access to intelligence than they did before 9/11, and the absorption of Special Branch personnel into the CT Command helps it to address evidential questions at an earlier stage of intelligence inquiries. Outside of London, the policy of putting intelligence collectors and law enforcement officers together in the same police unit was also applied in the creation of three new regional Counter Terrorism Units (CTUs) in 2007.[123]

In the British case, the prior and long-standing presence of formal organizational routines favored the introduction of formal changes to the coordination of counterterrorist intelligence and law enforcement after 9/11. These reforms were congruent with both contemporaneous and previous changes approved by the government to promote MI5 primacy on terrorism intelligence. This is not to deny that some important initiatives first emerged "on the ground." Intelligence and police officers did innovate in the face of the dual demand to arrest terrorist suspects earlier and still gather sufficient evidence to prosecute them. The organizational routines of the British counterterrorist agencies were thus performed in creative ways by individuals. Nevertheless, the underlying formal routines were adhered to as the

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[120] Ibid. Senior Metropolitan Police (Special Branch/Counter Terrorism Command) officer [UK-K], interview with author, London, 5 July 2007.

[121] On the basis of various official documents, I estimate that plans were made to recruit approximately six hundred additional police officers for counterterrorist intelligence work during the period, 2004–2008, which appears moderate when compared to the increase of 1,600 that MI5 underwent during the same period.

[122] Sean O'Neill, "Special Branch absorbed into counter-terror unit," *Times*, 3 October 2006.

[123] "Regional anti-terror unit formed," *BBC News Online*, 2 April 2007, available at http://news.bbc.co.uk/2/hi/uk_news/england/6516829.stm. Although a logical response to the growth of terrorist networks in certain regions, the creation of substantial regional CTUs could give rise to coordination problems. See Peter Clarke, "Learning from Experience."

agencies' adaptive efforts were formalized with the creation of new institutions such as the CT Command. With the British agencies intercepting a number of substantial conspiracies in the years after 2001, these efforts provided another example of how intelligence and law enforcement could be adapted to prevent and prosecute terrorism.[124]

Britain (2): Hesitancy in Linking Intelligence and Police to Prosecution and Justice

While the key units of British counterterrorist intelligence and policing have strengthened their formal and regularized mode of cooperation since 2001, the links between that sphere and the world of prosecution and justice are less certain. The British take a relatively restrictive approach to collaboration between these domains.

The level of cooperation between the counterterrorist intelligence/policing world and the prosecutorial/judicial sphere in Britain is lower than in France. This difference has manifested itself in at least two areas of note. First, when deciding whether or not to charge a suspect, while the French investigating magistrate can take into account nonjudicial intelligence material shared with him by the DST intelligence agency, the English Crown Prosecution Service (CPS) cannot do likewise.[125] The CPS has less contact with intelligence services than its French counterpart and its decisions about suspects must be based on court-admissible evidence only—without reference to sensitive intelligence material on the individual in question.[126] From a purely investigatory point of view, the French authorities have an advantage here.

Second, whereas DST intelligence agents have relatively few fears about admitting intercept material to the French courts and sharing intelligence with investigating magistrates whom they have come to know personally, the British intelligence agencies see the English judicial system in a rather different light. They and the government claim that the country's adversarial legal system gives English defense lawyers greater rights to probe evidence and seek further information than their counterparts who work in the

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[124] These interceptions included "Operation Crevice" (mentioned above) and the foiling of the Dhiren Barot group, both in 2004. A significant plot to bomb transatlantic flights was also disrupted in August 2006. Against this, the British agencies failed to prevent the London bombings of 7 July 2005 and the botched attacks of 21 July 2005 and early June 2007. See "Salute the Spooks," *Economist*, 19 August 2006; and "Waiting for Al Qaeda's next bomb," *Economist*, 3 May 2007.

[125] Notwithstanding the many differences between them, the CPS is the closest English equivalent to the French section of investigating magistrates. They are both legal actors that work directly with the police, and they make the decision on whether or not to charge a suspect.

[126] Evidence given by the CPS to the Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights: Prosecution and Pre-charge Detention*, HC 1576 (London, TSO, August 2006), 35; former senior U.K. government official [UK-A], second interview with author, London, 25 January 2007.

inquisitorial legal systems of many other European countries.[127] According to a Home Office statement in 2005, the British intelligence agencies believed that the admittance of their intercept material as evidence in trials could "lead to the exposure in court of their techniques and capabilities."[128] In this context, the government's policy—reflected in law—has been that intercept material, collected by the intelligence agencies (and the police), cannot be admitted as evidence in a court case. This "intelligence only approach," as the Home Office has called it, extends to other sensitive areas of intelligence, including certain forms of surveillance and agent reporting.[129] Reflecting this cautious approach, Eliza Manningham-Buller, the head of MI5 from 2002 to 2007, has spoken of cases in which the British authorities were not able to prosecute suspected terrorists because their plots were "too embryonic" or where "the intelligence [against them] may be highly sensitive and its exposure would be very damaging as revealing either the source or our capability."[130] Indeed, the British intelligence agencies' concerns about the admittance of certain forms of intelligence material to the English adversarial courts have surfaced in a number of prominent cases of suspected terrorists. In thirty-six cases between January 2002 and May 2006, suspected terrorists were detained or controlled by the authorities in administrative ways but never prosecuted through the English courts. The government said that the intelligence against these individuals showed that they were involved in terrorist activity, but that this intelligence "could not be used [in court] without compromising national security, damaging relationships with foreign powers or intelligence agencies, or putting lives at risk."[131]

The complicated relationship between police/intelligence and prosecution/justice in Britain was one element that led to "frustration" and a perception within government after 9/11 that it was difficult to charge and convict terrorist suspects under the English legal system.[132] Against this

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[127] Home Office, "Frequently asked questions regarding terrorism legislation," http://www.homeoffice.gov.uk (last accessed on 14 April 2005, but since removed—print copy in author's possession). The U.K. Home Office (an interior ministry) is the government department that oversees and most closely reflects the views of MI5. See also David Omand, "Security Dilemmas," *Prospect*, no. 129 (December 2006): 12–13.

[128] Home Office, "Frequently asked questions regarding terrorism legislation."

[129] Ibid.; and Home Office, *Counter-Terrorism Powers: Reconciling Security and Liberty in an Open Society*, Cm 6147 (London, TSO, February 2004), 11–12.

[130] Eliza Manningham Buller, "The international terrorist threat and the dilemmas in countering it," speech to the AIVD (Dutch Security Service), The Hague, 1 September 2005, available at http://www.mi5.gov.uk/output/Page375.html.

[131] Home Office, "Frequently asked questions regarding terrorism legislation." An independent assessor, Lord Carlile, reviewed the intelligence seen by the authorities and said in all cases that he agreed with the government's judgment on the suspects concerned.

[132] Former senior U.K. government official [UK-A], interview with author, London, 4 November 2005. This official spoke of "frustration" in government on the issue. For a similar view, expressed by the then Home Secretary, see "Evidence of Charles Clarke MP," in Home Affairs Committee, *Terrorism Detention Powers: Oral and Written Evidence*, :HC 910-II (London, TSO, 2006), Ev 67 (Q333).

background—and in the context of a perceived rise in the terrorist threat—a number of efforts were made in the years after 2001 to foster greater links between the work of the police/intelligence agencies and prosecutors and, to a lesser extent, the judiciary.

The government's approval of an enhancement of the Crown Prosecution Service's (CPS) role across the board led in 2004 to prosecutors taking over from the police the responsibility of deciding whether to bring charges against suspects and what charges to bring.[133] Whereas police and prosecutors traditionally "didn't work together as a team," as one government official put it, they now cooperate more intensively.[134] According to police officers, this is partly because the final decision on charges now rests with the prosecuting agency. In this context, the CPS advice on particular cases is now almost always acted on by the police.[135] Police-prosecutor cooperation was also helped by the latter's creation of a "Counter Terrorism Division" in 2005 which, it said, "draws together the skills and knowledge of the CPS's most experienced terrorism lawyers."[136] It was also decided that all terrorism cases, regardless of what part of the country they originated from, would be referred centrally to the London-based Counter Terrorism Division. This centralization and specialization of CPS casework on terrorism, its new responsibility for charging, and its increased cooperation with the police bring it a number of steps toward the French model of counterterrorist investigating magistrates, a point which has been recognized by British police and parliamentary observers.[137] Indeed the frustration of government regarding prosecutions may have been reduced in 2007 as the efforts of intelligence, police, and prosecutors resulted in a number of substantial convictions in terrorist trials.[138]

Although collaboration between police and the CPS increased considerably, there was little increase in direct judicial-intelligence cooperation in Britain in the face of Islamist terrorism. As outlined above, MI5 did begin to gather more intelligence in ways that enabled it to be converted into court-admissible evidence. However, there was little or no change in two other

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[133] Hodgson, *French Criminal Justice*, 73–74.

[134] Senior U.K. Government official working on legal aspects of counterterrorism [UK-F], interview with author, London, 7 December 2006.

[135] Metropolitan Police counterterrorist officer [UK-E], interview with author, 17 July 2006. This was corroborated by the Director of Public Prosecutions, Sir Ken MacDonald, in his evidence to a British parliamentary committee. See Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights*, 25.

[136] Crown Prosecution Service, "CPS statement on conclusion of Andrew Rowe trial," 23 September 2005, available at http://www.cps.gov.uk/news/press_releases/146_05/.

[137] Metropolitan Police counterterrorist officer [UK-E], interview with author, 17 July 2006; and Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights*, 25–26.

[138] The most prominent of these convictions were the "Operation Crevice" trial (April 2007), the cases of Dhiren Barot and associates (November 2006 and May 2007) and the conviction of the group that attempted to attack the London transport system on 21 July 2005 (July 2007).

important areas. First, the government launched two official reviews of its policy prohibiting the admittance of intercept intelligence material to court, in 2003 and 2007.[139] Prime Minister Tony Blair was in favor of changing the policy, and the government raised the issue with the intelligence services on a number of occasions. The agencies, however, remained wary of admitting intercept to the English courts.[140] In this context, the first official review advised against making any change to the existing policy, while the second review recommended tweaking the policy to allow a minimal admittance of intercept material as evidence to court.[141] Thus, the concerns of the intelligence agencies have, at the very least, slowed down any closing of the judicial-intelligence divide in this particular area for over five years. Britain remains unique among western states for the extent of its reluctance to admit intercept intelligence material as evidence to court.

The government also considered a second reform proposal, which could have enabled more sensitive intelligence material to be admitted to court. The idea was to introduce "security-cleared judges," who would carry out a pretrial review of sensitive intelligence material and issue a ruling that the part of the trial that considered this intelligence could be held in private. Supported by two successive Home Secretaries, David Blunkett and Charles Clarke, and other senior government figures, this proposal sought to introduce aspects of the continental investigating magistrates system to Britain.[142] In a revealing reaction, however, a prominent parliamentary committee concluded that the "security-cleared judges" proposal showed the danger to England's common law traditions of borrowing certain aspects from the investigating magistrates system. This system, the committee pointed out, "required a very close relationship between the investigating magistrate and the police and intelligence agencies." It continued: "As Judge Bruguiere, a most experienced *juge d'instruction* in terrorist cases, put it to us, in France the intelligence services, law enforcement agencies and the judiciary 'worked in synergy.' Such a collaborative relationship would, in our view, *in this country*, be incompatible with the nature of the judicial function as it has

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[139] Home Office, "Use of Interception," available at http://security.homeoffice.gov.uk/ripa/interception/use-interception/.

[140] "PM meets police and intelligence," *BBC News Online*, 21 July 2005, available at http://news.bbc.co.uk/1/hi/uk_politics/4701823.stm; and Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights*, 27.

[141] Completed in February 2008, this second official review concluded that some forms of intercept could be allowed to be used as evidence in court. However, the government said that it would impose strict conditions on any such use of intercept and leave it up to the police and intelligence agencies to decide in particular cases if intercept could be admitted to court. See Will Woodward, "Police could get veto on use of phone tap evidence in court," *Guardian*, 7 February 2008.

[142] David Blunkett, U.K. Home Secretary 2000–2004 [UK-G], interview with author, London, 23 January 2007; Alan Travis, "Secret courts for terror cases," *Guardian,* 9 August 2005; and Alan Travis, "Anger over plan for secret courts," *Guardian,* 10 August 2005.

traditionally been understood."[143] British judges themselves were reluctant to get too closely involved in a procedure that they felt might undercut their traditional independence from the government and its agencies.[144] Many legal and political figures as well as sections of the government also thought that the proposal was inconsistent with England's common law traditions.[145] It was not pursued. Senior figures in the Home Office had proposed a reform that would have had the effect of modestly increasing cooperation between police/intelligence and the judiciary. Their move was stymied, however, by an interinstitutional convention, rooted in English common law tradition, which places a premium on the judiciary maintaining its independence from the government and its agencies. With this historically grounded constraint on its institutional evolution, Britain remained loyal to its relatively restrictive approach to the linking of counterterrorist intelligence and police to prosecution and justice.

EXPLAINING FRANCE AND BRITAIN'S DIVERGENT COUNTERTERRORIST REFORMS

French and British officials perceive the threat from Islamist terrorism in a similar way, and they have drawn similar implications from this assessment in their common embrace of a preventive logic of investigations. Informed by this logic, both states have made organizational reforms that enable the gathering of court-admissible information at an earlier stage of terrorist investigations. Given this important similarity in their response, France and the U.K.'s counterterrorist reforms may be partly explained with reference to balance of threat theory in a manner consistent with the rational choice paradigm. As this theory would expect, counterterrorist agencies in the two states modified their approaches in response to developments in the perceived threat environment. Indeed the British and French agencies' adaptive efforts to prevent and prosecute terrorist plots also show that, contrary to common beliefs about its limitations, law enforcement can provide a sustainable approach to preventing terrorism.

However, there have also been major differences between France and the U.K.'s counterterrorist reforms, which cannot be explained by a rationalist focus on threat and threat perception. Even though counterterrorist agencies

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[143] Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights*, 23 (italics added).

[144] Former senior U.K. government official [UK-A], interview with author, London, 4 November 2005; and David Blunkett, U.K. Home Secretary 2000–2004 [UK-G], interview with author, London, 23 January 2007.

[145] The government was split on the issue as two successive Home Secretaries and other senior figures argued in favor of introducing security-cleared judges, while some cabinet members and senior officials were unconvinced. Former senior U.K. government official [UK-A], interview with author, London, 4 November 2005.

in the two states shared a common imperative—to make extra and earlier efforts to gather court-admissible evidence—they nevertheless translated this imperative into quite different types of organizational reforms. To explain this, I focused attention on the divergent organizational routines of the British and French counterterrorist agencies and the contrasting interinstitutional conventions of the two states. These factors have favored different outcomes across three dimensions in particular.

First, the divergent organizational routines of the two cases have favored different methods of counterterrorist reform. Britain—relying on its formal organizational routines—has employed formal methods of change: the creation of new institutions, officially announced by the government or the agency leaderships, and coordinated across the relevant counterterrorist agencies. France's informal routines, on the other hand, have favored the introduction of informal changes, set in train by entrepreneurial actors and implemented "on the ground" without being formalized at official level and without being coordinated with all of the relevant security agencies.

The second dimension of the variation between the two cases concerns the balance that organizational reform achieves (or fails to achieve) between the responsibilities of the intelligence and police services. The French and British cases share one similarity in this domain—domestic intelligence agencies in both states have experienced an increase in their counterterrorist roles in recent years. The preventive logic, associated with France and the U.K.'s similar perceptions of Islamist terrorism, has favored a rise in the fortunes of intelligence agencies. However, the enhancement of these agencies' roles has been carried out in different ways and with different outcomes in the two states. The formal organizational routines of British counterterrorism meant that its reforms were initiated by government or the agency leaderships in coordination with each other. In this context, MI5's move "forward" into the evidential (law enforcement) sphere after 2001 was balanced out by an equivalent moving "back" of police investigators to play an earlier and greater role in the intelligence sphere. The formal routines of British counterterrorism favored the introduction of a balanced set of reforms to the roles of the intelligence and police agencies. In contrast, the informal organizational routines of French counterterrorism meant that its reforms were carried out not by central authorities, but were set in train instead by entrepreneurial actors within the system, and were not done in coordination with all the relevant agencies. In this context, the move "forward" of the DST intelligence agency into the law enforcement sphere was not balanced out by any equivalent move "back" of the police into the intelligence sphere. Instead the police were actually excluded from the main terrorist dossier— Islamist terrorism.[146] Thus, the informal routines of French counterterrorism

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[146] Gilbert Thiel, interview with author, Paris, 22 February 2007.

favored the introduction of an unbalanced set of reforms to the roles of the intelligence and police agencies.

Balanced change in the United Kingdom and the unbalanced nature of the French reforms have helped to reinforce certain prior patterns of intelligence-police coordination in the two states. In Britain, as we have seen, the Metropolitan Police Special Branch—one of the country's two major police counterterrorist units—was abolished and absorbed into a new unit. The traditional intelligence collection and analysis functions of Special Branch's personnel were also changed to a role focused more on law enforcement type investigations. Two factors explain why no major interagency rivalry ensued from these changes. First, the U.K.'s formal organizational routines—manifested in explicit government guidelines—meant that there has been an expectation among Special Branch officers since the early 1990s that MI5's role in terrorism intelligence would continue to be enhanced—at their expense.[147] As part of what one senior police officer called a set of "incremental changes,"[148] the loss of Special Branch and its absorption into a broader police counterterrorism command in 2006 came as no surprise. Second, the impact of this change has also been softened by the overall balance that Britain's post-9/11 reforms have maintained between the roles of the intelligence and police agencies. While the domestic intelligence agency saw its role enhanced, the police—in particular those working on law enforcement—also saw an increase in their resources and role. As the British reforms were introduced incrementally with the support of a central authority and were well balanced between the intelligence and police services, they did not provoke any major interagency competition. The relevant agencies continued and, in some respects, intensified their close and regularized cooperation on counterterrorism.

In France, on the other hand, the initial situation of a proliferation of agencies with overlapping mandates, unregulated by a central authority, favored the development of competition and informal organizational routines between the French services. When such routines enabled certain entrepreneurial actors (not supported by any central authority) to stimulate an unbalanced change to the intelligence and police counterterrorist roles in 1998, interagency competition was given a fresh impetus. In the years after 9/11, the *Police Judiciare* grew increasingly unhappy with its exclusion from—and the DST's monopoly over—law enforcement investigations into Islamist terrorism. Counterterrorist officers of the *Police Judiciare* said there is little cooperation between them and the DST, they questioned the

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[147] See, for example, "UK Special Branch Guidelines," *Statewatch*; Metropolitan Police (Special Branch/Counter Terrorism Command) officer [UK-B], interview with author, London, 26 January 2007; and Metropolitan Police counterterrorist officer [UK-E], interview with author, 17 July 2006.

[148] Senior Metropolitan Police (Special Branch/Counter Terrorism Command) officer [UK-K], interview with author, London, 5 July 2007.

appropriateness of an intelligence agency doing law enforcement investigations, and they said they want to reclaim this ground from the DST.[149] Indeed, the police's anti-terrorist division (the DNAT) hired thirty new officers, was upgraded in status within the *Police Judiciare*, and renamed the *Sous-Direction Anti-Terrorist* (SDAT) in 2006, partly as a bid to regain a foothold in the investigation of Islamist terrorism.[150] The success or failure of this initiative will still depend, however, on the SDAT's ability to make informal alliances with magistrates and other counterterrorist services. A leading magistrate, Gilbert Thiel, hoped for "a veritable competition—in the good sense of the term" between the DST and the SDAT. The DST had "imposed itself little by little" on Islamist investigations, he noted. In "the same way," he continued, "one day, there [may be] a decline of the DST . . . we will see tomorrow if [the situation] is re-made."[151] This view indicated the unstable nature of France's current counterterrorist arrangements and showed a positive attitude to overlapping mandates and interagency competition. However, this competition and the lack of cooperation between the DST and the police may leave France exposed if any future terrorist crisis demands more investigatory resources than the DST alone can offer. If the DST and the SDAT do not cooperate now, how would they fare if forced to work together in a time of greater peril?

The third and final dimension of the cross-case variation reflects better on the French approach to developing counterterrorist coordination. The British model of close and regularized interagency cooperation is strongest in the domain of conventional counterterrorist security agencies—police and intelligence. In French counterterrorism, on the other hand, there is a cooperative relationship, selective and informal though it may be, which extends all the way from intelligence to justice—from the DST intelligence agents and law enforcement officials directly to the investigating magistrates who prepare a case for court. Britain, with its traditional divide between the intelligence/policing world and the prosecutorial/judicial sphere has tried to close this gap in response to the advent of Islamist terrorism. In this context, the CPS took a number of steps toward a French-style cooperative relationship with the police. However, the agency still plays less of a role in investigations and has less contact with intelligence agencies than its closest French equivalent. As the police and intelligence agencies in France are more closely linked to prosecutors and, in particular, to the judiciary than is the case in the United Kingdom, I conclude that the French system entails an extensive form of

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[149] Senior counterterrorist official of the *Police Judiciare* [FR-O], interview with author, Paris, 9 February 2007; Counterterrorist investigator of the *Police Judiciare* [FR-G], interview with author, Paris, 9 February 2007. For example, asked if the police's anti-terrorist unit and the DST do operations together, the latter officer replied, "No, no, no. For the moment, it is very separated."

[150] Oliver Talles, "Face au terrorisme, le modèle français," *La Croix*, 24 October 2005; and Counterterrorist investigator of the *Police Judiciare* [FR-G], interview with author, Paris, 9 February 2007.

[151] Gilbert Thiel, interview with author, Paris, 22 February 2007.

cooperation between the diverse actors in these areas, while Britain adheres to a relatively restrictive model of cooperation between these domains.

Why have the French reforms produced a more extensive counterterrorist system than has been possible in Britain? Some analysts answer that France has advanced further than others in this respect because it has faced Islamist terrorism for longer than other states. Ludo Block argues that France's "effective" counterterrorist system "emerged from painful experience—unlike other European countries, France has faced the deadly threat of Islamic terrorism on its soil since the 1980s."[152] This boils down to a claim in realist terms that France has faced a greater threat than other European countries over the past twenty-five years, and this explains its more extensive counterterrorist system. The assumption seems to be that Islamist-linked militancy is inherently a more threatening form of terrorism than European nationalist terrorist groups. Yet this was far from evident to those living in Western Europe during the 1970s, 1980s, and 1990s. Britain faced a more sustained threat from the Irish Republican Army and suffered a larger number of terrorist attacks and casualties between the 1970s and 1990s than France did from the Islamist and other terrorist groups on its soil during the same period.[153] Neither current nor historical threats can explain the differences between France and the U.K.'s counterterrorist reforms since the late 1990s. The answer to this question is found, rather, in the institutional and organizational features of the two cases.

The British state's separating interinstitutional conventions (which have developed partly out of the English common law system) prohibit close collaboration between the judiciary and security agencies that fall under the responsibility of the government. This has ensured that any post-9/11 proposals for closer judicial-intelligence cooperation in Britain remain stillborn. In France, on the other hand, the state's integrating interinstitutional conventions, as reflected in its inquisitorial legal system, have permitted judicial actors to work directly with security services. Much of the power of these institutional conventions comes from constitutive norms that define the identities of actors. Rules and procedures may set out the functions of French investigating magistrates, for example, but these actors do not need to look at any rulebook to know that they can work directly with security agencies on investigations. Such collaboration is a part of their professional identity. Conversely, there is no British judge whose professional identity permits him to collaborate with security agencies in this way. Regular interaction between French magistrates and officials of the DST intelligence agency has become part of the counterterrorist organizational routines of that state.

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[152] Block, "Evaluating the effectiveness of French counterterrorism," 8. For a similar perspective, see Perelman, "How the French Fight Terror."

[153] While 175 people were killed in terrorist attacks in mainland France between 1965 and 2005, there were 395 deaths caused by terrorism in mainland Britain between 1969 and 2001.

Something that would be regarded as abnormal in Britain has thus been normalized across the English Channel. Indeed the informal routines of the French agencies facilitated the development of this direct judicial-intelligence cooperation in a quick and ad hoc way that may not be possible in Britain with its more formal organizational routines. Thus, it is the differences between the two states' institutional conventions, transmitted into the informal organizational routines of the French agencies, which explain why France has a more extensive counterterrorist system than Britain.[154]

IMPLICATIONS FOR THEORY AND PRACTICE

As France and Britain face Islamist terrorism, their particular organizational routines and interinstitutional conventions are proving crucial for how they coordinate their agencies' responses to the threat. These findings have considerable implications for both theory and practice. A potentially rich debate is opening up on whether states' counterterrorist polices are best explained with reference to the transnational threats facing them or to domestic-level factors, ranging from bureaucratic politics to institutional and cultural traits.[155] The findings presented here support the primacy of domestic-level explanations. By controlling for the type and level of terrorist threat (and how that threat is perceived) in a cross-national comparison, the article demonstrates that domestic factors play a crucial role in shaping western states' responses to terrorism. It also indicates that "domestic politics" approaches—now an established part of Security Studies—are likely to increase in importance for as long as terrorism is a top security priority of western states. This is because a comprehensive response to terrorism involves not only intelligence, police, and the military but also prosecution and justice. In this context, different organizational routines, legal systems, and interinstitutional conventions are likely to prove powerful factors for ongoing divergence between states' responses to terrorism. Western states' policies will therefore differ even when responding to a similar transnational terrorist threat. Future research should test this hypothesis further by measuring the extent

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[154] However, there does appear to be a trade-off between close, French-style judicial involvement in the work of security agencies and the level of legal protections offered to the individual. This is the subject of other research by the author. Second, as an investigating magistrate admitted, France's assigning of law enforcement tasks to an intelligence agency may increase the chances that evidence is manipulated. See Gilbert Thiel, interview with author, Paris, 22 February 2007.

[155] For the argument that differences in the threats facing western states (and variation in their own capabilities) explain the differences between their policies, see Jeremy Shapiro and Daniel Byman, "Bridging the Transatlantic Counterterrorism Gap," *Washington Quarterly* 29, no. 4 (Autumn 2006): 33–50. For the converse view, stressing domestic factors, see Katzenstein, "Same War—Different Views: Germany, Japan, and Counterterrorism." For another domestic-level argument and a discussion of the domestic politics literature and counterterrorism, see Kroenig and Stowsky, "War Makes the State, but Not as It Pleases," 266–67.

of cross-national differences across more country cases and more areas of counterterrorist policy, as well as subjecting the results to competitive theory-testing.[156]

The findings presented here can contribute to the development of debate within the domestic politics literature in Security Studies concerning which internal characteristics of states are most important for counterterrorist policy and how their effects should be theorized. The combination of organizational routine and institutional perspectives developed here offers an alternative to broad culturalist explanations on the one hand and theories of bureaucratic interest on the other.[157]

Applying organizational routine theory and the new institutionalism to the study of state responses to terrorism also has implications for the theories themselves. The counterterrorist policy field can be seen as a hard test for these theories' common expectation that historical legacies shape current policy in ways that reduce the likelihood of efficient outcomes. While international cooperation, for example at the EU level, is important, the protection of citizens from terrorism is ultimately the responsibility of the nation-state. Since a focus on organizational routines and institutional conventions has proved more apposite than a rational choice perspective on this top priority area of states' security policies, the theories, and my combination of them, would appear to have passed a difficult test.

This research has policy implications both for the specific countries under study and for counterterrorist coordination reform in general. In the case of France, it has been shown that there is insufficient cooperation and ongoing competition between its intelligence and police agencies. This vulnerability could be exposed in a terrorist crisis that demands major investigatory resources. The study also shows that the United Kingdom is taking a relatively restrictive approach to cooperation between the intelligence-policing sphere and the world of prosecution and justice. To the extent that Britain fails to make that link, it may prove to be a constraining factor on the authorities' ability to introduce sufficient evidence in court to convict terrorist suspects.

Extending the analysis, the study also provides grounds for identifying certain key conditions favorable to the development of a high level of cooperation between the counterterrorist agencies of a state. First, the presence

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[156] Different views on the sources of cross-national policy divergence lead to different expectations on the prospects for international cooperation on counterterrorism. For opposing views on this, see Katzenstein, "Same War—Different Views: Germany, Japan, and Counterterrorism," 757–58; and Shapiro and Byman, "Bridging the Transatlantic Counterterrorism Gap," 35, 45–48.

[157] For culturalist accounts, see Wyn Rees and Richard J. Aldrich, "Contending cultures of counterterrorism: transatlantic divergence or convergence?" *International Affairs* 81, no. 5 (September 2005): 905–23; and Katzenstein, "Same War—Different Views: Germany, Japan, and Counterterrorism." For a bureaucratic politics explanation, see Kroenig and Stowsky, "War Makes the State, but Not as It Pleases," 248–49, 259–65.

of few counterterrorist agencies, whose work is regulated by clear guidelines and distinct mandates laid down by a central authority, has been found to give rise to formal organizational routines. These routines in turn favor the development of formal and balanced counterterrorist reforms, which have the benefit of minimizing interagency competition and promoting close and regularized cooperation between intelligence and police services. All of the conditions leading to these outcomes were present in the British case and absent in the French case. Second, at the state level, the presence of integrating interinstitutional conventions has been found to enable the development of cooperation that extends all the way from intelligence to the judicial sphere. This type of extensive cooperation, which is unique to France and absent from the British case, enhances the authorities' ability to convict and imprison those accused of terrorist crimes.

Policy makers and researchers in states beyond the two studied here could find it useful to ask where their counterterrorist systems stand with respect to the two key variables highlighted in this article. Are the organizational routines of their counterterrorist agencies more formal or informal? Does their state come closer to the separating or the integrating model of interinstitutional conventions? Answering these questions can shed light on the origins of the strengths and weaknesses of their counterterrorist systems and inform policies for the fostering of greater interagency cooperation. This study has found that formal organizational routines and integrating interinstitutional conventions provide conditions that favor a high level of interagency cooperation. Lessons can be learned from this general conclusion, but it does not mean that every state should necessarily try to adopt these particular types of routines and conventions. The theoretical approaches applied here place a particular emphasis on the prior characteristics of specific cases. Reforming governments or practitioners cannot start with a blank slate. They are always working within a prior organizational and state context. It has been shown, for example, how relations between counterterrorist agencies are embedded in organizational routines. Such routines can develop, but they usually do so in a path-dependent manner. In this context, there is a need for policy makers to understand and take seriously the organizational routines of their counterterrorist services. The best approach to counterterrorist reform may be to build on these long-standing organizational routines in a constructive way—developing their strengths and mitigating their weaknesses—rather than imposing reforms that contradict the existing routines.[158]

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[158] This perspective should not serve to legitimize existing orders or retard change, but rather raise pertinent questions for policy makers and for further research. For example, U.S. counterterrorist intelligence and law enforcement—with its proliferation of agencies, overlapping mandates, and irregular cooperation patterns—appears to rely a good deal on informal organizational routines. Even if a further round of formal (top-down) reforms of U.S. intelligence and counterterrorism is mounted, will this be an

Since the September 11 terrorist attacks, analysts and practitioners in many western states have sought to reform their counterterrorist systems, often looking at other countries to see what they might learn from them.[159] The findings presented here indicate that governments may usefully learn from each other in some areas but not in others because each state embodies a particular combination of organizational and institutional legacies. These routines, procedures, and norms, which developed in previous eras, continue to have a significant influence on how states organize their responses to contemporary terrorist threats.

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adequate means of fostering greater cooperation between agencies that rely on informal organizational routines? For evidence of informal routines among U.S. agencies, see Kenney, *From Pablo to Osama*, 189–90; K. Jack Riley et al., *State and Local Intelligence in the War on Terrorism* (Santa Monica: RAND, 2005), 31–33, 45–46; and Gregory Treverton, *Reorganizing U.S. Domestic Intelligence* (Santa Monica: RAND, 2008). On the first two rounds of post-9/11 U.S. reform, see Zegart, *Spying Blind*, 169–99; and Posner, *Countering Terrorism*, 18–19, 34–44, 50–52.

[159] Examples include the British attempts to learn from the French, outlined above, and U.S. administration's consideration of a plan to establish a domestic intelligence agency modeled on the U.K.'s MI5. See Kroenig and Stowsky, "War Makes the State, but Not as It Pleases," 260–61; and Posner, *Countering Terrorism*, 151–56.