One of the recurring difficulties in thinking clearly about terrorism is how to evaluate the threat it actually poses. In this chapter, I review the historical evidence about how seriously terrorism has threatened liberal democracy since the mid-nineteenth century, explain why liberal democracies have often exaggerated the threat, and suggest what we can do to get risk and reaction into a better balance.

When terrorist emergencies are proclaimed, abridgments of liberty are justified in terms which assert that “the life of a nation” is at risk. When political leaders declare a “war on terror,” they imply that terrorism poses a threat equivalent to war. Yet there is a world of difference between the threat posed by armed attack by another state and a terrorist incident. Even if the plane that came down in Pennsylvania had struck the White House or the Capitol, the attacks of September 11 did not endanger the social order of the United States or threaten its democracy with collapse. Even if the president’s office had been successfully struck, the functions of government would have continued, as they have done following the assassination of presidents from Lincoln to Kennedy. While September 11 is often compared to Pearl Harbor, Al Qaeda certainly has nothing like the resources of the Empire of Japan. In order to think clearly about terror, we must distinguish moral condemnation from threat assessment, to try to separate the anger we feel from the risk they actually pose. Terrorist attacks may be odious and they may demonstrate alarming shortcomings in the system of national defense, but they do not necessarily threaten us with defeat, collapse, or capitulation. Indeed, when public authorities exaggerate a terrorist
threat, they risk instigating the panic that terrorists are seeking to achieve. They also tend to take measures that democracy later regrets.

Yet getting risk and response into balance is easy only in hindsight. The challenge is doing so when a threat impends and, as is always the case, authorities lack adequate information about how serious it is going to prove. In American history, the episode that September 11 most clearly recalls is not Pearl Harbor but the Red Scare of 1919. In retrospect, the Red Scare is seen as a textbook example of unnecessary exaggeration and panic in response to a relatively trivial security threat. But judging the response from the safety of hindsight misses the crucial fact that at the time, public authorities had good reason to be alarmed at the pattern they saw emerging. We need only view events as they unfolded to understand why U.S. state and federal authorities believed they were faced with a global terrorist conspiracy, akin to Al Qaeda. First, in 1917 a huge multinational empire—Russia—had been overthrown by a small band of revolutionary and terrorist agitators. Then, in short order, similar attempts were made to capitalize on the chaos at the end of World War I with a revolution in Germany. Revolution there was averted only by ruthless measures. Even after revolution in Germany had been beaten back, the Soviet revolutionaries urged workers of the world, particularly the millions of demobilized soldiers released from service in World War I, to join their cause. American authorities knew how many discontented unemployed soldiers in the United States might heed this call, and by 1919 they knew they no longer had the luxury of believing that revolutionary Communism was confined to Europe. By then, general strikes were taking place in Winnipeg, Canada, and Seattle, Washington. A wave of strikes in essential industries like coal and steel swept across the country in the summer of 1919; even the Boston police walked off the job. In some places, there was bloody conflict between strikers and police. Most seriously of all, bombs began going off at the homes and offices of mayors, judges, and other public officials across the country, one a suicide attack that damaged the house of the U.S. attorney general,
Mitchell Palmer. His department’s intelligence operations, led by J. Edgar Hoover, uncovered evidence that substantial numbers of alien immigrants belonged to parties sympathetic to the revolutionary Communist cause, and that some of these parties supported terrorist methods.

This was the context which led Palmer to authorize the infamous raids of November 1919 and January 1920 that detained five thousand aliens and led to the deportation of many of them. The context brought together five unusual elements: (1) an international revolutionary movement, (2) domestic terrorist activity, (3) political organization of aliens, (4) high unemployment and substantial economic insecurity after a war, and (5) the wartime experience of civil liberties restriction. The last feature is important. By the time the Palmer Raids occurred, a duly elected congressman, Victor Berger, had been convicted under the Espionage Act for opposing the war and denied his seat in the House of Representatives; a presidential candidate, Eugene Victor Debs, had been imprisoned for voicing opposition to American participation in the war and for urging his audience to defy the draft; Oliver Wendell Holmes of the U.S. Supreme Court had ruled in the Schenck case that speech urging resistance to conscription constituted a “clear and present danger” and was not entitled to protection under the First Amendment. All of these wartime decisions, in retrospect so clearly in violation of fundamental civil liberties, created the permissive context for the violation of the rights of aliens in the peacetime conditions of 1919–20.

It turned out that Communist radicalism did not pose a clear and present danger to the United States. The political organizations that were smashed by the Palmer Raids proved to be innocuous. The terrorist attacks of 1919 and 1920 did claim close to a hundred lives, but they did not threaten the country’s democratic institutions.

Despite the almost universal opprobrium that now surrounds the Palmer Raids, the problem of evaluating them honestly remains. At the height of his influence Attorney General Palmer’s measures commanded almost universal assent: the democratic
majority was clearly behind him. Even civil libertarians did not
recover their voices until late in the crisis. This does not make
the majority right: hysteria does not cease to be irrational merely
because it takes hold of everybody. But the fact that measures
turn out to be excessive and unnecessary, while a terrorist emer-
gency is underway, does not prove that they were unjustified at
the time. Palmer and Hoover did not know what we know, and
the claim that they did and went ahead anyway—because they
wanted to smash radicalism, for their own political reasons—is
a supposition about their real intentions that is impossible to
prove. It is true that the raids and other forms of harassment of
radical and Communist opinion exerted a decisive check on the
development of a radical left movement in the United States. But
these consequences prove nothing about the real intentions of
those who were responding to a terrorist threat in 1919. What-
ever other political agenda Palmer and Hoover may have had,
terrorism was not just a pretext. This threat was genuine, if
viewed from the standpoint of the time, and the measures taken
look excessive and illiberal only when set against the later dis-
covery that the threat was minimal. Time has judged Palmer
harshly, as it may well judge the actions of other attorneys gen-
eral. But decisions about risk are not made in the safe omni-
sience of hindsight.

If this is so, it raises doubts about whether risk and reaction
are ever likely to be in adequate alignment. All reactions are
likely to exaggerate, and as we shall see, the historical evidence
from other societies seems to show that few countries have met
the terrorist threat without taking measures in haste that they
repented at leisure.

This is precisely why the strategies of precommitment, discus-
ssed in the previous chapter, and the conservative principle,
outlined in chapter 1, are so important. In any situation of fac-
tual uncertainty about risk, we need to discipline our justified
fears with commitments to respect equality and dignity stan-
dards and to make the fewest possible changes to our tried and
tested standards of due process. We also need to learn from his-
tory. These standards may be tried and tested, but they have also
been bent and twisted in emergencies past, and we need to reflect honestly on the price we have paid for unnecessary and unwise civil liberties restrictions in the past. If the Palmer Raids proved that indiscriminate roundups of aliens are unlikely to reduce a terrorist threat, then this lesson ought to have been applied to the roundups after September 11, which predictably yielded the same result.

One reason why we balance threat and response poorly is that the political costs of underreaction are always going to be higher than the costs of overreaction. Political leaders who fail to take adequate precautions after an initial attack will pay heavily after a second one, while those who pile on additional measures and still fail to deter the next attack may be able to survive by claiming that they did the best they could. Since no one can know in advance what strategy is best calibrated to deter an attack, the political leader who hits hard—with security roundups and preventive detentions—is making a safer bet, in relation to his own political future, than one who adopts the precautionary strategy of “first do no harm.”

But there are other reasons why democracies overreact to terrorist threats. Democratic societies trust citizens as well as non-citizens with a great deal of freedom. Sleeper cells, like the ones that carried out the September 11 attacks, exploited the freedoms of American life and abused the trust of the country’s citizens in order to pass undetected. Once the attacks took place, citizens felt that their trust had been abused and they rued their trust as a form of credulity. The institutional freedoms that underpin this trust—relatively open borders, relatively low levels of domestic police surveillance—were then reconceived as a foolish indulgence, permissible in times of peace but unsuited to a time of war. The welcoming face that societies built upon immigration turn toward aliens in times of prosperity and peace can be replaced, in the twinkling of an eye, with a hostile countenance and a feeling of trust betrayed. Abridging the civil liberties of the innocent majority of aliens capitalizes on anger at the perfidy of the tiny minority responsible for the attacks.
Doing so is relatively easy, moreover, because a majority of citizens is unlikely to bear any of the direct costs of abridgment, and also because only small numbers of citizens put an independent ethical value on the commitment to dignity that these rights represent. Civil libertarians make the way a society handles terror a test of its identity, while most citizens are interested simply in stopping terror in its tracks. Hence a majority of citizens is likely to believe that risk trumps rights, while only a civil libertarian minority is ever likely to believe that rights should trump risks.

When civil libertarians try to explain why their own governments adopt repressive measures, they often blame unscrupulous politicians exploiting terrorism to pursue their own agendas. This fails to explain why these politicians customarily get away with it. Almost all liberal democracies have used September 11 to substantively expand the coercive powers of the criminal law and the police. What needs explaining is not that political figures exploit emergencies to suit their own ends, since they always will, but why they can usually count on substantial public support. Unless we assume that the public are dupes, we need to consider the possibility that strong measures, harmful to civil liberties, actually appeal to majority opinion.

Public support, of course, doesn’t make this position right, and the civil libertarian case against it is strong. Rights matter not just because they express ethical values, but also because respecting these values helps to guard against foolish excesses. The civil libertarian case is not merely that these rights abridgments are unjust, they are unnecessary too. A more devoted concern to avoid injustice might also avoid measures that turn out to be unnecessary.

Terrorism harms democracy, civil libertarians rightly argue, primarily by making a majority of citizens believe that their liberties are a source of weakness rather than strength. Preventing this damage in the future requires recommitting to the value of liberties both as guarantors of justice and as bulwarks against panic, anger, and misperception in public policy.
Historically, liberal democracies, faced with terrorist emergencies, have damaged themselves in two different ways, first by limiting political freedoms and second by limiting private rights. Democracies in Latin America have suspended elections, substituted rule by decree for rule by law, replaced democratically elected governments with military juntas, and suspended rights of assembly and free speech. Other democracies have banned political parties associated with armed struggle or terrorist campaigns. But a war against terror can also do permanent damage to private rights. Arbitrary search and seizure, detention without trial, confiscation of property, violations of privacy, expulsion of lawful aliens: all these may be part of the price a democracy pays to stamp out a terrorist cell in its midst.

The impact of a war on terror on political rights needs to be distinguished from the impact on private rights, since democracy might succeed in keeping its political system functioning while failing to preserve the full range of private rights. No abridgments of democratic rights in the United States have followed September 11, and none appear to be in prospect. This is in marked contrast to World War I when, as we have just seen, the Espionage and Sedition Acts were used to convict elected politicians for the exercise of free speech, to deny them seats in Congress, and to convict other persons who opposed U.S. participation in the war. If this is a sign that constitutional protections of political utterance and free speech have grown stronger since World War I and now impose more stringent limits on government action in times of emergency, it would be a welcome development. Thus far, in the war on terror, the rights that guarantee the political system remain untouched, but there has been a price. While the free speech and political rights of American citizens remain unaffected, the rights of aliens, enemy combatants, and other terrorist suspects have been abridged.

The same trade-off is evident in other countries. The British government has kept the democratic system functioning in Northern Ireland, but only through abridgments of private rights such as internment and suspension of jury trial and of the
right to keep silent during police questioning. In response to September 11, the British government has left democratic and free speech rights for the majority unaltered, while subjecting aliens to investigative detention and deportation.

This tacit trade-off—to maintain majority rights while restraining minority rights—has proven to be successful politically, since it has muted any criticism of the costs of the measures undertaken since September 11. But success has come at a price. The fact that the rights of the majority have not been harmed and democracy itself has continued to function through recent terrorist emergencies like September 11 does not mean that these emergencies do not do long-term institutional harm. Terrorism is one of the pressures that have led to more secretive government, more police powers, and increasing executive authority at the expense of the other branches of government. Terrorism is liberal democracy’s nemesis, beleaguering it and deforming it even when terrorism goes down to defeat. In all these respects, it is the response to terrorism, rather than terrorism itself, that does democracy most harm.

These harms, it should be understood, are exactly what a certain kind of terrorism intends. The French have an excellent phrase—la politique du pire, literally the politics of the worst—that encapsulates the logic of terrorism. Its purpose is to make things worse so that they cannot become better. The first theoreticians of this strategy were the Marxist revolutionaries of the nineteenth century. Marxists always understood that where mass popular support for revolution was lacking, the pace of change could be accelerated by acts of indiscriminate violence designed to provoke the constitutional system to “throw off the mask of bourgeois legality” and reveal itself to the peasants and workers as a system of organized violence.

Marxist revolutionary theories of terrorism may now have little direct relevance, but the theoreticians of Al Qaeda have certainly thought deeply about la politique du pire. They believe that by provoking the United States and its Arab allies into indiscriminate acts of oppression, they will turn them, as it were, into
recruiting sergeants for their cause. They have understood that the impact of terrorism is dialectical. Success depends less on the initial attack than on instigating an escalatory spiral, controlled not by the forces of order but by the terrorists themselves. If terrorists can successfully draw democracies into this spiral and control its upward acceleration, they will begin to dictate the terms of the encounter. Success becomes a matter of inflicting losses, enduring harms, and gambling that the enemy has less endurance than they do. Since a state will always be too strong for a cell of individuals to defeat in open battle, it must defeat itself. If terrorists can provoke the state into atrocity, this will begin to erode the willingness of a democratic public to continue the fight. Democracies may have the stomach for the occasional atrocity, but over the long term a policy of atrocity is unsustainable. It is important for liberal democracies not to succumb to this provocation, not to allow attacks to become the pretext for abandoning law altogether. A civil libertarian case for restraint starts from foundational commitments to rights and then goes on to argue that restraint is the best political strategy to avoid playing into the terrorists’ game. If a battle against terrorism is political, the best way to win is to remain on the higher ground. In a war on terror the only enemy that can defeat a democracy is itself.

Remaining on the higher ground depends on thinking clearly about risk. Sane public policy needs historical context: a clear sense of what the record tells us about the ability of liberal democracies to confront terror without jeopardizing their constitutions. The history matters. If there is no evidence that liberal democracy can be brought to its knees by a terrorist challenge, then we have additional reason to adhere to conservative principles and dignity and equality standards.

Of course history is not always a reliable guide, because the future may hold types of risk that have no historical precedent. If future terrorists were to acquire chemical, biological, or nuclear weapons, as well as the capacity to miniaturize, conceal, and transport them, many of the lessons of the past might cease to apply. This challenge has to be faced, and in chapter 6, “Liberty and Armageddon,” I deal specifically with it. At least for
now, the terrorism we face uses conventional weaponry, available for over a hundred years. At least for now, therefore, history remains a reliable guide.

II

The first society to face a sustained campaign of terror, designed to bring it to its knees, was czarist Russia. Its example is instructive because it was a reforming autocracy, struggling to adapt a medieval political system to the demands of a modern economy and a multinational empire. Russian nihilists, as terrorists were then called, were the first to create the theory that animates insurrectionary terrorism to this day: using atrocities to provoke regimes into repression that will weaken their grip on citizens’ allegiance and cause the discontented to embrace the terrorists as their spokesmen. The tactic evolved out of disillusion with the alternative: going to the people and creating a popular political base for revolutionary change. When this failed, when the peasants and workers rejected revolution, some revolutionaries turned to terror. They struck against the regime not because it was immobilized in feudal reaction, but because it was reforming itself. The nihilists feared that reform would broaden the regime’s base of support and make revolutionary change less popular. With this aim in view, the Russian nihilists succeeded in 1881 in assassinating Alexander II, the very czar who had freed the serfs in 1861, because destroying him was regarded as essential to dislodge the loyalty of peasants and workers. In killing a reformer rather than a reactionary, the nihilists sought to destroy faith in the possibility of peaceful political change.

The assassination of Alexander did provoke repressive legislation against legitimate political expression and a tightening of penal legislation against the Jews, who were blamed for their role in the revolutionary upsurge. From then onward Marxist revolutionaries used terrorist attacks to push the regime from reform to reaction. After 1905, when Czar Nicholas II reluctantly conceded the election of Russia’s first legislative assembly, the
Duma, terrorists tried to provoke the regime into undoing these reluctant reforms. The twilight years of the autocracy witnessed a race among reformers seeking to anchor the regime in constitutional liberty, terrorist revolutionaries seeking to provoke reaction, and reactionaries foolishly obliging. Prime Minister Stolypin’s land reforms—an effort to create a capitalist peasant class in the countryside—were the high-water mark of reformist hopes. When Stolypin was assassinated in 1911, the regime lost its last chance to renew itself from within.13

Terrorism did enormous harm to the Russian ancien régime. It split the ruling class between reformers and reactionaries. It dug an ever deeper gulf between the state and the society. “The almost complete failure of the educated classes to support the government,” as one report lamented, further isolated the czar from his elite.14 Terrorism did harm to all progressive causes, from unionization of workers to the creation of the zemstvo (the rural council system), by making it easier for a reactionary government to associate such causes with subversion.15 The insurrectionaries and terrorists did succeed in provoking it into ever more foolish measures of counterreaction, like Bloody Sunday in 1905, when troops fired on unarmed workers and peasants, killing several hundred in Winter Palace Square.

The Russian example teaches an obvious lesson for contemporary societies struggling with terror. Terrorists did succeed in gaining control of the czarist authorities’ cycle of reaction and counterreaction, and constitutional monarchists and liberals were never able to gain and hold the political initiative. Contemporary ancien régimes, like Pakistan, Egypt, and Saudi Arabia, should take note: unless liberalization and reform get ahead of the terrorists, political momentum shifts back to the fatal dialectic between terrorist violence and government reaction, with the government risking loss of its remaining hold on its people.

None of this changes the fact that terror itself did not bring down the czarist regime. Despite all its institutional backwardness, Russian society underwent explosive economic, technical, and cultural growth until 1914. It was World War I and the institutional and military collapse that it engendered which caused
the regime to fail, not terrorism. In the words of Theda Skocpol, “the revolutionary crises developed when the old regime states became unable to meet the challenges of evolving international situations.” Only then do regimes become truly vulnerable to terrorist threats.

III

A second example of a regime facing political violence and terrorism would be Weimar Germany. Between 1918 and 1924, the fledgling democratic republic was assailed by putschs and uprisings from Rosa Luxemburg’s Spartacists on the left to Adolf Hitler’s fascists on the right. Even though Rosa Luxemburg was killed by rightist thugs in 1919 and Hitler’s Beer Hall Putsch failed, the young republic barely survived. Democratic politicians like Walter Rathenau met their death at the hands of assassins, and between 1919 and 1922 there were no fewer than 376 political murders. Yet neither Communist nor fascist extremism prevailed in the 1920s, and the Weimar government was able to retain the loyalty of the police and army and go on to consolidate constitutional rule. Indeed from 1924 to 1929, under Gustav Stresemann, support declined for both the Nazis and the Communists, while attachment to constitutional democracy grew and the economy revived.

This is not to deny that the Weimar constitution suffered from weaknesses. It was both too democratic—allowing fringe parties with no commitment to constitutionalism—and too authoritarian. Article 48 of the constitution vested the president with dictatorial powers to repel terrorist political violence. By granting its president so much power, the constitution enabled an unscrupulous leader like Hitler to maneuver into a dictatorship by constitutional means. Yet without these executive powers Weimar would never have survived as long as it did. Stresemann used presidential decree to bring German hyperinflation under control, and his success paved the way for the political stability of the late 1920s. A more serious defect of the Weimar constitution was that it allowed political participation by parties, like the
Nazis, that made no secret of their desire to establish a dictatorship. Beyond the weaknesses in the constitution, as Richard J. Evans has shown, the civil service, the judiciary, and the army were all holdovers from the Wilhelmine regime and few gave the new regime their wholehearted support.\textsuperscript{20}

By 1930, as Hitler began his rise to power, the Weimar state had lost both the will and the capability to challenge Nazi Brownshirts in the streets. Here the essential problem was not democratic constitutionalism itself, but rather the isolation and disunity of those charged with its defense. Faced with fascism on the right and totalitarianism on the left, the defenders of liberal constitutionalism splintered and collapsed. The Weimar example suggests that liberal democracy runs the greatest danger of digging its own grave when it faces a simultaneous extraconstitutional challenge from the extreme Left and the extreme Right. This leaves liberals in the middle isolated and exposed, unable to sustain the unity necessary to take firm measures against violence at both extremes.

Yet it would be a mistake to blame Hitler’s rise to power exclusively on the weakness of German democracy or the irresolution of its defending elite. Without the world economic crisis of 1929 and its catastrophic effect on German political stability, it is unlikely that Hitler would have come to power, since his base of popular support eroded steadily before the Depression. Weimar tells us, just as czarist Russia did, that political terror is unlikely to crack a regime unless economic crisis simultaneously causes its material pillars to crumble.

IV

A third case of the impact of terrorism on constitutional regimes would be in twentieth-century Latin America.\textsuperscript{21} In Argentina during the 1970s, Marxist terrorism succeeded in provoking the ruling elite into indiscriminate repression, which hastened the imposition of military dictatorship. Here, too, the persistent weakness of the Argentinian economy played a key part in
weakening support for constitutional regimes. The military used the pretext of economic crisis and terrorist insurrection to institute a reign of terror in Argentina, based on torture and disappearances. Democratic rule was restored only in the 1980s when an ill-fated military adventure in the Falklands, growing resentment at illegal methods, and the failure of the military to solve the country’s economic problems brought about the junta’s downfall. The Argentinian case is indeed a case of terrorism as la politique du pire, but history did not unfold as the terrorists intended. They sought to make everything worse so that nothing could become better, but instead of bringing about a revolutionary transformation, they managed only to play into the hands of the military, with disastrous consequences for themselves and for Argentinian society.

A similar dynamic unfolded in Peru. A Marxist group, Sendero Luminoso (the Shining Path), killed villagers and government sympathizers to demonstrate that the government did not control the countryside, and to intimidate the populace into support for revolution. The tactic cost thousands of lives, but the strategy did not succeed. Instead, terrorism provided a democratically elected president, Alberto Fujimori, with the pretext to exploit a successful antiterror campaign and turn it into a mandate for an authoritarian type of rule.22

In Colombia, too, the insurrectionary group FARC has used terror to hold portions of the countryside, while the government licenses the counterterror of paramilitaries, all the while denying that it does so in order to hold its own territory.23 Terrorism has neither brought the Colombian state down nor ushered in the revolution in the countryside under FARC control. All that it has achieved is enduring damage to the structure of constitutional politics, first by licensing authoritarian leadership and ruthless counterterror, and second by turning terrorist emergency into a permanent system of constitutional order.

Summing up at this point—la politique du pire often succeeds as a tactic, provoking regimes into unconstitutional measures, yet it has never succeeded as a strategy, bringing terrorists to
power. More often than not, the result is strategic stalemate: terrorists and constitutional states locked in a struggle neither can win outright.

Where terror has succeeded, it has been as an ancillary tactic in a more general political strategy aimed at the revolutionary seizure of power. Lenin’s Bolshevik putsch in 1917 and Hitler’s accession to the chancellorship in 1933 represented a triumph for a decade of insurrectionary and antiparliamentary violence and terrorism, but even in this case, terrorist methods worked only where the constitutional state had already been weakened by other factors, such as major military defeat or economic crisis.

When such terrorist methods are used to win power, they become a staple of regular rule. Hitler’s purge in 1934, during the Night of the Long Knives, represented the continuation of terrorism, now turned against the Nazi party leadership itself. Lenin’s elimination of his Socialist Revolutionary rivals in 1918, after a failed attempt on his life, would be a second example of the institutionalization of terror. Regimes that use terror to win control of a state tend to hold power by the same method.

If we turn to South Asia and examine Sri Lanka, we find further evidence that terrorism may work as a tactic, while failing as a strategy. For twenty years, the Tamil Tigers used suicide bombings to crack the will of the Sinhalese majority government in Colombo and force it to concede a separate Tamil state. Moderate Tamils willing to negotiate with the government were a particular object of attack. These attacks were intended to coerce the Tamil minority into obeying the terrorist group, and to prevent the emergence of a negotiated settlement built around devolution. Yet the result was only a bloody stalemate. Tamil terrorism failed to break the Sinhalese leadership’s will to resist. To be sure, terrorism inflicted a terrible price on Sri Lankan society: sixty thousand deaths, hundreds of thousands of people internally displaced, and economic paralysis in what should have been one of the most competitive economies of Asia. Yet terrorism did not succeed in its primary aim, which was to divide the island in two.24
Terrorism is the politics of the shortcut, a resort to force when peaceful means of political mobilization offer only a protracted and uncertain road to victory. Yet the shortcut rarely achieves its goal. The means tarnish the ends that are sought, and when directed at a robust and democratic opponent, they rarely succeed.

The Israeli-Palestinian conflict offers final confirmation of this. Suicide bombing purports to be a politics of desperation, undertaken only because peaceful negotiation with Israelis is hopeless. In reality, it is a politics of the shortcut, seeking to make peaceful dialogue on a two-state solution impossible. Its further purpose is to demoralize Israeli society to the point that it concedes defeat. Yet two years of attacks have not forced Israel into capitulation or appeasement or undone its democratic fabric. Ordinary citizens in the military reserves, even those with profound doubts about the occupation, have done their constitutional duty to bear arms. With the exception of some Arab Israeli politicians now in detention, most Arab Israelis, although profoundly opposed to Israeli policies and increasingly alienated by their second-class status, continue to give their allegiance to the Israeli state. Among the majority of the Israeli population, there is both a national consensus opposing negotiation with terrorists and an unstanched national debate as to how to reconcile security and survival. The secret services and the Israeli Defense Forces wage a relentless and brutal campaign against Hamas and Fatah terrorists. House demolitions, targeted assassinations, and the construction of a security wall that expropriates Palestinian land have all aroused incessant controversy, both inside and outside Israel. Inside the country, however, the campaign remains under democratic authorization and judicial review. Generals publicly question its effectiveness, pilots express moral and tactical qualms about certain operations, columnists insist these operations make Israel less, not more, secure, and so on, yet through it all Israeli democracy is surviving the ordeal. Terrorism has done terrible damage: grinding the economy down, forcing a society to divert resources to security and defense that
should be spent on hospitals, roads, and schools, and strengthening the secret security and military elements of the society. Yet it has neither caused Israel to capitulate nor tipped its political system from democratic to authoritarian rule. National elections have been held, in the middle of the sustained emergency, and there have been peaceful changes of government.

V

A different story—but the same pattern of failure—is evident in terrorist attempts to destroy the political system of Western liberal democracies—Italy, Germany, Spain, and the United Kingdom.

During the 1970s in Italy and Germany, terrorists mounted a full-scale assault on liberal democracy, seeking to forestall the peaceful incorporation of Communist and socialist radicalism into normal parliamentary politics. In Italy, the Communist Party was slowly making its way toward Eurocommunism and full participation in the democratic system. In Germany, post-1968 hopes of radical change had given way to the incorporation of German social democracy into the corporatist bargain struck between capital and labor. A tiny Marxist vanguard set out to sabotage the emergence of social democratic centrism and to force the coercive apparatus of the liberal democratic state to "throw off its mask of bourgeois legality" and engage in extralegal repression. In this sense, the Baader Meinhof gang were throwbacks to the nineteenth-century nihilists, but they brought to the "propaganda of the deed" a modern media sensibility, assuming—wrongly, it turned out—that terrorist spectacles like the kidnapping and murder of a prominent German industrialist would succeed in mobilizing the marginalized and discontented where standard, nonviolent forms of political organizing had failed.

This strategy did not succeed. The terrorists who had hoped that ensuing violence would attract workers, intellectuals, and students into the streets to challenge liberal democracy ended up dead or recanting in prison. German and Italian democracy survived, and the terrorists are remembered not as martyrs but
The weakness of the strong

as criminals. More broadly, the decisive defeat of insurrectionary Marxism, plus the final defeat of Soviet Communism after 1989, ensured that the radical and Communist Left in Italy and Germany finally accepted that they belonged within peaceful parliamentary politics.

Both Germany and Italy developed effective antiterrorist teams and used amnesty legislation that offered immunity from prosecution to infiltrate and break up terrorist cells. Yet while both had reason to congratulate themselves on the survival of their democracy, they had less reason to be complacent about what terrorism did to civil liberties and private rights. Both countries did expand the detention and search-and-seizure powers of the police. The harsh treatment of the German revolutionary detainees in prison, ending with their suicides, left many Germans who were otherwise not sympathetic to their goals convinced that the government had overstepped its bounds. The German example shows that democracies can defeat terror, but always at a price to their commitments to dignity and respect for rights.

While the Italians and Germans defeated insurrectionary Marxism, Britain and Spain have shown, over the same period, how to turn back terrorism in the name of a minority self-determination claim. Basque terror did not arise because a peaceful avenue to promote constitutional change was denied, but because one was opened up. The bombing campaign actually accelerated as Spain left the Franco dictatorship and entered the era of constitutional democracy. In the Basque country, terrorism was a strategy to forestall peaceful constitutional reform. The terrorists sought to intimidate the Basque electorate so that they would be forced to seek outright independence outside the Spanish constitutional regime. It was this challenge that Spanish democrats sought to defeat from the late 1970s onward. They have not eliminated the threat, but they have fought it to a standstill with military and police counterterror, combined with a package of devolutionary reforms and infusions of cash to win the hearts and minds of the law-abiding majority. The Basque region remains unstable, however, with covert intimidation of
Basques who refuse to support independence and continued government bans on separatist parties and their newspapers. This suggests that final victory in wars on terror is not always possible. While the threat of domestic terrorism in Germany and Italy seems to have been beaten back, in the Basque country it remains permanent.

The British in Northern Ireland faced a similar challenge from a small terrorist minority using violence to drive a nationalist community away from peaceful constitutional politics toward insurrection. Apart from Bloody Sunday, when British forces did kill innocent civilians engaged in peaceful protest, and apart from the detention without trial of nationalist sympathizers and terrorist suspects, the British managed to keep their antiterrorist campaign within the bounds of constitutional propriety. When terrorists intimidated juries, the British set up special courts where criminal trials were conducted in front of a judge. When nationalists argued that the British military presence amounted to an occupation, the British insisted that the troops were there merely “in aid of the civil power.” This determination to preserve constitutional normality proved crucial to keeping political control of the province. Without careful control of military and police power, the British might well have lost the battle for moderate nationalist opinion in Ulster. While the British have preserved their hold on the minds of a majority of both unionist and nationalist opinion in Ulster, it is important not to overstate this success or to assume it can continue forever. Nor are the security forces always under effective control. Recent judicial inquiries have confirmed that the Royal Ulster Constabulary, the chief security force in the province, colluded with Protestant paramilitary groups and had active knowledge of paramilitary murders of nationalist politicians and lawyers in the 1980s. Maintaining effective political control, at all times, of police undercover activity is crucial to maintaining the political legitimacy of an antiterrorist campaign, and this has not proven easy.

Both the Spanish and the British have managed—just—to maintain nonviolent democratic politics in the two troubled regions, but the democratic process remains vulnerable to the
threat of political violence by armed nationalist groups. Recently, the Spanish government moved to outlaw the Basque political party that functions as the political wing of the major Basque terrorist group. Great Britain has suspended local self-rule in Northern Ireland because of its suspicions that the political wing of the IRA might have passed security-sensitive information to terrorists.

Summing up so far, we can conclude that terrorism has damaged liberal democracies, but it has never succeeded in breaking their political systems. Liberal states turn out to be much less weak than they perceive themselves to be; indeed, their chief weakness is to underestimate their strengths.

VI

One further assumption of the terrorists has proven wrong: that democratic peoples lack the will to fight for democracy. It is a commonplace, of both Burkean conservatives and left-wing communitarians, to bemoan the dearth of civic spirit, the ennui and disenchantment, of elites and electorates alike in capitalist democracies. These democracies, it is said, lack a common goal or a unifying civic purpose. Terrorist emergencies have shown, on the contrary, that democratic elites and publics alike can show a surprising tenacity when attacked. Even in Italy, with relatively weak coalition governments and a bureaucracy not known for its efficiency, the police and military forces proved energetic in fighting Red Brigade terrorism in the 1970s. Judges and juries did not hesitate to convict. The public strongly supported the defense of constitutional liberty. Theorists who suppose that liberal democracy is enfeebled by capitalist individualism, incapable of mobilizing the civic will to stand together, should look at terrorist emergencies and think again. To take but one example, which I witnessed myself, in 1988 after a Basque group bombed a supermarket in Barcelona, killing several innocent shoppers, a huge demonstration took place in the streets, involving hundreds of thousands of citizens, trade unions, and professional organizations, all carrying their banners dipped to
the ground, marching in perfect silence, to express their solidarity and their disgust. Such collective actions have a real political impact, cutting the ground from under the feet of those fellow travelers who are apt to say that they support the goals of terrorists but not their means. Here was an occasion where citizens en masse seemed to be saying, by their very silence, that some means irretrievably tarnish the goals themselves.

The American response to the catastrophe of September 11, 2001, fits into the same pattern. The courage of the police and firefighters who went up into the burning World Trade Center to help their fellow citizens revealed the true extent of the solidarity that democracies can call upon when attacked. This example inspired candlelight vigils, a flood of applications for public service work, and a host of other forms of civic activism and engagement. We had forgotten that democracies are also communities of sacrifice. September 11 proved that this capacity for sacrifice—as well as civic courage, ingenuity, and defiance—was as strong as ever.

We do not know exactly what image of liberal democracy Al Qaeda leaders have in their minds, but we can be reasonably certain that it includes an idea of decadence, a belief that Westerners are unable to match their technological superiority with a will to fight when attacked. This has surely been proven wrong. Certain virtues—specifically the capacity to improvise, to lead from the bottom, as in the heroic conduct of the passengers of American Flight 93—do seem to grow in democratic soils. They are less likely to be displayed in authoritarian societies. As Elaine Scarry has pointed out, the single most effective act of national defense during the September 11 attack was carried out, not by the armed forces, but by the ordinary citizens who rushed the cockpit of the aircraft heading toward Washington and managed to divert it so that it crashed in a field in Pennsylvania, killing all on board but possibly sparing the White House or the Capitol.38

Terrorists thus characteristically underestimate the will of democratic electorates to rally to the defense of their country and its political system. But the very strength of national feeling
is not always a friend to the framework of individual rights protection. The same public spirit that rallies to the flag may also support measures to take away the rights of aliens and fellow citizens suspected of offenses. Politicians will wrap themselves in the mantle of national tragedy to justify coercive measures. In this way, the public-spiritedness that is the lifeblood of a democracy can become a menace to its liberty. A terrorist attack may stimulate civic sacrifice and chauvinism in almost equal measure.\(^39\) As I have been arguing throughout, terrorist emergencies open up a fissure between democracy defined as majority rule and democracy defined as minority rights. When a national community is attacked, it naturally favors majority interests over minority rights, and its response to threat draws on everything—shared memory and common symbols as well as constitutional traditions that assert these majority interests. Scholars have distinguished between the “civic” and “ethnic” elements of national identity, between pride in constitutional rights and pride in culture, language, history, and common ethnic or racial feeling.\(^40\) September 11 showed how deeply fused these elements become when a nation is attacked.

How the resulting patriotism influences a war on terror depends critically on the use made of it by political leaders, and the uses they can make of it depend on how the national community is defined. What has prevented leaders from turning the majority against ethnic or religious minorities in our midst is that the definition of the American national community—and of most liberal democracies—has become steadily more inclusive. This imposes practical political limits on the stigmatization of groups in times of crisis. In 1919 and again in 1942, American leaders were able to get away with discriminatory measures against aliens and immigrants, but also against bona fide citizens—the Japanese Americans, for example—because the national community under attack could be defined in such a way as to exclude them.\(^41\) Nowadays this is more difficult. Mass migration has changed the rules of political appeal, and a political leader cannot easily focus paranoia and fear upon immigrants, aliens, or recently minted citizens. In the case of citizens or aliens
of Islamic origin, a further crucial factor is their growing political influence at home and their membership in an immensely powerful global religion. Anyone tempted to turn a war on terrorism into an anti-Islamic crusade has to reckon with the political consequences of taking on a global community of more than a billion believers. As a result, with some exceptions, political leaders after September 11 have taken care to avoid anti-Islamic slurs and to dwell on common allegiance to constitutional and national values, irrespective of origins. Whether or not the messages of civic and political inclusiveness voiced by presidents and prime ministers are sincerely intended, it must be true that none of them has any interest in turning a war on terror into a war between religions. This is not to deny that there have been abuses and miscarriages of justice. Hundreds of illegal aliens, mostly of Islamic or Arabic origin, have been targeted for detention and deportation, and while these measures were as unjust as they were unnecessary, they were less severe than the measures taken in 1919 and 1942. This is not a matter for congratulation or an invitation to complacency, but an indication that the parameters of permissible injustice are not what they were.

VII

Even if a case can be made that the pluralism of modern societies makes it more difficult to stigmatize Arab and Islamic groups than it was to stigmatize Italian and Slavic anarchists after 1919 and Japanese Americans after 1942, a war on terror can still do serious harm to democracy. Most antiterrorist campaigns require the creation of secret, highly trained units, either in the police or in the armed forces, whose function is to handle hijackings and hostage takings, and to take the war to the enemy, with targeted assassinations, roundups, and arrests. A central political challenge in a war on terror is to keep such units under control.

In the Basque terror campaign, the Spanish police were recurrently targeted. Stung by their losses, infuriated by what they perceived to be insufficiently robust support from the politi-
The Spanish police created an elite assassination squad, the GAL, which then eliminated a number of Basque activists and operatives in hiding in France. These illegal actions received the tacit support of the minister of the interior. The assassinations did not stop Basque terrorism: they served only to call into question in the eyes of Basque people the competence and honesty of the democratic government of Spain. Fortunately, the extent of the dirty war was brought to light by the Spanish press and investigating magistrates, and some of the guilty politicians and police operatives were jailed.42

Democratic should have nothing to do with licensed hit squads. The British sent an army antiterrorist squad to Gibraltar to arrest an active service unit of the IRA. Because the squad and the local police failed to cooperate fully, the operation was botched and the squad executed the three IRA operatives in a public street. The resulting scandal—Death on the Rock—alienated Irish republican opinion and earned the British condemnation at the European Court of Human Rights.43 More recently, a British inquiry found that security forces colluded with Protestant paramilitaries to execute a prominent nationalist politician. These examples show how difficult it is to keep counterterror forces from taking the law into their own hands. What loosens accountability is a malign confluence of anger and fear in the public at large, which sends the message to the political elites and their secret agencies that anything is permitted as long as it gets results, and an increasingly unconstrained executive branch, which—because it no longer fears effective scrutiny and control from the legislature or the courts—believes it can get away with taking the gloves off.

The Italian, British, and German experience shows that improving the command and control of counterterrorist operations is more effective than giving these units more search-and-seizure and arrest powers or further abridging the liberties of citizens. The crucial instruments of an effective counterterror operation are elite units that combine intelligence capability and strike capacity and are unified under one command and made as ac-
countable to courts and legislatures as is consistent with operational efficiency.

Loyalty oaths for government employees or bans on trade union organization in the security services are often advanced as necessary to prevent infiltration by terrorists. The German experience of the Berufsverbot, banning radicals from public service employment, turned out to be counterproductive, violating both academic and political freedom and needlessly alienating groups who, while critical of German democracy, were in no sense its enemies. Analogous measures to ban trade union membership and activity in the U.S. Department of Homeland Security have been defended on grounds of operational efficiency, but they seem calculated to violate the rights such an organization exists to defend. Loyalty oaths and restriction on trade union rights, moreover, seem unnecessary if scrupulous background checks are a part of recruitment to government service, provided that the data used for these checks is publicly available through the Freedom of Information Act.

Identity cards, and identity systems using biometric identifiers, are rapidly becoming mandatory for citizens in liberal democracies, and while civil libertarians have objected, it seems inevitable that their use will spread. The United Kingdom has recently announced that it will gradually introduce a national identity card system making use of the latest biometric technology. Carrying these cards will become mandatory, first for all registered aliens, and then for all citizens. The public interest grounds for such measures are clear. Law-abiding citizens want foolproof ways to ensure that their bona fides are accepted at security points. They will want such systems because more accurate identification allows authorities to target searches more accurately. Greater accuracy enhances liberty because it reduces the likelihood of detention based on mistaken identity.

The problems with identity cards are serious, however. Any centralized data collection system is open to penetration by terrorists themselves, and to abuse by overzealous government departments. The critical challenge appears to be to set up digital
fire walls between discrete sets of data, so that access is limited to those who have legal authority to view them. The major administrative problem is to guarantee the security, integrity, and inviolability of national identity registers. Already, however, it is possible to keep data systems clearly demarcated. Credit card companies should not have access to criminal record data or driver’s license data banks and so on. Governments should have strictly limited access to the credit and banking records of citizens. While U.S. civil liberties groups object to national identity card schemes on the grounds that they violate privacy rights and authorize government intrusion, there does seem to be a lesser evil justification for a regulated form of national scheme. The right way to think about these problems is not to object to an identity card system in principle, but to devise legislation which restricts the kinds of data that can be retrieved through a national identity card, and to ensure that it can be accessed exclusively by law enforcement officials. A court with jurisdiction over national data registers could evaluate requests for information as well as complaints of privacy and rights violation. As things already stand, most citizens know that their personal data is available to a host of prying eyes, from the spammers who follow the trail of their Internet transactions to the credit agencies that deny them credit. The problem is that all of these systems appear unregulated or unlicensed by public authority. A national identity card system might provide the legislative point of entry for a regulation of all digital data banks and the creation of a framework of redress for privacy violation.

These measures are not necessarily harmful to the liberty of citizens. Nor is it unreasonable, if terrorism crosses national boundaries, to allow domestic crime fighting agencies to cooperate with international intelligence agencies. It may also be justified to allow antiterrorist squads the same powers of wiretapping and electronic surveillance the police already employ in the war against drugs and organized crimes. But these increases in police power have been hastily enacted, in the U.S. Patriot Act and Canada’s Bill C-36, for example, and they do not appear to
keep search-and-seizure, arrest, and surveillance powers under sufficiently close judicial control.\(^{48}\)

If terrorism has never succeeded in breaking apart a liberal democracy, then it is not obvious that these measures can be justified on grounds of necessity alone. But this does not end the matter, for as I said at the outset, it is an illusion to suppose that legislative response will ever be in a fully adequate relation to the size of a terrorist risk. “Better safe than sorry” is likely to drive most reactions to threats, whether real or imaginary. The best that can be hoped for is that if more laws are passed than are needed, civil liberties groups and public interest lobbies will see to it that legislatures are put under sustained pressure to rescind unnecessary legislation as soon as it is seen to be so. If we cannot preempt exaggeration, we can at least correct it afterward. For the historical record shows that while no democracy has ever been brought down by terror, all democracies have been damaged by it, chiefly by their own overreactions. The slow accretion of unnecessary powers on the statute books is one way that the damage done by terrorist attacks endures long after the danger has passed. Pruning the laws of unnecessary power is one way, even if after the fact, to undo the damage that terrorism has done to the balance between liberty and order in democratic societies.

When terrorists strike against constitutional democracies, one of their intentions is to persuade electorates and elites that the strengths of these societies—public debate, mutual trust, open borders, and constitutional restraints on executive power—are weaknesses.\(^{49}\) When strengths are seen as weaknesses, it is easy to abandon them. If this is the logic of terror, then democratic societies must find a way to continue to see their apparent vulnerabilities as a form of strength. This does not require anything special. It simply means that those who have charge of democratic institutions need to do their jobs. We need judges who understand that national security is not a carte blanche for the abrogation of individual rights; a free press that ferrets out the information an executive may wish to alter or withhold in pur-
suit of national security; a legislature that will not allow national security to prevent it from fulfilling its function of checking executive power. If a system of constitutional checks and balances continues to function effectively, that is, if power continues to be subjected to the test of adversarial justification, there is no reason to fear that a war on terror will lead us to betray the values we are fighting for.