

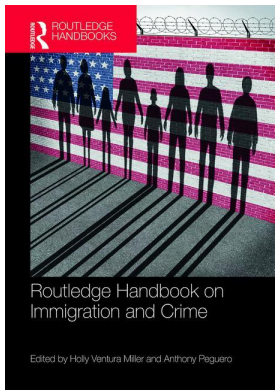
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IMMIGRATION AND TERRORISM

Nora V. Demleitner

Introduction

Recent transnational terrorist attacks have led to the assertion of a close connection between transnational migration and transnational terrorism. While recent developments have increasingly challenged that tie empirically, it remains salient in political discourse and is often cited as a justification for policy reform and legal change. Hungary's president Victor Orban asserted that "all the terrorists are basically migrants . . . The question is *when* they migrated to the European Union" (Kaminski, 2015, para. 1). At least in the few years after 2001, some research has supported this claim, as "not all immigrants are terrorists . . . [but] nearly all terrorists in the West have been immigrants" (Leiken, 2004, p. 6).

The International Organization for Migration noted "terrorism is, because of its cross-border dimensions, a migration issue" (IOM, 2003, p. 2). Yet there is no evidence that immigration leads to terrorism (Bove & Böhmelt, 2016, p. 573). Still, the close connection policymakers and some researchers have drawn between immigration and terrorism has turned immigration into a matter of national security and public protection. This may appear curious as the two areas are opposites. While migration embraces inclusion, cosmopolitanism, and mobility, the fear of terrorism has the opposite effect (Nail, 2016). When migrants become styled as threats—whether in the form of terrorists, criminals, social burdens, or job rivals—their entry and stay will be deemed an invasion that will lead to the destruction of societal values.

In recent years, Western countries have largely conceived of terrorism as Islamic-based. Some politicians have highlighted the connection between the Muslim religion and terrorism. While terrorism and migration have been connected throughout history, this chapter will focus largely on the timeframe since the early 1990s and the rise of Islamic terrorism in Western nations. Geographically, it will concentrate on North America, especially the United States, and Western Europe.

This chapter addresses two highly contested issues that are often plagued by different terminology and assumptions. The definition of terrorism used for this chapter stems from the Global Terrorism Database. It calls terrorism "the premeditated use or threat to use violence by individuals or subnational groups against noncombatants in order to obtain a political or social objective through the intimidation of a large audience beyond that of the immediate victims."¹

Immigration encompasses all individual movements across international borders, whether intended to be temporary or permanent, whether voluntary for the purposes of work, studies, family

unification, or involuntary for refugees and asylum seekers. The term includes those moving for legitimate and illegitimate ends, such as the commission of crimes or terrorist acts. The latter often use the immigration regime of a country to facilitate their offending, even if that includes committing immigration fraud.

The chapter begins by outlining public perception and political discourse connecting transnational terrorism and immigration. Here the special challenge of the citizen-terrorist will be introduced. In addition, the first section addresses conflicting theories about the causes for the increase in immigrant-terrorist. The following section discusses the empirical picture on the connection between terrorism and migration, indicating the challenges this research presents and the conflicting state of knowledge in crucial areas. Further research in light of the difficulties of empirical research into terrorism is needed, especially following the changes in terrorist operations that may make some of the older data less directly applicable. The third section turns to legal changes that were introduced both in the criminal arena and in immigration laws, reflecting the asserted connection between the two areas. As the citizen-terrorist continues to undermine the paradigm, the section indicates how even he can be reduced to outsider status, a characterization that has befallen many immigrants who are tainted as law-breakers.

The Connection between Immigration and Terrorism: Creating a Linkage

Since the turn of the millennium, the media, politicians, and public discourse in Western countries have often closely associated terrorism with immigration. Some have gone so far as to argue that “migration and terrorism . . . have become each other’s doppelganger in contemporary politics” (Nail, 2016, p. 159). This is so even though native-born citizens, without any recent family migration background, have committed some of the most devastating terror attacks in the last 50 years. Among them were the members of the Brigade Rosso in Italy, the Rote Armee Fraktion in Germany, the E.T.A. in Spain, the Provisional IRA in Northern Ireland, and the Black Panthers in the United States. Among the most fatal recent killings were those by the two Beltway snipers outside of Washington, DC in 2002, the two bombers of the federal courthouse in Oklahoma City in 1995, and Anders Breivik who killed almost 70 people, most of them teenagers, in Norway in 2011. Breivik, and some others, were motivated by right-wing, anti-immigrant, and anti-Muslim ideologies. Still, for most citizens of Australia and New Zealand, Europe, and North America today, a terrorist looks foreign and is Muslim. Being Muslim increasingly gets conflated with terrorism, with otherness, with being a foreigner.

The connection between terrorists and immigrants is not novel. Fears of criminals and terrorists—referred to as anarchists in earlier times—have throughout history been connected to migrants. Frequently that connection has been racialized, with Italians, Russians, and Jews connected to anarchism and communism in the United States throughout the first few decades of the 20th century. Now the focus has turned to Arabs and Muslims.

After pivotal events, public perception of different immigrant groups can change. For the United States and many of its Western allies that event occurred on September 11, 2001. Since then, US attitudes toward “Middle Eastern, Arab, and Muslim immigrants have grown especially negative . . . with these groups stereotyped as fanatical, dangerous, and threatening to the American way of life” (Reyna, Dobria, & Wetherell, 2013, p. 342). Similarly, at least since the Madrid train bombings in 2004, the London bombings in 2005, and the Paris attacks in November 2015, in Europe the terms immigrant and Muslim have become interchangeable. The subsequent attacks—in Brussels in March 2016, in Nice in July of that year, in Berlin in December 2016, and in Manchester and London in the summer of 2017—have further reinforced that feeling.

Concerns about cost and security but also a countervailing perception of the value of immigration and the national self-understanding of the United States as a country of immigrants have contributed

to an overall ambivalent attitude toward immigration and different immigrant groups. Yet, studies conducted after 9/11 have indicated that media accounts depicting immigrants generally turned more negative, though the negative image attaches largely to non-European immigrants. These findings accord with the threat perception theory that fear, among others, for public safety triggers a negative perception of foreigners (Woods & Arthur, 2014).

In turn, punitive attitudes toward immigrants increase with negative stereotypes attached to them. That holds now particularly true for Arabs who have been stereotyped as terrorists (Reyna, Dobria, & Wetherell, 2013). Some of the terror attacks have consequently resulted in an increase in anti-Arab and anti-immigration sentiments, often because of the emotional shock triggered by the attacks. On the other hand, Breivik's killings in Norway improved the public's perception of immigrants. The killer's background, his targets, and motives impact public opinion (Jakobsson & Blom, 2014).

Terror attacks and the perception of Muslims as dangerous have impacted the willingness of European countries to accept refugees from Middle East conflicts, especially the recent war in Syria, and ongoing strife in Afghanistan and parts of Africa. Despite initial compassion toward these refugees, the size of the refugee stream in the fall of 2015 and its uncontrolled nature, followed by the Paris attacks late that year, have turned the acceptance of refugees into a debate about border protection, public safety, and national security. The participation of some who have entered Europe with this refugee stream in recent attacks has heightened the fear that Daesh, the so-called Islamic State or ISIL, "might send trained operatives to Europe, hidden among the uncontrolled waves of migrants heading to EU countries" (Pinto Arena, 2017, p. 20). These refugee streams have therefore been reclassified from a humanitarian crisis into a security concern, with any arriving individual presenting a risk (Guild, 2003).

Discrimination and suspicion of certain immigrant communities may have unexpected consequences and lead to increased social cohesion within them, fostering the possibility of terrorist activity. Already alienated by social exclusion, young Muslims in particular have retreated into their own subculture, often driven by a sense of discrimination and frustration. Increased restrictions on immigrant communities, in the form of surveillance and restrictive immigration policies, may therefore negatively impact anti-terror policies.

From the Foreigner to the Citizen-Terrorist

As the specific background of the terrorist or his supporter has changed over time,² it frequently informed specific public fears, legal changes, and law-enforcement priorities. There are often differences in emphasis between Europeans on the one hand and North Americans and Australians on the other. Some of these differences also reflect the different experience of Muslim immigrant communities, with the U.S. Muslim communities generally being wealthier. There are also marked ethnic differences within the Muslim immigrant communities in individual countries, and their respective experiences.

On both sides of the Atlantic, though often more dominant outside of Europe, is the fear about the "sleepers" cell, groups of terrorists who blend into their surroundings but are suddenly activated. The United States, in light of the San Bernardino attack in 2015 and the Orlando nightclub killing in 2016, has focused on home-grown terrorists who are inspired by overseas jihad, either through online and social media communications or through in-person radicalization within a local social group.

At least since 2014, Europeans have become particularly concerned about "foreign fighters," especially those who are returning. Foreign fighters are "noncitizens of conflict states who join insurgencies during civil conflicts" (Malet, 2013, p. 9). The phenomenon has been more salient in Europe as a larger number of European citizens and residents have traveled to Syria to join ISIL, and other terrorist organizations in neighboring countries, including Al-Qaeda and the Al-Nusra Front. One

of the reasons may be greater geographic proximity and ease of travel from Western Europe to the Middle East, another the existence of a larger, more economically deprived and excluded Muslim community.

This is not the first time that foreign citizens have joined insurgencies in other countries. Historic examples range from the U.S. and the Spanish Civil Wars to World War II. In recent years, the conflicts in Afghanistan, Bosnia, Somalia, and Iraq have attracted numerous foreign fighters. Those joining ISIL in Syria are therefore only the latest group of militants to join a foreign fight. The marked difference, however, is in the number of foreign fighters involved in this conflict. In December 2015, there were about 40,000 foreign fighters under Daesh's command, 5,000 to 7,000 of whom hailed from Western Europe, North American, Australia, and New Zealand, amounting to about 15 percent of all foreign fighters. Most of them were in their late teens or early 20s and usually second- or third-generation immigrants from Muslim countries. Their recruitment occurred either via social media or in mosques, in some cases connected to so-called "hate preachers," though much of it was very individualistic and depended on the interplay between multiple forms of recruitment. The media portrayal of recruitment, however, focused frequently on the Muslim community and especially the imams.

If prior battles are indicative, some of the foreign fighters will be killed, either on the battlefield or in some cases by ISIL, some will remain in the country or an adjacent state once the conflict ends, some will join another fight, and some will return home. Of those returning in the past, some got involved in terror events in Western countries (De Roy van Zuijdewijn & Bakker, 2014), which heightens concerns about those coming back.

Who Is to Blame?

Lack of immigrant integration tends to be blamed for the involvement of immigrants and immigrant-citizens in terrorist activity. In the wake of 9/11, Western European countries declared culture and the Muslim religion preeminent integration challenges.

While theology or a combination of religion and global political grievances may inspire some young Muslims to join terrorists, many radicalize because of local integration challenges (Emerson, 2009). The latter encompass low educational attainment and workforce exclusion, now joined by the stereotyping of all Muslims.

The changed focus from pragmatic integration challenges to the labeling of culture and religion as primary hindrances has stigmatized Muslim immigrants (Triandafyllidou, 2015). Muslim youths especially may feel—and be—ever more excluded and suspected, further inhibiting their integration. As they have been created to be a domestic danger, they respond accordingly.

Two narratives dominate the debate about foreign fighters. On the one hand, the media, law enforcement, and the public blame radical Islam for the phenomenon, making religion, or some version of religion, the enemy. The ongoing focus on the radical Muslim character of terrorists puts blame on the individual and allows the association between terrorist and foreign to continue.

On the other hand, failed integration has been declared the culprit, focusing on societal responsibility. Both approaches may be too reductionist and overemphasize the religious and the migration aspects. Ultimately, the movement is born out of a "no future" youth subculture. The attraction of young Muslim youths to terrorism has been called a form of "post-modern youth malaise" (Triandafyllidou, 2015, p. 11). Some of the young and discontented merely change from general deviant behavior to become *mujahideen*, others join in search of belonging and recognition, neither atypical for teenagers. What binds them together is the belief that they have no future (Coolsaet, 2016).

Today's recruitment of Muslim youth in Europe is as, Olivier Roy put it, a function of "an increasingly interconnected world . . . and [at least partially failed] locally/nationally rooted integration processes" (Triandafyllidou, 2015, p. 11). Modern connectivity allows the two to merge, which

diverts focus and effort from integration onto a larger global dispute. Radical Islamic groups refocus violence against the West by exploiting the local complaints of young people “and plac[ing] them within the broader Salafi-Jihadist ideology, which pleads to defend Muslim honour and interests against a supposed Western aggression” (Pinto Arena, 2017, p. 21).

Other studies, however, find neither poverty nor social inequality determinative, but rather indicate that the ethnic and linguistic homogeneity of the receiving Western countries make it difficult to assimilate (Benmelech & Klor, 2016). Such a conclusion may render any integration effort meaningless and ultimately counsel against further immigration from any, or at least from Muslim, countries. That conclusion some politicians, and an uneasy public, may easily support. Independent of the analytical conclusion reached, foreign fighters reinforce the negative perception of Islam and migrants at home, further enhancing the cycle of disenchantment and exclusion (Coolsaet, 2016).

The battle of experts is not unusual in terrorism and immigration research, which has been bedeviled by ambiguous definitions and fast-paced changes with respect to the terror groups at issue and their individual strategies.

The Empirical Picture on Immigration and Terrorism

Terrorism and immigration studies cover all disciplines and areas, though much of the work does not connect the two. Some of those who do connect the fields have found a strong empirical relationship; others have argued that the asserted connection between terrorism and migration is politically constructed, relying on anecdotes rather than substantive empirical data. Whether real or perceived, the alleged relationship has caused insecurity and fear in Western countries.

A number of well-known studies by Robert Leiken and Steven Brooke indicate that a large number of terrorists were immigrants (Leiken, 2004; Leiken & Brooke, 2006). The studies have been criticized as they focus on transnational terrorism only and therefore inexorably lead to the result found.

A recent spatial-econometric analysis of migrant inflows and terrorist attacks in 145 countries between 1970 and 2000 has concluded that migrant inflows overall lead to a smaller number of terrorist attacks, which parallels findings that immigration lowers the crime rate. Immigrants who hail from terrorist-prone states, however, often bring terrorism with them. As the general migration literature indicates, migrants are attracted to areas in which relatives and friends, or at least co-nationals, live, to benefit from social cohesion. Terrorists may rely on the same connections. Bove and Böhmelt argue when terrorism exists in the migrants’ country of origin, terror organizations may take advantage of the existing social bonds and relationships within the immigrant community to spread their message, recruit followers, and raise funds. “Migrants are then a vehicle for the diffusion of terrorism” (Bove & Böhmelt, 2016, p. 575). The larger the migration stream from countries with terrorism, the greater the likelihood terrorist attacks will occur.

Terrorism in the home country in turn is at least in part due to economic discrimination against minority communities (Piazza, 2011) and is more likely in countries with an intermediate level of political freedom (Abadie, 2004). In addition, permanent geographic factors may play a role in predicting terrorist events (Abadie, 2004). Even though studies on the origins of terrorism leave room for doubt, those that generally supported indicators may inform the type and allocation of foreign pressure and support for immigrants’ home countries.

On the immigration front, these findings may counsel against immigration laws that are harsh across the board, but rather for their more selective implementation. That may focus on more searching individual background checks as wholesale religion- or nationality-based restrictions may run afoul of modern constitutional and human rights norms.

The Bove and Böhmelt study focuses on terror attacks until 2000, which leaves open the question of whether recent attacks are qualitatively different. Many of these were not committed by

immigrants but by native-born citizens, albeit with roots in immigrant communities. The foreign fighter phenomenon has also brought a large number of converts, often without preexisting ethnic or national connections to the countries of terror and into the ambit of terror organizations. Finally, some of the radicalization appears to have occurred over the internet rather than in person, which is a function of technological change but also of enhanced surveillance of Muslim communities that may hamper in-person radicalization.

The heavy focus on terror attacks in Western countries—and the neglect in some empirical studies—but most importantly in Western public perception of more horrific attacks around the world—may distract from the global picture. With an increase in living conditions overall, migration could globally decrease terrorism though attacks may become more diffused (Pinto Arena, 2017). International terrorism has indeed decreased over time though it has also become more lethal, a result of the increase in religiously inspired terrorist activity (Avdan, 2014). The global decrease raises broader questions of the global distribution of risk, which emerge also in the acceptance of refugees.

A group that has increasingly come under scrutiny in the migration context is refugees and asylum seekers. Even though they are migrants, their movement is involuntary and governed by a different legal regime, based on the UN Refugee Convention. Global refugee flows today, however, occur for broader humanitarian reasons, including general violence in a country, or environmental disasters, than the narrowly framed convention which was an outgrowth of the Holocaust and the Cold War. For that reason, international refugee organizations tend to employ a broader lens than the legal definition. Refugees often flee within a country or to neighboring states. Some will be resettled in third states, others will make it there on their own, turning them into asylees.

With the end of the Cold War, the perception of refugees changed in Western Europe and the United States. Increasingly, refugees were deemed undeserving, abusing the system, and likened to undocumented migrants, the so-called “illegals.” Recently, refugees have been portrayed as substantial security threats, often more threatening than other immigrants who enter for employment or personal reasons. The fear may not be entirely baseless as there is a great likelihood that they trigger an increase in terror attacks when migrating in large numbers to neighboring countries (Choi & Salehyan, 2013). Among the reasons for such an increase may be cross-border attacks on refugee camps. Also, “the infusion of aid workers, food, shelter, and other humanitarian supplies makes host countries more prone to terrorist attacks, as militants seek to exploit these resources” (Choi & Salehyan, 2013, p. 55). In addition, refugee camps may be fertile recruitment grounds for terrorist organizations. There is some indication that this holds also true for asylum centers in Western Europe, though the other concerns seem inapplicable to countries outside the immediate conflict neighborhood.

In Western Europe and other refugee-receiving Western countries, the presence of a large group of refugees who are ethnically, religiously, or culturally different from the local population may lead to right-wing terror attacks. Those have occurred, at varying levels of violence, in numerous European countries over the years but were especially pronounced following the large inflow of refugees from Syria, other Middle Eastern, and African countries in 2015. A few European politicians have used the danger of right-wing violence to argue against an increase in refugee admissions.

Besides refugees, empirical studies have now focused on the Muslim citizen-terrorist and especially the ways in which she is being recruited (Coolsaet, 2016). European police and intelligence services have used the concept of radicalization to understand how a person becomes a terrorist. The notion of radicalization remains closely connected to Muslims, though some have also applied it to right-wing groups.

Radicalization studies have developed multiple models to explain the process (King & Taylor, 2011). They focus on kinship and friendship, rather than ideology, as crucial ingredients in a process that usually occurs over a long period of time. Ultimately, it is a connection of specific individual and group characteristics and context that leads to radicalization (Coolsaet, 2016). The adoption of

radical beliefs, however, does not equate with violence. That connection requires additional steps. The intricate developments and unique personal background involved makes the so-called deradicalization also a very individual and long-term process. Deradicalization, however, does not equate with abstaining from violence.

As Sageman has identified some substantial differences between the current group of foreign fighters and preceding waves (Sageman, 2008), Europol has suggested speaking of a “violent extremist social trend” rather than radicalization (Europol, 2016, p. 6). Foreign fighters generally become activists for three different reasons. They may be driven by political or religious idealism or altruism; they may join a group because of their friends or to find a social network; or they feel socially frustrated and marginalized. Religious study or fervor motivates the current group substantially less than those in the past. The vast majority of foreign fighters leave terrorist groups sooner or later either because remaining becomes too difficult, or because a better alternative presents itself. While a change in their ideological beliefs and values may be desirable, the primary goal is to disengage them from the commission of violence (Bjørge, 2013).

Solid empirical studies have provided us with a multi-faceted understanding of immigration. That is less true of terrorism, which is by definition harder to study and shrouded in secrecy. The connection between the two fields also lends itself to further research, though one may be cautious about overvaluing individual findings. Broad consensus of research, however, takes time. Neither policymakers nor law-enforcement officials feel that they have the luxury of time when the terrorist threat is looming.

The Immigration-Terrorism Nexus: Legal and Organizational Responses

Executive action taken, using immigration laws and national security tools, immediately upon the events of 9/11 favored security over liberty. With the memory of that event receding, however, such exceptional politics cannot be maintained. It has been replaced by what Huysmans and Buonfino (2008) label the “politics of unease.” It sews together a variety of different fears, ranging from crime to illegal immigration, from the cost of immigration to counter-terrorism, and employs policing technologies to address them. Therefore, other concerns than merely the fear of terror support the enhanced securitization of migration (Huysmans & Buonfino, 2008), which encompasses tightening immigration laws and their implementation. With the ongoing expansion of antiterrorism laws, however, immigration restrictions may become dispensable.

The immediate response to the events of 9/11 was to classify the act as one of war, rather than a crime, which triggered a host of extraordinary legal measures. The reaction of the United States was likely the most extensive of any country’s to recent acts of terror, especially in the use of extra-legal and executive measures. Still, some other countries managed to accrue similar powers over time through legislation.

Even though 9/11 is often portrayed as a watershed that led to the review of border security and immigration laws in light of transnational terror, it was not the first immigration-focused legislative response to terrorist attacks in the United States. Despite a tenuous connection between terrorism and immigration during the 1990s, already then the immigration regime was tightened in the name of terrorism prevention. The Oklahoma City bombing, committed by two native-born U.S. citizens, triggered the passage of a punitive and exclusionary immigration law. The 1990 Schengen Agreement connected immigration and asylum laws with crime on the one hand—drug trafficking, human trafficking, and money laundering—and terrorism on the other. Politically, terrorism became linked to organized crime, an assertion that continues to reverberate in Europe and the United States. It may be, therefore, that 9/11 was less of a watershed than an occasion to strengthen anti-immigrant rhetoric and enhance the securitization of immigration because of its now documented connection to terrorism. The event also triggered a flurry of legislative action in many Western countries, that

substantially restricted civil liberties to further national security. Those changes may have later facilitated investigations of citizen-terrorists.

Criminal Law and Procedure

Since the turn of the millennium, substantive criminal and procedural laws have been changed in the name of public protection. Antiterrorism legislation and enforcement have not been inexorably connected to immigrants or immigration. At least since 2002, legislative changes in the UK have focused increasingly on the citizen-terrorist, which has seemingly cut the tie between immigration and terrorism. That may, however, not be reflected in the enforcement of these laws.

Governments enlarged the definition of terrorist acts to capture pre-attempt activity, membership, and recruitment activities. Based on the 2005 Council of Europe Warsaw Convention on the Prevention of Terrorism, European countries created criminal liability for ever more preparatory offenses. By criminalizing the acquisition of specific skills that may be necessary in the commission of a terrorist act and by acquiring goods that could be used to build a bomb, perfectly legal activities, such as learning Arab or buying nails, may become criminal acts (Mueller, 2014). Other new offenses are also only distinguishable from legal acts because of their intentionality component. They include the intentional funding of a terrorist group and contacting a terrorist group with the intent to receive terrorist training.

United Nations Security Council Resolution 1624 (2005) called on states to prohibit direct incitement to commit terrorist acts and prevent the occurrence of such activity. The Warsaw Convention went a step further by asking for the criminalization of indirect incitement. Speech restrictions, however, can be easily misconstrued and may run afoul of freedom of speech. Ultimately these definitional expansions have morphed criminal law. It is no longer a retributive tool, punishing past offending, but rather has been turned into a preventive mechanism.

Substantive legal changes were not the only avenue to proceed against terrorists. Western countries also expanded their investigatory powers by permitting law-enforcement agencies to work in conjunction with the intelligence services or to collect intelligence information. In some countries, such as the UK, it has proven difficult to convict suspects because of the way in which evidence was collected. Intelligence information either could not be legally or should not pragmatically be introduced in a criminal trial in order to prevent intelligence sources from being revealed (Elliott, 2010).

In such situations other preventive strategies have been developed that may double as a means to induce cooperation. The United States, for example, permitted indefinite detention of a suspected terrorist by labeling him a material witness. The UK achieved the same goal through the adoption of far-reaching legislation allowing for the long-term detention of suspected non-citizen-terrorists for preventive reasons. In light of court challenges, starting in 2010, these measures were loosened but extended to citizens. Terrorism Prevention and Investigation Measures still allow for the imposition of an up to two-year long official surveillance and restrictions on movements and association of those accused of involvement in terrorism who cannot be prosecuted or deported (Ashworth & Zedner, 2014). Germany also permits surveillance through electronic tagging for suspected terrorists. Other restrictions include the confiscation of passports to thwart international travel. Pre-charge detention was also substantially extended in the wake of 9/11, but then restricted to two weeks, still substantially longer than previously tolerated. Yet, none of these measures will successfully thwart the efforts of a determined terrorist.

Upon conviction, anti-terrorist sanctions encompass those allowed against other criminal offenders. In some cases, for procedural or pragmatic reasons, a prosecution may have to occur abroad, accomplished through extradition³ or deportation, in the case of a foreign national.

Surveillance rules were loosened and enhanced, leading to large-scale observations of community events in Muslim communities and even in mosques. The rise in domestic terrorists may partially

result from these changes in law-enforcement practices. As surveillance in mosques and within the Muslim immigrant communities increased substantially after 9/11, recruitment of terrorists moved to private homes and the internet. Surveillance may also have led to the development of smaller units that operate largely independently from the larger terrorist movement, and are therefore more difficult to detect. In some cases, home-grown terrorists may enter into collaborations with returning fighters and fellow nationals who are abroad, as was the case in the Paris attacks (Pinto Arena, 2017).

The United Nations Security Council, in Resolution 2178 on threats to international peace and security caused by terrorist acts, adopted on September 24, 2014, registering its concern with foreign fighters, directed states to investigate, criminalize, and prosecute a host of terrorism-related activities, including traveling abroad for the purposes of joining a terrorist group and funding terrorist activities. In addition to criminal law measures, it called for increased international cooperation, including in countering violent extremism (United Nations Security Council Resolution 2178 [2014]). The Security Council opted for broad measures to combat foreign fighters, with a subsequent Resolution urging member states specifically to stem the travel of foreign fighters into Iraq and Syria (United Nations Security Council Resolution 2249 [2015]).

Similarly in May 2015 the Council of Europe, in an Additional Protocol to the Warsaw Convention, required the criminalization of “travelling or attempting to travel for terrorist purposes” (Art. 4). A European Union directive on combating terrorism, adopted on February 23, 2017, also requires member states to criminalize the attempt to travel abroad and such travel for the purpose of participating in terrorist activity. The definition of travel is not geographically limited and includes a person’s country of citizenship or residence. Also, financing of such travel or terrorist activity will have to be criminalized. The most far-reaching aspect of the directive may be in Article 21, which allows member states to use the tools employed against organized crime in the fight against terrorism. These include searches of property, communication interceptions, electronic surveillance, recordings of audio and visual images, and financial investigations (European Parliament and Council of Europe).

Criminalizing travel attempts to support terrorist organizations carries special challenges with it. Returning fighters, and perhaps more so the individuals whose attempt was thwarted, present special security risks. They may have become disillusioned, ready to abandon the cause, or at least the violent means by which to accomplish it. Alternatively, they may want to radicalize others, provide logistical support to the broader terrorist network, or engage in terrorist attacks in their home country.

The creation of new groups of terrorist offenses has been responsive to the practices and patterns of Islamic terror groups and their supporters. While repressive measures may be necessary to combat immediate threats, in the long run, prevention strategies and reintegration measures may be more effective not only with individuals but also with the broader Muslim and immigrant community. Ultimately, that may mean that repressive measures recede (Bjørøgo, 2013).

Connecting fears about immigration and terrorism has been most successful in the expansion of policing and technological supervision (Huysmans & Buonfino, 2008), leading to broader executive powers in those areas. With the ongoing focus on Islamic terrorism and empirical studies that have reinforced the link between immigration and terrorism by highlighting the way in which terrorist organizations may be able to abuse immigration policies to recruit new members or establish funding networks (Leiken, 2004), immigration laws continue to be employed in the service of the fight against transnational terrorism.

Immigration Law

In the wake of the attacks of September 11 in the United States and later terrorist attacks in multiple European countries, immigration laws, including asylum and refugee protections, have been restricted.

Paralleling tighter access was an increased use of deportation, often preceded by prolonged, and sometimes mandatory, immigration detention. Detention may serve to assure removal to the country of origin or rather be designed to prevent terrorist activity. At least since the early 2000s, illegal immigration, terrorism, crime, and asylum seekers have often been connected.

Much of the focus on both sides of the Atlantic has been on undocumented immigrants, even though all the 9/11 hijackers had temporary stay rights in the United States. Undocumented immigrants, also often called illegal immigrants, are deemed to be breaking the law by virtue of their status and therefore are more closely associated with crime, and by extension terrorism. Fear of undocumented migrants generally leads to a focus on securing outer borders to prevent their entry and on removing them from one's territory. Asylum seekers and refugees are also frequently presented as faking persecution and abusing the humanitarian regime designed to offer them protection. Still, Avdan's recent empirical study indicates that between 1980 and 2007 transnational terrorism has not undermined the asylum regimes in European Union countries, which continue to prioritize the human rights conditions—including extreme violence and terrorist attacks—in the asylum-seeker's country of origin in their decision-making. Terrorist events in the refugees' home countries have therefore not impacted recognition rates, though terrorist events in receiving countries have had some impact. "Stiffening of asylum rates occurs in response to direct threats" (Avdan, 2014, p. 468). Others have found refugees in the UK labeled as potential threats, with an impact on their recognition rates (Choi & Salehyan, 2013). In particular, men from Muslim nations who asked for asylum in the UK were treated as a risk that needed to be contained. At best, their presence created a sense of unease, at worst, they were viewed as dangerous, causing fear. Among the control mechanisms used were electronic tagging and mandatory reporting, the same ways in which convicted criminals were supervised. Because of the media and political picture painted that converted the refugee into a terrorist and enemy, the public has deemed punitive measures, including deportation, legitimate and desirable, even though those may push asylum-seekers into crime and make them become their stereotype (Bhatia, 2015). At least in Europe, international obligations, constitutional rules, and European human rights norms have limited restrictions on asylum.

The same has not held true for the United States where 9/11 reversed the likelihood of recognition for applicants from Arab-speaking countries, those with Al-Qaeda activity and state-sponsored terrorism because "factors that were previously regarded as potential threats to an applicant are now being overshadowed by calculations of security risks from individuals" (Avdan, 2014, p. 448). This response may be a result of the depiction of Arab men as the "face of terror," directly in connection with the hijackers but also metaphorically as "a demonic type of face that had penetrated both the national territory and the national imagination" (Gates, 2011, pp. 106–107).

The most extreme approach for a country to deny ingress or egress is the closure of its outside borders. France took a version of this step after the November 2015 attacks when it proceeded to reinstitute border controls upon a suspension of the Schengen Agreement. Generally, however, after terror attacks, governmental reactions have been more nuanced. Yet when terrorist attacks occur on domestic soil or a country's citizens are being targeted, immigration policies will be restricted the most (Avdan, 2014; Bove & Böhmelt, 2016).

Entry controls, for example, in recent years have focused particularly on those considered apologists of terrorism or potential recruiters. Implementation of immigration restrictions often negatively impacts citizens of countries with large numbers of terror attacks, by making it more difficult for them to receive visas or refugee recognition. Avdan's research indicates that citizens of states that are connected to terrorism over a longer period of time may face visa restrictions (2014, p. 449; Neumayer, 2006). Those restrictions, however, impact the population most in need of protection, as the recent case of Syria indicates.

It is not only national legislatures but also international bodies that have supported greater migration controls, justified by the asserted connection between migration and terrorism. United Nations

Security Council Resolution 1373 (2001), for example, asked for stricter border controls and anti-fraud initiatives to prevent the movement of terrorists with fraudulent documents.

Once alleged non-citizen-terrorists have entered a country, they can be removed. The UK has often prioritized deportation over criminal prosecution to avoid difficult criminal cases and remove a potential risk expeditiously. In some cases, however, international norms limit deportation. That is the case when no country can be found to accept the alleged terrorist or when the individual would be threatened with mistreatment or death. Domestic and European courts have declared the indefinite detention even of alleged terrorists in such situations in violation of human rights norms (Elliott, 2010). To circumvent such limitations, the UK has negotiated agreements with receiving countries that commit them not to torture the deportees. Some of these agreements may not have been honored.

In the United States, the connection between immigration and terrorism first appeared in the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrants Responsibility Act, both of 1996, and later in the USA PATRIOT Act. These laws have impacted not only migrants from Muslim and Arab countries but collaterally affected other immigrant groups directly and indirectly (Antiterrorism and Effective Death Penalty Act of 1996; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001). The militarization of the Southern border, for example, has limited access for Mexicans and Central Americans. Similarly, harsher detention and deportation policies have negatively affected Latinos (Romero & Zarrugh, 2017). Latino immigrants were racialized in the same way Arabs were, and portrayed also as potential security risks.

Perhaps even more dramatic than legislative changes may be institutional changes. In the United States after 9/11, immigration services—and some antiterrorism agencies—were unified within the Department of Homeland Security. “[T]he conflation of immigration and terrorism was embedded into the culture of the new enforcement and immigration agencies” (Romero & Zarrugh, 2017, p. 14).

The increase in citizen-terrorists, especially when native-born, could be interpreted to sever the tie between immigration and terrorism. Efforts at denaturalization, an action designed to turn a citizen into an outsider, however, may reflect powerfully the tight connection between those two areas.

Legal Responses to the Muslim Citizen-Terrorist

The emergence of home-grown terrorists, citizens of the second and third immigrant generation or recent converts to Islam who commit terrorist acts at home, and of “foreign fighters,” citizens who choose to fight for radical Islamic groups abroad, has ostensibly undermined the connection between international migration and terrorism. Only a few argue seriously against migration because they are concerned about the actions of following generations.

Converts, many of whom have joined the ranks of foreign fighters, present a new and unprecedented challenge to Western countries. They present the most powerful threat to the link between immigration and terrorism as neither they nor their families have a migration background. Because of the politically salient relationship between migration and terrorism, Western countries, however, continue to use that framework, though in novel ways.

At present, some countries increase the focus on the terrorists’ otherness by turning to deprivation of citizenship as a sanction or an avenue to remove an unwanted citizen from the country. “Denationalisation serves the narrative of terrorism as always and essentially foreign to the body politic by literally transforming the citizen-terrorist into the foreign outcast” (Macklin, 2015b, p. 54). This portrayal requires a leap of faith in light of the individual’s long-standing relationship with the country of citizenship, a leap yet greater for native-born citizens. As most of the citizen-terrorists have families who migrated originally from Arab-speaking countries and are Muslims, Western governments can continue to focus on “the other,” using tools perceived to be connected to immigration

laws. The emblematic example is the case of Esam Hamdi who renounced his US citizenship in exchange for being allowed to leave the Naval prison brig on which he was being held. He was a US citizen by birth but had grown up in Saudi Arabia. His beard and white flowing Arab garb made him “other.”

Between 2006 and 2014, the United Kingdom deprived 27 citizens of citizenship based on national security grounds. In three of the cases, the citizen was abroad when he lost his citizenship, which made it impossible for him to return and appeal the decision or for another country to force the UK to repatriate him (Macklin, 2015a). To avoid statelessness, traditionally, citizenship can only be withdrawn, other than for fraud, when the person holds a second citizenship. That is no longer the case in the UK.

Other countries that allow for denationalization are Australia, Canada, France, and Belgium (Wautelet, 2016). In 2012, Belgium broadened its rules allowing any court to deprive a person convicted of select crimes of terrorism and sentenced to at least five years in prison of his/her citizenship. Still limitations remained. Deprivation of citizenship could befall only dual nationals and could only be imposed on those who had obtained Belgian citizenship through naturalization (Wautelet, 2016).

Similarly, France has expanded its regime to deprive an individual of his/her citizenship, though only upon a criminal conviction. So far, only a few individuals have lost their citizenship. In both countries, the loss of citizenship is discretionary (Wautelet, 2016). Loss of citizenship allows for deportation and hinders admission into the former country of citizenship and if the individual’s other citizenship is not from an EU country, into the EU generally.

Denationalization has been described as “extending the functionality of immigration law in counterterrorism” (Macklin, 2015a, p. 1). To some extent, it may go yet further, as denationalization may serve “not only [as] a political analogue to death” but as a prelude (Macklin, 2015a, pp. 3–4), permitting a government to kill the individual. Officially only the United States has killed its own citizens abroad because of their involvement in terrorist activities.

Denationalization is more of a symbolic than pragmatic sanction as it merely dislocates or transfers the threat the terrorist may pose. How the other country of citizenship proceeds with the individual is outside the control of the country of denationalization. More disconcertingly, “by cutting the bond, states deny their responsibility, including that toward the rest of the world upon whom they inflict the terrorist threat” (Bauböck, 2015, p. 29). In its operation, denaturalization connotes how the ideal citizen looks and acts. Denaturalization, therefore, signals otherness, a concept tied closely to the depiction of the immigrant as a threat.

Conclusion

The ideological attachment to the tie between immigration and transnational terrorism continues even in light of at best mixed empirical evidence. As the shape of terror is changing, the connection becomes ever more tenuous. Still, European states, Australia, and North America continue to restrict immigration and paint the terrorist as the migrant “other” in the name of fighting terror. Exclusion of foreigners remains paramount even as the enemy comes increasingly from inside. Nevertheless, terrorism plays only a subordinate role in migration policy, though its impact may vary especially when terror attacks occur in immigrant-receiving countries. Migration laws may sweep too broadly and negatively affect desirable immigration, which is why governments often limit their use.

Immigration law will not be able to address the challenges of terrorism, though anti-immigrant rhetoric may carry negative ramifications for immigrant groups. Ultimately, modern transnational terror cannot be limited without the support from the home countries of immigrants, by helping reduce political violence and terrorism there through the expansion of wealth and political freedoms (Bove & Böhmelt, 2016).

Notes

- 1 The database for International Terrorism: Attributes of Terrorist Events (ITERATE) uses a similar definition. It contains only events with victims and perpetrators of different nationalities or those who cross international borders.
- 2 Even though most terrorists are male, some women have been recruited into their ranks, often in supporting roles. This chapter interchanges the pronouns but uses the male one more frequently, to reflect the gendered reality of this phenomenon.
- 3 Not all countries permit the extradition of their citizens. Even those that do often have restrictive rules, such as double criminality, and other normative limits, including a prohibition on the infliction of certain sanctions.

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