

Terrorism and the Revival of the State. A Comparative Study of Israel and Germany

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In the late 1990s, many scientists assumed that the state is losing in sovereignty in face of an accelerating globalisation. David Held et al. (1999), for example, argue that the state is now a “decision taker” instead of a “decision maker.” In a similar vein, the German sociologist Habermas (1998) claims that through globalization and world financial markets, states lose control of social, economic and fiscal policies. Similarly, in foreign policy, state sovereignty is declining as international organizations and international human rights norms gain in importance.¹

While this might be true in the area of economic and financial policies or foreign policy, we might actually witness variance in levels of state sovereignty in different functional policy areas. After the terror attacks of September 11, in the Western democracies, there is a revival of the state in the policy area of internal security policies. The aim of this study is to determine if the challenge of terrorism is indeed reviving the state.

In order to answer this research question, a comparative analysis of the states of Israel and Germany is conducted. These countries are chosen primarily for conceptual reasons. The hegemonic conception of the “state” mainly applies to Western highly developed countries. Thus, in order to control other factors which influence the level of statehood, only two developed countries are analyzed. In addition, the independent variable – the level of terrorism – varies between Germany (no terror attack) and Israel (many terror attacks) and so this case comparison comes close to the model of Mill’s method of difference. For the limited range of this paper, the case studies are conducted for the years 2001-2007, which is a crucial time period to observe as Western states underwent a number of terror attacks.

¹ According to the French philosopher Jean Bodin (1529-96), sovereignty refers to the untrammelled and undivided power to make laws. Echoing Hobbes, the English jurist William Blackstone (1723-80) argued that “there is and must be in every state a supreme, irresistible, absolute and uncontrolled authority, in which the right of sovereignty resides” (quoted in Hague and Harrop 2004, 7). However, Curtis points out that sovereignty “is not unlimited or unconditional. There are always things the sovereign body will not or cannot do even though it has legal power to act. Even totalitarian or authoritarian states do not interfere in the whole range of social affairs. Moreover, the sovereign power is limited in all systems by natural forces and the physical conditions of the environment” (Curtis 1978 31).

In addition, both observed countries struggled with dilemmas raised by the tensions between security and liberal/human rights. Thus, the choice of cases of two liberal democracies is also politically relevant. The study hopes to contribute to the understanding of these dilemmas and to the finding of a “balance between security needs and adherence to the basic principles of human rights and dignity”, which “is of fundamental importance for any democracy under threat” (Hofnung and Weinshall 2009, 4).

Hypothesis and Operationalization

The hypothesis is that the challenge of terrorism (independent variable) is reviving the state (dependent variable). The research method is deductive and the main unit of analysis is the state and its citizens. Therefore, in the structure-agent debate, this article tends more to the side of the structural dimension. This is justified as due to our research question we are dealing here with processes in the state as a community of the citizens. In order to control for omission of other independent variables - in other words in order to be able to discover neglected factors which can also influence the revival of the state (i.e. criminal networks) - this paper follows the method of back-tracing.

What is meant by the terrorism? First it is important to clarify that terrorism is not only a complex term but also an extremely emotional one. The study of “terrorism” is fraught with dangers (see Lim 2006, 229). Holmes (2009, 469-70) reminds us that there is a lack of good data due to differing concepts of terrorism. It triggers a wide array of definitions of terrorism. Following Bruce Hoffman, terrorism is defined as:

the deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change. All terrorist acts involve violence or the threat of violence. Terrorism is specifically designed to have far-reaching psychological effects beyond the immediate victim or object of the terrorist attack. It is meant to instil fear within, and thereby intimidate, a wider “target audience” that might include a rival ethnic or religious group, an entire country, a national government or political party, or public opinion in general. Terrorism is designed to create power where there is none or to consolidate power where there is very little. Through the publicity generated by their violence, terrorists seek to obtain the leverage, influence and power they otherwise lack to effect political change on either a local or international scale. (Quoted in Lim 2006, 205)

In face of a wide array of definitions of terrorism, this definition is chosen as it does not only point to the actual violence, but also to the psychological effects. The psychological effects are also stressed by Hofnung and Weinshall, when they argue that unlike “the case of fighting an enemy country on the

battlefield, terror can strike anyone at any time or place. Terror eradicates the traditional lines between the frontline and the rear, and therefore harms the very basic feeling of internal security and public safety that any government is expected to provide (Hofnung and Weinshall 2009, 4-5). Thus the threat of terrorism increases not only with the number of terror attacks carried out, but also with the level of fear among the citizens.

In order to guarantee security, we might find a revival of the state as an answer to terrorism. What is the state? Max Weber (1965) defined the state as a political entity which has the monopoly of legitimate force for the enforcement of its order. Thus, a revival of the state means an increase in the monopoly of legitimate force.² However, as pointed out by liberal or libertarian philosophers such as John Locke, Adam Smith or, most extremely, Friedrich Hayek, this also means a decrease in the liberal freedoms of the citizen – it means that the state enters into the lives of its citizens and their private sphere.

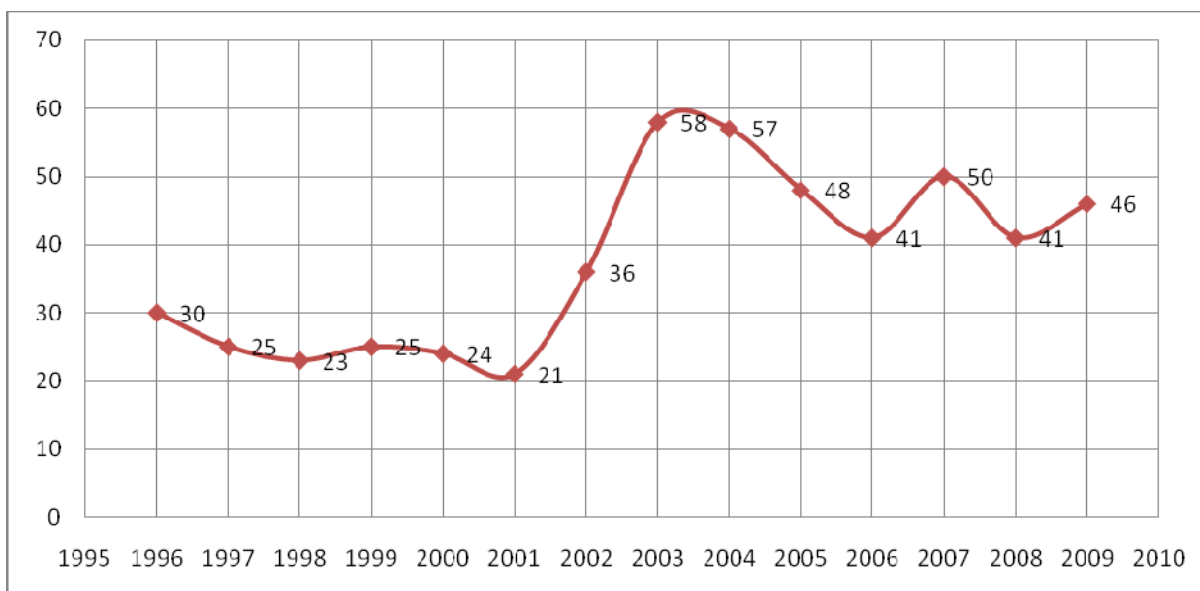
Thus, an increase of the state will be measured through a decrease of liberal freedoms in this state. The term liberal freedoms here refers to those rights which defend the individual against state interference, such as the right for individual development, the freedom of the person, the protection of privacy, protection of property, and the freedoms of thought, conscience, religion, opinion, assembly, and movement. Such liberal freedoms can be limited by law, but also by unlawful practice of state institutions. Both will be analyzed in this paper.

The Case of Germany

In Germany, no successful act of terrorism happened against civilians. However, the international terrorist network Al Qaida repeatedly threatened to carry out attacks in Germany in order to force the German army out of Afghanistan. In addition, while there are repeatedly reports on plans on terror attacks in Germany, only one of these plans was almost executed: the two bombs on passenger trains in Dortmund and Koblenz in July 2006, which failed to detonate. More importantly, however, Germany is influenced by the fear spread through terror attacks which happened in the US or in its European neighborhood, meaning the September 11 attacks in 2001 and the attacks in Madrid in 2004 and in London in 2005.

² In contrast to Weber, Poggi (2008, 87) points out that states “though they sometimes project themselves as self-standing, personified entities, are themselves made of people, operate exclusively within and through the activities of people – at bottom, indeed, of individuals.”

The following table shows the threat perceptions of the Germans regarding terrorism between the years 1996-2009.



Source: R& V (2009)

Following these threats and the high level of fear in Germany after the September 11 attacks, immediately security controls in the airports were tightened. In addition to this, reporters without borders noticed in 2002 that in the wake of the September 11 attacks press freedom and freedom of opinion got limited in many Western countries, such as the US, Germany, France and Great Britain (Reporters Without Borders 2002).

In addition, as an immediate measure, the ministries of Interior decided to apply the so-called “Rasterfahndung” (dragnet investigation), which was used in Germany during the times of terror of the Red Army Fraction (RAF). This type of investigation means that certain persons are filtered out of public and private databases according to certain characteristics in order to limit the group of suspicious persons. This procedure abandons the presumption of innocence of the person.

These practices were soon followed by the introduction of new laws. Already in late 2001, the German parliament started to discuss “Security Package I,” which cut the privilege for religious communities not to be forbidden (in contrast to associations, which could be forbidden already before on certain grounds). In addition to this, “Security Package I” prolonged the possibility of security services to receive information on phone connections from the telecommunications companies. The security package was passed with hardly any objections in the parliament.

“Security package II,” however, was more complex and interfered deeper in the rights of the individual. In this package, the police and other security institutions received increasing competencies and another aim of the package was to improve the communication between the security services. Furthermore, it targeted foreigners in order to prevent so-called “sleepers” to enter Germany. The law entitles secret services to observe foreigners from “problematic states” (not further defined), who plan to come to Germany. In addition, foreigners can now be deported from Germany faster than before. Regarding German citizens, the law entitles to control passports of travellers in German trains without previous suspicion. The German secret services were enabled to receive information from banks on accounts and money transfers. The ministry of finance got empowered to save all bank accounts in a central register. The internal secret service was even enabled to obtain information from the post.

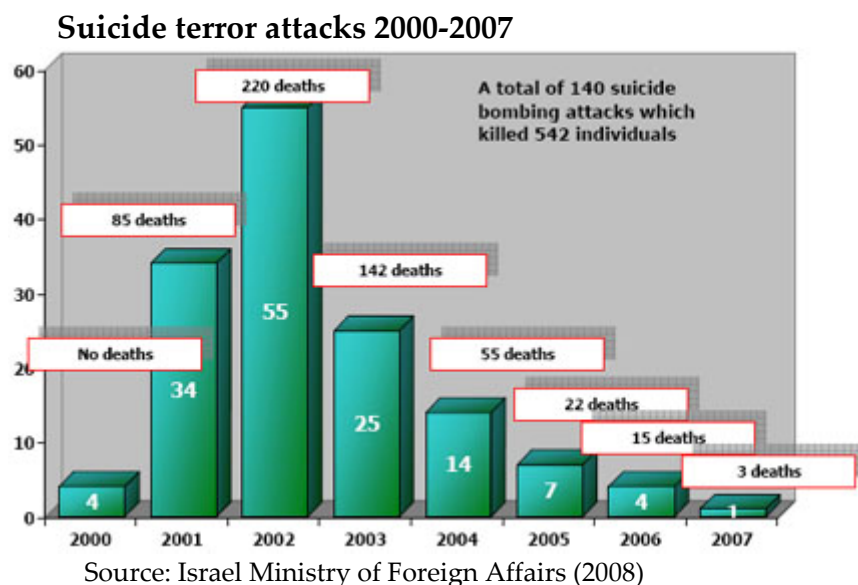
In contrast to the first security package, this second package was heavily criticized, as it interferes deeply in the liberal freedoms of German citizens. It enlarged the competencies of the police and the security services and put foreigners under a general suspicion. However, the government still sought to add more paragraphs to these laws in the following years. In 2006, the minister of Interior proposed to allow the shooting down of hijacked planes, which was, however, forbidden by the German High Court. In 2007, further laws enlarged the competencies of the secret services, who can now also possibly observe mobile phones and private computers through the internet. Identification documents include a chip, which contains the fingerprint of the person, and passports have to include a biometric picture.

In addition to the introduction of these new laws, there has also been some unlawful practice by the German state. Most important was the case of the Turkish citizen Murat Kurnaz, who lived in Germany, but was arrested by Pakistani security forces in 2001 in Pakistan, where he wanted to participate in a pilgrimage. The Pakistanis handed him to the Americans, who put him into the prison of Guantanamo Bay. In 2006, he was transferred back to Germany, even though the Americans had offered to the German government already in 2002 to release him. Kurnaz claims that he was abused by special units of the German army and tortured by US Americans in Afghanistan and Guantanamo Bay.

In sum, the case of Germany shows that only the fear of terror was enough to curtail liberal freedoms in German law and to lead to some instances of unlawful practice of the German state against the rights of the individual against bodily harm and for personal freedom.

The Case of Israel

The level of terrorist threats in the observed timeframe is much graver than in the German case. Between 2001 and 2007, Israel lived through the second Intifada with many suicide bombings in Israel, as the following statistics of the Israeli foreign ministry shows.



Hofnung and Weinshall point out that terrorism raised fear in Israel “not merely for the security of Israeli’s borders, but also for Israel’s very existence and that of its population” (Hofnung and Weinshall 2009, 8). Thus, the level of perceived threat in Israel was high – not only for the security of the single person (as in Germany), but also for the security of the whole state.

Following our hypothesis, we should witness a decrease in liberal freedoms after the year 2001. The gravest violations of basic freedoms during the second Intifada happened in the Palestinian territories. However, this work focuses on the curtailment of liberal freedoms against a state’s own citizens and will thus concentrate on the situation within the State of Israel. In Israel, several liberal freedoms were limited to a certain degree already long before the start of the second Intifada, as Israel has been a country in conflict for a long period of time. Ben-Porat claims that from “the end of the war in 1948 until 1966, in spite of their formal citizenship, Arabs were placed under a military rule that limited their movement. The gradual relaxation of Israeli policies towards Arab citizens has not diminished the social gaps between them and the Jewish majority’s

economic, social and political marginalization” (Ben-Porat 2009, 6).³ Shultziner (2009) claims that also today the “civil rights of the Arab citizens of Israel are far from equal to that of their Jewish counterparts, even though they are equal de jure.”

In many circumstances the Palestinian citizens of the State of Israel do not receive the same social services as the Jewish citizens. If, for example, a person wants a home loan from a bank one of the first requirements in order to obtain it is that he is able to prove that he has served in the army, which Palestinians are exempted from. Ben-Porat shows that “Arab citizens are exempt from military service, which is considered the most significant contribution to the state and therefore cannot count as ‘good citizens’” (Ben-Porat 2009, 6). In addition, media freedom is sometimes restricted by a military censorship. Furthermore, as Arian et al (2009, 107) point out,

the level of freedom of the press that is prevalent in Israel places it at the end of the list of democratic countries, beside countries in Eastern Europe and South America. For the first time since the Freedom of the Press Index began publication, Israel belongs to the group of “partly free” countries. Israeli political culture represents this objective measure well. Most of the public support freedom of expression, but are not prepared to accept criticism of the State of Israel.

During the time of the Intifada, a law was introduced, which curtailed the freedom of the family. In 2003 the Law of Citizenship was passed, according to which Palestinians from the territories, who marry Palestinian citizens of Israel do not receive citizenship.

Instead of deep changes of the legal situation in Israel during the Intifada, the actual practice sharpened. In October 2000, 13 Palestinian citizens were shot dead by Israeli police when demonstrating for the Palestinian uprising in the territories. The Or Commission, which conducted an Israeli public investigation on this incident, found that the demonstrations were mainly motivated by the discrimination of the Palestinian minority in Israel and it also implied responsibilities of the head of the police, as well as former Prime Minister Ehud Barak (Or Commission 2003). The case constituted a grave violation of the most basic right of the person to life and of protection against bodily harm. Due to the involvement of some Palestinian citizens in the planning of suicide attacks during the Intifada, suspicion against them increased.

Also in 2003, a Palestinian radical newspaper was forbidden and some Palestinian and Arab journalists working for Western media did not receive press credentials from Israel anymore. In 2005, Israel arrested a BBC journalist

³ On the context of the dilemmas, which Israel faces due to its multinational and multicultural realities, see Ben-Porat (2009, 1).

who had interviewed an Israeli sentenced for spying. BBC had to apologize to Israel in order to get access again. Another British journalist was deported after having been engaged in the International Solidarity Movement.⁴

In sum, as an answer to the terrorist threats, there were some changes in law, but most of the laws already allowed state interference in the private sphere before the second Intifada. What sharpened was the curtailment of media freedom as well as a suspicious attitude toward Palestinian citizens of Israel, which was also, as already stressed, generated by the involvement of some of them in the planning of terroristic activities.

Conclusion

Both analyzed cases showed that the challenge of terrorism indeed revives the state, as the state increasingly starts to curtail liberal freedoms of the citizens. The comparison also pointed out that the fear of terrorism alone is sufficient to increase the state's monopoly on the use of force. However, as already mentioned in the introduction, this mainly happens in the area of internal security. In other functional areas of state policy, terrorism does not have the same influence.

The curtailment of liberal freedoms can be witnessed in all Western states and the public debate on the danger of this development for liberal democracy is increasing. This is why it is highly important to study this subject. When studying it, we also might always want to remember one of the most important legacies of Rousseau, namely that the "strongest is never strong enough unless he succeeds in turning might into right and obedience into duty."

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⁴ Some scholars, among them Michael Widlanski, however, noticed that in our times "media in Israel have gotten too strong, while the government has gotten too weak" (Widlanski 2009, 1).

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