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WITH LIBERTY AND JUSTICE FOR ALL: AN EXAMINATION OF THE UNITED
STATES' COMPLIANCE WITH RULE OF LAW AS IT RELATES TO DOMESTIC AND
INTERNATIONAL TERRORISM

A thesis submitted in partial fulfillment
of the requirements for the degree of
Master of Arts

By

JONATHAN WILLIAM MAZE
B.A., Wright State University, 2013

2018
Wright State University

WRIGHT STATE UNIVERSITY
GRADUATE SCHOOL

April 19, 2018

I HEREBY RECOMMEND THAT THE THESIS PREPARED UNDER MY SUPERVISION BY Jonathan William Maze ENTITLED With Liberty and Justice for All: An Examination of the United States' Compliance with Rule of Law as it relates to Domestic and International Terrorism BE ACCEPTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF Master of Arts.

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Abstract

Maze, Jonathan William. M.A., Department of Political Science, Wright State University, 2018. *With Liberty and Justice for All: An Examination of the United States' Compliance with Rule of Law as it relates to Domestic and International Terrorism.*

This study examines what factors contribute to United States' compliance with rule of law in response to terrorism. A qualitative analysis utilizing a comparative case study approach to examine the Clinton, Bush, and Obama administrations' response to domestic and international terrorism. This study tests what impact the location of terrorist attacks, nationality of terrorist actors, and presidential ideology have upon rule of law compliance. Results from this study illustrate the causal relationship between rule of law compliance and presidential ideology, while taking into account the impact of the terrorist attack on September 11, 2001.

Key Words: terrorism, rule of law, presidential ideology, global war on terror, Supreme Court of the United States

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List of Acronyms

AUMF: Authorization for the Use of Military Force

CIA: Central Intelligence Agency

DOD: Department of Defense

FBI: Federal Bureau of Investigation

GITMO: United States Military Facility in Guantanamo Bay, Cuba

GRS: Global Response Staff

GWOT: Global War on Terror

IED: Improvised Explosive Device

IRTPA: Intelligence Reform and Terrorism Prevention Act

ISIS: Islamic State of Iraq and Syria

MCA: Military Commissions Act of 2006

NDAA: National Defense Authorization Act of 2012

PATRIOT Act: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism

PD: Police Department

SCOTUS: Supreme Court of the United States

SUV: Sport Utility Vehicle

UCMJ: Uniform Code of Military Justice

UDHR: Universal Declaration of Human Rights

US: United States

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I would like to dedicate this to my Grandfather, Rev. Larry D. Callahan. Your faith, love, and kindness have forever transformed my life. You're the man I strive to be – thank you for everything papaw.

Jeremiah 29:11

Chapter 1: Introduction

The terrorist attacks of September 11, 2001, proved to be one of the most catastrophic attacks in recent history. Although the United States had previously experienced both domestic and international terrorist attacks, 9/11 brought terrorism to the forefront of American politics and made it both a domestic and international issue. Earlier examples of terrorist attacks, from the 1970's through the 1980's, predominantly pertained to the hijacking of passenger airliners. However, during the 1990's the size, location, and scope of attacks began to shift. The United States was confronted with domestic and international terrorist attacks, such as the 1993 bombing of the World Trade Center, the 1995 Oklahoma City Bombing, 1996 attacks at the Khobar Towers complex, the 1998 African Embassy bombings, and the attack on the U.S.S. Cole in 2000. Each of these terrorist attacks were “addressed through existing criminal justice systems.”¹ However, the attack on September 11, 2001, caused American policy makers to re-examine and evaluate previous policy measures in order to prevent further attacks from taking place.

To understand the role of the Presidential administrations in enacting counterterrorism policies and initiatives, it is important to remember the promise or guarantee each President makes to the country. Upon taking the Oath of Office, each President affirms “I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help

¹ Chertoff, M. (2011). 9/11: Before and After. *Homeland Security Affairs: the Journal of the NPS Center for Homeland Defense and Security*. Retrieved from <https://www.hsaj.org/articles/584>

me God”². In doing so, each President is charged with upholding and abiding by the Constitution, while simultaneously protecting the American people from foreign and domestic threats, which can become a balancing act. Aaron Wildavsky³ notes there is a dual presidency, one focused on governing over domestic affairs, while another simultaneously centers on matters of foreign affairs. Considering this duality, each President must balance domestic laws, programs, and unforeseen circumstances with international laws, programs, and similar unforeseen circumstances.

Considering the scope, location, and sheer magnitude of the attacks on September 11, 2001, the United States was confronted with balancing domestic and international rule of law frameworks when enacting counterterrorism strategies and tactics to thwart further attacks. In response to the 2001 attacks, the United States Congress passed the *2001 Authorization for the Military Force* (AUMF) act, along with the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001*, otherwise known as the Patriot Act. The AUMF and Patriot Act eased the restrictions on the executive branch to allow the President to have greater unilateral discretion on use of military forces. This newly formed power created a paradigm shift in rule of law governance and subsequent compliance.

Since the attacks on September 11, 2001, numerous scholars have begun to address the United States’ response to terrorism by examining various aspects of its domestic and foreign counter-terrorism measures, such as the use of rendition, drone strikes, and torture. However, the larger question that arises centers on whether the attack on September 11, 2001, was the trigger that prompted the paradigm shift in regards to rule of law compliance? Three factors that may

² Oath of Office. Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424. (5 U.S. Code § 3331 et seq) Short title, see 5 U.S.C. 3331 note. Retrieved from <https://www.law.cornell.edu/uscode/text/5/3331>

³ Wildavsky, A. (1966). The Two Presidencies. *Foreign Affairs*. Retrieved from <http://www.csuchico.edu/~ccturner/syllabi/TwoPresidencies.pdf>

possibly have led to the change in rule of law compliance are (1) the nationality of the terrorist actor (American terror suspect vs. foreign national), (2) the location of terrorist attacks (within the United States vs. abroad), as well as (3) United States Presidential ideology – Conservatives (Republicans) and Liberals (Democrats).

The problem I am studying is the United States' compliance with rule of law in response to domestic and international terrorism. This study will examine the Clinton (neo-liberal), Bush (neo-conservative), and Obama (neo-liberal) administrations' rule of law compliance. These three cases will be analyzed to determine if the three independent variables (terrorist actor, location of terrorist attack, and U.S. Presidential ideology) have any discernable effect upon rule of law compliance. I will test to see if the United States prosecutes domestic terrorist actors differently from international terrorist actors as well as the use of drone strikes to assassinate enemy combatants, particularly the targeting of American citizens abroad. After examining the literature involving the United States' counterterrorism operations, I have found gaps in the literature. Noting these gaps, I outline my research question, along with methodological approach in this chapter.

Counterterrorism Literature

Scholars have undertaken numerous approaches to examine the subject of United States compliance with domestic and international rule of law in regards to enacting counterterrorism strategies and policies. Scholars have focused on use of force following terrorist attacks but there appear to be gaps in the literature pertaining to the role of terrorist actor, the location of attacks, and Presidential ideology. To understand the shift in rule of law compliance, as a result from the AUMF and Patriot Act, and possible further deviation, it is necessary to understand the foundation of rule of law within domestic and international law.

Rule of Law in Domestic and International Law

To understand the concept of rule of law, the United Nations defines it as, “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”⁴ During the last half century, States have been working toward strengthening governance by rule of law domestically as well as internationally in order to reduce violence as a means to achieve political reform. Throughout the international community States have begun to strengthen domestic rule of law. A model of this approach is the United States, which has created a “liberal democratic judicial systems” that allows ordinary citizens to have access to conflict resolution mechanisms, thereby negating the need and desire for such heinous acts.

Scholar Joe Eyerman contends the establishment of equitable (fair and impartial) rule of law (which allows for multiple avenues for ordinary citizens to participate in peaceful displays of opposition to government policies without fear of retribution) has a strong ability to reduce animosity and resentment. In doing so, it can minimize some of the root causes of dissatisfaction within society and curb ordinary citizens’ desire to utilize violent, terrorist tactics in response to government policies. Building upon this, Choi similarly notes democratic citizens are “socialized to trust in the fairness and impartiality of the legal system in times of disputes.”⁵ Considering

⁴ The United Nations: Department of Peacekeeping Operations and the Office of the High Commissioner for Human Rights. (2011). Rule of Law Indicators: The United Nations Implementation Guide and Project Tools (First Edition). Retrieved from https://peacekeeping.un.org/sites/default/files/un_rule_of_law_indicators.pdf

⁵ Choi, S.W. (2010). *Fighting Terrorism Through The Rule Of Law?* *Journal of Conflict Resolution*. Retrieved from <http://journals.sagepub.com/doi/abs/10.1177/0022002710371666>

ordinary citizen's "socialization," it would be self-defeating to utilize violent tactics to resolve conflicts, which could be handled within the given judicial frameworks.

Contrasting domestic rule of law, the basis of rule of law under international law is an ever changing field. Choi highlights two conditions which must be present to cause an individual to engage in a terrorist act and forego operating within rule of law frameworks. (1) When local citizens have grievances regarding the violation of their political and legal rights by foreigners and (2) when these citizens do not believe peaceful resolution is the most suitable option, due in large part to deficient or non-existent rule of law. In a similar vein, Goldston outlines the need to "fortify state capacity"⁶ and in doing so, enhance the rule of law to curb such events from occurring.

Within the international community, States have created resolutions and conventions which outline the legality of actions a country may engage in across a wide-array of issues. These actions are aimed at improving rule of law and curbing the frequency of violence as a means to achieve political objectives. In the realm of peace and security, the international community came together to create a set of standards, regarding the conduct of war and the treatment of prisoners of war, known as the Geneva Conventions. These conventions outline the legal frameworks to which States must adhere when dealing with prisoners of war.

Adoption of Extra-Judicial Frameworks to Combat Terrorism

Scholars have argued that the United States has begun to move away from operating under current legal frameworks (rule of law) and subsequently started to employ extra-judicial

⁶ Goldston, J. (2007). The Rule of Law Movement in the Age of Terror. *Harvard Human Rights Journal*. Retrieved from <http://heinonline.org/HOL/LandingPage?handle=hein.journals/hhrj20&div=7&id=&page=>

frameworks to combat terrorism. The concept of extra-judicial frameworks can be understood as operating outside the existing judicial system and further noted as being noncompliant with rule of law. Gus Martin details the United States' ability to use unconventional tactics to prevent, detect, and deter future terrorist attacks. Specifically, the use of "extraordinary renditions"⁷ which he notes was initially employed by the Reagan Administration in 1987 but was significantly expanded and used following the attacks on September 11. Unlike previous renditions which captured and brought detainees into the United States legal system, the more recent renditions have circumvented this process entirely. Additionally, Martin asserts "most antiterrorist abductions have placed subjects in covert detention [and] these suspects have been routinely tortured".⁸ Terrorists and suspected terrorists alike have been subjected to varying forms of torture at the United States military facility in Guantanamo Bay, Cuba (GITMO), as well as in Iraq at the Abu Ghraib prison, and at other "black sites" operated by the CIA.

These practices have undermined the frameworks of the United States' established criminal protections, the United States Uniform Code of Military Justice (UCMJ), in addition to international law, particularly with regard to upholding human rights as outlined with the Universal Declaration of Human Rights. Lygutas also draws attention to the expansion of domestic law enforcement's "investigative powers"⁹ by reducing the standards required to obtain a court order for surveillance operations focused on gathering electronic intelligence from foreign nationals. Moreover, Doyle eloquently references the Fifth Amendment to the United States Constitution, which explicitly states "No person... shall be compelled in any criminal case

⁷ Martin, G. (2012). *Understanding Terrorism: Challenges, Perspectives, And Issues* (Second Edition). *Sage Publications*. 475.

⁸ *Ibid*, 475.

⁹ Lygutas, A. (2009). *Human Rights In The Context Of Counter-Terrorism Measures: United States of America*. *Mykolas Romeris University*. 148.

to be witness against himself, nor be deprived of life, liberty, or property, without due process of law.”¹⁰ Specifically, the question if U.S. jurisdiction and laws are still applicable outside the United States. As outlined in *Miranda v. Arizona*, individuals arrested are read their Miranda rights and are informed of what can be used against them in a court of law. However, Doyle points out two significant provisions to this clause. First, the United States Supreme Court (SCOTUS) has yet to decide on what extent, if any, Miranda rights apply to interrogations being conducted outside the sovereign territory of the United States. Furthermore, the Court has recognized some exceptions to this rule. Primarily, Miranda can be neglected in order to protect “an officer’s safety and that of the public,”¹¹ otherwise known as the public safety exception. Scholars are in agreement that the United States has and is currently utilizing extra-judicial frameworks to combat terrorism.

Examining Rule of Law within the Clinton, Bush, and Obama Administrations

In analyzing the United States’ compliance with rule of law when enacting counterterrorism strategies and tactics, scholars specifically focus on examining Presidential Administrations. Steven Koven details the Bush Administration’s approach to combatting terrorism and consequent failure to comply with domestic legal frameworks. According to Koven, “the Bush administration appears to have violated the checks and balances on arbitrary power through its formation and implementation of interrogation policies.”¹² Jeffrey Mashaw further notes the Bush Administration was in many regards more “aggressive” in its pursuit to

¹⁰ Doyle, C. (2010). Terrorism, Miranda, And Related Matters. *Journal of Current Issues In Crime, Law & Law Enforcement*. Retrieved from <https://fas.org/sgp/crs/terror/R41252.pdf>

¹¹ Ibid.

¹² Koven,S. (2009). Separation of Powers, Rule of Law, And The Bush Administration, *Public Integrity*. Retrieved from <https://www.tandfonline.com/doi/abs/10.2753/PIN1099-9922110403?journalCode=mpin20>

thwart terrorist activities. Mashaw further details some of the more notorious acts, such as “warrantless domestic surveillance, degrading treatment of prisoner, sometimes amounting to torture; [and] extraordinary rendition of suspects”.¹³

Moreover, Mashaw diverges from Koven and asserts there are other contributing factors to consider when addressing the issue of “maintenance of rule of law” and “checks and balances”. Mashaw depicts that actions undertaken by the Office of Legal Counsel and the United States Department of Justice as inept, particularly “laughably incompetent.”¹⁴ The ability to have full-proof checks and balances has proved to be enormously difficult, especially during times in which the executive branch is enacting policies to maintain national security. Both Koven and Mashaw contend there was a failure of “checks and balances” to prevent the illegal detention, torture, and increased surveillance by the Bush Administration. Scholars note that such events took place until public awareness was increased by non-governmental organizations, *i.e.* to Human Rights Watch, along with “institutional reaction” from the judicial branch. However, the Bush administration cited the SCOTUS case *Korematsu v. U.S.* which the Court ruled that under extreme circumstances and duress, the executive is legally afforded powers to protect and defend the State. Thereby, acting under this precedent, the Bush administration did contend they acted lawfully and within the parameters set forth by the constitution on executive power.

In regards to the study of rule of law and terrorism, both Choi and Goldston describe the presence of democratic rule of law as a necessary mechanism to minimize the potential for

¹³ Mashaw, J. (2009). Due Processes of governance: Terror, The Rule Of Law, And The Limits Of Institutional Design. *Governance*. Retrieved from <http://onlinelibrary.wiley.com/doi/10.1111/gove.2009.22.issue-3/issuetoc>

¹⁴ *Ibid.*

citizens to use violent tactics for conflict resolution. Similarly, Joe Eyerman believes the establishment of rule of law frameworks that allow ordinary citizens the opportunity to peacefully resolve disputes, can further minimize the occurrence of domestic terrorism. However, Goldston and Eyerman fail to address the issues of international terrorism.

In taking a comprehensive approach, Choi describes democratic regimes as governments which are focused on preserving civil liberties and human rights. Choi believes democratic societies are “considered to foster a favorable environment for the activities of terrorist groups.”¹⁵ Choi further differentiates this approach by claiming democratic regimes are more susceptible to terrorist attacks than autocracies, as a result of the ability of people to freely move about a democratic society. Although he does assert religion and ideology play a minimal role in what promotes or enables international terrorism, he fails to fully capture what role each of these respective concepts plays in combatting terrorism.

The role of utilizing extra-judicial frameworks to prosecute and ultimately, prevent, detect, and deter terrorism is outlined by Choi, Goldston, Lygutas, and Martin. However, Martin keenly points out the best defense to terrorism is “broad popular support to control for terrorist activities through normal channels of law enforcement without resorting to count-terror.”¹⁶ He asserts a primary objective of terrorist networks is to “enrage the beast”¹⁷ and is encouraged as well as in some regards validated when the State employs the use of terror tactics to suppress further acts of aggression. Martin suggests States minimize and reduce the potential population

¹⁵ Choi, S.W. (2010). *Fighting Terrorism Through The Rule Of Law?* *Journal of Conflict Resolution*. Retrieved from <http://journals.sagepub.com/doi/abs/10.1177/0022002710371666>

¹⁶ Martin, G. (2012). *Understanding Terrorism: Challenges, Perspectives, And Issues (Second Edition)*. Sage Publications. 475.

¹⁷ *Ibid*, 560.

of supporters for terrorist groups, which will in turn dry up the support base for such radical groups.

An additional concept reviewed within the literature relates to the gathering of intelligence. Following the attacks of September 11, 2001, the AUMF and Patriot Act allowed the executive to employ extra-judicial frameworks to garner intelligence while allowing domestic agencies to cooperate via sharing information. As a result, the divide between the F.B.I. and C.I.A was breached with renewed focus on interagency cooperation and information sharing. Additionally, some of the extra-judicial approaches advanced ranged from wire-tapping to a reduction of burden of proof to more easily procure warrants. Paul Wilkinson emphasizes “a crucial requirement for defeating any terrorist campaign must be the development of high-quality intelligence.”¹⁸ As a result of the lack of agency coordination, Martin draws attention to President Bush’s policy of creating the position of Director of National Intelligence. Though the scope of intelligence is vast, reviewing the creation of enacted policies, such as wiretapping and the appointment of the Director of National Intelligence, reflects the changing paradigm to focus on increasing the availability of information to policy makers.

The literature on Presidents Bush and Obama directly pertains to enacting counterterrorism strategies. However, they differ in their explicit approach. Kassop is focused on identifying the underlying internal causes that shaped the decision-making processes of President Obama, whereas Lygutas and Koven focus their respective research on examining the legality of actions undertaken by President Bush. Both have significant utility in depicting the nature of each respective administration. The flaws in Koven and Lygutas’ respective articles deals with

¹⁸ Wilkinson, P. (2001). *Terrorism Versus Democracy: The Liberal State Response*, Taylor & Francis. 105

not further examining the decision-making processes. Particularly, what factors led an administration to take such policy actions? Was bureaucratic rivalry a source of conflict during the decision-making process? Also, Kassop could further build upon the internal approach by including how Obama administration policies relate to domestic and international rule of law frameworks.

President Obama's administration sought to enact policies in line with rule of law, and with a greater focus on rule of law, his administration was fairly consistent with compliance. There have been cases where the United States has sought to press criminal charges within domestic courts against non-State actors, such as Richard Reid and Umar Farouk Abdulmutallab; however, there have been other instances when extra-judicial frameworks were employed, one such instance was the targeted assassination of suspected American terrorist Anwar al-Awlaki. Executive Order 12333 places a prohibition on the use of targeted assassination, which suggests the al-Awlaki assassination as being noncompliant. The relevance of these events may illuminate what could be a new policy approach to govern by rule of law. The strength of this argument centers on the utilization of existing legal infrastructures to prosecute suspected enemy combatants. However, there are two glaring weaknesses of this article. First, these cases have occurred on a limited basis, and more pressing, President Obama has begun to surveil, imprison, and at times, utilize drone strikes against American citizens who are suspected of being involved with terrorist-related offenses overseas.

Scholars in this field have significantly increased the knowledge base regarding the relationship between United States rule of law compliance and enactment of counter-terrorism strategies. Particularly, scholars have identified: the presence of rule of law is essential in thwarting terrorist activities; the need for greater intelligence gathering and dissemination

amongst the respective government agencies; and the utilization of judicial and extra-judicial mechanisms within the Clinton, Bush, and Obama administrations. However, it is worth noting that no President could ever openly admit to operating outside the rule of law for fear of reprisal and reprimand. As such, there is a gap within the literature regarding the impact of: terrorist actor, the location of terrorist attacks, as well as Presidential ideology upon rule of law compliance. My research will examine the role each of these independent variables has upon my dependent variable within the three given cases.

Although scholars have researched the actors and retaliatory responses of the United States in regard to terrorism, there is little literature relating to the location of such events and its effect upon policy. Having reviewed the attacks in Nairobi, Kenya, and Tanzania, and the attack on the U.S.S. Cole off the coast of Yemen, along with the Oklahoma City Bombing and first World Trade Center bombing, it would be insightful to examine if location of terrorist attacks prompts any shift within the policy realm. Moreover, as scholars have briefly mentioned the prosecution of domestic and foreign terrorists, there needs to be further research regarding if the United States prosecutes foreign born terrorists differently from domestic born terrorists.

Research Design

The subject I am examining is the United States' compliance with rule of law, when it responds to domestic and international terrorism. In order to examine this topic, I will discuss my rationale for case selection, hypotheses, and methodology.¹⁹

¹⁹ Roselle, L. and Spray, S. (2008). Research and Writing in International Relations. *Longman*.

Case Selection

This study examines three separate cases, the Clinton, Bush and Obama administrations. In each case, I examine the rule of law and which variables impact compliance. These cases were selected as they allow for control over a myriad of variables. First, selecting the Clinton, Bush, and Obama administrations allow for a modern examination of terrorism, following the end of the Cold War. Moreover, selecting administrations within the United States will allow for control over the impact of culture, economic system, and political system. Assuming each administration will operate within the same culture, economic system, and political system, these variables can be held as constant and allow for the examination over my three independent variables.

Within each administration, terrorist attacks that occurred during their tenure will be examined. The Federal Bureau of Investigation's Major Terrorist Cases lists the terrorist attacks and incidents that occurred under the Clinton, Bush and Obama Administrations. This data will be used to characterize the type terrorist actor involved, the location of terrorist attack, along with the response of each administration.

Variables and Operationalization.

What causes variation in the United States compliance with domestic and international rule of law? In this study, the dependent variable is rule of law compliance; the independent variables are (1) terrorist actor (United States citizen vs. foreign national), (2) location of terrorist attack (domestic vs. abroad), and (3) Presidential ideology.

The dependent variable of United States' compliance with *rule of law*, is defined as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced

and independently adjudicated, and which are consistent with international human rights norms and standards”.²⁰ Disagreement with or operating outside the rule of law is coded as *noncompliant*, more specifically the lack of adherence to domestic as well as international frameworks governing the treatment of terrorist suspects. Precisely, they are coded if they operate outside the legal confines of domestic law, international law, or both.

For my first independent variable, terrorist actor, I differentiate between United States terror suspects as individuals with United States citizenship and foreign national terror suspects as those who are not United States citizens. Additionally, individuals with United States citizenship will be classified as being natural born citizens or naturalized citizens. This allows for further examination to see if American citizens are tried differently based upon their type of citizenship. Moreover, to see if American citizens are treated differently within the United States and abroad.

For my second independent variable, location of terrorist attack, domestic attacks will be those that have occurred within the continental United States. Examination of domestic attacks include but are not limited to: Oklahoma City Bombings, the 1993 World Trade Center Bombing, attacks on September 11, 2001, as well as 2013 Boston Marathon attacks, the 2015 San Bernardino attacks, and the 2016 Orlando nightclub shooting. Attacks on U.S. personnel, facilities, and property outside the continental United States will be denoted as occurring abroad.

My final independent variable, Presidential ideology, focuses on American political ideologies, which fall under center ideologies on the political spectrum. The two ideologies

²⁰United Nations: Department of Peacekeeping Operations and the Office of the High Commissioner for Human Rights. (2011). Rule of Law Indicators: The United Nations Implementation Guide and Project Tools (First Edition). Retrieved from https://peacekeeping.un.org/sites/default/files/un_rule_of_law_indicators.pdf

under examination will be neo-liberal (Clinton and Obama) and neo-conservative (Bush). Neo-liberals believe in utilizing international institutions and partnerships to forge alliances in upholding U.S. national security, along with promoting peace and security. Moreover, neo-liberals contend, policies should be “formulated according to cooperative and ethical standards”²¹. Unlike neo-liberals, neo-conservatives primarily focus on advocating for a strong U.S. presence in foreign affairs, which includes the use of military force and intervention, to maintain and protect U.S national security.²² Gus Martin argues a core principle of the neoconservative ideology centers on the “aggressive promotion”²³ of democracy, and in order to achieve this end state, “global intervention is necessary, and pre-emptive wars sometimes need to be fought.”²⁴ A fundamental difference between these competing ideologies is neo-liberals adopt cooperative policies and predominately act within given legal structures. Neoconservatives however, contend the United States, in order to maintain national security, must preserve its position as the sole hegemonic power in the world.²⁵ A second tenet of neo-conservatism, as exhibited by the Bush Doctrine, condones the preemptive use of military force within the international community.²⁶ Jean-Francois Drolet notes these neoconservative ideals “share the classical realist view that war and conflict are ultimately rooted in man’s natural drive for self-

²¹ Rourke, J., Boyer, A. *International Politics on the World Stage: Thinking and Caring about World Politics*. McGraw-Hill

²² Martin, G. (2012). *Understanding Terrorism: Challenges, Perspectives, And Issues* (Second Edition). Sage Publications. 33.

²³ Ibid

²⁴ Ibid

²⁵ Schmidt, B.C., and Williams, M.C. (2008). *The Bush Doctrine and the Iraq War: Neoconservatives versus Realists*. *Security Studies*. Retrieved from <http://www3.nccu.edu.tw/~lorenzo/Schmidt%20and%20Williams.pdf>

²⁶ Ibid

preservation [and] competition.”²⁷ In other words, States are in a constant struggle for power and survival.

In this study, it is imperative to understand what the concepts of *terrorism* and *extrajudicial frameworks* mean. Defining terrorism has been hotly contested within the international community – what one country may define as a terrorist, another may view the same as a freedom fighter. Therefore, considering the focus of this research is on United States rule of law compliance in response to terrorism, I will use the Federal Bureau of Investigation’s (F.B.I.) definition. The F.B.I. defines domestic terrorism with three primary characteristics, specifically actions which “involve acts dangerous to human life that violate federal or state law; appear intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and occur primarily within the territorial jurisdiction of the United States.”

Furthermore, the F.B.I. defines international terrorism with three characteristics, which “involve violent acts or acts dangerous to human life that violate federal or state law; appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping and occur primarily outside the territorial jurisdiction of the U.S., or transcend national boundaries in terms of the means by which they are

²⁷ Drolet, J. (2010). A liberalism betrayed? American Neoconservatism and the theory of international relations. Retrieved from <http://web.a.ebscohost.com.ezproxy.libraries.wright.edu/ehost/pdfviewer/pdfviewer?vid=0&sid=dc0b770a-52b9-4898-9fa6-bf891fee41b8%40sessionmgr4010>

accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum”.

The concept of *extra-judicial frameworks* or noncompliance with rule of law will be noted as failure or refusal to comply with domestic law, international law, or both when enacting counter-terrorism operations. Although it is an imperfect definition, it provides a basis for understanding the contrast between using existing legal processes, in comparison to employing new policies and approaches.

To understand if administrations adhere to rule of law, compliance is divided into four categories: (1) compliance with domestic rule of law compliance but non-compliant with international law, (2) compliance with international rule of law but noncompliant with domestic law, (3) compliant to both domestic and international law, or (4) non-compliant with domestic and international law. In determining rule of law compliance, I will examine a wide array of sources, including but not limited to: United States counter-terrorism operations and existing legal civil and military statutes, SCOTUS decisions, legal and academic scholars, as well as non-governmental organizations assessments. International rule of law compliance will examine international frameworks and cases before the International Criminal Court, the International Court of Justice, the World Court, legal and academic scholars, as well as assessing reports from non-governmental organizations, *e.g.* Human Rights Watch and Amnesty International, to determine the legality of United States Administration’s counter-terrorism measures.

The first independent variable I will examine is the type of terrorist actors. Does the United States detain and prosecute American citizens who have engaged in acts of terrorism differently than foreign national terrorists? To determine if the type of actor changes compliance, I examine each of the major incidents listed under the Federal Bureau of Investigation’ Major

Terrorism Cases list and ascertain if each administration complied with United States Federal law as well as international law when detaining and prosecuting domestic and foreign national terrorists.

The second independent variable examines the location of terrorist attacks. This study sets out to determine if the location of terrorist attacks (domestic vs. foreign) change the way terrorists are detained and prosecuted. Domestic attacks will be defined as attacks that occur within the United States and foreign attacks will be noted as attacks against United States' facilities and personnel abroad. For this variable I will analyze the impact of location of terrorist attacks and if the location shifts rule of law compliance in the Clinton, Bush, and Obama administrations.

For the third independent variable of Presidential ideology, I outline the political rhetoric of the two primary parties, Republican and Democratic, and compare their Presidential ideology and rhetoric against the policy measures enacted by the respective Clinton, Bush, and Obama Administrations to determine what role Presidential ideology has upon rule of law compliance.

Hypotheses

In applying the three independent variables, I have created four distinct hypotheses regarding rule of law compliance.

(H1) Foreign nationals are more likely be subjected to extra-judicial framework measures, such as extraordinary rendition, torture, and denial of due process.

(H2) United States citizens that are suspected terror suspects will be afforded due process, as outlined in the United States Constitution, and be detained and prosecuted under current rule of law measures.

(H3) Domestic terrorist attacks will cause Presidential administrations to enact counterterrorism policies that are non-compliant with existing rule of law.

(H4) Neo-liberals administrations will adopt policies compliant with existing rule of law, while neo-conservative administrations will employ “extra-judicial” frameworks.

Methodology

In analyzing the hypotheses and impact of the variables, I will utilize a qualitative analysis approach. In order to effectively identify and measure the conceptual relationship between the variables, I will use a comparative case study in order to “achieve a high level of conceptual validity [and] measure the indicators that best represent the theoretical concepts.”²⁸ Although this study has a low sample size, N=3, it does provide a longitudinal examination spanning three administrations, all of which were elected to two terms. I will use a comparative case study framework to examine each administration. Using this method allows for more generalizable findings from the research. Moreover, utilizing this approach is extraordinarily beneficial as it lends more depth in analyzing the given phenomena as well as potentially identifying the causal link between rule of law compliance and the variables of terrorist actor, the location of terrorist attacks, and Presidential ideology.

After thoroughly examining each case, I found the independent variable of Presidential ideology has a positive effect upon on rule of law compliance and as a result, shifts administrations from compliant to noncompliant. After analyzing each case study and the impact of the dependent variables, the variables of terrorist actor type and location of terrorist attack have little to no effect upon compliance. The lone caveat is following the attacks of September

²⁸ George, A., Bennett, A. (2005). *Case Studies And Theory Development In The Social Sciences*, MIT Press. 19

11, 2001, the United States adopted new legislation to prevent further attacks on the homeland. Though these new laws allowed for greater authority to the executive branch, the Bush administration adopted even further “extra-judicial” frameworks to deter future attacks. Though President Bush and Obama operated in a post September 11 world, the research shows President Obama reining in many of the neo-conservative policies of the Bush era that were non-compliant with rule of law. In this study, the trends and data suggest greater similarities in compliance tactics between the Clinton and Obama Administrations, rather than the Bush administration.

Chapter 2: Counter-Terrorism before September 11, 2001

The William Jefferson Clinton Administration (1993-2001)

“Democracies don’t go to war against each other, and by and large they don’t sponsor terrorism. They’re more likely to respect the environment and human rights and social justice. It’s no accident that most of the terrorists come from non-democratic countries.”

-President Clinton

Introduction

Beginning in the early 1990’s, the United States began to face a concentrated terrorism campaign²⁹ which focused attacks on maximizing mass casualties through a myriad of violent acts, and indiscriminately targeted U.S. citizens at home and abroad. Albert Bandura highlights the rationale behind such action. In order for terrorists to accomplish their main objective, they must “exercise influence over targeted officials or nations through intimidation of the public and arousal of sympathy for the social and political causes they espouse”³⁰ and in doing so, “...without widespread publicity, terrorist acts can achieve neither of these effects”³¹. Having considered this rationale, we must examine this new terrorist threat facing the United States. During the Clinton Administration, the F.B.I. identified six prominent cases, under their Terrorism Major Cases, which are: the World Trade Center Bombing (1993); the Oklahoma City Bombing (1995); the Unabomber (1996); the embassy bombings in Tanzania & Kenya (1998); Ahmed Ressam’s Millennium Plot (1999); as well as the attack on the U.S.S. Cole (2001). These terrorist attacks began a new chapter of anti-American terrorism. In response to these various

²⁹ Feste, A. (2011). *America Responds to Terrorism: Conflict Strategies of President Clinton, Bush, and Obama*. Palgrave Macmillan. Retrieved from <http://web.a.ebscohost.com.ezproxy.libraries.wright.edu/ehost/pdfviewer/pdfviewer?sid=d10f4567-2166-47d2-9556-072ae63cdd54%40sessionmgr4006&vid=1&hid=4106>: 3

³⁰ Bandura, A. (1990). *Mechanisms of Moral Disengagement in Terrorism*. Stanford University. Retrieved from <https://www.uky.edu/~eushe2/Bandura/Bandura1990MoralDis.pdf>:

³¹ Ibid.

attacks, would the United States detain and prosecute these terror-suspects under current United States laws? What rights, if any, would be afforded under the Geneva Convention? Would the U.S. government detain and prosecute these individuals differently based upon their citizenship or labeling as a non-State actor? Would the location of the terrorist acts have any discernable role in how the United States would comply with current legal frameworks? If the United States does treat terror-suspects contrarily, what can be attributed to this phenomenon and what impact does it have moving forward?

This chapter analyzes the Clinton Administration's response to the foreign and domestic terrorist attacks against the United States, while examining what role (1) terrorist actor (United States born-citizen; United States naturalized citizen; and foreign-national); and (2) location of terrorist attack, have upon determining rule of law compliance; as well as what role (3) Presidential Ideology has upon rule of law compliance. Hypothesis (1) assumes foreign national terrorists are more likely to be subjected to extra-judicial framework measures, such as extraordinary rendition, whereas Hypothesis (2) suggests citizens born within the United States will be tried under existing legal frameworks and not subjected to extra-judicial mechanisms. If this is valid, we should see variance in rule of law application that favors the treatment of U.S. citizens, in comparison to foreign nationals. Hypothesis (3) contends terrorist attacks occurring within the borders of the United States will prompt a shift in rule of law compliance, rather than attacks which occur abroad. During the Clinton Administration, the United States experienced foreign and domestic terrorist attacks, which can allow for careful examination of what impact the location of attacks has upon shaping rule of law compliance. To conclude this chapter, I will give a brief summary of the events, as well as reevaluate my hypotheses.

Domestic Terrorist Attacks

During the Clinton Administration, there were four major instances of domestic terrorism that occurred within the continental United States: the World Trade Center Bombing; the Oklahoma City Bombing; the Unabomber Attacks; and the attempted Millennium plot by Ahmed Ressam. In order to examine these terrorist attacks, each incident will be assessed on: where the attack took place, the type of actor involved, and the how the Clinton administration responded.

1993 World Trade Center Bombing

On February 26, 1993, the World Trade Center (WTC) shook as a car bomb exploded in the underground parking garage below. The attack killed six individuals and left more than 1,000 injured³². Following the attack, the F.B.I. began investigating and concluded that Ramzi Yousef (Pakistani citizen), Mohammed Salameh (Palestinian citizen), Abdul Yasin (U.S. born citizen), Mahmoud Abouhalima (Egyptian citizen), Ahmed Ajaj (Palestinian citizen), Nidal A. Ayyad (Kuwaiti citizen), and Eyad Ismoil (Kuwaiti citizen), were all directly involved in carrying out the attack³³ and began a world-wide manhunt to capture them. Upon further investigation, the F.B.I determined Ramzi Yousef to be the mastermind behind the World Trade Center bombing and details of the attack, as well as future terrorist attacks uncovered were deemed to be “the most ambitious terrorist conspiracies ever attempted against the United States”³⁴. Yousef’s attack

³² Cable News Network. (2018). 1993 World Trade Center Bombing Fast Facts. *CNN*. Retrieved from <http://www.cnn.com/2013/11/05/us/1993-world-trade-center-bombing-fast-facts/>

³³ Federal Bureau of Investigation. (2008). FBI 100 – First Strike: Global Terror in America. *F.B.I.* Retrieved from https://archives.fbi.gov/archives/news/stories/2008/february/tradebom_022608

³⁴ Mylroie, L. (1995/96). The World Trade Center Bomb: Who is Ramzi Yousef? And Why It Matters. *The National Interest*. Retrieved from http://www.jstor.org/stable/42895058?seq=1#page_scan_tab_contents.

on the WTC and future plots were intended as a response to U.S. support of Israel and their oppression of the Palestinian people.

The Clinton Administration sought to capture and prosecute those involved with the WTC bombing. The F.B.I., in coordination with the State Department, located Ramzi Yousef abroad³⁵, arrested him, and brought him back to the United States to stand trial. Similar to the capture of Yousef, Mahmoud Abouhalima was arrested by Egyptian authorities and extradited back to the United States. The other conspirators, Mohammed Salameh, Ahmed Ajaj, Nidal Ayyad, and Eyad Ismoil were found and arrested within the United States. During the Clinton Administration, the United States captured six of the seven suspected terrorists involved in the WTC bombing – only Abdul Yasin remained at large. Acting in accordance with domestic federal law, 18 U.S. Code Chapter 113B³⁶, the Clinton Administration tried the conspirators of the WTC bombing in U.S. federal courts and the courts sentenced each conspirator to 240 years in prison. Upon appeal, *United States v. Ramzi Ahmed Yousef*, Bilal Alkaysi, Abdul Rahman Yasin³⁷, the court ordered a resentencing hearing for the accused which reduced the time of incarceration from 240 years, down to 100 years.

³⁵ Cable News Network. (2018). 1993 World Trade Center Bombing Fast Facts. *CNN*. Retrieved from <http://www.cnn.com/2013/11/05/us/1993-world-trade-center-bombing-fast-facts/>

³⁶ United States Code. Terrorism: Criminal Penalties

Pub. L. 99–399, title XII, § 1202(a), Aug. 27, 1986, 100 Stat. 896, § 2331; amended Pub. L. 101–519, § 132(b), Nov. 5, 1990, 104 Stat. 2250; Pub. L. 102–27, title IV, § 402, Apr. 10, 1991, 105 Stat. 155; Pub. L. 102–136, § 126, Oct. 25, 1991, 105 Stat. 643; renumbered § 2332 and amended Pub. L. 102–572, title X, § 1003(a)(1), (2), Oct. 29, 1992, 106 Stat. 4521; Pub. L. 103–322, title VI, § 60022, Sept. 13, 1994, 108 Stat. 1980; Pub. L. 104–132, title VII, § 705(a)(6), Apr. 24, 1996, 110 Stat. 1295. (18 U.S. Code § 2332 et seq.) Retrieved from <https://www.law.cornell.edu/uscode/text/18/2332>

³⁷ *United States v. Ramzi Ahmed Yousef, Bilal Alkaysi, Abdul Rahman Yasin, Abdul Hakim Murad, Ead Ismoil, Wali Khan Amin Shah, Defendants*. 327 F.3d 56 (2d Cir. 2003). Retrieved from <http://caselaw.findlaw.com/us-2nd-circuit/1397069.html>

Oklahoma City Bombing

Early morning on Wednesday, April 19, 1995, a Ryder truck parked in front of the Alfred P. Murrah Federal Building in Oklahoma City, packed with “5,000 pounds of explosives,”³⁸ exploded, killing 168 people and injuring hundreds more. According to the F.B.I., the scope of the Oklahoma City bombing was one of the deadliest acts of homegrown terrorism to have occurred in the United States. In response to the attack, the F.B.I. began to investigate and determined Timothy McVeigh to be the main culprit. McVeigh’s plot to attack the Murrah Building stemmed from what he perceived as the U.S. Government’s attack upon American citizen’s personal freedoms and constitutional rights.³⁹ Specifically, he viewed the Federal Government’s response to the Waco, Texas shootout between Federal agents and David Koresh cult followers, as a direct assault on the American people and sought to bring about a new American revolution⁴⁰.

Following the attack Timothy McVeigh was arrested during a routine traffic stop. Two days later, Terry Nichols, McVeigh’s fellow conspirator, turned himself in to authorities.⁴¹ Both Timothy McVeigh and Terry Nichols were tried in federal courts. McVeigh was convicted on “11 counts of murder, conspiracy and using a weapon of mass destruction”⁴² and sentenced to death. Nichols was found guilty on federal charges of involuntary manslaughter and conspiracy charges. He was sentenced to life in federal prison.

³⁸ Federal Bureau of Investigation. The Oklahoma City Bombing: 20 Years Later. *F.B.I.* Retrieved from <https://stories.fbi.gov/oklahoma-bombing/>

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Cable News Network. (2017). Oklahoma City Bombing Fast Facts. *CNN*. Retrieved from <http://www.cnn.com/2013/09/18/us/oklahoma-city-bombing-fast-facts/>

⁴² Ibid.

In response to the Oklahoma City Bombing, the United States government enacted antiterrorism measures, in order to "... [Enhance] security, and other defensive measures seeking to deter or prevent terrorist attacks."⁴³ To begin improving security, President Clinton issued Executive Order 12977 which established the Interagency Security Committee (ISC). The primary function of ISC was to "address security concerns and implement new standards"⁴⁴ for federal facilities. This new system implemented enhanced security measures based upon the classification of the federal facility. Moreover, to deter future attacks, the U.S. government passed the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The AEDPA limited criminal defendant's ability to appeal cases on the grounds of habeas corpus by requiring defendants to "put all of their claims into one appeal [and] further narrow the grounds on which successful habeas claims can be made."⁴⁵ The AEDPA not only sought to strengthen U.S. law but deter future terrorist activity by limiting the legal remedies afforded under U.S. law.

The Unabomber

Beginning in 1978, a series of mailed and hand delivered bombs were sent to various institutions and locations across the United States. The attacker became known as the Unabomber, because the explosive packages were being sent to "UNiversity and Airline

⁴³ Martin, G. (2012). *Understanding Terrorism: Challenges, Perspectives, And Issues* (Second Edition). Sage Publications. 476

⁴⁴ Security: Making America Safer. *Oklahoma City National Memorial & Museum*. Retrieved from <https://oklahomacitynationalmemorial.org/wp-content/uploads/2015/03/OKCNM-security-lesson-plan.pdf>

⁴⁵ United States Code: Antiterrorism and Effective Death Penalty Act of 1996

28 U.S.C. § 2254. Retrieved from https://www.law.cornell.edu/wex/antiterrorism_and_effective_death_penalty_act_of_1996_aedpa

BOMBing targets”⁴⁶. The attacks spanned nearly two decades and resulted in the deaths of three Americans and injuries to 24 others. It wasn’t until 1996 when authorities arrested Ted Kacynski. In complying with rule of law, the United States prosecuted Kacynski in federal court – *United States v. Kacynski*. On May 4, 1998, Ted Kacynski was “sentenced to four consecutive life sentences, plus 30 years imprisonment.”⁴⁷

Ahmed Ressam’s Millennium Plot

In December of 1999, Ahmed Ressam, an Algerian citizen, was arrested for “attempting to enter the U.S. with components used to manufacture improvised explosive devices”⁴⁸. While being interrogated, Ressam admitted his plan was to detonate a bomb at the Los Angeles International Airport on the eve of the 2000 Millennium celebrations. The Clinton Administration brought suit against Ahmed Ressam in *United States v. Ressam*.

Ressam was tried in federal court and convicted on nine counts of “criminal activity in connection with his plot to carry out an attack against the United States by detonating explosives at the Los Angeles International Airport.”⁴⁹ The sentencing guidelines ranged between 65 years to life in prison. In 2001, Ressam began cooperating with the U.S. Government, divulging information regarding al-Qaeda (A.Q.) operations, affiliates, and tactics, in exchange for a

⁴⁶ Federal Bureau of Investigation. (2008). FBI 100: The Unabomber. *F.B.I.* Retrieved from https://archives.fbi.gov/archives/news/stories/2008/april/unabomber_042408

⁴⁷ Ibid.

⁴⁸ Federal Bureau of Investigation. Millennium Plot/Ahmed Ressam. *F.B.I.* Retrieved from <https://www.fbi.gov/history/famous-cases/millennium-plot-ahmed-ressam>

⁴⁹ *United States v. Ahmed Ressam, Defendant-Appellee*. 474 F.3d 597 (9th Cir. 2007). Retrieved from <http://caselaw.findlaw.com/us-9th-circuit/1506151.html>

reduced prison sentence. However, after two years of cooperation, Ressay began to recant and ceased cooperating with the Government.

Terrorist Attacks Abroad

Having already experienced multiple domestic terrorist attacks, the United States was confronted with further terrorist attacks abroad – the bombings at the United States Embassies in Dar es Salaam and Nairobi in Tanzania and Kenya, along with the suicide-attack against the U.S.S. Cole. The same methodical approach will be employed to study terrorist attacks abroad – examining where the attack took place, the type of actor involved, and the how the administration responded.

Embassy Bombings: Tanzania & Kenya

In a hallmark of al-Qaeda attacks, nearly simultaneously, the U.S. Embassy in Nairobi, Kenya and U.S. Embassy in Dar es Salaam, Tanzania were attacked by truck bombs on August 7, 1998.⁵⁰ More than 200 people were killed in the attacks on the U.S. Embassies, including 12 U.S. citizens, and over 4,000 people injured⁵¹. Following the attacks, the F.B.I. identified al-Qaeda as the terrorist organization responsible for the attacks. After analyzing intelligence reports and evidence collected from the embassies, the United States indicted more than twenty individuals in response to the attack, the most prominent terror-suspect indicted was Usama Bin-Laden.

⁵⁰ Abdallah, S., Heinzen, R, & Burnham, G. (2007). Immediate and long-term assistance following the bombing of the US Embassies in Kenya and Tanzania. *Disasters*, P. 417

⁵¹ Perl, R. (1998) Terrorism: U.S. Response to Bombings in Kenya and Tanzania: A New Policy Direction? *Congressional Report*, P. 2

On August 20, 1998, President Clinton authorized the launch of missile strikes against al-Qaeda training bases in Afghanistan. Additionally, the United States attacked a pharmaceutical plant in Sudan, “as a precursor chemical weapons facility with connections to bin Laden.”⁵² This retaliatory response was significant, as it was, “the first time the U.S. has given such primary and public prominence to the *preemptive*, not retaliatory, nature and motive of a military strike against a terrorist organization or network.”⁵³ This is the first instance during the Clinton Administration of a preemptive military strike in response to a terrorist attack. Prior to this instance, the United States’ response to terrorism has centered on detention of terror-suspects and trying them in federal courts.

Attack against the U.S.S. Cole

On October 12, 2000, the U.S.S. Cole was refueling in the Port of Aden in Yemen, when a small boat carrying suicide-bombers came alongside the U.S. Navy Destroyer and exploded – killing 17 U.S. Navy sailors and injuring 39 others.⁵⁴ In the wake of the terrorist, the F.B.I. determined that al-Qaeda operatives had planned and carried out the bombing⁵⁵. Following the attack on the U.S.S. Cole, President Clinton issued a statement, “If, as it now appears, this was an act of terrorism, it was a despicable and cowardly act. We will find out who was responsible and hold them accountable.”⁵⁶ The Clinton Administration, specifically the Department of Defense (DOD), issued the DOD U.S.S. Cole Commission Report Executive Summary, which

⁵² Ibid. 3

⁵³ Ibid

⁵⁴ Federal Bureau of Investigation. USS Cole Bombing. *F.B.I.* Retrieved from <https://www.fbi.gov/history/famous-cases/uss-cole-bombing>

⁵⁵ Ibid.

⁵⁶ Starr, B., McWethy, J., & James, M. (2000). 6 Dead, Dozens Hurt in Attack on Navy Ship. *ABC News*. Retrieved from <http://abcnews.go.com/International/story?id=80798>

identified key areas that attributed to the attack. However, in regards to a retaliatory or follow-on preemptive strike, the Clinton Administration refrained from employing military action.

Presidential Ideology – The Neo-Liberal Presidency of Bill Clinton

Upon taking office, each President affirms a duty to uphold Article II, Section 1, Clause 8 of the United States Constitution, specifically to, “the best of my Ability, preserve, protect and defend the Constitution of the United States.”⁵⁷ This affirmation requires each Presidential administration to uphold rule of law, while protecting the country from threats, foreign and domestic. The concept of rule of law is vital to democratic societies, as it “helps to regulate behavior, resolve disputes, and enable the creation or revision of social rules”⁵⁸. U.S. rule of law is established in codified laws which govern the populace and define the scope of power of the three branches of authority in the U.S. system. Additionally, the international community has created and codified international laws, established in treaties, which govern how nations operate among one another. However, it is important to note what role international law has upon rule of law compliance.

Drawing upon United States Supreme Court Justice Horace Gray declaration in the *Paquete Habana*, “international law is part of our law.”⁵⁹ Article I, section 8, Clause 10 and Article III, Section 2 of the U.S. Constitution both recognize that the U.S. is “subject to international law.”⁶⁰ This notion to abide by international customary law dates back to the

⁵⁷ United States Constitution. Article II, Section 1, Clause 8. Retrieved from https://www.senate.gov/civics/constitution_item/constitution.htm#a2

⁵⁸ Sitaraman, G. (2013). *The Counterinsurgent’s Constitution: Law in the Age of Small Wars*. Oxford University Press. 183

⁵⁹ *The Paquete Habana*. 175 U.S. 677 (1900). Retrieved from <https://supreme.justia.com/cases/federal/us/175/677/case.html>

⁶⁰ Erickson, R. (1989). *Legitimate Use of Military Force Against State-Sponsored International Terrorism*, Air University Press, 10

beginning of the federal republic. However, the President is afforded executive powers, as established within the Constitution, to unilaterally revoke any treaty and as such, could not be legally challenged for doing so. Although this power to revoke treaties can affect Presidential Administration's ability to comply with U.S. laws, the United States can still be held accountable for violating international law by the international community⁶¹.

The Concept of Neo-Liberalism views world conflict as derived from competition, and in order operate in an anarchic world, States should cooperate to achieve mutually beneficial outcomes⁶². Neo-liberals can also be known as liberal institutionalists⁶³, considering, "they believe that the best way to achieve cooperation is to build effective international organizations"⁶⁴ which provide numerous benefits to the States involved. President William Jefferson Clinton was an ardent neo-liberal who sought to work with international organizations to cooperate with Member-States, in order to find mutually beneficial solutions. This was exhibited in a variety of ways during his Presidency. First, he sought to cooperate with other States, in order to extradite terrorists back to the United States for prosecution. Second, in upholding domestic rule of law and international customary law, the Clinton Administration equitably applied legal frameworks to terror-suspects. Lastly, it seems President Clinton's focus was on detaining and prosecuting terrorists, as stipulated by current rule of law frameworks. His administration did not employ extra-judicial frameworks of extraordinary rendition or targeted assassinations.

⁶¹ Ibid, P. 11

⁶² Rourke, J, (2007). *International Politics on the World Stage: Thinking and Caring About World Politics*. McGraw Hill. 26

⁶³ Ibid

⁶⁴ Ibid.

Summary

Analyzing the Clinton Administration's response to the foreign and domestic terrorist attacks against the United States, we can begin to identify what factors impact rule of law compliance. Furthermore, we can examine which hypotheses are applicable within the Clinton Administration.

When looking at what impact the type of terrorist actors have upon rule of law compliance, we can determine after reviewing the six identified cases of terrorist attacks, the Clinton Administration did not detain or prosecute terrorist actors differently based upon the citizenship. In nearly each circumstance, President Clinton operated within the confines of domestic and international rule of law by detaining and prosecuting terror-suspects in federal court. The only variation we can note stems from the U.S. Embassy bombings in Kenya and Tanzania. Though the Clinton Administration did indict the terror-suspects involved in the bombing, President Clinton did carry out retaliatory and preemptive military strikes in Afghanistan and Sudan. This new approach varied from Clinton's use of force in the past. Overall, it seems the type of terrorist actor had little to no impact upon rule of law compliance within the Clinton Administration. Further examination of the facts disprove hypothesis (1) and (2), thereby affirming rule of law was equitably applied to terror suspects, no matter what citizenship they held.

The next variable to evaluate focuses on what role the location of terrorist attacks had upon determining rule of law compliance. Specifically, Hypothesis 3 asserts terrorist attacks occurring within the borders of the United States will prompt a shift in rule of law compliance. The inverse could be stated that terrorist attacks occurring outside the continental United State will have little impact upon rule of law compliance. After the four cases of domestic terrorism,

the Clinton Administration passed the AEDPA following the Oklahoma City Bombing. The AEDPA limited habeas corpus, while enacting other provisions to deter further acts of terrorism, thereby strengthening governance by rule of law. However, unlike the passage of the AEDPA, President Clinton utilized preemptive military strikes overseas following the attack on the US Embassies. President Clinton sought to strengthen rule of law governance as a result from domestic terrorist attacks and instead responded with preemptive military strikes, in response to terrorist attacks outside the United States.

The last variable to evaluate is what role Presidential Ideology had upon rule of law compliance. President Clinton can be identified as a neo-liberal or as a liberal-institutionalist, who sought to work within international organizations and frameworks. Following the WTC bombing, President Clinton utilized cooperation with fellow Member-States to obtain, via extradition, terror-suspects, to be tried in U.S. federal courts. Moreover, under his administration, terror-suspects were afforded the same legal rights as U.S. citizens, and those rights did not vary based upon their citizenship. This equitable application is foundational within rule of law governance. As such, it undermines what terrorist set out to accomplish, “[to] have established governments overreact, acting outside the law as terrorists themselves do, and thereby undermining the legitimacy of the government itself”⁶⁵. The Clinton Administration’s national security strategy seemed to be grounded in neo-liberal values and beliefs. The only variation outside of neo-liberal norms occurred when President Clinton preemptively employed military strikes. This variation could be attributed to the oath of office which calls upon the Commander-in-Chief to preserve, protect and defend the Constitution and subsequently the American People.

⁶⁵ Erickson, R, (1989) *Legitimate Use of Military Force Against State-Sponsored International Terrorism*, Air University Press, 12

In conclusion, Presidential Ideology had a positive impact in determining rule of law compliance in the Clinton Administration. If this remains constant, we can determine how future administration will comply with rule of law, in response to domestic and foreign acts of terrorism based upon political ideology. However, what remains to be determined, is the magnitude of the attacks of September 11, 2001 impact upon rule of law compliance.

Chapter 3: Deterring Terrorism in the Aftermath of September 11, 2001

The George Walker Bush Administration (2001-2009)

“A great people has been moved to defend a great nation. Terrorist attacks can shake the foundations of our biggest buildings, but they cannot touch the foundation of America. These acts shattered steel, but they cannot dent the steel of American resolve. America was targeted for attack because we're the brightest beacon for freedom and opportunity in the world. And no one will keep that light from shining.”

-President Bush

Introduction

Throughout the 2000 Presidential election season, Governor George W. Bush campaigned on domestic issues and called for, “sharply reduced taxes, military modernization, Social Security and health care reform, and measures targeted to disadvantaged groups that fell under what he referred to as ‘compassionate conservatism.’”⁶⁶ Not only did his campaign focus on issues at home but his campaign adamantly opposed a “globally expansive foreign policy”⁶⁷. The Bush campaign warned of the perils of an “activist foreign policy”⁶⁸ model that focused on nation building, as it would strain support for U.S. policy objectives by the international community.

Upon taking office in 2001, President Bush faced a sharply divided public – a direct result of what many pundits have argued as the most contentious and “controversial presidential election in over a century.”⁶⁹ Though public support varied, he came into office with a Republican controlled House and Senate and with a budget surplus at his disposal. In the early

⁶⁶ Greenstein, F. (2004). *The Presidential Difference: Leadership Style from FDR to George W. Bush*, Princeton University Press.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Farnsworth, S., and Lichter S. (2004). *New Presidents and Network News: Covering the First Year in Office of Ronald Reagan, Bill Clinton, and George W. Bush*. *Presidential Studies Quarterly*. Retrieved from <http://web.a.ebscohost.com.ezproxy.libraries.wright.edu/ehost/pdfviewer/pdfviewer?vid=4&sid=4a52cd9c-586d-49ce-92e1-f435341b6d67%40sessionmgr4007>

months of his presidency, the Bush White House began to advance the domestic legislative agenda he campaigned on. Economic growth was the primary focus in the early stages of the Bush presidency – however, on the morning of September 11, 2001, the United States would be confronted with, “a terrorist attack unprecedented in scale.”⁷⁰

Domestic Terrorist Attacks

During the Bush Administration, the United States experienced three acts of domestic terrorism: the attacks of September 11, 2001; the Anthrax “Amerithrax” attacks; as well as the Washington D.C Beltway Snipers.

September 11, 2001

On the morning of September 11, 2001, four passenger airlines were hijacked by 19 al-Qaeda terrorists. In a series of coordinated attacks, they sought to destroy the foremost pillars of American economic, military, and political power (the North and South Tower of the World Trade Center, the Pentagon, and either the United States Capital Building or the White House).

Attempting to cripple the American economy, al-Qaeda leadership targeted the World Trade Center in New York, New York. American Airlines Flight 11 (AA 11) and United Airlines Flight 175 (UA 175), both departed from Logan International Airport in Boston, Massachusetts heading toward Los Angeles, California. Roughly fifteen minutes into the flight, five hijackers stormed the cockpit of AA 11 and took control of the aircraft. At 8:45 a.m., AA 11 crashed into

⁷⁰ Ibid.

the North Tower (One World Trade Center) killing 92 passengers and crew (including 5 hijackers)⁷¹.

Nearly 30 minutes into the flight, five hijackers breached the cockpit of UA 175 and at 9:05 a.m., crashed into the South Tower (Two World Trade Center), killing carrying 65 passengers and crew (including 5 terrorists).⁷² The attacks on the North and South Towers destabilized the very core foundation of the buildings. At 9:59 a.m., the South Tower fell in lower Manhattan. Less than thirty minutes later, the North Tower came down at 10:28 a.m. In total, 2,753 people perished at the World Trade Center.⁷³

American Airlines Flight 77 (AA 77) departed Washington Dulles International Airport at 8:10 a.m. en route to Los Angeles, California. Shortly into the flight, five hijackers rushed the cockpit and immediately began to turn the aircraft back to Washington D.C. Attempting to further incapacitate the United States Government's military capabilities, they crashed into the Pentagon at 9:39 a.m., killing 64 passengers and crew (including 5 hijackers), as well as 125 people in the building.⁷⁴

The fourth plane hijacked was United Airlines Flight 93 (UA 93) which took off from Newark International Airport bound for San Francisco, California. Shortly into the flight, four hijackers overtook the crew and aircraft. They planned to either target the "the White House or

⁷¹ Federal Bureau of Investigation. American Airlines 11. *F.B.I.* Retrieved from <https://archives.fbi.gov/archives/about-us/history/famous-cases/9-11-investigation/american-airlines-11>

⁷² Federal Bureau of Investigation. United Airlines 11. *F.B.I.* Retrieved from <https://archives.fbi.gov/archives/about-us/history/famous-cases/9-11-investigation/united-airlines-175>

⁷³ Cable News Network. (2017). September 11th Terror Attacks Fast Facts. *CNN*. Retrieved from <https://www.cnn.com/2013/07/27/us/september-11-anniversary-fast-facts/index.html>

⁷⁴ Federal Bureau of Investigation. American Airlines 77. *F.B.I.* Retrieved from <https://archives.fbi.gov/archives/about-us/history/famous-cases/9-11-investigation/american-airlines-77>

Capital Building.”⁷⁵ In conjunction with the other attacks, al-Qaeda sought to decapitate the United States Government with the hijacking of UA 93. However, passengers on board learned of the other hijackings and sought to take back control of the aircraft. At approximately 9:57, passengers and crew formulated a plan to take back control of the aircraft by charging the cockpit of UA 93. During the struggle, “According to the 9/11 Commission, the terrorists remained in control of the plane and chose to crash [the aircraft] rather than risk the passengers and crew regaining control.”⁷⁶ Due to the courageous acts of the passengers and crew on board, UA 93 never reached its intended target and crashed in a field near Shanksville, Pennsylvania killing all 44 passengers and crew (including 4 hijackers).

Anthrax “Amerithrax” Attacks

In the wake of September 11, the United States faced yet another domestic terrorist attack. On September 18, 2001, letters laced with anthrax were sent through the United States Postal Service to all the major media outlets.⁷⁷ In a follow-up attack, two additional letters were mailed to two United States Senators, Tom Daschle and Patrick Leahy. In response to the anthrax attacks, an F.B.I. investigation was launched to determine the culprit. The investigation, code named “Amerithrax”, would be one of the most complex investigations in law enforcement history.⁷⁸ Following years of forensic analysis, in early 2008, the F.B.I. investigation concluded Dr. Bruce Irvins, an Army scientist at Fort Detrick, Maryland, was the sole culprit for carrying

⁷⁵ National Memorial Pennsylvania: Flight 93. History & Culture: The Flight 93 Story. *National Park Service*. Retrieved from <https://www.nps.gov/flni/learn/historyculture/index.htm>

⁷⁶ Ibid

⁷⁷ Landers, J. (2014). The Anthrax Letters That Terrorized a Nation Are Now Decontaminated and on Public View. *Smithsonian*. Retrieved from <https://www.smithsonianmag.com/smithsonian-institution/anthrax-letters-terrorized-nation-now-decontaminated-public-view-180960407/>

⁷⁸ The Federal Bureau of Investigation. Amerithrax or Anthrax Investigation. *F.B.I.* Retrieved from <https://www.fbi.gov/history/famous-cases/amerithrax-or-anthrax-investigation>

out the deadly attacks which killed five people and injured twenty two others. Before he could be taken into custody and stand trial, Irvin took his own life.

Beltway Snipers

In October 2002, John Allen Muhammad (United States citizen) and Lee Boyd Malvo (Jamaican citizen) coordinated a series of sniper attacks which targeted people at random, throughout the Washington D.C. metropolitan area. Over the course of three weeks, Muhammad and Malvo's indiscriminate attacks resulted in the deaths of 10 people, while critically injuring three others⁷⁹. On October 24, the F.B.I and local law enforcement officials captured Muhammad and Malvo outside a rest stop in Frederick Country, Maryland. Following their arrest, John Allen Muhammad was tried and convicted in the Circuit Court of Prince William County, Virginia for commission of an act of terrorism, conspiracy to commit capital murder, and for the illegal use of a firearm⁸⁰. On November 24, 2003 Muhammad was sentenced to death and on November 10, 2009 the sentence was carried out⁸¹.

Lee Boyd Malvo, a seventeen year old minor, was similarly prosecuted and convicted as an accomplice. He was sentenced to serve six consecutive life sentences for his involvement. Upon appeal, Malvo's lawyers cited the SCOTUS ruling in *Miller v. Alabama* that set a precedent which outlines the difference in sentencing between juveniles and adults. In spring 2017, a United States Federal District Court Judge overturned the original sentence and remanded the case back to the Circuitry courts to issue a new sentence.

⁷⁹ The Federal Bureau of Investigation. Beltway Snipers. *F.B.I.* Retrieved from <https://www.fbi.gov/history/famous-cases/beltway-snipers>

⁸⁰ Clark County Prosecutors Office. John Allen Muhammad. *Clark County Prosecutor*. Retrieved from <http://www.clarkprosecutor.org/html/death/US/muhammad1181.htm>

⁸¹ Ibid

Richard Reid – The Shoe Bomber

In December, 2001, Richard Reid (British citizen) an al-Qaeda operative⁸², boarded American Airlines Flight 63 (AA 61) from Paris, France to Miami, Florida. Midway through the flight, Reid attempted to use a match to detonate explosives hidden within his shoes. Nearby passengers and crew were able to subdue Reid until the flight landed. Reid was charged with eight counts in a United States Federal Court in Boston, Massachusetts. Reid plead guilty to all charges and was sentenced to serve three consecutive life sentences in a federal prison.

Terrorist Attacks Abroad

The Federal Bureau of Investigation maintains a major terrorist cases database and during the Bush Administration, no major foreign terrorist attacks were recorded.

Presidential Ideology – The Neo-Conservative Presidency of George W. Bush

Neo-conservatism is an American political philosophy which advocates advancing United States' national interest within the international community, not limited to an interventionist foreign policy. When President Bush (Republican) was elected in 2001, he campaigned primarily on addressing domestic issues at home, rather than placing a premium on foreign affairs. However, scholars contend his neoconservative roots began to take shape before the attacks of September 11. Steven Ward notes, "...Bush administration was hardly friendly to international legal order,"⁸³ and draws attention to the United States withdrawal from the

⁸² Wiktorowicz, Q. (2005). *Radical Islam Rising: Muslim Extremism in the West*. Rowman and Littlefield Publishers.

⁸³ Ward, S. (2009). Naturalism, Neoconservatism, and the International Legal Order. *International Studies Association*. Retrieved from <http://web.a.ebscohost.com.ezproxy.libraries.wright.edu/ehost/pdfviewer/pdfviewer?vid=13&sid=4a52cd9c-586d-49ce-92e1-f435341b6d67%40sessionmgr4007>

International Criminal Court, Kyoto Protocol, and the Fifth Review Conference of the Biological Weapons Convention, all of which took place during President Bush's first year in office⁸⁴.

Other scholars, suggest the events of September 11 provided an opportunity for neoconservatives to offer "readymade logic with which to view the new post 9/11 era."⁸⁵

In the aftermath of the 9/11 attacks, the Bush Administration began the Global War on Terror (GWOT). Congress, in support of the President, passed laws which afforded expanded powers to the Executive branch in order to thwart further terrorist attacks. In the immediate aftermath of September 11, Congress passed the *2001 Authorization for the Military Force* (AUMF) act, the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001*, otherwise known as the Patriot Act, along with the Intelligence Reform and Terrorism Prevention Act (IRTPA).

Under the auspices of the AUMF, the President has the authority to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons... this Act is intended to constitute specific statutory authorization within the meaning of the War Powers Resolution".⁸⁶ Additionally, the Patriot Act strengthened the federal government's ability to investigate individuals suspected involvement with terrorist organizations, while increasing the penalties for those who commit terrorist crimes.

⁸⁴ Ibid.

⁸⁵ McGlinchey, S. (2010). Neoconservatism and American Foreign Policy. *Politikon*. Retrieved from <http://web.a.ebscohost.com.ezproxy.libraries.wright.edu/ehost/pdfviewer/pdfviewer?vid=16&sid=4a52cd9c-586d-49ce-92e1-f435341b6d67%40sessionmgr4007>

⁸⁶ Authorization for the Use of Military Force. S.J.Res. 23 (107th). Retrieved from <https://www.govtrack.us/congress/bills/107/sjres23/text>

The Bush Administration determined the al-Qaeda terrorist network, along with the Taliban, were the culprits of the 9/11 attacks. In order to remove this threat to the national security of the United States, the Bush Administration invaded Afghanistan on October 7, 2001 – thus began the GWOT. During the invasion, the United States detained hundreds of enemy combatants and transported them to the military detention facility in Guantanamo Bay, Cuba⁸⁷. One tool employed by the United States was the use of executive detention; the imprisoning of detainees without bringing formal charges or holding a trial.⁸⁸ Steyn contends that liberal democracies, during times of war or conflict, may adopt policies disproportionate to the given crisis which infringe upon human rights.⁸⁹ The use of executive rendition and extraordinary rendition are examples of such policies.

Following the end of World War II, the international community passed a series of laws which guarantee certain provisions and rights regarding the capture, detention, treatment and trial of enemy prisoners⁹⁰. Considering the scope of the 9/11 attacks, many within the Bush Administration deemed the Geneva Conventions outdated in the GWOT. Alberto Gonzales, Counsel to the President, argued that the traditional law of war rationale was now rendered obsolete, considering the strict limitations of interrogating prisoners, under the Geneva Conventions. After deliberation, President Bush issued a memorandum denying rights, afforded under Geneva, to al-Qaeda and Taliban detainees held in the United States' custody. Having denied Geneva, the United States employed the use of *extraordinary rendition* or “enhanced interrogation techniques”

⁸⁷ Steyn, J. (2004). Guantanamo Bay: The Legal Black Hole. *International & Comparative Law Quarterly*. Retrieved from <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/guantanamo-bay-the-legal-black-hole1/32C465EFB2597C97B6F70BBD2C82E795>

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ Ibid

which ranged from sleep deprivation to water-boarding – many of these were viewed as tantamount to torture⁹¹.

In response to the administration’s approach to combatting terrorism, detainees, with the assistance of family members and non-governmental organizations, began to bring suit against the United States government. There were three primary cases to examine, *Rasul v. Bush*, *Hamdan v. Rumsfeld*, and *Boumediene v. Bush*. In the case of *Rasul v. Bush*, four Australian and British citizens were captured by the United States military and were detained at the Guantanamo Bay Detention facility. After learning of their detention, family members brought suit claiming their detention was unconstitutional, on the grounds that it violated the Fifth Amendment’s Due Process clause. The United States government asserted the federal courts had no jurisdiction to hear the case because the prisoners were not United States’ citizens and were being held in an area where the United States did not hold sovereignty – though the government leases the Guantanamo Bay, Cuba maintains “ultimate sovereignty.”⁹² Upon deliberation, the courts ruled in favor of the United States, thereby dismissing the suit.

Salim Ahmed Hamdan, Osama Bin Laden’s former driver, challenged his imprisonment at Guantanamo Bay, in the case of *Hamdan v. Rumsfeld*. Hamdan filed a petition for a writ of habeas corpus, citing his classification as an enemy combatant via a military tribunal. The district court originally granted Hamdan’s habeas petition, citing the legal statutes afforded under the Geneva Convention. However, the decision was reversed by the Circuit Court of Appeals for the District of Columbia. The circuit court held that prisoners of war cannot be tried in military

⁹¹ Satterthwaite, M. (2007). Rendered Meaningless: Extraordinary Rendition and the Rule of Law. *George Washington Law Review*. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=945711

⁹² *Rasul v. Bush*. 542 U.S. 466 (2004). Retrieved from <https://www.oyez.org/cases/2003/03-334>

commissions that do not afford them the rights prescribed in the Geneva Conventions and UCMJ.

Considering the ruling rendered in *Hamdan v. Rumsfeld*, the Bush Administration worked with Congress and enacted the Military Commission Act (MCA) of 2006. There are three main tenets of the MCA. First, the MCA expanded the definition of an “unlawful enemy combatant,” so as to allow the President to unilaterally declare any individual such a person. Furthermore, it creates protections for United States officials by providing immunity to those who have previously engaged in illegal action, while attempting to inhibit legal action from detainees for abuses incurred while imprisoned⁹³. Lastly, it narrowly defines torture and sexual assault in an effort to limit the use and application of “international law in U.S. courts.”⁹⁴

The broad interpretation of “unlawful enemy combatant” was challenged in the case of *Boumediene v. Bush*. Lakhdar Boumediene, and others, were captured by United States military forces and labeled enemy combatants. Akin to *Rasul* and *Hamdan*, they filed a petition for a writ of habeas corpus, citing the MCA was unconstitutional in application as it violated the Due Process, various treaties and statues, common law, and international law.⁹⁵ The court ruled in favor of Boumediene, drawing on the precedent of *Rasul v. Bush* which allowed enemy combatants the right to petition for habeas corpus. The decision overturned the provision in the MCA which deprived detainees the ability to petition for habeas corpus.

Summary

To ascertain the impact of the variable terrorist actors have upon rule of law compliance requires careful review of each attack, the terror suspect(s) involved, and response by the Bush

⁹³ FAQs: The Military Commissions Act. (2007). *Center for Constitutional Rights*. Retrieved from <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/faqs-military-commissions-act>

⁹⁴ Ibid

⁹⁵ *Boumediene v. Bush*. 553 U.S. 723 (2008). Retrieved from <https://www.oyez.org/cases/2007/06-1195>

Administration. The Bush administration's detention and prosecution of terrorists differed. Acting in accordance with newly established laws, AUMF and Patriot Act, meant some terror suspects being detained and denied habeas corpus, whereas others were prosecuted in federal courts. In each circumstance, it appears the difference had less to do with the ethnic background or citizenship of the terror suspect and more to do with the location in which they were apprehended. Richard Reid, John Allen Muhammad, and Lee Boyd Malvo were all detained within the continental United States and prosecuted under federal law. In the instances of Rasul, Hamdan, and Boumediene, each suspect was detained on the field of battle and remanded to the Guantanamo Bay Detention Facility, where they were denied rights afforded under the Geneva Convention.

Ultimately, the variable regarding type of terrorist actor had little to no discernable impact upon rule of law compliance within the Bush Administration. Further examination of the facts disprove hypotheses (1) and (2), thereby affirming that rule of law is equitably applied to terror suspects, no matter what citizenship they hold. Moreover, the variable of the location of terrorist attacks did appear to have an impact upon determining rule of law compliance. Specifically, Hypothesis (3) asserts terrorist attacks occurring within the borders of the United States will prompt a shift in rule of law compliance. The attacks of September 11 brought about a new wave of Executive branch authorities, which shifted domestic compliance with rule of law, while circumventing international rule of law frameworks. However, in application, it appears foreign terrorist attacks in which the suspects are detained abroad, led to more non-compliant rule of law actions.

President Bush, and his Administration, are known to have been ardent neoconservatives. In essence, they advocated for policies which freed the Executive branch from cumbersome

domestic and international rule of law obligations. Following the attacks of September 11, Congress passed new legislation removing limitations on wiretapping, detention, and prosecution of terror suspects, while simultaneously increasing the penalties for carrying out such acts. Unlike the Clinton Administration, during the Bush Presidency, terror-suspects were afforded varying degrees of rights, which appears to have been based primarily upon where they were apprehended.

It appears Presidential ideology had an impact in determining rule of law compliance during the Bush Presidency. Scholars argue the implementation of a neoconservative agenda, following the attacks on September 11, caused the United States Government to overreact, thereby degrading the legitimacy of the government.⁹⁶ Moreover, the Bush Administration's national security strategy seems to be grounded in neoconservative beliefs, which center on placing a premium on maintaining national security over rule of law compliance. And, the magnitude of the 9/11 attacks posed a threat on a scale never before experienced by the United States. It was an experience unmatched in the course of terrorism and the Presidential response reflected that magnitude. Perhaps regardless of ideology?

⁹⁶ Erickson, R. (1989). *Legitimate Use of Military Force Against State-Sponsored International Terrorism*. *Air University Press*. 12

Chapter 4: More Like Clinton or More Like Bush? Counterterrorism Post September 11th The Barack Hussein Obama Administration (2009-2017)

“We need not throw away 200 years of American jurisprudence while we fight terrorism. We need not choose between our most deeply held values, and keeping this nation safe. That’s a false choice, and I completely reject it.”

-President Obama

Introduction

During the 2008 Presidential election, then Senator Barack Obama campaigned on closing the detention facilities located at Guantanamo Bay; overturning the Military Commissions Act; and recommitting United States initiatives to abide by the statutes set forth within the Geneva Conventions. A prominent theme in Obama’s candidacy centered on rule of law compliance – “Our Constitution and our Uniform Code of Military Justice provide a framework for dealing with the terrorists.”⁹⁷

This chapter allows us to test whether 9/11 or political ideology matters more to U.S. counter-terrorism. If President Obama acted more like President Bush, it could support that 9/11 was a decisive change in American counterterrorism regardless of party or ideology. If President Obama returned to the ways of the Clinton Administration, it would lend support to the idea that leadership ideology and party may matter more.

Domestic Terrorist Attacks

During the Obama Administration, the United States experienced four acts of domestic terrorism: the Boston Marathon Bombing, the San Bernardino shooting, the Orlando night club

⁹⁷ Reuters Staff. (2011). Factbox: Has Obama Delivered on his 2008 Campaign Promises? *Reuters*. Retrieved from <https://www.reuters.com/article/us-usa-campaign-obama-promises/factbox-has-obama-delivered-on-his-2008-campaign-promises-idUSTRE79R3M920111028>

shooting, as well as the attempted bombing of Northwest Airlines Flight 253 by Umar Farouk Abdulmutallab, the “underwear bomber”. The attacks are examined in chronological order.

Umar Farouk Abdulmutallab – The Underwear Bomber

On December 25, 2009, Northwest Airlines Flight 253 departed from Amsterdam, en route to Detroit, Michigan. While airborne, Umar Farouk Abdulmutallab, a twenty three year old Nigerian⁹⁸, attempted to detonate a homemade explosive device located within his underwear. Fortunately, the device malfunctioned, allowing passengers and crew members to subdue Farouk until they landed. Scholar Bruce Hoffman notes, had it not been for the malfunctioning of the device, the “[United States] would have fallen victim to the worst terrorist attack since September 11, 2001.”⁹⁹ Once the flight landed, Abdulmutallab was arrested and placed in federal custody. Following the attempted attack, Umar Farouk Abdulmutallab was convicted in U.S. Federal Courts on eight criminal charges and sentenced to life in federal prison.

Boston Marathon Bombing

The 117th Boston Marathon was held on April 15, 2013, with over 27,000 registered¹⁰⁰ participants, not including race onlookers. At 2:49 p.m., as race participants neared the finish line, “two improvised explosive devices (IEDs) [were] detonated.”¹⁰¹ The explosions rocked Boylson Street, killing three people, while injuring over two hundred individuals. In the immediate aftermath, law enforcement officials set off on a city wide manhunt to arrest those

⁹⁸ Hoffman, B. (2010). American Jihad. *National Interest*. Retrieved from <http://web.a.ebscohost.com.ezproxy.libraries.wright.edu/ehost/pdfviewer/pdfviewer?vid=22&sid=4a52cd9c-586d-49ce-92e1-f435341b6d67%40sessionmgr4007>

⁹⁹ Ibid

¹⁰⁰ After Action Report for the Response to the 2013 Boston Marathon Bombings. (2014). *City of Boston*. Retrieved from <http://www.mass.gov/eopss/docs/mema/after-action-report-for-the-response-to-the-2013-boston-marathon-bombings.pdf>

¹⁰¹ The Road to Boston: Counterterrorism Challenges and Lessons from the Marathon Bombings. – House Homeland Security Committee Report. (2014). *United States House of Representatives: Committee on Homeland Security*. Retrieved from <https://homeland.house.gov/files/documents/Boston-Bombings-Report.pdf>

involved. Upon investigating the attack, it was determined that Tamerlan Tsarnaev (permanent resident) and Dzhokhar Tsarnaev (US citizen), brothers, had planted two IED's within backpacks along Boylson St. Following the bombing of the marathon, the Tamerlan and Dzhokhar fled the scene.

On April 17th, President Obama issued an emergency declaration in response to the attack.¹⁰² Still looking for the Tsarnaev brothers, the F.B.I. released their images to the public on April 18.¹⁰³ On the Evening on April 18, the Tamerlan and Dzhokhar drove to the Massachusetts Institute of Technology (MIT). Approximately at 10:28 p.m.,¹⁰⁴ M.I.T. Police Officer, Sean Collier, was fatally wounded in his marked police vehicle. Later that night, they carjacked a sport utility vehicle (SUV). Around 12:41 a.m.,¹⁰⁵ the Cambridge Police Department (PD) informed the Watertown P.D. of the location of the missing S.U.V. A firefight began as authorities approached the S.U.V. During the firefight, Tamerlan ran out of ammo and was tackled by a Watertown police officer. During the struggle, Dzhokhar entered the S.U.V. and struck Tamerlan as he fled the scene. Tamerlan Tsarnaev was pronounced dead at Beth Israel Deaconess Hospital.¹⁰⁶

Following the shootout, authorities located the stolen S.U.V., but Dzhokhar had already fled the area. After hours of conducting door-to-door searches, it was determined the remaining suspect had taken shelter in a winterized boat. Following a lengthy standoff, Dzhokhar emerged from the boat and was taken into federal custody. He was tried in federal courts and following 14

¹⁰² After Action Report for the Response to the 2013 Boston Marathon Bombings. (2014). *City of Boston*. Retrieved from <http://www.mass.gov/eopss/docs/mema/after-action-report-for-the-response-to-the-2013-boston-marathon-bombings.pdf>

¹⁰³ Ibid

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ Ibid

hours of deliberations,¹⁰⁷ the jury noted his lack of remorse and recommended he be sentenced to death. Though Massachusetts ended the death penalty in 1984, Tsarnaev was tried in federal court, and thereby eligible for the death penalty. On June 24, 2015, Judge George A. O’Toole sentenced Dzhokhar to death, and he awaits his sentenced to be carried out at the time of this research.

San Bernardino Shooting

In 2015, the United States was confronted with another domestic terrorist attack. On December 2, Syed Rizwan Farook (United States citizen) and Tashfeen Malik (Pakistani citizen, permanent resident of the United States) opened fire on the Inland Regional Center in San Bernardino, California. Farook and Malik, a married couple, launched their attack on an office complex, firing up to 75 rounds of ammunition, while leaving three pipe bombs behind.¹⁰⁸ The mass shooting attack left 14 killed and 22 injured¹⁰⁹. Following the shooting, Farook and Malik fled the scene to the nearby town of Redlands. After receiving information regarding their whereabouts, local, state, and federal authorities surrounded their rental home. Farook and Malik opened fire upon authorizes and during the firefight, both suspects were shot and killed.

Orlando Night Club Shooting

On June 12, 2016, a fourth domestic terrorist attack was carried out at the Pulse nightclub in Orlando, Florida. Omar Mateen (United States citizen) opened fire at random upon club patrons. According to the F.B.I., Mateen called 911 during the attack, at which time pledged his allegiance to “Abu Bakr al-Baghdadi... on behalf of the Islamic State [of Iraq and Syria]

¹⁰⁷ Boston Bombing Trial: Death Sentence for Dzhokhar Tsarnaev. (2015). *British Broadcasting Corporation*. Retrieved from <http://www.bbc.com/news/world-us-canada-32757790>

¹⁰⁸ Calamur, K., Koren, M., and Ford, M. (2015). A Day After the San Bernardino Shooting. *The Atlantic*. Retrieved from <https://www.theatlantic.com/national/archive/2015/12/a-shooter-in-san-bernardino/418497/>

¹⁰⁹ The Federal Bureau of Investigation. Terrorism. *F.B.I.* Retrieved from <https://www.fbi.gov/investigate/terrorism>

(ISIS).”¹¹⁰ After numerous calls to the Orlando Police Crisis Negotiation Team, the Orlando Special Weapons and Tactics (SWAT) team began to pull victims out of the nightclub. Upon learning that Mateen planned on attaching vests with bombs on victims,¹¹¹ the SWAT team initiated a wall breach. Following the breach, shots were fired between Orlando SWAT and Mateen, at which time he was killed. During the attack, 49 people were killed, while 58 others were injured.

Terrorist Attacks Abroad

During the Obama Administration, the United States experienced one act of foreign terrorism, the attack on U.S. facilities and personnel in Benghazi, Libya. In 2011, in the midst of the Arab Spring, the Libyan Revolution led to the removal of Muammar Gaddafi, which created a power vacuum. As a result, warring factions and tribal violence broke out in Libya. During the unrest, the United States still operated diplomatic outposts in country. U.S. Ambassador to Libya, J. Christopher Stevens, traveled to a diplomatic outpost in Benghazi, on September 10, 2012.¹¹² On the anniversary of September 11, the U.S. Diplomatic Outpost, housing Ambassador Stevenson, was attacked by armed militants.¹¹³ Attackers laid siege to the U.S. compound with rocket propelled grenades, mortar fire, and grenades. While under attack, the outpost called a nearby Central Intelligence Agency (CIA) annex for support.¹¹⁴ Located at the annex was a

¹¹⁰ Federal Bureau of Investigation. Investigative Update Regarding Pulse Nightclub Shooting. *F.B.I.* Retrieved from <https://www.fbi.gov/contact-us/field-offices/tampa/news/press-releases/investigative-update-regarding-pulse-nightclub-shooting>

¹¹¹ Ibid

¹¹² Rogers, M. and Dutch, C.A. (2014). Investigative Report on the Terrorist Attacks on U.S. Facilities in Benghazi, Libya, September 11-12, 2012. *United States House of Representatives' Select Committee on Intelligence*. Retrieved from <https://intelligence.house.gov/sites/intelligence.house.gov/files/documents/benghazi%20report.pdf>

¹¹³ Ibid

¹¹⁴ Ibid

C.I.A. Global Response Staff (GRS)¹¹⁵ team, comprised of former U.S. military Special Forces operators.

GRS operators responded to the attack on the outpost, and located most of the embattled U.S. personnel. Ambassador Stevens was missing and while searching for him, operators came across the body of Sean Smith, a State Department employee. Unable to locate Ambassador Stevens, the GRS team returned to the Annex, awaiting support from Washington. As the night progressed, the Annex was continuously attacked by militants. As the U.S. personnel prepared to infiltrate, Navy SEAL's Glen Doherty and Tyrone Woods were killed. The attacks resulted in the deaths of four U.S. civilian and military personnel.

Presidential Ideology – The Neo-Liberal Presidency of Barack Obama

Analogous to the Clinton Administration, President Obama's ideology centered on neo-liberal philosophies. Upon taking office, President Obama issued a series of executive orders focused on reaffirming support and compliance with domestic and international rule frameworks. Specifically, Michael Stohl draws attention to the Obama administration's policies which led to: (1) the closure of secret C.I.A. detention facilities, (2) ordering the C.I.A. to utilize the same interrogation techniques as the military, (3) overturning prior executive orders that authorized the use of "enhanced interrogation" techniques, and (4) reaffirming U.S. support and adherence to the Geneva conventions.¹¹⁶ The importance of rule of law compliance was a core principle, Stohl

¹¹⁵ Ibid

¹¹⁶ Stohl, M. (2010). Framing Terrorism: Terrorism, Networks, and Counter-Terrorism from George W. Bush to Barack Obama. *International Studies Association*. Retrieved from <http://web.a.ebscohost.com.ezproxy.libraries.wright.edu/ehost/pdfviewer/pdfviewer?vid=27&sid=4a52cd9c-586d-49ce-92e1-f435341b6d67%40sessionmgr4007>

contends, as the Obama administration “reasserted the primacy of a law and justice framework to conduct counterterrorism [operations].”¹¹⁷

Considering President Obama’s emphasis on rule of law compliance, it is necessary to examine how the administration supported the use drone strikes to target terrorist network operatives. To meet the growing challenges posed by terrorist networks, President Obama heavily relied¹¹⁸ on utilizing drone strikes to target terrorists. The use of drones were viewed as being accurate tools to remove threats, while minimizing the cost of life to US personnel. Though accurate, drones can create collateral damage, causing the deaths of innocent civilians.¹¹⁹ Moreover, Jessica Stern argues that the coverage surrounding drone strikes “...might help terrorists find new recruits.”¹²⁰ However, self-defense remains the primary rationale in international law behind the use of force.

Utilizing drone strikes requires examination to determine if the use comports with domestic and international law. A prominent example for evaluation is the killing of Anwar al-Awlaki (US citizen) via a drone strike. The issue regarding the use of lethal force in response to terrorism has “been the subject of extensive scholarship, advocacy, and litigation”.¹²¹ Robert Chesney raises the question, “does international law permit the US government to kill al-Awlaki?”¹²² Trevor McCrisken notes the findings of Harold Koh, a legal adviser at the State Department, who contends the US “has the ‘authority under international law, and the

¹¹⁷ Ibid

¹¹⁸ Stern, J. (2015). Obama and Terrorism. *Foreign Affairs*. Retrieved from <http://web.a.ebscohost.com.ezproxy.libraries.wright.edu/ehost/pdfviewer/pdfviewer?vid=31&sid=4a52cd9c-586d-49ce-92e1-f435341b6d67%40sessionmgr4007>

¹¹⁹ Ibid

¹²⁰ Ibid

¹²¹ Chesney, R. (2010). Who May Be Killed? Anwar al-Awlaki As a Case Study in the International Legal Regulation of Lethal Force. *Yearbook of International Humanitarian Law*. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1754223

¹²² Ibid

responsibility to its citizens to use force, including lethal force, to defend itself, including by targeting persons...who are planning attacks.”¹²³

The Department of Justice created a White Paper which outlined the lawfulness of “lethal operations against US citizens.”¹²⁴ The White Paper was created to justify the deliberate inclusion of al-Awlaki on a kill-or-capture list. The document outlines US citizens who pose an imminent threat to the United States can be legally killed by the US. Furthermore, the document draws on “Congress’ authorization of military action against al-Qaeda” as justification for the response. The decision to kill al-Awlaki required deliberations, over several months, when it was determined capture was not a viable option to the administration. After reviewing intelligence regarding potential attacks being planned by Awlaki,¹²⁵ President Obama ordered the drone strike to kill the al-Qaeda operative.

Similar to al-Awlaki, President Obama learned of a high value target located in Abbottabad, Pakistan. After months of surveillance and intelligence collection, the C.I.A. identified the target as Osama bin Laden, the head of al-Qaeda. Given the location and threat posed by bin Laden, President Obama ordered U.S. Special Forces to conduct a covert night raid on the bin Laden compound. As U.S. military personnel began clearing the compound, Nicholas Schmidle poignantly notes, “nine years, seven months, and twenty days after September 11th, an American was a trigger pull from ending bin Laden’s life.”¹²⁶ Moments later, a Navy Seal reported on his radio “For God and country—Geronimo, Geronimo, Geronimo. Geronimo

¹²³ McCrisken, T. (2013). Obama’s Drone War. *Survival*. Retrieved from <http://web.a.ebscohost.com.ezproxy.libraries.wright.edu/ehost/pdfviewer/pdfviewer?vid=36&sid=4a52cd9c-586d-49ce-92e1-f435341b6d67%40sessionmgr4007>

¹²⁴ Ibid

¹²⁵ Ibid

¹²⁶ Nicholas, S. (2011). Getting Bin Laden: What happened that night in Abbottabad. *The New Yorker*. Retrieved from http://www.thomasweibel.ch/artikel/110808_new_yorker_getting_bin_laden.pdf

E.K.I.A.”¹²⁷ which means enemy killed in action. The man responsible for attacks of September 11, 2001 was finally brought to justice.

A further legal challenge facing the Obama administration centered on the National Defense Authorization Act (NDAA) of 2012. The NDAA permitted the federal government to “indefinitely detain”¹²⁸ individuals suspected of supporting, collaborating with, or being a part of terrorist networks. A group of journalists, led by New York Times Reporter Christopher Hedges, brought suit against the government. They alleged that Section 1021(b)(2)¹²⁹ of the NDAA of 2012, could be interpreted to include the detention of journalists and political activists alike. The SCOTUS ruled in favor of the government, citing the lack of standing because “Section 1021 says nothing at all about the President’s authority to detain American citizens... [the plaintiffs] also failed to establish standing because they had not shown a sufficient threat that the government would detain them under Section 1021.”¹³⁰

Summary

A foundation of the Obama doctrine is grounded in rule of law governance. In order to determine the impact of the given dependent variables, I tested each to ascertain what impact they had upon the dependent variable. First, the Obama administration’s approach to detention and prosecution offers similarities and differences from the Bush era. President Obama viewed the use of torture and “extra-judicial” frameworks as unconstitutional. Unlike the Bush administration, President Obama abolished many of his predecessor’s policies on

¹²⁷ Ibid

¹²⁸ Hedges v. Obama. 724 F.3d 170 (2013). Retrieved from <https://www.quimbee.com/cases/hedges-v-obama>

¹²⁹ Hedges v. Obama. No. 12-3176 (2d Cir. 2013). Retrieved from <https://law.justia.com/cases/federal/appellate-courts/ca2/12-3176/12-3176-2013-07-17.html>

¹³⁰ Ibid

counterterrorism, such as the use of ‘enhanced interrogation’ techniques. When terror suspects were apprehended, they were detained and prosecuted under existing US legal frameworks.

During the Obama administration, Umar Farouk Abdulmutallab, Dzhokhar Tsarnaev, and Ahmed Abu Khattala were detained and prosecuted within the federal court system. In each of these cases, the location of attack varied between foreign and domestic. Moreover, citizenship varied among the three terrorist operatives, including foreign nationals and those holding US citizenship. Ultimately, all three have been prosecuted within the US, in accordance with domestic and international law. Therefore, the variables regarding type of terrorist actor and location showed no impact upon rule of law compliance within the Obama Administration. Reviewing the facts illustrates rule of law is equitably applied to terror suspects, no matter what citizenship they hold, or where the location occurs, thereby refuting hypotheses 1, 2, and 3. Hypothesis 3 contends terrorist attacks occurring within the borders of the United States will prompt a shift in rule of law compliance. The attacks of September 11 brought about a new wave of Executive branch authorities, which shifted domestic compliance with rule of law. However, in accordance with congressional legislation, the Obama administration began to rein in executive power and reaffirmed support to the principles set forth in the Geneva Conventions.

President Obama’s national security strategy embraced neo-liberal principles of cooperating and embracing international institutions. In short, his administration enacted policies that were compliant with domestic and international rule of law frameworks. Similar to the Clinton Administration, President Obama’s administration detained and tried terror suspects within federal courts. The greatest exception was the targeted assassination of an American citizen abroad by the Obama Administration.

The findings suggests Presidential ideology did impact compliance with rule of law during the Obama administration. Scholars contend a chief objective of terrorist organizations is to cause the target nation to overreact.¹³¹ Throughout President Obama’s administration, a core pillar of his national security strategy was based on adherence to rule of law governance. This approach was aimed at reducing the use of “extra-judicial” frameworks, in order to maintain core American judicial values, along with reducing recruiting opportunities for terrorist networks.

¹³¹ Erickson, R. (1989). Legitimate Use of Military Force Against State-Sponsored International Terrorism, *Air University Press*, 12

Chapter 5: Conclusion

An Examination of the Clinton, Bush, and Obama Administrations (1993-2017)

“I know that we will be judged in history by not only how we disrupt terrorism but how we protect the civil liberties and constitutional rights of all Americans, even Americans who don’t wish us well. We must do all these things exceptionally well.”

- (Retired) F.B.I. Director Robert Mueller

Introduction

The research question this study is based on is, “what factors are causal in determining United States’ compliance with rule of law, in response to domestic and international terrorism?” In answering this question, the study focused on three case studies, the Clinton administration, Bush, and Obama administrations’ counterterrorism strategies. This study set forth four distinct hypotheses:

(H1) Foreign nationals are more likely be subjected to extra-judicial framework measures, such as extraordinary rendition, torture, and denial of due process.

(H2) United States citizens that are suspected terror suspects will be afforded due process, as outlined in the United States Constitution, and be detained and prosecuted under current rule of law measures.

(H3) Domestic terrorist attacks will cause Presidential administrations to enact counterterrorism policies that are non-compliant with existing rule of law.

(H4) Neo-liberals administrations will adopt policies compliant with existing rule of law, while neo-conservative administrations will employ “extra-judicial” frameworks.

After examining each case study, the data illustrates which hypotheses are valid, and which have no factual standing. Hypothesis 1 purports foreign nationals will be subjected to extra-judicial measures, such as extraordinary rendition, torture, and the denial of due process. After examining the each administration, the literature suggests this primarily occurred during the Bush Administration. During the Bush Presidency, enemy combatants who were detained on the field of battle were sent the GITMO, or other secret CIA facilities, while being subjected to torture and denied due process. In contrast, the Clinton and Obama administrations had similar policy initiatives which aimed at prosecuting terror suspects in federal courts. It can be concluded that this hypothesis was only applicable during the Bush administration.

Role of Terror Actor during the Clinton Administration

Clinton Administration	1993 WTC Bombing	Oklahoma City Bombing	Unabomber	Millennium Plot	Embassy Bombings	U.S.S. Cole
Actors' Citizenship	Ramzi Yousef (FN) Mohammed Salameh (FN) Abdul Yasin (US) Mahmoud Abouhalima (FN) Ahmed Ajaj (FN) Nidal Ayyad (FN) Eyad Ismoil (FN)	Timothy McVeigh (US) Terry Nichols (US)	Ted Kaczynski (US)	Ahmed Ressam (FN)	al-Qaeda (FN & US)	al-Qaeda terrorists (FN)
Status of Detention	Ramzi Yousef Detained by US Mohammed Salameh Detained by US Abdul Yasin Remains at Large Mahmoud Abouhalima Detained by US Ahmed Ajaj Detained by US Nidal Ayyad Detained by US Eyad Ismoil Detained by US	Timothy McVeigh Sentenced to Death Terry Nichols Detained by US	Ted Kaczynski Detained by US	Ahmed Ressam Detained by US	al-Qaeda Detained 11 Al-Qaeda members. US launches cruise missile in retaliation.	al-Qaeda members killed during attack
United States Compliance	For each suspect in custody, they were tried in US courts and sentenced to federal prison.	Timothy McVeigh was sentenced to death for his role in the Oklahoma City Bombing, while Terry Nichols was sentenced to 161 sentences of life imprisonment.	Ted Kaczynski was sentenced to 8 consecutive life sentences.	Ahmed Ressam was sentenced to 37 years in prison	The US launched cruise missiles at suspected terrorist targets, coupled with detaining 11 al-Qaeda members.	The US arrests Fahd al-Quso and Jama al-Badawi for role in attack. Additionally, US captures Abd al-Rahim al-Nashiri, currently detained at GITMO.

Table 1

* U.S. citizenship is denoted as US **Foreign nationals are denoted as FN

Role of Terror Actor during the Bush Administration

Bush Administration	September 11, 2001	Anthrax Attacks	Beltway Snipers	Shoe Bomber
Actors' Citizenship	Al-Qaeda All 19 Hijackers (FN)	Dr. Bruce Irvins (US)	John Allen Muhammad (US) Lee Boyd Malvo (US)	Richard Reid (FN)
Status of Detention	Ramzi Yousef Detained by US Mohammed Salameh Detained by US	Dr. Bruce Irvins Planned detention by US	John Allen Muhammad Detained by US Lee Boyd Malvo Detained by US	Richard Reid Detained by US
United States Compliance	In response to the attacks on September 11, 2001, the United States declared a War on Terror against Al-Qaeda, and all affiliates.	Bruce Irvins committed suicide before he could be taken into custody.	John Allen Muhammad was tried in US courts and sentenced to death. Lee Boyd Malvo sentenced to serve 6 life sentences.	Richard Reid was tried in US courts and sentenced to serve 3 consecutive life sentences.

Table 2

* U.S. citizenship is denoted as US **Foreign nationals are denoted as FN

Role of Terror Actor during the Obama Administration

Obama Administration	Underwear Bomber	Boston Marathon Bombing	San Bernardino Shooting	Orlando Nightclub Shooting	Benghazi, Libya	Anwar al-Awlaki
Actors' Citizenship	Umar Farouk Abdulmutallab (FN)	Tamerlan Tsarnaev (FN) Dzhokhar Tsarnaev (US)	Syed Rizwan Farook (US) Tashfeen Malik (FN)	Omar Mateen (US)	al-Qaeda (FN) Ansar al-Sharia (FN) Ahmed Abu Khattala (FN)	Anwar al-Awlaki (US)
Status of Detention	Umar Farouk Abdulmutallab Detained by US	Tamerlan Tsarnaev Killed during a shootout with authorities. Dzhokhar Tsarnaev Detained by US	Syed Rizwan Farook Killed during a shootout with authorities Tashfeen Malik Killed during a shootout with authorities	Omar Mateen Killed during a shootout with authorities	Ahmed Abu Khattala Detained by US Mustafa al-Imam Detained by US	Anwar al-Awlaki Killed by US drone strike.
United States Compliance	The US tried and convicted Umar Farouk Abdulmutallab in federal court and sentenced him to life in prison.	Tamerlan Tsarnaev was killed in a shootout with local and federal law enforcement. Dzhokhar Tsarnaev was detained and tried in US courts. He was found guilty and sentenced to death.	Following the attacks in San Bernardino, local and federal authorities surrounded Syed Farook and Tashfeen Malik. They open fire on authorities and were killed during the shootout.	Omar Mateen opened fire upon guests at the Pulse nightclub in Orlando, Florida. Upon learning of Mateen's plan to use explosive ordinances, Orlando SWAT breached the club and were immediately engaged in a shootout with Mateen. He was killed in the shootout.	The United States detained Ahmed Abu Khattala, suspected Ansar al-Sharia in Benghazi. Additionally, Mustafa al-Imam was detained and awaits trial in the US.	President Obama gave approval to use a targeted drone strike to kill Anwar al-Awlaki. It was deemed unfeasible to capture Awlaki and considering his continual efforts in planning attacks against the United States, it was determined it would be lawful to kill Awlaki.

Table 3

* U.S. citizenship is denoted as US **Foreign nationals are denoted as FN

The second hypothesis put forth claims US citizens suspected of being involved with terrorist networks will be detained and prosecuted in federal courts, with all rights afforded under the 14th Amendment due process clause. The Clinton, Bush, and Obama administrations did primarily adhere to this notion. However, the Obama administration differed from its neo-liberal counterpart. In one significant way: President Obama approved the targeted assassination of an US citizen, Anwar al-Awlaki, for conspiring with terrorist networks, and being deemed an immediate threat to the national security of the United States. After conferring with the Department of Justice, along with other federal agencies, it was determined that it would be unfeasible to capture Anwar al-Awlaki. As such, after further reviewing his continual support of al-Qaeda in planning attacks against the United States, it was deemed legal to use lethal force. In doing so, the Obama administration approved the use of a drone strike to kill al-Awlaki. Though federal agencies agreed in the use of the drone strike, the Obama administration did deny Awlaki the right to due process. This was the dominate deviation among the three cases. In evaluation, the hypothesis appears to be based in fact.

Role of Location of Attacks in the Clinton, Bush, and Obama Administrations

	Domestic Attacks	Foreign Attacks	US Response & Compliance
Clinton Administration	1993 WTC Bombing Oklahoma City Bombing Unabomber Millennium Plot	US Embassy Bombings <u>U.S.S. Cole</u>	When possible, the Clinton Administration detained and tried terror suspects in US courts. However, President Clinton did approve the use o
Bush Administration	September 11, 2001 Anthrax Attacks Beltway Snipers Shoe Bomber	<i>The Federal Bureau of Investigation does not list any major foreign terror attacks having occurred during the Bush Administration.</i>	In response to the Anthrax Attacks, Beltway Snipers, and Shoe bomber, the Bush Administration detained and tried each (when possible) in US courts. However, in response to the attacks of September 11, 2001, the Bush Administration opened Guantanamo Bay Cuba, as a military detention facility. Many suspected terrorists reside at the detention facility. Some are awaiting trial, while others are in a perpetual state of custody.
Obama Administration	Underwear Bomber Boston Marathon Bombing San Bernardino Shooting Orlando Nightclub Shooting	Benghazi, Libya	Similar to the Clinton Administration, the Obama Administration detained and tried terror suspects within US courts. However, President Obama did authorize the killing of a United States citizen who joined al-Qaeda. After confirming with the Department of Justice, F.B.I, and other federal agencies, it was deemed unfeasible to capture Anwar al-Awlaki, and therefore deemed it legal to authorize his killing.

Table 4

The third hypothesis argues domestic terrorist attacks will cause US administrations to enact counterterrorism policies that are non-compliant with existing rule of law. From President Clinton through the Obama administration, the United States faced twelve possible terrorist attacks. In only one instance did the US adopt new legislation aimed at thwarting terrorism, and in doing so, shifted rule of law compliance. Since the adoption of new anti-terrorism laws, the

Bush and Obama administrations have operated under the purview of the AUMF, MCA, and IRTPA. A key difference between the two cases is President Bush allowed for “enhanced interrogation” techniques, via executive order, to be used as a method of obtaining credible intelligence. Though he was given new authorities, this approach did not hold up to the scrutiny of domestic, nor international law. Moreover, the Obama administration, though with legal support from the Department of State and Department of Justice, did target a US citizen for assassination. Though there are many similarities between the Clinton and Obama administrations, it appears following September 11, 2001, there are a few similarities between Bush and Obama as well. This hypothesis only has one attack, coupled with two corresponding incidents to support this claim. Overall, it seems to lack a strong factual basis.

The final hypothesis contends neo-liberal administrations will adopt policies compliant with existing rule of law, while neo-conservative administrations will employ “extra-judicial” frameworks. In examining the literature and respective data, I conclude this hypothesis has a strong factual basis. Scholars have drawn comparisons between the Clinton and Obama administrations, where rule of law governance was a core principle in advancing US national security. In contrast, the Bush administration placed a premium on protecting the homeland, at the expense of rule of law. There are clear similarities between the Clinton and Obama administrations which are based in neo-liberal philosophies. Similarly, the main difference between Bush and the Clinton and Obama administrations pertains to the Bush neo-conservative philosophy. Ultimately, this hypothesis has the strongest possible explanation to rule of law compliance.

Policy Implications and Recommendations for Future Research

As a result of this study, there are some policy implications. The most significant is the relevancy of presidential ideology is determining how compliant US presidential administrations will be when enacting counterterrorism strategies. The data suggests this variable is causal in determining rule of law compliance. For example, it can be concluded that neo-liberal administrations will favor cooperation with international institutions and frameworks, similar to the Geneva Conventions. In contrast, neo-conservative administrations will favor advancing US national security interest, through unilateral force, if necessary.

The data further suggests that out of twelve possible domestic terror attacks, only once did it prompt a shift in rule of law compliance. The lone caveat is the attacks on September 11, 2001. I argue this can be attributed to the scope as well as location of attack, which prompted the US government to adopt new measures to detect and deter future terrorist activity. This assertion can be further assessed by examining the United States' response to the Civil War and the attack on Pearl Harbor. During the Civil War, President Lincoln, in an effort to protect the Union, suspended Habeas Corpus. In a similar effort, President Franklin Delano Roosevelt immediately directed the government to intern all Japanese citizens following the attack on Pearl Harbor. In each circumstance, the primary focus was on the preservation and protection of the country. Similar to the Civil War and the attack on Pearl Harbor, the primary objective following the attack on 9/11 was the preservation and protection of the homeland.

Following the attacks of 9/11, Congress passed new legislation, the AUMF, Patriot Act, and IRTPA to affording the president new authorities and powers. These authorities are still embedded within US domestic law. As a result, new administrations are afforded additional executive authorities, unlike the Clinton administration. Since the attacks of 9/11, the United

States has utilized multilateral cooperation to help keep the homeland safe. Additionally, when terror suspects are apprehended, there appears to be a trend in prosecuting them within US federal courts.

Overall, there are numerous avenues for future research related to the study of US rule of law compliance in response to terrorism. Surveying US citizens, along with foreign nationals, could add value to understanding the perceived impact of US counterterrorism operations. Scholars contend that terrorism aims to cause an overreaction, thereby supporting terrorist recruiting operations. Interviewing individuals with varying citizenships will allow scholars and policymakers alike the ability to understand the impact of past and current US counterterrorism operations.

Moving forward, it would be beneficial to examine the Trump administration's counterterrorism strategies. Hal Brands and Peter Feaver draw attention to candidate Trump's campaign rhetoric which called for, "sweeping changes in U.S. counterterrorism strategy."¹³² Will the Trump administration adopt a national security strategy, similar to President Bush's, which furthers neo-conservative policies? How will the President's use of twitter impact national security? Will the President place an emphasis on adopting a digital counterterrorism strategy to defeat the digital caliphate? Each of these questions can help us assess future US counterterrorism initiatives and to what extent the US will remain compliant with domestic and international legal frameworks.

¹³² Feaver, P. and Brands, H. (2017). Trump and Terrorism. *Foreign Affairs*. Retrieved from <https://www.foreignaffairs.com/articles/2017-02-13/trump-and-terrorism>

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