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The Loss of Community and the Rise of the Police State: The Aftermath of 9/11 in the United States

Master's Degree in Governance, Leadership, and Democracy Studies

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Abstract

This paper examines the aftermath of terrorism in the United States pre- and post 9/11 to determine how individuals' civil rights were impacted. On September 11th, 2001, four terrorist attacks were carried out in the United States. The looming threat of terrorism led to legislative changes affecting the American people. The research will answer how the uncertainty of terrorism impacted legislation and how the legislative changes affected Americans' rights. Relevant civil rights legislation and Supreme Court rulings pre- and post-September 11th, 2001, will show how state power increased after 9/11. This paper explores the conception of American society through its founding and major societal changes impacting civil rights. The formation of law enforcement institutions, such as slave patrols, police departments, and federal agencies. The legal precedent of civil protections from the country's founding until September 11th, 2001. The changes in government procedures due to the security issues posed during 9/11 led to the reconstruction of federal agencies and methods of surveillance by law enforcement, protected under the expansion of qualified immunity.

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Introduction

The United States gained independence on July 4th, 1776. A new society inspired by John Locke's ideals would declare the unalienable right to life, liberty, and the pursuit of happiness. Society and, in turn, the United States government would be tasked with protecting these rights. The United States Constitution would outline the legal framework of a society forged for the collective good. Despite the United States' sovereignty from its colonial power, it would adopt many British practices, including common law and policing models. By implementing new laws, the American legal system came to be. The United States framework established the separation of enforceable powers between the federal, state, and local governments. After September 11th, 2001, counter-terrorism became a focal point for federal law, which directly impacted law enforcement and American civil rights protections.

The social construction of a community is built through the establishment of the law, norms, and bonds. Police officers are a product of societal norms and laws, as society deems certain behaviors and actions deviant. Without a moral perception of right or wrong, there would be no necessity for law and, in turn, law enforcement. Law enforcement officials are all a product of the society they represent and seek to protect on the federal, state, and local levels. The number of law enforcement officers, training methods, and legal protections are contingent on the perceived threat of crime. This literature review examines the formation of society, the sociology of law, social control, and the state of the art, focusing on contemporary research into terrorism.

In the 17th and 18th centuries, philosophers Thomas Hobbes, John Locke, and Jean-Jacques Rousseau debated the conditions in the state of nature and how individuals enter society. In philosophical conception, the state of nature was a world without government, order, or society. A time when humans are free from the influence of society. Hobbes would be the first philosopher to describe life in the state of nature, arguing that humans were

originally equal. In an equal world without individuality, conflict arises over competition, diffidence, and glory. Humans were in a perpetual state of chaos, acting in a manner that was selfish and fearful. A world without morals filled with general distrust, a need for recognition, and a search for resources. When individuals enter society, they exchange their freedoms to a governmental body for assurances of security.¹ Locke believed that in the state of nature, humans were capable of reason and respected the law of nature, protecting life, liberty, and property. Conflict in the state of nature occurred because of violations of these natural rights. The conditions posed in the state of nature would be solved by the construction of government through the social contract. Locke emphasized that the consent of the governed is imperative, as individuals have the right to overthrow tyrants and declare a new government. The social contract acts as the unwritten agreement between individuals and a government limited by checks and balances for assured protection of freedoms.²

Rousseau, who agreed with Locke, challenged Hobbes' view as it was structured through the lens of society itself. Rousseau believed that the natural man was uncorrupted by society, living in a peaceful state where an individual's basic needs were satisfied. Fighting in the state of nature would be short as it would relate to basic needs rather than societal wants, and thus human nature is one of free will, self-perfection, and pity. Society would create conditions of inequality because of the desire for private property.³ Sociologists view these perspectives as the foundations of the social contract, an exchange between individuals and the government, who forgo some freedoms for assured protection from violence. For the government to function, a sense of order within a constituency must exist, and agents of the state must be able to carry out actions that political actors themselves cannot.

Law is a cyclical societal process that is a product of morality. The legal body that governs a society is simultaneously comprised of the morals of those who make up said

¹ Thomas Hobbes, *Leviathan* (Oxford University Press, 2008).

² Locke, *Two Treatises of Government*.

³ Jean-Jacques Rousseau, *The Social Contract* (Penguin Books, 2006).

society. When Hobbes debated morality in the state of nature, it was argued that there was no conceptualization of morals, because where there is no law, there can be no injustice.⁴

Whether morality existed within the state of nature or society itself created morality, laws are formed by individuals in society. In the 19th century, two centuries after Hobbes' philosophical conception of the state of nature, during the Industrial Revolution, sociologists Max Weber and Émile Durkheim expanded the sociological canon with the notion that the law exists beyond legal jurisprudence.

According to German sociologist Weber, law has no meaning without a social order. The social order is a force in society that is influenced by who is in power, the structure of order, and the distribution of power. Weber describes the structure of order through the arrangement of the legal system and those who create the law. Exploring the concept of power through the perspective of class, Weber dictates that the social order is formed through political and social power. A hierarchical order must be established for the operation of bureaucracy, with clear rules and regulations for all. Bureaucracy would become more important over time as the government would become the most rational institution, eventually governing all aspects of life.⁵

In contrast, Durkheim, a French sociologist, believed that collective consciousness, a term that describes shared beliefs and values, serves as the conduit that allows individuals to become a part of a single society. Durkheim's research documents the difference in societal morals before and after industrialization. In industrial societies, labor is divided in terms of interest, and thus, collective consciousness is lower. In an industrial society, no longer governed by agricultural labor alone, there are diversified interests and, as a result, a lowered common interest, which causes a loss of shared values. Social order is then preserved through interdependence rather than norms.⁶ While Weber and Durkheim differ in how the social

⁴ Thomas Hobbes, *Leviathan* (Oxford University Press, 2008).

⁵ Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (Bedminster Press, 1968).

⁶ Emile Durkheim, *The Division of Labor In Society* (The Free Press, 1964).

order is constructed, both support the necessity of order. In the absence of order, there is no need for agents of the state in the form of bureaucrats because there would be no state.

Socialization has long-standing historical origins in other schools of thought, including psychology. Sigmund Freud, an Austrian psychologist, proposed fundamental ideas about an individual's sense of self.⁷ Sociologically, the sense of self is determined at birth by factors outside of one's control, such as class, race, and ethnicity. These factors are determined by societal classifications and the othering of those unlike ourselves. Social control theory, established by American sociologist Travis Hirschi, was influenced by Hobbes's perception of crime. Hobbes affirmed that punishment serves as a logical response to an individual's failure to adhere to the rule of law.⁸ Social control theory outlines how the strength of an individual's societal bonds influences the likelihood of committing a crime.⁹ Like many social theorists, Hirschi highlights the importance of socialization in the lives of young individuals and the greater society.

Sociologists such as Ulrich Beck and Mitat Çelikpala have argued that a gradual shift toward a culture of fear has occurred. The events of September 11th, 2001, are explored by Turkish international relations professor Çelikpala through the lens of German sociologist Beck. Beck's concept of a "risk society" explores the obstacles to security and risk minimization that began in the early 20th century. Major societal shifts after the Industrial Revolution, with class mobility and changes to family compositions, led to a brand new era.¹⁰ Beck argues that there is no turning back from the risks associated with "reflexive modernity", a term used to describe this transition. Globalization results in untreatable insecurity posed by global terrorism. Çelikpala explains the War on Terror, waged by United States President George W. Bush after 9/11, is a response to growing insecurity in the modern

⁷ Sigmund Freud, *The Interpretation of Dreams*, trans. by A. A. Brill (Wordsworth Editions, 1997)

⁸ Thomas Hobbes, *Leviathan* (Oxford University Press, 2008).

⁹ Travis Hirschi, *Causes of Delinquency* (University of California Press, 1969).

¹⁰ Ulrich Beck, *Risk Society: Towards a New Modernity* (Sage Publications, 1992).

era.¹¹ Unlike the invisible threats waged during the Cold War, 9/11 was America's confrontation with a visible threat. The billions of dollars spent during the War on Terrorism would create safety but not security.¹²

9/11 was not the first instance of domestic insecurity. In the 1950s, United States Senator Joseph McCarthy popularized fear, an era known as McCarthyism, instilling a moral panic amongst the American public that within their communities, there was an imminent threat of communism. American international relations professor John Mueller confronts the historical implications of American fear in the form of public opinion. Mueller did so by examining the change in public opinion through press coverage and documented surveys on the fear of communism from the 1940s to the 1980s.¹³ In 2018, Mueller conducted research, nearly two decades after 9/11, highlighting pivotal points in Western terrorist acts that may have impacted long-standing anxiety trends toward terrorism. Since 2001, the Department of Homeland Security has increased its government spending for counter-terrorism. A report published nearly a decade later by the National Research Council concluded that, regardless of the increased spending, no decisive methods were implemented to address general national security. Mueller does not explore the conditions that create the change in domestic policy but rather the shift over decades in public opinion of terrorism.¹⁴ Instead, Mueller acknowledges that the government is obliged to preserve domestic tranquility, a notion attributed to Hobbes, while emphasizing the major increase in spending by the Department of Homeland Security after 9/11.

Americans had already experienced decades of uncertainty posed by the Red Scare, propelled by the Cold War, and the new tangible threat of terrorism demonstrated by the

¹¹ Mitat Çelikpala and Duygu Öztürk, "The Only Thing We Have to Fear: Post 9/11 Institutionalization of In-Security," *Uluslararası İlişkiler* 8, no. 32 (2012): <https://dergipark.org.tr/tr/download/article-file/540177>.

¹² Çelikpala, "The Only Thing We Have to Fear: Post 9/11 Institutionalization of In-Security,".

¹³ John Mueller, "Public Opinion as a Driver of the National Security State," *Constitutional Political Economy*, (2024): <https://doi.org/10.1007/s10602-024-09454-z>.

¹⁴ John Mueller, "Public Opinion as a Driver of the National Security State,".

events of 9/11. Prior research includes terrorism in Western societies, American opinions on terrorism, international policy shifts, and changes in expenditures to address various conditions that arose as a result of September 11th, 2001. Further research into the impact of 9/11 on United States domestic policy through legislation and civil rights is necessary to better understand the long-term effects of the event on American life.

This study will employ a sociological analysis through qualitative research, including relevant civil rights legislation and Supreme Court rulings in the United States, pre- and post-September 11th, 2001. The use of the interpretive method of primary and secondary sources will allow for a review of federal law pre- and post-9/11 to answer the research question: “How did the threat of terrorism after the events of September 11th, 2001, influence American domestic policy, and to what extent did these changes impact Americans’ civil rights protections?”. The present hypothesis is that September 11th, 2001, would act as a catalyst, shifting domestic policy under the perceived threat of terrorism in the United States, invoking a deterioration of civil rights through legal means. The independent variable is legislation, Supreme Court rulings, and law enforcement procedures post 9/11. The dependent variable is the change in civil rights protections. The control variable is American domestic civil rights policy before 9/11.

An in-depth analysis of legal rights and police procedures is necessary to address the research question. An investigation must be conducted into the shift of federal law and legal procedures post-September 11th, 2001, and the law’s impact on individuals to better understand the deterioration of civil rights protections in the United States. This research has potential limitations. Research limitations include time constraints and a lack of access to all relevant research, specifically police data that is not public. Possible future research alternatives include the direct impacts of police procedures on individuals and proposed long-term solutions.

Chapter 1: The Origins of Policing and Civil Rights

Slave Patrols were the first form of legalized policing in the United States brought over from Barbados by the English colonists.¹⁵ As there were no English laws that outlined the governance of slaves, in 1661, the Parliament of Barbados, comprised of the English colonists, created the slave codes based on slave laws established by Spain and Portugal, dating back to the 1500s.¹⁶ Mass migration of the English colonists in 1670, from Barbados to the South Carolina colony, brought new ideas to the colonies on how to govern slaves. In 1704, South Carolina, with a large population of slaves, replicated Caribbean laws and established a slave code.¹⁷ Unlike its colonial neighbors, Virginia had Indigenous tribes rather than slaves. In the 1600s, the colony formed militias as a way to kill members of the Wampanoag and Powhatan tribes who refused to leave the new settlement.¹⁸ Only a year after South Carolina's slave codes were established, Virginia, with its previous methods of oppressive control that targeted Indigenous groups, was the second colony to implement slave codes and later the formation of slave patrols.¹⁹

Slave codes were structured by the needs of a colony and, like all laws, required a method of enforcement. Slave codes granted patrollers the legal authority to act in the preservation of domestic tranquility. Slave patrollers were protected under the law to enter homes and arrest those suspected of harboring fugitives.²⁰ Patrollers consisted of White male colonists who were either monetarily incentivized or mandated to serve for a set duration of time. In Florida, it was mandated that all White males between the ages of eighteen and

¹⁵ Justine Collins, *English Societal Laws as the Origins of the Comprehensive Slave Laws of the British West Indies* (Cambridge University Press, 2021), chap. 3.

¹⁶ Sally E Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Harvard University Press, 2001).

¹⁷ Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas*.

¹⁸ Margaret Ellen Newell, "'The Rising of the Indians'; or, The Native American Revolution of (16)'76," *The William and Mary Quarterly* 80, no. 2 (2023): 287-324. <https://dx.doi.org/10.1353/wmq.2023.0018>.

¹⁹ William Waller Hening, *The Statutes at Large; Being a Collection of All the Laws of Virginia from the First Session of the Legislature, in the Year 1619* (R. & W. & G. Bartow, 1823), 3:447-463.

²⁰ Betty L Wilson, "Under the Brutal Watch: A Historical Examination of Slave Patrols in the United States and Brazil During the 18th and 19th Centuries," *Journal of Black Studies* 53, no. 1 (2021): 3-18, <https://doi.org/10.1177/00219347211049218>.

forty-five serve for three months.²¹ Slave patrollers were led by captains who were typically property owners. In 1856, North Carolina, a documented captain's oath outlined their responsibilities. Captains oversaw the infliction of no more than fifteen lashes on slaves who were off their slave owners' property without permission and the arrest of free Black men congregating with slaves.²² Slave patrolling was considered a civic duty to maintain prosperity, as White civilians were frightened at the prospect of being outnumbered by the slave population.²³ The threat of slave violence made patrol service a collective responsibility.

Armed with guns and whips, they patrolled on foot or by horseback. In some cases, they were equipped with dogs as another method of deterrence for slaves seeking potential escape and freedom. Slaves were tracked by bloodhounds, forcing them to flee into the swamps when faced with patrols.²⁴ During this period, Indigenous people were also enslaved on plantations and often arrested because of their skin tone. They were mistaken or presumed to be of African origin or “mulattos”, a term used to describe individuals of mixed Black and White origin. Advertisements from across the colonies documented over one thousand Indigenous people who were being sold or described as runaway slaves.²⁵ Outside of the typical patrol composition, in some colony jurisdictions, slave patrollers included Indigenous people and White women.²⁶ In Florida during the mid-1800s, the Seminoles, an Indigenous tribe, were mandated, along with the White colonists, to serve in slave patrols.²⁷

²¹ Betty L Wilson, “Under the Brutal Watch: A Historical Examination of Slave Patrols in the United States and Brazil During the 18th and 19th Centuries,” *Journal of Black Studies* 53, no. 1 (2021): 3–18, <https://doi.org/10.1177/00219347211049218>.

²² Obadiah Woodson, *Slave Patrol Contract*, January 1856, Salisbury, North Carolina, Gilder Lehrman Institute of American History. Accessed March 1, 2025, <https://www.gilderlehrman.org/history-resources/spotlight-primary-source/slave-patrol-contract-1856>.

²³ Sally E Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Harvard University Press, 2001).

²⁴ Larry H Spruill, “Slave Patrols, ‘Packs of Negro Dogs’ and and Policing Black Communities.” *Phylon* 53, no. 1 (2016): 42–66, <http://www.jstor.org/stable/phyllon1960.53.1.42>.

²⁵ Anjali DasSarma and Linford D. Fisher, “The Persistence of Indigenous Unfreedom in Early American Newspaper Advertisements, 1704–1804,” *Slavery and Abolition* 44, no. 2 (2023): 267–91, <https://doi.org/10.1080/0144039x.2023.2189517>.

²⁶ Ben Brucato, “Policing Race and Racing Police: The Origin of US Police in Slave Patrols,” *Social Justice* 47, no. 3/4 (161/162) (2020): 115–36, <https://www.jstor.org/stable/27094596>.

²⁷ Larry Eugene Rivers, *Rebels and Runaways: Slave Resistance in Nineteenth-Century Florida* (University of Illinois Press, 2013).

Patrols, unlike the Ku Klux Klan, were governed by laws such as the limitations on the number of lashes and the need for a captain's presence when the punishment was enacted.²⁸ The night watch had a similar objective to the slave patrols, as it was another form of community policing that regulated vagrancy. The night watch was a corrupt institution that employed individuals within the community to serve in a part-time, unpaid position to deter criminal acts such as prostitution and gambling. Often, watchmen volunteered to avoid military service and were seen intoxicated while performing their duties.²⁹ The slave patrol and night watch were the first colonial structures of policing, organized by rules designed to protect the White way of life and promote domestic tranquility. The Reconstruction Era eradicated the utility of slave patrols with the passage of the Emancipation Proclamation in 1863 by President Abraham Lincoln and the conclusion of the American Civil War in 1865.³⁰

1.1 London Metropolitan Model of Policing

In 1829, the United Kingdom passed the Metropolitan Police Act, establishing a centralized uniformed police force in London, a city that had doubled in size after the growth of the Industrial Revolution. The bill outlined new powers granted to officers and established police district jurisdictions. London had nearly one thousand unarmed men who were dressed in blue civilian-like uniforms with the words “police” on their chest, embellished with blue hats, a visible distinction from the military.³¹ Two decades later, in the 1850s, Boston, New York City, Chicago, and New Orleans would be some of the first major cities to establish

²⁸ Obadiah Woodson, *Slave Patrol Contract*, January 1856, Salisbury, North Carolina, Gilder Lehrman Institute of American History. Accessed March 1, 2025, <https://www.gilderlehrman.org/history-resources/spotlight-primary-source/slave-patrol-contract-1856>.

²⁹ Gary Potter, “The History of Policing in the United States,” *EKU School of Justice Studies I*, (2013): https://www.denvertaskforce.org/wp-content/uploads/2023/02/the_history_of_policing_in_the_united_states.pdf

³⁰ J. L. Lyman, “The Metropolitan Police Act of 1829,” *The Journal of Criminal Law, Criminology, and Police Science* 55, no. 1 (1964): <https://doi.org/10.2307/1140471>.

³¹ J. L. Lyman, “The Metropolitan Police Act of 1829,” *The Journal of Criminal Law, Criminology, and Police Science* 55, no. 1 (1964): <https://doi.org/10.2307/1140471>.

police forces following London's Metropolitan Police as a model.³² The model was adapted according to American needs, with adaptations across government jurisdictions to enforce public order, laws, and the public good.

The first police forces were structured as armed citizens as a consolidated form of social control to deter and impede crime, a shift from the role of the American night watch. In 1854, the first police department in the United States was established in Boston, replacing the night watch. Police officers were appointed by the mayor and paid two dollars a day.³³ The police department had a hierarchical structure consisting of a "superintendent, deputy superintendent, chief inspector, captain, inspector, lieutenant, sergeant, patrolman and reserveman".³⁴ At its founding, the relative size of the Boston police department was 250 officers. Much like the watchmen before them, officers lacked qualifications, formal training, and drank while patrolling. Though now armed with firearms and batons, and given the right under law to use preemptive force.³⁵ Thirty years after the establishment of the police, historical accounts from Charleston, South Carolina, in the 1890s describe the department as primarily comprised of Charleston residents who were second-generation family men of Irish or German origin, with a small minority of Black officers.³⁶ Nearing the 20th century, African Americans were now becoming a part of policing efforts, a change from the social dynamics of slavery.

In the United States, firearms have always been integral in maintaining and overcoming the system of slavery. Much like bloodhounds, they served as a legal enforcement against slaves seeking freedom while also being used by runaway slaves to enact

³² Gary Potter, "The History of Policing in the United States," *EKU School of Justice Studies 1*, (2013): https://www.denvertaskforce.org/wp-content/uploads/2023/02/the_history_of_policing_in_the_united_states.pdf

³³ George H McCaffrey, "Boston Police Department," *Journal of Criminal Law and Criminology* 2, no. 3 (1912): <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1125&context=jclc>.

³⁴ McCaffrey, "Boston Police Department,".

³⁵ Gary Potter, "The History of Policing in the United States," *EKU School of Justice Studies 1*, (2013): https://www.denvertaskforce.org/wp-content/uploads/2023/02/the_history_of_policing_in_the_united_states.pdf

³⁶ Layton Wayne Jordan, "Police and Politics: Charleston in the Gilded Age, 1880-1900," *The South Carolina Historical Magazine* 81, no. 1 (1980): 35-50, <http://www.jstor.org/stable/27567600>.

small revolutions or barter for their freedom.³⁷ It follows that firearms would become a part of American policing, serving as a form of deterrence for crime, a deviation from the London Metropolitan model. However, “when the idea of an armed police force was introduced to New Orleans residents in the 1800s, many of the white residents at the time disapproved or were outright angered at the prospect, the implication being that the government wanted to treat them like slaves”.³⁸ Public outrage caused the guns to be removed, though they would later be returned to the police force. The response by White citizens in New Orleans demonstrates that from the beginning of American life, guns were inherently tied to systems of inequality as a method of social control against Black people.³⁹ In other cities, such as San Francisco, it would be the Indigenous resistance against the White settlers in the 1850s and the Civil War that militarized the police.⁴⁰ Armed police officers became the standard for policing nationwide as police precincts began to resemble White America.

Corruption in major cities across the United States became widespread due to the mayoral appointments of police officers. In 1878, in San Francisco, the police commissioners board elected by California judges placed leading capitalists of the state in positions of power to ensure no working-class men, potential union sympathizers, would be in charge.⁴¹ In New York City, in the late 1890s, detectives and police officers would allow theft, prostitution, and other illegal acts when the profits were shared with the officers.⁴² Simultaneously, they

³⁷ Betty L Wilson, “Under the Brutal Watch: A Historical Examination of Slave Patrols in the United States and Brazil During the 18th and 19th Centuries,” *Journal of Black Studies* 53, no. 1 (2021): 3–18, <https://doi.org/10.1177/00219347211049218>.

³⁸ Bryan Wagner, *Disturbing the Peace: Black Culture and the Police Power after Slavery* (Harvard University Press, 2009).

³⁹ Laurence Ralph, “The Logic of the Slave Patrol: The Fantasy of Black Predatory Violence and the Use of Force by the Police,” *Palgrave Communications* 5, no. 130 (2019): <https://doi.org/10.1057/s41599-019-0333-7>.

⁴⁰ Philip J Ethington, “Vigilantes and the Police: The Creation of a Professional Police Bureaucracy in San Francisco, 1847-1900,” *Journal of Social History* 21, no. 2 (1987): 197–227, <http://www.jstor.org/stable/3788141>.

⁴¹ Ethington, “Vigilantes and the Police: The Creation of a Professional Police Bureaucracy in San Francisco, 1847-1900,”.

⁴² Roger Dunham and Geoffrey Alpert, *Critical Issues in Policing: Contemporary Readings*, 7th ed (Waveland Press, 2015).

carried out acts of political fraud by orchestrating elections to keep politicians in places of power.

During the 1900s in Portland, business owners bribed residents to complain to the mayor and police about industrial worker strikes, ensuring a police response to disperse workers. Early policing enforced laws at will and preserved the social order for the wealthy while limiting the ability of the working class to protest conditions in industrial plants.⁴³ The founding of the police union in the 1900s would provide further financial security to officers who were making double the pension of the average industrial worker.⁴⁴ In 1919, the first major general strike across industries occurred in Seattle involving 65,000 workers who boycotted labor in solidarity with the shipyard workers.⁴⁵ Police officers were placed at odds with the public during the strikes. Law enforcement tasked with preserving the peace do so even when the general public disagrees. After the implementation of police departments, came the federal expansion of policing nationwide.

1.2 Building a Police Empire

Policing grew beyond local city police departments. The Department of Justice (DOJ), founded in 1870, was overburdened by uninvestigated cases, as the department was borrowing Secret Service agents to investigate crimes. In 1907, a federal agency was proposed, though it received pushback from members of Congress. President Theodore Roosevelt asserted to Congress that the number of agents who served in temporary positions for investigations was insufficient, as there were not enough people to investigate crimes.⁴⁶ As in 1908, when the agency was proposed once more, the country had approximately one

⁴³ Dennis E. Hoffman and Vincent J. Webb, "Police Response to Labor Radicalism in Portland and Seattle, 1913-19," *Oregon Historical Quarterly* 87, no. 4 (1986): 341-66, <http://www.jstor.org/stable/20614086>.

⁴⁴ Laylon Wayne Jordan, "Police and Politics: Charleston in the Gilded Age, 1880-1900," *The South Carolina Historical Magazine* 81, no. 1 (1980): 35-50, <http://www.jstor.org/stable/27567600>.

⁴⁵ Robert L. Friedheim, *The Seattle General Strike* (University of Washington Press, 2018).

⁴⁶ John F. Fox, "The Birth of the Federal Bureau of Investigation" (Federal Bureau of Investigation, 2003). <https://www.fbi.gov/history/history-publications-reports/the-birth-of-the-federal-bureau-of-investigation>.

hundred cities with over 50,000 people.⁴⁷ Roosevelt argued that Congress did not want a federal institution because “Congressmen themselves did not wish to be investigated”.⁴⁸ Similarly, to the White citizens in New Orleans, politicians feared the creation of a new method of surveillance that might impact them. By the end of 1908, the Federal Bureau of Investigation (FBI) was founded.⁴⁹ The FBI established field offices to carry out investigations on potential and committed crimes nationwide.

The United States would experience an influx of immigrants who brought over their customs. Over nearly a hundred years from 1816 to 1914, 5.5 million Germans would immigrate.⁵⁰ German immigrants made up the largest European immigrant population, roughly 15%, and brought cultural norms of drinking at all hours of the day and businesses such as breweries and beer saloons.⁵¹ The 1920 census states that racial categories included Indian, Chinese, Indigenous, Black, White, and all other groups, which signifies that the country was becoming increasingly diverse.⁵² Much like the slave codes serving as a response to an influx of slaves, the anti-alcohol movement came as a reactionary response to an influx of immigrants. For native White Americans, these new drinking norms were deemed un-American, and coupled with increases in crime, the anti-alcohol movement had begun.

Founded in 1893, the Anti-Saloon League (ASL), under the leadership of American Attorney Wayne Wheeler, began a campaign reliant on the politics of public pressure. Through the dissemination of flyers and the mobilization of churches, the league was able to pressure politicians, a tactic that gained traction during World War I to garner public support.

⁴⁷ “A Brief History: The Nation Calls, 1908-1923” (Federal Bureau of Investigation, 2021).

<https://www.fbi.gov/history/brief-history>.

⁴⁸ John F Fox, “The Birth of the Federal Bureau of Investigation” (Federal Bureau of Investigation, 2003).

<https://www.fbi.gov/history/history-publications-reports/the-birth-of-the-federal-bureau-of-investigation>.

⁴⁹ Fox, “The Birth of the Federal Bureau of Investigation,”.

⁵⁰ Klaus J. Bade, “From Emigration to Immigration: The German Experience in the Nineteenth and Twentieth Centuries,” *Central European History* 28, no. 4 (1995): 511, <http://www.jstor.org/stable/4546551>.

⁵¹ Bade, “From Emigration to Immigration: The German Experience in the Nineteenth and Twentieth Centuries,”.

⁵² U.S. Census Bureau, “1920 Census: Volume 3. Population, Composition and Characteristics of the Population by States,” (1922): <https://www.census.gov/library/publications/1922/dec/vol-03-population.html>.

The emotional pull and rhetoric in the ASL flyers, depicting mothers and young children being destroyed by the impact of alcoholism, mobilized support from voters.⁵³ Industrialists supported the measure to ensure a sober workforce.⁵⁴ While scientists following Darwin's theory of evolution believed that alcohol would be the long-term killer of White people.⁵⁵ Prohibition came as a way to preserve the White race, a cause the Ku Klux Klan resonated with, as nearly two million Klan members in the 1920s would join in the movement.⁵⁶ Public support caused Congress to pass the National Prohibition Act, also known as the Volstead Act, with continued support from various parts of the American public.

On January 17th, 1920, the production, sale, and transportation of alcohol were banned in the United States. The ban created the Prohibition Era that lasted from 1920 to 1933. With the ban on alcohol came the need to regulate the ban nationwide. Federal entities collaborated to enforce the ban across agencies, including the United States Postal Service, the United States Coast Guard, and the United States Customs and Border Protection. The Customs and Border Protection agencies worked to prohibit alcohol from entering the country and its production along state lines. Border officers were tasked with surveilling the roads and rivers along the United States and Canada, conducting raids that included the seizure of cars and alcohol.⁵⁷ The United States Postal Service served as a mechanism to regulate the movement of alcohol across the country. At the same time, police departments were engaged in enforcement on the local level, arresting those who defied the ban.

⁵³ Julia H. Johnson, *Daddy's in There—: Wanted--A Father; A Little Boy's Plea*, (American Issue Publishing Co., nd).

⁵⁴ Ellen NicKenzie Lawson, *Smugglers, Bootleggers, and Scofflaws: Prohibition and New York City* (State University of New York Press, 2013)

⁵⁵ Lisa McGirr, *The War on Alcohol: Prohibition and the Rise of the American State* (W. W. Norton & Co., 2016).

⁵⁶ David A Horowitz, "The Klansman as Outsider: Ethnocultural Solidarity and Antielitism in the Oregon Ku Klux Klan of the 1920s," *The Pacific Northwest Quarterly* 80, no. 1 (1989): 12–20, <http://www.jstor.org/stable/40491018>.

⁵⁷ Allan S. Everest, *Rum Across the Border: The Prohibition Era in Northern New York* (Syracuse University Press, 1978), 57–86.

The act primarily impacted lower-class groups such as urban immigrants, the working class, and those who were impoverished.⁵⁸ Legislation came as a way to enforce the dominance of White Protestant ideals on immigrant populations. The ban's enforcement was specific to regions with large immigrant populations, such as Chicago and New York City. Criminals such as Al Capone in Chicago became figureheads in the fight against prohibition through the smuggling and sale of alcohol to the highest bidder.⁵⁹ The growing unpopularity of the act led to difficulty in conviction for arrests of bootleggers, those who were illegally smuggling alcohol, by sympathetic juries comprised of everyday Americans.⁶⁰ According to John Horgan, the chairman who served on the Intoxicating Liquor Commission for four years, "the total number of prisoners serving sentences of more than one year in federal prisons has risen from 5,268 in 1921 to 14,115 in 1930, and of these last over one-third were violators of the Prohibition Act, the largest class of long term federal prisoners".⁶¹ The regulation of alcohol increased police arrests, but vagrancy in the form of alcohol consumption had not changed. The report by the commission in 1931, two years before the end of prohibition, found that for prohibition to continue, public opinion was "essential for the enforcement of the law".⁶²

The Prohibition Era would be the first real exercise of the state's power on crimes such as the illegal distribution or consumption of alcohol from the 1920s to the 1930s through the deployment of United States agencies that regulated the act. When the Association Against the Prohibition Amendment began funding the 1933 repeal campaign with the support of the Women's Organization for National Prohibition Reform, Americans exercised

⁵⁸ Lisa McGirr, *The War on Alcohol: Prohibition and the Rise of the American State* (W. W. Norton & Co., 2016).

⁵⁹ John Landesco, "Prohibition and Crime," *The ANNALS of the American Academy of Political and Social Science* 163, no. 1 (1932): 120-129, <https://doi.org/10.1177/000271623216300113>

⁶⁰ J. C. Burnham, "New Perspectives on the Prohibition 'Experiment' of the 1920's," *Journal of Social History* 2, no. 1 (1968): 51-68, <http://www.jstor.org/stable/3786620>.

⁶¹ John J. Horgan, "The Failure of Prohibition," *Studies: An Irish Quarterly Review* 20, no. 78 (1931): 225-38, <http://www.jstor.org/stable/30094754>.

⁶² Horgan, "The Failure of Prohibition,".

their right to choose whether they wanted prohibition to continue. Between April and November of 1933, 21 million Americans voted across the thirty-seven states that held elections, and 73% of voters chose to repeal.⁶³ When public opinion had waned for the cause, states repealed the amendment, and on December 5th, 1933, prohibition came to an end. Though prohibition ended, the Prohibition Era was an exercise in the government's ability to implement and enforce laws on vagrancy.

1.3 American Civil Rights Legislation

The United States Constitution was constructed under common law and includes the protection of habeas corpus. Habeas corpus is a legal principle that protects individuals from being detained unlawfully. The United States Constitution states in Article I, Section 9, clause 2 that: “[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it”.⁶⁴ At the start of the Civil War, on March 25th, 1861, twenty days after being sworn in for a second term, President Abraham Lincoln would issue the first suspension of the writ of habeas corpus to detain members of the Confederacy who had rebelled against the Union. On March 26th, the Supreme Court ruled that the suspension was unconstitutional, but the Executive Branch failed to comply. Lincoln would issue another suspension in 1862, expanding the previous suspension beyond a single state to the entire nation.⁶⁵ The suspension of civil liberties came at a time when the country was at war with itself and showcased societal shifts that have led to changes and suspension of legislation.

The passage of the Thirteenth Amendment in 1865 came as a response to the conditions that preceded the United States Civil War, granting all slaves freedom and making

⁶³ David Kyvig, *Repealing National Prohibition* (Kent State University Press, 2000).

⁶⁴ U.S. Constitution. art. I § 9, cl. 2.

⁶⁵ Clayton Barnes, “A Comparison and Contrast of the Suspension of the Writ of Habeas Corpus by Presidents Abraham Lincoln & George W. Bush,” *Lincoln Memorial University Law Review* 8, No. 1 (2020): <https://digitalcommons.lmunet.edu/lmulrev/vol8/iss1/6>.

slave patrols obsolete. The Civil Rights Act of 1866 was proposed as a solution to the legal uncertainty of a newly freed population. The act outlined a new concept of citizenship law in the United States, guaranteeing equal rights to all individuals, including former slaves (excluding Indigenous peoples) under the rule of law.⁶⁶ Originally vetoed by President Andrew Johnson, the act was eventually passed by both the House and Senate with a veto-proof bill, as two-thirds of Congress voted in favor.⁶⁷ The same year, the Fourteenth Amendment was passed by the Senate, though the amendment would not be ratified until two years later in 1868 by the House of Representatives.

The Civil Rights Act of 1866 served as the guide to the construction of the Fourteenth Amendment, a constitutional ratification that provided all who were born on American soil with citizenship.⁶⁸ The Fourteenth Amendment was formed under the conceptual framework of common law, distinguishing between the public and private sectors in application to equal treatment. Under the amendment, public institutions such as schools, cemeteries, theatres, and public transportation could not discriminate against non-White individuals. The amendment protected the rights of private businesses, as owners still held the right to deny equal access. The Civil Rights Act of 1866 and the Fourteenth Amendment were the legal foundation for segregation and discrimination in the United States.

The KKK Acts were three subsequent pieces of legislation to the Fourteenth Amendment that sought to address Klan violence toward African Americans exercising their right to vote. The three Enforcement Acts of 1870 and 1871, under President Ulysses S. Grant, were a legislative means to implement the Thirteenth and Fourteenth Amendments, as they had failed to be enforced in the Southern states.⁶⁹ The Enforcement Act of 1870 denied

⁶⁶ George Rutherglen, *Civil Rights in the Shadow of Slavery: The Constitution, Common Law, and the Civil Rights Act of 1866* (Oxford University Press, 2013).

⁶⁷ A. K. Sandoval-Strausz, "Travelers, Strangers, and Jim Crow: Law, Public Accommodations, and Civil Rights in America," *Law and History Review* 23, no. 1 (2005): 53–94, <https://doi.org/10.1017/S0738248000000055>.

⁶⁸ George Rutherglen, *Civil Rights in the Shadow of Slavery: The Constitution, Common Law, and the Civil Rights Act of 1866* (Oxford University Press, 2013).

⁶⁹ A. K. Sandoval-Strausz, "Travelers, Strangers, and Jim Crow: Law, Public Accommodations, and Civil Rights in America," *Law and History Review* 23, no. 1 (2005): 53–94, <https://doi.org/10.1017/S0738248000000055>.

the protection of organized groups that attempted to suppress others' rights. The Second and Third Enforcement Acts of 1871 gave the state the right to enforce and regulate the electoral process nationwide, allowing armed forces to be stationed at polling sites to protect African Americans' right to vote.⁷⁰ Armed forces and marshals were stationed across the United States, placing the federal government in a position of power to use physical force against Klan aggressors. The two bills in the Enforcement Act of 1871 established 42 U.S.C. § 1983, better known as Section 1983, which outlined that all individuals have the legal right to sue state and local government officials who have violated their rights.⁷¹ The post-Civil War acts with Section 1983 allowed disenfranchised African Americans to sue officials who continually denied rights outlined by the Thirteenth and Fourteenth Amendments.

At the start of the Prohibition Era, the civil rights movement formed with the ratification of equal treatment under the rule of law, an expansion that would happen over time through amendment passages. The Civil Rights movement sought to end discrimination through peaceful and violent methods as different groups attempted to end the practice. The Civil Rights Act of 1964 would mark the end of Jim Crow laws and racial segregation nationwide. The act detailed that no individual, regardless of circumstance, based on their racial or ethnic makeup, could be discriminated against. The legal document granted all equal access to public and private facilities, a change from the Civil Rights Act of 1866. The Supreme Court's decision in *Miranda v. Arizona* (1966) was pivotal in constructing individual rights. Expanding on the Bill of Rights, *Miranda v. Arizona* outlined the legal principle that all suspects must be informed during all criminal proceedings, including initial arrest.⁷² Individuals arrested must understand that they have the right to remain silent, the right to an attorney, and the right to due process. What came to be known as Miranda Rights

⁷⁰ Elaine Frantz Parsons, "Klan Skepticism and Denial in Reconstruction-Era Public Discourse," *The Journal of Southern History* 77, no. 1 (2011): 53–90, <http://www.jstor.org/stable/27919387>.

⁷¹ 42 U.S.C. § 1983 (1871).

⁷² *Miranda v. Arizona*, 384 U.S. 436, 440–441 (1966).

outlined a pivotal part of a previous Supreme Court decision in *Gideon v. Wainwright* (1963) that a state-appointed lawyer must be provided at no cost to those arrested, protecting an individual from psychologically coercive tactics that may lead to a false confession under duress.⁷³

In 1967, in *Pierson v. Ray*, the Supreme Court argued that police officers could not be held financially liable for professional conduct under two conditions: that they acted in good faith and with probable cause.⁷⁴ Section 1983 from the Enforcement Acts of 1871 serves as the only legal basis that allows for the pursuit of damages against public officials, including police, however, it would become secondary to the precedent set forth by the court in *Pierson v. Ray*. The Supreme Court ruling in *Harlow v. Fitzgerald* (1982) continued the expansion of qualified immunity, a practice that constricted individual rights. Removing the need to have acted in good faith in the decision of the previous ruling, police officers, like all other government officials, were granted legal protection from criminal or civil legal action unless their actions had violated “clearly established law”.⁷⁵

Qualified immunity expanded legal protections for public officials while placing a great burden of proof on individuals who have had their rights violated. The burden of proof describes the legal process of the power imbalance between a plaintiff and a defendant who must prove that a crime occurred. The doctrine of qualified immunity was a legal remedy to Section 1983 ruled on in the late 1960s and placed a significant barrier for plaintiffs to sue public officials. Establishing a doctrine that requires the violation of a “clearly established” constitutional right, for this to occur, existing case law must have previously ruled in favor of the plaintiffs' alleged right violation. Since 1967, the doctrine has become more expansive as new rulings have been deliberated.

⁷³ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁷⁴ *Pierson v. Ray*, 386 U.S. 547 (1967).

⁷⁵ *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

Chapter 2: The Events of 9/11: The 9/11 Commission Report (2004)

On September 11th, 2001, at around 8:14 a.m., the first American plane, American Airlines Flight 11, en route from Boston to Los Angeles, was hijacked. Before the hijacking, President George W. Bush would iterate that the United States as a nation had not experienced terrorism on its soil since the attack of Pearl Harbor in 1941.⁷⁶ Though previous acts of terrorism had occurred, including the attack on the World Trade Center in 1993. The events of 2001 were not the first time the American public and its landmarks had been targeted. In spite of previous attacks or attempted attacks, security in public places was very different. At the time, airport security was entirely privatized. For most, terrorism was not a consideration as 78% of Americans believed that poor airline maintenance while flying would be a greater threat to them than terrorism.⁷⁷ 9/11 would end privatization of airport security and forever change Americans' sense of safety, resulting in legislative changes. The National Commission on Terrorist Attacks Upon the United States, a government-funded commission, would view the events leading up to and during the four hijackings of American Airlines Flight 11 and 77, and United Airlines Flight 93 and 175 as failures by the federal government.

At the airports, there were approximately 16,000 private security screeners nationwide to regulate aviation security. Screeners underwent twelve hours of x-ray screening training to monitor for weapons like handguns or bombs, with no training on baggage screening.⁷⁸ Additional training included the use of the program Computer Assisted Passenger

⁷⁶ George W. Bush, "Statement by the President in Address to the Nation" (speech, Washington, DC, September 11th, 2001), White House Archives,

<https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010911-16.html>

⁷⁷ National Commission on Terrorist Attacks Upon the United States, *Seventh Public Hearing of the National Commission on Terrorist Attacks Upon the United States*, January 26-27, 2004, accessed April 15, 2025.

<https://govinfo.library.unt.edu/911/hearings/hearing7.htm>.

⁷⁸ Garrick Blalock, Vrinda Kadiyali, and Daniel H. Simon, "The Impact of Post-9/11 Airport Security Measures on the Demand for Air Travel," *The Journal of Law & Economics* 50, no. 4 (2007): 731–55, <https://doi.org/10.1086/519816>.

Prescreening System (CAPPS) to identify potential suspicious passengers for supplemental screening at security. The metal detectors at airports were only equipped to detect the amount of metal content, as in a .22-caliber handgun. Nonpassengers entering what is now known as the secure area, the transportation of four-inch long blades, and box cutters were deemed non-threatening by the Federal Aviation Administration (FAA).⁷⁹ Of the nineteen male hijackers who had entered security screening at Boston Logan International Airport, Washington Dulles Airport, and Liberty International Airport, five would undergo additional screening. The five selected by the CAPPS system passed through metal detectors and were allowed on board their flights. Instead, their checked bags were prevented from being loaded into the plane's cargo until closer to flight takeoff.

On September 11th, 2001, the United States Air Traffic Control was divided into regional commands. New York, Boston, Cleveland, and Indianapolis would be the four regional commands in charge of relaying the hijacking transmissions and rerouting information to the FAA and then to the Pentagon National Regional Command Center and the North American Aerospace Defense Command (NORAD).⁸⁰ The emergency protocol between the FAA and the military was to ensure that, in the event of a confirmed hijacking, the military could intervene and provide military escorts of the aircraft. In a more drastic scenario, potentially shooting down the commercial aircraft was a part of the procedure. American Airlines Flight 11 was the only flight to reach military command, providing nine minutes from the military's notification of a confirmed hijacking. There was no information on the location of the plane in New York airspace before the first flight hit one of the World Trade Center's Twin Towers.

⁷⁹ James Ford, Ardeshir Faghri, Dian Yuan, and Saumabha Gayen, "An Economic Study of the US Post-9/11 Aviation Security," *Open Journal of Business and Management* 8, no. 5 (2020): <https://doi.org/10.4236/ojbm.2020.85118>

⁸⁰ National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report. Executive Summary* (National Commission on Terrorist Attacks upon the United States, 2004).

Between 8:14 a.m. and 10:02 a.m. Eastern Standard Time, four planes would be hijacked, three of which would hit the World Trade Center and the Pentagon. Recovered phone call logs from passengers to their loved ones described the events onboard the last flight and the choice to overtake the four terrorists on United Airlines Flight 93 en route to Washington, D.C.. The bravery of the passengers' choice to rush the cockpit resulted in the plane crashing in Shanksville, Pennsylvania, at 10:02 a.m., deterring the final attack from being enacted in Washington, D.C.. The report by the commission does not attempt to provide assurances that, despite knowledge of the previous attacks and with the present legislative infrastructure in place, the attack would have been subverted by the United States government without the passengers. By the time notice was approved by Vice President Dick Chaney at 10:30 a.m. and given to NORAD to shoot down any unresponsive plane, twenty-eight minutes had passed since the final flight had crashed.⁸¹ The report details that as of 10:02 a.m., the flight was six to sixteen minutes from reaching its destination in Washington D.C. and that while NORAD assures it would have been able to shoot down United Flight 93, the commission was confident that the nation owes an outstanding debt to the passengers on board who saved the lives of countless others.

The 9/11 Commission Report serves as the most comprehensive review of the events of September 11th after inquiries into all involved levels of bureaucracy. It details the failures of the FAA's Air Traffic Control Centers, the Secret Service, NORAD, American Airlines, and United Airlines. The private airlines that chose not to ground planes nationwide after the first detailed hijacking, the government's failure to communicate among its agencies, and the military's failure to address its chain of command.

⁸¹ National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report. Executive Summary* (National Commission on Terrorist Attacks upon the United States, 2004).

Chapter 3: Direct Change After 9/11

America was no longer at peace after 9/11. September 11th, 2001, exposed the American public to the looming threat of terrorism by Al-Qaeda and the harm that could follow. On September 11th, hours after the attacks at 7:35 p.m., Congress sang “God Bless America” to demonstrate a united front on the world stage.⁸² President George W. Bush addressed the nation at 8:30 p.m., an hour after the Congressional Address, renouncing terrorism and instilling confidence in American institutions.⁸³ The address was a five-minute response to the attack, honoring those who had fallen, and the Bush Administration’s commitment to protecting the American people from terrorism.

In the months after the attack, media coverage showed the events continuously. 2,997 people died on September 11th, 2001, with 2,000 others who were present at the World Trade Center attack dying in the years to follow. Since then, thousands have been diagnosed with cancer or respiratory illnesses.⁸⁴ Millions of Americans watched the collapse of the Twin Towers in real time as major news networks such as ABC, NBC, and CBS were broadcast live across smaller networks.⁸⁵ Studies following the immediate aftermath of the event monitored the symptoms of Americans between two groups: individuals who had watched the events most and those who had not. The group who had watched the events most were twice as likely to experience posttraumatic stress disorder and depression.⁸⁶ The deaths of hundreds of foreign nationals garnered global support, including countries that had lost citizens. The

⁸² U.S. House of Representatives, “The Singing of ‘God Bless America’ on September 11, 2001,” *History, Art & Archives*.

⁸³ George W. Bush, “Statement by the President in Address to the Nation” (speech, Washington, DC, September 11th, 2001), White House Archives.

⁸⁴ Robert D. Daniels, Travis L. Kubale, Dori B. Reissman, and John Howard, “The World Trade Center Health Program: Twenty Years of Health Effects Research,” *American Journal of Industrial Medicine* 64, no. 10 (September 24, 2021): 797–802, <https://doi.org/10.1002/ajim.23273>.

⁸⁵ Newseum, Cathy Trost, and Alicia C. Shepard. *Running Toward Danger Stories Behind the Breaking News of 9/11* (Rowman & Littlefield, 2002).

⁸⁶ Peter Vasterman, C. Joris Yzermans, and Anja J. E. Dirkzwager, “The Role of the Media and Media Hypes in the Aftermath of Disasters,” *Epidemiologic Reviews* 27, no. 1 (2005): 107–14, <https://doi.org/10.1093/epirev/mxi002>.

Global War on Terrorism had begun. America began its invasion of Afghanistan on October 7th, 2001, less than one month after the attacks.

Later in the month, on October 26th, the Patriot Act was signed into law by President George W. Bush. The four-year-long renewable act provided the federal government with greater state surveillance power. The power to deter acts of terrorism through the sharing of data and intelligence within intergovernmental agencies. This was done to rectify the previous failure of the FBI to share their findings when they had investigated some of the nineteen terrorists who had been in the country in July of 2001. Now, notifying other federal agencies would no longer be an issue with cross-agency evidence sharing.⁸⁷ The act included an expansive provision of the existing FBI's national security letters, allowing the agency to acquire investigative information about all Americans without a court order. National security letters became a legal means of violating the Fourth Amendment, which protects from unlawful searches and seizures.⁸⁸ The FBI now has the power to obtain Americans' data for anything deemed counter-terrorism.

Before the Patriot Act was amended by the Patriot Act Additional Reauthorizing Amendments Act of 2006, the FBI's letters could not be litigated. Between the years of 2001 and 2005, the FBI issued over 30,000 letters a year as a constitutional workaround to privacy laws, with recipients unable to fight the data requests.⁸⁹ After the Reauthorizing Amendments Act, the warrantless letters were able to be litigated against as the FBI had investigated all aspects of American data information, including library data, to review Americans' reading habits and literature content in the name of counter-terrorism.⁹⁰

⁸⁷ National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report. Executive Summary* (National Commission on Terrorist Attacks upon the United States, 2004).

⁸⁸ *Doe v. Gonzales* 449 F.3d 415 (2d Cir. 2006).

⁸⁹ Andrew E. Nieland, "National Security Letters and the Amended Patriot Act," *Cornell Law Review* 92, no. 4 (2007): <http://scholarship.law.cornell.edu/clr/vol92/iss6/4>.

⁹⁰ *Doe v. Gonzales* 449 F.3d 415 (2d Cir. 2006).

Demonstrating the harsh anti-terrorism attitude that would persist throughout the Bush Administration through the lengthening of the sentences of terrorists and terrorist conspirators.⁹¹ The act changed civil liberties as individual civil liberties were impeded under the powers of the federal government to surveil potential threats. The Patriot Act would not be the first legislation in the United States to racially profile minority groups. Still, it would serve as the largest basis for the racial profiling of ethnic and religious Muslims residing, entering, and exiting the country. The nineteen terrorists who committed the plane hijackings had entered the country on legitimate visas, and so legislation shifted toward the denial of visas from specific Middle Eastern countries.⁹² These shifts would result in fewer visas for qualified students and workers.

The Bush Administration created vague legislative rhetoric that allowed Americans and foreign “unlawful enemy combatants” to be detained indefinitely.⁹³ Terrorist threats were detained at Guantanamo Bay, a naval base in Cuba, that existed without the legal protection of United States law, including the right to due process or international law in the form of the Geneva Convention for the humane treatment of war prisoners.⁹⁴ Bush would be the second president to suspend the writ of habeas corpus after Lincoln, allowing for the administration to detain individuals in Guantanamo until the Supreme Court's ruling in 2004.⁹⁵

On November 19th, 2001, the Aviation and Transportation Security Act was enacted, establishing the Transportation Security Administration (TSA). Before TSA, there were

⁹¹ U.S. Congress, "Text - H.R.3162 - 107th Congress (2001-2002): Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001," 2001, <https://www.congress.gov/bills/107/congress/house-bills/3162/text>.

⁹² K. Jack Riley, James Dobbins, Arturo Muñoz, et al, “Flight of Fancy?: Air Passenger Security Since 9/11,” In *The Long Shadow of 9/11: America's Response to Terrorism*, ed. by Brian Michael Jenkins and John Paul Godges (RAND Corporation, 2011), 147–60.

⁹³ Leila Nadya Sadat, “A Presumption of Guilt: The Unlawful Enemy Combatant and the U.S. War on Terror,” *Denver Journal of International Law & Policy* 37, no.4 (2009): <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1241&context=djilp>

⁹⁴ Sadat, “A Presumption of Guilt: The Unlawful Enemy Combatant and the U.S. War on Terror,”

⁹⁵ *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

16,000 private security officers; after its founding, 56,000 TSA officers were employed.⁹⁶ Initially, security remained privatized, though on January 16, 2002, “all airlines had to either adopt positive bag matching, in which each piece of checked luggage was matched to a passenger on board a flight, or screen checked baggage for explosives with one of four options: explosion detection system (EDS) machines, explosion trace detection (ETD) machines, bomb-sniffing dogs, or manual searching of bags,” implementing distinct security policy changes four months after the attack.⁹⁷ The mandate that would require the screening of both passengers and their baggage would not reach all airports until January 2003. The No Fly List was established the same year, along with the Terrorist Screening Center under the FBI, to prevent potentially dangerous or flight-risk passengers from being allowed to board planes.

The Department of Justice would release a report in April of 2002 showcasing cities nationwide that had enacted counter-terrorism measures in the months that followed the attacks. The department continued to place counter-terrorism beyond the federal government and onto local government. The report titled “Local Law Enforcement Responds to Terrorism: Lessons in Prevention and Preparedness” identified the need for cross-jurisdictional collaboration, improved emergency response, and suspicious characteristics that law enforcement should be wary of. Sharing data across jurisdictions allows for departments to track behavior they deem abnormal. Included in the characteristics were “paying cash for plane tickets, taking flight lessons, inquiring about crop duster planes, and frequenting drug stores”.⁹⁸ These actions in conglomeration created a narrative of suspicious activity that police departments should be wary of. Much like Bush’s doctrine of

⁹⁶ Garrick Blalock, Vrinda Kadiyali, and Daniel H. Simon, “The Impact of Post-9/11 Airport Security Measures on the Demand for Air Travel,” *The Journal of Law & Economics* 50, no. 4 (2007): 731–55, <https://doi.org/10.1086/519816>.

⁹⁷ Blalock, “The Impact of Post-9/11 Airport Security Measures on the Demand for Air Travel,” 731–55.

⁹⁸ U.S. Department of Justice, Office of Community Oriented Policing Services, *Local Law Enforcement Responds to Terrorism: Lessons in Prevention and Preparedness*, COPS Innovations: A Closer Look (Washington, DC: U.S. Department of Justice, 2002), <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-w0125-pub.pdf>.

preemptive strikes in the Middle East, local police efforts would focus on preemptive action to deter terrorism. Attaching actions to terrorism created a formula of predictive policing that would continue for decades to come.

3.1 Legislation Post 9/11

After September 11th, 2001, policing and surveillance shifted across bureaucratic institutions, including the federal, state, and local governments. The Homeland Security Act, passed on November 25th, 2002, with bipartisan support from Congress, would focus on long-term domestic security. The act authorized a large restructuring of the federal government's operations, establishing the Department of Homeland Security (DHS), dismantling the previous immigration system, and the United States Immigration and Customs Enforcement (ICE) was formed in its place.⁹⁹ Both agencies began operation in March 2003.

After the breaches in national security due to the actions by governmental personnel before and during the attacks on September 11th, 2001, one of the recommendations by the 9/11 Commission was to enhance emergency responses and cyber surveillance of terrorist threats. The government had learned from the 9/11 attacks that it was under-equipped for a unilateral response to the threat of danger. The Department of Homeland Security coordinated the collaboration between the executive branch. DHS orchestrated the Department of Defense, the Department of Justice, the National Guard, the FBI, and many others to detect and prevent threats to the United States.¹⁰⁰ Territorial strength through strong borders and the regulation of drugs, as well as cyber defense, would become a part of homeland security practice.

⁹⁹ U.S. House of Representatives, *Homeland Security Act of 2002*, H.R. Rep. No. 107-609, pt. 1 (2002), <https://www.congress.gov/congressional-report/107th-congress/house-report/609/1>.

¹⁰⁰ Charles R. Wise, "Organizing for Homeland Security," *Public Administration Review* 62, no. 2 (2002): 131–44, <http://www.jstor.org/stable/3109897>.

Before 9/11, legislation was limited to digital technology. In the United States, the Internet and the World Wide Web had been around for a decade, however, there was no cyber legislation providing central authority and governmental oversight. The United States was originally ahead of other nations in creating the Internet. The Department of Defense had been one of the crucial proponents in cyber advancement with the creation of the Advanced Research Projects Agency Network (ARPANET) project in 1969. ARPANET was the mechanism that allowed for network switching that would create the internet in 1989, and the World Wide Web, created by a British scientist in 1991, would serve as the means of connection beyond closed systems to the open global system seen today.¹⁰¹

Legislation before 9/11 focused on technology such as cell phones for crime prevention and evidence acquisition for the FBI. This included the Communications Assistance for Law Enforcement Act, passed in 1994, which mandated that telephone providers ensure wiretapping capabilities for law enforcement use. In 2007, the Department of Homeland Security established the National Protection and Programs Directorate, a government agency now known as the Cybersecurity and Infrastructure Security Agency (CISA) to address this lack of legislation to reduce cyber threats working with the “public sector, private sector and government partners to share information, build greater trust, and lead the national effort to protect and enhance the resilience of the Nation”.¹⁰² The agency has expanded over time and is not limited to cyber threats, as it coordinates emergency responses to natural disasters and oversees election results.

Since the implementation of the Transportation Security Administration in 2001, many terrorist attacks have been deterred, with potential terrorists apprehended before being

¹⁰¹ Kleinrock, L, "History of the Internet and its flexible future," *IEEE Wireless Communications* 15, no. 1 (2008): 8-18, [doi: 10.1109/MWC.2008.4454699](https://doi.org/10.1109/MWC.2008.4454699).

¹⁰² U.S Department of Homeland Security, *CISA Cyber Mission and Cyber Resources*, Cybersecurity and Infrastructure Security Agency, accessed April 5, 2025, https://www.dhs.gov/sites/default/files/publications/privacy-pia-obim004-hartincrement1-february2020_0.pdf.

able to carry out mass acts of terrorism on flights.¹⁰³ With terrorism, deterrence comes the abdication of civil liberties such as the Fourth Amendment, of unnecessary searches and seizures of ordinary passengers as they are placed aside at an airport. Whole body searches became a normative practice in airports. Regardless of whether or not a metal detector goes off, agents are tasked with frisking passengers at random. Per its outlined purpose detailed in the Aviation and Transportation Security Act (2001), TSA must continue to research and develop security practices.¹⁰⁴

In 2007, the Department of Homeland Security began its notification to the press that it would begin the pilot operation of Whole Body Imaging (WBI).¹⁰⁵ Whole Body Imaging became standard aviation security practice using millimeter Advanced Imaging Technology (AIT), implemented nationwide at all airports. TSA now scans the bodies of passengers who enter the secured screening area, generating a three-dimensional image of their bodies. Under federal privacy laws, the scan could not show an individual's face, as that would violate the right to the protection of Personally Identifiable Information (PII). However, there was no legal protection against the invasive demonstration of “breasts, genitals, buttocks, prosthetics, binding materials, and any objects on the person’s body” to security officers, as it is deemed a counter-terrorism measure.¹⁰⁶ The practice was simplified in 2013 to no longer include graphic depictions of passengers' private regions, after the media and the public deemed the imaging government overreach. TSA is federally mandated to continue researching innovative security measures to protect the public. As a response to September 11th, 2001, the government remains focused on legislation and technology that better surveil threats.

¹⁰³ K. Jack Riley, James Dobbins, Arturo Muñoz, et al, “Flight of Fancy?: Air Passenger Security Since 9/11,” In *The Long Shadow of 9/11: America’s Response to Terrorism*, ed. by Brian Michael Jenkins and John Paul Godges (RAND Corporation, 2011), 147–60.

¹⁰⁴ U.S. Department of Homeland Security, *Privacy Impact Assessment for TSA Whole Body Imaging*, 2008, https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_tsa_wbi.pdf.

¹⁰⁵ U.S. Department of Homeland Security, *Privacy Impact Assessment for TSA Whole Body Imaging*,.

¹⁰⁶ National Center for Transgender Equality, *Whole Body Imaging FAQ*, 2009, https://transequality.org/sites/default/files/docs/releases/NCTE_Body_Scan.pdf.

3.2 Media / See Something, Say Something

In the weeks after the attack, federal officials had meetings with Hollywood screenwriters, none of whom had any knowledge about the threat of jihad-driven terrorism, to produce counter-terrorism methods.¹⁰⁷ Americans who watched the event have often described the attack as “something out of a movie”. Pentagon officials, in their creation of possible counter-terrorism measures, turned to the creativity of Hollywood, particularly within the sci-fi genre of alien invasions, to map out new methods of defense in the event of a terrorist threat.¹⁰⁸ Despite federal officials' meetings with creative Hollywood writers, media had shifted following the attacks. American fiction and nonfiction stories were rewritten, reshot, and reanimated because of the emotions many Americans felt. Specifically, movies in production or slated to be released that year would be edited to no longer include hijacked planes or internal threats. American filmmakers, writers, and producers began shifting the locations of new television shows and movies away from New York City. Hollywood production companies separated themselves from the events of September 11th, 2001, and were cautious as to the depictions of terrorism.

Mainstream news coverage of the War on Terror focused on George W. Bush's crusade against terrorism, depictions of American troops in Afghanistan and Iraq, as well as Muslim threats. Continuing the narrative of the bravery and sacrifice of those who had chosen to serve overseas for Americans' everyday security, while maintaining that a domestic threat persisted. President Barack Obama's first campaign in 2008 focused on the continuation of Bush's legacy of protecting the American people from foreign threats through the expansion of the War on Terror. Obama ran his campaign on the slogans “Change We Can Believe In” and “Yes We Can”, the latter a reference to Dolores Huerta's “Si Se Puede”.

¹⁰⁷ Michael C. Frank, "Alien Terrorists: Public Discourse on 9/11 and the American Science Fiction Film," *Screens of Terror: Representations of War and Terrorism in Film and Television since 9/11*, (2011): 155-76, <http://nbn-resolving.de/urn:nbn:de:bsz:352-250724>.

¹⁰⁸ Frank, "Alien Terrorists: Public Discourse on 9/11 and the American Science Fiction Film,".

Despite attacks seeking to discredit his birthplace and his legal right to hold the presidential office, Americans were receptive to Obama's policies of reinstalling the American Dream through improved social conditions and physical and economic safety.¹⁰⁹ His following two terms in office would continue the policies of his predecessor with more drone strikes than ever engaged by any president, killing over 3,000 described “militants”. The number of drone strikes has increased over time as Obama’s presidency fades. The statistic is likely larger than has been stated, though an exact number remains unsubstantiated due to a lack of transparency of drone strikes abroad.¹¹⁰ Yemen, Pakistan, and Somalia, which were most affected by the strikes, do not have drone strike figures.

Every society has culture-based imagery of terrorism, with depictions changing according to more recent memories. 9/11 was not the single event that created the sentiment that Muslims were terrorists. The imagery of non-Western societies being deemed uncivil has existed in the American zeitgeist long before 2001, but how Muslims were viewed changed. Uncivilized became violent as Arabs and Muslims were grouped as the actors of terrorism. The threat of Muslim terrorists would overpower other religious minorities as “U.S. news article coverage of all terrorist incidents cataloged in the Global Terrorism Database between 2006 and 2015 found that attacks with a Muslim perpetrator received significantly (357%) more coverage than other attacks”.¹¹¹ News depicting terrorism would focus on the perpetrator's ethnicity when reporting on newly enacted attacks, furthering the narrative that Muslims were more likely to enact violence compared to other groups both within the nation and abroad.

¹⁰⁹ R. C. Rowland, “The Fierce Urgency of Now: Barack Obama and the 2008 Presidential Election,” *American Behavioral Scientist* 54, no. 3 (2010): 203-21, <https://doi.org/10.1177/0002764210381707>

¹¹⁰ Amrit Singh, “Death by Drone: Civilian Harm Cause by U.S. Targeted Killings in Yemen,” *Open Society Justice Initiative*, (2015): <https://www.justiceinitiative.org/uploads/1284eb37-f380-4400-9242-936a15e4de6c/death-drones-report-eng-20150413.pdf>.

¹¹¹ Murat Haner, Melissa M. Sloan, Justin T. Pickett, and Francis T. Cullen, “When Do Americans ‘See Something, Say Something’? Experimental Evidence on the Willingness to Report Terrorist Activity,” *Justice Quarterly* 39, no. 5 (2021): 1079–1103, <https://doi.org/10.1080/07418825.2021.1942162>.

The New York Metropolitan Transportation Authority launched a counter-terrorism campaign that would be licensed to the Department of Homeland Security in July 2010. The campaign “If You See Something, Say Something” was launched in concurrence with the Nationwide Suspicious Activity Reporting Initiative, a program that facilitated tips from callers to the DHS, FBI, state, local, and tribal law enforcement.¹¹² Americans were shown television advertisements, magazines, and billboards that emphasized the need to observe abnormal behavior and inform emergency services.¹¹³ The phrase, “If You See Something, Say Something,” echoed in the minds of Americans as they interacted with the social world, trained to scrutinize the actions of their colleagues, family, and neighbors.

The now fifteen-year-long campaign remains a part of all airports as political actors like mayors are recorded maintaining that passengers are to remain vigilant and report any suspicious behavior to airport security, placing the responsibility of safety on all travelers, not just airport personnel. Just as the Department of Justice had placed counter-terrorism on police departments after 9/11, the Department of Homeland Security would do the same to the American public. The practice is a return to the Cold War era, as Americans were asked once more by the government to monitor suspicious activity in the name of public safety and the domestic tranquility of all. However, now, instead of looking for the signs of a communist or Soviet sympathizer, Americans are trained to assess potential terrorist threats posed by the community around them.

3.3 Societal Apprehension

In the weeks and months to follow 9/11, other attacks would occur. Between September 18th and October 12th of 2001, bioterrorist attacks were carried out. The attacks

¹¹² “Nationwide SAR Initiative (NSI),” U.S. Department of Homeland Security, accessed March 20th, 2025, <https://www.dhs.gov/nationwide-sar-initiative-nsi>.

¹¹³ Haner, “When Do Americans ‘See Something, Say Something’? Experimental Evidence on the Willingness to Report Terrorist Activity,”.

consisted of anthrax spores placed in mailed letters containing written threats to American stability, addressed to news outlets and Senators. Another terrorist attempt occurred on December 22nd, 2001. The attack was deterred because of the failure to light the detonation fuse hidden inside the attacker's shoes. The courage of passengers on American Airlines Flight 63 led to the attacker being subdued until authorities arrived.¹¹⁴ The man, known as the “Shoe Bomber”, was initially stopped when passing through security at the Paris Charles de Gaulle Airport because he had paid for his ticket with cash and had no luggage, but was allowed to board the flight bound for Miami International Airport regardless. Both attacks carried out in the months after the September 11th attack were presumed by news outlets and political actors to be threats by Al-Qaeda, often focusing on the attacker's potential affiliations with the group.¹¹⁵ Presuming who was responsible for the attacks carried out disproportionately affected Arab and Muslim populations.

Sociologically, the narrative of the “other” and perpetuation of the shared sense of American values in congruence with fear, death, and the perpetual media cycle about the threat of terrorism would create disproportionality in how terrorism was viewed. Muslims and those of Arab origin became othered, overrepresented in the media compared to other groups, and were impacted by the initiative that encouraged Americans to call about anyone they deemed suspicious. By continuing media coverage for the War on Terror with thematic messaging that Arabs were the only racial group to enact terrorism, and failing to address attacks by non-Arabs and Muslim U.S. citizens.¹¹⁶ The narrative would perpetuate, alongside nationwide campaigns by the federal government, what terrorism looked like. As a result, the threat of terrorism would disproportionately affect people of color.

¹¹⁴ James Jay Carafano and Jessica Zuckerman, “40 Terror Plots Foiled Since 9/11: Combating Complacency in the Long War on Terror,” *The Heritage Foundation, backgrounder*, No. 2604 (2011): <https://www.heritage.org/terrorism/report/40-terror-plots-foiled-911-combating-complacency-the-long-war-terror>.

¹¹⁵ Carafano, “40 Terror Plots Foiled Since 9/11: Combating Complacency in the Long War on Terror,”.

¹¹⁶ Kimberly A Powell, “Framing Islam: An Analysis of U.S. Media Coverage of Terrorism Since 9/11,” *Communication Studies* 62, no. 1 (2011): 90–112, <https://doi.org/10.1080/10510974.2011.533599>.

Hotline tips and calls to 9-1-1, the national emergency crisis line, received calls after 9/11 that targeted specific groups and behaviors. Muslim and Arab individuals were reported for speaking in Arabic and practicing their faith in public spaces, amongst other examples.¹¹⁷ The Countering Violent Extremism (CVE) program was launched by the Obama Administration in 2011, mirroring programs carried out in the United Kingdom, unveiling the plans for a community-based approach with law enforcement to prevent the radicalization of Americans. The program exclusively targeted Muslim-Americans nationwide from 2011 until 2017, when it was defunded.¹¹⁸ The program operated on the basis that radicalization could be combated by recognizing the signs of potential radicalization, a practice that resembles predictive policing, designating certain actions or behaviors as signs that an “at-risk individual” might be more susceptible to terrorist messaging because of their background. In Minneapolis, the CVE programs targeted American-born Somali youth within the community who were naturalized citizens because of their ethnic and religious backgrounds.¹¹⁹ The United States program saw little success, as the United Kingdom found in its own CVE policies, there is no formula for the prediction of a home-grown terrorist.¹²⁰ While the United States government theorized that someone of Somali origin may be more likely to become a terrorist based on the ethnic origins of previous terrorists, there is no evidence that American-Somali youth are more predisposed than someone of a different background to commit an act of terrorism.

¹¹⁷ Murat Haner, Melissa M. Sloan, Justin T. Pickett, and Francis T. Cullen, “When Do Americans ‘See Something, Say Something’? Experimental Evidence on the Willingness to Report Terrorist Activity,” *Justice Quarterly* 39, no. 5 (2021): 1079–1103, <https://doi.org/10.1080/07418825.2021.1942162>.

¹¹⁸ U.S. Department of Justice, The National Institute of Justice, *Engaging With Communities To Prevent Violent Extremism: A Review of the Obama Administration’s CVE Initiative, Executive Summary*, David Schanzer and Joe Eyerman, 2021, <https://nij.ojp.gov/library/publications/engaging-communities-prevent-violent-extremism-review-obama-administrations-0>.

¹¹⁹ Sarah Chaney Reichenbach, “CVE and Constitutionality in the Twin Cities: How Countering Violent Extremism Threatens the Equal Protection Rights of American Muslims in Minneapolis-St. Paul,” *American University Law Review* 69, no. 6 (2020): <https://digitalcommons.wcl.american.edu/aulr/vol69/iss6/6>

¹²⁰ Faiza Patel, “Rethinking Radicalization,” *Brennan Center for Justice at New York University School of Law*, (2011): <https://www.brennancenter.org/sites/default/files/legacy/RethinkingRadicalization.pdf>.

The statistics do not reflect the threat of terrorism that the Bush and Obama Administrations perpetuated to the public or the perceived threat Americans feel when asked about terrorism. Statistically, White individuals are more likely to commit terrorist acts than minority groups in the United States. The FBI's report on lone wolves followed terrorist acts from 1972 to 2015 and found that pre- and post-9/11, White men were the group most likely to engage in acts of individual terrorism.¹²¹ Despite this statistic, Muslim jihad-driven attacks of terror are more likely to receive media coverage than White terrorists. Counter-terrorism measures as carried out by both the Bush and Obama Administrations targeted ethnic and religious groups, regardless of a statistic that had been documented well before 9/11.

The "neglect of probability" is a social phenomenon that occurs when individuals disregard the actual statistical probability of an event due to strong emotional sentiments. Americans, when enacting social actions such as calling law enforcement over observed potential threats of terrorism, are engaging in a neglect of probability when the probability does not align with their own cognitive biases. A member of the Obama Administration cites the anthrax attacks of 2001 as an example of the neglect of probability. In the response to the anthrax attacks, "public fear was disproportionate to its cause, ... the level of response was disproportionate too," given that the bioterrorism attacks that killed four people were unlikely to occur again compared to other high-risk activities.¹²²

Both the public and private sectors, in collaboration with the federal government, promoted the need to exercise caution when opening mail, prompting higher governmental costs than the attacks themselves.¹²³ The government's response to the anthrax attacks that occurred between September and October was not necessarily disproportionate. In the

¹²¹ Federal Bureau of Investigation, *Lone Offender Terrorism Report: A Study Of Lone Offender Terrorism in the United States (1972-2015)*, Behavioral Threat Assessment Center, 2019, <https://www.fbi.gov/file-repository/reports-and-publications/lone-offender-terrorism-report-111319.pdf/view>.

¹²² Cass R. Sunstein, "Terrorism and Probability Neglect," *Journal of Risk and Uncertainty* 26, (2003): 121–136, <https://doi.org/10.1023/A:1024111006336>

¹²³ Sunstein, "Terrorism and Probability Neglect,"

aftermath of the attacks, the government's response was costly, though the alternative is that more lives would be lost. In a globalized world, terrorism is more likely to occur as diverse interests span the globe. The statistical probability of non-Muslims, such as White Christian individuals, carrying out acts of terrorism is not enough to provide Americans with security; however, programs that target minority groups, such as youth and people of color, without substantial evidence do not contribute to a general sense of security.

Chapter 4: The Legacy of 9/11 on Civil Rights

Social control has always been racialized, with minorities experiencing more policing than other groups. Increased surveillance to prevent terrorism became a motivator and justifier of legal action that reduced civil liberties, a practice that would affect Americans in accordance with race, ethnicity, and religion. The threat of terrorism, irrational violence, deviance, and all that threaten the social world would have real-world implications that impact individuals' actions. Policing after 9/11 would become a means of combating the threat of terrorism. The law would enable the expansion of police powers and continue to protect officials from accountable action by slowly eroding the Fourth Amendment.

The ratification of the 14th Amendment guaranteed that Americans are treated equally under the rule of law. The amendment in the Constitution mandates that legislation adhere to the legal rights of all Americans. The only consistent legislative exception to this is for police officers. Civil protections for individuals are often set aside in the name of safety and security. Historically, policing impacts and is perceived by communities differently. Immigrants, Black, and Indigenous Americans have the longest-standing relationship with police officers from the slave patrols to present-day policing. While legislation has changed to include these groups under the protections of the United States Constitution, they remain over-policed and othered. In cities where predictive policing is employed without transparency, with the disenfranchisement of marginalized communities, and those who are low-income, the legacy of overpolicing continues.

Cities play a major part in police procedures as they are carried out locally. Political actors and civil workers determine police budgets, functions, and accountability. Municipalities engage in predictive policing based on factors such as previous years' statistics on crime rates, camera footage, and 9-1-1 calls.¹²⁴ Cities have hotspot areas that are, in turn,

¹²⁴ Albert Meijer and Martijn Wessels, "Predictive Policing: Review of Benefits and Drawbacks," *International Journal of Public Administration* 42, No. 12 (2019): 1031–39, <https://doi.org/10.1080/01900692.2019.1575664>.

more impacted by predictive policing. Predictive methods are determined by crime reported rather than actual crime, a phenomenon that describes that not all crime is reported. Much like general police tactics, predictive policing is not a practice often announced, and as a result, some areas experience more police surveillance than others.

The effectiveness of predictive policing has been disputed, as some city police departments claim success while others deem the system ineffective. Police departments are not required to disclose the methods or programs they use to surveil certain neighborhoods over others.¹²⁵ Without public transparency in methodology, the programs and systems vary based on the police department, documented crime, and actual criminal activity. This makes it difficult to gauge effectiveness beyond police departments' stated effectiveness. While crime data collection has been around for decades, predictive policing has recently become more frequently employed nationwide, and with continuously evolving software without transparency, these systems remain unchecked.

Predictive police software generates predictions based on the data-based likelihood of crime rather than previous convictions. Reported crime is not a true indicator of the safety and/or vagrancy of an area. Often, areas with lower violent crime have higher crime rates than are reported because of factors that hinder an individual's likelihood to report a crime. These factors include the fear of retaliation, the inconvenience of reporting, and general distrust of police. Victims of crimes who fear potential retaliation from their attacker or perpetrator may not report the crime. Underreporting is a phenomenon that occurs at the same rate regardless of an area or individual's socioeconomic status, though the number shifts when including invisible populations. Immigrants without legal status underreport crimes carried out against them because of the looming threat of deportation. Cities with larger immigrant communities may not be as safe as data shows, as the crime per capita rate would

¹²⁵ Meijer, "Predictive Policing: Review of Benefits and Drawbacks,".

be higher when factoring in underreporting by immigrants.¹²⁶ Predictive models based on hot spots are computed outputs that approximate higher crime areas based on general crime, gang activity, and weak community bonds that impact at-risk individuals' likelihood to commit criminal acts.

In 1994, seven-year-old Megan Kanka was murdered by her neighbor, a registered sex offender in New Jersey. Two years later, President Bill Clinton signed Megan's Law into federal law, enacting a safeguard system to notify all residents of a community that a sex offender had moved into the area. The law made it a legal requirement for all sex offenders to register any change of address with their local police department, and that the state make the information public. Many states have public websites that show all registered sex offenders in a postal code. Megan's Law is an example of policing that takes into account actual previous criminal activity and informs the community to be alert to potential recidivism. According to the Department of Justice, recidivism for previously convicted individuals across 34 states within five years of release is 71%.¹²⁷ Megan's Law is a legislative model that informs the public of individuals who may endanger a vulnerable population: children. The model is based on actual crimes committed and the decades of statistics that demonstrate that after being released from prison, prisoners who lack support systems and skills are at risk of recidivism and reentry into the prison system.

Megan's Law protects vulnerable populations and incorporates the actual likelihood of recidivism in practice. The law is a form of policing that engages recidivism statistics in its application and encourages community members to be cautious without infringing on the civil liberties of the formerly incarcerated individual who lives in the neighborhood. Public

¹²⁶ Carmen M. Gutierrez and David S. Kirk, "Silence Speaks: The Relationship Between Immigration and the Underreporting of Crime," *Crime & Delinquency* 63, no. 8 (2015): 926–50, <https://doi.org/10.1177/001128715599993>.

¹²⁷ Matthew R. Durose and Leonardo Antenangeli, "Recidivism of Prisoners Released in 34 States in 2012: A 5-Year Follow-Up Period (2012–2017)," *U.S. Bureau of Justice Statistics*, 2021, <https://bjs.ojp.gov/library/publications/recidivism-prisoners-released-34-states-2012-5-year-follow-period-2012-2017#0-0>.

information includes their name, a photograph, the convicted crime, and the duration of incarceration because of a convicted crime, rather than based on their potential to commit a crime. Criminologists have long debated whether there is an exact formula to predict crime. Established causes for crime include opportunistic crime, socioeconomic status, poverty, unemployment, and weak social bonds. When law enforcement inquires into vulnerable populations such as youth for counter-terrorism measures, as seen during the Obama Administration, there is an assumption that youth of certain backgrounds are more likely to become terrorists than others. Unlike Megan's Law, a measure to ensure law enforcement and the community at large are aware of convicted felons, in the post 9/11 era, predictive and preventative law enforcement has become a part of policing, infringing on the civil rights of all who are unknowingly surveilled.

4.1 The Divide

Police officers are uniformed agents of the state tasked with protecting the peace. They take an oath to protect and serve the citizens of the United States. Officers are emergency responders, enforcers of the law, and an authoritative force against vagrancy. Police officers are placed in the line of fire as they interact with criminals and the communities they serve. They embody the American ideal of federal, state, and local powers as they protect and serve at the different levels of government. In May 2023, the United States Bureau of Labor Statistics reported approximately 550,000 employed local police officers, excluding state patrols and federal officers nationwide.¹²⁸ While the number of officers fluctuates yearly due to changes in police budgets and the needs of a city, over the past two decades, the number has remained within the range of 530,000 - 600,000.¹²⁹

¹²⁸ U.S. Bureau of Labor Statistics, "Occupational Employment and Wages, May 2023: 33-3051 Police and Sheriff's Patrol Officers," accessed April 12, 2025, <https://www.bls.gov/oes/2023/may/oes333051.htm>.

¹²⁹ Sean E. Goodison, "Local Police Departments Personnel, 2020," *Bureau of Justice Statistics*, 2022, <https://bjs.ojp.gov/library/publications/local-police-departments-personnel-2020>

Police officers are some of the highest-paid professionals without a college degree. Salaried municipal police officers annually are paid a mean wage of \$76,550.¹³⁰ The federal salary mean for all workers is \$66,621.¹³¹ Police officers make approximately 15% more than the average American. Law enforcement is one of the larger employment industries in the country, varying by state, as Southern states have a higher concentration of jobs for law enforcement officers, including prison guards per capita, than others.¹³² In 2024, 72-89% of police departments required a high school diploma, and few states require an associate's or bachelor's degree.¹³³ In cases of involuntary termination, officers with just a high school diploma are more likely to be fired for misconduct than officers with a four-year college degree.¹³⁴ There is no federal standard for the recruitment and training of police officers.

Police officers, on average, receive less than six months of training at twenty-one weeks, undergoing 840 total hours. The Department of Justice breaks down the number of training hours as “operations (an average of 213 hours per recruit); firearms, self-defense, and use of force (168 hours); self-improvement (89 hours); and legal education (86 hours)”.¹³⁵ Officers receive training based on realistic scenarios that may arise while on patrol for arrests and eight of ten receive these training for the use of firearms.¹³⁶ Trainings vary on a state-by-state basis. Officers who enter the police force as rookies undergo formal training at the police academy and the department alongside their partner.

¹³⁰ U.S. Bureau of Labor Statistics, “Occupational Employment and Wages, May 2023: 33-3051 Police and Sheriff's Patrol Officers,” accessed April 12, 2025, <https://www.bls.gov/oes/2023/may/oes333051.htm>.

¹³¹ U.S. Social Security Administration, “2023, AWI Series and Underlying data,” Average Wage Index (AWI), Accessed April 12, 2025, <https://www.ssa.gov/oact/cola/awidevelop.html>.

¹³² U.S. Bureau of Labor Statistics, “Occupational Employment and Wages, May 2023: 33-3051 Police and Sheriff's Patrol Officers,” accessed April 12, 2025, <https://www.bls.gov/oes/2023/may/oes333051.htm>.

¹³³ Ian Pepper, Christie Gardiner, James Dwyer, Isabelle Bartkowiak-Théron, and Christopher D. O'Connor, “Incorporating Higher Education into Initial Police Training: An International Comparison of Practices and Challenges,” *Journal of Criminal Justice Education*, (2025): 1-23, <https://doi.org/10.1080/10511253.2025.2460812>.

¹³⁴ Ben Grunwald and John Rappaport, “The Wandering Officer,” *Yale Law Review* 129, No. 6, (2020): 1703-10, https://www.yalelawjournal.org/pdf/GrunwaldRappaportArticle_s6branzzy.pdf

¹³⁵ Brian A. Reaves, “State and Local Law Enforcement Training Academies, 2013,” *Bureau of Justice Statistics*, 2016, <https://bjs.ojp.gov/content/pub/pdf/slleta13.pdf>.

¹³⁶ Reaves, “State and Local Law Enforcement Training Academies, 2013,”.

Paramedics, who are also protected under qualified immunity, work alongside law enforcement, provide critical care to detained individuals, gunshot victims, and other civilian injuries. Excited delirium is a term that arose in 1985 and was used to describe symptoms individuals may experience when being placed under arrest. Delirium refers to a reduced ability to focus and a lower environmental awareness, with symptoms including fear, physical violence, and hypertension.¹³⁷ The term is not approved as an official psychiatric term by the World Health Organization or the American Medical Association.¹³⁸ The symptoms of excited delirium mimic the same symptoms that anyone could experience when being detained. The procedure by the American College of Emergency Physicians for any person determined by police officers and paramedics to be experiencing excited delirium is to inject them with ketamine, a strong sedative, that has a high chance of causing respiratory problems.¹³⁹

The maker of TASER, Axon Enterprises, a police contractor, sold police departments the need for taser guns to respond to symptoms of excited delirium in the field.¹⁴⁰ The combination of a taser gun, which sends an electrical shock to a person's body, in addition to ketamine, coupled with physical restraints, is now known to cause respiratory distress. The procedure places Americans in harm's way, killing detained persons a matter of hours after being initially arrested.¹⁴¹ In 2020, the American Psychiatric Association affirmed it did not recognize excited delirium as a mental health condition and that the term is disproportionately applied to those with mental illnesses, Black people, and other minorities by law enforcement, highlighting disparities in usage.¹⁴² Police departments across the

¹³⁷ Paul S. Appelbaum, "Excited Delirium, Ketamine, and Deaths in Police Custody," *Psychiatric Services* 73, no. 7 (2022): 827–29, [doi:10.1176/appi.ps.20220204](https://doi.org/10.1176/appi.ps.20220204).

¹³⁸ Paul S. Appelbaum, "Excited Delirium, Ketamine, and Deaths in Police Custody,"

¹³⁹ Paul S. Appelbaum, "Excited Delirium, Ketamine, and Deaths in Police Custody,"

¹⁴⁰ Terry McGuinness and Lipsedge Maurice, "'Excited Delirium', acute behavioural disturbance, death and diagnosis," *Psychological Medicine* 52, No. 9 (2022): 1601–11, <https://doi.org/10.1017/S0033291722001076>.

¹⁴¹ Terry McGuinness and Lipsedge Maurice, "'Excited Delirium', acute behavioural disturbance, death and diagnosis," *Psychological Medicine* 52, No. 9 (2022): 1601–11, <https://doi.org/10.1017/S0033291722001076>.

¹⁴² Council on Psychiatry and Law, "Position Statement on Concerns About Use of the Term "Excited Delirium" and Appropriate Medical Management in Out-of-Hospital Contexts," American Psychiatric Association, 2020,

country still train their officers to employ the use of a taser, ketamine, and physical restraint when presented with excited delirium. The term continues to be used by police officers and paramedics in negligence and misconduct lawsuits as legitimate grounds for force because of their training. It serves as a reminder of the importance of police training, as training impacts police outcomes.

Police training hours and procedures are not the single determinant for police conduct. Police culture plays a significant part in the shaping of new officers. A key component of the police academy is emphasizing the illegality of lying under oath. Police officers employ tactics that they deem appropriate beyond their job description and the law they are sworn to protect to obtain the outcomes they feel are correct.¹⁴³ The cone of silence that surrounds police culture serves as a barrier to whistleblowing misconduct, as officers protect one another. Officers who commit crimes both on and off duty in cases of domestic violence, financial gain, and substance use frequently go unreported by fellow officers.¹⁴⁴ Due to their occupation, police officers, in contrast with civilians, will have their crimes concealed by their fellow officers in instances such as driving while under the influence. Judges who know evidence has been entered into court illegally will also fail to whistleblow against an officer to preserve relations with the police department.¹⁴⁵ Officers and legal agents will protect one another when placed in instances of misconduct, a divide referred to as the blue line or blue wall.

By comparison, other professions do not have the same circumstances. They require a larger number of training hours and have different work cultures. For example,

<https://www.psychiatry.org/getattachment/7769e617-ee6a-4a89-829f-4fc71d831ce0/Position-Use-of-Term-Excited-Delirium.pdf>

¹⁴³ Rachel Moran, "Police Go to Court: Police Officers as Witnesses/Defendants," *Annual Review of Law and Social Science* 19, (2023): <https://doi.org/10.1146/annurev-lawsocsci-113022-111914>.

¹⁴⁴ F. D. Boateng, D. K. Pryce, and M.-L. Hsieh, "The Criminal Police Officer: Understanding Factors That Predict Police Crime in the United States," *Crime & Delinquency* 69, No. 9 (2021): 1700-35, <https://doi.org/10.1177/00111287211054732>.

¹⁴⁵ Rachel Moran, "Police Go to Court: Police Officers as Witnesses/Defendants," *Annual Review of Law and Social Science* 19, (2023): <https://doi.org/10.1146/annurev-lawsocsci-113022-111914>.

cosmetologists must undergo between 1,000 and 2,000 hours before receiving their license to practice. Despite police officers being equipped with tasers and guns, experiencing a more high-stress work environment than a hair stylist, they are trained less. Law enforcement officers are at a 54% higher risk of suicide than the general population.¹⁴⁶ Their counterparts, former prisoners they have incarcerated, are at a similarly high risk, with former convicts being twice as likely as the general population to commit suicide.¹⁴⁷ Both groups, when returning to civilian life, lack resources for their lived experiences. The Law Enforcement Suicide Data Collection Act, established in 2020, seeks to bridge the gap between the lack of data and the rate of suicides for former/current officers.¹⁴⁸ Of reporting police department agencies, former and current officers typically commit suicide by use of a firearm. Some commit suicide while on duty with their authorized firearm.

In addition to the tasers and firearms, body cameras have been implemented as part of the uniform requirement of police officers. Axon Enterprises, the company that manufactures and sells the TASER, also serves as the leading supplier of police body cameras.¹⁴⁹ In 2020, 62% of local police officers wore body cameras.¹⁵⁰ The same year, 16% of police departments nationwide had a civilian oversight board or agency, and 37% employed an external agency for claims of excessive force by officers.¹⁵¹ Police departments receive local and federal funding, but are not legally obligated to share data related to excessive force and civilian complaints. All data for policing is submitted voluntarily to the FBI's Uniform Crime

¹⁴⁶ Daniel S. Lawrence and Jessica Dockstader, "Law enforcement deaths by suicide," *CNA Corporation*, 2024, <https://www.cna.org/reports/2024/03/Law-Enforcement-Deaths-By-Suicide.pdf>.

¹⁴⁷ Kate Vinita Fitch, "Suicide Mortality Among Formerly Incarcerated People Compared With the General Population in North Carolina, 2000–2020," *American Journal of Epidemiology* 193, No. 3 (2024): 489-99, <https://doi.org/10.1093/aje/kwad214>.

¹⁴⁸ U.S Congress, "Text - S.2746 - 116th Congress (2019-2020): Law Enforcement Suicide Data Collection Act," 2020, <https://www.congress.gov/bill/116th-congress/senate-bill/2746/text>.

¹⁴⁹ Steven Feldstein, "Types of AI Surveillance," *The Global Expansion of AI Surveillance*, (2019): 16-21, <http://www.jstor.org/stable/resrep20995.8>.

¹⁵⁰ Brian A. Reeves, "State and Local Law Enforcement Training Academies, 2013," *Bureau of Justice Statistics*, 2016, <https://bjs.ojp.gov/content/pub/pdf/slleta13.pdf>.

¹⁵¹ Sean E. Goodison and Connor Brooks, "Local Police Departments, Procedures, Policies, and Technology, 2020 – Statistical Tables," *Bureau of Justice Statistics*, 2023, <https://bjs.ojp.gov/library/publications/local-police-departments-procedures-policies-and-technology-2020-statistical>

Reporting (UCR) Program, which oversees all data programs. Arrest rates, police misconduct, and surveillance methods are among the examples of significant data statistics that provide a more transparent picture of policing nationwide.

The FBI created the National Use-of-Force Data Collection in 2015, a program that would go into effect in 2019. The data collection is voluntary and occurs on the honor system because there is no federal oversight of the data. Of the 11,445 out of 19,277 reporting agencies from the federal, state, local, and tribal law enforcement between 2023 and 2024, 55% of excessive force reports were due to serious bodily injury by an officer, and 33% were reported deaths by an officer.¹⁵² The FBI introduced the National Incident-Based Reporting System (NIBRS) in 2021 to further address the disparity in reporting, though the system has not been effective without police department data.¹⁵³ Gaps in data points create inconsistencies in state crime rates, police effectiveness, and use of excessive force, which provide an incomplete picture of policing in the United States.

Police officers in cases of misconduct who are fired are unlikely to have their police certification revoked and can move jurisdictions. Moving jurisdictions within the state requires an active police certification. However, officers who have been decertified in one state by the state police licensure certification boards can move to another state to become recertified. There is no decertification process in four states.¹⁵⁴ Unlike other professions, officers are not banned from their work for misconduct. After malpractice, lawyers are barred from practicing in one state and are subsequently denied by other state boards the ability to practice. When an officer is fired, they can start anew without previous records. Police disciplinary records contrary to a public arrest record are not public. Without police

¹⁵² “FBI Crime Data Reporter, 2024,” Federal Bureau of Investigation, accessed April 20, 2025, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/le/uof>.

¹⁵³ Marcus Berzofsky, Kelle Barrick, Tom Scott, Erica L. Smith, and Cynthia Barnett-Ryan, “Indicators for Crime Estimates Using NIBRS Data,” *U.S. Department of Justice*, 2022, <https://bjs.ojp.gov/content/pub/pdf/iceunibrsd.pdf>.

¹⁵⁴ Ben Grunwald and John Rappaport, “The Wandering Officer,” *Yale Law Review* 129, No. 6, (2020): 1703-10, https://www.yalelawjournal.org/pdf/GrunwaldRappaportArticle_s6branzzy.pdf.

misconduct records, communities are unequipped by the government to protect themselves from individual abuses of power in cases of misconduct.

4.2 Qualified Immunity

Since the establishment of qualified immunity, the rule of law has stagnated. Courts no longer have to determine the constitutionality of an officer's actions when charged with criminal misconduct, including major injury or death to an individual party. Qualified immunity is the doctrine of insurmountable proof by the plaintiff that must be substantiated by a previously established ruling, with limited previous rulings related to policing, courts protect against civil rights violations by prison guards, police officers, lawyers, politicians, and other public servants.¹⁵⁵ The standard of no previous exact case law, even in cases where clear civil rights violations exist, is the measure for absolution, causing charges to be dropped.

Researchers have attempted to calculate the number of litigated cases for police misconduct. Many cases are dropped before they reach trial, as they take years to litigate, placing clear barriers to conducting the research. Attempts have been made to use insurance claims, civilian complaints, and legal payout statistics to provide insight into the number of cases that arise as a result of misconduct, but all methods rely on available data, and much of the data is not public.¹⁵⁶ Police misconduct includes excessive force, unreasonable searches and seizures, injury by an officer, false arrests, sexual abuse, and racial profiling, amongst the more extreme cases, death by an officer.

Police unions are obstacles to suing an officer. Police unions across the country create labor agreements between the city and the police departments that allow officers to view

¹⁵⁵ Allah v. Milling, 876 F.3d 482d Cir. 2017).

¹⁵⁶ Aurélie Ouss and John Rappoport, "Is Police Behavior Getting Worse? Data Selection and the Measurement of Policing Harms," *Journal of Legal Studies* 49 (2020): https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=14062&context=journal_articles

witness incident reports of misconduct before their interviews, and prevent anonymous complaints.¹⁵⁷ Of a sample of 178 police union contracts from major cities nationwide, officers can have their previous misconduct records removed, limit independent oversight boards, and have mandated arbitration.¹⁵⁸ Operating within the cone of silence, police union officials protect officers and provide them with benefits not available to the general public. Like all unions, they employ negotiation tactics and provide powerful safeguards for their workers with competitive salaries and benefits. With these safeguards, officers being investigated in civilian complaints and misconduct lawsuits can operate beyond the normal parameters of the law.

An investigation by the Associated Press and initiatives by Mapping Police Violence have attempted to independently track how many civilians die at the hands of police officers each year. Filling in gaps left by the Department of Justice's Arrest-Related Death program, established in 2003. The Associated Press, in collaboration with the Howard Center for Investigative Journalism and Frontline PBS, found that 1,000 civilians a year die at the hands of police officers.¹⁵⁹ This number does not include all other law enforcement. The FBI keeps track of the number of officers who are killed both on and off duty through the Law Enforcement Officers Killed and Assaulted (LEOKA) Data Collection, established in 1972. The data is split between felonious and accidental deaths. Felonious deaths include traffic control in pursuit of a suspect and during general enforcement. Accidental deaths include motor vehicle accidents, pedestrian officers hit by a vehicle, aircraft crashes, and other causes. The average number of deaths is about 100 officers a year between both the felonious and accidental death categories.¹⁶⁰ In 2022, approximately 49.2 million people over the age of

¹⁵⁷ Abdul Nasser Rad, David S. Kirk, and William P. Jones, "Police Unionism, Accountability, and Misconduct," *Annual Review of Criminology* 6, no. 1 (2022): 181–203, <https://doi.org/10.1146/annurev-criminol-030421-034244>.

¹⁵⁸ Stephen Rushin, "Police Union Contracts," *Duke Law Journal* 66, (2017): 1191-1266, <https://scholarship.law.duke.edu/dlj/vol66/iss6/1>.

¹⁵⁹ *Documenting Police of Force*, directed by Serginho Roosblad. (2024; The Associated Press), PBS.

¹⁶⁰ Federal Bureau of Investigation, "Statistics on Law Enforcement Officer Deaths in the Line of Duty From January Through August 2024," Law Enforcement Resources, 2024,

sixteen had at least one interaction with a police officer.¹⁶¹ This number includes traffic stops, noise complaints, filing a police report, being placed under arrest, etc., based on the Bureau of Justice's representative sampling. Police officers' jobs largely relate to public engagement, and qualified immunity damages the public's perception of police.

The Supreme Court has continued to expand qualified immunity in the past decades. In 2011, the Supreme Court heard the American Civil Liberties Union's (ACLU) case on behalf of Abdullah al-Kidd. He was an American citizen who had been detained in 2003, when trying to leave the country, under the First Judiciary Act of 1789 and amended by the Bail Reform Act of 1984, which codified 18 U.S.C. § 3144 allowing for material witnesses to be detained to ensure material witness testimony.¹⁶² al-Kidd was detained under the federal material witness statute and placed on parole for thirteen months as a material witness in a trial.¹⁶³ The ACLU sued the United States Attorney General, John Ashcroft, for his role in detaining al-Kidd under the statute for months, alleging that this was done to investigate al-Kidd while on bail, as he was never called to the stand as a witness. The Supreme Court ruled unanimously that Ashcroft was protected under qualified immunity and could not be held liable for the detention of al-Kidd, as Ashcroft was acting on behalf of the United States government. The decision in *Ashcroft v. al-Kidd* (2011) expanded qualified immunity for public officials who execute arrest warrants, removing the need for probable cause when detaining an individual to prevent them from committing crimes while being investigated. The Supreme Court decision outlines that Ashcroft could not be held responsible, as Ashcroft did not violate clearly established law, a recurring trend with rulings in qualified immunity cases.

<https://le.fbi.gov/cjis-division/cjis-link/statistics-on-law-enforcement-officer-deaths-in-the-line-of-duty-from-january-through-august-2024>.

¹⁶¹Susannah N. Tapp and Elizabeth J. Davis, "Contacts Between Police and the Public, 2022," *Bureau of Justice Statistics*, 2024, <https://bjs.ojp.gov/library/publications/contacts-between-police-and-public-2022>.

¹⁶² 18 U.S.C. § 3144. (1984)

¹⁶³ *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011).

More recently, the Supreme Court ruled in *Vega v. Tekoh* (2022) on the legality of police officers being sued for not reading individuals their Miranda Rights after being detained, even in cases where a statement was produced. The Supreme Court ruled that a police officer who failed to state the Miranda Rights, due to the previous court's decision *Miranda v. Arizona* (1966), did not violate the Fifth Amendment that protects from self-incrimination.¹⁶⁴ The ruling protects police officers who acquire information or confessions of guilt from suspects to support a conviction without informing a suspect of their right to remain silent. The decision sets a dangerous precedent that legally protects police officers who obtain false confessions when pressuring a suspect and protecting them under qualified immunity while doing so.

Many officers pay a small portion of their paychecks to their police union or an additional police insurance company for on-duty and off-duty claims. All municipalities have insurance coverage for incidents related to policing, including personal injuries, property damages, and large claim payouts.¹⁶⁵ Without insurance for the actions of police officers, multi-million dollar cases could potentially bankrupt a small city government. In cases of misconduct, officers are represented by city lawyers, and while still employed, are paid by the city with workers' compensation.¹⁶⁶ They are paid to attend trial hearings where they are accused of misconduct. When a settlement occurs, the total settlement is paid by the city, and more accurately by taxpayers. The police officer who committed the act is not held liable for the damages the prosecution raises because prosecutors seek the largest possible sum for their client. Even in litigated cases where the plaintiff won, officers may remain employed by the police department.

¹⁶⁴ *Vega v. Tekoh*, 597 U.S. 134 (2022).

¹⁶⁵ Aurélie Ouss and John Rappoport, "Is Police Behavior Getting Worse? Data Selection and the Measurement of Policing Harms," *Journal of Legal Studies* 49 (2020):

https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=14062&context=journal_articles

¹⁶⁶ Ouss, "Is Police Behavior Getting Worse? Data Selection and the Measurement of Policing Harms,"

In 1871, Congress created Section 1983, originally to allow African Americans to sue public officials for civil rights violations who were failing to protect their rights in the South. Qualified immunity began decades ago with the initial ruling in *Pierson v. Ray* in 1967, limiting such claims, and has since been expanded with new Supreme Court rulings.¹⁶⁷ Qualified immunity has repeatedly been stated to protect “all but the plainly incompetent or those who knowingly violate the law”.¹⁶⁸ Neither condition is granted to civilians who break the law unknowingly or otherwise. While qualified immunity existed before 9/11, the controversial use of 18 U.S.C. § 3144 by law enforcement for the arbitrary detention of individuals became more frequently invoked under the Bush Administration’s War on Terror and continues to be invoked.¹⁶⁹ The legal framework of qualified immunity protects civil rights violations by public officials under the rule of law. It allows the state to surveil and enforce measures that would otherwise be deemed illegal, violating civil rights in the name of counter-terrorism.

4.3 State Power and Surveillance

The state has always had forms of surveillance, carried out long before the events of 2001. Over time, surveillance methods have changed from word of mouth to media, video surveillance, and more recently, artificial intelligence. Under the Bush Administration, the federal government and its agents would be granted new powers during the rise of technology, and the police state would slowly take form. Like many facets of the American legal system with expansions to the powers of the Supreme Court, the police state did not arrive overnight. It came with gradual legislation and a societal focus on increasing surveillance.

¹⁶⁷ *Pierson v. Ray*, 386 U.S. 547 (1967).

¹⁶⁸ *Malley v. Briggs*, 475 U.S. 335 (1986).

¹⁶⁹ Ricardo J. Bascuas, “The Unconstitutionality of “Hold Until Cleared”: Reexamining Material Witness Detentions in the Wake of the September 11th Dragnet,” *Vanderbilt Law Review* 58, No. 3 (2005): <https://scholarship.law.vanderbilt.edu/vlr/vol58/iss3/1>.

On February 20th, 2001, the Supreme Court was presented with a case that examined the legality of law enforcement's use of a thermal imagery device, similar to that of X-ray technology, to investigate a suspect. The device in question had confirmed law enforcement's suspicions, using evidence acquired without a warrant to justify entry into the suspect's home. The Supreme Court acknowledged that the Fourth Amendment, which protects individuals and their property rights, is increasingly affected by technological advances by law enforcement. The court ruled in the case decision *Kyllo v. United States* on June 11th, 2001, that when “the government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a ‘search’ and is presumptively unreasonable without a warrant”.¹⁷⁰ The wording of the decision by Supreme Court Justice Antonin Scalia created ambiguity in how a law enforcement device could be employed.

Months after the Supreme Court's decision, with the passage of the Patriot Act on October 26th, 2001, widespread legal surveillance granted in the wake of 9/11 began. Stingray is an International Mobile Subscriber Identity catcher (IMSI) created by a United States military contractor to track terrorists during the War on Terror. The technology was sold to police departments and is now used to surveil criminal suspects.¹⁷¹ A Stingray device operates by mimicking cell towers, pulling all intercepted data in the area.¹⁷² The FBI and military contractor L3Harris have gone to extensive lengths to keep the surveillance program away from the public, the court system, and the press. The Fourth Amendment states that it is the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but

¹⁷⁰ *Kyllo v. United States*, 533 U.S. 27 (2001).

¹⁷¹ Harvey Gee, “Stingray Cell-Site Simulator Surveillance and the Fourth Amendment in the Twenty-First Century: A Review of the Fourth Amendment in the Age of Surveillance, and Unwarranted,” *St. John's Law Review* 93, No. 2 (2019): <https://scholarship.law.stjohns.edu/lawreview/vol93/iss2/3/>.

¹⁷² Gee, “Stingray Cell-Site Simulator Surveillance and the Fourth Amendment in the Twenty-First Century: A Review of the Fourth Amendment in the Age of Surveillance, and Unwarranted,”.

upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized”.¹⁷³ A key legal component of the Fourth Amendment is that no warrant may be issued without probable cause.

The Stingray program exists within a legal gray area without probable cause, collecting information without a warrant by acting as a false cell tower. The unverified cell tower gathers information, including geographic location, text messages, and cell phone calls from the targeted individual, as well as data traffic in the surrounding area.¹⁷⁴ Law enforcement uses the collected information as a justification for conviction. When presented in court by the prosecution, the origin of the data used is undisclosed, protected by the legal shield of an “undisclosed informant”, removing the defendant's ability to see the presented evidence.¹⁷⁵ Hidden behind nondisclosure agreements, the FBI and L3Harris have directed law enforcement not to disclose the purchase to the public and protect the Stingray equipment.¹⁷⁶ Officers have lied under oath as to how information presented into evidence was obtained, and official documents by the FBI have stated that the agency would rather charges be dropped than have the technology be exposed.¹⁷⁷ The technology became public knowledge around 2012 through reports of law enforcement's usage.

After 9/11, Bush granted the National Security Agency (NSA) the power to surveil Americans and foreign actors through warrantless wiretapping. In 2005, the New York Times released its article about the use of wiretapping without a warrant, a direct violation of the Foreign Intelligence Surveillance Act (FISA) of 1978. The act signed into law by President

¹⁷³ U.S. Constitution, amend. IV.

¹⁷⁴ Gregory Maleska, “Stinging the Stingray: The Need for Strong State-Level Anti-Surveillance Legislation,” *Valparaiso University Law Review* 52, No. 3 (2018): <https://scholar.valpo.edu/vulr/vol52/iss3/6>.

¹⁷⁵ Harvey Gee, “Stingray Cell-Site Simulator Surveillance and the Fourth Amendment in the Twenty-First Century: A Review of the Fourth Amendment in the Age of Surveillance, and Unwarranted,” *St. John's Law Review* 93, No. 2 (2019): <https://scholarship.law.stjohns.edu/lawreview/vol93/iss2/3/>.

¹⁷⁶ Federal Bureau of Investigation and Baltimore Police Department, “Purchase Wireless Collection Equipment/Technology and Non-Disclosure Obligations,” Signed August 11, 2011, <https://embed.documentcloud.org/documents/2290702-baltimore-pd-fbi-nda-13jul2011/>.

¹⁷⁷ Harvey Gee, “Stingray Cell-Site Simulator Surveillance and the Fourth Amendment in the Twenty-First Century: A Review of the Fourth Amendment in the Age of Surveillance, and Unwarranted,” *St. John's Law Review* 93, No. 2 (2019): <https://scholarship.law.stjohns.edu/lawreview/vol93/iss2/3/>.

Jimmy Carter created legislation for governmental practices involving intelligence gathering.¹⁷⁸ The Protect America Act (2007) was signed into law to ensure the Bush Administration's actions could legally continue. The Protect America Act created the PRISM program that would surveil individuals from other nations and Americans in contact with foreign nationals.¹⁷⁹ The United States Foreign Surveillance Court (FISC), established in 1978 by the FISA Act, operates under closed session, and its rulings are not made available to the public unless declassified.¹⁸⁰ The court oversees all foreign intelligence actions by the United States government. The FISA Amendments Act, passed in 2008, relaxed the previous parameters for foreign intelligence acquisition under the 1978 Foreign Intelligence Surveillance Act. The 2008 act under Section 702 would no longer require a warrant for communications by individuals "reasonably believed to be outside of the United States".¹⁸¹

In 2013, NSA contractor and whistleblower Edward Snowden exposed the PRISM program by revealing thousands of documents to the press, revealing, in part, the extent of widespread surveillance occurring in the United States. Snowden was later charged with theft of government property and two charges for violating the Espionage Act of 1917. As a response to distrust by Americans who learned of the surveillance, the Obama Administration would release a few formerly classified court cases by the FISC concerning Americans' privacy.¹⁸² Among the released cases was the court case on April 20th of 2011, the FISC court deliberated on a case that reviewed an NSA program accused of operating outside of the Fourth Amendment. The court ruled on October 3rd of 2011 that the NSA program could no

¹⁷⁸ Scott A Boykin, "The Foreign Intelligence Surveillance Act and The Separation of Powers," *University of Arkansas at Little Rock Law Review* 38, No. 1 (2015): <https://lawrepository.ualr.edu/lawreview/vol38/iss1/2>.

¹⁷⁹ U.S. Congress, "S.1927 - 110th Congress (2007-2008): Protect America Act of 2007," 2007, <https://www.congress.gov/bill/110th-congress/senate-bill/1927>.

¹⁸⁰ U.S. Foreign Intelligence Surveillance Court, "About the Foreign Intelligence Surveillance Court, accessed April 25, 2025, <https://www.fisc.uscourts.gov/about-foreign-intelligence-surveillance-court>.

¹⁸¹ U.S. Congress, "Text - H.R.6304 - 110th Congress (2007-2008): FISA Amendments Act of 2008," 2008, <https://www.congress.gov/bill/110th-congress/house-bill/6304/text>.

¹⁸² The White House of President Barack Obama, "Remarks by the President in a Press Conference, 2013," accessed April 26, 2025, <https://obamawhitehouse.archives.gov/the-press-office/2013/08/09/remarks-president-press-conference>.

longer operate because it breached the Fourth Amendment after surveilling thousands of Americans' emails.¹⁸³ The court case is one of many that debated the extent to which the NSA, FBI, CIA, and other intelligence agencies were operating within the scope of the law.

The Stingray and PRISM programs are some of the many programs developed during the War on Terror to combat terrorism that would later be used to repress Americans' civil liberties. The government changed legislation in light of Snowden's revelation to the public. The USA Freedom Act of 2015 (later renewed in 2019) would replace the recently expired Patriot Act Sunsets Extension Act of 2011 in legislative language. The USA Freedom Act states that the government now has to choose a specific term when reviewing technological communications while conducting their investigations to reduce large acquisitions of data.¹⁸⁴ The legislation neglects to include a provision that states an explicit need for investigations to concern terrorism. The Stingray and PRISM programs were exposed to the public because of individuals. The Stingray device was exposed because of individuals at the ACLU who requested the information under the Freedom of Information Act (1967), while the PRISM program was due to Edward Snowden.¹⁸⁵ Neither program was public knowledge until Americans sought transparency from their government for cyber surveillance, because while the legislation that granted usage in some cases was public, the programs themselves were not. While legislative language shifted after the renewal of the new Patriot Act, known as the USA Freedom Act, currently in effect, mass surveillance has persisted.

In 2021, the United States Foreign Intelligence Surveillance Court would find that in one year, the FBI had conducted 278,000 unlawful queries that surveilled Americans without

¹⁸³ U.S. Foreign Intelligence Surveillance Court, *Memorandum Opinion*, Office of the Director of National Intelligence, 2011, accessed May 1, 2025, <https://www.intelligence.gov/assets/documents/702%20Documents/declassified/October-2011-Bates-Opinion-and%20Order-20140716.pdf>

¹⁸⁴ Scott A Boykin, "The Foreign Intelligence Surveillance Act and The Separation of Powers," *University of Arkansas at Little Rock Law Review* 38, No. 1 (2015): <https://lawrepository.uarl.edu/lawreview/vol38/iss1/2>.

¹⁸⁵ Ada Danelo, "Legislative Solutions to StingRay Use: Regulating Cell Site Simulator Technology Post-Riley," *Washington Law Review* 91, No. 3 (2016): <https://digitalcommons.law.uw.edu/wlr/vol91/iss3/13>

evidence of a crime or an authorized purpose.¹⁸⁶ The Fourth Amendment legally protects the public from being investigated without a warrant. Programs that operate in secrecy curtail the legal right to equality before the law when civilians are not granted the right to know how evidence was acquired and where the evidence being presented in court originates from. The House Committee on Oversight and Government Reform would eventually review the Stingray technology, but only after its continued use over the last decade.¹⁸⁷ It would take the government fifteen years to review the Stingray technology implemented by the FBI that had been sold to law enforcement nationwide. Growth of state power occurred because of expansions to the qualified immunity doctrine, changes in technology, and the length of legislative oversight to preserve domestic tranquility in the wake of 9/11.

When governments legislate, the process requires committee approvals, rewrites of legislative language, and an understanding of what is being legislated. The War on Terror created new technology to combat terrorism that would later be introduced to law enforcement, at a rate that legislative oversight could not swiftly act. Technology has made the state more powerful, now able to investigate all persons with a doctrine that protects political officials, police officers, and other public servants from being prosecuted for their actions, eroding the civil rights of Americans in the name of counter-terrorism.

¹⁸⁶ U.S. Foreign Intelligence Surveillance Court, *FISC Order In Response To Querying Violations*, Office of the Director of National Intelligence, 2021, accessed May 1, 2025, <https://www.intel.gov/assets/documents/702%20Documents.pdf>

¹⁸⁷ J. Chaffetz and E. Cummings, *Law Enforcement Use of Cell-Site Simulation Technologies: Privacy Concerns and Recommendations*, U.S. House of Representatives Committee on Oversight and Government Reform, accessed May 1, 2025, <https://info.publicintelligence.net/US-CellSiteSimulatorsPrivacy.pdf>.

Conclusion

The attacks on the World Trade Center changed America's domestic security policy forever. In the late 16th & 17th centuries, Thomas Hobbes, John Locke, and Jean-Jacques Rousseau devised an explanation for how we as individuals come into society. The three philosophers believed that individuals chose to forge some rights in the state of nature for protection in the form of society. The English colonists ventured into new territory and brought their way of life to form a new nation. The United States was founded on the ideals of life, liberty, and the pursuit of happiness. The country was not founded on equality, as the law, the emergence of policing, and the lived experiences of all who were not White would attest. Black and Indigenous people experienced the lashings of the slave patrols, the torture of slavery, and the fight for freedom.

The Industrial Revolution would change the division of labor as the nation transitioned from agriculture to a more diverse industry, shifting societal norms and socioeconomic status. White Americans experiencing large societal shifts viewed the increases in immigrants as threatening. Immigrants would become the scapegoat for crime in urban cities, and the reason behind the push for Prohibition. Policing began as an informal means of control to oppress these groups and preserve the White-way of life. The slave patrols and the night watch would slowly resemble contemporary police departments as law enforcement grew.

When discussing the founding of the Federal Bureau of Investigation in 1908, President Theodore Roosevelt wrote in a private letter to the Speaker of the House of Representatives that "only criminals need fear our detective".¹⁸⁸ The sentiment that surveillance only impacts criminals is carried out in American society. The idea that prevails

¹⁸⁸ Theodore Roosevelt, "Letter, 4706 [Theodore Roosevelt] to Joseph Gurney Cannon, 4/30/1908," in *The Letters of Theodore Roosevelt, Volume 5: The Big Stick, 1905–1909*, ed. Elting Elmore Morison (Harvard University, 1952).

is that an individual who has not committed a crime has no reason to fear surveillance. The reality is that mass surveillance is an issue that affects all within America's borders.

Particularly when the state operates outside of the constitution and does so in secret.

Implementing programs under non-disclosure agreements dissuades trust between the people and their local institutions. An issue that impacts Americans when law enforcement ignores the need for probable cause and legislative oversight.

All surveillance cannot be public. The practical applications of informing the public of all the state's actions are not feasible, much less to have criminals know they are being surveilled. Law enforcement's use of wires in the form of physical objects and informants to record otherwise private conversations is an example of why informed surveillance is not entirely possible. A suspect who knows that they were being recorded would change their behavior to ensure no proof of criminal wrongdoing was present. Innovative methods have been devised to ensure the presented scenario does not occur. Criminal suspects should not be presented with the opportunity to negate the law. Simultaneously, law enforcement should not have the legal capacity to avoid culpability.

The state has a responsibility to protect people. It creates self-sustaining institutions through social conventions, instilling norms, finding new needs and facets to improve through the democratic process, ensuring that everyone within its borders is protected. The cost of being protected is that citizens forgo their freedoms to create a society that honors the rule of law, free from violence. The Aviation and Transportation Act is one legislative example of many where a federal agency is mandated to develop technology in the name of counter-terrorism. The United States was founded by the colonists who sought freedom from tyranny. The state and its army can be an asset. It enforces and protects the American people nationwide. Cross-jurisdictional legislation improved after the failures that occurred on 9/11 for this reason. The nation grew in power to better protect the people. To better protect the

United States constituents, learning from the miscommunication failure by the government and private agencies on 9/11, and prevent another mass terrorist event from occurring, which, in part, is why the police state slowly started to take form.

The United States is a democracy, and laws are implemented through the democratic process, but September 11th, 2001, would act as the catalyst that changed the nation's trajectory. The nation shifted its priorities from foreign security to homeland security, establishing safeguards to prevent another mass casualty event on American soil at the expense of civil protections. Over the past two decades, changes to how civil rights would be protected, specifically, under the Fourth Amendment, have occurred to achieve the mission of a better-protected homeland. However, there must be a balance between terrorism prevention, protecting Americans, and the functional expansion of state power that is accountable to the people and their rights before the law. Without legislation that continues to prioritize the ideals that the country was founded on, there will be no democracy left to protect.

By analyzing the changes in United States legislation pre- and post 9/11, this thesis has shown that September 11th, 2001, would act as a catalyst for domestic policy changes because of the perceived threat of terrorism, deterioration of civil rights through legal means. In particular, the Fourth Amendment has lost its original ability to protect Americans' rights with the added protections under qualified immunity for members of the executive branch of the government. As a result of the delayed responses by the legislative and judicial branches, more power has been allocated to the executive branch to circumvent Americans' legal protections, with the ability to infringe on Americans' privacy in secret.

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