Chapter 5

The Needs of the Many:
Biological Terrorism, Disease Containment, and Civil Liberties

David B. Cohen
Alethia H. Cook
David J. Louscher

The liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. . . . Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own [judgment], whether in respect of his person or his property, regardless of the injury that may be done to others.


Introduction

Although in the minds of most Americans the 9/11 terrorist attacks signified a watershed event in American history, the less well-remembered anthrax attacks of autumn 2001 represent an omen of potentially more devastating bioterror threats on the American horizon. In an unprecedented bioterrorist attack, letters containing a powder composed of Bacillus anthracis (anthrax) were dropped in a mail depository in New Jersey and sent to the corporate offices of the Sun tabloid in Florida, the New York Post, the offices of CBS News anchor Dan Rather, NBC News anchor Tom Brokaw, and the U.S. Senate offices of Tom Daschle (D-SD) and Patrick Leahy (D-VT).1 In the wake of these attacks, five individuals were dead, including a photo editor at the Sun, two postal workers in Maryland, a hospital supply worker in New York City, and a ninety-four-year-old woman in Connecticut. The latter four deaths resulted from mail that was cross-contaminated by the packages
bearing the anthrax bacterium or because the victims worked in a mail-sorting facility in which the contaminated mail was processed. Seventeen others were treated for anthrax-related illness, Congress shut down, the U.S. mail system was in disarray, and millions of dollars were spent cleaning up federal buildings contaminated with anthrax spores. A mild panic ensued within the country as public health authorities and physicians were besieged with requests from patients for information about anthrax as well as antibiotics that would protect them from the bacterium. As of this writing, the perpetrator(s) of America’s first major act of biological terrorism are unknown and remain at large.

Anthrax is just one of a wide assortment of biological agents that can be used to terrorize or kill. The Centers for Disease Control and Prevention (CDC) in Atlanta lists on its website the sixteen biological agents that are most likely to be used as weapons of terror. The U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID) details thirteen biological agents in its seminal handbook (also known as the “Blue Book”) on medical management of biological weapons casualties. These lists are certainly not exhaustive. Compounding the threat of bioweapons is the highly mobile nature of modern society. The effects of the anthrax attack stretched along the East Coast, infecting victims as far north as Connecticut and as far south as Florida. Perhaps more frightening, if this particular attack had utilized a highly communicable pathogen such as smallpox or pneumonic plague, the results could have been unimaginable, resulting in death and panic in the United States not seen since the deadly influenza outbreak of 1917–18.

The anthrax attacks are an important wake-up call to an American public that, until recently, had not confronted the realities of biological terrorism. The attacks further energized ongoing governmental attempts to prepare for such a contingency. U.S. policymakers during the cold war were understandably worried about the potential for a nuclear war—the threat of biological weapons was a much lower priority when considering the potential devastation associated with an all-out nuclear confrontation between the superpowers. Given hindsight, considering the lethality of biological weapons and the relative ease with which they can be acquired/produced, this may have been a mistake.

The balance of this chapter will examine the challenges to conventional views of individual civil liberties posed by responses and planned responses to biological attacks on the nation. As the anthrax attacks illustrate, a biological attack is an imminent threat to the United States and is an ideal instrument for terrorists. The variety of biological agents and forms of delivery make response planning a very difficult task. Among the instruments for mitigation are isolation, quarantine, and vaccination; however, these tools can be problematic when considering American notions of civil liberties. The Model State Emergency Health Powers Act (Model Act) is assessed to gain insights into the dilemmas. The recent responses of various countries to severe acute respiratory syndrome (SARS) provide further