

NATIONAL SECURITY, MULTICULTURALISM AND MUSLIM MINORITIES

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Using case studies of Muslim minorities in Canada and Singapore, this paper examines the complex relationship between multiculturalism and national security. The first part of the paper examines the different characteristics of Muslim minorities in Canada and Singapore with an emphasis on how Canada's Muslim minority is smaller, more diverse and less well established than Singapore's. The next section examines some of the dangers of hurried or heavy-handed attempts to merge concerns about multiculturalism with security that do not build on pre-existing institutions and inter-group relations. The next part outlines Canada's and Singapore's main responses to 9/11 with special attention to how these responses may affect the Muslim minorities in both countries and the way each society has managed the arrest and detention of suspected terrorists. The next section explores the role of transparent and independent review of national security activities in the maintenance of public confidence in the fairness of the state's security strategies in multicultural societies. The final section critically examines the emerging trend of prosecuting speech associated with terrorism and the consequent blurring of anti-terrorism and anti-hate rationales for the prohibition of extreme political or religious speech. The article concludes with a discussion of how Canada and Singapore will deal with the challenges of crafting national security policies for their multicultural societies in their own distinct manner.

I. INTRODUCTION

Compared to the 2005 riots in Paris and Sydney or some of the heated controversies in 2006 over the Danish cartoons, inter-group relations in both Canada and Singapore seem relatively sedate. Both countries consciously define themselves as multicultural states in the sense that they not only tolerate but welcome multiple and minority cultures and provide some constitutional commitments to this end. At the same time, genuine inter-group cohesion and harmony in diverse societies do not occur spontaneously. In their own distinct ways, both Canada and Singapore devote considerable attention to the management of multiculturalism.

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Although Canada and Singapore have both been fortunate so far not to be victims of the post 9/11 wave of terrorism, both countries have serious security concerns. Canada was dramatically affected by the 9/11 terrorist attacks on nearby New York and Washington and Singapore had similarly felt the repercussions of the terrorist explosions in nearby Bali and Jakarta. Canada's and Singapore's security concerns are not, however, restricted to terrorism as both countries suffered an outbreak of SARS in 2003. Protecting the security of individuals, like multiculturalism, requires work and planning and in 2004 both Canada and Singapore proclaimed official national security plans.¹ Significantly, both national security plans devote considerable attention to multiculturalism.

In this article, I will explore how Canada and Singapore have approached the delicate intersection of multiculturalism and national security. The countries are significantly similar in their recognition of multiculturalism as a defining aspect of national identity and their security challenges to allow comparisons and the possibility that each could learn from the experience of the other. At the same time, they are significantly different both in the nature of their multiculturalism² and their approach to rights and security to provoke debate and better self-understanding. The emphasis that both Canada and Singapore in their own distinct ways place on the importance of maintaining multiculturalism as part of national security may also provide some lessons for other countries that are struggling with similar issues.³

In the first part of this article, I will provide a brief description of Muslim minorities in Canada and Singapore which will emphasize how Canada's Muslim minority is smaller, less well-established and more diverse than Singapore's. The next section examines some of the dangers of hurried or heavy-handed attempts to merge concerns about multiculturalism with security that do not build on pre-existing institutions and inter-group relations. Topics examined include Canada's creation of a new Cross-Cultural Roundtable on Security, the aborted proposal in the United Kingdom for control orders with respect to religious extremism and Singapore's *Maintenance of Religious Harmony Act*.⁴ The next part outlines Canada's and Singapore's main responses to 9/11 with special attention to how these responses may affect the Muslim minorities in both countries and the way each society has managed the arrest and detention of suspected terrorists. The place of multiculturalism in the official national security policies released by both governments in 2004 is also examined. The next section explores the role of transparent and independent review of national security activities in the maintenance of public confidence in the fairness of the state's security strategies in multicultural societies. The final section critically examines the emerging trend of prosecuting speech associated with terrorism and the consequent blurring of anti-terrorism and anti-hate rationales for the prohibition of extreme political or religious speech. The article concludes with a discussion of how

¹ Canada, *Securing an Open Society: Canada's National Security Policy* (Ottawa: Privy Council Office, 2004); Singapore, *The Fight Against Terrorism: Singapore's National Security Strategy* (Singapore: National Security Coordination Centre, 2004).

² For an argument that Singapore has embraced a deeper form of multiculturalism and legal pluralism than Canada see Gary Bell, "Multiculturalism in Law is Legal Pluralism — Lessons from Indonesia, Singapore and Canada" in this issue.

³ For a related paper on this topic see Victor V. Ramraj, "Anti-Terrorism Policy, Minority Alienation, and Multiculturalism: Some Lessons from Northern Ireland" in this issue.

⁴ Cap. 167A, 2001 Rev. Ed. Sing.

issues of multiculturalism and anti-terrorism policy are often intertwined and how Canada and Singapore will deal with these challenges in their own distinct manner.

II. THE MUSLIM MINORITIES OF CANADA AND SINGAPORE

It is important to consider issues of multiculturalism in context. Therefore, this section will provide a brief snapshot of the Muslim minorities in Canada and Singapore. The focus on the Muslim minorities in each country reflects the context of post 9/11 terrorism concerns. At another time, attention would have been directed at other groups. For example in the 1980's in Canada, there was a significant focus on the Sikh community in large part because of the Canadian-based terrorist bombings of two Air India flights in 1985 that caused the deaths of 331 people.

A. *The Muslim Minority in Canada*

In Canada, the Muslim minority is a diverse and newcomer community that constitutes about two per cent of the population. Between 1991 and 2001, Canada's Muslim population doubled. In the 2001 census, 579,640 Muslims were identified in Canada, up from 253,000 in 1991 and 98,165 in 1981.⁵ This rapid growth in Canada's Muslim population reflects its immigration policy which now accounts for the fact that 18.4 per cent of Canada's population is foreign born, second only to Australia's 22 per cent foreign born population and substantially more than the 11 per cent of the United States' population that is foreign-born.⁶

An important feature of the Canadian Muslim minority is its diversity with large numbers of immigrants coming from Southeast Asia as well as the Middle East. The majority of Canadian Muslims are Sunni, but there is also a significant representation of Shia, Ismailis and Ahmadi sects. Even within sects, there are important differences of nationality, with some mosques focusing on populations from Southeast Asia and others on Muslims from Arabia, Africa or Bosnia.

Canada's Muslim minority is heavily urbanized with large numbers in Toronto, Ottawa and Montreal and there are 10 federal ridings in those cities with a Muslim population of over 10 per cent of the riding. Canada has a first past the post electoral system that does not facilitate the representation of minorities unless they are geographically concentrated so as to make up a significant portion of a riding. It is thus not surprising that Muslims are not well-represented in the Canadian legislature or in its civil service.⁷ The voluntary Canadian Islamic Congress encourages Canadian Muslims to vote and prepares report cards on candidates who run in ridings with significant Muslim populations.⁸ Canada has a multi-party democracy and this helps to ensure that political parties have incentives to respond to the grievances of some minority communities. The social democratic New Democratic Party, for example,

⁵ "Ecumenical Canada", online: Statistics Canada <http://142.206.72.67/02/02a/02a_008_e.htm>.

⁶ "Canada's Ethnocultural Portrait: The Changing Mosaic", online: Statistics Canada <<http://www12.statcan.ca/english/census01/Products/Analytic/Index.cfm>>.

⁷ See Lorne Sossin, "Discretion and the Culture of Justice" in this issue.

⁸ Online: The Canadian Islamic Congress <http://www.canadianislamiccongress.com/election2006/_table.php>.

has proposed a bill to define and prohibit discriminatory racial, ethnic and religious profiling.⁹

The diversity of the Canadian Muslim community in terms of national origin, sect, political and religious orientation may affect its political engagement in Canada and there are a number of different groups that compete to represent Muslims in Canadian political life.¹⁰ In any event, the overall small numbers of Muslims in Canada (two per cent of total population) and the newness and diversity of the community adversely affect their political strength.¹¹

As a newcomer community, the Muslim minority in Canada has no specific constitutional identity.¹² The Muslim minority is, however, protected by general rights to freedom of religion and the right not to suffer discrimination on the basis of religion in sections 2 and 15 of the *Canadian Charter of Rights and Freedoms* and from Section 27 of the *Charter* which provides that the *Charter* should be interpreted “in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians”.¹³ A federal act provides vague commitments to multiculturalism, but does not establish enforceable rights or concrete institutional structures that involve minority communities in Canada.¹⁴ As discussed by my colleague Anver Emon in his contribution to this issue, Canada’s largest province has recently enacted a law prohibiting the use of syariah and other forms of religious laws in marriage arbitration.¹⁵

B. *The Muslim Minority in Singapore*

Singapore’s Muslim minority is larger, more established and more homogenous than Canada’s Muslim’s minority. Singapore’s Muslim minority constitutes 15 per cent of its population.¹⁶ Singapore’s Muslim minority is also less diverse than Canada’s minority, with virtually all of Singapore’s Malay population reporting Islam as their religion and 25 per cent of its Indian population.¹⁷ Some of Singapore’s Indian Muslim population identifies as part of the larger Malay minority, increasing the cohesiveness of Singapore’s Muslim minority.

⁹ Canada Bill 296, *An Act to Eliminate Racial Profiling*, 1st Sess., 38th Parl., 2004.

¹⁰ “Muslims Search for a Common Voice” *Ottawa Citizen* (14 August, 2005).

¹¹ See Kent Roach, “Canadian National Security Policy and Canadian Muslim Communities” in Abdulkader Sinno, ed., *Muslims in Western Politics* [publication date will be 2008].

¹² *The Constitution Act, 1867* provided school rights for the Protestant minority in Quebec and the Catholic minority in Ontario as well as limited rights with respect to the English and French language in the federal and Quebec legislatures. Charter rights in Canada are subject to “reasonable limits” that are “prescribed by law” and “can be demonstrably justified in a free and democratic society”: *Canadian Charter of Rights and Freedoms*, s.1.

¹³ For an exploration of this section see Joseph Eliot Magnet, “Multiculturalism and Collective Rights” in Beaudoin & Mendes, eds., *Canadian Charter of Rights and Freedoms*, 4th ed. (Toronto: Lexis Nexis, 2005).

¹⁴ *Canadian Multiculturalism Act*, S.C. 1988, c. 31.

¹⁵ Anver Emon, “Conceiving Islamic Law in a Pluralist Society” in this issue.

¹⁶ Singapore Census Population, “2000 Advance Data Release No. 2 Religion”, online: Statistics Singapore <<http://www.singstat.gov.sg/papers/people.html# census2000>>.

¹⁷ *Ibid.*

The *Constitution of the Republic of Singapore* recognizes the special position of the Malays as the indigenous people of Singapore and contemplates Government promotion of their “political, religious, economic, social and cultural interests and the Malay language”.¹⁸ Moreover, there is a constitutional requirement to “by law make provision for regulating Muslim religious affairs and for constituting a Council to advise the President in matters relating to the Muslim religion”.¹⁹ Equality rights in Singapore are qualified to allow religious based personal laws and religious based institutions.²⁰ The *Administration of Muslim Law Act*²¹ provides for an organization, the Majlis Ugama Islam, to advise the President on matters affecting the Muslim religion and to administer matters relating to the Muslim religion including mosques, schools, charity, and religious dietary requirements.²² This organization consists of appointees of the president who must be Muslims and Singaporean citizens and the Mufti of Singapore who is also appointed by the President.²³ The act also provides for a legal or fatwah committee²⁴ and a syariah court which has jurisdiction over family disputes with respect to marriages that are solemnized under Muslim law and registered under the Act.

Unlike Canada, Singapore does not have a strong multi-party democracy. Since 1991, group representation constituencies have been used in Singapore and they now outnumber single member constituencies. One of the objectives of these constituencies is to increase minority representation and political parties are required to run at least one minority candidate in these constituencies. In addition, there are provisions for members to be appointed by the President to ensure representation of sectoral interests and opposition parties. There is also a Presidential Council for Minority Rights that can review bills and other matters with respect to their impact on racial or religious minorities.²⁵

Singapore’s Muslim minority is proportionately much larger than Canada’s. It also has a distinct constitutional identity. On the other hand, Canada’s smaller and more diverse Muslim minority has no distinct recognition but receives the general benefits of an open, multi-party democracy, equality rights and the constitutional recognition of multiculturalism.

¹⁸ *Constitution of the Republic of Singapore* (1999 Rev. Ed.), art. 152(2). Note that s. 152(1) is a more general clause that provides: “It shall be the responsibility of the Government constantly to care for the interests of the racial and religious minorities in Singapore”. For an argument that stresses that Singapore departs from Malaysia by not constituting Islam as an official religion and that the representation of Malays should not be conflated with representation of Islam, see Thio Li-ann “Recent Constitutional Developments: Of Shadows and Whips, Race, Rifts and Rights, Terror and Tudungs, Women and Wrongs” [2002] Sing. J.L.S. 328. For an argument that these sections indicate that Singapore does not have a “colour-blind constitution” and that group representation constituencies are a positive development to promote the political interests of Malay, Indian and other minorities see C.L. Lim “Race, Multi-Cultural Accommodation and the Constitution of Singapore and Malaysia” [2004] Sing. J.L.S. 117 at 134.

¹⁹ *Constitution of the Republic of Singapore* (1999 Rev. Ed.), art. 153. [*Singapore Constitution*].

²⁰ *Ibid.*, art. 12. In Canada, there is a general provision in constitutional equality rights to allow affirmative actions programs for disadvantaged groups. See generally R.J. Sharpe & Kent Roach, *The Charter of Rights and Freedoms*, 3rd. ed, (Toronto: Irwin Law, 2005) c. 15.

²¹ cap. 3. 1999 Rev. Ed. Sing.

²² *Ibid.*, s. 3.

²³ *Ibid.*, s. 30.

²⁴ *Ibid.*, ss. 31-33.

²⁵ *Singapore Constitution*, *supra* note 19 at Part VII.

III. THE DELICATE RELATIONSHIP BETWEEN MULTICULTURALISM AND ANTI-TERRORISM POLICY

Minority groups may understandably be skeptical if not cynical if governments appear to first take interest in them after an act of terrorism. There are many dangers in viewing inter-group relations in a multicultural society through the narrow and intense prism of security. These dangers include unfair stereotyping of groups, particularly Muslim minorities, as security threats and assumptions that an entire minority can and should be held responsible for the violent actions of a few. As Victor V. Ramraj has argued in his contribution to this symposium, it is unfair to regard “the minority community simply as a means for containing the violence” and he suggests that such an instrumental and opportunistic approach may contribute to minority alienation.²⁶

Singapore has a considerable advantage over Canada and other countries such as the United Kingdom because there were well-established institutional and interpersonal relations between the Muslim minority and the government long before 9/11. Such pre-existing institutional and interpersonal relations are relevant to engagement on security issues because they suggest that the state recognizes the aspirations and grievances of the minority community, apart from the state’s own security interests. In short, the minority community is not just being engaged by the government when it suits the government’s interest in security matters. Prior comprehensive and constructive engagement is also a valuable antidote to stereotyping and suspicion of Muslim minorities because it provides an opportunity to view the Muslim community through more multi-faceted lens than those provided by security. It can be helpful to engage and build trust with Muslim minorities on issues such as education, charity, personal and dietary laws before engaging with them on security issues. As will be seen, both the Canadian and British governments have stumbled and made some mistakes in attempting to create better relations with Muslim minorities since 9/11.

A. *Canada’s Cross Cultural Roundtable on Security*

Some of the dangers of a hurried or superficial outreach to minority communities can be seen in the growing pains of a Cross-Cultural Roundtable on Security created by the Canadian government in 2004. This roundtable was first announced as part of Canada’s first official national security policy, *Securing an Open Society*, that was released in April 2004, a few weeks after the Madrid bombings. The Cross-Cultural Roundtable was featured on page two of the fifty-page document and described as follows:

The Government needs the help and support of all Canadians to make its approach to security effective. Therefore, it will introduce new measures to reach out to communities in Canada that may be caught in the “front lines” of the struggle against terrorism.

²⁶ See Victor V. Ramraj, “Minority Alienation and Terrorism: Some Lessons from Northern Ireland” in this issue.

To this end, the Government is creating a Cross-Cultural Roundtable on Security, which will be comprised of members of ethno-cultural and religious communities from across Canada. It will engage in a long-term dialogue to improve understanding on how to manage security interests in a diverse society and will provide advice to promote the protection of civil order, mutual respect and common understanding. It will be a partnership with all communities to work to ensure that there is zero tolerance for terrorism or crimes of hate in Canada. The roundtable will work with the Minister of Public Safety and Emergency Preparedness and the Minister of Justice.²⁷

Canada's Cross-Cultural Roundtable focuses on security issues and not other issues such as employment, discrimination and religious freedom that may also be of interest to minority groups in Canada.

The Roundtable's goal of promoting "zero tolerance for terrorism and crimes of hate" reflects the orientation of Canada's post 9/11 *Anti-Terrorism Act*²⁸ which added many new crimes of terrorism to Canada's *Criminal Code*, but also, in recognition of post 9/11 rises in hate crimes, added a new crime of hate-motivated mischief to religious property and provided enhanced provisions for the deletion of hate propaganda from the internet. To be sure, many minority communities had genuine concerns about hate crimes in the wake of 9/11, but the focus on terrorism and hate crimes is a partial focus even from a security perspective because Canada's Muslim communities and others have expressed concerns about discriminatory law enforcement practices in the state's anti-terrorism efforts. Indeed, proposals were made to add an anti-discrimination clause to Canada's *Anti-Terrorism Act* by Irwin Cotler, a noted human rights lawyer who was then a backbencher in the then-governing Liberal party, but these calls were not heeded.²⁹ Cotler was the Minister of Justice at the time that the 2004 National Security Policy was released, but it is interesting that the focus of the Cross-Cultural Roundtable remained on achieving "zero-tolerance" of terrorism and hate crimes, but not "zero tolerance" of the use of racial or religious profiling or other discriminatory law enforcement practices by state officials. It is unlikely that outreach to minority communities on security issues will be successful if it does not engage all of the concerns that these communities may have about Canada's security policy.

After a public call for nominations, the Ministers of Public Safety and Justice appointed 15 members to the Cross-Cultural Roundtable in February, 2005. The Roundtable is chaired by Dr. Zaneer Lakhani, a medical doctor and a member of Edmonton's Ismaili community, but includes representatives from many other minority communities. It also represents the diverse regions of Canada's large land mass. Concerns have been raised, however, that the Roundtable does not include Muslim representatives from the urban centres of Toronto, Montreal or Ottawa that contain

²⁷ *Securing an Open Society*, *supra* note 1 at 2.

²⁸ S.C. 2001, c.41 For further discussion see Kent Roach, "Canada's New Anti-Terrorism Law" [2002] Sing J.L.S. 122.

²⁹ Irwin Cotler, "Thinking Outside the Box: Foundational Principles for Counter-Terrorism Law and Policy" in Daniels, Macklem & Roach, eds., *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill* (Toronto: University of Toronto Press, 2001).

large Muslim populations and have been the focus of several high profile and controversial national security investigations. Although the roundtable could be praised for not associating only Muslims with security issues and for defining minority representation broadly, it can also be criticized for not appointing members from those communities who are, at present, most directly affected by the government's national security activities.

The Roundtable's mandate was defined by the Department of Public Safety and Emergency Preparedness as "to engage Canadians and the Government of Canada in an ongoing dialogue on national security in a diverse and pluralistic society." It is to accomplish this mandate by "providing insights on how national security measures may impact Canada's diverse communities, promoting the protection of civil order, mutual respect and common understanding, and facilitating a broad exchange of information between the government and communities on the impact of national security issues consistent with Canadian rights and responsibilities."³⁰ So far, the Roundtable has yet to emerge as an active presence. It has only held a few formal meetings and issued short statements deploring the bombings in London on 7 July, 2005 and condemning terrorism as not reflective of the "moral principles of our religious and ethnic communities" after seventeen people were arrested in Toronto in June 2006 on various terrorism charges.³¹

Some of the problems confronted by the Cross-Cultural Roundtable were demonstrated when its Chair, accompanied by an Assistant Deputy Minister, Portfolio Affairs and Public Relations from the Department of Public Safety, appeared in October 2005 before a Senate Committee conducting a mandated three year review of Canada's *Anti-Terrorism Act*. Some of the Senators raised concerns that the mandate of the Roundtable was conflicting because it required the Roundtable to act both as an advocate for those who may "be wrongfully profiled and subject to the anti-terrorism legislation" and as "disseminators of information" from the government to minority communities.³² Another Senator raised concerns about the lack of independence of the Roundtable from the Department of Public Safety.³³ One Senator was particularly critical and cutting in raising concerns that the roundtable "could be seen as a PR group for the department".³⁴

The Assistant Deputy Minister responded that the Roundtable had an annual budget of \$600,000 that included three full time staff and that the Roundtable "gives us 15 more pair of eyes and ears and advisors to assist us in our larger outreach initiative".³⁵ A number of Senators expressed concerns that there were no Muslim representatives from Toronto or Montreal on the Committee and the Chair of the Committee also indicated that a number of civil society groups that had appeared before the Committee had expressed concerns that "they do not know what the round table is doing and the kinds of discussions you are having".³⁶

³⁰ Terms of Reference, online: <<http://www.psepc-sppcc.gc.ca/prg/ns/ccrs/ccrstor-en.asp>>.

³¹ News Release (5 June 2006), online: <<http://www.psepc-sppcc.gc.ca/media/nr/2006/nr20060605-en.asp>>.

³² Canada, Special Senate Committee on the Anti-Terrorism Act, (24 October 2005) at 17: 38 *per* (means Issue 17 at page 38) Senator Andreychuk.

³³ *Ibid.* at 17: 43 *per* Senator Fraser.

³⁴ *Ibid.* at 17: 49 *per* Senator Joyal.

³⁵ *Ibid.* at 17: 40 *per* Marc Whittingham.

³⁶ *Ibid.* at 17: 65 *per* Senator Fairburn.

The fact that an expert group of Canada's appointed Senators was critical and skeptical of the Roundtable underlines the difficulty of establishing a credible liaison with minority communities in the long shadow of immediate security concerns. Singapore can draw on the Majlis Ugama Islam as an established institution that has responsibility for a wide variety of interactions between the government and the Muslim minority outside of the security context. Expertise and relationships built in the context of administering halal laws or building schools or mosques can potentially be transferred to security issues in Singapore whereas in Canada, governments must start to build relations with Muslim minorities on the difficult and divisive security file. This is particularly the case for the federal government in Canada which has jurisdiction for matters of national security, but does not have jurisdiction over matters such as education or the regulation of religious institutions which are matters of provincial jurisdiction.

Attempts at establishing institutions such as the Cross-Cultural Roundtable also suffer from a Canadian suspicion of corporatism and an expectation that civil society be independent of governments. In this regard, it is significant that even Senators appointed by the government expressed concern about whether the Cross-Cultural Roundtable was sufficiently independent of the federal Department of Public Safety and Emergency Preparedness. To be successful, the Roundtable will have to establish a reputation for independence and critical distance from government. Although the establishment of the Roundtable constitutes a positive gesture of outreach by the government to minority communities, the ultimate success of the Roundtable as an active and credible presence is in doubt.

B. *The United Kingdom's Preventing Extremism Proposal*

If the success of Canada's Cross-Cultural Roundtable on Security remains in doubt, the same cannot be said for the United Kingdom's initiative in the fall of 2005 on preventing extremism in religious communities. The Blair government's proposal to place control orders to require those in charge of religious institutions to prevent extremism in those institutions and if necessary to close the religious institution was greeted with wide-spread opposition from Muslim and other religious organizations and has been withdrawn by the government.

In October 2005, the Home Office issued a discussion paper entitled *Preventing Extremism Together: Places of Worship*. It proposed creating a legal power that would allow court orders to be issued that would require those who control a place of worship to take steps to stop extremist behaviour which was defined as support for a proscribed terrorist organization or encouragement of terrorism as now prohibited in section 1 of the *Terrorist Act, 2006*.³⁷ The consultation document then proposed for it to be an offence for those subject to the court order to fail to take reasonable steps to stop extremism and that a further court order, a restriction of use order, could be obtained to close the place of worship.³⁸ The Home Office itself seemed to recognize that it was preparing a heavy-handed approach that might not be rationally

³⁷ *Terrorist Act 2006* (U.K.), c. 12. s. 1.

³⁸ U.K., Home Office, *Preventing Extremism Together: Places of Worship*, (6 October 2005) at paras. 20-21.

connected to stopping extremism and terrorism and that might be unfair to innocent people.³⁹

As might be expected in a democracy committed to freedom of religion, the reaction to this proposal was very negative. In a report that was otherwise supportive of the government's new initiatives, Lord Carlile expressed concerns about the proposal in light of freedom of religion. He urged second thoughts "before we introduce what could be a law that we might come to regret".⁴⁰ The Muslim Council of Britain indicated that they "totally reject the need for the legislative proposals" which in their view "are not only unnecessary but are counterproductive and have the serious potential to cause division, fragmentation and disruption in the community".⁴¹ The Islamic Human Rights Commission argued that the focus on mosques was "based on prejudice and more specifically Islamophobia" and the proposal to close places of worship "suggests that the government cannot differentiate between individual responsibility and blanket criminalization of the entire community".⁴² It emphasized that no strict membership is required to enter a mosque and that even the prosecution in the Hamza case acknowledged that "thousands of law-abiding persons worshipped" at the Finsbury Park Mosque. It also argued that "what constitutes 'extremist behaviour' in Islam is not something to be decided by the government or the police but by the Muslim community through an internal mature debate".⁴³ It warned that "the police already have a very bad track record of subjecting innocent Muslims to stop and search, arrest, imprisonment and other false harassment based on faulty intelligence and Islamophobia".⁴⁴

Muslim groups were not alone in opposing the proposal. The Catholic Bishops opposed the proposals noting that even during the height of IRA terrorism, no such proposals were considered with respect to Catholic churches.⁴⁵ The Church of Scotland argued that the proposal should be abandoned: "The measure of closing a place of worship because of the activities of a small minority seems to be coming very close to the area of communal punishment. Not only is it disproportionate, it is unjust".⁴⁶ The mayor of London argued that the proposals "are unnecessary given existing laws and could cause significant damage to community relations".⁴⁷ Given this almost universal disapproval of the proposal, it is not surprising that then Home Secretary Charles Clarke announced in December, 2005 that the government

³⁹ The consultation paper acknowledged: "Taking action against extremism at places of worship, whether through temporary closure or other means, is unlikely to stop radicalization taking place... We must also bear in mind that restricting the use of certain services or parts of a place of worship can disenfranchise ordinary worshippers as well as extremist followers", *ibid.* at paras. 10-11.

⁴⁰ *UK Proposals by Her Majesty's Government for Changes to the Law Against Terrorism* (6 October 2005) *per* Lord Carlile at para. 109, online: <<http://security.homeoffice.gov.uk/news-and-publications/1/publication-search/independent-reviews/carlile-review-121005?view=Standard&pubID=241429>>.

⁴¹ Preventing Extremism Together Collected Responses, (15 December 2005) at 124, online: <<http://www.homeoffice.gov.uk/documents/cons-prev-extreme/>>.

⁴² *Ibid.* at 54.

⁴³ *Ibid.* at 54.

⁴⁴ *Ibid.* at 55.

⁴⁵ *Ibid.* at 60.

⁴⁶ *Ibid.* at 77.

⁴⁷ *Ibid.* at 88.

would not proceed with the proposal.⁴⁸ A subsequent anti-terrorism strategy released by the government places greater stress on promoting equality and social inclusion including various forms of outreach to Muslim communities.⁴⁹

The experience of the *Preventing Extremism* proposal underlines the dangers of heavy-handed approaches to security and multiculturalism that are not based on established outreach with the affected communities. It also demonstrates the importance of other groups allying with Muslim minorities when governments overreach. In Canada, there have been interesting alliances between various groups representing Muslim minorities and other civil society groups including civil liberty, faith and refugee groups and unions.⁵⁰ In the United Kingdom, Muslim groups were not alone in their opposition to the *Preventing Extremism* proposal and were joined by many other groups including those representing many other religions. Social cohesion can occur at many levels and social cohesion among civil society and faith groups may be a valuable means of combating the potential alienation of Muslim minorities.

C. Singapore's Maintenance of Religious Harmony Act

The abandoned British proposal on controlling extremism has some similarities to restraining orders contemplated under Singapore's *Maintenance of Religious Harmony Act*.⁵¹ This act, first enacted in 1990, allows the Minister to "make a restraining order against any priest, monk, pastor, imam, elder, office-bearer or any other person who is in a position of authority in any religious group or institution or any member thereof...where the Minister is satisfied that that person has committed or is attempting to commit any of the following acts":

- (a) causing feelings of enmity, hatred, ill-will or hostility between different religious groups;
- (b) carrying out activities to promote a political cause, or a cause of any political party while, or under the guise of, propagating or practising any religious belief;
- (c) carrying out subversive activities under the guise of propagating or practising any religious belief; or
- (d) exciting disaffection against the President or the Government while, or under the guise of, propagating or practising any religious belief.⁵²

This Act goes beyond a prohibition on extremism associated with terrorism potentially to apply to any involvement by religious leaders in political activities as well as the causing of feeling of hostility between different religious groups. In doing so, it blurs several distinct rationales for regulating speech: concerns about hatred against identifiable groups, concerns about political involvement in religion, concerns about

⁴⁸ Press Release, "Partnership Approach to Tackle Extremism Together" (15 December 2005), online: <<http://press.homeoffice.gov.uk/press-releases/partnership-tackle-extremism>>.

⁴⁹ *Countering International Terrorism: The United Kingdom's Strategy*, June 2006, Cm. 6888 at paras. 45, 47-63. See generally Victor V. Ramraj in this issue.

⁵⁰ See Roach, *September 11: Consequences for Canada* (Montreal: McGill Queens Press, 2003) c. 3.

⁵¹ Cap. 167A, 2001 Rev. Ed. Sing.

⁵² *Ibid.*

subversion and concerns about terrorism. Each of these rationales for restricting speech have different implications and weights.

Restraining orders under this Act can prevent a person from addressing orally or in writing any theme specified in the order without the prior permission of the Minister. Although the person subject to a restraining order has an opportunity to make written representations to the Minister and there are provisions for reviews before a Presidential Religious Harmony Council and the President, there is also a privative clause that purports to preclude all judicial review of such orders⁵³ despite their obvious effects on freedom of expression and freedom of religion as guaranteed under Singapore's *Constitution*. To my knowledge, the Act has not yet been used. Such legal powers, even if never used, would not be accepted in Canada or the United Kingdom both because of their effects on freedom of expression and freedom of religion and their attempt to exclude judicial review.

IV. A COMPARISON OF CANADA'S AND SINGAPORE'S RESPONSES TO 9/11

Both Canada and Singapore were affected by the terrorist attacks on the United States on 11 September 2001. Canada was immediately affected by American closing of its airspace and the landing of over 200 planes in Canada, as well as by slowed movement of goods and people over the border. It responded with a massive new *Anti-Terrorism Act* introduced in Parliament on 15 October 2001, increased use of immigration law as anti-terrorism law, and a significant re-organization of government around the themes of public safety and emergency preparedness as embraced in Canada's first official national security policy.

Singapore's response to 9/11 was less dramatic in part because of its reliance on the *Internal Security Act* and pre-existing institutions and laws affecting religion and freedom of expression. At the same time, the post 9/11 fallout in Singapore has not been insignificant. It has seen the enactment of new legislation against the financing of terrorism, the creation of inter-racial harmony circles and religious rehabilitation teams, an unprecedented White Paper to explain the detention of suspected terrorists under the *Internal Security Act* and a new national security policy focused on terrorism.

A. Singapore's Response to 9/11

Singapore's legislative response to 9/11 was relatively restrained. It enacted the *Terrorism (Suppression of Financing) Act*⁵⁴ to ensure compliance with U.N. Security Council Resolution 1373 and its emphasis on the need for laws to target the financing of terrorism. At the same time, however, greater reliance was placed on the *Internal Security Act* '(ISA)'.⁵⁵ The ISA was used to detain 15 persons in December 2001 and 21 persons in August 2002 on the basis that they were associated with Jemaah Islamiyah.⁵⁶ Michael Hor has argued that the ISA has explicit constitutional

⁵³ *Ibid.* at s. 18.

⁵⁴ Cap. 325, 2003 Rev. Ed. Sing.

⁵⁵ Cap. 143, 1985 Rev. Ed. Sing. [ISA].

⁵⁶ *The Jemaah Islamiyah Arrests and the Threat of Terrorism* (7 January 2003) Cmd. 2 of 2003.

legitimacy in Singapore and is used as a kind of “a super criminal-law, swooping down and dealing with those suspected of criminal activity when the Executive perceives the normal processes of the criminal law are likely to fail or create more problems than they solve”.⁵⁷

Another of Singapore’s responses to 9/11 was the creation of Inter-Racial Harmony Circles in January 2002. They were organized for each of the constituencies of Singapore and as of December 31 2004, they had a reported membership of 979 people.⁵⁸ After the 2002 Bali bombings, then Prime Minister Goh Chok Tong called on the non-Muslim majority of Singapore not to:

let unfounded suspicion affect the way you behave towards Muslim Singaporeans, this will build up resentment among Muslims, and turn even moderate ones against the society. So rein in your emotions and fear, and act rationally. But this is not a one-way street. Muslim Singaporeans must play their part. If you become exclusive and different, this will reduce your interaction with non-Muslims. And if Islamic extremism grows in your midst, this will cause them to look at you with disquiet. You too must make an effort to reach out to members of other communities.⁵⁹

Concerns about “inter-racial harmony” figured prominently in Singapore’s discourse about security and featured calls on the non-Muslim majority not to view the Muslim community with suspicion, as well as calls on the Muslim minority to combat extremism. More recently, the government has expressed concerns that Inter-Racial Harmony Circles have not penetrated enough in society given recent events such as the London bombings of July 2005 and the controversies over the Danish cartoons. It has announced that a new Community Engagement Programme involving schools, businesses, unions and religious groups will be launched.⁶⁰

Michael Hor has argued that the government’s decision to use the *ISA* to detain suspected terrorists as opposed to a public trial was probably influenced by “the context of a history of delicate racial and religious relations” between Singapore’s non-Muslim majority and its Muslim’s minority. He elaborated:

the spectacle of a public trial against alleged Malay Muslims accused of extremism and terrorism might polarize the different communities in Singapore to an unacceptable degree. People are bound to take sides and the side that they take is likely to follow the racial and religious divide. It would also be an uphill task to try to persuade the Malay Muslim minority that the majority are not oppressing them out of racial or religious prejudice. Also, it would not be fanciful to predict

⁵⁷ Michael Hor, “Terrorism and the Criminal Law: Singapore’s Solution” [2002] Sing. J.L.S. 30 at 43.

⁵⁸ Online: <<http://fcd.ecitizen.gov.sg/CommunityDevelopment/PromoteRacialHarmonyNCommunityBonding/>>.

⁵⁹ “Dialogue with Community Leaders” (15 October 2002), online: Ministry of Home Affairs <<http://www2.mha.gov.sg/mha/detailed.jsp?artid=591&type=4&root=0&parent=0&cat=0&mode=arc>>.

⁶⁰ “DPM Wong on Community Engagement Programmes” (13 Feb 2006), online: Ministry of Home Affairs <<http://www2.mha.gov.sg/mha/detailed.jsp?artid=1877&type=4&root=0&parent=0&cat=0&mode=arc>>.

that a public trial might feed existing racial or religious prejudice on the part of the majority, or even create prejudice where it did not exist before.⁶¹

In light of these concerns, Professor Hor concluded that if the government was using the *ISA* to avoid religious and racial conflict that its actions “cannot be said to be wholly unreasonable”.⁶²

In January 2003, the government of Singapore issued a fifty page white paper on the *JI* arrests.⁶³ Although a carefully worded government document is no substitute for a public trial covered by a free press, it is significant and may even be a sign of some movement towards liberalism⁶⁴ that the government felt it necessary to prepare such an unprecedented document. The White Paper examined the history of the *JI* and identified and listed the 31 detainees, revealing that all but one was Singaporean, and that 14 detainees were Malay, and seven were Indian.⁶⁵ It presented a summary of the case against the detainees and a summary of proceedings before the Internal Security Act Advisory Board. It stated that the thirty one detainees “were not ignorant, destitute or disenfranchised outcasts”. Indeed, they all had received a secular education and held “normal respectable jobs”.⁶⁶ It also quoted psychological profiles of the detainees which suggested that they deferred to authority and had a high level of compliance. Victor V. Ramraj has argued that these profiles present an implicit challenge for Singapore because they “are qualities that, at least until recently, were regarded as desirable in citizens in the political sphere”.⁶⁷

The last section of the White Paper examined ways to counter the terrorist threat and concluded that “enhanced security and intelligence are not enough” and that “with the support of the Government, the Muslim community will need to propose and implement measures to prevent dangerous foreign influences, such as the distorted teachings of foreign preachers like Bashir and Abu Jibril from infiltrating Singapore and influencing Muslims here”.⁶⁸ Although it can be argued that it is unfair to place this responsibility on the Muslim community, especially given the White Paper’s own observations that the detainees had “stayed away from mainstream religious activities” and observed a “strict oath of secrecy” after they were inducted into the *JI*,⁶⁹ it may also be significant that the government itself did not take the lead under the *Maintenance of Religious Harmony Act* discussed above. Engaging the Muslim community on issues of extremism and terrorism is a double edged sword. On the one hand, there is a risk of unfairly making all Muslims responsible for the actions of the few. On the other hand, the Muslim community itself may have unique resources for identifying and dissuading those who would engage in religiously inspired terrorism.

⁶¹ Michael Hor, *supra* note 57 at 49.

⁶² *Ibid.* at 49.

⁶³ *The Jemaah Islamiyah Arrests and the Threat of Terrorism*, Cmmd. 2 of 2003.

⁶⁴ Victor V. Ramraj, “The Post-September 11 Fallout in Singapore and Malaysia: Prospects for an Accommodative Liberalism” [2003] *Sing. J. L. S.* 459. But see the reply by Lim, *supra* note 18.

⁶⁵ *Supra* note 56 at Appendix C.

⁶⁶ *Ibid.* at 15.

⁶⁷ Victor V. Ramraj, *supra* note 64 at 473.

⁶⁸ *Supra* note 56 at 22.

⁶⁹ *Ibid.* at 22.

The White Paper also repeated calls for the need to strengthen “social cohesion and religious harmony”.⁷⁰ It concluded that:

the members of the JI were a small and isolated group of misguided Muslims with no support from the community. It would be tragic if the terrorist attacks and the JI case caused distrust and suspicion between Singaporeans...Much is at stake for a multi-racial and multi-religious country like Singapore. Terrorism in the name of religion will cause enormous harm to inter-religious and inter-racial ties. Unlike material loss, such damage to Singapore’s social fabric will take many years to heal.⁷¹

Although a public trial may have strained racial and religious relations, the release and tone of the White Paper suggests that the government appreciated that damage had been done even without such a trial and that the maintenance of social cohesion and religious harmony was as important an objective for the government as the prevention of terrorism.

An interesting post-script to the JI detentions was the creation of a small volunteer group of Islamic teachers and scholars to form a religious rehabilitation team to work with the detainees. The efforts of this group both with the detainees and the wider Muslim community has been praised by the government.⁷² Religious counseling also played a role in the decision to release at least one of the detainees, Andrew Gerard, who curiously was the only person recorded as a convert to Islam in the White Paper.⁷³ Restriction orders were also ordered in January 2004 under the ISA requiring 12 people said to be associated with the JI and the Moro Islamic Liberation Front to undergo religious counseling.⁷⁴

Although the voluntary nature of the counseling is questionable and could possibly be abused in order to gather intelligence, Singapore’s attempt at counseling terrorist suspects is to my knowledge unique. It is also significant that the government allowed volunteers from the Muslim community to conduct the counseling as opposed to state security officers. In contrast, there has been no known attempt at rehabilitating suspected terrorists held under security certificates in Canada and a report by the Canadian Security Intelligence Service has rejected rehabilitation, arguing that “individuals who have attended terrorist training camps or who have independently opted for radical Islam must be considered threats to Canadian public safety for the indefinite future”.⁷⁵ Although rehabilitation can be abused, Singapore’s attempts at rehabilitating some suspected terrorists suggest that they are still considered to be part of the community.

⁷⁰ *Ibid.* at 23.

⁷¹ *Ibid.* at 23-24.

⁷² Comments From Deputy Prime Minister/Minister for Home Affairs Wong Kan Seng at Iftar (Breaking Of Fast) at the Khadijah Mosque, (17 October 2005), online: Ministry of Home Affairs, <<http://www2.mha.gov.sg/mha/detailed.jsp?artid=1754&type=4&root=0&parent=0&cat=0&mode=arc>>.

⁷³ Government Press Statement, “Update on Counter-Terrorism Investigations in Singapore” (11 November 2005), online: Ministry of Home Affairs, <<http://www2.mha.gov.sg/mha/detailed.jsp?artid=1785&type=4&root=0&parent=0&cat=0>>.

⁷⁴ Government Press Statement, “Update on Counter-Terrorism Investigations in Singapore: Twelve Persons Issued Restriction Orders” (14 January 2004), online: Ministry of Home Affairs, <<http://www2.mha.gov.sg/mha/detailed.jsp?artid=981&type=4&root=0&parent=0&cat=0>>.

⁷⁵ Stewart Bell, “Reason to Live” *National Post* (25 February 2006) at A15.

In 2004, the Singapore government released its national security strategy entitled *The Fight Against Terror: Singapore's National Security Strategy*.⁷⁶ This document follows the American model of defining terrorism as the number one threat to national security, something that has started to be questioned in the United States given the failures to mitigate the harms of Hurricane Katrina. Defining terrorism as the only threat to national security can have negative effects for social cohesion and intergroup relations because of the possibility of Muslim minorities being identified as the source of the only threat to national security. To be sure, the Singaporean strategy is well aware of this danger and takes steps to mitigate it, but Canada's national security strategy may be better designed to achieve social cohesion because it is directed not only against terrorism, but other risks such as SARS, avian flu and natural and man-made disasters that could have devastating effects on all citizens and cannot be associated with any sub-group of citizens.

Singapore's national security strategy stresses the need for tighter co-ordination on a network model between various agencies with responsibility for national security as well as with the private sector. It candidly and correctly admits that "absolute security is unattainable"⁷⁷ and that "security issues cannot become an overriding concern that displaces other national imperatives" such as education, housing, health care and economic growth.⁷⁸ The next logical step, however, may be to define other threats to well-being as threats to national security.

Following the pattern of the 2003 White Paper, Singapore's national security strategy concluded with an extended discussion of social harmony. It stated that "Muslims must speak out and denounce those who distort Islam. They have to engage the extremists, from the media to the mosque to the madrassah, and assert mainstream Islamic values".⁷⁹ As discussed above, this strategy of placing responsibility on the Muslim community can be problematic especially to the extent that the government's own evidence suggests that JI detainees "stayed away from mainstream religious activities", kept "a strict code of secrecy" and held important meetings outside of Singapore.⁸⁰ Nevertheless it may be a better alternative than a crack down that would rely on the coercive state powers of the *ISA* and the *Maintenance of Religious Harmony Act*. In the end, the White Paper and the national security strategy both suggest that the greatest threat of post 9/11 terrorism is not to life and property, but to the "multi-racial, multi-religious compact" that forms the "cornerstone" of Singapore.⁸¹

B. Canada's Response to 9/11

Although Canada has not engaged in the frenzy of anti-terrorism legislative activity that has occupied Australia and the United Kingdom, it has been fairly active in enacting new anti-terrorism legislation in the period following 9/11. Canada

⁷⁶ Singapore: National Security Co-ordination Centre, (2004).

⁷⁷ *Ibid.* at 30.

⁷⁸ *Ibid.* at 31.

⁷⁹ *Ibid.* at 64.

⁸⁰ *Supra* note 56 at 22.

⁸¹ *Supra* note 1.

quickly enacted a new *Anti-Terrorism Act*⁸² before the end of 2001. The bill defined crimes based on the commission of a terrorist activity for the first time in Canada's *Criminal Code*. It also provided for increased police powers of preventive arrests and investigative hearings, listing of terrorist groups and individuals by the executive, enhanced provisions for protecting national security information and a new procedure for the deregistration of charities.⁸³ A number of Muslim groups, along with other groups such as lawyers, unions and civil libertarians, opposed the enactment of the law on various grounds.⁸⁴ As a concession to this opposition, the Canadian government amended the bill before it became law to place a five-year sunset clause on the new police powers of preventive arrest and investigative hearings.

One of the controversial features of Canada's *Anti-Terrorism Act* is that following British law, it defines terrorist activities in relation to the pursuit of political or religious objectives. In response to arguments that this definition departed from ordinary criminal law principles concerning the irrelevance of motive and could constitute a form of religious or ideological profiling, the government agreed to add an interpretative clause after second reading of the bill that provides that the expression of political or religious opinion or belief would not normally fall within the broad definition of terrorist activities.⁸⁵ Although my own view is that the motive requirement should still be repealed,⁸⁶ the clarifying amendment is a testament to the Canadian government's sensitivity to claims that their anti-terrorism efforts were directed against particular religions. No similar clarifying provision is found in British, Australian or South African anti-terrorism laws which also define terrorism in part as acts committed with religious or political motive.⁸⁷ In addition, Canada's Minister of Justice has recently indicated some interest in exploring the possibility of removing the requirement for proof of a religious or political motive.⁸⁸ It may also be significant that Singapore's definition of terrorism both in the *ISA*⁸⁹ and in the *Terrorism Suppression of Financing Act*⁹⁰ do not define terrorism in reference to religious motive. In this respect, Singapore's law follows the reluctance of Arab states, Pakistan and Indonesia to include religious motive as an essential element of their definition of terrorism.⁹¹

⁸² S.C. 2001, c. 41.

⁸³ For an overview of the Act, see Kent Roach, "Canada's New Anti-Terrorism Law", *supra* note 28 at 122.

⁸⁴ See Ronald Daniels, Patrick Macklem & Kent Roach eds., *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill* (Toronto: University of Toronto Press, 2001).

⁸⁵ *Criminal Code* of Canada, R.S. C. 1985 c. C-34 s. 83.01 (1.1).

⁸⁶ Kent Roach, "The Three Year Review of Canada's Anti-Terrorism Act" (2005) 54 U.N.B.L.J. 308. For a defence of this political and religious motive requirement, see Stanley Cohen "Law in a Fearful Society" (2005) 54 U.N.B.L.J. 143.

⁸⁷ Kent Roach, "The Post 9-11 Migration of the Terrorism Act, 2000" in S. Choudhry ed., *The Migration of Constitutional Ideas* (Cambridge: Cambridge University Press, 2006).

⁸⁸ Proceedings of the Special Senate Committee on the Anti-Terrorism Act (12 June 2006).

⁸⁹ *ISA*, *supra* note 55 at s. 2.

⁹⁰ Cap. 325, 2003 Rev. Ed. Sing., s. 2.

⁹¹ Lynn Welchman, "Rocks, Hard Places and Human Rights: Anti-Terrorism Law and Policy in Arab States" in Victor V. Ramraj, Michael Hor and Kent Roach, eds., *Global Anti-Terrorism Law and Policy*

Until recently, the Canadian government has relied on immigration law as anti-terrorism law. Canada's immigration law has broader liability rules and provisions for investigative detention, lower standards of proof and an enhanced ability to keep information confidential than the criminal law apparatus of the *Anti-Terrorism Act*.⁹²

The most well known and controversial part of Canada's *Immigration and Refugee Protection Act*⁹³ (IRPA) are provisions that allow the Ministers of Immigration and Public Safety to sign security certificates that designate non-citizens as threats to the security of Canada on a variety of grounds including that there are reasonable grounds to believe that they are members of a group that has engaged, engages or will engage in terrorism in any part of the world. There are presumptions for mandatory detention of non-citizens who are not permanent residents until they can be deported. In 2002, the Supreme Court of Canada ruled that the Canadian Charter will generally prohibit deportation of a non-citizen held under a security certificate if there is a significant risk that he will face torture, but the Court also held that courts should defer to the government's determinations about the risk of torture unless they are patently unreasonable and that there may be "exceptional circumstances" in which it would be constitutional for Canada to deport a non-citizen to torture.⁹⁴

The standard of proof under security certificates is lower than that used in civil cases, let alone criminal cases. The detainee is prohibited by law from seeing evidence that is presented to the judge to determine the reasonableness of the certificate if the judge determines that its release would be injurious to national security or the safety of any person. There is no provision for adversarial challenge of this secret evidence, as there is in the United Kingdom with respect to the use of security cleared special advocates. There is no limit on the period of detention under security certificates and as will be seen, security certificates have been used in Canada as a form of de facto indeterminate detention.⁹⁵ In many ways, security certificates in Canada serve a somewhat similar role to detention under the *Internal Security Act* in Singapore except that only non-citizens in Canada can be detained under security certificates and the review of security certificates are conducted before a judge, in part in open court.

Five Muslim men suspected of involvement with terrorism have been detained in Canada under security certificates, two since before 9/11. Mohamad Mahjoub, a 45 year old Egyptian, has been detained the longest. He has been detained since June 26, 2000 and is alleged to have worked for Osama bin Laden and to have been associated with the Vanguard of Conquest a group that wishes to overthrow the Egyptian government. Mahmoud Jaballah, alleged to have terrorist ties with the Egyptian Al- Jihad has been detained since August, 2001 on a security certificate

(Cambridge: Cambridge University Press, 2005); Kent Roach, "Anti-Terrorism and Militant Democracy: Some Western and Eastern Responses" in Andras Sajó, ed., *Militant Democracy* (Amsterdam: Eleven International Publishing, 2004).

⁹² Kent Roach, "Canada's Response to Terrorism" in Victor V. Ramraj, Michael Hor and Kent Roach, eds., *Global Anti-Terrorism Law and Policy* (Cambridge: Cambridge University Press, 2005).

⁹³ S.C. 2001. c.27. [IRPA]

⁹⁴ *Suresh v. Canada* [2002] 1 S.C.R. 3. For my criticism of this exception, see Kent Roach, "Constitutional, International and Remedial Dialogues About Rights: The Canadian Experience" (2005) 40 *Tex. Int'l L.J.* 537.

⁹⁵ For various criticisms of Canada's security certificates see Hamish Stewart, "Is Indefinite Detention of Terrorist Suspects Really Constitutional?" (2005) 54 *U.N.B.L.J.* 234; Kent Roach and Gary Trotter, "Miscarriages of Justice in the War Against Terror" (2005) 109 *Penn. State L.Rev.* 967.

ordering his deportation to Egypt. Hassan Almrei, from Syria, has been detained since October 19, 2001. Mohammed Harkat was detained on December 10, 2002 with allegations that he has ties to the Algerian Islamic Army Group, but a judge in May, 2006 ordered that he be released on bail. Adil Charkaoui, also from Algeria, was detained since May, 2003 but in February of 2005 was released on strict conditions on his fourth detention review. In each of the above cases, the government has argued that the detainee will not face torture if returned to Egypt or Syria or Algeria despite known cases of torture of terrorist suspects in those countries. The government has also argued in the alternative that each case constitutes an “exceptional case” in which deportation to torture would be constitutional under Canada’s Charter, even though in violation of Canada’s international law obligations with respect to torture. The constitutionality of indeterminate detention under security certificates and the use of evidence not disclosed to the detainee have been challenged under the Canadian Charter of Rights and Freedoms and is presently under review by the Supreme Court of Canada.⁹⁶

Security certificates have not been the only controversial use of Canadian immigration law as anti-terrorism law. In August, 2003, the Canadian government used the broad powers of investigative detention under Canadian immigration law to detain 23 non-citizens from Pakistan. The operation, known as Project Thread, alleged that the men “appear to reside in clusters of 4 or 5 young males and appear to change residences in clusters and/or interchange addresses with other clusters... All targets were in Canada prior to September 5, 2001.... A confirmed associate of the group... provided an offer of employment from Global Relief Foundation... [which] has been identified by the United Nations as a fundraising group that provides financial support to terrorist groups, including Al Qaeda... One of the targeted apartments is reported to have aeroplane schematics posted on the wall, as well as pictures of guns.” This summary then contained an even more sensational allegation that became the lead in the newspapers: “One of the subjects is currently enrolled in flight school to qualify as a multi-engine commercial pilot. His flight path for training purposes flies over the Pickering Nuclear Plant”.⁹⁷

Not surprisingly given the dramatic nature of this extraordinary release, the initial detention of 19 men (the same number involved in the September 11 attacks) was highly publicized and initially raised many security concerns in Canada. The men were entitled to prompt administrative hearings, but most of them were detained under s.58(1)(C) of IRPA on the grounds that “the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security or for violating human and international rights”.⁹⁸ The aftermath of these detentions suggest that the front page news about a suspected Al-Qaeda cell with designs on a nuclear plant was grossly unfair. Both the RCMP and immigration officials subsequently retracted the claims of a security threat with one official telling

⁹⁶ The Supreme Court has recently held that the security certificate regime violated the Charter because it failed to provide for adversarial challenge to secret evidence presented by the government to justify the security certificate and because it denied prompt judicial review to non citizens who were not permanent residents. The Court did not, however, invalidate long term detention under security certificates pending deportation and suspended its declaration of invalidity for 12 months to allow Parliament to reform the process: *Charkaoui v. Canada* 2007 SCC 9.

⁹⁷ Project Thread Backgrounder: Reasons for Detention Pursuant to 58(1)(c) (undated).

⁹⁸ IRPA, *supra* note 93. s.58(1)(C).

reporters: "I can comfortably say there is no known threat; what is being investigated is a reasonable suspicion. Its taken the spin that it has taken in the media for whatever reason".⁹⁹ One of the reasons for the spin, of course, was the sensational backgrounder prepared by the government. Many of the men were subsequently deported not as a threat to national security but because of immigration offences related to fraudulent student visas.

The whole incident caused widespread resentment among Canada's Muslim communities with some criticizing the apprehension of the men as the actions of a police state and others suggesting that it is an example of profiling that victimizes the innocent. On the other hand, Canada's leading national newspaper refused to condemn the operation. It argued that "preventive detention may be necessary in some cases" even while it recognized that the case against the men "would be laughed out of a criminal-court bail hearing, smacking of preventive detention and guilt by association".¹⁰⁰ These comments raise a recurring theme in Canada's post 9/11 security policies: namely how Muslim minorities are particularly vulnerable to harsh anti-terrorism laws that would not be accepted in Canada for citizens. The Canadian government has not taken steps to reform either security certificates or investigative detention procedures under the immigration law.

The post 9/11 threat of terrorism has been defined in Canada much more than Singapore as a threat from foreigners. The five security certificates and Operation Thread were all directed against non-citizens. A 2002 backgrounder on the terrorism threat prepared by the Canadian Security Intelligence Service (CSIS) is telling in its emphasis on "foreign" activities when it stated:

Most terrorist activities in Canada are in support of actions elsewhere linked to homeland conflicts. These activities include providing a convenient base for terrorist supporters and may involve using the refugee stream to enter Canada, or immigrant smuggling. In recent years, terrorists from different international terrorist organizations have come to Canada posing as refugees.¹⁰¹

The definition of the terrorist threat as one from foreigners discounts the real risk that Canadian citizens could engage in acts of terrorism, as was the case in the 1985 Canadian-based bombings of two Air India flights that killed 331 people in what was the worst act of aviation terrorism prior to 9/11.¹⁰² A Canadian citizen, Mohammed Jabarah, was suspected of involvement in the JI plots and is now believed to be in American custody.¹⁰³ In 2004, another Canadian citizen was the first and until very recently the only person charged under Canada's 2001 *Anti-Terrorism Act* and is alleged to have planned acts of terrorism with conspirators in London, England.

In May 2006, a senior official of CSIS told a Senate national security committee that "all the circumstances that led to the London transit bombing...are resident here and now in Canada...we have to be vigilant on two fronts - what's coming to us from the outside environment but increasingly what is growing up in our own

⁹⁹ "Case of 19 terrorists unraveling", *Globe and Mail* (30 August 2003).

¹⁰⁰ "The arguments made in protection's name", *Globe and Mail* (29 August 2003).

¹⁰¹ CSIS Backgrounder No. 8 (August 2002), online: Canadian Security Intelligence Service <<http://www.csis-scrs.gc.ca/en/newsroom/backgrounders/backgroundunder08.asp>>.

¹⁰² Kent Roach, "Must We Trade Rights for Security?" (2006) 27 *Cardozo L. Rev.* 2151 at 2157ff.

¹⁰³ Stewart Bell, *Cold Terror: How Canada Nurtures and Exports Terror Around the World* (Toronto: John Wiley and Sons, 2004) at 193-194.

environment".¹⁰⁴ A few days later, 17 people including five youths and other young men some who are associated with the same mosque in suburban Toronto, were arrested and charged with various terrorism offences in Toronto, Canada. This is alleged to be a home grown terrorist plot that involved middle class people who have lived all or most of their lives in Canada and who are alleged to have tried to secure three tons of ammonium nitrate for bomb attacks and other acts of terrorism in Toronto and Ottawa.¹⁰⁵ These arrests, like the London bombings in 2005, raised concerns about the terrorist threat from Canadian citizens.

Some in the Muslim communities have complained of unfair media coverage, but Canadian officials went to great length to explain the arrests to various leaders of the Muslim communities even before the media was made aware of the arrests. One example of this outreach was that press releases on the arrests were translated into Arabic and Urdu.¹⁰⁶ At the same time, the arrests caused increased tensions in Canadian society. There was an immediate increase of hate crimes against mosques in Canada, including an assault of a well-known Imam in Montreal.¹⁰⁷ Canadian Prime Minister Stephen Harper responded to attempts by some subsequent to the arrests to blame multiculturalism and immigration for the incident by arguing that terrorism "will be rejected most strongly by those men and women living in the very communities that the terrorists claim to represent, as we have already seen in Canada." He contrasted Canada's diversity and openness with terrorists who want "societies that are closed, homogeneous and dogmatic".¹⁰⁸

An interesting post-script to the Toronto arrests is that a well-known figure in Toronto's Muslim community who had campaigned vigorously but unsuccessfully for the incorporation of Syariah law into divorce arbitration has subsequently revealed that he acted as an informer against the men.¹⁰⁹ The apparent use of this informant, who has volunteered his name to the media, suggests that security intelligence agencies and police forces may find it useful to establish contacts within the Muslim community. At the same time, the use of the informant has been subject to various criticisms within Canada's Muslim community. Terek Fatah of the Muslim Canadian Congress has argued that the informer was "the number one proponent of syariah law in Canada, has been extremely hostile to all moderate Muslims, which calls into question whether he's acting out of sincerity or is he trying to fish himself out of his own troubles". On the other hand, a conservative Toronto Imam, Ally Hindy, has alleged that the informant's role was not "just to inform what was happening, he was making things happen".¹¹⁰ Recent media reports suggest that a second informant

¹⁰⁴ "Web used for terror training, spy says" *Toronto Star* (30 May 2006).

¹⁰⁵ "Crown sheds light on alleged roles" *Toronto Star* (6 June 2006). For a preliminary examination of what must be proved in these prosecutions see Kent Roach, "The Toronto Terrorism Arrests" (2006) 51 *Crim. L.Q.* 265.

¹⁰⁶ "Authorities confronted 'wall of silence'," *Globe and Mail* (9 June 2006).

¹⁰⁷ "Imam attacked in Montreal", *New York Times* (10 June 2006).

¹⁰⁸ "Harper defends Canadian diversity", *Globe and Mail* (20 June 2006).

¹⁰⁹ "Informer says he wanted to protect Canada", *Toronto Star* (14 July 2006).

¹¹⁰ *Ibid.* Entrapment is a defence in Canadian criminal law that will result in a stay of proceedings in cases where the police and perhaps other state agents present people with an opportunity to commit a crime without having a reasonable suspicion that the person is engaged in criminal activity or without acting in the course of bona fide inquiry into a particular type of crime or at a particular location. Even if these prerequisites are satisfied, entrapment will also occur if the state agents go beyond offering a person an

from within Toronto's Muslim community assisted authorities in the case, including with an alleged control purchase of fake ammonium nitrate for use in truck bombs. One associate of the alleged informant told reporters that he believed that the informant "was Wahabbi" in reference to his militant views while another said that he "pretended to be religious in order to get close to these people [the suspects]".¹¹¹ In any event, these stories demonstrate how Canadian police and security agencies can be assisted by those in the Muslim community.

Long before the Toronto arrests, the Canadian government was aware of the inter-relationship between multiculturalism and national security policy. In April 2004, shortly after the Madrid bombings, the Canadian government released its first official national security policy *Securing an Open Society*.¹¹² The Canadian national security strategy, like the Singaporean strategy, stressed the need to maintain social cohesion in the face of religious terrorism. The Canadian strategy stated:

We reject the stigmatization of any community and we do not accept the notion that our diversity or our openness to newcomers needs to be limited to ensure our security... The deep commitment of Canadians to mutual respect and inclusion helps to mitigate extremism in our society... Canadians stand together in reaffirming that the use of violence to pursue political, religious or ideological goals is an affront to our values and must be met with a determined response by Canadians and their governments.¹¹³

These statements were followed by the government's commitment to create a Cross-Cultural Roundtable on Security discussed above. Unlike the comparable Singaporean document, the Canadian strategy did not specifically call on Canadian Muslims to combat extremism in their community. In part this may be related to the smaller and diverse nature of Canada's Muslim communities and a lack of the same official institutional structure as Singapore.

Like Singapore's national security strategy, the Canadian policy stressed the need for greater integration and co-ordination of the government's national security actors. It differed from the Singaporean strategy, however, by not focusing on terrorism but by taking a broad all-risk approach which included threats from natural disasters and diseases such as SARS. It devoted a whole chapter to public health and featured emergency preparedness as a strategy that could mitigate the damage of not only terrorism but others harms.¹¹⁴ Such an all-risks approach can be contrasted with a single-minded emphasis on the prevention of terrorism as the sole threat to human security.¹¹⁵ From the perspective of multiculturalism, an all-risk approach may

opportunity to commit a crime and actually induce the commission of a crime: *R. v. Mack* [1988] 2 S.C.R. 903.

¹¹¹ "Police had a second mole in terror plot", *Globe and Mail* (14 October 2006).

¹¹² Ottawa, Privy Council Office. *Securing An Open Society: Canada's National Security Policy*. (April 2004), online: Privy Council Office <http://www.pco-bcp.gc.ca/default.asp?Page=Publications&Language=E&doc=NatSecurnat/natsecurnat_e.htm>.

¹¹³ *Ibid.* at 2.

¹¹⁴ The Singaporean strategy remained focused on terrorism, but it briefly mentioned Singapore's own SARS crisis concluding that it "demonstrated the need for tight inter-agency coordination and widespread community participation- elements that will be critical in meeting future national crises", *The Fight Against Terrorism: Singapore's National Security Strategy*, *supra* note 1 at 31.

¹¹⁵ For a defence of an all-risks approach to national security with a particular emphasis on administrative regulation of sites and substances that can be used for terrorism, see Kent Roach, *September 11:*

be preferable because it stresses values of social solidarity in the face of natural and man-made disasters while a terrorism focused approach may present a threat to social cohesion if the threats of terrorism are perceived to come from a small segment of the population defined on religious or racial lines. Canada's all-risk strategy may also reflect what some have argued is Canada's national obsession with survival in the face of a hostile northern environment.¹¹⁶

C. Summary

Both Canada's and Singapore's national security strategies proudly affirm the diversity of their societies and articulate a commitment not to allow terrorism to disturb the multicultural nature of each country. Although terrorism threatens social cohesion in both nations, there is also the possibility that the integration of multicultural dialogue in national security policies could provide a constructive vehicle for widespread agreement about "certain 'non-negotiable' principles"¹¹⁷ that some argue should be the foundation for multicultural societies. The unacceptability of the use of violence against civilians for any motive, including political or religious ends, is a good candidate for a non-negotiable foundation that everyone in a diverse and multicultural society should accept.

Until very recently, Canada has defined terrorism largely as a foreign threat from non-citizens while as early as 2002 Singapore confronted the fact that most of its terrorism suspects were Singaporean. Singapore has been able to build on a pre-existing institutional structure that has involved the Muslim minority in Singapore in various facets of governance and even self-governance wholly apart from security issues while Canada has struggled to create new and security-focused institutions such as the Cross-Cultural Roundtable on Security. At the same time, the fact that Singapore's government issued an extensive White Paper on the JI detentions may indicate the start of acceptance of the need for greater transparency and accountability for how the state conducts its anti-terrorism efforts. It is not only terrorism, but heavy-handed and discriminatory anti-terrorism efforts that can harm the social cohesion of a multicultural state.

V. INDEPENDENT REVIEW OF NATIONAL SECURITY ACTIVITIES

The national security policies of both Canada and Singapore express concerns about possible adverse effects that an act of terrorism could have on social cohesion in each country. Both policies support multiculturalism and social cohesion and see it as a positive resource that could limit harms and speed national recovery should an act of terrorism occur. Although acts of terrorism could harm inter-group relations, it is also possible that the state's anti-terrorism efforts could have the same effect. State

Consequences for Canada, *supra* note 50 at c. 7. For arguments that the American Homeland Security approach which focuses on terrorism was unable to respond effectively to natural disasters such as Hurricane Katrina, see Kent Roach, "Must We Trade Rights for Security?", *supra* note 102.

¹¹⁶ Margaret Atwood, *Survival* (Toronto: McClelland and Stewart, 1996).

¹¹⁷ Will Kymlicka, *Finding Our Way: Rethinking Ethnocultural Relations in Canada* (Toronto: Oxford University Press, 1998) at 23.

actions such as Canada's Project Thread discussed above could have the harmful effects of making Muslim minorities feel that they are being wrongly stigmatized as terrorists and could also wrongly inflame fears and prejudices in the majority. In this section, I will suggest that independent review of the state's growing national security activities could respond to the dangers of the state's anti-terrorism efforts harming social cohesion and creating minority alienation. Canada is beginning to recognize the importance of independent review of national security activities while Singapore has not moved far in that direction, even though documents like the 2003 White Paper suggest some recognition of the need for more transparency about the state's anti-terrorism measures.

A. Canada's Arar Inquiry

One of the most visible and expensive forms of review in Canada is the holding of a public inquiry. Public inquiries, often headed by sitting or retired judges, have broad powers both to compel testimony and the production of evidence and to conduct research.¹¹⁸ They issue extensive reports and recommendations that are aimed as much at the public as they are at governments. Although they are precluded from making findings of criminal or civil liability, they can call individuals, organizations, government and even society in general to account for misconduct or failures.¹¹⁹

In Canada, there are presently two major, multi-million dollar public inquiries or royal commissions being held on national security matters. The first inquiry headed by Justice Dennis O'Connor of the Ontario Court of Appeal, examined the actions of Canadian officials in relation to the rendition of Maher Arar, a Canadian citizen born in Syria, from the United States to Syria via Jordan. Mr. Arar was returning to Canada when he was detained in the United States and transported to Jordan and then onto to Syria where he was detained for almost a year. An independent fact finder appointed by the commission of inquiry has confirmed Mr. Arar's claims of torture while in Syria and has also found that three other Canadians of Arab origins were tortured while detained in Syria.¹²⁰ Maher Arar is a reminder for many Canadians that innocent people can be harmed in anti-terrorism investigations.

Arar's treatment at first did not spark wide-spread concern in Canada, but public pressure mounted until the government decided to appoint the inquiry in early 2004. The inquiry has a factual mandate to investigate and report on the actions of Canadian officials in relation to Arar's detention in the United States, his deportation to Syria, his treatment in Syria and his return to Canada. Both the governments of Syria and the United States declined invitations to participate in the inquiry which many see as extraordinary because of its examination of information concerning national security matters. Large portions of the inquiry have been conducted in camera without Mr. Arar or his lawyers being present because of concerns about national security confidentiality. Witnesses from the Royal Canadian Mounted Police ('RCMP'), CSIS, Canadian Customs and Canada's department of Foreign Affairs have given

¹¹⁸ See *Inquiries Act*, R.S. 1985, c. I-11.

¹¹⁹ Kent Roach, "Canadian Public Inquiries and Accountability" in Philip Stenning, ed., *Accountability for Criminal Justice* (Toronto: University of Toronto Press, 1995).

¹²⁰ Report of Professor Stephen Toope-Factfinder, (14 October 2005), online: Arar Commission <<http://www.ararcommission.ca/eng/17.htm>>.

public testimony. The very fact that such a large scale inquiry was called suggests an enhanced awareness in Canada of the predicament that Canadians from the Middle East and of dual citizenship may face when they travel abroad.

In September 2006, the Arar Commission released its first report. It concluded that the RCMP had provided inaccurate and unfair information about Maher Arar to American officials including a description of both Mr. Arar and his wife as “Islamic Extremist individuals suspected of being linked to the Al Qaeda terrorist movement”.¹²¹ Three of the Commission’s twenty-three recommendations touched on issues relating to multiculturalism. It recommended that national security investigators receive better training including social context training about Canada’s Arab and Muslim communities in order “to avoid relying on stereotypes about race, religion or ethnicity in investigations” and to improve relations and outreach with those communities.¹²² Justice O’Connor also recommended that Canadian agencies have “clear written policies” stating that national security investigations “must not be based on racial, religious or ethnic profiling” to respond to:

an increased risk of racial, religious or ethnic profiling, in the sense that the race, religion or ethnicity of individuals may expose them to investigation. Profiling in this sense would be at odds with the need for equal application of the law without discrimination and with Canada’s embrace of multiculturalism. Profiling that relies on stereotypes is also contrary to the need...for relevant, reliable, accurate and precise information in national security investigations. Profiling based on race, religion or ethnicity is the antithesis of good policing or security intelligence work.¹²³

The Arar Commission also has a policy mandate to make recommendations on an independent arms-length review mechanism for the national security activities of the RCMP.¹²⁴ This aspect of the inquiry recognizes that the RCMP has more tools in the national security area because of the enactment of 2001 *Anti-terrorism Act*. In addition, the Commission for Public Complaints Against The RCMP (‘CPC’), which has jurisdiction to review how the RCMP handles public complaints against individual officers, has acknowledged that it does not have sufficient powers to adequately review the increased national security activities of the RCMP.¹²⁵ The Arar Commission has recommended that the RCMP be subject to a new self-initiated review mechanism that will have full access to confidential material. This body would also still be able to hear complaints from individuals and third parties.¹²⁶ In addition it recommended increased review of the national security activities of customs, immigration and terrorist financing officials and the creation of an overarching

¹²¹ Canada, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar* (Ottawa: Public Works and Government Services, 2006) at 13, online: <<http://www.ararcommission.ca/eng/26.htm>>.

¹²² *Ibid.* at 327.

¹²³ *Ibid.* at 355-357.

¹²⁴ The author served on a Research Advisory Committee to advise the Commissioner on this part of his mandate.

¹²⁵ Shirley Heafey, “Civilian Oversight in a Changed World” in David Daubney *et al.*, eds., *Terrorism, Law and Democracy* (Montreal: Yvon Blais, 2002).

¹²⁶ Canada, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar *A New Review Mechanism for the RCMP’s National Security Activities* (Ottawa: Public Words and Government Services, 2006).

review body to co-ordinate joint reviews and hear complaints from individuals like Mr. Arar who might not have been able to identify all of the agencies who were involved in his file.

Review and audit of national security activities are of particular importance to those in Canada's Muslim communities who may suspect but perhaps not be aware that they are subject to scrutiny from the state and who may for various reasons relating to employment, social stigma and lack of citizenship be reluctant to complain about the treatment they receive from police or security intelligence agents. Although review of such powers will focus on the propriety of state actions, it may also contribute to the efficacy of the state's actions. The targeting of the wrong people not only threatens civil liberties, but also wastes limited resources. Similarly, the alienation of Muslim communities by insensitive or heavy handed tactics that inspire fear and distrust may dry up sources of information and co-operation. State tactics such as racial and religious profiling offend equality values, but may also be counterproductive to the task of identifying potential terrorist plots.

Both the Arar and Project Thread cases reveal inadequacies in Canada's present system for the review of the state's national security activities. In the Arar case, review by both the CPC, which has jurisdiction with respect to complaints against the RCMP, and SIRC, which reviews the activities of Canada's security intelligence agency commenced investigations, were suspended in favour of the Arar inquiry which has the broader jurisdiction to examine the activities of all Canadian officials, whether from the police, security intelligence agency, customs, foreign affairs or elsewhere who were involved in the case. The Arar case is an example of how a person's reputation can be damaged by being associated in any way with a terrorism investigation. Although Maher Arar was released by Syria and has not been charged with an offence since his return to Canada, he has been unable to find employment despite his skills as a computer engineer and the Arar Commission's fact finder has found that this state of affairs has caused Mr. Arar much pain.¹²⁷

The non-citizens detained as part of Project Thread did not bring official complaints into the matter in part because they were either fighting deportation on the basis of various immigration law violations or claiming refugee status on the basis that they would face persecution if returned to Pakistan. A third party complaint, however, by a retired Toronto priest was brought to the CPC about the RCMP's conduct. In February 2006, the CPC dismissed this complaint concluding that "the RCMP members involved were not motivated by racism or racial profiling in their handling of the investigation" even though the investigation only involved 31 of 420 persons who had been issued fraudulent visas by a business college and all those identified for a national security investigation were from Pakistan. The CPC stressed that "country of origin alone was not sufficient to qualify for inclusion" in the national security investigation and that religion was not used as a ground for inclusion.¹²⁸ Its conclusion that there was no racial or religious profiling was, however, dependent on

¹²⁷ Report of Professor Stephen Toope-Factfinder, (14 October 2005), online: Arar Commission <<http://www.ararcommission.ca/eng/17.htm>>.

¹²⁸ Chair's Final Report, online: Commission for public complaints Against The RCMP <http://www.cpc-cpp.gc.ca/DefaultSite/Reppub/index_e.aspx?articleid=1151>.

the controversial assumption that using country of origin as one of multiple criteria for investigation did not amount to discrimination.¹²⁹

The CPC's report on Project Thread makes the point that the CPC does not have jurisdiction to examine the activities of immigration officials who worked with the RCMP on Project Thread. The CPC concluded that the international publicity surrounding the detentions was "an unfortunate consequence", but found "it was a consequence unrelated to any information disclosed by the RCMP".¹³⁰ This conclusion, however, did not address the fact that inflammatory information was released by someone connected with the joint RCMP/Immigration operation. The CPC also reached its conclusion that there was no wrongdoing on part of the RCMP despite earlier statements that their investigation of Project Thread has been hampered by the RCMP's refusal to disclose to them all of the evidence in the case, including search warrant applications.¹³¹ As in the Arar case, the effectiveness of existing review mechanism may have been compromised by the inability of review bodies to have access to all the information or to review the conduct of the multiple parts of governments that are increasingly tasked to national security matters.

One of the challenges for review of national security activities is to adjust to the increasingly integrated nature of the state's activities. Review that is limited to the activity of single agencies may no longer make sense in the new security environment with its emphasis on integration and information sharing. To this end, it is a positive development that Canada's 2004 national security policy recognizes that "[a]s the legal authorities and activities of our security and intelligence agencies evolve to respond to the current and future security environment, it is vitally important that we ensure that review mechanisms keep pace".¹³² The Arar Commission will address the important issue of what review mechanisms are required in the current security environment when it releases its second report.

B. Canada's Air India Inquiry

The second major public inquiry on national security matters being held in Canada is the inquiry into the 1985 terrorist bombings of Air India Flight 182. This inquiry is being conducted by retired Supreme Court Justice John Major. The Air India Inquiry was appointed in 2006 after the controversial acquittals in 2005 of two Sikh-Canadians charged with conspiring to commit the bombings which killed 331 people in what was the world's worst act of aviation terrorism before 9/11.¹³³ If the Arar case represents a narrative about the possible harms of anti-terrorism investigations, the Air India case represents a counter-narrative about the harms of failures of the state's anti-terrorism efforts.¹³⁴ Both cases, involve however, claims of discrimination that could harm multiculturalism in Canada.

¹²⁹ Some definitions of discriminatory profiling would include even the use of race or religion even when combined with other factors. The use of a country of origin such as Pakistan could have disproportionate effects on Muslims.

¹³⁰ *Ibid.* See also "Review clears RCMP in 2003 Terror Probe", *Toronto Star* (23 March 2006).

¹³¹ Commission for Public Complaints, *Annual Report* (2004/2005) at 35.

¹³² Canada, *Securing An Open Society: Canada's National Security Policy*, *supra* note 1 at 19.

¹³³ *R. v. Malik and Bagri* [2005] B.C.S.C. 350.

¹³⁴ There have been a number of books by journalists on the bombing of Air India. See Kim Bolan, *Loss of Faith* (Toronto: McClelland & Stewart, 2005); Zuhair Kashmeri & Brian McAndrew, *Soft Target*

In 1985, CSIS was a new security intelligence agency that had a number of suspected Sikh separatists under close surveillance, but this surveillance was unable to stop the placing of the bombs on two airplanes that originated from Canada. There have been many concerns about a lack of co-operation between CSIS and the RCMP in the investigations and about CSIS's subsequent destruction of audio-tapes of wiretaps that it had on the prime suspect in the case. There are also concerns about the adequacy of the protection provided to witnesses in the Air India trial and the charitable status that some Sikh separatist groups received.

There are also serious concerns that Canada did not really internalize the tragedy of the Air India bombings which on a per capita basis was the Canadian equivalent of 9/11. A lasting symbol in this regard were the actions of then Canadian Prime Minister Brian Mulroney in expressing condolences to the government of India for the bombing even though the majority of victims were Canadians. In addition, India commissioned a judicial inquiry into the bombing in 1986, whereas Canada only took this step twenty years later. A preliminary study completed in late 2005 by a fact finder appointed by the Canadian government addressed the controversial issue of whether the Canadian response would have been different had the victims not been mainly Indo-Canadian. The factfinder, Bob Rae, a former Premier of Ontario, "found no evidence of racism on the part of anyone in a position of authority".¹³⁵ Although some have criticized the calling of the Air India's inquiry as an attempt by Canada's new Conservative government to appeal to the "ethnic vote",¹³⁶ the inquiry recognizes that multiculturalism can be adversely affected by perceptions of discrimination whether the allegation concerns failures or excesses of anti-terrorism policy. The Commissioner, retired Supreme Court of Canada Justice John Major, has already stated that the families of the victims "are owed some form of explanation for a letter of condolence going to India" and has indicated that a prime objective of the inquiry is to give the victims "a sense that they are really Canadians...".¹³⁷ These statements underline how issues of multiculturalism and integration may play an important role with respect to an inquiry examining Canada's most serious security failure.

C. *The Availability of Inquiries in Singapore*

In contrast to Canada, Singapore's government seems to place considerably less emphasis on independent reviews of the state's national security activities. Singapore has a *Commissions of Inquiry Act*¹³⁸ that is similar to legislation in Canada that allows the appointment of public inquiries, but it does not have the same Canadian tradition of calling public inquiries and no public inquiry has been called with respect to national security matters.¹³⁹

(Toronto: Lorimer, 2005); Salim Jiwa & Donald Hauka, *Margin of Terror* (Toronto: Key Porter Books, 2006).

¹³⁵ Hon. Bob Rae, *Lessons to Be Learned* (2005) at 4.

¹³⁶ Jeffrey Simpson, "Harper chasing ethnic vote with Air India inquiry" *Globe and Mail* (6 May 2006).

¹³⁷ "Bomb inquiry sets out to include victims' families", *National Post* (19 June 2006). The author is presently serving as research director-legal studies for the Air India inquiry.

¹³⁸ Cap. 48, 1985 Rev. Ed. Sing.

¹³⁹ An inquiry was called and held into the collapse of a tunnel.

The *Police Force Act*¹⁴⁰ allows the Minister to appoint a committee of inquiry that has the power to compel testimony and evidence to examine the conduct of police officers. Such committees of inquiry, however, cannot examine the activities of intelligence officers¹⁴¹ or sit in public.¹⁴² The mandatory provisions for closed inquiries under the *Police Force Act* are questionable, especially if review is thought necessary to ensure legitimacy and public confidence in the police among all parts of a multicultural society. Although significant parts of the Arar inquiry in Canada have been conducted in camera, this was determined necessary by a decision of the commissioner on the basis of specific concerns that the release of specific information would damage national security, national defence or foreign relations whereas the *Police Services Act* provides a more blanket exclusion of the public. The *Singapore Armed Forces Act*¹⁴³ provides an example of a more tailored provision that contemplates that subordinate military courts shall be open to the public except when required to be closed for reasons relating to security, public defence or safety, morals or the administration of justice. At the same time, this act has a blanket prohibition on boards of inquiry sitting in public.¹⁴⁴ The *Public Service Commission Act*¹⁴⁵ also prohibits the disclosure of material that may come before it. Both the *Internal Security Act*¹⁴⁶ and the *Maintenance of Religious Harmony Act*¹⁴⁷ also provide for the confidentiality of proceedings under those acts and this may raise suspicions within minority communities about the fairness of proceedings under these acts.

Although there may be valid reasons in particular cases for restricting the free flow of information, information about how public officials are held accountable for misconduct should generally be made public. Such publicity could be particularly important in assuring minority communities that officials are held responsible for improper national security investigations and that those in minority communities who are accused of illegal conduct are treated fairly. Indeed, the 2003 White Paper on the JI detentions can be seen as a response to this need to justify the state's national security activities. At the same time, however, a white paper written by the government is not the same as a public trial or independent review.

VI. FREEDOM OF EXPRESSION, HATE SPEECH, AND MULTICULTURALISM

The different approaches in Canada and Singapore to the review of national security activities in part relates to different approaches in the two countries to freedom of expression. In a recent speech, Singapore's Prime Minister Lee Hsein Loong argued that the publication of the Danish cartoons or Salman Rushdie's *The Satanic Verses* would not have been allowed in Singapore. He explained: "People say, 'where is freedom of expression?', we say maintaining harmony, peace, that's the first requirement.... This episode will deepen the gulf between Muslims and non-Muslims in Europe. But in Singapore, we have to maintain our social harmony and

¹⁴⁰ Cap. 235, 2006 Rev. Ed. Sing., Part IV.

¹⁴¹ *Ibid.* at s. 65.

¹⁴² *Ibid.* at s. 52(2).

¹⁴³ Cap. 295, 2000 Rev. Ed. Sing., s. 103.

¹⁴⁴ *Ibid.* at s. 189.

¹⁴⁵ Cap. 259, 1985 Rev. Ed. Sing., s. 4.

¹⁴⁶ *Supra* note 55 at ss. 16 and 82.

¹⁴⁷ Cap. 167A., 2001 Rev. Ed. Sing., s. 7.

religious harmony at all costs".¹⁴⁸ Although the protection of groups from hatred and the protection of information that if disclosed would harm national security would be considered in Canada to be objectives that could justify restrictions on freedom of expression, the proportionality of such restrictions would have to be established by the government to the courts and restrictions on speech would not be accepted at all costs. For example, the Supreme Court of Canada has affirmed that the open court principle applies with respect to investigative hearings held under Canada's new *Anti-Terrorism Act*. Although this open court principle is rebuttable, it still requires the government to justify restrictions on freedom of expression and to demonstrate their proportionality to an independent judge.¹⁴⁹

Canada successfully negotiated the 2006 controversy over the publication of the Danish cartoons containing offensive caricatures of the Prophet Muhammad without using censorship or criminal prosecutions. The main stream media voluntarily decided not to publish these cartoons and were praised for doing so by both Canada's Prime Minister and its Foreign Affairs Minister. These senior ministers also criticized violent protests against the cartoons and affirmed the important role of freedom of expression in Canadian society.¹⁵⁰ A coalition of 21 Canadian Muslim groups welcomed these statements and concluded that:

Canada has lived up to its principles. Prime Minister Stephen Harper and Foreign Affairs Minister Peter MacKay have eloquently emphasized responsible expression, condemned violent action and called for a greater understanding of Islam and Muslims. Canadian media, with the exception of a few small publications, have exercised responsibility in their use of free speech. Canadian civic organizations have stood in solidarity with fellow Muslim citizens. And Canadian Muslims have made their profound hurt known through dialogue and peaceful expression. This collective response speaks volumes about the values that we share as one nation—values that bind us together in citizenship and a common humanity. Canada's response has been unique and has struck the right balance between freedom of expression, and the legal and moral right of citizens to be protected from publications promoting hate and racism. Muslim representatives from across the country have joined together in an unprecedented manner to express their pride as Canadians in Canada's collective response to the publication of

¹⁴⁸ Excerpt from *Straits Times* (10 February 2006), online: Ministry of Home Affairs <http://www2.mha.gov.sg/mha/getready/pm_speech.html>.

¹⁴⁹ *Re Vancouver Sun* [2004] 2 S.C.R. 332.

¹⁵⁰ Foreign Affairs Minister Peter Mackay issued the following statement on the Danish cartoons: "The publication of cartoons of the Prophet Muhammad has caused offence to Muslims and non-Muslims around the world and in Canada. Freedom of expression is a legally enshrined principle in Canada, but it must be exercised responsibly. We commend those Canadians who have acted appropriately. However, we condemn the violent protests that have occurred in some parts of the world, and find the attacks on foreign diplomatic missions particularly deplorable. This sensitive issue highlights the need for a better understanding of Islam and of Muslim communities. Respect for cultural diversity and freedom of religion is a fundamental principle in Canada. The Government of Canada will continue to promote a better understanding of Islam internationally, in partnership with Muslim communities". Press Release, (8 February 2006), online: Foreign Affairs and International Trade Canada <http://w01.international.gc.ca/minpub/Publication.asp?publication_id=383656&Language=E>.

malicious and provocative cartoons of Prophet Muhammad. As Muslims, and as Canadians, we say to our nation: you have made us proud!¹⁵¹

This episode demonstrates the potential for condemning hateful speech and praising those who exercise freedom of speech responsibly without relying on the heavy and divisive hand of censorship or criminal prosecutions.

Both Canada and Singapore have offences that would apply in certain cases to hate speech. Canada prohibits the willful promotion of hatred against racial and religious groups¹⁵² and this offence has been held by the Supreme Court of Canada to be a reasonable limit on freedom of expression in part because it requires a high level of fault and the Attorney-General's prior consent to any prosecution.¹⁵³ Singapore prohibits the deliberate wounding of religious feelings.¹⁵⁴ Prosecutions of hate speech can be defended as part of multiculturalism policy, but they should be used with care, as a last resort and in an even-handed fashion. The United Kingdom has recently added new offences of fomenting religious hatred in part because of a perception that although anti-Semitic hatred had been prosecuted under existing laws against racial hatred, anti-Islamic hatred could not be so prosecuted.¹⁵⁵ Equal and even-handed protection of the law is necessary, but care must be taken not to overestimate the actual protection that hate speech prosecutions will provide to vulnerable minorities.¹⁵⁶

Former Canadian Justice Minister Irwin Cotler has argued that the "anti-hate principle" should be one of the building blocks of modern national security policies.¹⁵⁷ In my view, however, there is a danger in conflating the distinct justification for laws against hate speech and those against terrorism. Criminal laws against hate speech can be seen as a response to the harm that is caused to minorities by such speech and as social condemnation of such speech.¹⁵⁸ Laws against terrorism on the other hand target violence that is designed to intimidate the population and to compel governments or international organizations to act. The connection between either hate speech or speech that encourages or praises acts of terrorism and actual acts of terrorism, however, is much less clear. Moreover, there are other less drastic measures to the use of the criminal sanction such as condemnation and rebuttal of the speech.¹⁵⁹

Recent events suggest that concerns about terrorism will be used as a justification for justifying new restrictions on speech associated with terrorism. United Nations Security Council Resolution 1624¹⁶⁰ calls upon all states to take steps to prevent

¹⁵¹ "National Muslim Coalition Issues Statement on Cartoon Controversy" (17 February 2006), online: <Muslim Canadian Congress <http://www.muslimcanadiancongress.org/20060217.html>>.

¹⁵² *Criminal Code of Canada*, R.S.C. 1985, c. C-34, at ss. 318-319.

¹⁵³ *R. v. Keegstra* [1990] 3 S.C.R. 697.

¹⁵⁴ Cap. 224, 1985 Rev. Ed. Sing., s.298.

¹⁵⁵ *Racial and Religious Hatred Act, 2006* (U.K.), c. 1.

¹⁵⁶ For further argument, see Kent Roach, *Due Process and Victims' Rights* (Toronto: University of Toronto Press, 1999) ch.4.

¹⁵⁷ Irwin Cotler, "Terrorism, Security and Rights: The Dilemmas of Democracies" (2002) 14 N.J.C.L. 13.

¹⁵⁸ *R. v. Keegstra* [1990] 3 S.C.R. 697.

¹⁵⁹ For arguments that Canada should not follow the British lead and enact new offences against the encouragement of terrorism see Kent Roach, "Ten Ways to Improve Canadian Anti-Terrorism Law" (2005) 51 *Crim. L.Q.* 102.

¹⁶⁰ *Resolution. S/Res/1624*. 2005.

incitement to commit terrorist acts. The resolution, which was sponsored by the British government, declares that states have “obligations under international law to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent the subversion of educational, cultural and religious institutions by terrorists and their supporters”.¹⁶¹ In 2005, Australia enacted new laws that prohibit some forms of incitement to terrorism as sedition and that allows organizations that advocate or praise terrorism to be prohibited as terrorist groups.¹⁶² Britain’s *Terrorism Act, 2006*¹⁶³ contains controversial new offences against speech and publications that indirectly or directly encourage terrorism.

The new trend of prosecuting speech associated with terrorism is one that needs to be approached with caution with respect to its effects on Muslim minorities. One danger is the potential divisiveness of prosecutions based on speech that, for example, sympathizes with acts of terrorism in foreign lands. Although such speech should be rebutted and deplored, it does not constitute as direct a threat to national security and public safety as plots or assistance in actual acts of terrorism. Prosecuting a person in Canada or Singapore for saying that he or she supports acts of terrorism in the Middle East, Afghanistan or Chechnya may create an impression that the war against terrorism is a war against Islam. If anti-terrorism policy is to become the grounds for societal consensus on what Will Kymlicka has called “certain ‘non-negotiable’ principles”,¹⁶⁴ it may be best to focus on acts of assistance and commission of violence as opposed to speech that praises or condones terrorism. Indeed, it may be difficult to justify the restriction of speech that advocates or justifies terrorism as a proportionate restriction on freedom of expression that is necessary to stop terrorism.¹⁶⁵ There is a fundamental difference between speech and violence but unfortunately this distinction may be lost if the next trend in anti-terrorism law is the prosecution of speech associated with terrorism.

It may be especially difficult for Singapore to separate the distinct rationales for regulating speech to prevent hate and to prevent terrorism because both the *Maintenance of Religious Harmony Act*¹⁶⁶ and the *ISA*¹⁶⁷ conflate these grounds by their broad powers to prohibit various forms of expression. The broad grounds in both acts include speech that might counsel violence or speech that is deemed to be prejudicial to national security with speech that may affect harmony between different groups. A 2002 pamphlet, *Singapore Safe for All*, concluded that “as Singapore does not have laws to deal with subversion and racial and religious extremism, the Internal Security Act is used to deal with those problems too”.¹⁶⁸

The tide of history may be on the side of increased regulation of speech associated with terrorism including the approach of conflating security and anti-hate rationales

¹⁶¹ *Ibid.*

¹⁶² *Anti-Terrorism Act (No. 2) 2005*, No. 144 of 2005, Schedules 1 and 7.

¹⁶³ *Terrorism Act 2006* (U.K.). c.12. ss. 1-3.

¹⁶⁴ Will Kymlicka, *Finding Our Way: Rethinking Ethnocultural Relations in Canada* (Toronto: Oxford University Press, 1998) at 23.

¹⁶⁵ For further arguments that the new British offences are a disproportionate restriction on freedom of expression see Kent Roach, “Must We Trade Rights for Security?”, *supra* note 102 at 2179-2184.

¹⁶⁶ *Supra* note 51.

¹⁶⁷ *Supra* note 55.

¹⁶⁸ Singapore, Ministry of Home Affairs, *A Singapore Safe for All* (November 2002).

for the regulation of speech.¹⁶⁹ Indeed, it can be argued that this conflation recognizes that one of the most devastating harms of terrorism is to the social cohesion and solidarity of multicultural societies. At the same time, however, the prosecution of religious or political speech may be especially divisive in a multicultural society and conflate the fundamental distinction between speech and violence. In multicultural societies it may be wiser to insist that prohibitions on violence as opposed to extremist speech are fundamental and non-negotiable.

VII. CONCLUSION

Canada and Singapore have both approached the pressing issue of developing effective and sustainable anti-terrorism policies in full recognition of the multi-cultural nature of their respective societies. Indeed, a common theme in each country's national security policy is that perhaps one of the greatest threats of terrorism in the post 9/11 era is to social cohesion.

Due allowance must be made for the differences between the two countries. Singapore has a much larger and more established Muslim minority than Canada and Singapore had developed official institutions to facilitate the relation between Muslims and non-Muslims long before 9/11. The growing pains of Canada's new Cross-Cultural Roundtable on Security, as well as the failure of the British preventing extremism proposal, underlines the dangers of hurried attempts to reach out to minority groups for security reasons. In contrast, Singapore has been able to build on existing institutions and relations with its Muslim minorities. These institutions engage the Muslim minority on a range of issues such as education, personal and dietary laws. They attempt to treat the Muslim minority as an end as opposed to engaging them instrumentally as a means that can assist in the protection of national security. Unlike Canada, Singapore has generally not defined the terrorist threat as a foreign threat that cannot be rehabilitated and must be expelled, even at the possible cost of deporting someone to torture. Singapore's attempts to rehabilitate suspected terrorists, though liable to abuse, also indicate an admirable recognition of the continued membership of those suspects in the community.

Although Canada has used closed proceedings in some security certificate cases and in some public inquiries, it remains a more open society than Singapore and this presents both challenges and opportunities. Although some have argued that the closed nature of the *ISA* proceedings against the *JI* detainees could protect religious and racial harmony, the government's decision to issue a detailed white paper to explain and to justify the detentions suggests that the government recognized the need for increased levels of transparency and accountability. Closed proceedings may breed suspicion and distrust of the government's actions and disbelief about the terrorist threat. There is also a danger that the terrorist threat will be used as a reason for unreasonable restrictions on freedom of expression that cannot be justified as necessary either to prevent terrorism or to protect vulnerable groups from hatred.

Canada has begun to recognize the importance of transparent and open review of national security activities especially in order to determine whether there has been

¹⁶⁹ For arguments that the West may be catching up with the East in terms of "draconian security legislation" see Victor V. Ramraj, "Terrorism, Security and Right: A New Dialogue" [2002] Sing. J.L.S. 1 at 1-3.

misconduct in relation to minority groups that can be harmed either as the targets of terrorism or as the targets of the state's anti-terrorism activities. Review can serve a valuable purpose in investigating allegations of racial and religious discrimination that if ignored may fester and infect inter-group relations in multicultural societies. Terrorism can harm social cohesion in multicultural societies, but so too can excesses and failures of the state's anti-terrorism activities.

Canada is placing greater emphasis on openness and independent review of its national security activities than Singapore. At the same time, it has a much less established infrastructure for relations with a Muslim minority that is smaller and more diverse than Singapore's. Both countries in their own ways have recognized that the maintenance and management of multiculturalism is a key objective of their national security policies.