

## COUNTER-TERRORISM POLICY AND MINORITY ALIENATION: SOME LESSONS FROM NORTHERN IRELAND

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Questioning the assumption that the United Kingdom's experience in Northern Ireland holds few lessons for contemporary counter-terrorism strategy, this article examines the complex relationship between terrorism, counter-terrorism policy, and minority alienation in the United Kingdom through the lens of the Northern Ireland conflict and the Belfast Agreement. The main argument in this article, and the ultimate lesson that emerges from the Northern Ireland conflict, is that an effective counter-terrorism strategy must move beyond short-term, coercive strategies, toward social and political strategies that are designed to address minority alienation and facilitate the project of building a socially cohesive, multicultural society.

### I. INTRODUCTION

Since the *Belfast Agreement* in 1998,<sup>1</sup> Northern Ireland has been emerging from a divisive decades-long conflict which served as the incubator for the United Kingdom's counter-terrorism policies. With the peace process increasingly entrenched, and following the September 11 attacks on the United States, the focus of the United Kingdom's counter-terrorism policy has shifted from Northern Ireland to the threat posed by Al-Qaeda and its domestic counterparts. The Blair government has insisted, however, that Northern Ireland "is really a different situation" and one that holds few lessons for contemporary counter-terrorism strategy.<sup>2</sup> According to Prime Minister

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<sup>1</sup> *Agreement Reached in the Multi-Party Negotiations*, 10 April 1998, Cm 3883, full text available online: CAIN Web Service <<http://cain.ulst.ac.uk/events/peace/docs/agreement.htm>> [*Belfast Agreement*].

<sup>2</sup> The Prime Minister's comments were made during a press conference on 5 August 2006 in which he declared that "the rules of the game have changed." In response to a question from the press as to whether he has discussed with the US government the lessons learned by the UK in Northern Ireland—that security and military strategies "can only take us so far"—he replied: "[I]n relation to Northern Ireland I am not going to go, since the last time I spoke about this I think people took offence at some of the things I said, and I didn't mean to cause offence at all, but my view is that that is really a different situation. You have got demands that people are making that you can fit into a normal

Blair, referring to Al Qaeda, “no compromise with these people [is] possible, you either get defeated by them or defeat them.” Consistent with these comments, the UK government’s counter-terrorism strategy today places a high priority on coercive emergency powers and, perhaps until recently, a relatively low priority on social and political strategies for addressing concerns about minority alienation, one of the serious social consequences of terrorism and counter-terrorism. In contrast, in Northern Ireland, the *Belfast Agreement* sought to address the problem of minority alienation by rolling back emergency powers, securing human rights and equality rights, and reforming key public institutions, such as the police.

This article examines the complex relationship between terrorism, counter-terrorism policy, and minority alienation in the United Kingdom through the lens of the Northern Ireland conflict and the *Belfast Agreement* that seeks to address it. The main argument in this article, and the ultimate lesson that emerges from the Northern Ireland conflict, is that an effective counter-terrorism strategy must move beyond short-term, coercive strategies, toward social and political strategies that are designed to address minority alienation and facilitate the project of building a socially cohesive, multicultural society. Part II provides a brief overview of the conflict in Northern Ireland, paying particular attention to the social and political strategies in the *Belfast Agreement*. Part III examines contemporary counter-terrorism strategy in the United Kingdom; Part IV then assesses the contemporary strategy, comparing it with the approach taken in Northern Ireland, returns to the question of the relevance of the Northern Ireland experience, and considers to what extent the pertinent lessons of Northern Ireland have been absorbed, and should yet be considered, in crafting a counter-terrorism strategy.

## II. MINORITY ALIENATION AND THE BELFAST AGREEMENT

The *Belfast Agreement* is the culmination of a long series of attempts to deal politically with the Northern Ireland conflict.<sup>3</sup> The *Agreement* purports to address a wide range of interrelated issues:<sup>4</sup> it acknowledges that the constitutional status of Northern Ireland is to be governed by the principle of consent;<sup>5</sup> it proposes three strands of political and institutional relationships among the governments of Northern Ireland, Britain, and Ireland; and it addresses a range of specific matters, including devolution, human rights, equality of opportunity, decommissioning of arms, security arrangements, policing and justice, and the early release of prisoners. This section provides

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political context. These demands, you only have to read the demands that come out from Al Qaeda to realise that there is no compromise with these people possible, you either get defeated by them or defeat them.” See “PM’s Press Conference—5 August 2005”, online: 10 Downing Street Website <<http://www.number-10.gov.uk/output/Page8041.asp>>.

<sup>3</sup> See C.J. Harvey, “The New Beginning: Reconstructing Constitutional Law and Democracy in Northern Ireland” in Harvey, ed., *Human Rights, Equality and Democratic Renewal in Northern Ireland* (Oxford: Hart, 2001), 9–51 at 23–26.

<sup>4</sup> See generally Christopher McCrudden, “Northern Ireland, the Belfast Agreement, and the British Constitution” in Jeffrey Jowell and Dawn Oliver, eds., *The Changing Constitution*, 5th ed. (Oxford: New York: Oxford University Press, 2004); See also Harvey, *supra* note 3.

<sup>5</sup> Any change in its constitutional status is a matter for the “people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment” and it would be “wrong to make any change in the status of Northern Ireland save with the consent of the majority of its people” (*supra* note 1 at “Constitutional Issues”, paras. 1(ii), (iii)).

some background to the conflict in Northern Ireland and examines those features of the *Belfast Agreement* designed to address concerns about minority alienation, particularly through the protection of human rights and the guarantee of equality.<sup>6</sup>

### A. *The Northern Ireland Conflict and Minority Alienation*

The rise of the security state in twentieth-century Northern Ireland is well-documented.<sup>7</sup> Virtually since its inception, Northern Ireland has been subject to emergency legislation, starting in 1922 with the *Civil Authorities (Special Powers) Act*,<sup>8</sup> which provided for a wide range of powers, including the notorious power of detention without trial, or *internment*. A period of growing civil unrest in the late 1960s gave rise to enhanced emergency powers, in the form of the *Northern Ireland (Emergency Powers) Act 1973*<sup>9</sup> and the *Prevention of Terrorism (Temporary Provisions) Act 1974*<sup>10</sup>, both of which were frequently amended in the period leading up to the 1994 ceasefire. Following the *Belfast Agreement* and the enactment of the *Human Rights Act 1998*<sup>11</sup>, the regime of emergency powers in Northern Ireland was replaced by the *Terrorism Act 2000*<sup>12</sup>, which consolidated and placed existing legislation on a more permanent basis, while temporarily extending some provisions that related specifically to Northern Ireland.<sup>13</sup>

Among the most contentious of the powers under the emergency regime in Northern Ireland were the following: the power of internment without trial; special powers to stop terrorist suspects and hold them for up to seven days; powers to conduct warrantless searches; the use at times of interrogation techniques effectively amounting to torture; the use of special (“Diplock”) courts to deal with terrorism offences; the suspension of trial by jury and modifications to the right to silence to permit the courts to draw adverse inferences from the silence of the accused; and the involvement of the military in the suppression of terrorism.<sup>14</sup> Numerous other powers and changes to ordinary criminal procedure were made to facilitate the investigation and prosecution of terrorist offences. The result of this legislation was an entrenched regime of emergency powers in Northern Ireland, a set of tools ostensibly needed to

<sup>6</sup> Human rights and equality are key features of the Agreement: see McCrudden, *supra* note 4, *passim* (an ideological approach to constitutionalism, including human rights, was a key aspect of the Agreement); and Stephen Livingstone, “The Need for a Bill of Rights in Northern Ireland” (2001) 52 N. Ir. Legal Q. 269, at 282 and *passim* (observing the importance of communal identity and equality in drafting a bill of rights).

<sup>7</sup> See generally Michael P. O’Connor and Celia M. Rumann, “Into the Fire: How to Avoid Getting Burned by the Same Mistakes Made Fighting Terrorism in Northern Ireland” (2003) 24 *Cardozo L. Rev.* 1657; L.K. Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom 1922-2000* (Dublin: Irish Academic Press, 2001).

<sup>8</sup> (N.I.), 1922, c. 5.

<sup>9</sup> (U.K.), 1973, c. 53.

<sup>10</sup> (U.K.), 1974, c. 56.

<sup>11</sup> (U.K.), 1998, c.42.

<sup>12</sup> (U.K.), 2000, c.11.

<sup>13</sup> The provisions in Part VII of the *Terrorism Act 2000* continue to apply only to Northern Ireland. Most of the measures specific to Northern Ireland are set to end by August 2007: see *Terrorism (Northern Ireland) Act 2006* (U.K.), 2006, c. 4.

<sup>14</sup> *Supra* note 7; see also Paddy Hillyard, “The ‘War on Terror’: lessons from Northern Ireland”, online: European Civil Liberties Network website <<http://www.ecln.org/essays/essay-1.pdf>>.

facilitate the suppression of terrorism. Yet it is unclear whether these powers reduced the threat of terrorism—or perpetuated the conflict instead.

There are, of course, many ways of understanding the dynamics of the Northern Ireland conflict and the history of the conflict remains deeply contested. Several factors—social, political, cultural, and economic—would necessarily have come together to create the conditions that gave rise to a period of intense and prolonged violence. But one significant factor identified by some who have studied the conflict was the counter-terrorism regime itself, which was at times applied “almost exclusively”<sup>15</sup> against the Republican/Nationalist community; this regime is said to have given rise to the civil rights movement of the 1960s, to further civil and political unrest, and to the “steady ‘securitisation’ of society, with resulting state abuse of human rights.”<sup>16</sup> So while political violence naturally triggered a protective state response, it has also been argued that the mass “screening” and regular house searches by the military “so alienated the Catholic community in the areas of insensitive army activity that a continuing flow of new recruits was ensured.”<sup>17</sup> Targeting the Republican/Nationalist community with military-security rather than ordinary criminal law measures only exacerbated “the feeling of discrimination and alienation among most Nationalists.”<sup>18</sup>

Realistically, the government could not have stood back in the face of rising violence. But the use of emergency powers by the state was not politically neutral. Consider Laura Donohue’s assessment of the use of emergency measures:

The justification offered for the introduction and use of such [emergency] measures ... failed to provide a sufficient limitation on the extent of the provisions and the way in which such measures would be exercised. Emergency law itself became an intricate part of the political problem. The Northern Ireland government’s appeal to reason of state could be defended on grounds of political or moral responsibility, as the legitimate exercise of power in the name of the common good. But this doctrine lay open to abuse. Reason of state degenerated into a technique of domination and became a device to consolidate power—not to defend the body politic against clear attack. In turn, the presence of such measures became interpreted according to a domination doctrine, thus ensuring that the special powers became entangled in the political grievances in the North.<sup>19</sup>

Donohue’s account of domination may well be contested, but what remains clear is that the use of emergency powers in Northern Ireland became “entangled in ... political grievances.” Whatever the short-term efficacy of the measures in containing the violence, they may well have been damaging in the long-term to “the social and political dynamics of the conflict.”<sup>20</sup>

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<sup>15</sup> Donohue, *supra* note 7 at xix.

<sup>16</sup> *Supra* note 3 at 20.

<sup>17</sup> Tom Hadden, Kevin Boyle, and Colm Campbell, “Emergency Law in Northern Ireland: The Context” in Anthony Jennings, ed., *Justice Under Fire* (London: Pluto, 1990), 1–26 at 8.

<sup>18</sup> *Ibid.*

<sup>19</sup> Donohue, *supra* note 7 at 353; Colm Campbell and Ita Connolly, “A Model for the ‘War on Terrorism’? Military Intervention in Northern Ireland and the 1970 Falls Curfew” (2003) 30 *J.L. & Soc’y* 341 at 373.

<sup>20</sup> Donohue, *ibid.* at 354.

### B. *Some Key Aspects of the Belfast Agreement*

A commitment to addressing the “social and political dynamics of the conflict” is evident in the *Belfast Agreement* and its concurrent commitments to normalize security measures,<sup>21</sup> while building institutions designed to address concerns about equality and human rights in general and in relation to specific institutions, including the police. First, in recognizing that “the development of a peaceful environment on the basis of this agreement can and should mean a normalisation of security arrangements and practices,”<sup>22</sup> the United Kingdom agreed to gradually reduce the role of the military, removing security installations, and removing emergency powers, and “other measures appropriate to and compatible with a normal peaceful society.”<sup>23</sup>

At the same time, the *Agreement* committed the parties, and the United Kingdom in particular, to crafting institutions to give effect to equality and human rights protections and to reform key institutions to attract and sustain “support from the community as a whole.”<sup>24</sup> The *Agreement* affirmed a commitment to human rights, anticipated the incorporation into Northern Ireland law of the *European Convention on Human Rights*<sup>25</sup> (to which the government was already committed<sup>26</sup>), and proposed the creation of the Northern Ireland Human Rights Commission<sup>27</sup> which was to consider, in the context of giving advice on a Bill of Rights for Northern Ireland, “the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland” and to formulate clearly “the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.”<sup>28</sup> A complementary role was envisaged for what was to become the Equality Commission for Northern Ireland.<sup>29</sup> Parallel steps were to be taken by the Irish government to “further strengthen the protection of human rights in its jurisdiction” and active steps were to be taken to “demonstrate [the Irish government’s] respect for the different traditions in the island of Ireland”<sup>30</sup>—thus recognizing that the conflict was not simply about the “minority” concerns of the Republican/Nationalist community since in a broader Irish perspective, the Unionist/Loyalist community could

<sup>21</sup> This commitment was linked to the decommissioning of arms by paramilitary groups, which in turn constituted a precondition for the early release of prisoners. As it turned out, the prisoners were released under the terms of the Belfast Agreement in July 2000, but the decommissioning of weapons by the IRA was not confirmed by the Independent International Commission on Decommissioning until September 2005. Loyalist and dissident Republican paramilitaries have still not decommissioned their weapons.

<sup>22</sup> *Supra* note 1 at “Security”, para. 1.

<sup>23</sup> *Ibid.* at para. 2.

<sup>24</sup> *Supra* note 1 at “Policing and Justice”, para. 1.

<sup>25</sup> *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 U.N.T.S. 221, Eur. T.S. 5.

<sup>26</sup> *Supra* note 24 at para. 2.

<sup>27</sup> See online: Northern Ireland Human Rights Commission <<http://www.nihrc.org/>>.

<sup>28</sup> *Supra* note 1, Oliver, D. Hart, “Incomplete Contracts and the Theory of the Firm” (1988) 4 J. L. Econ. & Org. 119.

<sup>29</sup> *Ibid.* at para. 6. See online: Equality Commission for Northern Ireland <<http://www.equalityni.org/ftp/aboutus/index.htm>>.

<sup>30</sup> *Supra* note 28 at para. 9.

also been seen as a minority.<sup>31</sup> Crucially, extensive changes were made in relation to policing, to address the perceived illegitimacy of the Royal Ulster Constabulary (RUC) by the Republican/Nationalist community. Following the publication of the report of the Independent Commission on Policing for Northern Ireland,<sup>32</sup> extensive reforms were made to ensure greater accountability and, through recruiting methods, to make the police more representative; in November 2001, as a symbolic break from the past, the RUC was transformed into the Police Service of Northern Ireland, the PSNI.<sup>33</sup>

### C. Some Lessons for Counter-Terrorism Policy

The *Belfast Agreement* was the culmination of decades of on-again, off-again efforts to find a political solution to the Northern Ireland conflict. So it may be that the unique conditions of Northern Ireland and the possibly unique nature of Al-Qaeda, suggest that the Northern Ireland experience is “really a different situation,”<sup>34</sup> such that few lessons can be learned for contemporary counter-terrorism policy. I shall return to this possibility in Part IV. But for now, three possible lessons suggest themselves.

First, there is an implicit recognition that whatever the triggering causes of the conflict, the escalation of political violence—in which the increasing securitisation of the state, however well-intended, leads to abuses of power further alienating the minority community and exacerbating the underlying causes of the violence—is counter-productive in the long term. This is not to say that the state can simply roll back all security measures in the face of threatened political violence. In Northern Ireland, as elsewhere, the state’s willingness to do so will be conditioned by the willingness of its opponents to engage in the political process. But it cannot be assumed that the state’s security apparatus is necessarily neutral or that the state has no role to play in initiating a shift away from violence. An important strategy for addressing the conflict may thus involve gradually, and proportionately, dismantling the excesses of the security state and limiting opportunities for abuses of state power.

Second, and following closely from the first point, one key aspect of the *Agreement* consists of measures to address the alienation of the Republican/Nationalist community. This has been done, for instance, by securing human rights protections and addressing discrimination through specific reforms to key institutions, such as the police service. It may be that a more general lesson emerges here—that building public confidence in institutions, particularly among marginalized communities—is an important sub-strategy for addressing the social consequences of the conflict.

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<sup>31</sup> J. Whyte, *Interpreting Northern Ireland* (Oxford: Clarendon, 1990) at 100–101 (it might even be a triple minority situation since the “Northern Protestants are not just a minority in Ireland, but in the United Kingdom as well”).

<sup>32</sup> Independent Commission on Policing for Northern Ireland, *A New Beginning: Policing in Northern Ireland* (1999) (the Patten Report), online: Northern Ireland Office <[http://www.nio.gov.uk/a\\_new\\_beginning\\_in\\_policing\\_in\\_northern\\_ireland.pdf](http://www.nio.gov.uk/a_new_beginning_in_policing_in_northern_ireland.pdf)>. The implementation of the recommendations is overseen by the Oversight Commissioner, online: Office of the Oversight Commissioner <<http://www.oversightcommissioner.org/>>.

<sup>33</sup> *Supra* note 4 at 221–23. See also online: Police Service of Northern Ireland <[http://www.psni.police.uk/index/about\\_psni.htm](http://www.psni.police.uk/index/about_psni.htm)>.

<sup>34</sup> *Supra* note 2.

Third, while provision was made to address Republican/Nationalist concerns about alienation, Unionist/Loyalist aspirations, bearing on their political identity, were also acknowledged as legitimate. For instance, the *Agreement* acknowledges that the constitutional status of Northern Ireland will be determined by the principle of consent<sup>35</sup> and recognizes the “right of all the people of Northern Ireland to identify themselves and to be accepted as Irish or British, or both.”<sup>36</sup> This attempt to address concerns about what today might be called the “politics of identity”<sup>37</sup> suggests the need for a more general strategy for dealing with identity issues in a heterogeneous political community. The next part of the article (Part III) examines the UK’s contemporary counter-terrorism strategy, while the following part (Part IV) considers to what extent contemporary counter-terrorism policy has learnt and could learn from the Northern Ireland experience.

### III. CONTEMPORARY COUNTER-TERRORISM POLICY IN THE UNITED KINGDOM

In the post-9/11 era, the UK’s official counter-terrorism policy is reflected, at least in part, in the Home Office’s strategic five-year plan (2004-2008),<sup>38</sup> which describes a four-pronged approach to combating terrorism. Two prongs are uncontroversial: protecting critical national infrastructure and sites that are at particular risk<sup>39</sup> (target-hardening) and ensuring adequate emergency response and preparedness.<sup>40</sup> These are sensible ways of reducing the risk of terrorism and mitigating the effects of an attack, while also forming part of a broader “all-risks” approach to disasters, whatever their cause.<sup>41</sup> The plan also seeks to address the causes of terrorism abroad by “working to resolve the international disputes which fuel terrorist organisations and recruitment” and, domestically, by ensuring “that all our citizens, whatever their origins or religious convictions, are fully enfranchised and can fully contribute to society.”<sup>42</sup> It seeks to better understand “the capabilities and intentions of terrorist organisations, and to disrupt their ability to operate at home and overseas.”<sup>43</sup> On the surface, these latter goals are also non-contentious, but a closer examination of their implementation suggests at least an initial, and apparently continuing, preference for coercive strategies over social and political ones.

Just before September 11, and in response to the changing circumstances in Northern Ireland and the growing threat of international terrorism, the UK government

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<sup>35</sup> *Supra* note 5.

<sup>36</sup> *Supra* note 1 at “Constitutional Issues”, para. 1(iv).

<sup>37</sup> See *infra* note 64.

<sup>38</sup> *Confident Communities in a Secure Britain: The Home Office Strategic Plan 2004-08* (July 2004), Cm 6287. The counter-terrorism strategy set out in this document (at 93–95) are also summarized on the Home Office website: <<http://security.homeoffice.gov.uk/>>.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.* “Across the government, we will build on the overhaul of our contingency arrangements to ensure that we are as prepared as possible to deal with the consequences of terrorist attacks, including the possibility of a deliberate release of chemical, biological, or radiological material.”

<sup>41</sup> This approach reflects the “broader security agenda” urged by Ken Roach: see Ken Roach, *September 11: Consequences for Canada* (Montreal/Kingston: McGill-Queen’s UP, 2003) in c. “The Challenge of Preserving Canadian Security” at 168–203.

<sup>42</sup> *Supra* note 38 at 93–94.

<sup>43</sup> *Ibid.* at 94.

introduced a new set of counter-terrorism legislation. Specifically, it replaced temporary terrorism legislation in the *Prevention of Terrorism (Temporary Provisions) Act* and terrorism legislation specific to Northern Ireland in the *Northern Ireland (Emergency Provisions) Act* with the more comprehensive *Terrorism Act 2000*. Among the provisions in the *Terrorism Act 2000* were measures extending the pre-existing legal regime for the proscription of terrorist groups to international terrorist groups. The *Terrorism Act 2000* also gave the police greater powers to investigate terrorism, including the power to arrest without warrant, and detain for up to 48 hours, a person they reasonably suspected to be a terrorist (section 41). The period of detention could be extended by a magistrate for as long as seven days<sup>44</sup> (increased in 2003 to 14 days<sup>45</sup>). New terrorism-related offences, including offences relating to terrorist property, training for terrorist purposes, and incitement, were also introduced.<sup>46</sup> Soon after September 11, the *Anti-Terrorism, Crime, and Security Act*<sup>47</sup> added a range of new powers, including provisions designed to cut off terrorist funding and to permit indefinite detention of foreign terrorist suspects who could not be deported.

The *Prevention of Terrorism Act 2005*<sup>48</sup> was enacted in response to the December 2004 ruling of the House of Lords in *A. v. Secretary of State for the Home Department*,<sup>49</sup> which declared the provisions in Part 4 of the *Anti-Terrorism, Crime, and Security Act* (concerning the indefinite detention of non-citizens) incompatible with the *European Convention on Human Rights* for being not “strictly required by the exigencies of the situation”<sup>50</sup> and for discriminating against non-UK citizens in respect of their right to liberty. This legislation sets up a calibrated regime for limiting the movements and activities of suspected terrorists and applies to both citizens and non-citizens. The *Terrorism Act 2006*<sup>51</sup> extends the maximum period of detention without trial of terrorist suspects from 14 to 28 days<sup>52</sup> (the government’s original proposal of 90 days was defeated by the House of Commons), and introduces additional powers and offences, including an offence of encouraging acts of terrorism.<sup>53</sup> But

<sup>44</sup> *Terrorism Act 2000*, *supra* note 12, Schedule 8, s. 29(3).

<sup>45</sup> *Criminal Justice Act 2003* (U.K.), 2003, c. 44, s. 306(4).

<sup>46</sup> *Supra* note 44, Parts III and VI.

<sup>47</sup> *Anti-Terrorism, Crime and Security Act* (U.K.), 2001, c. 24.

<sup>48</sup> *Prevention of Terrorism Act 2005* (U.K.), 2005, c. 2.

<sup>49</sup> [2005] 2 A.C. 68 (H.L.).

<sup>50</sup> See Art. 15 of the *European Convention on Human Rights* and, for example, the speeches of Lord Bingham (at para. 42) and Lord Hope (at para. 132).

<sup>51</sup> *Terrorism Act 2006* (U.K.), 2006, c.11.

<sup>52</sup> S. 23(7) of *Terrorism Act 2006*, *ibid.*

<sup>53</sup> S. 1(2) of *Terrorism Act 2006*, *ibid.* creates the offence of encouraging acts of terrorism: “A person commits an offence if (a) he publishes a statement to which this section applies or causes another to publish such a statement; and (b) at the time he publishes it or causes it to be published, he (i) intends members of the public to be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate acts of terrorism or Convention offences; or (ii) is reckless as to whether members of the public will be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate such acts or offences.” Section 1(3) elaborates on this offence as follows: “For the purposes of this section, the statements that are likely to be understood by members of the public as indirectly encouraging the commission or preparation of acts of terrorism or Convention offences include every statement which (a) glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences; and (b) is a statement from which those members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances.”



even as this new legislation was clamped in place, the government was negotiating diplomatic assurances to facilitate the deportation of terrorist suspects to countries where torture is known to be systemic.<sup>54</sup>

The coercive character of these measures is also reflected in the UK's participation in the US-led invasion and occupation of Iraq, which can be seen, ostensibly, as part of its counter-terrorism strategy. Although no credible evidence has been put forward to link the invasion of Iraq with the 9/11 attacks,<sup>55</sup> the invasion of Iraq continues to be described as the international dimension of the "war on terror" and can be seen as part of the government's attempt, with the United States, to "disrupt terrorist organizations"<sup>56</sup> by spreading democracy in the Middle East.<sup>57</sup> Whether the war has been successful on this score is dubious, and former UN commander in Bosnia, General Sir Michael Rose, has observed that the consequences of the war "have been quite disastrous both for the people of Iraq and also for the west in terms of our wider interests in the war against global terror."<sup>58</sup> Yet it remains that the military has become entangled in the coercive part of the UK's counter-terrorism strategy.

There are, however, some social and political elements within the UK's overall counter-terrorism strategy. For instance, the *Anti-Terrorism, Crime and Security Act* expanded the breadth of racially aggravated offences to include increased penalties not only for racially but also *religiously* motivated attacks.<sup>59</sup> More recently, the government has increased its efforts in "developing a community-led response to extremism"<sup>60</sup> by setting up working groups between the Government and Muslim communities after the London bombings in July 2005 aimed at "preventing extremism together."<sup>61</sup> However, the idea of "preventing extremism together" is now associated with the government's attempts to control extremism in places of worship through the *Terrorism Act 2006*, and has been roundly criticized by human rights group, religious organizations, and civil society.<sup>62</sup> Prominent Muslim groups, such as the Muslim Council of Britain, deny that the government is genuinely engaged in a dialogue with the Muslim community;<sup>63</sup> the government, for its part,

<sup>54</sup> Human Rights Watch, Vol. 17, No. 4 D, *Still at Risk: Diplomatic Assurances No Safeguard against Torture* (April 2005), available online: Human Rights Watch <<http://hrw.org/reports/2005/eca0405/eca0405.pdf>>, esp. at 67–72.

<sup>55</sup> As "Why America Must Stay" *The Economist* (November 26, 2005) observes, the "awful irony is that the specious link which the [Bush] administration claimed existed between Iraq and al-Qaeda in order to justify going to war now exists" (at 11).

<sup>56</sup> See online: UK Home Office <<http://security.homeoffice.gov.uk/counter-terrorism-strategy/>>.

<sup>57</sup> Stephen Hadley, assistant to the president for national security affairs, defended the spread of "freedom, democracy, and justice" in the Middle East as "the antidote to Islamic extremism" (see <<http://www.whitehouse.gov/news/releases/2005/10/20051031-4.html>>).

<sup>58</sup> "Impeach Blair over Iraq—general," *BBC News* (9 January 2006), online: BBC News <[http://news.bbc.co.uk/2/hi/uk\\_news/politics/4594216.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/4594216.stm)>.

<sup>59</sup> *Anti-Terrorism, Crime and Security Act 2001* (U.K.), 2001, c. 24, ss. 37–42.

<sup>60</sup> See online: UK Home Office <<http://www.homeoffice.gov.uk/about-us/news/communities-to-lead-response>>.

<sup>61</sup> Working groups were set up by the Home Office to discuss a range of issues with the Muslim community: see <<http://security.homeoffice.gov.uk/counter-terrorism-strategy/preventing-extremism/>>.

<sup>62</sup> Kent Roach, "National Security, Multiculturalism and Muslim Minorities," in this volume.

<sup>63</sup> Riazat Butt "Warning on 'criminalizing Muslims'" *The Guardian* (5 December 2005) at 8 (the secretary general of the Muslim Council of Britain, "rejected the idea that there was any kind of dialogue between the government and the Muslim community. He said 'They ignored us when we told them that the war on Iraq was wrong. After 7/7 the communication links were breached. We have sent our representatives

appears to be distancing itself from this group.<sup>64</sup> There are, on the other hand, some indications that the United Kingdom is starting to place greater emphasis on social strategies for countering the threat of terrorism, as can be seen in a new strategy document, published in July 2006, *Countering International Terrorism: The United Kingdom's Strategy*<sup>65</sup> and the newly created and untested Commission on Integration and Cohesion.<sup>66</sup> I will return to the significance of this document later, but the importance of social strategies, has been, and still remains, largely overshadowed by coercive ones.

Many of the recent measures introduced in response to the rising threat of international terrorism—including detention without trial, limitations on freedom of speech, attempts (thwarted by the courts<sup>67</sup>) to rely on evidence that might have been obtained by torture, and a controversial array of new terrorism-related offences, echo the coercive strategies used in the early stages of the Northern Ireland conflict. Similarly, the increasing reliance by the government on coercive foreign policy measures, including military intervention in Iraq, is reminiscent of the militarization of the Northern Ireland conflict at the height of the Troubles. The next part of the article will consider what lessons, if any, the experience in Northern Ireland holds for contemporary counter-terrorism policy.

#### IV. COUNTER-TERRORISM POLICY AND THE LESSONS OF NORTHERN IRELAND

Before we consider the possible lessons of Northern Ireland, we need to return to the claim that the situation in Northern Ireland really is different.<sup>68</sup> The *Belfast Agreement* is but one chapter in the long history of the conflict in Northern Ireland and, in many respects, a unique response to that particular socio-political context. For one thing, the *Agreement* required a complex formula for addressing concerns about the constitutional status of Northern Ireland and for political power-sharing between the communities. For another, many (though not all) of the key players in the conflict were represented at the multi-party negotiations. And the *Agreement* itself was negotiated during a time of relative peace, after an initial cease-fire initially called in 1994, which was renewed in 1997 after an outbreak of violence. The complex politics and on-again, off-again nature of the conflict suggests a need for caution in drawing lessons from the Northern Ireland experience, including the *Belfast Agreement*, for the more amorphous “war on terror.” Indeed, the final chapter in the Northern Ireland conflict is still to be written and occasional violence, albeit on a much reduced scale, continues. And yet, at the social level, we are today witnessing patterns that closely resemble those of the Northern Ireland conflict, including a wariness of the rapid securitisation of the state and, in particular, a growing sense of alienation, especially in Arab-Muslim communities, and a resurgence of identity politics. So while acknowledging the peculiarities of the Northern Ireland situation, we should

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to the government”). See also “The Wake-up Call that Wasn’t” *The Economist* (8 July 2006) at 55, reporting on some of the frictions between Muslims groups and the UK government.

<sup>64</sup> “The Uncomfortable Politics of Identity” *The Economist* (21 October 2006) at 62.

<sup>65</sup> Available online: UK Resilience <<http://www.ukresilience.info/publications/countering.pdf>>.

<sup>66</sup> For details, including the Commission’s terms of reference, see online: Communities and Local Government <<http://www.communities.gov.uk/index.asp?id=1501520>>.

<sup>67</sup> *A v. Secretary of State for the Home Department (No. 2)* [2005] UKHL 71.

<sup>68</sup> *Supra* note 2.

not be too quick to dismiss the possibility that the experience in Northern Ireland holds at least some important lessons for contemporary counter-terrorism policy.

A second concern about looking to Northern Ireland for lessons is that the contemporary *threat* of terrorism differs in important ways from the Northern Ireland conflict. We have already seen Prime Minister Tony Blair's view that Al Qaeda is different from other terrorist groups in that it is impossible to negotiate with them; the only alternative, he concludes, is a coercive, military one.<sup>69</sup> Michael Ignatieff agrees: "If the goal of terrorism is neither territory nor freedom, if its purpose is to strike a blow that asserts the dignity of Muslim believers while inflicting horror and death upon their enemies, then it is difficult to envisage a political response of any kind."<sup>70</sup> But even if this argument were correct (historians and political thinkers will long debate the cogency of this sort of view), Ignatieff gives insufficient attention to the impact that terrorism and the counter-terrorism response will have on potential domestic sympathizers, whose grievances may well be political. He recognizes the need to distinguish "between conceding the legitimacy of terrorism and conceding the legitimacy of grievances."<sup>71</sup> One can, he says, "refuse the first premise while accepting the second."<sup>72</sup> It may well be, then, that the political means of addressing the legitimate grievances in the Northern Ireland context may hold important lessons for addressing the legitimate grievances of those who might sympathize with the political grievances that lie behind or are exposed by the unconscionable atrocities committed by terrorists. Many of the terrorist attacks and threats post-9/11, including the attacks in London in July 2005 and the arrests of the Toronto 17 in June 2006 suggest a growing "home-grown" threat. The sorts of grievances that inspire these acts and threats, and the political means of addressing them, are matters that governments cannot afford to ignore.

So whatever the specific differences between the violence in Northern Ireland and the threat of violence today, the general lessons identified earlier may yet be relevant to the formulation of contemporary counter-terrorism strategy. This part of the paper will therefore consider to what extent the contemporary counter-terrorism strategy attempts to: (a) limit the state's security apparatus to what is necessary and proportionate; (b) address problems of minority alienation by reforming key institutions; and (c) articulate a coherent approach to multicultural policy.

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<sup>69</sup> This point is apparent both in the political rhetoric and the scholarly literature. See, for instance, comments by Prime Minister Tony Blair, *supra* note 2, and those been expressed by Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror* (Toronto: Penguin, 2004) at 99. After describing the constraining factors on armed groups that have a real prospect of gaining recognition and statehood, Ignatieff continues: "But these incentives and restraining factors do not apply to all terrorist groups. No such factors discipline the conduct of Al Qaeda. They have no aspirations to statehood and therefore no incentive to play by any known rules. They do not serve a determinate population and are therefore unconstrained by their supporters' moral code or by their vulnerability to reprisal. They even appear indifferent to casualties inflicted on Muslim populations who live or work in proximity to their targets. This is also why they cannot be engaged politically and must instead be defeated militarily."

<sup>70</sup> *Ibid.* at 99.

<sup>71</sup> *Ibid.* at 101.

<sup>72</sup> *Ibid.*

### A. Security and Proportionality

One key lesson of the Northern Ireland conflict identified earlier was the need to dismantle—gradually and proportionately—the security state to limit opportunities for abuses of state power. The current Labour government in the United Kingdom is responsible for bringing human rights formally into domestic law through the *Human Rights Act 1998*, and was responsible, in part, for provisions in the *Belfast Agreement* that linked the resolution of the Northern Ireland conflict to human rights protections for minorities. However, it has not always seen the protection of human rights as a key part of its counter-terrorism strategy. On the contrary, former Home Secretary Charles Clarke once claimed that the fight against terrorism requires that human rights concerns be “balanced” against security concerns:

I believe that our peoples expect not only the protection of individual rights, but also the protection of democratic values such as safety and security under the law. We need a legal framework which seeks to address the difficult balance in these rights. We cannot properly fight terrorism with one legal hand tied behind our back, or give the terrorists the unfettered right to defend themselves as they promote and prepare violent attacks on our society.<sup>73</sup>

It may be that this quotation does not reflect official policy. Yet this understanding of national security and human rights as a zero-sum game, in which human rights must be compromised for the sake of national security, seems consistent with government policy. On this approach to national security, for instance, allowances can be made for counter-terrorism measures that have a differential impact on those regarded as the alien, such as non-nationals under the *Anti-Terrorism, Crime and Security Act*. Although attempts have been made to highlight the dangers of this strategy given the experience in Northern Ireland,<sup>74</sup> it was only by virtue of the declaration of incompatibility by the House of Lords in December 2004, in part because of an absence of proportionality,<sup>75</sup> that the provisions in this legislation allowing for indefinite detention were repealed by the government—only to be replaced with a regime of control orders which itself remains controversial.<sup>76</sup>

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<sup>73</sup> Speech to the Heritage Foundation (5 October 2005): UK Home Office <<http://press.homeoffice.gov.uk/Speeches/10-05-heritage-foundation>>.

<sup>74</sup> Northern Ireland, Human Rights Commission, *Countering Terrorism and Protecting Human Rights*, (September 2004), online: Northern Ireland Human Rights Commission <[http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/26/Terrorism\\_HR\\_Sept04.pdf](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/26/Terrorism_HR_Sept04.pdf)>.

<sup>75</sup> *Supra* note 49.

<sup>76</sup> The Court of Appeal has recently considered the implications of this scheme in *Secretary of State for the Home Department v. MB* [2006] EWCA Civ 1140 (holding that the provisions in the *Terrorism Act 2005* relating to the judicial supervision of non-derogating control orders were consistent with the right to a fair hearing in Article 6 of the European Convention on Human Rights) and *Secretary of State for the Home Department v. JJ* [2006] EWCA Civ 1141 (holding that “non-derogating” control orders requiring the respondents to be in their residences for 18 hours each day constituted a deprivation of liberty contrary to Article 5 of the *European Convention on Human Rights*).

### B. *Minority Alienation and Institutional Reform*

A second important strategy for dealing with the Northern Ireland conflict consisted of measures to address concerns about minority alienation. This was achieved not only by gradually dismantling the security state to reduce those aspects of counter-terrorism policy that contributed to alienation, but also by reforming key institutions to restore confidence in their ability to serve the public effectively and impartially. The need for similar measures today is apparent.

While the immediate impact of terrorism is felt by its victims and their families, minority communities, especially those to which suspects are perceived to belong, bear the brunt of an important secondary impact of terrorism and the counter-terrorist laws and policies that are enacted in response to it. For instance, three weeks after the London bombings in July 2005, religious hate crimes in London increased six-fold<sup>77</sup> and 20 percent of Muslim Britons indicated that they or their family members “had experienced hostility or abuse” from non-Muslims because of their religion since the bombings took place.<sup>78</sup> By July 2006, 79 percent of British Muslims polled felt that Muslims had experienced more abuse and hostility since the London bombings.<sup>79</sup> As Tariq Modood observes, Muslims in Europe “have found themselves bearing the brunt of a new wave of suspicion and hostility, and strongly voiced if imprecise doubts being cast on their loyalty as citizens.”<sup>80</sup> This kind of societal response to contemporary terrorism has a detrimental effect on those communities, contributing to a profound sense of alienation from the wider community.<sup>81</sup>

But it is not just the social impact of terrorism that leads to a growing sense of alienation. Even before the London bombings, the Joint Committee on Human Rights noted in July 2004 that there is “mounting evidence that the powers under the Terrorism Act are being used disproportionately against members of the Muslim community in the UK.”<sup>82</sup> More recently, the UK Parliament’s Home Affairs Committee observed in April 2005 that community relations had deteriorated post-9/11, and that international terrorism “*and the response to it* have contributed to this deterioration, particularly in relations between the majority community and the Muslim community.”<sup>83</sup> The Report criticizes the government for not having a clear community cohesion policy as part of its broad counter-terrorism strategy. That the

<sup>77</sup> “Hate crimes soar after bombings” *BBC News* (4 August 2005), online: BBC News <<http://news.bbc.co.uk/1/hi/england/london/4740015.stm>>.

<sup>78</sup> “Two-thirds of Muslims consider leaving the UK” *Guardian Unlimited* (26 July 2005), online: Guardian Unlimited <<http://politics.guardian.co.uk/polls/story/0,11030,1536259,00.html>>.

<sup>79</sup> Poll by Populus Limited, conducted from 1–16 June 2006 and published by *The Times* and ITV News. A summary of the results is available online: Populus <[http://www.populuslimited.com/poll\\_summaries/2006\\_07\\_04\\_Times\\_ITV.htm](http://www.populuslimited.com/poll_summaries/2006_07_04_Times_ITV.htm)>.

<sup>80</sup> Tariq Modood, “Muslims and the Politics of Difference” (2003) 74 *The Political Quarterly* 100 at 101.

<sup>81</sup> After the London bombings 62% of British Muslims reconsidered whether “they wanted to live in the UK” (*supra* note 78).

<sup>82</sup> U.K., H.L./H.C., Joint Committee on Human Rights, “Review of Counter-Terrorism Powers”, Eighteen Report of Session 2003-04, HL Paper 158/HC 713, at para. 46 (copy available online: Privacy International <<http://www.privacyinternational.org/issues/terrorism/library/ukjrcreviewcounterterr2004.pdf>>).

<sup>83</sup> U.K., H.C., Home Affairs Committee, “Terrorism and Community Relations”, Sixth Report of Session 2004-05, HC 165-I, at para. 88, emphasis added; see online: United Kingdom Parliament Home Page <<http://www.publications.parliament.uk/pa/cm200405/cmselect/cmhaff/165/165.pdf>>.

Muslim communities are the most vulnerable seems clear and is exemplified by a police raid on a Muslim household in Forest Gate in East London on 2 June 2006, in which a young Muslim man was shot and wounded. The police were looking for a chemical device that was never found, the suspects were released, and the police apologized “for ‘any hurt’ they had caused.”<sup>84</sup> But the police shooting of an innocent Brazilian man Jean Charles de Menezes on 22 July 2005, after a second failed attack on the subway,<sup>85</sup> suggests that the threat to minorities posed by abuses in policing and counter-terrorism powers may well extend more broadly, to those who might potentially be regarded as the alien “other” or who are deemed to be associated with a Muslim community whose members are, by virtue of their religion, assumed to pose a threat.

Such discriminatory treatment by society and law enforcement agencies leads to growing minority alienation. A poll of British Muslims conducted after the London bombings indicated that 5% of respondents thought that further attacks by British suicide bombers would be justified,<sup>86</sup> while 93% thought that it was unacceptable “for religious or political groups to use violence for political ends.”<sup>87</sup> The poll did not indicate how non-Muslims would have responded to these questions and there is some question as to the interpretation of the data.<sup>88</sup> But, on its face, the poll suggests that a small number of individuals who identify themselves as Muslims, have some sympathy for the supposed causes of the suicide bombers, and some polls suggest that the proportion may be rising.<sup>89</sup> Of course, sympathy does not necessarily translate into terrorist violence, a point that must not be overlooked. A growing sense of alienation might simply lead many to disengage from public life. But it might also, when exacerbated by feelings of victimization or alienation, inspire a small number who might otherwise shun political violence to take up arms.<sup>90</sup>

The government’s commitment to addressing concerns about “Islamophobia, protecting Muslims from extremism, and community confidence in policing,”<sup>91</sup> must be combined with concrete steps to protect minority communities. Members of a community who are alienated by government policies and *targeted* by security forces may well lose their faith in the government and begin to sympathize with those

<sup>84</sup> “Who speaks for British Muslims?” *The Economist* (17 June 2006) at 64; “Terror Raid Intelligence Denial” *BBC News* (24 June 2006), online: [http://news.bbc.co.uk/2/hi/uk\\_news/5112388.stm](http://news.bbc.co.uk/2/hi/uk_news/5112388.stm). Assistant Commissioner Andy Hayman of the Metropolitan Police Specialist Operations subsequently apologized for the raid, see “Raid Police Apologise for ‘Hurt’” *BBC News* (14 June 2006), online: [http://news.bbc.co.uk/2/hi/uk\\_news/5077198.stm](http://news.bbc.co.uk/2/hi/uk_news/5077198.stm).

<sup>85</sup> See “Tube Shooting Charges ‘Possible’” *BBC News* (9 December 2005), online: <http://news.bbc.co.uk/1/hi/uk/4513482.stm>. The circumstances surrounding the shooting are currently under investigation by the Independent Police Complaints Commission.

<sup>86</sup> *Supra* note 78 (81% thought further attacks were not justified and 14% “didn’t know”).

<sup>87</sup> *Ibid.* (4% thought it was acceptable and 3% “didn’t know”).

<sup>88</sup> It is difficult to know what to make of the fact that 5% thought that “further attacks by British suicide bombers would be justified” while only 4% thought that it was acceptable “for religious or political groups to use violence for political ends.”

<sup>89</sup> According to the poll by Populus Limited, *supra* note 79, in June 2006, 13% of British Muslims respondents thought that the July 7 bombers should be seen as martyrs.

<sup>90</sup> In the aftermath of the July 2005 bombings in London, demands by some Muslims groups for a public inquiry into the connection between “home-grown terrorism and anger over the Iraq war—a connection that was obvious to the police and security services but not the ministers, at least publicly”—have been rejected by the UK government. See: “The Wake-Up Call That Wasn’t”, *supra* note 63.

<sup>91</sup> *Supra* note 60. But see *supra* note 63, and accompanying text.

engaged in political violence in the first place. The number of individuals who resort to violence might be very small indeed and their motivations for engaging in violence will no doubt be complex. Yet their sense of alienation may well figure significantly in their decision to resort to violence. The Northern Ireland conflict and the *Belfast Agreement* point to the conclusion that the social and political alienation of a minority community that is targeted (or perceived to be targeted) by counter-terrorism measures is a concern that must be addressed.

As we have seen, the *Anti-Terrorism, Crime, and Security Act* did, in a small way, acknowledge concerns about a social backlash against Muslims in Britain by increasing penalties for racially and religiously motivated crimes.<sup>92</sup> After the July bombings in London, and revelations that the suicide bombers were British nationals, minority communities in the UK, particularly Muslim groups, came to be seen both as potential allies in the suppression of terrorism and, arguably, as a potential threat to security. Officially, the approach taken to these communities was to co-opt them as part of the strategy for dealing with terrorism. They are regarded as part of a “community-led response to extremism.”<sup>93</sup> But recent efforts by the government to extend the prohibition on stirring up racial hatred to religious hatred through the *Racial and Religious Hatred Bill*<sup>94</sup> were stymied by Parliament, which supported a House of Lords amendment that would ban only “threatening” words and behaviour, not words that were critical, abusive, or insulting.<sup>95</sup>

Even well-intentioned efforts to address minority alienation may be undermined when, as in Forest Gate, a counter-terrorism raid uncovers no terrorist operation and innocent civilians are hurt. After such incidents, a mixed apology and defence of mistaken counter-terrorism measures can make official concerns about discriminatory law enforcement practices appear disingenuous, exacerbating the damage caused.<sup>96</sup> Incidents such as the Forest Gate shooting highlight what is probably the greatest threat that terrorism poses to pluralist democracies—its ability to destroy societies from the inside by fueling ethnic tensions, collapsing bonds of trust, and further marginalizing minority communities. Whatever short-term gains may be won by stringent policing and emergency powers tend to be lost over the long-term, as abuses surface, concerns about legitimacy arise, and terrorists attract more sympathy within the communities they purport to represent.<sup>97</sup>

<sup>92</sup> *Supra* note 59.

<sup>93</sup> *Supra* note 60.

<sup>94</sup> Bill 11, *Racial and Religious Hatred Bill*, 2005-2006 Sess., 2005, online: UK Parliament <<http://www.publications.parliament.uk/pa/cm200506/cmbills/011/2006011.htm>>.

<sup>95</sup> “Q&A: Religious hatred law” *BBC News* (1 February 2006), online: BBC News <[http://news.bbc.co.uk/2/hi/uk\\_news/politics/3873323.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/3873323.stm)>

<sup>96</sup> “Blair Defends Police Terror Raid” *BBC News* (6 June 2006), online: BBC News <[http://news.bbc.co.uk/2/hi/uk\\_news/politics/5053618.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/5053618.stm)>. Prime Minister Tony Blair, “asked if he feared a Muslim backlash following the raid, ... said: ‘I’m really not. I think it’s a real mistake to think that the average person from the Muslim community is any different from anyone else. They know perfectly well there is a problem with terrorism.’” Similarly, Sir Ian Blair asserted that the raid was “not a police force on behalf of one community against another...we are responding to the threat of terror on behalf of all communities.” See “Police Chief Defends Terror Raid” *BBC News* (8 June 2006), online: BBC News <[http://news.bbc.co.uk/go/em/fr/-/2/hi/uk\\_news/5054348.stm](http://news.bbc.co.uk/go/em/fr/-/2/hi/uk_news/5054348.stm)>.

<sup>97</sup> *The Economist* reports that “it is likely that Muslims are coming in for harsher treatment. The number of Asians searched on the street has almost doubled since the terrorist attacks of September 11th 2001 in America. Most offensive, perhaps, the proportion who were subsequently arrested is lower than for any other racial group. The hit rate for those searched under anti-terrorism powers is especially dismal.

While some government initiatives to deal with disaffected communities are laudable, there is equally a danger that these initiatives might be seen as tokenistic—or worse, that they might be seen as unprincipled and opportunistic, aimed at containing the terrorist threat rather than genuinely addressing the problem of political marginalization. Indeed, the strategy as it is articulated appears in some respects to place the onus on British Muslims to contain the threat, suggesting that the causes of violence rest within the minority community itself, rather than in the broader social, political, and legal framework in which that community finds itself. The challenge, then, is to address minority alienation as a problem in its own right, to secure a place of respect and dignity for the community and its members within the society, mindful that in so doing the deeper causes of political violence might at the same time be addressed. So to regard the minority community simply as a *means* for containing the violence is precisely to contribute to the growing sense of alienation. What is required is a sincere recognition of alienation and a genuine attempt to address the problem. The *Belfast Agreement* suggests that one way of doing this is to embrace institutions designed to address the concerns of the alienated minority community and reforming existing institutions to attract and sustain “support from the community as a whole.”<sup>98</sup> It remains to be seen whether recent steps in this direction, such as those set out in the latest official national security strategy paper,<sup>99</sup> will, in the long term, be able to mend the damage caused to the confidence of minority communities in public institutions caused by the de Menezes shooting and the botched East London raid.<sup>100</sup>

### C. *The Politics of Identity and Multicultural Policy*

A third lesson of the Northern Ireland conflict concerns issues of political identity and, more generally, the need for a strategy for dealing with pluralism and identity in a heterogeneous, multicultural society. The damage to the social fabric of a pluralistic society by acts of terrorism *and* counter-terrorism policy is serious; strands of intolerance and nationalistic assertions of identity exacerbate feelings of alienation. Counter-terrorism policy in diverse societies thus cannot be separated from more profound questions about identity, social cohesion, and, ultimately, multiculturalism. The problem, in our contemporary context, is this. On the one hand, in a context of strained ethnic relations and feelings of alienation and suspicion, the challenge is for societies committed to pluralism to make their support for religious and cultural diversity clear.<sup>101</sup> On the other hand, the act of acknowledging the problem of

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In 2003-2004, 3,668 were searched under the terms of the 2001 Anti-terrorism, Crime and Security Act. Just 70 were arrested, only one for a terrorism-related offence.” See “The Wake-up Call that Wasn’t”, *supra* note 63.

<sup>98</sup> *Supra* note 23.

<sup>99</sup> *Supra* note 65.

<sup>100</sup> Early signs of personal or institutional accountability in the de Menezes shooting are not promising, with the Crown Prosecution Service refusing to prosecute individual officers for want of sufficient evidence. The Metropolitan Police Service has been charged under health and safety laws: see “Met Pleads Not Guilty over Menezes” *BBC News* (19 September 2006), online: BBC News <<http://news.bbc.co.uk/1/hi/uk/5359500.stm>>.

<sup>101</sup> In Helen Duffy, *The ‘War on Terror’ and the Framework of International Law* (Cambridge: Cambridge University Press, 2005), Duffy observes that the “environment of discrimination and racial tension that



alienation might unfairly shine the spotlight on a particular community; the very act of identifying a particular group as susceptible to discrimination and public backlash in the aftermath of a terrorist attack might reify the very stereotypes that confront the group in the first place. The challenge, then, is to find a way to square the circle, to recognize diversity without essentializing difference.

The tension between recognizing an acute need for public resources in particular communities and the need not to be stereotyped is evident in the Muslim Council of Britain's August 2004 response to the government discussion paper on counter-terrorism powers; this response sought to reject the assumption "that a threat exists from the Muslim community"<sup>102</sup> while observing that the government's targeting of Muslims "can only be counter-productive to meeting our security needs by diverting increased resources on policing an increasingly marginalized community and alienating *the very community* whose cooperation is the most vital."<sup>103</sup> The tension also explains the adverse reaction by the Muslim Council of Britain to initiatives by the government following the London bombings,<sup>104</sup> in which the government sought, both to extend support to "the Muslim community" while seeking its assistance in "preventing extremism together"<sup>105</sup>—with the obvious and dangerously stereotypical implication that the problem stemmed from inside the community itself. But the problem runs even deeper, to the core of multiculturalism itself and its uneasy attempt to reconcile group rights with a rights-oriented approach to basic legal and political rights. There is no consensus, politically or conceptually, as to how these competing values should be reconciled.

After September 11, the legitimacy of the UK's multicultural policy has come under increasing pressure, with growing support for a return to a more secularist and integrationist approach to pluralism.<sup>106</sup> A multicultural approach, if taken too far, runs the risk of undermining social cohesion and tolerating the oppression of women.<sup>107</sup> But, as Modood and others argue, a secular liberal approach to pluralism might not be the best response either; the failure to "have one's difference ... recognized in the public sphere" through an egalitarian, multicultural policy "runs the risk of making many Muslims feel that they do not belong to Britain."<sup>108</sup> A better approach, Modood argues, may be to cultivate a sense of belonging by ensuring

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erupted in many parts of the world post September 11" had led to the imposition in international human rights law of positive obligations on states to prevent intolerance and discrimination by private actors, including the need for educational campaigns to prevent racism and discrimination against Arabs and Muslims (at 367-68).

<sup>102</sup> U.K., Muslim Council of Britain, *Counter-Terrorism Powers: Reconciling Security and Liberty in an Open Society—A Response from the Muslim Council of Britain* (Government Discussion Paper) (August 2004), online: Muslim Council of Britain <<http://www.mcb.org.uk/downloads/ATCSA.pdf>> at para. 2.

<sup>103</sup> *Ibid.* at para. 5 (emphasis added).

<sup>104</sup> *Supra* note 63.

<sup>105</sup> *Supra* note 61.

<sup>106</sup> See, for e.g., comments Trevor Phillips, chairperson of the Commission for Racial Equality, equating multiculturalism with separatism: "Race body snubs 'un-British' work" *BBC News* (10 April 2004), online: BBC News <<http://news.bbc.co.uk/1/hi/uk/3615379.stm>>.

<sup>107</sup> S.M. Okin, "Is Multiculturalism Bad for Women?" in J. Cohen et al., eds., *Is Multiculturalism Bad for Women?* (Princeton: Princeton University Press, 1999) at 7-26.

<sup>108</sup> *Supra* note 80 at 105, 114.

that the polity is recognized “as a community of communities as well as a community of individuals” and by “challenging ... all racisms and related structural inequalities.”<sup>109</sup>

The UK’s recent counter-terrorism strategy<sup>110</sup> articulates—in considerable detail—the socio-political aspects of its counter-terrorism strategy and acknowledges up front the need to address “structural problems in the U.K. and overseas that may contribute to radicalization, such as inequalities and discrimination.”<sup>111</sup> It also stresses the importance of promoting “good governance and human rights internationally” and of “social inclusion, community cohesion and active citizenship” at home as key components of its counter-terrorism strategy.<sup>112</sup> Whether these social strategies are ultimately effective turns, at least in part, on their ability to address the concerns of marginalized communities without implicating them as the source of the problem. Some group-based ameliorative measures will likely be necessary as part of this overall approach. The need for such measures does not necessarily imply an essentialist stance,<sup>113</sup> although such measures would have to be pursued cautiously, to avoid entrenching stereotypes or suggesting that there is only one monolithic community comprising individuals with the same beliefs and concerns.<sup>114</sup> Objections along these lines have been made to the *Belfast Agreement*, specifically on the basis that in expressly recognizing “the identity and ethos of ‘both communities’ ... it legitimises and thus perpetuates existing divisions.”<sup>115</sup> The challenge is to find a multicultural policy that takes seriously the need for groups to protect their cultural institutions and identities without resorting to essentialist assumptions.

The *Belfast Agreement*’s answer to criticisms of essentialism can be found in its “consociational”<sup>116</sup> character, including its complicated formula for cross-community power-sharing and minority rights, and its non-reductionist approach to identity, which allows Northern Irish citizens to identify themselves as “Irish or British, or both.”<sup>117</sup> Given the deep political division and different historical situation of the Northern Ireland conflict, the Northern Ireland model of consociationalism may not be the solution to the problem of minority alienation in other contexts. But it is useful to draw from the *Belfast Agreement* the general principle of respecting and empowering minority communities through the use of group-specific (though not necessarily essentialist<sup>118</sup>) mechanisms, while accepting that identities can be

<sup>109</sup> *Ibid.* at 114.

<sup>110</sup> *Supra* note 65.

<sup>111</sup> *Ibid.* at para. 6.

<sup>112</sup> *Ibid.* at paras. 44-45.

<sup>113</sup> See C.L. Lim, “Race, Multi-cultural Accommodation and the Constitutions of Singapore and Malaysia” [2004] *Sing. J.L.S.* 117. (arguing that there is a strong connection between group rights and essentialism) and my response to Lim in Victor V. Ramraj, “Multiculturalism and Accommodative Liberalism Revised” [2005] *Sing. J.L.S.* 159.

<sup>114</sup> See “Who Speaks for British Muslims?”, *supra* note 84.

<sup>115</sup> Harvey, *supra* note 3 at 35, rejecting this argument on the basis that the Belfast Agreement is ultimately a consociational one, based on cross community power-sharing and deliberative democracy.

<sup>116</sup> *Ibid.* On consociationalism (including a defence of one version of it), see John McGarry and Brendon O’Leary, “Consociational Theory, Northern Ireland’s Conflict, and its Agreement: [Part 2] What Critics of Consociation Can Learn from Northern Ireland” (2006) 41 *Government and Opposition* 249.

<sup>117</sup> *Supra* note 36.

<sup>118</sup> *Supra* note 116 at 271: “[Critics of consociationalism] are wrong to suggest that consociationalists are necessarily primordialists: there is a major difference between thinking that some identities are durable and maintaining that they are immutably primordial.”

multifaceted. But modern accommodative liberalism may provide some assistance here. Consider, for instance, Ayelet Shachar's notion of joint governance—the idea that “both the state and minority groups have a legitimate interest in shaping the policies under which their citizens/group members operate.”<sup>119</sup> Shachar's solution is to allocate political power as between the state and the cultural community in respect of a particular area, such as family law, in a non-exclusive way, opening “the door to newer, more complex, and more attractive possibilities for constructive dialogue between state and group.”<sup>120</sup> The precise state response to the tension between individual and group identity will necessarily be complex, but it will require a sophisticated and non-reductionist understanding of the interrelationship between individuals and the complex communities in which they live.

## V. CONCLUSION

The conflict in Northern Ireland differs from the “war on terror” in many respects—from its historical, political, and ideological causes to its localized nature—so there is reason to think that there is little to be learned from studying it. What this article suggests, however, is that, by abstracting from the peculiarities of that conflict and the *Belfast Agreement* that seeks to address it, we may yet find some important lessons for contemporary counter-terrorism policy. The first is that, in response to a terrorist threat, the securitisation of the state may well go too far, to the point that it does more harm than good. Although the need for coercive measures cannot be ruled out, it is important to ensure that any coercive response is proportionate to the threat. While the courts in the United Kingdom have recently been active trying to keep the government in check, it may be too much to expect that they will always be able to do so. It is therefore worth remembering that there are good pragmatic reasons for questioning the need for coercive measures, as they may well be counter-productive. Second, terrorism and counter-terrorism can lead to the alienation of minority communities and a good social and counter-terrorism policy should take steps to address this through appropriate institutional reform. It is therefore imperative that governments do all they can to restore public confidence in public institutions whose legitimacy has been undermined by botched counter-terrorism efforts. Third, a comprehensive counter-terrorism strategy cannot ignore the politics of identity and difficult questions concerning multicultural policy. It appears that multiculturalism is high on the public agenda in the United Kingdom today, as it should be. But it remains to be seen whether an appropriate and nuanced approach to the formulation of multicultural

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<sup>119</sup> Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge: Cambridge University Press, 1995) at 89. See also Will Kymlicka's attempt to empower national minorities to preserve their cultural institutions and identities, while protecting individuals from oppressive group practices in Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995) at 34-48.

<sup>120</sup> Shachar, *ibid*, at 114. Elsewhere, I have argued that accommodative liberalism can “acknowledge the importance of group rights and substantive equality while maintaining a firm rights-oriented stand on matters of legal and political rights; it can advocate rights of exit or internal dissent for internal minorities while respecting and preserving group identity and group norms; and it can resist an individualistic understanding of rights while recognizing that strong legal and political rights are important to groups and individuals alike, as both have an interest in curbing the power of the state.” See Victor V. Ramraj, *supra* note 113 at 165.

policies—beyond the political rhetoric—can be found. On the surface, the UK's July 2006 counter-terrorism strategy suggests that these lessons of Northern Ireland may well be seeping into the United Kingdom's contemporary counter-terrorism strategy. The challenge lies in seeing them through.