The Rules of the Game

Terrorism, Community and Human Rights

Andrew Blick, Tufyal Choudhury and Stuart Weir

A REPORT BY DEMOCRATIC AUDIT,
HUMAN RIGHTS CENTRE, UNIVERSITY OF ESSEX

For the Joseph Rowntree Reform Trust

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Democratic Audit is a research organisation that carries out research into the quality of democracy and human rights in the UK and publishes secular and systematic 'audits' of British democracy. The Audit is attached to the Human Rights Centre, at the University of Essex, and maintains the same standards of objective and policy-relevant scholarship in the Centre's tradition of the 'public intellectual'.

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Foreword

The role of the state in relation to the citizen is a perennial question that has to be attended to at regular intervals in the light of changing circumstances. It is clear that the opening years of the twenty-first century, which have been characterised by new forms of terrorism with both national and international dimensions, have occasioned a renewal of the debate on the subject.

There is no denying that the over-riding duty of the state is to protect its citizens, but to do so in such a way as not to encroach unduly upon their basic rights and liberties. This is a tension that has to be managed if proportionality and balance are to be contrived and rendered publicly acceptable. In a liberal democracy the process of achieving such a desired outcome is necessarily one of informed and free political debate.

That is the classic textbook formulation of what should happen. In practice, it is much harder to achieve this ideal because the very situations that trigger a re-examination of the 'perennial question' are invariably ones of crisis when the state is under external and/or internal threat. Such circumstances require swift action by governments so that any critical analysis and monitoring of these responses by Parliament, the judiciary, the media and ultimately the electorate is consequential and often occurs much later. The evaluation of government reaction is more problematic when the crisis is prolonged and occasions yet further measures, before the earlier ones have been digested, and when raison d'etat is employed to constrain debate by withholding essential facts from the public arena.

A good deal has to be taken on trust that government has the requisite intelligence to support its actions and, moreover, that these are proportional to the perceived crisis. Public trust in government and political elites these days is at a discount pretty well throughout the western liberal democracies and this is an added complication. These are the ingredients that go to make up the context within which contemporary debate on the changing boundaries between the state and the citizen, between order and liberty, must be resolved.

There is one further factor to be considered and that is the Muslim communities, most notably in Britain but also elsewhere. The new outbreak of terrorism has been caused by Islamic jihadists both from abroad and, more recently, home grown. This has had profound implications for the maintenance of a peaceful multicultural Britain. In pursuit of the terrorists new laws and tactics have been devised and employed whose efficacy is a matter of genuine debate. One effect of the new measures, however, has been to increase the anxiety and alienation of British Muslims to the point where the entire Muslim community risks becoming demonised and that cannot be good for the health of civic society.

In 1904, when Joseph Rowntree established the trusts that bear his name, he wrote to the board members of all three, observing that 'while new occasions teach new duties' it is possible that 'time makes ancient truths uncouth'. How applicable is this dictum to our present concerns? That is to say, is the character of the so-called 'War on Terror' such that it requires an acceptance that 'the rules of the game' have to be changed substantially, as political leaders of a neo-conservative cast of mind insist? Or is it rather the case that the new kind of terrorism that has manifested itself since 9/11 is not so different from previous episodes that it cannot be accommodated within existing legal provisions? This is the view of many distinguished jurists. No one would disagree that the intelligence and security services and law enforcement agencies need seriously to improve their performance for they quite patently do. The fundamental point at issue is whether new laws and oversight procedures are necessary for dealing with the changed nature of terrorism or whether such contrivances are merely politically cosmetic knee-jerk responses with no substantive advantages but with potential counter-productive disadvantages.

For all these reasons the Joseph Rowntree Reform Trust decided to commission Democrat Audit to undertake an analysis of the 'perennial problem' as it presents itself today. In particular, it was asked to review the new counter-terror measures that have been adopted, to note the successes and failures and to estimate how far, if at all, they were counter-productive. Special attention was to be given to the situation of the Muslim community. *The Rules of the Game* reports the findings of Professor Stuart Weir and his colleagues. It affords an up-to-date, objective and authoritative account of recent developments that will be widely accepted; it also contains policy recommendations for the future which will more contentious. However, both elements of the report make an important contribution to the ongoing debate on the themes of terrorism, community and human rights which now define the parameters of the 'perennial problem'.

Lord Smith of Clifton

Executive summary

Home-grown terrorism presents a real, if unquantifiable, danger to the people of the United Kingdom. There is evidence that terrorist cells are becoming more proficient and further terrorist attacks are likely to occur, putting at risk people in all communities. It is the first duty of the government, the intelligence and security services and the police to protect the public and to adopt counter terrorism laws and practices that minimise the risks from terrorism to the public and make it possible to apprehend the 'men of violence' before they are able to act. But they recognise, as we do, that it is not possible to guarantee that all plots against the public will be prevented.

Both counter terrorism laws and practice inevitably raise concerns about the impact that they have on human rights and on the quality of justice and democracy in this country. The Joseph Rowntree Reform Trust asked us to review the human rights consequences of the government's counter terrorism legislation and the work of the intelligence and security services and police; and to judge whether it was effective. In November 2005, we produced *The Rules of the Game*, a scoping report focusing on the human rights aspects of existing counter terrorism laws and the Terrorism Bill 2005 that was then going through Parliament. This report takes a wider look at the human rights and community consequences of the laws and counter terrorism practice.

Our basic conclusion is that the key to successfully combating terrorism lies in winning the trust and cooperation of the Muslim communities in the UK. However, the government's counter terrorism legislation and rhetorical stance are between them creating serious losses in human rights and criminal justice protections; loosening the fabric of justice and civil liberties in the UK; and harming community relations and multiculturalism. Moreover, they are having a disproportionate effect on the Muslim communities in the UK and so are prejudicing the ability of the government and security forces to gain the very trust and cooperation from individuals in those communities that they require to combat terrorism. The impact of the legislation and its implementation has been self-defeating as well as harmful. Its boomerang effect is being made more damaging by government statements, in particular those of the Home Secretary, John Reid.

We acknowledge how difficult it is for the state and intelligence and security forces to seek out potential terrorists who may be or who are active within particular communities without to some extent targeting or even demonising by extension the communities within which they hide. But ministers have failed to make the vital distinction between criminals and communities strongly enough, as the police service actually did after 7/7. We also recognise that the government has to reassure the public that it is acting firmly to protect them. But the combination of tough laws and tough talk ministers have adopted is divisive and directed too much at the majority population. There is a strong suspicion that some pronouncements are inspired by electoral considerations.

Ministers (and some opposition spokespersons) publicly demand too much from Muslim community leaders who are not representative enough to deliver in any case. The emphasis on 'separateness', and in some quarters 'apartheid', inspired in part by Jack Straw's comments on the veil, is as damaging as it is misleading, since all the evidence available (which we examine in Chapter 2) suggests that the majority of Britain's Muslims – by no means an homogenous group – wish to integrate and do not want to live parallel lives in self-chosen ghettos.

In 2003, the government adopted a counter terrorism strategy that was designed to pursue potential terrorists robustly in the short term while seeking in the longer term to prevent the radicalisation of Muslims in the new generations now growing up in the very young Muslim communities in the UK. There are comparatively few terrorists in the midst of these communities. But there are larger numbers of people who have some sympathy with their aims, and who share to some extent the frustrations and anger that drives the men of violence and who could give them the tacit or active support on which terrorists everywhere rely. Government policy must persuade these young people that their future lies within the democratic framework of a tolerant and law-abiding nation. These short-term and long-term goals are connected. The more the authorities can win minds and hearts within the Muslim communities, the more likely they are to gain the vital intelligence that can save lives. Good and accurate intelligence is the single most important key to success.

We strongly urge the government to abandon talk of a 'War on Terror'. This terminology is misleading and disproportionate and leaves the Prime Minister open to the charge that he is exploiting a politics of fear. It allows terrorists to assume the dignity of being 'soldiers' or 'combatants' instead of the mere criminals that they are. In responding to the terrorist threat, it is essential to keep a sense of proportion for other dangers for a democracy like Britain lurk in the shadow of terrorism. But the rhetoric of war has encouraged an over-reaction in which human rights and the rule of law are among the more obvious casualties.

Government ministers often talk of a 'trade off' between security and human rights. But this is a false choice. Human security itself is the principal human right, 'the right to life', and is the central component of the carefully assembled and interdependent package of civil and political rights and responsibilities contained in the European Convention of Human Rights. The European Convention, now largely incorporated into British law, allows for a government to restrict some rights in a genuine national emergency. There is a case for a limited 'trade off' between surveillance and other civil and political rights since, at least for the time being, surveillance is most likely to deliver the intelligence that is required to prevent terrorism. But this would require stronger safeguards

against abuse than those which currently exist, especially in view of warnings that Britain is sleep-walking into 'a surveillance society'. We also accept the 'trade offs' involved in the intelligence community and police service practice of early intervention to disrupt and prevent terrorist plots so long as it does not rely on prolonged preventive detention.

The major 'trade off' that is occurring is not however between this or that right. It is between the rights of the majority population and those of minorities, especially the Muslim communities. In a very real sense, and no doubt inevitably, apprehension of the terrorist threat has been 'racialised'. An important part of the government's ability to pass its counter terrorism laws and developing police practice lies in the idea that these laws and their enforcement will not be employed against Tony Blair's 'law-abiding' majority: they will not be used against 'us', they will be used against 'them'. The way that the threat has been 'racialised' is key in drawing this boundary. Stringent measures are possible in part because the general public does not feel vulnerable to being kept under surveillance, watching their words, being arbitrarily stopped, searched, raided, beaten, arrested or shot. By contrast, people in the Muslim and other minority communities do.

We make a series of recommendations in Chapter 7, the most important of which are that the government should adopt a more open and inclusive counter terrorism strategy in place of its combative insistence that it alone knows the right course; that it should recognise that the participation of local communities, Muslim and non-Muslim, is vital; that the request of the government's own Muslim working groups for a wide-ranging inquiry on the roots of terrorism should take place; and that the government's strategy should be constructed and implemented within the framework of the rule of law and human rights, a recommendation with which the intelligence community agrees.

Within this framework, the government should retreat from the shadow system of executive justice that it has been constructing and deal with terrorism so far as is possible within the criminal justice system and its safeguards. The new offence of preparing for terrorist activities has made it easier to bring criminal charges against alleged terrorists; ending the ban on intercept information as admissible evidence in courts would also make it easier to prosecute alleged terrorists rather than resorting to preventive detention. Ministers should also involve Parliament more fully in reorienting its counter terrorism laws and practice. They can make a valuable start by allowing for thorough pre-legislative scrutiny of the promised Consolidation Bill on terrorism, accompanied by a wide-ranging public debate.

We are also convinced that the government should review its foreign policy in the light of British interests at home and abroad. We say so not out of a knee-jerk anti-Americanism but from a profound conviction that the Prime Minister's close and publicly unquestioning stance alongside the United States is damaging to British influence in the world at large and in Europe; that it feeds extremism and violence at home and abroad; and that it casts severe doubt on this country's commitment to democracy and human rights which must be the cornerstone of our struggle against extremism.

Finally, we are also concerned that the Muslim communities, for a variety of reasons, are not beginning to prosper as new generations succeed the first settlers. There seems to be no 'second generation bounce' as there has been in other immigrant communities. We recommend that the government continue in its efforts to end the discriminations that blight the lives of the younger members of these communities and to alleviate the deprivations and disadvantages from which they suffer.

Chapter 1

The Terrorist Threat

The United Kingdom faces a serious threat of terrorist attacks from 'home-grown' and international sources, but the scale of the threat and its likely duration are unknowable to the general public. The security forces, however, take it for granted that the 7 July 2005 bombings in London will not be the last terrorist attack in the UK. They also take it for granted that the threat of terrorism against the UK and UK interests and citizens abroad will last for at least one generation, and possibly longer. Peter Clarke, Deputy Assistant Commissioner at the Metropolitan Police, said in response to our questioning at a Royal United Services Institute (RUSI) conference on terrorism that the nation was facing 'unprecedented' levels of threat from 'well-trained' home-grown terrorists, adding that 'Al-Qaeda are believed to have talked of plans over the next 50 years'.[1]

Senior security officials give briefings to MPs and other opinion formers who describe them as 'chilling'. One official stated to us that terrorism in the UK could degenerate into 'a form of world war' if it were not dealt with efficiently. The bombs and other devices that have been employed in attacks so far have been rudimentary, he said, but he warned that the security forces already take seriously the danger of chemical attacks and fear that future terrorists may acquire nuclear materials. In October 2006, intelligence officials briefed the media, warning that 'Britain has become the main target for a resurgent al-Qaeda and now presents a greater threat than ever before'. They no longer believe that the terrorist threat in the UK comes from small uncoordinated groups, but describe 'self-organising groups' within an organised structure of command and interlinkage, with sophisticated methods of recruitment and training and plans for a spectacular atrocity on the scale of the 2001 attacks in the United States.[2]

Notwithstanding that such warnings are not issued in a full and formal report to Parliament or the nation, but tend to be released in media briefings, or sound-bites in ministerial speeches, they clearly have to be taken seriously and effective counter measures must be taken. But it is vital at the same time to keep a sense of proportion. For other dangers for a democratic society like Britain lurk in the shadow of terrorism, especially if it is a long-term threat. The government must strike the right balance between public safety and fundamental democratic values. Aggressive counter terrorism laws and practice can endanger the rule of law and human rights that are the hallmarks of a democratic and open society; especially the rights of Britain's Muslim communities among whom the authorities search for terrorists. There are signs that the response to terrorism of the government and media is already opening up damaging fissures in society between the majority and these minorities; and all the more intensively since former Home Secretary Jack Straw initiated the debate over the veil in October 2006. And if the government over-reacts, counter terrorism measures themselves may feed and sustain terrorism, creating a well of sympathy and silence among certain groups in society, especially if they increase repression, stigmatise and alienate these groups and resort to coercion and even torture, as the UK learned to its cost in Northern Ireland.[3]

These dangers are the greater in the current crisis for the government regards itself as being engaged in a 'War on Terror', at home and abroad. As Bruce Ackerman, the distinguished American constitutional lawyer who is Sterling Professor of Law at Yale University, has pointed out, 'This is not a War . . . This is an Emergency'. Ackerman argues:

> 'War on terror' is, on its face, a preposterous expression. Terrorism is simply the name of a technique: intentional attacks on innocent civilians. But war isn't merely a technical matter: it is a life-and-death struggle against a particular enemy. We made war against Nazi Germany, not against the *Blitzkrieg*.[4]

This terminology of 'war' is a counter productive blunder. It allows terrorists to regard and proclaim themselves as 'combatants' and 'soldiers', whereas they should be described and prosecuted as criminals. Moreover, it leaves Tony Blair and George Bush, the main protagonists of the 'War on Terror', open to the charge that they are exploiting a new politics of fear that actually assists the terrorists. The attitudes the idea betrays encourage the authorities to overlook the need for a proportionate response to the menace and to adopt measures that are justifiable only in a real war or for a short-lived emergency.

David Blunkett, when Home Secretary, actually referred to historical examples of special measures taken in the midst of armed conflict to justify the counter terrorism powers that the government was then seeking. In his foreword to a Home Office consultation paper in February 2004, Blunkett wrote of how 'the American Civil War of the mid 19th century saw Abraham Lincoln suspending the right of habeas corpus …while in World War II UK without trial citizens were interned on British soil'.[5] (Wisely, he did not mention measures in Northern Ireland, a more exact parallel, which proved to be a huge blunder that swelled community support for the Provisional IRA.[6])

The new Home Secretary, John Reid, has however gone one further. He has likened the war against terror to Britain's war against Nazi Germany and has proclaimed, with sub-Churchillian embellishment, that the threat is worse than the cold war[7].

The measures now being taken and their impact are not geared to the immediate crisis. They are intended for the long-term. In her speech at the RUSI conference on terrorism on 16 February 2006, Hazel Blears, then the Home Office minister, said that Britain had to become accustomed to 'permanent anti-terrorist laws', adding,

> Probably we all would have had a genuine hope that terrorism would be a temporary phenomenon and therefore our laws could be

temporary. I think probably we are in a different position now.

Yet it is crucial in Britain's counter terrorism efforts to adopt measures that are proportionate to the risks that our nation must confront, to uphold democratic principles and to maintain moral and ethical standards; otherwise, our society may lose its way for two generations or more. This 'war' against usually invisible forces, often within our own society, cannot be won by the security forces and counter-terrorism laws alone. Extremist ideologies that promote hatred and terrorism can ultimately only be defeated on ideological grounds in free and open debate within a nation that upholds the rule of law and values of democracy, equality and freedom.

'Home-grown' terrorism

This report is largely focused on the response to what is now known as 'home-grown' terrorism. As late as March 2005, the intelligence agency heads and senior officials who form the Joint Intelligence Committee (JIC), the central body for assessing UK intelligence information on security, defence and foreign affairs, judged that 'suicide attacks' were unlikely in the UK and 'would not become the norm in Europe'. However, a JIC report in 2004 noted that the security services were targeting an unstated number of British citizens for investigation and judged that over the next five years the UK would be under threat from 'home-grown' as well as foreign terrorists.

The Intelligence and Security Committee (ISC), from whose review the above information comes[8], did however express concern that

> Across the whole of the counter-terrorism community the development of the home-grown threat and the radicalisation of British citizens were not fully understood or applied to strategic thinking.

and questioned the JIC judgement that suicide attacks were unlikely, commenting

> there were clearly already grounds for concern that some UK citizens might engage in suicide attacks, as the shoe-bombers and the bombers in Tel Aviv had done. We are concerned that this judgement could have had an impact on the alertness of the authorities to the kind of threat they were facing and their ability to respond

It is very hard to judge the scale of home-grown involvement in terrorist activity, as the authorities do not publish official estimates and release information in an unsystematic and ad-hoc way, often through the media or in speeches. The ISC report did not estimate the size of the 'large number of extremists in the UK' while acknowledging that the state of knowledge of the intelligence and security services about the scale of extremism is 'not substantial enough'.[9]

Press reports and official statements on and off the record present conflicting estimates of the scale of danger. At the time of the 9/11 atrocities in the United States, it was said that MI5 'knew' of about 250 'primary investigative targets' inside Britain. According to *The Times*, that figure had risen to 800 by 7 July 2005, and yet Peter Clarke told the RUSI conference in February 2006 that the police believed that there could be up to 500 fanatic terrorists in the country. *The Times* says that the figure is now over 1,200 while the *Scotsman* reports that 'anti-terrorism police and MI5 have identified as many as 900 people in Britain who they suspect could be linked to potential terrorist plots'.[10] On the other hand, the security consultant Charles Shoebridge estimated that the hard core of terrorists - by which he meant those with both the will and the capability to carry out attacks in the UK – may amount to as few as about 100 people.[11]

Official statements and media briefings use attempted terrorist plots as another measure of the menace. For example, Sir Ian Blair, the Metropolitan Police Commissioner, stated four months after the July 2005 bombings in an article in the *Sun* that the Met and the security service had prevented 'other attacks in the last few weeks . . . The sky is dark. Intelligence exists to suggest that other groups will attempt to attack Britain in the coming months.' In a meeting with families of victims in that outrage in May 2006, John Reid, newly Home Secretary, raised the stakes, saying that 20 'major conspiracies' had been uncovered. The government's official report on the London bombings, published in May 2006, stated, 'At least three further potential attacks have been disrupted since last July'. Two months later, the government's strategy report said that the police and security agencies had 'disrupted' many attacks against the UK, 'including four since last July alone'. By August, when Pakistani and British security forces and police moved pre-emptively to disrupt the alleged plot to 'destroy up to 10 transatlantic airliners', newspapers reported that a dozen 'similar terrorist plans' were being investigated, while John Reid, on BBC-2 *Newsnight*, said that he would not 'confirm an exact number' when asked about a report that twice as many investigations were underway.[12]

Part of the difficulty in establishing the scale of the danger lies in the tactics of the police and security forces; and the language that is sometimes used by ministers and in the press to describe their activities confuses the picture still further. The authorities have determined that the potential damage to life and property justifies the police and security forces in acting early to 'disrupt' potential terrorist plots; one of the reasons for the new offence of 'preparation of terrorist acts' is to give them the possibility of charging and prosecuting suspects at an early stage. The language of official reports takes care to use the word 'disrupt'; in the mouths of politicians conspiracies are 'uncovered' or 'foiled'. Take for example the arrests of 10 Iraqis in dawn raids in London, Derby and Wolverhampton on 8 October 2005; this conspiracy was reported by the *Sunday Times*, under the heading, 'Car bomb attacks foiled.' *The Observer* reported on 11 June 2006 that all those arrested had been released without charge. The ad-hoc nature of such reports and the elusive language in which they are couched make it hard to estimate how accurate they are as indicators of the scale of the terrorist menace.

A further degree of caution is advisable. For example, Sir Ian Blair's article in the *Sun* was designed to rally backing for 90-day detention without charge, while the *Sunday Times* report coincided with the then Home Secretary Charles Clarke's decision to press ahead with that proposal in Parliament.[13]

Simon Jenkins, the *Sunday Times* and *Guardian* columnist, argues forcefully that the chief risk we run is not of terrorists undermining western democracy but of the west absurdly overstating that risk:

> Editors who blazon every rumour on their front pages, politicians who hold weekly press conferences on 'international threat levels' and policemen who boast their tally of menaces averted are the arms salesmen of terror. Obsessed by the chimera of "absolute security", they seem comfortable only with a perpetual state of emergency. Such people are terrorism's accomplices.[14]

The simple fact is that, at least for now, the intelligence and security agencies almost certainly do not

know. Sir David Pepper, director of the Government Communications Headquarters (GCHQ) told the ISC,

> We had said before July [2005], there are probably groups out there that we do not know anything about, and because we do not know anything about them we do not know how many there are. What happened in July … rather sharpens the perception of how big …the unknown unknown was.[15]

And whatever the exact nature of the threat, no amount of security measures can guarantee absolute security. In the words of the Newton report on the Anti-Terrorism, Crime and Security Act 2001, 'It is in the nature of terrorism that it is impossible to prevent it completely'.

Meanwhile, it is surely incumbent on government to report on the potential terrorist menace in a regular and proportionate fashion? And on ministers, asked about alleged plots, as John Reid was on *Newsnight*, to respond openly?

Sympathy for terrorism

However, Shamit Saggar, Professor of Political Science at the University of Sussex and a former adviser in Prime Minister's Strategy Unit in the Cabinet Office, argues that there is a significant 'big known'. He says that religious and political extremism and a mixture of understanding and sympathy for those who turn to violence exists on a large scale among Britain's Muslim communities. Most commentary on the attitudes towards terrorism among the Muslim communities in the UK rightly asserts the law-abiding and moderate nature of Britain's Muslims. Professor Saggar suggests that there are three layers within the Muslim communities – the law-abiding majority, 'the men of violence' and the 'considerable minority' of Muslims in the middle, who express sympathy with the motives of the July 2005 bombers, refuse to judge them, or who 'would never grass on a fellow Muslim'. He describes these people as 'fence-sitters' who, as previously in Northern Ireland, may provide a ring of actual and tacit backing around the terrorists, ranging from sympathy to logistical support – and silence. Government policy must, he writes, understand, persuade and if necessary challenge the 'fence-sitters' – an objective which he regards as 'at least as big a job' as bearing down on the terrorists themselves.[16]

A Global Attitudes Study for the Pew Foundation, published in June 2006, also found that Muslims in the UK 'have much more negative views of westerners' across a range of poll questions than Muslim minorities in France, Germany and Spain – a finding that suggests again that there is a 'big job' for government and communities to take on.[17] In three polls held in the immediate aftermath of the 7 July bombings – ICM 2005, Sky Communicate Research and YouGov – the great majority of British Muslims refused to justify the suicide attacks (91 per cent, for example, in the Sky Communicate Research poll). Between 2 to 6 per cent agreed that they were justified – a small minority that however suggests that there is a pool of between 22,000 and 66,000 individuals, some of whom may be prepared to give some form of support for such acts of terrorism.[18] Similarly, a Populus poll for *The Times* in February 2006 found a small proportion, just 1 per cent of Muslims, agreed that the two July bombing plots were 'right' – about 11,000 people. There is a significant age differential in these findings: in the Populus poll, 1 per cent of those aged 34 or below agreed that it was 'right', and nobody aged from 35 or more did; in the ICM July 2005 poll, the 5 per cent who felt that attacks were justified broke down by age to 7 per cent among the under-35s, and 2 per cent among those who were older.

However, a NOP poll for Channel 4 in April 2005 found a very high percentage of Muslim respondents – 22 per cent in all – agreed that the attacks were justified. The way in which the question was framed may go some way to explaining this marked discrepancy, for they were asked whether they agreed with the view that the attacks were justified 'because of British support for the US war on terror.' One in four of respondents – 24 per cent – in the YouGov poll in July 2005 expressed sympathy with the feelings and motives of the four July bombers and over half – 56 per cent – replied that, whether or not they sympathised with the bombers, they could at least understand why some people might want to behave in this way.[19] An ICM poll, published in the *Sunday Telegraph* in February 2006 found 20 per cent of respondents, slightly fewer than in YouGov's July 2005 poll, agreed that, regardless of whether they thought the bombings were justified or not, they had 'some sympathy with the feelings and motives' of those who carried out the London attacks.

The results of a survey of Muslim students by the Federation of Islamic Student Societies (FOSIS) have provoked concerns. The FOSIS survey suggested that some 4 per cent would not condemn the London attacks and a further 11 per cent refused to condemn such attacks. Respondents were reported to be divided and equivocal over the key question for the intelligence and security forces of how they might deal with a potential suicide bomber among their ranks. 72 per cent said that they would contact the police or security forces at once, and another 6 per cent said they would first try to talk a would-be bomber out of his or her plans, but would contact the police if that failed. But a fifth of these students would not inform the law enforcement agencies with such critical and potentially life-saving information. Two per cent of them 'would never grass on a fellow Muslim'; another 2 per cent would not call the police because they were 'scared or mistrustful' of them; and the remaining 16 per cent did not say why they would remain silent.[20]

These would be alarming findings if they were representative of the body of Muslim students in the UK who are, as Professor Saggar points out, a 'better educated, human capital-rich group'. However, the published survey acknowledges serious limitations in methodology and our inquiries indicate that this was an internet-based poll essentially of FOSIS members who were asked also to get their friends and relatives to fill in the questionnaire. It is disturbing enough in that context, but it cannot therefore be regarded as a random representative poll of Muslim students, as it has been taken in some commentaries. [21]

Plainly Professor Saggar is right to express concern about these figures: they represent a form of warning. They need also to be interpreted with caution as they suggest no more than that Muslims are willing to try and understand and empathise with the feelings they think the young bombers were experiencing. The confused and equivocal response of young Muslims in our three focus groups, reported in Chapter 3, give some context to these findings. There is an element of 'fence-sitting' here, but it is not the whole story. Yet the experience of terrorism from within minority populations – as for example in Northern Ireland, the Basque country, Quebec – has shown that terrorists did rely and depend upon the sympathy, silence and support of a ring of people within those communities and that it was when that ring was broken that terrorism lost its way. The target then is not just the violent minority, but also the 'considerable minority' who would never participate in violence,

but who may give sympathy and silence. It must be a priority for the government, the intelligence and security forces, and the police to get those who sympathise with the bomber off Professor Saggar's 'fence'.

It is our view that the government's counter terrorism laws and the thrust of policy and rhetoric are actually doing more harm than good. The vast majority of people, non-Muslim and Muslim alike, want the police and security forces to apprehend the terrorists. However, mounting heavy police raids in pursuit of the 'violent extremists bent on destruction', hectoring Muslim parents to spy on their children, raising a 'healthy debate' about women who wear the veil, may play well with the *Sun*'s readers and the electorate at large, but it is all likely to drive a wedge between the Muslim and non-Muslim communities and to make it harder to win over the minority of those who feel sympathy with terrorists in Muslim communities. This model of counter terrorism is as dangerous as terrorism itself.

The impact of foreign policy

There is an international dimension to terrorism in the United Kingdom, in terms of the danger of attacks by foreign terrorists from overseas, specific links with Al Qaida and other foreign extremists, and more generally through the influence of ideology and perceptions of the persecution of Muslims around the world and the UK's part in such persecution. The Home Office suggests, for example, that the 7 July bombers were motivated by, 'Fierce antagonism to perceived injustices by the West against Muslims and a desire for martyrdom'.[22] We discuss the significance of ummah, the global Muslim communion which establishes concern for the well-being of Muslims abroad among their fellows in the UK, later in this report (in Chapters 2 and 3). However, the video message of Siddeque Khan, who led the 7 July suicide bombers, clearly reveals the links in his mind between commitment to terrorism in the UK and the 'atrocities' of the west against Muslims around the world. In his message, broadcast on 1 September 2005 on Al Jazeera, he said:

> Your democratically elected governments continuously perpetrate atrocities against my people all over the world. And your support of them makes you directly responsible, just as I am directly responsible for protecting and avenging my Muslim brothers and sisters. Until we feel security, you will be our targets. And until you stop the bombing, gassing, imprisonment and torture of my people, we will not stop this fight. We are at war and I am a soldier.

Khan's message also praised Osama Bin Laden and Ayman al-Zawaheri, Al Qaida's now dead terrorist chief in Iraq, and al-Zawaheri appeared on the same tape in a separate recording, praising the 'blessed battle' which had transferred to the 'enemy's land'. Al-Zawaheri later claimed credit for the 7 July attacks. It is known that Khan visited Pakistan in 2003 and spent several months there with Shazad Tanweer, another of the bombers, in 2004-05. It is possible that they met Al Qaida figures then and they almost certainly undertook training while there; and British intelligence suggests that they may have received advice or direction in the run-up to 7 July. However, whether Al Qaida was involved in or knew in advance of the attacks is unclear.[23]

The historical trajectory and ideology of Al Qaida is now relatively familiar. As Phillip Knightley, the investigative journalist who has specialised in secret intelligence put it to us, Al Qaida is not a single hierarchical organisation, but should be regarded as a 'franchise operation'[24] or, as the Home Office describes it, 'a network of networks'.[25] The fragmented nature of Al Qaida makes its influence, the nature of the threat it poses, or even who can properly be described as an 'Al Qaida figure' difficult to assess, in the UK as elsewhere. Who were the 'contacts' the 7 July bombers had with people in Pakistan in the run up to the bombings? Who else in the UK may have helped 'radicalise' or incite Khan and the group, or gave 'direction and advice'? The fact is that the search for positive links between Al Qaida and home-grown terrorism has been something of a red herring. The intelligence community divided assessments of the connections of British-born terrorist individuals and networks into three categories: Tier 1 links described a direct link with 'core' Al Qaida (as in the 9/11 strikes in the United States); Tier 2 with individuals or groups loosely associated with Al Qaida; and Tier 3 those with no links who might be inspired by its ideology. Since May 2005 the Joint Terrorism Analysis Centre (JTAC), the body which pulls together and analyses all available data on the terrorist threat has assessed the majority of terrorist individuals and networks in the UK as belonging to Tier 3 (as did the Madrid train bombers of March 2004).[26]

Among other aspects of international terrorism, the intelligence and security forces have revealed that foreign-born militants living in Britain are assisting and financing attacks overseas, including suicide attacks in Iraq against US and UK forces; and that British-born militants leave this country to join the insurgency in Iraq with the assistance of organisers who remain here.[27]

Holding the balance

Confronting terrorism from within as well as from without is a fraught and complex task for any government. As we have pointed out above, first and foremost there is the crucial challenge of holding the balance between public safety and fundamental democratic liberties and values. On safety, as one participant in the seminar on this report in draft commented, 'the politicians are terrified of failing the people'. But there is also for any government the fear that it may be held culpable for a major atrocity or a series of blunders and thus lose the public support that its continued existence in power depends upon. So ministers will wish to arm themselves as powerfully as possible against the immediate threat. There is also real pressure on government to provide greater assurance of security against terrorism – and hard choices have to be made as to what to do. Left to themselves, a significant number of the British public would be willing to see 'legal niceties' swept away and terrorist suspects rendered harmless here or removed from British soil by whatever means are necessary. In a democracy, the government must respond to legitimate concerns and consider the popular will, especially if it wants to remain in power – though ministers would be well advised to heed Walter Lippman's celebrated warning in the 1930s that public opinion always leads and lags at the wrong moments. Most certainly, they ought not to exploit public concerns and indulge in a politics of fear that plays into the hands of terrorists and acerbates community tensions. We hear a great deal about the poor leadership of the Muslim communities; but the government and political parties must show responsible leadership too.

For 'legal niceties', of course, read also the rule of law, human rights and traditional liberties. This government has to its eternal credit secured civil and political rights (and given passing protection to some economic and social rights) through the Human Rights Act. The destruction of our

commitment to democracy and such rights is one of the principal goals of the current wave of terrorism across the world. One of the more immediate goals of the terrorists is likely to be to exploit the state's sensitivity to the insecurities of majority opinion to provoke an over-reaction which could further alienate the Muslim minorities that are the focus of suspicion and thus make it easier for terrorists to build footholds within those communities.

As we shall argue, a continued commitment to the rule of law and respect for human rights is integral to a successful counter terrorism strategy. We can only defend the democratic and open way of life if we demonstrate a continuing commitment to its values and practice in the way we actually combat terrorism. (The abuse of human rights in the conduct of the American 'War on Terror' is a major obstacle to its successful conclusion.) At a more pragmatic level, the government's counter terrorism laws, policy and practice have to be informed by human rights canons of equality and proportionality if the police and intelligence and security agencies are to gain the trust in the Muslim communities that is essential to the successful prosecution of counter terrorism in the UK. New laws and new strategies of surveillance and 'disruption' may be required to root out terrorism. But they need to be introduced and prosecuted with agreement, care and sensitivity. We discuss these matters fully in Chapters 4 and 5.

Footnotes

[1] See reports in the *Daily Telegraph* and *Daily Mirror*, 17 February 2006

[2] Private information, but see also for example, 'Britain now No1 al-Qaida target', *Guardian*, 19 October 2006

[3] See, for example, Silke, A, 'Fire of Iolaus', in Bjørg, T (ed), *The Root Causes of Terrorism: myths, reality and ways forward,* Routledge, 2005: 242-248.

[4] Ackerman, B, *Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism,* Yale University Press, New Haven & London, 2006: 13

[5] *Counter-Terrorism Powers: Reconciling Security and Liberty in an Open Society, A Discussion Paper*, Cm 6147, TSO, February 2004: i.

[6] See for example Taylor P, *Provos: The IRA and Sinn Fein*, Bloomsbury 1997: 93 and 129-130.

[7] See the *Independent*, 1 November 2006

[8] The Intelligence and Security Committee, though made up of MPs and peers., is not a parliamentary committee. The Prime Minister appoints its members and they report to him and only through him to Parliament after he has excluded potentially 'prejudicial' information from any report. The committee's remit is to review the work and expenditure of the security apparatus. The ISC report referred to is its Report into the London Terrorist Attacks on 7 July 2005, Cm 6785, May 2006: 26-29.

[9] Ibid, pp. 29 and 30.

[10] McGrory, D, *The Times*, 3 June 2006; Kirkup, J, *Scotsman*, 11 May 2006.

[11] Interview with Charles Shoebridge, 3 March 2006.

12 See *The Independent*, 14 August 2006.

[13] *Report of the Official Account of the Bombings in London on 7th July 2005*, HC 1087, TSO, May 2006: p.30; and Blair, Sir Ian, the *Sun*, 2 November 2005; Reuters, 2 November 2005; *Sunday Times*, 9 October 2005; *The Times*, 3 June 2006.

[14] Jenkins, S, "The politics of fear", *Sunday Times*, 20 August 2006

[15] ISC report, op cit, p. 31.

[16] Interview with Shamit Saggar, 6 March 2006. See further Saggar, S, 'The one Per Cent World: Managing the Myth of Muslim Religious Extremism', *Political Quarterly,* forthcoming

[17] See www.bbc.news.co.uk, 23 June 2006

[18] As a third of the Muslim population is aged under 16, we have taken as our baseline for this calculation a total of 1.1 million. Some estimates of the potential pool use the 1.6 million figure for the total Muslim population as their baseline.

[19] YouGov poll for the *Daily Telegraph*, published 23 July, 2005. YouGov interviewed 526 Muslim adults across Great Britain between 15 to 22 July 2005.

[20] Federation of Student Islamic Societies, *The voice of Muslim students: a report into the perceptions and attitudes of Muslim students following the July 7th London attacks*, FOSIS, 2005

[21] Federation of Student Islamic Societies, *The Voice of Muslim Students, A report in to the attitudes and preceptions of Muslim students following the July 7th London attacks*, FOSIS, August 2005.

[22] *Report of the Official Account of the Bombings in London on 7th July 2005*, HC 1087, TSO, May 2006: 26.

[23] ISC report, op cit: 27.

[24] Interview with Phillip Knightley, 30 December 2005.

[25] *Report of the Official Account of the Bombings in London on 7th July 2005*, op cit.

[26] ISC report, op cit: 27.

[27] McGrory, D, *The Times*, 3 June 2006.

Chapter 2

The Muslim Communities

There is no such thing as the single monolithic 'British Muslim community' that our politicians and media discuss. The 1.6 million Muslim in the UK, constituting 3 per cent of the UK population, are remarkably diverse in terms of ethnicity, generation, British-born or new immigrant, birth-place, class and age. Muslims are the largest faith group after Christians and like them they also differ in terms of religious adherence. Census data show that nearly half (46 per cent) of Muslims living in Great Britain were born in the UK and nearly three quarters are of Asian ethnic background; in 2001, 43 per cent were Pakistani, 16 per cent Bangladeshi, 8 per cent Indian and 6 per cent of other Asian ethnic background.[1] There are also Arab, Afghan, Iranian, Turkish and Turkish Cypriot, Kurdish, Kosovar, east European, North African, Somali and 'white' Muslims. According to *Q-news*, the Muslim magazine, there are in all 56 ethnicities speaking almost 100 languages.

Muslims living in Britain are mainly young. The average age of the UK population is 40, the average age of the Muslim population is 28. Or put differently, a third of Muslims are aged under 16 (the national average is 20 per cent) and nearly one in five are aged 16-24 (national average,10.9 per cent).[2]

To understand the responses of British Muslims to counter terrorism legislation and policy it is important to understand how the current terrorist threat impacts on them. First, they are more likely to be the victims of a terrorist incident than the general population. This is mainly a result of settlement patterns; Muslims are concentrated in the large urban centres, which in turn are at greater risk of an attack. London, the most likely target of any terrorist attacks, is home to 40 per cent of the UK's Muslim population. Thus, although Muslims make up only 3 per cent of the UK population, more than 10 per cent of the innocent victims of the London bombings were Muslim.[3] Secondly, Muslims face the brunt of any backlash in the immediate aftermath of an incident. After the London bombings, attacks on Muslims (and those perceived to be Muslims) increased, ranging from arson and vandalism of mosques to physical and verbal attacks on individuals.[4] Thirdly, anti-terrorism policing and policy in response to such incidents disproportionately impact on the daily lives of Muslims.

This triple vulnerability must be placed in the context of communities in which many individuals already face social and economic marginalisation. In the view of Britain's most senior Muslim police officer, Assistant Commissioner Tarique Ghaffur, 'elements of the Muslim community have become intensely self-reflective, both in terms of individuals and communities. They remain inward looking and are still in "survival" mode, thinking and feeling victimised, disconnected and separated'.[5]

Social and economic disadvantage

Muslims in the UK are disproportionately represented in the most deprived urban communities. Three quarters live in 24 cities or authorities in the five major conurbations of Greater London, the West and East Midlands, West Yorkshire and Greater Manchester.[6] One third of the Muslim population live in the 10 per cent most deprived neighbourhoods.[7] The concentration of Muslims in the poorest city areas indicates not only how far they are marginalised, but also tends to create confrontational inter-faith and inter-ethnic interactions, resulting from fear and mistrust of the 'other side'.[8] 'Race hate' assaults on Muslims increased substantially over the national average in London and other conurbations after the London bombings;[9] and Democratic Audit research on the British National Party indicates that the far-right party gains electoral support in areas with Muslim communities of Pakistani or Bangladeshi origin.[10]

Two in five Muslims in England live in conditions of housing deprivation, rising to nearly half in different regions. The figure for the general population is 15 per cent.[11] One in three Muslim households live in overcrowded accommodation (as compared to 22 per cent of Hindu, 19 per cent of Sikh and 6 per cent of Christian households).[12] Muslim children are especially at risk from child poverty and bad housing conditions; over a third (35 per cent) are growing up in households where there are no adults in work – twice the rate for all dependent children; and 28 per cent live a household without a car or van (16 per cent for all dependent children).[13] These figures are particularly significant for the future, given the young age profile of Muslims in Britain.[14] In education, the available data indicate that the levels of academic achievement of Pakistani and Bangladeshi students are low, but improving.

Almost one third of Muslims of working age have no qualifications, the highest proportion for any faith group. But even those with degrees suffer discrimination in employment. A major study of the experience of graduates from the ethnic minorities seeking work found not surprisingly that degree classification has a significant impact on employment. Nonetheless, comparing students with first and upper-second class degrees, Pakistani and Bangladeshi graduates had a higher unemployment rate than all other ethnic groups. In fact, though unemployment is generally lower among students with higher classes of degree than those with lower class degrees, this general rule is reversed in the case of the Bangladeshi and 'Asian Other' groups. Proportionately fewer Bangladeshis with first class degrees enter into the top three occupational groups than any other ethnic group.[15]

Muslims are by far the most disadvantaged faith group in the British labour market. They are three times more likely to be unemployed than the majority Christian group. They have the lowest employment rate of any faith group (38 per cent) and the highest economic inactivity rate (52 per cent). Of young people aged 16-24, Muslims have the highest unemployment rate of all faith groups. 40 per cent of Muslims are in the lowest occupation groups, compared to 30 per cent of Christians. Muslim men are among the least likely to be in managerial or professional jobs and the most likely to be in low skilled jobs, especially in the distribution, hotel and restaurant industry. There are also indications that the deprivation and disadvantage experienced by many

Muslims in the UK may also have implications for their health status. In the 2001 Census, Muslims reported the highest rates of illness of all faith groups. Compared to other faith groups, Muslims also have the highest rate of disability.

Discrimination

Experiences of discrimination on the grounds of religion may also add to the sense of alienation. Evidence is growing of the extent of Islamophobia or anti-Muslim racism experienced by Muslims in the UK. Research prior to 11 September 2001 found that Muslims were the most likely to report 'very serious' problems or experiences in relation to seven out of nine indicators of unfair treatment.[16] 80 per cent of Muslims reported experiencing some religious discrimination in a 2004 survey of over 1,000 Muslims conducted by the Islamic Human Rights Commission (IHRC).[17] This large-scale survey echoes the findings of a joint study assembled by other Muslim organisations that since 11 September 2001, 80 per cent of Muslim respondents reported being subjected to Islamophobia; that 68 per cent felt that they had been perceived and treated differently; and that 32 per cent reported being subjected to discrimination at UK airports.[18] These are significant increases from previous surveys in 1999 and 2000.

The IHRC survey found a 'meaningful relationship between religiosity and discrimination'. Only about one in seven or eight Muslims who describe themselves as 'highly' practising'or 'practising'Muslims have never experienced discrimination while broadly one in four 'secular' and 'cultural' Muslims never did so.[19] In previous surveys there was a significant gender gap, with Muslim women experiencing higher levels of discrimination than men. It was assumed that this was because Muslim women were often more visible than men. However, the 2004 survey found the gender gap had closed. The Islamic Human Rights Commission suggests that one probable reason for this is the increase of harassment by security forces towards Muslim looking men.[20]

A BBC survey seems to indicate that discrimination does impact significantly on Muslims. In 2004, the BBC conducted a survey in which fictitious applications were made for jobs using applicants with the same qualification and work experience, but different names. One in four applicants with traditionally English sounding names secured an interview, compared with 13 per cent of applicants with black African names and only 9 per cent for applicants with Muslim names.[21]

The 2004 Home Office citizenship survey found that the ethnic group most likely to report facing religious discrimination in gaining employment were Bangladeshis (13 per cent) and Pakistanis (9 per cent).[22] 27 per cent of Pakistanis, 12 per cent of Indians and 7 per cent of Africans cited religion as a reason for being refused a promotion in the past five years.[23] In 10 opinion polls since 2002 Muslims have been asked if they have experienced hostility and discrimination. Around 30 per cent of Muslims consistently report experiencing some form of hostility directed at them (the actual figures range from 20-38 per cent). A poll in July 2005 asked Muslims about the kinds of adverse treatment they might experience:

- 14 per cent said they had experienced verbal abuse
- 3 per cent reported physical violence
- 5 per cent said they had been stopped and searched by police
- 32 per cent felt they had been the object of hostility; and
- 42 per cent felt they had been the object of suspicion.

Results from the 2005 Home Office Citizenship Survey indicate that Muslims were the most likely to feel that there was 'a lot' of religious prejudice in Britain today; a third of them took this view, as against a quarter of Christians. Over half (57 per cent) of Muslims in the survey said they felt there was more religious prejudice in the UK today compared to five years ago. One in eight Muslims said that they had experienced discrimination because of their religion from public bodies, with 6 per cent reporting discrimination by the police. Nearly one in four Muslims said they feared being attacked because of their skin colour, ethnic origin or religion. Nearly half (44 per cent) of Muslims who had experienced unfair treatment in the labour market with regard to promotion or progression, believed that it was because of their religion.[24]

The need for protection from religious discrimination has been a key demand of Muslim communities for over 20 years. The Home Office Citizenship Survey 2001 indicates that one third of Muslims feel the government is doing too little to protect the rights of people belonging to different faith groups in Britain.[25] Levels of dissatisfaction were higher among young Muslims (16-24 year olds), of whom 37 per cent felt that the government was doing 'too little.'[26]

The prominence of religious identity

Discrimination and disadvantage on the grounds of their religion may add to a sense of alienation or disaffection among Muslims in light of the importance of religious identity to them. Evidence from the fourth Policy Studies Institute (PSI) survey of ethnic minorities indicates that 95 per cent of Muslims consider religion to be 'very' or 'fairly' important to their lives (against 46 and 69 per cent respectively for white members of the Church of England and white Roman Catholics). [27] The Home Office Citizenship Survey 2001 indicated that, for Muslims, religion was the most important factor in describing themselves after their family. For Christians religion ranked seventh. [28] These findings are supported by other research that has tracked the rise, since the 1980s, of religion as a more significant marker of identity amongst Muslims than ethnicity.[29]

This Muslim mobilisation may be a response to racism or to the public devaluation and disparagement of Muslims and Islam that has led to increased in-group solidarity: thus, 'Islam provides both a positive identity, in which solidarity can be found, together with an escape from the oppressive tedium of being constantly identified in negative terms'.[30] Muslim political activism can also be seen as in part the 'politics of "catching-up" with racial equality and feminism'.[31]

It is important to understand the complex and diverse reasons for the foregrounding of religious identity by some Muslims. For example, for some young men a strong Muslim identity is a way in which to resist stereotypes of 'weak passive Asians', it can provide a positive role model as an alternative identity that they can have pride in, in contrast to their parents (who are seen as economically weak and disempowered) and as an alternative to the gang and drug cultures of the 'street'.[32]

For young women Muslim identity can be an important resource used to resist parents and to challenge family prohibitions. By evoking Islamic authority young women are able to negotiate greater freedom to pursue their interests, in education, employment and choice of marriage partner.[33] Within this diverse range of reasons for the foregrounding of Muslim identities there are some for

whom a Muslim identity is developed in opposition to and in rejection of ethnic and national identities.

The importance of religion to Muslims has also meant that Muslims have often mobilised as a faith community to gain greater accommodation of their needs from public institutions and organisations. The demand for accommodation indicates affection rather than disaffection, it indicates a commitment to Britain and a wish by the younger generation to make themselves more at home in Britain. The Preventing Extremism Together working group on regional and local initiatives set up after 7/7 notes that 'most Muslim organisations and communities are asking for changes within the state system rather than outside it. Most people want to be part of the mainstream, but a mainstream that reflects and is sensitive to their needs".[34]

Muslim identity is also important in connecting British Muslims to the experiences of Muslims in other parts of the world. The concept of the ummah, the global Muslim communion, is central to understanding the impact of international issues on Muslims in the UK. Participants in our focus groups used the metaphor of body in which all Muslims are a part in describing the ummah. The pain and suffering that is experienced by one part of the body is shared and felt by the other parts.

Thus, Muslim identity provides British Muslims with a connection to and concern for Muslims in Afghanistan, Bosnia, Chechnya, Kashmir, Iraq and Palestine where it is believed Muslims are being oppressed, persecuted and humiliated. The emotional connections to international issues that the concept of the ummah provides is central to understanding the levels of anger felt by many young Muslims. Interviews and focus group discussions confirm that for many Muslims opposition to specific aspects of British foreign policy, most notably the 2003 Iraq war, combines with frustrations at what are perceived as the double standards and inconsistencies in other areas of foreign policy, such as the UK's attitude towards Israel's treatment of the Palestinians (see further Chapters 5 and 7).

Role of Mosques and Imams

No-one knows how many mosques there are in the UK. Estimates range from 1,500 to over 3,000, most of which are in converted buildings, often terraced houses. The historian Professor Humayun Ansari notes that:

> By the mid-1980s mosques were serving a range of functions – as places of worship, as venues for religious education of both adults and children, as centres for the publication of religious tracts, and as libraries and bookshops. They offered funeral services and advice on immigration and social security and counselling services for families. Many could obtain resources to run mother tongue and English classes. Others tried to become effective community centres, organising activities for women, the elderly and the young. On a wider front they campaigned for social and political changes favourable to Muslims, acting as brokers between their communities and the institutions of the wider society.[35]

There is growing diversity and disparity in the roles that mosques play. A small but growing number operate as community centres. For example, the London Muslim Centre, attached to the East London mosque, provides facilities for education, health and welfare advice, a children's centre and a gym. However many mosques, while theoretically open to all, exclude others on the basis of gender, ethnicity and generation. These mosques provide an important space for first generation male immigrants to resist assimilation, navigate social exclusion and organise self-help. A case study of mosques in Bradford found that the leaders tended to deploy Islam as a resource for the re-construction of religious, ethnic and other boundaries. Their first generation members resist participation by younger men or women in the mosque life. They feel the gap between their social position previously in Pakistan and their invisibility here. Many are unemployed and the mosque helps to address the spiritual and social impact of long-term unemployment.[36]

As first generation male migrants remain in control of most mosques, they reflect their priorities and needs rather than address issues of relevance to young people. For example, the sermons during Friday prayers are in their mother tongue, rather than English. The imams are often from the country of origin of this first generation and are less able to communicate with and understand the world of Muslims born and brought up in the UK. Despite this most young Muslims will have significant contact with the mosque as many provide supplementary schooling. There are no precise data on the number of young Muslims attending supplementary schools but they are thought to have very high attendance, especially amongst young children. It seems that many Muslim children attend community or church primary schools in the day and attend mosque or other Islamic schools for up to two hours every evening, 'to learn about their religion'.[37]

The quality of education delivered through the mosque sector varies considerably. Some mosques have well-trained teachers and good resources; in others, teaching is often by rote learning with less emphasis placed on understanding and exploring ideas. Young Muslims who complete their religious education in the mosque sector are able to recite prayers and read the Koran and have a basic knowledge of Islam. However, they often lack detailed knowledge of the history and traditions of Islam – knowledge that would provide them with the tools to fully engage with their religion. Thus mosques and imams may contribute to the risk of radicalisation not from what they preach or teach but from their failure to adequately teach, inform and educate young people about Islam and its place in society and life.

The Muslim campaigning group, the Muslim Public Affairs Committee, suggests that the reluctance of imams and those who control mosques to address the political and social issues that concern young people, and to involve them in the running of mosques, adds to the alienation of young Muslims. Others have suggested that 'young British Muslims face a double exclusion: from wider society and from conventional leadership roles within their own communities'.[38] It is this marginalisation and ignorance that organisations that promote violence seek to exploit. It has been noted that 'many who have become radicalised have little knowledge of either Arabic or Islam, what knowledge they do have is either from "recruiters" seeking to radicalise youngsters or from radical Internet sites'.[39]

One of the recommendations of the Preventing Extremism Together working group on Mosques and Imams was the creation of a Mosques and Imams National Advisory Board (MINAB). The role of this body would be:

- To be a repository for good practice
- To provide guidelines on the accreditation and eligibility of imams and ensure that the profession attracts suitable young 'home-grown' talent

- To provide guidelines on legal requirements for mosques and imams
- To take up the issue of ill-paid imams
- To provide training for mosque management committees
- To act as a voice for mosques and imams and as a unifying link between mosques and imams from different denominations in the UK
- To encourage the participation of young people and women in mosque structures
- To assist mosques and imams in playing their role in community cohesion and combating extremism[40]

Identity

The idea that people can hold within themselves multiple identities and loyalties ought not to seem strange within a heterogeneous nation such as the United Kingdom, but Britain's political classes seem to be undergoing an 'identity crisis' when it comes to considering the conflicting loyalties of British Muslims. Young Muslims were for us the key group. We held three focus groups with young people of Pakistani origin in Bradford, young Bangladeshi women in south London, and young Somalis in Waltham Forest; and we report in detail on their views and experience of life in the UK in the next Chapter. We also carried out a survey of young Muslims participating in new media communication on the net, which we report on here.

Out there in the media, young Muslims boldly proclaim their sense of ease with their various identities. As television producer Navid Ahkter said, 'I am absolutely British. I am absolutely Pakistani. I am absolutely Muslim. I am all of those'.[41] Shahed Alam, a trainee auditor from Oldham, said, 'All these loyalties – religious and cultural run parallel and I think that is good.'[42] In our focus groups the young Pakistani men and Bangladeshi women all declared themselves as British, but their feelings of belonging, either in the UK or their countries of origin, were ambivalent. Thus the young Pakistanis expressed the tensions of being Muslims in a secular and for them decadent western society and found comfort and security from living in the Pakistani community in Bradford. As research for the Commission for Racial Equality in 2005 found, 'identification with ethnicity was strong' among all ethnic minority participants 'because ethnicity was deeply connected with the emotional space of "home": food, family, traditions, a sense of belonging to a community and, in some cases, language. It was associated with ease and familiarity.'

Indeed, their research (among white English, Welsh and Scots as well as ethnic minorities) found that 'perhaps against expectations it would seem that ethnic minority participants (except for black Africans) who lived in England were the ones who most strongly identified themselves as British'. However, religion was also a dominant source of identification for Muslim participants (though no-one interviewed saw Islam and Britishness as fundamentally incompatible).[43]

The CRE study also found that many Muslims dislike being asked to rank their various identities:

> Many Muslim participants deplored the fact that they were as they saw it, implicitly or explicitly being asked to 'choose' between these two identities [Muslim and British], both by the British people and the British government. They felt very strongly that this test of their 'loyalty' was both misguided and unfair since nationality and religion are not mutually exclusive.

The study continues "Perhaps most critically, British Muslim participants argued that the very question made them feel like 'outsiders' and served to reinforce their attachment to their faith:

> I am British from head to toe, but I am a Muslim British. So that's what the establishment doesn't like. They want us to leave the Muslim side and stand on the British side.

> You really feel like an outsider when they ask you to choose [between Islam and Britain]. Why should I choose? Nobody asks you to choose between being a Church of England and a British.

> I felt British until this media barrage came on to the Muslim community. It's questioning me, whether I'm British or not because someone is setting the boundary of what it means to be British and they are trying to make us fit into that system or be left out of it; but the thing is we've been here all these years already and I wouldn't change now and they start aggressive talk and it's not very nice what's going on around us now. So until now, I did feel quite British, but it's making me question myself.[44]

Shareefa Fulat, Director of the Muslim Youth Helpline challenges the assumption that young Muslims are having an idenitity crisis:

> More young Muslims than we usually give credit for don't have any real problems straddling two cultures. Most young Muslims are quite comfortable with their dual or rather multiple identities as something that enriches their lives and from which they can effectively choose and pick the best of both worlds. They have become quite expert at negotiating both worlds without a second thought and are quite comfortable existing in and between both – sometimes in ways that are mutually exclusive and contradictory, but sometimes in quite an effortlessly fluid way, sliding in and out of each as you would change your clothes for different occasions.

In her experience, 'the problem arises when young Muslims are demanded to belong exclusively to one or the other, and any link to one undermines their belonging to the other. The reality is that most young Muslims are quite critical of aspects of both worlds and yet this brings into question their right to belong. It has begun to feel like Muslims must be more English than the English to prove their belonging to Britain – to not only condemn terrorism but condemn it louder and more frequently than anyone else – to embrace liberal ideas that even middle England would not be expected to'.

It is this attitude, she argues, that leads many 'to feel like they belong wholly to either British society or to the communities of their parents' cultures of origin' and that 'questions of Muslims and integration seem to centre around what Muslims must accept rather than what they have to contribute.'[45]

Opinion polls constantly ask Muslims whether they consider themselves Muslim or British first. Ignoring for a moment the problematic nature of this question, the answer received can depend on the options available. For example, in the Pew 2006 poll 81 per cent of Muslims in the UK said they considered themselves as Muslim first, 7 per cent British first. By contrast, in a Sky News poll in 2005 46 per cent said British first and Muslim second, 12 per cent Muslim first and British second and 42 per cent said they did not differentiate. This latter option was not available to the respondents to the Pew Poll. In

the 2006 NOP/Channel 4 Poll, 38 per cent said they felt strongly that they belonged to both Britain and to Islam. Three quarters of Muslims said that their sense of belonging to Britain has not changed as a result of 7/7; for 14 per cent that their sense of attachment has increased and for 10 per cent that it has decreased.[46]

The question of whether Muslims feel loyal towards Britain is also shaped by the way in which the question is posed. Muslims asked directly about their own sense of loyalty to the UK indicate high levels of loyalty to Britain. In a YouGov poll in July 2005 and in a ICM poll in 2006, nearly half of Muslims said they felt 'very loyal' to the UK and between a third and 42 per cent 'fairly loyal' to the UK. Only 6 and 5 per cent said they 'did not feel very loyal' and those reporting 'not feeling loyal at all' numbered 10 per cent in the YouGov 2005 poll and 2 per cent in the ICM poll. However, the figures for those feeling loyal are significantly lower if the question is framed so that Muslims are asked to consider how loyal they think 'Muslims' feel towards the UK. Given the diversity of the Muslim communities in the UK the failure of Muslims to get this question right is hardly surprising.

The extent to which framing can affect outcome is best seen in a question posed in the 2006 NOP/Channel 4 poll. The headline report was that 24 per cent of Muslims see the UK as 'their country'. However, the actual question posed was, 'When you see the British Union flag do you feel "that's my country" or "that's their country" ?'. Thus the replies reflected ambivalence toward the union flag rather than the UK. By contrast, 88 per cent of Muslims agreed with the statement, 'when a British team does well in international competitions, such as sporting events, I feel proud'. The figure for all people in the UK was 90 per; and as many non-Muslim and Muslim respondents, 7 per cent of each group, disagreed.[47]

Shared cultural experiences

Young Muslims are active participants in the new media technologies and they have their own chat rooms and channels on the web and digital radio. The Muslim Youth Helpline http://www.myh.org.uk/ is a national telephone and e-mail counselling service which, along with its sister project Muslimyouth.net, is focused on young people. The exchanges of young Muslims on these and BBC sites underline feelings of Britishness by referring to shared cultural experiences: being brought up in Britain; going to the same schools; watching the same TV programmes as everyone else:

> I was brought up on Spiderman and the Teenage Mutant Hero Turtles. I have a different education and different interests to my parents.[48]

> Anyone who is born here regards themselves as a Brit regardless of whether they are Muslim or whatever faith. I look at European telly and the American blockbusters and prefer British irony and understated wit ANY DAY! I also find that having grown up here, I relate to the literature, programmes, sense of humour etc more.[49]

The web also reflects a very British interest in sport or at least football and cricket where Pakistani men (the figures are available only for ethnicity, not religion) play more than the national average for all men. They would, as one interviewee said wryly, fail Norman Tebbit's 'cricket test' for loyalty to English cricket teams, but not in football. (In Bradford for our research during the World Cup we saw many Pakistani taxis and houses bedecked with St George flags.) Here also are typical exchanges from the online version of the magazine, *The Revival: The Voice of Muslim Youth*:

> MuslimSisLilSis wrote: does anyone else think that the flags attached to cars and houses looks so chav?

> First Reply: yep totally today i saw the funniest thng this geezer had one england flag n the other one was a bangladeshi flag integration or what,bangladesh aint in the world cup

> il be supporting England.

> Second Reply: Yes but I understand it and even respect it. I think we should all back England to the hilt and say stuff like "England are gonna win.

> Third reply: But not to the point where we're chanting WW2 songs and doing the Nazi salute as the radio was saying this morning, number of Brits been arrested in Germany for this … muppets."[50]

In fact, the desire to rank identities, saying for example, first I am Muslim and secondly British, only seems to manifest among the more radical elements. Members of Hizb ut-Tahrir tend to express a more separatist approach. Rachel Pillai, a researcher on migration and citizenship, says: 'Muslim citizenship is already the subject of intense debates within the community itself between "separatist" radicals and mainstream groups which favour integration and participation.'[51]

The myth of "self segregation"

The Cantle report into the riots and disturbances in three northern towns in 2001 suggested that white and minority ethnic communities in those towns were living a 'series of parallel lives'.[52] The nuanced analysis of the issues presented in the report was lost in the subsequent public discussion in which Muslims alone were perceived to be seeking segregation from wider society. Last year Sir Trevor Phillips, then head of the Commission for Racial Integration, gave his celebrated warning that Britain was 'sleeping walking into segregation'. This summer politicians of both main parties have seized on the idea of Muslim 'apartheid' or 'separateness', now in the context of the menace of terrorism, in ways which will actually drive Muslim communities within themselves and which have provoked racial attacks on Muslims.

There is however no evidence to support any claims of self segregation – of Muslims preferring to live in Muslim-only areas or even predominately Muslim areas. The evidence does not even support the the Bradford review team's suggestion in its 2001 report that 'there was a worrying drift towards self-segregation among south Asian communities in the city.'[53] A recent study of segregation at Manchester University, examining indices of segregation, found that levels of segregation had not increased over the past decade.[54] There are clusters and concentrations of south Asian Muslims in particular areas of Bradford, and these concentrations have grown. But more than half the growth in the populations in these areas are accounted for by natural growth in the population as new migrants have families and are not old enough to suffer many deaths.

At the same time, an academic paper notes that 'there has been movement out from those clusters by individuals and families. The movers are those who can afford something other than the inadequate housing associated with low income; they have avoided the unemployment endemic where once-welcoming industries have failed'[55] This picture is confirmed by another academic finding that by 2000 10 per cent of Muslims in Bradford were living in the more affluent suburban areas. This shift, the paper argues, is indicative of growing class differentiation within the British Muslim population of Bradford and counters the pervasive myth

of inner-city segregation. Growing inner-city clustering is therefore being accompanied by the slow outwards movement of British Muslim people. Further, 'given ethnic inequalities in access to power and resources, the sustained patterns of settlement in deprived inner-city living are more likely to reflect the choices of white, non-Muslim people and institutions'.[56] Focus groups for this study revealed that there were 'white' areas where Bradford's Asian Muslims would not go, but that reasons for this were not related to a desire for self segregation, but sprang from fear of racism, ethnic tensions and racial harassment:

> fear…continues to act as a powerful constraint on spatial mobility, and many families, including some middle-class households, opt to remain in the inner-city ethnic clusters for defensive reasons… many British Muslim families value residential clustering, for reasons of culture and tradition, familiarity, identity, and security. The desire for separation from others is not self-evident. Their spatial segregation in poorer neighbourhoods largely reflects bounded choices, constrained by structural disadvantage, inequalities in the housing market (past and present), worries about racism, and . . . racist harassment. The geographies of British Muslim settlement in Bradford reflect the intersection of class and 'race', with poverty as well as racism providing a brake on mobility for many [57]

In Oldham, one of the other cities that experienced disturbances in the summer of 2001, a CRE investigation in the early 1990s found that segregation was the consequence of racial discrimination in the allocation of council housing.[58] Arguments supporting self-segregation become even more difficult to sustain if we look beyond the northern mill towns to London, home to 40 per cent of the UK's Muslim population. Professor Ceri Peach notes that 'all Muslims…in England are currently living in wards with mixed populations'.[59]

The research literature is reinforced by opinion polls which indicate that the majority of Muslims are quite integrated into British society. One indicator of integration is having close friends beyond the group. In the Populus/*Times* 2006 poll, 87 per cent of Muslims said they had a close friend who was a non-Muslim, echoing an ICM poll in November 2004 in which only 6 per cent of Muslims reported having no non-Muslims friends and 11 per cent very few. In the ICM poll, 37 per cent of Muslims said they had a lot of non-Muslim friends, 25 per cent 'quite a few' and 21 per cent a few. The polls also suggest that younger people are more likely to have non-Muslim friends than older people and Muslim women are more likely than Muslim men to do so. Some 94 per cent of Muslims rejected the idea that Muslims should keep themselves separate from wider society.[60] However, one third of Muslims would like to have Muslims as neighbours.

Far from being averse to integration, many Muslims also tell pollsters that they need to do more to integrate. In three ICM polls, between 33-40 per cent of Muslims said Muslims needed to do more to integrate, 28-32 per cent said the level of integration by Muslims was about right and 18-26 per cent that Muslims had done too much to integrate. In a 2006 Populus/*Times* poll over two thirds of Muslims agreed with the statement that the Muslim community in Britain needs to do more to integrate into mainstream British society. The difference in the results between the polls may reflect a change in attitude among Muslims, but may also reflect the difference in the way the questions are framed. In the 2005 BBC Multiculturalism poll Muslim views on a whole series of issues on the demands that Britain can make on new migrants didn't significantly differ from those of the UK population as a whole, issues including for example, pledging primary loyalty to Britain, allegiance to the national flag and Crown, integration fully into British society and acceptance of the rights of women as equal citizens (where there was virtually universal agreement at 96 and 95 per cent).[61]

Radicalisation

Understanding why and how young people are radicalised into violent extremism remains limited. But such understanding of the circumstances that motivate those who turn to extremism and terrorism and what external factors can do to create those circumstances is vital to the UK's long-term counter terrorism strategy. What can we learn firstly from the community of experts on terrorism? Dr. Tore Bjørgo, a leading researcher into terrorism and political violence, has edited the findings of a conference of 30 international experts on terrorism in Oslo. One of these is Dr Andrew Silke, of the Centre for the Study of Terrorism and Political Violence, University of St Andrews. According to Silke, experts in terrorism have long recognised that a key motivation for those joining a terrorist cell or organisation ultimately revolves around a desire for revenge that makes them willing to sacrifice their integrity, social standing, personal safety and even their lives. The desire for revenge and the willingness to seek it violently are tied to self worth – feelings of shame, humiliation, loss of face – retribution and deterrence.[62] How far such feelings may be inspired among British Muslims by the oppression of other Muslims abroad or the disadvantages from which they suffer here is unclear.

In the same symposium, Jerrold M. Post, former director of the CIA Center for the Analysis of Personality and Political Behavior, observed that charismatic figures, especially if they are clerics, can play a significant role in grooming young men for terrorism and justify killing by quoting verses from the Koran and invoking the name of God.[63] Post's view adds weight to the government's emphasis upon the 'glorification' of terrorism and attempts to deport 'preachers of hate'; and possibly to the inference that might lie behind Eliza Manningham-Buller's observation in the Intelligence and Security Committee (ISC) report on the London bombings that the speed of radicalisation of some of those involved in the July attacks was unexpected, suggesting that violent radicalisation 'could be created in a very short time and through a very quick process'[64] – that is, that their leader Khan or another charismatic figure might have radicalised other bombers. However, as Tore Bjørgo himself adds, it is important to abandon any official tendency to regard terrorists as the passive pawns of manipulative masterminds, extremist clerics or social, economic and psychological forces. 'It is more useful to see terrorists as rational and intentional actors who develop deliberate strategies to achieve political objectives.'[65]

Be that as it may, the spark that ignites violent terrorism requires tinder and as yet the significance and role to be attributed to a range of backgrounds factors, such as relative socio-economic deprivation, ideology and foreign policy – in other words, the tinder – remains unclear. The July 2005 bombings in London 'overturned' the police understanding of the processes which turn young Muslim men into radical extremists, as Assistant Commissioner Andy Hayman told the ISC; 'we were working off a script which actually has been completely discounted from what we know as reality,' he said.[66] There was previously a tendency to assume that, for example, men of South Asian or North African origin were more likely to engage in terrorism, or that

terrorists were more likely to come from socially or economically deprived communities. The security forces now recognise that the threat is more diverse and that 'there is no simple extremist profile'. Thus the authorities have a new 'script' that understands that the threat is as likely to come from young men who are well 'assimilated' into mainstream British society, 'with jobs and young families, as from those within socially or economically deprived sections of the community'.[67]

The Home Office working groups set up after the July 2005 bombings show that Muslims also differ in their views on the causes of violent radicalisation. The working group on engaging with young people noted in their report that 'there is no single pathway into extremism – individuals can come from a range of ethnic, socio-economic backgrounds'.

However they recognised that 'the one common denominator is the existence of an ideology that is rooted in political grievances but articulated with reference to a mistaken understanding of Islam, and the lack of legitimate outlets with which young Muslims are able to register protest and dissent'.[68] The working group on regional and local initiatives argued that it was important to acknowledge that deprivation was one factor in a chain of circumstances that could possibly lead to 'extremism', political or religious.[69] The working group on tackling extremism and radicalisation noted that 'the radical impulse among some in the Muslim community is often emotionally triggered by perceptions (sometimes true, some times false, sometimes exaggerated) of injustices inherent in western foreign policies that impact on the Muslim world'.[70] The working group on security and policing commented on the dangers of developing policy without a clearer evidence base. In their view it was important to have 'an interrogation and understanding of the root causes of terrorism (e.g., discrimination, deprivation and alienation facing British Muslims; UK foreign policy; the plight of Muslims across the world, etc), their respective weight and how they relate to each other'.[71]

An analysis by the Dutch government suggests that three aspects play a role in the process of 'radicalisation': the individual process, the interpersonal dynamic and the effect of circumstances. In the individual process, radicalisation is seen as one possible outcome from the search for identity. For young people in particular the search for identity is part of the process of defining one's relationship with the world that usually takes place without 'radicalisation'. 'Radicalisation' therefore also requires an interpersonal interaction with other actors who stimulate and influence the radicalisation process. However, it is also suggested that there is evidence of radicalisation that does not require a direct external actor directing the process but involves persons going through a process together and reinforcing the ideas in each other. Finally, 'social and geopolitical circumstances . . . may act as an initiator of an individual process or they can stimulate the inter-personal process'. Thus continuous political and media focus and examination of Muslim communities can generate a sense of siege and in turn reinforce a cycle of polarisation. It is within this context that counter-terrorism policy must be implemented.[72]

And here it is important to bear in mind Andrew Silke's warning that the state's counter terrorism measures 'can profoundly affect the nature and lethality' of terrorist violence and that any analysis of the causes of terrorism which does not consider state responses runs the risk of being dangerously 'limited and flawed'.[73]

It is also important to make a distinction between individuals who are involved in 'radical' organisations (and those organisations as well) and those individuals who become 'violent radicals', prepared to use unlawful violence to further any radical position. We need greater understanding about the precise relationship between these two positions. Some officials we interviewed suggested that radical organisations, particularly those that are clear in their opposition to violence (such as Hizb ut-Tahrir, the radical organisation the Prime Minister is pledged to proscribe) provide a mechanism for diverting people away from violent radicalisation, while others suggested that for some individuals such organisations provided a stepping stone towards violent radicalisation.

Shariah law

In several polls Muslims have been asked their views about Shariah law. In response between 30 and 60 per cent of Muslims indicate that they would like to see Shariah law introduced into the UK, and these figures are given great prominence in media reports. But it is necessary to be cautious in interpreting the responses to questions of this kind, and indeed in reporting on them. The Shariah law of popular legend among the majority is generally portrayed as harsh and unforgiving, with cruel punishments such as stoning people found guilty of adultery to death.

But for many Muslims in the UK, a benign form of Shariah law already plays a significant role in various aspects of their lives here; it covers norms and rules on issues ranging from rituals relating to daily prayers, dress and dietary rules through to rules on marriage, divorce and inheritance. These laws do not in most areas conflict with British law. Thus questions that ask Muslims whether Muslims should be able to live by the rules of Shariah law or whether Shariah courts should be introduced do not clearly reflect what their responses mean for no attempt is made to put their answers in the context of their daily lives as Muslims. Many Muslims organise their lives on the basis of their understanding of Shariah law; in the absence of the official recognition of Muslim personal laws, informal Shariah courts have operated in the UK since the 1970s.

The Islamic Shariah Council emerged from attempts in 1978 by a group of London imams to resolve issues where laws were in conflict. Its principal functions include: resolving disputes between British Muslims; providing religious opinions in answer to questions from organisations or individuals; and resolving conflicts of law between civil British and Shariah law, particularly in family law. So Muslims asked about the introduction of Shariah law in the UK may be asking for the recognition of religious rules that already operate informally. Furthermore, there is ambiguity in the way the questions are phrased. Are they being asked whether they support the creation of Shariah courts? Or the recognition of Shariah law as a general principle based on freedom of religion? Or whether they recognise that Shariah law is important for some Muslims? Or whether they would like to be able to take relevant disputes before a court that recognises their religion? The ambiguities inherent in such questions may account in part for the different responses they produce. For example, in 2004, 61 per cent of Muslims agreed that 'so long as the penalties do not contravene the British law, they would support Shariah courts being introduced in Britain to resolve civil cases within the Muslim community'. In 2006, 40 per cent supported the introduction of Shariah law into areas of the UK with large Muslim populations. In the NOP/Channel 4 in 2006, 30 per cent of Muslims said they wanted to live under Shariah law, as practised in countries such as Iran or Saudi Arabia while 54 per cent chose to live under

British law.

Canada introduced Shariah courts a few years ago, but soon abandoned the initiative amidst protests. Dr Aziz Pasha, who has been campaigning for Shariah law in family matters through his Union of Muslim Organisations, raised the issue with Ruth Kelly, the new Communities and Local Government Secretary. Meanwhile many Muslims will continue to act with reference to Shariah norms. If Ruth Kelly is able to consider the issues dispassionately, she could first identify situations where UK law prevents Muslims from acting in line with Shariah norms that they wish to observe, and then consult on the need for change.

Actually this sort of official response has occurred. Since the 1960s statutory exemptions have allowed for the slaughter of animals in a manner required by Shariah norms for the preparation of halal meat.[74] In 2004, the Treasury made changes to stamp duty to enable financial institutions to offer mortgages to Muslims in compliance with Shariah norms. Secondly, she may consider situations, in areas like inheritance, marriage and divorce, where Muslims are not prevented under British law from acting in compliance with Shariah norms, but the state does not then officially recognise their actions. Already, for example, changes have been made to register marriage ceremonies performed by imams and so to obviate the need for a civil ceremony.

Muslim attitudes towards integration

Understanding the reality of Britain's Muslim communities is difficult as the communities are diverse and in a state of dynamic change, both in response to generational changes and political events. There is a danger in the current climate of intense scrutiny and examination of Muslims in Britain that stereotypes and prejudicial assumptions are circulated in both the public discourse and in policy circles as a common sense that then forms the basis of policy decisions. For example, the demand for accommodation of their religious needs or more visible expressions of Islamic identity can be mistaken to be signs of segregation when they may in fact be confident statements of integration and readiness to participate. Here, even the Minister for Communities, Ruth Kelly admitted that until 2005 she 'along with many people, probably thought that some people wear the hijab not through choice but because they were expected to.' When she then met a group of Muslim women, she said, she 'found exactly the opposite' and her conversation with them 'challenged her assumption about the hijab'.[75] During the media frenzy that accompanied Jack Straw's remarks about Muslim women who wear of the niqab and the discussion of the veil-wearing woman Muslim class assistant, what seemed to go largely unnoticed, was that in both instances the women were not withdrawing or separating themselves from society but rather seeking engagement with the political process and the labour market and education system. These 'conflicts' emerge precisely because Muslims are seeking to negotiate greater participation and integration in society.

While, therefore, there is talk of communities 'sleep walking' into segregation, the evidence suggests that for Muslims there are no normative barriers to integration but rather the barriers that exist are structural. Discrimination and social and economic deprivation remain central to the experience of Muslims living in Britain today. Perhaps the most surprising finding in polls of Muslims is that despite all this, Muslims remain more optimistic about the UK, than the UK population as a whole. In 2006 half the Muslims polled said they were satisfied with the way things are going in Britain, compared to only a third of the general population. Nearly three quarters of the general population were dissatisfied with the way things are going, but only two thirds of Muslims.

Footnotes

[1] Office of National Statistics, *Focus on Religion*, London, ONS, 2004: 5-6, available at http://www.statistics.gov.uk/downloads/theme_compendia/for2004/FocusonReligion.pdf (accessed 20 October 2004), (hereafter, ONS, *Focus on Religion*).

[2] ONS, *Focus on Religion*

[3] Home Office, *Preventing Extremism Together*, Report of the Home Office Working Groups, Home Office, 2005:76.

[4] See: *The Impact of the 7 July 2005 London Bomb Attacks on Muslim Communities in the EU*, European Union Monitoring Centre on Racism and Xenophobia, Vienna, 2005 and Christopher Allen and Jorgen Nielsen, *Summary Report on Islamophobia in the EU after 11 September 2001*, European Union Monitoring Centre on Racism and Xenophobia, Vienna, 2004

[5] Assistant Commissioner Tarique Ghaffur, speech to the Association of Black Police Officers, 6 August 2006

[6] Richardson, R (ed.), *Islamophobia – issues, challenges and action: A Report by the Commission on British Muslims and Islamophobia*, Stoke on Trent, Trentham Books, 2004: 29 (hereafter, Richardson, Islamophobia).

[7] Beckford, J, et al. *Review of the Evidence Base on Faith Communities*, London: Office of the Deputy Prime Minister, 2006: 39. The census data can be analysed at the level of 'Super Output Areas' which is equivalent to a neighbourhood, these neighbourhoods are classified into 10 deprivation categories based on their score on the ODPM Index of Multiple Deprivation.

[8] Pauly, R J Jr., *Islam in Europe: integration or marginalisation?*, Aldershot, Ashgate, 2004.

[9] Council for Arab-British Understanding, fact sheet, August 2005. See also *The Impact of 7 July 2005 London Bomb Attacks on Muslim Communities in the EU*, European Union Monitoring Centre on Racism and Xenophobia, 2006

[10] John, P, et al., *The BNP: the roots of its appeal*, Democratic Audit 2006: 16-17, 28.

[11] J. Beckford et al., *Review of the Evidence Base on Faith Communities*, Office of the Deputy Prime Minister, 2006: 40.

[12] ONS, *Focus on Religion*, p. 11.

[13] Oxford Centre for Islamic Studies, *Muslim housing experiences*, p. 13, Table 3.

[14] ONS, *Focus on Religion*, p. 3.

[15] Conners, H, Tyers, C, Modood, T, and Hillage, J, *Why the Difference? A Closer Look at Higher Education Minority Ethnic Students and Graduates,* Research Report 552, Institute of Employment Studies, 2004, (hereafter, Conners, Why the Difference?)

[16] Weller, P., Fieldman A., and Purdam K., *Religious Discrimination in England and Wales*, Home Office Research Study 220, Home Office, Research, Development and Statistics Directorate, 2001: 105-6.

[17] Ameli, S., Elahi, M., and Merali, A., *British Muslims' Expectations of the Government. Social Discrimination: Across the Muslim Divide*, Islamic Human Rights Commission, 2004.

[18] Forum Against Islamophobia and Racism, Al Khoei Foundation and the Muslim College, *Counter-Terrorism Powers: Reconciling Security and Liberty in an Open Society: Discussion Paper – a Muslims Response*, FAIR, 2004: 22. The FAIR survey was based on questionnaires send out to Muslim schools, mosques, charities, Islamic students' societies, NGOs and members of the community. Over 200 people responded to the survey, providing information on how they had been affected by Islamophobia.

[19] Ameli, S., Elahi, M., and Merali, A., *British Muslim Expectations of the Government. Social Discrimination: Across the Muslim Divide*, Islamic Human Rights Commission, 2004: 26-27

[20] Ameli, S., Elahi, M., and Merali, A., *British Muslim Expectations of the Government. Social Discrimination: Across the Muslim Divide*, Islamic Human Rights Commission, 2004: 45.

[21] See: 'Shocking Racism in job market', BBC News, 12 July 2004, available on the BBC website at http://news.bbc.co.uk/1/hi/business/3885213.stm (accessed) . See also Wilson, J, 'Muslim says he was sacked for wearing a beard', *Guardian*, 11 August 2004; and Dodd, V, 'City firm sued for Bin Laden jibes', *Guardian*, 9 April 2004.

[22] 2003 Home Office Citizenship Survey:

People, Families and Communities, Home Office Research Study 289, Home Office Research, Development and Statistics Directorate, 2004: 103.

[23] 2003 Home Office Citizenship Survey: *People, Families and Communities,* Home Office Research Study 289, Home Office Research, Development and Statistics Directorate, 2004: 104.

[24] For figures in this paragraph, see Kitchen, S, Michaelson, J, and Wood, N, *2005 Citizenship Survey: race and faith topic report*, Department for Communities and Local Government, 2006: 21-31

[25] Five per cent of Muslims said the government was doing 'too much' and 62 per cent 'the right amount'. However, this overall figure masks significant differences by gender and age: Muslim women (37 per cent) were more likely than Muslim men (30 per cent) to feel the government was doing 'too little'. This gender difference is also found in the Christian, Hindu and Sikh groups. Among all respondents the response was: 'too much', 20 per cent; 'right amount', 54 per cent; and 'too little', 27 per cent. O'Beirne, M, *Religion in England and Wales: findings from the 2001 Home Office Citizenship Survey*, Home Office Research Study 274, Home Office, Research, Statistics and Development Directorate, 2004: 25, (hereafter, O'Beirne, Religion in England and Wales).

[26] However, this is lower than for others in this age group. O'Beirne, *Religion in England and Wales*, p. 26.

[27] Modood, T et al, *Ethnic Minorities in Britain: Diversity and Disadvantage*, Policy Studies Institute, 301

[28] M. O'Beirne, *Religion in England and Wales*, p. 20. The survey asked participants to list the top ten things that would say something important about themselves. For Muslims, Hindus and Sikhs the top three were family, religion and the ethnicity. For Christians, religion was seventh on the list.

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Chapter 3

The Experience of Young Muslims

To explore the tangled issues that lie at the heart of the experience and attitudes of young Muslims who live in the United Kingdom in more depth, we organised three focus groups of young people aged between 18 and 25 in May 2006, talking with young men of Pakistani origin in Bradford, young Somali and Nigerian men in north east London, and young women of Bangladeshi origin in south London. The young Pakistanis and Bangladeshis (if we may so refer to them) were broadly in work or in further or higher education, the young Africans were mostly studying at a further education college. These were politically aware young people, the Pakistanis and Bangladeshis inter-acted with whites or 'Christians' at work and wanted to explain Islam to them, they used the web, received videos on for example the Israel-Palestine crisis, and some of them, for example, quoted from BBC2 *Newsnight*. The young Pakistanis and Bangladeshis were British-born and held British citizenship: they were more likely than the Somalis to be active in Muslim community affairs or student activities and several of them had joined demonstrations against the Iraq war.

Islam was at the centre of all their lives, and most of them described themselves as practising Muslims. There was across-the-board agreement about the benign nature of Islam: that (as the Somalis said), 'Islam means peace; it doesn't discriminate between black or white, between men and women'; 'it is about social justice'; (or for the Pakistanis), 'it's just being good, good to humanity, good to this world, good to yourself, that's Islam'; (or for the Bangladeshis), 'Again it means peace, my religion has helped me better myself and the citizenship I am around'; 'like you think calmly, you don't jump up, it covers literally everything – and charity and tolerance.' Equally members of the three groups all agreed on the universality of Islam, they feel part of the ummah. A young Pakistani explained,

'If something happens on the other side of the world, any normal British person is not really bothered. They've not got that feeling in there. But when it comes to Muslims, you get that automatic connection. It's like another Muslim brother or sister, if they get hurt, you get hurt.'

For those with British citizenship, which came first, their religion or citizenship? 'Religion first and foremost,' said a Bangladeshi. 'But obviously you are part of society. I am part of this society so I'll contribute and I'll abide by the laws because Islam says, "Whatever country you are in, abide by the laws as long as it doesn't affect your religious beliefs and practice." As a citizen here, I think the laws and stuff are fair to me.' A Pakistani said, 'People can live as Muslims and be part of, you know, British society, it doesn't mean to say that they have to jeopardise any of their beliefs, and I think British people don't expect you to do that anyway.' A Somali with citizenship said he valued the tolerance of British society, especially in multi-cultural London. He 'had the vote' but was not sure it was his place to use it.

Most of them valued the freedom and opportunities in education and work that living in the UK brought and contrasted their ease here with the difficulties of life 'back home'. 'We should be thankful for what we have here, be honest,' a Somali said. Various of them contrasted life in the UK favourably with life in other European nations, especially strongly secular France. The Bangladeshi women welcomed the freedoms to be educated and take work, and one explained, 'having our own opinions and we've got our own decisions; again, what I really like about here is the multiculturalism.' Another added, 'Women are more respected here than back home'.

On the other hand, other women objected that women were not respected in the UK – they were treated as sex objects and subject to a glass ceiling. All these young Muslims objected strongly to the licence of young white Britons, the drinking, racist incidents and insults, 'bad influences', 'video clips of violence and sex', and youngsters who 'don't learn no respect.' One Somali also condemned 'twisted' teaching on homosexuality as defiance of God's making of 'woman for man.'

Citizenship for them was not necessarily a badge of belonging. All the young people were uncertain of their place in British society. 'My passport is British but I don't think I could ever be seen as British. If a non-Muslim saw me, it won't immediately be, "he's British", it would be, "he's a Paki".' This ambivalence about their acceptance is plainly long-standing and comes in part from the experience of racism. A Somali, beaten up for his mobile phone, said, 'It was racism. They said they are from this country and I am not and don't deserve to be here – yeah, I have got that a lot.' One Pakistani explained the subtle ways in which he was marginalised and ignored at work and how he would take an opportunity to introduce himself by offering help, 'Hello, my name's Imran, would you like any help?' 'The first thing is that they look shocked that I can speak English "proper".' The group laughed as one and called out, 'Yeah', 'Yeah'.

But their unease has become pronounced since 9/11 provoked the 'War on Terror', and especially since the July 2005 London bombings. There is a sense in which they feel part of a besieged community here and overseas. A Somali says, 'Most people see us as outsiders, as Muslims, as terrorists. Most people think that if you are a Muslim, you must be a terrorist.' A Pakistani says, 'People now associate being Muslim with terrorism.' A Bangladeshi says, 'It's like they keep pointing at you every time something goes wrong, you hear it all the time. Something goes wrong, they say, "It's Muslims, they're doing it".'

The Bangladeshi women particularly complain of being harassed. One who works in an agency said,

> When I went to work on the bus, a lot of people would get up and not want to sit next to me. Yeah, and a lot of our clients coming in, they've had their headscarves pulled off. They got spat on. At one point, my

mum is like, "Oh my gosh, is it all right for you to wear a headscarf now?" I was okay about it. If someone didn't want to sit next to me, that was cool.

Clients were scared even to attend to use their services; 'they'd make an appointment and they wouldn't turn up because they were too scared to come out of their houses.' Another says, 'Ever since the bombings, a lot has changed. All the Asians, even those that don't wear scarves, they're being picked on.' The Bangladeshi women also complain that their mosque is prohibited from holding discussions. 'The brothers, they wanted to have a discussion, I think it was about the Iraq war . . . after what happened [with the bombings] they impose laws like you're not allowed to have discussions.' She added that such discussions would clarify issues. 'My opinion is that the mosques are there, they are the centre hold of the Muslim community.'

The reaction to the bombing brings or perhaps simply accentuates feelings of insecurity. Despite other occasions on which white people had behaved especially well, the young Somalis feel that they 'are on the edge . . . people like us get deported'. For the Pakistani men, Bradford with its large Muslim population offers the security of being 'with your own people, who you can relate to'. One man says, 'We feel safe to be here and I reckon we're lucky in that sense, more than other places.' Another said, 'You want to be a bit cautious. You know, we have been to London [but] many people wouldn't have been out just for the sense of security.' We asked the Bradford group about the next five or ten years. One man, recently a father, said he was 'very, very scared':

What makes you think we're going to be still here? Not living, I mean, in this country. I use the word kicked out, somebody reckons they're going to get kicked out, when I say that it's more like driven out. "You practice your religion or you practice our culture. You're either Muslim or you're either British, you either stay or you go back." It's one of them. It's only going to get worse. Surely that would even be on the agenda now, maybe for some bodies. The BNP's just like an obvious one, but it could be on the agenda for some other people . . . Because you see, also what people can do is affect what happens at the top at government level, and what seems to be happening now is . . . there's almost a culture starting where you're kind of like pushing the Muslims down and sectioning them off from society, cornering them off, and maybe, maybe in the future, there may be a view to actually, you know, drive people out . . . '

Members of the three groups agree unanimously that the media fuel Islamophobia and portray Islam in a negative way – 'Islam at the moment is the hot topic . . . all of a sudden the media was bombarding [people] with negative messages.' A young woman said, 'I know there's freedom of speech, but there has to be some regulation where it affects the whole community in the UK, not just one community in Bradford or in Tower Hamlets.' A Pakistani complained that the media gave extensive coverage to a demonstration against the Danish cartoons that was organised by extremists, but far less to a bigger peaceful demonstration of 'civilised Muslims behaving like Muslims'. Another adds,'They put them into categories. On the news, you'll see Israel, they kill Palestinians every day, yeah? But when a Palestinian kills an Israeli, that will come on the news.'

The impact of foreign policy

All these young people were outraged and shocked by the invasion of Iraq, one woman found it 'heart-breaking' – 'so many innocent people get killed.' The Bangladeshis say of the Iraq war, 'It was terrible, even if I think about it now, it really frustrates me . . . it was an invasion. I think it was an act of terrorism, I think these soldiers went in and they terrorised the whole country for no reason.' They are equally outraged and upset by what they regard as Israeli oppression of the Palestinians; 'I get a lot of emails forwarded to me with pictures showing people killing Palestinian children and stuff, and women getting raped . . . They should be shown to the world because it's so disgusting,' says one Bangladeshi woman. There is widespread agreement that the 'War on Terror' is a war against Islam. One woman said:

'They found that Islam was one community that wasn't going to conform to this ideal of norm by a few powerful people, including America, and so they were taking them over. Islam was a big, big obstacle in relation to the oil industry. Most of the oil is found in the poorest countries [where Muslims are] . . . I think it's all about globalisation and the need to control – . . . and they're actually attacking vulnerable countries. Things like Afghanistan, Iran and places like that. All these places, they're very vulnerable. They don't have the means to protect themselves. America, they just go in there, do their thing. . . . they go and rape these countries, take whatever they want and then just come out. They have no regard for [humanity] . . . '

For the Pakistanis, too, oil was at the root of the invasion of Iraq. But some of them also believed that a US commitment to protect Israel inspired Bush's concern about Iraq and Iran possessing weapons of mass destruction – 'any country threatens Israel . . . you concentrate on that country', as one of them said. And yet, 'Israel has probably got the worst human rights record from any Middle Eastern country in terms of their invasion of Palestinian territory, so if anything they're probably more of a threat in that region, with their weapons of mass destruction . . . So really I think they should get back out of Iraq and maybe concentrate on creating democracy in Israel.'

Both the Somalis and Bangladeshis felt strongly that it is President Bush who is the terrorist through the prosecution of the 'War on Terror'. 'Bush is a terrorist, he is going into other countries and killing people and children for no reason,' Somalis agreed. 'The way the media use the word "terrorism" is wrong. The only real terrorists are the world leaders who go and bully people in other countries.' Furthermore, it is wrong to describe Palestinians as terrorists. They are rather freedom fighters who have been combating Israeli cruelty 'for the last decades'. A Bangladeshi woman demands: 'What will be your reaction if your sister is being raped in front of your eyes, your father is being killed in front of your eyes?' One Pakistani man acknowledged that some Arab regimes were also oppressive. He said, 'There are basically two groups in Islam, one who is doing cruelty, who is cruel, and the other group who is facing cruelty. Unfortunately, nowadays if we look at the map of the world at this stage it's mostly Muslims who are facing cruelty.' Another said, 'My view of Iraq, I think they are trying to help but they went around it in the wrong way. They could have done a lot more things to help there, to bettering the way of life, instead of just waging war.'

When we asked, what could the government do to prevent further terrorist acts, the response from the Bangladeshi women was immediate and forceful. 'Stop invading Muslim countries would be a good thing. It would be a start wouldn't it?' One woman said that the west should

intervene in the Israeli-Palestinian conflict 'where Israel is taking over Palestine by force. . . . There's like grandmothers and the houses are being crushed on top of the people, do you see? So if you're going to meddle, meddle in a good way and if you're not, then just get out'.

Other than this, there was a more diffuse feeling that the government here was placing unfair restrictions on the Muslim communities and as it were targeting the communities rather than the minority of potential terrorists. Thus more generally they wanted a government that would listen to their concerns, more education about the nature of Islam, more tolerance, and action on equal opportunities.

When our moderator asked the young Pakistanis, 'So is 7/7 in any way related to the conflicts in the outer world?' they were incredulous. 'Oh no! Come on! Absolutely.' 'Definitely.' Then a moment later, 'Forget what we said, the guy who blew himself up apparently, who made the video, he said, "until you get your troops out of Afghanistan, Iraq . . ." so it is, he said it himself, that's why he did it. He said it, and it was.' Did they feel that such attacks could recur? 'Yes, because the fighting in Iraq is still going on.'

Participating in British politics

The young people in the three groups all accepted that there was a minority in the Muslim communities in the UK that was extreme or violent, but it was a small minority; 'I know some extremists and they feel isolated', said one Somali. The group agreed that the violence was 'not right' – I don't think they know the meaning of it, they take the law into their own hands and take other people's lives, which is not right'. Another Somali agreed that their terrorism was not right, but said, 'You can't blame them . . . they think they are fighting for innocent people.' He was immediately challenged: 'Yes, but it is not right to go about shooting other people.' 'Yes,' he replied, 'that is true, but some people cannot handle it, the pressure, they are not strong people. I can't blame them . . . How else can some people react?'

As for suicide bombings, the Somalis stated that Islam is against suicide and is for justice; 'at the end of the day, you never want to kill innocent people.' Bombings were also bad for the image of Islam and the Muslim communities. The Pakistanis condemned suicide bombings and terrorist acts in this country as unjustifiable; they see them as a perversion of Islam. The Bangladeshi women were curious about what could motivate Muslims to turn to violence when Islam is 'such a peaceful religion'. 'You know, what led them to that extreme? Obviously for them to do something like that [the bombings], there must be something wrong.' When asked why some young Muslims go to such extremes, they have no answers about which they feel certain, except to say that such acts are 'a last resort' of desperate people.

These are generally young people who believe that being involved in society is part of their lives as Muslims and who do get engaged in civil society and Muslim affairs. But part of the background to the idea of the 'last resort' is that they feel that young Muslims have no effective voice in the UK – 'they don't listen to us.' They regard British democracy as unresponsive and feel that their community as a whole is not properly represented. Some in the Pakistani and Bangladeshi groups had taken part in the demonstrations against the Iraq war. They were greatly heartened by being part of huge crowds among 'English people, Christians' and sharing feelings of 'commonality' with other sections of British society. 'It was for me the best thing . . . we had a whole mixed bag and I was wearing my headscarf as well, so I had a lot of people approaching me and asking how I felt and my opinion of it,' said a Bangladeshi woman. 'But at the end of the day it wasn't worth it, in the sense that the war still went ahead. Such a shame because it just goes to show that you don't have a say. This being a democratic country, our views don't get taken into consideration.'

A Pakistani who had demonstrated said much the same thing: 'When you go on demonstrations and you do this and that, you're there. But have you moved their thoughts an inch or two? You don't see anything and you think, "What can we do? Some are struggling so much to make a point, people in Palestine are blowing themselves up . . . let's make a point".'

Moderator: 'You're saying it was a last resort. Do you think there's some justification?'

Pakistani: 'Look, there's absolutely no justification at all.'

They are also sceptical about voting. A Bangladeshi woman explained why in some detail. She said that MPs would not look after Muslim interests, not even Muslim MPs because they are part 'of a bigger group or the government' and therefore represent 'what the government and the person at the top is going to do.' 'My mum wants me to vote this year and I am unsure about it, so I thought just let me stay out of the whole dodgy business. When I find out more about it, then I'll vote.'

Nor are they impressed by the Muslim organisations that the government negotiates with. They do not for example believe that the Muslim Council of Britain represents them: 'Who initiated the MCB? . . . I mean, no-one asked me that "we're going to elect so-and-so people from a certain community" …'; 'They've basically been invited by the government, and even the way the group has been picked, you know, it's been done quite randomly.'

Cooperating with the authorities over terrorism

The question, 'What would you do if you know or suspect that someone is planning a terrorist attack?' threw almost all of them into confusion. On the one hand, 'saving people's lives . . . that is the duty of every good Muslim' (as one Somali said). On the other hand, none of them was prepared directly to report their knowledge or suspicions to the police. The Bangladeshi women discussed this question. 'I wouldn't [report someone to the police] because then it would be like, here we go, Muslims are the bad people again. So I'd really think.' 'But,' interposes another, 'innocent people will die!' 'But I've just caught them red-handed, so they haven't done anything yet.'

The main problem with going to the police was that none of them trusted the police to handle the information with care and sensitivity, and they were fearful that the police might over-react and misuse their considerable powers. The shooting of Jean Charles de Menezes loomed large in their minds. 'A police officer can hold you, arrest you, on any grounds, for example suspicion,' says a Pakistani. 'They are ruining people's lives like that you know.' For him even having a beard was grounds enough for the police to hold someone on suspicion. For a Bangladeshi woman passing information to the police meant 'you'll get interviewed for hours and hours. Get your house raided.' 'Yeah,' said another, 'you're one of the suspects now. You're made to feel like a criminal yourself.' She recalled how the police had 'disrespected' her mosque, entering with their shoes on 'and everything' to make inquiries after July 2005. Thus there are fears either that reporting someone to the police might result in their being badly treated or wrongly charged, or that they could themselves be implicated – 'the police will think you are working with him and you are trying to get away from trouble'; 'they might think

you are in it as well'.

There were also fears of reprisals from the putative terrorists or their associates; 'if he is ready to kill himself, then if he knew I was reporting he would kill me as well'; 'there are people behind him, and they would say I am an infidel and they would kill me, for what?'; at the end of the day you have to protect yourself.' Such views provoked this exchange among two Somalis: 'If I felt that I knew someone was going to kill hundreds of people in a tube station and I didn't do something about it, I wouldn't be able to live with myself.' 'I know that hundreds of people die but I have to look out for myself.'

Most of the other young people settled for first discussing their dilemmas with a friend or having it out with those whom they suspected; and then, if need be, reporting their knowledge or suspicion to the authorities. 'I would talk to the person, find out what the hell they are playing at first. Yeah, definitely. And tell them, like, what planet are they on. If they don't abandon whatever plan they've got, I would take it to higher authorities.' Wouldn't she be scared? 'Yes I would. But obviously there's the curiosity.' But which authority would they go to? Still not the police, unless they could do it anonymously, but to the imam (if they trusted him, said one). A Bangladeshi woman suggested that the police should demonstrate that they would not target anyone who reported their suspicions to them.

Chapter 4

The government's counter terrorism strategy

Almost hidden behind the government's 'tough' talk on terrorism and the media's obsession with the security forces, there has been a sensible medium-term (and now long-term) counter terrorism strategy,[1] which is as much concerned with winning over the younger generation of Muslims and their communities in the UK as it is with giving instructions to Muslim leadership groups, creating 'robust' counter terrorism laws and actively pursuing potential terrorist groups. But only belatedly, has the government actually given any prominence to a strategy that has now been in existence since early 2003.

However, there are now worrying signs that government ministers are submerging this strategy under a dangerously rhetorical stance aimed at the majority population. We fear even that ministers, and Home Secretary John Reid particularly, are seeking (as some Labour MPs tell us) to restore Labour's appeal to the white working class by exploiting anti-Muslim sentiment at a particular sensitive time and taking a tough populist stance with Britain's Muslim communities. We discuss later in this Chapter how John Reid's shameful speech avowedly to Muslim parents was actually aimed at the majority population. There are also the comments by Jack Straw and other ministers on the niqab and Ruth Kelly's demand that Muslim organisations should address radicalisation or forfeit government funding. It is suggested that these various initiatives may be co-ordinated.

The dangers of this approach were made vividly clear to us in talking to a prominent politician. He told us, 'Jack Straw's comments on the veil have removed a taboo. There is a seething issue of people's irritation with Muslims as a group, over-reacting, constantly demanding special privileges, and so on, all made worse because there are killers in their midst.' In our view, the government is under an obligation to protect the Muslim communities from an anti-Muslim backlash. There is in fact a formal obligation under the Council of Europe Framework Convention on the Protection of National Minorities. But there is also a more immediate political obligation to protect the Muslim communities and in doing so to protect the British people as a whole from further terrorist atrocities.

Another well-informed politician said that he feared the government was close to adopting 'the wrong model', choosing an ideological clash rather than seeking to engage with Britain's Muslims. He deplored the 'if you are not with us, you are against us' approach. Government officials indicate that a wide strategic change is taking place from engagement with political Islam and what the government regard as Islamist organisations towards a policy that seeks to isolate them.

Yet there is a thought-out counter terrorism strategy – known as 'CONTEST' – that is in large part built around the concept of engagement with the Muslim communities. In the words of Sir David Omand, the first Security and Intelligence Co-ordinator in the Cabinet Office (from 2002-05), this strategy aims to 'reduce the risk from international terrorism so that our people can go about their daily lives freely and with confidence'. Sir David says the words 'freely and with confidence' are critical. The phrase means that while there should be a sufficient level of security, it should not entail unnecessary impingements upon basic freedoms of all communities within the UK. Preserving our freedoms, he notes, is part of any 'victory' against terrorism.[2] There are two inter-connected keys to this strategy: first, gaining vital intelligence that will expose the terrorists; and secondly, engaging with the Muslim communities to obtain that intelligence.

Initially, the strategy was for five years only. Sir David Omand says that this was a relatively short time-frame, but political considerations made planning for ten years, which would have been appropriate, more difficult. The government now describes the strategy as 'long-term' as the potential scale of the terrorist threat has become clearer. This is clearly more realistic, especially as Phillip Knightley, the investigative writer on security and spying, warns us that for MI5 successfully to gear itself to be able to penetrate terrorist organisations would take a minimum of five years.[3] For Omand, the main long-term goal must be to prevent the radicalisation of young Muslims in the new generations now growing up in the UK.

The strategy has four elements – Prevention, Pursuit, Protection and Preparedness:[4]

- Prevention takes in long-term goals, such as working to reduce tendencies leading to 'radicalisation', for instance through helping resolve international disputes which encourage terrorism (a prominent part of the FCO's duties); ensuring that all citizens in the UK 'feel fully part of our society'; fighting the 'battle of ideas'; and introducing legislation to deter terrorism.

- Pursuit goes wider than actually seeking to prevent terrorist attacks and apprehending those involved in the disruption of terrorist organisations, through better understanding of their capabilities and intentions; prosecutions, deportations, control orders and proscriptions of organisations; working with communities; making it harder for terrorists to operate domestically and abroad; and targeting their funds.

- Protection entails working to safeguard critical national infrastructure and other sites at risk and maintaining border security.

- Preparedness means ensuring effective contingency arrangements are in place.

Perhaps naturally for a government with a strong focus on presentation, it has given prominence to the hard end of the strategy, focusing upon aspects of policy that seem more likely to show the public that it is acting to counter the terrorist threat, such as its counter terrorism legislation, measures against 'preachers of hate' and similar

initiatives (see below) and the pursuit and disruption of potential terrorist activities. By definition, the media share similar preoccupations. The public scrutiny of the overall strategy in Parliament is far from 'joined-up' and so contributes little to pressure for a more rounded public policy to combat and eradicate terrorism. Most of the scrutiny has been divided between two select committees, the Home Affairs and Foreign Affairs Committees, and the Intelligence and Security Committee (ISC), a committee of parliamentarians – not a parliamentary committee – appointed by the Prime Minister. The ISC has an exclusive remit for scrutiny of the intelligence and security agencies and in effect 'the intelligence community' (by agreement with the government, its remit has been extended in some respects to the Defence Intelligence Staff and the Joint Intelligence Committee in the Cabinet Office).

We discuss scrutiny of the counter terrorism strategy by the ISC and select committees in more detail in Chapter 6; but broadly, the ISC has specifically ruled out considering 'the efficacy of the Government's counter terrorism strategy' as a whole while the Home Affairs Committee, the lead select committee on these issues, has not made the agencies' activities part of its inquiries into the broader counter terrorism strategy (and is restricted in so doing, as we discuss below).

In its first major report on counter terrorism, the Home Affairs Committee did however assert that the strategy should be more than 'a set of police and judicial powers. It must be part of an explicit broader anti-terrorism strategy'.[5] Within such a strategy, there are two keys to unlocking Sir David Omand's aim of preventing the radicalisation of young Muslims in future generations and of isolating those who may already have been radicalised:

> First, involving the Muslim and other communities in a strategy to overcome the isolation which too many Muslim people experience in modern Britain and to win the 'battle of ideas'; and
>
> secondly, making vigorous efforts in international policies to remedy the legitimate and perceived grievances that Muslims here, as part of the global ummah communion, feel as they view UK and US policies around the world, most notably in Palestine and the Middle East. (There is no wish here to evade the fact that Muslims also suffer from oppression under Muslim rulers in several states.)

These key tasks devolve upon the Department of Communities and Local Government (DCLG) and the Foreign and Commonwealth Office.

Multiculturalism, community and 'separateness'

The Association of Chief Police Officers (ACPO) expressed regret to the Home Affairs Committee that 'Communities' was not included as a fifth item in its own right in the strategy, stating 'an opportunity was missed to ensure the elements of the strategy that involve communities had prominence and priority'.[6] Of course, 'Communities' would not have fitted into the neat four Ps structure of the strategy; and we are informed that Muslim community leaders were against giving it too much prominence. Consequently ACPO's missing 'communities' pillar is largely subsumed into Prevention where government sources argue it is at the heart of this strand of the strategy, as well as featuring in the others.

Indeed, one of the architects of the strategy has informed us that assessing the impact of government measures on the Muslim communities was very much part of a strategy that was drawn up to emphasise 'the linkages and feed-backs' between the action plans. In considering the Home Office strategy, the Home Affairs Committee felt it important to develop a vision of 'British identity' for the 21st century and to involve young people particularly in the debate around it. The Cantle report on the 2001 riots in the northern cities put 'British identity' at its centre, but the government has steadfastly refused to touch the issue. So its report combined the 'respect for diversity' that is at the heart of multiculturalism with a proposal to develop a common ground around identity to hold UK society together.

The committee hoped that this approach would offer a real prospect of reducing the alienation and anger among young Muslims that could potentially inspire a turning point towards violent terrorism.

The Home Office's vision of a 'cohesive society' envisioned a United Kingdom in which there is a common sense of belonging for all communities; the diversity of people's different backgrounds and circumstances is appreciated and positively valued; people from different backgrounds have similar life opportunities; and 'strong and positive' relationships are being developed between people from different backgrounds in the workplace, in schools and within neighbourhoods. The HAC report also described the government's ambitious goals for a multicultural United Kingdom within which there would be a real prospect of reducing the alienation and anger among young Muslims that could potentially inspire a turning towards violent terrorism. The government vision is of a UK society in which:

- young people from different communities grow up with a sense of common belonging;
- new immigrants are integrated;
- people have opportunities to develop a greater understanding of the range of cultures that contribute to our strength as a country;
- people from all backgrounds have opportunities to participate in civic society;
- racism is unacceptable;
- extremists who promote hatred are marginalised.

Multiculturalism

In broad terms, we believe that multiculturalism has served this nation well. Over the years the customs and conduct of ethnic communities have evolved as they adjust to British society just as those of the majority population have changed. Some communities, such as the Hasidic Jews of north-east London, have led more or less 'parallel' lives in cooperation with public services. Multiculturalism has given the Hindu and Muslim communities a sense of security, as Tariq Modood has shown, while at the same time it has not promoted segregation, either voluntary or conditioned by the state.[6]

We cannot be certain what direction the DCLG might take in relation to multiculturalism and 'separateness' and how far it may take a similar view. There is undoubtedly a shift in attitude against multiculturalism by some politicians and policy-makers, associated with Trevor Phillips, the new head of the Commission for Equality and Human Rights, who has declared that multiculturalism is out of date and encourages 'separateness' between communities. Phillips saw an urgent need to 'assert a core of Britishness' across society. Ministers, and especially David Blunkett, as Home Secretary, have not only asserted this need, but have also increasingly voiced their opposition

to 'separateness' on the part of the Muslim communities – even though the great majority of Muslims are against any such trends (see Chapter 2) and fear the consequences more keenly than any national politician.

Ruth Kelly's new Commission on Integration and Cohesion, set up in August 2006, has the look of a practical body of experienced people who will seek to build on good practice in promoting social cohesion. In her opening remarks, Kelly spoke warmly about the benefits of diversity, but her speech also contained echoes of Phillips's views:

> we have moved from a period of uniform consensus on the value of multiculturalism, to one where we can encourage that debate by questioning whether it is encouraging separateness. Trevor Phillips and others have put forward these points of view. These are difficult questions and it is important that we don't shy away from them. In our attempt to avoid imposing a single British identity and culture, have we ended up with some communities living in isolation of each other, with no common bonds between them? [7]

Our view is that a re-appraisal of multicultural policy is in order, but that the government should not abandon it or seek a more strongly assimilationist approach. Public policy should be as secular as possible within what is a historically confused situation – for example, on religious schools. Within any minority community, the practices and attitudes of individuals are often at odds with mainstream opinion; equally people within these communities are often shocked by the extremes of permissive behaviour on the part of the majority. The state should not seek to 'impose a single British identity and culture' or impose restrictions upon cultural expression, except where activities break the law or violate human rights standards. Indeed, we believe that human rights should provide a unifying non-religious baseline for relations within Britain's diverse communities, particularly if they include but extend beyond civil and political rights to take in economic, social and cultural rights.

More immediately, we believe that the re-appraisal should seek a balance between diversity and commonality. The dynamics of multiculturalism are constantly changing. New migrants will continue to enter the UK to meet the needs of the economy, or to find asylum; sometimes they will join settled migrant communities, sometimes they will go to neighbourhoods which are experiencing large-scale migration for the first time. Over the next decade, some British cities will become minority-majority cities. It will be important to re-examine past experience to see what has worked and what hasn't. There are legitimate concerns about, for example, what is in some areas virtually segregated schooling. Understanding the interaction between structural factors, public policies and personal choices will be vital to the state's ability effectively to prevent the formation of potentially harmful ghettoes. The northern riots are seen by some as evidence that multiculturalism is failing; the dignified response of Londoners to the July bombings may be seen in part as a testament to its success. Professor Tariq Modood argues that civic integration means that there has to be

> mutual learning and movement from both/all sides . . . this is not simply a matter of compromise but of multicultural inclusion. Muslim sensibilities, concerns and agendas should be knitted into society just as the case with other marginalised groups or classes are accepted as democratic equals.

In his view, 'if the goal is multicultural integration, then we must curb anti-Muslim racism and exercise restraint in the uses of freedom directed against religious people'. [8]

Meanwhile, the Home Affairs Committee was not willing to accept the Home Office vision at face value. Members contented themselves in 2005 with observing that it was 'not clear there is a coherent strategy, developed with the Muslim community for tackling extremism'.[9] They noted that there was

> a comprehensive cross-Government Public Service Agreement target to monitor and reduce race inequalities between 2005 and 2008, including specific goals to reduce perceptions of discrimination in a wide range of public services, reduce employment inequalities and monitor the progress of minority ethnic communities across major public services, from education to housing.[10]

However, one aspect of multicultural policy in the UK has been a benign neglect that has allowed discrimination and disadvantage to ravage the former Home Secretary Roy Jenkins's founding definition of that policy. For Jenkins integration of minorities was:

> Not a flattening process of assimilation but equal opportunity accompanied by cultural diversity in an atmosphere of mutual tolerance.

The government has indeed begun a strategy to 'reduce race inequalities', as the HAC noted. But in doing so, committee members failed to question the scale of resources that were being devoted to achieving this target, or to inquire into the likely efficacy of the PSAs put into place. Professor Shamit Saggar suggested to us that the current PSA targets on race inequalities were neither sophisticated enough to focus on particular under-performing groups, among them specific sections of the Muslim communities, nor broad enough to escape divisive accusations of 'special treatment'. [11] For example, he suggested that PSAs could involve ethnically- and gender-delineated floor targets for schools, something that is certainly controversial and also something that ministers signed up to in 2003 in the event that an 'at risk' group fell any further behind. He believed that there were opportunities for innovative initiatives like this that officials in the Home Office were then beginning to explore. He also suggested that across-the-board initiatives for more sensitive policy-making for all religions might assist in easing some problems that Muslim and other faith groups experience in British society.

The narrow focus of the Intelligence and Security Committee (ISC), the other public body with a responsibility for assessing the effectiveness of the counter terrorism strategy, did report on the overall counter terrorism strategy, but only from within a narrow intelligence and security remit. [12] However, in its official response to the ISC report the government described what might be termed the 'communities' part of the strategy. Agreeing with the committee that 'actions by the Agencies are only part of the response to the contemporary terrorist threat,' the government explained that, through the Prevention pillar, it was seeking to address 'the motivational, facilitational and structural factors that contribute to radicalisation'. [13]

The damaging effect of counter terrorism measures

It is however astonishing that neither the government, nor the ISC committee, acknowledged the potentially damaging effect that counter terrorism measures themselves can have in contributing

to 'radicalisation' or in inhibiting community cooperation in identifying suspects. The Home Affairs Committee did touch upon this crucial insight in a paragraph reviewing the effects of terrorism legislation and practice during the Provisional IRA terror campaign:

> It was suggested to us that previous British governments had not been able to combat terrorism without alienating the Irish community. For example, the freelance journalist Paul Donovan believed that the operation in the 1970s of the Prevention of Terrorism Act had sent the Irish community back into itself, creating resentment toward the state and its various agencies. He believed that little if any evidence had ever been produced to suggest that the anti-terror law actually stopped or helped prevent terrorism and that much of the terrorism that was prevented came about as a result of routine policing which caught terrorists in the act. Similarly, the Muslim Council argued that one of the results of the police treating the Irish as a suspect community had been that the public were encouraged to do the same.[14]

There is often a working acceptance on the part of the authorities that 'heavy-handed' police raids or the disproportionate use of police 'stop and search powers' may prejudice the good relations with the Muslim communities that they must ultimately rely on to stop terrorism. Britain's most senior Muslim police officer, Assistant Commissioner Tarique Ghaffur, has commented that the impact of stop and search and passenger profiling has been to create 'a strong feeling of mass stereotyping within Muslim communities'. The massive police raid on a house in Forest Gate, east London, in June 2006 and the shooting of one of the two suspects who were subsequently released without charge did lead to some official recognition of the need to 'rebuild' community trust in the police. The Metropolitan Police offered equivocal apologies and Met officers attended a community meeting shortly afterwards as part of an attempt to do so.

But these responses came within the framework of an unapologetic commitment by Tony Blair and the security forces to such raids in the future, even if they could not be sure of the intelligence on which they were based. There was no equal acknowledgement of the fears and anxieties of those communities who will suffer the effects of any such mistakes in the future. The Prime Minister for example said on a webcast interview posted on the No 10 Downing Street website that he was '101 per cent' behind the decision to storm the Forest Gate house. He discounted talk of a Muslim backlash, saying that Muslims understood why the raid took place. The police and intelligence experts had to follow up information they thought was reasonable, he said, and do everything possible to prevent a terrorist attack. 'I think the Islamic community, like everybody else, recognises that is what happened'. The Assistant Metropolitan Police Commissioner Andy Hayman issued a half-apology and said the police had 'no choice' but to carry out the raid after getting 'specific intelligence'.[15] Assistant Commissioner Ghaffur believes that this sort of incident 'drip feeds into vulnerable communities and gradually erodes confidence and trust'. He also warns of 'a very real danger that the counter-terrorism label is also being used by other law-enforcement agencies to the effect that there is a real risk of criminalising minority communities. The impact of this will be that just at the time we need the confidence and trust of these communities, they may retreat inside themselves. We therefore need proper accountability and transparency round all policy and direction that affects communities'.[16]

This sort of incident also obscures the more patient work that is being done by the police to win hearts and minds within Britain's Muslim communities. Some forces have for example begun to develop de-radicalisation strategies, which on occasion involve engaging and working with imams who are in the Wahabi/Salafi stream of Islam and have a radical understanding, and even reputation. Such initiatives are more likely to succeed for partners like these who oppose violence share enough common ground with radicalised Muslims that they will listen.

We discuss later the inadequacies of the government's robust defence of incidents such as the Forest Gate raid and the widespread use of stop and search powers against young Muslims. But here we record our dismay that ministers seems to have no appreciation of the need to factor into the state's counter terrorism strategy a sober recognition that the state's investigations, tactics of 'disruption' and legislative powers will contribute to the problem. (We should say here that some government officials and high-ranking police officers have taken this on board.)

International experts on terrorism have long argued that measures of the kind the government is pursuing can have a profound affect on terrorism (see Chapter 2). For example, Dr Andrew Silke, of the Centre for the Study of Terrorism and Political Violence, University of St Andrews, whom we cited above, warns that the state's counter terrorism measures 'can profoundly affect the nature and lethality' of terrorist violence and that any analysis of the causes of terrorism which does not consider state responses runs the risk of being dangerously 'limited and flawed'.[17]

Lord Condon, the former Metropolitan Police Commissioner, illustrated the risks that flawed legislation ran in the House of Lords debates on pre-trail detention of up to 90 days. He warned that 'the battle against fundamental Islamic terrorism is a battle that will last for decades and perhaps even centuries. It is a battle for hearts and minds . . .' He feared that, on balance, 'and it is a very fine balance', that the extension of detention without charge might be counterproductive 'in the sense of encouraging martyrdom rather than preventing it'. The question for Parliament to decide was:

> Having heard what the police and intelligence agencies are advocating, what does this House and the other place feel is in the long-term benefit of the country in the fight against terrorism? Even though in one, two or three individual cases an extension to 90 days may help, my fear is what that might generate in terms of helping in the propaganda of terrorism. Often there is a misunderstanding about what al-Qaeda is. It is not a finite list of several hundred people and, once we have ticked them off and got them before a court and convicted, we will have stopped terrorism. In Arabic, al-Qaeda means many things. One of its main meanings is a way of looking at life and doing things—a series of tenets and principles, advocating the witness of martyrdom through violent means. The huge publicity that has surrounded this debate has already generated enormous fear in law-abiding communities in parts of this country. If we now go back and make it look as though we are going to challenge yet again the point of 28 days that we have reached, I fear that it will play into the hands of the propagandists, who will encourage young men and women—to all other intents and purposes, they are good people—to be misguided,

brainwashed and induced into acts of martyrdom. This may be only a small part of the tipping point that leads them to martyrdom. But those who advocate terrorism and challenging the values of the West will point to this provision, if we go to 90 days, as illustrating why they must challenge our values and norms.[18]

The effects of foreign policy

The scale of terrorism around the world inspired by the wider and diffuse movement, centred on Al-Qaida, since the 9/11 atrocities is evident for all to see and hardly needs repetition here. There is much evidence of the international inspiration of 'home-grown' terrorists in the UK and their links with terrorist organisations in Pakistan and elsewhere, notably in the case of the London bombers and of their leader, Siddeque Khan, in particular.[19] A few young British Muslims are ready to raise money for and to join forces combating western and British troops in Afghanistan and Iraq and even to undertake suicide missions.

The recent US National Intelligence estimate, the shared verdict of 16 branches of US intelligence, sections of which were first leaked and then de-classified, states that the Iraq war has galvanised terrorist violence, and that 'jihadists regard Europe as an important venue for attacking Western interests'. This verdict, on which intelligence services in the UK agree, may very well finally nail the consistent attempts of the Prime Minister and ministers to deny the significance of the links between the wars in Afghanistan and Iraq and terrorism overseas and at home.

It is also well known that Britain's security and intelligence officials warned Tony Blair before he committed British forces to the invasion of Iraq in 2003 and were still warning the government in the weeks leading up to the London bombings, that the invasion and then the continuing war in Iraq was increasing the risk of terrorism in the UK. As the Intelligence and Security Committee reported in September 2003, a Joint Intelligence Committee assessment presented to the government in February that year warned that the collapse of the Saddam regime might result in the transfer of chemical and biological warfare technology into terrorist hands. The JIC assessment stated that al-Qaida and associated groups 'continued to represent by far the greatest terrorist threat to western interests, and that threat would be heightened by military action against Iraq.'[20]

A report by the government's Joint Terrorist Analysis Centre, leaked to the *New York Times*, explicitly linked US-led involvement in Iraq with terrorist activity in the UK, stating that 'Events in Iraq are continuing to act as motivation and a focus of a range of terrorist-related activity in the UK.'[21] The previous day ministers rejected the conclusions of a Royal Institute of International Affairs (popularly known as 'Chatham House') briefing paper that the Iraq conflict and the UK's subservience to the United States in foreign policy had increased the terror threat to the UK. The two specialist authors, Frank Gregory and Paul Wilkinson, argued in a joint paper that

> A key problem . . . is that the UK government has been conducting counter terrorism policy 'shoulder to shoulder' with the US, not in the sense of being an equal decision-maker, but rather as a pillion passenger compelled to leave the steering to the ally in the driving seat. There is no doubt that the situation over Iraq has imposed particular difficulties for the UK, and for the wider coalition against terrorism.

The war, they concluded, had boosted Al Qaida's propaganda, recruitment and finances, provided a 'key training area for Al Qaida linked terrorists, and was costly in terms of British and US military lives, Iraqi lives, military spending and the damage caused to the counter terrorism campaign'.[22]

The Prime Minister's response to this barrage of evidence has been consistently to argue that the terrorist violence pre-dated the 'War on Terror' and the two invasions that took place after 9/11 and are now being used 'as an excuse' for their actions; and that 'giving in to [their] perverted and twisted logic . . . [and] compromising on certain aspects of foreign policy' would not make the terrorists go away but would enable them to argue that the UK 'was on the run, let's step it up'.

To say the violence is all to do with the Iraq war is easily refuted. At the same time, so it should be acknowledged that western interference and military action in the Middle East region goes back at least as far as to the defeat of the Ottoman Empire in the First World War, the British and French creation of imperial protectorates and new states; complicity in the overthrow or attempted coups against Middle Eastern governments that threatened western interests; and a continuing catalogue of cynical intervention, including the Anglo-French Suez adventure, the west's complicity in Israel's failure to follow UN resolutions after the 1967 war and Israeli settlement policy – all of which the invasion of Iraq has anchored in Muslim perceptions of western bias and opportunism.

Further, Tony Blair's arguments hardly answer the case that those who advocate modifying British foreign policy are making. Foreign policy should be made on the basis both of the national interest, at home as well as abroad, and of international law, human rights obligations and ethical considerations.[23] The Prime Minister and his colleagues should seriously consider the argument that the current policy has trapped the UK in two damaging wars accompanied by great loss of life and abuses of human rights; and that it risks leaving the British people more unsafe, more fearful and less respected around the world, by Muslims and non-Muslims alike. We should all eschew a knee-jerk anti-American, or anti-Bush, reaction to events. We should measure policy against a sober calculation of British interests and of the benefits and disadvantages of any shift away from current policy – as characterised either by the instruction of Blair's chief of staff, Jonathan Powell, to Sir Christopher Meyer, on being posted as ambassador to Washington, 'We want you to get up the arse of the White House and stay there!' ,[24] or its nobler formulation, 'standing shoulder to shoulder' with the USA in the 'War on Terror'.

It would in our view serve British interests best if the government disentangled British policy from its adherence to US foreign policy, which need not destroy the benefits of the Special Relationship or put at risk the US-European alliance. From a human rights perspective, it should bring to an end UK complicity in the detention without trial of thousands of suspects; the rendition of unknown numbers of suspects for interrogation and torture; 'alternative interrogation techniques' and 'coercive interrogation' amounting to torture in secret CIA prisons and Guantanamo Bay outside the USA; and a willingness to work with oppressive states that enrol in or are ready to exploit for their own ends the 'War against Terror'. Just as with domestic counter terrorism measures, this international 'War' is likely to 'profoundly affect the nature and lethality' of terrorist violence and any analysis of the causes of terrorism which does not consider the

responses to the vigour of the US and UK campaign runs the risk of being dangerously 'limited and flawed'.[25]

In our view, it is equally legitimate to consider and examine the impact that the foreign policy has on the government's domestic counter terrorism strategy: does it make the British public more vulnerable to terrorist attack or not? Does it assist or hinder the effort to win over the Muslim communities in the UK and to shrink the pool of individuals vulnerable to 'radicalisation' themselves or supportive of the terrorist cause? Certainly, as Sir Bernard Crick, a quondam adviser to government on citizenship and community, said on the BBC Radio 4 *Today* programme,

> 'It is so glaring to so many intelligent, educated young Muslims that we have fallen in behind a grossly mistaken American foreign policy and are not even protesting against it . . . Even if we can't change it, protests from people in authority will cool the water of intolerance in some sections of the community.'

It was wrong of the government, he said, 'to keep denying that the water in which the terrorists swim is plainly political'. [26]

Swimming against the tide

Countering terrorism and 'radicalisation' is a key strategic priority for the Foreign Office, but FCO officials are plainly swimming against the tide. At a recent Royal United Services Institute (RUSI) conference, David Richmond, director general of the FCO's defence and intelligence, and John Davies, the communications director, set out the policies the Foreign Office is pursuing to reduce the effects of UK foreign policy on domestic extremism and 'radicalisation' and to engage with the Islamic world abroad.

In a broad review, Richmond said that the government and FCO acknowledged that foreign policy did contribute to radicalisation. It was idle, he said, to pretend that UK policy in Palestine and elsewhere had no effect. Specific circumstances could turn grievances against the west and western-backed regimes in the Middle East from discontent into 'extremism and violence' and Al Qaida was quick to exploit issues like Kashmir, Iraq and Palestine. He stressed that the western world was not 'anti-Muslim' and listed positive western initiatives, such as the NATO intervention in Kosovo, the then EU backing for the Palestinian Authority and the commitment to stability and democracy in Afghanistan and Iraq, as evidence.

Davies said that the FCO was working closely with the Home Office and other departments and agencies at countering 'myths' and 'radicalisation' and reaching out to British Muslims in the 'grey area' of extremism, not terrorism. His account is corroborated in the government's response to the 2006 ISC report on the London bombings which also details efforts to encourage direct dialogue between UK Muslims and 'mainstream Muslims' from abroad. There have been measures like the 'Empowering voices of mainstream Islam' roadshow to enable young British Muslims to encounter Muslim scholars tackling extremist misinterpretations of Islam and a European Muslims conference in Istanbul to bring together western and Muslim-world Muslim thinkers to reject 'extremism and terrorism'. Additional Arabic and Urdu media FCO spokespeople had been recruited to the Islamic Media Team; and outreach programmes included the use of Al-Jazeera, the Arabic satellite news channel, to counter Al Qaida inspired propaganda.[27] Similar policy approaches are set out in the government's Countering International Terrorism report of July 2006.

Initiatives of this kind are however dwarfed in the minds of many Muslims around the world by the brutal US offensive against the Iraqi insurgency, acquiescence in US opposition to a just settlement between Israel and Palestine, the abuses, deaths and injuries consequent on the Iraqi war, and collusion in policies of arbitrary detention and rendition. Regional news channels like Al-Jazeera spread knowledge of these activities more widely and intensively than the western media and reach into Muslim homes everywhere. Extremist and terrorist organisations are able skilfully to exploit them through the web, videos and DVDs. It is clear from the remarks of the young Muslims who took part in our focus groups that they are made aware of and deeply resentful of UK policies in the Middle East (see Chapter 3). It is equally clear that the limited policies that the FCO is able to pursue are most unlikely to win over the generations of young Muslims to come.

There are four keys to more positive policies. It is not too late begin to analyse the impact that UK foreign policy has on the Muslim communities in the UK and abroad. Secondly, any such analysis must seriously consider building a more balanced foreign policy in the Middle East, and especially towards Palestine. Abandoning uncritical support for US policy is integral to such a shift in the UK's current policy. Thirdly, the government must acknowledge that seeking to understand the grievances of people in the Muslim world does not entail condoning or supporting terrorist atrocities, and is by contrast essential to the process of beginning to reach out more effectively to those who are moved by them. Fourthly, a more independent relationship with the United States is vital. When John Davies was questioned about the need to differentiate the US and UK approaches to the 'War on Terror' at the RUSI conference, he was reduced to replying that it was important to understand the 'shock' of 9/ll and that 'he did not like to over-emphasise' the differences in the two approaches.

Playing down communities

The basics of effective counter terrorism were put in place in the intelligence community's strategy formulated in 2003:

1. intelligence geared to the new source of terrorist danger;

2. a commitment to protect the Muslim communities from the potential backlash from the majority population caused by terrorist attacks;

3. an endeavour to gain the trust of Muslim communities, not least because their members are the best source of intelligence;

4. an honest and unsensational account of the dangers and measures required to deal with them;

5. and the protection of basic civil liberties.

To these conditions we would add what should be givens – seeking consensus across party and in civil society and genuine public participation on the measures necessary. At the political level, the Prime Minister and ministers have often failed to live up to these goals.

Building trust among the Muslim communities is an essential part of the counter terrorism strategy. At the same time, there is real public pressure on the government to provide greater assurance of security against terrorism. We recognise that in a democracy governments must be responsive to the popular mood. The difficulty for ministers, however well-meaning, is that these two necessary, and complementary, objectives can clash. Our view is that ministers have

Implementing the 12 point plan

Prime Minister's Pledges, 5 August 2005	Official Report Back, July 2006	*The Financial Times* verdict, 7 July 2006
Make it easier to deport and exclude terror suspects	Actioned	Incomplete
Create an offence of condoning or glorifying terrorism	Actioned	Done
Refuse asylum in this country to anyone with a terror link	Actioned	Done
Extend and make more effective powers to strip citizenship from British citizens engaged in extremism	Actioned	Done
Set a time limit for the length of extradition cases involving terrorism	Consultation completed	Not done
Extend detention without charge and improve court procedures for trials involving sensitive evidence	Actioned	Incomplete
Extend the use of control orders to British nationals who cannot be deported	Actioned	Incomplete
Expand court capacity to deal with terror cases	Actioned	Not done
Proscribe Hizb ut Tahrir and the successor organisation Al Mujahiroun	Under Review	Incomplete
Establish with the Muslim community a commission to advise on better integration; review the acquisition of British citizenship	Actioned	Incomplete [now done]
Create new power to close 'places of worship' (i.e., mosques) fomenting extremism and ban foreign imams who are 'not suitable to preach'	'Consultation completed'	Not done
Toughen border controls	Actioned	Incomplete but good progress has been made

Sources: ***Countering International Terrorism: The United Kingdom's Strategy***, July 2006, Cm 6888, Annexe A; Campbell, M, and Burns, J, 'Blair falls short on promised counter-terrorism measures, *Financial Times*, 7 July 2006.

so far stressed the second objective that they have prejudiced the first. The Prime Minister has promoted policies of repressive legislation, no doubt in the sincere belief that it is necessary; and he and ministers like Hazel Blears, and more recently the Home Secretary John Reid, have emphasised a commitment to tough law enforcement in terms that overshadow and prejudice the vital community aspects of their own government's counter terrorism strategy.

At times, both the Prime Minister and Home Secretary have forfeited trust in themselves by politicising significant issues involving civil liberties and the rule of law for narrow political advantage, by embarking upon short-term rhetorical initiatives and by seeming to pander more to tabloid newspaper editors than to building consensus around a balanced strategy.

We examine the substance of the legislative and law enforcement strategy from a civil liberties, or rather human rights, perspective in Chapter 5. Here we observe that the government's counter terrorism policies, often adopted on the hoof, are part of a long-term authoritarian trend. From the 1970s onwards, governments of both main parties have taken more and more powers to deal with terrorism, crime, civil emergencies, immigration, public disorder and 'anti-social behaviour'. In addition, Richard Thomas, Britain's information commissioner, has warned that the government's flagship ID card scheme could lead to Britain sleepwalking into a 'surveillance society'; and he has commissioned an as yet unpublished report that, according to the *Sunday Times*, warns that the linkage of databases and surveillance systems in the UK makes the British people 'more spied upon by their political leaders than any other population in the free world'.[28]

On top of a considerable body of existing counter terrorism and criminal legislation, the government has increased its coercive armoury with three specific counter terrorism measures (the Anti-Terrorism Crime and Security Act 2001, the Prevention of Terrorism Act 2005 and the Terrorism Act 2006) as well as provisions in other laws.[29] Shortly after 9/11, the then Home Secretary David Blunkett set the rhetorical tone, promising the Labour conference on 3 October 2001 stern action by the state and an attack on existing legal safeguards including 'the constant use of judicial review, which has frankly become a lawyer's charter'.[30]

The Prime Minister is especially prone to give in to the tyranny of the short term at the expense of a long-term strategy. He for example ratcheted up the rhetoric on 5 August 2005, a month after the 7/7 bombings, when he announced a '12 Point Plan' for a 'comprehensive framework for action in dealing with the terrorist threat in Britain'. He declared:

> What I'm trying to do here is, and this will be followed up by action *in the next few weeks*, as I think you will see, is to send a clear signal out that the rules of the game have been changed [our italics].[31]

He also promised 'lots of battles in the months ahead . . . because of the way that the law has been interpreted over a long period of time' – a 'clear signal' that he too was impatient with the judiciary which had ruled that the indefinite detention without trial of foreign suspects was unlawful and might also rule against the use of 'Memoranda of Understanding' to enable foreign suspects to be returned to nations that practised torture. The day after, the *Sun* declared victory over 'new terrorism laws'.

The '12 Point Plan', generated in Downing Street, took Charles Clarke, then Home Secretary, and the Home Office by surprise and shattered the cross-party consensus on new counter terrorism measures that Clarke had built up with his Conservative and Liberal Democrat shadows. Tony Blair's plan made proposals that had not been agreed, or even discussed, with the two other parties and that they were almost bound to oppose.[32] John Denham, a former Home Office minister and chairman of the Home Affairs Committee, described Blair's proposals as 'half-baked' and told the Channel 4 journalist Peter Oborne,

> There must be some concern that the government agenda is sometimes driven by public and media pressure in this area, rather than a concern for what is most effective.[33]

The proposals were indeed 'half-baked'. At the time, Tony Blair said that the pledges were being acted on 'now, immediately, or under urgent examination'. A year later, a *Financial Times* audit found that only four

points were fulfilled; the remainder had either not been carried out, were incomplete or would be achieved over a number of years (see table). Some actions, such as the expulsion of 'preachers of hate', were virtually still-born and the potentially damaging proposal to close places of worship – i.e., mosques – was soon abandoned. The 12 points were diverse but shared two common features. First, they were populist measures aimed at satisfying the demands of the tabloid press. It seems that the Prime Minister was talking tough to appease the tabloid press clamour for new anti-terrorism laws, at a moment when they were dominated by stories railing against holidaying ministers. (Tony Blair himself was due to go on holiday the day after his intervention.) Secondly, the package was almost certain to alienate opinion within the Muslim communities; and it was promulgated in advance of the deliberations of the Muslim working groups that were set up after 7/7 to consult people from the Muslim communities on combating terrorism, identifying the roots of home-grown terrorism (see below) and winning trust in those communities.

Talking tough is also the hallmark of the approach of John Reid, the new Home Secretary. Just hours before the police arrests of 25 young Britons allegedly plotting to blow up transatlantic airliners in August, Reid spoke bullishly against the opposition politicians, judges and others who 'just don't get it', flaying them for not accepting the need to 'modify' some freedoms 'in order to prevent their misuse and abuse by those who oppose our fundamental values and who would destroy all of our freedoms'. He may or may not have known that the police were to act within hours, but he did know about the alleged plot and that action was likely soon. On 20 September Reid elected to advise Muslim parents to keep a close eye on their children and act if they suspected they were being 'radicalised'. This was spun as his first speech to a Muslim audience. Yet Reid wrote an article in the *Sun* on the day he went to Waltham Forest and the speech seemed to be pitched more at a majority television audience than at putative Muslim parents. The journalist Peter Oborne commented to us:

> Given that he was asking Muslim families to turn over their children, an incredibly difficult thing to do, this was not to put it mildly a sensitive course of action. It shows I think that Reid's real purpose was to have a conversation with the white working class community through the Murdoch press and not to have a discussion with Muslims. It suggests that Reid was actually seeking confrontation.

It was certainly an unrealistic speech, given the difficulties inherent in identifying young 'radicals', especially for their parents; and ill-advised, for if anyone was to issue any advice of this kind, it should surely have been someone from a Muslim community. As it was, he was heckled by a well-known local activist Abu Izzadeen who said he had no right to speak to a Muslim gathering, giving Reid the opportunity at the Labour party conference later that month to declare grandiloquently that he would allow no 'no go' areas in the UK (as if Izzadeen could accomplish that!).

Ironically, Reid gave his August speech at a Demos meeting where he drew on a Demos research paper advocating the participation of non-state actors in counter terrorism. The same paper warns against re-positioning 'security as an area of policy where there is no room for question and debate' and also contains this passage:

> Leaders must assume responsibility for initiating and maintaining sensible debates about security. Talk might be cheap, not least at election time when parties are trying to position themselves as being the only credible defence against immigration, terrorism, crime or whatever the concern of the day might be. But when those sound-bites exaggerate the risks or seek to reinforce the myth of the all-knowing, all-powerful government, this type of tactic is not only cynical. It also leaves the public feeling powerless to act, and our communities weaker as a result.[34]

The same research paper argues for two-way exchange as opposed to 'public information', and 'shared decision making' and 'planning scenarios' involving all actors – public, private and voluntary – in security policy-making, arguing that security is a 'participatory project', that needs to be anchored with checks and balances and a 'better informed public'. Another Demos paper argues against the strategy of trying to 'hit back' against terrorism in Iraq, Chechnya and elsewhere, saying that the evidence suggests that strategies to destroy terrorism by 'force of arms' are not sufficient to establish peaceful order and 'increase rather than decrease the level of violence and the gap between the two sides.'[35] And in February 2005 former Assistant Commissioner David Veness stressed in a Demos lecture that taking on those with Al Qaida sympathies should take place at community level; 'if we are to stop loose affiliations embedding themselves and maturing into cohesive networks, [we] must engage citizens and community leaders as "unlikely counter-terrorists".' All good advice that seems to have passed John Reid by.

Reid's grand-standing is hardly conducive to good community relations. He and ministers do, however, take care to add balancing comments about the 'law-abiding majority' of Muslims when addressing issues of terrorism, clearly anxious to make it clear that the terrorist threat comes from particular individuals, not particular communities. But it is in the nature of the media that such qualifications rarely make headlines or sound bites. There is now opinion poll evidence that public attitudes towards British Muslims and Islam in general are deteriorating. YouGov found in 2005 that 23 per cent felt that practically no Muslims supported terrorism and two thirds that there was only a dangerous minority. The same question in August 2006 found that 18 per cent thought that a 'large proportion' of British Muslims were extremists, and only 16 per cent that practically no British Muslims supported terrorism. A majority of people (53 per cent) agreed that Islam, 'as distinct from fundamentalist Islamic groups', posed a threat to western liberal democracy, as against 46 per cent after the London bombings in 2005 and 32 per cent after 9/11.

Building trust in the Muslim communities

The riots of April to July 2001 in northern cities set the Home Office working on social cohesion and race relations. After 9/11 this work took on a new immediacy as officials began secretly studying and seeking strategies to prevent 'disaffection' in the Muslim communities turning into 'radicalisation'. Their work coalesced in joint working between the Home Office and Downing Street Strategy Units, the creation of a cabinet-level review and finally the counter terrorism strategy.[36] Early on, the tendency was to concentrate on socio-economic concerns, building on regeneration, other government policies in schools, housing and so on, and anti-discrimination initiatives.

It was only after the July 2005 bombings that the decision to engage more directly with the Muslim communities took practical shape.

Central government is not used to or good at participatory politics; the tendency was to identify community leaders and to try and engage with the remarkably diverse, and often divided, communities through them. The most significant initiative under the 'communities' pillar of the strategy was the creation of a series of Muslim working groups, under the general title of 'preventing extremism together'. Our discussions with participants involved in the working groups indicate that many of those who were involved were apprehensive, fearing that they would be used by government as a cover for further more draconian security measures. However, they also felt obliged to participate. They recognised that this might not be the ideal mechanism for developing the government's policy responses, but it was the only game in town and there was little option but to participate and try to influence its outcomes.

Confidence in the process was also affected by the time frame the working groups were required to work to. The working groups were convened over August and were required to report by mid-September on immensely complicated issues – coexistence in a multicultural society, discrimination and disadvantage, the roots of radicalisation. Most managed three or at most four meetings, and rarely with all members of the working groups present. The working group on community security in its report noted that they

> retained significant reservations about the Government's intentions and commitment to the process. This is partly based on the rushed and poorly organised nature of the current consultation process; and the impression conveyed by the dialogue to date that these consultation meetings were designed more for effect than for any meaningful input.[37]

Moreover, within two weeks of their being set up, Tony Blair issued his 12 Point Plan (see above), pre-empting their discussions. The Liberal Democrat peer, Kishwer Falkner, said that she was

> completely dismayed within days of being set up to discover [that the Prime Minister] was proceeding full speed ahead with a raft of measures, without waiting fot us to come up with our recommendations, or indeed, our analysis of the problems. And the raft of measures was completely counter to reducing alienation and extremism. In fact, if anything, it was going to increase alienation in terms of the Muslim community.[38]

Nonetheless, many of those involved were supportive, particularly in light of the broad range of those that were asked to participate. A significant degree of trust was built up in the process. But this was prejudiced by the fact that each working group was required to provide a maximum of three recommendations among which the government could pick and choose. The government argues that 'by achieving so much in such a short time we have ensured that the long term process of preventing violent extremism within our communities is credible, well informed and evidence-based right from the beginning'.[39] It claims that the process has been led by the Muslim community; Muslims on the other hand note that the terms of reference, timetable and membership of the working groups were set by government. According to the report of the working groups, 'most if not all [working groups] see that the solutions lie in the medium to longer term issues of tackling inequality, discrimination, deprivation and inconsistent Government policy, and in particular foreign policy'.[40]

Sadiq Khan MP, a working group member, noted on the first anniversary of the July 2005 bombings that 'speaking to members of the task force now…there is a huge amount of frustration. What has happened to all the good ideas? Why hasn't an action plan been drawn up with time lines?' He acknowledged that there was some progress but added, 'there is an air of despondency. Only three recommendations have been implemented, and group members feel let down…I worry that the government might become the Duke of York – marching all these talented British Muslims up the hill of consultation and dialogue only to march them down again as very little appears to have changed.'[41]

The government has stated that there were 27 recommendations for government to lead on, that three of these have been acted on, work is in progress on 21 and three remain under consideration. However, a central recommendation of the working groups for a wide-ranging public inquiry, 'in order for all the issues to be considered and examined in the public domain' has been rejected. Many of the community organisations that we have spoken to believe that such an inquiry is vital to ensure that counter terrorism policies are effective and communities feel ownership of them. At the moment there is no shared understanding about the process by which the individuals involved in 7 July atrocities ended up as bombers. In the absence of a public inquiry, there is no open discussion, let alone any agreement, on the part that ideology, foreign policy, socio-economic deprivations or other factors might play in the radicalisation of young Muslims and the appropriate measures that might be taken.

Some Muslim organisations have suggested that as a consequence the policies that are being pursued will not have deep roots and are too narrowly based on reactive pursuit. They also suggest that the inquiry process, open to all sides, sharing different experiences, hearing all the relevant evidence, and examining and weighing up all claims and proposals impartially, would be more important than the eventual conclusions.[42] The government, defensive over the July bombings and the effects of the Iraq war, was never likely to accede to such a proposal, constructive though it is.

Police measures to improve trust

Police officers we have talked to recognise that prior to 11 September they had limited engagement with British Muslim communities. By contrast, they had considerably more experience of working with black Caribbean communities through addressing issues such as gun crime. The 2000 British Crime Survey, which provides data only on the basis of ethnicity, indicates that in 2000 Pakistanis and Bangladeshis had the lowest level of satisfaction with public initiated police contact and the lowest levels of confidence in the police. Only 18 per cent of Pakistanis and Bangladeshis said they were 'very satisfied' with the service they received from the police (compared to 39 per cent of whites).[43] The 2003 Citizenship Survey also indicates that Muslims have a lower level of trust in the police force than Christians.

Since 11 September 2001, the police have taken measures to build trust, creating the National Community Tensions Team (NCTT) to monitor developments in local communities and the Muslim Safety Forum (MSF) to establish an avenue for communication between Muslim organisations and the police. A Muslim Contact Unit was developed within Special Branch, to inter alia provide community impact assessment of planned operations (though imperfectly, if not at all, for example in the case of the Forest Gate and possibly other 'raids'). They have

engaged with influential Muslim scholars, for example co-sponsoring conferences attended by Yousef Al-Qaradawi, the Muslim scholar and preacher best known for his al-Jazeera programme, *Sharia and Life*. The police response to Muslim fears of a backlash in the immediate aftermath of the 7 July 2005 bombings was widely praised by many Muslims. Within hours of the attacks the Association of Chief Police Officers gave police forces across the country guidance on measures that could be taken to counter any backlash, including the need to make 'contact with vulnerable communities'. The ACPO press release on 8 July 2005 set the right tone in seeking to reduce the risks of a backlash:

> We have to be clear that the people who carried out these attacks are criminals. Whether or not they seek to justify their acts by reference to religion, what they did was mass murder. No religion supports that. It is therefore absolutely crucial that there be no backlash against any section of the community. Any such backlash would simply play into the hands of the murderers. As well as taking action to prevent it, police will deal robustly with any such behaviour that actually takes place.

The police have also addressed wider community issues and concerns, most notably initiatives to improve reporting of anti-Muslim incidents, such as the launch in November 2004 of the "Islamophobia – Don't Suffer in Silence" crime reporting scheme, a joint NCTT-MSF project. 50,000 information packs were published to encourage Muslims to report faith hate crimes.[44]

The Muslim Safety Forum is a potentially valuable body. It was set up by the Metropolitan Police and was initially something of a talking shop. This was mainly down to differences in expectations between the police and Muslims on the MSF: for the police, it was a useful way of 'reading the temperature' in the Muslim communities; but for the active MSF members it was a bridge to the kind of trust and dialogue that the police have developed with the black communities over initiatives to tackle gun crime. Relations reached a low point in early 2005 after MSF members felt that police ignored their advice not to arrest on arrival the British detainees released from detention in Guantanamo. Since then, however, under the stewardship of an able and energetic chairman, Azad Ali, a member of the Islamic Forum Europe, the MSF has become fully independent and developed a more proactive role involving closer liaison with the police. It has developed a protocol for cooperation with the police, which ensures more effective influence and access to senior police officers. It has now been able to open an office with a full-time staff member, thanks to a start-up grant from the Greater London Assembly.

The police are working hard in other ways to develop networks beyond the 'usual suspects', some of which already exist and are rarely commented on (which often suits those with whom the police are dealing). The police are also trying to 'foster what we see as new community leadership and engagement' by trying to engage with the 'many more articulate, professional, challenging leaders' who have come to their notice over the past two years and who do not come through the usual routes of mosque and community association. Overall the police believe that attitudes in Muslim communities have shifted and that denial of the terrorism threat is much less prevalent across all their contacts than it was four years ago. The willingness to discuss ways to tackle terrorism has increased, although many of their Muslim contacts feel 'intimidated' by government pronouncements.[45]

Working through faith communities

Faith is an obvious point of engagement with the Muslim communities. Given the tensions between faith communities (the talk is ecumenical, the rivalries are keen), central government has turned broadly towards these communities in much of its social cohesion and regeneration policies. In 2004 the Home Office published a review of government engagement with faith communities.[46] The government acknowledges that its recognition of faith communities' significant neighbourhood renewal and social inclusion role 'has yet to be reflected fully in local practice. The broad picture is still patchy, with enthusiasm in some areas matched by apparent reluctance to involve faith communities in others.'[47]

An earlier report from the Local Government Association argued that faith communities offered not only a channel of communication within the communities themselves, but also a wide engagement. However, the report noted that 'there is a low level of involvement of faith communities other than the main Christian Churches . . . the principle that faith communities are valuable partners in regeneration is widely promoted, but the practice in translating this into substantial outcomes is "work in progress". '[48] This report also warned that the needs of minority faith communities may be significantly different from those of the majority faith communities, stating that they

> have particular difficulty engaging with existing consultation processes and accessing funds, yet they are likely to be in particular need of help: they are often concentrated in areas of severe deprivation, they coincide with minority ethnic communities and they may lack the skills required to engage with wider structures.[49]

Yet in neighbourhoods where the social infrastructure has been eroded, religious institutions – churches, mosques, temples, synagogues and gurdwaras – may well be the only existing community organisations, and are certainly likely to be the most substantial community-based in terms of active membership, with as much right to be involved in discussion on neighbourhood renewal as, for example, residents' or tenants' organisations.[50]

The government's broader policies of regeneration and neighbourhood renewal, Sure Start and other schemes are all of obvious relevance to its attempts to engage with the Muslim communities; and engagement with faith communities is being built into the government's recognition that consulting and involving communities in developing effective government policy interventions is crucial to their success. The government recognises in principle that the 'most effective interventions' are often those where communities are actively involved in their design and delivery and 'where possible in the driving seat'; that this principle applies as much to 'communities of interest as it does to geographical communities'; that it is important to have input from vulnerable and excluded communities; and that its neighbourhood renewal programmes must focus on diversity in their strategy and implementation.

The Neighbourhood Renewal Unit's Diversity in Neighbourhood Renewal factsheet highlights the importance of faith communities. It notes that faith communities are able to draw upon significant resources in terms of people, networks, organisations and buildings. The more organised faith communities have a role in the voluntary and community sector and 'are crucial to the provision of local and neighbourhood services in areas of long term disadvantage'. Government guidance for local

strategic partnerships and other neighbourhood and community schemes echoes the importance of the role that they can play.[51]

The government in its wider policy and legislative agenda has also addressed specific concerns of Muslim communities. This includes the introduction of legislation to prohibit discrimination on the grounds of religion in employment,[52] education and the provision of goods and services, including public services.[53] The Racial and Religious Hatred Act 2006 added to the existing set of religiously aggravated offences. Between December 2001 and March 2003 there were 18 prosecutions for religiously aggravated offences, 10 involving Muslim victims.[54] In 2003-04 44 cases involving a religious element were reported to the CPS, half of them on behalf of Muslims. In 23 of the 34 cases involving a religious element were reported to the CPS in 2005-5 the actual or perceived religion of the victim was Muslim.[55]

However, our discussions with those close to such interventions and appreciative of the value to Muslim communities of policies designed to remedy disadvantage in education, housing, neighbourhoods and health, constantly come back to the discrepancy between such 'good stuff' and the relentless march of anti-terrorism legislation and insensitive policing. The public discourse around the legislation, highlighting issues of immigration and nationality, is particularly alienating for Muslims. 'Nobody ever talked about taking away Gerry Adam's nationality, or deporting him to the Irish Republic,' one prominent Muslim complained to us, semi-humorously. It is to the new counter terrorism laws and coercive state action that we now turn.

Footnotes

[1] See *Countering International Terrorism: The United Kingdom's Strategy*, Cm 6888, TSO, July 2006.

[2] Interview with Sir David Omand, 16 January 2006.

[3] Interview with Phillip Knightley, 30 December 2005. Phillip Knightley, the former *Sunday Times* special correspondent, is author of *The Second Oldest Profession* and other books on matters of security and war.

[4] The strategy can be accessed at: http://security.homeoffice.gov.uk/counter-terrorism-strategy/counter-terrorism-strategy/ House of Commons Home Affairs Committee, *Terrorism and Community Relations*, HC 165-I, TSO, March 2005: para 179.

[5] 'Memorandum submitted by the Association of Chief Police Officers', 14 September 2004, House of Commons Home Affairs Committee, *Terrorism and Community Relations*, HC 165-II, Written Evidence TSO, December 2005: 3.

[6] See Modood, T, *Multicultural Politics: Racism, Ethnicity and Muslims in Britain*, Edinburgh University Press, 2006; and Sir Bernard Crick's review, 'Multiculturalism and Britishness', *Political Quarterly*, vol 77, No. 2, 2006.

[7] DCLG News Release 2006/0085, New Commission on Integration and Cohesion, 24 August 2006

[8] Modood, T, *The Liberal Dilemma: Integration or Vilification?*, Open Democracy, 2006, http://www.opendemocracy.net/conflict-terrorism/liberal_dilemma_3249.jsp

[9] House of Commons Home Affairs Committee, *Terrorism and Community Relations*, HC 165-I, TSO, March 2005: para 175.

[10] Op cit, paras 17-19.

[11] Interview with Shamit Saggar, 6 March 2006.

[12] Intelligence and Security Committee, *Report into the London Terrorist Attacks on 7 July 2005*, Cm 6785, May 2006.

[13] Government Response to the Intelligence and Security Committee's *Report into the London Terrorist Attacks on 7 July 2005*, Cm 6786, TSO, May 2006: 7

[14] Home Affairs Committee, op cit: para 171.

[15] www.news.bbc.co.uk/2/hi/uk_news/politics/50563618.stm (6 June 2006)

[16] Assistant Commissioner Tarique Ghaffur, speech to the Association of Black Police Office 6 August 2006

[17] Silke, A., 'Fire of Iolaus: The role of state countermeasures in causing terrorism and what needs to be done,' in Bjørgo, T. (ed), *Root Causes of Terrorism: myths, reality and ways forward*, Routledge, 2005

[18] House of Lords Debates, 13 Dec 2005 : Column 1175. (Terrorism Bill, House of Lords Committee Stage)

[19] See Suskind, R, *The One Per Cent Doctrine*, Simon and Schuster, 2006, as well as the ISC report, op cit 14.

[20] Intelligence and Security Committee, *Iraqi Weapons of Mass Destruction – Intelligence and Assessments*, Cm 5972, September 2003: paras 126-127.

[21] Sturcke, J, 'Intelligence "warned of Iraq terror link"', *Guardian*, 19 July 2005

[22] Gregory, F, and Wilkinson, P, 'Riding Pillion for Tackling Terrorism is a High-risk Policy', *Chatham House Briefing Paper, ISP/NSC 05/01*, July 2005.

[23] See Burall, S, Donnelly, B, and Weir, S, *Not in Our Name: Democracy and Foreign Policy in the UK*, Politico's, 2005

[24] Meyer, C, *DC Confidential*, Weidenfeld & Nicholson, 2005

[25] Op cit, see fn 17.

[26] Crick, B, interview on BBC Today programme, 19 July 2005

[27] Richmond, D, and Davies, J, addresses to the Royal United Services Institute conference, 'Politics and Terrorism', 15 February 2006; Government Response, op cit, fn 10, p.7.

[28] Rogers, L, 'British the most spied upon people in the western world,' *Sunday Times*, 29 October 2006

[29] See Blick, A., and Weir, S., *The Rules of the Game: the government's counter terrorism laws and strategy,* a Scoping Report for the Joseph Rowntree Reform Trust, www.jrrt.org.uk

[30] Quoted in Andrew Blick, *How to go to War*, Politico's 2005: 130.

[31] Prime Minister's press conference, www.number-10.gov.uk/output/Page8041.asp

[32] For a full account of the break-up of the cross-party consensus, see Oborne, P, *The Use and Abuse of Terror: The Construction of a False Narrative on the Domestic Terror Threat*, Centre for Policy Studies, 2006: 7-15. The CPS pamphlet was published to accompany the Channel 4 Dispatches documentary, *Spinning Terror*, broadcast on 20 February 2006

[33] Oborne, op cit, p.10.

[34] Briggs, R, *Joining Forces: From national security to net-worked security*, Demos 2005

[35] Elworthy, S, and Rifkind, G, *Hearts and Minds: Human security approaches to political violence,* Demos 2005

[36] Private information

[37] *Preventing Extremism Together*, Report of the Home Office Working Groups, London: Home Office, 2005, p.73

[38] Quoted in Oborne, op cit, p. 33.

[39] Letter from Home Office to members of the Working Group

[40] *Preventing Extremism Together*, Report of the Home Office Working Groups, London: Home Office, 2005, p.3

[41] Speech by Sadiq Khan MP to the Fabian Society, 3 July 2006.

[42] *Preventing Extremism Together*, Report of the Home Office Working Groups, London: Home Office, 2005, p.3

[43] A. Clancy, M. Hough, R Aust and C. Kershaw, *Crime, Policing and Justice: the Experience of Ethnic Minorities*. Findings from the 2000 British Crime Survey, London: Home Office Research, Development and Statistics Directorate, 2001, p. 49.

[44] Press Release, 16 November 2004, Forum Against Islamophobia and Racism

[45] Private information.

[46] Home Office, *Working Together: Co-operation Between Government and Faith Communities*, Home Office Faith Communities Unit, 2004.

[47] Neighbourhood Renewal Unit, *Involving Faith Communities*, Office of the Deputy Prime Minister, 2004: 1.

[48] Local Government Association, F*aith and Community,* LGA Publications, 2002: 13.

[49] Local Government Association, *Faith and Community*, London: LGA Publications, 2002: 4.

[50] Neighbourhood Renewal Unit, *Involving Faith Communities*, London: Office of the Deputy Prime Minister, 2004: 1.

[51] Neighbourhood Renewal Unit, D*iversity in neighbourhood renewal factsheet*, Office of the Deputy Prime Minister, 2005: 4-5

[52] Employment Equality (Religion and Belief) Regulations 2003

[53] Equality Act 2006

[54] Racist Incident Monitoring Scheme, *Annual Report 2002-2003*, Crown Prosecution Service.

[55] Racist Incident Monitoring Scheme, *Annual Report 2004-2005*, Crown Prosecution Service

Chapter 5

The Effect on Human Rights

Human rights have been among the first casualties of the government's 'War on Terror'. Human rights, finally given systematic effect in British law in 1998 by the very government which now finds them so irksome, are being 'hollowed out' across the board - from the ancient rights of habeas corpus, liberty and a fair trial to the protection of private life and privacy and freedoms of association and expression. The authorities are even taking an equivocal stand on the prohibition on torture, which ought to be a non-negotiable hallmark of our democracy. In the judgment of Amnesty International, since the US declared the 'War on Terror' in 2001, the UK authorities have 'mounted a sustained attack on human rights, the independence of the judiciary and the rule of law'.[1] In rather more restrained language, Parliament's own Joint Committee on Human Rights (JCHR) has been saying much the same thing to the government, MPs and peers in successive reports on counter terrorism legislation and policy since 2000.[2]

Yet as we shall argue, human rights give Britain a valuable framework for preserving respect, responsibilities and tolerance in our society and offer the best long-term prospect of countering and ending at least 'home-grown' terrorism. Counter terrorism experts agree that it is crucial in counter terrorism policy and practice to uphold democratic and human rights principles and to maintain moral and ethical standards. Increased repression and coercion are likely to feed terrorism rather than reduce it.

Extremist ideologies that promote hatred and terrorism should be confronted on ideological grounds by investing more effort into challenging them politically.[3] It is necessary to adapt to the dangers that terrorism poses, but the kinds of changes that the Prime Minister and current Home Secretary are advancing to the 'rules of the game' are damaging to the very substance of human rights and justice in the UK. Tony Blair talks of 'rebalancing between the rights of the suspect and the rights of the law-abiding majority'. John Reid declared to the Labour party conference , 'It cannot be right that the rights of an individual suspected terrorist be placed above the rights, the life and limb of the rest of the British people. It cannot be right – it is wrong, no ifs, no buts, it's just plain wrong.' But these are false dichotomies: 'suspects' are members of the 'majority'. They are innocent until proved guilty, their rights and those of the majority hang together. (It is a miserable fact, however, that thanks to its constant use, the word 'suspect' is now charged with the presumption of guilt – so much that the *Guardian* recently wrote of 'alleged terrorist suspects'.)

The balance between human security and liberty

Human rights – or the rule of law and civil liberties – are the basic foundation stones of a modern representative democracy. In the heat of post-7/7 debate, it is often blandly stated that Britain faces a choice, or a 'trade off', between security and human rights [4], but this is an illusory choice that must be challenged. The 'trade off' that is emerging is between the largely undisturbed rights of the vast majority of people and the rights of members of minority communities and foreign inhabitants of the UK. As Cherie Booth said in her lecture after 7 July, 'it is all too easy for us to respond to such terror in a way which undermines commitment to our most deeply held values and convictions and which cheapens our right to call ourselves a civilised nation'. It is therefore important to stress that human rights and human security are not polar opposites that dictate trade offs; and that, indeed, Britain's human rights obligations under the European Convention on Human Rights are actually drawn up specifically to allow for states to respond to emergencies, such as a campaign of terror, but not unconditionally.

Respect for the rule of law

Far from being antithetical to effective anti-terrorism laws and measures, respect for the rule of law and civil and political rights provides the essential basis for an effective counter-terrorism strategy, for protecting the public, for intelligence gathering and for asserting and upholding the values of a modern and pluralist democracy. Respect for the rule of law and individual rights is especially important to the state's dealings with people within the Muslim communities who can be essential allies in counter-terrorism strategy.

The fact is that civil and political rights are constitutive of democracy and the rule of law. These rights are the sinews of the two basic principles of representative democracy – that the citizens of a country ultimately exercise control over their government, and that they share equally in that control. Such principles are meaningless in the absence of civil and political rights. Citizens must be able to debate issues freely in civil society, to communicate with each other and to associate and act together if they are to judge the policies and actions of governments and act upon those judgments. These freedoms are equally integral to democracy within the sphere of civil society, allowing society and communities to adapt and develop the values and convictions that provide an overall normative framework for the policies and conduct of governments of all colours. Protests and demonstrations are an important and legitimate part of these processes so long as they are peaceful. All these activities must take place free from the surveillance and interference of government and the state unless it is necessary to protect the lives and livelihood of citizens and their democracy; and there must then be safeguards in place to ensure that surveillance powers are not misused. Otherwise citizens will not feel free to make use of their civil and political rights.

Equally people must be protected from arbitrary arrest, imprisonment and torture. Habeas corpus and the rule of law are the hallmarks of British freedoms. As Albert Venn Dicey, the 19th century authority on the British constitution wrote, 'When we say that the supremacy of the rule of law is a characteristic of the English

constitution, we generally include under one expression at least three distinct though kindred conceptions, We mean, in the first place, that no man is punishable or can be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land …' This tradition – of the security of the person and due process alongside the right to life and civil and political liberty – occupies a significant place in the European Convention, which is in effect modern Britain's Bill of Rights.

Reconciling human security and liberty

Few human rights protected under the European Convention are absolute. The Convention makes specific allowance for the government lawfully to reconcile the needs of security with the protection of democracy and human rights. In fact, government plans to limit the democratic rights of free speech, association, information and assembly may legitimately be justified under a wide variety of 'recognised aims': national security, public safety, public health or morals, for the prevention of public disorder or crime, or to protect the rights and freedoms of others. The Convention also insists upon strict tests of the need for any limits on civil and political rights. The measures taken must be 'necessary in a democratic society' – that is, they must fulfil a pressing need and serve a 'recognised aim'; they must be proportionate to the need or danger; they must be 'prescribed by law' and conducted with regard to due process; they must be non-discriminatory; and they must conform to the democratic values of 'pluralism, tolerance and broad-mindedness.'[5] In general, the executive's laws and practice should be subject to the scrutiny and judgment of the courts; the independence of the judiciary should be respected; and its actions should be subject also to effective procedures for democratic oversight.

If the government wishes to curtail human rights, it should also do so formally through taking a derogation, rather than evading the human rights issues that its conduct raises. In practice, the European Court of Human Rights has given states a wide a wide degree of latitude in protecting national security, preventing public disorder or crime, or for similar goals. Further, under Article 15, states may take measures in an emergency derogating from its human rights obligations 'in time of war or other public emergency threatening the life of the nation . . . to the extent strictly required by the exigencies of the situation . . .' It is important to stress how severe and imminent an emergency must be to justify a derogation: it must threaten the life of the nation. Only a few key rights are non-derogable: in particular the right to life (Article 2), the prohibition of torture (Article 3), and 'no punishment without law' (Article 7). But derogation should be a temporary response that is supposed to last only as long as an emergency demands; Britain's counter terrorism laws are liable to be entrenched for good, depending upon decisions made around the promised Terrorism Consolidation Bill.

From 9/11 onwards there have been warnings from the parliamentary Joint Committee on Human Rights that the British government is failing to meet such standards. As early as November 2001, the JCHR concluded that the Anti-terrorism, Crime and Security Act 2001 (ATCSA 2001), then still in bill form, did not on the evidence available to its members always strike the balance between freedom and security 'in the right place'.[6] The challenge to established democratic and human rights principles has since continued. Earlier this year, the JCHR, reporting on the control orders regime operated by the government since 2005, argued that the lack of safeguards led to 'significant concerns about whether… this regime…is compatible with the rule of law and with well established principles concerning the separation of powers between the executive and the judiciary'.[7]

Further, the 'trade off' between security and freedom is falling disproportionately on certain communities in the UK, as Hazel Blears, then the Home Office minister responsible for counter terrorism, told the Commons Home Affairs Committee in 2005:

> Dealing with the terrorist threat and the fact that at the moment the threat is most likely to come from those people associated with an extreme form of Islam, or falsely hiding behind Islam… inevitably means that some of our counter-terrorist powers will be disproportionately experienced by people in the Muslim community. That is the reality of the situation, we should acknowledge that reality and then try to have as open, as honest and as transparent a debate with the community as we can. There is no getting away from the fact that if you are trying to counter the threat, because the threat at the moment is in a particular place, then your activity is going to be targeted in that way.[8]

She also backed the police argument that the purpose of stop and search activity is to disrupt and deter terrorism rather than to apprehend terrorists. She explained that their use helps 'to deter all kinds of terrorist activity by creating a hostile environment for would-be terrorists to operate in'.[9] Since, as we show later (page 49), these powers fall heavily and too often indiscriminately on Asians as a proxy for Muslims, they also create a 'hostile' environment for many non-terrorists in their communities.

We accept that the activities of the intelligence and security services and police are bound to impact disproportionately on the communities among whom terrorists 'falsely hide', but the surveillance and 'disruption' that ensues should as far as is humanly possible be 'targeted' on individual suspects as distinct from the communities, should be justifiable and should be subject to effective checks. The government's approach to counter terrorism has also been part of wider attempts to break with basic human rights and long-accepted traditions of criminal justice in the UK – for example, protections for the rights of the accused, habeas corpus – to introduce summary justice and to restrict jury trial. The Prime Minister's impatience with aspects of the criminal justice system is not unjustified, and he is right to argue that the state's primary duty is to safeguard the safety of its citizens (along of course with anyone else in the UK's jurisdiction). But his formulation of this duty suggests that 'law-abiding people' should be protected at the expense of people, law-abiding or not, guilty or not, accused of a crime or misdemeanour for which they have not stood trial. Human rights must exist for everyone equally or they are worthless. Everyone is equally entitled to be presumed innocent until found guilty: an innocent person suspected of a crime is one of the 'law abiding people' who the Prime Minister believes should be 'allowed to live in safety'. If they are denied a fair trial under due process, they are denied their right to live in safety. What Tony Blair is actually saying is that some innocent people may be punished or locked up because current safeguards mean that some guilty criminals and terrorists whom the authorities 'know' to be guilty walk free.

Visiting Britain late in 2004, Alvaro Gil-Robles, the Council of Europe Commissioner for Human Rights, 'was struck…by the frequency with

which I heard calls for the need to re-balance rights protection, which, it was argued, had shifted too far in favour of the individual to the detriment of the community'. Amongst the 'targets of such rhetoric' was 'prevention of terrorism', alongside criminal justice and asylum. But, he emphasised 'human rights are not a pick and mix assortment of luxury entitlements, but the very foundation of democratic societies. As such, their violation affects not just the individual concerned, but society as a whole; we exclude one person from their enjoyment at the risk of excluding all of us'.[10]

In our scoping report on counter terrorism, *The Rules of the Game*, we set out a full analysis of the main proposals of the then Terrorism Bill 2005. We found that some new offences – of preparing terrorist acts, training for terrorism, making or possessing nuclear devices, etc – were valuable or acceptable in principle, but they often replicated existing law and were generally too widely drawn and so vulnerable to abuse.[11] Since then, we have encountered doubts among intelligence and law enforcement officials about whether these new laws are, in the Home Secretary's term, 'fit for purpose'. 'As a general point,' we were told, 'the further you go away from a "core" offence, the harder it is to investigate. There are four tiers of involvement; the actual terrorist act, the conspiracy, the incitement, the assistance. The more links in the chain away from the offence will make it harder to prove both the intent and the actions. Many of these new offences created under the Terrorism Act are more removed from substantive act. Not ideal in terms of investigations and not greatly welcomed by practitioners.'[12]

The table sets out areas of possible or actual conflict between UK laws and practice and international human rights standards, as assessed at the time by official national and international organisations and in our judgment (and partially amended to make the analysis still relevant). This Chapter then goes on to consider key areas in more detail.

The definition of terrorism

All Britain's counter terrorism laws and practice are based legally on the definition of terrorism set out in the Terrorism Act 2000. This wide definition includes serious violence against people or damage to property that is designed to influence the UK, other governments and international bodies such as the United Nations, to intimidate the public, or to advance 'a political, religious or ideological cause'. The definition was immediately criticised in 2000 for being too wide and vague to satisfy the clarity required for the criminal law. The danger is that it widens offences under the counter terrorism laws, creates too much discretion in the way in which they may be applied, leaves room for political bias and could be used to prosecute people active in legitimate social or political movements who are exercising their rights. Amnesty International argued in 2005 that offences in counter terrorism laws based on the Terrorism Act 2000 may not amount to 'recognizably criminal offences' under international law. Thus arrests, detention, charge and trial in connection with an offence bolted onto this definition may lead to injustice and risk further undermining of human rights protection and the rule of law in the UK.'[13] The JCHR has noted that counter terrorism measures based on the wide 2000 definition 'are capable of application to speech or actions concerning resistance to an oppressive regime overseas.' The committee argues that unless a narrower definition of terrorism 'which could, for example, concentrate on attacks on civilians' is introduced, there could be compatibility problems with Article 10 [protecting freedom of expression] and related Articles of the European Convention.[14]

Surveillance

A principal element of the government's counter terrorism strategy has been the surveillance of suspected individuals by the intelligence and security services. But this aspect of policy has to some extent escaped debate because the rules governing state surveillance and its oversight were put in place in legislation prior to the present emergency. Intelligence is the key to successful counter terrorism; it is 'clean', the authorities argue, and good intelligence can prevent blunders. Given the inevitable time-lag in the ability of the intelligence and security services to infiltrate and develop human intelligence from a standing start, they are bound to rely heavily on surveillance. In particular, entry into and interference with

Communications Interception Warrants issued in England and Wales under RIPA, 2001-04

Year	Issued	In force on 31 December	Modifications
2001	1314	464	1788
2002	1466	515	1885
2003	1878	705	2525
2004	1849	674	3101

UK counter terrorist policy and human

UK Law or Action
Definition of terrorism
Power of arrest of suspected terrorist
Pre-charge detention of up to 28 days
Indefinite detention of foreign terrorist suspects without charge or trial
Control orders, enabling restrictions of freedom on individuals by Home Secretary, based on at least partially secret evidence
Proposed deportation of terrorist suspects with diplomatic assurances against ill treatment from destination state
Detention or bail of terrorist suspects 'pending' deportation
Possible use of evidence obtained through torture in legal proceedings; provision of torture evidence to states which may use it as basis for ill-treatment
Use of UK airports for stopovers by CIA when carrying out extraordinary rendition for interrogation by torture; use of UK airports by planes suspected of having carried out rendition previously.
UK personnel being present at, or participating in, interrogations of detainees in Afghanistan, Guantanmo Bay and Iraq
New tests for deprivation of citizenship from dual nationals or right of abode.
Enforced out of country appeals for deportations on national security grounds
August 2005 list of 'unacceptable behaviours' to be used in consideration of stripping of citizenship from dual nationals and right of abode
Criminalising of 'encouragement' of terrorism, dissemination of terrorist publications, attendance at a place used for terrorist training
Proscription of organisations glorifying terrorism

property or equipment, intrusive and non-intrusive surveillance, and the interception of communications by the agencies and other law enforcement agencies is part and parcel of investigations into terrorist activities. Sir David Omand has put to us the idea that it may be necessary to accept a degree of flexibility around the right to privacy, in the use of such practices as surveillance and interception, in order to preserve other basic human rights, including freedom of expression and association, while ensuring the rights to life and human security are protected against terrorism. (Some flexibility in the right to privacy is allowed for by the ECHR.) The table on page 44 shows how interception of communications, as provided for under the Regulation of Investigatory Powers Act 2000 (RIPA), has increased since 2001, partly in response to the perceived threat of terrorism, but

rights compliance, 2005

Authority	Protected Human Right	Actual or Possible Violation
Terrorism Act 2000 (TA 2000)	Articles 10 and 5, European Convention on Human Rights (ECHR)	Vague and catch-all character. Possible
TA 2000	Article 5 ECHR	The danger of arbitrary arrest is potentially reduced by the creation of the new offence of Acts Preparatory to Terrorism. Vague definition of terrorism renders it liable to abuse
Terrorism Act 2006 (TA 2006)	Articles 3, 5 and 6 ECHR	Enables police to detain without charge for excessive period of time; could amount to ill-treatment and denial of liberty and right to fair hearing. Possible
Part Four of the Anti-Terrorism, Crime and Security Act 2001 (ATCSA 2001, this part now defunct)	Articles 3 and 5 ECHR; Article 4 of the International Covenant on Civil and Political Rights (ICCPR). The UK has taken out derogations. Article 8 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Ruled in violation of Articles 14 and 15 ECHR by Law Lords, 16 December 2004.	Enabled Home Secretary to detain suspects who could not be tried; discriminatory against foreign nationals; disproportionate response to the threat; ill-treatment of detainees. Actual
Prevention of Terrorism Act 2005 (PTA 2005)	Articles 3, 4, 5, 6, 8, 9, 10, 11 and Article 1 Protocol 1 ECHR	Entails severe restrictions on the liberty of suspects without the right to a fair hearing; overrides due process and separation of powers; amounts to ill-treatment; discriminatory against foreign nationals; denies freedom of speech and association; interferes with rights of family members. Actual
Deportation power has statutory expression in Immigration Act 1971	Article 3 ECHR; Article 3 UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)	Runs risk of tacit compliance with torture and ill-treatment of individuals who cannot be prosecuted; guarantees produced by destination states cannot be relied upon; difficult to monitor compliance. Actual
Section 3 Immigration Act 1971	Article 5 ECHR	Abuse of 1971 Act allows authorities to hold suspects indefinitely without trial. Actual
	Article 3 ECHR; Article 15 UNCAT	Danger remains that it will be used, despite being ruled illegal by House of Lords. Possible
	Article 3 ECHR; Article 7 ICCPR; Article 6 and 12 UNCAT; Customary international law	UK authorities have duty to act upon credible suspicion that this is taking place. Possible
	Geneva Conventions and specific UK policy on interrogations	Personnel not properly trained in Geneva Conventions and UK policy on them; unaware of interrogation techniques banned by UK in 1972; unaware of 2003 ban on hooding of prisoners in transit. Actual
Immigration, Asylum and Nationality Act 2006	Articles 3, 5, 8, 14 ECHR; Articles 12 and 26 ICCPR	Home Secretary can, on basis of subjective criteria, strip individuals of right to live in UK, even if born here. Actual
Immigration, Asylum and Nationality Act 2006	Article 1 Refugee Convention	Uses very broad definition of 'terrorist'; denial of basic principles of refugee law. Actual
	Article 10 ECHR	Could impinge upon freedom of speech of dual nationals and those with right of abode; may be applied retrospectively. Actual
TA 2006	Article 10 ECHR	Too vaguely drawn, could impinge upon freedom of speech; Actual
TA 2006	Articles 10 and 11 ECHR	Too vaguely drawn, could impinge upon freedom of speech and association. Actual

partly as well to a likely loosening across the board as the authorities have been given greater latitude in criminal investigations.

It is fair to say that the powers provided generally under RIPA, while receiving much less public attention than those associated with the raft of counter terrorism legislation produced since 2001, are and will continue to be used far more extensively than any of the novel measures introduced by the government since then. While increased surveillance may be necessary and preferable to other forms of interference with human rights, it is necessary to subject it to strict oversight. Yet the oversight of surveillance in the UK is one of the weakest in the democratic world. It is the Home Secretary who approves interceptions and senior policemen who approve access to 'traffic data' (for instance, the duration of a call and the number it was made to), not judges in either case. There are episodes in David Blunkett's memoir that reveal that warrants for telephone taps and surveillance had reached 2,500 a year by the end of his period at the Home Office in 2004.[15] (See Chapter 6 further). The figures in the table are clearly out of date; and while they tell us how many communications interception warrants there are, they do not tell us which agencies made use of them, or their purpose. No figures are produced for surveillance of traffic data; or for warrants for entry on or interference with property or with wireless telegraphy ('property warrants'), or other authorisations of activities. We do not even know for sure exactly how far surveillance of traffic data extends; Gus Hosein, of Privacy International, says: 'It's not quite trawling yet, but it does permit fishing expeditions.'

Control orders and preventive detention

It has become clear to us in our researches that the authorities would like to introduce a more targeted form of preventive detention than the internment without trial that was discredited by its use in Northern Ireland (though there are those who still argue for internment). The authorities have tried repeatedly since 9/11 to find ways to restrict the freedom of individuals whom they believe to be security risks but who cannot be prosecuted or more usually deported, in the case of foreign nationals. Both the short-lived indefinite detention without trial of foreign terrorist suspects, introduced by the Anti-terrorism, Crime and Security Act 2001 and condemned by the House of Lords in December 2004 as incompatible with the European Convention,[16] and the proposal in 2005 to give the police powers to hold suspects for up to 90 days without charge, were at root attempts to introduce targeted preventive detention. One of our interviewees who was in the loop made it clear that the real reason for many arrests under existing powers and for holding people for up to 90 days was not to give the police more time to interrogate suspects and gather evidence, but really to keep them out of mischief.

Following the judgment of the Law Lords, the government introduced control orders in the Prevention of Terrorism Act 2005 to maintain the detention of suspects. Control orders have been so restrictive that they have effectively deprived suspects, nationals or non-nationals alike, of their liberty. They imposed curfews of up to 18 hours on the detainees, restrict their associations with groups and individuals, their movement and access to goods and services, control their finances and affect the families of suspects as well. They come in two types: those which require derogation from the European Convention (as yet unused) and those which in theory have not. The Home Secretary must apply to the courts to issue a derogating control order which lasts for six months. He may proceed unilaterally with a non-derogating order which lasts a year, applying to the courts within seven days. Hearings may be in open or closed court. In closed sessions 'security-sensitive' information is considered and the suspect is represented by a Special Advocate (as in hearings by the Special Immigration Appeals Commission, SIAC). By the end of 2005 18 control orders had been issued – 11 of which were against foreign suspects previously held in indefinite detention. On 2 September 2005 the first control order was applied to a British citizen. As of September 2006, 15 control orders existed (including, it is understood, some orders issued as a contingency but not yet enforced).Control orders raise not only general points of constitutional principle concerning the rule of law and the separation of powers, but also a number of specific human rights concerns.[17] In the High Court on 28 June 2006, Mr Justice Sullivan quashed control orders on six detainees, ruling that the 'draconian' restrictions on their liberties fell just short of house arrest. They had been deprived of their liberty in contravention of Article 5 of the European Convention.[18] On 1 August the Court of Appeal confirmed the ruling. The Home Secretary is believed to have made the orders in question slightly less stringent, scaling down the curfews in place from18 to 14 hours. Previously, in February 2006, Lord Carlile, the official independent reviewer of counter terrorism laws, published a list of obligations which have been included in most of the control orders issued so far (see Appendix A) and described them as 'extremely restrictive'.[19] The JCHR – a cross-party committee of parliamentarians, remember, not a civil liberties organisation – published a damning verdict on control orders in the same month. The committee suggested that control orders might violate protected human rights under four Articles of the European Convention:

- stating that they can be 'so restrictive of liberty as to amount to a deprivation of liberty for the purposes of Article 5 (1) ECHR [the right to liberty and security]', and questioning whether the power to impose non-derogating control orders would be exercised compatibly with Article 5 'in the absence of a derogation from that Article'.[20]

- expressing the belief that the control orders regime amounted to a 'de facto derogation from Articles 5 (4) [lawfulness of detention] and 6 (1) [the right to a fair and public trial] of the Convention.[21]

- registering concern that 'the combination of the degree of restriction imposed by control orders, their indefinite duration, and the limited opportunity to challenge the basis on which they are made, carries a very high risk of subjecting those who are placed under control orders to inhuman and degrading treatment contrary to Article 3 ECHR' [the prohibition of torture or inhuman or degrading treatment or punishment].[22]

The committee also found that control orders interfered with the human rights of members of the suspect's family, including their right to respect for private, family life and home; their right to freedom of expression and to receive information; their right to freedom of association. In the committee's view, they were being caused 'Mental suffering and anguish due to the fear of their home being searched, the controlled person rearrested, or their own social interactions monitored'.[23] The JCHR argued further that the standard of

proof for control orders should be raised: in the case of non-derogating orders, from 'reasonable suspicion' to 'the balance of probabilities' (the standard for civil cases in England and Wales); for derogating orders, from 'the balance of probabilities' to 'beyond reasonable doubt'.[24]

Under the 2005 Act, the Home Secretary may make non-derogating control orders without first applying to the courts. Both Alvaro Gil-Robles and the JCHR have argued that such orders should be made by a court, not the executive. The JCHR said that 'our own constitutional traditions of due process, and of the separation of powers between the executive and the judiciary' were involved.[25] The committee were concerned about the use of secret evidence and special advocates – 'a procedure in which a person can be deprived of their liberty without having opportunity to rebut the basis of the allegations against them' – and stated that these processes were not

> compatible with the right to a fair trial in Article 6 (1), the equality of arms inherent in that guarantee, the right of access to a court to contest the lawfulness of their detention in Article 5 (4), the presumption of innocence in Article 6 (2), the right to examine witnesses in Article 6 (3), or the most basic principles of a fair hearing and due process long recognised as fundamental by English law.[26]

Alvaro Gil-Robles pointed out that non-derogating orders were 'initially made by the executive rather than, as Article 6 ECHR would properly require, the judiciary' and commented,

> it does not seem to me that the weak control offered by judicial review proceedings satisfies the requirement of the judicial determination of what could be considered, in effect, as criminal charges. Added to this, the proceedings fall some way short of guaranteeing the equality of arms, in so far as they include in-camera hearings, the use of secret evidence and special advocates unable subsequently to discuss proceedings with the suspect of the order. The proceedings, indeed, are inherently one-sided, with the judge obliged to consider the reasonableness of suspicions based, at least in part, on secret evidence, the veracity or relevance of which he has no possibility of confirming in the light of the suspect's response to them. Quite apart from the obvious flouting of the presumption of innocence, the review proceedings described can only be considered to be fair, independent, and impartial with some difficulty.[27]

Finally, since 17 of the 18 control orders issued were against non-nationals, the JCHR raised the question 'of possible discrimination in the application of the control orders regime' – potentially a breach of Article 14 [requiring non-discrimination] of the European Convention, in conjunction with Articles 5, 6, 8, 9, 10, 11 and Article 1 of Protocol 1, protecting the rights to liberty and security of the person, to a fair and public hearing, and to the peaceful enjoyment of possessions, respect for private and family life, and freedoms of thought, conscience, religion, expression and association.[28]

Control orders and the use of immigration powers

Nine of the 18 control orders issued in 2005 were still in force by the end of the year (including one against a UK national). The nine who had their control orders revoked – all former foreign detainees held indefinitely under the Anti-Terrorism, Crime and Security Act – were detained under Section 3 of the Immigration Act 1971 and served on 11 August 2005 with notice of intention to deport. The government may only detain individuals under the Act 'pending deportation'. The government argues that deportation is pending since it is seeking memoranda of understanding with foreign governments not to execute, torture or subject the foreign suspects to inhuman or degrading treatment if they are returned to their own country.[29] Memoranda have been agreed with Jordan, Libya and Lebanon. Negotiations are underway to conclude them with Algeria, Morocco and Egypt. The value of an agreement with a nation that already tortures prisoners and so violates existing international agreements is doubtful.

Four of the nine former suspects being held for deportation have been granted bail. The bail conditions, according to Lord Carlile, are 'similar to rigorous non-derogating control order obligations'.[30] The Campaign Against Criminalising Communities, a conglomerate of lawyers, activists and community groups, states that the bail conditions for at least one man amount to 'full house arrest'. If this were so, a derogation from the European Convention would be required if there was no reasonable prospect of deportation; none has been sought for the exercise of this power under the Immigration Act 1971.[31] The JCHR has noted,

> Given the very clear case-law establishing that detention pending deportation can only be justified under Article 5(1)(f) of the Convention if there is a realistic prospect of deportation within a reasonable time, we doubt whether use of Immigration Act bail conditions amounting to full house arrest, which undoubtedly amounts to a deprivation of liberty, in cases where memoranda of understanding with the receiving country have yet to be concluded, can be lawful in the absence of a derogation from Article 5'.[32]

The 1971 Act has also been used to detain those found not guilty in the so-called 'ricin trial' (some of whom have subsequently been bailed on control order-style conditions of 'partial house arrest'). This course in effect represents what the Campaign Against Criminalising Communities said was 'a parallel or alternative route to punishment without trial' in evidence to the JCHR. Alvaro Gil-Robles levels the same accusation against the use of control orders: 'Substituting "obligation" for "penalty" and "controlled person" for "suspect" only thinly disguises the fact that control orders are intended to substitute the ordinary criminal justice system with a parallel system run by the executive'.[33] More broadly, Amnesty International believes that the government has since 9/11 created a

> shadow criminal justice system involving 'punishment, whether it be by deprivation of liberty or deportation of people against whom there is insufficient evidence to support a criminal charge. Such a course of action brings the law and those charged with its enforcement into disrepute; it is neither fair, nor just, nor lawful – and soon results in the loss of public confidence.[34]

Arrests and pre-trial detention

Under section 41 of the 2000 Act, the police may arrest someone on reasonable suspicion that they are a terrorist; but the definition of terrorism and related offences as contained in the Act is so broad as to make the power of arrest potentially very wide in its application. In his 1996 report on counter terrorism law, Lord Lloyd of Berwick, the former law lord, found the power of arrest – which existed in the Prevention of Terrorism Act – useful as a means of pre-empting terrorist acts, but was concerned it could contravene the fundamental legal principle

that arrests should be based on the commission, imminent or actual, of specific crimes. He saw a potential conflict with Article 5 of the European Convention on the right to liberty and security. Accordingly Lord Lloyd – and Lord Carlile after him – recommended that lower level acts 'preparatory to terrorism' should become criminal offences.[35] The Terrorism Act 2006 introduced this new crime which is now in use – for example, in charges against those accused of plotting to blow up transatlantic airliners. Thus arrests are brought into the criminal justice system, but the offence is so widely drafted that it creates dangers of abuse; and the length of time that it is taking to bring charged suspects to court makes for a de facto form of preventive detention.

A suspect arrested under the 2000 Act may be detained for up to 28 days before being charged. The period of pre-charge detention has been raised from seven days in 2000, which the police felt was adequate, to 14 days in 2003, again apparently an adequate period for police purposes, and then to 28 days from 14 by the Terrorism Act 2005. It is interesting that the police case for each period of detention, from seven days in 2000 to their pressure for up to 90 days in 2005, scarcely varied. It is hard to understand fully just why the period of detention itself rose so dramatically, unless it is largely regarded as a form of preventive detention. As it is, the government and police failed to persuade Parliament to extend the period of pre-charge detention to 90 days, losing the crucial vote in the House of Commons. The official evidence produced to justify the 90-day period was unconvincing; and while the police wanted it, we are reliably informed that the intelligence services did not. Lord Lloyd warned that the proposal 'bordered' on internment. The official evidence did not in our view even justify 28 days of pre-charge detention, which was more a political compromise than a considered decision. From 20 January 2004 (when pre-charge detention rose from seven to 14 days) to 4 September 2005, only 11 terrorist suspects were held for as long as 13-14 days, and they were all charged with offences, suggesting that the police had enough time.

The Home Affairs Committee, in its report on pre-charge detention in July 2006, was highly critical of the police and government case for the 90 days, stating that the police case on such a major issue with very significant human rights implications should have been 'better developed' and criticising the Prime Minister and the then Home Secretary for not challenging the police case well enough to assure themselves that it was justified.[36] However, the committee also found, after studying some 17 cases in depth in private session – some which have yet to come to court, some which were currently in court – that an extension beyond the existing 14 days was justified in view of the cumulative effect of computer decryption and other forensic investigations, but not as yet a maximum detention period of more than 28 days. However, the committee felt that 28 days may prove inadequate in the future. The committee recognised the 'preventative element' of some arrests under terrorism laws and recommended that it should 'be given clearer and more explicit recognition' by the government, having put it to Assistant Commissioner Andy Hayman that the main case for extending the maximum detention period was to disrupt or prevent terrorist activity, rather than to gather evidence. He agreed that 'There are a vast amount of cases now where an early interdiction is to disrupt on the grounds of public safety'. The committee concluded that preventive detention was a significant new development that should not be left to the police alone, and recommended judicial oversight of preventive arrests and detention and 'continual reassessment' of whether alternatives, such as control orders and tagging, might not be more appropriate.

By contrast, the Joint Committee on Human Rights has noted that 'Preventive detention is not permissible under Article 5 [the right to liberty and security of person] of the European Convention and warned that it could not be introduced 'without a derogation' – which would require the government to claim that the 'life of the nation' was in peril. Prolonged detention is a harrowing experience with intense psychological pressures on those who are held. The power to hold suspects even for the current 28 days may already fall foul of Article 3 [the prohibition on torture and inhuman or degrading treatment or punishment] and Article 5 of the European Convention in the view of the Joint Committee on Human Rights. The JCHR argues that the case for extensions beyond 14 days is unproven; that when such an extension takes place, there should be a full adversarial hearing before a judge, with the detainee present and relevant material made available; and that there should be a clear presumption in favour of liberty, not detention.[37] Moreover, lawyers for people who have been arrested and held in 28-day detention complain that the police are not questioning them or proposing charges for long periods – some suspects have been held, it is said, for nine days before they have been questioned. This calls into question the quality of the judicial supervision of extensions beyond 14 days as in the cases of the alleged airliner plotters who were not, we are informed, interviewed at all for some time following their arrest.

A 'shadow' system of criminal justice, driven by the executive, is beginning to emerge and the pressures for extending it are growing. It is essential for the health of justice in the UK to seek every opportunity to prosecute terrorist suspects within the existing criminal justice system with its protections for liberty and fair trial rather than devising means to hold them. One of the reasons given for seeking longer pre-charge detention for suspects and exceptional measures like control orders is that intercept evidence is not admissible in court. This ban is thus a factor in the growth of the shadow system of criminal justice. We discussed the case for repeal of the ban under the Regulation of Investigatory Powers Act 2000 on the use of domestic intercept information as evidence in open court in our scoping report. The UK is the only country other than Ireland to have such an absolute prohibition in place; other nations, including France, Germany and the US, make intercept evidence admissible on a regular basis. It would be valuable in major criminal cases as well as in terrorist trials. Intercept material from Austria, Belgium and Italy played a vital role in securing the conviction of the ring of Turkish people-traffickers in October, for example, but it was only admissible as evidence in court because it was obtained lawfully by the foreign law enforcement agencies.

There is widespread informed support for allowing it to be introduced in court; and the security services could always withhold information that would damage their operations. Among other organisations, JUSTICE has argued 'lifting the ban on the use of intercept evidence in criminal proceedings . . . would allow for an increase in the number of prosecutions that could be brought for terrorist offences'.[38] It seems difficult to conceive of a compelling reason for the government to maintain the current self-imposed ban while at the same time seeking to justify a departure from the ordinary principles of the criminal law. The Attorney General did signal in September that the

ban should be lifted. We are reliably informed that he and the Prime Minister are 'raring to go' with lifting the ban, and that the only obstacle is said to be making it workable. However, it is hard to believe that it beyond the wit of government to devise a way of lifting the ban and also protecting vital security information; the JCHR has argued that the use of public interest immunity and special advocates should be sufficient to ensure the concerns of the intelligence and security agencies about using sensitive material in prosecutions are met. And others closely involved in monitoring counter terrorism policy told us that the government was making no real effort to remove this or any other obstacle to prosecutions.

Making intercept information admissible in court would make it possible to prosecute more alleged terrorists. In his 1996 report on counter terrorism laws, Lord Lloyd found at least 20 cases in which the use of intercept evidence would have made it possible to mount a prosecution (though obviously under different circumstances). The Newton committee, Lord Carlile, and the JCHR have over the last few years proposed various other options to facilitate more criminal prosecutions and avoid executive detention. Other approaches proposed include using terrorism as an aggravating factor in sentencing; earlier involvement in terrorist cases by the Crown Prosecution Service (which has to some extent been taking place since 2004); an emphasis when investigating terrorism upon converting information into evidence; an equivalent to the French offence 'association of wrongdoers'; more proactive case management by judges; and more incentives for giving evidence. Meanwhile, the introduction of the 'threshold test' by Crown Prosecutors when deciding whether to charge an individual with a criminal offence removes one obstacle. Instead of the general belief that CPS requires a greater than 50 per cent chance of a successful prosecution, it can now apply a 'reasonable suspicion' test instead – though one based on evidence, rather than intelligence, as can be the case simply for arresting a suspect. The JCHR argues that the 'threshold test' is used in the majority of terrorist cases and thus undermines arguments for an extension of pre-charge detention beyond the current maximum of 28 days. The JCHR argues as well for changes in Home Office regulations to permit post-charge questioning of terrorist suspects without either new evidence coming to light or the agreement of the defendant; and the drawing of adverse inferences from a refusal to answer questions at interviews.

However, it seems most likely that the government is going to rely even more heavily on preventive detention. Ministers have been discussing going beyond the current 28 days and resurrecting the demand for 90-day detention. In his Chatham House speech on 10 October 2006, the Chancellor said that the security forces could no longer afford to risk waiting to catch terrorists 'red handed in the act of criminality' when they could take 'the lives of thousands in one act'. This was why preventive measures are necessary. He did offer the consolation that the independent reviewer could investigate every case where someone was detained for more than 28 days, with an annual report to Parliament. But far stronger measures of judicial oversight will be necessary in such an eventuality, as the Home Affairs Committee has argued.[39]

Ethnic profiling: stop and search powers

The police can stop and search anyone whom they 'reasonably suspect' of being a terrorist to look for evidence.[40]. Under section 44 of the Terrorism Act 2000 the police also have powers to designate areas in which anyone may be stopped and searched without a need for reasonable suspicion.[41] These powers are in frequent but uneven use, and are often used very heavily in some areas. Until 2004, the police had constant section 44 powers across the whole of London by way of rolling 28-day authorisations – a clear violation of the spirit of the legislation. Stop and search powers are now being used more intensively since 7 July 2005 but they are of little use in catching terrorists. Under previous legislation the use of powers equivalent to those provided for by section 44 had fallen to 1,900 in 1996-97. In 2004-05, the police stopped and searched 35,800 pedestrians, vehicles and occupants under section 44 and arrested only 455 people (just over 1 per cent of those stopped). Few of these arrests were for offences connected with terrorism. By contrast, over the same period, the arrest rate for the 851,200 stops and searches under all police powers was 11 per cent.[42]

The Association of Chief Police Officers (ACPO) has described the value of stop and search as being to 'disrupt and deter' terrorist 'reconnaissance of potential targets'.[43] In other words, this is not intelligence-led action to capture perpetrators of actual or intended attacks – rather it is a blunt and haphazard instrument, one moreover which is used disproportionately against individuals from minority communities.

Stops and searches are not recorded by religion, but there are figures on race which indicate that the police and public officials may be guilty of 'ethnic profiling' – that is, using racial, ethnic or religious stereotypes to make law enforcement decisions to stop and search, check papers and so on. Home Office statistics show that during 2004-05 black people were 2.5 times more likely than whites to be stopped and searched under the Terrorism Act 2000, Asian people were 2.2 times more likely, and 'Others' 3.8 times more likely.[44] The police explain that these figures are consistent with the proportions of Asians and others in the local areas and that the use of national ethnicity figures is misleading.

In one year, 2002-03, section 44 stops of those considered 'Asians' rose by 302 per cent.[45] The Open Society Justice Initiative comments that out of the 21,577 section 44 stops and searches in that year, none have to date resulted in a conviction for a terrorism offence: 'The UK does have more than 60 defendants currently awaiting trial on terrorism offences. To our knowledge, not one of those resulted from a section 44 stop. Rather these were largely the results of intelligence based investigation over extended periods.' Open Society adds that the majority of arrests resulting from section 44 stops appear to result in immigration proceedings and deportations.[46] The police argue that the rates of arrests are irrelevant: the point of stops and searches is to act as a disruptive deterrent.

The figures for stops and searches under all legislation (stops and searches are recorded by race, but not religion) show that black people (which does not include Asians) are the group most discriminated against, but under the 2000 Act powers, the extent of discrimination against Asians and 'Others' increases, while the extent of discrimination against blacks decreases.[47] The obvious conclusion is that people who appear as though they might be Muslims are more likely to be stopped and searched. Indeed, the proportion of Asians stopped in the aftermath of the July bombings and the failed plot rose to half of all stops and searches; the police state however that these interventions were specifically driven by circulated descriptions. In the YouGov poll of Muslims in Britain in July 2005, 5 per cent of respondents said that they had personally been stopped by a police officer or public official 'while going

about [their] everyday business', and 12 per cent reported that a family member or friend had been stopped.[48] (These are of course subjective accounts.) It is not just the police who stop and search people who they think may be terrorists. The 2000 Act also requires officials to maintain port and border controls and they are not required to have 'reasonable suspicion' in order to examine passengers, goods, vehicles or crew.

Lord Carlile has found the use of intuitive stops – that is those not based on reasonable suspicion or specific intelligence – while having 'potential for catching a terrorist at work' – had a low 'strike rate'. The number of such stops, he concluded, 'could be reduced significantly'.[49] Routine stops and searches do not normally arouse controversy, though they plainly cause resentment against the police and inhibit trust in their good faith. But some section 44 stops and searches have aroused controversy. Their use against protestors at an east London arms fair under the rolling 28-day authorisations has been tested in the courts; and in March 2006, the Law Lords upheld the importance of police officers being able to use their 'intuition' and ruled that their use breached neither domestic law nor the European Convention (while, as one judge said, 'The mere fact that a person appeared to be of Asian origin was not a legitimate reason for exercise of the power to stop and search)'.[50] There was also controversy about their extensive use in Brighton during the Labour Party conference there in 2005. Lord Carlile has stated that section 44 'involves a substantial encroachment into the reasonable expectation of the public at large that they will only face police intervention in their lives (even when protestors) if there is a reasonable suspicion that they will commit a crime'. While the powers were 'necessary for a small range of circumstances', their use could be cut at least by half.[51]

Britain is the only EU member state that has expressly banned racial discrimination by law enforcement officers.[52] The Council of Europe's Commission Against Racism and Intolerance (ECRI) has, like the UN Committee on the Elimination of Racial Discrimination, stated clearly that ethnic profiling violates the prohibition against discrimination. ECRI's General Policy Recommendation No. 8 on combating terrorism specifically recommends that European governments should ensure that their laws and practice do not lead to discrimination, including 'checks carried out by law enforcement officials within their countries and by border control personnel'.[53] But does the use of stop and search powers breach Article 14 of the European Convention on Human Rights? The discrimination, or 'difference in treatment', shown to blacks, Asians and 'Others' in their use is self-evident. But ECHR case law also asks, does it have a 'legitimate aim'? And is there a reasonable degree of proportionality between this aim and 'the means employed'? Combating terrorism is plainly a legitimate aim, but can the use of powers that contributes a great deal to stigmatising members of ethnic minorities and harming community relations while contributing little to combating terrorism be described as proportionate?

The police authorities state that they do not condone ethnic profiling and issue guidance to steer officers away from such practices. But senior officers also acknowledge that the practice, however infrequent, has a symbolic effect that heightens and personifies general feelings of persecution and victimisation among the Muslim communities. It is, members of those communities have told us, part of the 'pain' they experience 'on the street'. It is plainly very difficult to avoid ethnic profiling, no matter what guidance is issued, and we urge the police to weigh in the balance the possible deterrent effect of the practice against the negative impact that it has on their relations with the Muslim communities.

The use of lethal force

On 22 July 2005, the day after the failed bomb attempts in London, police shot dead Jean Charles de Menezes, a 27-year-old Brazilian electrician, in the belief that he was a potential terrorist. He was shot under a new 'shoot-to-kill' policy, drawn up by the ACPO, to deal with suicide bombers who might blow up themselves and ordinary citizens nearby at the point of arrest if not immediately incapacitated. This shift in policy was apparently agreed without reference to ministers or the Home Office. Professor Haleh Afshar, the Muslim scholar, has written that Muslims in Britain 'realised that there was now a "shoot to kill" policy that could threaten their lives.'[54] Such fears will have intensified since the shooting by armed police of Mohammed Abdul Kahar, aged 23, in the major police raid of his family home in Forest Gate, east London, on 2 June 2006. The police 'stormed in like burglars', their sister told BBC News. Kahar and his brother, Abel Koyar, were taken into custody for questioning and released without charge.

As is well-known, Sir Ian Blair, the Metropolitan Police Commissioner, tried to prevent the Independent Police Complaints Commission (IPCC) from investigating the shooting and barred the IPCC staff from the scene of the Menezes's killing. He requested that the Home Office draw up 'rules of engagement', similar to those provided for the military in a war and had discussed with the Prime Minister 'maximising the legal protection for officers who had to take decisions in relation to people believed to be suicide bombers'. The IPCC inquiries began a few days late. At Forest Gate, the IPCC investigators had immediate access to the house.

There is no provision in international law for 'shoot to kill' policies. Amnesty International has stated that 'all law enforcement agencies should be guided at all times by the principles of necessity and proportionality when using force. Every effort must be made to apprehend rather than kill'.[55] In the UK, section 3 of the Criminal Law Act 1967 states that 'a person may use such force as is reasonable in the circumstances in the prevention of crime, or in the effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large'. Police officers may use force 'only when strictly necessary and to the extent required for the performance of their duty'.[56] They also have a right of self-defence. The authorities and courts have always given the police a wide margin of discretion in the use of fire-arms, recognising the difficult circumstances in which some such incidents occur. British governments have always denied that a 'shoot-to-kill policy (i.e., deliberately shooting suspects dead as an alternative to arresting them) was in force in Northern Ireland in the 1980s, but human rights bodies, in particular Amnesty International, and academics have rejected these denials. John Stalker, the senior police officer, who was removed from the official inquiry into possible 'cover-ups' in suspicious circumstances, was convinced that there was a 'clear understanding' of what was expected of those 'whose job it was to pull the trigger'. The inquiry report, completed by a chief constable, was never published, but the government said that it found no evidence of a 'shoot-to-kill' policy when it was presented to Parliament.[57] The Independent Police Complaints Commission report into the killing of Jean Charles de Menezes that cleared the security forces' actions in shooting the young Brazilian dead,

has also not been published. The IPPC's findings may yet be legally challenged.

The Menezes tragedy has special resonance in the Muslim communities, but also raises long-standing concerns about the unwillingness of the authorities to investigate fatal incidents involving the police and security forces; the already low accountability of the police for fatal shootings; the withholding of information when there is an inquiry; and the reluctance to bring the legal standard for the use of lethal force up to prevailing international standards.[58]. The police put the authorities under intense pressure not to investigate such cases and no police officer has been convicted in connection with any of the 31fatal shootings of civilians that have occurred over the past 12 years.

Torture and inhuman degrading and cruel treatment or punishment

The prohibition on torture and inhuman or degrading treatment or punishment is at the heart of human rights protection. It is both a fundamental principle of our domestic law and a key provision in the principal human rights treaties which bind the UK, including the European Convention and the UN International Covenant on Civil and Political Rights. These guarantees are built upon by the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).[59] The UK government, through its own counter terrorism policies and failure to apply sufficiently rigorous standards in its dealings with other nations, is failing to comply with international standards on torture and inhuman or degrading treatment or punishment. In its concluding observations published in December 2004, the UN Committee Against Torture raised concerns about the following issues relevant to counter terrorism policy: the admissibility in UK courts of evidence obtained by torture abroad without the involvement of UK officials (Article 15 UNCAT); the denial of UN safeguards on torture in the British jurisdiction and operations in Iraq and Afghanistan; indefinite detention under the Anti-terrorism, Crime and Security Act 2001 (ATCSA); and the proposed reliance on diplomatic assurances from regimes that practice torture that they will not torture or ill-treat returned asylum seekers, combined with a likely lack of safeguards and monitoring of such asylum seekers once returned.[60]

The treatment of detainees under ATCSA 2001 causes particular alarm. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) organised a special visit to the UK from 14-19 March 2004 to investigate concerns and drew immediate attention to the state of three detainees who should be transferred to more appropriate facilities. One man – who had been transferred from Belmarsh Prison to Broadmoor Special Hospital – was suffering from 'a most severe post-traumatic stress disorder'. In Broadmoor he had 'endured frequent episodes of verbal abuse by members of staff…as well as assaults from other patients…His mental state also appeared to have deteriorated seriously, risking permanent damage'.[61] The second man, in Belmarsh, suffered from major physical disabilities, depression, weight loss and further loss of function. His 'state of health was likely to deteriorate further'.[62] A third man in Belmarsh – both of whose forearms were amputated – was unable to urinate or defecate unaided, but 'did not always receive the necessary assistance'. His mental state had deteriorated seriously, 'leading to both severe depression and post-traumatic stress disorder'.[63] In general the CPT called for staff at Belmarsh to 'be reminded that ill-treatment of any form, including threats, abusive or aggressive language and mockery, will not be tolerated and will be the subject of severe sanctions';[64] and it urged the UK authorities to ensure its anti-bullying strategy was applied in Belmarsh to protect detainees from racist behaviour by other prisoners.[65] The CPT found both physical impairment and psychiatric disturbances amongst detainees and called upon the authorities to provide appropriate care facilities, which were lacking.[66] After further visits in 2005 the European Committee expressed its concern that, with pre-charge detention of up to 28 days being introduced, 'the present conditions at Paddington Green High Security Police Station are not adequate for such prolonged periods of detention'.[67] Studying conditions at Long Lartin and Full Sutton prisons, where terrorist suspects detained 'pending' deportation under the 1971 Immigration Act were being held, it noted 'neither prison was prepared to receive the detainees and ad hoc measures were taken to accommodate them'.[68] The CPT made a series of detailed recommendations designed to improve conditions.

As we have shown, the impact of control orders (and detention or bail conditions under the Immigration Act 1971) continues to raise concerns about inhuman or degrading treatment. Further, the government has refused to rule out relying on evidence suspected of being obtained through torture in hearings to determine whether a suspect is involved in terrorist-related activity and therefore requires a control order. The sole caveat is that British agents were not involved in its extraction. Such evidence can also be used in hearings by SIAC, the body to which those served with deportation notices on security grounds appeal. But as Alvaro Gil-Robles points out, the prohibition of torture under Article 3 ECHR is 'absolute…torture is torture whoever does it, judicial proceedings are judicial proceedings, whatever their purpose – the former can never be admissible in the latter.'[69] Furthermore, under UNCAT's Article 15, statements 'established to have been made as a result of torture shall not be invoked as evidence in any proceedings', except against someone accused of torture.

In December 2005 the House of Lords overturned an earlier decision by the Court of Appeal that evidence obtained through foreign torture not involving the UK authorities was admissible. However the Law Lords divided on the test to be applied to determine whether evidence should be excluded. The majority argued that it was the responsibility of detainees to raise the issue of torture evidence with SIAC. It was then the duty of SIAC to investigate if there were reasonable grounds for suspicion and to determine whether, on the balance of probabilities, the evidence was obtained by torture. Lord Bingham, in the minority, argued that were SIAC 'unable to conclude that there is not a real risk that the evidence has been obtained by torture, it should refuse to admit the evidence'.[70] However, there is an obvious risk that lack of information about the provenance of evidence will lead to evidence obtained by torture being admitted before SIAC; the JCHR has called for the intelligence and other agencies to supply SIAC with the fullest possible information about the circumstances in which evidence was obtained.[71] Aside from the question of its possible use as evidence in proceedings, information obtained by torture undoubtedly is used as a basis for action by UK security forces.[72]

The JCHR accepts that 'UNCAT and other provisions of human rights law do not prohibit the use of information from foreign intelligence

sources, which may have been obtained under torture, to avert imminent loss of life'. Indeed the UK authorities may be required under Article 2 of the European Convention (which protects the right to life) to act upon warnings. But 'great care must be taken to ensure that use of such information is only made in cases of imminent threat to life'. It is essential to avoid lending tacit support to violations of international standards and the committee complained that in effect Britain's intelligence agencies did just that, adopting an 'essentially passive stance towards the methods and techniques of foreign intelligence agencies.' It recommended they establish framework agreements for intelligence sharing that set minimum standards to be observed and then monitor for compliance with them. Some 'independent scrutiny of those arrangements' would be desirable.[73]

The UN Committee against Torture is not the only official critic of the government's determination to conclude memoranda of understanding for the return of foreign suspects to countries that practise torture. Alvaro Gil Robles cautions, 'There is clearly a certain inherent weakness in the practice of requesting diplomatic assurances from countries in which there is a widely acknowledged risk of torture.' He called for any such assurances to be unequivocal with 'an effective monitoring mechanism…established.' It was 'vital that the deportation of foreigners on the basis of diplomatic assurances are subject to judicial scrutiny capable of taking all these elements, the content of the assurances, and the likelihood of their being respected into account.'[74] The JCHR has expressed 'grave concerns that the Government's policy of reliance on diplomatic assurances could place deported individuals at real risk of torture or inhuman and degrading treatment, without any reliable means of redress.' If deported suspects were executed, tortured or ill-treated, Britain would in breach of Articles 2 or 3 of the European Convention and UNCAT's Article 3.[75]

What vexes the government most about the effects of its Human Rights Act is that the rights that it 'brings home' apply universally to people in the UK. The Act obliges the courts here not only to protect the rights of UK and EU citizens, but also to respect the rights of foreigners resident in the UK, a few of whom they believe are committed terrorists but do not have sufficient admissible evidence to prosecute them. The judiciary has adopted the European Court of Human Rights judgment in the case of Chahal v the UK in 1997 that a person cannot be deported to a country where they face a real risk of torture or inhuman and degrading treatment, regardless of public emergency or terrorist threat. For the ECHR, the prohibition against torture is absolute. The government has been a vociferous critic of this judgment and now, along with Lithuania, Portugal and Slovakia, is currently intervening in another case before the Court (Ramzy v The Netherlands) about the Dutch authorities' efforts to deport a suspect to Algeria. The government is seeking to persuade the Court to revise its majority judgment in Chahal and adopt the minority finding that a state should be able to balance the threat to national security that someone poses against the potential risk of torture or ill treatment at their destination.[76] In other words, the government is seeking a trade off that may lead in some circumstances to the absolute prohibition on torture being overruled by national security considerations. As it stands now, any such deportation would be a violation of both the European Convention and UNCAT.[77] In a disappointing judgment in August 2006, SIAC ruled that an Algerian man known as 'Y' – one of those acquitted in the ricin case, already a victim of torture – would not face the risk of ill-treatment if returned to Algeria. Amnesty International described the judgment as 'an affront to justice and wrong'.

Extraordinary rendition

Britain also stands accused by the Council of Europe as being one of seven member states who can be held directly responsible for violations of the rights of specific individuals through its participation in the 'extraordinary rendition' by the United States of prisoners to destinations where they will be interrogated under torture. After years of suspicions, the Council's Parliamentary Assembly rapporteur, Dick Marty, a Swiss senator, published a report in June 2006 revealing what he called a reprehensible 'spider's web' of unlawful CIA detentions and transfers aided by the collusion, intentional or through gross neglect, of European governments.[78] It is alleged that British intelligence officials conspired in CIA kidnappings of suspects and participated in the interrogations of detainees in Morocco, Pakistan and Guantanamo Bay, and that CIA aircraft have rendered people to torture through British airports.[79] Britain is obliged under UNCAT, the European Convention and the UN International Covenant on Civil and Political Rights not to return anyone to a country where there are substantial risks that they may be tortured and has a positive obligation to prevent and investigate acts of torture under both the ECHR and UNCAT as well as customary international law.[80] This obligation clearly applies where an individual is rendered through the UK by foreign agents.[81] The government is also duty bound under UNCAT to investigate potential cases of torture within its jurisdiction, to secure persons alleged to have committed torture and to conduct inquiries with a view to prosecution or extradition. Given that the 'rendition' flights amount to torture in themselves, credible allegations that an aircraft present in the UK is transporting suspects to torture, or has been used for rendition in the past, place the British authorities under a duty to detain the aircraft, arrest any suspects on board, and carry out an investigation.[82]

The Council of Europe is pursuing its inquiries into extraordinary rendition and wants to initiate laws to control European security services and impose safeguards on the use of civil and military aircraft. Franco Frattini, the EU Justice Commissioner, admitted for the first time on 27 June 2006 that European territory had been used for rendition. The British government's position is to stay shtum.

British intelligence officers had by March 2005 conducted or witnessed more than 2,000 interviews of detainees in Afghanistan, Iraq and Guantanamo Bay. A report by the Intelligence and Security Committee on their involvement acknowledged difficulties in balancing the duty of the intelligence community 'to obtain intelligence …and the need to abide by the UK's interpretation of international Conventions' – difficulties that were 'further complicated' because the US and UK interpretations differed.[83] The report revealed that the intelligence staff had interviewed detainees captured by the US without first consulting Secretaries of State. Furthermore intelligence officials deployed to Afghanistan, Iraq and Guantanamo were not sufficiently trained in the Geneva Conventions and were unaware of interrogation techniques the UK had banned as long ago as 1972. (In Iraq, they and their military protection teams were not 'informed when the hooding of detainees during transit was prohibited in 2003'.) The report also enumerated deficiencies in the reporting of 'serious potential abuse by the US military', both

to the US authorities and British ministers,[84] and revealed lapses in the Prime Minister's account to them of reporting processes a year earlier. The report was especially critical of the lack of follow-up of reports of abuse by the UK authorities.[85] What the committee found in effect was that UK ministers and the intelligence community had failed to develop a comprehensive policy on reports of abuse or to agree standards of conduct with the US. It was only in September 2004 that the security agencies issued guidance to staff involved in interviewing detainees on the Geneva Conventions and UK policy.

Encouraging and glorifying terrorism

The Terrorism Act 2005 introduced a new offence of 'glorifying' the commissioning and preparation of acts of terrorism (of the past, present or future) which other people may understand as 'direct or indirect' encouragement to similar acts. The same Act widened the grounds for the proscription of organisations under the Terrorism Act 2000 to cover non-violent bodies that glorify past, present or future terrorism. A raft of criminal laws already covers direct or indirect incitement to terrorism and there was no need to create this new offence, especially in such broad and poorly drafted terms. On its own, the offence is a serious threat to legitimate free expression, which is likely to bear down heavily on members of the UK's Muslim communities; but coupling it with the power to proscribe non-violent organisations damages freedom of association as well, doubling its effect. This smells of state censorship and the new provisions could breach Articles 9, 10 and 11 of the European Convention, protecting the freedoms of thought and conscience, expression and association, depending on how they are interpreted. Someone may be guilty of glorifying terrorism without meaning to do so as the offence could cover any reference to political violence at any time against any government anywhere in the world. Would for example the radical Muslim musician, Aki Nawaz, fall foul of this law? His new album, *All is War (The Benefits of G-had)*, has tracks about Osama bin Laden, the immorality of the west and suicide bombers:

Cookbook DIY
I'm strapped up cross my chest bomb belt attached
Deeply satisfied with the plan I hatched
Electrodes connected to a gas cooker lighter.[86]

Or could you be arrested simply for wearing the 'wrong' T-shirt or carrying a radical pamphlet?

Initially it seemed that the law was extended in particular to ban Hizb-ut-Tahira, the radical but non-violent Muslim group that the Prime Minister has targeted. Yet no such ban has been introduced or seems likely to be enacted. But the effect goes wider. The efficacy of banning terrorist groups, rather than concentrating on illegal terrorist acts themselves, is questionable. Human Rights Watch points out that 'apart from organizations related to Ireland, the majority of the groups [already] proscribed under the 2000 Act are of Islamic origin'.[87] The policy of extending proscription to Hizb-ut-Tahrir and other radical non-violent groups under the 2006 Act is likely to be regarded as further discrimination against Muslims. 'Protect our rights', an association of various human rights organisations, Islamic and other, argues that it 'is a political organisation that has been committed to non-violence for 50 years'; and that there can be no more justification for banning it than the British National Party, 'whose members have been accused of inciting and perpetrating violent racist acts. In a democracy, neither should be proscribed. Those of us who disagree with them should confront them politically. If their members break the law they should be dealt with by the criminal justice system.'[88]

There is a small crowd of other laws and measures that seek to stifle the encouragement or glorification of terrorism. Behind them all lies the government's desire to stamp out radicalisation without quite knowing how or where it grows. There is now a companion offence under the Terrorism Act 2005 of disseminating 'terrorist' publications, which is designed to tackle bookshops and websites that deal in such propaganda. This offence includes publications which contain 'information of assistance' to terrorists. Again, existing laws give the authorities sufficient powers to deal with people publishing material inciting or assisting terrorist acts. This offence casts an imprecise net too widely. The prosecution need not show that an accused person intended to encourage or facilitate terrorism; it is enough just to make available a publication that someone else may regard as useful for terrorism. As JUSTICE has pointed out, the London A-Z may thus qualify as a 'terrorist publication'. These measures encourage the suppression of dissenting views well beyond the parameters of glorifying terrorism to legitimate and peaceful protests, for example, against the Iraq war or heckling the Foreign Secretary at a party conference. Perhaps the most telling, and absurd, of examples of heavy-handed suppression was the charging in June 2006 of Steven Jago, a management consultant, under the Serious Organised Crime and Police Act 2005 for carrying a placard in Whitehall bearing – a delicious irony! – the George Orwell quotation, 'In a time of universal deceit, telling the truth is a revolutionary act.' Jago compounded his offence by carrying several copies of an article in the American magazine *Vanity Fair*, headed 'Blair's Big Brother Legacy' which were confiscated by the police. 'The implication that I read from this statement at the time was that I was being accused of handing out subversive material,' Jago said. Henry Porter, the magazine's London editor, wrote to the Metropolitan Police Commissioner, 'The police told Mr Jago that this was "politically motivated" material, and suggested it was evidence of his desire to break the law. I therefore seek your assurance that possession of *Vanity Fair* within a designated area is not regarded as "politically motivated" and evidence of conscious law-breaking.'[89]

In August 2005, Charles Clarke, the then Home Secretary, published a list of 'unacceptable behaviours' that would justify him deporting foreign nationals on the grounds that they were 'non-conducive to the public good'. The exercise of powers of deportation is thus now extended to those who represent an indirect threat; dual nationals may be stripped of their British citizenship on similar grounds (and this measure may even be applied retrospectively). The JCHR questions whether this new initiative is compatible with Article 10 of the ECHR [freedom of expression].[90] 'Protect our rights' warns that enforcing such a list to deport people will be 'perceived as censorship of those who might criticise British foreign policy or call for political unity among Muslims…carrying the dual risk of "radicalisation" and driving the "extremists" further underground, to use the government terminology.'[91]

The use of immigration and asylum powers to further the government's counter terrorism strategy heightens fears of the discriminatory effect of its measures, such as the use of immigration powers to detain or bail terrorist suspects and the attempts to secure diplomatic assurances from abusive regimes to justify their deportation. The government included

in the Immigration, Asylum and Nationality Act 2006 a new test for depriving people of citizenship or the right of abode in the UK, measures to deny suspected terrorists asylum and providing for appeals against deportations on national security grounds to be brought out of country, unless challenged on a basis of human rights. The JCHR has raised concerns about the compatibility of powers to deprive people of citizenship and a right of abode with Articles 3, 5, 8 and 14 of the European Convention (the protection of people against torture, the right to liberty, respect for private and family life and non-discrimination).[92] In the JCHR's view, the powers to enforce out-of-country appeals also conflict with the Refugee Convention.[93]

We questioned Hazel Blears, the then Home Office minister responsible for counter terrorism, about the centrality of offences that criminalise encouraging and glorifying terrorism (and which carry heavy sentences). Her reply was that these offences were intended to bring about a change in the way individuals expressed themselves as well as actual prosecutions. Such changes are not necessarily 'conducive to the public good'. Human rights organisations warn that such repressive measures have a 'chilling effect' upon political freedom and the quality of public debate. As Human Rights Watch has warned, such measures were 'likely to have an impact on the media, whether through self-censorship, or the prosecution of journalists or editors'; have a negative impact 'on free speech generally'; and alienate 'the very communities whose support is needed in the fight against terrorism'.[94]

Even measures that are only proposed but not ultimately introduced can have a 'chilling effect'. One of the proposals in the Prime Minister's 12 Point Plan was to consult on taking new powers to close 'places of worship' used for fomenting extremism. His aim was clearly to close down some mosques. The idea was widely condemned and caused outrage in Muslim circles. But though it was never introduced, together with the other government measures designed 'to change the way people express themselves', it still discourages quite proper debate in some of Britain's mosques. For example, one young Bangladeshi woman in our south London focus group complained about the legal 'restrictions' on the freedom of debate at her mosque: 'because you can't – if you wanted to have a discussion in the mosque, you can't do it now. Some mosques you can't have a political discussion in there and even the Imams and stuff, they won't let you- . . . [It's] the law, the law, you're not allowed to.' (See Chapter 3 also.)

Footnotes

[1] Submission from Amnesty International, Europe and Central Asia Programme, to the JCHR's inquiry into counter-terrorism policy and human rights', 14 October 2005.

[2] The JCHR is a joint committee of both Houses of Parliament on which MPs and peers serve together. It was set up to advise Parliament on the human rights implications of government legislation after the Human Rights Act 1998 and to report more widely on human rights issues in the UK.

[3] Bjørgo, T., 'Conclusions' in *Root Causes of Terrorism: Myths, realities and ways forward*, Routledge 2005: 256-262.

[4] Even the *Guardian*/ICM poll of 22 August 2005 obliged respondents to make this choice, rather than to allow them to choose both security and liberty.

[5] See further, Klug F, Starmer K, and Weir S, *The Three Pillars of Liberty: Political Rights and Freedoms in the UK*, Routledge, 1996

[6] Parliamentary Joint Committee on Human Rights, *Anti-Terrorism, Crime and Security Bill*, HC372, TSO, 16 November 2001: para 78.

[7] Parliamentary Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005* (Continuance in force of sections 1 to 9) Order 2006, HC 915, TSO, 20 February 2006: 24.

[8] House of Commons Home Affairs Committee, *Terrorism and Community Relations*, HC 165-III, TSO, March 2005: Q474.

[9] Letter to the *Guardian*, 7 October 2005.

[10] *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom, 4th – 12th November 2004*, CommDH (2005)6, Council of Europe, 8 June 2005: 5.

[11] The full report is on the website of the Joseph Rowntree Reform Trust, www.jrrt.org.uk . The report also contained a précis of all recent counter terrorism legislation. A summary in printed form is also available.

[12] Private information.

[13] Amnesty International, *Submission from Amnesty International on the Draft Terrorism Bill*, 12 October 2005: section 1.

[14] JCHR, *Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters*, HC 561 – I, 28 November 2005: 13-14.

[15] Blunkett, D, *The Blunkett Tapes: my life in the bear pit*, Bloomsbury, 2006: 275, 277, 280-81.

[16] The Law Lords ruled that the power was disproportionate (Article 15 of the ECHR) and discriminatory since it applied only to foreign nationals (Article 14). The JCHR had already raised in 2001, among other problems, the prospect that it might also be incompatible with Article 5 (the right to liberty) where discrimination was exercised. See JCHR, Anti-Terrorism, Crime and Security Bill, HC372, TSO, 16 November 2001: para 38.

[17] See *Report by Mr Alvaro Gil-Robles*, op cit, p.8.

[18] The Secretary of State for the Home Department vv JJ and Others, EWCA 1623 Admin.

[19] First Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005, TSO, 2 February 2006: 13. For the list see: Annex 2: 29-35.

[20] Parliamentary Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005* (Continuance in force of sections 1 to 9) Order 2006, HC 915, TSO, 20 February 2006: 15.

[21] Parliamentary Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005* (Continuance in force of sections 1 to 9) Order 2006, HC 915, Stationery Office, 20 February 2006: 24.

[22] Parliamentary Joint Committee on Human Rights, C*ounter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005* (Continuance in force of sections 1 to 9) Order 2006, HC 915, Stationery Office, 20 February 2006: 26.

[23] *Parliamentary Joint Committee on Human Rights, Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005* (Continuance in force of sections 1 to 9) Order 2006, HC 915, Stationery Office, 20 February 2006: 26.

[24] *Parliamentary Joint Committee on Human Rights, Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005* (Continuance in force of sections 1 to 9) Order 2006, HC 915, Stationery Office, 20 February 2006: 19-20.

[25] Op cit, pp. 20-21.

[26] Op cit, p.23.

[27] Op cit, Report by Mr Alvaro Gil-Robles, p.10.

[28] Op cit, p.27.

[29] An Algerian held pending deportation finally asked to return voluntarily on 16 June 2006, this risking possible torture rather than stay in detention any longer. Sources close to him said he was leaving out of 'desperation'.

[30] First Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005, The Stationery Office, 2 February 2006: 4.

[31] Op cit, pp. 41-42.

[32] Op cit, p.16.

[33] Op cit, *Report by Mr Alvaro Gil-Robles*, p.10.

[34] Amnesty International , Submission from Amnesty International, Europe and Central Asia Programme, to the JCHR's inquiry into counter-terrorism policy and human rights, 14 October 2005.

[35] Cm 3420, 1996: Chapter 8 and para 8.5; Lord Carlile of Berriew Q.C., *Report on the operation in 2004 of the Terrorism Act 2000*, TSO, 2004: paras 76-78.

[36] Home Affairs Committee, *Terrorism Detention Powers*, HC 910, TSO, July 2006.

[37] JCHR, *Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters*, HC 561 – I, 28 November 2005: 36-37.

[38] 'Submission from JUSTICE to the JCHR'S inquiry into counter-terrorism policy and human rights', 17 October 2005.

[39] Home Affairs Committee, T*errorism Detention Powers*, op cit.

[40] Terrorism Act 2000, section 43.

[41] Terrorism Act 2000, sections 44-45.

[42] Home Office Statistical Bulletin, *Arrests for Recorded Crime (Notifiable Offences) and the Operation of Certain Police Powers under PACE, England and Wales, 2004/05*, 21/05, 16 December 2005: 1 and 12.

[43] 'Memorandum submitted by the Association of Chief Police Officers', 14 September 2004, House of Commons Home Affairs Committee, Terrorism and Community Relations, HC 165-II, Written Evidence TSO, December 2005: 2.

[44] Home Office, *Statistics on Race and the Criminal Justice System – 2005*, 2006: 22.

[45] Home Office Press Release, 220/2004, 2 July 2004.

[46] Goldstein, J. G., *Ethnic Profiling and Counter-Terrorism: Trends, Dangers and Alternatives*, Open Society Justice Initiative, June 2006.

[47] Home Office, *Statistics on Race and the Criminal Justice System – 2005*, 2006: 22.

[48] YouGov survey, 15-22 July 2005.

[49] Lord Carlile of Berriew Q.C., Report on the operation in 2004 of the Terrorism Act 2000, The Stationery Office, 2004: para 115.

[50] 51 R v Commissioner for the police of the Metropolis and another ex parte Gillian and another [2006] UKHL 12, per Lord Hope of Craighead, para 45.

[51] Lord Carlile of Berriew Q.C., R*eport on the operation in 2004 of the Terrorism Act 2000*, The Stationery Office, 2004: para 106.

[52] Under the Race Relations (Amendment) Act 2000.

[53] ECRI General Policy Recommendation No 8., adopted 17 March 2004.

[54] Afshar, H., *Democracy and Islam*, Hansard Society 2006: 7.

[55] Submission from Amnesty International, Europe and Central Asia Programme, to the JCHR's inquiry into counter-terrorism policy and human rights', 14 October 2005.

[56] See, for example: Association of Chief Police Officers (ACPO), 'Briefing Note concerning ACOI Firearms policy and Deadly and Determined Attacks'.

[57] HC Debates, 25 January 1988, c21-35. See also Klug, Starmer and Weir, *The Three Pillars of Liberty, Routledge* 1996, and *The Times,* 9 February 1988.

[58] SACHR Annual Report, 1992-93.

[59] See the JCHR report, *The UN Convention Against Torture (UNCAT)*, HC 701, Stationery Office, 26 May 2006: para 1.

[60] Concluding Observations of the Committee against Torture, Conclusions and Recommendations: United Kingdom of Great Britain and Northern Ireland – Dependent Territories, 10 December 2004, CAT/C/CR/33/3.

[61] Op cit, p. 4.

[62] Op cit, p. 4.

[63] Op cit, p. 5.

[64] Op cit, p. 5.

[65] Op cit, p. 6.

[66]Op cit: pp. 10-11.

[67] *Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, CPT/Inf: 10 August 2006: 16.

[68] *Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, CPT/Inf: 10 August 2006: 12.

[69] *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom, 4th – 12th November 2004*, CommDH (2005)6, Council of Europe, 8 June 2005: 11.

[70] A and Others v Secretary of State for the Home Department [2005] UKHL 71, per Lord Bingham of Cornhill para. 56.

[71] Parliamentary Joint Committee on Human Rights, *The UN Convention Against Torture (UNCAT*), HC 701, Stationery Office, 26 May 2006: para 49.

[72] Parliamentary Joint Committee on Human Rights, *The UN Convention Against Torture (UNCAT)*, HC 701, Stationery Office, 26 May 2006: para 52.

[73] Parliamentary Joint Committee on Human Rights, *The UN Convention Against Torture (UNCAT)*, HC 701, Stationery Office, 26 May 2006: para 56.

[74] R*eport by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom, 4th – 12th November 2004*, CommDH (2005)6, Council of Europe, 8 June 2005: 12.

[75] See also, Parliamentary Joint Committee on Human Rights, *The UN Convention Against Torture (UNCAT)*, HC 701, Stationery Office, 26 May 2006: paras 130-31.

[76] For an account of these developments, see: Parliamentary Joint Committee on Human Rights, *The UN Convention Against Torture (UNCAT*), HC 701, Stationery Office, 26 May 2006: pars 19-21.

[77] Parliamentary Joint Committee on Human Rights, *The UN Convention Against Torture (UNCAT)*, HC 701, Stationery Office, 26 May 2006: para 22.

[78] Parliamentary Assembly of the Council of Europe, *Alleged secret detentions and unlawful linter-state transfers*, report by Dick Marty to the Legal Affairs and Human Rights Committee, Doc. 10957, 12 June 2006.

[79] See www.guardian.co.uk/usa/rendition .

[80] Parliamentary Joint Committee on Human Rights, *The UN Convention Against Torture (UNCAT)*, HC 701, Stationery Office, 26 May 2006: para 156.

[81] Parliamentary Joint Committee on Human Rights, *The UN Convention Against Torture (UNCAT)*, HC 701, Stationery Office, 26 May 2006: para 157.

[82] Parliamentary Joint Committee on Human Rights, *The UN Convention Against Torture (UNCAT)*, HC 701, Stationery Office, 26 May 2006: para 159.

[83] Intelligence and Security Committee, *The Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq*, Cm 6469, Stationery Office, 1 March 2005: 29.

[84] Intelligence and Security Committee, *The Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq*, Cm 6469, Stationery Office, 1 March 2005: 30.

[85] Intelligence and Security Committee, *The Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq*, Cm 6469, Stationery Office, 1 March 2005: 31.

[86] See the *Guardian*, 28 June 2006. Nawaz says that he expects a knock on the door from MI5.

[87] Submission from Human Rights Watch on the Draft Terrorism Bill, 7 October 2005.

[88] 'Joint Submission from "Protect our rights"…to the JCHR's inquiry into counter-terrorism policy and human rights'.

[89] The Independent, June 29, 2006

[90] JCHR, Counter-Terrorism Policy and Human Rights: *Terrorism Bill and related matters*, HC 561 – I, 28 November 2005: 41.

[91] 'Joint Submission from "Protect our rights"…to the JCHR's inquiry into counter-terrorism policy and human rights'.

[92] JCHR, Counter-Terrorism Policy and Human Rights: *Terrorism Bill and related matters*, HC 561 – I, 28 November 2005: 54.

[93] JCHR, Counter-Terrorism Policy and Human Rights: *Terrorism Bill and related matters*, HC 561 – I, 28 November 2005: 58.

[94] Submission from Human Rights Watch on the Draft Terrorism Bill, 7 October 2005.

Chapter 6

Safeguards and Oversight

The 'rules of the game' are changing. The government has given the security forces ever greater powers and discretion, the range of surveillance of British subjects is expanding, suspects are held in custody or are otherwise deprived of their liberty without charge and criminal justice safeguards are under threat. Britain plainly faces prolonged danger from international and 'home-grown' terrorist conspiracies; what is scarcely ever acknowledged is that we are equally in danger of losing hard-won liberties and protections for an equally long time and perhaps forever. Occasionally, under pressure in Parliament, the government concedes a 'sunset' clause on a piece of legislation, but for the most part its counter terrorism legislation is of indefinite duration and, as we show below (page 62), even on crucial issues, such as control orders, the government is able to renew time-limited provisions with ease once they are no longer in the spotlight.

In these circumstances, the safeguards that exist for the protection of human rights and due process and parliamentary and other oversight of the executive and security forces take on pronounced importance. In a comment on control orders, Alvaro Gil-Robles, the Council of Europe's Commissioner for Human Rights, argued that the government's exceptional counter terrorist measures could only be justified 'for the duration of, and in proportion to' the terrorist threat; and that it was essential that the necessary judicial guarantees apply to proceedings resulting in their application and that the legislation providing for such exceptional measures be subject to regular parliamentary review.[1] Similarly Lord Newton's report argues that, 'The authorities are not infallible so their powers must include limitations and safeguards to reduce the danger that they could be misapplied'. These safety devices should include 'special procedures for authorising their use, periodic review and renewal, regular reporting of usage, independent oversight, and exercisable rights of appeal and redress for the individual.'[2]

The role of the judiciary

For Blackstone, the great legal authority, the existence of the judiciary consisted 'one main preservative of the public liberty'. He explained that

> liberty cannot subsist long in any state, unless the administration of common justice be in some degree separated both from the legislative and also from the executive power.[3]

The fact is that the judiciary has over time had a chequered history in acting as a 'preservative of the public liberty'. In the 17th and 18th centuries, for example, Chief Justices Sir Edward Coke and the Earl of Camden stood firm against executive power; during the second world war and afterwards judges were often, as Lord Atkin said in a famous dissenting speech in 1941, 'more executive-minded than the Executive'.[4] Similarly, the protection of liberty that the writ of habeas corpus has offered British citizens has flowed and ebbed over time. But the traditions of the independent and separate judiciary; adherence to the principle of habeas corpus; and the protection of the rights of the accused in the criminal justice system, remain a touchstone of freedom in the United Kingdom. All three are under attack both from the executive and in a comparatively weak Parliament.

The courts are well placed to protect liberties within a human rights framework which insists upon a proportionate balance between safeguarding the right to life and civil and political rights. The judiciary have developed the process of judicial review of public decision-making and their role in protecting civil and political rights and asserting safeguards against arbitrary detention and arrest has been strengthened by giving effect to the European Convention on Human Rights (ECHR) in British law through the Human Rights Act 1998 (HRA). Individuals can seek redress for violations of Convention rights in the courts and the judiciary have ruled that aspects of the counter terrorism laws are incompatible with the ECHR. However, as is well known, the courts cannot strike down primary legislation, such as the Terrorism Act 2005. The government can under the HRA reject the courts' rulings, but so far ministers have in practice complained vociferously about the judges' interventions while submitting to the appeals process and ultimately adjusting the legislation as necessary (though sometimes in the process creating further human rights concerns).

The judiciary's role as preservative of the public liberty is strengthened by the presence of the European Court of Human Rights and its jurisprudence and by the activities of the Council of Europe, which is responsible for the ECHR. The Council has a Commissioner for Human Rights (whom we quote above) and also regularly sends an investigation team to check upon the conditions of detention in the UK; the Council has also adopted a comprehensive statement of the position on counter terrorism, entitled Guidelines on Human Rights and the Fight Against Terrorism.[5] Within civil society, JUSTICE, Amnesty, Liberty and many other bodies also play a role in seeking to protect 'the public liberty' and among lawyers there is an outstanding human rights tradition that ensures that the government's counter terrorism legislation comes finally under robust challenge in the courts on behalf of individual people affected.

Thus far, the courts have largely fulfilled their obligations to protect human rights under the ECHR. As we have seen (page 46), when the government sought to evade the European Court ruling that the UK may not deport people to countries where they may be executed or tortured[6] by legislating to hold foreign suspects in indefinite detention without trial, the House of Lords found that this device was discriminatory and unlawfully deprived them of their liberty. Similarly, in August 2006, the Court of Appeal held that stringent control orders holding six Iraqi terror suspects under partial house arrest and further restricting their liberty without trial breached their human

rights (see page 46). The courts are also prepared to use their powers to oversee attempts by the government to derogate from the European Convention. Under the HRA, the government may derogate from the ECHR in a national emergency under secondary legislation and did so in an attempt to stay within the law over the indefinite detention of foreign nationals. But the courts can overturn secondary legislation; and in their December 2004 judgment in this case, the Law Lords quashed the derogation order that had been used to make the detentions human rights compatible.[7]

Judicial review

It is an essential function of the judiciary to protect citizens against unlawful acts of government, its agencies and officials. It is the constitutional duty of the courts, if proper application is made to them by an aggrieved citizen, to check the executive and public authorities from exceeding their powers and to direct the duties they owe to private citizens; and it is fundamentally important that they should do so fearlessly in a period of political over-reaction and media exaggeration. Moreover, this government's own Human Rights Act specifically directs the courts to review the necessity and proportionality of legislation in cases affecting human rights.[8] The Prime Minister and colleagues however bitterly and publicly complain that the judges are interfering in decisions that belong in the realm of Parliament and the executive, and are putting the safety of the public at risk. David Blunkett's outbursts against the judiciary while he was Home Secretary established a tradition that has if anything hardened since then. After the London bombings, Tony Blair specifically singled out the Law Lords' ruling against the indefinite detention of foreign nationals in his statement about the 'rules of the game' changing. John Reid's own wide-ranging onslaught on judges and others who are critical of the government's counter terrorism strategy – the 'they just don't get it' speech – is simply the most recent challenge to the legitimacy of the courts' proper role (see also page 56).

The doctrine of the separation of powers and its importance to democracy is simple enough to understand. The danger of leaving decisions on detention, arrest, freedom of speech and other civil and political rights to ministers and parliamentarians is that decisions on our lives and liberties would be regulated only by their own opinions, the results of focus groups and the politics of triangulation, and not by fundamental principles of law. The Prime Minister and ministers have no business threatening amending legislation or querying court decisions. They protest too much. Take the more considered view of the specially convened joint committee on the then draft Civil Contingencies Bill which took expert evidence in 2003 on the role of the courts in dealing with emergency powers and concluded that there was little evidence that they were overly 'activist'; indeed, much of the evidence clearly indicated that the courts gave 'proper deference' to the executive in times of national emergency. JUSTICE and other organisations have protested against the impropriety of the Prime Minister and his colleagues making statements 'seeking to instruct members of the judiciary as to how they should carry out their constitutional functions'. Their conduct is improper not only insofar as it is designed to intimidate and influence the course of judicial conduct, but also because it fuels a potential populist reaction against the rule of law itself.

Criminal justice safeguards

Britain's adversarial criminal justice system, scorned though it is by ministers, is designed to secure the fair trial of all accused people and to ensure that the police, prosecution and courts observe due process at all stages. People suspected of being terrorists – be they British, foreign, or dual nationals – ought therefore in principle to be charged with criminal offences and brought to trial in a timely fashion (or otherwise released). Their guilt or otherwise could then be determined by a jury trial that observes due process. The safeguards in place would include the presumption of innocence; the burden of proof would fall upon the prosecution; the criminal standard of proof (beyond reasonable doubt) would apply. The accused would be represented by a counsel of their own choice; would be made aware of the charges and evidence against them; and their counsel would be able to cross-examine evidence and witnesses on their behalf.

As we have noted (see pages 49-59) the government has refused to take measures urged upon it by numerous expert observers to facilitate prosecutions of suspects – most notably through lifting the ban on the use of domestic intercept evidence in open court. The ban remains in force, though, as we mention above, the Attorney General has now said that sufficient safeguards can be put in place to protect the secret intelligence-gathering techniques (*Guardian*, 21 September 2006). Paradoxically, those close to the government's thinking on the use of intercept information say that it is precisely because the government has been concerned for the human rights of suspects under 'equality of arms', that it has so far resisted amending the law until a scheme compatible with the Human Rights Act can be devised. Yet one way out of this dilemma has been to introduce preventive detention by various means for a small number of suspects (several of whom have even been cleared on terrorist charges in court), with scarcely any equality of arms. We discuss pre-charge detention and control orders and the development of a 'shadow', or parallel, system of justice driven by the executive above (pages 46-47).

These deviations from the old rules of the game demand new arrangements for effective judicial scrutiny and representation, not simply to try and ensure that such detention is not arbitrary, but also to give a degree of legitimacy to changes that may deprive people of their liberty without being charged, without being informed of the evidence against them and without being represented by counsel of their own choice.

Under the Terrorism Act 2006, the police may now hold a terror suspect for interrogation and continuing inquiries for up to 28 days without charge. After seven days, the police are obliged to seek the authority of a district judge (criminal) for further periods of detention for up to 14 days in all; between 14 and 28 days they must get the authority of a senior circuit judge for up to seven days at a time to a maximum of 28 days without charge. The suspects are represented by their own lawyers, but there are serious doubts about the process as a whole. District judges are at the lowest level of judicial rank. They are applying a system designed initially to deal with seven-day detention, not up to 14 days; and they have to deal with a substantial number of cases. They are presented with one-sided material with little opportunity for detailed scrutiny; the material is not open to adversarial challenge by a suspect's lawyer; they have no role in the inquiry taking place; and have no access to independent counsel or advice. Recently the Commons Home Affairs Committee stated (before the extension to 28 days) that 'we share the wide-spread unease at the prospect of the existing system being used to provide judicial oversight of even longer pre-charge detention.'[9]

The regime of safeguards for the terror suspects subject to control order and the further suspects held in detention 'pending' deportation under the Immigration Act 1971 (and before that, indefinite detention under Part Four of the Anti-Terrorism, Crime and Security Act 2001) puts in place safeguards for the protection of the liberty of suspects that are considerably weaker than those demanded under due process. Yet these people are being deprived of the liberty to varying degrees for an indefinite period without actually being charged with an offence (and some have in fact been found not guilty of terrorism charges).

We have described the distinction between non-derogating and derogating control orders above. On the insistence of MPs, a High Court judge considers the executive's case for applying a non-derogating control order to a suspect and the renewal of an order after periods of 12 months. The judge decides first whether the Home Secretary has a case and then holds a hearing in which the standard of proof is 'reasonable suspicion'. For derogating control orders, which have not yet been used, the Home Secretary must apply to the High Court for an order; if the court decides that there is a case for such an order, it must hold a full hearing. In such cases, the control orders are renewable by the court every six months; the standard of proof is 'balance of probabilities'. As the Joint Committee on Human Rights has argued, these are low thresholds: the standard of proof should be raised to 'balance of probabilities' for non-derogating control orders and to 'beyond reasonable doubt' for derogating ones.

In any of these hearings, suspects and their counsel may be excluded from closed sessions hearing security sensitive information. Instead, the suspects are represented by a special advocate, appointed on their behalf. The role of these special advocates is constrained. They are not allowed to reveal sensitive information to those they represent. Consequently 'they may face the difficult task of being asked…to present facts or versions of events in relation to which there is the strongest contradictory evidence, but evidence which they are not permitted to reveal in any form'.[10] They are under-resourced and Lord Carlile has called for them to be given security-cleared case assistants (he understands 'practical steps have now been taken to allay this concern'). He has recommended too that special advocates should be trained and selected from a wider base; the government has accepted this recommendation in principle (he wants 'rapid progress on this').[11] The parliamentary Joint Committee on Human Rights (JCHR) has pointed to the 'significant problem' that the special advocates are appointed by the Attorney General, 'who not only represents a party to the proceedings…but is the only other legal representative present during the closed hearings, in the absence of the detainee or their legal representative.'[12] The government has, as we report above (page 47) 'bent' the rules of the game to detain terror suspects 'pending' deportation for long (and potentially indefinite) periods under the Immigration Act 1971. They have a right of appeal to the Special Immigration Appeals Commission (SIAC) which Jack Straw, as Home Secretary, set up in 1998 in response to the Chahal judgment (see page 52). The European Court ruled in part that the panel of 'three wise men' charged with reassessing the Home Secretary's decisions to deport people on national security grounds did not constitute a proper court for such decisions. SIAC comprises three commissioners, one of whom holds or has held high judicial office and another who is or has been an immigration judge. The commission can hear security sensitive information – not made available to the appellant – in closed sessions from which the terror suspect is excluded and who is represented, as for control order hearings, by a special advocate. SIAC previously heard appeals against the indefinite detention of terror suspects who could not be deported after the Chahal judgment; and now also hears appeals against decisions to deprive people of British citizenship based on security sensitive information (another aspect of the government's counter terrorism policies).

Several special advocates resigned – after first trying to make the system work over a few years – when SIAC's remit was extended from hearing immigration cases to those of terror suspects held in indefinite detention without charge or trial. The first to leave, Ian Macdonald QC, stated late in 2004: 'My role has been altered to provide a false legitimacy to indefinite detention without knowledge of the accusations being made and without any kind of criminal charge or trial.'[13]

It is very hard to judge how fair the government's alternative safeguards are in practice. It is by now well established that intelligence is by its nature often speculative and incomplete. The mistakes of the detentions of Iraqi residents during the first Gulf war, as well as the apparently bungled Forest Gate operation, show that it can also be wrong and even negligently so. If individuals are deprived of their liberty on a basis of secret information which cannot be examined and challenged in open court, the risk that mistakes will be made increases considerably. In 1991, on the eve of the first Gulf War, the government, acting on intelligence information, began detaining Iraqi and other foreign nationals present within the UK on the grounds that they posed a terrorist threat. By 28 January 101 Iraqis and 10 other foreign nationals had been detained under the Immigration Act 1971, having been served with notice of the intention to deport them for reasons of national security. 35 further Iraqis were held in military custody as prisoners of war.[14] The route of appeal against such detentions was to a non-judicial panel of 'Three Wise Men' – a less satisfactory route even than SIAC, which had yet to be established. MPs – amongst whom David Blunkett was prominent – and others protested against these detentions. The quality of the intelligence was shaky. 'Iraqi soldiers' turned out to be engineering and physics students on scholarships from the Iraqi military. The case against one man, Ali el-Saleh, was apparently 'that his wife's sister had married a man whose uncle was Abu Nidal.' An interned Palestinian, Abbas Cheblak, was an advocate of Arab-Israeli rapprochement who had written a sympathetic study of the Jews of Iraq and criticised the invasion of Kuwait. A guest editor of *Jewish Quarterly* organised the campaign to free him.[15] The then Prime Minister, John Major, concedes in his memoirs 'we soon realised that some mistakes in identifying [terrorist suspects] were made, through either haste or excessive caution.'[16]

There is evidence that some deprivations of liberty since 11 September 2001 have also had a flawed evidential basis. In the case of one detainee, known as 'M', SIAC ruled in March 2004 that the government's assessments were unreliable and cancelled his detention. In October 2006 SIAC ruled that information presented to it by the government when seeking to deport an individual known as 'MK' had been used in a contradictory way in the trial of an Algerian, Abu Doha. The error only came to light because a barrister happened to be representing both men.[17] It is argued therefore that SIAC has not proved to be entirely a rubber-stamp for executive decisions. Yet in the first case 'M' was wrongly detained without charge for some 15 months

before the error in authorising his detention was established.'[18] Without the benefit of independent scrutiny, we cannot judge how impartial and effective existing arrangements are. But it seems likely that injustices, as in the case of 'M', will not be identified by the unchallenging processes set up either to prevent them or simply, in Macdonald's words, to 'provide false legitimacy'. Certainly, too, further measures for preventive detention will require far more robust oversight.

Proscription hearings

The government has created the Proscribed Organisations Appeal Commission (POAC), a body similar to SIAC, that hears appeals against the proscription of 'terrorist' organisations. POAC has three members, one of whom must be a current or past holder of high judicial appellate office; the other two members are appointed by the Lord Chancellor. The Home Secretary first considers appeals against proscription; if they are refused, POAC can hear the case 'if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review.' There is provision for further appeal on a point of law. Like SIAC, the Commission sits in public but is able to hear sensitive evidence in closed sessions from which the applicant and applicant's lawyers are excluded. A special advocate represents the applicant. An internal government working group also meets every six months to review all proscriptions.

Oversight of the police

There is a variety of checks, internal and judicial, on the exercise of police powers. We noted above the heavy use of stop and search powers designed to 'disrupt' terrorism and the evidence of ethnic profiling in their application (see pages 49-50). It requires at least an assistant chief constable (or an officer of equivalent rank) to designate an area in which police may stop and search people without the need for reasonable suspicion under section 44 of the Terrorism Act 2000; the officer authorising the designation need merely 'consider it expedient for the prevention of acts of terrorism.' The Home Secretary must be informed at once and must confirm the order within 48 hours if it is not to lapse. Any constable can cordon off an area, but an officer of at least superintendent rank must take charge as soon as possible. The police must act on 'reasonable suspicion' if they are using counter terrorism stop and search powers outside designated areas.

Lord Carlile told us that he reckoned that the number of areas designated under section 44 could be halved. Certainly, the statistics on the number of stop and search powers leading to arrests on suspicion of terrorism – let alone charges – suggest that there is little systematic intelligence being used either for stops and searches arising from 'reasonable suspicion' or the designation of section 44 areas. A Home Office Stop and Search Action Team includes an 'independent Community Panel', on which there are Muslim representatives. But there is no 'independent scrutiny, involving the Muslim community, of police intelligence and its use as a basis for stops and searches and arrests' that the House of Commons Home Affairs Committee called for in 2005.[19]

Circuit judges hear police applications for searching premises, obtaining financial information and requiring the 'production of persons and materials' under the Terrorism Act 2000; and under section 42 of the same Act a justice of the peace may issue a search warrant to a police constable if he or she is satisfied there are reasonable grounds for suspecting someone who is liable for arrest as a terrorist is to be found there.

The Independent Police Complaints Commission (IPCC), created recently in the wake of complaints about its weak predecessor, is charged with hearing complaints about police conduct resulting in death or serious injury in England and Wales and may also hear other complaints. The IPCC decides whether to delegate an investigation to the local force, to supervise a local investigation or to manage or lead an investigation itself. Its investigators have full police powers when on duty and must by law be given access to police premises, documents and other evidence when requested.

Sir Ian Blair, the Metropolitan Police Commissioner, sought to head off the IPCC investigation into the police killing of Jean Charles de Menezes at Stockwell in July 2005. But the Home Office ordered that the IPCC should be given full assistance for an immediate inquiry and he succeeded only in delaying the inquiry for a few days. The IPCC was by contrast given immediate access to the scene of the Forest Gate shooting in June 2006. This suggests that it will have at least this degree of independence and cooperation in the future. However, only its annual reports are published automatically. Other reports, as for the inquiry into the de Menezes killing, are only made public if the Home Secretary deems it appropriate.

Successful counter terrorism requires the support, trust and co-operation of local communities. One way of doing this is to ensure that the police and others are accountable for their actions to those local communities where they act. Local police forces are accountable to local communities through such structures as the local police authorities, on whose boards sit local councillors, magistrates and independent members. However, it is the anti-terrorist branch of the Metropolitan Police (SO13) that carries out many of the most significant policing operations in relation to counter terrorism, not local forces. In many instance the manner in which such operations are carried out undermines the efforts of local police forces to build up relationships of trust and co-operation in their local communities.

This insensitivity may, in part, reflect a gap in the accountability structure around SO13. There is no direct mechanism for local communities to hold the anti-terrorist branch to account. Instead accountability is at the national level, via the Chief Commissioner, to the Home Secretary. For operations that take place in London there is some accountability to the Metropolitan Police Authority. The MPA recognises the importance of building community confidence and trust in effective counter terrorism policing. In 2006 it began a programme on engaging communities in discussions on counter terrorism. However, the MPA's ability to scrutinise the actions of the Metropolitan Police is limited, since its remit is limited to oversight of 'strategic' matters and not 'operational' details. One former member of the MPA noted to us that, 'If the police don't want to you to discuss an issue, they claim it is operational, you then get into long debates about the distinctions between the two'. Given these limitations it will be important to consider ways in which to lock in greater local community accountability for SO13.

Reviewing counter terrorism laws

Ideally most of the counter terrorism legislation should incorporate sunset clauses, time-limited, say, to a five years maximum and requiring renewal by primary legislation not ministerial order.[20] The government's gesture in this direction is to appoint reviewers or review teams as part of each legislative package. The Anti-Terrorism, Crime and Security Act

(ATCSA) 2001's nine-member Privy Counsellor Review Committee under Lord Newton reported in December 2003.[21] Lord Carlile has been given a portfolio of statutory review functions: of the Terrorism Act 2000 (as well as, separately, parts of it applying to Northern Ireland); of Part IV of ATCSA 2001 (on the detention of foreign terror suspects who could not be deported), now no longer in force; and of the Prevention of Terrorism Act 2005 (which provides the legislative basis for control orders. Lord Carlile reported on the Terrorism Act 2006 when it was in bill form; and he is due to report late in 2006 on the definition of terrorism, feeding into the government's plans for a consolidation Act for counter terrorism law. There are additional provisions under which the government provides regular information to Parliament on its counter terrorism activities; for example, the Home Secretary reports quarterly on the exercise of control order powers.

Quite what influence these review processes have is not clear, but at least they provide a public focus for debate. The government quite robustly rejected crucial recommendations from the Newton Committee – including the abolition of indefinite detention for foreign nationals; and Lord Carlile has given indications of his impatience with the government's slow progress on his more modest proposals for reform. There are doubts about the value of a single individual shouldering his package of functions. There is merit in that he accumulates experience nearly across the board and practitioners are likely over time to share security-sensitive information with him. He has been assiduous in carrying out his responsibilities. On the other hand, it is not desirable for such significant responsibilities to devolve upon the judgment of a single individual, however principled and able. Moreover, there can be no guarantee that a reviewer of similar calibre will replace him (or that a government can be relied upon to try). And there is an arguable tendency for such reviewers, even if independent in their approach, to 'go native' over time.

Oversight of the 'intelligence community'

Oversight of the activities of the security forces is conducted by way of judicial monitoring, through the Intelligence Services Commissioner, the Interception of Communications Commissioner, and the Office of Surveillance Commissioners. Various other bodies have or will have a role, including the Information Commissioner, the proposed National Identity Scheme Commissioner, the Commissioners for policing and terrorism in Northern Ireland, the police complaints mechanisms; and the Parliamentary Ombudsman.[22] The Intelligence and Security Committee (ISC) takes an overall view of intelligence and security agencies and produces annual and one-off reports. The ISC published a narrowly-focused report for example on the 7 July bombings (see page 32). The ISC is based within Parliament but it is not a select committee. It is a parliamentary committee in the sense that it is established by statute to be composed of senior parliamentarians from the major parties; the Prime Minister appoints its members, both MPs and peers, in consultation with the Opposition, and it reports to him rather than Parliament. Its reports are usually redacted, sometimes heavily so. It is therefore not wholly independent of the executive and relies a great deal on the cooperation of the security agencies. On the other hand, its members are drawn from the three main parties; it has adopted the non-partisan ethic of select committees; and members of the three larger parties who sit on the ISC are confident that they carry out their duties with sufficient independence and have expressed their belief that the ISC satisfactorily carries out its tasks of scrutiny.

Our professional sources are more divided over whether the ISC 'does a good job' or not and some have criticised it for not trawling as widely as it might for evidence. Governments have from time to time established one-off inquiries into security matters, of varying quality and openness; the latest such inquiry was that of Lord Butler into the handling of intelligence on Iraq's supposed weapons of mass destruction.

The work of the security forces is vital for the protection of the public and the nation. However there are legitimate concerns about the quality of oversight of agencies which are by their very nature intensely secretive. Lord Butler said that his experience in government was that officials were responsible people who did 'obey the rules' and that the 'services people are of a pretty law-abiding nature'. The members of the ISC 'are not pussy cats'. He said that judicial monitoring and the system in general worked well. An important factor in regulating the agencies was 'the fear of the cost of being found out'.

As we have seen, Sir David Omand suggests that the public should accept a deal on human rights: an increase in surveillance (the best intelligence, as it is not tainted) and thus invasions of privacy in return for continuing protection of traditional liberties. (We discuss this in Chapters 5 and 7.) He too believed that internal discipline offered the best protection against abuse. He described the basic ethical principles that governed intelligence activity in general and surveillance in particular. There is a strong echo of human rights principles here in David Omand's six commandments: There must be sufficient sustainable cause for any action; integrity of motive; proportionality; appropriate authority for each action; a reasonable chance of success; and covert action must be a last resort. He added that the intelligence and security services outlawed assassination and acknowledged public concerns about the use of intelligence for military or covert action and the acceptance of information that might be tainted by the use of torture or other abuse of human rights.

Yet Juvenal's eternal question hardly receives a convincing answer: 'Quis custodiet ipsos custodes?' ('Who shall guard the guards themselves?'). On surveillance, Privacy International judges that the UK is one of the most lax western countries and that the EU states are generally lax, making the US seem good in comparison.[23] Most democratic countries require a judicial warrant for an interception; here it demands only the signature of the Home Secretary or First Minister (in Scotland). For access to traffic data (see Chapter 5), many if not most countries require a judge to sign an order before telephone companies hand over the data: here in the UK it is authorised by a senior police officer. The processes for the agencies are even more opaque. Moreover the sheer volume of warrants means that neither minister can possibly give detailed scrutiny to the warrants they approve.

The Regulation of Investigatory Powers Act 2000 provides for an Interception of Communications Commissioner to oversee the system and report to the Prime Minister. While the annual reports contain valuable information they are brief (about 13 pages) and much sensitive material is left out of the published version. One of the Commissioner's strengths is in reporting on errors made, for instance the wrong telephone line being monitored. The current Commissioner, Sir Swinton Thomas, argues that 'The number of errors is unacceptably high.'[24]

The Act also established an

Investigatory Powers Tribunal for hearing complaints from members of the public. It has nine judicial members, and a registrar appointed to assist with claims alleging infringements of the Human Rights Act. During 2004, the most recent year for which figures are available, the tribunal received 90 new complaints, of which it completed the investigation of 49. On no occasion did it conclude that either the 2000 Act or the Human Rights Act had been contravened. While the Interception of Communications Commissioner is required to provide such assistance as is required to the tribunal, none was asked of him in 2004, nor of the Intelligence Services Commissioner, who is similarly required to provide assistance.

Depending on the agency involved property warrants are generally authorised under RIPA by the Home Secretary or Foreign Secretary. Authorisation for overseas individual acts or classes of acts such as theft or bribery are provided in practice by the Foreign Secretary. Intrusive surveillance in the UK, for instance using a device in someone's house or car, is authorised by the Secretary of State. Non-intrusive covert surveillance and the use of human intelligence sources can be authorised by a designated person within an agency or other public authority. All of these authorisations and activities are overseen under RIPA by the Intelligence Services Commissioner, currently Lord Brown of Eaton-Under-Heywood. His reports to the Prime Minister are shorter even than those produced by the Interception Commissioner, lacking figures for property warrants issued or authorisations for intelligence activities; and similarly omit sensitive information for publication.

The annual reports take almost a year to appear, as do those of the Interception Commissioner, meaning that oversight of surveillance is very much a retrospective activity. Some of the content of one Commissioner's report is an exact reproduction of that in the other's. The Intelligence Commissioner has taken on responsibility for oversight of the proposed provision of information without consent from the National Identity Register to the intelligence and security agencies.

The role of Parliament

The ruling doctrine of parliamentary sovereignty in the UK creates and undermines the principle of ministerial responsibility to Parliament. In theory, the government is accountable to Parliament for its 'War on Terror', requires parliamentary consent for its policies and legislation, and is subject to parliamentary influence and scrutiny. However, structural and cultural factors drain away much of this apparent scrutiny and accountability. Parliamentary sovereignty belongs to the Crown in Parliament and not simply to MPs and peers. The Crown – for all practical purposes, the government of the day – dominates both Houses, largely owing to its command of an absolute single party majority in the Commons.

Parliament doesn't really exist as an institution in its own right, distinct from partisan loyalties, and its powers to oversee all government policies are slight.[25] Parliament is not possessed of the substantial formal powers and access to public information that it requires to enable it to carry out oversight of government. On issues of national security – as with foreign policy, making war and signing and ratifying treaties – the Prime Minister and his colleagues possess royal prerogative powers which absolve them from even consulting or informing either House. Where parliamentary responsibility does apply, governments are generally able to manipulate the un-codified UK constitution in order to drive through controversial measures with the minimum of parliamentary resistance.

The Home Affairs Committee (HAC) is the 'lead' committee on counter terrorism policy, and various other select committees do or may investigate aspects of counter terrorism – Defence, Foreign Affairs, Science and Technology, the Joint Committee on Human Rights (JCHR). The HAC covers the work of the Home Office and has therefore a very large brief, taking in much more than just terrorism. Since 2001 it has produced three full reports directly on terrorism – on the Anti-Terrorism, Crime and Security Bill in 2001; on terrorism and community relations in 2005; and on terrorism detention powers in 2006. To its credit the committee has considered terrorism in more than just a security context, as the community relations report (referred to extensively in this report) shows. The HAC backs the concept of pre-emptive detention through extended pre-charge custody, and is therefore at odds with the JCHR and European human rights standards. As well as the three reports, the HAC has inquired into other related issues, such as identity cards and extradition powers; and it holds regular evidence sessions with ministers – including the Home Secretary – which often deal with terrorism. When the government decided to rush through the Terrorism Bill in 2006 without the pre-legislative phase it had promised, the committee did at least hold evidence sessions to discuss it in draft form. Meanwhile, the Foreign Affairs Committee has been keeping the international 'War on Terror' under regular review and has reported on its impact at home, but has not pursued the implications of this impact on the counter terrorism strategy.

However, there has been overall a gap in examining 'homeland security' and the government's counter terrorism strategy as a whole, though all the above committees have dipped toes in the water. But the committee structure militates against their ability to conduct a cross-cutting review, with demarcation concerns further preventing any one committee from seizing the initiative. The existence of the Intelligence and Security Committee (ISC) – as we say above, not a select committee – has in practice also obstructed the access of parliamentary select committees to the work and activities of the security agencies (though Douglas Hurd, the then Foreign Secretary who set the ISC up, assured MPs that this would not happen). Yet his successors have on several occasions refused to give the Foreign Affairs Committee access to the agencies on the grounds that the ISC is responsible for their parliamentary scrutiny. The argument is that select committees had no such access prior to 1994 and so their remit has not 'been truncated'. [26] In early 2006, Dame Eliza Manningham-Buller, Director General of the Security Services, refused to give evidence to or meet informally with the Joint Committee on Human Rights, since all the areas of inquiry which the JCHR wished to discuss, she said, 'have been or are the subject of investigation by the ISC.'

But certain areas are effectively closed off to select committees anyway since, as Lord Butler once remarked, government does not trust them to be responsible. Indeed, ministers and advisers are generally more willing to cooperate with inquiries the government itself has set up itself, such as the Butler Review and Hutton Inquiry, than with select committees. Further, since the government has a majority on all select committees, and the whips determine their membership, the potential for their carrying out fully independent scrutiny is reduced (though this is not to minimise the value of the effective work produced by certain select committees). The tendency for parliamentary consensus to develop

around national security issues has an inhibiting effect within the general framework of executive strength and parliamentary weakness, further reducing the chances of meaningful oversight of counter terrorism policy. Moreover, counter terrorism action by the UK is closely associated with the 'special relationship' with the US, a long-standing commitment conducted via the royal prerogative and subject to little parliamentary investigation.[27] These inhibiting effects temper both the 'brute accountabilities' and party rebellions that take place in the House of Commons.

Indeed, it has been put to us that the Commons – the only body in the state possessed of direct democratic legitimacy – tends to pass on responsibility for human rights issues to the unelected Lords. The Lords have been assiduous in scrutiny of terrorism legislation and frequently return it to the House of Commons, but ultimately, unless there is intense pressure on government business, the government can take advantage of the Lords' democratic weakness and vulnerability to force its legislation through. Nevertheless the government has been forced onto the back foot on its counter terrorism legislation, as when the Lords were able to block legislation for control orders early in 2005 – because an election was looming- and then a Commons rebellion put paid to the extension of pre-charge detention to 90 days later in the same year. Even so, on neither occasion did Parliament wholly reject the government's legislative proposals. For instance, the division over 90 days' detention was ultimately resolved by a compromised bidding process which arrived at 28 days' detention – not the best means of making such weighty decisions.

Parliamentary control of legislation

It has been a long-standing concern, detailed most convincingly in Hansard Society reports, that Parliament exercises weak control of the mass of legislation that government funnels through formal, and largely ineffective, checking processes. It is a recognised parliamentary principle that the government 'must have its business'; and its control of the parliamentary timetable and procedures, allied usually with an inbuilt majority in the Commons, generally secures its legislative programme. The Commons standing committees, which formally examine bills in detail, are stacked with loyal backbenchers and timetabled to get Bills through with the minimum of disruption.

A major and perennial deficiency in parliamentary oversight is that crucial counter terrorism measures are often enacted in crisis conditions and rushed through Parliament without effective scrutiny.[28] Governments usually justify the rush to legislation by reference to recent atrocities or imminent dangers, but it may also be the result of the government's own bungling. The three major terrorism laws – the Anti-Terrorism, Crime and Security Act 2001 (ATCSA) , the Prevention of Terrorism Act 2005 and the Terrorism Act 2006 were rushed through Parliament. Under ATCSA 2001 the Newton Committee was established to provide post-legislative review of a measure that should have been subject to proper pre-legislative review. The Committee thereupon criticised the way in which the government pushed the Act through Parliament:

> By definition, an emergency timetable does not allow the normal opportunities for full and detailed Parliamentary scrutiny. Enacting provisions in this way…ran the risk of undermining the usual consensus for recognising the responsibility of the Government of the day for public safety and for giving it greater discretion when approving legislation presented under emergency conditions.[29]

To emphasise its dissatisfaction, the Committee further took advantage of the power it was given under section 123 of the Act to specify any provision in the Act which it believed should cease to have effect within six months after its report was published unless both Houses passed motions showing that they had considered the report. The Committee cited the whole Act, in order to make 'clear our support for the principle of making emergency legislation subject to periodic review and renewable by Parliament.'[30] (Both Houses duly debated the report).

The government then drove the Prevention of Terrorism Act 2005 through Parliament in response to the Law Lords' ruling of December 2004 that indefinite detention without trial under the 2001 Act was incompatible with the European Convention. Ministers had long received considered warnings (from among others, the Joint Committee on Human rights; see below) that the courts would come to this verdict. Yet they went ahead and did not even prepare a working alternative, precipitating a brief constitutional crisis. Thus the stop-gap and drastically re-written 2005 Act was rushed into law in two and a half weeks from start to finish, introducing control orders to replace indefinite detention. Control orders in turn raised very serious human rights issues, not least the proposal that a politician – the Home Secretary – and not a judge should have the power to deprive someone of their liberty, or severely constrain it. This and other serious deviations from the traditions of British justice (see also page 58 above) provoked major controversy in both Houses. The government came very close to losing the entire Bill because they could not persuade the House of Lords and a substantial body of opinion in the Commons that they were entitled to have control orders in the form that they wanted them. They finally secured the Act's passage through Parliament by offering early full legislation and renewal of the control order provisions so that Parliament could properly address all the outstanding issues. That undertaking was not honoured.

Instead, the London bombings of 7 July 2005 were used to justify accelerating yet another rushed Bill through Parliament with no pre-legislative scrutiny, despite the government conceding that its measures would have not directly prevented the attacks, and renewal of control orders only through affirmative resolutions in both Houses. Debate on the government resolutions was sandwiched between long debate on the new Terrorism Bill and the parliamentary recess. As Kenneth Clarke MP complained in the debate,

> Twelve months ago, both Houses were full of hundreds of Members consumed with passion for the great issue of civil liberty, saying that the Government of the day should not have their way unless we were satisfied that a British citizen's fundamental rights were safe. The number of Members in the Chamber today scarcely reaches double figures [actually 13 MPs were in the Chamber] and the debate, which is restricted to an hour and a half, is being held on the eve of a recess. The vast majority of hon. Members are well on their way to wherever they will spend the weekend.

The effect was, in the words of the Joint Committee on Human Rights (JCHR) 'significantly to reduce the opportunity for parliamentary scrutiny and debate of the control orders regime'. In place of 'detailed debate and scrutiny of a Bill' there was 'a single debate in each House with no opportunity to amend the legislation to reflect any concerns about its actual operation, including its compatibility with human rights standards'.[31] The committee also complained that it

had been given hardly any time to give Parliament a fully considered report on the renewal of the orders, between 2 and 15 February.[32] As for the rushed 2006 Act, the Home Affairs Committee noted recently that 'Many of the difficulties the Government experienced in the passage of the Terrorism Bill arose from the speed with which it was drafted and presented to Parliament'. Its report, the committee concluded, 'did the job of examining the police arguments for extended detention which the Home Office should have done before introducing the Terrorism Bill.'[33]

Freedom of information

Information on the security forces, tribunals and other security bodies is absolutely exempt from release under the Freedom of Information Act 2000 and other information on national security depends on the consent of ministers. There are obvious reasons why security sensitive material should be protected, but on the other hand how are Parliament and the public to make informed decisions about the dangers of terrorism and the need for the government's counter terrorism laws if they are not given clear and relevant information, other than the occasional ministerial or police statement and unattributed media reports?

Moreover, the secrecy surrounding the security services is more excessive even than Whitehall's secretive norms; and the government's addiction to spin makes it harder still for the public to gain a clear understanding of the case for exceptional measures and restrictions on civil and political rights that it has been seeking in Parliament. The Joint Committee on Human Rights has repeatedly expressed its frustration about the government's reluctance to provide sufficient information to parliamentarians. When David Blunkett, then Home Secretary, was arguing in 2001 for a derogation from the European Convention to allow for the indefinite detention without charge of foreign suspects, the JCHR accepted that data sources must be kept secret, but still expressed concern about 'the lack of specificity in the reasons given…for asserting that there is a public emergency threatening the life of the nation [our emphasis, these are the grounds for derogation]'. David Blunkett said for example that 'the threat is variable, but is generally greater at present than, for example, that from the IRA from the 1970s onwards because today's terrorists are believed to have access to weapons of mass destruction.'[34] Is this really so? The committee concluded, 'we recognise that there may be evidence of the existence of a public emergency threatening the life of the nation, although none was shown to this Committee…it is especially important for each House to decide whether they are satisfied of the existence of a public emergency threatening the life of the nation'.[35] It was 'not persuaded that the circumstances of the present emergency or the exigencies of the current situation' met the requirements that justified derogation.

In 2004 the committee, noting a statement by the Director General of the Security Service that the international terrorist 'threat is likely to remain indefinitely', stated:

> democratic legitimacy demands some independent confirmation that the emergency remains at the level which justified unusual measures…Given the importance of being able to appraise the level of the threat from international terrorism in order properly to assess the proportionality of…measures… we think it is necessary to explore ways in which the Government could present for the public and/or parliamentary scrutiny more of the material on which its assessment of the threat from international terrorism is based, without prejudicing legitimate concerns about revealing intelligence sources. We also consider this to be an issue of the democratic legitimacy of counter-terrorism laws, given the existence of public concerns about both the reliability of intelligence reports and the use to which they are put.[36]

Even the constant alterations to counter terrorism legislation are not adequately made public. The Terrorism Act 2000 was subject to numerous changes after it first became law. Lord Carlile asked us to reinforce his repeated requests for the placement of 'an up to date edition of the TA2000 as currently in force…on the Home Office website. Given the prevalence of new criminal justice legislation as a policy preference in most Parliamentary sessions, even those of us involved on a frequent basis in the effects of TA2000 find it difficult to keep up with changes.' The Home Office has (at time of writing) still to make good its repeated assurances that it would post the up-to-date Act on the official website.[37]

The government also suppresses relevant information, not of a security sensitive nature, which could assist Parliament in its deliberations. In July 2004, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) issued a final report on its inspections in the UK that March (see page xx above). They found that the conditions in which some of the indefinite detainees were held amounted to inhuman and degrading treatment that contravened the European Convention. But their reports are published at the discretion of the government involved, and the UK government held this report back for almost a year until June 2005 – during which time the Law Lords heard the challenge to the validity of the derogation from the European Convention on Human Rights and Parliament was asked to pass the Prevention of Terrorism Act 2005. The government did not disclose the existence of the report either to the Law Lords (the Judicial Committee of the House of Lords) or to Parliament.[38]

Joint Committee on Human Rights

There is a parliamentary committee, the Joint Committee on Human Rights, which is specifically charged with subjecting government legislation to scrutiny on its compliance with the European Convention (ECHR) (as incorporated by the HRA 1998 into British law) and reporting on broader thematic issues. This committee is a valuable resource on which civil society draws (we have drawn extensively on its work for this report) more than the government does, but its 18 high-quality reports that consider directly or partially the government's counter terrorism legislation are frequently quoted in parliamentary debates on these laws. The committee is also carrying out a broader and ongoing themed inquiry.

The JCHR has 12 members, six MPs and six peers, and is chaired by Andrew Dismore MP, a member of the governing party. They have often proved prescient in publishing warnings that aspects of the government's proposals are not compatible with the ECHR, but the government has ignored them – and, indeed, has not cooperated as much as it might with the committee. We cite above for example their warning from the outset that the indefinite detention of foreign nationals without charge probably violated the ECHR. In July 2004, echoing Newton, the committee called upon the government to repeal the law providing for 'indefinite administrative detention'.[39] The government did not act upon this suggestion; in December 2004 the Law Lords ruled that this detention was incompatible with the ECHR

for reasons the JCHR had referred to, including discrimination and proportionality.

The government now appears to be ignoring concerns the JCHR has raised about the compatibility of control orders, as currently enacted, with the European Convention, over which it is likely to lose once again in the courts (see page xx above). Ministers might also be well advised to consider the concerns the committee has raised about extended pre-charge detention.

Footnotes

[1] *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom, 4th – 12th November 2004*, CommDH (2005)6, Council of Europe, 8 June 2005: 10.

[2] *Anti-Terrorism, Crime and Security Act Review: Report*, TSO, HC 100, 18 December 2003: 24-26.

[3] Blackstone, W., *Commentaries on the Laws of England (15th edition)*, vol I, p.208, 1809

[4] Lord Atkins's statement was contained in a dissenting House of Lords judgment in a detention case, see *The Times* Law Report, 4 November 1941.

[5] Adopted by the Committee of Ministers on 11 July 2002 at the 804th meeting of the Ministers' Deputies.

[6] See Chabal v the United Kingdom, 15 November 1996, reports 1996-V, para 79.

[7] A and others v Secretary of State for the Home Department, [2004] UKHL 56

[8] 'Submission from JUSTICE to the JCHR'S inquiry into counter-terrorism policy and human rights', 17 October 2005.

[9] Commons Home Affairs Committee, *Terrorism Detention Powers*, HC910, Stationery Office, 20 June 2006: 46.

[10] Lord Carlile of Berriew Q.C, *Report on the Operation in 2005 of the Terrorism Act 2000*, May 2006.

[11] Lord Carlile of Berriew Q.C, op cit, p.14

[12] Parliamentary Joint Committee on Human Rights, *Review of Counter-terrorism Powers*, HC 713, Stationery Office, 21 July 2004: 15.

[13] Ian Macdonald, 'Why I feel I have no option but to resign', *Mail on Sunday*, 19 December 2004.

[14] Hansard, HC written answers, 4 Feb. 1991, Col. 28.

[15] Nick Cohen, 'Without Prejudice', *Observer*, 18 November 2001.

[16] John Major, *The Autobiography* (HarperCollins, London, 2000), p.222.

[17] Nigel Morris, '"Contradictory" evidence used in deportation case', *Independent*, 13 October 2006.

[18] Parliamentary Joint Committee on Human Rights, *Review of Counter-terrorism Powers*, HC 713, Stationery Office, 21 July 2004: 13.

[19] Commons Home Affairs Committee, *Terrorism and Community Relations*, HC165, Stationery Office, 22 March 2005: 44.

[20] Parliamentary Joint Committee on Human Rights, C*ounter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention*, HC1576, Stationery Office, 24 July 2006: 44.

[21] Privy Counsellor Review Committee, *Anti-terrorism, Crime and Security Act 2001* Review: Report, HC100, Stationary Office, 18 December 2003.

[22] Submission from Dr C N M Pounder to JCHR, 4 October 2005.

[23] See for example www.privacyinternational.org/index and www.privacyinternational.org/article.shtml?cmd

[24] Report of the Interception Communications Commissioner for 2004, HC 549, 3 November 2005: 4

[25] See further, Beetham, D, et al, *Democracy under Blair*, Politico's, 2004; and Burall, S, Donnelly, D, and Weir, S, (eds) *Not in Our Name: Democracy and Foreign Policy in the UK*, Politico's, 2005

[26] See Burall, S, Donnelly, B, and Weir, S, *Not in Our Name: Democracy and Foreign Policy in the UK*, Politico's, 2006

[27] See further, *Not in Our Name*, fn 17.

[28] See *The Three Pillars of Liberty: Political Rights and Freedoms in the UK*, Klug, F., et al, Routledge 1996, for a historical perspective.

[29] Privy Counsellor Review Committee, *Anti-terrorism, Crime and Security Act 2001* Review: Report, HC100, Stationary Office, 18 December 2003: 5.

[30] Privy Counsellor Review Committee, *Anti-terrorism, Crime and Security Act 2001* Review: Report, HC100, Stationary Office, 18 December 2003: 9.

[31] Parliamentary Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005* (Continuance in force of sections 1 to 9) Order 2006, HC 915, Stationery Office, 20 February 2006: 9.

[32] Parliamentary Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005* (Continuance in force of sections 1 to 9) Order 2006, HC 915, Stationery Office, 20 February 2006: 9.

[33] Commons Home Affairs Committee, *Terrorism Detention Powers*, HC910, Stationery Office, 20 June 2006: 46.

[34] Parliamentary Joint Committee on Human Rights, *Anti-Terrorism, Crime and Security Bill,* HC372, Stationery Office, 16 November 2001: para 29.

[35] Parliamentary Joint Committee on Human Rights, *Anti-Terrorism, Crime and Security Bill*, HC372, Stationery Office, 16 November 2001: para 30.

[36] Parliamentary Joint Committee on Human Rights, *Review of Counter-terrorism Powers*, HC 713, Stationery Office, 21 July 2004, 9-11.

[37] Lord Carlile of Berriew Q.C, *Report on the Operation in 2005 of the Terrorism Act 2000*, May 2006: 2.

[38] Parliamentary Joint Committee on Human Rights, *Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005* (Continuance in force of sections 1 to 9) Order 2006, HC 915, Stationery Office, 20 February 2006: 25.

[39] Parliamentary Joint Committee on Human Rights, *Review of Counter-terrorism Powers*, HC 713, Stationery Office, 21 July 2004: 13.

Chapter 7

Looking to the Future

Conclusions

Combating 'home-grown' terrorism within the greater dimension of international terrorism and the US-led 'War on Terror' presents the government with a series of complex and fraught challenges and tasks. As we have pointed out, first and foremost there is the crucial challenge of holding the balance between public safety and fundamental democratic liberties and values. The immediate pressures upon government, not least from the tabloid media, quite clearly tilt the balance against the protection of civil and political rights.

For the government must in the first instance provide the general public with greater assurance of security against terrorism. Given the difficulties that the intelligence and security agencies face in 'catching up' in human intelligence – that is, in identifying potential conspiracies and, harder still, infiltrating extremist and terrorist circles – from a standing start, it is very hard for the government to acknowledge publicly that it is most likely that future conspiracies may very well succeed, at least in the short term. Ministers naturally feel a compulsion to be 'seen to act' and to talk tough when they cannot act effectively. Indeed, responses of this kind can be beneficial if people believe that the government has their security at heart. But ministers need not be so driven by fear of a political backlash from another terrorist attack. They suffered no backlash after 7/7 and the best way of ensuring protection against a backlash of this kind is to abandon their frankly partisan approach and return to the earlier search for the political consensus around policy that the public wishes to see. But, as we say in Chapter 4, we fear that the recent rhetorical stance taken by ministers is counter productive and will militate against both winning the cooperation of the Muslim communities and creating unity around their counter terrorism strategy.

Yet the deluge of anti-terrorism legislation, ministerial rhetoric and some high-profile police activity masks and prejudices an official counter terrorism strategy which we find to be balanced and sensible (see Chapter 4). There is a strong emphasis in this strategy on reassuring the Muslim communities in order to gain their trust and cooperation and to convince future generations of young Muslims to cast their lot with democracy and social justice rather than with violence. We chronicle in Chapter 4 examples of government policies and policing that can be seen as building blocks for an approach that wins the trust of people within Britain's Muslim communities. However, a word of caution is required here. Developing the UK's agenda for integration reinforces the perception that policies that address minority needs are only being developed as a response to extremism and suggests that integration is not a two-way process: rather that the state is not really interested in the concerns and experience of the Muslim minorities unless it impacts on the majority.

The rolling out of increasingly wide-ranging legislative powers about which even senior police officers are sceptical and the development of a shadow, or parallel, system of justice driven by the executive cancels out the positive interest in integration and equality that the government has demonstrated and the good practice that is being developed. The disruptive and preventive measures that have been and are being taken alienate the very communities on whose cooperation the authorities depend for intelligence. People will be reluctant or wary of reporting incidents or passing on crucial information when they or friends or relatives experience unpleasant or worse treatment from the authorities or read or see media reports of brutal, abusive or insensitive incidents. It is a commonplace of expert study of terrorism that the state's own counter terrorism measures can have a profound effect upon the intensity of the terrorism they are designed to combat. This is not to say that new legislation and changes in police practice may not be needed, nor even to challenge the need for early and disruptive action against particular groups of potential terrorists. But they need to be introduced with care and consensus after open debate or the fomenters of extremism and terror will exploit them to crank up community tensions and stoke anger and frustration. We reiterate the points that the key to more immediate success against the terrorists is good intelligence in the first place; and that the second stage must be to win over those young people in the Muslim communities who may give the terrorists in their midst the tacit or active support that they need.

Government ministers often talk of a 'trade off' between security and human rights. But this is a false choice. Human security itself is the principal human right, 'the right to life', and is the central component of the carefully assembled and balanced package of civil and political rights and responsibilities contained in the European Convention of Human Rights and other human rights instruments. The European Convention, now largely incorporated into British law, allows for a government to restrict some rights in a genuine national emergency. To do so, it is incumbent on the government to take out a derogation from those rights and formally and publicly to justify that derogation on the grounds that the 'life of the nation' is under threat. There are also suggestions that a particular 'trade off' between surveillance and other civil and political rights might represent an acceptable compromise since, at least for the time being, surveillance is most likely to deliver the intelligence that is required to prevent terrorism (see Chapter 5).

The actual 'trade off' that is occurring is not however between this or that right. It is between the rights of the majority population and those of minorities, especially the Muslim communities. In a very real sense, and no doubt inevitably, apprehension of the terrorist threat has been 'racialised'. In our view, government statements, like those of Home Secretary John Reid, contribute to a divide that has been exacerbated

for some years by Islamophobic reports and items in the media.[1] An important part of the government's ability to pass its counter terrorism laws and developing police practice lies in the idea that these laws and their enforcement will not be employed against Tony Blair's 'law-abiding' majority: they will not be used against 'us', they will be used against 'them'. The way that the threat has been 'racialised' is key in drawing this boundary. These measures are possible in part because the general public does not feel vulnerable to being kept under surveillance, watching their words, being arbitrarily stopped, searched, raided, beaten, arrested or shot. By contrast, people in the Muslim and other minority communities do. (It is noteworthy that the misuse of counter terrorism powers has generated the most mainstream controversy on the relatively rare occasions when it has been directed against non-Muslims, such as the stopping and searching of peace protestors or delegates at the Labour Party conference.)

This process – and the government's Manichean distinction between terrorist suspects and 'the rest of the British people' – enables and justifies the removal or reduction of key protections, such as the presumption of innocence, safeguards against detention without charge, the basic principles of fair trial, and even the use of evidence that may have been obtained by torture. As we show in Chapter 5, the government's counter terrorism legislation and practice undermine many human rights and weaken the rule of law across a wide spectrum. Much of the new legislation is unnecessary and is expressive rather than 'fit for purpose'. The creation of the new offence of 'preparation of acts of terrorism' has been a useful instrument for bringing action against suspected terrorists and disrupting or preventing violent conspiracies within the criminal justice system early enough to protect the public – and also for providing a workable alternative to more preventive detentions. But the offence is widely framed and its use requires careful scrutiny. We understand why the intelligence and security agencies resort to surveillance as a means of keeping the immediate menace of terrorism at bay. But we are concerned that the oversight of their surveillance is deficient, and most especially about the role that the Home Secretary or First Secretary (in Scotland) play in authorising their activities. At the same time, we are dismayed that the authorities still refuse to allow intercept evidence to be used in terrorist and criminal court proceedings, when it can facilitate bringing charges against suspects and subjecting them to fair trial within the rules of criminal justice – and can clearly be done in ways that would allow the intelligence and security services to protect their operations from being harmfully disclosed.

We have concentrated on government laws and practice that diminish or remove protections of the liberty of the individual and the right to fair trial. But the restrictions on freedom of speech and association can have a 'chilling' effect on individuals as they watch their words or change their behaviour to avoid suspicion, and on society at large as they diminish the space for democratic debate around issues that are best publicly resolved. Given that so little is known of the manner in which young people are drawn into terrorism, the government's concern over 'glorifying terrorism' is wholly understandable. But incitement to murder or violence would anyway be illegal under pre-existing laws; and it hardly seems likely that the new provisions will catch any but the most blatant forms of incitement (which may be the point, as it will at least deal with those cases that provoke tabloid outrage). What is more likely is that debates within the Muslim communities that need to be had will be constrained, as a Bangladeshi woman in one of our focus groups describes, while the more extreme and malevolent 'preachers of hate' will retreat out of sight and their views will become more difficult to challenge. At the same time, necessary engagement between the majority and minority communities will also be constrained and the normal processes of integration will be slowed or narrowed.

We reiterate our warning – also voiced by the Home Affairs Committee – that the government's approach to security and counter terrorism is having a negative effect upon community relations, as well as upon frank and open public debate and political consensus. It is above all vital that the government and the institutions of the state concentrate on getting across the clear message that the terrorist threat does not come from a particular community, but from particular individuals. Attempts by the Prime Minister and his colleagues to present themselves as the only credible defenders of the public against further terrorist attacks and to denigrate other politicians, judges and commentators who disagree with their proposals or who block measures that infringe human rights actually put at risk the nation's ability to deal rationally, proportionately and effectively with the terrorist threat that they are supposed to extinguish.

Human security, as Demos has argued, is a participatory project.[2] It is especially important, as former Assistant Commissioner David Veness has stressed in a Demos lecture, to recruit 'unlikely counter terrorists' at community and citizen level.[3] But the rhetoric of all-powerful government which alone sees and appreciates the scale of the terrorist risk (while never ever quite sharing its knowledge with the public) prevents the fuller and better informed engagement of civil society, communities, political parties and non-state organisations and actors. The legacy of the government's overt counter terrorism policies may very well be divided communities and diminishing trust alongside the damage to human rights. There are even signs from opinion polls, such as a YouGov poll in August 2006, that they are not even winning the majority support that they are aimed at.

The government's assumption of greater powers is especially worrying as this is an administration that finds it hard to stand up to populist pressures. The hostility to the judiciary is unfounded and constitutionally illiterate. It is rarely willing to defend human rights against ill-founded media criticisms. Given such weaknesses, the level of public disillusion with government and formal politics and the impact of EU membership and globalisation on the social fabric, we ought not to accept former Home Secretary Charles Clarke's complacent statement to the Home Affairs Committee that we need not fear that future governments will misuse the greater powers and extensive surveillance apparatus at their disposal. Over the past quarter of a century British government has been moving steadily in the direction of an authoritarian populist state and no-one can be sure of the complexion of a future government that may inherit an ever more powerful and intrusive state.

The government is in a sense a victim of a political system and culture that both encourages the cult of strong leadership and at the same time subjects that leadership to less institutional and political checks and balances than in any other western democracy. The existence of the Royal Prerogative gives a government virtually unchallenged discretion to make foreign policy. The result is often incompetent government, punctuated by 'policy disasters', among which participation in the

invasion of Iraq ranks very high. It is now widely recognised that the wars in Afghanistan and Iraq, and Britain's acquiescence in the US's partial position in the Israel-Palestine conflict, have contributed to intensifying alienation and extremism among Muslims in the UK and the wider world. The frustration that many Muslims (as well as many more non-Muslims) experienced over the Iraq action was born as much out of anger about the way the decision to invade was taken as of the recklessness of the decision itself.

Hazel Blears, while at the Home Office, admirably spent a great deal of time addressing Muslim audiences on the need for them to engage in and rely upon democracy in Britain as the proper alternative to violence. But as she complacently recounted at a Royal United Services Institute seminar on terrorism, she informed them that they wouldn't necessarily get their own way. As our focus groups and wider researches show, these were audiences that hardly needed that note of warning. Muslims in Britain do not experience British democracy as a participatory or even responsive process that values their views. Quite the reverse. The young people who participated in the protest marches against invading Iraq (and who rejoiced in finding themselves a minority on those marches), just as their elders who participated in the government's Muslim working groups and who agreed that a full public inquiry into terrorism was necessary, felt and still feel that their voices don't count. Those who preach the merits of democracy ought also to examine the deficiencies in the British model and take on board the need for reform.[4]

Yet Hazel Blears's voice is not heard above the shock and awe of the United States' crusade for freedom and democracy in the Middle East. The government should urgently review its commitment to US policies and practice not to appease terrorists, but because they are not in Britain's interests, at home and abroad, as well as being illegal, mistaken and apparently indifferent to the human deaths, injuries and suffering that they cause. You cannot preach democracy at home and set it aside abroad. The double standards of the US-led coalition, the oppressive nature of many of the regimes involved; the UK's collusion in unlawful detentions, rendition, and a variety of abuses and torture; the disrespect for the international rule of law and human rights standards undermines the claim that the 'War on Terror' is being waged to spread democracy and freedom. It is true that Bin Laden's terrorism pre-dated the war on Iraq; but the war and associated policies anger Muslims around the world who would never subscribe to his wider ambitions and critically make some of them sympathetic to violent protest.

As we have argued throughout this report, a continued commitment to the rule of law and respect for human rights is integral to a successful counter terrorism strategy. We can only defend the democratic and open way of life if we demonstrate a continuing commitment to its values and practice in the way we actually combat terrorism and improve it in an inclusive way for all of this country's communities. The government's counter terrorism laws, policy and practice have to be informed by human rights canons of equality and proportionality if the police and intelligence and security agencies are to gain the trust in the Muslim communities that is essential to the successful prosecution of counter terrorism in the UK. New laws and new strategies of surveillance and 'disruption' may yet be required to root out terrorism. But they need to be introduced and prosecuted with agreement, care and sensitivity.

Recommendations

Our principal recommendation on which all else hangs, is that human rights provide the only appropriate framework for counter terrorism laws and practice, as well as for citizenship and civil society, public ethics and public policy for the diverse population of the UK. It is a 'neutral' and secular framework with a moral content and purpose that reflects and is consistent with the most valuable aspects of religious beliefs.[5] Human rights law balances civic responsibilities and obligations with the rights that are protected. The European Convention is often portrayed as an alien, and unnecessary, intrusion; yet it was framed in the first place by British lawyers who took Britain's uncodified liberties as a model for codified human rights. Civil and political rights are central to the democratic processes by which the people of the United Kingdom can discuss and resolve the issues and dangers that the terrorist threat poses and can frame policies and practices that reduce it. Moreover, the human rights framework would recognise that terrorist acts represent a violation of human rights and that the state is under an obligation to counter them, but that its response to terrorism should be proportionate.

We acknowledge that there is a strong feeling that 'human rights' are actually 'minority rights' that unpopular minorities take advantage of. Of course, human rights do seek to protect minorities, to give them equality and to prevent discrimination against them; but they are also universal rights that protect basic liberties that the British people have come to regard as their own. The government did a great disservice to its own Human Rights Act when it introduced it almost apologetically and omitted to proclaim its virtues and value to the public at large out of fear of provoking a tabloid backlash that has come anyway. Nor did the then cabinet accept the need for a Human Rights Commission to explain the effects and purpose of the new law. Meanwhile, the new Commission for Equality and Human Rights Commission must immediately act against Islamophobia and the damaging divide that is being opened up between the majority population and Muslim communities, by government ministers among others, and must begin the major long-term task of educating the public in the benefits to society and themselves as individuals of human rights protections and responsibilities. One recommendation the Commission might consider seriously is the proposal by Rob Beckley, assistant chief constable of Hertfordshire, that there should be regular polling to monitor attitudes towards and within the Muslim communities.

Terrorism has, in part, social, economic and cultural roots, both within the UK and internationally. While 'human rights' is often taken as meaning 'political and civil rights', there is in fact a continuum of interdependent rights encompassing the right to 'equality' and freedom from discrimination and the full spectrum of economic, social and cultural rights.[6] This broader human rights framework would encourage a more comprehensive and principled approach to tackling the problem of terrorism by the reduction of social exclusion, inequality and discrimination.

Five main points arise from these recommendations:

1. The rule of law – with the long-established principle that the executive is subject to the rule of law – is the bulwark of British liberties. Habeas corpus is a vital aspect of the rule of law as it demands that the executive justify the arrest and imprisonment of those held in custody. Much of the government's anti-terrorist strategy depends on preventive detention

for suspects who are not charged and who are denied a full and fair trial. The government should make available the resources to place suspects under whatever form of surveillance is necessary rather than keeping them in detention, and introduce legal and procedural reforms to facilitate proceedings within the safeguards of the criminal law, including making intercept evidence lawful in open court.

2. The creation of a shadow or parallel system of executive justice and the violation of principles of due process to bring about executive detention or house arrest through various means, including misuse of immigration legislation, should be brought to an end as soon as possible. As long as preventive detention in various forms exists there should be stronger judicial oversight (as recommended by the Home Affairs Committee) and reforms of the SIAC processes to improve the quality of SIAC decisions and strengthen the rights of defendants (as recommended by Lord Carlile and the JCHR).

3. Intercept evidence should be made admissible in court to facilitate the criminal prosecutions of suspects and other means of facilitating the ordinary processes of the criminal law, as suggested by the JCHR, should be explored.

4. Racial or religious profiling, including the discriminatory use of stop and search powers – which ACPO concedes are intended to cause general disruption and deterrence, not actually to catch terrorists – ought not to form part of the counter terrorism strategy. These practices depend on discrimination on a basis of physical appearance or apparent ethnicity or religion, are not effective, create deep resentment and damage the trust of minority communities in the police and other state officials at airports, ports and elsewhere.

5. The United Kingdom should end its collusion and participation in the perpetration of human rights abuses abroad, including in Afghanistan and Iraq. Such a decision would clearly not be cost-free in many respects and would most likely require a political review of the existing level of commitment to the Special Relationship with the United States and reconsideration of the UK's relationship with European states within the EU.

There will be further counter terrorism legislation in the next Queen's Speech. There have been indications that the government will seek to re-introduce its proposal for 90-day detention without charge for those suspected of being involved in terrorism. . A terrorism consolidation bill has been promised for 2007 and so ought to form part of the Queen's Speech. If so, it is likely prove to be most important piece of UK legislation since the European Communities Act 1972. It must be treated as such. Six points:

1. All new counter terrorism laws and the provisions of a future Consolidation Bill should be limited by 'sunset clauses' and renewable only by way of primary legislation.

2. If the government seeks to prolong pre-trial detention for more than 28 days, or any form of de facto house arrest, it should formally take a derogation from the European Convention on the grounds of a serious emergency that is a threat to the life of the nation as a platform for parliamentary debate and judicial scrutiny.

3. The Consolidation Bill should be subject to the fullest scrutiny and consultation with pre-legislative scrutiny, possibly by a specially convened joint committee, including chairs or members from various relevant select committees, with full staff support from the Scrutiny Unit. Hearings should be held around the UK; and evidence sessions should be conducted on-line, with viewers able to submit comments on proceedings.

4. The Bill itself should establish a single review body on the model of the Newton Committee to oversee counter terrorism law and practice in place of a single reviewer. The review body should be required to consider and report on counter terrorism within a broad human rights framework. The review team would hold open and closed hearings and report annually to Parliament as well as issuing urgent reports when required.

5. The oversight of surveillance of all types is inadequate and the existing processes for authorising warrants is dangerously narrow, being left to a single minister or senior police officers. Given the centrality of surveillance to counter terrorism and the spectre of a 'surveillance state', there is an urgent need for reforms to strengthen oversight and to widen the way in which authority is given for surveillance activities.

6. The government and Parliament must accept the need for clearly and carefully defined terrorist offences. The many vague and broadly defined offences which leave a great deal of room for discretion are likely to create injustices and generate distrust and the police do not necessarily find them helpful.

Ministers must abandon their 'we know best' tough-talking approach and initiate public debate on human security and counter terrorism. Their intolerance of dissent or criticism and the hardening view that anyone who is not with us is against us creates distrust and alienation throughout society. The disproportionate hostility expressed by ministers to the moderate criticisms of Muslim leaders in the summer of 2005 and mild reproaches from the leader of the Conservative party damages the quality of political debate and shrinks its parameters at a time when a thorough and inclusive debate is essential. The government must also resist any temptation to pander to resentments against the Muslim communities.

The 'home-grown' bombers were British, the government must be clear that it is the responsibility of the whole of British society to work together to address the challenge of 'home-grown' terrorism and must avoid rhetoric that places the burden exclusively on Britain's Muslim communities. Ministers must also cease seeking to monopolise the counter terrorism agenda and establish a wide-ranging public inquiry into all aspects of the counter terrorism strategy, as free as possible from the 'blame culture' that inhibits deliberative debate in the UK. The government's Muslim working groups asked for such an inquiry, but were rebuffed because the government feared that it would turn into an inquest on the Iraq war.

There is no shared debate, let along understanding, on what led to the July bombings, the roots of alienation, the pathways into violent radicalisation, the weaknesses and strengths of multiculturalism, the dynamics of majority and minority interaction, the significance of Islamophobia and religious difference and the impact of discrimination and disadvantage. The government cannot determine such matters, let alone generate support for its policy responses, on its own. As we have argued above, securing human security is a participatory process.

Four points:

1. The process of a public inquiry is as important as the outcome or the conclusions that it reaches. The government's analysis may well be correct but it needs to share that analysis and listen to others. The state cannot expect co-operation from minority communities without also seriously addressing their concerns,

2. Many of the concerns go beyond policing issues to addressing the wider social and economic disadvantage and discrimination that individuals in these communities may face. It is vitally important that addressing such issues is disentangled from the counter terrorism agenda.

3. Ministers should appreciate that the lack of trust in their policies and state institutions is often a consequence of very different experiences of the state, particularly for those whose historical background is in former colonial states.

4. A key lesson from the Irish experience is that all organisations involved in dealing with political violence, from the secret services to the units handling public order in the streets, must be independently and democratically accountable.

Finally, we endorse the view expressed by ACPO that 'community' should have been given its own heading within the counter terrorism strategy. We do so for reasons that go beyond issues of human security. There has been a growing sense of public unease about the rate of immigration into the UK and the impact that migrants have on communities with limited experience of new migrants. One consequence of this unease is the growth of Islamophobia and racial attacks on the one hand, and resentment and signs of retreat and consolidation in some Muslim communities on the other. These tensions can only be resolved by the kind of wide-ranging public debate that we have recommended above; and then effective government policies to promote community and the equality that underpins it in the interests of the majority and minority communities in the UK. The government can only devise these policies for improved community relations if they are based on the participation of those communities. Respect for the contribution that Muslim communities can make and wider understanding of the processes by which some young people within those communities are turned towards violence can come about only if they are seen to be playing a full part in combating that violence; and that can come about only if they are fully engaged in counter terrorism plans.

Footnotes

[1] A particularly irresponsible example of this was published in the *Sun* on 7 October 2006, which reported in prejudicial terms while following up tensions in Windsor between young white and Muslim youths under the front-page slogan, 'HOUNDED OUT: Hero soldiers' homes wrecked by Muslims'

[2] Briggs, R, J*oining Forces: From national security to net-worked security*, Demos 2005

[3] Lecture at Demos, 22 February 2005.

[4] See for example, Beetham, D, et al, *Democracy under Blair: A Democratic Audit of the United Kingdom*, Politico's, 2002

[5] Professor Francesca Klug sets out an eloquent case for this proposal in *Values for a Godless Age: the story of the UK's new bill of rights*, Penguin, 2000. She is currently working on a second edition of *Values for a Godless Age*, which is due to be published by Routledge in 2007

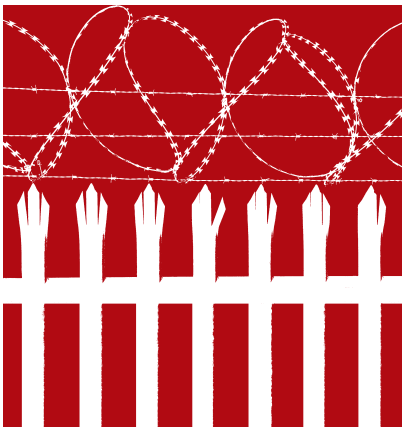
[6] See further Weir, S, *Unequal Britain: human rights as a route to social justice*, Politico's 2006

The Rules of the Game

Terrorism, Community and Human Rights

Andrew Blick, Tufyal Choudhury and Stuart Weir

Joseph Rowntree Reform Trust



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