IS THE 'WAR ON TERRORISM' A WAR ON RELIGIOUS PLURALISM AND LIBERTY IN CANADA?

ABSTRACT

Not since Europe's religious battles, has religion played such a prominent role in national security matters. The authors of this article suggest this is understandable since the perpetrators of September 11th claimed to have done so for religious reasons: this was the continuation of a war between the "West" and "Islam". Because the actions had an overtly religious dimension, many argue that religious pluralism and liberties should be curtailed, especially for the Muslim community. However, the authors argue these measures limiting religious freedoms and pluralism are myopic and misguided. Since the framing of security has a religious dimension, religious pluralism must be accommodated to ensure national security.

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In a speech in Cape Town, South Africa, on June 7, 1966, Robert F. Kennedy said:
"There is a Chinese curse which says, 'May he live in interesting times'.
Like it or not, we live in interesting times…"

Although Robert F. Kennedy was referring to a different time and context, those who witnessed the attack on the twin towers on September 11th, the proceeding 'War on Terrorism' and the introduction of various anti-terrorism legislations around the world, too live in interesting times.

Not since Europe's religious battles, has religion played such a prominent role in national security matters. This is understandable since the perpetrators of the terrorist act claimed to have done so for religious reasons: this was the continuation of a war between the "West" and "Islam". Appropriately, the Muslim community was quick to condemn the terrorism in their name, and reconfirmed that Islam has nothing to do with these atrocities.

Because the actions had an overtly religious dimension, many argue that religious pluralism and liberties should be curtailed, especially for the Muslim community. Internationally, it seems that these voices are getting louder and are being heard. The Madrid train bombing, the murder of Dutch filmmaker Theo van Gogh and the London train bombings in July 2005, have sparked a new debate on religious pluralism and accommodation. Why are educated young people, born in Europe, blowing themselves up? Why do they want to murder their fellow citizens? Could changes in public policy prevent future attacks? The search for answers has led many governments to introduce new regulations restricting the liberty of their domestic Muslim population.[1]

However, these measures limiting religious freedoms and pluralism are myopic and misguided. Since the framing of security has a religious dimension, religious pluralism must be accommodated to ensure national security.

What do we mean by religious pluralism? Professor Paul Ingram, a professor of religion at Pacific Lutheran University makes the distinction between "religious pluralism" and "religious diversity." He argues that religious diversity is simply an empirical fact (in other words, see Statistics Canada to determine the number of Muslims, Jews, Christians, Sikhs, Agnostic that there are in the country), but religious pluralism is predicated on dialogue where it is "not mere tolerance of 'the other' but is an active attempt to understand the other."[2]

Any government action that facilitates this dialogue accommodates and encourages religious pluralism and liberties would be positive and welcome. However, any action to the contrary may lead to the 'ghettoization' and marginalization of the Muslim and other faith-based communities. Such a scenario would be counter-productive to national security.

This paper will answer several key questions:

1. In Canada, does the Anti-Terrorism Act jeopardize religious pluralism and religious liberty?
2. Are there incidents whereby Canadian Muslims feel targeted or have concerns? and,
3. Are there any recommended practical accommodations of religious pluralism?

In Canada, does the *Anti-Terrorism Act* (the "Act") jeopardize religious pluralism and religious liberty?

It does seem on the surface that the Act does jeopardize religious pluralism and liberty. The shock and horror of the terrorist attacks in New York and Washington sent the Canadian government into a flurry of activity, trying to decide how best to deal with the new terrorist threat against the West.[3] The Canadian government felt compelled to showcase to the world (and the U.S. in particular) that it was an equal partner in the war against terrorism, and that it too, would introduce new legislation focusing on anti-terrorism. After a flurry of legislative proposals, the suggestively named *Anti-Terrorism Act* was passed on December 18, 2001, less then three months after the attack.

The new legislation was heralded by the Liberal government as legislation essential to protecting Canada's borders, her people and allies. Increasingly, however, the Act is perceived as the most comprehensive threat to Canadian civil liberties ever enacted. The critics of the Act voiced their criticism immediately. They did not question that they are living in perilous times and that law enforcement officials should be given special tools to deal with terrorists, but in seeking to protect the country, the Act denies the very freedoms that Canadians seek to protect.

The Act concerns the proscription of terrorist groups. By "terrorism", the Act means "the use or threat of action […] designed to influence the government or to intimidate the public or a section of the public and […] made for the purpose of advancing a political, religious, or ideological case.[4] The listing of religion among the purposes of terrorism is not common in previous anti-terrorism legal provisions: for example, the U.N. *Declaration on Measures to Eliminate International Terrorism* defines terrorism exclusively in connection with "political purposes" and mentions religion only among the elements that cannot, in any circumstance, justify terrorism. The escalation marked by the Act means the lawmaker is now aware that terrorism can be inspired by a religious purpose and he is no longer prepared to grant religion a presumption of innocence, as happened in the past.

So far only one person has been charged with the new offences of participating in a terrorist group and facilitating terrorism.[5] Further, the Supreme Court has upheld one of the most controversial powers under the Act – the power to require people to reveal information about terrorism in investigative hearings, even if that information would incriminate them.

In contrast, the Supreme Court tempered investigative hearings by prohibiting the use of information in subsequent extradition and immigration proceedings and by stressing the presumption that such hearings would be held in open court with the media present. Three dissenting judges argued that the Act did go too far. They objected to the government's use of this new power in the middle of the Air India trial. Two of the judges concluded that investigative hearings offended judicial independence by requiring judges, as opposed to police, to investigate people. Investigative hearings, as well as the power to prevent arrest on reasonable suspicion of involvement with terrorist activities, will sunset[6] at the end of 2006, unless they are renewed by Parliament. At the same time, the rest of the legislation is permanent.

According to Kent Roach and other critics, the definition of terrorism in the Act is too broad.[7] It covers five pages of legislative text applicable to politically or religiously motivated disruptions of essential public or private services that intentionally endanger a person's life or cause serious risk to public health or safety.

Even the Supreme Court does not subscribe to such a broad definition of terrorism. It read a much narrower definition of terrorism into Canada's immigration law: one that focuses on intentional death or serious bodily injury to civilians so as to intimidate a population or compel action by a government or an international organization. Although the Supreme Court noted that Parliament was free to change this definition, it also argued that its tighter definition of terrorism caught the essence of what the world understands as terrorism. In order to enhance civil liberties and to focus investigative resourceson the most serious threats, the Supreme Court's tighter definition of terrorism is more appropriate then that used by Parliament.

> The inquiry's four months of public testimony reveal a government that in this most crucial of areas — protection of Canadian citizens — was constantly at odds with itself.

In light of the new prominence that religion plays in the Act, it is not surprising that the Muslim community complains that it is dispro-portionately affected by the Act and other security-related regulations.

Are there incidents whereby Canadian Muslims feel targeted or have concerns?

Yes, there are incidents whereby Canadian Muslims feel that they are being religiously profiled and collectively punished.

Almost immediately after the attacks, reports of racism in the form of verbal and physical attacks against people of Middle Eastern/Arabic background or who were perceived to be Muslims began to pour in.[8]

According to results of a survey released one year after the 9/11 attack by the Council on American Islamic Relations – Canada ("CAIR-CAN"), a majority (60 per cent) of Canadian Muslims say they experienced bias or discrimination since the 9/11 terrorist attacks.[9] A similar number (61 per cent) also experienced kindness or support from friends or colleagues of other faiths. Eighty percent said they knew a Muslim who was harassed.[10]

In addition, Canadian Muslims point to the following other incidents that concern them in the post 9/11 environment.

Maher Arar

Maher Arar is the Canadian Arab-Muslim man who was wrongfully detained in New York in September 2002, by U.S. authorities and summarily deported to the country

of his birth, Syria.[11] It seems clear that this is a case of the U.S. rendition policy.[12] In Syria, he was jailed for 374 days. He says he was tortured. Upon his eventual release, public pressure mounted on the Canadian government to formally commence a public inquiry in to this situation. The government was quite hesitant, but finally succumbed to public pressure.

Although the inquiry is not complete, in the words of Thomas Walkom of the *Toronto Star*, "if there is a lesson from … the inquiry it is this: Canadians who get into trouble shouldn't depend on their government to help them out."[13]

The inquiry's four months of public testimony reveal a government that in this most crucial of areas — protection of Canadian citizens — was constantly at odds with itself.

For instance, Canadian officials seemed wilfully blind or did not care about the possibility of Arar being tortured. The inquiry has revealed that in April 2002, the Royal Canadian Mounted Police passed on to their U.S. counterparts absolutely everything they knew about Arar and other unspecified Canadians without first filtering the information to ensure it was either relevant or accurate.

According to Walkom, the most disturbing revelation is evidence that the RCMP appeared to be reporting directly to the U.S. government, rather than to its own political masters. Testimony revealed that the Mounties knew before Arar touched down in New York that he was going to be arrested by U.S. officials. But they didn't bother telling anyone else in the Canadian government. Indeed, the foreign affairs department — lead player in Canadian external affairs — didn't find out until Arar had been in custody for almost a week.[14]

National Security Certificates

Another area where the Canadian government has used questionable measures in identifying terrorist suspects is in the use of security certificates. Since 9/11, the Canadian government has made more frequent use of security certificates under the Immigration Act, as opposed to criminal charges, to detain terrorist suspects.

In mid-February of this year, Adil Charkaoui was released on bail, but only after he had been detained 21 months on a security certificate. Other men – Mohamed Mahjoub, Mahmoud Jaballah, Hassan Almrei, Mohamed Harkat, Manickavasagam Suresh and the recently deported Ernst Zundel have also been detained under security certificates.

Currently, all the people held under these certificates are Muslim men born in the Arab world. They have been subjected to conditions, as the U.N. Committee on Arbitrary Detention recently noted, that are more severe than those imposed on Karla Homalka.

In a positive move, the September 2005, the Supreme Court announced that it will finally review the constitutionality of security certificates. The Court granted that opportunity to Adil Charkaoui.

Are there any recommended practical accommodations of religious pluralism?

In addition to the eight recommendations for reform that was released by the Canadian Arab Federation, CAIR-CAN and the Canadian Muslim Lawyers' Association on September 20, 2005,[15] there are other practical steps the Canadian government can take to better accommodate religious pluralism and preserve national security.

The House of Lords in the United Kingdom has taken a much bolder and rights friendly approach than Canada's Federal Court of Appeal by holding indefinite detention of non-citizen terrorist suspects as both disproportionate and discriminatory.

1. Cross Cultural Roundtable on Security

In April 2004, the Canadian Government released its national security policy. The policy articulates core national security interests and proposes a framework for addressing threats to Canadians. It attempts to do so in a way that fully reflects and supports key Canadian values of democracy, human rights, respect for the rule of law, and pluralism. To this end, the Government created a Cross-Cultural Roundtable on Security (the "Roundtable") in March 2005, which is comprised of 15 members of ethno-cultural and religious communities from across Canada. The Roundtable is to engage in a long-term dialogue to improve understanding on how to manage security interests in a diverse society and will provide advice to promote the protection of the country and her citizens in an inclusive manner.

The Roundtable is the first of its kind in the Western world and the Government should be commended for its innovative strategy to partner with front-line communities. Perhaps, it would have been more beneficial to create such a Roundtable at the time the Act was enacted in 2001. However, it is better late then never.

The Roundtable must be given the budget and procedural flexibility to meet with various ethno-cultural and religious communities so as to proper gauge the impact of anti-terrorism legislation on specific communities. For the Roundtable to be effective, the Government must take the advice and recommendations from the Roundtable seriously. It is too early at this stage to determine the effectiveness of the Roundtable.

2. Learn from the British

The House of Lords in the United Kingdom has taken a much bolder and rights friendly approach than Canada's Federal Court of Appeal by holding indefinite detention of non-citizen terrorist suspects as both disproportionate and discriminatory. In that court's view it was arbitrary to rely on immigration law to deal with terrorism given that not all terrorists will be non-citizens and that

removal of a terrorist from a country may only export terrorism. The Lords also found that it was discriminatory to subject suspects to harsher treatment because they were not citizens. Despite its boasts about multiculturalism, Canada has not yet taken the argument about discrimination against non-citizens seriously.

The British system is arguably fairer than Canada's because it allows senior lawyers with security clearances to see and challenge all of the government's evidence. In contrast, the Canadian system only provides the detainee with a summary of some of the national security evidence that the government presents to the judge. The British also accept their international law commitments of never deporting a person to face torture. In contrast, the Supreme Court and now the Canadian government, regrettably has refused to close the door to that disturbing possibility. Despite its boasts about being a leader with respect to international law, Canada seems willing to contemplate violating the right against torture, one of the most basic and absolute rights recognized in international law.

3. Government Programs targeting moderate and moderating Muslim groups

A joint initiative between the government and moderate and moderating Canadian Muslim organizations intended to steer young Muslims away from extremism and to get them to integrate better into mainstream Canadian society should be introduced.[16] This idea was first put forward by British community leaders in late September in response to the London bombings. The British government responded by spending £5m over the next 18 months to pursue this initiative.

A number of working groups should be set up by the Deputy Prime Minister's office. A national advisory council of imams and mosques to teach English to imams, encourage more Canadian-born Muslims to become Islamic clerics so as to reduce the reliance on foreign-based ones and to advise mosques on how to prevent them being used by extremists;

A national forum against extremism and Islamaphobia to provide a regular discussion point for Muslims to talk about issues as they affect their local communities, with access to government to share outcomes and understandings; and a nationwide road show of influential, populist religious scholars to explain the true meaning of Islam and condemn extremism.

However, there is concern that while helping create better community relations and understanding between Muslims and the wider community, one feature of these proposals is that public money should not be spent on schemes trying to convert people to Islam. There is a concern that this could cause resentment in other faith groups and be wholly counter-productive if it is distinct from other multi-faith initiatives.

Conclusion

There is no attempt here to minimize the threats to Canada or her people. Nor is there any justification for international terrorism in the name of religion or ideology. The government is compelled to pursue those who want to harm innocents, and the government is well justified in applying the severest punishment on such criminals and also to those who aided and abated them. But it must be recognized that terrorists of al-Qaeda "win" not by destroying buildings or subway lines. They win principally by destroying the fabric of the societies that they target, and the fabric includes the institutional relationships, including that between church and state, which enables spiritual vitality and dialogue.

The obligation of the Government and her citizens is to avoid the excesses of the past wars,[17] where innocent groups and individuals were victimized by state sanctioned oppression, and to stand on guard to preserve civil liberties despite perceived national security threats. Canada and Canadians must accommodate religious pluralism; it will make the land and her people safer from terrorist attack.

Notes

1 In the Netherlands, for instance, the government has introduced a range of measures designed to produce greater integration of the Muslim community. Anyone who wants to go settle there, and who has attended school in the country for fewer then eight years, now has to pass a compulsory integration test demonstrating knowledge of the Dutch language and culture.

There is also a series of measures directed at the Muslim community specifically.[1] All Imams recruited in Islamic countries must follow a one-year integration course before they can work in the Netherlands. In France, the government passed a controversial bill banning Muslim women from wearing the *hijab* or headscarf. The French claim that they had to do this to protect secularism.

2 Paul Ingram (p. 137)

3 The situation was even more complicated as prominent American politicians like Hillary Clinton and George Pataki incorrectly suggested that Canada is weak on its immigrant screening and that several of the 9/11 bombers entered the US via Canada.

4 The action falls within the scope of the Act if it (a) involves serious violence against a person, (b) involves serious damage to property, (c) endangers a person's life, other than that of the person committing the action, (d) creates a serious risk to the health or safety of the public or a section of the public, or (e) is designed seriously to interfere with or seriously to disrupt an electronic system.

5 On March 31, 2004, the RCMP charged Mohammad Momin Khawaja of Ottawa under the Act, alleging that he was part of a terrorism plot in London, United Kingdom. The trial has not commenced.

6 In legislative terms, "sunset" means that the provisions become inoperative and cease.

7 See his landmark work *September 11: Consequences for Canada* (McGill Queens University Press, 2004)

8 Muslims across Canada were harassed, taunted and threatened and their places of worship desecrated. Several Muslim schools — in Vancouver, Calgary, Toronto, Ottawa and Montreal — were closed and many Muslim children were kept home from public schools for fear of physical attacks. Mosques in Oshawa, St. Catharines, and Montreal were reportedly attacked by firebombs; Muslim children in Oakville, Ont., said they were assaulted; and Muslim women were targeted because of their distinctive mode of dress. The type of incidents reported ranged from verbal abuse to physical threat, abuse, and the destruction of property. According to a report by the Toronto Police Services, there was 66 percent increase in hate crimes in 2001 (Toronto Services Board, 2001). The largest increase was against Muslims between September and December, 2001.

9 See http://www.caircan.ca/itn_more.php?id=A90_0_2_0_M for more information on CAIR-CAN's September 5, 2002 survey results.

[10] The survey polled 296 Muslims from across Canada and according to CAIR-CAN was intended to provide a window into the lives of Canadian Muslims in the first year after the 9/11 attacks.

[11] Since the US does not have official diplomatic relations with Syria, Arar was first flown to Jordan and then transported to Syria.

[12] This policy allows the US government to transport detained persons to third countries that have questionable track records on torture, in order to solicit information.

[13] Thomas Walkom, "Few Heroes in Arar Saga" *Toronto Star*, September 3, 2005 A5.

[14] We recommend that you read Walkom's whole article to see other examples of Canada's mistreatment of Maher Arar.

[15] To see a copy of the *Joint Statement of Principles & Recommendations for Real Security* by the three organizations, please go to www.muslimlaw.org.

[16] Examples of moderate Muslim organizations include the Canadian Federation of Muslim Women, Ihya Foundation and the Muslim Youth Association of North America, to name a few.

[17] For instance, the internment of the Japanese and Germans.

