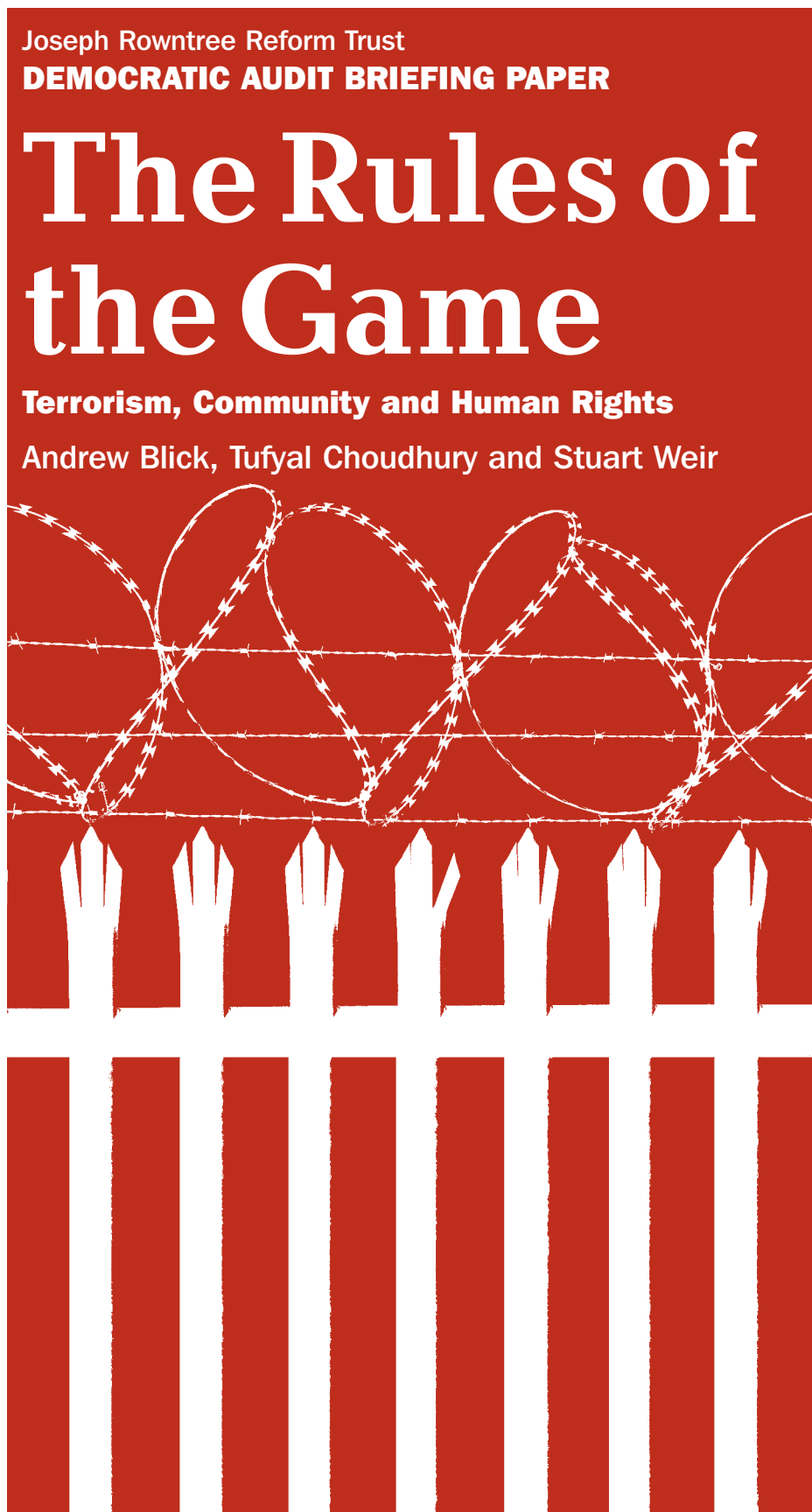


Home-grown terrorism presents a real, but unquantifiable, danger to the people of the United Kingdom. There is evidence that terrorist cells are becoming more proficient and further terrorist attacks are likely to occur, putting at risk people in all communities. It is the first duty of the government, 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.

This briefing summarises two reports by Democratic Audit for the Joseph Rowntree Reform Trust: the first, *The Rules of the Game* in November 2005, focused on the human rights aspects of existing counter terrorism laws and the Terrorism Act 2006 (then in Bill form); the second, *The Rules of the Game: Terrorism, Community and Human Rights*, a year later, took a wider look at both counter terrorism laws and proposals, and the work of the intelligence and police services; asked primarily how effective the overall strategy was; and assessed the human rights and community consequences of the laws and practice. Both reports may be viewed as a whole on the Trust's website, www.jrrt.org.uk.

The Democratic Audit reports found that the government's counter terrorism legislation and aggressive 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, the government has subverted its own counter terrorism strategy for short-



term and sometimes electoral gains, thus prejudicing the ability of the security forces to gain the trust and cooperation from the Muslim communities that they require to combat terrorism effectively. Thus 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, which are liable to stoke the terrorist threat, not reduce it.

HUMAN RIGHTS

Shadow criminal justice

A 'shadow', or parallel, criminal justice system of special courts and special advocates has been erected to avoid the protections of Britain's adversarial criminal justice system and introduce selective preventive detention:

- Criminal justice in the UK 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. The presumption of innocence is a vital component of British justice.
- The shadow system enables the authorities to impose control orders upon terrorism suspects, severely restricting their freedom and amounting virtually to house arrest, without them being charged or even informed of the secret evidence against them (and so denying them the opportunity to challenge that evidence) and without being represented by an advocate of their own choice. This form of detention under control orders, which are renewable, is potentially of indeterminate duration.
- This secret form of justice brings with it another danger – that use will be made of information from foreign governments that was obtained through torture, in contravention of international human rights law.

A form of shadow justice is also in force to incarcerate foreign nationals through the misuse of immigration powers. The courts have ruled that the detention without trial of 'foreign suspects' who could not

be deported to countries that might execute or torture them, was unlawful. 'Foreign suspects' are being detained, or granted bail on conditions equivalent to control orders, under the Immigration Act 1971. However, the Act rules (and rightly so) that the government should only detain people 'pending deportation'. The government has been holding 'foreign suspects' under the Act since 2005 on the dubious grounds that seeking agreements with six nations not to execute or torture returned detainees meets this obligation. Any such agreements may themselves breach human rights law.

The government have also taken powers to hold suspects without charge for 28 days and may this year still press for the 90 days' pre-charge detention that Parliament denied them in late 2005

Finally, the government is considering the proscription of groups that it considers 'glorify' terrorism under its wider definition of terrorism, arguably harming freedom of expression in the UK, giving such groups extra status and making open debate between extremist and democratic ideals impossible.

Human rights violations

The Joint Committee on Human Rights (JCHR), a cross-party committee of MPs and peers, has warned that control orders might violate protected human rights under four Articles of the European Convention on Human Rights:

- The restrictions on the liberty of the detainees might amount to a deprivation of liberty contrary to Article 5(1) (the

right to liberty and security of the person)

- The control orders regime amounts to a derogation from Article 5(4) (lawfulness of detention) and Article 6(1) (the right to a fair and public trial)
- The combination of the strict restrictions, indefinite duration and limited opportunity to challenge control orders carries a very high risk of subjecting the detainees to 'inhuman or degrading treatment' contrary to Article 3 (the prohibition of torture).

The JCHR has also suggested that the control order regime violates the human rights of the families of the detainees.

The 'trade off' in rights

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.

Given the additional risks that suicide attacks represent, the authorities are obliged to take short cuts and to disrupt and move against suspect plots at an early stage to prevent the 'men of violence' from acting. This inevitably means that the security forces do not necessarily have sufficient evidence to prosecute and may well apprehend and detain innocent people, as they have done.

There is therefore 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'. The reports also accept the 'trade offs' involved in the intelligence 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.

COMMUNITY

Winning the Muslim communities

Hidden behind the government's tough talk on terrorism and the responsibilities of 'the Muslim community' lies a sensible long-term official counter terrorism strategy – known as CONTEST – that was first adopted in 2003. This strategy is concerned as much with preventing the 'radicalisation' of younger generations now growing up in the very young Muslim communities in the UK as with the pursuit, disruption and apprehension of the cells of violent terrorism.

There are two major practical reasons for this focus on the Muslim communities. (Contrary to ministerial statements, there is no single monolithic 'Muslim community', but rather a diverse range of Muslim communities.) First, the security services require direct 'human intelligence' from within the communities to assist them in identifying extremist plotters.

Secondly, in these very young communities, it is important to win over young people before they either turn to extremism themselves or sympathise with and even give aid and comfort to those who do.

It is difficult 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 angering the communities within which they live – thus risking alienating or demonising those communities and so jeopardising the long-term strategy. The police service has striven hard to mitigate such effects – for example, making a strong distinction between the communities and terrorist criminals in their midst after 7/7. (But the heavy-handed use of 'stop and search' powers alienates many Muslims without being an effective way of apprehending terrorists.)

The Prime Minister and his colleagues have not behaved with sufficient caution and

'Home-grown terrorism'

There are comparatively few terrorists in the midst of Britain's Muslim communities. But larger numbers of people have some sympathy with their aims, and share to some extent the frustrations and anger that drives the men of violence and could give them the tacit or active support on which terrorists everywhere rely. Government policy must persuade these mostly young people that their future lies within the democratic framework of a tolerant and law-abiding nation. 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.

How many Muslims are sympathetic to terrorism? In opinion polls after 7/7 held

among Muslims, the number of respondents saying that the bombings were justified ranged from 1-6 per cent, amounting to between 11,000 – 66,000 of the adult Muslim population. Yet the Chancellor of the Exchequer has stated that 120,000 Muslims say that the London bombings were justified, and Dame Eliza Manningham Buller, head of MI5, gave the figure of 100,000 in a major briefing session. These vastly higher figures are however based on a percentage of the total rather than the adult Muslim population. In extrapolating statistics from these polls one must remember that one third of UK Muslims are below 16.

What importance should be attached to such poll findings can be better assessed if polling organisations asked the same question of the non-Muslim UK population.

sensitivity through a short-sighted desire to seem tough on terrorism. Their combination of tough laws and tough talk is divisive. Pronouncements are addressed too often at the majority population even when they are presented as being for the guidance of 'community leaders' or 'Muslim parents'. There is a strong suspicion that some pronouncements are inspired by electoral considerations.

Thus counter terrorism laws and practice and rhetoric combine to impact disproportionately on the Muslim communities in the UK. The effect is to *prejudice* 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 effectively.

Ministers' statements are also likely to contribute to Islamophobia and abuse and attacks on Muslims and people from the Asian subcontinent in general. Ministers (and some opposition spokespersons) publicly demand too much from Muslim community leaders who are not representative enough to deliver anyway. 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 suggests that the majority of Britain's Muslims – by no means an homogenous group – wish to integrate. Research evidence shows that they do not want to live 'parallel lives' and do not choose 'self-segregation'. Polls also show that most Muslims want more integration and that over a raft of demands

Future policy

The government's talk of a 'War on Terror' is misleading and disproportionate and leaves ministers open to the charge that they are 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.

The government must instead adopt a more open and inclusive counter terrorism strategy in place of its combative insistence that it alone knows the right course; and ministers should recognise that the participation of local communities, Muslim and non-Muslim, is vital. The government is in denial over the impact of the invasion and occupation of Iraq and its policies in Israel and Palestine have had in stoking terrorism and widening sympathy for extremism. It should no longer on this account refuse the request of its own Muslim working groups for a wide-ranging inquiry on the roots of terrorism.

Future 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. The key reform is to end the ban on intercept information as

now being advanced – pledging primary loyalty to Britain, allegiance to the national flag and Crown, acceptance of women as equal citizens – the views of Muslims did not differ significantly from those of the UK population as a whole.

The 'separateness' that does require urgent attention is that which condemns too many Muslims and their families to poor housing, deprived neighbourhoods, failing education and discrimination in work opportunities and services.

admissible evidence in courts. This reform has the potential to improve the quality of justice for alleged terrorists and to make it easier to prosecute them properly 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 future consolidation and possibly extension of counter terrorist legislation, accompanied by a wide-ranging public debate; and giving the House of Commons a fuller role in the oversight of the intelligence agencies, through the establishment of a parliamentary National Security Committee.

The government should review its foreign policy in the light of British interests at home and abroad, our human rights obligations and other international commitments. The Prime Minister's close and publicly unquestioning stance alongside the United States and complicity in its human rights abuses is damaging to British influence in the world at large and in Europe; it feeds extremism and violence at home and abroad; and it casts severe doubt on this country's commitment to democracy and human rights which must be the cornerstone of the struggle against extremism.

Finally, 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.

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Democratic Audit

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