Tolerating extremism : to what extent should intolerance be tolerated?
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CHAPTER THREE

Multiculturalism

The liberal democratic nation-state is founded on a contract between the individual and the state; the former willingly joins the latter primarily for protection and safety. In so doing, he voluntarily waives certain freedoms and rights he would otherwise enjoy were he to remain truly independent; he does not, however, waive protections. Quite the opposite. For that reason, the nation-state's failure to directly confront extremism and its resulting harms reflects re-articulation of Rousseau's Social Contract.[156] In seeking to preserve one set of rights (freedom of religion/freedom of speech), the state is relinquishing its responsibility to protect other, equally important, rights. While different definitions of multiculturalism have been proposed,[157] I suggest the following: acceptance and accommodation of every practice even when that practice is counter to the laws of the host country.

That said, how one defines multiculturalism is less important than what it represents philosophically, morally and practically: an embrace, or at least, 'understanding', by society of different communities, ethnicities and religions living in the nation-state. Without doubt, a laudatory goal; nevertheless, we must ask whether an embrace of *all* aspects of *all* cultures comes at a cost. After all, society must not tolerate institutions nor people with extremist beliefs who seek to limit otherwise protected rights of others whether secular or persons of moderate faith).

In *The Last Days of Europe: Epitaph for an Old Continent*,[158] Walter Laqueur notes that radicalization and poverty are occurring in Europe's immigrant communities. This, according to Laqueur, despite government largesse and positive, preferential discrimination designed to right historical wrongs and facilitate educational and employment opportunities for those historically denied

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[156] Jean-Jacques Rousseau, *The Social Contract* (1762).

[157] The classical defense of multiculturalism is: Taylor, Charles, "The Politics of Recognition", in: Taylor, Charles, *Multiculturalism: Examining the Politics of Recognition,* Edited and introduced by Amy Gutman, Princeton University Press, Princeton, New Jersey 1994, pp. 25-75. A critical evaluation is: Barry, Brian, *Culture & Equality: An Egalitarian Critique of Multiculturalism,* Polity, Cambridge 2001. Other valuable comments are: Alibhai-Brown, Yasmin, *After Multiculturalism,* The Foreign Policy Centre, London 2000; Baber, H.E., *The Multicultural Mistique: The Liberal Case against Diversity,* Prometheus Books, Amherst, New York 2008; Fish, Stanley, "Boutique Multiculturalism, or Why Liberals Are Incapable of Thinking about Hate Speech", in: *Critical Inquiry,* Vol. 23, No. 2 (Winter, 1997), pp. 378-395; Guiora, Amos, "Multiculturalism and Religious Extremism: Whose Human Rights Do We Protect?", in: Gelijn Molier, Afshin Ellian, and David Suurland, eds., *Terrorism, Ideology, Law, and Policy,* Republic of Letters Publishing, Dordrecht 2011, pp. 337-361; Hasan, Rumy, *Multiculturalism: Some Inconvenient Truths,* Politico's Publishing Ltd 2010.

[158] Walter Laqueur, *The Last Days of Europe: Epitaph for an Old Continent*, St. Martin's Press, 2008.

access to educational and employment opportunities. Whether radicalization and poverty reflect a cognitive dissonance between articulated government policy and its actual outcome is not an insignificant concern.

Language Requirement for Citizenship[159]

Required	Not Required
Netherlands*	Netherlands*
Norway	Spain
UK	
France	

If dwindling resources are made available but do not have the desired impact, then we must examine the forces countering, perhaps actively, the state's efforts. In other words: what internal forces within the state are contributing to radicalization and who ultimately benefits from this development.

I. The Effects of Multiculturalism

Some, such as Will Kymlicka[160], embrace multiculturalism, arguing it reflects acknowledgment and acceptance of minority rights by government recognizing and celebrating the uniqueness of diverse and distinct groups comprising the nation-state's population. According to this theory, multiculturalism ensures the

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[159] **Norway**: (1) have to complete an approved tuition in the Norwegian language, or (2) you can document that you have sufficient knowledge of Norwegian or Sami. *See Requirement for completed tuition in the Norwegian language for you who are applying for citizenship*, UDI, http://www.udi.no/Norwegian-Directorate-of-Immigration/Central-topics/Citizenship-/Requirement-for-completed-tuition-in-the-Norwegian-language-/#suffic; **Netherlands**: Two options for obtaining citizenship. One requires language test and the other does not. *See Becoming a Dutch national*, GOVT. OF THE NETH., http://www.government.nl/issues/nationality/becoming-a-dutch-national; **France**: France just implemented stricter language requirements. Must speak at a level of a 15yr old. *See Key formalities*, SOCIETE GENERALE, https://particuliers.societegenerale.fr/international_guide/conditions_for_applying.html; **Spain**: Does not have a language requirement. *See ¿Cómo se adquiere la nacionalidad española?*, MINISTERIO DE JUSTICIA,

http://www.mjusticia.gob.es/cs/Satellite/es/1215198282620/Estructura_P/1215198293183/Detalle.html; **UK**: Requires language to an acceptable degree. *See Requirements for naturalization*, UK BORDER AGENCY, http://www.ukba.homeoffice.gov.uk/britishcitizenship/eligibility/naturalisation/spouseorcivilpartnerofcitizen/.
[160] William Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity* (Oxford Univ. Press, 2009).

protection of a minority's human rights by enabling groups, to varying degrees, to conduct their lives in accordance with their particular norms and mores. Protecting a minority groups' human rights is undeniably a core principle of civil democratic society manifested both by domestic legislation and international conventions.[161] By seeking to embrace all –whether equally or selectively remains to be analyzed—the state engages in 'disaggregation',[162] in which state power declines relative to group power.

While enabling group power is not inherently a 'negative,' and may even be considered a 'positive,' the state cannot absolve itself from responsibility to prevent harm to group members. For the state to suggest otherwise is to relinquish state responsibility; non-state actors free from state encumbrances of responsibility and in particularly accountability fill the resulting void.[163] Although the embrace of multiculturalism is perhaps understandable in the context of expanding rights to minority groups, I suggest that not all is well with respect to multiculturalism. Discussion regarding multiculturalism inherently requires addressing group rights in direct contrast to the previous discussion regarding individual rights.[164]

In seeking to respect and advance the rights of minority groups the state potentially endangers two distinct categories. These two categories are individual members of the minority group identified as having violated group morals or values and the larger national population potentially at risk as a result of over-protection extended to minority groups. The latter is Melanie Phillips' focus in 'Londonistan';[165] the former has been proposed in literature regarding unprotected group members.[166] To more thoroughly examine these threats, multiculturalism must be viewed through the lens of immigrant communities who came to the 'host' country largely in search of work.

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[161] See International Covenant on Civil and Political Rights (members of minority groups shall not be denied the right to profess and practice their religion) and European Convention on the Protection of Human Rights and Fundamental Freedoms (individuals have the right to freedom of religion including the right to manifest religion in practice and observance).

[162] I borrow the term from Neil Craik and Joseph DiMento *avaliable at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=128557 (last viewed November 13, 2009; selected for inclusion in Amos N. Guiora, (ed) *Top Ten Global Justice Law Review Articles* (Oxford University Press, 2009).

[163] The issue of non-state governance was addressed at a University of Utah Law School symposium, Non-state Governance, February, 2009; Symposium, Non-State Governance, 2010 Utah L. Rev.

[164] See on the notion of group rights: Stapleton, Julia, ed., *Group Rights: Perspectives since 1900,* Thoemmes Press, Bristol 1995.

[165] *See generally* MELANIE PHILLIPS, LONDONISTAN (2006); *see generally* Hans O. Staub & Harry Z. Daedalus, *The Tyranny of Minorities*, 109 THE END OF CONSENSUS? 159-168 (Encounter books, 1980).

[166] *See* STEPHANIE T. JARRETT, MINORITY RIGHTS HARM ABORIGINAL WOMEN (Bennelong Soc., 2006); Cf. *see generally* EUR. PARL. ASS., *Report of the Comm. on Equal Opportunities for Women and Men*, Doc. No. 9720 (2003) *available at* http://assembly.coe.int/Documents/WorkingDocs/doc03/edoc9720.htm. http://www.washingtontimes.com/news/2009/sep/25/muslim-apostates-in-us-ask-for-protection/.

Examining immigrant communities and multiculturalism requires answering the following question: what is the relationship between the immigrant community and the host country? In essence, if members of the immigrant community live in a 'parallel' society, segregated from mainstream culture, rather than functioning as vibrant, contributing members of the host country, red flags regarding multiculturalism's beneficence must be raised. Brian Barry has suggested that while assimilation requires ratification by the receiving group, in acculturation the individual comes to acquire cultural practices belonging to a tradition of another group.[167] Parallel societies, or what Tariq Modood calls 'creating an alternative society',[168] pose a significant danger to liberal society because, as Modood explains, they foster or shelter radicalism.

Disturbingly, radicalism manifests itself in the immigrant community in two primary ways: sexual and political violence. The inherent isolationism of parallel societies makes the state largely unable—perhaps unwilling is a more accurate term—to engage those that it *otherwise* would. In doing so, the state facilitates non-state governance unencumbered by government oversight or intervention.[169]

Political philosophers argue that the essence of liberal society is tolerance of diverse communities predicated on state encouragement of individual expressions of speech and conduct. Minow's question regarding the degree of intolerance that can be tolerated is particularly poignant in the context of immigrant communities whose illiberalism—predicated on the mores of their 'former' cultures—runs counter to liberal societies that, nevertheless, tolerate them even though harm occurs to internal, apostate members.[170] State tolerance of group intolerance that causes harm comes at a significant cost, raising questions about the limits of liberalism. This dilemma suggests an intellectual paradox, if not practical conundrum: the liberal state has fostered illiberalism that, as Phillips suggests, goes unabated.

While multicultural manifestations including distinct language, attire, music and food are celebrated,[171] other manifestations are, frankly, less deserving of laudatory embrace or even tolerance. The tension is both complex and stark: if

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[167] BRIAN BARRY, CULTURE AND EQUALITY: AN EGALITARIAN CRITIQUE OF MULTICULTURALISM 73 (Harvard Univ. Press, 2001).

[168] TARIQ MODOOD, MULTICULTURALISM (Polity Press, 2007).

[169] For additional information *see* FRANK J. BUIJS, FROUKJE DEMANT AND ATEF HANDY. *STRIJDERS VAN EIGEN BODEM. RADICALE EN DEMOCRATISCHE MOSLIMS IN NEDERLAND* (Amsterdam Univ. Press 2006). (However, they have cited other sources. On p. 207 they mention that 40 percent of the Dutch Moroccans think that Islamitic and Euopean lifestyles do not reconcile. For this information they cite a study of K. Phalet, C van Lotringen and H. Entzinger from 2000. In this study, the researchers have only studied the youths in Rotterdam.)

[170] Modood, *supra* note 157. This theme, articulated by Modood, was similarly discussed at the University of Utah Law Review Symposium, see fn 29; *see generally* Interview by Jennifer Dunham with Syylvia Maier, SNYU professor, scholar, and activist, in Perspectives on Global Issues (Spring 2008) *available at* http://www.perspectivesonglobalissues.com/0302/SilviaMaier.htm.

[171] In the American context, ethnic fairs/weeks are a representative example.

multiculturalism is not embraced the liberal state may be accused of illiberalism. For the liberal democratic state, predicated on 'the ingathering of the exiles,' the majestic words on the Statue of Liberty ring as loudly today as when Emma Lazarus wrote them:

> *Give me your tired, your poor,*
> *your huddled masses yearning to breathe free,*
> *The wretched refuse of your teeming shore.*
> *Send these, the homeless, tempest-tost to me,*
> *I lift my lamp beside the golden door!"*[172]

However, the crux of the contemporary existential dilemma facing the liberal European state is this: disturbing evidence suggests that some in immigrant communities, despite welcoming host country largesse and embrace, subsequently reject that embrace, in particular values of tolerance and inclusiveness.[173] This is clearly seen in a recent report conducted by the German Interior Ministry which found that nearly one in four non-German Muslims rejects integration, questions western values and tends to accept violence.[174] In France, a study by the French Domestic Intelligence Services revealed that many French city suburbs are becoming ethnic ghettos. These suburbs are plagued with unemployment, crime and violence and a high proportion of immigrant families - some still practicing polygamy – hold anti-Western and anti-Semitic opinions. Particularly, the intelligence services noted "many families of immigrant origin were rejecting French values and even the French language, following instead more traditional ways of life associated with their ethnic origin - including an increasing religious radicalisation among young Muslims, and a backlash against young Muslim women who wore Western clothing."[175]

In other words, the radicalization[176] that defines particular immigrant communities stands at variance with liberal values and culture of the home country. While Europe has witnessed extraordinary—and unimaginable–acts of inhumanity throughout history, the European nation-state is, at its core, liberal and tolerant. However, that liberalism is being challenged, literally, on a daily

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[172] See Emma Lazarus, *The New Colossus, avaliable at* http://www.libertystatepark.com/emma.htm.

[173] *See generally* Andrew Reding, *Can Europe keep its Western values with unassimilated immigrants?*, Pacific News Service (May 22, 2002), http://www.worldpolicy.org/sites/default/files/uploaded/image/SAEN-2002-Can%20Europe%20keep%20values%20despite%20its%20immigrants.pdf; Emily Abbey, *Ventriloquism: The Central Role of an Immigrant's Own Group Members in Negotiating Ambiguity in Identity*, Culture & Psychology, Dec. 2002 at 409-15;Leon de Winter, *Tolerating a Time Bomb*, N.Y. Times, July 16, 2005, http://www.nytimes.com/2005/07/16/opinion/16winter.html?_r=2&pagewanted=all.

[174] *Many German Muslims 'refuse to integrate'*, The Local (Mar. 1, 2012), http://www.thelocal.de/society/20120301-41079.html. ; *see* Toni Johnson, *Europe: Integrating Islam*, Council on Foreign Relations, (July, 25, 2011), http://www.cfr.org/religion/europe-integrating-islam/p8252.

[175] Caroline Wyatt, *France 'forming ethnic ghettoes'*, BBCNews, http://news.bbc.co.uk/2/hi/europe/3871447.stm (last updated July 6, 2004, 4:49PM).

[176] For an important study examining radicalization see Jean Tillie, Process of Radicalisation, Institute for Mirgration and Ethnic Studies (Universiteit van Amsterdam, 2006).

basis in the current milieu, through threats or harm to both internal members and the population at large.[177]

As Bruce Bawer suggested:

in recent years, something has happened to complicate the left's fanciful picture even further: Western European voters' widespread reaction against social democracy.

The shift has two principal, and related, causes. The more significant one is that over the past three decades, social-democratic Europe's political, cultural, academic and media elites have presided over, and vigorously defended, a vast wave of immigration from the Muslim world—the largest such influx in human history. According to Foreign Affairs, Muslims in Western Europe numbered between 15 million and 20 million in 2005. One source estimates that Britain's Muslim population rose from about 82,000 in 1961 to 553,000 in 1981 to two million in 2000—a demographic change roughly representative of Western Europe as a whole during that period. According to the London Times, the number of Muslims in the U.K. climbed by half a million between 2004 and 2008 alone—a rate of growth 10 times that of the rest of the country's population.

Yet instead of encouraging these immigrants to integrate and become part of their new societies, Western Europe's governments have allowed them to form self-segregating parallel societies. Many of the residents of these patriarchal enclaves subsist on government benefits, speak the language of their adopted country poorly, if at all, despise pluralistic democracy, and support—at least in spirit—terrorism against the West. A 2006 Sunday Telegraph poll, for example, showed that 40% of British Muslims wanted Sharia in Britain, 14% approved of attacks on Danish embassies in retribution for the Mohammed cartoons, 13% supported violence against those who insulted Islam, and 20% sympathized with the July 2005 London bombers. Too often, such attitudes find their way into practice. Ubiquitous youth gangs, contemptuous of infidels, have made European cities increasingly dangerous for non-Muslims—especially

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[177] The hijab and burqa are the two modest dresses that Islamic culture insists for women to wear. A hijab is a headscarf worn over the head which covers the head and the hair. With a hijab, the face is seen. A burqa is a loose dress that covers the whole body from the head to the foot. As the whole body is covered, there is a face veil that is usually a rectangle and made of semi-translucent cloth. This veil is stitched to the topside of the headscarf of the burqa which makes it loose from the headscarf. This helps the women to lift the veil. For an analysis regarding the wearing religious attire in state-functions vs. private functions, see Patrick Weil, *Why the French Laicite Is Liberal*, 30 Cardozo L. Rev. 2699 (2009); Paul Cliteur, *State and religion against the backdrop of religious radicalism*, 10 Int'l J. of Const. L. 127 (2012); *See generally* Adam Silverman, *Drift into Extremism: Immigrant Communities*, A Committee of Correspondence (Jan. 6, 2010), http://turcopolier.typepad.com/sic_semper_tyrannis/2010/01/drift-into-extremism-immigrant-communities-and-terrorism-adam-silverman-ph-d.html; Stephen Borthwick, *Immigrant violence in Sweden reaches new high*, Examiner, June 10, 2010, http://www.examiner.com/article/immigrant-violence-sweden-reaches-new-high; AP, *State of Emergency Declared in France,* Foxnews (Nov. 8, 2005), http://www.foxnews.com/story/0,2933,174868,00.html.

women, Jews and gays. In 2001, 65% of rapes in Norway were committed by what the country's police call "non-Western" men—a category consisting overwhelmingly of Muslims, who make up just 2% of that country's population. In 2005, members of immigrant groups, the majority of them Muslims committed 82% of crimes in Copenhagen.[178]

Religious extremists[179] question the state's legitimacy; for them, state law is not inherently superior to religious law. As Margit Warburg explains,

> In some religious circles the emphasis in human rights on the individual above all is a thorn in the flesh. For example, an outstanding Danish right-wing Lutheran theologian, Søren Krarup argues against the concept of human rights precisely because it places humans and not God in the centre (Krarup 2000). A parallel to this is the Muslim argument that in an Islamic state any acceptance of such a human-centred concept of universal human rights would be a denial of the religious supremacy of Allah and an acceptance of secularism. In both cases, it concerns the relationship between religion and state. The extreme interpretation of the Lutheran doctrine of two kingdoms which calls for a sharp division between religion and politics, or the extreme Islamic call for the adoption of shari'a in family law are both challenged by human rights as universal rights that can only be exercised in a secular state.[180]

While faith is celebrated, harm caused in the name of faith must be aggressively addressed by law enforcement regardless of 'sensitivities.' Tragically, in the context of embracing multiculturalism—including religious extremism—the nation state is choosing to ignore a clearly identifiable class of wrongdoers. Government philosophy, if not policy, that grants 'license' to internal communities to engage in self-regulation (non-state governance) is, perhaps, reflective of liberalism espousing a 'hands-off' approach. However, the practical impact of this places vulnerable members of an internal community at harm, subservient to the 'will' of the group devoid of state protection. That is a profound danger posed by multiculturalism and a failure to address the potential harms emanating from it.

II. The State's Role and Responsibility

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[178] *See* Bruce Bawer, *Heirs to a Fortuyn?,* WSJ, Apr. 29, 2009, http://online.wsj.com/article_email/SB124043553074744693-lMyQjAxMDI5NDEwMDQxMzA1Wj.html.

[179] It is critical to distinguish clearly between religious extremism/extremists and religion as practiced by people of moderate faith. The fundamental distinction is that the former's conviction regarding the supremacy of their divine leads to violence against the non-believer, while the latter combine their belief with a deep and abiding respect for the state and an intellectual understanding and tolerance for different faiths.

[180] Margit Warburg, *Dynamics of Religious Boundaries: A European Perspective,* Europeanization, Welfare and Democracy – International Conference, Centre for Modern European Studies.

On the premise that the state *does* owe a duty, the question to *whom* is not a rhetorical question, asked in the abstract. Rather, it is –perhaps—one of the most important contemporary questions, particularly when the nation-state is under attack, principally from within. Recent polls have suggested that most Europeans feel their state has failed in its duty; this sentiment is predicated on a belief that the nation state is devoting resources, time, and protection to those perceived as "attacking" their country—immigrants.[181] This sentiment has been manifested in recent European elections with the rise in popularity of anti-immigrant groups.[182] This rise in popularity has pushed mainstream parties to interject anti-immigrant themes into their campaigns and messages.[183] As Phillips suggests, the unwillingness of state actors to recognize (or acknowledge) that the nation state is under attack is particularly disconcerting.[184]

International legal norms regarding intervention in failed states offer an instructive analogy. Scholars examining contemporary trends in international law suggest states justify intervention in failed states to protect both vulnerable population groups in the failed state and their own national self-interest. While there is not a general consensus regarding the definition of a failed state common characteristics are agreed upon by many scholars.[185] These

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[181] Soeren Kern, *European Concerns Over Muslim Immigration Go Mainstream*, GATESTONE INSTITUTE (Aug. 15, 2011), http://www.gatestoneinstitute.org/2349/european-concerns-muslim-immigration.

[182] *See generally* Rachel Donadio, *Hard Times Lift Greece's Anti-Immigrant Fringe*, N.Y. TIMES, Apr. 12, 2012, http://www.nytimes.com/2012/04/13/world/europe/far-right-golden-dawn-sees-opening-in-greeces-woes.html?_r=2; *Golden Dawn: leader of far-right party lashes out at Greece's 'traitors'*, GUARDIAN, May 6, 2012, http://www.guardian.co.uk/world/2012/may/06/golden-dawn-far-right-greece. Jon Henley, *Marine Le Pen's 17.9% is not a breakthrough for the far right*, GUARDIAN, Apr. 25, 2012, http://www.guardian.co.uk/world/french-election-blog-2012/2012/apr/25/marine-le-pen-french-elections-2012; Andrew Willis, *Gains for Wilders' anti-immigration party in Dutch elections*, EU OBSERVER (Apr. 3, 2010), http://euobserver.com/political/29605.

[183] *Sarkosy: 'We have too many foreigners in France'*, FRANCE 24 (July 3, 2012), http://www.france24.com/en/20120306-france-sarkozy-immigrants-presidential-election.

[184] I reached a similar conclusion while researching "Freedom from Religion" in the UK (December, 2008). An article written in 1888 states that the duty of the state is first to its own citizens. To aid them in maintaining the degree of civilization to which they have attained and in improving on the same….more important than duty to humanity…..serves humanity by maintaining its own civilization…when applied to immigration to watch and regulate closely and to stop any evil that comes of it…..(page 8 of the article). *Available at* http://www.jstor.org.ezproxy.lib.utah.edu/openurl?volume=3&date=1888&spage=409&issn=00323195&issue=3&

[185] Hugo Grotius, a jurist who laid the foundations of international law in *De Jure Belli ac Pacis*, (1625; On the Law of War and Peace) writes that, 'where a tyrant "should inflict upon his subjects such a treatment as no one is warranted in inflicting" other states may exercise a right of humanitarian intervention'. Thus, it is widely accepted that military intervention is justified where massive violations of human rights occur.

Although Ferdinand Teson acknowledges the fact that international law in general bans the use of force, he contends that 'cases that warrant humanitarian intervention disclose … serious violations of international law: genocide, crimes against humanity, and so on'. In some cases, Teson writes regardless of what action we take we tolerate the 'violation of some fundamental rule of international law' therefore 'either we intervene and put an end to the massacres, or we

characteristics, according to the US think tank Fund for Peace, include a central government that is so weak or ineffective that it has little practical control over much of its territory, non-provision of public services, widespread corruption and criminality, refugees and involuntary movement of populations, and sharp economic decline.[186] The failed state concept was used to justify both the American military presence in Afghanistan[187] and the policy of firing drone missiles into western Pakistan in an effort to target al-Qaeda and Taliban targets.[188] Identifying a state as 'failed' is grounds for intervention; by analogy, the failure to protect individuals within the immigrant community is just that: failure regarding a duty owed to a domestic population group.

With respect to the question to whom does the state owe a duty, Winston Churchill's response was unequivocal: protect the general public and thwart danger. That duty, according to Churchill, was essential and primary. Churchill was unique in that he both 'saw the future' and acted on what he saw; unlike many who 'prophesize', Churchill's genius was not in saying 'I told you so' but in minimizing the damage done by others that he had correctly foreseen. In doing so, he was a lone and brave voice against appeasement and an advocate for the use of necessary force in resisting evil. His infamous phrase 'never have so many owed so much to so few' applies to him with a small twist "never have so many owed so much to one individual". Although some suggest that comparing historical paradigms and social contexts is an exercise fraught with danger, I would respond that the pages of history provide invaluable lessons and important warning lights.[189]

Contrast Churchill with Tony Blair, the darling of European liberals.[190]

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abstain from intervening, in which case we tolerate the violation by other states of the general prohibition of gross human rights abuses'. Ferdinando R Teson, 'The Liberal Case for Humanitarian Intervention,' in J. L. HOLZGREFE AND ROBERT O. KEOHANE ED., HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS 110 (Cambridge Univ. Press, 2003).

Christopher Greenwood rightly argues that 'it is no longer tenable to assert that whenever a government massacres its own people or a state collapses into anarchy international law forbids military intervention altogether'. Christopher Greenwood, quoted in OLIVER RAMSBOTHAM AND TOM WOODHOUSE, HUMANITARIAN INTERVENTION IN CONTEMPORARY CONFLICT: A RECONCEPTUALIZATION 143 (Polity Press, Cambridge, 1996).

[186] *The Failed States Index: Frequently Asked Questions: What does "state failure" mean?*, FUND FOR PEACE, http://www.fundforpeace.org/global/?q=fsi-faq#5.

[187] Failed in the Afghanistan paradigm is defined as a failure to prevent the presence of al-Qaeda pre-9/11 and the resurgence of the Taliban; both are considered to simultaneously threaten the domestic Afghan population and present a threat to American national interests.

[188] This is, perhaps, more in accordance with a 'partial failed state' as, according to conventional wisdom, Pakistan has all but relinquished control of western Pakistan (Buchistan) to al-Qaeda and the Taliban. Whether the US policy is in accordance with Pakistani agreement (tacit or complicit) is besides the point; what is of critical importance is US violation of Pakistani sovereignty.

[189] As an example, it would behoove American decision makers to recall Churchill's warning that no foreign power can conquer Afghanistan.

[190] Until his decision to send British forces to Iraq, for which he was subsequently castigated both in the UK and Europe.

Blair's response to 9-11 is reflective, frankly, of blind acceptance of multiculturalism devoid of significant and rigorous analysis of its dangers: "[w]e celebrate the diversity in our country, we get strength from the cultures and races that go to make up Britain today."[191] Apparently, the British public viewed Blair's words favorably: "a Mori poll for the BBC in August 2005, following the London July bombings[192], showed that, although 32% of the population thought that multiculturalism 'threatens the British way of life', 62% believed that 'multiculturalism makes Britain a better place to live.'"[193] Some might suggest the poll numbers reflect an unwillingness to accept certain realities;[194] others would respond that modern society is predicated on different communities living under 'one roof'. However, a YouGov poll conducted shortly after the July bombings asked Muslims how loyal they felt towards Britain: 18% stated they felt little loyalty. When asked how they felt about Western Society and whether, if at all, Muslims should adapt to it, 32% stated they believed Western Society is decadent and immoral and that Muslims should seek to bring it to an end. 24% had some sympathy with the feelings and motives of those who carried out the July 7 attacks. 56%, whether or not they sympathized with the bombers, at least understand why some people might want to behave this way; in addition, 6% insisted that the bombings were fully justified. In absolute numbers that amounts to about 100,000 people whom, if not willing to carry out terrorist attack, support those who do.[195]

In the middle of this discussion is the 'delta'—human rights. Numerous conventions[196] and treaties[197] create obligations for states to protect human

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[191] The Anglican Church, Jews and British Multiculturalism, Margaret Brearley, http://sicsa.huji.ac.il/ppbrearley.pdf last visited November 13, 2009. *See generally Conform to our society, says PM*, BBCNEWS, http://news.bbc.co.uk/2/hi/uk_news/politics/6219626.stm (last updated Dec. 8, 2006). Important to add that surveys regarding multiculturalism are inherently controversial because of different definitions regarding the term.

[192] 52 people were killed in the attacks with over 770 injured. *7 July Bombings*, BBCNEWS, http://news.bbc.co.uk/2/shared/spl/hi/uk/05/london_blasts/investigation/html/introduction.stm (last visited Jan. 7, 2013).

[193] MARGARET BREARLEY, THE ANGLICAN CHURCH, JEWS AND BRITISH MULTICULTURALISM, *available at* http://sicsa.huji.ac.il/ppbrearley.pdf (last visited Jan. 7 2013); for an additional perspective on this issue see Norman Berdichevsky, *Mutliculturalism in the U.K.: Faith Based and Ethnic Schools*, ENGLISH REVIEW (Feb. 2008), http://www.newenglishreview.org/custpage.cfm/frm/9971/sec_id/9971.

[194] In researching "Freedom from Religion" I traveled to London. In response to my question regarding what I define as extreme 'political correctness', more than one interlocutor explained that the British suffer from 'colonial guilt'; while meant sardonically, I would suggest there is more than a grain of salt of truth in that self-assessment.

[195] *See generally* MUHAMMAD TAHIR-UL-QADRI, JOHN ESPOSITO, AND JOEL HAYWARD, FATWA ON TERRORISM AND SUICIDE BOMBINGS (Minhaj-al-Quran Pub. 2011); Michael Radu, *London 7/7 and Its Impact*, FOREIGN POLICY RESEARCH INSTITUTE (July 2005), http://www.fpri.org/ww/0605.200507.radu.londonbombings.html; *See also* Anthony King, *One in four Muslims sympathises with the motives of terrorists*, THE TELEGRAPH, Jul. 23, 2005, http://www.telegraph.co.uk/news/uknews/1494648/One-in-four-Muslims-sympathises-with-motives-of-terrorists.html.

[196] Charter of Fundamental Rights of the European Union; European Council's Framework Treaty for the Protection of National Minorities, *available at* http://www.un.org/en/documents/udhr/ (last visited Jan. 7, 2013).

rights and facilitate monitoring by non-government organizations.[198] In the aftermath of World War II human rights became a critical component of international geo-politics.[199] The essence of human rights is to protect the individual[200] from egregious governmental action that violates otherwise protected or valued rights. Discussing human rights requires asking whose human rights and how are competing concepts of human rights balanced. In the 'balancing' dilemma, the human rights community places greater emphasis on legitimate individual rights rather than equally legitimate national security considerations of the state,[201] which inherently tips the scale in favor of the former. A legitimate and defensible position, this approach has been upheld in both courts of law[202] and the court of international opinion.[203] Nonetheless, one must question whether it adequately and equally protects both society and an otherwise unprotected class.[204]

To protect both larger society and vulnerable individuals the state must impose limits on human rights for human rights are not an absolute. Multiculturalism ostensibly celebrates human rights, but it has the unintended opposite effect: it directly contributes to violations of human rights for the reasons discussed above. To better understand this it is appropriate to recognize that human rights demands that the rights of all human beings to fair treatment and justice, and to basic needs, such as food, shelter and education are respected and met.[205] Multiculturalism, when examined theoretically is intended to ensure the protection of religious, cultural and moral rights in accordance with human rights as traditionally understood. However, multiculturalism in practice is not individualistic but rather communistic.

Jens-Martin Eriksen and Frederik Stjernfelt termed this version as "hard" multiculturalism[206]; the practice of multiculturalism, then, is contrary to that of

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[197]The core international human rights treaties can be found at http://www2.ohchr.org/english/law/, last visited Jan. 7, 2013.

[198] See Amnesty International Reports, etc *available at* www.amnesty.org.

[199] See the Jackson-Vanik amendment in Title IV of the 1974 Trade Act which denies most favored nation status to countries with non-market economies that restrict emigration. See http://georgewbush-whitehouse.archives.gov/news/releases/2001/11/20011113-16.html, last viewed Jan. 7, 2013.

[200] See David Koller, *The Moral Imperative: Toward a Human Rights—Based Law of War*, 46 Harv. Int'l L.J. 231 (2005).

[201] *Id.*

[202] *See generally Sahin v. Turkey*, Application no. 44774/98, Council of Europe: European Court of Human Rights, 10 November 2005, *available at* http://www.unhcr.org/refworld/docid/48abd56ed.html (last visited Jan. 17,2013]; Immigration and Refugee Board of Canada, *Turkey: Situation of women who wear headscarves*, 20 May 2008, TUR102820.E, *available at* http://www.unhcr.org/refworld/docid/4885a91a8.html last visited Jan. 17, 2013).

[203] *See generally, Germnay: Headscarf Bans Violate Rights*, HUMAN RIGHTS WATCH, (Feb. 26, 2009), http://www.hrw.org/news/2009/02/26/germany-headscarf-bans-violate-rights.

[204] *See* University of Utah conference, http://www.law.utah.edu/news/show-news.asp?NewsID=206 last visited November 13, 2009.

[205] Jens-Martin Eriksen and Frederik Stjernfelt, *The Democratic Contradictions o f Multiculturalism*, E-INTERNATIONAL RELATIONS (Mar. 22, 2012), http://www.e-ir.info/2012/03/22/the-democratic-contradictions-of-multiculturalism/.

[206] *Id*.

human rights and freedom. Instead it allows a community to legally and socially enforce its own mores and traditions, whatever it holds sacred.[207] In its most extreme form "the community may even mobilize its own police force and legal system in order to demand, to some extent or another, the conformity of individuals."[208] This is especially evident in domestic affairs: a compelling example of this is found in Canada when a father, wife, and son were accused and convicted of killing three of their family members in the name of honor.[209] Tarek Fatah, founder of the Muslim Canadian Congress, when speaking on the case lamented, "These girls went to the school, the cops, child services and everyone wanted to protect multiculturalism — not the lives of these young women."[210]

Similarly, in advocating the supremacy of religious law rather than civil law, religious extremism inherently limits human rights. According to Eriksen and Stjernfelt:

> A concrete example…can be seen in the famous case of the Danish cartoons of Muhammad. An analysis of the central drawing of Muhammad with a bomb in his turban points out that it is normal, in everyday international caricature, to portray the originator of a doctrine as a symbol of that doctrine. Thus, the famous Muhammad caricature addresses the doctrine of Islam rather than targeting Muslims as worshippers of the doctrine. In the same vein, equipping politicians or thinkers with bombs, grenades or other weapons to convey their violent intent is just as common a device in caricature drawing. Despite the normalcy of such drawings, many of the arguments against them (in Muslim countries as in the West) rest on a multiculturalist assumption that certain groups are entitled not to be offended, to have religious belief protected, to attack people taken to offend them, etc. The Cartoon Crisis thus offers a conspicuous example of the clash between basic, universal human rights claimed for all individuals, such as free speech, and the group rights claims of hard multiculturalism.[211]

While civil law and liberal society celebrate individual rights extremism emphasizes absoluteness and justifies, even authorizes, violence in the name of a particular belief. Extremists, after all, are convinced of their truth; absolution requires adherence to a conviction that *the truth* is known but to members of *that group* and compromise is not possible. This conviction applies whether the group is secular or religious.

The notion of human rights as a zero-sum game demonstrates a fundamental misunderstanding of the tenuous relationship between different

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[207] *Id.*

[208] *Id.*

[209] *See Jury hears wiretap of accused in canal deaths*, CBC News, Nov. 10, 2011, http://www.cbc.ca/news/canada/montreal/story/2011/11/10/shafia-trial-nov10.html.

[210] Stephanie Fidley, *Were Shafia murders 'honour killings' or domestic violence?*, THE STAR, Jan. 30, 2012, http://www.thestar.com/news/gta/article/1123403--were-shafia-murders-honour-killings-or-domestic-violence.

[211] Eriksen, *supra* note 200.

internal communities and between those communities and the nation-state. A more realpolitik approach would be to ask the following: human rights—at what cost and to whom. This question is particularly relevant in examining multiculturalism whose is the acceptance of competing values, interests and cultures when devoid of external restraints. In an age fraught with extraordinary danger, the instinctive reaction that all rights must be equally respected is both a philosophical fallacy and a practical misconception.

To that end, in examining multiculturalism I recommend specific measures intended to protect society and individuals alike. If the state's ultimate responsibility is to protect its citizens, then it cannot make allowances for multiculturalism even if contemporary 'political correctness' advocates such an approach. The state's duty is to minimize the harm caused to citizens; duty is not owed to concepts. In the face of dangers posed by multiculturalism, the state has a number of appropriate responses, according to political scientists and political philosophers. Rafael Cohen-Almagor and Marco Zambotti have suggested, for example:

> The business of government is to protect and foster the interests of the public, and allowing entry to this group does not coincide with these aims. Democracy ought to defend itself against threats, even if sometimes the measures include steps which exclude members of intolerant groups altogether from a democratic state. Thus, we have a strong case for exclusion where fascists are concerned, since their ideas are incompatible with a commitment to human dignity and respect for others, and since they are likely to resort to violence to achieve their political aims. Similarly, what countermeasures should the government of a liberal democracy put in place if a considerable number of radical Islamist zealots were to immigrate in mass to England with the aim of pursuing a political agenda based on the literal application of the Qur-an? We refer here to the verses regarding the relations between Muslim believers and infidels, that – if read in their literal meaning – would escalate the level of inter-faith violence within the country. In this case, again, the principles and values characterizing the community of immigrants are not compatible with the preservation of a liberal democratic society. Just as in the case of fascists, England's democratic society would be entitled to defend itself and the bases on which peaceful coexistence in a liberal democracy rest. Access into the country, therefore, could be legitimately denied on the grounds that instigation to violence and inter-faith hatred are not compatible with the rules of a liberal democracy.[212]

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[212] Raphael Cohen-Almagor and Marco Zambotti, *Liberalism, Tolerance and Multiculturalism: The Bounds of Liberal Intervention in Affairs of Minority Cultures*, in KRZYSZTOF WOJCIECHOWSKI AND JAN C.

Domestic legislation, judicial holdings and political paradigms influence how society can most effectively protect belief in the face of multiculturalism that tolerates intolerance, therefore placing individuals and society at risk. Important to recall that insular groups benefit from liberal society's tolerance of multiculturalism; the irony, of course, is that this tolerance results in tolerating intolerance. To protect society, the following measures can serve as a blue print:

Limit the civil and political rights of those who limit the rights of others (e.g., the group suppressing/ repressing the individual rights of group members);
Re-articulate rights otherwise granted by constitution or statute;
Language as a condition for citizenship;
Impose limits on independent (e.g., beyond the purview of state control) educational systems;
Impose limits on attire (e.g., the veil/burkha);
Re-articulate judicial regimes so that family issues are adjudicated not in religious courts, but in the pre-existing national court structure;
Enforce the criminal law;
Investigate and prosecute crimes committed in the name of religious extremism and facilitated by multiculturalism;
Impose restrictions on religious extremist speech;
Re-articulate criminal codes to broaden the definition of crimes predicated on religious extremism/multiculturalism;
Combat the immunity from which religious extremism and multiculturalism currently benefit;
Minimize non-state governance;
Engage immigrant communities;
Resolve to protect the unprotected

Although each of the options above warrants a detailed and thorough examination, discussion will be limited to the last premised on a deeply held conviction that the state must not grant immunity to religious practices and religion. International law has, as previously discussed, increasingly limited national sovereignty but that does not –*must not*— suggest by analogy that

extremist communities step into the shoes of the sovereign. National constitutions protect the practice and conduct of religion,[213] but must not protect crimes committed in the name of religious belief.

III. Responding to the Dangers: Recommendations

The harm produced at the intersection of multiculturalism and religious and secular extremism must be acknowledged even if contemporary democratic civil society embraces multiculturalism while railing to recognize its inherent intolerance. While understandable from an intellectual and visceral perspective, embracing multiculturalism must not be tolerated it causes harm to otherwise unprotected individuals. By embracing multiculturalism and insufficiently responding to the threat extremism poses, the state has facilitated (whether deliberately or not) the emergence of the non-state actor whose *known* criminal actions are largely unchallenged. Prof Amnon Rubenstein has concisely articulated the paradigm:

> The Islamist crisis administered a serious blow to this concept and led to a renewed awareness of the need to defend the freedom and equality of individuals as well as to the right of the majority preserve its culture and identity. The multicultural approach in its absolutist interpretation – the claim that all cultures are equal and have an equal legal status – has been weakened, but the multicultural approach in its liberal–tolerant interpretation – consideration given to religious traditions and cultures of various communities – remains intact. In cases in which the multicultural approach clashes head-on with human rights, it must vacate its place and withdraw. Otherwise, this collision can be readdressed by balancing the two interests. Demarcation of borders between the two types of collisions and balancing those interests is within the field of expertise of judges and jurists.[214]

If immigrant communities want to assimilate, society benefits; if they want to remain self-enclosed, then society is at risk. The former produces enculturation educationally, economically, socially and politically; the latter engenders isolation (from larger society), radicalization, poverty, anger and, in many cases, religious extremism. While this paints a stark picture of clear diametric opposites, it represents a reality in much of Europe today. Simply put, while the 'original' population may welcome[215] multiculturalism, there are increasing reports and significant anecdotal evidence that the immigrant

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[213]See the constitutions of the United States, Turkey, France, Australia, Germany etc for examples of constitutional protection of religious conduct/choice.

[214] Amnon Rubenstein, *The Decline, but not Demise, of Multiculturalism*, IDC, Oct. 30, 2006, *avalilable at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=941370.

[215]An example of 'original' society rejecting immigrants can be seen in Russia, Owen Matthews, *The Kremlin Vigilantes*, Newsweek, Feb. 13, 2009, http://www.newsweek.com/id/184777. Measures against immigrants can be seen in many countries where there are language requirements and cultural teachings such as in the Netherlands, Rubenstein, *Id*.

community is turning inward and looking increasingly to religion and, specifically, religious extremism.[216]

Thomas Friedman described the world as 'flat' in the age of globalization, but perhaps the reality is that of a flat world with walls.[217] The walls, it is important to emphasize are largely self-imposed by particular immigrant and ethnic communities who choose to separate themselves thereby shunning the mainstream society of host countries. This trend raises interesting philosophical questions, but in the interim it raises practical concerns regarding the physical well being of internal group members. A flat world with walls is extraordinarily dangerous for those living within the walls. The proverbial 'proof in the pudding' is female genital mutilation and honor killing.[218]

These two practices highlight the dangers of religious extremism. Ayaan Hirsi Ali[219] and Fauziya Kassindja[220]describe the former graphically and unflinchingly. Law enforcement officials, whether in the US, Europe or Middle East, are aware of the harm caused to private individuals in the name of religious extremism. However, the disturbing reality is that—almost by conscious design—there is a universal decision not to engage. For clarity sake failure to engage is defined as establishing intelligence gathering mechanisms, proactively seeking information, aggressively prosecuting extremists engaged in wrongdoing. The possibility that the state is afraid of religious extremists is an alarming thought; it is also a

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[216] *Muslims in Europe: Economic Worries Top Concerns About Religious and Cultural Identity*, THE PEW GLOBAL ATTITUDES PROJECT (July 6, 2006), http://pewglobal.org/reports/pdf/254.pdf. (Only 7% of British Muslims think of themselves as British first (81% say 'Muslim' rather than 'Briton'); *Muslim Americans: No Signs of Growth in Alienation or Support Extremism*, PEW RESEARCH, (Aug. 30, 2011), http://www.people-press.org/2011/08/30/section-6-terrorism-concerns-about-extremism-foreign-policy/. (21% of Muslim-Americans say there is a fair to great amount of support for Islamic extremism in their community); Muslim Americans: Middle Class ad Mostly Mainstream, Pew Research, (May 22, 2007), http://pewresearch.org/assets/pdf/muslim-americans.pdf#page=60; Denis MacEoin, Sharia Law or 'One Law For All?', Civitas, (June 2009), http://www.civitas.org.uk/pdf/ShariaLawOrOneLawForAll.pdf. (26% of younger Muslims in America believe suicide bombings are justified. 35% of young Muslims in Britain believe suicide bombings are justified (24% overall). 42% of young Muslims in France believe suicide bombings are justified (35% overall). 22% of young Muslims in Germany believe suicide bombings are justified.(13% overall). 29% of young Muslims in Spain believe suicide bombings are justified.(25% overall).). AP, Life For '60s Radical H. Rap Brown, CBSNews, http://www.cbsnews.com/stories/2006/08/14/opinion/main1893879.shtml&date=2011-04-06. (62% of British Muslims do not believe in the protection of free speech. Only 3% adopt a "consistently pro-freedom of speech line.")

[217] THOMAS L. FRIEDMAN, THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY (Farrar, Straus and Giroux, 2005).

[218] FGM is considered by its practitioners to be an essential part of raising a girl properly—girls are regarded as having been cleansed by the removal of "male" body parts. It ensures pre-marital virginity and inhibits extra-marital sex, because it reduces women's libido. Women fear the pain of re-opening the vagina, and are afraid of being discovered if it is opened illicitly. See Female genital mutilation, World Health Organization, (Feb. 2012), http://www.who.int/mediacentre/factsheets/fs241/en/index.html; The tradition underlying honor killing defines a woman's chastity as her family's property. It "comes from our ancient tribal days, from the Hammurabi and Assyrian tribes of 1200 B.C. - Norma Khouri, a Christian Arab and author of HONOR LOST: LOVE AND DEATH IN MODERN-DAY JORDAN (Atria Books 2003).

[219] AYANAN HIRSI ALI, INFIDEL (Free Press 2007).

[220] FAUZIA KASSINDJA AND LAYLI MILLER BASHIR, DO THEY HEAR YOU WHEN YOU CRY (Delta 1999).

potential reality.

The practice of female circumcision varies from country to country and in its degree of intrusiveness. Even in its least invasive form the description is often hard to stomach. The World Health Organization classifies the practice in four degrees. The following is a witness's description of one of the more intrusive forms:

> It is the twelfth of June, a day that promises to be as hot and as demanding as any yet experienced. I am to witness the circumcisions of the two little girls. Zaineb calls for me at sunup; it seems we are late. We run to a *hosh* (courtyard) in the interior of the village. When we arrive, we find that Miriam, the local midwife, has already circumcised one sister and is getting ready to operate on the second. A crowd of women, many of them grandmothers (*habobat*), has gathered outside the room, not a man in sight. A dozen hands push me forward. 'You've got to see this up close,' says Zaineb, 'it's important.' I dare not confess my reluctance. The girl is lying on an *angareeb* (native bed), her body supported by several adult kinswomen. Two of these hold her legs apart. Then she is administered with a local injection. In the silence of the next few minutes Miriam takes a pair of what look to me like children's paper scissors and quickly cuts away the girl's clitoris and labia minora. She tells me this is the *ahma djewa* (the inside flesh). I am surprised that there is so little blood. Then she takes a surgical needle from her midwife's kit, threads it with suture, and sews together the labia majora, leaving a small opening at the vulva. After liberal application of antiseptic, it is all over.[221]

According to the World Health Organization there are currently 100 to 140 million girls and women worldwide who have been subjected to FGM.[222] In Africa alone there is an estimated 3 million girls at risk of undergoing FGM.[223] While most of the girls and women who have undergone FGM or who are at risk of undergoing FGM are predominantly located in under developed countries residing in Africa recent statistics indicate that the practice is prevalent in western countries. A study conducted in 2007 estimated that over 24,000 girls in England and Wales are at risk of undergoing FGM each year.[224]

Honor killings are beyond description; they are also, tragically, not uncommon in

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[221] Janice Body, *Womb as Oasis: The Symbolic Context of Pharaonic Circumcision in Rural Northern Sudan*, 9 AMERICAN ETHNOLOGIST NO. 4, (1982).

[222] *Female genital mutilation and other harmful practices*, WHO, http://www.who.int/reproductivehealth/topics/fgm/prevalence/en/index.html (last visted Jan. 8, 2013).

[223] *Id*.

[224] *See A Statistical Study to Estimate the Prevalence of Female Genital Mutilation in England and Wales*, FORWARD (2007), http://www.forwarduk.org.uk/download/96.

certain cultures that treat women as property whose actions directly impact a family's reputation.[225] According to the principle justifying honor killings, if a woman brings dishonor to her family, her family members must kill her.[226] In the overwhelming majority of honor killings, those responsible go unpunished. It is estimated, by women's groups, that over 20,000 women are killed each year in the Middle East and Asia in the name of honor.[227] In addition, this crime is committed in western countries: in 2011 there were almost 3,000 victims of honor-based violence in the UK. Nevertheless, precise statistics on how many women die in honor killings in European countries and other parts of the world are hard to come by. This is largely due to the fact that most honor crimes are rarely ever reported and are a political hot potato. Politicians, community leaders, and feminist groups fear singling out one group of perpetrators, especially immigrant groups, and are reluctant to call honor killings for what they really are.[228] Rather, they use terms such as domestic violence to describe the crimes. In the Middle East and Asia honor killings are rarely ever prosecuted and when they are, the sentences are often light.[229]

Equally disturbing: in the name of multiculturalism (and political correctness), these murders are defined as 'domestic violence.' While the violence does indeed occur in the home, the reality is simultaneously far more complicated and yet uncomplicated. When I sat as a judge in an honor killing case, involving two brothers killing their sister at the behest of their mother, I was struck by the overwhelming lack of remorse those involved expressed and their absolute conviction in the rightness of the killing. In particular, the mother had instructed her sons to kill her daughter in a manner that was beyond gruesome. As was explained to me removing the alleged stain to family honor caused by the daughter's alleged behavior requires the killing be conducted in a particularly brutal manner. In the case before me the two brothers killed their sister over 8

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[225] For a discussion regarding honor killings see *Case Study: "Honour" Killings and Blood Fueds,* GENDERCIDE, http://www.gendercide.org/case_honour.html (last visited Jan. 8, 2013); Phyllis Chesler, *Are Honor Killings Simply Domestic Violence?*, MIDDLE EAST QUARTERLY 61-69, (Spring 2009) *avaliable at* http://www.meforum.org/2067/are-honor-killings-simply-domestic-violence; Hillary Mayell, *Thousands of Women Killed for Family "Honor"*, NATIONAL GEOGRAPHIC, Feb. 12, 2002, http://news.nationalgeographic.com/news/2002/02/0212_020212_honorkilling.html.

[226] For a discussion regarding the controlling of women in certain cultures, see Susan Moller Okin, *Feminism and Multiculturalism: Some Tensions*, Ethics, Vol 108, No. 4 (Jul., 1998); SUSAN MOLLER OKIN, IS MULTICULTURALISM BAD FOR WOMEN, IN IS MULTICULTURALISM BAD FOR WOMEN (Joshua Cohen and Matthew Howard eds., Princeton Univ. Press, 1999).

[227] Robert Fisk, *RobertFisk: The crimewave that shames the world*, THE INDEPENDENT, Sep. 7, 2010, http://www.independent.co.uk/voices/commentators/fisk/robert-fisk-the-crimewave-that-shames-the-world-2072201.html.

[228] *See* Chesler, *supra* note 220; Phyllis Chesler, *A civilized Dialogue About Islam and Honor Killing. When Feminist Heroes Disagree*, available at http://muslimsagainstsharia.blogspot.com/2009/03/civilized-dialogue-about-islam-and.html; *Jordanian Journalist Rana Husseini on "Murder in the Name of Honor: The True Story of One Woman's Heroic Fight Against an Unbelievable Crime"*, DEMOCRACY NOW (Oct. 21, 2009), http://www.democracynow.org/2009/10/21/jordanian_journalist_rana_husseini_on_murder.

[229] Yotam Feldner, *"Honor" Murders–Why the Perps Get off Easy*, MIDDLE EAST QUARTERLY 41-50, (Dec. 2000) *available at* http://www.meforum.org/50/honor-murders-why-the-perps-get-off-easy.

hours, ultimately dismembering her by tying her legs to two different beds pulled in separate directions. The description is important not for purposes of sensationalism nor to dishonor her memory but to emphasize, graphically, the sheer horror of honor killings. The horror is magnified by a disconcerting failure by state agents to consistently prosecute those responsible for honor killings including inciters and perpetrators alike.

But if the state defers to the cultural mores accepting – even demanding – such behavior, it abdicates its duty to the individual. The very fact that honor killings go unpunished in many cultures highlights the direct harm multiculturalism can cause. In questioning whether society owes a duty to the culture or to the individual harmed by that culture, the answer must resoundingly be that the primary obligation is to the latter; the celebration of the former must be tempered by the reality of the harm caused.

Additional problems arise when the criminal law accommodates religious and cultural extremism. In the United States, for example, the "cultural defense" has been argued and, in some cases, accepted as a mitigating factor or defense to violent crimes. For example, in *People v. Wu*,[230] the Court of Appeals of California held that "upon retrial [for murder of her child, ANG] defendant is entitled to have the jury instructed that it may consider evidence of defendant's cultural background in determining the existence or nonexistence of the relevant mental states."[231] I am neither the first—nor the last— to ask this question: "at what point must the criminal law be willing to undermine culture."[232] In the ideal, society would respect culture and cultural heritage, mores and norms; but just as important, society must protect those who are harmed by cultural heritage, mores and norms. That is not to suggest that culture necessarily harms, but rather to advocate, indeed emphasize, that *when* culture harms it must be viewed as just that—a harm to an otherwise unprotected population group that society owes a clear duty too. The weakness of the embrace of multiculturalism and its ensuing celebration is the inability to address when and how society protects those harmed (directly and indirectly) by that very multiculturalism. After all, the defendant in *Wu* argued that her "cultural background" [233] was a major reason why she murdered her child.

No less problematic, the world is also dangerous for those outside the walls described above. After all, members of immigrant communities have committed post 9/11 terrorist attacks in Europe. Madrid, London, Glasgow and Amsterdam all represent domestic terrorism committed in the name of Islamic extremism; those committing acts of terrorism in Europe are immigrants and their children. That is not to say, under any condition, that all immigrants are terrorists; it is, however, to highlight that immigrants commit terrorist attacks in contemporary Europe. This is distinguishable from the 1970's when radical groups comprised of native Europeans committed terrorist attacks in West

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[230] *People v. Wu*, 286 Cal. Rptr. 868, 887 (Ct. App. 1991).
[231] *Id*.
[232] JOHN KAPLAN, ROBERT WEISBERG, GUYORA BINDER, CRIMINAL LAW 378 (Wolters Kluwer, 6th ed. 2008).
[233] Wu, *supra* note 225..

Germany and Italy. The contemporary trend whereby immigrants commit terrorism in Europe suggests that rather than becoming fully engaged members[234] of the home country, some immigrants are retreating to their community, vulnerable to religious extremist faith leaders encouraging and facilitating acts of terrorism.

As a government policy, therefore, unmitigated multiculturalism enables harm to both specific individuals within closed groups and random targets within the general population. It is harmful to those within specific immigrant communities deemed to have violated their mores; it is also harmful to the random victims of terrorism within the larger population. Both categories are victims – unintentionally by the government; intentionally by the actors—of multiculturalism. By embracing the concept that non-governmental groups can engage in governance (non-state governance) without government monitoring, much less accountability, the state is neglecting its primary responsibility. In the context of embracing different cultures and—in essence—facilitating their operation beyond the state's reach, the nation-state is actually minimizing its own sovereignty, thereby re-articulating the definition of the state.

IV. Societal Responses

A government's fundamental responsibility is to protect the community at large; determining what protections must be extended to particular communities within the larger community is a critical question in the 'limits of freedom' discussion. Those protections are not absolute; indeed, no rights can be absolute.[235] Rousseau's social contract depends on an understanding that the rights of an individual are not absolute. In essence, the individual 'trades' rights (such as freedom) for protection (as part of the larger community); in so doing, the individual both implicitly and explicitly recognizes that individual rights are not absolute. As John Locke explained:

> The toleration of those that differ from others in matters of religion is so agreeable to the Gospel of Jesus Christ, and to the genuine reason of mankind, that it seems monstrous for men to be so blind as not to perceive the necessity and advantage of it in so clear a light. . . But, however, that some may not colour their spirit of persecution and unchristian cruelty with a pretence of care of the public weal and observation of the laws; and that

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[234] Some readers will point to the physicians involved in the Glasgow attack as a sign that terrorists are fully integrated into the home country; I would respond that although the individual was a physician, 'at the end of the day' he was a terrorist acting in accordance with religious extremist principles.

[235] Thomas Hobbes 1651 book *Leviathan* describes the structure of society and legitimate governments and is one of the best known examples of social contract theory—the idea that in exchange for social order/rule of law people give up some rights. John Stuart Mill's *On Liberty*, first published in 1859, can be viewed as a reaction to social contract theory. Mill believed that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."

others, under pretence of religion, may not seek impunity for their libertinism and licentiousness; in a word, that none may impose either upon himself or others, by the pretences of loyalty and obedience to the prince, or of tenderness and sincerity in the worship of God; I esteem it above all things necessary to distinguish exactly the business of civil government from that of religion and to settle the just bounds that lie between the one and the other. If this be not done, there can be no end put to the controversies that will be always arising between those that have, or at least pretend to have, on the one side, a concernment for the interest of men's souls, and, on the other side, a care of the commonwealth. The commonwealth seems to me to be a society of men constituted only for the procuring, preserving, and advancing their own civil interests.[236]

The obvious challenge to individual and state is in defining the limits the latter may impose on the former. The equation, however, is not binary because there is an additional –critical—variable that must be factored in: members of society potentially injured by the individual actor's actions. That is, while the individual seeks protection by joining society (and therefore voluntarily agreeing to limitations on his otherwise absolute rights), other members of society must be similarly protected from that individual. The state has an obligation to protect members of society; doing so may well require imposing limits on specific religious-based conduct. These limits do not gainsay either the centrality or vitality of religion; rather, they clearly demonstrate that rights—even if predicated on religious belief—are not absolute. At its basic level, this appears to be an obvious truism, but the more complicated issue is determining both which rights should be limited and how in the face of potential conflict with divinely-ordained conduct.

Government, in protecting society, must both define threats and assess the dangers they pose. In so doing, it is essential to weigh the costs of action and inaction alike in response to those threats. Obviously, this is not a scientific exercise because threats cannot be empirically determined, but the potential harm they pose must be carefully analyzed even in the absence of numerical certainty.[237] To cut to the chase: as I have suggested, multiculturalism as presently practiced by government and religious extremists alike directly poses a clear and present danger to two distinct population groups, specific targets and the broader population. Although the intended consequence of multiculturalism is not to cause harm, the failure to aggressively rectify the harm it causes is—if not intended—certainly inexcusable and reflects a fundamental governmental failure with respect to an absolute obligation to protecting innocent citizens. It is also not the essence of the nation-state, but may perhaps be the reality of the contemporary nation-state.

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[236] John Locke, *A Letter Concerning Toleration*, *available at* http://www.constitution.org/jl/tolerati.htm (last visited Jan. 8, 2013).
[237] See RAF Charts in FUNDAMENTALS OF COUNTERTERRORISM (Aspen Law & Business 2008).

Human rights of the individual must be deemed more important than governmental policies 'playing to' particular groups and communities. What Churchill called appeasement regarding Chamberlain has, I suggest, once again reared its extraordinarily dangerous head. That appeasement was in response to an external threat; today's threat is largely internal. McCarthyism, a manifestation of the great harm of domestic 'finger-pointing', showed us the great risks in suggesting internal threats and dangers, but its remaining scars and fears are the extreme. Society cannot turn a blind eye to harm caused by an excessive embracing of a policy—however well intended—that causes harm. There is a middle ground: after all the essence of human rights is to balance competing rights of individuals and groups living under one roof in the nation-state that is responsible for the public good and welfare.

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[1] See RAF Charts in FUNDAMENTALS OF COUNTERTERRORISM (Aspen Law & Business 2008).