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Situating Women in Counterterrorism Discourses: Undulating Masculinities and Liminal Femininities

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SITUATING WOMEN IN COUNTERTERRORISM DISCOURSES: UNDULATING MASCULINITIES AND LUMINAL FEMININITIES

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INTRODUCTION

The preoccupation with the challenges posed by violent actors has long existed for many states, whether such actors are characterized as terrorists or insurgents, nonstate or paramilitary actors. The events of September 11, 2001, brought a new urgency and vibrancy to state action in the realm of counterterrorism, illustrated by both the response of national legal systems as well as more concerted efforts to achieve multilateral and multilevel counterterrorism reactions on the international plane.[1] From a feminist perspective, it is notable that terrorism and counterterrorism have long been of marginal interest to mainstream feminist legal theorizing.[2] This is partly

  [1] *See* Fionnuala Ní Aoláin, *Balancing Human Rights: International Legal Responses to Terrorism in the Wake of September 11*, 33 ISR. Y.B. ON HUM. RTS. 63 (2003).

  [2] *But see* Judith Gardam, *War, Law, Terror, Nothing New for Women*, 32 AUSTL.

because of the sustained absence of women's voices in the regulation of armed conflict and war, as well as the exclusion of women from the war zone, aptly illustrated in Homer's pithy phrase that war constitutes "men killing and men being killed."[3] Men remain the primary and visible actors in terrorist acts and counterterrorism responses. In the legal field, a concentration on male actors has dominated national security conversations. There is no "end of men" in terrorism or counterterrorism discourses. When women come into view they typically do so as the wives, daughters, sisters, and mothers of terrorist actors, or as the archetypal victims of senseless terrorist acts whose effects on the most vulnerable (women themselves) underscores the unacceptability of terrorist targeting. Women remain marginal to the conversations in which definitions of security are agreed upon and generally peripheral to the institutional settings in which security frameworks are implemented as policy and law. Women perpetrators of terrorist violence are largely ignored or fetishized. Women scholars have generally not articulated a feminist perspective on the ways in which states respond to violent challengers.[4] More particularly, the legal quandaries that result from the use of law as a management tool to address terrorism have not generally garnered a feminist response.

There are, of course, caveats to some of my generalizations. A number of commentators have evidenced scholarly and policy interest in the category of female combatants.[5] Female terrorists – particularly those associated with the violent politics of extremist jihadist groupings – have also recently incited attention.[6] The preoccupation with the violent (and generally presumed aberrational) female is, in itself, the product of an essentialist discourse that

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FEMINIST L.J. 61, 61 (2010) (lamenting the "relatively muted" feminist voice regarding the legal frameworks offered by International Humanitarian Law); Susan N. Herman, *Women and Terrorism: Keynote Address*, 31 WOMEN'S RTS. L. REP. 258, 260 (2010) (arguing that antiterrorism action will be ineffective if based on false gender stereotypes portraying women as only victims); Anna T. Höglund, *War on Terrorism: Feminist and Ethical Perspectives*, 35 SECURITY DIALOGUE 242, 243 (challenging the "gender-based images of war" of the past); *Symposium: The Gender Dimensions of Terrorism*, 31 WOMEN'S RTS. L. REP. 258 (2010).

[3] Kathy L. Gaca, *Girls, Women, and the Significance of Sexual Violence in Ancient Warfare*, in SEXUAL VIOLENCE IN CONFLICT ZONES: FROM THE ANCIENT WORLD TO THE ERA OF HUMAN RIGHTS 73, 76 (Elizabeth D. Heineman ed., 2011) (citing HOMER, ILIAD, 8.64-65)

[4] I note that my own work in the area of national security and emergency laws has generally fallen into this category. *See, e.g.,* OREN GROSS & FIONNUALA NÍ AOLÁIN, LAW IN TIMES OF CRISIS (2006).

[5] *See, e.g.,* IRISH WOMEN AND NATIONALISM: SOLDIERS, NEW WOMEN AND WICKED HAGS (Louise Ryan & Margaret Ward eds., 2004); MARGARET WARD, UNMANAGEABLE REVOLUTIONARIES: WOMEN AND IRISH NATIONALISM (1983).

[6] *See, e.g.,* JANNY GROEN & ANNIEKE KRANENBERG, WOMEN WARRIORS FOR ALLAH: AN ISLAMIST NETWORK IN THE NETHERLANDS (Robert Naborn trans., 2010); Brigitte L. Nacos, *The Portrayal of Female Terrorists in the Media: Similar Framing Patterns in the News Coverage of Women in Politics and in Terrorism*, 28 STUD. CONFLICT & TERRORISM 435 (2005).

requires a critical eye. Such short-term obsessions should not be read as the emergence of women in the terrorism and counterterrorism terrain as a counter-point of male demise. Historical and essentialist patterns of male combatancy and female victimhood remain alive and well in terrorism and counterterrorism discourses.[7] In parallel, inquiries as to whether facially neutral antiterrorist laws have a gendered hue have historically not garnered much attention from either mainstream national security scholars or feminists deconstructing particular parts of the legal apparatus, insofar as it affects women. Curiously, one can observe that international feminist discourses foregrounding women's insecurity and the gendered dimensions of violence are leveraging from and have synergy with scholarly antiterrorism discourses emphasizing the regulation of and responsibility for nonstate actors.[8] There is sturdy legal and normative resonance across these conversations, in that both call for a similar "shift[] in perspective" that involves rethinking "the entire basis of the public/private dichotomy."[9] The echoes of feminist language emphasizing insecurity in the private sphere interact tidily with the language that affirms the ubiquity of security threats. Finally, there are threads of scholarly and policy thought that link violence against women as a "warning sign" for terrorism because "[g]roups that engage in these sorts of attacks on civilians as a whole often pursue misogynist agendas and carry out, or advocate, severe forms of violence against women."[10]

Drawing on these opening theoretical framings, Part I examines the female combatant/terrorist category, outlining its connection to and presence in counterterrorist regulation. The analysis seeks to problematize the "presence" of women in the production of violence, avoiding the zero-sum of counting acts of extreme, politically motivated violence by women. I address the lethality and efficiency of women as violent political actors and the manner in which stereotyped cultural and social assumptions operate to give violent

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[7] *See, e.g.*, ROBIN MORGAN, THE DEMON LOVER: THE ROOTS OF TERRORISM 54 (2d ed. 2001) (comparing the "terrorist mystique" to the "deadly hero" and describing the related stereotypes of male aggression).

[8] Vasuki Nesiah, *Feminism as Counter-Terrorism: The Seduction of Power, in* GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES, *supra* note *, 127, 131-32 (summarizing the work of scholars who argue "that for security concerns to be addressed adequately, state responsibility doctrine should give greater legal emphasis to 'indirect responsibility'").

[9] Rachael Lorna Johnstone, *Unlikely Bedfellows: Feminist Theory and the War on Terror*, 9 CHI.-KENT J. INT'L & COMP. L. 1, 17 (2009).

[10] Karima Bennoune, *Terror/Torture*, 26 BERKELEY J. INT'L L. 1, 49 (2008). For arguments on the policy side, see AMY CAIAZZA INST. FOR WOMEN'S POLICY RESEARCH, IWPR PUB. NO. I908, WHY GENDER MATTERS IN UNDERSTANDING SEPTEMBER 11: WOMEN, MILITARISM, AND VIOLENCE 1 (2001) (arguing that the United States government should "[p]ay particular attention to women when attempting to counteract terrorism," especially "to the work of those who are effective opponents of violence against women"). Caiazza further argues that focusing on women in the counterterrorism movement will make the United States "more likely to address the root causes of terrorism and violence at home and in the wider world." *Id.*

women actors advantages in access to combat closed off to men in conflict settings. Appraising the efficiency of counterterrorism rules on the basis of their essentialized conventions about women's roles in the production of violence produces unexpected regulatory outcomes. The analysis takes up the mobilization dynamics for female combatants and concludes by tracking the convergence of feminist theorizing on the public/private divide with emerging doctrines of state responsibility emanating from terrorism scholars and policymakers. Part II contemplates ethno-national conflicts and disaggregates the distinctions between combat-related action and a broader set of acts undertaken by women that support, advance, or facilitate violence. Part III is framed by attention to the myriad ways in which women's lives intersect with counterterrorism practice and policies. I specifically address the experiences of women incarcerated for terrorist-related offenses and examine, among other things, the ongoing role that prisons play in the maintenance of state counterterrorism discourses and political control. I focus a sizeable part of my analysis on the documented experiences of women paramilitaries from both sides of the political divide in Northern Ireland, with parallel comparisons to the experiences of women combatants/terrorists in other jurisdictions.[11] I explore the complexity of responses to incarcerated female terrorists from liberal feminist constituencies and the broad reluctance to identify harms against such women as constituting human rights violations.

Part IV attends to the experience of women following the application of state anti-terrorism laws. While providing some general comments on the presumptions of neutrality associated with anti-terrorist legislation, I use the Northern Ireland case study as a way to explore the sidelining of gender in how we understand and analyze the effects of counterinsurgency regimes on multiple societies experiencing communal and sustained violence involving both state and nonstate actors. The ways in which the U.N. human rights machinery oversees post-9/11 counterterrorism policies is used to illustrate the pitfalls of how women can be called into view but are almost invariably essentialized in the process. Part V provides an in-depth view of stop-and-search powers under British emergency law. I address the patterns and harms that emerge from attention to private and domestic spaces of violation as well as the frontline effect that results from the use of stop-and-search powers in deeply divided societies. This part of the analysis recognizes some tension between acknowledging the pervasive *lingua franca* of post-Cold War feminist engagement that calls attention to the impact of war on women,[12] but whose

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[11] The primary source used is the recently released Armagh Women's Jail narratives. *Armagh Stories*, PRISON MEMORY ARCHIVE, http://prisonsmemoryarchive.com/armagh-stori es/ (last visited May 29, 2013). This Article will also draw on other secondary source material documenting interviews with female paramilitary actors across the political divide in the jurisdiction.

[12] This includes the strengthening of international institutional responses to women's experiences of conflict though United Nations Security Council Resolution 1325 and its progeny as well as the emphasis on mainstreaming a "women, peace, and security" agenda into inter-state conflict management and intervention. *See* FIONNUALA NÍ AOLÁIN, DINA

less-seductive outcome includes re-inscribing texts around women's presumed vulnerability, insecurity, and fragility.

I.   TITLES MATTER: THE WOMAN AS COMBATANT OR TERRORIST

In traditional narratives women's contribution to the activation, maintenance, and perpetuation of conflict and political violence has been vastly underplayed. Various scholarly disciplines are pervaded by the "assumption that women are generally more peaceful and less aggressive or warlike than men."[13] In the main, the quantification of and rationale for women's political violence is a grossly under-researched arena across academic disciplines.[14] Given its intersection with state counterterrorism policy, the complexity of the social, political, and legal spaces occupied by female combatants deserves particular attention.

First, it is important to be clear about the terminology being addressed. The use of the terms "terrorism" and "counterterrorism" pose some conceptual and methodological challenges. The term "terrorism" has become ubiquitous in contemporary state conversations to describe the actions and views of those who disavow the state or use violent methods to advance their political beliefs and ideologies. The term is provocative and generally intentionally pejorative, as it places those included within its ambit as outside the realm of acceptable behavior, and signals their exclusion from the agreed upon social and communal boundaries of the state and the community. The term precludes deeper conversations about the causalities of violence, as well as reflection on the conditions conducive within the state that beget violent acts. Much of the legal and political literature is rife with sweeping generalizations about the nature and form of all types of violence directed against states, discouraging any attempts to disaggregate the phenomenon of terrorism from other forms violence. It is not the goal of this analysis to revisit the lack of definitional and legal clarity surrounding "terrorism," but rather to acknowledge that the absence of such precision influences how we understand women to operate as terrorist actors and how we assess the kinds of harms to women result from counterterrorism responses.[15]

FRANCESCA HAYNES & NAOMI CAHN, ON THE FRONTLINES: GENDER, WAR, AND THE POST-CONFLICT PROCESS 81-104 (2011).

[13] MIRANDA H. ALISON, WOMEN AND POLITICAL VIOLENCE: FEMALE COMBATANTS IN ETHNO-NATIONAL CONFLICT 1 (2009).

[14] *See, e.g.,* CYNTHIA ENLOE, DOES KHAKI BECOME YOU? THE MILITARISATION OF WOMEN'S LIVES, at v (1983) ("So much of military history and current commentary on weapons, wars and defence spending is written as though women didn't exist . . ."); Simona Sharoni, *Rethinking Women's Struggles in Israel-Palestine and in the North of Ireland, in* VICTIMS, PERPETRATORS OR ACTORS? GENDER, ARMED CONFLICT AND POLITICAL VIOLENCE 85, 87 (Caroline O.N. Moser & Fiona C. Clark eds., 2001) ("[A] critical examination of the assumptions that have informed the extensive body of literature on gender and political conflict underscores the need for more nuanced, context-specific studies on this topic.").

[15] *See* Sharon Harzenski, *Terrorism, A History: Stage One,* 12 J. TRANSNAT'L L. & POL'Y 137, 145 (2003) ("Whether to treat terrorism as a crime or as an act of war is one of the

For feminists, reflection on the ways in which a focus on particular acts of violence – generally to the body and to property – avoids state engagement with structural and pervasive violence ought to give momentary pause on the adoption of the terrorism category itself. At the very least, it might prompt critical reflection on the need to judiciously tease out the category – moving to an emphasis on precision and nuance in application, and a focus on acts of terrorism – specifically in the sense of civilian targeting as the core to which the legal concept should be applied. As a practical legal matter, the term "terrorism" operates to shut down conversations about legitimate uses of force by nonstate actors in the context of wars of national liberation, occupation, and armed conflicts falling within the protective mandate of the 1977 Protocol Additional to the Geneva Conventions of 1948.[16] For example, in the Northern Ireland conflict, the United Kingdom consistently eschewed the applicability of the laws of war legal framework, arguing that neither Common Article 3 to the 1949 Geneva Conventions nor the 1977 Protocol II was applicable.[17] As a result, the "conversation" about the legal status of the conflict was overwhelmingly debated in the language of terrorism and counterterrorism.[18] It is unfailingly difficult in any jurisdiction to activate a conversation about how, why, and with what baggage we use the term "terrorism." Doing so puts one in the category of a seeming apologist for unacceptable acts, while not doing so invites intellectual dishonesty and a superficiality of engagement with what is

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debates pervading the literature of definition."); Charles A. Russell et al., *Out-Inventing the Terrorist*, *in* TERRORISM: THEORY AND PRACTICE 3, 5 (Yonah Alexander et al. eds., 1979) (attributing the rise in transnational terrorist groups to their ability to "[e]xploit[] the absence of international agreement"). The international community has struggled to agree on a single definition of "terrorism." The League of Nations attempted a definition, but the instrument never entered into force. *See* Convention for the Prevention and Punishment of Terrorism art. I(1), Nov. 16, 1937, 19 League of Nations Official J. 23, 23 (defining terrorist acts as "criminal acts against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public"). For other recent attempts to establish international definitions, see, for example, Inter-American Convention Against Terrorism art. 2, June 3, 2002, 42 I.L.M. 19 (relying on a variety of pre-existing international agreements to define acts of terrorism), and COUNCIL OF EUR., THE FIGHT AGAINST TERRORISM: COUNCIL OF EUROPE STANDARDS 302-04 (3d ed. 2005) (defining a "terrorist act" as any of eleven different "intentional acts" "where committed with the aims of . . . seriously intimidating a population," "unduly compelling a government or an international organisation to perform or abstain from performing any act," or "seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation").

[16] *See* Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 609.

[17] *See* FIONNUALA NÍ AOLÁIN, THE POLITICS OF FORCE: CONFLICT MANAGEMENT AND STATE VIOLENCE IN NORTHERN IRELAND 226 (2000).

[18] *See id.* at 230 (describing "[t]he policy of criminalization in Northern Ireland" that has sent politically motivated violent crimes to special courts).

ultimately an "essentially contested concept."[19] It is also true in the context of this analysis.

The category of women combatants – or even women as tacit supporters of violence – poses particular quandaries for scholars, policymakers, and political processes. Combatancy issues and their definitional overlap with the category of terrorism have more obviously arisen in a range of ethno-nationalist conflicts – such as Afghanistan, Algeria, Iraq, Northern Ireland, and Israel-Palestine – than in traditional international conflicts contemplated by Article II of the 1949 Geneva Convention.[20] It is evident that the capacity of women to participate as combatants manifests more readily in pro-nationalist movements rather than in institutionalized state settings. In the context of South Africa's post-apartheid truth process, Beth Goldblatt and Sheila Meintjes assert that "[u]nderstanding that women were capable of perpetrating violence enables us to see that women are not monolithic in their outlook as a group and are not bearers of certain essential qualities such as kindness and compassion."[21] Acknowledging the complexity of violence also helps us as feminist scholars to break up the monolithic narratives that have emerged in terrorism and counterterrorism discourse, inserting uncertainty, tension, and disruption.[22]

A. *Female Efficiency and Counterinsurgency Restrictions*

There have been few empirical studies of female involvement in nonstate violent groups, particularly those targeting civilian infrastructure and populations. Contemporary research has been principally directed at female jihadists and tends to rely on the narrative or qualitative form.[23] The terrorism

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[19] W.B. Gallie, *Essentially Contested Concepts*, 56 PROC. ARISTOTELIAN SOC'Y 167, 169 (1956).

[20] *See* Rebecca Ingber, *Untangling Belligerency from Neutrality in the Conflict with Al-Qaeda*, 47 TEX. INT'L L.J. 75, 80 (2011).

[21] Beth Goldblatt & Sheila Meintjes, *South African Women Demand the Truth*, *in* WHAT WOMEN DO IN WARTIME: GENDER AND CONFLICT IN AFRICA 27, 45 (Meredith Turshen & Clotilde Twagiramariya eds.,1998).

[22] *See, e.g.*, MORGAN, *supra* note 7, at 112 (expressing concern about the danger of stereotypes about "*l'homme fatal*").

[23] *See, e.g.*, JOHN REUTER, AM. COMM. FOR PEACE IN CHECHNYA, CHECHNYA'S SUICIDE BOMBERS: DESPERATE, DEVOUT, OR DECEIVED? 25-26 (2004); BARBARA VICTOR, ARMY OF ROSES: INSIDE THE WORLD OF PALESTINIAN WOMEN SUICIDE BOMBERS 8 (2003); Anne Speckhard & Khapta Ahkmedova, *The Making of a Martyr: Chechen Suicide Terrorism*, 29 STUD. CONFLICT & TERRORISM 429, 429 (2006); Mira Tzoreff, *The Palestinian Shahida: National Patriotism, Islamic Feminism, or Social Crisis*, *in* FEMALE SUICIDE TERRORISTS: DYING FOR EQUALITY 13, 22 (Yoram Schweitzer ed., 2006); Reuven Paz, *Suicide Terrorist Operations in Chechnya: An Escalation in the Islamist Struggle*, INT'L INST. FOR COUNTER-TERRORISM (June 17, 2000), http://www.ict.org.il/NewsCommentaries/Commentaries/tabid/69/Articlsid/111/currentpage/21/Default.aspx; Eelamaran, *Women and the Struggle for Tamil Eelam: Freedom Birds of Tamil Eelam*, EELAM VIEW (Aug. 18, 1990), http://www.eelamview.com/2012/08/18/women-the-struggle-for-tamil-eelam/. In identifying those existing studies it is important to note the critiques that have emerged of large-N studies of suicide terrorism. *See* Scott Ashworth et al., *Design, Inference, and the Strategic Logic of Suicide*

rules are, by and large, assumed to apply to the behavior of men. They stereotype and profile men, seeking to target the optimal group deemed most likely to be terrorists or combatants in any particular cultural setting. Few studies have sought to empirically measure the strategies deployed by nonstate groups, especially those operating in highly patriarchal settings, to calculate the effectiveness of women as terrorist operatives and to assess the factors that bring about women's mobilization.[24] One study that is highly relevant to a portion of the claims made in this Article addressed the effectiveness of women as suicide bombers.[25] In a study of all known terrorist suicide bombers between 1981 and 2008, Lindsay O'Rourke demonstrated that there are a number "special" features of female suicide bombing, including the strategic advantages that females offer, cogent rationales to deploy females over male suicide bombers in certain societal contexts, and the effectiveness of women bombers.[26] The analysis determines that women are more lethal compared to their male counterparts, as demonstrated by their relative lethality in attacks across multiple jurisdictions and deployments.[27] Women claimed a higher average number of victims in individual attacks (8.4 for women compared to 5.3 for men), a number that remained higher for women even when controlling for increased defensive measures by the state over time.[28] Women also failed less often than men in carrying out suicide attacks.[29] Even when operating in team assaults, women's involvement produced more casualties per individual than team attacks with men only.[30]

Vital to understanding the success of women as violent operators for nonstate organizations are the pervading social and cultural assumptions about women's likely propensity for violence, and specifically extreme violence directed at civilians. Women are less likely to arouse suspicion, are better equipped to conceal explosives, and are generally not subject to as strict security measures.[31] The capacity to conceal is augmented in societies where the dress code norms for women entail wearing loose full-body coverings.[32] In areas where presumed pregnancy decreases the likelihood of a woman being

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Terrorism, 102 AM. POL. SCI. REV. 13, 13 (2008).

[24] The markers for describing certain states with that designation might include the incidence of and accountability for honor killings; social status of women being intimately tied to familial and domestic spheres; and a high value on the marital fidelity of women, early marriage, and patterns of the number of children born in marriage.

[25] Lindsay A. O'Rourke, *What's Special About Female Suicide Terrorism?*, 18 SECURITY STUD. 681 (2009).

[26] *Id.*

[27] *Id.* at 686-89.

[28] *Id.* at 687-88.

[29] O'Rourke's study found that men failed to kill anyone in 33.3% of the attacks, while women failed to do so in just 16.9% of their attacks. *Id.* at 689.

[30] *Id.*

[31] *Id.*

[32] *Id.* at 690.

subjected to a body search, the female body conceals as much as it reveals.[33] In a number of these societies where mobilization of women is theoretically possible, the social constraints that operate to presume women inherently honorable further operate as barriers to their recruitment into those paramilitary groupings adhering rigidly to gender separation and the maintenance of established gender roles. One is more likely to find women being recruited by ethno-national paramilitary groupings than by religious militants.[34] There is some evidence, however, of changing recruitment strategies by religious groups as they perceive the success of secular groups in employing women to engage in violent acts. In short, strategy trumps ideology.[35]

Arguably, stereotyped perceptions create sub-optimal enforcement of antiterrorism laws. By contrast, a "gender-neutral" slant viewing women as equally capable of violence might, from an efficiency and enforcement perspective, justify giving greater reach to counterterrorism provisions.[36] In Northern Ireland and other ethno-national conflict settings, this would lead to more direct and confrontational interface between women political actors and the state, rather than the principally indirect interface with state forces that is the contemporary norm for most women. The complexity of this conclusion, in contexts where legitimacy of the use of violence to achieve political outcomes

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[33] *See* Mia Bloom, *Mother. Daughter. Sister. Bomber.*, BULL. ATOMIC SCIENTISTS, Nov./Dec. 2005, at 54, 57 (describing how female suicide bombers hide explosives under the guise of pregnancy). Documented cases of female attackers feigning pregnancy across cultures underscore this point. *See, e.g.*, R. KIM CRAGIN & SARA A. DALY, WOMEN AS TERRORISTS: MOTHERS, RECRUITERS, AND MARTYRS 66 (2009) ("In fact, PKK women operatives have conducted eleven of a total of fifteen suicide bombings in Turkey, and three of these women wore belts that made them look pregnant."); *Fake Pregnant Bomber Kills 8 in Sri Lanka*, USA TODAY, http://usatoday30.usatoday.com/news/world/2006-04-25-sri-lank a-attack_x.htm (last updated Apr. 25, 2006, 11:10 AM) ("The attacker, killed instantly, entered the grounds using fake identification and claiming to have a prenatal appointment at the army's hospital, the military officials said. She was wearing explosives that made her appear pregnant . . . .").

[34] *See* DAGMAR HELLMANN-RAJANAYAGAM, THE TAMIL TIGERS: ARMED STRUGGLE FOR IDENTITY (1994); Nur Bilge Criss, *The Nature of PKK Terrorism in Turkey*, 18 STUD. CONFLICT & TERRORISM 17, 20 (1995) (listing recruitment methods for the Kurdistan Worker's Party (PKK), which included kidnapping young men and women).

[35] This has occurred with some odd caveats. In the case of Hamas, the Palestinian terrorist organization, the deployment of female suicide bombers in 2004 (following an initial rejection of the use of female suicide bombers) represented a change of course but was accompanied by requirements to maintain the gendered status quo. MIA BLOOM, DYING TO KILL: THE ALLURE OF SUICIDE TERROR 150 (2005) (quoting Sheikh Yassin, who stipulated that women committing a suicide bombing must have a male chaperone accompanying her "if she is to be gone for a day and a night. If her absence is shorter, she does not need a chaperon [sic].").

[36] *See, e.g.*, O'Rourke, *supra* note 25, at 717 (recommending that states targeted by female suicide terrorists "adapt their defensive strategies . . . to undermine women's advantages in achieving surprise and concealing explosives").

is contested, has thorny implications in practice. In one sense, it could be argued that the highly gendered assumptions that pervade the efficient application of antiterrorism norms negate the highly gendered assumptions that pervade the efficient application of antiterrorism measures.[37]

The paucity of research on women as violent actors is tied to complex social conventions about their role in the military apparatus of the state, or any roles that women may play within nonstate structures in society. Additionally, "the prevalent view of women as victims … tends to overlook, explicitly or implicitly, women's power and agency."[38] This blind spot tends to produce policy and practice that view women as "homogeneously powerless and as implicit victims," thereby excluding the parallel reality of "women as benefactors of oppression, or the perpetrators of catastrophes."[39] Moreover, women's active roles in national or ethno-national military organizations are defined by deep ambiguity linked to resonant debates about the identity of nation, the meaning of citizenship, and the complex interface between cultural reproduction and gender roles in any society.[40]

Greater recognition of the capacity for women's mobilization into terrorist and combatancy roles does not offer easy solutions to effective counterterrorism strategizing. Those seeking to thwart or resist the vulnerability of the state, its institutions, and its civilian population to female-produced violence run a number of risks if the instinctive response is to directly subvert local cultural norms and target women broadly and directly for surveillance, stop, search, detention, and armed attack. Precisely because of the tenacity of essentialized vulnerability and the ethic of care that is routinely ascribed to women, in situations of ethno-national divisions or in interventions resulting from occupation or invitation, states run risks when they target the female body. The fluidity of political mobilization illustrated by the status of the woman's body as part of both jihadist discourses and discourses of national purity in ethno-national conflicts, makes it particularly fraught to detain or harm female bodies without political consequence.[41] As Ruth Lister has so

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[37] *See* Ashley Nicole Reynolds, Note, *So You Think a Woman Can't Carry Out a Suicide Bombing? Terrorism, Homeland Security, and Gender Profiling: Legal Discrimination for National Security*, 13 WM. & MARY J. WOMEN & L. 667, 697 (2007) ("An easy and clear consequence of a non-gender-neutral profile is the negation of women as potential terrorists.").

[38] Sharoni, *supra* note 14, at 86.

[39] Ronit Lentin, *Introduction: (En)gendering Genocides, in* GENDER AND CATASTROPHE 1, 12 (Ronit Lentin ed., 1997).

[40] *See* NIRA YUVAL-DAVIS, GENDER AND NATION 93-115 (1997) (explaining how "women have always fulfilled certain, often vital roles" within the military and in warfare but on unequal terms, depending on the country); James McKinley, *Eritrea's Women Fighters Long for Equality of War*, GUARDIAN, May 6, 1996, at 8 (finding that the 20,000 women released from the Marxist Eritrean People's Liberation Front still faced an overwhelmingly patriarchal society).

[41] *See* Farhat Haq, *Militarism and Motherhood: The Women of the Lashkar-i-Tayyabia in Pakistan*, 32 SIGNS: J. OF WOMEN IN CULTURE & SOC'Y 1023 (2007) (capturing the

aptly noted, "the public and the private define each other and take meaning from each other,"[42] and taking heed of the public/private symbiosis would be the obvious starting point in attempting to make sense of the analysis advanced here. In zero-sum fashion, using counterterrorism measures widely and deeply against female populations in hostile conflict zones may do little more than encourage popular support for the political causes that have propagated the turn to violence in the first place.

B.   *Motivations and Mobilization*

If one were to foray into more effective counterterrorism strategizing, a little knowledge about women's motivation and mobilization might be useful. Aside from the minimal amount of empirical information that exists on the effectiveness of women as paramilitary actors, little reliable data is available on the motivations of women engaging in politically motivated violence. Sources on women's motivation include the testimony of incarcerated women, information given by women to truth and reconciliation processes, amnesty hearings and demobilization procedures, and some limited data on female suicide bombers. To understand women's engagement in violent acts, a more complex assessment of motive and context is necessary. In a recent small-scale study of Palestinian women's involvement in acts of violence, the authors report that they ascertained mixed motives in women's decisions to become involved in "terrorism."[43] Motivation in the context of terrorism also connects to broader literature on women's engagement with criminal acts more generally, although that subject is beyond the scope of this analysis. Nonetheless, overlap exists with theories that suppose women's criminality is connected to equality discourses and represents a measure of parity evolution in the public sphere.[44] Activism is also clearly related to the intensification of ideological discourses in particular ethno-national settings, where the political activation of the community invariably involves women, interpolating them as

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discourses connecting the veiled body of the Muslim woman as a signal to the rest of the world of the purity of the revitalized Muslim *ummah* and asserting that political programming is thus inscribed on the female body, which thereby reflects the complexity of engagement with that body as counterterrorism policy).

[42] Ruth Lister, *Citizenship: Towards a Feminist Synthesis*, FEMINIST REV., Autumn 1997, at 28, 42.

[43] Anat Berko & Edna Erez, *Gender, Palestinian Women, and Terrorism: Women's Liberation or Oppression?*, 30 STUD. CONFLICT & TERRORISM 493, 503 (2007) ("The women's pathways to terrorism took various forms, were triggered by different motives, and reflected different personal circumstances."). Note that the study involved the semi-structured interviews of only fourteen women incarcerated in Israeli prisons. The authors observe that the women interviewed described themselves as both combatants and liberators and placed their actions in the context of Israeli occupation. The interview analysis is made more complex by the context of the study, in which Palestinian women detainees were interviewed by Israeli researchers.

[44] *See generally* FREDA ALDER, SISTERS IN CRIME: THE RISE OF THE NEW FEMALE CRIMINAL (1975); RITA JAMES SIMON, WOMEN AND CRIME 2 (1975).

national actors. In parallel, of course, there are difficult questions of coercion and consent.[45] What does it mean for women under a highly patriarchal system to "choose" a course of political action? What are the consequences for women who do so, when the boundaries of culturally acceptable female conduct are rigid? In Northern Ireland, the conflict took place in a highly conservative society in which gender roles were highly circumscribed and implicit in all communal and social interactions across both Protestant and Catholic communities. Strong ideologies of motherhood, purity, and female caregiving were deeply embedded in gender relations. These ideologies permeated women's political choices, and framed how and in what ways they engaged in or supported political violence.

A range of country-specific examples demonstrate that elements of liberation from highly stratified gender roles may be a motivating factor for violent acts.[46] Conversely, for women in highly traditional settings, the consequences of stepping outside traditional care and nurture roles may not be uniformly positive.[47] Damaging outcomes include stigmatization and exclusion from the social and communal benefits of conventionally garnered female status in many traditional societies. Fiona Ross's groundbreaking study of the South African Truth and Reconciliation Commission has cogently demonstrated that post-conflict processes, specifically truth commissions, are marked by the absence of female perspectives.[48] Women who self-identify strongly as political actors, and thus wish to avoid (often despite experiences of harm) being categorized as victims, frequently choose not to appear before truth or accountability processes.[49] Articulating a combatancy or paramilitary role may not be a viable choice for women.[50] Uniformly, in the aftermath of collective

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[45] On the complexity of agency in the context of armed conflict, see Mats Utas, *Victimcy, Girlfriending, Soldiering: Tactic Agency in a Young Woman's Social Navigation of the Liberian Warzone*, 78 ANTHROPOLOGICAL Q. 403, 426 (2005) ("A more robust analysis of women's lives in the war zone requires seeing women as something other than mere victims devoid of agency, or alternatively as 'fully free actors,' but rather as tactical agents engaged in the difficult task of social navigation.").

[46] *See, e.g.*, Mary Ann Tétreault, *Women and Revolution in Vietnam, in* WOMEN AND REVOLUTION IN AFRICA, ASIA, AND THE NEW WORLD 111, 114 (Mary Ann Tétreault ed., 1994) (explaining that women participated in Vietnam's conflict because "[w]omen's liberation was part of the generalization of grievances [against] the colonial regime").

[47] *See* PAIGE WHALEY EAGER, FROM FREEDOM FIGHTERS TO TERRORISTS: WOMEN AND POLITICAL VIOLENCE 24 (2008) (describing how some women who participate in "wars of national liberation" are "then viewed as 'damaged goods' by their supposedly grateful nations . . . because they have eschewed the traditional feminine role for women in that society by taking on a 'man's role' by fighting").

[48] FIONA C. ROSS, BEARING WITNESS: WOMEN AND THE TRUTH AND RECONCILIATION COMMISSION IN SOUTH AFRICA (2003).

[49] *See id.* at 5.

[50] *See* YUVAL-DAVIS, *supra* note 40, at 89-90 (describing problems with feminist arguments for equal military footing for women, including: (1) the necessity of leaving behind children, (2) the unequal balance of power, and (3) the general context of the military).

violence, few women are willing to openly discuss their political activities and their roles as violent actors in conflict with the state, further compounding how little we know about the complexities of women's engagement in violent acts.[51]

Owning up to a combatancy/paramilitary role may not be a viable choice for women, whether during hostilities or in their aftermath.[52] By way of illustration, the invisibility of women paramilitaries in the post-conflict phase in Northern Ireland is striking.[53] During the modern phase of the conflict, women were engaged in acts of ongoing resistance to military presence, supportive of armed opposition groups, and directly involved in acts of violence.[54] Few women have been prepared to claim public political space in the post-conflict phase to acknowledge these roles.[55] In adequately assessing such engagement, a feminist analysis should attentively listen to how women describe their activism and activities on their own terms, and avoid relying on

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[51] *See* Fionnuala Ní Aoláin & Catherine Turner, *Gender, Truth and Transition*, 16 UCLA WOMEN'S L.J. 229, 256 (2007) (attributing women's marginalization in the truth process to the lack of consideration for specific harms to women and the general absence of women from the post-conflict negotiation process).

[52] *See* Rick Wilford, *Women, Ethnicity and Nationalism: Surveying the Ground*, in WOMEN, ETHNICITY AND NATIONALISM: THE POLITICS OF TRANSITION 1, 3 (Rick Wilford & Robert L. Miller eds., 1998). Wilford demonstrates that "fighting alongside men to achieve independence does not provide a guarantee of women's inclusion as equal citizens." *Id.* at 15. Indeed, "even where women have been active as warriors . . . they are invariably left holding the wrong end of the citizenship stick." *Id.*

[53] *See generally* NORTHERN IRELAND AFFAIRS COMMITTEE, REPORT OF THE CONSULTATIVE GROUP ON THE PAST IN NORTHERN IRELAND, 2009-10, H.C. 171 (U.K.), *available at* http://www.parliament.the-stationery-office.co.uk/pa/cm200910/cmselect/cmni af/171/171.pdf (lacking any substantial gender analysis). For a criticism of the lack of gender analysis, see generally RESPONSE OF THE WOMEN'S RESOURCE AND DEVELOPMENT AGENCY, DEALING WITH THE PAST IN NORTHERN IRELAND: THE RECOMMENDATIONS OF THE CONSULTATIVE GROUP ON THE PAST (2009), *available at* http://www.wrda.net/Documents/W RDA%20Response%20to%20the%20Eames%20Bradley%20Consultation%20on%20Deali ng%20with%20the%20Past.pdf. There are only a handful of notable exceptions to this pattern, the most obvious being Mairéad Farrell, a member of the Irish Repubican Army, who was one of three paramilitary members killed in the high-profile Gibraltar operation by the Special Air Service in 1988. *See* Catherine O'Rourke, *Dealing with the Past in a Post-Conflict Society: Does the Participation of Women Matter? Insights from Northern Ireland*, 19 WM. & MARY J. WOMEN & L. 35, 59 (2012). These deaths led to the pivotal decision by the European Court of Human Rights on the use of lethal force. *See* McCann v. United Kingdom, 21 Eur. Ct. H.R. 97 (1996). The Consultative Group's Report focused on "women who were deeply embroiled in the conflict divisions," yet the report proceeds to champion throughout the report the presumed virtues of peacemaking and conflict transcendence of women as a general matter. O'Rourke, *supra*, at 61.

[54] *See generally* Sandra McEvoy, *Loyalist Women Paramilitaries in Northern Ireland: Beginning a Feminist Conversation About Conflict Resolution*, 18 SECURITY STUD. 262 (2009).

[55] *See id.* at 282 (pointing out that the negotiation of the Good Friday Agreement included "non-partisan, peace-brokering women . . . rather than partisans and combatants").

definitions infused with masculine presumptions. Doing so might result in a wider, deeper understanding of the acts we view as constitutive of combatancy or terrorism.[56] Opening space for and actively listening to the accounts of paramilitary female actors might expose the bias and limitations of current thinking in addressing the causes conducive to the production of widespread political violence in many settings. Moreover, the outcomes may produce greater regulatory attention to women and widen the range of legal acts that "count" as supporting or undertaking terrorist acts.

Complex questions emerge as we think about whether women's engagement as combatants/terrorists and involvement in violent acts should be interpreted as "a sign of women's newfound empowerment" and simultaneously as "an indication of ongoing gender oppression."[57] Terrorist organizations have demonstrated remarkable sensitivity to deploying gender-specific appeals to women as a recruitment tactic.[58] They include feminist appeals for equal participation, the offer of redemption to women who have violated the gender norms of their own societies, revenge, nationalism, and religious precept.[59] Remarkably specific mobilization efforts directed at the mothers of potential jihadists indicate that some organizations specifically hone in on the mothering dimensions of mobilization, at the very least to quell mothers' objections to their sons' involvement in jihadist movements.[60] Indeed, there is a deep and "paradoxical relationship between women and contemporary religio-political movements that advocate the retraditionalization of women's role as they actively mobilize women in public arenas."[61]

Feminist egalitarian militarists have maintained that gender integration of state militias is an essential step toward equalizing the status of women as soldiers and citizens.[62] The debates about military service as the sine qua non

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[56] Reynolds, *supra* note 37, at 668 ("The gender bias . . . will undoubtedly have a negative impact on the 'War on Terror.'").

[57] Berko & Erez, *supra* note 43, at 493.

[58] *See* O'Rourke, *supra* note 25 at 701-02.

[59] *Id.* at 701. O'Rourke also argues that there are strong reasons for terrorist organizations to select and encourage women suicide bombers whose biographies depict the behavior of the target state in a negative light, including women who have been sexually violated or who have lost a family member at the hands of the state. *Id.* at 702.

[60] *See* Haq, *supra* note 41, at 1023 (quoting a speech by Hafiz Saeed, who recounted an elderly woman telling him, "'I am a poor widow; I have done hard labor to bring these sons up. Now I have heard the call of jihad. I have no money to give, but I have this treasure, these sons. Take my second son and when he is martyred I will have the third one ready.'").

[61] *Id.* at 1024; *see also* Malathi de Alwis, *Motherhood as a Space of Protest: Women's Political Participation in Contemporary Sri Lanka, in* APPROPRIATING GENDER: WOMEN'S ACTIVISM AND POLITICIZED RELIGION IN SOUTH ASIA 185, 186 (Patricia Jeffery & Amrita Basu eds., 1998) (characterizing the Mothers' Front movement in Sri Lanka as one that drew large female support using "essentialist views of women that reinforce the notion of biology as destiny and legitimize a sex-role system that . . . encourages masculinized violence and destruction").

[62] Orna Sasson-Levy & Sarit Amram-Katz, *Gender Integration in Israeli Officer Training: Degendering and Regendering the Military*, 33 SIGNS 105, 110 (2007) ("Gender

of full citizenship and thus equality have been well traversed in the context of regular militaries in democratic settings. This Article does not revisit that terrain but accepts as a premise that there is some transferability around the citizenship arguments as connected to military service. The engagement of women in nonstate armed groups may follow from or be connected to the perception that participatory and democratic equality may follow, both within the group and in whatever polity emerges post-violence. Arguably, the analysis around mobilization for combatancy in nonstate or jihadist groups is more complex than that encountered in the democratic state. A variant of this mobilization analysis characterizes women's involvement as a form of resistance to prescribed gender roles in highly gender-stratified societies.[63] While there is no doubt that elements of such determinants can be identified, there is little evidence in the limited systematic analysis available that equality-driven challenges to existing gender norms are compelling.[64]

Capturing the density and complexity of women's choices in conflict settings is no easy task, and I do not claim that the work of capture should always be led by law.[65] Nevertheless, expanding our conceptual capacity to more fully capture the work women do in conflicted and violent settings is an important means to disrupt settled views and entrenched regulatory approaches. The landing point will likely bring turmoil since nuanced antiterrorism laws grafting onto and "seeing" gendered patterns may spread the net of counterterrorism norms more broadly, thereby running into both legal and cultural headwinds.

C.   *Unlikely Bedfellows: Feminist Theory Converges with Terrorism*

One unlikely sequel found in the post-9/11 intellectual terrain is the unexpected convergence of certain strands of theorizing by feminist international law scholars with far-reaching analyses of state responsibility doctrines by terrorism scholars. Unsurprisingly, neither spends much time acknowledging the intellectual debts owed to the other.

Beginning with the groundbreaking work of Hilary Charlesworth, Christine Chinkin, and Shelley Wright, feminist international law scholarship has identified the public/private dichotomy as central to understanding the patriarchal premises behind the concept of the state, the state-centric basis of

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integration of officer training can be seen, then, as a step toward equalizing women as soldiers and citizens."); *see also* ILENE ROSE FEINMAN, CITIZENSHIP RITES: FEMINIST SOLDIERS AND FEMINIST ANTIMILITARISTS (2000).

[63] *See, e.g.*, VICTOR, *supra* note 23, at 194 (reasoning that women volunteer for suicide bombings because it is the only way to be given equality and respect).

[64] *See* O'Rourke, *supra* note 25, at 703 (rejecting the notion that female suicide bombers act in rebellion of gender roles because their attacks harm, and are meant to harm, more liberal societies that embrace rights for women).

[65] *See generally* CAROLE PATEMAN, THE DISORDER OF WOMEN: DEMOCRACY, FEMINISM, AND POLITICAL THEORY (1989).

international law, and the marginalization of women's rights and experiences to its regulatory concerns.[66] A wealth of scholarship has followed that, while broadly conceding that the precise boundaries constituting the public and the private vary between cultures, accepts the "universal pattern of identifying women's activities as private, and thus of lesser value."[67] From this foundational point, two normative responses have followed. The first mostly accepts the existing scheme and works within existing arrangements to advance incremental improvements.[68] The second decries the dichotomy in its entirety and argues for dismantling the architecture of liberal theory and international law.[69] Of particular significance to the convergence I identify here are the claims made by feminist international law scholars that horizontal harms, and specifically violence between private parties, should not be merely considered abhorrent behavior but also incur state responsibility.[70]

One evident outworking of the 9/11 attacks and the subsequent intellectual responses thereto involves a complicated reassessment of the traditional assumptions about state responsibility for the actions of nonstate actors. One piece of this reassessment contains strong echoes of the feminist discourses on state responsibility for the actions of private actors. State rhetoric, as well as some practice-oriented and scholarly responses, have articulated demands to harden the positive obligations of states to prevent terrorism by placing higher standards of due diligence on states with respect to terrorist actors.[71] The calls

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[66] Hilary Charlesworth, Christine Chinkin & Shelley Wright, *Feminist Approaches to International Law*, 85 AM. J. INT'L. L. 613, 625 (1991) ("[M]odern international law rests on and reproduces various dichotomies between the public and private spheres.").

[67] *Id.* at 626.

[68] *See* Rebecca J. Cook, *State Accountability Under the Convention on the Elimination of All Forms of Discrimination Against Women*, *in* HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 228, 229 (Rebecca J. Cook ed., 1994).

[69] Doris Buss, Austerlitz *and International Law: A Feminist Reading at the Boundaries*, *in* INTERNATIONAL LAW: MODERN FEMINIST APPROACHES 87, 88 (Doris Buss & Ambreena Manji eds., 2005).

[70] *See* Hilary Charlesworth, *What Are "Women's International Human Rights"?*, *in* HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES, *supra* note 68, at 58; Christine Chinkin, *A Critique of the Public/Private Dimension*, 10 EUR. J. INT'L. L. 387, 395 (1999).

[71] Vincent-Joël Prouix, *Babysitting Terrorists: Should States Be Strictly Liable for Failing to Prevent Transborder Attacks?*, 23 BERKELEY J. INT'L. L. 615, 653-54 (2005). *Contra* Derek Jinks, *State Responsibility for the Acts of Private Armed Groups*, 4 CHI. J. INT'L. L. 83, 83-84 (2003) (claiming that higher standards of state responsibility will be "ineffective and counterproductive"). Since the September 11th attacks, the U.N. Security Council has repeatedly stressed that states bear responsibility to prevent terrorism from occurring. S.C. Res. 1368, U.N. Doc. S/RES/1368 (Sept. 12, 2001); S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001); S.C. Res. 1390, U.N. Doc. S/RES/1390 (Jan. 28, 2002); S.C. Res 1452, U.N. Doc. S/RES/1452 (Dec. 20, 2002); S.C. Res. 1455, U.N. Doc. S/RES/1455 (Jan. 17, 2003); S.C. Res. 1456, U.N. Doc. S/RES/1456 (Jan. 20, 2003); S.C. Res. 1526, U.N. Doc. S/RES/1526 (Jan. 30, 2004); S.C. Res. 1530, U.N. Doc. S/RES/1530 (Mar. 11, 2004); S.C. Res. 1535, U.N. Doc. S/RES/1535 (Mar. 26, 2005); S.C. Res. 1540,

for tightening obligations go beyond the well-defined general duties of a state "not to allow knowingly its territory to be used for acts contrary to the rights of other States."[72] Post-9/11 calls to expand the obligation to prevent the actions of nonstate actors have identifiable synergy with the feminist approach of enlarging the state's positive obligations to protect individuals. A narrow reading of this position constructs it as a change that does not challenge the traditional view of state responsibility per se. It thus comports with the feminist model of working within the private/public status quo in international law but inflates the boundaries to include certain kinds of acts perpetrated by certain actors (a form of *lex specialis*). Equally, one can view the doctrine of state responsibility expansion as indicating an emerging articulation of direct accountability for terrorist acts even where there is no agency test being met by the state, intensely relevant to the kind of new architecture thinking advanced by some feminist scholars.

In either model, thinking about the private actor dominates, with the indirect responsibility of the state for the actions undertaken by the nonstate entity being paramount.[73] Both feminist and terrorism scholars are preoccupied with the violence produced by private actors.[74] Both attach comparable importance to the distinction between negative and positive state responsibilities, to the consequences that follow from a lack of due diligence by the state, and to the kinds of rebuttable presumptions that should flow from ongoing uninterrupted violence emanating from a nonstate source. Despite the synergies of concern and similar conceptual genealogies, there is little recognition by either constituency of their common intellectual ground. We should be wary, however, of over-simplifying this finding. The narrow ground of expanded state responsibility flows in very different directions for both groups of

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U.N. Doc. S/RES/1540 (Apr. 28, 2004); S.C. Res. 1566, U.N. Doc. S/RES/1566 (Oct. 8, 2004); S.C. Res. 1611, U.N. Doc. S/RES/1611 (July 7, 2005); S.C. Res. 1617, U.N. Doc. S/RES/1617 (July 29, 2005); S.C. Res. 1624, U.N. Doc. S/RES/1624 (Sept. 14, 2005); S.C. Res. 1735, U.N. Doc. S/RES/1735 (Dec. 22, 2006).

[72] Corfu Channel (U.K. v. Alb.), 1949 I.C.J. 4, 22 (Apr. 9).

[73] In the terrorism studies field, this has led Prouix to argue that "a monumental shift in international law from direct to indirect state responsibility [is occurring]. Indirect responsibility is no longer a second-best when direct responsibility cannot be established; rather, it has supplanted direct responsibility as the dominant theme in the field of attribution." Prouix, *supra* note 71, at 637.

[74] For example, Tal Becker argues, in a mode reminiscent of mainstream feminist scholarship on intimate violence, that:

> Persistent State failure to prevent wrongs within the private domain can be as much a form of State policy as direct governmental action. But by conceiving of responsibility through the prism of the public/private distinction this method of State action can be concealed. The result is to shield the functioning State from direct responsibility when its wrongful conduct was a direct cause of a private harm.

TAL BECKER, TERRORISM AND THE STATE: RETHINKING THE RULES OF STATE RESPONSIBILITY 274 (2006).

scholars,[75] a matter to which this Article now turns in addressing the gendered "costs" of counterterrorism.

II.   POSITIONING COUNTERTERRORISM RESPONSES IN THE CONTEXT OF WOMEN'S ENGAGEMENT IN ETHNO-NATIONAL CONFLICTS

Until this point my analysis has roughly explored the agency and activist roles exercised by women in a range of conflict sites. As a review of the literature demonstrates, recent preoccupation with jihadist groups and with the phenomenon of suicide bombing has skewed policy and scholarly analysis to a smaller sub-set of those settings in which women are likely to be violent in decidedly masculine ways. To tackle the broader complexity of women's agency and activism in violence in conflict settings and the legal encounters that follow, I now turn to a micro-analysis of one ethno-national conflict in which women have engaged in a variety of combatancy related activities. Some of this "action" easily fits into the category of acts that "count" for combatancy purposes but others prove more elusive to capture by existing legal definitions of combatant engagement.[76]

Conflicts such as those in Northern Ireland and Sri Lanka show that women have used and exploited local cultural expectations as a means to advance their military roles.[77] For reasons specific to each culture in these settings, women are less likely to be highly active in the public sphere and thus are not presumed to be collaborators, informers, human shields, recruiters, or perpetrators of acts of destruction and death.

Akin to other ethno-national conflict settings, the social and political roles women undertook during the Northern Ireland conflict remain appreciably underexplored.[78] While a small number of important academic studies have

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[75] *See* Johnstone, *supra* note 9, at 14-16 (tracking the variance in feminist scholarly analysis of the public/private dichotomy).

[76] I note the obvious overarching caveat that in order to count as a combatant under the Geneva Convention III standard, each individual must take direct part in the hostilities of an armed conflict. To qualify for prisoner of war status each combatant must: (1) be a member of the armed forces of a party to the conflict, (2) be commanded by a person responsible for his subordinates, (3) have or carry a fixed distinctive sign recognizable at a distance, and (4) conduct operations in accordance with the laws and customs of war. *See* J. Ricou Heaton, *Civilians at War: Reexamining the Status of Civilians Accompanying the Armed Forces*, 57 A.F. L. REV. 155, 198-99 (2005) (describing the standards for direct participation in hostilities and for prisoner of war status).

[77] *See, e.g.*, ALISON, *supra* note 13, at 96-101, 122-61 (describing the use of behavior and dress as a means to gain access to targets, or as a means to avoid detection when engaged in activities such as carrying weapons, premised on the reluctance of primarily male agents of the state to defy conventions on searching women); *see also* ALLEN FELDMAN, FORMATIONS OF VIOLENCE: THE NARRATIVE OF THE BODY AND POLITICAL TERROR IN NORTHERN IRELAND 95-96 (1991).

[78] Marysia Zalewski, *Gender Ghosts in McGarry and O'Leary and Representations of the Conflict in Northern Ireland*, 53 POL. STUD. 201, 201 (2005) (explaining that feminist scholarship is "largely irrelevant" to politically significant conflicts, including the conflict in Northern Ireland).

emerged providing assessments of women's combatancy in the Irish Republican Army (IRA), and more recently in extremist Protestant paramilitary groups, such work has largely concentrated on the experiences and motivations of a small group of women. No work to date has investigated the parallel intersections with state conflict-management and counterterrorism strategies.[79]

The research of Miranda Alison and others on female Tamil Tiger (the more common name of the Liberation Tigers of Tamil Eelam, previously the most powerful Tamil militant separatist group in Sri Lanka) combatants in Sri Lanka and women members of the IRA in Northern Ireland highlights the empirical reality that women can and do engage in violent acts, and may actively support other women and men who carry out such acts in the context of ethno-national conflicts.[80] In this context, Alison also powerfully focuses our critical attention on what we mean by "combatancy" or "service to the war effort." This requires consideration of a range of roles women play in facilitating violence not only as direct perpetrators, but also as lookouts, weapon carriers, and protectors of those who carry out direct physical violence.[81] For example, it is estimated that between fifteen percent and one-third of the Tamil Tigers were female combatants.[82] Again, a broader recognition of these gendered roles and the kinds of acts that women, for culturally specific reasons, are likely to undertake in conflict may trigger substantive reevaluation of what kinds of acts in support of terrorism "count" for the purposes of criminal liability. We have some inkling of where this terrain takes us in the post-9/11 regulatory emphasis on "material support to terrorism" and other novel offenses meant to expand terrorism-related criminal liability, and the controversies that have followed.[83] Criminal liability alone is too narrow a prism to utilize in these

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[79] A recent and detailed study by Campbell and Connolly addressing the repression-mobilization nexus for combatants in Northern Ireland involved only three females. Colm Campbell & Ita Connolly, *The Sharp End: Armed Opposition Movements, Transitional Truth Processes and the Rechtsstaat*, INT'L J. TRANSITIONAL JUST. 1, 5 (2012). Researchers have noted that it is difficult to find women involved in combatant roles both because few women overall are involved in direct physical violence and because many who are involved were unwilling to discuss their activities and motivations. *See, e.g.*, Miranda Alison, *Women as Agents of Political Violence: Gendering Security*, 35 SECURITY DIALOGUE 447, 452 (2004) ("The scale and extent of women's presence and involvement in loyalist paramilitaries is very hard to gauge, and I found gaining access to women willing to talk about their involvement extremely difficult.").

[80] Alison, *supra* note 79, at 460; *see also* Sitralega Maunaguru, *Gendering Tamil Nationalism: The Construction of 'Woman' in Projects of Protest and Control, in* UNMAKING THE NATION: THE POLITICS OF IDENTITY AND HISTORY IN MODERN SRI LANKA 158, 163 (Pradeep Jeganathan & Qadri Ismail eds., 1995).

[81] *See* Alison, *supra* note 79, at 452 ("Loyalist women's activities have primarily been in the realms of 'welfare work' . . . , first aid, and cleaning, moving and hiding weapons.").

[82] *Id.* at 450.

[83] For example, the designation of "material support to terrorism" as a war crime has been viewed by many commentators, policymakers, and prosecutors as highly problematic. *See, e.g.*, Geoffrey S. Corn & Eric T. Jensen, *Trial and Punishment for Battlefield*

conflict settings, not least because conflict-ending deals are invariably premised on amnesty agreements curtailing the extent to which criminal liability can be sought.[84] This was the case in Northern Ireland, where an essential component of the peace deal was a de facto amnesty in the form of a system of prisoner release on license.[85] Even so, the status of acts undertaken during the conflict remains important because those who attain the status of combatants may gain from a variety of post-conflict arrangements designed to maintain combatant "buy-in" to the political deals made. Allowing combatants to benefit from these deals ensures that they are re-integrated into the political and legal economies of the state and results in combatants being furnished with elevated social status within their own communities. Hence, when women are left out of the combatant matrix, there is material, legal, and political loss to be counted.[86]

Significant archival and narrative research in the decade following the signature and ratification of the 1998 Good Friday/Belfast Agreement has demonstrated the depth and complexity of women's varied engagement with violent political movements.[87] Uncovering this complexity requires going beyond state incarceration statistics during the course of the conflict and merely examining the gender ratios for offenses charged using antiterrorist legislation.[88] Using a fundamental tool of feminist research methods – namely, "asking the woman question"[89] – gives a far more thought-provoking and

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Misconduct, in THE WAR ON TERROR AND THE LAWS OF WAR: A MILITARY PERSPECTIVE 161, 179 (Michael W. Lewis ed., 2009) ("Unlike murder in violation of the law of war, there is not even an international armed conflict precedent for [material support to terrorism]. [I]ncluding material support to terrorism . . . within the subject-matter jurisdiction of the Military Commission . . . seems motivated by the desire to avoid bringing such cases to trial in civilian courts.").

[84] *See* LOUISE MALLINDER, AMNESTY, HUMAN RIGHTS AND POLITICAL TRANSITIONS: BRIDGING THE PEACE AND JUSTICE DIVIDE 180-81 (2008).

[85] *See* Kieran McEvoy, *Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict,* 22 FORDHAM INT'L L.J. 1539, 1551 (1999); Daniel F. Mulvihill, *The Legality of the Pardoning of Paramilitaries Under the Early Release Provisions of Northern Ireland's Good Friday Agreement,* 34 CORNELL INT'L L.J. 227, 239 (2001).

[86] NÍ AOLÁIN, HAYNES & CAHN, *supra* note 12, at 131-51.

[87] *See, e.g.,* PETER SHIRLOW & KIERAN MCEVOY, BEYOND THE WIRE: FORMER PRISONERS AND CONFLICT TRANSFORMATION IN NORTHERN IRELAND 77-79 (2008); MARIE SMYTH ET AL., THE IMPACT OF THE POLITICAL CONFLICT ON CHILDREN IN NORTHERN IRELAND: A REPORT ON THE COMMUNITY CONFLICT IMPACT ON CHILDREN STUDY 9 (2004); BILL ROLSTON, CHILDREN OF THE REVOLUTION: THE LIVES OF SONS AND DAUGHTERS OF ACTIVISTS IN NORTHERN IRELAND (2011); Kieran McEvoy et al., *The Home Front: The Families of Politically Motivated Prisoners in Northern Ireland,* 39 BRIT. J. CRIMINOLOGY 175, 176 (1999); *see also* RUTH JAMIESON AND ADRIAN GROUNDS, NO SENSE OF AN ENDING: THE EFFECTS OF LONG-TERM IMPRISONMENT AMONGST REPUBLICAN PRISONERS AND THEIR FAMILIES (2002).

[88] The primary antiterrorism statutes in use through the course of the conflict were the Prevention of Terrorism Act and the Emergency Provisions Act, discussed *infra* Part IV.

[89] Katharine T. Bartlett, *Feminist Legal Methods,* 103 HARV. L. REV. 829, 836 (1990).

vibrant account of women's engagement in acts of political violence on both sides of the political divide in Northern Ireland. As I have explored in previous work, segregating out phases of the Northern Ireland conflict, from militarization (1969 to 1974), through police primacy (1975 to 1980), to active counterinsurgency (1981 to 1994), assists in understanding the dynamics of mobilization during various conflict periods.[90] An important takeaway message is that the state's use of blunt military force (such as curfews and internment), the crude manipulation of the criminal justice system (through nonjury trials, inquest curtailment, extensive arrest, and detention), and the deployment of extrajudicial use of force against suspected paramilitary actors by specialist military units all played contributing roles in perpetrating the conflict cycle and mobilizing violent actors.[91]

III.   AT ONCE FEMALE AND TERRORIST OR FEMALE AND COUNTERING TERRORISM

Turning now to the effects of prevailing counterterrorism regulation on women's lives, this Article explores the extent to which what are often called the secondary effects of antiterrorism regulatory schemes are understood – or intended – to have gendered consequences. In the past decade there have been some efforts to document the gender dimensions and impacts of counterterrorism measures.[92] Much of the analysis has been directed at the practices of the U.S. military in Iraq, Afghanistan, and Guantánamo Bay and addresses the manner in which gender is embedded in the differential impacts of both militarized and non-militarized counterterrorism policies targeted primarily at radical jihadist groups.[93] The literature operates on the "unspoken assumption" that because men are those most likely to be arrested, detained, or killed for their actions they necessarily suffer the most.[94] The emphasis that

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[90] NÍ AOLÁIN, *supra* note 17, at 26-29 (arguing that "the key to this analysis lies in the understanding that the use of force manifests clear patterns and phases of existence and transformation," and proceeding to lay out the phases).

[91] *See id.* at 247 ("[T]he use of force and the efforts to control conflict remain undeniably intertwined, bound into one another's embrace as the state struggles to maintain a tight grip on ever-persisting internal crisis.").

[92] *See, e.g.*, CTR. FOR HUMAN RIGHTS AND GLOBAL JUSTICE, A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM 9 (2011), *available at* http://chrgj.org/wp-content/upl oads/2012/07/locatinggender.pdf (studying the effects of U.S. counterterrorism measures on women and sexual minorities).

[93] *See, e.g.*, Hilary Charlesworth & Christine Chinkin, Editorial Comment, *Sex, Gender, and September 11*, 96 AM. J. INT'L L. 600, 600 (2002) (questioning the absence of women in the responses to terrorism after 9/11); Ratna Kapur, *Un-Veiling Women's Rights in the "War on Terrorism,"* 9 DUKE J. GENDER L. & POL'Y 211, 214 (2002) (analyzing the assumptions about gender issues in the War on Terror and arguing that those assumptions "tend to obscure more than they reveal"); Timothy Kaufman-Osborn, *Gender Trouble at Abu Ghraib?*, 1 POL. & GENDER 597, 597 (2005) (exploring and criticizing the feminist response to the photographs of Iraqi detainees at Abu Ghraib).

[94] Jayne C. Huckerby & Margaret L. Satterthwaite, *Introduction* to GENDER, NATIONAL

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one draws from the liberty-security literatures obscures the extent to which "women, men, and sexual minorities experience counter-terrorism, rendering the full scope of gender-based rights violations invisible to policy makers and the human rights community alike."[95]

A deeper mapping of the gendered effects of counterterrorism measures would give us greater understanding of the gendered effects of both gender-specific and gender-neutral counterterrorism measures. For example, it might reveal the gendered power and effects of interrogating female family members in the absence of their male counterparts. It could demonstrate how ongoing interface between home spaces and agents of the state searching for those suspected of terrorist acts involves an undulating relationship between the public and the private the consequences being most profoundly experienced by women. It might arouse feminist curiosity as to connections between the ongoing profiling, arrest, and detention of male actors in suspect communities with the "immiseration of their dependents," especially but not exclusively in highly gender-stratified societies.[96] The unseen and collateral damage of counterinsurgency policies remains largely undocumented in the formal pleadings and advocacy that results from challenges to detention. In the critical assessment of international human rights organizations, we rarely find reference to the impact on the spouses and family members of those left behind by rendition, detention, imprisonment, or targeted killing.[97] There is also little policy or scholarly assessment of the ways in which female combatants within the custody of the state differentially experienced counterterrorism regimes through arrest, detention, trial, and imprisonment. I use the Northern Ireland case study below to explore some of these conspicuous gaps.

Researchers have yet to systematically document the extent to which the state's counterinsurgency activity targeted women and the effects of state counterterrorism policies on women in Northern Ireland. I address the experiences of both female state actors engaged in counterterrorism as well as the interactions of violent female actors with national security policies and

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SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES, *supra* note *, at 1, 2 ("In a human rights analysis of counter-terrorism, the often unspoken assumption that men suffer the most – both numerically and in terms of the nature of rights violations endured – has obscured the different ways that women, men, and sexual minorities experience counter-terrorism.").

[95] *Id.*

[96] *See* Cyra Akila Choudhury, *Globalizing the Margins: Legal Exiles in the War on Terror and Liberal Feminism's War for Muslim Women*, 9 INT'L REV. CONSTITUTIONALISM, no. 2, 2010 at 1, 25 (acknowledging that punishment for men who are "the primary economic earners and protectors of their families" harms both the men and their dependents).

[97] *But see* Ramzi Kassem, *Gendered Erasure in the Global "War on Terror": An Unmasked Interrogation*, *in* GENDER, NATIONAL SECURITY AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES, *supra* note *, at 15, 17 ("Although it has been largely invisible, 'War on Terror' rendition, interrogation, and detention practices that ensnare men have a concrete and indisputable impact on women, especially spouses.").

regulatory frameworks. Of course, given the broad sweep of emergency laws in the jurisdiction, thousands of women were also directly and indirectly swept up by mass house searches, roadblocks, curfews, and limitations on the freedom of movement at various points through the conflict. In this context, one might conceive of the broader effects of armed conflict as being applicable to both men and women, recognizing some specificity of experience aligning with the particularity of male and female roles in a gender-stratified and socially conservative society.

Throughout the course of the conflict in Northern Ireland, women were represented in both the state's police and military entities.[98] In military and policing contexts, women were part of highly masculine and hierarchical forces. For women police officers in particular, the notion of a "front line" would have been meaningless. As with their male colleagues, they were potentially targets while formally on duty and consistently while off duty, and all lived (unlike their military counterparts) in civilian settings, accessible by violent nonstate actors who targeted them both on and off duty.[99] A total of 302 police officers were killed during the conflict in Northern Ireland, and almost 9000 were injured.[100] These numbers include the fourteen women police officers and military personnel killed between 1969 and the ceasefires of the early 1990s.[101]

As police, military personnel, and prison officers, women were on the front line of enforcing the state's counterterrorism policies. Those policies ranged from detention without trial, extended detention, expansive stop-and-search powers, strip searching (in prisons), nonjury trials, denial of access to legal counsel, and internal exile within the United Kingdom.[102] Thus, while the "face" of counterterrorism in Northern Ireland was predominantly male, it was not exclusively so. Women were actively engaged in making, shaping, and enforcing counterterrorism policies, laws, and strategies – an intersection that feminists should not ignore as we reflect on the intersectionalities that coexist

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[98] *See, e.g.,* David McKittrick, *Female RUC Officers to be Armed,* INDEPENDENT, Aug. 12, 1993, at 2 (stating that "[j]ust over 10 per cent of the RUC's 13,000 officers are women" and that "[s]ix policewomen have been killed in the troubles").

[99] *See* David McKittrick, *Danger and Stress Take Toll on RUC Officers,* INDEPENDENT, Feb. 5, 1992, at 2 ("Police officers in Northern Ireland are very well paid but their lives are in constant danger.").

[100] *Conflict and Hope in Northern Ireland,* CNN, http://web.archive.org/web/200708290 11121/http://edition.cnn.com/SPECIALS/2000/n.ireland/police.html (last visited Apr. 8, 2013).

[101] *See* Malcolm Sutton, *An Index of Deaths from the Conflict in Ireland,* CAIN, http://ca in.ulst.ac.uk/sutton/crosstabs.html (last visited Mar. 31, 2013) (adding the total number of deaths of women working for state actors including the British Army, Royal Ulster Constabulary, British Police forces, and Irish National Liberation Army, but excluding deaths of civilians, Republican and loyalist paramilitaries, and activists).

[102] CLIVE WALKER, BLACKSTONE'S GUIDE TO THE ANTI-TERRORISM LEGISLATION §§ 9.01-9.85 (2d ed. 2009).

for women in the counterinsurgency sphere, and the varied presence of women within these settings.

Definitional entry points are important in qualifying what counts as activity in nonstate paramilitary organizations in Northern Ireland. At its height, the IRA was estimated to have only a few hundred active volunteers engaged in violent activities, of which a small percentage were women.[103] In order for such a group to sustain itself over the decades of conflict, a much wider social and communal web of support must have existed. The broader set of "care" and "support" categories likely had a gendered hue, lending a more complex and dense picture of the scale of support women gave to violent actors.[104] This narrative of action maps onto earlier analysis in this Article, reflecting on the gendered nature of what we call primary and secondary acts of violence or terrorism.[105] More recently, memorialization sites in Northern Ireland by national communities illustrate the perceived contribution of women to the national struggle, documenting both the "hard" side of violent engagement, as well as the "soft" side of support.[106]

The most notorious and visible instance of paramilitary women's political action came through the collective decision of IRA and Irish National Liberation Army (INLA) prisoners to refuse to wear prison uniforms or abide by prison rules in the late 1970s in order to protest of the lack of recognition for their claimed status as political prisoners.[107] Paramilitary women prisoners in Armagh women's jail began a parallel "dirty protest" in February 1980.[108] This involved a collective political decision by female paramilitary offenders to refuse to empty chamber pots, wash or clean their cells, or wear prison

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[103] *See* Mia Bloom et al., *Tiocfaidh ár Mná: Women in the Provisional Irish Republican Army*, 4 BEHAV. SCI. OF TERRORISM & POL. AGGRESSION 60, 63 (2012) ("Across the course of the conflict, women account for approximately 1 in 20 Volunteers in the PIRA database.").

[104] *See, e.g.*, BEGOÑA ARETXAGA, SHATTERING SILENCE: WOMEN, NATIONALISM, AND POLITICAL SUBJECTIVITY IN NORTHERN IRELAND 110 (1997) (suggesting that though women engaged in nationalist struggles were represented as powerful, that power "[did] not stem from their engagement in action but from the endorsement of their sons, whose sacrifice cause[d] them so much grief").

[105] *See* Carl Wellman, *On Terrorism Itself*, *in* ASSENT/DISSENT 255 (Joe P. White ed., 1984) (distinguishing between "the primary and the secondary targets of terrorism").

[106] Kris Brown, *Irish Republican Memorialization of Women – Partisan but Faceted* (forthcoming 2013) (on file with author).

[107] *See generally* NELL MCCAFFERTY, THE ARMAGH WOMEN (1981). Notably some former women prisoners have identified how the decision of the women to engage in this protest was deeply embarrassing to the male Republican movement. One interview recalls:

> [T]hey didn't want us on dirty protest because of our periods. They didn't say that; they said that we were women, that we were different. But we knew it was because of our periods. These were men who had killed, had been imprisoned and they couldn't say the word "period!"

ARETXAGA, *supra* note 104, at 127.

[108] MCCAFFERTY, *supra* note 107, at 9.

clothing.[109] The result was an extended period of confrontation with the British state, culminating in the hunger strikes of 1981, in which ten male prisoners starved themselves to death in the Maze/Long Kesh prison.[110] The prison policy was an integral part of the state's counterterrorism strategy; prisons and their paramilitary populations were viewed as essential to "taming" or managing the terrorist threat.

Prisons were one of the main points of contentious interface for female paramilitaries with the state. The prison regime in Northern Ireland presented a microcosm of broader societal tensions. Throughout the conflict, prisons remained a space of hostility, state challenge, and radical action.[111] They were also deeply gendered spaces in which both the state and nonstate agents used the strictures of cultural assumptions around the masculine and feminine as a way to undo the discipline of the institutions (a de facto means to "undo" the state) within the confines of incarceration. As global counterterrorism discourses have heightened our attention to what occurs within detention spaces, most notably in Guantánamo Bay and Afghanistan's Bagram Airfield, the Northern Ireland experience attests to the mobilization and radicalization that can spread from prison to broader society. It points to the pitfalls in store for any state when prison becomes emblematic of the larger struggles between the state and nonstate entities, as the vicissitudes of the terrorism-national liberation-occupation triad are played out through the policies of detention, prisoner treatment, and access to and accountability for violations of paramilitary members' legal rights.

Women who were imprisoned for terrorist offenses in Northern Ireland were subject to a distinctly different prison experience than their counterparts who were "ordinary decent criminals." As a result of long-running disputes between the prison authorities and the paramilitary organizations over the recognition of "political status" for those belonging to paramilitary organizations, these prisoners were housed separately and subject to a modified and heightened security regime.[112] Women prisoners were subject to a regime of prison management that had much in common with the regime experienced by male paramilitary prisoners.[113] In addition, women prisoners experienced a range of gender-specific and sex-based management techniques, all of which were justified as necessary under the banner of security, as well as to contain the potential hazards of housing female terrorists. The most notable of these actions was regimented strip searching of female bodies, including their internal cavities, following all visits or movement within the prison or

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[109] *Id.* at 9-10.

[110] C.P. Walker, *Irish Republican Prisoners – Political Detainees, Prisoners of War or Common Criminals?*, 19 IRISH JURIST 189, 198 (1984).

[111] *See generally* KIERAN MCEVOY, PARAMILITARY IMPRISONMENT IN NORTHERN IRELAND: RESISTANCE, MANAGEMENT, AND RELEASE 354 (2001).

[112] *Id.* at 91.

[113] Laura Weinstein, *The Significance of the Armagh Dirty Protest*, 41 ÉIRE-IRELAND 11, 13 (2006).

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externally to court appearances.[114] Strip searching was generally carried out in the presence of male guards, and neither menstruation nor pregnancy provided exemption.[115] Female prisoners consistently alleged verbal abuse, including sexually offensive language and psychological maltreatment with distinctly sexual overtones. The dirty protest further compounded the alienation and extreme regulation of female prisoners and resulted in women being almost perpetually confined to their cells, where they experienced highly unsanitary conditions for long periods of time.[116] The level of abuse by prison guards against female prisoners was intense and protracted as a result of this protest. It also catapulted these paramilitary females into the public domain, further exacerbating their status as aberrational and deviant females, a discourse not dissimilar to the contemporary narratives that attach to female suicide bombers.

Notably, the feminist movement in Ireland and the United Kingdom struggled to adequately and consensually address the female paramilitary prison experience and its context. The broader and deeper issues of territory, security, and sovereignty overshadowed all efforts to address the sexual violence and harm female prisoners were subjected to, and froze the feminist response to one of fracture and dissonance.[117] Counterinsurgency measures should not only be understood as formal legal lexicon, but as foundational to a broad range of practices adopted by the state and its institutions to address politically nonconformist behavior. The prison was an essential site for such measures, and cemented a triangle of control, agency, and ideology in which paramilitary women prisoners were central in every sphere. While the range of sex-based abuses that women paramilitaries experienced was intense and might (without respect to ideological commitment or agreement) be assumed to draw feminist attention and concern, the opposite was in fact the case. Throughout the course of the conflict, feminists and women activists stepped away from identification with these women, and from the range of state actions being taken against their bodies.[118] The discomfort felt by feminists and women's rights activists points to an interesting quandary as we consider the interface of

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[114] MIA BLOOM, BOMBSHELL: WOMEN AND TERRORISM 91 (2011) ("According to [the women incarcerated in Armagh and Maghaberry prisons], most of the searches involved highly invasive probing of all orifices . . . .").

[115] *Id.*

[116] Weinstein, *supra* note 113, at 11 (describing the dirty protest, which resulted in women being locked in their "waste-encrusted cells" for twenty-three hours of the day); *see also* Leila Neti, *Blood and Dirt: Politics of Women's Protest in Armagh Prison, Northern Ireland, in* VIOLENCE AND THE BODY: RACE, GENDER, AND THE STATE 77 (Arturo J. Aldama ed., 2003).

[117] *See* Weinstein, *supra* note 113, at 19 ("Feminists were divided over whether or not the Armagh women were a women's issue or a republican issue, and consequently the women's movement split over whether to support the female dirty protesters.").

[118] BLOOM, *supra* note 114, at 84 ("Large segments of the feminist movement viewed the women of the PIRA with suspicion and, at times, contempt. In fact, within the Irish feminist movement they were called the slaves and dupes of the men.").

counterterrorism policies and feminist activism. The women who are the subjects of state action in the counterinsurgency plane are not attractive actors to feminists and rights activists. They are viewed as markedly aberrational, unsympathetic, and outside the realm of compassion. Moreover, they are not regarded as being independent bearers of rights. Articulating a response to address violations of paramilitary detainees' rights involves mounting a complex challenge to the state, and risks the advocate being viewed as a "fellow traveler" with those who threaten our security and the common good. Being female does not alter that fundamental dynamic.

There is obviously a continuum in political and military acts of defiance, all of which defy a conventional understanding of women as passive victims of conflict or authoritarian regimes. Women's support for extremist politics and the resort to violence in achieving political objectives are complex phenomena.[119] Acknowledging that women play violent roles in conflict, or support violence, has been a difficult process for many feminists, and is an ongoing conversation for feminist theorists. Acknowledgment itself, however, should not underplay the extent to which the vision of the violent female terrorist can become a captured space for women in the discourses around terrorism. We see a tendency to move between extremes: women appear as victims or as violent perpetrators at two ends of one spectrum. There is little room to acknowledge the intersectionality of roles that women adopt and move between, or the essentialism inherent in what gets to count as "women's space" in the discourses around violence. Moving beyond the extremes, however, there is evidently greater capacity to affirm agency and complexity, and to more fully understand how women's actions and experiences follow from and are linked to violent action, whether by state or nonstate actors. Moving directly to the "counter" terrorism space without fully considering and placing women's experiences of violence and the state seems too fast and precipitous an action, and one that feminist engagement should avoid.

IV. EMERGENCY POWERS IN GENERAL AND IN GENDER

This Part addresses the gendered impact of national security laws, and the gendered effects of national security policies that seem facially neutral. In the context of post-9/11 preoccupations with terrorism, Judith Gardam has noted that "[w]omen are affected by the war on terror to a much greater degree and number than detainees or terror suspects."[120] This broad-brush effect was evident in Northern Ireland, as women were integral parts of broader communities under surveillance, subjected to search and seizure, and directly connected to (generally male) family members who were in direct confrontation with the state.

There were multiple points of counterterrorism interface projecting women to the front line of contested engagement with the British state. Emergency

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[119] *See generally* Carol S. Lilly & Jill A. Irvine, *Negotiating Interests: Women and Nationalism in Serbia and Croatia, 1990-1997*, 16 E. EUR. POL. & SOCIETIES 109 (2002).

[120] Gardam, *supra* note 2, at 65.

powers in Northern Ireland have a long and distinguished history. Emergency is no new phenomenon to the jurisdiction, predating the modern period of political instability in Northern Ireland and finding its foundation in the very creation of the state.[121]

The primary emergency laws in force in Northern Ireland throughout the modern phase of the conflict were the Northern Ireland (Emergency Provisions) Act 1991 (EPA)[122] and its counterpart, the Prevention of Terrorism (Temporary Provisions) Act 1989 (PTA).[123] Both were initially created as temporary pieces of legislation and were extended on a consistent basis, and both have been consolidated and made permanent. The EPA is an evolved version of a piece of legislation first passed in 1973. Its forerunner repealed the Special Powers Act, which symbolically represented to the minority Catholic community the dominance and undemocratic nature of the state. Paradoxically, the 1973 legislation re-enacted many of the same provisions. Both statutes are "designed to obtain convictions in cases involving those suspected of paramilitary activity, based on confessions obtained through prolonged detention and intense interrogation."[124] The 1975 government-sponsored review of the EPA by the Gardiner Committee[125] saw some minor adjustments in the legislation, which by 1978 was consolidated with its 1973 parent act into one piece of legislation.[126] In 1984 another government-sponsored review recommended significant adjustment and expansion of the emergency powers.[127] Government-sponsored reviews were a consistent companion of the emergency regime over the past twenty-five years in Northern Ireland. However, their mandate never included assessing the gendered implication of the legislation and its impact. In 1987 the EPA was further expanded by the incorporation of the Northern Ireland (Emergency Provisions) Act 1987, which operated in conjunction with the EPA of 1978.[128] Close to the end phase of the conflict, the EPA was introduced in 1991, consolidating earlier legislation,

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[121] *See* NÍ AOLÁIN, *supra* note 17, at 21 ("From the creation of the state, emergency legislation was entrenched and normalized as a daily part of state procedure, becoming one of the primary focuses for discontent articulated by the civil rights movement of the 1960s. The centrality of emergency laws to the functioning of the unionist regime is an early indicator of the abnormal political reality of the state.").

[122] Northern Ireland (Emergency Provisions) Act, 1991, c. 24 (U.K.).

[123] Prevention of Terrorism (Temporary Provisions) Act, 1989, c. 4 (U.K.).

[124] LAWYERS COMM. FOR HUMAN RIGHTS, HUMAN RIGHTS AND LEGAL DEFENSE IN NORTHERN IRELAND: THE INTIMIDATION OF DEFENSE LAWYERS, THE MURDER OF PATRICK FINUCANE 1 (1993).

[125] REPORT OF A COMMITTEE TO CONSIDER, IN THE CONTEXT OF CIVIL LIBERTIES AND HUMAN RIGHTS, MEASURES TO DEAL WITH TERRORISM IN NORTHERN IRELAND, 1975, Cmnd. 5847 (U.K.).

[126] Northern Ireland (Emergency Provisions) Act, 1978, c. 5.

[127] Fionnuala Ní Aoláin, *The Fortification of an Emergency Regime*, 59 ALB. L. REV. 1353, 1355 (1996).

[128] Northern Ireland (Emergency Provisions) Act, 1987, c. 30.

creating new offenses, and bringing into the EPA's domain provisions of the PTA that were applied only in Northern Ireland.[129]

By the late 1990s, it had become the British government's view that, despite the apparent successes of the Northern Irish peace process, permanent counterterrorist legislation was required – not specifically for Northern Ireland, but for the whole of the United Kingdom.[130] This view predated the events of 9/11 and was formed on the basis of then articulated, but as yet unproven, threats from global terrorist organizations. The outcome was the Terrorism Act 2000,[131] which remains in force today. This substantial piece of legislation was designed to be a comprehensive code of the United Kingdom's counterterrorism law. As Adam Tomkins notes:

> It provides the legal definition of terrorism used in UK law; it makes extensive provisions concerning proscribed organizations; it extends the criminal law to deal with a number of specific terrorist offenses; and it confers extended powers on the police, as well as legislating for a range of other matters.[132]

The Terrorism Act 2000 did not, however, long remain a singular item on the United Kingdom's counterterrorism menu. Indeed, "[w]ithin a few weeks of 9/11, Parliament had passed the Anti-terrorism, Crime and Security Act 2001, and in the years since, the Prevention of Terrorism Act 2005, the Terrorism Act 2006, and the Counter-terrorism Act 2008 have been added."[133] From a feminist perspective, there are two important elements of these measures to acknowledge. First, the seepage of extraordinary law into the ordinary and the ease of slippage from outsider counterinsurgency frameworks into the regular law of the land should pose broader theoretical and practical questions about the construction of the "ordinary" and what such delineations mean for women. Second, given the absence of a gendered narrative on the experience of women under emergency law over three decades in Northern Ireland, and the wholesale export of these rules to the entire United Kingdom following the Good Friday/Belfast Agreement, awareness of the gendered impact of counterterrorism norms is important to tracking and challenging contemporary manifestations of these norms for women.

Various international human rights bodies, including the European Court of Human Rights, the United Nations Human Rights Committee, and a number of prominent international nongovernmental organizations, have consistently

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[129] Ní Aoláin, *supra* note 127, at 1356.

[130] *See* Ní AOLÁIN, *supra* note 17, at 64-65 (describing state recommendations for "the imposition of permanent counter-terrorist (emergency) legislation upon the normal legal framework as part of the ordinary law"); David Bonner, *Responding to Crisis: Legislating Against Terrorism*, 122 L.Q. REV. 602, 619 (2006) (describing the 1974 passage of counterterrorism legislation as "a graphic warning of the permanence of the provisional, a feature of 'emergency' legislation").

[131] Terrorism Act, 2000, c. 11.

[132] Adam Tomkins, *Criminalizing Support for Terrorism: A Comparative Perspective*, 6 DUKE J. CONST. L. & PUB. POL'Y 81, 85 (2010).

[133] *Id.*

found the operation of Northern Ireland's draconian legislative measures to be in breach of the United Kingdom's international human rights treaty obligations.[134] The substance of gendered impact was not raised or addressed in litigation or treaty-body scrutiny of the operation of antiterrorism norms during the course of the conflict in Northern Ireland. This raises a broad question about the limited effect of gender mainstreaming on the work of the international bodies whose function it is to assess whether states deploying extraordinary law have breached human rights norms.

Before the events of September 11, gender mainstreaming had only minimally affected the work of the international bodies whose function included appraisal of whether states deploying extraordinary law had breached human rights norms. As one reflects on the intersection of counterinsurgency measures with international human rights obligations, a minimum step would appear to be the identification of gendered effect, specifically using the U.N. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)[135] as a point of review. My review of CEDAW Committee concluding reports indicates that the Committee has given little, if any, attention to assessing the gendered effects of counterterrorism laws to date.[136] Where terrorism is referenced, it generally serves as a basis for excusing a lack of progress on the implementation of women's rights.

In other parts of the institutional human rights community, some inroads have been made toward addressing gender and counterterrorism interfaces, particularly in the work of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism.[137] Special Rapporteur Martin Scheinin pressed multiple

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[134] *See* David Turns, *The "War on Terror" Through British and International Humanitarian Law Eyes: Comparative Perspectives on Selected Legal Issues*, 10 N.Y. City L. Rev. 435, 454 (2007) ("From 1957 to 1984, and again from 1988 to 2001, the 'emergency' was considered to justify continuous derogations from the U.K.'s obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms, and there were many occasions on which British soldiers were accused of using excessive force – judged by the standards of the ordinary criminal law and European human rights law.").

[135] United Nations Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

[136] An exception is the Concluding Comments on Algeria that reference terrorism, though in the context of women as particular victims. U.N. CEDAW, *Concluding Comments: Algeria*, ¶ 19, U.N. Doc. C/DZA/CC/2, (Feb. 15, 2005), *available at* http://www 2.ohchr.org/English/bodies/cedaw/docs/CEDAW-CC-DZA-0523916E.pdf ("In particular, the Committee finds that its concern about the consequences of the physical violence suffered by women from terrorist groups . . . and the situation of wives of disappeared persons . . . have been insufficiently addressed.").

[137] Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, transmitted by Note of the Secretary-General*, U.N. Doc. A/64/211

recommendations requesting that states cease inappropriately targeting women using broad-brush tactics and indiscriminately applying counterterrorism policies.[138] This included a proposal that countries cease detaining and mistreating women and children "to produce information on male family members suspected of terrorism."[139] His institutional recommendations ultimately encouraged the Human Rights Council, the CEDAW Committee, and other human rights monitoring bodies,[140] as well as the Security Council's Counter-Terrorism Committee, to incorporate gender assessment and gender impact in examining the effectiveness, effect, and human rights compliance aspects of state policies.[141] The Special Rapporteur's recommendations were laudable, and the general thrust of his approach was to institutionally counter stereotypical perceptions about terrorists only being men, and counterterrorism as a quintessentially male concern. The initial purpose of his challenge to the masculinity of the discourse was to remind institutions and states of the impact terrorism and counterterrorism practices have on the enjoyment of human rights by women.[142] To state the obvious, this framing of counterterrorism's

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(Aug. 3, 2009) (by Martin Scheinin).

[138] *Id.* ¶ 53(c) (recommending that member states "end impunity for all direct and collateral gender-based human rights violations in the name of countering terrorism, including economic, social and cultural rights violations, and provide redress for victims, including through reparations schemes that are non-discriminatory and equality-enhancing and provide recognition for all forms of gendered harms, including for victims targeted on the basis of sexual orientation and gender identity").

[139] *Id.* ¶ 53(g).

[140] The complaint in *Al-Asad v. Djibouti* to the African Commission on Human and Peoples' Rights illustrates an emphasis on the effects of state counterterrorism strategies on family life. Al-Asad v. Djibouti, Commc'n 383/2010, African Comm'n H.R. (2011). In a supporting declaration submitted to the Commission, Zahra Mohamed told of her husband's arrest and her tireless search for him, including the filing of an unsuccessful habeas petition in Tanzanian courts and a tracing request with the International Committee for the Red Cross, the Council of Europe, and other international organizations. *Id.* ¶ 13 ("While Mr. al-Asad was detained, his wife, Zahra Ahmed Mohamed, and her brother-in-law searched frantically for Mr. al-Asad in Tanzania. Mr. al-Asad's father, Abdullah al-Asad, searched in Yemen for his son, and when it became apparent that he was not there, he joined Zahra Ahmed Mohamed's search in Tanzania. Abdullah al-Asad and Zahra Ahmed Mohamed devoted more than a year to their search for Mohammed al-Asad.").

[141] *See generally* Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *supra* note 137. Notably the effect of his efforts was partly reflected in the Human Rights Council's requirement that the Special Rapporteur's mandate "integrate a gender perspective into [its] work" in 2007. Martin Scheinin, *Foreword* to GENDER, NATIONAL SECURITY, AND COUNTER-TERRORISM: HUMAN RIGHTS PERSPECTIVES, *supra* note *, at xi, xi.

[142] *See generally* Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism on His Mission to Turkey*, U.N. Doc. A/HRC/4/26/Add.2 (Nov. 16, 2006) (by Martin Scheinin) (examining, inter alia, the operation of laws and schemes related to the possibility of providing compensation to those who have lost homes and were

gender politics distinctly avoids entanglement with the complex causalities of insecurity, mobilization, and radicalization. The emphasis on empathy for female harm reboots female victimization at the forefront of counterterrorism mitigation strategies from which a number of possible paths follow.

The first path is the impulse to protect and defray the harms to women resulting from aggressive and unrestrained counterterrorism policies. Though not undesirable per se, this path invariably functions to reinvigorate a politics of gender essentialism and holds a fundamentally disempowering motif for the subjects of its well-intentioned practice.[143] The second path holds out to women the intangible benefit of countering radicalism by enlightened practices. The institutional articulation of such sentiment is illustrated by the terminology of former United Nations High Commissioner Mary Robinson, who urged that rule of law should be promoted "not just because it's the right thing to do, but because it is the most effective strategy in countering the forces which fuel terrorism."[144] In this vein scholarly sentiment has tangled with the framing that "empowering women" can be a "vital way of combating terrorism,"[145] thereby making gender a national security issue and giving the double benefit of advancing gender equality whilst countering terrorism. Seductive as the thought may be, we should be wary of the glitter. The limits of progressive equality briefing in the context of counterterrorism policy are poignantly proven by the Special Rapporteur's decision in 2009 to go beyond

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internally displaced as a result of the violence between the PKK and the Turkish army, giving special attention to how compensation schemes affect women); Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶ 38, U.N. Doc. A/HRC/6/17 (Nov. 21, 2007) (describing how the delays caused at security check points were increasing the risks of childbirth for Palestinian women); Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism on His Mission to Peru*, ¶ 41, U.N. Doc. A/HRC/16/51/Add.3 (Dec. 15, 2010) (examining the gendered effects of compensation for terrorist acts in Peru).

[143] *See* Nesiah, *supra* note 8, at 137-38.

[144] Mary Robinson, The Rule of Law: Striking a Balance in an Era of Terrorism, Keynote Address at The International Rule of Law Symposium: A Plan for Action (Sept. 16, 2006) (transcript available at http://apps.americanbar.org/rolsymposium/docs/mary_robinson_keyn ote.pdf). Resonant language on linking military intervention to securing women's rights has a connecting and overarching security paradigm. In the words of former First Lady Laura Bush, "the fight against terrorism is a fight for the rights and dignity of women." Laura Bush, Radio Address (Nov. 17, 2001), (transcript available at http://www.presidency.ucsb.e du/ws/?pid=24992).

[145] Bennoune, *supra* note 10, at 49; *see also* Barbara Ehrenreich, *A New Counterterrorism Strategy: Feminism*, *in* STOP THE NEXT WAR NOW: EFFECTIVE RESPONSES TO VIOLENCE AND TERRORISM 78 (Medea Benjamin & Jodie Evans eds., 2005) (advocating for supporting human rights for women and girls in order to combat terrorism in areas where extremist Islamic insurgency is prevalent).

reporting on harms to women.[146] He attempted to systematically engage with a range of gender issues, including targeting sexual minorities under the mantle of antiterrorism legislation; the use of homophobia and other gendered techniques to break down the resistance of suspected male terrorists in detention; and examining "the socially constructed, diverse, and dynamic roles of men and women, including those with varying gender identities and sexual orientations."[147] The Report garnered tremendously negative political responses by a variety of states, resulting in the U.N. General Assembly's decision to delete all references to the report from its annual resolution on human rights and counterterrorism.[148] The conclusion one can draw is awkward. A gendered account of counterterrorism strategies that concentrates on female harm can carve out acceptable political space. But beyond the language of victimhood and defense of the female, there is little political room for a full engagement with sex, sexism, and gender intricacies in the counterterrorism terrain.

While the Special Rapporteur's recommendations are laudable, this Article suggests that there is much knowledge to be gleaned from jurisdictions that have undergone long-term exposure to emergency regulation. The gendered histories of regulating terrorism in these jurisdictions, including Northern Ireland, require greater exposure in order to inform and frame the analysis and knowledge base that we start from with post-9/11 counterterrorism measures.

V.   STOP-AND-SEARCH POWERS

In the context of considering specific counterterrorism measures, a range of powers could be more fully considered, given their breadth and scope. For the purposes of this Article, however, I focus on a review of stop-and-search powers under the United Kingdom's emergency law framework. As noted above, in earlier work on the application of emergency laws to Northern Ireland, I identified three phases to the conflict: militarization, normalization, and active counterinsurgency.[149] The reliance on law to "manage" the conflict varied in these phases, but the use of certain powers was consistent and dependable. Stop-and-search powers fell into this category and were regulated by the PTA and the EPA, as discussed above.[150] Stop-and-search powers were

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[146] Scheinin, *supra* note *, at xii ("The 2009 annual thematic report to the General Assembly systematically confronted the gender dimensions of terrorism and counter-terrorism. . . . [The] report did not limit itself to addressing the human rights of women in the fight against terrorism.").

[147] *Id.* at xiii.

[148] *See* G.A. Res. 64/168, U.N. Doc. A/RES/64/168 (Jan. 22, 2010). For the votes, see INT'L SERV. FOR HUMAN RIGHTS, OVERVIEW OF THE 64TH SESSION OF THE GENERAL ASSEMBLY 4 n.13 (2010) ("The vote on OP12 was 77 in favour, 73 against, and 23 abstentions. The vote on OP19 was 81 in favour, 73 against, and 20 abstentions.").

[149] *See supra* note 90 and accompanying text.

[150] *See supra* notes 122-23. Sections 15(3) and (4) of the PTA empowered a police officer to stop and search anyone who appears to be subject to arrest under section 14 and to search him to see if he is carrying anything that might confirm the officer's suspicions that

exercised in geographically and spatially limited ways. They were largely directed at the Nationalist (Catholic) community, and used not merely as a means to locate individuals and weapons, but also as a means to exercise control over and access to particular communities.[151]

There were fairly consistent patterns in the exercise of stop-and-search powers. For home and property searches, the operations took place in the early mornings, when individuals and families were likely to be off guard and would be disoriented by the arrival of large numbers of military personnel in their homes.[152] During the course of house searches, an effective form of house arrest was exercised for families, containing them, often for hours, to one room or one portion of the home.[153] Recent studies addressing the mobilization and radicalization of paramilitary actors point to the catalyzing effect that house searches had for a number of such actors.[154] House searches involved accessing the most intimate parts of a home and sometimes destroying parts of it or damaging it.[155] Verbal abuse, often sexualized, accompanied the presence of young British soldiers in the home of perceived Irish nationalists.[156] Although few, if any, direct sexual assaults were reported, the intimacy of presence in the home and the destruction and vulnerability associated with

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suspect is involved in terrorism. Prevention of Terrorism (Temporary Provisions) Act, 1989, c. 4, § 15(3)-(4) (U.K.). Section 44 of the Terrorism Act 2000 later enabled a police constable to authorize subordinate officers to stop and search vehicles and their occupants if he considers it "expedient for the prevention of acts of terrorism." Terrorism Act, 2000, c. 11, § 44 (U.K.).

[151] Notably, despite the formal end to hostilities in the jurisdiction, government statistics reported in 2010 and 2011 on the use of stop-and-search powers under the Justice and Security Act 2007 and the Terrorism Act 2000 show that these powers were used over 22,000 times in the reporting period. POLICE SERV. OF N. IR., STOP AND SEARCH STATISTICS 2010/11 2 (2011), *available at* http://www.psni.police.uk/pace_tact_jsa_-_201011_internet.p df. The police service report does not break down the data for terrorist (scheduled) offenses and ordinary offenses, including resisting stop and search. Arrest rates for the period for those subject to stop and search were under four percent. A Code of Practice on police use of stop-and-search powers in Northern Ireland was first created in May 2012. *See* U.K. HOME OFFICE, CODE OF PRACTICE (NORTHERN IRELAND) FOR THE AUTHORISATION AND EXERCISE OF STOP AND SEARCH POWERS RELATING TO SECTIONS 43, 43A AND 47A OF, AND SCHEDULE 6B TO, THE TERRORISM ACT 2000 (2012), *available at* http://www.official-docum ents.gov.uk/document/other/9780108511684/9780108511684.pdf.

[152] Colm Campbell & Ita Connolly, *Making War on Terror? Global Lessons from Northern Ireland*, 69 MOD. L. REV. 935, 947 (2006) ("These [house raids] were typically described as happening in the early hours of the morning, involving searching of anything from one-third to an entire row of houses.").

[153] *Id.* at 947-48.

[154] *See, e.g.,* Colm Campbell & Ita Connolly, *A Model for the 'War Against Terrorism'? Military Intervention in Northern Ireland and the 1970 Falls Curfew*, 30 J.L. & SOC'Y 341, 353 (2003) (describing how "rioting . . . grew out of the house search").

[155] Campbell & Connolly, *supra* note 152, at 947-48.

[156] *Id.* at 947 (stating that "[f]emales . . . tended to describe harassment in terms of gendered abuse").

home stops and searches clearly fell more acutely on women and children than on men.[157] Vivid and gendered images of the Northern Ireland conflict involved the practice of women banging heavy tin dustbin lids on the roads leading to various housing estates to warn of the impending arrival of soldiers and the searches that were likely to follow.[158]

A significant feminist literature has emerged addressing the effect of home disruptions on women in conflict sites.[159] As I have noted in other contexts, when harms or effects are measured, there is a marked emphasis on public, not private, acts for the purposes of recording as well as constructing a societal and legal narrative.[160] What generally matters is what occurred in streets, public spaces, and formal institutional settings. Violations within the home or close to private, intimate spaces that women describe as central to their experiences of vulnerability, lack of security, and violation are deemed to fall within the "private" domain in most legal and social systems, and frequently outside the circle of notice and accountability. Much of the existing literature examining the experience of trauma or violence for women in extremity suggests that traumas are not externally located but rather are most acutely felt in the way "violation came to be incorporated into the meaning and feeling structures in relationships between husbands and wives; between mothers and sons; and between women themselves."[161] What follows from this is the important understanding that when violation is thus internally incorporated, it is neither time specific nor singular in effect. Rather, its effects can far exceed the original moment of the violence itself.[162] This should give us pause as we think about where and how the effects of counterinsurgency measures harm women, and how we undertake the measurement of those harms.

It also tells us that the sites of violation are not external and may not – especially for women – be experienced in the myriad public or institutional spaces that have overwhelmingly defined the locales of violence and intrusion by the state for public male actors. Rather, the spaces of violation are the private contiguous spaces that women consistently inhabit, out of public and

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[157] *See* Ní Aoláin & Turner, *supra* note 51, at 271 ("Research has demonstrated that the status of the home as the center of family life, and the resulting social reality of the lived lives of women within the home, means that home violation is considered by women and children to be the most humiliating and destabilizing aspect of a rupture with the state.").

[158] *See* FELDMAN, *supra* note 77, at 95-97.

[159] *See, e.g.,* Campbell & Connolly, *supra* note 154, at 353; Sharoni, *supra* note 14, at 93-94.

[160] Ní Aoláin & Turner, *supra* note 51, at 237.

[161] Nthabiseng Motsemme, *The Mute Always Speak: On Women's Silences at the Truth and Reconciliation Commission*, 52 CURRENT SOC. 909, 909 (2004).

[162] *See id.* ("These accounts . . . alert us to how violence and violation are not only contained in time, but have effects that far exceed the original moment of violence."); Amrit Srinivasan, *The Survivor in the Study of Violence, in* MIRRORS OF VIOLENCE: COMMUNITIES, RIOTS AND SURVIVORS IN SOUTH ASIA 305, 310-11 (Veena Das ed., 1990) (characterizing the Sikh tradition of grouping traumatic events and retelling history as a way of creating a "collective past").

legal sight that frame the notion of the public and of spaces of harm in many societies.[163] Moreover, shattering the security of the home space is not an isolated act, but one that for many women is experienced as a continuous presence, the influence of which lingers literally and emotionally.[164]

Aside from home searches, other forms of stop and search included individual searches at permanent or ad hoc military and police checkpoints in particular geographical locales in Northern Ireland, as well as at airports and entry points, for which specific powers of stop and search had been enacted under the emergency legislation. *It's Part of Life Here*, an empirically based study by a leading NGO in Northern Ireland, documented the experience of harassment resulting in large part from the use of stop-and-search powers.[165] The subjective experiences of humiliation and the internalization of profiling are evident. The following extracts provide illustration:

> Name and age asked to delay me. Car searched. Police called for no reason by the Army. Stopped because of a Catholic name and going to a Catholic area. (Working Class Catholic Woman: Newry and Mourne)[166]

> On Thursday 11 March, I was walking home and the British Army were on the streets stopping cars. I was walking, minding my own business, when a soldier said to me, "Hello, Sexy". I felt embarrassed and wouldn't look at them. Then he replied, "Don't speak to us, the 'Ra might hear you". This kind of abuse happens every day in our Catholic community. (Working Class Catholic Woman: Derry)[167]

> Until a few years ago there was a checkpoint on our school bus route and almost every day soldiers would get on the bus and walk to the back,

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[163] *See* Sharoni, *supra* note 14, at 93-94 (recounting one Irish woman's narrative of how the impact of her private life within her home politicized her and drew her into the public sphere).

[164] Deepak Mehta & Roma Chatterji, *Boundaries, Names, Alterities: A Case Study of a "Communal Riot" in Dharavi, Bombay*, *in* REMAKING A WORLD: VIOLENCE, SOCIAL SUFFERING, AND RECOVERY 201, 221 (Veena Das et al. eds., 2001) ("The narratives show that violence leads to a sense of displacement, thematized as loss, something that is fixed and final."). A study of riots in a shanty town called Dharavi in Bombay on December 7, 1992, following the destruction of a significant mosque (Babri Masjid) in Ayodhya, Uttar Pradesh, describes the violation of the home in the words of one victim (Faridabi) as follows:

> "On the twenty-fourth the police came to my house. . . . The 'scene-shot' was like this: when I opened the door they asked me to show them where the men were hidden. I told them there was no one in this house. They wouldn't listen. They took my two alarm clocks and a Citizen wall clock. When I protested they rifle-butted me in the stomach. Ever since my stomach has become hard. . . . One of them kicked the cupboard. Now it doesn't close. "

Id. at 220.

[165] ROBBIE MCVEIGH, "IT'S PART OF LIFE HERE...": THE SECURITY FORCES AND HARASSMENT IN NORTHERN IRELAND (1994).

[166] *Id.* at 109.

[167] *Id.*

pointing their rifle as [sic] people. We were all afraid of them and it was unnecessary intimidation for children! (Catholic Woman: Fermanagh)[168]

In my area, the British Army always set up checkpoints on all routes to our local chapel just before Mass time, so that a reasonable proportion of the congregation arrives late. Always feeling uneasy while the British Army are present on the streets when I'm walking is another pressure. They frequently shout unpleasant comments and leave me feeling very threatened and vulnerable. (Working Class Catholic Woman: Dungannon)[169]

As we consider the gendered effects of counterterrorism measures in the stop-and-search context, the graphic power disparities played out at closed checkpoints between women and armed military and police are laid bare. A notable dimension of these interactions arises from women's particular responsibilities in caring for children. Of course, harassment at checkpoints is particularly burdensome and harmful for women who are stopped and searched while they have children in tow. This experience can greatly exacerbate the effects of counterterrorism practices for women. The layering of vulnerabilities results from the concern that children will be targeted or negatively affected, with the burden of responsibility falling on the mother who is present to protect or limit the impact of the interface for the child. For many women, these tensions were particularly evident around their sons, as young men were far more likely to experience the blunt edge of interaction, with the worry that radicalization or paramilitary engagement might follow.

CONCLUSION

Counterterrorism discourses and norms must be important to feminist theorizing and feminist advocacy. If we pay attention to the gendered construction of security discourses we may avoid simplifying the landscape so as to avoid "ping-pong" between a telling of male and female experiences of violent conflict and terrorism. Equally, an assumption of neutrality in the narratives that frame our assessments of security, terrorism, and counterterrorism should be put aside in any thoughtful reflection. To this end, paying close attention to the experiences of women as the subjects of counterterrorism norms underscores the unique vulnerabilities that women face when their lives intersect with powerful patriarchal institutions and interests. The long history of emergency law regulation in Northern Ireland offers exemplary illustrations of the complexity of the terrorism terrain, the conflict over terminology and legitimacy, and the ways in which women's lives and experiences are excluded from the narratives that emerge from both state and nonstate entities. There is a critical need to reinsert women into the conversation as subjects and victims of counterterrorism regulation, to make visible the complexity of their interaction with violence and violent actors, and to reassess the categories that are deemed to fall within the "action" sphere of

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[168] *Id.* at 100.

[169] *Id.* at 110.

legal regulation. Such an approach has its gendered pitfalls, but it encourages a feminist engagement that is comprehensive and willing to see the entirety of the female form in the land of counterterrorism, not merely selected highlights.