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Canada (En)Counters Terrorism: US-Canada Relations and Counter-Terrorism Policy

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Canada (En)Counters Terrorism: U.S.-Canada Relations and Counter-terrorism Policy

Shortened version: U.S.-Canada Relations and Counter-terrorism Policy

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Bios

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Abstract This paper examines the role of identity in shaping counter-terrorism policy in Canada. We show that identity functions in three ways: constitutively by defining the range of choices a state is likely to consider; strategically by being a resource to buttress arguments based in economic or sovereignty; and heuristically by using identity as a marker for risk. This three-faceted explanation helps explain why, despite close economic, social, and political links between Canada and the United States which might lead us to expect Canada to follow American counter-terrorism policy, Canadian counter-terrorism policy often diverges from the American lead.

The idea that the terrorist is the enemy of *all* states and of *each* state, although not new, has gained in strength in recent years. How do states come to perceive that they are threatened by ‘terrorism’? And how do the specific characteristics of states determine their co-operative efforts to counter the threat? As counter-terrorism co-operation gradually spreads, there is much to be gained by studying the processes through which different states come to understand themselves as targets of terrorism and participate in institutions.

This paper examines the responses of Canada to international terrorism and highlights the role of identity in threat perception and responses. Identity works in three ways to influence Canadian policy. First, identity *makes possible* certain choices and rules others out. Second, it acts as a *strategic resource* for actors motivated by sovereignty concerns or economic interests. Canadians emphasize the aspects of their national identity that are similar to, or different from, American identity in order to buttress particular policy choices. Third, identity functions as a *heuristic* in the design and implementation of policy.

Canada is an interesting case for studying the influence of national identity on co-operation, because we expect to see convergence with United States’ preferences and policies for three reasons beyond geographical proximity—security/sovereignty concerns, vital economic ties, and shared—yet contested—cultural identity. Yet we note a fair amount of distance between U.S. preferences and Canadian choices on several issues. Under what circumstances do Canadians resist convergence, and what aspects of national identity do they draw on to resist it? We examine four high-profile issues in Canadian-American counter-terrorism issues: the Smart Border Accords, the Maher Arar case, the Western Hemisphere Travel Initiative, and the Passenger Protect no-fly list.¹

The way a country defines itself influences its perception of external threat. National identity makes possible certain policies and certain responses; it defines the set of options that seem reasonable and possible. Identity is powerful, but we do not proffer it as an irreducible and final explanation, being more interested in tracing its operational role in our case of interest. While identity defines the realm of policy options that appear appropriate, it does not dictate which of these will be chosen. Other factors, such as economics, weigh into the decision-making process as well. Moreover, identity can be used strategically. National identity is not monolithic. Different parts of an identity can be

emphasized at different times, and identity can be a strategic resource drawn upon in the service of creating or selling policies. We also show how identity is employed as a heuristic at the border, to determine what kinds of people are admissible—and the problems this may generate in cross-border relations. Here the problem may be a clash between the identity held by the individual, the identity stated on identification documents, and the identity projected on to an individual by border officials.

We begin by asking how and when Canada came to see itself as threatened by international terrorism. It contrasts the responses of Canadian policymakers to the 1985 Air India bombing and to the attacks on U.S. targets in September 2001 (9/11), to show that this threat perception is based on ideas of identity. Next, we elaborate how dominant ideas about Canadian identity, reflected in its national institutions, shaped the manner in which Canada responded to the terrorist threat after 9/11. In order to further demonstrate the three roles of identity discussed above, we then examine four cases of conflicting preferences on counter-terrorism between the U.S. and Canada. We conclude with some implications for theory and policy.

Canada in the face of international terrorism

Canada's security interests are defined by its identity and geography. During the World Wars Canada was aligned with the Allied powers, then remained part of the Western democratic alliance during the Cold War that followed. During the Cold War Canadian security interests were always defined not just in national terms, but also in terms of the security of the West as a whole. The long border with the United States meant both that Canada was free from worry about its southern front, and that it would have a place under the American security umbrella. The Canadian and American governments have a long history of shared partnership on every conceivable issue. The relationship depends to a great extent on personal relationships and is sometimes referred to as "intermestic" – not quite domestic, but not quite international either.² In a recent poll, around 85 percent of Canadians surveyed stated that the U.S. had "very similar" or "somewhat similar" aims as Canada on the global stage, while a poll-topping 46 percent of Canadians said their values and goals were "very similar" to those of their southern neighbours.³

Yet this feeling of similarity to the United States is balanced, within Canadian national identity, with a profound sense of difference from U.S. Americans. This self-differentiation affects Canadian

foreign and security policy. Even during the Cold War, Canada sought to enlarge its sphere of independent action to the largest extent possible. After the East-West conflict ended in the 1990s, Canadian policy shifted its focus to 'human security' issues (such as banning landmines at a time when the United States was vocally opposed to the treaty). At the same time, the threat of international terrorism grew more prominent for many countries, and after 9/11 became the focus of attention by major states. In Canada, the growing perception that its allies considered terrorism a threat was at least as important as 'objective' facts or events in placing the issue at the top of Canada's security priorities.

Twenty four Canadians were killed on 9/11, but this was not Canada's first experience with international terrorism, nor its largest. On June 23, 1985, 280 Canadians were among 329 passengers killed in the bombing of Air India Flight 182, which originated in Vancouver, British Columbia. It was the largest terrorist attack killing Canadian citizens. In 2005, Canadian Prime Minister Paul Martin declared 23 June the National Day of Remembrance for the Victims of Terrorism and travelled to Ireland for a commemoration. Significantly, it was the first time in twenty years that a Canadian Prime Minister had taken part in that memorial.

Earlier that year, a judge of the British Columbia Supreme Court had ruled that the two men (both Sikh Canadians from Vancouver) charged with conspiracy and murder in the case were not guilty. The judgement angered the families of the victims, and renewed allegations that the police and legal systems had been negligent in constructing the case for the prosecution because the victims were not white Canadians.⁴ Evidence given to a subsequent inquiry led by Justice John Major has revealed that key pieces of information were not communicated to the appropriate authorities, and appropriate security procedures were not followed. Key witnesses were also silenced through threats and intimidation.⁵

Former Ontario Premier Bob Rae, appointed to review the case and advise the government on whether a public inquiry was warranted into the mishandled investigation, described the bombing as a "Canadian catastrophe."⁶ Yet Rae's report also concluded that the bombing was not "embraced as a Canadian event" and questioned whether Canadians had "taken its lessons seriously enough."⁷ Although 280 of the victims were Canadian citizens, all but a few were of South Asian origin. The attack was, and to some extent still is, widely perceived by Canadians as the unfortunate fallout of an

internecine conflict in faraway India between the Indian central government and Sikh militants, not as an act of international terrorism against Canadians. Speaking at the memorial in Ireland, an Indian cabinet minister repeatedly used the term “terrorism” to describe the incident, in marked contrast to Martin’s terms “tragedy”, “hateful deed” and “act of evil.”⁸

There was no such reticence in September 2001, though many fewer Canadians were killed. Although members of the intelligence community were growing increasingly concerned about terrorist activities affecting Canada, it took an event like 9/11 to bring political and public attention to the issue.⁹ Reg Whitaker claims that to find an analogy to the shock of these attacks one would have to reach back to the 1940s.¹⁰ Clearly, Canada’s identity as a member of the Western democratic alliance, and a special partner of the U.S. in particular, led it to feel especially threatened after 9/11. National identity determined the parameters of the country’s response. However, while Canadians expressed immediate and profound solidarity with the U.S. in the aftermath of 9/11, Canada would not always follow the U.S. lead on counter-terrorism policy.

Good neighbours without good fences

The parts of the Canadian identity which are shared with the U.S. are a powerful determinant of threat perception. At the same time, national identity, like other types of identity, is defined in relation to an Other which is different from the Self. This difference need not be large to be significant, but it needs to be relevant. Canadians define their identity both together with, and apart from, the United States. The United States is the relevant Other for many facets of Canadian identity; it is Canada’s first point of comparison. Not being American is centrally important to Canada, even though it identifies strongly as an ally of the United States. For instance, Canadian identity is intimately tied to its role as a good international citizen, and an important member of the United Nations, the North Atlantic Treaty Organization, and other international organizations. In these contexts, as a middle power, it sometimes has different views or interests than the hegemonic United States.

Concerns about sovereignty and economic gains also determine Canadian responses to U.S. counter-terrorism policies. Canada, like any other country, is concerned to preserve its sovereignty.

Canadians anticipated that the U.S. response to 9/11 would have an impact on their security and

sovereignty. Canada had to react both to the terrorist attacks and to the U.S. reaction to the attacks.¹¹ This imperative for Canadian decision-makers stems from what Canadians sometimes call ‘defence against help’. It originates in the so-called Kingston Dispensation of 1938, when U.S. President Franklin Roosevelt promised that the United States would “not stand idly by” if Canada were to be threatened. In return, Prime Minister Mackenzie King pledged that Canada would do nothing to jeopardize American territorial security.¹² We use ‘defence against help’ to denote the particular set of sovereignty concerns related to Canadian fears of Americans taking Canadian security into their own hands, either by implementing policies contrary to Canadian interests, or more seriously, by enforcing American laws on Canadian territory. In the context of terrorism and homeland security, this implies that Canada must always consider American security imperatives while defending its sovereign right to develop its own policies against terrorism. A terrorist attack in Canada, originating in Canada, or on joint Canadian-American assets would only confirm suspicions in some quarters in the United States that the porous border to the north is a huge vulnerability.

These factors are not identical across the country or across time. Not all Canadians share the same values, with the West being traditionally the most socially conservative part of the country and British Columbia and Quebec the most socially liberal. For some, co-operation with the United States presents a greater threat than it does to others. A national identity is different from a regional or individual identity, and prevailing views of what it means to be Canadian will reflect the views of the majority, as described above. Over time, identity may shift, but this tends to happen slowly. The risk for Canada is that Americans would not hesitate to act in their own defence on Canadian soil, threatening Canadian sovereignty.¹³ This is not merely abstract speculation. During the run-up to the invasion of Iraq, for instance, the U.S. National Security Agency apparently spied on diplomats from ostensibly allied countries at the United Nations.¹⁴ The United States has also sent agents of its intelligence agencies to allied countries like Norway and Sweden when it was dissatisfied with the way they were dealing with suspected terrorists.¹⁵ While we are unaware of any such actions in Canada, popular culture provides examples of American fears about the porous northern border. In October 2001, the widely-watched TV drama *The West Wing* featured a terrorist crossing into the U.S. from Canada. The Canadian Foreign Affairs Minister was sufficiently concerned that he made the episode a centerpiece of his speech in New York City designed to reassure U.S. residents about the border.¹⁶ In the Nuclear Threat Initiative’s *Last Best Chance*, a film about a nuclear attack on the

U.S., the weapon is transported across the U.S.-Canada border.¹⁷ Some American politicians, notably Hillary Rodham Clinton, have also evoked the so-called threat from Canada in political speeches.¹⁸

Historically, the border between the U.S. and Canada has been porous to the crossing of people and goods, leading to a great deal of exchange between the two countries. A relatively open border is essential to trade with the United States without which the Canadian economy would collapse. In 2006, 79 percent of Canada's exports were sent to the U.S. and 65 percent of imports came from that country. 52 percent of Canada's GDP is accounted for by the U.S. trade.¹⁹ The U.S. is also the biggest foreign investor in Canada and the most popular destination for Canadian investments. Canadian historian Desmond Morton emphasized the two-front war Canadians face, confronting terrorism as well as the American reaction to terrorism: "Americans may remember 9/11; we must remember 9/12, when American panic closed the U.S. border and shook our prosperity to its very core."²⁰ Morton's comment highlights the economic imperatives for Canada to ensure that Americans do not come to perceive Canada as a security problem.

As we have shown, the Canadian response to the terrorist attacks on the U.S. was founded on the widely-held idea that Canadians too had been targeted. A poll taken shortly after September 2001 showed that a majority of Canadians (58 percent) feared that Canada would become a terrorist target. Canadians said they felt closer to U.S. Americans after 9/11, with 33 percent saying they felt like family or the best of friends and 47 percent saying they were friends, but not especially close. The reasons given for this post-9/11 closeness are what we would expect: shared values and beliefs (38 percent), the common threat (37 percent) and economic ties (23 percent)—that is, identity, security, and economics. Consequently, the Canadian government re-evaluated several external and domestic policies and 56 percent of Canadians supported Canada's new anti-terrorism bill, widely seen as intended to reassure U.S. Americans.²¹

At the same time, Canadians were also quick to begin fighting on the other front in the 'war on terrorism,' protecting themselves from American responses to the attacks. This brought other aspects of Canadian identity to the fore: those that distinguish Canadians from denizens of the United States. By the end of 2002, relations were already cooling with distance from the attacks and the controversy over the Iraq war, which Canada decided not to join. One third fewer saw Americans as like family or best friends, and 9 percent more Canadians than in 2001 viewed the

relationship as “cordial, but distant or openly hostile.” Most Canadians continued to see the relationship as between “friends, but not especially close.” 57 percent of Canadians were concerned about losing their independence to the United States.²²

Canadian Anti-Terrorism Policies

While the Canadian government most acutely felt the threat of terrorism after 9/11 and other attacks on Western interests, Canada also began to be perceived as a *source* of threat by its southern neighbour. Immediately after the attacks, U.S. elites turned to the question of securing the country’s borders. While the border with Mexico was already a cause for concern thanks to illegal immigration, the long border with Canada came into focus as a potential easy entry point for terrorists.

Canada and the U.S. have the longest non-militarized border in the world (8,891 kilometres or 5,525 miles). In some forested areas, the border has literally “disappeared.”²³ In addition, the border has become blurred in certain Canadian airports, where in “remote border posts” or “pre-clearance sites” U.S. border agents process passengers so that they can fly to domestic terminals in the U.S. In these spaces, U.S. laws are administered by American officials under the Canadian Charter of Rights and Freedoms.²⁴ The meaning and scope of the ‘border’ have expanded. While border procedures are tighter and more sophisticated, surveillance, investigation and risk assessment *before* a person actually presents himself or herself at the border have also increased. Thus, changes in border security have deep implications for policies on citizenship and nationalism.

U.S. policy has long made the assumption that Canadians posed a minimal security threat by *virtue of being Canadian*. The ‘average’ Canadian today, however, is not necessarily the low-risk individual pictured by U.S. heuristics. The U.S. is acutely aware of the widely varying identities of those carrying a Canadian passport. According to the 2001 census, 18.4 percent of Canadian residents are immigrants, and over 80 percent obtained Canadian citizenship. Sixty percent of recent immigrants (those who arrived between 1991 and 2001) came from Asia and the Middle East.²⁵ Canadian policies and attitudes contribute to the concerns of U.S. policymakers.

At the time of the 9/11 attacks, Canadians held positive attitudes about immigration and multiculturalism. In May 2000, an Angus Reid poll of Canadians found that 45 percent of them approved of the current level of immigration into the country. Canada, it is claimed, has the most liberal asylum system in the world.²⁶ It is the fourth most accepting country on the issue of immigration.²⁷ A 2002 Pew Research Poll found that Canada was the only one of 38 countries where a clear majority (77 percent) said that immigration was good for their country.²⁸ Since Canadian policies on asylum, refugee rehabilitation, civil liberties and multiculturalism are viewed as markedly more liberal than those in the U.S., some perceived the physical proximity of this difference on the North American continent as a threat. Indiana Congressman John Hostettler expressed his country's apprehensions: "We do not want to have to worry about a neighbour that has a very different attitude than we do about terrorism." He declared that Canadian immigrants are threatening because they "demonstrate an unsuccessful adoption of traditional Canadian values, or at least, a lack of assimilation..."²⁹

Post-9/11, U.S. security heuristics focused more intensely on ethnicity and religion as markers of danger. U.S. policy makers were soon confronted by the multi-ethnic nature of citizenship—a possible disjuncture between citizenship and identity—since citizens from Canada, Australasia and certain European countries had been previously assessed as low risk and exempted from the visa requirement to enter the U.S. A growing population of radicalized Muslim youth in these countries leads the U.S. government to become concerned about citizenship policies outside its borders.³⁰

In May 2007, there was speculation that the United States was considering excluding British citizens of Pakistani descent from its Visa Waiver Program.³¹ This would in effect mean that a foreign country was creating a less-privileged class of UK citizens. The British Foreign Secretary was quick to condemn such a plan and reiterate that his government would protect all its citizens.³² Similarly, Canada protested the automatic application of restrictions on its citizens who were born in countries on the U.S. list of state sponsors of terrorism, as well as special measures for those born in countries like Saudi Arabia, Pakistan and Yemen.³³ The re-assessment of the relative risk from Canadians started with the arrest of Ahmed Ressam, an Algerian Islamic militant dubbed the 'Millennium Bomber' because he was plotting to explode a bomb in Los Angeles International Airport on New Year's Eve in 1999. Ressam had entered Canada claiming asylum and was attempting to enter the U.S. on a fake Canadian passport.

Smart Borders

Almost immediately after 9/11, the Canadian government acted proactively to design a policy which addressed Canadian and American security needs without threatening Canadian identity in the sense of its distinctiveness from the U.S. It raised the allocation for security in the federal budget to an unprecedented \$7.7 billion, of which \$2.2 billion went towards creating the Canadian Transport Security Agency (CATSA) as a crown corporation in April 2002.³⁴ Pundits and journalists on both sides of the border, and even Paul Cellucci (then U.S. Ambassador to Canada) talked about creating a security perimeter, which would mean that decisions would be taken at a trans-state level bypassing the governments. Canadian government officials shut down such speculation more firmly than they ever had before. Erasing the border was “simply not on the table.”³⁵ On a continent divided in two by a geographically incongruous line down the middle, the border is what makes Canada possible. Here we see identity at work, making some options unthinkable.

What *was* on the table were the Smart Border accords.³⁶ The accords were drafted largely by the Borders Task Force in the Privy Council Office (PCO), under the close supervision of the prime minister. That the initiative was housed centrally in the PCO, rather than in one of the departments such as Foreign Affairs, testifies to the high-level attention that was focused on Canadian-American security relations and the extent to which the relationship is not considered completely foreign. The accords outlined a series of co-operative measures in four baskets: the secure flow of people, the secure flow of goods, secure infrastructure, and co-ordination and information sharing on the implementation of the accords. The Smart Border accords drew together a series of initiatives which had been under consideration for some time, and which became more urgent after 9/11.³⁷

From a Canadian perspective, the Smart Border Accords were successful because they achieved the objective of facilitating flows across the border while enhancing security, *without* erasing the border or otherwise threatening Canadian identity. By combining high-level political attention with technical co-operation, the Smart Border accords avoided the political implications of integration as well as the charge that bureaucratic co-operation and quiet diplomacy was not enough.³⁸

The Smart Borders Accords focused on risk rather than individual transactions. Using heuristics as a shortcut to make decisions, officials try to identify high-risk goods and passengers crossing the border, rather than inspecting a higher proportion of all people and cargo. Some people and companies and goods are seen to be more likely to be dangerous than others. The descriptor ‘smart’ also refers to the use of increasingly sophisticated technology to assist with this differentiation, allowing ‘safe’ goods and people to be pre-cleared and processed more quickly, leaving more time for inspections of riskier crossers. Travelers, importers and exporters who wish to be pre-cleared through programs like FAST, or Free and Secure Trade (for businesses) and NEXUS (for travelers) must meet a set of eligibility requirements, such as never having violated customs and immigration law and not having a criminal record. Additionally individuals must provide information on employment and address history, and businesses must sign a memorandum of understanding with the government. In some cases an interview is also required.³⁹

The Smart Border Accords were not merely a technical solution. The shared identity of U.S. and Canada was deployed by the Canadian government to make the argument that procedures need not be structured in the same way as those on the U.S. border with Mexico. For instance, the pre-clearance programs FAST and NEXUS were rolled out on the northern border before the southern one. However, Canadians insisted that the border had to remain as a bright line differentiating Canada from the U.S., and refused to consider a “security perimeter.” Ambassador Paul Celluci began to refer instead to a “zone of confidence.”⁴⁰ Economic imperatives and the threat to Canadian sovereignty meant that something had to be done; Canadian identity defined what kind of solution would emerge.

Maher Arar

As we have shown above, national identity is used as a heuristic to make choices about the desirability of the entry of persons or goods into a country. The heightened concern in the U.S. with Islamist terrorism led officials to focus on religion and ethnic origin. One such case, the most dramatic example of conflict between the U.S. and Canada, involves Maher Arar. In 2002, Arar, a Syrian-born Canadian citizen, was changing planes in the U.S. when he was arrested by the American authorities. He was secretly extradited to Syria, tortured, and held there in prison for ten

months before he was returned to Canada. His detention and ‘rendition’ to Syria triggered a wave of anti-American sentiment in Canada.

In 2004, the Liberal Minister of Public Safety requested that Justice Dennis O’Connor conduct a factual inquiry into the actions of Canadian officials in the Arar affair, and proposed an arm’s length review of the federal Royal Canadian Mounted Police (RCMP). O’Connor concluded that Arar had no connections to terrorists. He also found that there were inaccuracies in the information about Arar available to the RCMP, but that when officials shared the information with their U.S. counterparts, they failed to attach caveats, thus flouting the organization’s own policies on screening information.⁴¹ Arar had become a “person of interest” to the Canadian authorities because of his association with an individual who was being investigated by the RCMP. Information the Canadian authorities shared with the Americans may have contributed to the Americans’ decision to detain and question Arar, then deport him to Syria instead of returning him to Canada, as he had requested and as would seem reasonable given that he was traveling on a Canadian passport.

Information sharing subtly erases the border. If data is equally accessible by Canadian and U.S. officials, then the border no longer becomes the relevant division, the place where one makes a new, independent judgement about a person’s identity. Sharing information may positively increase North American security, but its abuse is hard to control. As Justice O’Connor noted in his Report identifying policy recommendations for Canadian security, “the legal power of Canadian courts and governments to require respect of constitutional rights and freedoms is exercised within Canada’s territorial borders. Once a person or information moves outside of Canada, it becomes difficult to ensure treatment of that person or information in accordance with Canadian constitutional rights and values” The O’Connor report makes clear that the Canadian government wishes to make the decision about the treatment of a Canadian suspect, even if the U.S. retains the right to deny him entry.⁴²

When the story of Arar’s deportation broke in the *Globe and Mail*, the story focused on the fact that a Canadian citizen had been deported to Syria, mentioning only once in passing that he was accused of having links to Al Qaeda. Later, Canadian media would divide into two camps, those insisting that Arar needed to be returned to Canada and those who focused on Arar’s alleged links to terrorism.⁴³ The latter focused on his Syrian birth and a series of allegations based on false information provided

by the RCMP. The former stressed Arar's Canadian credentials: his middle class life in Ottawa, McGill education, his wife's Canadian PhD and her vocal support and activism. It was easy enough to turn Arar's story into that of a typical Canadian. This is in some contrast to 1985, where the Air India attacks were *not* widely seen as an attack on Canadians. This change reflects a shift in widely-held notions in Canada of what a Canadian looks like.

Canadian outrage was directed not just at Canadian officials, but also at the American government. That the United States would not participate in the O'Connor Inquiry is not surprising, considering that it would inevitably subject national security policy to foreign scrutiny, but Canadians were appalled when the U.S. refused to review Arar's inclusion on the watch list even after his name was cleared in Canada. American officials claim that they have their own evidence against Arar⁴⁴, but Conservative Public Safety Minister Stockwell Day purportedly saw confidential materials related to the case, and stated that it does not change Canada's position that Arar was innocent.⁴⁵ When Day demanded a review of the case, then American Ambassador to Canada David Wilkins proclaimed that "it's a little presumptuous of him to say who the United States can and cannot allow into our country." An editorial in the *Globe and Mail* responded: "Interesting turn of phrase. How would it fall on a scale of presumption that included, say, detaining a Canadian citizen at a New York airport and deporting him to Syria as a suspected terrorist rather than sending him to Canada?"⁴⁶ It is clear that the conflict over the Arar case will shadow future Canadian-American co-operation on terrorism.⁴⁷

In the Arar case, Canadians differentiated themselves from Americans in terms of values—the priority given to human/individual rights over security being highlighted as intrinsic to Canadian national identity. Citing multiculturalism in opposing the U.S. was an effective shortcut in the national debate. They also pointed to Canadian sovereignty to emphasize that the U.S. was not authorized to make decisions affecting Canadian citizens. The explicit naming of Arar as a Canadian in the domestic discourse (rather than Arab or Muslim) demonstrates the nature of Canadian identity as fundamentally civic and inclusive, at the same time that it demonstrates national pride and consciousness of a distinct identity. This multicultural identity—much stronger in the mid-2000s than it was twenty years earlier at the time of the Air India bombing—made it impossible for the Canadian government to acquiesce in the rendition of its citizen. The government was forced to admit the role of its security agencies in procedural mistakes.

Passports

We see that the border is a site where sovereignty is clearly implicated, but so is identity. The border is where judgments about identity are made, and where American concerns about the terrorist threat from Canada are most concretely expressed. The passport as proof of nationality is an heuristic device “linking individuals to foreign policy, and according to which government agents classify travelers as safe or dangerous, desirable or undesirable, according to national, social, and political narratives.”⁴⁸ A passport attests to both personal and national identity. Some national identities being more ‘risky’ than others, countries will impose barriers at border crossings on the basis of passports. In the last few years, the U.S. has re-assessed its policy of facilitating the easy mobility of Canadians into the U.S. and of its own citizens returning from Canada, requiring passports as the only acceptable form of identification at the border.

A product of the American Intelligence Reform and Terrorism Prevention Act of 2004, the Western Hemisphere Travel Initiative (WHTI) requires all travelers (including American citizens) to present a passport or equivalent documentation when entering the United States. Originally the WHTI was to come into force for air travel on December 31, 2006, and a year later for all land crossings. Due to lobbying efforts by the Canadian government and its allies within the United States, as well as the Department of Homeland Security’s inability to implement the programme on that schedule, these dates changed several times. Current (July 2008) Department of Homeland Security projections estimate that the land and sea portions of WHTI will be implemented by summer 2009. The Canadian government is still hoping that it will be able to negotiate the use of alternative documents, like enhanced driver’s licences, under the program.

Canadians’ relatively free access to the U.S. has been questioned before: in the wake of the 1999 Millennium Bomber case and in 1996, when the United States proposed to implement a program designed to track the entry and exit of all foreign nationals to the United States under Section 110 of the *Illegal Immigration Reform and Immigrant Responsibility Act*. Canadians were exempted from changes to U.S. law on both occasions. The WHTI became a major issue in Canadian-American relations in the spring of 2005. Traditionally, Canadians and Americans have been able to cross their common border with two pieces of government-issued identification (such as a birth certificate and driver’s licence), or sometimes with only an oral declaration of their identity. These minimal requirements

for proof of identity at the border reflected the low risk that these allies considered each other to be, as well as the fact that crossing the border was a normal, everyday activity.

The affected parties in Canada included both private citizens and corporate interests. Their concerns were primarily economic. 300 000 people cross the Canada-U.S. border each day. One study suggested that the passport requirement would cost the Canadian economy as much as \$1.7 billion, and the U.S. economy up to \$750 million.⁴⁹ It is estimated that 3.5 million trips to Canada by Americans would be deterred annually.⁵⁰ The concern was that if Americans (only 23 percent of whom had passports when the initiative was announced) required expensive passports to return to the country, they would elect instead not to visit at all. The Canadian government does not require U.S. citizens to present passports while entering the country.

Elected officials at all levels of government and business lobby groups felt compelled to counter the passport requirement. They launched a lobbying effort in the United States, finding allies in border states.⁵¹ The Canadian Embassy in Washington DC lobbied Congress, and the Canadian foreign ministry cautioned that the two countries needed to rethink the issue of border security, while delaying implementation of the WHTI.⁵² The Canadian government also highlighted the economic impact of the decision on the U.S.: Canadian visitors added \$10.9 billion to the American economy in 2003.⁵³

The lobbying efforts were successful, and by September 2006, the U.S. Congress agreed to postpone the requirements for land entry. Lobbying by Canadians continued in an effort to make sure the deadline was extended and to press for concessions on the requirement for Canadians to show passports. Here we have an apparently clear case of Canadians sensing a threat to their economic interests, and acting to get an exemption for Canadians from an American policy. However, we insist the case put forward by Canada that Canadians *should* be exempted from American policies is an argument based in identity. Canadians, we know, define themselves as not-American, but they also see themselves as being in a different category of neighbour from the United States' other neighbours/allies. Thus, Canadians do not want to be treated as just another country. The way in which Canadian identity is constituted makes it possible for Canadian elites to selectively emphasize the shared aspects of identity in order to combat the new heuristics used by the U.S.

Passenger Protect No-Fly List

An exclusive focus on the physical border is misplaced for two reasons. First, as Didier Bigo points out, the control of mobility has shifted to the surveillance of so-called risk groups.⁵⁴ Second, the border itself has ‘expanded’ to include not just the physical space between nations, but also the whole gamut of policies related to entry and exist and the identification of desirable or undesirable entrants. In our final case, we show that the expansion of the border to the air threatens Canadian identity, sovereignty and economic interests. The North American airspace has become a battleground for the U.S. and Canada.

After 9/11, U.S. authorities developed a semi-secret list of individuals who were not to be permitted to board flights. Again, this list applies heuristics based on various undisclosed criteria. The United States government has also been eager for Canada and other allies to develop and share no-fly lists of suspected terrorists, as well as to share other passenger information. In addition, the U.S. requires all airlines flying in its airspace to transmit their passenger lists so that they can be checked against American no-fly lists.⁵⁵

In June 2005, the Canadian Transport Minister, Jean Lapierre pointed out to U.S. policymakers that such a requirement would be particularly hard on Canada. Because of the population distribution near the border, as many as two-thirds of the roughly 278,000 flights within Canada each year cross into American airspace at some point. Lapierre said: “We don't think it's a good idea that Canadians travelling from one city to another would have to be checked under the American no-fly list.”⁵⁶ Eventually, the government was able to secure an exemption for flights that both originated and terminated in Canada. However, the U.S. Department of Homeland Security then announced a Notice of Proposed Rule Making for the Secure Flight Program. Passenger manifests for flights from Canada that cross U.S. airspace en route to third countries were required to be turned over 72 hours before the flights took off, again imposing special hardship on Canadian companies, particularly the smaller charter airlines which may lack the technology to implement the program.⁵⁷

In June 2007, the Canadian government launched Passenger Protect, a made-in-Canada no-fly list. Unlike the U.S. government, which will not divulge the criteria for being on the no-fly list, the Canadian government has only placed people on the list who “pose an immediate threat to aviation

security. They must also be suspected of participating in a terrorist group, or they must have committed a life-threatening crime against aviation security, or a life threatening crime that leads officials to believe they pose a threat to passengers or crew.”⁵⁸ Transport Canada will field requests from the federal agencies—the Royal Canadian Mounted Police (RCMP) and the Canadian Security and Intelligence Service (CSIS)—about who should be on the list, then make recommendations to the Minister of Transport. When it receives requests from foreign agencies, Transport Canada will seek advice from the RCMP and CSIS before making its recommendation.⁵⁹

The no-fly list has been discussed in Canada since 9/11, but was announced by Paul Martin’s Liberal government in August 2005. Almost immediately, critics pointed out that if there was enough evidence against a listed individual on the list indicating potential to threaten national security, he or she should not be “walking around in Canada” but rather “put behind bars where he or she belongs.”⁶⁰ On the other hand, if there was insufficient information to implicate them, they should not be under a cloud of suspicion.⁶¹ Initial proposals seemed to lack provisions for getting off the list, although this was rectified in later policy reports, probably in response to the Maher Arar affair. Representatives of the aviation industry, facing the requirements of the Secure Flight Program discussed above, were disturbed that the Canadian list, developed in consultation with U.S. authorities was clearly not considered adequate for ensuring the security of the U.S.⁶²

Much of the media attention paid to Canada’s efforts to develop a no-fly list concerned fears that the American list was being used in Canada by stealth, or that Canadians would be forced to share their list with the United States. Canadian officials note that the Canadian no-fly list grew out of judicial authority accorded by the Public Safety Act of 2004, and was a response to Canadian concerns about aviation security, to perceived problems with the American list, and to American initiatives not aimed specifically at Canada, such as the decision to demand passenger lists for all planes overflying the United States.⁶³ Thus whether or not there was overt pressure by the United States, Canada’s decision to adopt Passenger Protect was certainly a reaction to pressure generated by American policies; a ‘defence against help’ to avoid American threats to Canadian sovereignty. Once again, this was not an abstract fear. Around the same time the Liberal government announced its intention to create a no-fly list, newspapers began reporting instances of Canadians being denied boarding on domestic flights, leading to the suspicion that Canadian airlines were already using the American no-fly list.⁶⁴

By April 2006, the American government was apparently impatient with Canada's slow progress on developing a no-fly list, and privately threatened to deny Canadian airlines overflight rights, even for flights with a third-country destination.⁶⁵ In early 2007, Canadian opposition to the no-fly list increased over the issue of information sharing with the United States, which some experts claimed was inevitable.⁶⁶ Since part of the issue with the Arar case was the misuse of information shared by the Canadian government, once Arar was exonerated Canadians became understandably wary about sharing information.⁶⁷

Canadian government officials did not deny that the list would be shared with the U.S. As Martin Rudner, a Canadian security expert pointed out, such co-operation was the inevitable price that Canadians had to pay for their relatively easy entry into the U.S.⁶⁸ Canada's list is orders of magnitude smaller than the U.S. list (reportedly between 500 and 3000 versus over a million).⁶⁹ It is also much more precise in its criteria—the list only names those who are considered to pose “an immediate threat to civil aviation.” The heuristics used to construct it are thus quite different from those of the U.S. Not every individual with links to terrorist groups would figure on the list, moreover, the list may include those who are dangerous for other reasons and may be considered a threat to the passengers or crew of an airplane.⁷⁰

In what ways, then, did Canadian identity influence Canadian policy on the no-fly list? Canada's decision to draw up a new list can be explained simply with recourse to traditional notions of sovereignty. Adopting the American no-fly list would be tantamount to enacting American national policy on Canadian soil. Doing so would be more than simply free-riding; it could encroach on sovereign functions like investigating one's own citizens. Whether it would affect Canadian identity depends on how much importance is attached to it in the public imagination; certainly those who feared adopting the American list saw sovereignty as fundamental to the national sense of self. But adopting the American list would have also left under American control decisions about which Canadians are safe flyers and which are not. Creating a domestic no-fly list, even if the information on it is ultimately shared with Americans, removes one more location where the United States might make judgements about Canadians (and about what it means to be Canadian) without the consent of the Canadian government. Passenger Protect is an attempt on the part of Canada to reinforce the idea that the border is a site for making judgments about identity. Even those who oppose the

Canadian no-fly list refer to Canadian differentiation from the U.S. They express the fear that the information would be shared with the U.S., and they draw on the specifically Canadian 'Charter Rights' to make their case.⁷¹

Implications for theory and policy

Canada is currently governed by a minority parliament led by Conservative Prime Minister Stephen Harper. Would an election resulting in a Conservative majority change Canadian anti-terrorism policy? A greater emphasis on facets of Canadian identity emphasizing sameness with the United States might result in more policies which look like American ones. That said, the four case studies here suggest that under the stable minority (in power since January 2006), Harper's anti-terrorism policy has broadly followed on from that of his Liberal predecessors. We can expect future Canadian leaders to resist convergence on anti-terrorism policy with the United States when convergence would harm Canadian interests or sovereignty or when it would be counter to the established tenets of the Canadian identity.

Insert Table 1 about here.

When pressuring Canada to adopt particular policies, or when making judgments about identity at the border, the United States is not just asking for better border security, but re-evaluating what it means to be Canadian. When Canada makes counter-terrorism policy, it is similarly enacting its national identity. Why is identity crucial to understanding the Canadian positions—both convergent and divergent from the U.S.? As Table 1 shows, there are three ways in which identity matters. First, identity is constitutive; it makes certain outcomes possible while rendering others unthinkable because they would be incongruent with the dominant identity. Canadian identity as different from the United States made adopting policies seen to be too close to American policy impossible. In the WHTI case, however, Canadian identity as shared with the United States made it possible to argue for special treatment. Identity was constitutive in a different way in the Arar case: as multiculturalism became more important to Canadian identity, it became possible to frame Arar's rendition as a threat to all Canadians. From identity's constitutive role, we can see that while Canadians clearly see that their security and well-being is tied to the U.S., they want to retain their distinctiveness,

especially as it concerns domestic arrangements. Canada's identification with American sense of vulnerability to terrorism and its desire to preserve good relations with the U.S. did not mean that the need to maintain an identity separate from the U.S. were thrown aside. The very idea that Canada needs to 'defend' itself against help stems from the need to preserve the particularities of Canadian policy from preferences of the U.S. On the other hand, a shared identity helps facilitate close economic links between the two countries.

Identity "makes possible" but in this study, it is not a master variable. Economic and sovereignty arguments are fundamentally important to shaping Canadian counter-terrorism policy. Canadians fear American incursions on their sovereignty, and economic loss from American policies which are adverse to Canadian interests. However, identity is at work here as well, in a more conscious and strategic fashion. In this second role identity is strategically deployed *in order to* defend sovereignty or economic interests. In the Arar and Passenger Protect cases, it better served Canadian interests to highlight their sameness with the United States. In the Smart Borders and WHTI cases, emphasizing the identity Canada shared with the U.S. facilitated arguments for special treatment. Both arguments about shared identity and differentiated identity resonate with Canadians and neither contradicts the Canadian identity writ large.

The third way that identity operates is as a heuristic. Here the focus is not so much on the identity held individually or collectively, but rather on the identity projected by government officials on individuals. The Smart Borders and Passenger Protect cases highlight the way identity is used as a marker of risk: those travelers identified as low-risk are able to travel more easily, and policy emphasis shifts from monitoring every traveler to identifying those with high-risk identities. The Maher Arar and WHTI cases demonstrate that individuals may have little control over how their identities are perceived, since officials may separate documented passport identities from perceived ethnic identity or allegiance.

It is not enough to assert that identity is important. Such assertions must be accompanied by careful empirical research showing how it matters, even if, as in this case, findings demonstrate that it is not monolithic and may be deployed strategically. Our research shows that concerns about identity and values will be significant in determining the extent and nature of co-operation that the U.S. is able to obtain. If Canada, sharing so many ties with the U.S. manifests a divergent path, we can expect that

other countries' counter-terrorism policies will be even more inflected with their specific identities and related concerns. For instance, the USA has been unable to persuade European countries to modify their privacy laws to share aviation data. As we study the spread of co-operation/regimes in global security, for example, the European Union's common foreign and security policy, we must recognize the importance of identity and study the complex ways in which it interacts with security and economic considerations.

Table 1 The Roles of Identity

Role of Identity	Smart Borders	Maher Arar	WHTI	Passenger Protect
Constitutive	Identity makes perimeter solution impossible	Identity change makes possible framing of Arar's rendition as a threat to all Canadians	Shared identity makes arguing for special treatment possible	Differentiated identity makes using American list impossible
Strategy				
Defence Against Help feared?	Yes	Yes	No	Yes
Economic loss feared?	Yes	No	Yes	No
Part of identity emphasized	Shared (Canadians are low risk) Differentiated (no perimeter solution)	Differentiated (Canadians should decide how to investigate their citizens)	Shared (Canadians are low-risk and should receive a special exemption)	Differentiated (Canadians should decide how to investigate their own citizens)
How is identity used strategically?	To push for mobility	To castigate USA and its sympathizers in Canadian government	To minimize economic loss	To castigate USA and its sympathizers in the Canadian government
Heuristic	Identity marks risk Low risk travellers proceed quickly	Passport identity may be separated from ethnic identity or allegiance.	Passport identity may be separated from ethnic identity or allegiance. Burden of identity proof falls to the traveller.	Identity marks risk Attempt to minimize risk of mis-identifying travellers

¹ These cases were chosen because of the media and public attention they received as success stories or failures. The attention they received makes it easier to see the role identity plays; emotion-filled statements are more likely to contain "clear articulations of identities and policies" Lene Hansen, *Security as Practice: Discourse Analysis and the Bosnian War* (London: Routledge, 2006) (p. 87), which makes it easier to analyse the role of identity in Canadian responses to counter-terrorism, in contrast with cases for which we only have unemotional press releases or detached policy documents.

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⁶ Bob Rae, "Lessons to Be Learned: Air India Flight 182 Review and Inquiry Report", (Ottawa: Air India Review Secretariat, 2007) (p. 2)

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