

MODELING TERRORIST RADICALIZATION

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Academic analysis and critique of public and private discrimination against Muslim-Americans after the terrorist attacks of September 11, 2001 has followed two tracks. In the first track, scholars have cataloged violations of constitutional rights after 9/11.¹ This is scholarship as penitential didacticism. By enumerating atrocities, scholars hope to quicken sorrow and provoke behavioral change. Blending the descriptive and the moralistic, they aspire to inculcate by aversive example.² In the second track, scholars take culture rather than law as their target. This is scholarship as *kulturkampf*. The scholars identify popular cultural

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1. The best of this genre bear witness at a granular level to the experience of rights violation, see, e.g., TRAM NGUYEN, *WE ARE ALL SUSPECTS NOW: UNTOLD STORIES FROM IMMIGRANT AMERICA AFTER 9/11* (2005), or provide a synoptic analytic framework, linking current policies to historical precedents, see, e.g., David Cole, *Enemy Aliens*, 54 STAN. L. REV. 953, 976 (2002). I too have written in this mode. See Aziz Huq, *The New Counterterrorism: Investigating Terror, Investigating Muslims*, in *LIBERTY UNDER ATTACK: RECLAIMING OUR FREEDOMS IN AN AGE OF TERROR* 167 (Richard C. Leone & Greg Anrig, Jr. eds., 2007).

2. See Murad Hussein, *Defending the Faithful: Speaking the Language of Group Harm in Free Exercise Challenges to Counterterrorism Profiling*, 117 YALE L.J. 920, 938 (2008). See generally Tracey Maclin, “Voluntary” Interviews and Airport Searches of Middle Eastern Men: *The Fourth Amendment in a Time of Terror*, 73 MISS. L.J. 471 (2003).

depictions of Muslims qua terrorists as key catalysts for discriminatory policies and attitudes. They thus condemn the frequency of negative representations of Muslims and Arabs in film, popular culture, and public discourse³ as an invitation to or a legitimation of improper animus.⁴

This Article suggests a third approach to the discrimination question that is especially salient at a time of fresh terrorism arrests in the United States and increasing attention to domestic-source terrorism. This is scholarship as epistemological archeology. Rather than looking at what the state *does* to Muslim-Americans or at how the media *represents* Muslim-Americans, I suggest we should look at how *the state represents* them. In particular, I suggest a focus on the epistemic predicates of terrorism policies. North American and European governments have recently mapped how individuals decide to commit acts of terrorism. Governments term this process “radicalization.”⁵ While these governments have long acknowledged and addressed the problem of terrorism, this investment is a new development. This process develops “[n]ew slots . . . in which to fit and enumerate people.”⁶ Investment in “radicalization” modeling yields dividends in the form of legitimacy for policies of investigation and prosecution bottomed on the state’s claim of expertise. The state’s epistemological assertion is especially forceful in the terrorism domain because, unlike other areas of risk regulation, from pandemic disease control to environmental catastrophes, it is a field where the state claims to have privileged access to information and where it has comparatively few academic competitors.

The resulting state taxonomies merit study for two reasons. First, claims of state expertise redirect the vector and intensity of counterterrorism policies, particularly those concerning religious speech and conduct. Second, the state’s epistemology of religious and ethnic identity also limits and channels opportunities for political and religious expression for a larger minority population of Muslims, Arabs, and South Asians in the United States and Europe.

Part I situates this project in a larger intellectual tradition generally unfamiliar to the legal academy and explains why that tradition merits extension. Part II examines “radicalization” policies on the state level in the United States, at the federal level, and then in the United Kingdom. Lengthy, perhaps tedious exposition of divergent policies is warranted here given the absence of previous descriptive accounts. Part III evaluates and critiques the trajectory of

3. See, e.g., JACK SHAHEEN, *REEL BAD ARABS: HOW HOLLYWOOD VILIFIES A PEOPLE* (2d ed. 2009); John Tehranian, *The Last Minstrel Show: Racial Profiling, the War on Terrorism and the Mass Media*, 41 CONN. L. REV. 781 (2009); Tung Yin, *Jack Bauer Syndrome: Hollywood’s Depiction of National Security Law*, 17 S. CAL. INTERDISC. L.J. 279 (2008).

4. This work also suggests that new forms of constitutional prohibitions ought to forestall new violations. See Sunita Patel, *Performative Aspects of Race: “Arab, Muslim, and South Asian” Racial Formation After September 11*, 10 ASIAN PAC. AM. L.J. 61 (2005).

5. I retain quotation marks for the term “radicalization” through the Article. I do not doubt individuals do, in fact, become persuaded to commit acts of terrorism. I use the quotation marks to underscore that the “radicalization” under discussion is the discrete discursive formation, not the social process itself.

6. IAN HACKING, *HISTORICAL ONTOLOGY* 100 (2002).

“radicalization” policy along methodological, political economy, and consequentialist grounds.

I should emphasize at the outset the tentative nature of my investigation. My goal here is largely descriptive. I hope to persuade the reader that there is a new form of state “expertise” being developed, and that this body of expertise warrants scholarly attention.

I. STATE EPISTEMIC PRACTICES AND STATE POLICIES

Governments generate policies based on understandings of social facts and social dynamics. Like social scientists, governments value parsimony because “[n]o administrative system is capable of representing any existing social community except through a heroic and greatly schematized process of simplification and abstraction.”⁷ These understandings can be the result of public debate and deliberation, or they can emerge from investments of bureaucratic time and expertise. In evaluating the risks of climate change for example, federal government bureaucrats may look to published scientific studies, they may conduct their own research, or they may rely on interest groups to bring them information. The epistemic bases of government policy are almost always varied. The selection of “simplification[s] and abstraction[s],” their upstream sources, and their downstream effects, can all be isolated and studied.

To target terrorism, a government might wish to start off with some understanding of who becomes a terrorist, and how the transformation happens.⁸ For the first five years after the 9/11 attacks there was little public information about how North American and European states conceptualized the “radicalization” process. But that is changing. In the past few years, American state police forces, the U.S. federal government, and several European governments have published policy documents describing how individuals turn to political violence. The authors of “radicalization” literature attempt to construct a descriptive taxonomy of terrorist motivations and interactions to enable prediction of future acts of violence.⁹ “Radicalization” so defined appears to be a new object of state scrutiny and epistemological investment.¹⁰

As the state turns to the production of “knowledge” and “expertise,” scholarship that attempts to understand counterterrorism must reorient itself as well. In turning to epistemology to understand state practice, I am following a tradition established by historian and cultural theorist Michel Foucault. Foucault argued that “truth” could be characterized as “a thing of this world,” which is “centered on the form of scientific discourse and the institutions which produce

7. JAMES C. SCOTT, *SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED* 54 (1998).

8. I do not deny that a government might attend to these causal questions. States fought crime and wars long before bureaucrats thought about their causes.

9. See generally Aziz Huq, *The Signaling Function of Religious Speech in Counterterrorism* (2009) (draft on file with author) (discussing empirical problems generated by pressure toward prophylactic responses in counterterrorism).

10. I have failed to locate any documents from the relevant jurisdictions herein discussed predating 9/11 that discuss “radicalization.”

it . . . subject to constant economic and political incitement.”¹¹ Elsewhere, Foucault explored the relationship between how government acts and “discursive formations,” i.e., “statements different in form, and dispersed in time [that] form a group [because] they refer to one and the same object.”¹² He urged scholars to focus their inquiries on “whether the political behavior of a society, a group, or a class is not shot through with a particular, describable discursive practice” that in turn would “define the element in politics that can become an object of enunciation.”¹³ This Article should be understood in that vein.

Foucault’s lesson is emphatically not the facile one that knowledge is an instrument in the hands of the powerful. In his histories, a diffuse “band of experts” organize “lots of hypotheses and prejudices and tidy theories” into a “postulated set of rules that determine what kinds of sentences are going to count as true or false in some domain.”¹⁴ What matters are thus not the rules themselves but the conditions that make them count as “true.” These conditions enable “[the state] . . . to do something new with people”; one can treat them as “disciplinary objects” within a new field of possible identities and categories.¹⁵ Knowledge, on this account, does not repress, it constitutes.¹⁶ To borrow Ian Hacking’s phrase, it is a matter of “making people up,” not simply controlling them.¹⁷

More traditional political scientists have also studied the complex and bilateral connection between state epistemological practices and state policies. Of special note is the work of anthropologist and political scientist James C. Scott, who has traced a history of state efforts “to make a society [more] legible,” i.e., more discernable and quantifiable.¹⁸ This desire for legibility, Scott explains, is “a central problem in statecraft” insofar as it is an adjunct to the “classic state functions of taxation, conscription, and prevention of rebellion.”¹⁹ Increasing legibility, Scott argues, augments a state’s capacity for control.²⁰ The more the state knows about the distribution of and variance in social practices, the easier it is for it to direct the use of coercive force. As a correlative, “illegibility . . . has provided a vital margin of political safety from control by outside elites.”²¹

11. MICHEL FOUCAULT, POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITING 1972–1977, 131 (Colin Gordon ed. 1980).

12. MICHEL FOUCAULT, THE ARCHAEOLOGY OF KNOWLEDGE 32 (A.M. Sheridan Smith trans., Harper Colophon Books ed. 1976) (1969).

13. *Id.* at 194; *see also* EDWARD SAID, ORIENTALISM 23 (1979) (adopting the concept for the study of Western texts about the “Orient”).

14. HACKING, *supra* note 6, at 76–77.

15. *Id.* at 79.

16. *See* MICHEL FOUCAULT, THE HISTORY OF SEXUALITY: AN INTRODUCTION 11, 138–43 (R. Hurley, trans. 1978).

17. *See* HACKING, *supra* note 6, at 99.

18. SCOTT, *supra* note 7, at 2, 13.

19. *Id.* The process is never aimed at a perfect mapping: “No administrative system is capable of representing any existing social community except through a heroic and greatly schematized process of simplification and abstraction.” *Id.* at 22; *accord id.* at 309.

20. *See id.* at 77.

21. *Id.* at 54.

There is, hence, a rich interdisciplinary tradition of studying the state's epistemic bases for public policies. This tradition, however, has not yet been extended to the study of counterterrorism policies.

II. CONCEPTIONS OF "RADICALIZATION" IN THE UNITED STATES AND THE UNITED KINGDOM

This Part begins by examining the most influential governmental approaches to "radicalization" in the United States, which have emerged at the subfederal level before turning to federal models. This Part then outlines the development of "radicalization" policy in the United Kingdom.

A. "Radicalization" in the United States – State-level Responses

The trend in "radicalization" policy in the United States defies the conventional wisdom in policy and constitutional law in that it is a state (New York) government that has taken the lead in a national security matter.²² While the federal government has been a laggard, the first, and perhaps most influential, analysis of "radicalization" has emerged in a publication by the New York Police Department ("NYPD"). In the wake of the New York study, the Pennsylvania Municipal Police Officers' Education and Training Commission issued a training manual addressing "radicalization." Because local and state police are on the front lines of interacting with most urban Muslim-American communities, the analysis adopted by state agencies may be especially significant as an index of frontline policies.

At the threshold, however, federal and state sources diverge on their assessment of the severity of the domestic-source terrorist threat facing the United States. A decision to invest in understanding "radicalization" implies a geographic distribution of terrorist risk where domestic source threats constitute a principal share of the policy concern. Part of the work of the "radicalization" literature, therefore, is to substantiate the claim that this is a policy problem meriting serious attention.

The National Intelligence Estimate ("NIE") addresses this issue in a July 2007 document entitled *The Terrorist Threat to the US Homeland*. This analysis picked out the growing strength of al Qaeda in western Pakistan as the principal threat. It argued that al Qaeda retained the ability to send agents into the United States from overseas.²³ The NIE noted a "growing number of radical, self-generating cells in Western countries" and an expanding "radical and violent segment of the West's Muslim population."²⁴ But the NIE also observed that "this internal Muslim terrorist threat is not likely to be as severe [in the United States] as it is in Europe," and that other "non-Muslim groups . . . probably will

22. See, e.g., MARK M. LOWENTHAL, INTELLIGENCE: FROM SECRETS TO POLICY 24–39 (2000).

23. NATIONAL INTELLIGENCE COUNCIL, NATIONAL INTELLIGENCE ESTIMATE: THE TERRORIST THREAT TO THE US HOMELAND 5 (July 2007), http://www.dni.gov/press_releases/20070717_release.pdf. The National Intelligence Estimate is "the Intelligence Community's (IC) most authoritative written judgments on national security issues and designed to help US civilian and military leaders develop policies to protect US national security interests." *Id.* at 2.

24. *Id.* at 7.

conduct attacks . . . on a small scale.”²⁵ Intelligence briefings produced during the 2008 presidential election campaign further downplayed domestic-origin terrorism.²⁶ Congressional testimony from the National Counterterrorism Center (“NCTC”) in March 2009 affirmed that assessment. The NCTC rejected the idea that there had been “community-wide radicalization” of the Somali-American community in Minneapolis after some young men from that city traveled to the Horn of Africa to join the Islamist Shabab insurgency.²⁷

By contrast, a report published by the NYPD identified a more serious problem. It asserted that “jihadist ideology . . . is proliferating in Western democracies at a *logarithmic* rate” and that “radicalization *permeat[es]* New York City, especially its Muslim communities.”²⁸ Unlike the federal assessment, the state assessment was cast in terms of imminent and geographically specific concern. A subsequent codicil to the report claimed the term “permeate” had been used in the neutral sense of dissemination. But the tone and context of the NYPD’s assessment suggested that the department viewed Muslim-Americans as a source of significant threat.

Echoing that assessment, Senator Joseph Lieberman, chair of the Senate’s Homeland Security and Governmental Affairs Committee, warned in 2007 of a “rise of domestic terrorist cells, inspired by but not necessarily directly linked to al Qaeda [as] an emerging threat to our nation’s security.”²⁹ Senator Lieberman further explained that the threat, in his view, was inextricably tied to the Muslim-American community: “We have thought that American Muslims were more fully integrated into American society than Muslim communities in Europe.” He continued, “I believe that remains true but, obviously, not for all Muslims in America.”³⁰ Senator Lieberman is one of the few political actors at the federal level to endorse and promote the model of “radicalization” generated at the New York state level.³¹

25. *Id.*

26. Joby Warrick and Walter Pincus, *Reduced Dominance is Predicted for U.S.*, WASH. POST, Sept. 10, 2008, at A2 (discussing national security briefing given to 2008 presidential candidates, which de-emphasized terrorism in favor of climate change and resource conflicts as major concerns).

27. *Violent Islamist Extremism: Al-Shabaab Recruitment in America Before the S. Comm. on Homeland Security and Governmental Affairs*, 111th Cong. 4 (2009) [hereinafter Liepman testimony] (statement of Andrew Liepman, Deputy Director of Intelligence, National Counterterrorism Center, Directorate of Intelligence), available at http://hsgac.senate.gov/public/_files/031109Liepman.pdf.

28. MITCHELL D. SILBER & ARVIN BHATT, NEW YORK POLICE DEPARTMENT (“NYPD”), *RADICALIZATION IN THE WEST: THE HOMEGROWN THREAT* 8, 66 (2d ed. 2009) [hereinafter NYPD Report] (on file with author) (emphases added).

29. Transcript of March 14, 2007 U.S. Senate Homeland Security and Governmental Affairs Committee Hearing on Islamist Radicalization at 2 (Sen. Joseph I. Lieberman) [hereinafter “Senate March 14 Hearing Transcript”], available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=2fb6902f-72e9-45a6-b5b2-15389ed18ec3.

30. See *Violent Islamist Extremism: Government Efforts to Defeat It Before the Homeland Security and Governmental Affairs Committee*, 110th Cong. 3 (2007) (Opening Statement of Chairman Joseph Lieberman), http://www.homeland.ca.gov/pdf/testimony/senate/sga/05-10-07/Statement_ChairJosephLieberman.pdf.

31. Which account is correct? Divergent assessments of the underlying risk of domestic-source political violence in the United States are hard to evaluate. There is no clear benchmark to set them against. The most obvious metric is the frequency of attacks. But this is obviously insensitive to fluctuations in the underlying number of immanent terrorist threats within the United States.

Corresponding to the variance in threat assessments, the first and most prominent analysis of “radicalization” in the United States emerged at the state level. The NYPD’s Intelligence Division published *Radicalization in the West: The Homegrown Threat* in August 2007.³² Until that time, the NYPD had never published an analytic report, and the change in approach was not explained. The NYPD’s Report does not state why or by whom the document was commissioned. There is no evidence that New York City’s democratic branches, its mayor and city council, sought the report. Nor is there a clear statement about how the report was intended to be used. The report vaguely explained that its aim was to “assist policymakers and law enforcement officials . . . by providing a thorough understanding of the kind of threat we face domestically.”³³ But the Department added a later “statement of clarification” to some public versions of the report, disclaiming any intention to be “policy prescriptive.”³⁴ By rejecting any claim to prescription, and by laying claim to a mantle of neutral expertise, the report situated itself as a legitimating basis for subsequent policies.

Moreover, the NYPD report’s tone and content indicated an effort to set and legitimate an agenda for “policy-makers” in state and federal political branches. Suggestive of this advocacy goal, the report included a series of “Outside Expert’s Views” from internationally recognized academics and policy experts, each speaking admiringly of the Department’s expertise in “how to detect imported terrorists, new converts and homegrown operators.”³⁵ These “expert” views, rather than supplementing the analysis of the report, validated its bona fides and underscored its aspirations. Presumably, obtaining such imprimaturs of authority was not costless. The department’s efforts to secure evidence of its neutrality, respectability, and reliability are consistent with a more ambitious account of the report’s aims.³⁶ The report, in other words, was an opening bid in “the creation of a self-constituting class of experts located within a new knowledge.”³⁷

The NYPD report’s analytic ambition also bespeaks a larger aspiration. The authors used a broad scope, documenting ten case studies of alleged or completed terrorist conspiracies: five from Europe and Canada and five from the United States. But the report has a narrow focus along a different axis: all ten case studies were linked explicitly or implicitly to al Qaeda. The sample population for the report comprised all terrorism incidents in the world, but the actual sample included only terrorism explicitly or notionally connected to Islam.

Moreover, since there have been no attacks in the United States since 2001, the metric is also too lumpy to be of much use.

32. Rather confusingly, while the August 2007 version of the report remains on the NYPD’s website at the time of this writing, a different edition of the report, containing a “Statement of Clarification” with responses to critics is available at New York City government’s public information site. See http://www.nyc.gov/html/nypd/downloads/pdf/public_information/NYPD_Report-Radicalization_in_the_West.pdf [hereinafter NYPD Report II].

33. NYPD Report, *supra* note 28, at 2.

34. NYPD Report II, *supra* note 32, at 11, 12.

35. *Id.* at 13, 15.

36. Consider by way of analogy law professors’ habit of larding star footnotes with credits to celebrated colleagues.

37. HACKING, *supra* note 6, at 77.

Selection, clearly, was not random, but directed by an interest in certain forms of terrorism.

Elaborating these case studies, the report perceives a “remarkable consistency” in the “radicalization” process. The report proposes four stages to the “radicalization” process, “each with its distinct set of indicators and signatures.”³⁸ These are: (1) pre-radicalization, (2) self-identification, (3) indoctrination, and (4) jihadization. In the last term of the sequence, a connection between religious belief and terrorism is worked into the basic discursive matrix of the report. In a noteworthy rhetorical move, these categories are vested with empirical certainty and heft by graphical representations. The authors of the report included graphics that chart, with apparently almost day-by-day accuracy, temporal transitions of individual terrorists in particular cases from one stage to another.³⁹ The level of putative accuracy is surprising given concessions elsewhere in the report about the necessarily fragmentary evidence of individual motivations.⁴⁰ The degree of accuracy in the “radicalization” graphics, however, is consistent with an effort to establish the aura of academic credibility via a claim to precision that underlying data cannot support.

The four stages of “radicalization” act as a funnel according to the report: once a person enters, he or she might not reach “jihadization,” but will remain “a threat.”⁴¹ This has expansive consequences. Consider the definition of the “pre-radicalization” phase stipulated by the report. Individuals are “pre-radical,” according to the NYPD’s logic, when they live in geographic Muslim enclaves, which are “‘ideological sanctuaries’ for the seeds of radical thought”; when they are between fifteen and thirty-five year old males; and when they are middle class and educated through at least high school.⁴² That entire class of individuals is already in the funnel and thus a potential “threat.” Cashed out in operational terms, the NYPD’s analysis means that almost the whole young, male Muslim population of urban areas in the United States constitutes a threat because they all are in the “pre-radicalization” stage.⁴³ This is, to say the least, a surprisingly broad claim at odds with the ambient level of terrorist attacks in the United States.

The body of the report provides case-by-case analyses of ten cases of alleged terrorism drawn from incidents in Madrid, Amsterdam, London, Australia, Toronto, Portland, Northern Virginia, Lackawana, and New York City. By aggregating the case studies, the report claims to identify “typical signatures” associated with each of the four phases. The “typical signatures” of the pre-radicalization phase, for example, are “[b]ecoming alienated from one’s former life”; “[g]iving up cigarettes, drinking, gambling and urban hip-hop gangster clothes”; “[w]earing traditional Islamic clothing, growing a beard”; and

38. NYPD Report, *supra* note 28, at 7.

39. *Id.* at 19, 54; *see id.* at 81.

40. *See id.* at 10 (noting that the “subtle and non-criminal nature of the behaviors involved in the process of radicalization makes it difficult to isolate or even monitor”).

41. *Id.*

42. NYPD Report, *supra* note 28, at 22–23. These minimal definitions, however, are violated by the report’s own later examples, which include individuals who do not satisfy the educational and class qualifications. *See id.* at 67.

43. *Id.* at 23.

"[b]ecoming involved in social activism and community issues."⁴⁴ (A subsequent version of the report contained a response to criticism by civil liberties advocates, stating that "a greater degree of religiosity . . . cannot be used as a signature."⁴⁵ The main text of the report that alludes to these indicia, however, remains unchanged and thus merits analysis). Signatures of the "jihadization" phase, in turn, include the undertaking of "Outward Bound-type activities," and, in one striking passage, the ownership of "wilted plants," which may be a sign that "noxious explosives" are being prepared in the location.⁴⁶ The end of the four phases is an acceptance of an "individual duty to participate in jihad" that precedes any "operational planning for jihad or a terrorist attack."⁴⁷

In the wake of the NYPD's report, the Pennsylvania Municipal Police Officers' Education and Training Commission issued a training manual entitled "*Radical Islam: A Law Enforcement Primer*" (the *Primer*).⁴⁸ This training manual merits attention as an elaboration of state-level operational approaches to counterterrorism. The authors did not, however, include an explicit analysis of the process of "radicalization" with anything like the NYPD report's level of detail. The *Primer's* first section, entitled "Typologies and Misconceptions," instead contains a disordered sequence of terms, definitions, and notes on early Muslim history.⁴⁹ The discussion moves indiscriminately, and confusingly, between historical and theological claims. It drifts from doctrinal issues such as a definition of the "Sunnah," to complex theological notions, such as the abrogation of early verses of the Qur'an by later ones.⁵⁰ The manual's second section is entitled "Radical Islam," and begins with a one-page summary of Islamic theology from the thirteenth century Ibn Taymiyyah to the twentieth century Sayyid Qutb.⁵¹ This section gives the impression that a centuries-long sweep of Islamic intellectual and theological development can be distilled down to a single thread: the endorsement of violence for political ends. The third and final section continues the same theme, identifying "modern radical groups," including al Qaeda, Hamas, Islamic Jihad, and Hezbollah, that share "five pillars of radical ideology" despite the fact that one (Hezbollah) emerges from Shia Islam, which is quite separate from and often antagonistic to the Sunni tradition from which the others emerge.⁵² While glossing over elemental differences, the

44. *Id.* at 31.

45. NYPD Report II, *supra* note 32, at 12.

46. NYPD Report, *supra* note 28, at 44, 49. "Wilted plants" were seen in one British apartment where explosives were being prepared. The report extrapolates from that observation to the conclusion that viewing wilting plants generally should trigger concern.

47. *Id.* at 43. Note again the conflation of religious behavior and terrorism.

48. Municipal Police Officers' Education & Training Commission, *Radical Islam: A Law Enforcement Primer* (Bill Kaiser, ed., undated) [hereinafter *Pennsylvania Primer*].

49. *Id.* at 2-12.

50. *Id.* at 7-8. The idea of *naskh*, or abrogation, is complex and long-contested in Islamic theology. See WAEL B. HALLAQ, *A HISTORY OF ISLAMIC LEGAL THEORIES* 68-74 (1997).

51. *Pennsylvania Primer*, *supra* note 48, at 13-19. It should go without saying that this is a staggering feat of compression.

52. *Id.* at 20-23. This passage also conflates justifications for violence with the more prosaic notion of the five pillars of core practice in mainstream Islam. For an excellent account of Shia political mobilization, including Hezbollah, that makes plain how distinct it is from Sunni politics, see LAURENCE LOUËR, *TRANSNATIONAL SHIA POLITICS* (2008).

Primer's mosaic of disparate facts communicates the impression that the problem of violent terrorism is not linked to a small fraction of Muslims, but rather adheres in the structure and dictates of the faith tradition itself.

B. "Radicalization" in the United States – Federal Response

Whereas state models of "radicalization" have been powerfully informed by a view about the underlying threat level and a normative vision of religious tradition—which I explore at greater length below—the federal response has been fragmented, hesitant, and incomplete. Assumptions of federalism, at least in this domain, are turned on their head.

No federal agency has published a formal analysis of "radicalization." Congress has passed no law directly relating to the matter. But the Federal Bureau of Investigation ("FBI") and the Department of Homeland Security ("DHS") have separately suggested definitions in the course of congressional testimony. In addition, one Senate committee has generated reports that, while heavily dependent on the NYPD's efforts, try to make a distinctive contribution. In general, federal responses have demonstrated a more tempered and careful position on religious identity. Blanket accusations about one faith's co-religionists are few and far between.

The FBI has generated the least in terms of policy documents. In written testimony delivered to Congress in May 2007, an assistant director of the FBI explained that "consistent with the First Amendment, [the FBI] defines radical individuals as persons who encourage, condone, justify, or support the commission of a violent act or other crimes against the U.S. government, its citizens or its allies for political, social, or economic ends."⁵³ In March 2009, FBI congressional testimony addressed the possibility that members of Minneapolis's Somali-American community might have traveled to and from the Horn of Africa, where they would be ideologically transformed and might be persuaded to execute terrorist attacks in the United States. While expressing "concern" about the possibility of "recruitment of individuals" to fight in Somalia, the FBI testimony recognized "a variety of motivations affecting such individuals."⁵⁴ Unlike the NYPD and Pennsylvania definitions, the FBI thus does not couple religion and terrorism tightly.

By contrast, other federal agencies have invested time and attention to the "radicalization" problem to craft more elaborate analyses. Statements from DHS, in particular, suggest it views "radicalization" as a nuanced and fluid process of social transformation. Former DHS Secretary Michael Chertoff declared in congressional testimony that "DHS defines radicalization as the process of adopting an extremist belief system, including the willingness to use, support, or

53. *Violent Islamist Extremism: Government Attempts to Defeat It Before the S. Comm. on Homeland Security and Governmental Affairs*, 110th Cong. (2007) (statement of John Miller, Assistant Director, Office of Public Affairs, Federal Bureau of Investigation), [hereinafter Miller Statement] http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=a3a45e4d-8a9f-4a54-a245-f50743eb1b71.

54. *Before the S. Comm. on Homeland Security and Governmental Affairs*, 111th Cong. (2009) (statement of Philip Mudd, Associate Executive Assistant Director, National Security Branch, Federal Bureau of Investigation), <http://www.fbi.gov/congress/congress.htm>.

facilitate violence, as a method to effect social change.”⁵⁵ Chertoff and other DHS officials have suggested that the Department is careful not to define “radicalization” in religious terms. They use the term “to encompass a wide range of threats against our country, including various white supremacy and fascist organizations.”⁵⁶ Before Congress, Chertoff rejected any equation “of violent extremism with an entire religion such as the Muslim religion.” Within the faith, however, Chertoff explained that:

There is a subset of individuals who we have to characterize as violent Islamic extremists, meaning that they are adherents to an ideology that is distinctive and has a narrative of the world. It is one that at least uses the language of Islamic symbols; it may be a perversion of the language, but it uses that rhetoric. And it has as a goal acts of violence that are aimed at creating a society that will ultimately be radically different from the one we have now, one which is not characterized by democracy, freedom and tolerance, but one that is characterized by intolerance and totalitarianism.⁵⁷

DHS has also taken positions on the mechanisms of “radicalization.” Addressing “Islamic radicalization,” DHS’s Chief Intelligence Officer Charles Allen distinguished “radicalization from terrorism by emphasizing the difference between related social patterns that may all lead to terrorism.”⁵⁸ In the same testimony, Allen cautioned that there “are diverse ‘pathways’ to radicalization,” rather than a “‘one-way street’” of radicalization.⁵⁹

Ideology, including religious ideology, still plays a central role in the DHS’s account. A key part of the “radicalization” path, Secretary Chertoff explained, is that “people have to be persuaded” and “presented with a comprehensive world narrative.”⁶⁰ In that process of persuasion, Allen identified “a variety of human and institutional catalysts, such as formal and informal religious institutions” and “[c]harismatic leaders,” and risk factors, such as “[i]nsular communities with little exposure to moderating influences,” and the “deterioration of familial, social and societal ties” that may precipitate “radicalization.”⁶¹ In the hearing, Allen singled out prisons and “university group[s]” as radicalizing hubs.⁶²

It seems the DHS’s understanding of “radicalization” is in flux. In his March 2007 testimony, Secretary Chertoff stated that although DHS was taking “a

55. *Before S. Comm. on Homeland Sec. and Gov’t Affairs*, 110th Cong. 1 (2007) (written testimony of Michael Chertoff, Sec’y of the Dep’t of Homeland Sec.), http://hsgac.senate.gov/public/_files/031407Chertoff.pdf [hereinafter Chertoff testimony]; *accord Threat of Islamic Radicalization to the Homeland Before the S. Comm. on Homeland Sec. and Gov’t Affairs*, 110th Cong. 4 (2007) (written testimony of Charles E. Allen, Chief Intelligence Officer, Assistant Secretary for Intelligence and Analysis), [hereinafter Allen testimony] <http://www.investigativeproject.org/documents/testimony/270.pdf>.

56. Chertoff testimony, *supra* note 55, at 1.

57. Senate March 14 Hearing Transcript, *supra* note 29, at 5.

58. Allen testimony, *supra* note 55, at 4.

59. *Id.* at 5; *accord* Senate March 14 Hearing Transcript, *supra* note 29, at 28 (Allen confirmed that “there’s no single pathway. But we did identify nodes” such as “an extremist mosque” or “a university group”).

60. Senate March 14 Hearing Transcript, *supra* note 29, at 6.

61. Allen testimony, *supra* note 55, at 6–7.

62. Senate March 14 Hearing Transcript, *supra* note 29, at 28.

comprehensive approach” to the issue, it was still working with the academic and scientific communities in “[d]eveloping a better understanding of the radicalization phenomenon,” through cooperation with British counterparts.⁶³ In late 2008, DHS issued a request for participation, asking private “experts . . . to participate in a radicalization-research effort” to “systematically identify key intervention strategies that can help to prevent or counter radicalization in the United States.”⁶⁴ The Department under Secretary Janet Napolitano, however, has not published any conclusions based on that call.

Evidence about the position taken by the intelligence agencies of the federal government, as opposed to its law enforcement arms, is relatively sparse. One piece of evidence is a statement filed in congressional hearings respecting Somali-Americans traveling to fight with the Shabaab in the Horn of Africa. An official from the NCTC stated in March 2009 hearings that the decisions of these Somali-Americans were “the result of a number of factors . . . that come together occasionally when dynamic, influential leaders gain access to despondent, disenfranchised young men.”⁶⁵ Recruiters offer young men an alternative to gang subculture, according to the NCTC, in the form of “religiously inspired indoctrination to move them toward violent extremism.”⁶⁶ NCTC testimony emphasized the psychological rather than the religious dynamics of the process, which sweeps in “vulnerable” young men, “lacking structure and definition in their lives at home.”⁶⁷ Like the DHS, the NCTC publicly articulated a multifactor model of “radicalization” attuned to complex social and psychological nuances.

Congress, too, has started to take a position in the “radicalization” debate. Since September 2006, the U.S. Senate Committee on Homeland Security and Governmental Affairs (“Senate Homeland Security Committee”), led by Senators Susan Collins and Joseph Lieberman, has held hearings about the problem of “domestic radicalization.” The first hearing, for example, focused on “prison radicalization.”⁶⁸ In a May 2008 committee report, the Senate Homeland Security Committee adopted the NYPD’s *Radicalization in the West* analysis.⁶⁹ Senator Lieberman lauded the NYPD’s analysis as a “breakthrough” that “set the standard” for law enforcement.⁷⁰

63. Chertoff testimony, *supra* note 55, at 2. DHS Chief Intelligence Officer Charles Allen agreed that “work on radicalization is preliminary and by no means complete.” Allen testimony, *supra* note 55, at 5.

64. I was asked to attend this meeting.

65. Liepman testimony, *supra* note 27.

66. *Id.*

67. *Id.*

68. *Prison Radicalization: are Terrorist Cells Forming in U.S. Prison Blocks?: Hearing Before the S. Comm. on Homeland Sec. & Gov’t Affairs*, Sept. 19, 2006, available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=b602edb5-1faa-4011-b12c-c312678d1b71.

69. *Violent Islamist Extremism, The Internet, and the Homegrown Terrorist Threat: Majority & Minority Staff Report: Hearing Before the S. Comm. on Homeland Sec. & Gov’t Affairs*, 110th Cong. 4 (2008), http://hsgac.senate.gov/public/_files/IslamistReport.pdf [hereinafter *Violent Islamist Extremism*].

70. *Sen. Lieberman Applauds Pioneering Report on Homegrown Islamic Radicalism*, S. Comm. on Homeland Sec. and Gov’t Affairs, Aug. 15, 2007, [http://hsgac.senate.gov/public/index.cfm?FuseAction=Press.MajorityNews&ContentRecord_id=350f95d1-d9bf-446e-b6a3-c3d13df07a56&Region_id=&Issue_id=\[hereinafter Lieberman statement\]](http://hsgac.senate.gov/public/index.cfm?FuseAction=Press.MajorityNews&ContentRecord_id=350f95d1-d9bf-446e-b6a3-c3d13df07a56&Region_id=&Issue_id=[hereinafter Lieberman statement]).

The Senate Homeland Security Committee's contribution to the "radicalization" literature focused on the Internet. In a May 2008 report, the Committee concluded that the Internet "play[s] a critical role throughout the radicalization process."⁷¹ In the Committee's view, the Internet is a bridge by which radicalizing influences enter the United States. It is "the most significant factor in the radicalization process today."⁷² The Internet, on this account, is a way for individuals to find and explore propaganda, to become indoctrinated in the cause, and to connect "with the global Islamist terrorist movement."⁷³ According to the Committee, the Internet presents new problems for law enforcement because "self-generated violent Islamist extremists who are radicalized online" are unlikely to come to law enforcement's attention through real-world activities or connections.⁷⁴ The report gives two examples of the Internet's radicalizing potential. One involves two Georgia Tech students who made contact with a Toronto-based group via the Internet; the other is the case of Derrick Shareef, alleged to have been planning an explosives attack on an Illinois mall.⁷⁵ In both cases, it is unclear whether the Internet played a unique role that could not have been played by telephone communications.

C. "Radicalization" in the United Kingdom

The British discourse on "radicalization" emerged in a series of government documents that outline general counterterrorism policy rather than homing in on the problem of "radicalization." I first outline the overall British policy framework and then document the development of an understanding of "radicalization."

In 2003, the Home Office, the cabinet-level entity charged with crime and security policy, adopted a four-prong counterterrorism strategy called "Contest." Details of the Contest strategy, which includes analyses regarding domestic terrorism, were released to the public in 2006 and amended in 2009. The Contest strategy's four overarching prongs are: preventing terrorism, pursuing terrorists, protecting the public, and preparing the public.⁷⁶ The "preventing terrorism" or "Prevent" strand, implicates the "radicalization" problem. It is not clear what model of "radicalization" the British government used up to 2006, when the Contest strategy was first released to the public. In early 2005, the Joint Terrorism Analysis Center, part of the British security services, had developed a "three-tier model . . . to describe the varying degree of connection between targets and the Al Qaida leadership," with the tiers corresponding to direct links, loose

71. Violent Islamist Extremism, *supra* note 69, at 10.

72. *Id.* at 11.

73. *Id.* at 12.

74. *Id.* at 14.

75. *Id.* at 13.

76. PRIME MINISTER AND SEC. OF STATE FOR THE HOME DEP'T, COUNTERING INT'L TERRORISM: THE UNITED KINGDOM'S STRATEGY, 2006-07, Cm. 6888, at 1-4, [hereinafter COUNTERING INT'L TERRORISM], available at <http://www.cabinetoffice.gov.uk/media/136036/countering.pdf>.

affiliations, and ideological affinities.⁷⁷ This three-tier model is not elaborated in any public document, and appears to have been abandoned. There is some evidence that the July 7, 2005 London bombings prompted a significant shift in British governmental understanding. According to testimony from the head of specialist operations at the Metropolitan Police Service to Parliament's Intelligence and Security Committee, the security services had until 2005 been "working off a script which actually has been completely discounted from what we know as reality."⁷⁸

Whatever the old script was, it was formally superseded by 2006. The first prong of the Contest strategy, Prevent, is now dedicated to "preventing terrorism by tackling the radicalisation of individuals."⁷⁹ Prevent, in turn is made up of three major strands: ameliorating institutional weaknesses and gaps, hindering extremists from spreading their messages, and winning the hearts and minds of U.K.'s civil society—in particular Britain's marginalized population.

The pivotal document in the United Kingdom "radicalization" policy is a 2006 Home Office paper outlining the Contest strategy. Later Home Office papers deal with the Prevent strand specifically, and give further detail about "radicalization." Finally, a 2008 paper generated by the U.K.'s Security Service (MI-5) also addresses "radicalization."⁸⁰ The result is a rich and not entirely consistent "discursive formation."

i. *Countering International Terrorism*. The first official analysis of "radicalization" by the U.K. government was the 2006 Home Office strategy paper *Countering International Terrorism: The United Kingdom's Strategy*.⁸¹ Publication of this strategy paper came only two months after the Parliamentary Intelligence and Security Committee warned that "across the whole of the counter-terrorism community the development of the home-grown threat and the radicalism of British citizens were not fully understood or applied to strategic thinking."⁸² The 2006 paper can be read as a response to that challenge.

According to *Countering International Terrorism*, "radicalization" is the first of two steps that may lead to violence. First, an individual alienated from larger

77. INTELLIGENCE AND SEC. COMM., REPORT INTO THE LONDON TERRORIST ATTACK ON 7 JULY 2005, 2006-07, Cm. 6785, at 27, available at http://www.cabinetoffice.gov.uk/media/cabinetoffice/corp/assets/publications/reports/intelligence/isc_7july_report.pdf.

78. *Id.* at 30 (italics omitted). Reviewing British counterterrorism strategy in 2004, lawyer John Upton identified Professor Magnus Ranstorp of the Center for the Study of Terrorism at the University of St. Andrews as a formative influence on U.K. governmental thinking about "radicalization." Ranstorp had a "four-stage process by which al-Qaida's jihadists are formed. First, a recruit undergoes spiritual preparation; then he is provided with basic military and survival skills. Following this it is his duty to place himself at the fault-lines between Islam and the West; the armed struggle comes last." John Upton, *In the Streets of Londonistan*, LONDON REV. BOOKS, Jan. 22, 2004. This appears to be a different four-stage process from the one offered by the NYPD. What one makes of the proliferation of overlapping models—evidence of intellectual ferment or symptoms of pathological uncertainty—is unclear.

79. COUNTERING INT'L TERRORISM, *supra* note 76, at 9.

80. *See infra* 17-19.

81. *Id.* at 5. The paper is a "partial" publication because some parts of the United Kingdom's counterterrorism strategy remain classified.

82. INTELLIGENCE AND SEC. COMM., *supra* note 77, at 30.

society adopts extreme views, thereby becoming “radicalised.”⁸³ Second, a “tiny minority” of these radicalized individuals become terrorists “by financing, lending facilities to, or encouraging active terrorists, or by actively participating in terrorist attacks.”⁸⁴ The paper cautions that “[t]he processes whereby certain experiences and events in a person’s life cause them to become radicalized, to the extent of turning to violence to resolve perceived grievances, are critical to understanding how terrorist groups recruit new members and sustain support for their activities.”⁸⁵ But the report adds that this is neither a predictable nor a mechanical process: “There are a range of potential factors in radicalization and no single factor predominates. It is likely that the catalyst for any given individual becoming a terrorist will be a combination of different factors particular to that person” including a “sense of grievance and injustice,” “a sense of personal alienation or community disadvantage,” and the “exposure to radical ideas.”⁸⁶

Like the FBI and DHS approaches, *Countering International Terrorism* clearly states that “radicalization” is not a unified and linear concept.⁸⁷ Rather, there is a cluster of factors that may be associated with “radicalization” in particular cases. Nor does that study assert a tight nexus between religion and terrorism. Also implicit in its analysis is the suggestion that a person who has embarked on the first stage of “radicalization” will not necessarily continue on to its next stage. By further implication, “radicalization” is not a one-way ratchet like the “funnel” posited by the NYPD report.

While the *Countering International Terrorism* strategy paper rejects the notion of a predictable path to violence, it does enumerate several “[p]otentially radicalizing factors.” These include political, social, and religious elements such as: globalization and its economic, political, and cultural destabilizing effects; anti-Westernism in Muslim countries, fuelled by the belief that “the West does not apply consistent standards in its international behavior”; international incidents, including the first and second Gulf Wars and the war in Afghanistan; personal alienation, or economic or social disadvantage; and exposure to “radical ideas” or an inspiring figure already committed to extremism.⁸⁸ A March 2009 restatement of the Contest strategy stated flatly that “[t]here is no single cause of radicalization” but rather a variety of concerns, including differences on foreign policy issues such as Afghanistan and Iraq, as well as the treatment of detainees in Guantánamo Bay.⁸⁹ This breaks from the NYPD approach, which emphasizes faith and personal, psychological dynamics, but makes scant mention of political differences. It also supplements the U.S. federal approach, which does not

83. COUNTERING INT’L TERRORISM, *supra* note 76, at 10.

84. *Id.*

85. *Id.* at 9.

86. *Id.* at 10.

87. Indeed, the security services appear to have reached this conclusion as early as 2004. See Intelligence and Security Committee, *supra* note 77, at 29 (work undertaken before 2004 demonstrated that “there is no simple Islamist profile”).

88. COUNTERING INT’L TERRORISM, *supra* note 76, at 10.

89. PRIME MINISTER AND SEC. OF STATE FOR THE HOME DEP’T, PURSUE PREVENT PROTECT PREPARE: THE UNITED KINGDOM’S STRATEGY FOR COUNTERING INT’L TERRORISM, 2009–10, Cm. 7547 at 41, available at <http://merln.ndu.edu/whitepapers/UnitedKingdom2009.pdf>.

address political grievances. The British approach to “radicalization” considers the studied form of terrorism as an example of *political* violence, while the American approach to the data deracinates the problem of terrorism from any distinctively political roots.

But by introducing a political dimension, *Countering International Terrorism* creates a new ambiguity. The report distinguishes a person “who has become highly radicalized” from “a terrorist” or a supporter of terrorism.⁹⁰ That is, “radicalization” is not defined solely in terms of attitudes to violence. The report fails, however, to define “radicalization” adequately. Should “radicalization” be understood as movement along a spectrum of political views or of religious views? *Countering International Terrorism* gives no clear answer.

ii. *The Prevent Strategy*. Between 2006 and 2008, the British government’s ideas about “radicalization” evolved. In 2006 the U.K. government emphasized international dynamics and foreign policy questions. In 2008, it highlighted more local circumstances.⁹¹

A 2008 Prevent strategy paper picks out five “interlocking factors” with causal links to “violent extremism”: (1) “an ideology which justifies terrorism by manipulating theology as well as history and politics”; (2) “radicalisers and their networks”; (3) vulnerable individuals; (4) the lack of community capacity to resist “radicalization”; and (5) perceived and actual grievances against nation and government.⁹² Psychological and local factors are thus blended with international dynamics. In a separate appendix, the document enumerates a longer list of factors influencing “radicalization.” This annex treats “radicalization” as an individual process, in which characteristics such as a “personal crisis,” underemployment, social exclusion, and links to criminality are important.⁹³ The appendix further tethers “radicalization” to the presence of radicalizing “propagandists, ideologues, or terrorists” and “extremist material.”⁹⁴

The implicit account of “radicalization” here is closer to the American socio-psychological model of personal crisis and resolution through conversion than to *Countering International Terrorism*’s effort to take political motivations seriously. Indeed, political motives are largely absent. Subsequent analyses of “radicalization” published under the Prevent umbrella also focus on immediate social circumstances rather than national or international political grievances.⁹⁵

90. COUNTERING INT’L TERRORISM, *supra* note 76, at 10.

91. But the Prevent strategy cautions that “extremism . . . will need to be addressed at every level—international, national and local.” HM Government, *The Prevent Strategy: A Guide for Local Partners in England* (July 2008) at 7, [hereinafter *Prevent: A Guide for Local Partners*], available at <http://www.crimereduction.homeoffice.gov.uk/crimereduction029.htm>. This at least suggests that the British government distinguishes between domestic and international dynamics that propel “radicalization.”

92. *Id.* at 5.

93. *Id.* at 69.

94. *Id.*

95. See Department for Education and Skills, *Promoting Good Campus Relations: Working With Staff And Students To Build Community Cohesion And Tackle Violent Extremism In The Name Of Islam At Universities And Colleges* 7–9 (2006), available at <http://www.dcsf.gov.uk/hegateway/uploads/ExtremismGuidancefinal.pdf> (noting that, in universities, “extremism can be also disproportionately

That change in direction raises a possibility of transnational influence and borrowing: did American models of “radicalization,” with their focus on socio-psychological causes, influence the development of British doctrine? If so, why did the latter borrow from the former rather than vice versa? And if the borrowing of policies across jurisdictions does occur, is there a set of shared epistemic standards to ensure that the superior model is adopted?

The Prevent strategy leaves several key questions unanswered. First, like the *Countering International Terrorism* paper, it does not contain a clear definition of “radical” that distinguishes between political and religious metrics for estimating extremism. Nor does it define how “radical” ideas are to be distinguished from “moderate” ones.⁹⁶ Extremists are defined, for example, as those who “misrepresent the Islamic faith.”⁹⁷ But the strategy paper does not explain how “correct” representations of Islam are to be identified. Second, the Prevent strategy paper introduces a new term, “violent extremism,” to refer to what was previously called “radicalism”⁹⁸ without explaining the new term.

iii. “Radicalization” on Campus. The term “violent extremism” is, however, discussed at more length in a Department of Education and Skills report on “radicalization” on college campuses.⁹⁹ This report defines “[u]nacceptable extremism” as a spectrum of conduct “from incitement of social, racial or religious hatred, to advocating the use of violence to achieve fundamental change to the constitutional structure of the United Kingdom, to carrying out terrorist acts.” It cautions that individuals “can and do” hold extreme views, but “authorities are concerned [only] with any form of extremism that espouses, promotes or leads to violence: ‘violent extremism.’”¹⁰⁰

The terminological shift in British counterterrorism might be an effort to concede the legitimacy, if not the wisdom, of variance from median political and religious views, while at the same time sorting for cases in which violence is probable. The linguistic shift is an effort, in short, to decouple the risk of violence from the possession of disfavored religious or political views. This suggests the British government’s sensitivity to “the importance of language and communication” in counterterrorism.¹⁰¹

iv. 2008 Security Services Briefing Paper. In August 2008, British journalists reported that the domestic British Security Service MI-5 had developed a briefing note entitled *Understanding Radicalization and Violent Extremism in the UK* “based on hundreds of case studies of those involved in or closely associated with

affected by the simultaneous presence of a few like-minded individuals,” by ethnic segregation, and by charismatic outside speakers).

96. To the extent an inference is feasible, the strategy paper suggests that “radicalization” is a matter of religious strategy. *Prevent: A Guide for Local Partners*, *supra* note 91, at 17–18 (discussing strategies for challenging “violent extremist ideology” and supporting instead “mainstream” Islam).

97. *Id.* at 17. This raises two problems. First, does the state have the competence to make decisions about what is or is not “correct” Islam? Second, assuming it does, has it communicated effectively its understanding of the limits of acceptable Islam?

98. *Id.* at 6.

99. See generally Department for Education and Skills, *supra* note 95, *passim*.

100. *Id.* at 6.

101. See Rachel Briggs & Jonathan Birdwell, *Radicalisation among Muslims in the UK* 25 (Micron, Working Paper No. 7, 2009), available at www.microconflict.eu/publications/PWP7_RB_JB.pdf.

terrorism.”¹⁰² Like the NYPD report, expertise is claimed even as its evidentiary and methodological predicates are rendered invisible. The Security Services have not released the report, nor is its methodology available. According to one journalist’s account of the still-classified note:

[R]adicalisation takes months or years with no one becoming a terrorist overnight, and it is always driven by contact with others. Exposure to extremist ideology, whether in the form of online communities, books, or DVDs, although crucial, is never enough on its own. Personal interaction is essential, in most cases, to draw individuals into violent extremist networks [Key factors influencing receptivity included] the experience of migrating to Britain and facing marginalization and racism; the failure of those with degrees to achieve anything but low-grade jobs; a serious criminal past; travel abroad for up to six months at a time and contact with extremist networks overseas; and religious naivety.¹⁰³

This analysis echoed the multifaceted FBI and DHS approaches to “radicalization” and also a May 2006 U.K. parliamentary Intelligence and Security Committee conclusion that “there is no simple Islamist extremist profile in the United Kingdom and that the threat is as likely to come from those who appear well assimilated into mainstream U.K. society, with jobs and young families, as from those within socially or economically deprived sections of the community.”¹⁰⁴

III. THE PATHS OF “RADICALIZATION”

“Radicalization” policy in both the United States and the United Kingdom is a work in progress. It is well on its way to coalescing into a series of conditions that enable the gathering and evaluation of knowledge. Both governments are moving from a standing start. The U.K. government candidly admitted that its pre-2005 models of political violence were woefully lacking, despite the fact that the United Kingdom had already had long experience with terrorism as a result of disputes over the governance of Northern Ireland. The U.S. government evinced no such candor. The resulting body of literature raises questions of epistemology, political economy, and policy effects.

A. Epistemic and Methodological Concerns

First, the “radicalization” literature raises epistemic and methodological questions. Unlike social scientists, governments are under no obligation to air their methodology and data to public scrutiny and are often able to take advantage of a presumption of accuracy, especially in matters such as national security.¹⁰⁵ Indeed, national security bureaucrats are typically among those

102. Alan Travis, *The Makings of an Extremist*, THE GUARDIAN (U.K.), August 20, 2008.

103. *Id.*

104. Intelligence and Security Committee, *supra* note 77, at 30.

105. See, e.g., Jide Nzelibe & John Yoo, *Rational War and Constitutional Design*, 115 YALE L.J. 2512, 2541 (2006). The most sophisticated articulation of this view is in ERIC A. POSNER & ADRIAN VERMEULE, *TERROR IN THE BALANCE: SECURITY, LIBERTY AND THE COURTS* (2007).

viewed by the public as models of “selfless administrators”¹⁰⁶ whose claims to impartial understanding are quickly credited. And when pressed, the government can always reject criticisms by claiming to know more than can be revealed to the public. This may be the case even if there are methodological or logical flaws in the government’s empirical assumptions. But terrorism presents particularly acute epistemic problems: terrorists are not transparent about their intentions, particularly to the state; post hoc accounts from perpetrators about their motives merit skepticism; and many of the normal tools of empirical analysis are unavailable.

Consider in this light the NYPD and Pennsylvania reports. Numerous problems are facially apparent with the logic of the NYPD’s analysis. First, several of the “typical signatures” mentioned in the report are pervasive in the general population, for instance, the accumulation of facial hair and poor housekeeping skills. Treating facts that are pervasive in the ambient population as indicators of terrorist risk loosens constraints on investigative discretion. If almost everyone is a suspect, allocations of investigative resources may be distorted by many factors, including invidious animus.

A second question arises because some of the putative signals of terrorist risk identified in the report are tied to Islamic tradition and custom, e.g., adoption of Islamic garb. Recall, however, that the report takes “Islamic-based terrorism” as its sole subject at the outset.¹⁰⁷ It combines the breadth of a global focus with a narrow lens that picks up only incidents that it links to Islam. This methodology is known in the empirical literature as purposive sampling, which (unlike random sampling) involves “complete discretion” on a researcher’s part as to which observations to include in a study.¹⁰⁸ Having decided to disregard the full spectrum of contemporary terrorist groups and events available within a global sample frame,¹⁰⁹ and to select only for links to Islam, a researcher cannot then assert that the occurrence of Islamic traits or behavior are correlated with a dependent variable such as the threat of terrorist violence. To the contrary, any correlation is the result of the manner in which the sample was selected from the population.

A third concern relates to the facts of the selected cases. The NYPD report mixes studies of completed terrorism conspiracies with incidents in which an attack was apparently forestalled; it discusses both realized and potential threats. Including potential threats, however, raises selection concerns. A journalistic account of the events in Lackawanna, New York—one of the incidents studied in the report—has cast doubt on whether those arrested ever intended to commit a terrorist attack.¹¹⁰ A plea bargain in a highly visible and emotional terrorism prosecution, chronologically and geographically proximate to the 9/11 attacks, is

106. SAID, *supra* note 13, at 33.

107. See NYPD Report, *supra* note 28, at 5, 14 (extended defense of the focus on al Qaeda).

108. Lee Epstein & Gary King, *The Rules of Inference*, 69 U CHI. L. REV. 1, 105–06 (2000).

109. By contrast, a recent RAND Corporation study looked at 648 religious and secular terrorist groups to draw inferences about the optimal strategy against al Qaeda in Iraq and elsewhere. See SETH G. JONES & MARTIN C. LIBICKI, *HOW TERRORIST GROUPS END: LESSONS FOR COUNTERING AL-QAIDA* xiii (2008), available at <http://www.rand.org/pubs/monographs/MG741-1.pdf>.

110. See DINA TEMPLE-RASTON, *THE JIHAD NEXT DOOR: THE LACKAWANNA SIX AND ROUGH JUSTICE IN AN AGE OF TERROR* (2007).

not a substitute for evidence of actual risk. Worse still, some of the case studies involve facts in part crafted by the police. In one of the New York City conspiracy arrests, police relied on evidence from an informant working for the government who encouraged and aided the eventual defendant.¹¹¹ Questions of coercion, entrapment, and the perverse incentives implicated by the use of informants are beyond the scope of this Article. But informants are relevant insofar as they have influence on the cases chosen for prosecution and the facts of those cases. Informants and their police handlers select targets. In the terrorism context, informants play large roles in planning and encouraging attacks. In relying on cases involving informants—including one in New York City—the NYPD report thus relies on facts *created by the police themselves*. This is a feedback loop: the police influence the content and direction of prosecutions and then rely on those prosecutions as evidence of the underlying crime problem.

These three analytic concerns are compounded by the NYPD report's studied ambiguity on questions of methodology. In a section on methodology, the report explained that the NYPD "dispatched detectives and analysts to meet with law enforcement, intelligence officials and academics" at locations of terrorist attacks or conspiracies.¹¹² Despite this, it is hard to link primary empirical research to the contents of the report. The 143 footnotes of the report contain no reference to any interviews (even with names omitted); instead the 143 footnotes direct readers to five books, three court documents, and a mass of newspaper articles.¹¹³ Parts of the report do not identify their sources; nor are any non-public sources apparent from the arguments and facts presented in the main text. The report does not allow for careful parsing of its empirical claims, even though there is no reason why the first-hand sources relied upon could not have been identified, at least through pseudonyms.¹¹⁴

Opacity about the sources of knowledge matters. The manner in which knowledge is derived influences conclusions. This is illustrated in Foucault's landmark study of the birth of modern medicine. In that work, the French historian emphasized a paradigm change in the manner in which medical knowledge was being produced. After this rupture, physicians elevated the "privileges of a pure gaze, prior to all intervention and faithful to the immediate . . . and those of a gaze with a whole logical armature, which exorcised from the outset the naivety of an unprepared empiricism."¹¹⁵ That is, the choice of methodology was linked to a resistance to seeing the possible significance of methodological selection. The "radicalization" literature has a similar double structure to the one Foucault describes. Reports assert a

111. See *Band of Brothers*, HARPER'S, October 2006, at 20 (transcript of communications between Siraj and informant); William K. Rashbaum, *Window Opens On City Tactics Among Muslims*, N.Y. TIMES, May 28, 2006, at B29; William K. Rashbaum, *Closing Arguments in Trial of Subway Bombing Case*, N.Y. TIMES, May 23, 2006, at B3 ("brightest bulb").

112. NYPD Report, *supra* note 28, at 15.

113. *Id.* at 87–89.

114. Further, it is difficult in reading the individual case studies to identify any meaningful quanta of information that could not have been derived from newspaper reports. See, e.g., *id.* at 22–28 (describing first stage of five conspiracies).

115. MICHEL FOUCAULT, *THE BIRTH OF THE CLINIC* 131 (A.M. Sheridan, trans., Vintage Books 1994) (1963).

disinterested, neutral gaze, implicitly asserting a technocratic expertise to vouchsafe the resulting conclusions, while at the same time erasing from the record all traces of method—traces that would enable critique and challenge.

It is legitimate to ask whether ambient bias—or even simple aversion to a religious faith that is generally unfamiliar and unknown—distorts analytic outcomes. Both the NYPD and the Pennsylvania documents tie Islam to terrorism at the outset. They posit a categorical linkage between that faith and political violence. In this fashion, neither is “mere unconditioned ratiocination”¹¹⁶ without preconditions because both documents treat the “Muslim” *a priori* as a source of risk and harm. Both extend a long intellectual history that Edward Said has most famously excavated, a history that is based on “the ineradicable distinction between Western superiority and Oriental inferiority.”¹¹⁷ That categorical divide is enacted both by the decision to couple Islam and terror in the analytic categories and by the sampling methodology.

Consider by way of example the Pennsylvania training manual’s treatment of religious texts and identity. Like the NYPD’s report, the Pennsylvania manual assimilates religious motives to terrorism by singling out “radical Islam” from other justificatory accounts of terrorism at the threshold. It then backs away from this conflation. For example, the training manual states early on that “most Muslims are not jihadis.”¹¹⁸ But then in describing the doctrinal tenets of Islam, it makes the sweeping assertion that under the Qur’an, “[f]ighting was then sanctioned against all those who worshipped others along with Allah” and that “it became an obligation to fight against all those who do not believe in Allah.”¹¹⁹ By stating that “Muslims believe that Muhammad is the best exemplar . . . in all circumstances” and then quoting a non-Qur’anic passage in which Muhammad orders the execution of non-Muslim prisoners of war, the training manual suggests that violence against non-believers is *generally* endorsed by Islamic texts.¹²⁰ The manual fails to consider the status of the non-Qur’anic passage as a binding text, and says nothing about its possible divergent readings. Through its description of Islam, the manual also highlights arguments and canonical stories that can be used to argue for violence.¹²¹ Although the training manual does add the caveat that only “[r]adical individuals” will focus on the violent passages and ideas, the caveat serves more as a way of fending off accusations of bias, rather than a meaningful attempt to dispel the suggestion that these justifications are endorsed by Muslims generally. To the contrary, the manual claims precisely that. For example, it asserts that “[t]he motivation to engage in jihad is based on concepts [sic] that jihad is the ‘best deed’ a Muslim can perform.”¹²²

116. *Id.* at 15.

117. SAID, *supra* note 13, at 42.

118. Pennsylvania Primer, *supra* note 48, at 3.

119. *Id.* at 9–10.

120. *Id.* at 10–11.

121. *Id.*

122. *Id.* at 16.

By failing to mention a large body of literature repudiating those arguments,¹²³ the training manual implies that Muslims in general have a warrant for terrorist violence in their religious beliefs and texts that is distinct in scale and type from the warrant for political violence furnished by other religious texts such as the Bible or the Torah. Islam is again configured as distinctively dangerous and violent.¹²⁴

B. Political Economy

It is one thing to critique governments' approach to modeling "radicalization"; it is another to *explain* observed variance in approaches to religious and ethnic identity. The second question thus raised by the "radicalization" literature, therefore, is one of political economy: even given the small size of the sample policies, what can be discerned about the political and social forces generating different discursive formations?

The "radicalization" literature is not the product of disinterested experts, but emerged in the context of local and transnational political economies. In the United States, it emerged against the backdrop of interjurisdictional competition between states and with the federal government. Internationally, it unfurls against tensions and negotiations between nations in both counterterrorism and other security needs. I have mentioned above the possibility of transnational learning between the American and British governments regarding models of "radicalization," which might explain the shift in the British discourse from overtly political explanations to more local and psychological accounts. If such Transatlantic borrowing does happen, it would be important to know the criteria for success in the ensuing tournament of ideas.¹²⁵

A political economy of "radicalization" might begin by observing the greater influence of British Muslims as compared to their American counterparts. Muslim communities in the United Kingdom are longstanding, powerful, and organized in ways not familiar in the American political scene. The British Muslim community was first comprised of Yemeni, Malaysian, Bengali, and southern Arabian migrants who arrived and settled in the late 1800s in port cities such as Cardiff and Liverpool.¹²⁶ Substantial British Muslim populations began to develop in the 1960s and 1970s. The number of mosques in the United

123. For an accessible example of this literature, see, e.g., KHALED ABOU EL-FADL, *THE PLACE OF TOLERANCE IN ISLAM* (2002). El Fadl elegantly and succinctly explains how the texts that the Primer focuses on have been peripheral to Islamic tradition, and how they do not provide any license for violence.

124. This is hardly a unique sentiment in the general culture. See, e.g., SAM HARRIS, *THE END OF FAITH: RELIGION, TERROR AND THE FUTURE OF REASON* 123 (2004) ("Islam, more than any other religion human beings have devised, has all the makings of a thoroughgoing cult of death.").

125. The problem of borrowing between jurisdictions is extensively studied in constitutional law. See Ernest A. Young, *Foreign Law and the Denominator Problem*, 119 HARV. L. REV. 148 (2005). See generally Vicki C. Jackson, *Constitutional Comparisons: Convergence, Resistance, Engagement*, 119 HARV. L. REV. 109 (2005).

126. HUMAYUN ANSARI, *THE INFIDEL WITHIN: MUSLIMS IN BRITAIN SINCE 1800*, 24-30 (2004); Hisham A. Hellyer, *British Muslims: Past, Present and Future*, 97 MUSLIM WORLD 225, 229-30 (2007); Ceri Peach, *Britain's Muslim Population: An Overview*, in *MUSLIM BRITAIN: COMMUNITIES UNDER PRESSURE* 18-19 (Tahir Abbas, ed., 2005).

Kingdom leapt from thirteen in 1963 to 339 in 1985.¹²⁷ According to the last national census (2001), 2.7% of the British population was Muslim. Of that, 68% was of South Asian extraction.¹²⁸ British Muslim populations are characterized by lower-than-median socio-economic indicators. They also face more constrained social mobility than other British immigrant or autochthonous communities.¹²⁹ They are also subject to high levels of racial animus and cultural stigmatization. As in other European countries, these frictions often coalesce around manifest and visible symbols of difference, such as the women's use of niqabs or hijabs.¹³⁰ Yet Muslims have successfully entered the professions and politics in recent years, and have visible presences in the United Kingdom: in 2003, two Muslims secured seats in the House of Commons, and five Muslims have been appointed to the House of Lords.¹³¹ More widely, "[g]rowing numbers of Muslims have come to regard formal political mechanisms as an effective way of getting their problems addressed."¹³²

As a result, it is more costly for the British government than for the American government to slight or to be perceived as slighting Muslim interests. Instead, the British government claims it has sought the input of its Muslim community constituents. In the aftermath of the July 2005 London bombings, the U.K. government launched an initiative called "Preventing Extremism Together" "to engage and consult with Muslim communities" concerning future policy responses to domestic terrorist concerns.¹³³ The U.K. government convened seven working groups during the summer of 2007, each directed by a nationally- or locally-prominent Muslim leader. Each group drafted a report with substantive policy suggestions, case studies of successful community-government collaborations, and recommendations for legal reform.¹³⁴ While the Home Office publicly welcomed the input,¹³⁵ the reports had little tangible impact on subsequent government policies. Working groups' leaders later criticized the U.K. government for moving ahead with policy initiatives before

127. Hellyer, *supra* note 126, at 230.

128. Peach, *supra* note 126, at 20.

129. Tahir Abbas, *Muslim Minorities in Britain: Integration, Multiculturalism, and Radicalism in the Post-7/7 Period*, 28 J. INTERCULTURAL STUD. 287, 289 (2007); see also HUMAYAN ANSARI, MUSLIMS IN BRITAIN 8–11 (Minority Rights International, 2002), <http://www.minorityrights.org/1014/reports/muslims-in-britain.html> (describing persistent inequalities in housing, education, and employment markets).

130. Alan Cowell, *For Multiculturalist Britain, Uncomfortable New Clothes*, N.Y. TIMES, Oct. 22, 2006, at C3.

131. Hellyer, *supra* note 126, at 233.

132. ANSARI, *supra* note 129, at 18.

133. PREVENTING EXTREMISM TOGETHER: WORKING GROUPS, 1–4 (August–October 2005), <http://www.communities.gov.uk/documents/communities/pdf/152164.pdf> [hereinafter Preventing Extremism Together].

134. See generally *id. passim*.

135. HOME OFFICE, PREVENTING EXTREMISM TOGETHER: RESPONSE TO WORKING GROUP REPORTS, 1–2 (2005), <http://www.communities.gov.uk/archived/general-content/communities/preventingextremismtogether/216937/>.

even receiving their reports.¹³⁶ A British security scholar has characterized U.K. strategy as akin to “classic counter-insurgency policies that aim to divide extremists from the moderate majority Muslim community . . . by engaging with moderate Muslim groups . . . [by utilizing] consultations with and closer regulation of local Muslim leaders and Imams; and greater contact with Muslim representatives to address Muslim concerns over the use of counterterrorism methods.”¹³⁷ Consultations, and botched attempts to consult, are thus well understood as part of that divide-and-conquer strategy, and not as genuine efforts at gathering new information.

Concern about the electoral mobilization or otherwise adverse reaction of Muslim voters may also push the British government to pay close attention to its analysis’s implications about Islam and terrorism. The British government has resisted the kind of quick connections drawn in the NYPD report between Islam and terrorism. Both *Countering International Terrorism* and the Prevent strategy paper cautiously identify a contingent connection between Islam and terrorism. *Countering International Terrorism* states that “a distorted and unrepresentative version of the Islamic faith [has been used] to justify violence.”¹³⁸ The Prevent strategy paper explains that terrorism is promoted by those who “misrepresent” Islam.¹³⁹ Following the lead of these documents, the Department of Education and Skills cautions that “[a] clear distinction should be made between . . . extremist individuals and the faith they might claim to be associated with or represent.”¹⁴⁰ The same report observed that “propagating false perceptions about the values and beliefs of Islam potentially adds to a vicious circle that may fuel discrimination and islamophobia.”¹⁴¹ None of the American literature on “radicalization” demonstrates awareness or concern about the possibility of populist backlash against Muslim-Americans.¹⁴²

Conceptual separation of the main body of Islam from religious justifications given for terrorism minimizes any spillover legitimization effect on ambient discrimination. That separation also serves a strategic purpose by narrowing the perceived constituency for terrorist violence. The “population-centric” approach to counterterrorism, popularized by apparent successes in Iraq in recent years, has prioritized the security of local populations and the legitimacy of counter-terror efforts in ending insurgent groups.¹⁴³

136. Peter Osborne, *The Use and Abuse of Terror: The Construction of a False Narrative on the Domestic Terror Threat*, in *PLAYING POLITICS WITH TERRORISM: A USER’S GUIDE* 129–30 (George Kassimeris ed. 2008).

137. Brendan O’Duffy, *Radical Atmosphere: Explaining Jihadist Radicalization in the UK*, 41 *POL. SCI. & POLITICS* 37, 42 (2008).

138. *COUNTERING INT’L TERRORISM*, *supra* note 76, at 1.

139. *Prevent: A Guide for Local Partners*, *supra* note 91, at 17.

140. Department for Education and Skills, *supra* note 95, at 6.

141. *Id.*

142. The absence cannot be explained by the absence of anti-Muslim hate crimes in the United States. See, e.g., HUMAN RIGHTS WATCH, *WE ARE NOT THE ENEMY: HATE CRIMES AGAINST ARABS, MUSLIMS, AND THOSE PERCEIVED TO BE ARAB OR MUSLIM AFTER SEPTEMBER 11* (2002), <http://www.hrw.org/reports/2002/usahate/usa1102.pdf>.

143. See DAVID KILCULLEN, *THE ACCIDENTAL GUERRILLA: FIGHTING SMALL WARS IN THE MIDST OF A BIG ONE* 230–37 (2009).

In recent documents, the U.K. government has moved beyond an effort to disconnect religion from violence, and has instead drawn on empirical evidence that suggests that a *deficit* of religious knowledge presents a concern with respect to questions of “radicalization.” Professor Tufyal Choudhury pioneered this argument in an April 2007 paper for the government office for Communities and Local Government. In *The Role of Muslim Identity Politics in Radicalisation*, Choudhury aggregated research about why people commit acts of violence, focusing on the role of religion.¹⁴⁴ Examining studies of groups such as Al-Muhajiroun and Hizb-ut-Tahrir, Choudhury argued that research showed that “the path to [radicalization] often involves a search for identity in a moment of crisis.”¹⁴⁵ Whether because it is intrinsically belligerent or because it provides marginalized and disparaged communities with increased in-group solidarity, the identity of “Muslim” has proven increasingly attractive in recent decades.¹⁴⁶ Drawing on Quintan Wiktorowicz’s pioneering study of the Salafist group Al-Muhajiroun, Choudhury also observed that those attracted to marginal religious groups “are not particularly religious and do not have any significant religious education,” and “a lack of religious literacy and education appears to be a common feature among those that are drawn to extremist groups.”¹⁴⁷ This second, more general, conclusion about the role of religious naivety rests on data about Al-Muhajiroun’s recruitment dynamics, which might be atypical of terrorism groups (especially as Al-Muhajiroun itself disavows any violent intent). Further, there is some contrary data suggesting high degrees of religiosity among terrorists who self-identify with Islam from their youth.¹⁴⁸ Despite this uncertainty, the paper recommended that “Muslims will be better equipped to counter violent [radicalization] when they have the knowledge and ideas about their faith with which to confront extremists.”¹⁴⁹

Other governmental entities have reached similar conclusions. The Prevent strategy paper flags a “need to develop a stronger understanding of Islam and Islamic culture, society and history across all communities.”¹⁵⁰ In leaked portions of its August 2008 briefing note, the security agency MI-5 listed “religious naivety” as a factor in cases where individuals have turned to violence.¹⁵¹ In 2005, the government-sponsored Working Group on Young People observed that “much learning [among British Muslims] about Islam is autodidactic” rather than through mosques or family, which creates “opportunities for the

144. See generally TUFYAL CHOUDHURY, *THE ROLE OF MUSLIM IDENTITY POLITICS IN RADICALISATION (A STUDY IN PROGRESS)* (Department for Communities and Local Government April 2007), available at <http://www.communities.gov.uk/publications/communities/muslimidentitypolitics>.

145. *Id.* at 8.

146. *Id.* at 20, 38.

147. *Id.* at 79, 92; see also QUINTAN WIKTOROWICZ, *RADICAL ISLAM RISING: MUSLIM EXTREMISM IN THE WEST* (2005).

148. See Andrew Silke, *Holy Warriors: Exploring the Psychological Processes of Jihadi Radicalization*, 5 EUROPEAN J. CRIMINOLOGY 99, 110–11 (2008) (noting another study that found 45% of terrorists studied had been religious in their youth).

149. Choudhury, *supra* note 144, at 92.

150. *Prevent: A Guide for Local Partners*, *supra* note 91, at 18.

151. Travis, *supra* note 102.

propagation of extremist ideologies.”¹⁵² The correlative to this observation, noted another Working Group, was that the Muslim community has a “responsibility to try to ensure that the culture of radical ideas and influence” is eliminated, a responsibility not generally shared with other faith communities.¹⁵³ One response to the problem is “disseminating a more authentic understanding of Islam.”¹⁵⁴ Another 2007 report based on focus groups with Muslim Londoners identified local imams, many of whom migrate with little understanding of Western social conditions and problems, as causes of the vacuum in religious understanding. That report explained: “[B]y refusing to engage with young Muslims on contentious issues of concern to those young people, [imams] were forcing hungry young minds out onto the streets for answers.”¹⁵⁵

A political-economy approach must consider not only private interest groups, but also the interactions between different levels of government and different institutions within the government. One example of the difference that political economy makes in the distribution and form of knowledge about counterterrorism is the reversal of traditional federal and state roles in the United States. In contrast to the prevailing wisdom, it has been a state rather than the federal government that has taken the initiative on “radicalization,” sometimes seen as one of the most important national security issues of the day. Generally, state-level innovation in policy is considered good.¹⁵⁶ Not all state-level innovation, however, is to be encouraged. Some “incentive to deviate from the division of authority is inescapably built into the federal structure,” creating negative interstate spillovers.¹⁵⁷ The deviations may shift regulatory burdens onto other states, or they can create externalities for the nation as a whole.

Consider one account of the interjurisdictional “contestation”¹⁵⁸ underlying the genesis of state-level “radicalization” policy. I cannot prove this account. Rather, I offer it as a hypothesis supported by at least some circumstantial evidence, one that allows for critical examination of the political economy of the “radicalization discourse.” The account focuses on bureaucratic rivalries between the federal and state level. On this account, the NYPD report is part of a larger move to establish the Department’s priority as the premier counterterrorism agency within the United States. The NYPD has long contested the superiority of

152. *Preventing Extremism Together*, *supra* note 133, at 18.

153. *Id.* at 23.

154. *Id.* at 91.

155. Metropolitan Police Authority, *Counter-Terrorism: The London Debate*, 59 (March 2007), <http://www.mpa.gov.uk/downloads/publications/counterterrorism/ctld-22feb07.pdf>.

156. The classic text on interjurisdictional competition concerns taxation and expenditure. See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956) (demonstrating that competition among local governments will allow those governments to set appropriate levels of expenditure on public goods); see also *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

157. JENNA BEDNAR, *THE ROBUST FEDERATION: PRINCIPLES OF DESIGN* 63 (2009). On spillover effects, see, e.g., Richard Stewart, *Pyramids of Sacrifice? Problems of Federalism in Mandating State Implementation of National Environmental Policy*, 86 YALE L.J. 1196, 1215–16 (1977) (discussing spillover of physical pollution).

158. The possibility of “contestation” between states and the federal government is emphasized by Jessica Bulman-Pozen & Heather B. Gerken, *Uncooperative Federalism*, 118 YALE L.J. 1256, 1264 (2009).

the FBI in a protracted and “counterproductive bureaucratic struggle.”¹⁵⁹ The August 2007 “radicalization” report was a preemptive strike in that struggle, a bid to cement the legitimacy of a local police department’s intelligence and counterterrorism efforts.¹⁶⁰ In addition to studying “radicalization,” the NYPD has cultivated flattering press for its counterterrorism efforts. This includes a *New Yorker* article that focused almost exclusively on the Department’s perspective.¹⁶¹ A recent book on the NYPD’s counterterrorism efforts also trumpeted the Department as the nation’s “Best Counterterror Force” and gave little space even for discussion of substantial civil-liberties concerns raised by the Department’s policies.¹⁶² In short, the NYPD report can be read as part of a larger campaign being waged for policy primacy between jurisdictions within the United States.

Why should a state fight such a battle? Preeminence has practical advantages for individual states. Praising the NYPD report, Senator Lieberman added that “Congress must ensure adequate funding” for local law enforcement; presumably, the NYPD will be nearer the front of the federal funding line than it would otherwise be, given the support of a key Senate committee chairman.¹⁶³ But the NYPD’s approach also creates a new version of the spillover problem. Specifically, the NYPD’s approach may be attractive *because* it appeals to those with *a priori* animus against Muslims. Even if the report’s authors are not affected by bias, their work may provide confirmation for those who are so affected. To the extent that a flawed analysis is as a result adopted in whole or part by other states, a higher rate of civil and constitutional rights violations and inefficient allocations of policing resources may follow.

To the extent that the NYPD’s report can be read as a bid for national legitimacy, it is also an effort to circumvent local Muslim constituencies. The British experience suggests that the presence of a large Muslim population forces a government to pay a higher marginal political cost for claiming a connection between Islam and terrorism. State governments are more likely than national governments to have politically significant groups of Muslim-Americans who may take offense at their faith being thus impugned.¹⁶⁴ There is also a literature in American constitutional law that suggests local governmental units will be more protective of religious liberty than the federal government.¹⁶⁵ And yet, the opposite appears to be the case in the context of “radicalization” policy because of a local government’s ability to appeal to a national constituency.

159. Michael A. Sheehan, Editorial, *The Hatfields and McCoys of Counterterrorism*, N.Y. TIMES, Sept. 27, 2009, at 13.

160. William Finnegan, *The Terrorism Beat: How is the N.Y.P.D. Defending the City?*, NEW YORKER, July 25, 2005.

161. See generally *id.*

162. See generally CHRISTOPHER DICKEY, *SECURING THE CITY: INSIDE AMERICA’S BEST COUNTERTERROR FORCE—THE NYPD* (2009).

163. Lieberman statement, *supra* note 70. The NYPD has argued that it has been denied adequate funding in the past. See Finnegan, *supra* note 160, at 65.

164. The point is familiar from early constitutional discourse, which recognized the power of minorities in smaller geographic units. See THE FEDERALIST 10 (Madison) (C. Rossiter, ed. 1961).

165. See generally Richard C. Schragger, *The Role of the Local in the Doctrine and Discourse of Religious Liberty*, 117 HARV. L. REV. 1810 (2004).

Complicating the political economy picture further, Muslim-American political mobilization is in rapid flux. The Muslim-American community is more varied than is generally assumed.¹⁶⁶ The decennial national census does not contain a question about faith. This renders it hard to gauge the number of Muslims in the United States. Estimates range from 1.1 million to 7 million.¹⁶⁷ According to a 2007 Pew Research Center survey, about 65% of Muslim-Americans are first-generation immigrants, while 20% are second-generation with one or both parents living outside the United States.¹⁶⁸ Large Muslim communities of considerable sectarian diversity are scattered across the country's urban areas, including New York, Chicago, Detroit, and the Dallas/Fort Worth/Houston area. Political mobilization among Muslim-American groups dates generally back to the 1996 elections. While in 2000 majorities of South Asian and Middle Eastern Muslims supported the Republican ticket, and indeed were seen as possible pivotal vote banks in Florida and Michigan, in 2004 they switched sides.¹⁶⁹ One study estimates that they may "have a potential to make a political impact in swing states such as Michigan, Indiana, and Ohio" in future elections.¹⁷⁰ I have postulated above that British Muslims influenced the content and direction of British "radicalization" strategy by dint of political voice. Analogously, it is possible to imagine that the American Muslim political voice at the national level may influence the content of "radicalization" policy in the United States in a way that until now has been impossible to discern.

C. The Impact of "Radicalization" Conceptions on Policy Formation

The third and final question is whether "radicalization" literature will directly affect policy. The exercise of "epistemological power"¹⁷¹ by the state in this fashion has the potential to affect the direction and intensity of policy, as well as to shape the portfolio of political and religious identities available to a larger community of co-religionists or an ethnic cohort.

In the context of counterterrorism policy, the understanding of what a "terrorist" is and—significantly—how someone becomes a "terrorist" impinges on the allocation of investigative and policing resources in several ways. First, different understandings will influence the use of controversial investigative measures such as the surveillance of mosques and the recruitment of imams as informants.¹⁷² Police will spend more time cultivating religious leaders as

166. See Farida Jalalzai, *The Politics of Muslims in America*, 2 POL. & REL. 163, 165 (2009) (citing JANE J. SMITH, *ISLAM IN AMERICA* (1999)) ("Findings dealing with demographics and immigration patterns illustrate Muslim diversity in race, ethnicity, and socioeconomic status.").

167. PEW RESEARCH CENTER, *MUSLIM AMERICANS: MIDDLE CLASS AND MOSTLY MAINSTREAM* 11 (May 22, 2007), <http://pewresearch.org/assets/pdf/muslim-americans.pdf>.

168. *Id.* at 15.

169. Jalalzai, *supra* note 166, at 171–72.

170. *Id.* at 193 (citing BARRY A. KOSMIN & SEYMOUR P. LACHMAN, *ONE NATION UNDER GOD: RELIGION IN CONTEMPORARY AMERICAN SOCIETY* (1993)).

171. See Michel Foucault, *Truth and Juridical Forms*, in *POWER* 83 (J. Faubion, ed. 2000) (defining epistemological power as "a power to extract a knowledge from individuals and to extract a knowledge about these individuals who are subjected to observation.").

172. See, e.g., William K. Rashbaum & Al Baker, *How Using Imam in Terror Inquiry Backfired on Police*, N.Y. TIMES, Sept. 22, 2009, at A1.

informants if they are told, or otherwise believe, that religious texts and beliefs play a catalytic part in “radicalization.” A model of “radicalization” that implicates religion, therefore, will tend to shift the distribution of policing resources toward these more controversial measures. Recent changes to the FBI’s domestic surveillance guidelines proposed by former Attorney General Michael Mukasey illustrate one possible vector for this kind of policy change. These amendments relax procedural constraints on the use of direct surveillance or informants in religious spaces.¹⁷³ They enable a new balancing of religious liberties against security concerns.

Second, the “radicalization” discourse may influence front-end decisions about what conduct to criminalize, or charging decisions under inchoate statutes, such as the material support to terrorism provisions.¹⁷⁴ Elastic, inchoate statutes may be applied to cases involving religious conduct with increasing frequency if the latter is adjudged by the state to be a proxy for terrorist threat. Accounts of domestic-source “radicalization” might also distort aggregate resource allocations among divergent catastrophic threats because they amplify cognitive biases.¹⁷⁵ Emphasizing a threat that involves a betrayal of communal confidences at moments—on public transport or at work, for example—where a threat was not expected may yield different allocations of limited security resources.

Third, different understandings of the relation of terrorism to religious or ethnic identity may alter tolerance levels for ambient discrimination within governmental institutions. Supervisors may be less concerned about line officers who exercise their discretion in discriminatory ways.¹⁷⁶

Some evidence of how “radicalization” might be operationalized has emerged in Los Angeles. There, in response to concerns about “radicalization,” the Police Department initiated a “community mapping” plan to “lay out the geographic locations of the many different Muslim populations around Los Angeles . . . [and t]o take a deeper look at their history, demographics, language, culture, ethnic breakdown, socio-economic status, and social interactions” so as to “identify communities, within the larger Muslim community, which may be susceptible to violent ideologically-based extremism.”¹⁷⁷ The Los Angeles police chief explained that the department also intended to collect information on “languages used in a certain area, the employment rate,” and “who and where

173. See generally The Attorney General’s Guidelines for Domestic Intelligence, <http://justice.gov/ag/readingroom/guidelines.pdf>. For criticism, see generally Letter from ACLU et al., Sept. 16, 2008, <http://www.brennancenter.org/page/-/Justice/20080916.Coalition.Letter.AG.Guidelines.pdf>.

174. See, e.g., 18 U.S.C. §§ 2339A et seq. (2009).

175. See Cass R. Sunstein, *On the Divergent American Reactions to Terrorism and Climate Change*, 107 COLUM. L. REV. 503, 533–55 (2007).

176. Cf. William J. Stuntz, *Local Policing After the Terror*, 111 YALE L.J. 2137, 2164 (2002) (noting that monitoring for bias is more costly when policing is done through dispersed retail decisions rather than aggregated wholesale decisions).

177. *The Role of Local Law Enforcement in Countering Violent Islamist Extremism: Hearing before the S. Comm. on Homeland Sec. & Gov’t Affairs*, 110th Congress (2007) (statement of Deputy Chief Michael P. Downing, Counter-Terrorism Crim. Intelligence Bureau, Los Angeles Police Dep’t), http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=483590e6-9f4e-4aa6-b595-8ca3791e4acb.

the city's Muslim communities are."¹⁷⁸ This mapping project might be seen as one way of operationalizing the "radicalization" discourse. The epistemological project of understanding terrorism becomes the different epistemological effort to know Muslims.

The plan, however, prompted public criticism from Muslim community groups and civil liberties advocates. Citing the "fear and apprehension" prompted by the plan's public disclosure, Los Angeles Mayor Antonio Villaraigosa declared that it would not be put into effect.¹⁷⁹ Yet, much of its framework has been adopted in a new police reporting system used by Los Angeles police to identify terrorist threats via the filter of standardized "suspicious activity reports."¹⁸⁰ Just as the NYPD's "radicalization" report influenced Congress, so too, the Los Angeles effort is proving influential within the FBI, which is considering adoption of the "suspicious activity report" framework.¹⁸¹

Policy consequences of "radicalization" analysis thus drift between jurisdictions. Federalism, far from being a shield for individual liberties, may be a cause of erosion of those liberties as local jurisdictions, seeking reputational gain, compete to generate tougher and more potentially intrusive policies for adoption on the national level.

Finally, "radicalization" cannot be reduced to a matter of "labeling from above."¹⁸² Rather it is wise to recall Foucault's insistence that power is not reducible to domination and hierarchy. As he stressed in his work on sexuality, the exercise of power is dispersed, and involves work and investment on the part of power's subjects as much as its objects.¹⁸³ Following Foucault, one must attend to the opportunities that the new discourse of "radicalization" presents for its subjects. At its edges, "radicalization" creates a zone of semantic uncertainty where symbols of faith serve equally as signals of violence. For the suspected classes, that is, "the outer reaches of [their] space as . . . [individuals] are essentially different from what they would have been had these possibilities not come into being."¹⁸⁴

So it would be a mistake to conceptualize this as a form of simple repression. To be sure, "radicalization" changes the marginal cost of certain forms of religious behavior and thereby may create a disincentive to communal or individual forms of faith. But "radicalization" also creates opportunities for those seeking to establish normative distance from the state. The state supplies its own counter-narrative by legitimizing certain forms of resistance over others. Rather than repression, "radicalization" can be seen, perhaps not without irony, as a path of resistance and individuation through the tailoring of a ready-made

178. Los Angeles Police Department, Muslim Community Engagement Initiative 3 (Nov. 2007) (on file with author).

179. Richard Winton & Teresa Watanabe, *LAPD's Muslim mapping plan killed*, L.A. TIMES, Nov. 15, 2007, at A1, A21.

180. Josh Meyer, *LAPD leads the way in local counter-terrorism*, L.A. TIMES, Apr. 14, 2008, at B4.

181. Siobhan Gorman, *LAPD Terror-tip Plan May Serve as Model*, WALL ST. J., Apr. 15, 2008, at A3.

182. See HACKING, *supra* note 6, at 111.

183. FOUCAULT, HISTORY OF SEXUALITY, *supra* note 16, at 156–57.

184. HACKING, *supra* note 6, at 110.

mold of countercultural resistance. It remains to be seen how these openings and resources are leveraged in the creation of new political and religious identities.

IV. CONCLUSION

To understand the forms that emerging approaches to counterterrorism take, it is necessary to look to epistemic foundations. The “radicalization” literature shows those foundations in the process of formation. Its study implicates novel epistemological, political-economy, and legal questions. Further research is needed to understand this new, and increasingly significant, determinant of counterterrorism policy.