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Muslim Radicalization in Prison: Responding with Sound Penal Policy or the Sound of Alarm?

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Muslim Radicalization in Prison: Responding with Sound Penal Policy or the Sound of Alarm?

SpearIt*

ABSTRACT

This article assesses radicalization among Muslim prisoners in the post-9/11 era by analysis of ethnographic data in light of the available research. There are two primary motives that drive this inquiry: (1) to determine whether prisons are “fertile soil for jihad” as claimed, and (2) to the extent prisoner radicalization does occur, determine the ideological motives. In the last decade, politicians and analysts have clamored about the “danger” and “threat” posed by Islam in American prisons. Yet these characterizations sit in tension with several decades of sustained Islamic outreach in prison to support inmate rehabilitation and re-entry. They also sit in tension with the fact that since the 1960s, Muslims have been proactive about using American courts to deal with disputes and grievances. Today, Muslims are arguably the most proactive litigants among religious followers in prison. Overlooking these important developments misses a longstanding pedigree of Muslim inmates helping shape prison law and policy; it is a history that flips the discourse on its head by suggesting that Islam brings peace, rather than violence, to inmates, and that the true “threat” posed by Muslim inmates is the threat of a lawsuit. Despite this positive influence, penal institutions have implemented suppressive interventions against Muslim inmates. Unfortunately, some have backfired and worked to stoke radicalization instead. The final part of this article considers the top prospects for reform in this area. Long-term strategies include: supporting religious pluralism in prison, reforming educational policy, and working to stabilize prisoner re-entry. These prescriptions correspond to

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the fact that violent extremism among Muslim prisoners, although relatively rare, does not mean radicalization does not occur—it does and perhaps always will. Institutions thus have a great stake in reducing prospects for extremism generally, and fostering normative religious practice within its confines. Sustained strategic planning in these areas will help keep this relatively small problem, small.

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I. APPROACHING AND INTERPRETING PRISONER RADICALIZATION

“Radicalization,” according to one inmate, is when “prisons try to promote Christianity and starve Islam.”¹ This statement came in a letter from a Muslim inmate, Abdullah al-Muhajair, sent to Representative Peter King in his role as chair of the 2011 U.S. congressional hearings entitled, *The Threat of Muslim-American Radicalization in U.S. Prisons*. Representative King’s opinion on this matter sees Islamic radicalization as a unique threat since Muslims are, as he claims, “the only group in prison which is tied to overseas terrorists which is

1. Letter from Roy Wales, a.k.a. Abdullah al-Muhajair, Prisoner, Hudson Correctional Facility, to Peter King, Congressman, U.S. House of Representatives (Mar. 9, 2011) (on file with author) [hereinafter Letter from Prisoner].

part of an existential threat to the United States.² Hence, his account of the problem sits diametrically opposed to al-Muhajair's views, which together underscore the critical need to approach the question of prisoner radicalization with a sense of caution and consistency.

What follows relies on ethnographic sources to explore radicalization among Muslim prisoners. The data sets include testimony from incarcerated Muslims, testimony from congressional hearings, and case studies involving Muslim inmates and extremist violence. The data is examined in light of recent research on administrative and penal policies in prison.³ Together these sources reveal the complex relationship between the prison environment and radicalization, the internally and externally generated problems,⁴ as well as the nature of the prison experience, post-release experiences, and the relationship between pre-prison and post-release experiences.⁵

This article starts with a simple question: What exactly is *radicalization*? To be certain, the term is a very recent creation, gaining widespread use in the years following the attacks of 9/11 and becoming intertwined with the Muslim faith.⁶ In broad strokes, the term indicates a process or means by which one adopts *radicalism* or *radical* beliefs and behaviors. This much is simple, but determining the exact content of *radical* is not always certain since the term has

2. FoxNewsInsider, *Peter King: We Want to Stop Prisoners from Being Radicalized in Prison*, YOUTUBE (June 15, 2011), <http://www.youtube.com/watch?v=3RnF6Rp4Ip4>.

3. The ethnographic data on prisoners include surveys and interviews with current and former prisoners, as well as letters collected from incarcerated Muslims, the bulk of which was collected in 2006 from inmates in California facilities. The congressional hearings on Islam in prison have taken place in 2003, 2006, 2011, and speakers at these events include politicians, chaplains, scholars, and law enforcement and correctional experts. See *Terrorism: Radical Islamic Influence of Chaplaincy of the U.S. Military and Prisons: Hearing before the S. Committee on Terrorism, Technology and Homeland Security*, 108th Cong. 1 (2003) [hereinafter *2003 Senate Hearing*]; *Prison Radicalization: Are Terrorist Cells Forming in U.S. Cell Blocks?: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs*, 109th Cong. 2 (2006) [hereinafter *2006 Senate Hearing*]; *The Threat of Muslim-American Radicalization in U.S. Prisons, Hearing Before the H. Comm. on Homeland Security*, 112th Cong. (2011) [hereinafter *2011 House Hearing*].

4. ANTI-DEFAMATION LEAGUE, *DANGEROUS CONVICTIONS: AN INTRODUCTION TO EXTREMIST ACTIVITIES IN PRISON*, 4 (2002), http://archive.adl.org/learn/ext_terr/dangerous_convictions.pdf.

5. Gaetano Joe Iardi, *Prison Radicalisation- the Devil is in the Detail 2-3* (ARC Linkage Project on Radicalisation, 2010), available at <http://artsonline.monash.edu.au/radicalisation/files/2013/03/conference-2010-prison-radicalisation-gji.pdf>.

6. See generally DAVID R. MANDEL, *Radicalization: What Does it Mean?*, in *HOME-GROWN TERRORISM: UNDERSTANDING AND ADDRESSING THE ROOT CAUSES OF RADICALISATION AMONG GROUPS WITH AN IMMIGRANT HERITAGE IN EUROPE* (Thomas M. Pick et al. eds., 2009).

historically attached to different meanings.⁷ For example, early use of radical was loyal to the etymology of *rad*, which meant “radish” or “roots,” hence, a radical connoted one returning to “roots” of tradition—the origins or essence. Used this way, radical overlaps in meaning with the notion of *fundamentalist*, which similarly conveys a turn to the basics or fundamentals. Later use of radical, however, would connote a somewhat opposite meaning, as movement away from a particular norm, being “far out” or “extreme” with respect to the cultural status quo. Such use is not typically viewed as a pejorative since radicals were often seen as progressives who contributed to the development of thought, politics, and culture.

Today, however, the meaning of radicalization is not typically intended as a positive association. More particularly, it has been something of a code for violent behavior and ideology, despite the fact that violence is the exception among radicals. Take, for example, the 2006 congressional hearings, where one expert testified: “Occasionally, I am asked to describe the typical radicalized inmate. While it seems a reasonable question, I would suggest that focusing only on individual inmates is not an appropriate solution. In fact, *terrorism* is a team sport.”⁸ This perspective corroborates with the New York City Police Department’s model of radicalization, which concludes at a stage of violence called “jihadization.”⁹ More formal attempts to define radicalization follow suit, including the Department of Justice’s definition as “the process by which inmates who do not invite or plan overt terrorist acts adopt extreme views, including beliefs that violent measures need to be taken for political or religious purposes.”¹⁰ Characterized as such, radicalization is hardly a principled concept, and instead functions as a catchall for “what goes on before the bomb

7. Thomas Hintze, *Radicalization and the Semantics of Peter King*, (Mar. 16, 2011), <http://thebusysignal.com/2011/03/16/radicalization-and-the-semantics-of-peter-king/>.

8. 2006 Senate Hearing, *supra* note 3 (statement by Gregory B. Saathoff, Executive Director, Critical Incident Analysis Group, University of Virginia) (emphasis added).

9. MITCHELL D. SILBER & ARVIN BHATT, INTELLIGENCE DIVISION, NEW YORK POLICE DEPARTMENT, *RADICALIZATION IN THE WEST: THE HOMEGROWN THREAT 6-7* (2007) available at http://www.nypdshield.org/public/SiteFiles/documents/NYPD_Report-Radicalization_in_the_West.pdf.

10. OFFICE OF THE INSPECTOR GEN., U.S. DEP’T OF JUSTICE, *A REVIEW OF THE FEDERAL BUREAU OF PRISONS’ SELECTION OF MUSLIM RELIGIOUS SERVICES PROVIDERS 6 n.6* (2004) [hereinafter *OIG REPORT*]. This definition follows those in homeland security circles. See *HOMELAND SEC. POLICY INST. & CRITICAL INCIDENT ANALYSIS GRP., OUT OF THE SHADOWS: GETTING AHEAD OF PRISONER RADICALIZATION 3* (2006) [hereinafter *HSPI & CIAG REPORT*]; 2006 Senate Hearing, *supra* note 3 (statement of Frank J. Cilluffo, Director of Homeland Security Policy Institute, The George Washington University, adopting a variant of this definition).

goes off.”¹¹ The ascriptions are typically couched in terms of good and bad, right and wrong, and other dichotomies that convey the subjective perceptions of physical danger.¹²

The logic is flawed; radicalization is an insufficient cause of terrorism, most obviously because most radicals are not terrorists.¹³ Indeed extremism cuts both ways, and just as one can will toward extremist violence, another can toward extreme pacifism. Individuals like Mahatma Gandhi and Martin Luther King were radicals of the first order, bent on non-violence at all costs. Yet this dimension of radicalization is lost in today’s usage. Unfortunately, violence-based logic leads to fallacious forms of debate in which radicalization is viewed as the root cause of terrorism and, in turn, terrorism is proof of one’s radicalization.¹⁴ Yet radicalism itself is an insufficient predictor of terrorism, since most extremists do not engage in violent activities.¹⁵ This point is supported by more recent creations of phrases like *violent radicalization* or *militant radicalization*, to indicate a difference between radical thought and violent behavior.¹⁶ As one study admonishes:

Radicalization should not be viewed as an escalator, inevitably carrying all the individuals on it inexorably into violence. It is better envisaged as a funnel that large number of individuals may enter but from which only a very small number of individuals emerge. Many will drop out along the way, leaving only a small proportion to cross the Rubicon and become involved in terrorism.¹⁷

In this crossing, there is no singular pathway to becoming radical, and no single factor for adopting extremist views.¹⁸

The tendency to view violence as a part of what radicalization means is further clouded by its constant conflation with the term *conversion*. Although there may be overlap in the way conversion and radicalization manifest, they

11. PETER. R. NEUMANN, *Introduction*, in PERSPECTIVES ON RADICALISATION AND POLITICAL VIOLENCE 6 (Peter R. Neumann et al., eds. 2008).

12. See MANDEL, *supra* note 6 at 106.

13. See MANDEL, *supra* note 6 at 102.

14. MANDEL, *supra* note 6, at 102.

15. MANDEL, *supra* note 6, at 102.

16. NEUMANN, *supra* note 11; see, e.g., Violent Radicalization and Homegrown Terrorism Prevention Act of 2007, H.R. 1955, 110th Cong. (1st Sess. 2007).

17. GREG HANNAH ET AL., RADICALIZATION OR REHABILITATION: UNDERSTANDING THE CHALLENGE OF EXTREMIST AND RADICALIZED PRISONERS 3 (2008).

18. Mark S. Hamm, *Prisoner Radicalization: Assessing the Threat in U.S. Correctional Institutions*, 261 NIJ J. 14, 18 (2008), available at <https://www.ncjrs.gov/pdffiles1/nij/224085.pdf>.

are distinct concepts that potentially point in opposite directions.¹⁹ Indeed, Muslim converts may be less susceptible to extremist violence since they are in a reformation process, and are therefore less vulnerable due to opposition to violence.²⁰ Put plainly, for those on a path to peace, violent extremism may be an anathema. Practically, this difference is obvious since an individual can radicalize within his own tradition, in which case there is not a conversion, as typically understood, but more of a difference in theology or commitment. Conversely, conversion does not necessitate that ideology play a significant role in one's transformation since some converts are more motivated by religious experiences or antecedent trauma than by doctrine. In these instances, conversion is less ideology than epiphany. Recent research supports the point by suggesting inmates are more likely to convert in maximum-security facilities, which by definition are more dangerous.²¹

The tendency to disregard the difference between these phenomena is common. At the 2011 congressional hearings, Representative Peter King described a report that mentions three dozen individuals who converted to Islam in prison.²² He then paraphrases the report: "I'll say that again. Dozens of ex-cons who became *radicalized* Muslims inside U.S. prisons . . ."²³ Most recently, respected criminologist Mark Hamm iterates the error in his recent book on prisoner radicalization, which cites the report without challenging Representative King's analysis.²⁴ Similar portrayal is made of James Cromitie, who converted in prison, but who was not arrested on terror-related charges until years after his release. Despite evidence only of his conversion, Representative King claims Cromitie "was radicalized in a New York prison."²⁵

Failure to distinguish these concepts undoubtedly impacts the assessment of radicalization in significant ways. Conflating conversion with radicalization

19. Ilardi, *supra* note 5, at 4 (describing how the study of inmate radicalization should not be "encumbered by notions of some sinister and inevitable connection between conversion and radicalisation").

20. Mark S. Hamm, *Prison Islam in the Age of Sacred Terror*, 49 BRIT. J. CRIM'Y 667, 669 (2009).

21. THE PEW FORUM ON RELIGION AND PUBLIC LIFE, PEW RESEARCH CENTER, RELIGION IN PRISONS: A 50-STATE SURVEY OF PRISON CHAPLAINS 50 (2012) [hereinafter PEW SURVEY], available at <http://www.pewforum.org/files/2012/03/Religion-in-Prisons.pdf>.

22. 2011 House Hearing, *supra* note 3, at 204.

23. 2011 House Hearing, *supra* note 3, at 204 (emphasis added).

24. MARK S. HAMM, THE SPECTACULAR FEW: PRISONER RADICALIZATION AND THE EVOLVING TERRORIST THREAT x-xi (2013).

25. Peter King, *The Threat of Muslim Radicalization in U.S. Prisons*, THE HILL'S CONGRESS BLOG, (June 15, 2011, 11:29 A.M.), <http://thehill.com/blogs/congress-blog/homland-security/166557-the-threat-of-muslim-radicalization-in-us-prisons>.

exaggerates the prevalence of the latter. As research and reports indicate, Islam is the fastest growing religion in prison, which means widespread conversion. This research estimates that out of all those who seek faith while in prison, approximately eighty percent turn to Islam,²⁶ that one-third of African-American inmates converted to Islam at one correctional facility,²⁷ and that a majority of 730 prison chaplains agreed that Islam is growing faster than any other tradition in prison,²⁸ with others estimating that 30,000 or 40,000 prison conversions take place annually.²⁹ With these impressive figures, it is clearly untenable to make one synonymous with the other.

As this part has tried to convey, the attempt to isolate factors that motivate extremism is complicated, and there are many obstacles to a better understanding of the issue. Perhaps most critically, questions about causality haunt any analysis of the relationship between radicalization and the correctional context. The plain fact is that some inmates enter prison with clearly extremist views and proclivities. For these individuals, the prison is merely incidental to a worldview ignited long before the individual walked through the prison gates. Likewise, problems in timing surface in those ex-prisoners who become involved in violent extremism well after their release. Such cases, in addition to reigniting debates about importation versus deprivation theories of imprisonment, cast doubts on theories that cite the prison as causally significant. Despite these looming questions, Islam has been cast as a definite danger and existential threat, the substance of which is examined next.

II. ALARMISM AND POLITICAL DISTORTIONS

It is critical to understand how fear-based perceptions about Muslims and Islam have hampered objective inquiry into Islam in prison, and perhaps more critically, how they have concretely informed penal policy. Despite three congressional hearings and a growing body of scholarly research, there are still many unknowns.³⁰ More certain, however, is that perceptions about Islam in

26. Nawal H. Ammar et al., *Muslims in Prison: A Case Study from Ohio State Prisons*, 48 INT'L J. OFFENDER THERAPY & COMPARATIVE CRIMINOLOGY 414-28 (2004).

27. See MATTHEW SILBERMAN, *A WORLD OF VIOLENCE: CORRECTIONS IN AMERICA* 46 (1995).

28. PEW SURVEY, *supra* note 21, at 22.

29. AARON RAPPAPORT ET AL., *Homeland Security and the Inmate Population: The Risk and Reality of Islamic Radicalization in Prison*, in SPECIAL NEEDS OFFENDERS IN CORRECTIONAL INSTITUTIONS 431. 432 (Lior Gideon ed., 2012).

30. See, e.g., JEROME P. BJELOPERA & MARK A. RANDOL, CONG. RESEARCH SERV., R41416, *AMERICAN JIHADIST TERRORISM: COMBATING A COMPLEX THREAT* (2010); NEUMANN, *supra* note 11; DAVEED GARTENSTEIN-ROSS & LAURA GROSSMAN, *HOMEGROWN*

prison are tainted by a climate of suspicion and fear, some of which derive from fears entirely unrelated to Islam, including multiple perceived threats—criminals, prisoners, gang members, African-Americans, Latinos, and Muslims—a mix “that can easily overflow into unthinking hysteria.”³¹ Accordingly, public and political backlash against Muslims defines the post-9/11 era. Empirically speaking, there has been a spike in reported hate crimes against Muslims,³² including killings of Muslims and non-Muslims mistaken to be Muslim,³³ along with Quran burnings,³⁴ mosque bombings,³⁵ anti-Sharia initiatives,³⁶ and a generally unfavorable attitude against Muslims. American mosques have been under government scope for harboring militant extremists,³⁷ and city police have implemented spy operations against Muslim communities,³⁸ not to mention oppression in prisons like Guantanamo Bay.

Heated political debate in the post-9/11 era reflects great divides in opinion among academics and policymakers on the question of prisoner radicalization. According to a 2007 study funded by the National Institute of Justice (NIJ), “The literature on Islam in prison is divided into two camps that could not be

TERRORISTS IN THE U.S. AND U.K.: AN EMPIRICAL EXAMINATION OF THE RADICALIZATION PROCESS (2009); CENTER FOR ISLAMIC PLURALISM, BLACK AMERICA, PRISONS AND RADICAL ISLAM: A REPORT (2008); MARK S. HAMM, TERRORIST RECRUITMENT IN AMERICAN CORRECTIONAL INSTITUTIONS: AN EXPLORATORY STUDY OF NON-TRADITIONAL FAITH GROUPS (2007), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/220957.pdf>; HSPI & CIAG REPORT, *supra* note 10.

31. RAPPAPORT ET AL., *supra* note 29, at 432.

32. See, e.g., FBI: *Dramatic Spike in Hate Crimes Targeting Muslims*, SOUTHERN POVERTY LAW CENTER, <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2012/spring/fbi-dramatic-spike-in-hate-crimes-targetin> (last visited Oct. 29, 2013).

33. See, e.g., Arsalan Iftikhar, *My Take: Sikh Temple Shooting is act of Terrorism*, CNN (Aug. 6, 2012, 11:20 AM), <http://religion.blogs.cnn.com/2012/08/06/my-take-sikh-temple-shooting-is-act-of-terrorism/>.

34. See, e.g., Adelle M. Banks, *Florida Pastor Oversees Quran Burning*, USA TODAY (March 21, 2011), http://usatoday30.usatoday.com/news/religion/2011-03-21-quran-burning-florida_N.htm.

35. See, e.g., Kari Huus, *Attacks on U.S. Mosques Prompt Muslim Security Concerns*, NBC NEWS (Aug. 17, 2012), http://usnews.nbcnews.com/_news/2012/08/17/13321512-attacks-on-us-mosques-prompt-muslim-security-concerns.

36. See, e.g., Barbara Bradley Hagerty, *Oklahoma's Anti-Shariah Law Put on Hold, For Now*, NPR (Nov. 8, 2010), <http://www.npr.org/templates/story/story.php?storyId=131168920>.

37. See, e.g., *Raza v. City of New York – Legal Challenge to NYPD Muslim Surveillance Program*, ACLU, <https://www.aclu.org/national-security/raza-v-city-new-york-legal-challenge-nypd-muslim-surveillance-program> (last visited Oct. 29, 2013).

38. *Id.*

farther apart.”³⁹ One side tends to make claims based on assessments that center on a number of explicit and implicit arguments, including that Islam represents a unique and particularly dangerous threat in U.S. prisons, that U.S. prisons are factories for al-Qaeda-style radicalization, and that foreign influences are engaged in terror recruitment and fomenting extremism inside prisons, including Wahhabism.⁴⁰ As unsettling as these claims may be, they have proved highly speculative and based on little to no evidence or on research that lacks methodological rigor. As the NIJ study notes:

The alarmist position is based on research that is not only contradictory in places, but it lacks any real depth of understanding about the nature of prisoner subcultures, the social processes of religious conversion, and the vulnerability of individuals to recruitment by terrorists groups. The studies are also devoid of social scientific methodologies; there are no interviews with or observations of prisoners, and they offer only scant evidence on the perceptions of wardens, guards, chaplains, and security threat group administrators. Beyond that, they are riddled with errors.⁴¹

In stark contrast is a small but growing body of research, whose reports about Islam in U.S. prisons are based on data that is skeptical about the relationship between prisoner conversions to Islam and terrorism.⁴² Among these social scientific claims, there is little support for the idea that U.S. prisons

39. Hamm, *supra* note 18, at 669; more recently, the author placed his own research in a “third camp,” arguing that radicalization occurs “only under specific conditions of confinement.” See HAMM, *supra* note 24, at 51-52 (2013). The focus on conditions of confinement is incomplete, however, since it ignores inmates themselves—their experiences and proclivities, which are critical factors. From Hamm’s perspective, there would be no concern at having the most hardened radicals all at the same institution, as long as they are kept in comfortable conditions of confinement. The flaw is perhaps evinced in the JIS case, the work’s primary case study of prison-based jihad as some researchers posit that conditions of confinement likely did not play a significant role in the JIS terror plots. See Bert Useem & Obie Clayton, *Radicalization of U.S. prisoners*, 8 CRIM’Y & PUB. POL’Y. 561, 581 (2009) (suggesting that the JIS leader, Kevin James, was more interested in dealing with enemies like the NOI and Shia Muslims, and that had he not entered prison, he likely would have followed the same path of radicalization; more critically, they point out that his 100-page manifesto gives no indication of grievance with guards or the prison institution: “If bad prison conditions or the humiliation of the prison experience had moved James toward radicalization, then it is reasonable to expect that he would have said so in this document. Yet he did not. That James’s manifesto did not dwell on prison conditions suggests other reasons for his radicalization.” *Id.*).

40. For an overview see HAMM, *supra* note 30, at 22-23.

41. HAMM, *supra* note 30, at 25.

42. HAMM, *supra* note 30, at 25-26.

are factories for Muslim terrorism, but instead, indications demonstrate that Islam is a support for inmate rehabilitation and re-entry.⁴³

These two positions, which appear hopelessly at odds, nonetheless share common ground. For example, at least some within the alarmist camp acknowledge the potentially rehabilitative aspects of Islam for inmates.⁴⁴ In turn, there are those social scientists that note the violent nature of prison conditions, particularly in maximum-security facilities. These facilities foster environments for extremist ideology, as one researcher claims, “[T]he more extreme, harsh, dangerous, or otherwise psychologically-taxing the nature of the confinement, the greater the number of people who will suffer and the deeper the damage that they will incur.”⁴⁵ Regardless of the reluctance to admit these points; however, both sides of the debate concede that radicalization rarely leads to terrorist activity.⁴⁶

Despite many uncertainties about radicalization as a phenomenon, politicians and other state officials have not refrained from making overreaching claims about radicalization and prisons. To illustrate, during the 2006 U.S. Senate hearings on prisoner radicalization, Senator Jon Kyl (Arizona, Republican) asserted, “Jose Padilla, a terrorist accused of trying to build a dirty bomb to unleash in the United States was exposed to radical Islam in the U.S. prison.”⁴⁷ In the 2011 hearings, experts and politicians alike continued to invoke Jose Padilla as an inmate who was radicalized in prison.⁴⁸ Even prior to the 2011 hearings, Republican staffers for the Committee on Homeland Security distributed a background sheet entitled *Background Information on Prominent Post-9/11 U.S. Prison Radicalization Cases*, which listed Padilla as a prison convert.⁴⁹ However, Padilla did not convert to Islam

43. For an overview, see HAMM *supra* note 30, at 20-21.

44. See, e.g., *2011 House Hearing*, *supra* note 3, at 260 (statement of Patrick Dunleavy, retired Deputy Inspector, Criminal Intelligence Unit, New York Department of Correctional services).

45. CRAIG HANEY, *THE PSYCHOLOGICAL IMPACT OF INCARCERATION: IMPLICATIONS FOR POST-PRISON ADJUSTMENT* 5 (2002).

46. Hamm, *supra* note 18, at 682.

47. *2003 Senate Hearing*, *supra* note 3, at 2.

48. See *Testimony of William J. Bratton, Chief of Police, Los Angeles Police Department, Countering the Radicalization Threat: An Intelligence-Led Policing Challenge*, INVESTIGATIVEPROJECT.ORG, (Apr. 5 2007) [hereinafter *Bratton Testimony*], <http://www.investigativeproject.org/documents/testimony/276.pdf>; OIG REPORT, *supra* note 10, at 6.

49. *Background Information on Prominent Post-9/11 Prison Radicalization Cases*, HOUSE COMM. ON HOMELAND SECURITY (June 15, 2011) [hereinafter *Background Information*], <http://homeland.house.gov/sites/homeland.house.gov/files/06-15-11%20Prison%20Radicalization%20Background%20on%20Key%20Cases.pdf>.

until *after* he was released, nor did he travel to Afghanistan and Pakistan until seven years *after* his parole.⁵⁰

The same information sheet lists other inaccurate information. It describes James Cromitie as being “radicalized in prison,” despite the fact that he was paroled in 2004 and was not arrested on terror-related crimes until five years later.⁵¹ Despite the use of him and others as poster boys for inmate radicalization, there is little evidence, either before or immediately after their incarceration, to connect time in prison causally to acts of violent extremism. The sheet also cites Michael Finton as “radicalized in an Illinois state prison,” without evidence to substantiate the claim; similarly, it cites the Lackawanna Six terror plot without any explanation of why this case counts as prison radicalization.⁵² Furthermore, it cites to the abovementioned 2010 report, overseen by Senator John Kerry (Massachusetts, Democrat), which described three dozen prison converts who went to Yemen to learn Arabic.⁵³ Careful scrutiny of the report raises serious doubts that this should be a part of the information sheet. The report states, “U.S. officials told [c]ommittee staff that they *fear* that these Americans were radicalized in prison and traveled to Yemen for training.”⁵⁴ These statements came with no citations for the statements, no evidence of the extremism or intent to commit violence, and no mention of who the prisoners were; and the beliefs about radicalization were admittedly based on fear. Although this report contained no verifiable evidence that these individuals had converted, much less were radicalized in prison, the story was accepted and invoked as evidence throughout the rest of the report.

Like Padilla, commentators repeatedly cite Richard Reid, the shoe bomber, as an example of prisoner radicalization. Although scholarly works,⁵⁵ think-tank publications,⁵⁶ and congressional statements and reports⁵⁷ cite his name, there is little to support the claim that he was radicalized in prison.⁵⁸ In fact, a

50. See Ilardi, *supra* note 5, at 9-10; *but see* HAMM, *supra* note 24 (suggesting that the amount of time between release and the attempted terrorist attack should not imply the prison played a minor role in radicalization).

51. *Background Information*, *supra* note 49.

52. *Background Information*, *supra* note 49.

53. STAFF OF S. COMM. ON FOREIGN RELATIONS, 111TH CONG., AL QAEDA IN YEMEN AND SOMALIA: A TICKING TIME BOMB, S. Prt. 111-40, at 1 (Comm. Print 2010).

54. *Id.* at 9 (emphasis added).

55. See e.g., HAMM, *supra* note 24, at 184 (listing Reid on the “Prisoner Radicalization/Terrorism Database”); Hamm, *supra* note 18, at 668.

56. HSPI & CIAG REPORT, *supra* note 10, at iii.

57. See 2003 Senate Hearing, *supra* note 3; 2006 Senate Hearing, *supra* note 3; 2011 House Hearing, *supra* note 3; Bratton Testimony, *supra* note 48, at 213, 221, 224.

58. HAMM, *supra* note 24, at 47.

closer look at the historical record⁵⁹ suggests that he likely adopted extremist beliefs, and sought to engage in violence after he spent time at the Brixton mosque where he regularly heard sermons from the Abdullah El-Faisal, who was arrested in 2003 for attempting to incite violence.

As these cases indicate, inaccuracy and misinformation plague inquiry into Muslim-American prisoners. Compounding this is a general lag in research compared to other countries, some of which is likely to yield unsavory consequences, or as some researchers have put it, “In light of the powerful emotions that are provoked by the fear of prison radicalization, the failure to move ahead with that kind of research effort will mean that policy will inevitably be carried along not by reason, but by the political passions inevitably at play.”⁶⁰

These and other challenges surmount the quest to understand extremism in prison beyond the idea that Muslims are a particularly deadly threat. Yet it is without doubt that prison gangs single-handedly pose the greatest threat to institutional security. Moreover, Federal Bureau of Investigation (FBI) data point out that white supremacist groups, like the Aryan Brotherhood (AB), are among the most deadly groups in prison. Representing less than one-tenth of one percent of the entire prison population, the AB is responsible for eighteen percent of all prison murders across the country, numerous violent and drug related offenses outside of prison, and various attempted acts of terrorism.⁶¹ The technical capabilities of supremacist groups were noted in a 2007 prison intelligence report indicating that these groups are the most capable of using improvised explosive devices (IED).⁶²

Nonetheless, the excessive scrutiny of Muslims manages to omit the positive aspects of Islam in prison, including those prison converts who have helped foil terrorist plots. For example, there is little mention of Derrick Shareef, who planned to attack a shopping mall, but was stopped by the FBI with the help of an ex-gang member named William “Jamaal” Chrisman, who converted to Islam in prison.⁶³ Instrumental in preventing this attack, Chrisman stated that he decided to work as an informant to help the government because after the attacks of 9/11, “scholars in Saudi Arabia and Morocco said it was

59. OIG Report, *supra* note 10, at 6.

60. RAPPAPORT, *supra* note 29, at 433.

61. David Holthouse, *Leaders of Racist Prison Gang Aryan Brotherhood Face Federal Indictment*, INTELLIGENCE REP. 119 (2005), available at <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2005/fall/smashing-the-shamrock>.

62. HAMM, *supra* note 24, at 118 (citing Karl Mercer, “Terrorism Behind The Walls,” Presented at the American Correctional Association 137th Annual Congress of Correction (Aug. 12, 2007)).

63. BJELOPERA, *supra* note 30, at 34-35.

incumbent on Muslims to stop terrorists.”⁶⁴ This theme was echoed in a different plot in Seattle in 2011, which was foiled through the help of a prison convert—and there may be others.⁶⁵ These outcomes suggest a different story about the role of Islam in prison, a more beneficent side, which is treated in more detail next.

III. MUSLIMS IN CRIMINAL JUSTICE

This part of the article presents a current snapshot of Islam in American criminal justice and the problems facing Islamic communities in prison. Paying particular attention to how Muslims have affected prison law and culture, it explores Islam’s legacy in U.S. courts and prisons. For well over half a century, Muslims have used courts to establish religious rights for inmates in the same time Islamic outreach groups were assisting inmates through prison ministry and re-entry support. This history of Islam in prisons offers a compelling counter-narrative to the distortions described above.

A. *A Legacy in U.S. Courts and Prisons*

What have long been called “Black Muslim” organizations, such as the Nation of Islam (NOI) and the Moorish Science Temple, began formal prison ministry in the 1940s, concentrating their efforts on converting African-American inmates.⁶⁶ Within a few short years of establishing its prison outreach program, the NOI gained its most famous convert, Malcolm Little, also known as Malcolm X. The 1950s and early 1960s were a time of small but steady numbers of conversions to these organizations, which was particularly due to outreach efforts. In this era, prison outreach programs sought to instill values of honesty, hard work, individual responsibility, as well as mechanisms

64. Michael P. Mayko, *FBI Informant Testifies in Terror Case*, CONNECTICUT POST (Nov. 30, 2007), <http://winterparking.blogspot.com/2007/11/ct-post-fbi-informant-testifies-in.html>.

65. Levi Pulkkinen, *Man at Center of Seattle Terror Plot Admits Guilt*, SEATTLE POST-INTELLIGENCER (Dec. 6, 2012), <http://www.seattlepi.com/local/article/Man-at-center-of-Seattle-terror-plot-admits-guilt-4098072.php>; Lindsay Chamberlain, *Informant Who Divulged Terror Plot to FBI is a Convicted Felon*, KING 5 NEWS, <http://www.king5.com/news/local/Informant-who-divulged-terror-plot-to-FBI-is-a-convicted-felon-124511549.html> (last visited Oct. 28, 2013); see also BJELOPERA, *supra* note 30, at 49 (noting the plot involving Michael Finton also was foiled through the help of a prisoner who converted to Islam).

66. KARL EVANZZ, *THE MESSENGER: THE RISE AND FALL OF ELIJAH MUHAMMAD* 152-53 (1999).

for rehabilitation and coping with drug and alcohol abuse.⁶⁷ These groups tended to conceive of Islam in terms of nationalism, racism, and other beliefs and practices.⁶⁸ And it was these very racial and political dimensions of their philosophies that proved attractive to African-American inmates, and led to a significant Islamic presence in prisons.

As they reached a critical mass, incarcerated Muslims began making important contributions to the jurisprudence of prison law. In these years, Muslim inmates increasingly turned to courts to establish Islam as a legitimate religion, to redress conditions of confinement, and to advance prisoners' rights.⁶⁹ Prior to much of this litigation that inaugurated in the 1960s, courts rarely intervened on behalf of prisoners on the basis of the Eighth Amendment's freedom from cruel and unusual punishment or the First Amendment's free exercise clauses. That approach, known as the "hands off" doctrine, limited federal judicial interference in state correctional systems from the early to mid-1900s.⁷⁰ The hands-off era effectively allowed states to deny Muslims the right to practice their religion, and in the early 1960s, places like California, although generally accommodating of prisoners' religious activities, still did not extend such policies to Muslim prisoners.⁷¹

This situation began to change through a number of court decisions, which collectively established Islam as a legitimate religion in prison.⁷² The most important early decision was *Fulwood v. Clemmer* in 1962, which held that the Muslim faith must be recognized as a religion.⁷³ This case set the stage for other legal battles involving Muslim plaintiffs, including the first modern prisoners' rights case to reach the U.S. Supreme Court, *Cooper v. Pate*, where a Muslim inmate won a ruling that state prisoners have standing to sue in federal court under the Civil Rights Act of 1871.⁷⁴ Over the next several years, cases involving Muslim prisoners succeeded in gaining recognition of a variety of protections.⁷⁵

67. C. ERIC LINCOLN, *THE BLACK MUSLIMS IN AMERICA* 24-25 (1961).

68. ROBERT DANNIN, *BLACK PILGRIMAGE TO ISLAM* 169-70 (2002).

69. AMINAH BEVERLY MCCLOUD, *AFRICAN AMERICAN ISLAM* 123-24 (1995).

70. LYNN S. BRANHAM, *CASES AND MATERIALS ON THE LAW AND POLICY OF SENTENCING AND CORRECTIONS* 463 (2009).

71. Sarah E. Vallye, *Criminals Are All the Same: Why Courts Need to Hold Prison Officials Accountable for Religious Discrimination Under the Religious Land Use and Institutionalized Persons Act*, 30 *HAMLIN L. REV.* 193, 195-96 (2007).

72. See *In re Ferguson*, 361 P.2d 417, 422 (Cal.1961); *Sewell v. Pegelow*, 291 F.2d 196, 197 (4th Cir. 1961); *Pierce v. La Vallee*, 293 F.2d 233, 236 (2d Cir. 1961).

73. 206 F. Supp. 370, 379 (D.D.C. 1962).

74. *Cooper v. Pate*, 378 U.S. 546, 546 (1964).

75. *Northern v. Nelson*, 315 F. Supp. 687, 688 (N.D. Cal. 1970) (finding inmates possessed right to receive copies of the NOI publication, *Muhammad Speaks*, as well as

Muslims litigating for religious freedom, like other inmates, have grown accustomed to defeat more than anything. For example, in some settings, different denominations are denied separate worship space,⁷⁶ denied numerous religious accommodations⁷⁷ and have practical difficulties accessing Islamic chaplains and Islamic services.⁷⁸

These and other legal struggles established Islam as a legitimate religion among both prison officials and prisoners,⁷⁹ and put Muslims at the center of administrative and legal reform movements aimed at achieving greater constitutional protections for prisoners.⁸⁰ Muslim inmates' use of courts continues in the present as evinced in a report, which found that Muslim inmates submitted the largest number of religious discrimination complaints of any religious group between 2005 and 2007; initiated the largest number of federal lawsuits under the Religious Land Use and Institutionalized Persons Act

enjoining prison facilities to make at least one copy of the Quran available to inmates in their respective libraries); *Sewell*, 291 F.2d at 198 (finding prisoners were entitled to hearing for claims of punishment due to religion); *Banks v. Havener*, 234 F. Supp. 27, 30 (E.D. Va. 1964) (finding inmates had right to hold religious services); *Coleman v. D.C. Comm'rs*, 234 F. Supp. 408, 409 (E.D. Va. 1964) (finding right to possess and wear religious medals).

76. Jennifer K. Beaudry, *Islamic Sectarianism in United States Prisons: The Religious Right of Shi'a Inmates to Worship Separately from their Sunni Inmates*, 35 HOFSTRA L. REV. 1833, 1834 (2007).

77. See, e.g., *Gooden v. Crain*, 405 F. Supp. 2d 714, 722, 724 (E.D. Tex. 2005) (prohibiting inmate from wearing beard longer than one-quarter inch); *Hammons v. Saffle*, 348 F.3d 1250, 1257 (10th Cir. 2003) (denying inmate's access to prayer oils); *Couch v. Jabe*, 479 F. Supp. 2d 569, 580 (W.D. Va. 2006) (inmate barred from celebrating *Eid ul Fitr*); *Lovelace v. Lee*, 472 F.3d 174, 181 (4th Cir. 2006) (inmate prohibited from participating in *Ramadan* worship for breaking fast).

78. *Salahuddin v. Goord*, 467 F.3d 263, 270 (2d Cir. 2006) (inmate forced to choose between access to Islamic services or access to the law library; inmate denied access to an Islamic chaplain and denied participation in holiday services while in disciplinary custody); *Mayweathers v. Terhune*, 328 F. Supp. 2d 1086, 1097 (E.D. Cal. 2004) (inmate penalized for attending Muslim services); *Religious Discrimination and Prisoners' Rights: Hearing Before the Bd. on Religious Discrimination and Prisoners' Rights of the U.S. Comm'n on Civil Rights* 102 (Feb. 8, 2008) (statement of Imam Abu Qadir Al-Amin, Head, United Model Muslim Communities of America and Imam, San Francisco Muslim Community Center).

79. James B. Jacobs, *The Prisoners' Rights Movement and its Impacts, 1960-80*, 2 CRIME & JUST. 429, 434-35 (1980).

80. KATHLEEN M. MOORE, *AL-MUGHTARIBUN: AMERICAN LAW AND THE TRANSFORMATION OF MUSLIM LIFE IN THE UNITED STATES* 80 (1995); Christopher E. Smith, *Black Muslims and the Development of Prisoners' Rights*, 24 J. BLACK STUD. 131, 132 (1993).

from 2001 to 2006; and made the largest number of religious accommodation requests from 1997 to 2008.⁸¹

More recently, a 2013 Department of Justice (DOJ) report documented how Muslims in federal prison continue to deal with grievances through administrative channels.⁸² These complaints by Muslim inmates offer not just a further example of Muslims using legal recourse to deal with grievances, but also a glimpse of the institution's role in perpetuating radicalism among inmates.

The report assesses the implementation of section 1001 of the USA Patriot Act, which provides a legal remedy for civil rights violations by employees of the DOJ. The pertinent part of the statute reads: "The Inspector General of the Department of Justice shall designate one official who shall . . . review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice."⁸³ According to that report, between July 1, 2012 and December 31, 2012, the Department of Justice, Office of Inspector General (OIG) identified a total of six complaints by federal inmates, all of whom were Muslims.⁸⁴ The OIG investigated one directly and referred five to the Bureau of Prisons (BOP) for further investigation.⁸⁵ The direct investigation involved a BOP inmate who alleged that correctional officers harassed inmates, threw their Ramadan religious meals into the garbage, and uttered "racial slurs."⁸⁶

Among the cases referred to the BOP for further investigation was a BOP inmate who complained of discrimination. The inmate alleged that the institution does not employ a Muslim chaplain, that Muslims face a hostile environment at the institution, and that inmates at the same prison have previously filed similar complaints of harassment, retaliation, and discrimination.⁸⁷ In another case, a BOP inmate alleged that a correctional officer engaged in a pattern of "racist and discriminatory behavior" toward Muslims, "harassing them, 'trashing' their cells, and repeatedly singling them out for cell searches."⁸⁸ Another case involved three BOP inmates who alleged

81. U.S. COMM'N ON CIVIL RIGHTS, ENFORCING RELIGIOUS FREEDOM IN PRISON 69, 81 (2008).

82. U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL, REPORT TO CONGRESS ON IMPLEMENTATION OF SECTION 1001 OF THE USA PATRIOT ACT 6-11 (2013) [hereinafter *2013 OIG Report*].

83. USA Patriot Act of 2001, Pub. L. No. 56-107, § 1001(3), 115 Stat. 272.

84. 2013 OIG REPORT, *supra* note 82, at 5-7.

85. 2013 OIG REPORT, *supra* note 82, at 5.

86. 2013 OIG REPORT, *supra* note 82, at 6.

87. 2013 OIG REPORT, *supra* note 82, at 6.

88. 2013 OIG REPORT, *supra* note 82, at 6.

that two correctional officers acted unprofessionally, one by making comments about “killing Muslims when he was overseas” and the other by comparing Muslims to dogs and stating that he “hated dogs.”⁸⁹

The report also details pending investigations opened during previous reporting periods, in what amounts to more of the same story of Muslims complaining about their treatment at the hands of government officials. Among the five cases, one Muslim inmate alleged that a BOP chaplain accused him of “starting a terrorist cell,” which resulted in the inmate’s placement in solitary confinement.⁹⁰ Another case involved a BOP inmate who alleged that a correctional officer used a racial slur, confiscated his religious headdress, and called the headdress a “terrorist cap.”⁹¹ Yet another BOP inmate alleged, among other complaints, that BOP staff tampered with his legal mail, obstructed calls to his attorneys, censured his participation during Islamic services and studies, and inappropriately classified him as an “international terrorist”; the inmate also singled out a BOP lieutenant who told him that prison staff “hated him.”⁹²

Those cases and complaints, along with the legal history of Islam in prison, show Muslim inmates as frontrunners for advancing prisoners’ rights by relying on courts, over extremist violence, to deal with conditions of confinement. Simultaneously, the complaints implicate prisons themselves as a factor for fomenting dissent from harsh and oppressive conditions and treatment at the hands of staff.

B. *Penal and Cultural Impacts*

Like the impact Muslims have had on prison law, the practical impact of the religion on the lives of inmates and prison culture is unmistakable. The religion offers a set of practices and doctrines for inmates, including the proclamation of faith, prayer, charity, and fasting, among other traditional and non-traditional pieties. These practices help develop discipline and structure in individuals whose lives are characterized by chaos and instability, teaching selflessness in a world of self-interest. In turn, inmates refer to Islam through many images, including as a “lifeboat” that saved a life, or as a “sword” that cuts through “ignorance and repression,” “eye drops for those with irritated eyes.”⁹³ One Latino convert at Folsom State Prison in California explained Islam’s meaning for prisoners: “For those that are serious and involved in the

89. 2013 OIG REPORT, *supra* note 82, at 6.

90. 2013 OIG REPORT, *supra* note 82, at 7.

91. 2013 OIG REPORT, *supra* note 82, at 7.

92. 2013 OIG REPORT, *supra* note 82, at 8.

93. Letter from a Prisoner to Author (Dec. 18, 2005) (on file with author).

greater Jihad (Struggle of Self), Islam is an anchor to a world that is lost to us behind these cement walls and iron bars. It offers love and hope, and most of all, peace that comes when one surrenders to Allah.”⁹⁴

It is not uncommon for inmates to interpret and understand their imprisonment within an Islamic framework. This is possible due to the fact that prisons and penance both have a place in Islam. As one Muslim chaplain notes, “A cursory review of the acknowledged intentions of Islam and the Quaker reformists shows that it is apparent the objective of both religious ideologies is to instill penitence in the criminal.”⁹⁵ One scholar notes prisons were not unfamiliar in the Quran, and are mentioned at least nine times as an institution.⁹⁶ In the centuries following the founding of Islam, prisons would become more widely used within Islamic governance. Called “*nafi’a*,” or “beneficent,” the goal of punishment was intended to “benefit” the prisoner.⁹⁷ Hence, there is considerable overlap with this concept and “penance,” which informed the creation of penitentiaries in European Catholic traditions and later Protestant varieties in the United States. Just how many inmates make these connections is uncertain, but some inmates recognize the importance of imprisonment in religious narrative, as one African-American convert from San Quentin State Prison writes, “We must retain in mind that nearly all of the primordial Imams of Ahl Al-Bayt (the household of the Prophet) were imprisoned or under house arrest by the prevailing anti-Hashimite authorities of the time.”⁹⁸

Islam’s practical value in prison links to a strong emphasis on communal worship and diversity of denominations. Islam offers inmates something different from what Christian reformers envisioned in cloistered reflection or silent prayer. The practices are better suited for building social networks, and as one scholar asserts, “The greater the capacity of the prison jamaat to establish the privilege of congregational prayer, the greater the potential effect on the Muslim.”⁹⁹ The communal worship, egalitarianism, and positive identity construction all serve to support moral and social discipline in inmates, upholding Quran institutions, encouraging a rigorous program of study and prayer, and offering a “counter disciplinary resistance” to the hierarchies that

94. Letter from a Prisoner to Author (Dec. 5, 2005) (on file with author).

95. MIKAL HUDA BA’TH, *ISLAM IN PRISONS: AS VIEWED FROM THE NATION’S CAPITAL 3* (1979).

96. See Nawal H. Ammar, *Restorative Justice in Islam: Theory and Practice*, in *THE SPIRITUAL ROOTS OF RESTORATIVE JUSTICE* 173 (Michael L. Hadley ed., 2001).

97. *Id.* at 174.

98. Letter from a Prisoner to Author (Dec. 4, 2005) (on file with author).

99. DANNIN, *supra* note 68, at 176.

define prison culture.¹⁰⁰ For some, it offers a regime to resist American culture in general, particularly “Black Muslim” organizations, which have effectively captured the attention of those who have experienced racial oppression. For others who fall into Sunni circles, there is a very different effect of faith, and there is scriptural emphasis on equality and belief in God and righteous conduct, not skin color, nationality or political creed.¹⁰¹ This practical orientation, which supports ties both inside and outside prison, is cited as particularly suited for individuals in an environment where racial tensions run high.¹⁰² Still for others whose piety flows to Sufi forms of the tradition, inmates whose lives are laced with violence cultivate pacifism and non-violent principles. Taken wholly, the results are significant, according to one Muslim inmate at the Stafford Creek Corrections Center in Washington state, who describes the long-term effects of commitment to Islam as “wholly positive and liberating despite the anti-Islam rhetoric we hear so much of in the West.”¹⁰³

According to such testimony, Islamic values and mores converge with desired penal outcomes on multiple levels, including conversion itself. As a process that involves turning away from previous aspects of one’s life, for some, conversion represents the shedding of one’s identification as a criminal or gang member. As one inmate from Pelican Bay State Prison described, “I have seen people who were so confused about their present situation (incarceration) that they would victimize each other. But . . . many of them have rehabilitated themselves. These men are now ready to be placed back on the street to keep another generation from coming into prisons.”¹⁰⁴

Sometimes an inmate’s conversion to Islam impacts the very inmates who witness the transformation. According to veteran prison-preacher Imam Muhammad Abdullah of Taif Tul Islam in Los Angeles, when other prisoners witness the transformative impact of a conversion, this has profound consequences on those inmates: “[T]he discipline that Islam requires and cleanliness, are really admired by people . . . this begins a conversion of many because they are either living with their former crime partner(s) and they knew

100. DANNIN, *supra* note 68, at 177.

101. See, e.g., Quran Chapter 49, Verse 13, (“O men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another.” ISLAMICITY, <http://bit.ly/M6Os9q> (last visited Sept. 13, 2013)); Abdullah Antepi, *The Last Sermon of the Prophet Muhammad*, HUFFINGTON POST (Feb. 3, 2012), http://www.huffingtonpost.com/imam-abdullah-antepi/the-last-sermon-of-prophe_b_1252185.html.

102. See JOHN J. GIBBONS & NICHOLAS DE. B. KATZENBACH, THE VERA INSTITUTE OF JUSTICE, CONFRONTING CONFINEMENT: A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA’S PRISONS 23 (2006).

103. Letter from a Prisoner to Author (Dec. 5, 2005) (on file with author).

104. Letter from a Prisoner to Author (Dec. 5, 2005) (on file with author).

his or their past and to see that person or people change right before their very eyes is enough for anyone to see there must be a just god.”¹⁰⁵ Research supports that such transformations have a strong impact on others, as one study noted, “When people say that they feel peace or that they have found freedom within their imprisonment, any listener cannot help but be swayed by the obvious emotion with which they speak.”¹⁰⁶

Although there is need for further research on Islam’s influences on inmates, the available scholarship points to positive links between Islam and inmate rehabilitation. One of the earliest studies of Islamic beliefs in prisons in the 1960s claimed that recovering alcoholics and drug-addicts were able to cope in prison more effectively after converting to Islam.¹⁰⁷ A 1978 study found that the NOI helped inmates with morale, discipline, and rehabilitation.¹⁰⁸ According to one scholar, the religion’s attraction is in helping inmates transcend the material and often brutally inhumane conditions of prison.¹⁰⁹ Other research describes Muslims as a “stabilizing force in many prisons,”¹¹⁰ often assuming leadership roles in periods of crisis.¹¹¹ Some other examples include a study of U.S. prisons between 1971 and 1986, which found that Muslims did not participate in a single riot during the fifteen-year span of the study.¹¹² Rather, Muslim inmates mitigated violence and deaths in both the Attica (1971) and Sing Sing (1983) prison riots.¹¹³ Islam is also reported to improve inmates’ prison adjustment, self-esteem,¹¹⁴ and reformatory

105. Email from Muhammad Abdullah to Author (October 25, 2005, 22:50:16 PDT) (on file with author).

106. Todd R. Clear et al., *The Value of Religion in Prison*, 16 J. CONTEMP. CRIM. JUST. 53, 62 (2000).

107. LINCOLN, *supra* note 67, at 24-25, 29-30, 82-83.

108. Keith Butler, *Muslims Are No Longer an Unknown Quantity*, CORRECTIONS MAG., June 1978, at 56, 60.

109. DANNIN, *supra* note 68, at 178

110. MOORE, *supra* note 80, at 102; James B. Jacobs, *Stratification and Conflicts Among Prisoner Inmates*, 66 J. CRIM. L. & CRIMINOLOGY 476, 480 (1976).

111. JOHN IRWIN, PRISONS IN TURMOIL 196-97 (1980).

112. Peter Kimball and Bert Useem, STATES OF SIEGE: U.S. PRISON RIOTS 1971-1986 50 (1989).

113. PATRICK DUNLEAVY, THE FERTILE SOIL OF JIHAD: TERRORISM’S PRISON CONNECTION 28 (2011).

114. T.A. Barringer, *Adult Transformations Inside a Midwest Correctional Facility: Black Muslim Narratives of Their Islamic Conversion* 125 (1998) (unpublished Ph.D. dissertation, Northern Illinois University) (on file with author).

potential,¹¹⁵ as well as reduce recidivism rates more than other groups statewide¹¹⁶ and nationwide.¹¹⁷

For decades, African-American activists have commented on Islam's appeal among African-Americans inside prison walls.¹¹⁸ Malcolm X's story illustrates the point when, as a prisoner, he was struck by the idea that his forbearers were a race of "ancient civilizations" with "riches in gold and kings," thoughts he describes as "the first serious thoughts" that he had ever had in his life.¹¹⁹ The turning point for Malcolm X was crucial, since it connected him culturally to something bigger than he had ever known.

As it did for Malcolm X, Islamic history forges a pathway for African-Americans to reconnect with their Islamic roots and Arabic language. Malcolm X looked to American history as a pathway through which inmates could understand their Islamic heritage, since Muslims were among those enslaved and brought to America from Africa. Further back, to the very beginning, is the religious narrative of the figure Bilal, a companion of the Prophet Muhammad. Although Bilal was African and a former slave, the Prophet chose him to call Muslims to pray for the very first time, a story that proclaims Islam's commitment to equality.¹²⁰

These ancient cultural links support a rich tradition of conversion to Islam in modern America. Islamic preaching in North America among African-Americans traces to the early 1900s, when groups like the Moorish Science Temple, the NOI, and the Ahmadiyya movements began focusing their

115. FELECIA DIX-RICHARDSON & BILLY CLOSE, *Intersections of Race, Religion and Inmate Culture: The Historical Development of Islam in American Corrections*, RELIGION, THE COMMUNITY, AND THE REHABILITATION OF CRIMINAL OFFENDERS 11, 87 (Thomas P. O'Connor & Nathaniel J. Pallone eds., 2003).

116. Byron Johnson et al., *Religious Programs, Institutional Adjustment, and Recidivism among Former Inmates in Prison Fellowship Programs*, 14 JUST. Q. (1997), available at <http://www.leaderu.com/humanities/johnson.html>.

117. Stephen Seymour, *The Silence of Prayer: An Examination of the Federal Bureau of Prisons' Moratorium on the Hiring of Muslim Chaplains*, 37 COLUM. HUM. RTS. L. REV. 523, 532 (2006) (finding that the recidivism rate for Muslims was about 8% compared to 40% for Catholics and Protestants).

118. See, e.g., CLAUDE BROWN, *MANCHILD IN THE PROMISED LAND* 325 (11th ed. 1969) ("Damn, Alley, what the hell is going on in the jails here. It seems that everybody who comes out is a Muslim."); NATHAN MCCALL, *MAKES ME WANNA HOLLER: A YOUNG BLACK MAN IN AMERICA* 209 (1994) ("No African American spends much time in prison without being exposed to the doctrines of black Muslims.").

119. MALCOLM X, *THE AUTOBIOGRAPHY OF MALCOLM X: AS TOLD TO ALEX HALEY* 175-176 (Alex Haley ed., 1st Ballantine Books Hardcover ed. Oct. 1992).

120. Ivan G. Nassar, *Islam's First Muezzin has Honored Place in History: Messages of Faith*, CLEVELAND (Apr. 13, 2013, 7:00 PM), http://www.cleveland.com/religion/index.ssf/2012/04/islams_first_muezzin_has_honor.html.

attention on outreach to African-Americans.¹²¹ These efforts produced some of the most prominent leaders in African-American history, including Noble Drew Ali, Elijah Muhammad, Malcolm X, Warith Deen Muhammad, and Louis Farrakhan. And they helped make famous the story of conversion to Islam in prison, from the persona of Mike Tyson to hip hop songs, to television series like the *Chappelle Show*, the *Boondocks*, and *Oz*.

Perhaps like no other cultural medium, hip-hop music has created inroads for Islam within African-American cultures, including those in prison.¹²² Indeed, the history of hip-hop culture is one intimately connected to Islam and radicalization. After all, it was the “godfather” of hip hop, Afrika Bambaataa, who by all accounts was radicalized from the gang life into promoting non-violence. Having turned his back on the gang life, he made “peace, unity, love and having fun” one of hip-hop’s main mantras. Beyond Bambaataa, some of the most influential hip-hop artists of all time have identified themselves with Islam; from Rakim to Public Enemy to Mos Def and the Wu-Tang Clan, hip-hop music has transmitted Islamic themes, symbols, and language to African-Americans. At the extreme end of the spectrum, some of the music has been described “jihadi rap,”¹²³ “verbal mujahideen” or soldiers in what rapper Paris calls “sonic jihad.”¹²⁴

Given how Islam connects inmates to their African and African-American heritage, it is hardly cultural apostasy for African-Americans to convert to Islam, since doing so takes them to the very heart of Africa. It is for this reason that some describe their turn to Islam not as *conversion*, but as *reversion*—not a turn to the faith, but a *return*—a re-connecting and reclaiming of an uprooted past. As one African-American inmate describes, “Islam encourages togetherness, prayer, and aspects of morality that would, literally, awe the average Westerner. Islam encourages family adhesiveness and history . . . and gave me the encouragement to identify with Africa.”¹²⁵

Latinos adopt a similar cultural logic and embrace Islam as a way of reconnecting to their Spanish heritage. Although data on Latino conversion is sparse, and even less is known about conversion in prison, some studies confirm its occurrence.¹²⁶ For Latinos, the draw of Islam is perhaps unlike that

121. See Spearlt, *Raza Islamica: Prisons, Hip Hop & Converting Converts*, 22 BERKELEY LA RAZA L.J. 175, 178-179 (2012) (in addition was Duse Mohamed Ali’s Universal Islamic Society in Detroit) [hereinafter *Raza Islamica*].

122. See generally *id.* at 177.

123. Daveed Gartenstein-Ross, *Jihadi Rap*, FRONTPAGE MAG.COM (Nov. 10, 2004), available at <http://archive.frontpagemag.com/readArticle.aspx?ARTID=10635>.

124. PARIS, SONIC JIHAD (Guerilla Funk 2003).

125. Letter from a Prisoner to Author (Dec. 1, 2005) (on file with author).

126. See, e.g., HAMM, *supra* note 30, at 42, 68.

of any other religion due to historical factors similar to those that define the African-American experience. As the term “Moor” was embraced by various African-American leaders to unite the poor and disenfranchised with Islam, the Latino embrace of Moorish Spain provides a powerful tool to re-imagine identity. As one Mexican-American convert from Huntsville Unit, a prison in Texas, described: “When I learned ‘ojala’ (God willing) was from Arabic, I saw the truth about Hispanics and Islam. I’ve heard my parents say that a thousand times, but never really thought about it. Now I know and tell others that Mexicans got Islam in their blood.”¹²⁷

Highlighting the positive impacts of embracing Islam inside prison walls, however, should not ignore certain negative outcomes. For example, as one African-American convert describes, “There are no incentives (worldly) to embracing Islam in the prison system, especially since the aftermath of Sept. 11th, and subsequent events which only cast a negative image upon Islam, but have led the U.S. government to view Muslim prisoners as potential terrorists.”¹²⁸ Yet, the hardships that may be involved with accepting Islam does not stop inmates from converting. The consequences have their own set of ramifications, including having to live with the adverse effects. For example, one African-American convert asserts, “In the bible belt families have been known to disown their loved ones inside because they embrace Islam.”¹²⁹ Writing from Union Correctional Institute in Florida, he describes, “[W]ith all the negative which comes with prisoners embracing Islam, they continue to come to Islam at a steady pace, knowing that it will likely only make their time harder.”¹³⁰

Other adverse consequences of accepting Islam run along ethnic lines, and inmates who convert are at risk from members of their own ethnic group. As indicated by one Native-American convert from Corcoran State Prison, “When a non-African-American accepts Islam such as myself, I opened up a very dangerous door that could lead to physical and verbal abuse by [sic] fellow Native-Americans because I accepted Islam.”¹³¹ His troubles resound with those expressed by a Latino ex-prisoner who himself was not Muslim, but described seeing a Latino convert to Islam who was “dealt with in a horrible way.”¹³² As these individuals convey, embracing Islam comes with a price tag, sometimes even violence. The overarching conclusion suggests the benefits of Islam outweigh the harms and negatives associated with becoming Muslim.

127. Letter from a Prisoner to Author (Fall 2005) (on file with author).

128. Letter from a Prisoner to Author (Jan. 4, 2005) (on file with author).

129. *Id.*

130. *Id.*

131. Letter from a Prisoner to Author (Dec. 12, 2005) (on file with author).

132. *Id.*

C. *Gaps in Chaplaincy*

The lifeblood of Islam in prison is in social networks, both inside and outside. Yet in recent years, policy decisions have produced shortages in Islamic leadership, threatening these very networks. Despite that Muslim inmates have well-developed support structures and resources, there remain shortages of Islamic leadership to service the growth of inmates who turn to Islam. Scarce resources and shortages have made prisoner imams the most viable source of leadership since they come at no cost and in some cases may be more grounded practically because, as prisoners, they live with inmates twenty-four hours a day, seven days a week, compared to only weekly or monthly visits from outside imams. Unfortunately, these circumstances often leave the pulpit open to individuals with a radical agenda, as was noted by the Office of the Inspector General, who described that in federal prisons, inmates were “much more likely to lead their own religious services, distort Islam, advocate Prison Islam, and espouse extremist beliefs.”¹³³ Al-Muhajair, who claims to have served as his prison’s “imam and amir of education,” offers an ominous picture from his own pulpit: “With my love for America,” he writes sarcastically, “what do you think I am teaching young Muslims?”¹³⁴

Shortages in Islamic chaplaincy occur at both the federal and state level. The problem was recognized in a 2004 government report on the BOP, which highlighted a critical shortage of Muslim chaplains.¹³⁵ Citing the Chief of the Chaplaincy Services Branch’s definition of a critical shortage as “1 chaplain of a certain faith for every 700 inmates of that faith BOP-wide”; at the time of the report’s issuance, there was one Muslim chaplain for every 900 Muslim inmates.¹³⁶ Two years later, an official at the BOP noted, “[A] substantial portion of Islamic services [was] being led by inmates.”¹³⁷ The shortage had adverse outcomes, including offering space for more extreme versions of Islam, as described by one Muslim inmate’s testimony, “I’ve been to one prison in which there was no government hired chaplain. Our imam was a fellow prisoner and we were virtually unsupervised by prison authorities . . . Prisoner imams are mavericks. They usually are unafraid to speak their minds—even when their speech involves public condemnation of government foreign or domestic policy.”¹³⁸ This inmate’s definition sounds like a description of al-Muhajair, a prisoner-imam with strong opinions: “Americans believe by

133. OIG REPORT, *supra* note 10, at 36.

134. Letter from Prisoner, *supra* note 1, at 2-3.

135. OIG REPORT, *supra* note 10, at 36.

136. OIG REPORT, *supra* note 10, at 5.

137. 2006 Senate Hearing, *supra* note 3, at 29.

138. Letter from Prisoner to Author (Nov. 16, 2005) (on file with author).

starving one belief and shoving another down inmates' throats they are saving America. I am pissed, and I feel it is doing the exact opposite."¹³⁹

As al-Muhajair's words suggests, the leadership vacuum may be filled with radical elements, which is particularly ironic given that the leadership shortage was created in the name of containing radicalization. In reality, it created space for extremism to ferment within the prison. This situation perhaps explains why there has been little evidence of success of a wider effort by overseas Muslim groups successfully propagating extremism in prison. Indeed, evidence from media outlets¹⁴⁰ and federally funded academic studies indicate there has been no mass effort to propagate extremism in prison from Islamic networks abroad.¹⁴¹ Current studies point out that attempts to promote extremism in prisons are predominantly made by prisoners who are already *inside* the penal facility or through other networks, particularly, prison gang networks.¹⁴² The shortage of Muslim leaders threatens to compromise prison security and increase the risk of proliferating ideological extremism within prisons.¹⁴³

The situation in state prisons is equally problematic, and according to a recent survey of prison chaplains across the United States, fifty-five percent of all individuals surveyed said that the most underserved religious group in prison is Muslims.¹⁴⁴ As a result of this disparity, much, if not most, of the development for Islamic religious programming and education ends up falling on the shoulders of other inmates, non-Muslim chaplains, and prison officials who frequently lack basic understanding about Islamic beliefs and practices, compounded by staffs that typically have few Muslims.¹⁴⁵

These forced developments in localized leadership, however, are not always necessarily negative outcomes; indeed, one could argue that such influence is potentially positive. After all, inmate leaders living in the institution are more in touch with inmates' daily experiences than individuals who visit relatively briefly from the outside. The lack of trained leadership,

139. Letter from Prisoner, *supra* note 1, at 3.

140. Rachel Zoll, *American Prisons Become Political, Religious Battleground Over Islam*, ASSOCIATED PRESS (June 4, 2005), <http://legacy.utsandiego.com/news/nation/20050604-0928-struggleforislamii.html>.

141. Hamm, *supra* note 18, at 681; *see, e.g., 2011 House Hearing, supra* note 3, at 228-31 (statement of Patrick Dunleavy, retired Deputy Inspector, Criminal Intelligence Unit, New York Department of Correctional Services, citing the congressional testimony by Dr. Bert Useem).

142. Hamm, *supra* note 18, at 682.

143. HSPI & CIAG REPORT, *supra* note 10, at 14 ("The inadequate number of Muslim religious services providers increases the risk of radicalization."); OIG REPORT, *supra* note 10, at 2-3.

144. PEW SURVEY, *supra* note 21.

145. Hamm, *supra* note 18, at 678.

however, renders the religion at perpetual risk of being guided by inmates who can hardly deliver authoritative spiritual guidance. More critically, it allows individuals to exploit the pulpit, depart from traditional teachings, and even propagate an extremist agenda.

This pattern was evident in the only documented case of prison-based Islamic extremist violence in the post-9/11 era: the Jam'yyat Al-Islam Al-Saheeh (JIS). The group was conceived in the vacuum of Islamic religious authority inside New Folsom State Prison, where an intelligent and charismatic twenty-six-year-old preacher, named Kevin Lamar James, led and successfully recruited members into the JIS due to his "claimed special expertise as a representative and legitimate voice for Islam."¹⁴⁶ As the chaplain of New Folsom Prison explains, "Chaplains were too busy to help with any serious religious conversions due to the overcrowding problem here. For the prisoners who converted to Islam, we had to rely mainly on volunteers."¹⁴⁷

The overcrowded nature of prisons described by the chaplain increases prospects for violence, which is not limited to New Folsom. According to the Department of Justice's 2008-2009 National Inmate Survey, there were 25,312 male prisoner-on-prisoner assaults,¹⁴⁸ a figure that indicates inmates are approximately fifty times more likely to face assault in prison than outside it.¹⁴⁹ Therefore, there are times when the influence of social networks expands beyond assisting inmates with their spiritual and physical well-being. Taking shelter in Islam may be a simple strategy to survive and garner protection against other inmates and prison staff. As one federal prisoner from Terminal Island notes:

[A]ssociating yourself with some click [sic] in prison is very important because it gives you a sense of security and an alliance which you can build strong bonds with. The reality of prison is that you cannot survive without the help of others. If you isolate yourself from others, you will most likely be taken advantage of and be placed in harm's way.¹⁵⁰

146. Hamm, *supra* note 18, at 674.

147. HAMM, *supra* note 30, at 79.

148. ALLEN J. BECK ET AL., BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES: NATIONAL INMATE SURVEY, 2008-09 22 (2010). This number should be seen as a low-end baseline estimate since many assaults go unreported by inmates. For a critique of data collection on inmate violence, see GIBBONS & KATZENBACH, *supra* note 102, at 24-25.

149. BECK, *supra* note 148, at 24-25.

150. Letter from a Prisoner to Author (Sept. 30, 2005) (on file with author).

It is impossible to deny that protection-based motives cause some prisoners to turn to Islam. One inmate explains that offering protection is simply a part of being in a Muslim brotherhood: "Some brothers were born Muslim, and chose the street life over Muslim life only to return to it once entering the system, because with the Muslims there is a sense of structure, order, purpose, and some just seek a sense of protection, which is what we are here for."¹⁵¹ Sometimes a person who enters Islam out of self-interest will end up keeping the faith, as one inmate who converted in a Los Angeles County jail describes: "Although I entered Islam with an ulterior motive, my heart was already open to God and Allah is slowly but surely purifying my mind and spirit."¹⁵² His words suggest that even if an inmate joins Islam for physical protection, it is no barrier to developing faith. However, such motivations should not be exaggerated, as one ex-gang member writes from prison, "These days when asked if one became Muslim for protection, the retort is 'yes, for Allah's protection!'"¹⁵³

The lack in chaplaincy also means that, as a rule of thumb, some of those who step up will be from gang backgrounds.¹⁵⁴ One scholar describes conversion among gang members to groups like the NOI and Five Percent Nation of Islam as "[g]angland [g]angstas [t]urning Gods."¹⁵⁵ This phenomenon undoubtedly gives Muslim organizations the appearance of gang affiliation to prison officials. As one convert in a Missouri state prison lamented, "Since 9/11 we have been viewed as a 'gang,' and are being constantly investigated for possible al-Qaeda ties."¹⁵⁶

At present, little is known about Islam's impact on gang culture, and little is mentioned in social science studies about the influence of religion in a youth's ability to leave a gang.¹⁵⁷ One researcher has suggested that religion functions similarly "to gang affiliation and the need to connect to other people."¹⁵⁸ Despite the gap in research, it is clear that many who are now law-abiding Muslims were once gang members, as detailed by one African-American prisoner who writes, "When an individual wants to leave the gang

151. Letter from a Prisoner to Author (Nov. 14, 2005) (on file with author).

152. Letter from a Prisoner to Author (Dec. 15, 2005) (on file with author).

153. Letter from a Prisoner to Author (Nov. 20, 2005) (on file with author).

154. HAMM, *supra* note 30, at 38.

155. MATTIAS GARDELL, IN THE NAME OF ELIJAH MUHAMMAD: LOUIS FARRAKHAN AND THE NATION OF ISLAM 285 (1996).

156. Letter from a Prisoner to Author (Dec. 15, 2005) (on file with author).

157. IRVING A. SPERGER, THE YOUTH GANG PROBLEM: A COMMUNITY APPROACH 107 (1995).

158. J. Thomas & B.H. Zaitzow, *Conning or Conversion? The Role of Religion in Prison Coping*, 86 THE PRISON J. 242, 254 (2006).

life, most likely he enters into this community. He knows that we will support him and assist him put his life in order. It is not unusual to see gang members become ex-gang members.”¹⁵⁹ The turn from gangs is complex, yet as another inmate attests, “I believe the fact that young men in gangs are often primed for Islam as a result of the hardships they endure in their youth. Once in prison they are under no illusion about the American Dream Most young men in gangs come from impoverished homes with enormous voids in their lives and Islam brings substance to their lives.”¹⁶⁰ Unfortunately, however, as the next section shows, in prison this is not always the message spread in the name of Islam.

IV. RADICALIZATION IN PRISON

This part of the article analyzes what prisoners themselves identify as causal factors for radicalization. Their testimony suggests that prisoner radicalization is grounded more in domestic problems, and less in recruiting efforts of foreign operatives or jihadist networks. For example, according to Mark S. Hamm, overcrowding is a primary institutional-level cause of prisoner extremism, which among other outcomes, results in chaplain understaffing and gang dominance over increasingly populated physical spaces.¹⁶¹ At the organizational level, what Hamm describes as “charismatics,” typically from a gang background, are the primary instigators of extremism, who derive some of their influence by dint of their credibility among other prisoners.¹⁶² The lack of a strong and qualified Muslim religious authority results in services being led by untrained leaders whose credentials lack religious authenticity.¹⁶³ Prison-gang proselytizing thus represents a primary individual-level cause of inmate extremism, which is so prevalent that Hamm has asserted, “The prisoner radicalization problem cannot be separated from the prison gang problem.”¹⁶⁴

A. *The Fertile Soil of Jihad?*

Post-9/11 discourse on terrorism and radicalization was built on a binary, “us versus them” paradigm, with “them” representing foreign enemies. Although the individuals stated to have been involved in the attacks of September 11th were foreigners, the binary quickly was challenged by growing

159. Letter from a Prisoner to Author (Nov. 10, 2004) (on file with author).

160. Letter from a Prisoner to Author (Dec. 22, 2005) (on file with author).

161. HAMM, *supra* note 30, at 115.

162. HAMM, *supra* note 30, at 115

163. HAMM, *supra* note 30, at 117-18

164. HAMM, *supra* note 30, at 114

evidence that Americans could become jihadists without the influence of foreigners. Inmates express radical attitudes in various rhetorical schemes such as labeling the “USA” the “United Snakes of America,” adopting the spelling “AmeriKKKa,” or affixing postage stamps with the American flag upside down to indicate a state of emergency. Does such sentiment indicate that prisons are special spaces for growing violent jihadists?

Notwithstanding the incriminations, the idea that foreigners are at the root of radicalization has become the bedrock of much political analysis surrounding prisons. At the first round of congressional hearings in 2003, Senator Jon Kyl’s opening comment makes the point, asserting that to defeat “terrorists,” we must understand their goals and methods “as well as they understand our system of freedom.”¹⁶⁵ This statement, of course, implied that the threat was not American but foreign, particularly indicated by his use of the phrase “our system of freedom.” Likewise, in the 2006 hearings, Chairman Collins’s opening statement described the “rise of domestic terrorist cells” that are inspired by al-Qaeda.¹⁶⁶ This theme extended into the last round of hearings in 2011 with Chairman Peter King’s opening statement, which defended the hearings as a response to “Al Qaida’s announced intention to intensify attacks within the United States”¹⁶⁷ Later in the hearings, Representative King defended the focus on Muslim inmates along similar lines, “If we find out that neo-Nazis ally with a foreign power and they are coming to this country, we will investigate it.”¹⁶⁸ Of course, implicit in these comments is the idea that the influence is coming from “foreign powers,” as Representative King put it, rather than from forces at home.

Although the relationship between prisons and violent extremism in post-9/11 America proves tenuous at best, there are still many misconceptions. For example, one widely cited policy report on Muslim extremism, *Out of the Shadows: Getting Ahead of Prisoner Radicalization*, ominously described the phenomenon as “a threat of unknown magnitude.”¹⁶⁹ This characterization, however, is misleading, since religious violence emanating from prison has been quite the exception. Even in general, terrorist threats against the United States from “homegrown” American Muslim supporters of “jihadi” ideology tend to be few. As one terrorism analyst at the RAND Corporation noted in a 2010 study, out of more than three million Muslims in the United States, only a few more than 100 have joined jihad, “suggesting an American-Muslim

165. 2003 Senate Hearing, *supra* note 3, at 2.

166. 2006 Senate Hearing, *supra* note 3, at 1.

167. 2011 House Hearing, *supra* note 3, at 204.

168. 2011 House Hearing, *supra* note 3, at 266.

169. HSPI & CIAG REPORT, *supra* note 10, at i.

population that remains hostile to jihadist ideology and its exhortations to violence.”¹⁷⁰

Focusing on the prison population, evidence shows the number of cases in which an inmate or recent inmate was involved in terrorist activity is extremely small. In the global context, one study identified forty-six cases out of tens of thousands of terrorist attacks “in which a stretch in prison contributed to a radicalization process, leading eventually to a terrorist attack or threat against Western targets between 1968 and 2009.”¹⁷¹ In the United States, there has been little terrorist activity involving Muslim inmates. According to a Congressional Research Service (CRS) study, of fifty-three identified terror plots of “[h]omegrown violent jihadist activity,” only one case, the JIS, definitively involved violent extremism that was connected to a U.S. prison.¹⁷² These statistics have led one commentator to suggest that if prisons are producing terrorists like a factory, “they are doing a terrible job.”¹⁷³ Furthermore, in 2007, the FBI conducted over 2,088 terrorism threat assessments in prisons and jails across the United States and “determined that there was *not* a JIS-like pattern of terrorist recruitment in U.S. prisons Indeed, the FBI could find no pattern of terrorist recruitment whatsoever.”¹⁷⁴

B. Prisoner Perceptions

In his letter to Representative King, al-Muhajair illuminates what has propelled him to become an “enemy of the United States”: “I will spare you all the reasons, except to mention . . . cowardly bombing of Muslim women and children in a sovereign nation . . . thirty billion a year to Israel in weapons to kill Muslims, genocide of civilians in Iraq, Afghanistan, human rights violations at Gitmo, I am sure you get the point.”¹⁷⁵

Disaffection from government polices abroad and at home is common among Muslim inmates. In al-Muhajair’s case, feelings of anger and alienation led him to renounce his citizenship, only to be ignored by the government. He claims to have sent “letter after letter to the INS Dep[artment] of State all in

170. BRIAN MICHAEL JENKINS, *WOULD-BE WARRIORS: INCIDENTS OF JIHADIST TERRORIST RADICALIZATION IN THE UNITED STATES SINCE SEPTEMBER 11, 2001* 4 (2010); see also CHARLES KURZMAN ET AL., *Muslim American Terrorism Since 9/11: Why So Rare?*, 101 *MUSLIM WORLD* 464-83 (2011).

171. Mark S. Hamm, *Locking up Terrorists: Three Models for Controlling Prisoner Radicalization* 3 (2011) (unpublished manuscript) (on file with Indiana State University).

172. BJELOPERA, *supra* note 30, at 24, 26 (emphasis added).

173. Hamm, *supra* note 171, at 3.

174. Hamm, *supra* note 18, at 681.

175. Letter from Prisoner, *supra* note 1.

accordance with 8 USCS 1481 (A)(6).”¹⁷⁶ This particular statute affords a citizen the opportunity to renounce citizenship. Yet, al-Muhajair claims that his letters never got a response. He marvels at the government’s laxity: “[H]ow is it a right given to me by Congress of the United States can be voided by [a]gency in-action?”¹⁷⁷ More ominously, however, al-Muhajair points to the consequences of his treatment, “Seems the [Department] of [S]tate doesn’t know what happens when you corner a badger.”¹⁷⁸ His statements offer insight into inmate extremism and suggest there is plenty of fuel for radicalization at home—prison radicals need no proselytizing from foreigners—they are fully capable of radicalizing other inmates on their own.¹⁷⁹ This is obvious in al-Muhajair’s letter, which laments, “I don’t understand why it is ignored. The holy [Q]uran gives one a choice of fight or flight, why does America want me to fight? I will die for Allah, what land will it be on?”¹⁸⁰

1. Criminal Justice Critiques

From the days of Malcolm X to the present, Muslims invoke the criminal justice system as a major source of oppression against the poor, minorities, and Muslims themselves. This tradition continues and inmates hold deep animus from their experiences in criminal justice at all levels—cops, courts, and corrections. Regarding the latter, one Muslim prisoner in California describes the environment itself as causing one to seek survival over all: “Prisons are the only means by which man can legally enslave another man, so it is not difficult to see that there is and are ulterior motives for the crafty to keep men down and willing to do whatever to get ahead in this ruthless environment.”¹⁸¹ Similar invective was expressed by an elderly African-American prisoner who voiced his disdain for the prison system by unflinchingly signing all his letters with “Free the oppressed (90:11-13).”¹⁸²

Particular tensions for Muslim prisoners arise from negative interactions with prison guards, particularly in the aftermath of 9/11. In Malcolm X’s days,

176. Letter from Prisoner, *supra* note 1.

177. Letter from Prisoner, *supra* note 1.

178. Letter from Prisoner, *supra* note 1.

179. Hamm, *supra* note 18, at 674-74.

180. Letter from Prisoner, *supra* note 1.

181. Letter from a Prisoner to Author (Nov. 28, 2005) (on file with author).

182. Letter from a Prisoner to Author (Nov. 3, 2005) (on file with author). The numbers refer to the Quran Surah 90:11-13: “But he hath made no haste on the path that is steep. And what will explain to thee the path that is steep? It is freeing the bondsman.” *The Meaning of the Glorious Quran Text, Italics, & Commentary* (Sept. 10, 2013 11:09 AM), www.islamicbulletin.org/free_downloads/quran/quran_yusuf_ali2.pdf.

guards were antagonistic to the point of radicalizing inmates as he recalls, "I have heard scores of new prisoners swearing back in their cells that when free their first act would be to waylay those visiting-room guards. Hatred often focused on them."¹⁸³ His statement vividly captures the possibility that prison staff and policy can actually stoke inmate radicalization and perhaps, extremist violence as well. The same holds true in the present as expressed by an ex-gang member who cites his own experiences of being placed in solitary confinement. He used a homemade wick as an incense holder, which he was previously allowed. "Observing this quite common occurrence a guard who had previously commented on my religious attire as a 'nightgown' decided that this was some sort of explosive device, and I was subsequently thrown into ad-seg."¹⁸⁴ Another inmate, from Union Correctional Institute in Florida adds, "We are under tremendous pressure and scrutiny due to the War on Terror; guards target Muslim prisoners for harassment, and sometimes, target other black prisoner for no other reason than because they think they are Muslim."¹⁸⁵ Similar sentiment was expressed by an African-American convert who describes his own daydreams of getting even with guards:

It may seem petty and stupid, but after while it's aggravating and offends the senses when guards just refer to us as "Taliban" or call one of us "Mohammad." Sometimes I catch myself just fantasizing about how to settle the score and get back at them [T]here is one guard in particular—he hates us and it shows. Like I said it's petty, but I'm just saying what happens.¹⁸⁶

Finding irony in the treatment of Muslims by guards, one prisoner from California State Prison, Corcoran writes, "They always talk about gangs and Islam as if it's the same thing. But they never once look at how they look with their boots, badges, and shaved heads. That's pot calling kettle 'black.'"¹⁸⁷ Another inmate describes experiences with guards in a California prison: "I have been harassed, discriminated against, ridiculed, falsely accused and wrongly placed in ad-seg by a group of guards [One guard] openly ridiculed my Islamic clothing."¹⁸⁸ Such treatment leads inmates to other conclusions, like one California convert who writes, "Muslims, in prison, are conscious and the system has declared war on us."¹⁸⁹

183. MALCOLM X, *supra* note 119, at 167

184. Letter from a Prisoner to Author (Nov. 20, 2005) (on file with author).

185. Letter from a Prisoner to Author (Nov. 4, 2005) (on file with author).

186. Letter from a Prisoner to Author (Dec. 2005) (on file with author).

187. Letter from a Prisoner to Author (Oct. 2, 2007) (on file with author).

188. Letter from a Prisoner to Author (Dec. 18, 2005) (on file with author).

189. Letter from a Prisoner to Author (Dec. 5, 2005) (on file with author).

Implicit in inmates' views about their treatment at the hands of the justice system is widespread belief that the deck is stacked against criminal defendants. One inmate in California describes the severity of the system at multiple intersections: "I've been incarcerated for 13 years. I received a 20-year sentence for drug trafficking, and am a first-time offender . . . I've been to six different institutions, and of course have been subjected to discrimination for nothing other than being Muslim, then there's being a convict and being Black."¹⁹⁰ Another Muslim inmate described the U.S. government and the criminal justice system as "accomplices" since, according to him, "All minority prisoners are 'political prisoners' because under the current imprisonment [sic] policies established by politicians and government officials, all imprisonment is substantively political."¹⁹¹ For others, Islam is a path to recreating one's self by erasing the iniquities brought on by the justice system, as described by one African-American inmate:

Muslim converts behind bars are those who come from a gang lifestyle and frequent run-ins with police and authorities. And in my opinion, most were subjected to selective justice . . . [I]f one was arrested and convicted for robbery, he would be given stiffer punishment if he or she were black or [L]atino. Islam offers these kinds of people a new start. A chance to dump their baggage of hate and malice.¹⁹²

Of the justice system's branches, for Muslims the overwhelming target of dissent is the prison system. The sustained criticism is noteworthy and images are vivid, such as one inmate's account of life for prisoners: "Each and every day, prisoners are subject to brutality, inhumanity and degradation. Sick prisoners are allowed to linger days and nights in pain without help and who eventually die. Prisoners are thrown down stairs while handcuffed . . . Massive psychological torture, and mental illness uncared for, occurs daily in U.S. prisons."¹⁹³ One African-American convert indicates how such experiences were deeply linked to his turn to the faith: "[I've] seen almost every evil that ever could happen within these concentration camp walls, so brotherhood is just not something I've given into. We are being somewhat oppressed . . . these are all crisis [sic] that people of color face daily. Al-Islam is the only answer for men, women, and children."¹⁹⁴ Another inmate in Missouri reiterates the plight for Muslims at his institution: "The Prison

190. Letter from a Prisoner to author (Nov. 2005) (on file with author).

191. Letter from a prisoner to Author (Apr. 17, 2006) (on file with author).

192. Letter from a Prisoner to Author (Dec. 15, 2005) (on file with author).

193. Letter from a Prisoner to Author (Apr. 17, 2006) (on file with author).

194. Letter from a Prisoner to Author (Nov. 17, 2005) (on file with author).

Administration here is certainly against us. They do everything in there [sic] power to oppress us.”¹⁹⁵

2. Racial and Religious Discrimination

Related to their experiences in criminal justice is a sense of general discrimination of Muslims in free society. Al-Muhajair’s letter to Representative King cites such oppression as the catalyst for the “Fort Hood shooting”: “What do Americans expect, ‘Major Malik Nadal?’ Work on a base and see everyday Muslims being killed (what did you expect??). I think he is a hero and I am sorry he ran out of bullets.”¹⁹⁶ Practices of discrimination are sometimes so pervasive that non-Muslims are subject to hostility simply for looking like Muslims, as Representative Al Green described at the 2011 hearings: “I want you to know that when I board an airplane, I am looked upon with an eye of suspicion. For some reason people tend to think that I am Muslim. For some reason, a person told me I needed to go back home to my foreign country, that I don’t belong in this country.”¹⁹⁷

Like the religious discrimination Representative Green relates, inmates commonly cite experiencing racial inequities in American society and prison. This may explain in part why groups like the NOI have been successful in recruiting members—the group speaks to those who experience racism first-hand. For example, Malcolm X’s conversion to Islam in prison back in the 1950s was largely based on his attraction to the racial rhetoric, which helped him conclude: “[A]mong all Negroes the black convict is the most perfectly preconditioned to hear the words, ‘the white man is the devil.’”¹⁹⁸

The war on terror is an important symbol of oppression for inmate perceptions. Whether it be the rounding up of Arab-Americans or non-citizens, or torture at the Abu-Ghraib and Guantanamo prisons, inmates know first-hand that the burdens of war are not shouldered equally. The use of “war,” both literally and metaphorically, might encourage a war-like mentality. It might be little surprise, then, that extremist inmates understand the situation in like terms, or as al-Muhajair’s letter explains, “I am a Muslim, and I feel because of America’s ‘war on Islam’ I am the enemy of the United States.”¹⁹⁹ In similar vein, another Muslim inmate adds, “A war is being waged on poor and

195. Letter from a Prisoner to Author (Nov. 15, 2005) (on file with author).

196. Letter from Prisoner, *supra* note 1.

197. *The Extent of Radicalization in the American Muslim Community and that Community’s Response: Hearing Before the House Comm. on Homeland Sec.*, 112th Cong. 1, in COMPILATION OF HEARINGS ON ISLAMIST RADICALIZATION, Ser. No. 112-9 (2011).

198. MALCOLM X, *supra* note 119, at 199.

199. Letter from Prisoner, *supra* note 1.

minority communities across the U.S.. The result of all this warfare has been the absolute decimation of our communities, and an ongoing SOCIAL GENOCIDE of people of color. Around the globe we must demand that this social genocide STOP NOW!”²⁰⁰

V. CONCLUSION AND FORWARD

The findings of this article lead to telling conclusions that bear on penal and public policy. Perhaps, the greatest contribution is showing how political responses to prisoner radicalization are misguided, and based on false data and flawed analyses. Although less than a handful of Muslim inmates became involved in terrorist activity in the past decade, the issue has been overblown, perhaps best evidenced by the fact that there were more congressional hearings in the last decade on violent extremism among Muslim inmates than actual instances of it.

A. *The Sound of Sirens*

Violent extremism among Muslim inmate populations is relatively rare in the post-9/11 era. This fact is noteworthy for policymakers since it provides an opportunity to reconsider assumptions and perceptions about Islam in prison. Although some prison systems have adopted aggressive postures toward Muslim inmates, such heavy-handed policies run the risk of backfiring and fomenting radicalism, that is, “hysterical and stigmatizing reactions can fuel radicalization among prisoners and their followers, contributing to the threat rather than managing it.”²⁰¹ This is a lesson British prison officials have been learning since their extreme measures at security have inspired greater resistance among radicals.²⁰²

The attempt to shape religious ideology by censorship or otherwise is dangerous, and instead may stoke animosity and fear.²⁰³ More specifically, Communication Management Units (CMU) are cited as counterproductive and increasing levels of radicalization since they foster tensions among the different

200. Letter from a Prisoner to Author (Apr. 17, 2006) (on file with author).

201. RAPPAPORT, *supra* note 29, at 432.

202. Al Arabiya, *Islamist Prisoners Spread Radicalization in UK Jails, Report Finds*, AL ARABIYA NEWS (Feb. 6, 2012), <http://english.alarabiya.net/articles/2012/02/06/192969.html>.

203. Samuel J. Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 64 STAN. L. REV. 125, 125 (2012); NEUMANN, *supra* note 11, at 36.

Muslims groups in the units.²⁰⁴ The units have also fostered solidarity and defiance among the CMU inmates in light of heightening conflicts between guards and inmates.²⁰⁵

Current approaches to managing Muslim inmates in post-9/11 America feign as informed and well intentioned, but according to one scholar, “[T]here remains a significant lack of careful thinking about the rationales for many widely-shared prescriptions. Just as troubling, some worry that no attempt has been made to coordinate the policy prescriptions, resulting in unintended, and in certain cases counter-productive, consequences.”²⁰⁶

Fears about Muslim radicalization in prison have failed to fulfill doomsday prophecies. There is little extremist violence in the name of religion, and even less activity that involves the dreaded foreign enemy. Despite the dearth of evidence to support the myth of jailhouse jihad, Muslim inmates have been forced to bear the policies that toe this alarmist line. From a penological perspective, these developments were undesirable since, in some instances, the policies ended up causing what they sought to prevent.

Still, prisons are extreme and dangerous places particularly suited to catalyze extremist thought and behavior,²⁰⁷ yet researchers are indicating that the risk of radicalization is moderate and falling.²⁰⁸ Generally speaking, according to reports from the Triangle Center on Terrorism and Homeland Security²⁰⁹ and the Congressional Research Service (CRS),²¹⁰ homegrown terrorism is declining after a brief spike in the period from 2009 to 2011. By relative comparison, deaths due to religious extremism is quite rare, and according to the Triangle Center, since 9/11, there were thirty-three lives lost due to Muslim-American terrorism in the United States, compared to 150,000 murders committed by Americans in the same period.²¹¹ The occurrence of

204. Carrie Johnson & Margot Williams, *All Things Considered*, “‘Guantanamo North’: Inside Secretive U.S. Prisons,” (NPR radio broadcast Mar. 3, 2011) available at <http://www.npr.org/2011/03/03/134168714/guantanamo-north-inside-u-s-secretive-prisons>.

205. Scott Shane, *Beyond Guantanamo, A Web of Prisons for Terrorism Inmates*, NEW YORK TIMES, (Dec. 10, 2011), http://www.nytimes.com/2011/12/11/us/beyond-guantanamo-bay-a-web-of-federal-prisons.html?pagewanted=all&_r=0.

206. RAPPAPORT, *supra* note 29, at 433.

207. HAMM, *supra* note 30, at 114.

208. Bert Useem & Obie Clayton, *Radicalization of U.S. Prisoners*, 8 CRIMINOLOGY & PUB. POL. 561, 564 (2009); GARTENSTEIN-ROSS & GROSSMAN, *supra* note 30, at 14-15.

209. CHARLES KURZMAN, MUSLIM-AMERICAN TERRORISM: DECLINING FURTHER (Feb. 1, 2013), available at http://kurzman.unc.edu/files/2011/06/Kurzman_Muslim-American_Terrorism_February_1_2013.pdf.

210. BJELOPERA, *supra* note 30.

211. KURZMAN, *supra* note 170 (at the time of this Article, there are ongoing criminal proceedings for the Boston Bombings, which claimed 3 lives, which are not represented in

terrorist acts in prison, according to the CRS report, is even rarer. CRS notes the JIS case as the only documented case of a prison-based jihadist plot in the post-9/11 era. Empirically then, the situation in prison is temperate, and as some researchers have claimed, “Much of the talk about the risk of radicalization is simply talk, unsupported by research or evidence.”²¹²

B. *Critical Policy, Better Practices*

According to some scholars, “current claims that prison radicalization has reached a crisis stage are grossly premature and, at this point, mere speculation.”²¹³ The tenuous relationship between prisons and extremist violence demands a more rational and balanced approach in institutional and public policy. Accordingly, the following measures offer data-driven strategies specifically with the management of Muslim inmates in mind; yet they benefit the entire prison population. As such, prison administrators might explore how these strategies are convergent with broader correctional goals, including ensuring that religious normalcy reigns in and outside prison.

Representative King has publicly stated his intention “to stop prisoners from being radicalized.”²¹⁴ This is highly unlikely, and aside from whatever rhetorical value it holds, demonstrates a radical agenda in its own right. For even under the best-functioning prison systems, prevention of radicalization will never be possible. This is true partly because prison conditions account for only some of the will to extremism—but as shown above, many “radicalized” individuals enter prison with extreme proclivities, including the commission of crimes using weapons and violence. Hence, given these facts, significant administrative challenges inside prisons, and the social, political, and economic issues outside of prisons, calling for a complete halt to radicalization is not only itself radical, but also unrealistic and legally questionable.²¹⁵

Unrealistic goals produced failed policies like the BOP Standardized Chapel Library Project. This program sought to inventory all chapel books and rescreen their permissibility under the BOP’s security policies.²¹⁶ More importantly, the project revealed how suppressive tactics may backfire and antagonize Muslim inmates, rather than achieve its goal of reducing

the figure. See John Eligon & Michael Cooper, *Blasts at Boston Marathon Kill 3 and Injure 100*, THE NEW YORK TIMES (Apr. 15, 2013), http://www.nytimes.com/2013/04/16/us/explosions-reported-at-site-of-boston-marathon.html?pagewanted=all&_r=0.

212. RAPPAPORT, *supra* note 29, at 432.

213. RAPPAPORT, *supra* note 29, at 432.

214. FoxNewsInsider, *supra* note 2.

215. Rascoff, *supra* note 203, at 167.

216. OIG REPORT, *supra* note 10, at 55.

radicalization.²¹⁷ The removal of texts was reported to frustrate inmates greatly; some of whom were reading a particular book for decades, but now told the text was off limits.²¹⁸ The policy was more than mere paternalism since it overlooked how such literature may help to buffer extremism and produce a normalizing effect on inmates. Undoubtedly for some, such works can serve to repulse Muslims in prison similar to how Muslims on the outside are repulsed by extremist literature. Censorship potentially hinders more effective monitoring of inmates, as one panelist at the 2011 hearings noted, “If an individual in a correctional institution possesses these types of radical material, it is actually, in a way, an investigative benefit because that person is then self-identifying as someone that bears further inspection, and someone that can be monitored by the correctional staff.”²¹⁹

Research points to more effective ways to deal with extremism in prisons. According to one scholar, improvements in inmate safety and general institutional security has played a major role—rendering prison riots increasingly rare and a homicide rate that has fallen by ninety percent over previous decades.²²⁰ Moreover, surveillance in prisons has greatly magnified over the past twenty years and gang intelligence is more sophisticated—with prison staff and administrators becoming more conscious of radicalization trends and capable of defusing escalations. Unlike the fragmented communications that characterized corrections in the past, today there is more information sharing with other law enforcement agencies as routine parts of administration. Moreover, prisons are efficient at restricting inmates from the outside world. Inmates’ ability to communicate and potentially receive extremist influences from the outside world is limited as the Internet is unavailable and mail is inspected and censored.

These findings, as noteworthy as they might be, should not be taken as absolutes. Research as recent as 2006 and 2007 suggests that some penal institutions and systems lack the ability to detect and analyze potential abnormalities within inmate populations, and there is uncertainty as to whether those trained to detect extremism in various state penitentiaries meet basic

217. Aamir Wyne, *Dear God Give Me Back My Books: The Standardized Chapel Library Project and Free Exercise Rights*, 11 J. CONST. L. 1135, 1161 (2009).

218. Laurie Goodstein, *Prisons Purging Books on Faith From Libraries*, THE NEW YORK TIMES (Sept. 10, 2007), http://www.nytimes.com/2007/09/10/us/10prison.html?page_wanted=all.

219. 2011 House Hearing, *supra* note 3, at 271 (statement of Kevin Smith, former Assistant U.S. Attorney for the Central District of California).

220. 2011 House Hearing, *supra* note 3, at 228-31 (statement of Bert Useem, Professor of Sociology, Purdue University).

quality measures and competencies.²²¹ Further compromising security measures, prisoners have developed their own countermeasures to surveillance, including being detected for extremism. Indeed, it may be highly unlikely that an extremist will let ideological leanings and recruitment efforts be freely known to other prisoners, much less to prison security staff.²²² One report even suggests that radical inmates wishing to avoid detection may act as model prisoners so that prison personnel focus attention on violent prisoners “while overlooking radicalization.”²²³

1. Supporting Religious Pluralism in Prison

Fostering a more diverse and authentic marketplace of Islamic ideas will have a normalizing effect on Islamic practice in prison. In theory, achieving a more pluralistic religious environment strives to stimulate a multiplicity of religious views and options²²⁴ as well as facilitate entry of a more diverse body of Islamic leaders for programming. Practically, this might be carried out in myriad ways, including by broadcasting live prayer services on closed-circuit television, offering Arabic language classes to inmates, and, most critically, creating imam-certification programming. These approaches recognize and emphasize that Islam is a complex tradition, and that adopting any singular approach to the religion is not only dangerous ideologically, but contrary to religious life on the ground. Fostering a marketplace is the opposite of trying to establish what one scholar has dubbed “Official Islam” or a government-sponsored account of Islam.²²⁵

As for the concrete steps that prison officials and policymakers should take to promote pluralism, lowering barriers for religious leaders to enter stands paramount. The lack of Muslim religious leaders must be remedied such that trained religious leaders are the rule, not the exception. In the Pew survey of state prison chaplains, fifty-five percent of those surveyed agreed that Islam is the faith group with the greatest need for more volunteers, while eighty-three percent believed that Christian faith groups have “more than necessary.”²²⁶

221. McKinley D. Coffin, Jr., *Prison Radicalization: The New Extremist Training Grounds?* (Sept. 2007) (unpublished M.A. thesis, Naval Postgraduate School) (on file with Naval Postgraduate School), available at http://calhoun.nps.edu/public/bitstream/handle/10945/3307/07Sep_Coffin.pdf?sequence=1.

222. HAMM, *supra* note 30, at 111-12.

223. HSPI & CIAG REPORT, *supra* note 10, at 9.

224. See generally J. Scott Carpenter et al., *Confronting the Ideology of Radical Extremism*, 3 J. NAT. SEC. L. & POL. 301, 303 (2009) (“It is essential to provide a multiplicity of choices to distract or dissuade those tempted to join extremist causes.”).

225. Rascoff, *supra* note 203, at 130.

226. PEW SURVEY, *supra* note 21, at 25, 44.

Such statistics harken back to al-Muhajair's claim that radicalization occurs when prisons "promote Christianity and starve Islam."²²⁷ State correctional institutions implementing similar bans or severe restrictions should also reassess or, where applicable, develop policies that strike an adequate balance between vetting and providing services.

Prison policies should also encourage what may be described as *religious entrepreneurship*. In such an economy, prison officials and policymakers are encouraged to engage with a wide variety of Muslim organizations to increase access to various types of religious texts and religious workers that adhere to various interpretations of Islam. For example, the Ohio Department of Corrections has established a "Best Practices Tool-Kit" for faith-based engagement that offers exemplary programs in which religious programming converges with the goal of crime reduction.²²⁸ In addition, prisons might consider Folsom State Prison's Islamic Studies Program in California, which was reported to help with inmate rehabilitation.²²⁹ To avoid any potential state endorsement of religion and ensure quality control in the curriculum, that program could be done in partnership with an officially accredited academic institution, such as a seminary or theological studies department at a college or university. Saint Louis University's prison program is instructive here, since it began by offering inmates a certificate in Theological Studies, which has expanded into the opportunity to earn an associate's degree.²³⁰

Corrections officials would also do well to invest in providing staff with basic religious competency training and recruiting more Muslim staff. Providing staff with basic religious sensitivity training and recruitment of Muslim service providers will add more "cultural and political capital" to the prison setting by adding legitimate and moderate voices of religious authority.²³¹ The measure would also promote further goodwill and increase the respect of prison administration officials among Muslim inmates.²³² The knowledge gained from religious competency training and Muslim prison staff can assist in identifying extremism as well as avoiding unnecessary confrontation with prisoners.

227. Letter from Prisoner, *supra* note 1.

228. OHIO INSTITUTE ON CORRECTIONAL BEST PRACTICES, BEST PRACTICES TOOL-KIT: FAITH BASED PROGRAMMING, REENTRY AND RECIDIVISM (2007) [hereinafter OHIO BEST PRACTICES].

229. Hamm, *supra* note 18, 667-69, 678.

230. *Prison Program*, SAINT LOUIS UNIVERSITY, <http://www.slu.edu/school-for-professional-studies-home/prison-program/degree-program> (last visited Nov. 1, 2013).

231. HAMM, *supra* note 30, at 117-18.

232. HAMM, *supra* note 30, at 116-17.

Prison administrations should also provide sufficient worship space for different Muslim subgroups. In recent years, Sunni inmates have sued to have services held separate from Shia inmates and vice versa,²³³ yet some courts have not been receptive to the idea.²³⁴ In practice, this judicial posture overlooks important sectarian differences, which may have collateral outcomes. For example, as neither sect is recognized as authoritative enough to warrant its own space for worship, there is greater likelihood for rivalry and further antagonism between both sides. Although prison authorities have cited security reasons for not providing separate space for worship, it is precisely because of security concerns, namely, sectarian tensions flaring, that administrators should reconsider the wisdom. Hence, even though courts have handed down the barest of threshold requirements for accommodating Muslims prisoners, institutions are free to go beyond the minimum and provide separate space for worship.

2. Helping Former Prisoners Survive Outside

One sobering aspect of al-Muhajair's case rested in the fact that he was close to his release at the time he wrote the letter.²³⁵ Whether inmates like al-Muhajair can become successful at staying out of prison presents tremendous challenges, much of which flows from the very status of being a felony convict. For the more than 700,000 prisoners who return to society each year, a great vacuum awaits, including restrictions on voting, welfare services, housing, employment, and professional licensing.²³⁶ As one analyst attests, "Former inmates are vulnerable to radicalization and recruitment because many leave prison with very little financial or social support."²³⁷

233. See *Pugh v. Goord*, 345 F.3d 121, 122 (2d Cir. 2003) (Sunni adherents forced to pray with Shias); *Salahuddin v. Goord*, 467 F.3d 263, 269 (2d Cir. 2006) (Sunni adherents forced to pray with Shias); *Abdullah v. Wis. Dep't of Corr.*, No. 04-C-1181, 2005 WL 2885802, at *3-4 (E.D. Wis. Nov. 2, 2005) (Sunni adherents forced to pray with members of the Nation of Islam); *Orafan v. Goord*, 411 F. Supp. 2d 153, 156 (N.D.N.Y. 2006), *vacated and remanded*, 249 Fed. Appx. 217 (2d Cir. 2007) (Shia adherents suing to obtain separate worship services at prison facilities, vacated and remanded due to unresolved issues of material fact).

234. See *e.g.*, *El Izquierdo v. Crawford*, No. 1:05CV192 (CDP), 2007 WL 2873210, at *5 (E.D. Mo. Sept. 26, 2007) (granting summary judgment to defendants where plaintiff Sunni adherents were forced to pray with Shias).

235. Letter from Prisoner, *supra* note 1.

236. JEREMY TRAVIS ET AL., *FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER RE-ENTRY* 19 (2001).

237. *2006 Senate Hearing*, *supra* note 3, at 8.

Reentry presents opportunity for policy innovations to develop bridges during this immediate transition period.²³⁸ However, if services are not forthcoming, the void is vulnerable to being filled by others, including gang leaders and other extremist elements. By providing for individuals in their time of need, radical groups can offer means for survival, which has been a longtime recruitment strategy for gangs.²³⁹ Facilitating the transition into a stable environment will render ex-prisoners less susceptible to being recruited into extremist activities.²⁴⁰ The normative point is that officials must develop policies that help individuals returning from prison, rather than making it easier for them to go back. The choice seems clear, either help inmates survive on the outside or live with the consequences of allowing others to help them.

Administrators should implement re-entry services as an integral part of the corrections process. As their release dates near, inmates should receive at minimum a roadmap and plan for success and basic necessities, including a driver's license, birth certificate, and social security card, as well as outpatient medical and mental health care services if needed. Beyond the essentials, correctional programming might explore ways to parole inmates into stable religious communities. Although this is easier said than done, in the Islamic context there is already intensive outreach among African-American mosques and some partnerships are beginning to establish.²⁴¹

The best course to successful return to society is educational training on the inside. Although there is little empirical research on whether education reduces recidivism, education may militate against extremism directly, since groups like al-Qaeda have been known to prey on uneducated individuals to conduct their violent biddings.²⁴²

Developing solutions for successful re-entry is not solely the responsibility of prison and criminal justice officials. Muslim communities and the greater society at large have a significant stake in this matter, and can continue to contribute in important ways. One way is to invest in long-term domestic religious leadership education and development. For example, even in the

238. JEREMY TRAVIS ET AL., FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER RE-ENTRY 19 (2001).

239. 2006 Senate Hearing, *supra* note 3, at 8.

240. NEUMANN, *supra* note 11, at 35.

241. ENCYCLOPEDIA OF PRISONS & CORRECTIONAL FACILITIES 488 (Mary Bosworth ed., 2005).

242. See generally CORINNE GRAFFE, *Poverty, Development, and Violent Extremism in Weak States*, in CONFRONTING POVERTY: WEAK STATES AND U.S. NATIONAL SECURITY (Susan E. Rice et al. eds., 2010) (discussing the link between terrorism and poverty and a lack of education), available at <http://dspace.cigilibrary.org/jspui/bitstream/123456789/27875/1/Poverty%20Development%20and%20Violent%20Extremism%20in%20Weak%20States.pdf?1>.

absence of the BOP's hiring malaise, it is likely that state and federal prisons would still have experienced shortages of professional Muslim religious workers. Communities must continue to support existing institutions as well as support the development of new ones.

Particularly, ex-prisoners need help finding a job, obtaining a temporary place to live, and gaining access to mental or physical clinical services when they are released. Unfortunately, there is some preliminary evidence from New York and Indiana indicating that Muslim inmates are not getting enough help from Islamic organizations.²⁴³ In general, the U.S. has witnessed unprecedented numbers of released inmates returning to communities that are less stable and less able to provide social services for the mass of individuals trying to reintegrate.²⁴⁴ This is largely due to cultural resistance as well as a lack of funds in many urban areas that need services the most.²⁴⁵ Local communities, particularly those with more resources and funds, must continue to help less-resourced communities build infrastructure that will help parolees once they are living on the outside.²⁴⁶ Ex-prisoners are doubly disadvantaged when returning from prison, because they return to communities already struggling with high rates of poverty and unemployment.

3. Exploring Religious Programming as Best Practices

The statement, "Not all will accept the grace and redemption God offers, but we should do all we can to ensure the opportunity for such offers to be made," is a sentiment that might be a guiding principle for exploring the prospects of religious programming as a *best practice* in prison administration.²⁴⁷ Best practice may be defined as falling on a continuum ranging from those practices that are well established and have clearly demonstrated their effectiveness to others, which, although promising, have not

243. DEVEAUX & ASSOCIATES, MUSLIMS ON THE INSIDE: RESULTS FROM A SURVEY OF INCARCERATED MUSLIM (June 21, 2010), available at <http://citizensinc.wordpress.com/2010/06/21/muslims-on-the-inside-results-from-a-survey-of-incarcerated-muslim/>.

244. Richard P. Seiter & Karen R. Kadela, *Prisoner Reentry: What Works, What Does Not, and What is Promising*, 49 CRIME & DELINQUENCY 360, 380 (2003).

245. Tanzeela Ahmad, *The State of Muslim Social Services in America 13-15* (May 2006) (unpublished Honors thesis project, University of Tennessee) (on file with the University of Tennessee), available at http://trace.tennessee.edu/cgi/viewcontent.cgi?article=1929&context=utk_chanhonoproj&sei-redir=1&referer=http.

246. See, e.g., Andrea Elliott, *Between Black and Immigrant Muslims, an Uneasy Alliance*, NEW YORK TIMES (Mar. 11, 2007), <http://www.nytimes.com/2007/03/11/world/americas/11iht-muslims.4870677.html?pagewanted=all>.

247. John D. Hewitt, *Having Faith in Faith-Based Prison Programs*, 5 CRIMINOLOGY & PUB. POL'Y 551, 555 (2006).

yet been fully developed or documented.²⁴⁸ Hence, although there is scant research available that evaluates the effectiveness of religious organizations,²⁴⁹ for inmates, “what works” often involves religion.²⁵⁰

The programming advocated here embraces a variety of religiously oriented opportunities, including the opportunity for general religious study and practice of one’s own faith. This orientation is substantively different from what are typically described as “faith-based” initiatives, since religious study can be taken up by the faithful, faithless, and everyone else. Whereas faith-based initiatives are essentially theological in nature, religious study does not require a faith commitment from the student. Furthermore, “faith-based” implies reflection upon the particular faith of the student, whereas within a religious studies framework, any religion may be the subject of study. This point is crucial because it is the difference between sponsoring a particular faith versus sponsoring the opportunity to learn about *any* faith—theistic and non-theistic alike.

To date, however, prison officials are most likely to treat religious programming as primarily a First Amendment right that prisoners retain in limited degree. Policymakers have failed to recognize religion as a learning tool that is convergent with the broader programming goals of modifying inmate behavior and reducing crime. Due to this orientation, institutions are more likely to erect barriers for practicing inmates, even at the expense of discouraging religious study and participation.

This posture can be seen in the often cited case, *O’Lone v. Shabazz*, a Supreme Court decision upholding a prison work policy that prevented some Muslims from attending Friday prayer service based on a reasonableness standard.²⁵¹ Although the policy restricted some Muslims from attending the weekly congregational practice, *jumah*, the Court found the policy reasonably related to “legitimate penological objectives.”²⁵² This deferential standard became a cornerstone doctrine for restricting inmates’ free exercise of religion since it was practically inscrutable from any free exercise claim.²⁵³ The holding

248. OHIO BEST PRACTICES, *supra* note 228.

249. BYRON R. JOHNSON ET AL., OBJECTIVE HOPE: ASSESSING THE EFFECTIVENESS OF FAITH-BASED ORGANIZATIONS: A REVIEW OF THE LITERATURE (2002), available at <http://www.baylor.edu/content/services/document.php/24809.pdf>.

250. SpearIt, *Mental Illness in Prison: Inmate Rehabilitation & Correctional Officers in Crisis*, 14 BERKELEY J. CRIM. L. 277, 278 (2009).

251. *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 344-45 (1987), *superseded by statute*, 42 U.S.C. § 2000bb, *as recognized in* *Diaz v. Collins*, 114 F.3d 69, 71 n. 7 (5th Cir. 1995).

252. *Estate of Shabazz*, 482 U.S. at 353.

253. Shelly S. Rachanow, *The Effect of O’Lone v. Estate of Shabazz on the Free Exercise Rights of Prisoners*, 40 J. OF CHURCH & STATE 125, 126, 140-41 (1998).

articulated in *Shabazz* is particularly unfortunate, since, as the dissent noted, Christian and Jewish inmates were not affected by the restrictions for their worship services.²⁵⁴ Although the restriction was garbed in the name of institutional security, the policy effectively disrupted the Muslim community.

Creating barriers that prevent inmates from participating in religious programming fails to harness the power of religion, and fails to consider the alternatives open to inmates. There is little secret about the criminogenic opportunities behind bars, including drug dealing and use, gangs, pimping, prostitution, gambling, and other rapacious behavior. Considering these aspects of prison life, that some inmates are prohibited from attending prayer services is upside-down policy—rather than encouraging inmates to become involved in more benign activities, they are prevented. Despite the potential benefits of greater support for religious programming, few, if any, prisons have ever pieced together a program that supports religious education and training *as a means of rehabilitation through education*. The point is obvious considering that taking up religious studies involves a range of related study areas, including philosophy, theology, history, mathematics, language, and other curricular areas of learning, including theories and methods of the humanities and social sciences.

A more productive approach might be seen in a recent case settled on behalf of a group of Muslim prisoners in the restrictive Administrative Maximum unit at a BOP facility in Colorado.²⁵⁵ In the stipulation, the prison agreed to allow Muslims to call inmates to prayer with sufficient volume, guaranteed inmates the right to services by an Imam in Arabic, the right to a sufficient Islamic library, and the right to correspondence courses, including Arabic language courses.²⁵⁶ Of particular interest is one term that stated, “Inmates at the [prison] shall be allowed to participate in congregational prayer in groups of no less than three (3) for periods of not less than thirty (30) minutes at a time.”²⁵⁷ These guarantees, although quite the exception, illustrate how prisons can embrace religious programming, and prevent need for litigation.

Even then, it is admittedly difficult to measure religious programming’s influence on an inmate’s positive adjustment or successful transition back to society. Lack of empirical data, however, should not deter prison officials from exploring religious intervention in and outside prison. Nor should recidivism

254. *Estate of Shabazz*, 482 U.S. at 365 (Brennan, J., dissenting).

255. *Saleh v. Fed. Bureau of Prisons*, 05-cv-02467-EWN-KLM (D.C. Colo. 2010), available at <http://www.law.du.edu/documents/student-law-office-clinical-programs/Saleh-Rel-Claims-Settlement.pdf>.

256. *Id.*

257. *Id.*

rates be used to downplay the efficacy of educational programming, particularly since recidivism rates are often inflated as a result of individuals who violate a term of release rather than commit a new crime. More critically, recidivism rates are often inflated by mentally ill offenders, who are prone to returning to prison. These realities complicate the assessment of outcome measurements regarding religious and other programmatic interventions. They also ignore tough-on-crime policies that make it likely a released individual will end up in prison all over again. Notwithstanding how these faulty analytics skew the value of religious programming centered on education, religious services may have enormous potential to offer correctional systems and cultures in the United States,²⁵⁸ and may offer programming that is uniquely suited both to facilitate and augment the ongoing process of prisoner reentry.²⁵⁹

Ultimately, administrators should explore how to harness the rehabilitative aspects of religion more than it has to the present. Religious education and fellowship opportunities should be developed and maintained by institutions without fearing establishment clause violations any more than a religious studies department at a state university would. The opportunity for religious study should be afforded to inmates as a programming scheme based on what helps released inmates stay out of prison. Such programming is different qualitatively from other educational opportunities due to the emphasis on morality and legal conduct. This is not just some area of study, but one that gets at the ultimate questions of life and meaning of existence. For followers of Islam in particular, formal religious education can have a direct impact in reducing radicalization, since, according to a recent report, “For radical Islamists, mainstream Islamic scholarship and ethics are a very real threat, perhaps the biggest threat.”²⁶⁰ The opportunities for education in religious programming are valuable in themselves, but particularly because the educational outcomes converge with broader correctional goals and management of extremism.

258. THOMAS P. O’CONNOR & MICHAEL PERREYCLEAR, *Prison Religion in Action and Its Influence on Offender Rehabilitation*, RELIGION, THE COMMUNITY, AND THE REHABILITATION OF CRIMINAL OFFENDERS 11, 24 (Thomas P. O’Connor & Nathaniel J. Pallone eds., 2003).

259. DEP’T OF HEALTH & HUMAN SERVS., PRISONER REENTRY, RELIGION AND RESEARCH 5, available at https://peerta.acf.hhs.gov/pdf/prisoner_reentry.pdf (last visited Nov. 1, 2013).

260. AZEEM IBRAHIM, TACKLING MUSLIM RADICALIZATION: LESSONS FROM SCOTLAND (June 2010), available at <http://www.ispu.org/pdfs/ispu%20-%20radicalization%20report.pdf>.