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National Security's Broken Windows

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ABSTRACT

This Article examines the federal government's community engagement efforts with American Muslim communities as part of a larger infrastructure for policing radicalization and countering violent extremism (CVE). While the federal government presents community engagement as a softer alternative to policing, community engagement is integrated into a larger policing apparatus, making the reality far more coercive. Community engagement efforts are staged within the greater context of radicalization discourse, counterradicalization and CVE programs. Radicalization theory posits that increased religiosity and politicization in Muslims provokes an increased threat of terrorism. Government counterradicalization programs aim, therefore, to monitor and influence the political and religious cultures of Muslim communities so as to prevent radicalization, bringing tremendous scrutiny to bear on these communities.

The federal government situates its national security community engagement efforts within the history of community policing in the ordinary criminal context. Community engagement and community policing are celebrated as forms of policing that emphasize communication and collaboration with marginalized communities and serve ideals of inclusion and democratic participation. In both contexts, however, efforts at police-community communication and collaboration are warped by law enforcement's commitments to preventive theories of crime control, narrowing the space for the inclusion of and democratic contestation by the subject communities. Broken windows theory and radicalization theory invest local social and cultural norms an outsized role in the origination of criminal activity, creating a rationale for the policing of everyday life. In linking noncriminal activity to the potential for crime, both theories reinforce a punitive lens through which police interact with communities, further marginalizing communities on the grounds of their difference. In putting community engagement in conversation with community policing, this Article's central insight is as straightforward as it might be surprising: Community engagement in the national security context shares some of the problems of community policing in the ordinary criminal context.

Community engagement efforts increase the presence of law enforcement in already overpoliced communities, and exacerbate intracommunity inequalities. Rather than enhance participation, community engagement may simply provide opportunities for select members of Muslim communities to approve preexisting law enforcement commitments—and create an additional source of pressure on Muslim communities to perform their Americanness—without meaningful openings for Muslim communities to communicate, collaborate, and contest the relationship, its modalities, and its outputs.

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INTRODUCTION

In California's Bay Area, from 2004 to 2008 and likely after that, the Federal Bureau of Investigation (FBI) undertook a mosque outreach project[1] under the auspices of community outreach and engagement.[2] FBI agents met with representatives of area mosques on multiple occasions[3] and openly attended religious sermons.[4] In speaking with congregants, the FBI courted complaints about hate crimes[5] and listened to expressions of anxiety about a federal investigation of imams in nearby Lodi.[6] On one occasion, when a congregant at a particular mosque "expressed an interest in continuing a dialogue with the FBI and agreed

1. AM. CIVIL LIBERTIES UNION, ACLU EYE ON THE FBI: THE SAN FRANCISCO FBI CONDUCTED A YEARS-LONG MOSQUE OUTREACH PROGRAM THAT COLLECTED AND ILLEGALLY STORED INTELLIGENCE ABOUT AMERICAN MUSLIMS' FIRST AMENDMENT-PROTECTED RELIGIOUS BELIEFS AND PRACTICES (2012) [hereinafter EYE ON THE FBI (2012)], *available at* http://www.aclu.org/files/assets/aclu_eye_on_the_fbi_-_mosque_outreach_03272012_0_0.pdf (cataloging FBI documents obtained through the Freedom of Information Act (FOIA)); AM. CIVIL LIBERTIES UNION, ACLU EYE ON THE FBI: THE FBI IS USING THE GUISE OF "COMMUNITY OUTREACH" TO COLLECT AND ILLEGALLY STORE INTELLIGENCE INFORMATION ON AMERICANS' POLITICAL AND RELIGIOUS BELIEFS (2011) [hereinafter EYE ON THE FBI (2011)], *available at* http://www.aclu.org/files/assets/aclu_eye_on_the_fbi_alert_-_community_outreach_as_intelligence_gathering_0.pdf (cataloging Federal Bureau of Investigation (FBI) documents obtained through FOIA requests. The effort was part of "the FBI's ongoing contact with all Mosques and Islamic Community Centers in the FBI's San Francisco territory for the purposes of community outreach." Memorandum from the Fed. Bureau of Investigation's San Jose Resident Agency (Feb. 22, 2005) [hereinafter FBI Memorandum (Feb. 22, 2005)], *available at* http://www.aclu.org/files/fbimappingfoia/20120302/ACLURM017868.pdf.
2. *See, e.g.*, Memorandum from the Fed. Bureau of Investigation's San Jose Resident Agency (May 31, 2005), *available at* http://www.aclu.org/files/fbimappingfoia/20120302/ACLURM017882.pdf; Memorandum from the Fed. Bureau of Investigation's San Jose Resident Agency (May 26, 2005), *available at* http://www.aclu.org/files/fbimappingfoia/20120302/ACLURM017879.pdf.
3. Memorandum from the Fed. Bureau of Investigation's San Jose Resident Agency (Oct. 4, 2005) [hereinafter FBI Memorandum (Oct. 4, 2005)], *available at* http://www.aclu.org/files/fbimappingfoia/20120302/ACLURM017902.pdf; Memorandum from the Fed. Bureau of Investigation's San Jose Resident Agency (June 29, 2007), *available at* http://www.aclu.org/files/fbimappingfoia/20120302/ACLURM017968.pdf.
4. *E.g.*, Memorandum from the Fed. Bureau of Investigation's San Jose Resident Agency (Mar. 8, 2005) [hereinafter FBI Memorandum (Mar. 8, 2005)], *available at* http://www.aclu.org/files/fbimappingfoia/20120302/ACLURM017871.pdf.
5. FBI Memorandum (Feb. 22, 2005), *supra* note 1.
6. Memorandum from the Fed. Bureau of Investigation's San Jose Resident Agency (Aug. 25, 2005), *available at* http://www.aclu.org/files/fbimappingfoia/20120302/ACLURM017890.pdf. For a discussion of the Lodi prosecution, and its impacts on local communities, see Aziz Z. Huq, *The Signaling Function of Religious Speech in Domestic Counterterrorism*, 89 TEX. L. REV. 833, 854–55 (2011); Sunaina Maira, *"Good" and "Bad" Muslim Citizens: Feminists, Terrorists, and U.S. Orientalisms*, 35 FEMINIST STUD. 631, 637–39 (2009); Shirin Sinnar, *Questioning Law Enforcement: The First Amendment and Counterterrorism Interviews*, 77 BROOK. L. REV. 41, 51 (2011).

to schedule a[n] outreach meeting with the entire Mosque," the FBI "offered to come and speak to the [whole] congregation."[7] FBI records indicate that "all topics from [the] USA Patriot Act to local street gangs were open for discussion."[8]

This Bay Area example illustrates what many want from law enforcement: efforts at improving communication and collaboration with communities typically on the wrong side of the gun. On the surface, it appears the FBI is working to build open lines of communication with Muslim communities, to learn about community concerns, and to provide reassurance that law enforcement is committed to equal protection for all communities. Indeed, the federal government anchors its community engagement with Muslim communities in a broader history and language: that of community policing with marginalized groups in the ordinary criminal context,[9] calling on principles of communication, collaboration, and trust building.[10]

On closer inspection, however, these seemingly supportive practices reveal a more difficult reality. The same redacted FBI documents that memorialize these FBI meet-and-greet efforts are marked as "positive intelligence," and "disseminated outside FBI," indicating that the information was instrumentalized as surveillance.[11] The records detail the FBI's broad collection of information: the topic of a particular sermon is noted,[12] along with names and phone numbers of the people with whom the FBI spoke,[13] the relationship between an Islamic school and its parent organization,[14] the logistics of a community's recent move to a new mosque,[15] and congregants' political opinions.[16] Back at the field office,

7. FBI Memorandum (Feb. 22, 2005), *supra* note 1.
8. *Id.*
9. Throughout this Article, I draw a distinction between the "ordinary criminal context" and the "national security context." This is not to suggest that the two contexts do not overlap, but instead to establish gross distinctions between "ordinary crimes" (burglary, theft, larceny, drug-dealing, murder, etc.) and "national security crimes" (crimes that undermine the security of the country as a whole and that purportedly further terrorist causes). While these realms will often overlap, draw on, and even define each other, these labels are meant to reflect the distinct approaches by law enforcement to communities understood as majority Black and Latino on the one hand, and communities understood as Muslim on the other.
10. *See, e.g.*, Speech, Eric Holder, U.S. Att'y Gen., Remarks at the Muslim Advocates' Annual Dinner (Dec. 10, 2010), www.justice.gov/iso/opa/ag/speeches/2010/ag-speech-1012101.html.
11. *See, e.g.*, FBI Memorandum (Mar. 8, 2005), *supra* note 4.
12. *Id.*
13. FBI Memorandum (June 29, 2007), *supra* note 3.
14. FBI Memorandum (Oct. 4, 2005), *supra* note 3.
15. Memorandum from the Fed. Bureau of Investigation's San Jose Resident Agency (July 25, 2005), *available at* http://www.aclu.org/files/fbimappingfoia/20120302/ACLURM017887.pdf.
16. *See, e.g.*, Memorandum from the Fed. Bureau of Investigation's S.F. Field Office (Mar. 2, 2011), *available at* http://www.aclu.org/files/fbimappingfoia/20111110/ACLURM011275.pdf (memorializing community outreach conversations with an individual, including conversations regarding opinions on U.S. involvement in Iraq and Afghanistan).

FBI agents sometimes gathered further information on those with whom they had met.[17] In effect, then, the FBI's outreach aimed in significant part to collect intelligence on local Muslim communities and community institutions, intelligence that could then be leveraged to achieve other ends.[18] This complicated reality—that community policing brings new law enforcement scrutiny to an already marginalized community—also hearkens back to community policing in the ordinary criminal context.[19]

The events in the Bay Area represent just one instance of federal community engagement with Muslim communities.[20] While law enforcement initiatives aimed at Muslim communities existed before 9/11, these efforts were few and far

17. For example, memoranda from the San Francisco FBI Field Office suggest that agents conducted follow-up surveillance through Internet searches of those who attended mosque outreach events. *See* EYE ON THE FBI (2012), *supra* note 1; EYE ON THE FBI (2011), *supra* note 1; Memorandum from the Fed. Bureau of Investigation's S.F. Field Office (Sept. 25, 2008), *available at* http://www. aclu.org/files/fbimappingfoia/20111110/ACLURM013443.pdf; Memorandum from the Fed. Bureau of Investigation's S.F. Field Office (Oct. 10, 2007), *available at* http://www.aclu.org/files/fbimappingfoia/20111110/ACLURM013438.pdf; *see also, e.g.*, Memorandum from the Fed. Bureau of Investigation's Oakland Resident Agency (Mar. 3, 2008), *available at* http://www.aclu.org/files/fbimappingfoia/20111110/ACLURM011160.pdf (documenting community outreach to a Pakistani community organization, including organization activities, and identities of those involved); Memorandum from Fed. Bureau of Investigation's San Jose Resident Agency Office (Feb. 21, 2008), *available at* http://www.aclu.org/files/fbimappingfoia/20120302/ ACLURM017992.pdf (documenting a conversation conducted as part of mosque outreach and the agent's subsequent search of the individual's name in various databases, including Lexis-Nexis, the Department of Motor Vehicles (DMV), and a federal criminal database); Memorandum from the Fed. Bureau of Investigation's San Jose Resident Agency (May 11, 2007), *available at* http://www.aclu.org/files/fbimappingfoia/20111110/ACLURM012669.pdf (documenting mosque outreach meeting, analyzing "demographics" of those in attendance, representing twenty-seven Muslim community and religious organizations).

18. *See* Michael German, *Stigmatizing Boston's Muslim Community is No Way to Build Trust*, BRENNAN CENTER (Oct. 9, 2014), https://www.brennancenter.org/analysis/stigmatizing-boston-muslim-community-no-way-build-trust ("FBI outreach efforts to Muslim communities have been less about curbing violence than thinly veiled attempts to recruit informants and gather intelligence."); *see also* Eric J. Miller, *Role-Based Policing*, 94 CALIF. L. REV. 617 (2006) (claiming that preventive police norms should be separated from reactive investigative policing).

19. While the Department of Justice (DOJ) and the Department of Homeland Security (DHS) tend to use the terminology of community engagement, government agencies explicitly frame the efforts with Muslim communities as an extension of their community policing efforts with other communities. *See, e.g.*, CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE, A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM 83–84 [hereinafter A DECADE LOST]; *see also infra* Part II.A.

20. For the latest revelations regarding community engagement with Muslim communities in Minneapolis-St. Paul, see, for example, Cora Currier, *Spies Among Us: How Community Outreach Programs to Muslims Blur Lines Between Outreach and Intelligence,* INTERCEPT (Jan. 21, 2015), https://firstlook.org/theintercept/2015/01/21/spies-among-us-community-outreach-programs-muslims-blur-lines-outreach-intelligence; Michael Price, *Community Outreach or Intelligence Gathering?*, BRENNAN CENTER (Jan. 29, 2015), http://www.brennancenter.org/sites/default/files/analysis/Community_Outreach_or_Intelligence_Gathering.pdf.

between. The years following the attack on the World Trade Center saw a push by the Department of Justice (DOJ) and the FBI to engage Muslim, Arab, and South Asian (MASA) communities,[21] with the FBI conducting more than 500 meetings with more than 600 organizations and mosques nationwide, and DOJ's Community Relations Service (CRS) conducting more than 250 forums across the country.[22] The Department of Homeland Security (DHS) eventually entered the fray, supporting community outreach through its Office for Civil Rights and Civil Liberties (CRCL).[23] More recently, with the rise of the Islamic State of Iraq and Syria (ISIS), the federal government has pushed anew for community engagement as a tool to prevent American Muslims from traveling abroad to join ISIS.[24]

This Article focuses on federal law enforcement community engagement efforts with American Muslim communities. In government accounts and the popular imagination, community engagement efforts are soft, preventative, collaborative policing efforts, drawing on the history and gravity of community policing in the ordinary criminal context—measures meant to be celebrated

21. While not all Arab and South Asians are Muslim, the federal government's focus is on the Muslims within these communities.

22. HEATHER J. DAVIES ET AL., POLICE EXEC. RESEARCH FORUM, PROTECTING YOUR COMMUNITY FROM TERRORISM: THE STRATEGIES FOR LOCAL LAW ENFORCEMENT SERIES: VOL. 2: WORKING WITH DIVERSE COMMUNITIES 19–20 (2004); Press Release, FBI Nat'l Press Office, Director Meets With Key U.S. Leaders of National Arab, Muslim, and Sikh Organizations (Feb. 13, 2002), http://www.fbi.gov/news/pressrel/press-releases/value-of-the-continuing-assistance-from-the-arab-muslim-and-sikh-communities-in-the-overall-effort-to-provide-greater-security-for-all-americans [hereinafter Director Meets With Key U.S. Leaders] (framing these efforts as helpful to garnering cooperation and support for national security law enforcement, without mention of radicalization or extremism).

23. *See, e.g.*, *Community Engagement*, DEP'T HOMELAND SECURITY (Aug. 27, 2014), http://www.dhs.gov/community-engagement. For more on the DHS Office for Civil Rights and Civil Liberties (CRCL) see Margo Schlanger, *Offices of Goodness: Influence Without Authority in Federal Agencies*, 36 CARDOZO L. REV. 53 (2014).

24. *See, e.g.*, Press Release, Dep't of Justice, Office of Pub. Affairs, Attorney General Holder Announces Pilot Program to Counter Violent Extremists (Sept. 15, 2014), http://www.justice.gov/opa/pr/attorney-general-holder-announces-pilot-program-counter-violent-extremists; Spencer Ackerman, *Obama Administration Launches Program to Combat Radicalization*, THE GUARDIAN (Sept. 15, 2014, 5:18 PM), http://www.theguardian.com/world/2014/sep/15/obama-administration-american-muslims-radicalization; Tamara Audi & Miriam Jordan, *U.S. Engages With Muslims*, WALL STREET J. (Nov. 13, 2014, 10:42 PM), www.wsj.com/articles/u-s-engages-with-muslims-1415936525; Shelley Murphy, *Boston to Host Anti-Extremist Pilot Program*, BOSTON GLOBE (Sept. 24, 2014), http://www.bostonglobe.com/metro/2014/09/23/boston-site-program-prevent-residents-from-joining-extremist-groups/YpEpq2cYvITZ6u8AFkbarL/story.html; Eric Schmitt, *U.S. Is Trying to Counter ISIS' Efforts to Lure Alienated Young Muslims*, N.Y. TIMES (Oct. 4, 2014), http://www.nytimes.com/2014/10/05/us/us-is-trying-to-counter-isiss-efforts-to-lure-alienated-young-muslims.html.

across the political spectrum.[25] This Article attempts to reveal the mechanics of a more coercive reality.[26]

To understand the harms of community engagement approaches, it is essential to appreciate the larger context of law enforcement scrutiny in which they occur. The Article provides three larger frameworks in which community engagement must be understood.

First, law enforcement community engagement efforts are properly understood within the larger context of the rise of radicalization theories, and

25. *See* John P. Crank, *Watchman and Community: Myth and Institutionalization in Policing*, 28 LAW & SOC'Y REV. 325, 342 (1994) (arguing that community policing reflects conservative and liberal ideas of crime control). Until recently, scholars have largely, if cursorily, promoted community engagement efforts as a welcome government initiative to get to know Muslim communities, a new constituency of great public interest and concern. *See, e.g.*, NICOLE J. HENDERSON ET AL., VERA INST. OF JUSTICE, LAW ENFORCEMENT & ARAB AMERICAN COMMUNITY RELATIONS AFTER SEPTEMBER 11, 2001, at 19–20 (2006); Matthew C. Waxman, *National Security Federalism in the Age of Terror*, 64 STAN. L. REV. 289, 347–48 (2012); *cf.* Allison T. Chappell & Sarah A. Gibson, *Community Policing and Homeland Security Policing: Friend or Foe*, 20 CRIM. JUST. POL'Y REV. 327, 327–31 (2009) (surveying arguments for and against the compatibility of community policing and homeland security); David A. Harris, *Law Enforcement and Intelligence Gathering in Muslim and Immigrant Communities After 9/11*, 34 N.Y.U. REV. L. & SOC. CHANGE 123, 130 (2010) (arguing that government informant initiatives have gone too far and caused some Muslim communities to feel "betrayed"). New critical scholarship has emerged. Aziz Z. Huq has questioned whether government partnerships can produce national security benefits in the way prevailing accounts suggest. Aziz Z. Huq, *The Social Production of National Security*, 98 CORNELL L. REV. 637, 705–08 (2013). Huq also questions the tension between community policing and intelligence-led policing in the national security context. *Id.* at 697–701; *see also* INT'L ASS'N OF CHIEFS OF POLICE, NATIONAL SUMMIT ON INTELLIGENCE: GATHERING, SHARING, AND USE AFTER 9-11, at 7 (2008) (emphasizing a "close connection between intelligence-led policing . . . and community policing" because intelligence-led policing "can take advantage of the partnerships built through community policing . . .") (internal quotation marks omitted). Sahar F. Aziz has critiqued what she calls counterterrorism community policing (CCP) on the grounds that in its embrace of counterradicalization, CCP departs from the proven practices of community policing. Sahar F. Aziz, *Policing Terrorists in the Community*, 5 HARV. NAT'L SECURITY J. 147, 175–76 (2014). Relatedly, Sam Rascoff has flagged Establishment Clause concerns implicated by government counterradicalization. Samuel J. Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 64 STAN. L. REV. 125, 162 (2012).

26. This attempt is responsive to Rachel A. Harmon's call that scholars of policing move beyond a singular focus on constitutional constraint and harm to study more holistically "what harms policing produces, what kinds of policing are too harmful, and what kinds are harm efficient." Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 763 (2012). Scholars should establish "theoretical accounts of what the relevant harms are and how the harms should be measured, and empirical work measuring and comparing harms and policing efficacy." *Id.* at 793. While this Article assumes that the threat posed by al Qaeda-inspired terrorism is distorted and oversized in public discourse and government policy, it is largely agnostic on a key benchmark—the extent of the threat posed by al Qaeda-inspired terrorism—against which harm efficiency might be measured.

counterradicalization and countering violent extremism (CVE) programs.[27] Radicalization theory posits that increased religiosity and politicization among Muslims provokes an increased threat of terrorism. Incorporating this framework, government counterradicalization and CVE programs aim to monitor and influence the political and religious cultures of Muslim communities so as to prevent radicalization and violent extremism. This approach brings tremendous government scrutiny to bear on the religious and political beliefs and activities of American Muslim communities.[28] The overlay with counterradicalization and CVE is also what sets community outreach with Muslim communities apart from outreach with other communities.

Second, community engagement is, in practice and effect, closely intertwined with other policing methods and functions.[29] Unlike other types of national security policing—such as mapping, voluntary or pretextual interviews, recruitment and deployment of informants, and Internet monitoring—community engagement draws its legitimacy from community policing's ideas of inclusion and democratic participation. But law enforcement deploys community engagement as one among several of its national security policing tools, creating tension between trust-building, intelligence-collection, and counterradicalization efforts, and raising questions about the quality of inclusion and democratic participants these programs facilitate.[30]

Third, community engagement with American Muslim communities must be understood in conversation with community policing in the ordinary criminal

27. There is also a call for deradicalization programs. *See* John G. Horgan, *De-Radicalization Programs Offer Hope in Countering Terrorism*, L.A. TIMES (Feb. 13, 2015, 8:54 PM), http://www.latimes.com/opinion/op-ed/la-oe-0215-horgan-terrorist-deradicalization-20150215-story.html (stating that deradicalization programs "seek to change how former terrorists think").

28. Some have linked counterradicalization's focus on culture to counterinsurgency's focus on the same. *E.g.*, ARUN KUNDNANI, THE MUSLIMS ARE COMING! ISLAMOPHOBIA, EXTREMISM, AND THE DOMESTIC WAR ON TERROR 220 (2014); Aziz, *supra* note 25, at 223.

29. For example, alongside the new community engagement initiatives, DOJ has initiated new prosecutions against American Muslims allegedly attempting to support the Islamic State of Iraq and Syria (ISIS). *See, e.g.*, Eric Tucker & Sadie Gurman, *Islamic State Recruits Broadly, Not Just Fighters*, YAHOO! (Dec. 16, 2014, 11:20 AM), http://news.yahoo.com/islamic-state-recruits-broadly-not-just-fighters-061122291.html; *Colorado Teen Shannon Conley's Support of ISIS Raises Alarm About American Jihadists*, CBS NEWS (Sept. 10, 2014, 10:02 AM), www.cbsnews.com/news/colorado-teen-shannon-conleys-support-of-isis-raises-alarm-about-american-jihadists; *Rochester Man Mufid A. Elfgeeh Accused of Supporting ISIS Militants*, NBC NEWS (Sept. 16, 2014, 4:44 PM), http://www.nbcnews.com/storyline/isis-terror/rochester-man-mufid-elfgeeh-accused-supporting-isis-militants-n204941; *see also* Letter from ACLU et al. to Lisa O. Monaco, Assistant to the President for Homeland Sec. & Deputy Nat'l Sec. Adviser (Dec. 18, 2014) *available at* http://www.muslimadvocates.org/files/Countering-Violent-Extremism.pdf.

30. *See* Huq, *supra* note 25, at 697–701 (framing the tension as between community and intelligence-led policing). While one might view this tension as inherent to policing, this does not render the tension any less worthy of study.

context—and more specifically with the earlier debates on community policing inflected by broken windows theory. In both contexts, advocates celebrate communication and collaboration as ways to foster inclusion and civic engagement in marginalized communities on the one hand, and to reduce crime and increase order on the other. So, as with community policing, community engagement initiatives emphasize the idea that law enforcement must build trust and create greater channels of communication with American Muslims. To this end, law enforcement representatives reach out to Muslim communities, attend community events, host career fairs, and so on. In the same way that community policing in the 1980s and 1990s relied on partnerships with African American churches and youth in poor neighborhoods, the federal government's current community engagement programs focus on mosques, community institutions, and youth in Muslim communities.

The realities are more top-down than grassroots. In both contexts, aggressive theories of crime control—broken windows theory in the context of ordinary crime, counterradicalization in the context of national security—are overlaid atop ambiguous commitments to community partnerships, narrowing the space for open communication and contestation by the subject communities. In preserving law and order, police occupy an important role in the balance between a democratic and a coercive state, with community policing painted as a more democratic tactic. Community policing and community engagement trade on the moral authority of community partnerships by invoking ideas about popular participation in government and localized democracy.[31] But critics have challenged the normative and empirical bases for community policing and tactics influenced by broken windows theory, calling for a critical assessment of the costs of order and how police work with marginalized communities in these efforts. The concern, in essence, is that community policing allows the police to expand their power and reach into already marginalized communities, without giving subject communities the opportunity to meaningfully influence or determine policing priorities or strategies.

A central insight of this Article is as straightforward as it might be surprising: Community engagement in the national security context shares some of the problems of community policing in the ordinary criminal context. As with the criticisms lodged against broken-windows–styled community policing, counterradicalization–fueled policing serves to further marginalize an already margin-

31. *See, e.g.*, DAVID ALAN SKLANSKY, DEMOCRACY AND THE POLICE 116–17 (2008); STEVE HERBERT, CITIZENS, COPS, AND POWER: RECOGNIZING THE LIMITS OF COMMUNITY 65 (2006).

alized community on the grounds of its difference. Moreover, as with community policing, community engagement efforts increase the presence of law enforcement in already overpoliced communities, and exacerbate intracommunity inequalities.

The Article proceeds in three parts, engaging both the theoretical frameworks and the practices of community engagement.[32] Part I reveals the links between the burgeoning enterprise of federal community engagement efforts and the larger context of national security policing tactics, and the roots of such efforts in a commitment to radicalization theories and counterradicalization programs.[33]

In the post-9/11 era, DOJ and DHS have become the primary federal law enforcement agencies responsible for engaging Muslim communities. DOJ and DHS undertake various outreach efforts, from meet-and-greet events at local mosques, to regional roundtables with community leaders. While these efforts reflect a commitment to communication and collaboration, Part I investigates their concurrent goals in tandem with other policing methods to collect information on and shape the religious and cultural mores of Muslim communities.

Part II takes a deeper dive into the work of radicalization, counterradicalization, and CVE in community engagement efforts. To understand the limitations of community engagement refracted through radicalization, Part II draws on earlier literature debating community policing inflected by broken windows theory. Community policing theory aims to reorder relations between the marginalized and the police through community and collaboration, but community policing programs often fail to fulfill this goal when they rely on preventative theories of crime control. Broken windows theory posits a correlation between the aesthetics of disorder and crime, calling police into the service of countering disorder as a way to keep more serious crime at bay. In the ordinary criminal context, broken windows theory is used to shape and justify forms of community policing, while counterradicalization is the scaffold in the national security context.

Broken windows and counterradicalization bring government visions of crime control to bear on police-community partnerships and grant local social and cultural norms an outsized role in the origination of criminal activity. These assumptions create a rationale for law enforcement to police and surveil the minutiae of everyday life in marginalized communities. In linking noncriminal activity to the potential for crime, both theories reinforce a punitive lens through which police interact with marginalized communities. In turn,

32. I do not take a case study approach because there is no holistically developed account of a particular locality's experience of community policing. Government accounts are typically quite broad and do not offer much in the way of detail; community accounts are spare.

33. Amna Akbar, *Policing "Radicalization*," 3 U.C. IRVINE L. REV. 809, 854 (2013).

policing motivated by theories of radicalization serve to racialize Muslim identities, ideologies, and geographies in significant ways.

Policing is a central practice of American racialization and racial formation—whether and how one is policed form an integral part of one's experience of race in the United States. The emergence and routinization of heightened scrutiny by police on Muslim communities has become an important axis of Muslim racialization post-9/11.[34] Part II explores how radicalization and counterradicalization policing serve to radicalize American Muslims.

Part III moves to the material implications of community engagement. Community engagement efforts constitute one of many entry points for federal law enforcement into Muslim communities today. But unlike other types of radicalization policing, community engagement efforts draw their legitimacy from ideas of inclusion and democratic participation. Most acutely, my concern is that community engagement turns on itself by providing police with greater power and discretion over marginalized communities. Rather than enhance participation, community engagement may simply provide opportunities for select members of Muslim communities to approve preexisting law enforcement commitments—and create an additional source of pressure on Muslim communities to perform their Americanness—without meaningful openings for Muslim communities to communicate, collaborate, and contest the relationship, its modalities, and its outputs. The coercive effect of these practices has been underexplored, even as their success at increasing democracy and inclusion is taken for granted. While it is beyond the scope of this Article to engage the premise that cultivating pro-law-enforcement attitudes is necessary for democracy, the Article does raise questions about how the government should cultivate these attitudes, and how cultivating such attitudes may clash with the duty of people to hold their governments accountable.

By putting the mirror of the community policing literature to community engagement—more specifically, by placing the literature from the 1980s and 1990s on community policing with African American communities alongside community engagement with Muslim communities—the Article engages the way that police practices are discursive, experimental, and derivative. My aim is to contribute to the larger discourse on the relationship between policing, racialization, and inequality in the United States, and to understand the continuities and distinctions between contexts. On the one hand, positioning these practices side by side is descriptive, in that it reflects the federal government's situating of

34. I use the term racialization knowing that it imperfectly describes the shape and nature of the stigma that has attached to American Muslim communities after 9/11. *See infra* Part II.

community engagement efforts within a history of community policing efforts with marginalized communities. On the other hand, the cross-pollination is normative, in that it reflects my effort to deconstruct the sharp distinctions often drawn between the ordinary criminal and national security contexts. (National security scholars can learn from longstanding conversations in criminal law, especially regarding criminal justice techniques retooled for the national security context.) My hope is that this Article will contribute to our thinking about the role of police in comparative racialization—that in thinking about community policing and community engagement in the same breath, we will see new possibilities and problems in the way that police relate to communities of color and thereby construct and constitute the experience of race in the United States, including for American Muslims.[35]

I do not mean to draw overly neat parallels or to manufacture ghost genealogies between the two sets of theoretical frameworks or practices. Nor does this Article comprehensively survey historical or contemporary practices of community policing or community engagement. My concrete focus is the contemporary national security context in the United States, and I am working with the limited material—much of it produced through government accounts—available on these initiatives. This Article provides a sketch of the problems inherent in approaching community engagement through a counterradicalization and CVE lens. Particularized case studies are left for future work.

The idea of community engagement may capture our imaginations now as community policing did in the 1980s and 1990s. Then, as now, however, it should not capture our intellects: The theories and practices of community engagement demand our close and critical attention.

35. A few notes on vocabulary are in order. Community engagement is a broad term, encompassing government programs of various stripes, with different communities, and on different issues. My focus is on federal law enforcement's post-9/11 efforts to engage Muslim communities.

I use the term community policing to refer to the theories and practices vetted in the ordinary criminal context, and community engagement for the theories and practices in the national security context. By using the language of community engagement, I do not mean to detract from the way the Article positions community engagement as a policing technique.

I use the concepts of radicalization and violent extremism, and counterradicalization and countering violent extremism (CVE), interchangeably—the distinctions are not important for purposes of this Article—and in reference to their discursive constructs. (In other words, in referring to radicalization, I am not referring to a fixed process by which individuals become terrorists, but rather to how that process is understood, with a focus on government accounts.) The distinctions often collapse given CVE is often defined in reference to radicalization. *See, e.g.*, NAT'L COUNTERTERRORISM CTR., COUNTERING VIOLENT EXTREMISM: A GUIDE FOR PRACTITIONERS AND ANALYSTS 3 (May 2014) (defining CVE to include "programs and policies intended [] to prevent individuals and groups from radicalizing and mobilizing to commit violence").

I. A TAXONOMY OF NATIONAL SECURITY COMMUNITY POLICING

A. The Schematic of Policing Radicalization

The accounts of post-9/11 national security policing emphasize the federal government's new commitments to a preventative framework for fighting terrorism and to comprehensive intelligence gathering.[36] Although this narrative obscures the existence of preventive approaches and intelligence gathering before 9/11, it embodies important kernels of truth: The overt merger of prevention, intelligence gathering, national security, and criminal power has changed the nature of contemporary policing in the United States. Less commented on is the shift from emergency policing measures[37] to the routinization of national security policing. Unquestionably, important continuity exists between the emergency response and the routinized police practices—not simply because many of the practices are similar, but because they borrow their legitimacy from the same discursive universe, in which the 9/11 attack is a fundamental moment of authority.[38]

Theories of radicalization, counterradicalization, and CVE, have been important engines in the movement of national security policing from the realm of emergency to the realm of routine.[39] Radicalization theory—which also grounds ideas about violent extremism—was exported from the British government to the

36. *See* DAVID COLE & JULES LOBEL, LESS SAFE LESS FREE: WHY AMERICA IS LOSING THE WAR ON TERROR 30 (2007) ("At home, the [Bush] administration has . . . invoked the preventive paradigm as it has reshaped the nation's laws and adopted aggressive law enforcement and intelligence-gathering practices.").

37. *E.g.*, SAMEER AHMED ET AL., CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE AND ASIAN AM. LEGAL DEF. & EDUC. FUND, UNDER THE RADAR: MUSLIMS DEPORTED, DETAINED, AND DENIED ON UNSUBSTANTIATED TERRORISM ALLEGATIONS (2011), http://aaldef.org/UndertheRadar.pdf; Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CALIF. L. REV. 1259 (2004).

38. *See generally* Jacques Derrida, *Force de Loi: Le Fondement Mystique De L'Aurité* [*Force of Law: The "Mystical Foundation of Authority*], 11 CARDOZO L. REV. 920, 1007 (1990) ("[T]he police invent the law, they make themselves '*rechtsetzend*,' 'lawmaking,' legislative, each time law is indeterminate enough to give them the chance.").

39. The Obama administration tends to employ the language of violent extremism, rather than radicalization. Rascoff, *supra* note 25, at 146 n.93 (noting the administration's preference for the term "violent extremism" when discussing counterradicalization policies). In theory, the violent extremism approach is clearer in its focus on violent acts rather than dissident ideologies. But both frameworks evoke and rely on similar ideas of prevention, in practice focusing scrutiny on Muslim communities' religious and political cultures. For an example of how the terms are effectively conflated, see JOSEPH I. LIEBERMAN & SUSAN M. COLLINS, A TICKING TIME BOMB: COUNTERTERRORISM LESSONS FROM THE U.S. GOVERNMENT'S FAILURE TO PREVENT THE FORT HOOD ATTACK 17 (2011), *available at* http://www.hsgac.senate.gov//imo/media/doc/Fort_Hood/FortHoodReport.pdf?attempt=2 ("The process by which an individual transitions to a violent Islamist extremist is known as radicalization.").

U.S. government through DOJ and the New York Police Department (NYPD). The theory posits a correlation between religiosity and politicization in Muslims and the potential for terrorism. When the government embraces radicalization theories, it provides a new imperative to surveil and shape religious and political activities of Muslim individuals and within Muslim communities. That same embrace has also spawned a growing number of counterradicalization and CVE initiatives—of which law enforcement and community engagement efforts are an increasingly important part.[40]

Law enforcement's embrace of radicalization and counterradicalization has become a central tenet in our domestic approach to national security. A 2006 FBI report and 2007 NYPD report constitute the building blocks of this evolution.[41] Since the publication of these reports, both entirely focused on Muslims,[42] U.S. federal and local government literature has taken for granted that a problem of Muslim radicalization exists in—plagues, even—the United States.

The FBI's Intelligence Assessment, *The Radicalization Process: From Conversion to Jihad*, asserts the existence of an identifiable and predictable process by which a Muslim becomes a terrorist.[43] The FBI identifies the four stages of radicalization as "preradicalization," "identification," "indoctrination," and "action."[44]

40. *See, e.g.*, *Violent Islamist Extremism: Government Efforts to Defeat It: Hearing Before the S. Comm. on Homeland Sec. & Gov't*, 110th Cong. 304–12 (2007) (prepared statement of John Miller, Assistant Dir., Office of Pub. Affairs FBI); *Working With Communities to Disrupt Terror Plots: Hearing Before the Subcomm. on Intelligence, Info. Sharing, & Terrorism Risk Assessment of the H. Comm. on Homeland Sec.*, 111th Cong. 7 (2010) [hereinafter *Working With Communities Hearing*] (statement of Margo Schlanger, Officer for Civil Rights & Civil Liberties, Dep't. of Homeland Sec.); EXEC. OFFICE OF THE PRESIDENT, EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES 2–3 (Aug. 2011), https://www.whitehouse.gov/sites/default/files/empowering_local_partners.pdf [hereinafter EMPOWERING LOCAL PARTNERS]; *Attorney General Holder Meets With Muslim Leaders in Portland*, DEP'T OF JUSTICE, OFFICE OF PUB. AFFAIRS (Sept. 30, 2011), http://www.justice.gov/opa/blog/attorney-general-holder-meets-muslim-leaders-portland. This is a newer phenomenon, as radicalization and counterradicalization discourse have emerged and become mainstream in domestic national security discourse. *See* Akbar, *supra* note 33, at 854–68. *But see* A DECADE LOST, *supra* note 19, at 83–84 (2011) (explaining that some U.S. government officials "reject characterizing community-outreach activities as counter-terrorism measures.").

41. For a fuller accounting, see Akbar, *supra* note 33, at 811–13.

42. For the fate of the FBI's attempt to create reports for "right-wing" and "left-wing" extremism, see *id.* at 823 n.44.

43. FBI COUNTERTERRORISM DIV., THE RADICALIZATION PROCESS: FROM CONVERSION TO JIHAD 2 (2006).

44. *Id.* at 3. In 2003, a professor of psychology contributed to an issue of the FBI Law Enforcement Bulletin with an article theorizing four stages of "radicalization." *See* Randy Borum, *Understanding the Terrorist Mind-Set*, 72 FBI L. ENFORCEMENT BULL. 7, 7–10 (2003) (arguing that "four observable stages appear to frame a process of ideological development" for a terrorist).

The Assessment is vague about the data on which it relies, with almost no citations, sourcing, or clear methodology.

The NYPD's report, *Radicalization in the West: The Homegrown Threat*, posits a similar four-stage process: "[p]re-radicalization," "[s]elf-identification," "[i]ndoctrination," and "[j]ihadization."[45] Each stage has "specific signatures associated with it."[46] The first three stages of radicalization focus on where Muslims live and congregate, manifestations of their religious and political beliefs, and political, social, or religious activities.[47] The process culminates in the final stage, jihadization, when intent to commit a criminal act first forms.[48]

Despite deep contestation of this theory,[49] some ideas about radicalization have become mainstays of U.S. law enforcement's preventive approach to national security. These ideas include the following: First, radicalization is a somewhat predictable process with visible markers and geographies by which Muslims become willing and able to commit violence against the United States (or American interests) in the name of Islam or the global Muslim community.[50] Second, the government, as part of its investment in national security, must monitor and counter radicalization. Third, radicalization emerges from religious and political currents within Muslim communities.[51]

Radicalization and counterradicalization have become the language of prevention in national security criminal law. With the federal government at the helm, this commitment is echoed far and wide, from state and local police to

45. MITCHELL D. SILBER & ARVIN BHATT, NYPD INTELLIGENCE DIV., RADICALIZATION IN THE WEST: THE HOMEGROWN THREAT 21 (2007).

46. *Id.*

47. *Id.* at 22–44.

48. *Id.* at 47–48 (all aspects of criminal activity, including "attack planning," are substages of jihadization). Interestingly, the criminal act is theorized to come with a very particular intent: "[T]he ultimate objective for any attack is always the same—to punish the West, overthrow the democratic order, reestablish the Caliphate, and institute sharia." *Id.* at 45.

49. *See e.g.*, Letter from Muslim Am. Civil Liberties Coal. to Raymond Kelly, Police Comm'r, NYPD (Oct. 23, 2008) (urging New York Police Department (NYPD) Commissioner to recognize the harmful racial stereotypes embedded in the NYPD Report), *available at* http://www.brennancenter.org/sites/default/files/legacy/Justice/10.23.MACLC.pdf; Michael German, *Radically Wrong: A Counterproductive Approach to Counterterrorism*, ACLU BLOG RTS. (Feb. 14, 2013, 10:52 AM), https://www.aclu.org/blog/national-security-free-speech/radically-wrong-counterproductive-approach-counterterrorism (referring to counterterrorism policies such as the one adopted by the NYPD as "flawed and wasteful").

50. *But see*, *e.g.*, Marc Sageman, *The Stagnation of Research on Terrorism*, CHRON. HIGHER EDUC. (Apr. 30, 2013), http://chronicle.com/blogs/conversation/2013/04/30/the-stagnation-of-research-on-terrorism ("[N]o consensus exists about [radicalization] indicators.").

51. *See* Akbar, *supra* note 33, at 811–12; *see also* Arun Kundnani, *Radicalisation: The Journey of a Concept*, 54 RACE & CLASS 3, 5–6 (2012).

DHS, DOJ, FBI, and U.S. Attorneys' Offices.[52] As a result, federal law enforcement, with the aid of state and local police, spend considerable resources monitoring and shaping political and religious cultures in Muslim communities.

The federal government has undertaken numerous initiatives to counter radicalization and violent extremism—almost entirely focused on Muslims, despite assurances to the contrary.[53] The House and Senate Homeland Security Committees, for example, have held hearings and issued reports emphasizing the need for government agencies to monitor and respond to radicalization.[54] The White House issued two national security strategy papers in 2010 and 2011, emphasizing the need to counter violent extremism and radicalization,[55] and two blueprints for "empowering local partners to prevent violent extremism in the United States."[56] DHS, the National Counterterrorism Center (NCTC), FBI, the National Security Agency (NSA) and DOJ have also prioritized counterradicalization and CVE programming and research.[57] Most recently, the attorney general has announced a pilot program to respond to the lure of ISIS for American Muslims, the White

52. *See* Akbar, *supra* note 33, at 821–28 and accompanying text. Recently, DHS awarded the International Associates of Chiefs of Police a $700,000 grant "to develop training on how to prevent, respond to and recover from acts of terrorism" and "sponsored exercises in seven cities . . . to improve communication between local law enforcement and communities and to share ideas on how best to build community resilience against violent extremism." Schmitt, *supra* note 24.

53. For example, in the recent push for community engagement, despite the administration's ongoing emphasis that its focus is on all varieties of extremism, the only details to emerge about the specific outreach efforts are focused on Muslim communities. *See;* Murtaza Hussain et al., *Is Your Child a Terrorist? U.S. Government Questionnaire Rates Families at Risk for Extremism*, INTERCEPT (Feb. 9, 2015), https://firstlook.org/theintercept/2015/02/09/government-develops-questionnaire-see-might-become-terrorist; Jana Winter, *In Fight Against "Extremists," the Enemy Proves Elusive*, INTERCEPT (Feb. 18, 2015), https://firstlook.org/theintercept/2015/02/18/fight-extremists-enemy-proves-allusive; *see also* Deepa Iyer & Linda Sarsour, *Obama Wants to 'Counter Violent Extremism'. He Should Look Beyond Muslims*, GUARDIAN (Feb. 17, 2015, 06:15 AM), http://www.theguardian.com/commentisfree/2015/feb/17/obama-counter-violent-extremism-conference-muslims.

54. *See* Akbar, *supra* note 33, at 821 n.40.

55. EXEC. OFFICE OF THE PRESIDENT, NATIONAL SECURITY STRATEGY 8 (May 2010) [hereinafter NATIONAL SECURITY STRATEGY], http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf; EXEC. OFFICE OF THE PRESIDENT, NATIONAL STRATEGY FOR COUNTERTERRORISM 2 (June 2011) [hereinafter STRATEGY FOR COUNTERTERRORISM], http://www.whitehouse.gov/sites/default/files/counterterrorism_strategy.pdf.

56. EMPOWERING LOCAL PARTNERS, *supra* note 40, at 1; EXEC. OFFICE OF THE PRESIDENT, STRATEGIC IMPLEMENTATION PLAN FOR EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES 8 (Dec. 2011), https://www.whitehouse.gov/sites/default/files/sip-final.pdf [hereinafter STRATEGIC IMPLEMENTATION PLAN].

57. Akbar, *supra* note 33, at 827; *see also, e.g.*, Denis McDonough, Deputy Nat'l Sec. Advisor, Remarks at ADAMS Center: Partnering With Communities to Prevent Violent Extremism in America (Mar. 6, 2011), *available at* http://www.whitehouse.gov/the-press-office/2011/03/06/remarks-denis-mcdonough-deputy-national-security-advisor-president-prepa.

House held a three-day CVE summit, and the DHS secretary has been touring mosques around the country.[58]

Community engagement represents but one of a range of policing techniques deployed in counterradicalization efforts. The specific techniques essential to policing radicalization include mapping, voluntary or pretextual interviews, recruitment and deployment of informants, Internet monitoring, and community engagement.[59] These tactics are aimed at gathering intelligence on, as well as shaping, the religious and political currents in Muslim communities—the geographies where Muslims gather and collective identities emerge.[60] The tactics also attempt to identify individuals of concern by relying on participation from Muslim community members and forms of coercion that vary from mild to severe, including incentivized cooperation.

The tactics of policing radicalization exist in symbiosis, all feeding into each other.[61] Given the dynamic relationship between these techniques, a brief summation is necessary in order to appreciate national security community engagement in context.

Mapping refers literally to the practice of generating maps that detail where Muslims gather, whether in schools, mosques, or hookah bars.[62] The FBI's 2008 Domestic Intelligence and Operations Guide (DIOG) empowers FBI field offices to collect, map, and analyze racial and ethnic demographic information, including the location of businesses and other facilities servicing those demographic groups.[63] Drawing on commercially available information

58. Samantha Masunaga, *Homeland Security Head Aims to Build Trust in L.A. Muslim Community*, L.A. TIMES (Nov. 13, 2014, 8:35 PM), http://www.latimes.com/local/california/la-me-1114-mosque-visit-20141114-story.html; Murphy, *supra* note 24; Schmitt, *supra* note 24; ("The goal is to reach out to schools, health care providers, and community groups to get their help in monitoring and deterring the radicalization of young people who may be susceptible to recruitment."); Julie Hirschfeld Davis, *Obama Urges Global United Front Against Extremist Groups Like ISIS*, , N.Y. TIMES (Feb. 18, 2015), http://www.nytimes.com/2015/02/19/us/obama-to-outline-nonmilitary-plans-to-counter-groups-like-isis.html; Winter, *supra* note 53.

59. For a fuller accounting, see Akbar, *supra* note 33, at 854.

60. *Id.*

61. *See, e.g.*, Martin Innes, *Policing Uncertainty: Countering Terror Through Community Intelligence and Democratic Policing*, 605 ANNALS AM. ACAD. POL. & SOC. SCI. 222, 232 (2006) (community contacts "develop a 'community intelligence feed' about the activities of individuals and groups in these communities of interest to the police").

62. The focus here is on federal efforts, but local police departments have also experimented with mapping. The NYPD created extensive maps of Muslim communities in the New York-New Jersey area, and the LAPD announced a plan to map Muslim communities in 2007, but the initiative was canceled after it elicited public outcry. *See* Akbar, *supra* note 33, at 855–59, 855 n.177.

63. FBI, DOMESTIC INVESTIGATIONS AND OPERATIONS GUIDE §§ 4.3.3.2.1, 4.3.2.2.2 (2008), *available at* http://vault.fbi.gov/administrative-policy-procedures (follow "FBI Domestic Investigations and Operations Guide (DIOG)" hyperlink; then follow "2008 Version" hyperlink). The heavily redacted 2011 Domestic Intelligence and Operations Guide (DIOG), including the

and government databases, FBI offices have mapped the demographics of concentrated Muslim communities.[64] The FBI puts such maps to use in its community engagement efforts.[65]

Voluntary or pretext interviews—known as knock and talks in the ordinary criminal context—are a more visible method of policing radicalization.[66] Agents may approach individuals at mosques, home, work, or community institutions. They may identify the agency for which they work, or may simply cite a generic relationship with the U.S. government. In theory voluntary, the mode of approach and questioning often involves substantial coercive force.[67] Individuals targeted are often "led to believe they [are] compulsory."[68] Law enforcement officials regularly ask about religious and political opinions and activities: the purpose of a recent trip to Pakistan or Saudi Arabia, for example, or opinions on the Arab Spring or drone strikes in Pakistan.[69] These interviews appear to be triggered by national origin and ethnicity as well as travel and speech activity, including consumption of

2012 updated version, does not seem to include references to this power to map. FBI, DOMESTIC INVESTIGATIONS AND OPERATIONS GUIDE (2011), *available at* http://vault.fbi.gov/administrative-policy-procedures (follow "FBI Domestic Investigations and Operations Guide (DIOG)" hyperlink; then follow "2011 Version" hyperlink). These maps are not limited to Muslim communities. EYE ON THE FBI (2011), *supra* note 1 (summarizing documents obtained by FOIA requests, including FBI mapping of "Black Separatist" groups, as well as Chinese, Russian, and Salvadorian communities).

64. *See* EYE ON THE FBI (2012), *supra* note 1; EYE ON THE FBI (2011), *supra* note 1; Trevor Aaronson, *The Informants*, MOTHER JONES (July 29, 2011, 6:44 PM), http://www.motherjones.com/politics/2011/08/fbi-terrorist-informants. The decision to map seems to draw simply from the concentration of Muslims. A 2009 Detroit field office memorandum opening a "domain assessment" provides as its basis that "because Michigan has a large Middle-Eastern and Muslim population, it is prime territory for attempted radicalization and recruitment by these terrorist groups." Memorandum from the Fed. Bureau of Investigation's Detroit Field Office (July 6, 2009), *available at* https://www.aclu.org/files/fbimappingfoia/20111019/ACLURM011609.pdf.

65. Internal Memo from the Fed. Bureau of Investigation Regarding Implementation of Specialized Community Outreach Team 6 (Jan 7, 2009) (on file with author).

66. *See generally* Sinnar, *supra* note 6.

67. Agents draw their authority from the force of the badge, the uniform, and the law, as experienced in communities made vulnerable by their race, gender, class, or immigration status. The force speaks with specificity to American Muslims—as it does to others possessing various marginalized, policed identities—based on their particular vulnerabilities in the polity. *See* Akbar, *supra* note 33.

68. KUNDNANI, *supra* note 28, at 214. *See* Sinnar, *supra* note 6, at 50–51 (compiling reports that FBI agents have "approached people at work, where they could not refuse to cooperate without eliciting suspicion and fear of reprisal from employers already wary of Muslims," "pressured some individuals to submit to questioning immediately, despite their stated desire to obtain a lawyer first," "knocked on people's doors late in the evening or at night, which heightened the interviewees' perception of intimidation," "misrepresented the purpose of an interview," and "told others that if they refused to submit to an interview, the agents would arrest them").

69. *See, e.g.*, Ramzi Kassem, *The Long Roots of the NYPD Spying Program*, NATION (June 13, 2012), http://www.thenation.com/article/168376/long-roots-nypd-spying-program.

speech (for example, watching lectures online or visiting particular websites).[70] Interviews are regularly geared toward collecting information on religious and political opinions, whether individual or collective,[71] or cultivating informants, both formal and informal.[72]

Informants are key to national security policing, just as they are in the ordinary criminal context. Problems of police coercion, secrecy, and lack of accountability persist in both contexts.[73] The NYPD, for example, recruits informants for counterterrorism projects by scanning the general citywide arrest rolls for individuals hailing from Muslim countries, regardless of the crime for which they were arrested.[74]

Informants are widespread in Muslim communities, stationed within mosques, Muslim student groups, social networks, and so on.[75] The approach is less likely to be geared toward collecting information on a specific individual or criminal plot, and more likely tilted toward gathering "as much information on as many people in the Muslim community as possible."[76] Law enforcement uses informants to gather and test opinions, in a practice reminiscent of past police infiltration of radical political groups such as the Communist Party and various Black liberation organizations.[77] Informants may serve as passive listeners,[78] gathering information about individuals' religious and political views, or vulnerabilities (such

70. *See, e.g.*, Sinnar, *supra* note 6, at 54–55, 62–80.
71. *See, e.g.*, *id.* at 53–54.
72. On the range of informant relationships, and the issues therein, see generally ALEXANDRA NATAPOFF, SNITCHING: CRIMINAL INFORMANTS AND THE EROSION OF AMERICAN JUSTICE (2009).
73. *See generally id.*
74. *See* Joseph Goldstein, *New York Police Recruit Muslims to Be Informers*, N.Y. TIMES (May 10, 2014), http://www.nytimes.com/2014/05/11/nyregion/new-york-police-recruit-muslims-to-be-informers.html.
75. *E.g.*, Declarations of Craig Monteilh Submitted by Plaintiffs in Support of Their Oppositions to Motions to Dismiss at 10, Fazaga v. FBI, 884 F. Supp. 2d 1022 (C.D. Cal. 2012) (No. 11-00301) [hereinafter Declarations of C. Monteilh] ("Agent Armstrong told me that the FBI had every mosque—the ones I went to and the ones I didn't go to—under surveillance.").
76. *Id.* at 7 ("Agent Allen told me, 'We want to get as many files on this community as possible.'. . . They said they were building files in areas with the biggest concentrations of Muslim Americans—New York; the Dearborn, Michigan area; and the Orange County/Los Angeles area.").
77. *See, e.g.*, EMILY BERMAN, BRENNAN CTR. FOR JUSTICE, DOMESTIC INTELLIGENCE: NEW POWERS, NEW RISKS 8–9 (2011); *see also* Michael Greenberg, *New York: The Police and the Protestors*, N.Y. REV. BOOKS (Oct. 11, 2012), www.nybooks.com/articles/archives/2012/oct/11/new-york-police-and-protesters [hereinafter Greenberg, *The Police and the Protestors*]; Michael Greenberg, *The Problem of the New York Police*, N.Y. REV. BOOKS (Oct. 25, 2012), www.nybooks.com/articles/archives/2012/oct/25/problem-new-york-police.
78. *See, e.g.*, Kiran Khalid, *Iowa Muslim Leader: Law Enforcement Betrayed Us*, CNN (Feb. 3, 2012, 8:48 PM), http://inamerica.blogs.cnn.com/2012/02/03/iowa-muslim-leader-law-enforcement-betrayed-us.

as immigration status, LGBT/queer identities, or marital indiscretions) that can be used to pressure individuals into becoming informants.[79] Informants also test impressionability,[80] attempting to provoke reactions by making "radical" or "extreme" statements and then monitoring people's responses and their susceptibility to radical or extreme points of view.[81] Perhaps even more troubling, according to a

79. *See* Declarations of C. Monteilh, *supra* note 75, at 18; *see also* CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE, TARGETED AND ENTRAPPED: MANUFACTURING THE "HOMEGROWN THREAT" IN THE UNITED STATES 2, 16 (2011); Petra Bartosiewicz, *The FBI Stings Muslims*, THE NATION, July 2–9, 2012, at 17, 19.

To consider the fluid and broad nature of the role an informant might play in collecting and testing opinions, consider Craig Monteilh. *See This American Life: The Convert*, CHICAGO PUBLIC RADIO (Aug. 10, 2012), *available at* http://www.thisamericanlife.org/radio-archives/episode/471/the-convert. Monteilh worked undercover as an FBI informant for a little over a year, conducting surveillance in ten mosques in Los Angeles and Orange County. He was instructed to "gather information on Muslims' charitable giving, attend Muslim fundraising events, collect information on travel plans . . . attend lectures . . . attend classes and dawn prayers at mosques, track followers of extremist jihadist websites, elicit people's views on extremist scholars and thinkers, work out with Muslims he met at a local gym, and gather any compromising information about Muslims that [the FBI] could use against them to persuade them to become informants." Fazaga v. FBI, 884 F. Supp. 2d 1022, 1032 (C.D. Cal. 2012); *see also* Declarations of C. Monteilh, *supra* note 75, at 6–7 ("My handlers told me to look for and identify to them people with certain backgrounds or traits, such as anyone who studied *fiqh*, who openly criticized U.S. foreign policy, including the U.S. military's presence in Muslim countries; who had any kind of military training; who was an imam or sheikh; who went on *Hajj*; who played a leadership role at a mosque or in the Muslim community; who expressed sympathies to *mujahideen*; who was a quiet loner; who was a 'white' Muslim; or who went to a madrassa overseas."). He was also instructed to "investigate anyone who had the attention of the youth or influence over young people to see if they were radicalizing them" and to ask community members about certain verses of the Qur'an, and to elicit reactions about U.S. foreign policy. *Id.* at 10, 16 (Monteilh was told that "people's reactions to them would help discern who was and was not a threat . . . that discussions about these verses would elicit responses that could be used to justify additional surveillance measures."). Monteilh's FBI handlers allegedly told him they "would usually bring people in to an FBI interview only after I had obtained some useful background on the person . . . some embarrassing personal information or a statement of political beliefs . . . [to] provide leverage to get the person to provide information." *Id.* at 21. Monteilh's work for the FBI was eventually cut short after a mosque at which he was stationed pursued a restraining order to bar him from the mosque. *Id.* at 26.

80. *See* HUMAN RIGHTS WATCH & THE HUMAN RIGHTS INST. AT COLUMBIA LAW SCH., ILLUSION OF JUSTICE: HUMAN RIGHTS ABUSES IN U.S. TERRORISM PROSECUTIONS 21–59 (2014) [hereinafter ILLUSION OF JUSTICE]. In a number of cases, the FBI and NYPD have sent informants into mosques and community institutions not only to gather information but also to see who responds, and how, to their speech. *See* Declarations of C. Monteilh, *supra* note 75, at 3, 12, 24, 32, 44; CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE, *supra* note 79, at 34; *see also* Bartosiewicz, *supra* note 79, at 17. The FBI denies it has conducted surveillance on the *sole* basis of race, ethnicity, or First Amendment protected activity. *See, e.g.*, FBI NAT'L PRESS OFFICE, FBI RESPONSE TO ACLU REPORT (2011), http://www.fbi.gov/news/pressrel/press-releases/fbi-response-to-aclu-report.

81. *See, e.g.*, Adam Goldman & Matt Apuzzo, *Informant: NYPD Paid Me to 'Bait' Muslims*, ASSOCIATED PRESS (Oct. 23, 2012), www.ap.org/Content/AP-In-The-News/2012/Informant-NYPD-paid-me-to-bait-Muslims. *But see* Declaration of Stephen Hoban, Handschu v. Special Servs. Div., No. 71 Civ. 2203 (S.D.N.Y. May 16, 2013).

recent report by Human Rights Watch and Columbia Law School's Human Rights Institute, all but four of the last decade's high-profile terrorism prosecutions resulted from FBI sting operations, in which the FBI informant was directly involved in proposing, crafting, facilitating, and inducing a terrorist plot.[82]

Law enforcement also monitors what Muslims consume and post on the Internet about their opinions and activities via email listservs, blogs, websites, chatrooms, and social media.[83] These efforts seem to focus on those who download content by particular Muslim scholars such as Anwar Al-Aulaqi, post on Muslim-identified news websites or participate in Muslim-identified chat / discussion forums focused on religious discourse and U.S. foreign policy, or watch "jihadi" videos.[84] Internet monitoring triggers voluntary interviews as well as informants and undercover law enforcement "urging [young men] down the perceived path toward radicalization."[85]

82. *See* ILLUSION OF JUSTICE, *supra* note 80, at 21–59; *id.* at 22 ("Instead of beginning a sting at the point where the target had expressed an interest in engaging in illegal conduct, many terrorism sting operations that we investigated facilitated or invented the target's willingness to act before presenting the tangible opportunity to do so."); *cf.* Wadie E. Said, *The Terrorist Informant*, 85 WASH. L. REV. 687, 712 (2010). There have even been instances when the government agent "appears to have taken on the role of a religious authority figure for a target who was searching for guidance about Islam because he was young, a recent convert, or socially outside the mainstream Muslim community due to race or ethnicity." ILLUSION OF JUSTICE, *supra* note 80, at 41–45. *But see id.* at 21 n.30 (noting the four exceptions to the non-sting-inspired criminally prosecuted plots as the Boston Marathon bombing in 2013, Faisal Shahzad's attempt to bomb Times Square in 2010, Najibullah Zazi's attempt to bomb the New York City subway in 2009, and a shooting at the El Al counter at LAX in 2002).

83. DIALA SHAMAS & NERMEEN ARASTU, MAPPING MUSLIMS: NYPD SPYING AND ITS IMPACT ON AMERICAN MUSLIMS 40 (2013); *id.* at 27 (documenting an instance in which NYPD detectives offered a college student "400 or 500 dollars a month" to "sit[] in front of [his] computer and look at what people [were] doing" (internal quotation marks omitted)); Goldman & Apuzzo, *supra* note 81; Ramzi Kassem, *Praying While Muslim*, NATION, July 2–9, 2012, at 25; *see also Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy: Hearing Before the Subcomm. on the Constitution, Civil Rights, & Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. 62–63 (2010) (statement of Farhana Khera, President & Executive Director, Muslim Advocates) (stating that FBI monitoring of Internet use chills First Amendment protected activities for Muslim Americans).

84. *See* FBI COUNTERTERRORISM DIV., *supra* note 43, at 7 ("Internet [c]hat [r]ooms . . . [are a] virtual arena [that] allows vulnerable individuals from around the world to discuss Islamic doctrine. Radicalization is encouraged both directly and indirectly on the Internet: indirectly through extremist propaganda (inflammatory speeches, videos, etc.) and directly through chat rooms and bulletin boards."); SILBER & BHATT, *supra* note 45, at 22 ("The Internet, with its thousands of extremist websites and chat-rooms, is a virtual incubator of its own. In fact, many of the extremists began their radical conversion while researching or just surfing in the cyber world."); *see also* Kassem, *supra* note 83 (discussing NYPD email monitoring of a student group at a state university).

85. ILLUSION OF JUSTICE, *supra* note 80, at 26; *see* Kassem, *supra* note 83.

Post-9/11 changes to the FBI's investigative guidelines allow for broad, minimally regulated use of these tactics. No suspicion of criminal wrongdoing is required before an ordinary agent can deploy these investigative powers.[86] The FBI can use unlimited physical surveillance, conduct pretextual interviews, and deploy confidential informants, absent any suspicion of wrongdoing or "particular factual predication."[87] Moreover, these tools can be mobilized based mostly on First Amendment activity—for example, on attendance at a particular mosque, or harsh criticism of American foreign policy.[88] Nor are these techniques meaningfully regulated by the Constitution: The techniques do not require a warrant. Moreover, the Fourth Amendment's protections against unreasonable search and seizures can be waived if law enforcement obtains consent, a concept construed loosely and without regard to the particular mechanics of coercion in interactions between police and marginalized communities.[89]

B. The Particulars of Community Engagement

Countering violent extremism has been called a signature policy of the Obama administration's national security agenda.[90] In 2011, the White House announced its commitment to community engagement as a "whole-of-government approach" to responding to the threat of radicalization and violent ex-

86. *See* Emily Berman, *Regulating Domestic Intelligence Collection*, 71 WASH. & LEE L. REV. 3, 26–30 (2014); *see also* BERMAN, *supra* note 77, at 26–30.

87. OFFICE OF THE ATT'Y GEN., THE ATTORNEY GENERAL'S GUIDELINES FOR DOMESTIC FBI OPERATIONS 17 (2008); FBI, DOMESTIC INVESTIGATIONS AND OPERATIONS GUIDE 4-13 to 4-14, 5-2, 6-7 (2011) [hereinafter FBI DOIG 2011].

88. Large sections of the assessment-related rules are redacted. FBI DOIG 2011, *supra* note 87, at 5-4 to 5-6, 5-9 to 5-20, 5-22 to 5-37; *see also* Charlie Savage, *F.B.I. Agents Get Leeway to Push Privacy Bounds*, N.Y. TIMES (June 12, 2011), http://www.nytimes.com/2011/06/13/us/13fbi.html [hereinafter Savage, *F.B.I. Agents*]; Charlie Savage, *F.B.I. Focusing on Security Over Ordinary Crime*, N.Y. TIMES, Aug. 24, 2011, at A16 (finding that between 2009 and 2011, the FBI opened 82,325 assessments, 42,888 of which were to see whether people were terrorists or spies; the vast majority of assessments were closed out "without finding information that justified a more intensive inquiry."). The 2008 Domestic and Investigations Operations Guide (DIOG) was similarly lenient as to the permissible role of First Amendment activity in the opening of an assessment. FBI, DOMESTIC INVESTIGATIONS AND OPERATIONS GUIDE (2008), *available at* http://documents.nytimes.com/the-new-operations-manual-from-the-f-b-I; BERMAN, *supra* note 77, at 23–25. As with the 2008 DIOG, in the 2011 DIOG, the section on "undisclosed participation" by "confidential human sources"—informants—is largely redacted. FBI DOIG 2011, *supra* note 87, at 16-2 to 16-11.

89. In addition to taking advantage of easily obtained consent, the techniques rely on the government's easy access to massive amounts of electronic information. *See* Akbar, *supra* note 33; Berman, *supra* note 86, at 16.

90. *See* Marc Ambinder, *The New Term for the War on Terror*, ATLANTIC (May 20, 2010, 9:58 AM), http://www.theatlantic.com/politics/archive/2010/05/the-new-term-for-the-war-on-terror/56969.

tremism,[91] and then issued a "strategic implementation plan" for its strategy.[92] In so doing, the White House put its weight behind government-community engagement as a national security, CVE, and counterradicalization strategy.[93]

1. The Players

The Obama administration's community engagement plan leans heavily on law enforcement. Around the country, with DOJ and DHS at the helm, federal, state, and local police departments put significant resources toward community engagement programs with Muslim communities.[94] Echoing the imagined role of communities in community policing efforts in the ordinary criminal context, community engagement initiatives are premised on the idea that Muslim communities can serve as key partners in counterterrorism work.[95] Community engagement depends on some form of buy-in from, and contacts in, Muslim communities.[96] Cultivating these contacts is an im-

91. EMPOWERING LOCAL PARTNERS, *supra* note 40, at 2, 8 ("We must use a wide range of good governance programs . . . that may help prevent radicalization that leads to violence. This necessitates a whole-of-government approach, based on expertise of our traditional national security departments and agencies, as well as other parts of the government, including those with experience in addressing community safety issues."). The White House's 2010 National Security Strategy also mentioned, if only briefly, the importance of community engagement to counter radicalization and violent extremism. NATIONAL SECURITY STRATEGY, *supra* note 55, at 19, 29, 37; *see also* STRATEGY FOR COUNTERTERRORISM, *supra* note 55, at 6, 9–12 (2011).

92. STRATEGIC IMPLEMENTATION PLAN, *supra* note 56, at 7–21.

93. *See* Huq, *supra* note 25, at 658–63.

94. *Working With Communities Hearing*, *supra* note 40, at 10 (statement of Margo Schlanger, Officer for Civil Rights & Civil Liberties, Dep't. of Homeland Sec.); *see also* Carolee Walker, *U.S. Police Work to Build Trust With Muslim Populations*, U.S. EMBASSY (Feb. 5, 2007), http://iipdigital.usembassy.gov/st/english/article/2007/02/20070205144855bcreklaw0.714657.html.

95. *See, e.g.*, *Working With Communities Hearing*, *supra* note 40, at 4 ("Community engagement efforts . . . . focus on helping communities understand homeland security or law enforcement policies, practices, and methods. Others help those who execute these policies and methods interact respectfully with the communities with which they deal.") (statement of Bennie G. Thompson, Chairman, Comm. on Homeland Sec.); *id.* at 7 ("Our engagement efforts involve encouraging all Americans in many ethnicities, religions, and so on to take an active role in their Government, to ensure that the Government is responsive to and protects the rights of all Americans. . . . [T]his kind of engagement, soliciting the views and explaining policies from communities seeking to address complaints and grievances, is a basic part of good and responsible Government.") (statement of Margo Schlanger, Officer for Civil Rights & Civil Liberties, Dep't. of Homeland Sec.).

96. *See, e.g.*, EMPOWERING LOCAL PARTNERS, *supra* note 40, at 2–3 ("The best defenses against violent extremist ideologies are well-informed and equipped families, local communities, and local institutions. Their awareness of the threat and willingness to work with one another and government is part of our long history of community-based initiatives and partnerships dealing with a range of public safety challenges. Communities are best placed to recognize and confront the threat because violent extremists are targeting their children, families, and neighbors. Rather than blame particular communities, it is essential that we find ways to help them protect

portant aspect of these initiatives. FBI field offices, for example, aim to "identify and develop relationships with community leaders and other individuals who have influence in their communities and may be helpful conduits of information for the communities."[97] In turn "[t]hese leaders make up a network of contacts the field office can reach quickly in the event there is a threat . . . [or] when the FBI needs public assistance to support an ongoing investigation, to address concerns about FBI activities reported in the news media."[98]

While it's unclear how precisely partners are selected, community partners in these efforts include religious and civic organizations.[99] Partners have included major American Muslim civil rights organizations, mosques, community and

themselves. To do so, we must continue to ensure that all Americans understand that they are an essential part of our civic life and partners in our efforts to combat violent extremist ideologies and organizations that seek to weaken our society."). *See also Working With Communities Hearing*, *supra* note 40, at 9 ("Our engagement efforts build crucial channels of communication, both educating us about the concerns of communities affected by DHS activities and giving those communities reliable information about policies and procedures. They build trust by facilitating resolution of legitimate grievances; they reinforce a sense of shared American identity and community; and they demonstrate the collective ownership of the homeland security project.") (statement of Margo Schlanger, Officer for Civil Rights & Civil Liberties, Dep't. of Homeland Sec.); *Testimony of Secretary Napolitano Before the Senate Committee on Homeland Security and Governmental Affairs, "Eight Years After 9/11: Confronting the Terrorist Threat to the Homeland,"* DEP'T HOMELAND SEC. (Sept. 30, 2009), http://www.dhs.gov/news/2009/09/30/secretary-napolitanos-testimony-eight-years-after-911-confronting-terrorist-threat ("It is important to note that such engagement with the many key groups which with CRCL holds dialogues—such as Arab and Somali American communities, as well as Muslim and Sikh leaders—is important in and of itself as a matter of civil rights protection and smart, effective law enforcement. But by helping communities more fully engage with their government, DHS is also preempting alienation and creating buy-in to the broader shared responsibility of homeland security.").

97. *Working With Communities Hearing*, *supra* note 40, at 13 (statement of Brett Hovington, Supervisory Special Agent, Head of Comm. Relations Unit, FBI).

98. *Id.* at 14.

99. The FBI lists the following as its "Arab/Muslim/Sikh/South Asian-American Outreach" partners: the All Dulles Area Muslim Society, Allied Media Corp Multicultural Communication, American-Arab Anti-Discrimination Committee (ADC), Arab American Institute, Muslim Advocates, Muslim Public Affairs Council (MPAC), Sikh American Legal Defense and Education Fund, and the Sikh Coalition. *Our Outreach Partners*, FBI http://www.fbi.gov/about-us/partnerships_and_outreach/community_outreach/outreach_contacts (last visited Mar. 18, 2015); Laurie Goodstein, *U.S. Muslims Take on ISIS' Recruiting Machine*, N.Y. TIMES (Feb. 19, 2015), http://www.nytimes.com/2015/02/20/us/muslim-leaders-in-us-seek-to-counteract-extremist-recruiters.html. The extent of these partnerships is unclear. *See Working With Communities Hearing*, *supra* note 40, at 13 (statement of Brett Hovington, Supervisory Special Agent, Head of Comm. Relations Unit, FBI). Recent efforts to facilitate communication included the FBI briefing these organizations about impending changes to FBI guidelines before the changes were implemented. Savage, *F.B.I. Agents*, *supra* note 88.

religious leaders, scholars, and elders.[100] Individuals who participate in one community engagement initiative—such as a citizen-training initiative—often participate in other community engagement efforts.[101]

DOJ engages in extensive community engagement efforts through many of its offices and divisions. DOJ's community engagement efforts have included its Community Relations Service (CRS), Civil Rights Division, U.S. Attorneys' offices, and Office of Justice Programs.[102] The FBI undertakes its own efforts through its Community Outreach Program.[103] Each of the fifty-six FBI field offices has a community outreach program coordinated by a professional community outreach specialist or a special agent community outreach coordinator.[104] Around the country, U.S. Attorneys have met with Muslim

100. *Working With Communities Hearing*, *supra* note 40, at 13 (statement of Brett Hovington, Supervisory Special Agent, Head of Comm. Relations Unit, FBI); KUNDNANI, *supra* note 28, at 220–21. MPAC plays a lead role as a partner in these efforts. *See MPAC Coordinates a Meeting With LA Homeland Security Chief*, MUSLIM PUB. AFFAIRS COUNCIL (Feb. 19, 2003), www.mpac.org/programs/government-relations/mpac-coordinates-a-meeting-with-la-homeland-security-chief.php; *MPAC, UK Consul, Law Enforcement Officials Discuss Partnership*, MUSLIM PUB. AFFAIRS COUNCIL (Aug. 14, 2006), http://www.mpac.org/programs/government-relations/mpac-uk-consul-law-enforcement-officials-discuss-partnership.php; Matt Krasnowski, *Muslims Find Helping Law Enforcement Helps Their Future*, MUSLIM PUB. AFFAIRS COUNCIL (Oct. 8, 2005), http://www.mpac.org/programs/government-relations/muslims-find-helping-law-enforcement-helps-their-future.php; *MPAC and Law Enforcement Hold Joint News Conference on Cooperation, Partnership*, MUSLIM PUB. AFFAIRS COUNCIL (May 23, 2003), http://www.mpac.org/programs/government-relations/mpac-and-law-enforcement-hold-joint-news-conference-on-cooperation-partnership.php; SIREEN SAWAF, GOV'T RELATIONS DIR., S. CAL. MUSLIM PUB. AFFAIRS COUNSEL, RADICALIZATION, INFORMATION SHARING AND COMMUNITY OUTREACH: PROTECTING THE HOMELAND FROM HOMEGROWN TERROR (Apr. 5, 2007), *available at* http://hsc-democrats.house.gov/SiteDocuments/20070405120720-29895.pdf; SALAM AL-MARAYATI, EXEC. DIR., MUSLIM PUB. AFFAIRS COUNCIL, ASSESSING AND ADDRESSING THE THREAT: IDENTIFYING THE ROLE OF THE NATIONAL COMMISSION ON THE PREVENTION OF VIOLENT RADICALIZATION AND HOMEGROWN TERRORISM (June 14, 2007), *available at* http://chsdemocrats.house.gov/SiteDocuments/20070614135307-44582. pdf. Yet even MPAC has spoken out against counterradicalization. ALEJANDRO J. BEUTEL, MUSLIM PUB. AFFAIRS COUNCIL, BUILDING BRIDGES TO STRENGTHEN AMERICA 36 (2010), http://www.mpac.org/assets/docs/publications/building-bridges/MPAC-Building-Bridges—Complete_Unabridged_Paper.pdf ("Law enforcement must focus its energies on counterterrorism (i.e. criminal activities), not counterradicalization."). *But see* MUSLIM PUB. AFFAIRS COUNCIL, SAFE SPACES INITIATIVE: TOOLS FOR DEVELOPING HEALTHY COMMUNITIES (2014), http://www.mpac.org/assets/docs/publications/MPAC-Safe-Spaces-full.pdf.

101. *See id.*

102. Speech, Eric Holder, U.S. Att'y Gen., Speech at American Arab Anti-Discrimination Committee's 30th Anniversary National Convention (June 4, 2010), www.justice.gov/ag/speeches/2010/ag-speech-100604.html; JEROME P. BJELOPERA, CONG. RESEARCH SERV., R42553, COUNTERING VIOLENT EXTREMISM IN THE UNITED STATES 5–9 (2014); Aziz, *supra* note 25, at 17–22.

103. *Working With Communities Hearing*, *supra* note 40, at 13 (statement of Brett Hovington, Supervisory Special Agent, Head of Comm. Relations Unit, FBI).

104. *Id.* at 15–16; Speech, Eric Holder, *supra* note 102.

community leaders.[105] DHS primarily runs its engagement efforts through CRCL.[106] Many of these efforts constitute interagency or intergovernmental efforts.[107]

105. STRATEGIC IMPLEMENTATION PLAN, *supra* note 56, at 8 (2011); *Attorney General Holder Meets With Muslim Leaders in Portland*, *supra* note 40; *see also* Speech, Eric Holder, *supra* note 10 ("Just this past Tuesday, nearly a third of the nation's United States Attorneys gathered in Washington for an unprecedented meeting to work on this issue—and to identify additional ways to strengthen outreach to Muslim and Arab-American communities."); Steven M. Dettelbach, *Ohio's Muslim, Arab Neighbors*, CLEVELAND.COM (Apr. 29, 2011, 5:27 PM), http://www.cleveland.com/opinion/index.ssf/2011/04/ohios_muslim_arab_neighbors_de.html (stating that the U.S. Attorney for the Northern District of Ohio has personally met with "hundreds" of Muslims in Northern Ohio as part of counterradicalization and communication/collaboration-building efforts); Jenny A. Durkan, *Divisions Play Into Hands of Extremists,*CROSSCUT.COM (Apr. 6, 2011), http://crosscut.com/2011/04/06/op-ed/20752/Divisions-play-into-hands-extremists (stating that the U.S. Attorney for the Western District of Washington has met with Muslim communities as a way to counter extremism); Benjamin B. Wagner, *United Front Is Best Against Terrorism*, MERCED SUN-STAR (Apr. 9, 2011), http://www.mercedsunstar.com/2011/04/09/1845500_benjamin-b-wagner-united-front.html?rh=1 (stating that the U.S. Attorney for the Eastern District of California has met with Muslim community members as a way to counter radicalization and build communication, trust, and collaboration); Jim Letten, *Embracing the Diversity of Our Nation*, NOLA.COM (July 31, 2011, 7:46 AM), http://www.nola.com/opinions/index.ssf/2011/07/embracing_the_diversity_of_our.html (stating that the U.S. Attorney for the Eastern District of Louisiana has met with Muslim community members for ten years now, partly to prevent teen radicalization through Internet propaganda); *Outreach and Prevention*, OFFS. U.S. ATT'YS, http://www.justice.gov/usao/briefing_room/crt/outreach.html (last visited Mar. 18, 2015) (discussing the U.S. Attorney for the District of Connecticut's engaging in ongoing dialogue with Connecticut's Muslim, Arab, and South Asian (MASA) communities, focused on concerns about government policies, workplace bias, and religious accommodations). State parallels exist in this regard, as well. *See, e.g.*, *NJ AG Holds First Muslim Outreach Meeting*, WYNC (Sept. 5, 2012), http://www.wnyc.org/story/235307-nj-ag-holds-first-muslim-outreach-meeting; Samantha Henry, *NJ Muslims, State Officials, Continue Outreach*, NORTHJERSEY.COM (June 5, 2013, 6:23 PM), http://www.northjersey.com/news/nj-state-news/n-j-muslims-state-officials-continue-outreach-1.619493.

106. *Working With Communities Hearing*, *supra* note 40, at 10 (adding that "U.S. Citizenship and Immigration Services (USCIS), has held Naturalization Information Sessions in these communities . . . [and] officials from the Office of Policy and the Office of Intergovernmental Affairs have met repeatedly with members of these communities as well." (statement of Margo Schlanger, Officer for Civil Rights and Civil Liberties, Department of Homeland Security)); *see also Ten Years After 9/11: A Report From the 9/11 Commission Chairman: Hearing Before S. Comm. on Homeland Sec. & Gov't Affairs*, 112th Cong. 211 (2011) (prepared statement of Janet Napolitano, Secretary, Department of Homeland Security).

107. *See, e.g.*, *Community Engagement*, *supra* note 23; *Working With Communities Hearing*, *supra* note 40, at 6 (statement of Margo Schlanger, Officer for Civil Rights & Civil Liberties, Dep't. of Homeland Sec.). *See* Denis McDonough, Deputy Nat'l Sec. Advisor, Remarks at the ADAMS Center: Partnering with Communities to Prevent Violent Extremism in America (Mar. 6, 2011), *available at* http://www.whitehouse.gov/the-press-office/2011/03/06/remarks-denis-mcdonough-deputy-national-security-advisor-president-prepa ("[B]ecause the federal government cannot and should not be everywhere, we're expanding our coordination with state and local governments, including law enforcement, which work directly with communities every day.").

Outreach efforts also take place at the state and local level,[108] though these efforts are mostly derivative of federal efforts.[109] DOJ and DHS fund and encourage local police departments to initiate outreach with Muslim communities, or to refashion preexisting outreach through a counterradicalization framework.[110] Local initiatives often come out of immigrant outreach efforts: For example, in St. Paul, Minneapolis, the police department's Mus-

108. For example, since 2006, the FBI's Dallas Field Office has worked with the nearby Arlington Police Department to hold regular meetings with Muslim leaders. *Working With Communities Hearing*, *supra* note 40, at 16 (statement of Brett Hovington, Supervisory Special Agent, Head of Comm. Relations Unit, FBI). *See also, e.g.*, *Governor Chris Christie Selects Edward Dickson as Next Director of Homeland Security and Preparedness*, N.J. OFF. GOVERNOR (Feb. 9, 2012), http://www.state.nj.us/governor/news/news/552012/approved/20120209a.html; DEVAL L. PATRICK ET AL., THE COMMONWEALTH OF MASS. EXEC. OFFICE OF PUB. SAFETY & SEC., THE COMMONWEALTH OF MASSACHUSETTS STATE HOMELAND SECURITY STRATEGY 28–29 (Sept. 2007), *available at* http://www.boston.com/multimedia/news/2007/homeland_security_strategy.pdf; Press Release, Houston Police Department, HPD Officer Receives National Recognition (Sept. 30, 2005), *available at* http://www.houstontx.gov/police/nr/2005/sep/nr093005-3.htm; Press Release, Houston Police Department, HPD Meets With Local Muslim Leaders (Feb. 13, 2006), www.houstontx.gov/police/nr/2006/feb/nr021306-2.htm.

109. *See* Chappell & Gibson, *supra* note 25, at 336 (noting that community policing initiatives are vulnerable to shifts in federal funding). The most prominent local efforts take place in New York and Los Angeles. The NYPD's outreach occurs through its Community Affairs Bureau, and specifically through that bureau's New Immigration Outreach Unit. *Community Affairs Bureau: New Immigrant Outreach*, N.Y. POLICE DEP'T, http://www.nyc.gov/html/nypd/html/community_affairs/community_affairs_new_immigrant_outreach.shtml (last visited Mar. 18, 2015); *see also* ANITA KHASHU, ROBIN BUSCH & ZAINAB LATIF, VERA INST. OF JUSTICE, BUILDING STRONG POLICE-IMMIGRANT COMMUNITY RELATIONS: LESSONS FROM A NEW YORK CITY PROJECT 7 (2005), *available at* http://www.cops.usdoj.gov/Publications/Building_Police Immigrant_Relations.pdf; DAVIES ET AL., *supra* note 22, at 41–42. Concerns were raised that the CIA played a role in the NYPD program. Matt Apuzzo & Adam Goldman, *With CIA Help, NYPD Moves Covertly in Muslim Areas*, ASSOCIATED PRESS (Aug. 23, 2011), http://www.ap.org/Content/AP-In-The-News/2011/With-CIA-help-NYPD-moves-covertly-in-Muslim-areas.

The Los Angeles County Sheriff's Department and the Los Angeles Police Department engage in community outreach. In 2007, L.A. County Sherriff Lou Baca established a specific outreach unit for Muslims, dubbed the Muslim Community Affairs Unit. L.A. CNTY. SHERIFF'S DEP'T., MUSLIM COMMUNITY AFFAIRS UNIT 3 (2010), *available at* http://shq.lasdnews.net/content/uoa/MCA/MCAOverviewJan2010_LoRes.pdf (noting the unit is staffed by Muslim officers). For a history of efforts in L.A., see *The Extent of Radicalization in the American Muslim Community and That Community's Response: Hearing Before the H. Comm. on Homeland Sec.*, 112th Cong. 71 (2011) (statement of Lee Baca, Sheriff, L.A. County), *available at* http://homeland.house.gov/sites/homeland.house.gov/files/Testimony%20Baca_0.pdf; *Violent Islamist Extremism: The Role of Local Law Enforcement in Countering Violent Islamic Extremism: Hearing Before the S. Comm. on Homeland Sec. & Gov't Affairs*, 110th Cong. 4 (2007) (statement of Michael P. Downing, Commanding Officer, Counter-Terrorism/Criminal Intelligence Bureau, L.A. Police Dep't), *available at* http://www.lapdonline.org/assets/pdf/Michael%20DowningTestimonyforthe U.S.Senate-Final.PDF; *Counter-Terrorism and Special Operations Bureau (CTSOB)*, L.A. POLICE DEP'T, http://www.lapdonline.org/inside_the_lapd/content_basic_view/6502 (last visited Mar. 18, 2015).

110. *See, e.g.*, Price, *supra* note 20, at 5–7; Currier, *supra* note 20; KUNDNANI, *supra* note 28, at 219.

lim/Somali outreach was known as the African Immigrant Muslim Coordinated Outreach Program (AIMCOP).[111] DOJ provided the police department with a $670,000 grant to reframe the preexisting effort to focus on counterradicalization.[112]

2. The Mechanisms

Within the broader framework of community engagement, federal, state, and local law enforcement have stepped up efforts to establish channels of communication with Muslim communities. While on the surface these efforts are necessarily less secretive than other national security law enforcement efforts—indeed their basic function is partly aesthetic—the concrete data on these efforts is scattered and incomplete.[113] Government accounts are papered in promotional language, and community accounts are few and far between.[114] Given limited information on what these efforts entail, the parameters in which they function,[115] the absence of a central repository for information, and

111. Price, *supra* note 20, at 5–7; KUNDNANI, supra note 28, at 219; *see also* STEVAN WEINE & OSMAN AHMED, BUILDING RESILIENCE TO VIOLENT EXTREMISM AMONG SOMALI-AMERICANS IN MINNEAPOLIS-ST. PAUL (2012), http://www.start.umd.edu/sites/default/files/files/publications/Weine_BuildingResiliencetoViolentExtremism_SomaliAmericans.pdf.

112. Price, *supra* note 20, at 5–7; KUNDNANI, *supra* note 28, at 219.

113. For a recent accounting of community engagement efforts, see U.S. COMM'N ON CIVIL RIGHTS, BRIEFING REPORT: FEDERAL CIVIL RIGHTS ENGAGEMENT WITH ARAB AND MUSLIM AMERICAN COMMUNITIES POST 9/11, at 6, 33–37 (Sept. 2014), http://www.usccr.gov/pubs/ARAB_MUSLIM_9-30-14.pdf.

114. It could be argued that the relative lack of details on these community engagement programs undermines the possibility of stigma attaching to Muslim communities. That raises the question of how much, and what kind of, detail about these programs translates into stigmatization. Separate and apart from what is reported and what the public hears about, stigmatization occurs by virtue of these contacts between Muslim communities and law enforcement. For an argument about the expressive value of pretext interviews, see Sinnar, *supra* note 6, at 54 ("[T]he exchange that occurs in an interview signals the U.S. government's beliefs as to what, or whom, it considers threatening.").

115. A 2010 FBI Policy Directive on community engagement was recently made public. Corporate Policy Directive from Fed. Bureau of Investigation: Community Outreach in Field Offices (2010) [hereinafter Community Outreach in Field Offices], *available at* https://www.brennancenter.org/sites/default/files/analysis/2010%20FBI%20Outreach%20Directive.pdf. *The Intercept* recently reported the existence of 2013 guidelines for community engagement which provide that the FBI "maintain 'appropriate separate of operational and outreach efforts.'" Currier, *supra* note 20. At the same time the new guidance "'does not restrict coordination with operational divisions to obtain a better understanding of the various violations (i.e. terrorism, drugs, human trafficking, white collar crime, etc.) which may be impacting communities.'" *Id.* While the Directive raises more questions than it answers, it provides that community outreach is governed by the FBI's Domestic and Investigations Operations Guide and other rules designed to regulate the use of informants. *See generally* Community Outreach in Field Offices, *supra* note 115, at 5; Price, *supra* note 20; Community Outreach in Field Offices, *supra*, at 5.

the fast pace of growth of such efforts, the descriptions below are necessarily limited.[116]

As a counterradicalization and CVE tool, there are three primary ends at work in community engagement: relationship and trust building, norms molding, and intelligence gathering. Community engagement is unique in its emphasis on relationship and trust building at the same time that it contributes to norms molding and intelligence gathering.

Meet-and-greet efforts. Meet-and-greet efforts increase the breadth of contact between law enforcement and Muslim communities. These efforts include events, meetings, town halls, conference calls, and mosque visits. After 9/11,[117] DOJ CRS began arranging meetings across the country between law enforcement, city officials, and MASA communities.[118] Since 9/11, CRS has held more than 750 town halls and community meetings nationally.[119] FBI field offices have conducted extensive outreach in person and through conference calls.[120] The FBI has also held town halls around the country to "foster dialogue" with Muslim communities.[121] FBI field offices regularly visit local mosques and community centers, even requiring all new agents to meet with Muslim community leaders and mosques.[122]

116. In 2010, Margo Schlanger suggested the newest approaches involve transnational efforts with other countries, issue-specific engagement, promoting partnerships with state and local governments, and youth participation. *Working With Communities Hearing*, *supra* note 40, at 12 (statement of Margo Schlanger, Officer for Civil Rights & Civil Liberties, Dep't. of Homeland Sec.).

117. In the immediate aftermath of 9/11, local police departments provided support to Muslim communities in the face of hate crimes and backlash. *See, e.g.*, DAVIES ET AL., *supra* note 22, at 31–36 (mentioning efforts in Seattle and Chicago); David Thacher, *The Local Role in Homeland Security*, 39 LAW & SOC'Y REV. 635, 647–66 (2005) (mentioning efforts in Dearborn). Over time, local and state police departments have increasingly initiated community engagement with MASA communities, often through encouragement by the federal government.

118. DAVIES ET AL., *supra* note 22, at 19–20.

119. *Initiative to Combat Post-9/11 Discriminatory Backlash*, U.S. DEP'T JUST., http://www.justice.gov/crt/nordwg.php (last visited Mar. 18, 2015).

120. *Countering Radicalization: Our Other Prevention Strategy*, FBI.GOV (May 10, 2007), http://www.fbi.gov/news/stories/2007/may/radical_051007; Director Meets With Key U.S. Leaders, *supra* note 22; *Starting a Conversation: Muslim Youths See FBI Up Close*, FBI (Aug. 18, 2006), http://www.fbi.gov/news/stories/2006/august/newark_081806.

121. For example, the Atlanta, Georgia, office held a town hall at the Hamza Center in Alpharetta, Georgia; the New Haven, Connecticut, office held town hall meetings with a Pakistani-American group; the New York City field office spoke at a town hall for the Pakistani community in Jackson Heights; and the Buffalo, New York, field office hosted a town hall in partnership with the U.S. Attorneys' Office and the local Muslim Public Affairs Council chapter. *Attorney General Holder Meets With Muslim Leaders in Portland*, *supra* note 40; *Starting a Conversation*, *supra* note 120; *Working With Communities Hearing*, *supra* note 40, at 14 (statement of Brett Hovington, Supervisory Special Agent, Head of Comm. Relations Unit, FBI).

122. *E.g.*, EYE ON THE FBI (2012), *supra* note 1, at 1; EYE ON THE FBI (2011), *supra* note 1; *Building Trust*, FBI.GOV (Oct. 2, 2006), http://www.fbi.gov/news/stories/2006/october.

In part, these efforts seek to identify potential individual partners in Muslim communities.[123] In 2008, the DOJ created Specialized Community Outreach Teams (SCOT) "comprised of special agents, analysts, community outoutreach specialists, and personnel with language or other specialized skills."[124] SCOT aimed to assist "field offices with establishing new contacts in key communities"[125] and "strategically expand outreach to the Somali community to address counterterrorism-related issues."[126] SCOT provided intelligence gathering and investigative support to Field Intelligence Groups and "operational programs throughout the FBI"; it also sent information to the Behavioral Analysis Unit to "develop a baseline profile of Somali individuals that are vulnerable to being radicalized or participating in extremist activities."[127]

Advisory bodies and roundtables. The federal government also organizes regular advisory bodies and roundtables with Muslim community leaders and experts, with the hope of cultivating regular channels of communication.[128] Participants are likely to include "representatives of National organizations, community leaders from key cities, and religious and cultural scholars."[129] These meetings are designed to allow community leaders to "learn about significant Government policies" and "raise specific issues of concern."[130] The regular format involves senior government officials and, according to government documents, "emphasizes accountability for answers."[131]

Since 2010, DHS CRCL has run roundtables with federal, state, and local government officials and MASA communities around the country, about thirty

123. Sahar F. Aziz calls this deputizing of information gatherers in the community. Aziz, *supra* note 25, at 196–202.

124. Fed. Bureau of Investigation Report from Director's Office to Field Offices, Implementation of Specialized Community Outreach Team (SCOT), at 2 (Jan. 7, 2009) (on file with author); *Working With Communities Hearing*, *supra* note 40, at 17 (statement of Brett Hovington, Supervisory Special Agent, Head of Comm. Relations Unit, FBI); *see also* Speech, Eric Holder, *supra* note 102.

125. *Working With Communities Hearing*, *supra* note 40, at 17 (statement of Brett Hovington, Supervisory Special Agent, Head of Comm. Relations Unit, FBI); *see also* Speech, Eric Holder, *supra* note 102.

126. Currier, *supra* note 20 (reporting the SCOT program has ended); *see also Working With Communities Hearing*, *supra* note 40, at 17 (statement of Brett Hovington, Supervisory Special Agent, Head of Comm. Relations Unit, FBI); Speech, Eric Holder, *supra* note 102.

127. Fed. Bureau of Investigation Report from Director's Office to Field Offices, *supra* note 124, at 5, 7; Price, *supra* note 20, at 4 ("SCOT was based out of FBI Headquarters in Washington, DC, funded by the FBI's Counterterrorism Division, and staffed by counterterrorism personnel who served as supervisors and intelligence analysts.") (citations omitted).

128. These may take place in person or by phone. *Working With Communities Hearing*, *supra* note 40, at 10–11 (statement of Margo Schlanger, Officer for Civil Rights & Civil Liberties, Dep't. of Homeland Sec.) (referring to "bi-monthly community conference calls" with Somali-American leaders).

129. *Id.* at 11 (explaining the Incident Communication Coordination team).

130. *Id.* at 7.

131. It's unclear what is meant by accountability here. *Id.* at 11; *Community Engagement*, *supra* note 23.

times a year, and in eight regions with large MASA populations.[132] DHS roundtables consider "the threat posed to those communities by terrorist attempts to recruit their members" and "homeland security, civil rights, and other" issues.[133] DOJ also runs a bimonthly national roundtable involving DHS and MASA community members.[134] In 2009, Attorney General Eric Holder established an Arab/Muslim Engagement Advisory group, which works in part to improve DOJ's community engagement efforts.[135] Similarly, thirty-eight FBI field offices have established Community Engagement Councils or Multi-Cultural Advisory Councils.[136] State and local law enforcement also engage in such efforts.[137]

Training and education.[138] Exchange of expertise is central to national security community policing. Twin focal points of these efforts are training and

132. The eight regions are Detroit, Houston, Chicago, Boston, Los Angeles, Minneapolis, Columbus (Ohio), and Washington, D.C. The roundtables regularly include DHS, U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and the Transportation Security Administration, as well as U.S. Attorneys' Offices, the FBI, state and local law enforcement, and other Federal and local officials. *Working With Communities Hearing*, *supra* note 40, at 10 (statement of Margo Schlanger, Officer for Civil Rights & Civil Liberties, Dep't. of Homeland Sec.); *Community Engagement*, *supra* note 23. Also DHS's CRCL chaired local roundtables in Chicago and Detroit "involving [MASA] community leaders and numerous Federal agencies." *Working With Communities Hearing*, *supra* note 40, at 9 (statement of Margo Schlanger, Officer for Civil Rights & Civil Liberties, Dep't. of Homeland Sec.).

133. *Working With Communities Hearing*, *supra* note 40, at 10–11 (statement of Margo Schlanger, Officer for Civil Rights & Civil Liberties, Dep't. of Homeland Sec.).

134. *Id.* at 9.

135. Speech, Eric Holder, *supra* note 102.

136. *Working With Communities Hearing*, *supra* note 40, at 14 (statement of Brett Hovington, Supervisory Special Agent, Head of Comm. Relations Unit, FBI).

137. *See, e.g.*, *id.* at 23 (statement of Omar Alomari, Community Engagement Officer, Ohio Dep't of Safety, Homeland Sec. Div.) (stating that the Ohio Department of Safety, Homeland Security Division, has formed "advisory councils, imams' councils, youth councils, and women councils"); *id.* at 18 (statement of Leroy Baca, Sheriff, L.A. Cnty. Sheriff's Dep't) (reporting that the L.A. Sheriff's Department has developed multiple advisory councils, including an Interfaith Advisory Council and "ethnic" advisory councils including South Asian, Middle Eastern, "and particularly Iranian and Muslims from various nations including Pakistan, Jordan, the Gulf States, Turkey, and Azerbaijan"); SEATTLE POLICE DEP'T, MUSLIM, SIKH & ARAB ADVISORY COUNCIL 1 (2010), www.seattle.gov/police/programs/advisory/docs/MSA.pdf (stating that the Seattle Police Department started a Muslim, Sikh, and Arab Advisory Council in 2002).

138. In addition to the training of Muslim communities, there is training for law enforcement—yet federal law enforcement trainings on Islam and Muslims have come into question for reflecting anti-Muslim bias. *See, e.g.*, U.S. COMM'N ON CIVIL RIGHTS, *supra* note 113, at 16.

DOJ CRS has organized police trainings on communicating and collaborating with MASA communities. DOJ's CRS has also conducted several "Train-the-Trainer" programs, in which Arab, Muslim and Sikh American volunteers are trained to help local law enforcement and other government officials acquire a fundamental understanding of Arab, Muslim and Sikh cultures. DAVIES ET AL., *supra* note 22, at 19–20 (CRS has also developed several resources for law enforcement); *see also Twenty Plus One Things Local Law Enforcement Agencies Can Do to Prevent or Respond to Hate Incidents Against Arab-Americans, Muslims and Sikhs*, U.S. DEP'T OF JUSTICE

education for Muslim communities on the functions of law enforcement and on identifying and responding to radicalization. On law enforcement functions, the FBI runs training academies, with a key constituency in MASA communities, designed to teach the public about the FBI's work.[139]

Federal-law-enforcement-led radicalization and terrorism education occurs all over the country. DHS CRCL, along with the NCTC Directorate for Strategic and Operational Planning (DSOP), have conducted various trainings and briefings: The Community Awareness Briefing is "designed to help communities

(Nov. 16, 2001), http://www.justice.gov/archive/crs/pubs/twentyplus.htm; Community Relations Service, *The First Three to Five Seconds: Arab and Muslim Cultural Awareness Training for Law Enforcement*, U.S. DEP'T JUSTICE, https://www.dhs.gov/xlibrary/assets/training/xus/crcl/three-fiveseconds/First_Seconds_Arab_LEO/index.htm (last visited Mar. 18, 2015). DHS CRCL conducts cultural competency training relating to MASA communities for local, state, and federal law enforcement. *Working With Communities Hearing*, *supra* note 40, at 12 (statement of Margo Schlanger, Officer for Civil Rights & Civil Liberties, Dep't. of Homeland Sec.) (referring to "live," "on-site" and DVD versions of the trainings). For a state analogue, see, for example, *id.* at 23 (statement of Omar Alomari, Community Engagement Officer, Ohio Dep't of Safety, Homeland Sec. Div.). Diversification of police forces is a related enterprise. The L.A. County Sheriff's Department created a Muslim Community Affairs Unit, staffed by Muslim American deputy sheriffs. *See id.* at 20 (statement of Leroy Baca, Sheriff, L.A. Cnty. Sheriff's Dep't).

139. A more recent initiative, CREST, is a shorter version of the Citizen Academy, focused on communities where trust in the FBI is particularly low—various Muslim communities are an important demographic. *See, e.g.*, *Community Relations Executive Seminar Training (CREST)*, FBI.GOV, https://www.fbi.gov/about-us/partnerships_and_outreach/community_outreach/crest (last visited Mar. 18, 2014) (mentioning CREST presentation for Arab Americans). The FBI frames CREST as important to building relations with Muslim and Arab communities in a nonstressful setting and therefore as important to counterradicalization work. *Working With Communities Hearing*, *supra* note 40, at 14, 16 (statement of Brett Hovington, Supervisory Special Agent, Head of Comm. Relations Unit, FBI); *see also Starting a Conversation*, *supra* note 120; *CAIR-PA Participates in FBI Community Relations Training Program*, CAIR PHILA. (Dec. 15, 2010), http://pa.cair.com/civil-rights/cair-fbi-crest ("After the training, there was an open forum for concerns regarding FBI tactics used with Muslim Americans and mosques. Local leaders expressed concerns over informants penetrating mosques, agent provocateurs bringing extremist rhetoric, notable Islamophobes providing the FBI with misinformation on Islam and Muslims, imams being interviewed by FBI agents, and much more. FBI officials acknowledged that the relationship between the agency and the Muslim Americans needs to improve, and all parties agreed that more dialogue and outreach, such as the CREST program, is a step in the right direction."); Sameen Tahir-Khan, *Muslims Grill FBI Agents on Key Issues*, ARAB NEWS (Mar. 18, 2008), http://www.arabnews.com/node/310006 (describing a contentious CREST session with Muslim communities in Ohio); *Arab, Muslim, South Asian, and Sikh-American Organizations Object to FBI Comments*, AM.-ARAB ANTI-DISCRIMINATION COMM. (June 21, 2006), http://www.adc.org/index. php?id=2825 (including a letter by community groups to the FBI complaining about the FBI's framing of CREST); Arun Kumar, *Curb Terror: FBI To Rope in Muslims, Sikhs*, HINDUSTAN TIMES (June 14, 2006), http://www.hindustantimes.com/News-Feed/NM12/Curb-terror-FBI-to-rope-in-Muslims-Sikhs/Article1-109302.aspx; *Violent Islamist Extremism*, *supra* note 40, at 307–11 (statement of John Miller, Assistant Dir., Office of Pub. Affairs FBI); *FBI Citizens Academies*, FBI.GOV (Oct. 26, 2009), www.fbi.gov/news/stories/2009/october/citizensacad_102609.

and law enforcement develop the necessary understanding of al-Qa'ida and al Qaida [sic] inspired recruitment tactics" and "includes information relating to the foreign fighter recruitment narrative"; and the Community Resilience Exercise is a "half-day table-top exercise designed to improve communication . . . to share ideas on how best to build community resilience against violent extremism. . . . [and to] empower[] communities to develop comprehensive violence prevention and intervention models."[140] In Connecticut, DHS and NCTC officials held a closed-door briefing with Pakistani American physicians on "what the community needs to know" about "Radicalization and De-Radicalization Strategies."[141] The FBI's Cincinnati field office, in partnership with local U.S. Attorneys offices and the Columbus Division of Police, hosted a radicalization awareness program for members of the local Somali community.[142]

Some of these initiatives are explicitly geared toward cultivating suspicions of particular religious and political expressions. The New Jersey Office of Homeland Security and Preparedness has established antiradicalization initiatives including outreach to elders and imams of the state's largest mosques.[143] More broadly, there is a tacit educative or acculturation function in all outward facing community engagement efforts.[144] For example, youth-focused initiatives often include language about the importance of good citizenship to ward off radicalization.[145] Federal, state, and local programs have

140. OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES, *Community Engagement Section*, U.S. DEP'T OF HOMELAND SEC., http://www.dhs.gov/sites/default/files/publications/cve-as/community-engagement-dhs-crcl-poster.pdf (last visited Mar. 18, 2015).

141. PAKISTANI AM. ASS'N OF CONN. ET AL., UNDERSTANDING RADICALIZATION AND DE-RADICALIZATION STRATEGIES 8 (June 19, 2010).

142. A DECADE LOST, *supra* note 19, at 83.

143. *Governor Chris Christie Selects Edward Dickson as Next Director of Homeland Security and Preparedness*, *supra* note 108.

144. *E.g.*, KUNDNANI, supra note 28, at 218–19 ("The thinking was that the more young Somalis could be given opportunities to interact with people outside their own community, the more they would likely integrate successfully into mainstream American society . . . and trust police officers.").

145. *Working With Communities Hearing*, *supra* note 40, at 3 (statement of Michael T. McCaul, Chair, Subcomm. on Intelligence, Information Sharing, & Terrorism Risk Assessment) (referring to youth-focused community engagement efforts like the "Adopt-a-School/Junior Special Agent program" as aimed to "introduce youth to the FBI and to encourage good citizenship."); *id.* at 12 (statement of Margo Schlanger, Officer for Civil Rights & Civil Liberties, Dep't. of Homeland Sec.) (referring to youth as "the frontlines" for "terrorist recruitment," and therefore "perhaps the most vital audience for a message of inclusion, esteem, and fair treatment" and stating that DHS must "welcome young people in American Arab, Muslim, Sikh, and South Asian communities to join our Nation's collective security efforts; we must empower them to be connected rather than alienated."); *id.* at 26 (statement of Omar Alomari, Community Engagement Officer, Ohio Dep't of Safety, Homeland Sec. Div.) (speaking of Ohio Homeland Security's efforts).

included engagement through athletic leagues, YWCA programming, resume-writing workshops, and self-defense lessons.[146]

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Government officials tout these community engagement efforts as the pinnacle of good governance, providing Muslim communities with opportunities to educate and hold the government accountable, and providing the government with the chance to learn from Muslim communities.[147] Indeed, community engagement initiatives may seem preferable to, or at least less coercive than, other forms of policing. One might argue that the overt nature of community engagement efforts obviates any concern about coercion or consent. Communities of color—overpoliced as they are—must know that their interactions with the police are recorded and shared. (The FBI thinks otherwise: The recently released 2009 FBI Policy Directive on community engagement asserts that "members of the public contacted through a community outreach activity generally do not have an expectation that information about them will be maintained in an FBI file or database."[148]) How can communities later complain that they are under watch, even as they exchange pleasantries at a mosque outreach event with the local FBI agent? This is to miss, however, a larger set of normative concerns about the dialectic between the exercise of police power and the ways it restricts the options available to communities of color. The remainder of this Article attempts to unpack these concerns.

II. DISORDER AND RACIALIZATION

Community policing's elasticity has been integral to its currency and longevity. An approach by local police in the 1970s and 1980s to working with poor, urban Black communities in response to ordinary crime and historical distrust

146. KUNDNANI, *supra* note 28, at 220–21; Price, *supra* note 20, at 5–7; Dave Zirin, *Not a Game: How the NYPD Uses Sports for Surveillance*, NATION (Sept. 10, 2013, 9:00 AM), http://www.thenation.com/blog/176082/not-game-how-nypd-uses-sports-surveillance; Eileen Sullivan, *Community Outreach Key to Obama Counterterror Plan*, ASSOCIATED PRESS (May 25, 2013, 11:00 AM), http://bigstory.ap.org/article/community-outreach-key-obama-counterterror-plan; Press Release, FBI Honolulu Div., Kalihi-Waena Elementary School Community Outreach Event (March 18, 2011), *available at* http://www.fbi.gov/honolulu/press-releases/2011/hn031811.htm. Interestingly, the recently released 2010 FBI Directive provides that in its community outreach efforts, the FBI may engage in "discourse [about] criminal violence or terrorist activities that may be associated with a particular group or set of beliefs" but may not "engage in any effort to dissuade individuals from adopting, practicing, or espousing a particular religious or political belief." Community Outreach in Field Offices, *supra* note 115, at 4.

147. *See generally Working With Communities Hearing*, *supra* note 40.

148. Community Outreach in Field Offices, *supra* note 115, at 4.

has proved sufficiently flexible to be put to use in service of the post-9/11 paradigm. Federal law enforcement has adopted community-policing-like tactics nationwide with Muslim communities in response to national security concerns, deploying the vocabulary and aspirations of community policing.[149]

While community engagement is regularly invoked in the same breath, or included in the same conceptual universe, as community policing, unnamed is the dynamic between counterradicalization/CVE and broken windows theory. At first blush, there is an obvious parallelism: Counterradicalization defines the contours of community engagement as broken windows often shaped practices of community policing. Both counterradicalization and broken windows theories are preventative theories of crime control laid atop efforts at bettering relationships between marginalized communities and law enforcement.[150] Both theories also motivate traditional policing tactics and approaches beyond those that claim as their central normative force partnerships with the community. Yet there are important theoretical and material distinctions between broken windows and counterradicalization, and between community policing and community engagement.

In focusing on the critiques of community policing inflected by broken windows theory, I do not mean to suggest that all community policing is defined by broken windows theory, or that order maintenance (which is more directly linked to broken windows, in theory as well as practice) follows from community policing.[151] Community policing and broken windows theory can certainly be

149. In announcing its strategy to counter violent extremism in 2011, for example, the White House framed its efforts in the language of community policing: "Law enforcement and government officials for decades have understood the critical importance of building relationships, based on trust, with the communities they serve." STRATEGIC IMPLEMENTATION PLAN, *supra* note 56, at 1. DHS and DOJ materials also invoke community policing in discussing the importance of community engagement in the national security context. *See, e.g.*, HOMELAND SECURITY ADVISORY COUNCIL, COUNTERING VIOLENT EXTREMISM (CVE) WORKING GROUP 8–12 (2010), https://www.dhs.gov/xlibrary/assets/hsac_cve_working_group_recommendations.pdf. More recently, the International Association of Chiefs of Police, in collaboration with the DOJ's Community Oriented Policing Services, published a report that refers to the federal government's, and state and local law enforcement's, incorporation of community policing and CVE work: "Applying the same community policing principles that have helped reduce general crime, violence, and social disorder to terrorism and violent extremism can also aid in preventing future attacks." INT'L ASS'N OF CHIEFS OF POLICE, USING COMMUNITY POLICING TO COUNTER VIOLENT EXTREMISM: FIVE KEY PRINCIPLES FOR LAW ENFORCEMENT 2 (2014), *available at* http:// ric-zai-inc.com/Publications/cops-p299-pub.pdf.

150. For a critique of the broader rise of actuarial methods in criminal law and punishment, see BERNARD HARCOURT, AGAINST PREDICTION: PUNISHING & POLICING IN AN ACTUARIAL AGE 3 (2007).

151. It's also worth noting that a broken windows theory approach could encompass a wide range of policing practices.

decoupled:[152] Community policing's center of gravity is in communication and collaboration with local communities, while broken windows theory centers police discretion to pursue disorder and minor crimes.[153] In practice—and in particular in the 1980s and 1990s—the divide has proven more illusory.[154] When community policing and broken windows theory have been linked in practice and in study, the combination provides an important lens through which to see the problems that emerge when a theory of crime control that attaches predictive authority to social markers of difference shapes police communication with marginalized communities. The literature examining community policing shaped by broken windows theory provides insights on similar problems that emerge when community engagement is shaped by counterradicalization.

152. More recently, Tracey Meares has expressed hesitation about broken windows, and rearticulated her commitments to community policing through the lens of the procedural justice literature. Tracey Meares, Broken Windows, Neighborhoods and the Legitimacy of Law Enforcement, or How I Fell In and Out of Love with Zimbardo, Lecture Before the Netherlands Institution for Study of Crime & Law Enforcement Conference on Broken Windows Policing (Oct. 24, 2013) (draft on file with author).

153. Dorothy E. Roberts, *Foreword: Race, Vagueness, and the Social Meaning of Order-Maintenance Policing*, 89 J. CRIM. L. & CRIMINOLOGY 775, 776–77 (1999). For a helpful definition of disorder, see ROBERT J. SAMPSON, GREAT AMERICAN CITY: CHICAGO AND THE ENDURING NEIGHBORHOOD EFFECT 121 (2012) ("Social disorder is commonly understood to mean public behavior that is considered threatening, like verbal harassment, open solicitation for prostitution, public intoxication, and rowdy groups of young males on the streets. Physical markers of disorder typically refer to graffiti on buildings, abandoned cars, garbage in the streets, and the proverbial broken window.").

154. BERNARD HARCOURT, ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING 46–47 (2001). At the time, the literature and public discourse were oft-fixed on community policing in the form of aggressive enforcement of minor crimes—which could be and often was referred to as order-maintenance or broken windows policing. Bernard Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 294 (1998) (order-maintenance policing is a version of community policing); Tracey L. Meares & Dan Kahan, *Black, White and Gray: A Reply to Alschuler and Schulhofer*, 1998 U. CHI. LEGAL F. 245, 245, 256–59 (1998) [hereinafter Meares & Kahan, *Black, White and Gray*] (conflating Chicago's anti-gang-loitering ordinance with order-maintenance policing, community policing, and broken windows theory); Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows:* Terry, *Race, and Disorder in New York City*, 28 FORDHAM URB. L.J. 457, 467–68 (2000) (referring to order-maintenance policing as an adaptation of community policing).

For criticism of 1990s Chicago antiloitering ordinance, see, for example, Harcourt, *supra*. Chicago's criminal ban on "loitering" "with no apparent purpose" invested what the Supreme Court ultimately determined was unconstitutional discretion in police to flex their muscle. *Chicago v. Morales*, 527 U.S. 41, 47, 64 (1999); *see also* Dan M. Kahan & Tracy L. Meares, *Foreword: The Coming Crisis of Criminal Procedure* 86 GEO. L.J. 1153 (1997) [hereinafter Kahan & Meares, *Coming Crisis*]. Even the NYPD's "quality of life" initiative of the 1990s—by which the police force aggressively policed misdemeanors like graffiti, loitering, and public urination—has been characterized as a community policing initiative. HARCOURT, *supra*, at 46–47.

This Part first provides background on the emergence of broken windows theory and community policing in the ordinary criminal context, with its focus on African American communities. Then it explains how counterradicalization has come to racialize American Muslims, providing context necessary to understand the coercive qualities of community engagement.

A. Community Policing, Broken Windows, Ordinary Crime[155]

The basic intuition behind community policing is that increased communication and collaboration between police and communities will benefit both parties and cultivate a stronger ethos of civic engagement in marginalized communities—those with less social power and socioeconomic standing.[156] The precise causal mechanics of this process, however, are far from clear.[157] While the literature takes as a starting point the poor relationships between law enforcement and marginalized communities, it generally fails to meaningfully engage the question of how community policing practices should account for the power differential between police and those communities, instead assuming that the communication will itself have a democracy-enhancing function.[158] Proponents advocate for more interaction and flexibility, but provide little guidance on how to ensure that communication and police action is not predetermined by the more powerful police prerogative.[159]

155. There are many origin stories for community policing. *E.g.*, Tracy L. Meares, *Praying for Community Policing*, 90 CALIF. L. REV. 1593, 1600–01 (2002) (framing community policing as a result of interest in police as problem-solvers, decades-long interest in involving communities in policing, and organizational adaption within police); David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1699–1708 (2005) (observing that community policing reflects changing expectations of police and changing notions of democracy).

156. Police will be more informed—and in turn, more grounded in and responsive to—community needs and concerns. Mark Harrison Moore, *Problem-Solving and Community Policing*, 15 CRIME & JUST. 99, 123 (1992); Stephen D. Mastrofski & James J. Willis, *Police Organization Continuity and Change: Into the Twenty-First Century*, 39 CRIME & JUST. 55, 117–18 (2010); Michael D. Reisig, *Community and Problem-Oriented Policing*, 39 CRIME & JUST. 1, 5–6 (2010); *see also* NIGEL FIELDING, COMMUNITY POLICING 162–82 (1995).

157. The push for partnerships reflected the emerging awareness in governments that "crime control is 'beyond the state.'" DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY 123–27 (2001) (defining "beyond the state" in two ways: (1) "the institutions of the criminal justice state are severely limited . . . and cannot by themselves succeed in the maintenance of 'law and order'"; and (2) "there are crime control mechanisms operating outside the state's boundaries, and relatively independently of its policies.").

158. *Cf.* Meares, *supra* note 155, at 1601–19 (suggesting that for the communication to be effective, it must occur within some social norm control architecture).

159. Even those law enforcement agencies that support community policing philosophies often fail to make the required changes to their organizational structure to allow for meaningful community policing. *See* Gerasimos A. Gianakis & G. John Davis, III, *Reinventing or Repackaging Public Services? The Case of Community-Oriented Policing*, 58 PUB. ADMIN. REV. 485, 494–96 (1998).

Beyond its basic orientation toward communication, the theory and practices of community policing are muddled.[160] Reading the literature, one encounters an avalanche of terminology: preventive policing,[161] problem-oriented policing, neighborhood policing, hot spots policing, third-party policing, order-maintenance policing, zero-tolerance policing, quality-of-life policing, broken windows theory, social norms theory, intelligence-led policing, and so on.[162] These concepts represent an evolving spectrum of approaches to policing.[163] Of-

160. In their National Institute of Justice study, Jerome Skolnick and David Bayley identify four principles of community policing: "community-based crime prevention, reorientation of patrol, increased police accountability, and decentralization of command." WILLIAM LYONS, THE POLITICS OF COMMUNITY POLICING: REARRANGING THE POWER TO PUNISH 35 (1999) (citing the Skolnick and Bayley study); *see also* WESLEY G. SKOGAN, COMMUNITY POLICING: CAN IT WORK? 6–7 (2006); Jerome H. Skolnick & David H. Bayley, *Theme and Variation in Community Policing*, 10 CRIME & JUST. 1, 5 (1988); Peter Somerville, *Understanding Community Policing*, 32 POLICING INT'L J. POLICE STRATEGIES & MGMT. 261, 264 (2009); Herman Goldstein, *Toward Community-Oriented Policing: Potential, Basic Requirements, and Threshold Questions*, 33 CRIME & DELINQ. 6, 8–10 (1987).

161. *See, e.g.*, GERALD D. ROBIN, COMMUNITY POLICING: ORIGINS, ELEMENTS, IMPLEMENTATION, ASSESSMENT 41–74 (2000).

162. Reisig, *supra* note 156, at 24 (community policing is "undergird" by a "variety of theoretical frameworks," including "broken windows and social disorganization theory"); Matthew C. Scheider, Robert Chapman & Amy Schapiro, *Towards the Unification of Policing Innovations Under Community Policing*, 32 POLICING INT'L J. POLICE STRATEGIES & MGMT. 694, 694 (2009) ("Over the last 25 years the policing field has been subject to a dizzying array of innovation including: community policing, problem-oriented policing, broken windows, intelligence-led policing, Compstat, third-party policing, and hot spots."); Tracey L. Meares, *Critic: Third-Party Policing: A Critical View*, *in* POLICE INNOVATION: CONTRASTING PERSPECTIVES 207, 207 (David Weisburd & Anthony A. Braga eds., 2006) (explaining that third-party policing works "to persuade or to coerce third parties, such as landlords, parents, local government regulators, and business owners to take on some responsibility for preventing crime or reducing crime problems"); Debra Livingston, *Police Discretion and the Quality of Life in Public Spaces: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551, 556 (1997) (referring to "quality of life enforcement") (internal quotation marks omitted); SKLANSKY, *supra* note 31, at 120–22 (explaining neighborhood and hot spots policing). "Community policing has become the ubiquitous common terminology for describing the current era in policing—much as police professionalism served, a generation ago, as a catchall concept for practically any effort . . . aimed at improving law enforcement." *Id.* at 114 (alteration in original) (citation and internal quotation marks omitted).

163. Police histories and police function are highly contested, and have given rise to countless police histories. A careful chronicler of the complex trends in American policing, David Sklansky has written powerfully about the shifting emphasis in police theory from the 1960s onward, pointing out these theories motivate the exercise of police power, rather than to serve as a concrete set of tactics or procedures. The 1960s was the era of "police professionalism"—during which time department authority was to be "centralized and rationalized" so that police could "focus on crime suppression . . . objectively and scientifically, free from political influence." By the 1980s and 1990s, community policing started to eclipse the emphasis on professionalism. Community policing advocates argued that police departments should decentralize authority and "broaden[] their focus from crime control to a range of other goals," and "select[] and pursue[] these goals in consultation and cooperation with the public." The post-9/11 era, Sklansky notes, is marked with a return to the centralized norms of professionalism through the guise of "intelligence-led policing"

ten these concepts fill in the vagaries of or complement one on another, but they also clash and confuse; where one set of practices ends and the other begins is often unclear and subject to debate.[164]

Broken windows theory defines much community policing in the context of ordinary crime—one could even argue that it is a central spoke in contemporary preventive policing concepts. For purposes of this Article, a basic account of the theory's adaptation to policing should suffice.

In 1969, in a famous psychology experiment, two cars were left in two very different neighborhoods without license plates, and with hoods open: one in wealthy Palo Alto, and one in a poor neighborhood in the Bronx.[165] The Bronx car was quickly stripped of its valuables. The Palo Alto car went untouched—until the study's progenitor publicly smashed in the windows, precipitating others to codemolish and rob the car.[166]

In 1982, social scientists George L. Kelling and James Q. Wilson announced their broken windows theory in *The Atlantic*, parlaying the psychology experiment into a theory of crime control: They argued that outward signs of "disorder" invite law-breaking criminality by signaling to would-be criminals that the geography's inhabitants lack effective practices of social cohesion and control.[167] If the police can fix the visible signs of disorder (broken windows), the argument goes, they can reduce serious criminal activity. The translation from psychology experiment to preventive policing theory[168] was not the only translation at work, however. Kelling and Wilson also forwarded broken windows as a theory to motivate collaboration between police and the policed.[169] The *Atlantic* story featured a 1970s foot patrol initiative in which

and "predictive policing"—a "business model and managerial philosophy for objective decision-making using data and intelligence analysis." David Alan Sklansky, *The Persistent Pull of Police Professionalism*, NEW PERSP. POLICING, Mar. 2011, at 1, 1–3 (internal quotation marks omitted).

164. For example, while DOJ claims that intelligence-led policing is consistent with community policing, Sklansky argues that "[t]he guiding philosophy [of intelligence-led policing] is bureaucratic and technocratic rather than collaborative and community-based." Sklansky, *supra* note 163, at 2–4.

165. George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC (Mar. 1, 1982), http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465.

166. *Id.*

167. *Id.* ("[D]isorder and crime are usually inextricably linked, in a kind of developmental sequence.").

168. Jeffrey Fagan and Garth Davies have critiqued the NYPD's co-optation of broken windows theory into order-maintenance policing, arguing that while broken windows theory emphasized alternatives to arrest and prosecution, order-maintenance policing chooses instead to criminalize disorder. Fagan & Davies, *supra* note 154, at 471–72.

169. Another way to read the theory—and indeed it has been defended this way—is not that it suggests a correlation between disorder and crime, but that it correlates disorder and *fear* of crime. *See generally* Joshua C. Hinkle & David Weisburd, *The Irony of Broken Windows Policing: A Micro-Place*

foot patrol worked with the "regulars" or "decent folk" to protect them from "disorderly people"—"disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed."[170]

In the legal academy, social norm theorists[171] championed community policing efforts inflected by broken windows theory.[172] Community policing was framed as a powerful tool for the government to address the legitimacy deficit in African American communities, wherein relationships with police were defined by histories of distrust and police violence.[173] But community policing al-

Study of the Relationship Between Disorder, Focused Police Crackdowns and Fear of Crime, 36 J. CRIM. JUST. 503 (2008). Fear of crime will cause individuals to withdraw from the community, and that withdrawal will mean a decrease in social control in the community, opening up space for criminal activity. *Id.* at 3–4.

170. Kelling & Wilson, *supra* note 165 (internal quotation marks omitted); *see also* POLICE FOUNDATION, THE NEWARK FOOT PATROL EXPERIMENT 3 (1981).

171. The basic kernel: The government should account for the social meaning and social contexts of its actions and those it governs. Tracey L. Meares, *Norms, Legitimacy and Law Enforcement*, 79 OR. L. REV. 391, 391–98 (2000); Dan M. Kahan, *Social Meaning and the Economic Analysis of Crime*, 27 J. LEGAL STUD. 609, 610–22 (1998); Dan M. Kahan, *Privatizing Criminal Law: Strategies for Private Norm Enforcement in the Inner City*, 46 UCLA L. REV. 1858, 1860 (1999) [hereinafter Kahan, *Privatizing Criminal Law*]; Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CAL. L. REV. 1513, 1513–14 (2002). Social norms theory emerged as a response to the focus of law and economics on individualistic self-interested behavior, observing that crime reflects social meaning and context. *See* Robert C. Ellickson, *Law and Economics Discovers Social Norms*, 27 J. LEGAL STUD. 537, 539 (1998); Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349, 362–67 (1997). For social norms theorists, see generally Eric A. Posner, *The Regulation of Groups: The Influence of Legal and Non-Legal Sanctions on Collective Action*, 63 U. CHI. L. REV. 133 (1996); Eric A. Posner, *Symbols, Signals, and Social Norms in Politics and the Law*, 27 J. LEGAL STUD. 765 (1998); Richard H. McAdams, *Signaling Discount Rates: Law, Norms, and Economic Methodology*, 110 YALE L.J. 625 (2001) (reviewing ERIC A. POSNER, LAW AND SOCIAL NORMS, (2000)); *see also* Lawrence Lessig, *The New Chicago School*, 27 J. LEGAL STUD. 661 (1998); Robert Weisberg, *Norms and Criminal Law, and the Norms of Criminal Law Scholarship*, 93 J. CRIM. L. & CRIMINOLOGY 467 (2003).

172. Tracey Meares and Dan Kahan were the primary champions. *See, e.g.*, Meares, *supra* note 171, at 391–98; Kahan & Meares, *Coming Crisis*, *supra* note 154, at 1160–61 (defining a "new community policing" different than when the same techniques were put to use decades ago as a way to exclude communities of color). Meares and Kahan argued for a much broader set of reforms in criminal law and procedure that would prioritize what they framed as self-determination of communities of color in the question of constitutionality. *Id.* at 1153–56; Meares & Kahan, *Black, White and Gray*, *supra* note 154, at 245–46. Importantly, a larger chorus of voices—proponents of larger criminal justice reform—bolstered Meares and Kahan's arguments; these reformists favored community approaches to criminal law, if not broken windows theory. *E.g.*, Anthony V. Alfieri, *Community Prosecutors*, 90 CALIF. L. REV. 1465, 1465–66, 73–74 (2002); Anthony C. Thompson, *It Takes a Community to Prosecute*, 77 NOTRE DAME L. REV. 321, 330–32 (2002).

173. Kahan, *Privatizing Criminal Law*, *supra* note 171, at 1860–62; Tracey L. Meares, *Place and Crime*, 73 CHI.-KENT L. REV. 669, 678 (1998).

so had its critics,[174] many of whom pointed to how broken windows theory—even in a community policing guise—had shifted the focus of policing from criminal conduct to "disorder." Broken windows theory assumed dichotomies between "order and disorder," "insider and outsider," and the "law-abiding and lawless;"[175] assumed these categories were stable and observable; and then privileged order, insiders, and the law abiding over their counterparts.[176]

The meanings of disorder, outsiders, and lawlessness were left to police discretion, assuming the police would not inevitably draw from preexisting terrains of difference, and particularly the anti-Black racial text linking Blackness and criminality, in making these distinctions.[177] Indeed, more recent work has contested broken windows theory's assumption that the "perception of disorder is governed by actual, observed levels of disorder."[178] Instead, "racial and immigrant concentration proved more powerful predictors of *perceived* disorder than did carefully observed disorder."[179] Broken windows theory, in its construction of the disorderly, the lawless, and the outsider as legitimate subjects of policing, rendered already vulnerable individuals as even more vulnerable to policing.[180] Critics also pointed out that there was no empirical evidence to suggest that policing order decreased crime[181] or increased civic engagement.[182]

174. Bernard Harcourt and Dorothy Roberts were most prominent among them. *See* HARCOURT, *supra* note 154; Roberts, *supra* note 153.

175. Harcourt argued against the assumption that people are categorically good (law abiding) or bad (lawless). HARCOURT, *supra* note 154, at 26–27; *see also* Meares, *supra* note 173, at 683 ("Multiple roles are inevitable in poor, structurally weak communities where it is not uncommon for law-abiding citizens to decry law breaking even as they rely on law breakers for necessary goods such as money and security. . . . Some individual victims in high crime inner city neighborhoods, especially young men, are not always victims. Instead, they oscillate between being a victim in one instance and an offender the next.").

176. HARCOURT, *supra* note 154, at 26–27.

177. Roberts, *supra* note 153, at 801–03.

178. SAMPSON, *supra* note 153, at 135.

179. *Id.* at 135–37 (emphasis added).

180. HARCOURT, *supra* note 154, at 128 ("The order maintenance strategy, it turns out, depends on arresting people on meaningless charges.").

181. *E.g.*, *id.* at 57–121; Harcourt, *supra* note 154, at 295–96, 308–10. *See also* HARCOURT, *supra* note 154, at 258 n.6; SAMPSON, *supra* note 153, at 126–29.

182. Even Tracy Meares admitted as much. Meares, *supra* note 162, at 214–18. Roberts, *supra* note 153, at 810–11; HARCOURT, *supra* note 154, at 58. There is also a rich social sciences literature questioning broken windows theory's basic claims on normative, empirical, and statistical grounds. *See, e.g.*, Jelte M. Wicherts & Marjan Bakker, *Broken Windows, Mediocre Methods, and Substandard Statistics*, 17 GROUP PROCESSES & INTERGROUP REL. 388 (2014); Hinkle & Weisburd, *supra* note 169, at 503–12.

B. Radicalization, Counterradicalization, and National Security[183]

Like broken windows theory, radicalization theory has been highly contested and yet broadly influential in shaping contemporary policing. While U.S. government accounts take for granted a problem with radicalization that warrants government intervention, the literatures of governments, academics, experts, and civil society stakeholders around the world express profound disagreement over the meaning of radicalization, and the nature and extent of threat embodied by Muslims.[184] Radicalization discourse purports to predict future terrorism, drawing from studies of prior terrorist acts to identify trends and details that will aid in identifying future terrorists. In so doing, radicalization redefines and expands the legitimate scope of government concern from terrorism—a question of political violence, of crime, even of war crime—to radicalization—a question of religious and political cultures and beliefs.

Before moving further into the problems inherent in overlaying radicalization theory onto community engagement, it is worth exploring the similarities and differences between the work of radicalization theory and broken windows theory. The primary similarities are threefold. First, both radicalization and broken windows are preventative theories of crime control, calling for prophylactic state action against noncriminal behavior. Second, while both theories appear concerned with disorder or radicalization in the abstract, their practical effect is to bring considerable scrutiny to communities already marginalized by virtue of race and religion. As a practical matter, broken windows theory foregrounds race and inequality as instigators or signs of disorder.[185] Counterradicalization and CVE, in practice and in theory, are almost exclusively focused on Muslims.[186] Moreover, when manifest in community policing and community engagement approaches, the theories work to cultivate partnerships with community members in order to increase the legitimacy *and reach* of law enforcement into the subject communities. Third, in addition to shaping community policing/engagement

183. Akin to the embattled terrain of the term "terrorism," radicalization theories operate "at the contested boundary between politics and science, between academic expertise and the state." LISA STAMPNITZKY, DISCIPLINING TERROR: HOW EXPERTS INVITED "TERRORISM" 13 (2013); *see also* Aziz Z. Huq, *Modeling Terrorist Radicalization*, 2 DUKE J.L. & SOC. CHANGE 39, 40 (2010) (pointing to the particular problems associated with the state's epistemological engagement in the realm of terrorism studies).

184. Huq, *supra* note 25, at 651–52. For a report that distinguishes between violent and non-violent extremism, see JAMIE BARTLETT ET AL., THE EDGE OF VIOLENCE: A RADICAL APPROACH TO EXTREMISM (2010).

185. SAMPSON, *supra* note 153, at 135–37.

186. For a deeper exploration of this, see Kundnani, *supra* note 51. CVE is also focused on Muslims. *See* Letter from ACLU et al. to Lisa O. Monaco, supra note 29.

approaches, both theories have had great influence on the broader field of policing tactics in the relevant communities (and beyond).

There are at least two important differences. In terms of (contested) causal claims, broken windows theory focuses on physical signs of disorder as signals of deteriorating social order, whereas radicalization emphasizes ideological currents of disorder as motivators for acts of terrorism. Radicalization's concern is predicated on a false belief in the teleological character of Islam—that if Muslims communities witness conservative religious practice and critical politics, they will view such currents as acceptable and gravitate toward radicalism, thereby producing more terrorists. Second, the theories arguably have propelled different types of police action. Whereas broken windows theory leads to aggressive enforcement against misdemeanor and minor crimes, counterradicalization produces increased surveillance.[187] This distinction has its limits, since broken windows policing serves an intelligence-gathering function, and counter-radicalization shapes prosecutorial priorities. But while both theories expand the role of the state and the blueprint of policing, their mechanics are distinct.

To be clear, I'm less concerned with anaologies between the causal mechanics of the theories, and more concerned with how the theories construct the categories of the disorderly and the radical, and the implications those constructions have for policing and the subject communities.

1. Blurring Dissent and Difference With Violence

Even aside from the disproportionate focus on politically motivated violence by Muslims in terrorism studies, there are key definitional problems with radicalization discourse. Most fundamentally, the terms radicalization and extremism are used sloppily and with unclear meaning, with a causal connection assumed between radical ideas and committing acts of terrorism.[188]

187. Increased surveillance is also an aspect of traditional community policing. Geoffrey P. Alpert, Roger Dunham & Alex Piquero, *On the Study of Neighborhoods and the Police*, *in* COMMUNITY POLICING: CONTEMPORARY READINGS 309, 313 (Geoffrey P. Alpert & Alex Piquero eds., 1998) ("Informal control may take the form of close surveillance."). Indeed, a primary role of increased foot patrols—a paradigmatic community policing tactic—is precisely to increase surveillance in a neighborhood. *Cf.* POLICE FOUNDATION, *supra* note 170, at 39.

188. Kundnani, *supra* note 51, at 3; KUNDNANI, *supra* note 28, at 286; Mark Sedgwick, *The Concept of Radicalization as a Source of Confusion*, 22 TERRORISM & POL. VIOLENCE 479, 479 (2010); Jamie Bartlett, Jonathan Birdwell & Michael King, THE EDGE OF VIOLENCE: A RADICAL APPROACH TO EXTREMISM 29 (2010). *See generally* Jasbir K. Puar & Amit S. Rai, *Monster, Terrorist, Fag: The War on Terrorism and the Production of Docile Patriots*, 20 SOC. TEXT 117, 124 (2002); JASBIR K. PUAR, TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES (2007). Such scrutiny is also targeted at left-wing, antiwar, and anti-imperialist groups. *See, e.g.*, Michael Greenberg, *The Police and the Protesters*, *supra* note 77; Josh Harkinson, *How a Radical*

Empirical research "has emphatically and repeatedly concluded" that there is no single terrorist profile and no obvious markers for the process by which someone becomes a terrorist.[189] The process by which people embrace violence is not linear but complex.[190] Importantly, studies of so-called homegrown terrorism also reject the ideas that Islam and terrorism are linked, or that observing the Muslim faith constitutes a step toward violence.[191] Nor is there data to suggest that Muslims are becoming more radical in their views, let alone more violent.[192] National security prosecutions in the headlines provide a skewed sense of the threat; the vast majority of those prosecutions do not charge defendants with any violent crime, or with any intent to commit violent crime, but instead with material support for terrorism—a very broad concept typically far removed from violence.[193]

Despite their continued hold on law enforcement, the NYPD and FBI reports are transparent paper tigers—now deconstructed many times over.[194] The stages and factors of radicalization are internally inconsistent and vague enough to justify surveillance of any person who identifies as Muslim, or is linked with Muslim religious or political community. Consider, for example, that the NYPD

Leftist Became the FBI's BFF, MOTHER JONES, http://www.motherjones.com/politics/2011/08/brandon-darby-anarchist-fbi-terrorism (last visited Mar. 18, 2015).

189. FAIZA PATEL, BRENNAN CTR. FOR JUSTICE, RETHINKING RADICALIZATION, 8–12 (2001) (citing Sageman and MI5 studies, as well as a Rand Corporation study, and a DHS-supported academic study); *see also* Sedgwick, *supra* note 188, at 479 (identifying a general confusion and indeterminacy surrounding use of the term). While Robert Mueller has publicly stated that "[t]hese individuals have no typical profile; their experiences an motives are often distinct," Robert S. Mueller, III, Dir., FBI, Statement Before the S. Comm. on Homeland Sec. & Gov't Affairs, (Sept. 19, 2012), the FBI Intelligence Assessment remains in effect. Akbar, *supra* note 33, at 824 n.46. *See* FBI COUNTERTERRORISM DIV., *supra* note 43.

190. PATEL, *supra* note 189, at 10.

191. *Id.*

192. PEW FORUM ON RELIGION & PUBLIC LIFE, U.S. RELIGIOUS LANDSCAPE SURVEY: RELIGIOUS AFFLICTION: DIVERSE AND DYNAMIC 40 (2008), http://religions.pewforum.org/pdf/report-religious-landscape-study-full.pdf; PEW RESEARCH CTR., MUSLIM AMERICANS: NO SIGNS OF GROWTH IN ALIENATION OR SUPPORT FOR EXTREMISM 8–9 (2011), http://www.people-press.org/files/legacy-pdf/Muslim%20American%20Report%2010-02-12%20fix.pdf (showing substantial majority of Muslim Americans have liberal attitudes on current political issues and identify as Democrats); *Little Support for Terrorism Among Muslim Americans*, PEW FORUM ON RELIGION AND PUB. LIFE (Dec. 17, 2009), http://www.pewforum.org/2009/12/17/little-support-for-terrorism-among-muslim-americans. *See also Islamic, yet Integrated*, ECONOMIST (Sept. 6, 2014), www.economist.com/news/united-states/21615611-why-muslims-fare-better-america-europe-islamic-yet-integrated.

193. TERRORIST TRIAL REPORT CARD: SEPTEMBER 11, 2001–SEPTEMBER 11, 2011, CTR. ON L. & SEC. 19–21 (2011); Aaronson, *supra* note 64; ILLUSION OF JUSTICE, *supra* note 80, at 1–4. For a careful dissection of a particular high-profile prosecution—that of Syed Fahad Hashmi—see Laura Rovner & Jeanne Theoharis, *Preferring Order to Justice*, 61 AM. U. L. REV. 1331 (2012).

194. *E.g.*, PATEL, *supra* note 189, at 1; Huq, *supra* note 183, at 39; Akbar, *supra* note 33.

report marks as "radicalization incubators" "cafes, cab driver hangouts, flophouses, prisons, student associations, nongovernmental organizations, hookah (water pipe) bars, butcher shops and book stores": mostly locations where Muslims or those from Muslim-majority countries are likely to spend their time, whether for religious, political, or sentimental reasons.[195]

The reports offer little to no data in support of their ambitious conclusions, with the lack of substantiation reflecting and reconstituting the marginalization and stigmatization of American Muslims. The data on which the reports rely include national security prosecutions involving questionable tactics by law enforcement: constructing the plot, providing the means, and incentivizing the conduct. In other words, the data results in part from cases in which the FBI created or molded the behavior it then purported to model.[196] In other cases, the defendants never committed a violent act, confounding the link between their behavior and a willingness to commit terrorist acts.[197] Overall, there remains no trustworthy empirical account of radicalization that suggests the idea has explanatory or predictive power.[198]

2. Racializing Muslims

Under the guise of predicting future terrorism, radicalization provides a guide for government activity. In so doing, it redefines and expands the relevant field of state concern: from terrorism to radicalization in Muslim communities. Marking religious and political activities as the indicators of radicalization, the discourse links religious and political practices in Muslim communities with the likelihood of terrorism—inviting state scrutiny into the halls of Muslim communities, and changing the terms of engagement with the state for Muslims. The theory creates the Muslim, her religious and political habits, as an object of policing.

195. SILBER & BHATT, *supra* note 45, at 18, 22, 68, 70–77.

196. *See* Said, *supra* note 82, at 732–38; *see also* Aaronson, *supra* note 64; ILLUSION OF JUSTICE, *supra* note 80, at 21–55. Of course the problems with the entrapment defense are not limited to the national security context. *See, e.g.*, Hampton v. United States, 425 U.S. 484 (1976).

197. See Akbar, *supra* note 33, at 828–31.

198. *See, e.g.*, PATEL, *supra* note 189, at 1; Huq, *supra* note 25, at 639; Huq, *supra* note 183, at 40; Kundani, *supra* note 51, at 3. On the mechanics of counterradicalization, the government's projected dialectic between the state's desire to produce national security and the role of community partnerships is fuzzy at best. Aziz Huq explores three *potential* causal mechanisms that might contribute to the social production of counterterrorism: ideological competition ("ideological competition raises terrorism's propagandizing and recruitment costs"); ethical anchoring ("informal social sanctions can impose a frictional barrier to illegal behavior); and cooperative coproduction ("private individuals can substitute more fine-grained epistemic instruments for the blunter investigative methods government otherwise employs"). Huq, *supra* note 25, at 673.

The theory is racially productive,[199] contributing to the racialization of American Muslims.[200]

I use the term racialization knowing that it imperfectly describes the shape and nature of the stigma that has attached to American Muslim communities after 9/11, not least because African Americans make up a considerable portion of the Muslim population in the United States. American Muslims are unique in their diversity, varying by race, language, ethnicity, nationality, and class. Still, racialization best approximates the process by which a diverse group of people become lumped together by stigma, stereotype, and fear, all of which draw from a range of physical attributes and signifiers, mobilized by law, as a method of control and subordination. As with other subordinated and racialized groups (for example, Blacks, Latinos, Native Americans), there are for example, physical attributes associated with Muslim identity, from skin color to facial hair to garb.[201] By focusing on the post-9/11 era, I do not mean to minimize the reality that Muslims were racialized before 9/11, or that a significant portion of American Muslim communities are African American and have long been central to the story of race in America.

While crime is the primary lens through which African Americans figure in the American imaginary, terrorism is the lens through which Muslims appear. African American and Muslim identities are carved by and in opposition to particularized types of suspicion. So the politics of respectability of each group is distinct—with the pressure on African Americans to disavow and respond to Black-on-Black crime, and for American Muslims to disavow and respond to terrorism.

199. For the idea of racial productivity, see Devon W. Carbado, *(E)Racing the Fourth Amendment*, 100 MICH. L. REV. 946, 971 (2002) (discussing the idea that "law constructs (not simply avoids) and reifies (not simply discovers) race"). While he focused on the way that Fourth Amendment doctrine burdens Blacks, Carbado called for an understanding of "race-based policing as a multiracial social phenomenon." *Id.* at 967; *see also, e.g.*, Tracey Maclin, *"Black and Blue" Encounters—Some Preliminary Thoughts About Fourth Amendment Seizures: Should Race Matter?*, 26 VAL. U. L. REV. 243 (1991).

200. As with other predictive and actuarial methods, one of the costs will be a ratchet effect, whereby the targeted population becomes increasingly represented within the offender group by virtue of the more intense targeting. The "pull of prediction," then, effectively "displace[s] a fundamental tenet of just punishment, namely that similarly situated persons should be treated equally regardless of their membership in any particular ethnic, racial, or other group." *See* HARCOURT, *supra* note 154, at 273. ("[T]he profiled population becomes an even larger proportion of the carceral population—larger in relation to its representation among actual offenders—than the non-profiled population."); Bernard Harcourt, *A Readers Companion to Against Prediction: A Reply to Ariela Gross, Yoram Margalioth, and Yoav Sapir on Economic Modeling, Selective Incapacitation, Governmentality and Race*, 33 L. & SOC. INQUIRY 265, 281 (2008).

201. Other scholars have used the language of racialization for similar reasons. *See, e.g.*, Ahmad, *supra* note 37; Nagwa Ibrahim, *The Origins of Muslim Racialization in U.S. Law*, 7 UCLA J. ISLAMIC & NEAR E. L. 121 (2008).

a. Creating Muslim Suspects

The categories of "law-abiding" and "lawless,"[202] "radical" and "moderate," are both overinclusive and indeterminate,[203] depending entirely for their meaning on police deployment and creating deep vulnerability for Muslim communities.[204] Muslims are forced to carry the stigma borne of such intense scrutiny and are powerless to escape it, given that both playing up and minimizing Muslim identity can be seen as potentially suspicious.[205] Evidence suggests, however, that Muslims have changed their behaviors in response to the reality and perception of extensive surveillance. For example, individuals report signaling their Muslimness less openly, by praying at home rather than at the mosque, avoiding political conversation in mosques and other Muslim-specific spaces, or reducing donations to Muslim organizations. Similarly, mosques may ask speakers to avoid political content, including criticism of U.S. foreign policy.[206]

Radicalization discourse crystallizes the Muslim as a figure of legitimate police scrutiny.[207] As Harcourt observed in the context of broken windows theory, "the theory of deterrence and punishment focuses on the disorderly person rather than the criminal act, and thereby facilitates a policy of control, relocation, and exclusion of the disorderly"; "the category of the disorderly is the product, in part,

202. The law-abiding/lawless dichotomy does seem to be imported into the national security context. A recent press release announcing a new material support indictment against two Somali Americans stated: "The law-abiding members of Minnesota's Somali community are great partners in our fight against terror." Press Release, U.S. Dep't of Justice, Two Minnesotans Charged With Conspiracy to Provide Material Support to the Islamic State of Irag and the Levant (Nov. 24, 2014), http://www.fbi.gov/minneapolis/press-releases/2014/two-minnesotans-charged-with-conspiracy-to-provide-material-support-to-the-islamic-state-of-iraq-and-the-levant.

203. In the British context, "[t]he vague language of 'moderate' and 'extremist' was easily exploited to silence nonconformist views, whether from an Islamist ideological viewpoint or simply individual opinions about Britain's foreign policy." Arun Kundnani, *The Wrong Way to Prevent Homegrown Terrorism*, CNN (Dec. 16, 2010, 8:25 AM), www.cnn.com/2010/OPINION/12/16/kundnani.prevent.muslim.

204. *See* ARUN KUNDNANI, INST. OF RACE RELATIONS, SPOOKED! HOW NOT TO PREVENT VIOLENT EXTREMISM 35 (2009) (discussing in the context of the British Prevent program that the distinction between "moderate" and "extreme" Muslims is flexible enough to exploit marginalized critics of government policies.").

205. *See, e.g.*, SHAMAS & ARASTU, *supra* note 83.

206. *Id.*; Teresa Watanabe & Paloma Esquivel, *L.A. Area Muslims Say FBI Surveillance Has a Chilling Effect on Their Free Speech and Religious Practices*, L.A. TIMES (Mar. 1, 2009), http://articles.latimes.com/2009/mar/01/local/me-muslim1; Alexander J. O'Connor & Farhana Jahan, *Under Surveillance and Overwrought: American Muslims' Emotional and Behavioral Responses for Government Surveillance*, 8 J. MUSLIM MENTAL HEALTH 95, 191 (2014); ILLUSION OF JUSTICE, *supra* note 80, at 165–73.

207. Of course, suspicion of Muslims pre-dates radicalization theory and even 9/11. *See, e.g.*, Ahmad, *supra* note 37, at 1282. Radicalization theory does not create a new threat out of whole cloth, but shifts the terms of the conversation.

of the [policing] itself."[208] Broken windows theory does its work in a two-step dialectic: It shifts the object of policing from crime to the out-of-place person, and in so doing, constructs the out-of-place person as someone who needs to be surveilled and controlled by the state.

Similarly, radicalization theory and policing shift law enforcement's attention from actual plans to commit a terrorist crime to Muslim religious and political activity by literally marking observance of Muslim religious practice, or expressions of political solidarity with other Muslims, as within its causal framework. The radical Muslim, by virtue of noncriminal behavior—attending a *halaqa* (religious study group), visiting family in Pakistan, growing a beard, or paying off a mortgage[209]—embodies the potential threat of terrorism, and in so doing becomes a legitimate object of policing even when engaging in wholly noncriminal (now suspicious) behavior. "[P]oliticization," "[b]ecoming involved in social activism and community issues," and "watching jihadi videos . . . that highlight atrocities committed against Muslims" bring you within the third stage. It is not until the fourth stage that the theory concerns itself with any intent to undertake a criminal act. In other words, you could be three-fourths radicalized—a nearly full blown threat, one would imagine—and have yet to form any concrete thoughts of committing any crime. You might have radical beliefs, but no intent to commit a violent crime. The conservative Muslim, rolling up his pant sleeve in accord with a certain religious practice, or attending the Friday sermon criticizing U.S. foreign policy, embodies this disorder, and the potential for a much larger threat.

The religious and political vectors of radicalization theory work in different, if intersecting, ways; both vectors reflect concerns with the ideas and activities of Muslim communities. The religious vector marks basic observant behavior and conservative modes of Muslim religious practice as radical, and therefore worthy of suspicion. "Giving up cigarettes, drinking, [and] gambling," for example, or "[w]earing traditional Islamic clothing" are markers of radicalization.[210] It matters both what type of Islam you believe in and what you practice: whether your actions (do you follow to a tee the *hadith* of the Prophet Muhammad?) or level of devotion and study (do you regularly attend a *halaqa*?) adhere to more conservative modes of practice. The "more Muslim" you are in the religious sense, the more radical, and the more potentially threatening you appear to be.[211]

208. HARCOURT, *supra* note 154, at 162.
209. SILBER & BHATT, *supra* note 45, at 24, 32–33.
210. *Id.* at 33.
211. Practices understood to exhibit a Salafi worldview are particularly flagged. *E.g.*, *id.* at 33–37. In the United States, Salafism tends to be understood as a homogeneous, fundamentalist strain of

The political vector marks your relationship to the project of American statecraft vis à vis your concern and commune with other Muslims. The ideological questions are awash in a loyalty calculus, focused on whether you foreground concern with Muslim community and Muslim suffering at home and abroad, or the imperatives of the U.S. government in effectuating its policies. Implicit here is the idea that such concern is compatible with American identity only to the extent that it comes second or does not compete with U.S. government interests.[212]

The activity dimensions focus on Muslim engagement with political issues vis à vis other Muslims and the U.S. government. Does this person or community protest U.S. foreign or national security policy? Does this person or community comply with requests to inform on the local mosque when asked by the FBI to do so?

The radicalization and counterradicalization discourses have clear implications for the meaning of good citizenship on the part of American Muslims: To be a good citizen is to have a compliant relationship with the state, rather than to relate from an oppositional or contesting stance. Are you with us or against us?[213] remains the question. If radicalization creates ideological force for the idea that the state should monitor Muslims, and radical Muslims in particular, then counterradicalization initiatives operationalize the distinction, offering American Muslims an opening to perform their Americanness by partnering with the government.[214] The distinction emerges not simply from how Muslims signal their identity or allegiance with regard to Muslim religious practices or other Muslims. The distinction between the radical and American Muslim emerges in part from how Muslims relate to U.S. statecraft or U.S. government initiatives.

Islam—indeed *the* primary strain of concern. To the contrary, Salafism is a mode of religious interpretation and practice with various geographical and historical iterations. The term "Salafism" is insufficiently concrete or specific to refer to any particular sect or subset of Muslims. As much as Islam and terrorism should not be conflated, both as a matter of ethics and based on facts, conservative religious belief and terrorism should not be considered interchangeable either. *See* Akbar, *supra* note 33, at 835 & accompanying notes.

212. To put this in perspective, while a recent Pew survey found 47 percent of American Muslims polled "think of themselves first as Muslim, rather than as an American," polls of other communities have found that "42% of Christians (including 65% of Christian Evangelicals) said they were Christian first, rather than American." ALEJANDRO J. BEUTEL, MUSLIM PUB. AFFAIRS COUNCIL, BUILDING BRIDGES TO STRENGTHEN AMERICA: FORGING AN EFFECTIVE COUNTERTERRORISM ENTERPRISE BETWEEN MUSLIM AMERICANS & LAW ENFORCEMENT 14 (2014) (internal quotation marks omitted) (citing various Pew sources).

213. *See* Address, George W. Bush, President, Address to a Joint Session of Congress and the American People (Sept. 20, 2001), http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html.

214. For additional commentary on the good-bad Muslim dichotomy, see generally MAHMOOD MAMDANI, GOOD MUSLIM, BAD MUSLIM: AMERICA, THE COLD WAR, AND THE ROOTS OF TERROR (2004); Aziz, *supra* note 25.

Counterradicalization creates friction between loyalty to the U.S. project and practices of Muslim identity. In particular, the Muslim concept of the *ummah*, or global Muslim community, comes into conflict with counterradicalization commitments. Resistance to, or criticism of, American foreign policy in Muslim lands is a factor of radicalization.[215] So is concern for Muslim casualties abroad, or discrimination against Muslims in the United States.[216] Traveling abroad to Muslim countries, even for hyphenated second-generation Americans visiting family, suggests suspicious connection.[217]

In classifying Muslims who attend mosque, who travel or send money abroad, or who oppose the U.S. drone policy in Yemen and Pakistan, as within the process of radicalization toward terrorism, the theory marks individuals and geographies as sufficiently different to be outside the protections of the state, transforming them into legitimate objects of state scrutiny.[218] Radical Muslims become the lawless out-of-place subjects deserving of little protection.[219]

Counterradicalization cleaves Muslim from American identities in another way, equating cooperation with the state with Americanness and loyalty, and dissent with Muslimness, radicalization, and terrorism. Efforts at partnering with Muslim communities in counterradicalization efforts create opportunities for American Muslims to signal their allegiance. Like the "regulars" and the "lawful" in the broken windows account, those considered American Muslims are partners in counterradicalization—they stand for the state's values, will cooperate with the police in their efforts to monitor and influence coreligionists, and will step down in the face of conflict. By exercising a right of refusal to cooperate with the state, the American Muslim moves toward radicalism, the radical emerging in response to the state's policing.

215. *See, e.g.*, FBI COUNTERTERRORISM DIV., *supra* note 43, at 7–8; SILBER & BHATT, *supra* note 45, at 32; Deposition of Thomas Galati at 30–31, Handschu v. Special Servs. Div., No. 71 Civ. 2203 (S.D.N.Y. June 28, 2002), *available at* http://www.nyclu.org/files/releases/Handschu_Galati_6.28.12.pdf.

216. *See, e.g.*, Adam Serwer, *NYPD: Muslims' Conversations About Anti-Muslim Bias Justify Spying on Muslims*, MOTHER JONES (Aug. 23, 2012, 5:00 AM), http://www.motherjones.com/politics/2012/08/nypd-muslim-surveillance-transcript-redacted.

217. SILBER & BHATT, *supra* note 45, at 45.

218. There is an anxiety about the line between radical and illegal in the national security context. ROBERT WASSERMAN, U.S. DEPT. OF JUSTICE, GUIDANCE FOR BUILDING COMMUNITIES OF TRUST (2010), http://www.cops.usdoj.gov/files/RIC/Publications/e071021293_BuildingCommTrust.pdf ("The line between radicalism and violent extremism can be difficult to see when espoused beliefs run contrary to the majority public opinion.").

219. *See* Weisberg, *supra* note 171.

b. Creating the Terms of Racial Obedience

Radicalization and counterradicalization place identity pressures on American Muslims in their interactions with each other, the public, and the state.[220] To cooperate—no matter the substance of law enforcement's demand and expectation—is to validate one's American identity. To refuse or to dissent is to express radicalism, or at least openness to it.[221]

Radicalization policing creates the "racial obedience toward, and fear of, the police," manifested in "particular kinds of performances . . . . [t]o signal acquiescence and respectability."[222] Of course this racialized pressure emerges from a larger social context—people of color are subject to more frequent and more severe police scrutiny, and they are fearful that refusing the police will stoke racial animosity or race-based suspicion and aggravate an already bad situation.[223] Immigrants in particular are less likely to know their rights. In all these contexts, accountability is minimal, so the police "have an incentive to exploit vulnerabilities."[224]

Radicalization theory has created a post-9/11 reality in which Muslims "are more vulnerable to compliance requests, more likely to comply, and have to give up more privacy to do so."[225] Radicalization-informed policing produces a loyalty discourse in which there are "good" and "bad" Muslims, and thereby "entrenches the idea of [Muslimness] as a crime of identity,"[226] "encourages group surveillance," and incentivizes Muslims "to be available for, indeed advocate for, white

220. Akbar, *supra* note 33, at 877–78.

221. In a successful proposal for DOJ funding for its Muslim/Somali community outreach, the St. Paul Police Department claimed it would "identify radicalized individuals . . . who refuse to cooperate with our efforts." City of Saint Paul Police Dep't, Grant Proposal: African Immigrant Muslim Coordinated Outreach Program (AIMCOP) (on file with author). Ultimately AIMCOP "does not appear to have informed the Muslim/Somali community that failure to participate in the Police Athletic League or YWCA programs could result in being put on a list of radicalized youth . . . . [The police] maintain that 'the intelligence aspect never came to fruition.'" Price, *supra* note 20, at 5–7.

222. Carbado, *supra* note 199, at 966. In this discussion, I borrow Carbado's language about policing and blackness to consider the dynamics of policing and Muslimness.

223. *Id.* at 971–73.

224. *Id.*

225. *Id.* at 1020.

226. *Id.* at 1041 ("[T]he very notion that there are 'good' and 'bad' black people has political currency and makes sense only because there is already a presumption of blackness as bad . . . . [F]ew people, in the context of thinking about crime, would conceptualize whiteness or the category of 'white people' in terms of 'good' and 'bad.' The dichotomy is intelligible vis-à-vis blacks because people understand it to mean 'not *all* black people are bad. There are exceptions. *Some* of them are good.").

racial inspection of [Muslimness]."[227] As with the politics of respectability in Black communities, this approach does not protect the "good" Muslims but, instead, renders all Muslims "vulnerable to racial profiling."[228]

Indeed, radicalization creates geographies of suspicion. While the geography of broken windows theory was effectively one of class and race—hoisting the specter of the poor Black neighborhood—the sphere of radicalization is religious and cultural (though of course inflected by race and class as well).[229] In large metropolitan centers, there are certainly physically contiguous neighborhoods where Muslims of similar racial or class backgrounds reside. In the rest of the country, however, Muslims of different classes, races, nationalities, and linguistic and ethnic groups are more dispersed. In these places, government surveillance creates a different kind of geography out of the places where Muslims gather: the mosque, the halal butcher, or the Indian or Somali grocery store. And visiting these places makes you vulnerable to police scrutiny.[230]

Beyond the policing practices themselves, there is the realm of public discourse and debate in which Muslims make their choices. The most public and theatrical government initiative drawing attention to radicalization occurred with Peter King's first in a series of hearings before the House Homeland Security Committee in 2011 and 2012, meant to address "a crisis of radicalization to violence . . . within the Muslim-American community"[231]

227. *Id.* at 1041–42.

228. *Id.* at 1043.

229. As mentioned earlier, the FBI and NYPD have created maps visualizing the racial, religious, ethnic, and national demographics of Muslim neighborhoods and institutions. *See* Akbar, *supra* note 33, at 855–59. These become the policed locales, the raced geographies. These spaces are raced by virtue of the fact that people of color gather there; but the act of gathering itself makes the location a racialized site of policing.

230. *See, e.g.*, NYPD INTELLIGENCE DIV., DEMOGRAPHICS UNIT, EGYPTIAN LOCATIONS OF INTEREST REPORT 8–13, 16–21 (July 7, 2006) [hereinafter NYPD EGYPTIAN LOCATIONS REPORT], *available at* http://hosted.ap.org/specials/interactives/documents/nypd/nypd-egypt.pdf; NYPD INTELLIGENCE DIV., DEMOGRAPHICS UNIT, NEWARK, NEW JERSEY DEMOGRAPHICS REPORT 20–21, 25–33 (Sept. 25, 2007), *available at* http://hosted.ap.org/specials/interactives/documents/nypd/nypd_newark.pdf. Some of the entries for businesses denote whether the NYPD is aware of the owners' involvement in crimes like "credit card and WIC fraud" or "credit card fraud and prostitution." NYPD EGYPTIAN LOCATIONS REPORT, *supra*, at 11. An entry in this report notes a bookstore "was involved in terrorist activities in the past." *Id.* at 12. The terrorist activities referenced seem to be those at issue in the prosecution against Siraj Matin, in which the Joint Terrorism Task Force (JTTF) deployed undercover police to collect intelligence and instigate terrorist activity. The Matin prosecution has been widely criticized. *See, e.g.*, ILLUSION OF JUSTICE, *supra* note 80; Said, *supra* note 82.

231. *See Compilation of Hearings on Islamist Radicalization—Volume III: Hearings Before the H. Comm. on Homeland Sec.*, 112th Cong. 75 (2012) (statement of Rep. Peter T. King, Chairman H. Comm. on Homeland Sec.); *Compilation of Hearings on Islamist Radicalization—Volume II: Joint Hearing Before*

and a refusal by Muslims to cooperate.[232] Those called by King as representatives of Muslim communities testified that American Muslims were ignoring concerns with radicalization and could do more to cooperate.[233] The witnesses lampooned a number of mainstream and prominent American Muslim advocacy organizations—Muslim Advocates, the Council on American Islamic Relations, and the Muslim Public Affairs Council, all of which have met regularly with federal, state, and local city officials—for undermining Muslim cooperation with law enforcement efforts. The organizations and other community leaders came under fire especially for their recent initiatives counseling community members to retain a lawyer before dealing with the FBI.[234]

A loyalty discourse thus took shape during the King hearings, as cooperation with law enforcement was counterposed with Muslims' exercise of their right to counsel.[235] In essence, Muslims were encouraged to waive their rights and cooperate with the state without undertaking any method of self-protection, as a way to demonstrate their Americanness and their loyalty to the American project. No scrutiny was given to the law enforcement efforts with which they were being asked to cooperate.[236]

While the King hearing is a particularly egregious example of a government initiative that creates a binary between Muslim and American identity, other initatives contribute to the same identity cleavage.[237] For example, the White House's various counterradicalization, CVE, and community-

the H. Comm. on Homeland Sec. & the S. Comm. on Homeland Sec. & Governmental Affairs, 112th Cong. 2 (2011).

232. *See, e.g.*, Sheryl Gay Stolberg & Laurie Goodstein, *Domestic Terrorism Hearing Opens With Contrasting Views of Dangers*, N.Y. TIMES, Mar. 11, 2011, at A15.

233. The primary witnesses at the hearing were M. Zuhdi Jasser, President of the American Islamic Forum of Democracy, Melvin Bledsoe, and Abdirizak Bihi, father and uncle, respectively, of "radicalized" young men, and L.A. County Sheriff Lee Baca. *Compilation of Hearings on Islamist Radicalization—Volume I: Hearings Before the H. Comm. on Homeland Sec.*, 112th Cong. (2011).

234. The committee staff propped up a National Lawyers' Guild Know Your Rights poster advising of the Fifth Amendment right to silence to illustrate the concern. *See National Lawyer's Guild Rejects Scapegoating in Hearings Targeting Muslims*, NAT'L LAWYERS GUILD (Mar. 9, 2011), https://www.nlg.org/news/national-lawyers-guild-rejects-scapegoating-hearings-targeting-muslims; Amna Akbar, *Erasures and Resistance: What Peter King's Hearing Said. And What It Didn't*, SAMAR MAGAZINE (May 31, 2011), http://www.samarmagazine.org/archive/articles/353.

235. KUNDNANI, *supra* note 28, at 215–17.

236. *See* Amna Akbar & Ramzi Kassem, *Are Muslims Allowed Rights?*, AL JAZEERA (Nov. 28, 2011, 12:43 PM), http://www.aljazeera.com/indepth/opinion/2011/11/201111241550193829O.html.

237. In a dramatic reflection of how this pressure is lived, Linda Sarsour, the National Advocacy Director of the National Network for Arab American Communities, recently asked: "I'm an American and I'm a Muslim. Should I cut myself in half?" *The Rachel Maddow Show* (NBC television broadcast Feb. 18, 2015), *available at* http://www.msnbc.com/rachel-maddow-show/watch/obama-anti-muslim-bigotry-has-no-place-in-us-401221187568.

government partnerships have all contributed to this discourse, charging all American Muslims with the task of protecting the nation against terrorist threats.[238] In this context, joining hands with counterradicalization efforts, whatever they may entail, becomes the good American thing to do, while refusing becomes the wrong, terrorist, or Muslim option.

c. Racializing Ideology

In addition to shaping modes of political engagement with the state, radicalization discourse and counterradicalization practice affect the parameters of religious and political conversations and contestation by rendering certain viewpoints or topics as off limits.[239] Of course it is not just the existence of the discourse at work here—it is the recurring and regularized interactions with police that serve as constant reminders of the stakes for American Muslims.

Much of terrorism and radicalization discourses are enshrouded in a politics of "anti-knowledge."[240] Terrorism studies tend to "reduce complex social, historical, and political dynamics."[241] Chief among the "constraints shaping what can be said about terrorism" is "denial of the possibility of rational causes, and the attribution of terrorism to pure evil."[242] The mainstream narrative "implies that, once an individual has adopted an extremist religious ideology, terrorism will result, irrespective of political context or any calculation on the part of any organisation or social movement."[243] Similarly, radicalization and violent extremism discourse displaces any attention on political context with a focus on theological and psychological factors that supposedly foment radicalization.[244]

238. *See* Huq, *supra* note 25, at 705–07.

239. Rascoff has pointed to concerns with the government's role in legitimizing and delegitimizing modes of religious practice as acceptable or beyond the pale. Rascoff, *supra* note 25.

240. STAMPNITZKY, *supra* note 183, at 187–88. Stampnitzky also documents that terrorism experts' views have regularly been discounted by policy makers. *Id.*

241. Puar & Rai, *supra* note 188, at 124; *see also* PUAR, *supra* note 188, at 51–61. For an example, consider Kundnani's treatment of what the U.S. account misses about why Somali Americans might travel to Somalia to join al Shabaab. KUNDNANI, *supra* note 28, at 222–28.

242. STAMPNITZKY, *supra* note 183, at 180.

243. Arun Kundnani, *A Decade Lost: Rethinking Radicalisation and Extremism*, CLAYSTONE 15 (Jan. 2015), http://www.claystone.org.uk/wp-content/uploads/2015/01/Claystone-rethinking-radicalisation.pdf.

244. KUNDNANI, *supra* note 28. Kundnani points to Olivier Roy's work, where he argues that the "leap into terrorism" is not religiously inspired, but better seen as sharing "many factors with other forms of dissent, either political (the ultra left), or behavioral: the fascination for sudden suicidal violence as illustrated by the paradigm of random shootings in schools (the 'Columbine syndrome')." Kundnani, *supra* note 51, at 21.

Radicalization theory marks certain topics or viewpoints as beyond the pale by suggesting that they are un-American or likely to draw government scrutiny.[245] As a result, radicalization discourse puts pressure on the contours of conversation among Muslim communities about the public issues of our times to which many American Muslims are particularly attuned.[246] American Muslims are thus less likely to vocalize concerns about the exercise of American war power in Iraq, Afghanistan, Pakistan, Somalia, Yemen, and so on.[247] The absence of Muslim voices on these issues is particularly notable given how much of contemporary U.S. foreign policy is focused on Muslim populations. Equally important, the space for religious debate—on questions such as the meaning of "jihad" or different modes of interpretation—in mosques and other Muslim community space has also shrunk and warped.[248] "Since 9/11, mosque leaders have been under pressure to eject anyone expressing radical views, rather than engaging with them and seeking to challenge their religious interpretation, address their political frustrations, or meet their emotional needs."[249]

Moreover, radicalization discourse may serve to pathologize complex social problems, displace focus from the role of government activity in creating those problems, and place the burden of solving them on already marginalized communities. Broken windows theory could be criticized along the same lines: The underlying roots of ordinary crime—poverty, joblessness, mass incarceration, disenfranchisement—disappear under the discourse of "disorder." In the context of national security, the complicated political historical terrain between the U.S. government and Muslim communities within the United States on the one hand, and the United States, Muslim-majority countries, and international terrorist groups on the other, disappears under the discourse of radicalization and the terrorist Other.

245. SHAMAS & ARASTU, *supra* note 83; Amna Akbar, *How Tarek Mehanna Went to Prison for a Thought Crime*, NATION (Dec. 31, 2013), http://www.thenation.com/article/177750/how-tarek-mehanna-went-prison-thought-crime.

246. SHAMAS & ARASTU, *supra* note 83.

247. *Id.*; Akbar, *supra* note 245.

248. Arun Kundnani, *Missing the Best Chance to Prevent Terror Bombing*, CNN (May 7, 2013, 8:10 AM), http://www.cnn.com/2013/05/07/opinion/kundnani-terror-mosques-surveillance; KUNDNANI, *supra* note 204, at 35 (in the context of the British program, Prevent undermined "exactly the kind of radical discussions of political issues that would need to occur if young people are to be won over and support for illegitimate political violence diminished.").

249. Kundnani, *supra* note 248.

III. COMMUNITY ENGAGEMENT'S COERCION

While community engagement aims to build relationships with Muslim communities, to gain trust and enhance communication, it also functions as a technique of policing radicalization, encouraging all-encompassing surveillance of Muslim communities and working to cultivate in Muslims a suspicion of coreligionists' religiosity and politicization.[250] Community engagement becomes yet another pressure point at which Muslims must participate in surveillance or else suggest disloyalty to the American project. Given its anchoring in counterradicalization, the order that community engagement seeks to impose draws from ideas about the proper ways to practice Islam in America, the right balance between religious and secular life, and a demand for a certain form of political assimilation.[251] It closes, or at least narrows, possibilities for meaningful contestation and collaboration, while obscuring, and even reinforcing, the power differential between Muslim communities and law enforcement. The space between how community engagement appears—as a democracy- or inclusion-enhancing venture—and the work it actually does to reinforce coercive policing is what this Part explores.

Throughout the foregoing discussion, I have emphasized the dangers associated with law enforcement's community engagement efforts—in particular how counterradicalization and community engagement work to cultivate pro-law-enforcement attitudes and affectations, such that Muslims open up their communities in various ways for government inspection and regulation. In so emphasizing, I do not mean to disparage civic engagement, which is no doubt constitutive of democracy. The quality of civic engagement has to matter, though, if the end is democracy of any meaningfully participatory or accountable variety, and if the goal is to bring outsider communities into the fold. I am not convinced that encouraging marginalized citizens' interactions with their government is constructive of democracy when it is achieved through coercive means—which do not allow for contestation of terms or meaningful input, and instead provide pressure on communities to participate in the very policing tactics that create the gulf in trust that propels the need for forays into trust building. When this participation and consent are shaped by a pressure to perform

250. In the British context, all-encompassing surveillance has also been an aspect of similar community engagement efforts. KUNDNANI, *supra* note 204, at 28–34; Paul Thomas, *Failed and Friendless: The UK's 'Preventing Violent Extremism' Programme*, 12 BRIT. J. POL. & INT'L REL. 442, 448–50 (2010).

251. DOJ recognizes this tension in its community policing literature, which warns against "misusing terms such as radical, radicalism, extremist, and violent extremism." WASSERMAN, *supra* note 218, at 37.

Americanness and to dispel racialized assumptions about loyalty and allegiance, the coercion raises acute equality and antisubordination concerns.

The federal government has an interest in community engagement apart from democracy: national security. Through the surveillance and acculturation of communities marked as vulnerable to anti-American persuasion, the government hopes to prevent attacks on its (non-Muslim) citizens. But while a fear of Muslims or so-called Islamic terrorism fuels the push for community engagement, the data does not substantiate the extent of the concerns. When one considers the size of the global Muslim population, or even simply the American Muslim population, the few acts of terrorism committed by Muslims in the United States are infinitesimal, including as compared to other threats.[252] The bloated concern with terrorism seems to be motivated more by politics than by facts.

Community policing generates its moral authority by tapping into the ideas of community support and democratic legitimacy, but the slippery quality of the term community, and the terrain of inequality that gives rise to the push for such programs, provokes two nested concerns. First, community engagement programs are largely top down, with federal government prerogatives imposed on Muslim communities. Community engagement creates the aesthetics of democracy and inclusion without necessarily reflecting any substantive commitments to those values. Concretely, the police may select partners that ratify preexisting police practices,[253] or pursue community engagement primarily as another entry point for surveillance and norms molding, as opposed to a source of accountability or contestation. The appearance of collaboration, without any real possibility of significant contestation, may undermine rather than bolster democracy, augmenting the coercive power of the state. Moreover, to the extent community engagement draws on racialized pressures on Muslims to perform their Americanness, and disavow their Muslimness, as a way to prove their American bona fides, the police partnerships exacerbate autonomy, equality, and subordination concerns implicated in the broader regime of policing radicalization. Second, the police partnerships may exacerbate hierarchies within Muslim communities.

252. CHARLES KURZMAN, TRIANGLE CTR. ON TERRORISM & HOMELAND SEC., MUSLIM-AMERICAN TERRORISM: DECLINING FURTHER (2013); *see also* Spencer Ackerman, *Report: U.S. Muslim Terrorism Was Practically Nil in 2012*, WIRED (Feb. 1, 2013, 12:57 PM), http://www.wired.com/2013/02/american-muslim-terrorism; *see also* FBI COUNTERTERRORISM DIV., TERRORISM 2002–2005, at 1–2 (2006), *available at* http://www.fbi.gov/stats-services/publications/terrorism-2002-2005/terror02_05.pdf; Mark Follman et al., *A Guide to Mass Shootings in America*, MOTHER JONES (July 20, 2012, 10:32 PM), http://www.motherjones.com/politics/2012/07/mass-shootings-map.

253. *See* LYONS, *supra* note 160, at 167, 171–74 (observing that in the Seattle community policing initiative, perspectives of the police department remained privileged over community perspectives).

Police partnerships may have distributive effects internal to the community, such that the elite may be further empowered over the marginalized—even as they themselves are subject to coercive state power.

If the inclusive and democratic work of community engagement is questionable, and the fear of Muslims outsized, we must be suspect of the heightened push for community engagement with Muslim communities. My primary concern here is to test or problematize the democratic claims of this tactic.[254]

A. A Top-Down Approach

If we are to take the democracy and inclusion claims of community engagement seriously, we should expect that communities are able to "exert meaningful influence"[255] or have a determinative role in setting policing "goals, priorities, and strategies."[256] If community engagement does not provide opportunities for meaningful or determinative input but rather facilitates involvement only to the extent that participants lend support to preexisting law enforcement priorities, then its claim to democratic legitimacy should be questioned.

There is strong reason to question the democratic claims of community engagement. As with community policing in the ordinary criminal context, a basic tenet of community engagement is that there is value for Muslim communities and law enforcement in cultivating channels of communication. The emphasis in official government statements is on relationship and trust building, inclusion, and democracy. But community engagement efforts, steeped in counterradicalization, play important norms-molding and intelligence-gathering functions, raising important questions about the implicit claims to democracy enhancement on which the efforts rely. Moreover, whereas building trust and relationships is based generally on the idea of two-way obligations, in reality the government has done little to address the fundamental root of distrust—which starts with the overly broad and punitive approach to policing entire Muslim communities.[257] Interacting with Muslim communities, law enforcement's prevailing focus is national security,

254. The security valence was problematized *infra* Part II, and has been problematized elsewhere. *See generally, e.g.*, Akbar, *supra* note 33; Huq, *supra* note 183; COLE & LOBEL, *supra* note 36.

255. HERBERT, *supra* note 31, at 64–66 (stating that different visions of "state-society relations" will suggest the proper role of community in community policing).

256. ARCHON FUNG, EMPOWERED PARTICIPATION 4 (2006) (participatory democracy depends on the idea that "the people should have substantial and equal opportunities to participate directly in the decisions that affect them.").

257. *See, e.g.*, Schmitt, *supra* note 24; Paul Vitello & Kirk Semple, *Muslims Say F.B.I. Tactics Sow Anger and Fear*, N.Y. Times (Dec. 17, 2009), http://www.nytimes.com/2009/12/18/us/18muslims.html; U.S. COMM'N ON CIVIL RIGHTS, *supra* note 113, at 20.

foregrounding threat potential in government's interactions with Muslim communities.[258]

Above and beyond the concerns with community engagement serving as a cover for surveillance and norms molding, the federal government has repeatedly signaled little room for American Muslim communities to play a determinative role in setting priorities. Community engagement provides opportunities for American Muslims to partake in and ratify law enforcement's work. In a community engagement push by federal law enforcement with Minnesota's Somali communities, for example, "[an] FBI private acknowledged, there was no possibility of the community [having] influenced how the investigations were carried out."[259] To the contrary, the aims were more one-sided: to "correct what its agents called 'misperceptions' . . . such as that suspects in Somalia might be imprisoned without trial or targeted for drone killings (such community fears were consistent with official US policy . . .)" and "to encourage community leaders to pass information to federal agents about young people."[260] While there might be space to raise concerns with the government, there is little reason to suggest any real possibility for meaningful or determinative input.[261]

The detachment of community engagement from its claim to democratic authority starts at the foundational level. Community policing's historical aim has been to reduce crime in an inner city or even a particular neighborhood. The subject community could in some sense be imagined to be working with the police to enhance its own welfare. Central to proponents' arguments for community policing has been the idea that African American communities suffer from underenforcement by police and need more policing to rid their communities of

258. *See* U.S. COMM'N ON CIVIL RIGHTS, *supra* note 113, at 6 ("With few exceptions, these outreach efforts are intertwined with national security concerns."). MPAC has presented these as two distinct approaches to community engagement: the "suspect trend of engagement [that] encourages aggressive intelligence and surveillance activities in communities, suggesting that many in the community are suspects" and the "partnership trend in which local communities develop strong relationships with law enforcement agencies and local government agencies." *Id.* at 18. *See also Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach*, ORG. FOR SECURITY & CO-OPERATION EUR. 68–70 (Feb. 2014), http://www.osce.org/atu/111438?download=true (contrasting "community targeted" and "community oriented" approaches, where the former is focused on "intelligence-gathering and enforcement activities driven by security priorities of the state" and the latter is focused on building "locally driven, co-operative initiatives, tailored to local contexts"). The current reality of the U.S. approach is more blurred.

259. KUNDNANI, *supra* note 28, at 218–19.

260. *Id.* (indicators included "an absent father," "[a]n abrupt change in religious practice," "a deviation from one group of friends, or one mosque, to another, for no apparent reason," and "removing themselves from one peer group and becoming a loner and kind of deviating away from a particular religious group").

261. *E.g.*, Schmitt, *supra* note 24.

crime.[262] In its national security manifestation, however, community engagement's aim is to secure the state. Muslims are made responsible not for their own condition but for the welfare of the entire nation—and for protecting the nation against terrorists. It is a "particularized responsibility [for the welfare of the nation] . . . not shared by other groups."[263] The assignment of responsibility should trouble us for a number of reasons, including basic American proscriptions against guilt by association and racial and religious profiling.

Muslim communities had not identified radicalization or violent extremism as an issue of concern before the government's framing of radicalization and violent extremism as a national priority.[264] By and large, Muslim communities and advocacy groups have not only objected to the radicalization framework and the assertion of growing radicalization in Muslim communities,[265] but have also insisted that they *are* cooperating with law enforcement efforts.[266] Community engagement—in its current manifestation, grounded in counterradicalization and CVE—has, in some sense, been foisted on Muslim communities.[267]

262. For a long view of these problems, rooted in the history of slavery and Jim Crow, see, for example, RANDALL KENNEDY, RACE, CRIME, AND THE LAW 29–135 (1997).

263. Huq, *supra* note 25, at 706 ("Just as labeling one minority religious or ethnic group in categorical and derogatory terms seems problematic, so too labeling a specific minority as especially responsible for the production of security against terrorism may be cause for normative concern."). *See* Thomas, *supra* note 250, at 445–48 (documenting the harms of focusing on Muslim communities in the British counterradicalization program Preventing Violent Extremism (PVE)).

264. Goodstein, *supra* note 99 (noting that CVE programs "have not been embraced as a widespread priority by American Muslims, at least until recently, in part because the problem seemed to be overseas, not here, Muslim leaders say").

265. *E.g.*, COUNCIL ON AM.-ISLAMIC RELATIONS ET AL., *Joint Statement Regarding Upcoming Summit on Countering Violent Extremism*, COUNCIL ON AM.-ISLAMIC REL. (Feb. 17, 2015), http://www.cair.com/images/pdf/CAIR-CVE-summit-statement.pdf [hereinafter CAIR ET AL., *Joint Statement*].

266. *See, e.g.*, *Encouraging Cooperation With Law Enforcement*, COUNCIL ON AM.-ISLAMIC REL. (June 14, 2012, 9:32 PM), https://www.cair.com/about-us/working-with-law-enforcement.html.

267. This is not to suggest that American Muslims do not participate in these efforts. *See* Goodstein, *supra* note 99. The federal nature of the underlying concern also undercuts community engagement's democratic potential. Federal law enforcement entities, national in scope and in responsibility, take the lead in community engagement efforts, whereas local police embody community policing as originally conceived. Even in the community policing context, critics worried that more marginalized communities or segments of communities—the ones most in need of protection from abusive, unaccountable policing—would be unable to interact with police in any way that contests power. In the federal context, not to mention the politically charged realm of national security, the concern is even more acute. The idea that marginalized, dispersed, and diverse Muslim communities could contest or hold accountable the federal government or federal law enforcement is dubious. If Muslims had the political power to hold the police accountable—to change the script, so to speak—these proactive programs would not be necessary from a democracy or inclusion perspective to begin with. *Cf. id.*

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At the heart of radicalization discourse is the idea that Muslims and Islam are responsible for terrorism. Radicalization discourse creates false and stigmatizing equivalences: between Islam, Muslims, and terrorism, and between Islam, Muslims, and violence. In turn, community engagement becomes a tool of counterradicalization in which Muslims are asked to participate, instrumentalizing Muslim leaders to share information on their co-religionists in a regime that conflates Islam with the problem.[268] This information sharing happens knowingly and unknowingly, directly and indirectly, and with varying degrees of consent and coercion, through community participation in community engagement efforts.

The well-intentioned community leader seeking to forge ties with law enforcement as a way to help his community may unwittingly share intelligence that renders coreligionists even more vulnerable.[269] The recently released 2009 FBI Policy Directive on community engagement reflects the sense of the agency that community members do not have an expectation that community engagement will generate information for "an FBI file or database."[270] Indeed, when advocacy groups publicized the records obtained by the Freedom of Information Act (FOIA) demonstrating the Bay Area FBI mosque outreach program served as a cover for surveillance, Muslim communities reacted with surprise.[271]

268. *See* Aziz, *supra* note 25, at 196–202.
269. Arun Kundnani, *The FBI's 'Good' Muslims*, THE NATION, Sept. 19, 2011, at 18.
270. Community Outreach in Field Offices, *supra* note 115, at 4.
271. *See* Kari Huus, *ACLU: FBI 'Mosque Outreach' Program Used to Spy on Muslims*, NBC NEWS (Mar. 29, 2012, 3:07 AM), http://usnews.nbcnews.com/_news/2012/03/29/10907668-aclu-fbi-mosque-outreach-program-used-to-spy-on-muslims; U.S. COMM'N ON CIVIL RIGHTS, *supra* note 113, at 121, 124.

The revelations that community engagement initiatives have served to collect intelligence on entire Muslim communities have had devastating effects on the ability of these communities to function cohesively and trust in law enforcement.[272]

Nonetheless, Muslims are asked to choose the state over self-determination and autonomy.[273] Muslim communities are asked to participate in political and religious acculturation of their communities, to ensure their coreligionists are sufficiently American—not too conservative, not too critical of the United States. There is pressure on Muslims to moderate their religious and political views—and to pressure coreligionists to do the same—for the good of the nation.

A significant aspect of this duty is to facilitate the state's reach into Muslim communities by partnering in surveillance and culture shaping, including by opening doors to, and participating in, law enforcement community engagement.[274] Community engagement may also incentivize community members to share information about coreligionists' day-to-day activities with law enforcement. This incentivization may occur through opportunities to perform Americanness—an American Muslim specific politics of respectability, perhaps—and may come with concrete benefits, such as access to government officials, invitations to other community engagement programs, or even help with immigration issues.[275]

But the pressure to participate in the acculturation does not end at the town hall or meet-and-greet effort. The community engagement contact becomes a conduit through which participants become part of the larger surveillance apparatus: This requires accepting the premises of counterradicalization and the view that conservative modes of religious practice, or harsh criticism of the United States, is suspicious or dangerous. It also requires adopting the view that Muslims have a role in sharing information on and regulating the political and religious currents in their communities, and that they must condemn radicalism and extremism in any form in their communities. A Muslim businessman who has partnered in community engagement efforts explained: "The FBI is really helping us to know what to look for . . . . If you see someone changing overnight,

272. Imams have reported an inability to play the role of spiritual leader, or to cultivate the mosque as a space to hold debates or critical conversations on religious and political ideologies, for fear of surveillance. SHAMAS & ARASTU, *supra* note 83, at 14–15.

273. Huq, *supra* note 25 ("What might have been an autonomous domain of civil society becomes a grossly functional appendage of the state. In this fashion, religious communities already stigmatized and corroded by suspicion undergo a second, additional kind of loss that sounds in autonomy and equality.").

274. Akbar, *supra* note 33, at 876–82.

275. Carrots and sticks, such as help with immigration matters, or placement on the No Fly List, have been used to induce cooperation with other methods of policing radicalization. Akbar, *supra* note 33, at 863 n.214, 879–80.

growing a beard and starting to wear different clothes, we need to find out what is happening."[276] Similarly, in a 2010 presentation to Muslim community leaders in Houston, FBI "agents asked attendees to report on community members who were 'taking extreme positions' and 'trying to enforce a limited understanding of religion.'"[277]

B. Constitutive, Distributive Effects[278]

The definition and boundaries of a community are malleable. Out of the same population, the police could constitute different communities organized around various axes of identity (race, class, gender, profession); around ideological persuasions, including opinions about the police or the importance of working with them;[279] or around a desire to work with the police and access the power such partnership may facilitate. Indeed, Muslim communities are incredibly diverse,[280] comprising infinite varieties of formal and

276. Kundnani, *supra* note 269, at 18.

277. *Hearing on "Ending Racial Profiling in America*," BRENNAN CENTER (Apr. 17, 2012), www.brennancenter.org/sites/default/files/legacy/Justice/LNS/BrennanCenter_ERPA.pdf.

278. While it is beyond the scope of this Article, Bill Stuntz's observation about the distributive effects of the Fourth Amendment is worthy of note. The Fourth Amendment "take[s] the privacy people have, and use[s] it to define the privacy that the police cannot invade without some good cause." William J. Stuntz, *The Distribution of Fourth Amendment Privacy*, 67 GEO. WASH. L. REV. 1265, 1269 (1999). In middle-class and wealthy neighborhoods, "police investigations involve entry into houses, cars, and offices," whereas in poor urban environments, the investigations involve "apartments, buses, [] shop floors" and street encounters. *Id.* at 1270–74. Because poor people have less privacy and less space—dynamics exacerbated in the city environment—police encounters are less regulated by the Fourth Amendment than when police aim to regulate the middle-class and wealthy. *Cf.* State v. Mooney, 588 A.2d 145 (Conn. 1991) (holding that a homeless person has a reasonable expectation of privacy in his duffel bag and closed cardboard box located under a highway bridge, as these objects constituted his home).

Much of what we know about national security policing involves police approaching Muslims in their homes, mosques, and community institutions—rather than the street, the locus of active life in many impoverished communities, and the site of traditional community policing initiatives. In contrast, community engagement is more focused on communal social life that does occur in homes, business, and mosques—spaces in theory protected by the Fourth Amendment warrant rule. *See, e.g.*, Tom Lininger, *Sects, Lies, and Videotape: The Surveillance and Infiltration of Religious Groups*, 89 IOWA L. REV. 1201, 1249 n.222 (2004) (citing United States v. Aguilar, 883 F.2d 662 (9th Cir. 1989)).

279. *See* Mary I. Coombs, *The Constricted Meaning of "Community" in Community Policing*, 72 ST. JOHN'S L. REV. 1367, 1372–73 (1998) (finding that a community policing model empowers those who wish to work with the police at the expense of those who want more control over the police).

280. Harris, *supra* note 25, at 188–89 (discussing the importance of not underestimating the heterogeneity of Muslim communities in Muslim-law enforcement partnerships); *see* Innes, *supra* note 61, at 230–31 ("There are now three Mosques in [town name] and those three Mosques obviously mean that the groups that go to each of those Mosques follow something slightly

informal religious ideologies, national, linguistic, and ethnic differences, and class divisions.[281]

The White House community engagement plan focuses on the "community" without identifying a specific ethnic or religious group as particularly relevant to the project of national security.[282] While the White House goes to some length to emphasize that terrorist recruitment could happen in various communities, the force of its efforts has been on Muslim communities,[283] just as the bulk of government CVE and counterradicalization materials are focused on Muslims and Islam.[284] In focusing on Muslims and Islam as the primary threat facing the nation in this way,[285] these government efforts constitute Muslims as a threat, with Islam to blame; and they hold entire religious communities to account for the acts of individuals.

Community engagement initiatives necessarily focus on subgroups within Muslim communities.[286] Recent data suggests community engagement efforts focus on Arab American Muslims, to the relative exclusion of African American, South Asian, and other American Muslims of various decent.[287] In focusing on certain subgroups—youth, for example—the government seems to have assigned them a particularly high threat of radicalization, which, in turn, is likely to intensify vulnerability in these communities.

There's an observable synergy between the focus of community engagement efforts, policing radicalization, and foreign policy priorities.[288] Govern-

different. So you've effectively got three community groups within the culture of Muslims immediately in one particular area." (internal quotation marks omitted)).

281. *E.g.*, PEW RESEARCH CTR., MUSLIM AMERICANS: MIDDLE CLASS AND MOSTLY MAINSTREAM 15, 69 (2007), http://www.pewresearch.org/files/old-assets/pdf/muslim-americans.pdf; William Finnegan, *New in Town: The Somalis of Lewiston*, NEW YORKER, Dec. 11, 2006, at 46, *available at* http://www.newyorker.com/magazine/2006/12/11/new-in-town-2.

282. EMPOWERING LOCAL PARTNERS, *supra* note 40; Huq, *supra* note 25, at 671.

283. *See infra* text accompanying note 53.

284. *See infra* Parts I.A, II.B.1.

285. Huq, *supra* note 25, at 671 ("The track record of post-2001 counterterrorism plainly evinces a heightened focus on individuals or groups perceived to be Muslim or of an ethnicity (such as Arab or South Asian) that proxies for a Muslim identity."). *Id.* ("By contrast, over the past four years, the Department of Homeland Security has 'cut the number of personnel studying domestic terrorism unrelated to Islam, canceled numerous state and local law enforcement briefings, and held up dissemination of nearly a dozen reports on extremist groups under pressure from politically conservative groups who object to any federal attention on right-wing militias."); *see also* Akbar, *supra* note 33, at 823 n.44.

286. *See e.g.*, Memorandum from the Fed. Bureau of Investigations's Oakland Resident Agency, *supra* note 17, at 2–3 (referring to efforts with the Pakistani community); *Starting a Conversation*, *supra* note 120.

287. *See* U.S. COMM'N ON CIVIL RIGHTS, *supra* note 113, at 14.

288. *See* Wadie E. Said, *The Material Support Prosecution and Foreign Policy*, 86 IND. L.J. 543, 545 (2011) (framing "terrorism enforcement as a kind of foreign policy tool").

ment focus on the American Somali community—in the form of community engagement and other policing, as well for material support prosecutions[289]—dovetailed with U.S. foreign policy concerns about al-Shabaab, a Somalia-based designated Foreign Terrorist Organization,[290] which several Somali Americans allegedly traveled abroad to join.[291] Similarly, the latest focus on ISIS has come with a resurgent push on community engagement, policing, and material support prosecutions in American Muslim communities.[292] In practice, then, community engagement is closely intertwined with other policing methods and functions, as well as the security crisis of the day—reconstituting the idea that federal community engagement approaches Muslims first as potential threats, and then as partners.[293]

While community engagement initiatives do not overtly make distinctions based on class, they inevitably prioritize community elites: leaders, imams, businessmen, and other centers of influence in Muslim communities.[294] Other more blatantly coercive techniques of policing radicalization—those recruited into formal informant relationships, or targeted by informants for radicalization or entrapment—are likely to focus on community members more vulnerable by virtue of their class, immigration status, or criminal records. Thus

289. *Working With Communities Hearing*, *supra* note 40, at 10 (statement of Margo Schlanger, Officer for Civil Rights & Civil Liberties, Dep't. of Homeland Sec.) (stating that the Department of Homeland Security's Office for Civil Rights and Civil Liberties "has developed relationships with Somali American leaders in San Diego, Seattle, and Lewiston (Maine), and includes them in the regular roundtables where possible and in bi-monthly community conference calls" (statement of Margo Schlanger, Officer for Civil Rights and Civil Liberties, Department of Homeland Security)). The FBI's Boston Field Office, with the local U.S. Attorney, provides resume-writing assistance for Somali American youth and self-defense lessons to Somali American women. Sullivan, *supra* note 146.

290. *See Foreign Terrorist Organizations*, U.S. DEP'T ST., http://www.state.gov/j/ct/rls/other/des/123085.htm (last visited Mar. 18, 2015).

291. *See, e.g.*, Karen Greenberg, *The US Is Not a Target of al-Shabaab*, GUARDIAN (Sept. 24, 2013, 11:11 AM), http://www.theguardian.com/commentisfree/2013/sep/24/kenya-attack-us-target-shabaab.

292. *See, e.g.*, Marc Santora & Stephanie Clifford, *3 Brooklyn Men Accused of Plot to Aid ISIS' Fight*, N.Y. TIMES (Feb. 25, 2015) (discribing how three men attempting to travel abroad were charged with material support); Schmitt, *supra* note 24 (describing tension between U.S. government's community engagement efforts with Muslim youth and heightened security measures that have targeted and disillusioned the same group of youth); *infra* text accompanying note 29.

293. *See* Davis, *supra* note 58 ("'This focus solely on attacks committed by Arabs or Muslims reinforces the stereotype of Arab- and Muslim-Americans as security threats, and thus perpetuates hate of the respected communities.'" (quoting Samer Khalaf, President of American-Arab Anti-Discrimination Committee)).

294. Kundnani, *supra* note 269, at 18. Similar dynamics are often at work in community policing initiatives. LYONS, *supra* note 160, at 172–73, 198 (observing that Seattle community policing initiatives favored white, middle-class, small business owners).

while relative elites may partner with law enforcement to facilitate access, those that suffer the most acute consequences are more likely more vulnerable.

There may be financial mechanics to counterradicalization programming[295]—both with regard to funding for state and local law enforcement, and for community partners—raising a whole host of other issues. Federal dollars may induce state and local law enforcement to approach local Muslim communities with a new counterradicalization lens and may warp the work of community-based organizations.[296] Consider the St. Paul example. St. Paul's police department secured DOJ funding to take a counterradicalization community engagement approach in a longstanding outreach program with local American Somali communities.[297] In turn, Muslim American Society of Minnesota "got funding through the program to hire a police liaison."[298] In other words, DOJ funded the local police department, which in turn funded the community-based organization's effort. The executive director of the organization was "asked to keep track of attendees at outreach meetings" but, when asked by the police department to share the list of participants, he refused.[299]

Certainly, there are ideological dimensions to partnership with the federal government.[300] Counterradicalization programs will bolster Muslim leaders who are seen as moderate in their religious and political views, and thereby involve the government in shaping of acceptable forms of Islam and palatable forms of political

295. The financial mechanics have yet to be documented, but there are clues regarding potential forms it might take. *See* Kundnani, *supra* note 269, at 18 (identifying a partner of the FBI in Houston who is "a key source of private funding for mosques in the Muslim community"); City of Saint Paul Police Dep't, *supra* note 221; NAT'L COUNTERTERRORISM CTR., *supra* note 35, at 16 (laying out funding strategies for CVE programs, with advantage and disadvantages to various approaches); Paul McEnroe, *Twin Cities Muslim Leaders Challenge Federal Outreach Effort as Cloak for Spying*, STARTRIBUNE (Feb. 17, 2015, 11:32 PM), http://www.startribune.com/local/minneapolis/292307031.html (explaining that the DOJ is "funding outreach programs in Boston and Los Angeles for one year to gauge what kinds of mentoring and after-school programs can help dissuade young American Muslims from joining extremist groups or leaving to fight in the Middle East"); Press Release, *Walker to Introduce Legislation to Assist State, Locals in Countering Violent Extremism*, COMMITTEE ON HOMELAND SECURITY (Feb. 19, 2015), http://homeland.house.gov/press-release/walker-introduce-legislation-assist-state-locals-countering-violent-extremism; Countering Violent Extremism Grants Act, H.R. 1022, 114th Cong. (2015), *available at* https://www.congress.gov/114/bills/hr1022/BILLS-114hr1022ih.pdf.

296. *E.g.*, CAIR ET AL., *Joint Statement*, supra note 265 ("By choosing which community and religious partners to fund or collaborate with, the government may directly or indirectly be perceived as advancing one ideology or set of beliefs over others."); KUNDNANI, *supra* note 204, 10–27 (discussing the British context).

297. *See* Currier, *supra* note 20.

298. *See id.*

299. *See id.*

300. KUNDNANI, *supra* note 204, at 6; Rascoff, *supra* note 25, at 159–61.

engagement.[301] Equally troublingly, community engagement programs may work only with those Muslims who are relatively more amenable to the government's counterradicalization approach.

Community engagement "tends to empower those who want more policing at the expense of those who want more control of the police . . . . [and] to exclude those whose interests are in less aggressive policing."[302] Those interested in more policing are likely to be more politically organized, have more political capital, and be more likely to be invited to or to attend police community forums.[303] Those uninterested in more policing may avoid any interactions with the police, let alone cultivate partnerships. Refusal to participate in such efforts may even be construed as a sign of radicalization.[304]

More generally, law enforcement plays an important role in who gets a seat at the table to represent the American Muslim community. Take the case of the Council on American-Islamic Relations (CAIR), the largest Muslim American civil rights organization. In 2009, the FBI cut off ties with CAIR, not viewing the group as an "appropriate liaison partner."[305] The Islamic Shura Council of

301. HEDIEH MIRAHMADI & MEHREEN FAROOQ, WORLD ORG. FOR RES. DEV. & EDUC., A COMMUNITY-BASED APPROACH TO COUNTERING RADICALIZATION: A PARTNERSHIP FOR AMERICA 20–21 (2010), http://www.worde.org/wp-content/uploads/2010/12/WORDE-Counter-Radicalization-Report-Final.pdf; Rascoff, *supra* note 25. *But cf.* Kundnani, *supra* note 269, at 20 (arguing that PVE creates an atmosphere that suppresses any criticism of the war on terror, which ultimately leads Muslim youth to seek out extremists who will listen to their political opinions).

302. Coombs, *supra* note 279, at 1372–73; *see, e.g.*, Thacher, *supra* note 117, at 783 (finding that despite Community Advisory Committee members' outreach efforts to minority neighborhoods, distrust between Knoxville Blacks and the police resulted in low Black participation in community crime control meetings); LYONS, *supra* note 160, at 172–73, 198 (observing that Seattle's community policing initiative "excluded more critical voices").

303. One study in Chicago came to different conclusions. It found that those who regularly attended community policing beat meetings were "more inclined than occasional participants or nonattenders to be upbeat about their communities and the police and to be involved in local affairs." U.S. DEP'T OF JUSTICE, NAT'L INST. OF JUSTICE, PUBLIC INVOLVEMENT: COMMUNITY POLICING IN CHICAGO 12–17 (2000), https://www.ncjrs.gov/pdffiles1/nij/179557.pdf (noting that Blacks were most involved in local groups, then whites—with Latinos "dramatically less likely than others to report being involved," and that home ownership and length of residence was also positively correlated with civic engagement). People with higher incomes and more education were more likely to think the initiative was having an effect. *Id.* at 17. The study also found attendance rates highest in predominantly Black areas and lowest in white areas. Rates of attendance were highest in low-income and higher crime areas. *Id.* at 20.

304. A successful grant proposal by the St. Paul police department for DOJ funding to adopt a CVE approach in ongoing outreach efforts with American Somalis reads: "the team will also identify radicalized individuals, gang members, and violent offenders who refuse to cooperate with our [community engagement] efforts." City of Saint Paul Police Dep't, *supra* note 221, at 4.

305. Letter from Steven M. Martinez, Assistant Dir. in Charge, FBI L.A. Field Office, to Shakeel Syed, Islamic Shura Council of S. Cal. (July 19, 2010) (on file with author) (explaining that the FBI had cut off ties with CAIR, not viewing them as "an appropriate liaison partner," at the

Southern California registered its complaint with the Los Angeles field office, suspending the membership organization's participation in the FBI's outreach work.[306] The American Civil Liberties Union later complained to the DOJ Office of Inspector General about the FBI's "publicly and selectively ostracizing CAIR from its official outreach events" without adequate basis to exclude the civil rights organization.[307] In the aftermath, the Muslim Public Affairs Council (MPAC) started to play a more significant role in the federal government's outreach and counterradicalization efforts in Los Angeles and around the country.[308]

Behind the vision of community in accounts of community policing and community engagement, there tends to be a nostalgic, aspirational idea of community disconnected from reality: a community where there are bright boundaries demarcating who is inside and outside, and the community's wants are clear and unanimous.[309] In relying on this imagined community, community policing has prioritized order over dissent and agreement over disagreement. It has failed, moreover, to take communities seriously in their messy realities, and has fallen short of its potential to be a more democratic form of policing. The desire to partner with antiradical or moderate elements in American Muslim communities imposes a similar imaginary for American Muslims—creating a community engagement program that is inflexible and unresponsive to dissent or contestation.

C. Push Back

Since 9/11, Muslim communities have consistently articulated a fear of being outspoken or involved in the public sphere for fear of retribution or scrutiny

national and local level after the organization had been listed as an unindicted coconspirator in federal prosecution against the Holy Land Foundation). *See also* Paul Vitello & Kirk Semple, *Muslims Say F.B.I. Tactics Sow Anger and Fear*, N.Y. Times (Dec. 17, 2009), http://www.nytimes.com/2009/12/18/us/18muslims.html.

306. Letter from Steven M. Martinez, *supra* note 305.

307. Letter from Laura W. Murphy, Dir., ACLU Wash. Legislative Office, et al., to Michael E. Horowitz, Inspector Gen., U.S. Dep't of Justice (Oct. 7, 2013), *available at* https://www.aclu.org/files/assets/2013-10-07_-_aclu_letter_to_oig_re_general_review_of_fbi_interactions_with_cair.pdf (pointing out that CAIR has never been charged with a crime). *See also* Paul Vitello & Kirk Semple, *Muslims Say F.B.I. Tactics Sow Anger and Fear*, N.Y. TIMES (Dec. 17, 2009), http://www.nytimes.com/2009/12/18/us/18muslims.html.

308. Watanabe & Esquivel, *supra* note 206. *See* MUSLIM PUB. AFFAIRS COUNCIL, SAFE SPACES INITIATIVE: TOOLS FOR DEVELOPING HEALTHY COMMUNITIES (2014), http://www.mpac.org/assets/docs/publications/MPAC-Safe-Spaces-full.pdf; *see also Radicalization Conference 2010 Agenda*, REGONLINE, https://www.regonline.com/builder/site/tab2.aspx?EventID=890071 (last visited Mar. 18, 2015) (showing the "Radicalization and Homegrown Violent Extremism" conference agenda and listing MPAC as the only community-based organization).

309. *See generally* LYONS, *supra* note 160, 15–17 (community policing's "political utility to the state can be found in its cultivated ambiguities, nostalgia, and romance").

from the federal government.[310] The concern is that any heightened visibility may draw the surveillance of the state to their door. This concern has manifested in a reluctance to organize or articulate criticism of U.S. policies toward Muslims at home and abroad, and in changed relationships to spaces of community and worship.[311] At the same time, Muslim communities have become increasingly vocal in their objections to broad-based surveillance—and in particular the use of informants—in their communities.[312]

In the most recent wave of community engagement initiatives, Muslim communities have, notably, used the forums discussed herein to contest the modes through which the federal government is interacting with them. When the Secretary of Homeland Security visited an Ohio mosque, for example, "he faced a litany of grievances . . . [including complaints of] humiliating border inspections by brusque federal agents [and] F.B.I. sting operations that wrongly targeted Muslim citizens as terrorists."[313] The mosque's youth coordinator told the *New York Times*: "Our relationship has to be built on trust, but the U.S. government hasn't given us very many reasons to build up that trust."[314]

Public boycott of high-profile community engagement events at the White House have become a tool for organizing and resistance.[315] In advance of the 2014 annual White House iftar during the month of Ramadan, a wide-ranging debate emerged among American Muslims when a petition calling for boycott of the iftar emerged on social media, and the American-Arab Anti-Discrimination Committee (ADC) issued a statement in support.[316] The boycott was framed as a response

310. HENDERSON ET AL., *supra* note 25, at 14; SHAMAS & ARASTU, *supra* note 83, at 16.

311. SHAMAS & ARASTU, *supra* note 83; Akbar, supra note 245.

312. *See, e.g.*, First Amended Complaint, Tanvir v. Holder, No. 13-CV-6951 (S.D.N.Y. filed Apr. 22, 2014); Hassan v. New York, No. 2:12-3401(WJM), 2014 WL 654604 (D.N.J. Feb. 20, 2014); Raza v. New York, 998 F. Supp. 2d 70 (E.D.N.Y. 2013); H.G. Reza, *Area Islamic Groups Sue the FBI; Muslim Leaders Contend the Agency Withheld Information About Alleged Surveillance*, L.A. TIMES, Sept. 19, 2007, at B4.

313. Schmitt, *supra* note 24.

314. *Id.* (internal quotation marks omitted).

315. *See* Sabrina Siddiqui, *Muslims Call for Boycott of White House Iftar Over Gaza Conflict, NSA Spying*, HUFFINGTON POST (July 14, 2014, 11:59 PM), http://www.huffingtonpost.com/2014/07/14/white-house-muslims_n_5585851.html; Hena Zuberi, *A Date With Obama: The White House Iftar: Inclusion or Delusion*, MUSLIM MATTERS (July 25, 2014), http://muslimmatters.org/2014/07/25/a-date-with-obama-the-white-house-iftar-inclusion-or-delusion; *see also* Sahar Aziz, *The New Generation of Muslim American Leaders*, AL JAZEERA (July 24, 2014), http://www.aljazeera.com/indepth/opinion/2014/07/new-generation-muslim-american-2014723143141881797.html.

316. Juliet Eilperin, *Arab American Group Urges Boycott of White House Iftar Dinner*, WASH. POST (July 14, 2014), http://www.washingtonpost.com/blogs/post-politics/wp/2014/07/14/arab-american-group-urges-boycott-of-white-house-iftar-dinner; Faisal Qazi, *The White House Iftar—Why the Debate?*, PATHEOS (July 17, 2014), http://www.patheos.com/blogs/altmuslim/2014/07/the-white-house-iftar-boycott-why-the-debate.

to the Administration's "support for Israel's massacre of Palestinians in Gaza" and the latest Snowden revelations about the NSA spying on American Muslim leaders, including those involved in community engagement initiatives.[317] The ADC explained that "[p]olitical engagement is important and having a seat at the table is crucial—but only when the seat is intended to amplify our voice as a community, not tokenize or subdue it."[318] While many boycotted the iftar, many attended despite sharing the concerns motivating the boycott.[319]

Similarly, a number of Muslim American community groups boycotted and protested the three-day CVE summit held at the White House in February 2015.[320] A coalition of American Muslim and civil rights groups issued a joint statement in advance of the summit outlining concerns that community engagement "from a CVE standpoint sets American Muslim communities apart as inherently suspect"; that "CVE tasks community members to expansively monitor the beliefs and expressive or associational activities of other Muslims" and "creat[es] a climate of fear and chill[s] constitutionally protected activity"; and that "mutual trust is difficult, if not impossible," given the FBI's larger set of police practices, including "deceptively conducting intelligence gathering under the guise of community outreach," and relying on "law enforcement agencies [to] play the lead role in implementing CVE . . ."[321]

317. Amani Al-Khatahtbeh, *Why We Called for a Boycott of the White House Iftar*, HUFFINGTON POST (July 24, 2014, 1:22 PM), http://www.huffingtonpost.com/amani-alkhatahtbeh/boycott-of-the-white-house-iftar_b_5615167.html; *see* Nihad Awad, *I Am a Muslim-American Leader, and the NSA Spied on Me*, TIME (July 9, 2014), http://time.com/2970573/muslim-american-nsa-spies; Glenn Greenwald & Murtaza Hussain, *Meet the Muslim-American Leaders the FBI and NSA Have Been Spying on*, INTERCEPT (July 8, 2014), https://firstlook.org/theintercept/2014/07/09/under-surveillance.

318. Eilperin, *supra* note 316 (internal quotation marks omitted); *see also* Al-Khatahtbeh, *supra* note 317 ("I want to have a seat at the table -- one where we can actually have a meaningful discussion about the real issues at hand. Not one where dinner is served.").

319. *See, e.g.*, Tarik Takkesh, *Why I, a Palestinian-American Muslim, Went to the White House Iftar and What I Learned*, MONDOWEISS (July 18, 2014), http://mondoweiss.net/2014/07/palestinian-american-learned ("I intended to talk to the President about the very issues that made me question my government's commitment to equal rights and protection for all its citizens, especially marginalized minorities.").

320. Davis, *supra* note 58 (noting that even among attendees, "human rights activists" worried that CVE programs "could morph into fearmongering closet surveillance efforts that trample on civil rights and privacy").

321. CAIR ET AL., *Joint Statement*, supra note 265. The statement also raised concerns that "the process for planning and organizing this summit has furthered the sense of mistrust already felt by American Muslim communities" because the administration's approach to CVE was neither consultative nor transparent. *Id.* The statement also complained that the administration had not responded to a prior letter raising concerns with CVE. *Id.* For the contents of the letter referred to in the statement, see Letter from ACLU et al. to Lisa O. Monaco, *supra* note 29. The U.S. Council of Muslim Organizations also adopted concerns about CVE. *Press Release: Muslim*

While some of the signatories "decline[d] the invitation" to the summit, the groups "collectively decided that representatives from some of our groups will attend in order to provide a sorely missing critical perspective on the CVE framework and to seek more information about the rollout and implementation of CVE pilot . . ."[322] At the same time, a number of Muslim Student Association chapters issued a strong statement opposing CVE programs "to ensure that our American Muslim community is not mistreated and that our youth are able to live their lives free from fear of surveillance, racial and religious profiling, and as strong, active members of their communities."[323]

It is too soon to know whether American Muslims publicly organizing and debating the merits of community engagement, will lead to change, or lead to programs that simply work around the protest and protesters. Law enforcement's response may portend the democratic potential of community engagement.[324]

CONCLUSION

This Article has attempted to identify the problems with community engagement and counterradicalization in the national security context, drawing from the critiques of community policing and broken windows in the ordinary criminal context. The canvas for this critical engagement was limited insofar as

Council Adopts Points on Countering Violent Extremism (Feb. 17, 2015), http://www.uscmo.org/pressreleases/.

322. CAIR ET AL., *Joint Statement*, supra note 265. The statement went to pains to explain that "attendance at the summit by any of the undersigned groups does not constitute endorsement of the CVE framework or of the summit itself." *Id.*

323. MUSLIM STUDENT ASS'N W., *Muslim Student Associations Across CA Against Federal Government's Countering Violent Extremism Programs*, MSA W. EMAIL CAMPAIGN ARCHIVE (Feb. 21, 2015), http://us4.campaign-archive2.com/?u=30d739eaae2442c8d20aad278&id=f41ebab4e7&e=%5BUNIQID.

324. This may also have implications for perceptions of procedural justice. Stephen J. Schulhofer, Tom R. Tyler and Aziz Z. Huq have demonstrated in an extensive study of Muslims in the New York City area that "religiosity, cultural differences, or political background," "strength of identification with the Muslim community," and "disagreement with American government policies on Iraq, Afghanistan, and Israel" do not "play a significant role in determining willingness to cooperate." Stephen J. Schulhofer et al., *American Policing at a Crossroads: Unsustainable Policies and the Procedural Justice Alternative*, 101 J. CRIM. L. & CRIMINOLOGY 335, 370 (2011). Instead, "as in the case of conventional law enforcement, [there is] a strong association between willingness to cooperate with anti-terrorism policing and perceptions of procedural justice." *Id.* at 370. *See also id.* at 345 ("Perceived legitimacy is assessed by asking people to express their degree of faith in various public institutions, as measured by their belief that officials are trustworthy, concerned about the welfare of those with whom they deal, able to protect citizens against crime, and otherwise do their jobs well. People who express a high degree of confidence in public authorities comply with the law either because of social influence (they want to avoid the disapproval of their social group) or because of internalized moral norms (they want to see themselves as decent people who do the right thing).").

Muslim communities' experiences in these programs have been largely sheltered from public view. Harvesting those experiences is no doubt essential to understanding the possibilities and limitations of these programs. This Article provided a sketch of the problems lurking near the surface—that is left to future work.

Is community engagement salvageable? Moving community engagement toward its most democratic aspirations—toward a more genuine exercise in community consultation, contestation, and collaboration—would involve ridding the program of its pernicious baggage. For example, law enforcement could end community engagement's integration with community-wide intelligence gathering, or could decouple community engagement from CVE and counterradicalization.

Certainly there are strong normative reasons, including those that motivate this Article, to expect and demand that law enforcement account for the realities of marginalized communities. But we cannot expect that dialogue will necessarily lead to accountability, meaningful contestation, or realignment of police approaches in marginalized communities. After all, law enforcement is itself a significant vehicle for marginalization and racialization in the United States. It is reasonable to question whether community policing—or policing at all—can be expected to be the vehicle for the change we are seeking. The problem and the solution may be entirely mismatched.

The allure of community policing rests in part on a broader construct of dialogue as inherently valuable. While dialogue can certainly be valuable, its value will depend on the context and the point of view from which it is being evaluated. Dialogue often serves a different function for the more powerful in the conversation than the less powerful. The idea that dialogue is the cure-all for poor relationships between police and marginalized communities emerges from a failure to recognize the structures and histories of police impunity in these communities, as well as the material realities that keep inequality in place. When the dialogue in question is with the police, initiated by the police, and on the police's own terms, not only is the function of the dialogue necessarily limited, the entire initiative should raise red flags. How will the dialogue change the material reality of policing in the community? Does the dialogue further exacerbate inequality or simply validate preexisting policing practices through the performance of democratic legitimacy? Or is it really allowing for messy democratic contestation, and the possibility for change in the material conditions of the relationship between the police and the marginalized?

For community policing to be an effective tool in changing the relationship between the marginalized and law enforcement, marginalized communities cannot simply be offered a seat at the table to participate in preconceived policing

programs. They must have the political power to hold police accountable. For community policing mechanisms to offer potential for real change to marginalized communities, communities must build capacity and political power to demand accountability. So while we might advocate for law enforcement to engage marginalized communities, we cannot rely on law enforcement initiatives to recalibrate relationships long rife with deep inequality. The pressure for meaningful change must come from outside, from the communities themselves organizing for change.[325]

325. For more on this idea, see Jocelyn Simonson, *Copwatching*, 104 CAL. L. REV. (forthcoming 2016), draft *available at* http://ssrn.com/abstract=2571470.