

THESIS

ISLAMICODES: THE POST-9/11 RACIALIZATION OF COUNTER-TERRORISM

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ABSTRACT

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After 9/11, a conceptual conflation between Islam and terrorism occurred within American culture and public spheres, forming a new epistemology, Islamicodes. In order to understand how Islamicodes have influenced U.S. Counter-terrorism efforts, this thesis analyzes American culture and the judicial system through discourse, semiotics, and power/knowledge. This article will argue that the conceptual conflation of Islam and terrorism, through the usage of language, symbols, and institutional practices, severely limits the Constitutional rights and life chances of Muslims in America.

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THE HIJACKING OF THE MUSLIM IDENTITY

Banksy, a world-renowned political graffiti-artist, once stated in an interview: “They say you die twice. One time when you stop breathing and a second time, a bit later on, when somebody says your name for the last time.”¹ This keen observation is applicable to all of our lives; however, Muslim Americans will experience three deaths in our lifetimes, beginning with the death of our character on 9/11.

I will never forget the moment I first learned of *jihad* and what it means. When the individual used terms such as “holy war,” “violence,” and “radical,” to describe jihad, a surreal rush of the most visceral emotions came to me because of the obvious implications such descriptions have upon my religion, family, and community. But what was ironic about that moment, is that, for the first time in my life, one of the most important religious lessons I ever received did not come from my parents preaching to me, or my uncles lecturing me, or the local mullahs educating me on my religion. Instead, my first and only lesson on jihad came from a *Fox News* segment describing what had just taken place on 9/11, just days earlier. As a twelve-year old Muslim boy I took those words wholeheartedly, and that was the first moment in which I experienced self-hatred. For years, I struggled to erase that part of my identity because I so desperately wanted to be an “American.” But, my attempts were futile, and the magnitude of 9/11 left me feeling personally responsible for what had happened on that day. I truly believed I was a terrorist.

When I look back at that experience, I can’t help but laugh at my gullibility and innocence. But, more critically, I also recognize it as a moment in which I experienced linguistic

¹ Francis, Nick. “Banksy in His Own Words.” *The Sun*. September 4, 2010. <http://www.thesun.co.uk/sol/homepage/features/3124787/Banksy-in-his-own-words.html>. Retrieved April 3, 2013.

and intellectual violence, and I was indirectly implicated in the crime. In just a short twenty-second sound bite, millions of viewers acquired a new concept. It presented a skewed worldview, one in which the terrorist attack is explained and framed within the context of Islam and Muslims. I believe such a conceptual conflation of terrorism with Islam and its impact upon American culture and public spheres have yet to be properly understood.

In order to understand what had taken place twelve-years ago, the following questions help guide this thesis. How and why is Islam being almost exclusively associated with terrorism? What are the parameters of the national debate surrounding terrorism? How has this process become a form of knowledge and incorporated into culture? What are the institutional and personal effects of this view? To begin, I argue that a new epistemology was constructed immediately after 9/11. In seeking to understand the tragedy of that day specifically and global political violence generally, a new interpretive framework developed in order to identify the perpetrator and to justify counter-terrorist initiatives. A key aspect of this knowledge is that it forged an inseparable bond between Islam and terrorism, such that the first cannot be conceived without necessarily conjuring up the latter, and visa versa. In this thesis, I introduce the concept of Islamicodes in order to capture the process of ideological and material convergence of Islam with terrorism.

Chapter Two explains the concept of Islamicodes in greater detail. First, I analyze Islamicodes as a form of epistemology, with the following constitutive components: discourse, semiotics and power/knowledge. This section identifies ways in which both formalized and popular discourse impact how the public commonly understand and respond to “things” Islamic, i.e. semiotics. Thus, the chapter lays out the conceptual issues pertinent to the production of common-sense knowledge.

Situating the theory of Islamic codes in social context, Chapter Three analyzes its cultural impact with a focus on the politics surrounding the Park51 mosque, clothing such as hijab and turban, and the brown Islamic male body. Fundamentally, this chapter attempts to answer the questions: how do Islamic codes manifest in everyday interactions? How do these Islamic codes inform what is to be understood as either American or un-American? What role does Islamic codes play in constructing a religious-nationalist identity? I argue that the cultural manifestations of the Islamic codes undergird unequal power relations and exemplify a unique form of racialization. As a consequence, the Islamic codes ideologically and culturally justify the stigmatization of Islam and socially and politically marginalize, oppress and criminalize Muslims and Muslim Americans. More importantly, the process of defining the “other” simultaneously implicates the construction of one’s own identity. Framed in a dualistic, often antagonistic, pair, Islamic codes establishes and perpetuates the idea that Islam is inherently antithetical to American democracy and freedom. In doing so, the mainstream American culture fosters a particular brand of national identity at the expense of an ethnic and religious minority.

Chapter Four extends the cultural analysis and focuses on the process of institutionalizing Islamic codes within the legal system. Although written in a culturally-neutral language, several important counter-terror legal codes selectively target Muslims and Muslim Americans. I argue that the main actors responsible for prosecuting and adjudicating such cases interpret these laws through Islamic coded lens, such that the brown male bodies with any Islamic ties could become subject to interrogation, prosecution and incarceration. Thus, this chapter raises the following questions: what mechanisms of power are at play in the judicial system that disproportionately impact Muslims and Muslim Americans? What specific components of Islamic codes operate in implementing the counter-terror legal codes?

Ultimately, what I hope to accomplish in this thesis is twofold: one, to provide an analytical explanation as to how and why Islamophobia stems not from an irrational fear or emotion, but from a lived experience of Muslim Americans on a daily basis; two, by identifying Islamic codes as the main intellectual weapon, Muslims can then find new and creative ways to reformulate, redefine, and challenge the mainstream notions of our identity. On a personal level, I hope that this thesis would allow me to reclaim my identity by first unveiling the externally-imposed identities.

THE THEORY OF ISLAMICODES

Introduction

In order to better understand the epistemology that informs counter-terror laws, we must first understand how and why Islam was broadly implicated in terrorism. This is important because it is a unique racial formation, unlike that of other marginalized groups in America. In other words, what makes the treatment of Muslims in America unique and different from other groups is that Muslims are the only ones who have been associated with terrorism based on their religious identity. Why does the analysis of terrorism implement the cultural and religious characteristics of Muslims and Islam? I seek to capture such knowledge formation in the theory of Islamicodes where concrete and symbolic linkages form between the concepts of Islam and terrorism.

The following is a brief review of the intellectual and philosophical foundation of the theory of Islamicodes. The theory centers on the three interrelated concepts: discourse, semiotics, and power/knowledge. I have chosen these concepts because they best elicit the ways in which certain meanings are codified in our casual conversations, popular culture, and national debates. Discourse is the most fundamental form of communication we engage on a daily basis, however, due to its normalcy and naturalness, critical thought upon our social dialogue of terrorism lack. Representations within media are seldom challenged, effectively normalizing language and symbols associated with terrorism. With the fear of terrorism comes a yearning for security, which leads to an opportunity for government to expand its power under the guise of national security. In short, this chapter explains the constitutive parts of the theory of Islamicodes and

provides a basis for analytically understanding the language and culture of counter-terrorism in the post-9/11 American context.

Discourse on Terrorism

Language is being shaped everyday by our modes of communication. Our ideas are filtered through communicative processes, and new words are created and old words are ascribed new meanings. In *An Introduction to Discourse Analysis: Theory And Method*, James Paul Gee defines discourse as “a characteristic way of saying, doing, and being. When you speak or write anything, you use the resources of English to protect yourself as a certain kind of person, a different kind in different circumstance.”² In other words, discourse is not only a method of organizing and sharing ideas, but also a form of subjectivity in the language. I am someone, because I can say ‘I.’”

Judith Butler argues that subjectivity is inherent in language. In *Excitable Speech: A Politics of the Performative*, she identifies the process of interpellation as the production of the subject through discourse. She argues: “The act of recognition becomes an act of constitution: the address animates the subject into existence.”³ We constitutively create the “Other” through discourse. Butler elaborates:

That one comes to ‘be’ through a dependency on the Other – an Hegelian and, indeed Freudian postulation – must be recast in linguistic terms to the extent that the terms by which recognition is regulated, allocated, and refused are part of larger social rituals of interpellation.⁴

² Gee, P James. *An Introduction to Discourse Analysis: Theory and Method*. London: Routledge. 2005, Page 30.

³ Butler, Judith. *Excitable Speech: A Politics of the Performative*. NY: Routledge, 1997. Page 25.

⁴ Ibid. Page 26.

Butler also observes that words and language have a history, constituting a river of meanings that change over time. Although certain terms do not begin as an offensive term, repetitive references to the words with hateful and racist meanings “give the name its force.”⁵

The important point is that discourse creates subjects, which may trigger behaviors that result in social policies that are aimed at “Others,” effectively creating power relations between one social group over another. Gee elaborates:

Thus, in using language social goods are always at stake. When we speak or write, we always risk being seen as a ‘winner’ or ‘loser’ in a given game or practice. Furthermore, we can speak or write so as to accept others as ‘winners’ or ‘losers’ in the game or practice in which we are engaged. In speaking and writing, then, we can both gain or lose and give or deny social goods.⁶

By understanding discourse, we must ask how the popular media coverage of terrorism has prescribed parameters of discourse through which we attempt to understand political violence? Can the prescribed discourse of popular media be divorced from the socio-cultural connotations that implicate Islam and Muslims? The common understanding of terrorism that is utilized in popular news sources is riddled with socially- and culturally-ascribed symbols that frame the popular discourse on terrorism. Terms, such as “jihadist,” “Muslim fanatic,” “Sharia law,” and “the Muslim world,” represent culturally specific behaviors, bodies, ideas, or spaces being codified as Islamic. This process of codifying the language of terrorism is called Islamicoding. These Islamicodes are words, phrases, and statements that provide a meaningful language and vocabulary for talking about terrorism. These expressions shape and mold the popular understanding of terrorism, so as to make Islam and violence appear inseparable. For instance, just a day after 9/11, David Johnston and James Risen wrote in a *New York Times*

⁵ Ibid. Page 36.

⁶ Gee, P James. *An Introduction to Discourse Analysis: Theory and Method*. London: Routledge. 2005. Page 7.

article, that the 9/11 attacks as “radical Islamic terrorism.”⁷ However, the *a priori* assumption of the existence of a stable category of Islam is never questioned in the article. One must ask Johnston, Risen, the *New York Times*, and other journalists of popular news sources, how an intangible religion can encompass a violent action that any group or person is capable of? Can they accurately define “Islamic terrorism” without reducing to privileging some groups and person’s violence over others’ violence? How does one become a “jihadist”? The assumptions within popular news sources provide a troubling image of the narrative surrounding Islam, and how a religion is both naturalized and reduced to behaviors, bodies, ideas, and spaces. Therefore, it is through such processes Islamicodes designate Islam as a stable category that embodies and expresses terrorism and anti-American values.

However, we also find language in the discourse on terrorism that is culturally-neutral, ambiguous, and impartial to any one specific group. For example, the term “terrorist” has become synonymous, within dominant forms of media, with Muslim. Although “terrorist” does not overtly reference any specific religion or identity, how is it that this culturally-neutral term can carry so much cultural and religious baggage with it? Islamicodes operate without having to mention Islam or Muslims within the discourse on terrorism, religious and ethnic identities are still at the root of much of the culturally-neutral language. For instance, the phrase, “politically motivated,” as seen in the definition of terrorism within the criminal code 22 USC § 2656 poses several important questions. How much of the discourse within popular media is being used during the deliberation of the definition of terrorism? What kind of language was used during the Congressional hearings on Muslim Americans? Can it be that the commonly used definition of terrorism, which discusses as Islam as both being political and religious, influence the formation

⁷ Johnston, David, Risen, James. “A Day of Terror: Intelligence Agencies; Officials Say They Saw No Signs of Increased Terrorist Activity.” *The New York Times*, September 12, 2001.

of laws and policies?⁸ Another example can be found in the language of the criminal code 18 USC § 2331, which attempts to paint the image that terrorism is a unique form of violence because it attempts “to intimidate or coerce a civilian population.”⁹ By that definition, what set of violence does not “intimidate or coerce?” These seemingly neutral laws are implicated within the popular discourse on terrorism, which as seen by Johnston and Risen’s article, the post-9/11 discourse on terrorism immediately associated 9/11 with Islamic beliefs, persons and things. Although the referent, “Islam,” disappears from the legal discourse, the term “terrorism” has expressed, and identifies, acts and motivations stemming from the “Islamic world” in popular media. This type of language provides an ideological template on how to understand and perceive terrorism. Therefore, the culturally-neutral language of terrorism seldom identifies Islam or Muslims by name because it is already a culturally significant and understood word. No other religion has been paired with terrorism in the post-9/11 American mainstream media.

Overall, Islamicodes is an umbrella term under which we categorize all the various vocabulary within the discourse on terrorism. Along with the pairing of terms, Islamicodes also pairs seemingly different political concepts together. The terminology of “War on Terror” inherently insinuates that there are varying forms of violence, and terrorist violence is just one form of violence that we can readily identify all throughout the world. For instance, nationalistic terrorist agendas, such as Hamas, are not differentiated from organizations with a global agenda, such as al-Qaida, because both organizations are codified as having an “Islamic name.” Consequently, within the discourse of popular media, Islamicodes provide a method to unify and link diverse political motives under the banner of Islam, so as to create a meaningful concept of

⁸ 22 USC § 2656

⁹ 18 USC § 2331

“Islam,” that cannot be severed with terrorism and political violence for news sources and politicians.

Islamicodes also provides a method of how to speak about terrorism. In discussing terrorism, Islamicodes creates a boundary of discourse, specifically what is acceptable or not acceptable to say. By framing terrorist events in media through Islamicodes, a parameter of what can and cannot be known of an event is produced. This linguistic border guides the language of terrorism in a very specific, cultural sense. The boundary of discourse effectively rules-in certain ways of speaking and writing about terrorism, while it also rules-out and restricts alternative ways of discussing terrorism. Therefore, the boundary of discourse on terrorism frames the debate on terrorism by providing its own language and ways to speak about terrorism. A prime example of this is the media’s usage of the phrase “Allahu Akbar” in reporting terrorist events. When presented to describe a terrorist event, “Allahu Akbar” is utilized by news sources in a way that conjures up certain symbolic meanings, not of a religious prayer, but of an act of violence, within the discourse of popular media and political campaigning. Allen West, a former United States Congressman, famously said:

The individuals who hijacked two airplanes and flew them into the World Trade Center towers shouted, ‘Allahu Akbar’. The individuals who will attend the mosque would offer up like praise of ‘Allahu Akbar.’ The individuals who detonate suicide vests, behead school teachers and headmasters, throw acid on little girls trying to attend school, and fire rockets into Israel shout, ‘Allahu Akbar’.¹⁰

The 2009 Fort Hood shootings raised much debate surrounding the shouting of “Allahu Akbar” during the attack by Nidal Hasan. Kimberly Munley, one of the first police-officers on the scene, “told ABC News the survivors have been ‘neglected’ by President Obama and the

¹⁰ “Ground Zero Mosque Statement From Allen West.”
<http://gowestforallenwest.wordpress.com/2010/08/04/ground-zero-mosque-statement-from-allen-west/>.
Retrieved March 26, 2013.

government since the 2009 attack. A law-suit claims the government wrongfully categorized the attack as ‘workplace violence’ instead of terrorism.”¹¹ Many believe, including the witnesses of the shooting, that, because Nidal shouted “Allahu Akbar,” a clear religious connection was made with the attack.¹² Thus, the phrase “Allahu Akbar” serves as an analytical bridge between the concepts of Islam and terrorism.

In short, Islamicodes first codifies the language of terrorism as Islamic. Popular discourse within media and news simultaneously naturalizes certain phrases and ideas by implicitly linking the two, thereby eliminating the need to explicitly reference Islam. Consequently, Islamicodes provides a method of grouping differences into one and creates a boundary of discourse on terrorism, therefore not allowing the discourse of popular media and news coverage of terrorism to escape the specific ethno-religious parameters. Relatedly, Islamicodes does not merely describe what is Islamic but provides a description of what is American. The distinction between the two is that the language of Islamicodes manifestly function to provide a way to understand Islam and terrorism, while simultaneously functioning as a language that describes what it means to be truly American. If Islam represents “extremism,” “fundamentalism,” and “jihadists,” then the discourse of popular media would imply that the United States is “balanced,” “moderate,” and “secular.”

¹¹ Ortiz, Eric. “Fort Hood hero claims White House has ‘betrayed’ shooting victims as dramatic video is released of massacre’s aftermath.” New York Daily News. Tuesday, February 12, 2013. <http://www.nydailynews.com/news/crime/dramatic-video-shows-fort-hood-massacre-aftermath-article-1.1262031>. Retrieved March 27, 2013.

¹² Ibid.

The second concept of Islamicodes is semiotics, or signs and symbols. In *Signs: An Introduction to Semiotics*, Thomas Albert Sebeok defines sign as “any physical form that has been imagined or made externally (through some physical medium) to stand for an object, event, feeling, etc., known as a referent, or for a class of similar (or related) objects, events, feelings, etc., known as a referential domain.”¹³ In other words, signs represent meanings and ideas, and transfer information. However, beyond the meaning, signs produce certain effects: “[they] allow people to recognize patterns in things; they acts as predictive guides or plans for taking action; they serve as exemplars of specific kinds of phenomena; and the list could go on and on.”¹⁴ Signs convey the existence of something to people, communicate messages, and make sense of the world.

In *Symbolic Power and the Political Field*, Bourdieu claims that symbols represent the basis of social integration. He observes: “As instruments of knowledge and communication, they make it possible for there to be a consensus on the meaning of the social world, a consensus which contributes fundamentally to the reproduction of the social order.”¹⁵ Symbols are powerful because they are instruments capable of structuring thought and behavior in three distinct ways. First, symbolic systems are structuring structures, which constitutes as the “instruments for knowing and constructing the objective world.”¹⁶ These forms of symbolic structures structure the subjective structures of social agents. The second set of symbolic systems is structured structures, which constitute the means of communication, whether it is in the form of language,

¹³ Sebeok, A Thomas. *Signs an Introduction to Semiotics*. Page 3.

¹⁴ Ibid.

¹⁵ Bourdieu, Pierre. *On Symbolic Violence*. Page 166.

¹⁶ Ibid. Page 165.

culture, discourse, or behavior.¹⁷ These symbolic objects structure the objective structures of the social agent. These two forms of symbolic structures constitute the instruments of domination because social agents create various divisions of labor.¹⁸ When certain forms of knowledge become stabilized, these symbols naturalize unequal, often violent, social structure.

In the previous section, I attempted to illustrate how Islamicodes operate within the discourse of popular media and news coverage of terrorism. Careful wording and framing has shaped the popular media's understanding of violence, effectively merging Islam and terrorism as one. However, the meanings of our language do not conclude at the end of a sentence, a book, or an interview. Islamicodes are also transposed from simple vocabulary to embodying physical objects. The materiality of Islamicodes does not require words to describe its meanings, because the meanings are already embedded in symbols, images, architecture, books, and physical bodies. In other words, Islamicodes helps the media and policy writers categorize "things" as Islamic, without critically challenging or questioning such categorization. This chapter seeks to answer the following questions: What do symbols associated with "things Islamic" represent? In what ways do they help us understand Islam and ourselves?

In the following section, I examine the materiality and naturalness of Islamicodes. I begin with an examination of how Islamicodes conflate the concepts of Islam and terrorism, and construct a dualism between "things" Islamic and its antithesis. Moreover, I show that Islamicodes creates a stable category of Islam through physical and observable objects, so as to make Islamicodes tangibly real. However, I also argue that these physical manifestations of

¹⁷ Ibid.

¹⁸ Ibid.

Islamic symbols are not only meant to conflate Islam with terrorism, but also to define what constitutes an American national identity.

How does Islamicodes progress from words to symbols? In the previous section, we examined how Islamicodes provides a method of speaking about terrorism. Building on this idea, I argue that the Islamicoded language also personifies material things as intrinsically Islamic. The word “Jihadists,” for example, has become a stable, conceptual category because Islam necessarily produces dangerous, irrational minds embodied in the terrorist within the discourse of popular media. As such, the materiality of Islamicodes has several important characteristics. The first function of this process is that Islamicodes produces “Islamic things.” The second is that it draws an ideological and physical line between Islam and America. Lastly, by being able to pinpoint Islamic “things” as being distinct from American “things,” Islamicodes produces a normative American identity.

Unlike the cross and the Star of David, Islam does not have a religiously sanctioned symbol like Christianity and Judaism. However, over the course of the post-9/11 media coverage, the Crescent Moon and Star has assumed the religious symbol of Islam. Although on one particular person is to be identified for the error, what is intriguing is that this symbol is uncritically accepted in American culture as the symbol of terrorism. For instance, the film *Obsession: Radical Islam's War Against the West* depicts the Crescent Moon and Star on the cover of the DVD, which was distributed to 28 million voters in swing-states during the 2008 Presidential elections.¹⁹ Though the movie was about the similarities between the “rise of Islamism” and the rise of Nazism, the use of the Crescent Moon and Star served as a meaningful icon that created the symbolic links between Islam and terrorism.

¹⁹ http://www.obsessionthemovie.com/about_film.html

The Crescent Moon and Star as the Islamic symbol of terrorism took an interesting turn in the debate regarding the Flight 93 memorial design, which was perceived by some as having subliminal Islamic symbols. Flight 93 was one of the planes that was hijacked on 9/11, and was eventually crashed into a field in Shanksville, Pennsylvania. Since the unveiling of the memorial in 2005, many conservative critics, including the father of one of the individuals who died on Flight 93, have been protesting the memorial because they believe that it is symbolically shaped like a Crescent Moon and Star.²⁰ The author of “Crescent of Betrayal: Dishonoring the Heroes,” Alec Rawls, claims that the “memorial’s Field of Honor clearly resembles an Islamic crescent and star, and that the entire site is orientated toward Mecca.”²¹ In a petition that garnered thousands of signatures, Rawls stated: “Intentional or not, these features are entirely unacceptable... We ask that the crescent design be scrapped entirely and that it be replaced with a new design that is not tainted by Islamic or terrorist memorializing symbolism.”²²

The manner in which these symbols and markers became identified with terrorism is an example of Islamicodes. It defines what is Islamic, and what is American. Islamicodes is a filter through which popular media and news sources can readily identify symbols associated with Islam and terrorism as the antithesis of America. Symbols deemed un-American are subject to bias, profiling, and differential treatment. In this process, American national identity emerges within hidden and narrow channels of spaces and actions that seek to categorize and symbolize things in opposition between Islam and American. Islamicodes is not only spoken or seen, but also disseminated through media, learned about in academia, and disciplined through legal institutions. In the next section, I outline the process in which Islamicodes finds expression

²⁰ <http://www.foxnews.com/us/2010/09/07/critics-flight-memorial-insist-islamic-symbols-remain/>

²¹ Ibid.

²² Ibid.

through theory, language, and perception. More importantly, it shapes reality through institutional practices that leave physical and material impact upon our society.

Power/Knowledge of Terrorism

The third concept of Islamicodes is power/knowledge. The relation between institutions of knowledge, and the exercise of that knowledge as a form of power, is a key Foucauldian concept. Foucault has been a big inspiration for my theory of Islamicodes, primarily through his theoretical framework of power/knowledge. The theory sheds important light on the present-day tensions between Muslims and mainstream America. First, power/knowledge is a unified whole; the two cannot be separated. Foucault aptly summarizes: “We should admit rather that power produces knowledge; that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations.”²³

The second aspect of power/knowledge is that it uses both physical and ideological force. In *Discipline and Punish*, Foucault describes power/knowledge as a method of both physical and ideological control that occurs through “the deployment of force and the establishment of truth.”²⁴ One might reasonably ask: who has the institutional authority to establish truth and how does such truth provide a basis for deploying force or discipline? In what ways does power/knowledge operate in constructing truth about Islam and what kind of force exerts upon that truth?

²³ Foucault, Michel. *Discipline and Punish*. Page 27.

²⁴ Ibid. Page 184.

The last key aspect of power/knowledge is its disciplinary function. Foucault expands:

This subjection is not only obtained by the instruments of violence or ideology' it can also be direct, physical, pitting force against force, bearing on material elements, and yet without involving violence' it may be calculated, organized, technically thought out' it may be subtle. Make use neither of weapons nor of terror and yet remain of a physical order.²⁵

Immediately after 9/11, various news and media outlets produced Islamicodes. By participating in and engaging with the discourse on terrorism, ordinary citizens helped to crystallize the language, the meaning and the symbols of terrorism. While no single person or institution could be solely blamed for propagating Islamicodes, its impact on the lives of Muslim Americans has been profoundly disturbing and real. From a Foucauldian perspective, the important questions are: in what ways do institutions "calculate and organize" the subjection of Muslim American bodies? What are the mechanisms of the hidden, subtle force of power?

The aim here is not to analyze each and every institution, but to understand how particular structures serve as a way to produce specific social outcomes and relations between groups. With an institutional analysis, one must also question the source of legitimacy. That is, what exactly justifies an institution to have either an immense amount of power, trust, or respect in society? After 9/11, the institutions deemed legitimate in explaining terrorism was limited to government agencies and news sources. Because terrorism represents a "threat" to the United States, those institutions capable of "protecting us" were clearly given the stage to explain to the American public what exactly is going on and what is to be done. Therefore, legitimacy of the institutions of government agencies and news sources was rooted in our yearning for national security.

²⁵ Ibid. Page 26.

In order to understand how institutions practice Islamic codes, one must bear in mind the importance of legitimacy for institutions. In times of national crisis, security concerns impel institutions to construct knowledge of the perceived threat. This is expected as legitimate institutional practice. The subsequent efforts to eliminate threats entail not only further development of expert knowledge, but also disciplined public. The conversion of specialized knowledge into regularized social practices represents an instantiation of the disciplinary power upon the social body.

Many individuals in media, after 9/11, wondered why moderate Muslims were not speaking out against terrorism. The issue, however, was not that Muslims were silent against terrorism; rather, the deeper issue was that Muslims could not speak with legitimacy because the institutions through which Muslims condemned terrorism could provide neither security nor legitimacy. In other words, moderate Muslims who spoke out against terrorism did not have the power to define Islam apart from terrorism and to provide the American public with a sense of security from the threat of terrorism. This process effectively rendered bureaucrats and media pundits as the main voices of Islam and terrorism.

However, the power/knowledge within Islamic codes is not only about political efficacy, voice, and representation, but ultimately what separates the institutional practice from discourse and semiotics, is that the former allows us to measure the impact of Islamic codes on the life chances of Muslim Americans. The institutional practice of Islamic codes must incorporate an analysis of the ways in which an institution can affect various aspects of an individual Muslim's life such as in income and wealth accumulation, academic attainment, political representation, access to legal representation, treatment by police officers, etc., all of which constitute

measurable ways in which one can understand how Islamicodes have affected an individual's life chances.

In future sections of this article, I specifically examine how government agencies, law enforcement, and criminal courts impact the life chances of Muslim Americans. However, we must also note that all institutions practice Islamicodes and affect the life chances of Muslim Americans in a myriad of institutions. These institutions range from economic, academic, media, and cultural institutions.

Conclusion

The theory of Islamicodes provides an important way to understand the significance of post-9/11 perspective on War-on-Terror, which is rooted in an ideological convergence of Islam and terrorism. This conceptual conflation has been overlooked, and critical analysis has yet to be properly addressed. It is as if Islam and terrorism have become synonymous and this knowledge has become a part of our common-sense understanding. Discourse, semiotics, and power/knowledge serve as the building blocks of Islamicodes. These concepts are important to understand because they help explain how knowledge becomes hegemonic through multiple and simultaneous processes. These include language, symbols, and supporting institutions that propagate and perpetuate specialized knowledge.

The concept of discourse illustrates the social-cultural meanings of words and language, and bridges the epistemological gap between Islam and terrorism. Much of this language is disseminated through media, bureaucrats, and academics because the discourse of the War on Terror utilizes a specific form of language that narrows our understanding of terrorism. In

addition, the concept of semiotics informs us how the conflation of Islam and terrorism could be painted onto material objects, thereby creating the physical form of Islamicodes. Islamicodes has been symbolized onto bodies, clothing, buildings, and places, effectively creating racialized and religious objects, which reify the linkage between Islam and terrorism. Ultimately, semiotics realizes Islamicodes onto physical things, thereby making them susceptible to resistance and violence. Finally, Foucault's concept of power/knowledge allows us to understand how institutions utilize the specialized knowledge about terrorism to discipline the public and deleteriously affect the life chances of individual Muslim Americans. The effects of the institutional practice of Islamicodes also provide measurable evidence of Islamicodes' impact on the Muslim Americans.

In sum, Islamicodes is an epistemology that links the concepts of Islam and terrorism. Over time, this idea became stable and served as a basis for constructing counter-terror policies. As a consequence, these policies have selectively and disproportionately impacted Muslims and Muslim Americans. What has been rendered as solid and stable categories of "Islam" and "terrorism" must be demystified, so as to show how the link between the Islam and terrorism lacks logic. By eliciting the instability of the epistemology of Islamicodes, we can begin to question the legitimacy of institutions that practice Islamicodes as both a form of knowledge and power. In the following chapters, I present how the theory of Islamicodes manifest in real-life situations in American cultural context.

THE ISLAMICODES OF AMERICAN CULTURE

Introduction

Within the American public sphere, Islam and terrorism have been merged together, and now seem inseparable, making further analysis of each more difficult. Islamicodes, however, go beyond our knowledge and ways of thinking about terrorism and Islam; it materializes in the public sphere in various cultural forms. Thus, in order to understand how the Islamicodes transcends the realm of epistemology, this chapter examines the impact of Islamicodes on day-to-day interactions and popular culture. Specifically, this chapter focuses on the transformative process of Islamicodes by examining how the formation of knowledge about Islam informs debates and representations of “things” Islamic, such as mosques, the hijab and turban, and the Islamic bodies. In so doing, this chapter further illustrates that the socio-cultural manifestation of the Islamicodes constructs an American normative identity, one that necessarily counteracts against the forces of terror, oppression, and anti-American values.

The Un-American Mosque

I begin my analysis of masjids as an Islamicode by magnifying an important distinction between masjids as a physical, concrete building, and “mosques” as a symbolic occupation by Islam. In the first sense, masjid is the correct Arabic term for a building in which people congregate, discuss, and practice similar beliefs. The architectural structure of masjids, for the most part, are the same as any other building, used for any other purpose. In the second sense, “mosque” has been used primarily as an Islamicode for “Islamic occupation.” We will see the interplay between the two meanings shortly, but the difference between the definitions of the two

terms must be highlighted. Though there is a clear distinction between a physical building, and an occupational force of an intangible ideal, “mosque” cannot analytically divorce Islam from terrorism because the logic of Islamic codes binds the two together.

The incorporation of Islamic codes into American culture and the public sphere is perhaps best illustrated in the example of the Park 51 Islamic community center, which was famously dubbed as the “Ground Zero mosque.” Muslim Americans living in New York City planned to build an Islamic community-center several blocks away from where the events of 9/11 took place. Muslims praying in mosques or buildings near ground zero had never been an issue, in fact, “Muslims have been praying at the Pentagon, the other building hit on Sept. 11, for many years.”²⁶ The news story of Muslims wanting to build a prayer center was first reported by *The New York Times* on December 8, 2009, in which the article began with a scene-setter of 9/11, explicitly linking Islamic prayer to the terrorist attacks.²⁷ The article reported that local Muslims already used the location of the newly planned masjid as a prayer center, though the building itself could not be ostensibly recognized as a masjid from the outside.²⁸ However, for Blumenthal, the author of the article, the plan was highly problematic because of its symbolic significance. He stated: “these modest beginnings point to a far grander vision: an Islamic center near the city’s most hallowed piece of land that would stand as one of ground zero’s more unexpected and striking neighbors.”²⁹ The use of phrases such as “most hallowed piece of land,” and “unexpected and striking neighbors,” quite explicitly mark the boundary as to what is clearly

²⁶ Elliott, Justin. “How the ‘ground zero mosque’ fear mongering began”. August 16, 2010.

http://www.salon.com/2010/08/16/ground_zero_mosque_origins/

²⁷ Blumenthal, Ralph; Mowjood, Sharaf. “Muslim Prayers and Renewal Near Ground Zero.” *The New York Times*. December 8, 2009.

²⁸ Ibid.

²⁹ Ibid.

un-American. The Islamicoded phrase “unexpected and striking neighbors,” albeit in ambiguous terms, identifies the faceless Muslims as potential terrorists. The phrase, “most hallowed piece of land,” also implies that this mosque symbolically is tied to the very source of the tragic events of 9/11. Thus, the author simultaneously defined the Twin Towers as the symbol of American national identity and narrative, while the Islamic mosque represented a tangible threat to that identity.

On May 6, 2010, the proposed plan to build the mosque was unanimously accepted by the New York City community board committee.³⁰ However that acceptance did not come without opposition. On May 7, Pamela Geller, and her organization, Stop Islamization of America, began to run a campaign against the proposed mosque under the banner, “Stop the 911 Mosque!”³¹ Geller, a popular conservative blogger and commentator, is most well-known for her vociferous opposition to Islam and Muslims, which has garnered her much fame and support from the internet and conservative communities. Geller does much work with another prominent conservative blogger, Robert Spencer, the founder of the website Jihad Watch, and the two co-founded the American Freedom Defensive Initiative.³² On a near daily-basis, Geller propagates anti-Islamic rhetoric on another website, Atlas Shrugs, with which PayPal severed ties because they deemed it as a hate site.³³ Upon the beginning of Stop Islamization of America’s campaign against the Park51 masjid, Geller rose to national prominence, as she denounced the Islamic center as the “Ground Zero mega-mosque,” representing a symbol of terrorism that took innocent American lives.³⁴ Geller’s media blitzkrieg of Park51, describing its developers as “thugs” and

³⁰ Ibid.

³¹ Ibid.

³² Barnard, Anne; Feuer, Alan. “Outraged, and Outrageous.” The New York Times. October 8, 2010. <http://www.nytimes.com/2010/10/10/nyregion/10geller.html?pagewanted=all>. Retrieved March 27, 2013.

³³ Ibid.

³⁴ Ibid.

“lowlifes,”³⁵ helped shape and direct the national narrative and debate regarding the Park51 masjid. Geller vigorously assisted in making Islamicodes more mainstream by associating any masjid with Islamic occupation. “Terrorism by Muslims,” she argued, “springs not from perversions of Islam but from the religion itself.”³⁶ Geller’s articulation of Islamicodes has attracted a broader mass appeal, as some prominent, conservative politicians borrowed her very own language. Adopting Geller’s hateful speech, Newt Gingrich and Sarah Palin repeatedly utilized the phrase, “Islamofascism,” to denigrate the religion by making explicit links to violence and anti-democratic ideals.³⁷ Geller’s ideas would gain greater potency when her opposition to any Islamic masjid became widespread and prominent after her perceived “valiant stand” against the “Ground Zero mosque.”

Geller’s opposition to the proposed plan was at times masked in superficial concern for the Muslims. She argued:

“The ground zero mosque... To me it was an outrage, to me it was deeply offensive, to me it was indicative that interfaith dialogue and mutual respect and mutual understanding is a one-way street with Islamic supremacists, not Muslims. I believe that Muslims are more victimized by Islamic supremacists than even non-Muslims.”³⁸

Deflecting the charge against her as being “anti-Islam,” Geller defended her position: “I’m not leading the charge against the Islamic center near Ground Zero. The majority of Americans – 70% – of Americans find this deeply insulting, offensive. To call it anti-Muslim is a gross misrepresentation and to say that I’m responsible for all this emotion, again a gross

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Barnard, Anne; Feuer, Alan. “In Her Own Words.” The New York Times. October 8, 2010. <http://www.nytimes.com/2010/10/10/nyregion/10gellerb.html>. Retrieved March 27, 2013.

misrepresentation.”³⁹ Though Geller is correct in that she did not necessarily “start” this anti-Islamic fervor, the events of 9/11 created a catalyst for her organization’s deep-seated anti-Islamic stance to gain much wider support and media attention.

Despite the mosque’s board members claiming it is an open community center for all cultures and religions, the proposed building was already Islamicoded. On August 17, 2010, Rush Limbaugh, on his radio show, made his stance clear by exclaiming that “They want to build a victory monument!”⁴⁰ Opposition to this building was clearly rooted in the idea that the building was in some way “un-American,” symbolizing a battle between “good” and “evil” and representing an unconcluded war between Islam and America. The anti-Park51 masjid media fervor had become more widespread, and Geller and her organization infused a new life into the latent, anti-Islamic rhetoric.

The Islamicoding of the mosque as the “cauldron of terror” and “victory monument” occurs because Islamicodes suggest that, uniquely, an Islamic identity is being produced and reproduced within that architectural structure. The identification of a building as intrinsically Islamic begs the question: what constitutes an “American” building? If Islamicoded buildings serve as the antithesis to American buildings, what role and purpose must a building have to constitute as being American? This assumption inherently depends on the frail argument that Islam and America are necessarily opposites, where the two clashing ideals will never meet on peaceful terms. Despite Park51’s calls for the mosque to serve as a medium to bridge the two identities, Islamicodes disallows that form of logic, so as to essentialize and naturalize Islam as the antithesis of America.

³⁹ Ibid.

⁴⁰ Limbaugh, Rush. “Why This Mosque on This Spot?” *The Rush Limbaugh Show*. August 17, 2010.

Preliminary plans for the masjid had garnered much support and encouragement from city officials and the surrounding community.⁴¹ Much positive light was shed on Imam Feisal, the head religious leader of the masjid, who made public statements that the project, “sends the opposite statement to what happened on 9/11,” and “We want to push back against the extremists.”⁴²

Veiled Women, Turbaned Men

Aside from masjids, there are many more examples of the ways in which Islamic codes have been incorporated into American culture and the public sphere, and some of these components have a clear gendered effect, particularly through the discourse on clothing, such as the hijab and turban. In the following, I examine more closely how these pieces of clothing have been ascribed certain socio-cultural meanings, while simultaneously promoting normative American culture based in opposition to what is perceived to be “things” rooted in dangerous and oppressive Islamic culture.

One of the most apparent symbols of Islam in Western society is the hijab. The wearing of veils has become an illustrative symbol that is synonymous with the distinction between Islam and the West. Muslim women who wear the veil, immediately embody various assumptions of Islamic codes; religiously oppressed woman, fashionably lagging culture, mysterious and erotic Orientalism, and a method of “Islamifying” the West.

⁴¹ Ibid.

⁴² Ibid.

Though the wearing of the hijab is discernibly defined as an Islamic practice, it is not however unique to Islam. Modest clothing and dress is a cultural practice found all across the world. Catholic nuns, Anabaptist Christians, Orthodox Jews, all prescribe some form of dress code that promotes a perceived form of modesty. However, these examples have effectively been erased from our cultural memory and understanding of the wearing of a veil, and it has rather been identified as purely an Islamic “thing.”

If it is true that the hijab is not uniquely Islamic, despite our social ascription as such, what exactly about the hijab is not conducive with the American way of life? In, “The Right to Fashion in the Age of Terrorism,” Minh-Ha T. Pham explains how consumerism is the cornerstone of Western society, and women who choose to wear the hijab, are effectively not consuming the popular fashion trends of the day.⁴³ “In this and other post–September 11 campaigns for fashion consumerism, fashion emblemizes and enacts multiple neoliberal freedoms, including the freedom to consume, and connected to that, the freedoms of self-expression and self-determination. All these freedoms, Americans were told, were under threat in the age of terror.”⁴⁴ Therefore, according to the logic of Islamic codes, to wear a hijab, is to be a non-consumer of fashion. It is clear that the Islamic coding of clothing is not merely a method to discern what is an Islamic “thing,” but also to define what practices, clothing styles, and fashion senses are purely American, fostering a “fashionable” American identity, at the expense of Islamic identities.

Annette Lamothe-Ramos, a fashion columnist for Vice.com wrote an interesting expose of the day in which she walked around New York City wearing a burqa, though she is not a

⁴³ Pham, Minh-ha T. *The Right to Fashion in the Age of Terrorism*. Signs:

Vol. 36, No. 2 (Winter 2011), pp. 385-410. University of Chicago Press.

⁴⁴ Ibid. Page 386.

Muslim. She recounted her interesting experiences in her article, such as, “No one really paid much attention to me except a woman on the bench behind me who was sitting with her children. She dragged them to the other end of the platform when she saw me step onto the train.”⁴⁵ As she visited historic sights, such as the Empire State Building, “things got really uncomfortable. I could tell all the foreigners were talking shit about me in their native tongues. The group behind me also followed us around, presumably because we were taking so many photos.”⁴⁶ Lamothe-Ramos also recounted how security guards followed her around as well. Whether it was tourists or locals, Lamothe-Ramos knew her appearance and existence made others uncomfortable and hostile towards her. This is the reality many Muslim women face on a daily basis in America.

Discrimination against Muslim women in traditional wear extends beyond just simple interactions on streets, and has entered the realm of the workplace, severely diminishing the social mobility of Muslim women in America. According to the American Civil Liberties Union, complaints filed by Muslim advocacy groups on the issue of workplace discrimination rose from 366 incidents in 2000 to 2,467 in 2006, an increase of 674%.⁴⁷ The report also stated that there were “154 cases of discrimination or harassment in which a Muslim woman’s head covering was identified as the factor that triggered the incident.”⁴⁸ The complaint that occurred the most was for being prohibited from wearing a hijab, which occurred in 44 of these cases.⁴⁹ One expert has found that “Muslim women who wear headscarves are more likely than those who do not to face

⁴⁵ Lamothe-Ramos, Annette. “I Walked Around in a Burqa All Day (And I’m Not a Muslim).” September 28, 2013. Retrieved March 28, 2013.

⁴⁶ Ibid.

⁴⁷ ACLU. “Discrimination Against Muslim Women – Fact Sheet.” <http://www.aclu.org/religion-belief-womens-rights/discrimination-against-muslim-women-fact-sheet>. Retrieved March 27, 2013.

⁴⁸ Ibid.

⁴⁹ Ibid.

discrimination: 69% of women who wore hijab reported at least one incident of discrimination compared to 29% of women who did not wear hijab.⁵⁰

It still remains to be seen how the issue of the hijab will play out in instances at school, in which Muslim girls are assaulted or harassed for their clothing. In situations in dealing with law enforcement, Muslim women experience a difficult time in how much they are willing to reveal to an officer. In many cases, Muslim women had their right to wear a hijab in jail denied to them.⁵¹ There have been also many incidents in which Muslim women who sought to acquire a driver's license or a passport were denied due to their hijab.⁵²

After 9/11, Muslim women wearing a hijab in America experienced an intersection of hate, specifically biases against Islam, the brown body, and women. Unlike Muslim men, “women face unique forms of discrimination not adequately addressed by Muslim civil rights advocacy organizations, women's rights organizations, or civil liberties advocates,” claims Sahar Aziz, a prominent civil rights attorney and author.⁵³ Aziz points out how once, in America, the debate about Muslim women's hijab centered around issues of her own personal freedom, choice, and religious expression. However, after 9/11, the hijab now, “marks women as representatives of the suspicious, inherently violent, and forever foreign ‘terrorist other’ in our midst.”⁵⁴ According to Aziz, 9/11 shifted the nation's perspective of Islam from a religion to a political ideology. Within this perceptual shift, religious discrimination on behalf of the government cannot occur, because in the public's eye, Islam is not a religion. This allowance of police discrimination affects Muslim women in several unique ways. First, Muslim women become conflated with Muslim

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Aziz, Sahar. *From the Oppressed to the Terrorist: Muslim American Women in the Crosshairs of Intersectionality*. Hastings Race & Poverty L.J. 191. Summer, 2012. Page 2.

⁵⁴ Ibid.

men in the project of terrorism, despite terrorism being a clearly male-dominated.⁵⁵ Aziz states that, “Irrespective of their place of origin, or the color of their skin, the headscarf ‘marks’ these women as sympathetic to the enemy, presumptively disloyal, and forever foreign.” Second, Muslim women are ostensibly implicated as the racialized “terrorist other,” due to wearing her hijab, a manifest religious relic. Aziz states, “the Muslim headscarf symbolizes more than a mere cloth worn by a religious minority seeking religious accommodation. It is a visible ‘marker’ of her membership in a suspect group.”⁵⁶ Through this perceptual shift, Aziz believes that the symbol of the hijab has morphed from being subjected to religious oppression, to wanting to inflict religious oppression upon non-Muslims. Thus, counter-terror measures that target women center around the Muslim woman’s loyalty, due to her hijab.

If the hijab is the female aspect of clothing that has been Islamicoded into American culture, then its male counterpart is the turban. Historically, the turban is a form of headwear that has appeared all throughout the world, including places such as North Africa, the Middle East, South East Asia, and even parts of the Caribbean. However, the popular American media conception of the turban has been primarily portrayed by the image of the Indian, Punjabi, and Pakistani Sikh, that is misidentified as being Arabic and Islamic. This Islamicoded misattribution has ethnically and nationally conflated many non-Middle Eastern and non-Muslims into the same category of Islam and terrorism, effectively homogenizing many cultural and religious differences and variations. The Islamicoded turban was most popularized in mainstream media by the Danish cartoonist Kurt Westergaard, who in 2008, “drew a cartoon of the Prophet

⁵⁵ Ibid., Page 3.

⁵⁶ Ibid.

Muhammad wearing a turban that looked like a bomb.”⁵⁷ Several members of the free press society that pushed for the publication of the Danish cartoon included “Daniel Pipes, who has called for profiling Muslims at airports, and Geert Wilders, a Dutch politician who leads an anti-Islam party that won about 15 percent of the vote in European Parliament elections in June.”⁵⁸ The image of Islamic and terrorist turban manifested culturally in the form of a cartoon that has inspired many other renditions in America.

The impact of such misrepresentations on non-Muslims has been significant and troubling. August 5, 2012, the popularized image of the Islamic terrorist wearing a turban culminated into one of the deadliest shootings at a Sikh temple in American history.⁵⁹ Wade Michael Page, a white supremacist, who had ties to neo-Nazi groups and played in a right-wing punk band, once told an Army friend of his of an impending “racial holy war.”⁶⁰ Witnesses at the Sikh temple stated that they saw the shooter with a tattoo on his arm depicting 9/11.⁶¹ Page ultimately killed six people, wounding four others, in which many believe Page misinterpreted Sikhs as Muslims. Today, the victims of the Sikh-temple shooting are still waiting to hear if the attack will be characterized as domestic-terrorism or not. According to the Sikh coalition, the FBI does not track hate crimes against Sikhs in America.⁶²

⁵⁷ Barron, James. “Artist Who Set Off Muslim Fury Visits City.” *The New York Times*. September 29, 2009. Barnard, Anne; Feuer, Alan. “Outraged, and Outrageous.” *The New York Times*. October 8, 2010. Retrieved March 27, 2013.

⁵⁸ Ibid.

⁵⁹ CNN Wire Staff. “Police identify Army Veteran as Wisconsin temple shooting gunman.” CNN. August 7, 2012. http://www.cnn.com/2012/08/06/us/wisconsin-temple-shooting/index.html?hpt=hp_t1. Retrieved March 27, 2013.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Singh, Gurtej. “Victims waiting for answers on Wisconsin Sikh Gurudwara terror strike; FBI urged to track crimes incidents.” March 26, 2013. <http://www.sikhsiyasat.net/2013/03/26/victims-waiting-for-answers-on-wisconsin-sikh-gurudwara-terror-strike-fbi-urged-to-track-hate-crimes-incidents/>. Retrieved March 27, 2013.

Islamicodes have materialized into American culture and the public sphere in many unique ways, and articles of clothing is only one of many examples. Regardless of the piece of evidence, several aspects remain clear. First, a conceptual conflation is occurring between Islam and terrorism, and this can appear in various modes, including the hijab and the turban. Second, the hijab and the turban signify not only religious and terrorist aspects, but also gendered and ethno-national characteristics, which broadly expand Islamicodes into encompassing more features of Islam, the Middle East, and terrorism. Lastly, a grand homogenization process is occurring, in that all these varying characteristics that are being captured by Islamicodes, ultimately aim to promote both the merging of Islam and terrorism, as well as promote a normative American culture that is based on identifying the Muslim “Other.”

The Dangerous and Exotic Brown Body

Islamicodes have materialized into American culture and the public sphere in which the brown male and female bodies have become sites of violence and oppression. For men, their bodies are perceived as potentially violent and terrorist, while female brown bodies manifest an expression of religious oppression. In socially ascribing anti-American meanings and symbols to physical features, the Islamicode reinforces American cultural norms based on dualisms.

One of the most important physical manifestations of Islamicodes is the personification of Islamicodes onto the young, brown, male body. In 2010, the RAND Corporation published an article titled, “Would-Be Warriors: Incidents of Jihadist Terrorist Radicalization in the United

States Since September 11, 2001,” by Michael Jenkins.⁶³ The RAND Corporation is a nonprofit think-tank, which provides information, research, and analysis for various institutions, both public and private.⁶⁴ This article boldly states that, “Nearly all the domestically radicalized terrorists have been Muslims or converts to Islam.”⁶⁵ By providing statistics on the ethnicities of the arrestees, Jenkins paints a picture in which, “The Arab and South Asian immigrant communities are statistically overrepresented in this small sample.”⁶⁶ Jenkins proceeds to describe various terrorism cases, in which the individuals fit the profile of “Arab and South Asian,” and labels each of the individuals “jihadists.” The intriguing aspect of the article is not the arbitrary generalizations or labeling, rather, within this symbolic-social act of connecting an Islamic code with a physical body, a particular logic is revealed.

Jenkins’ assertion that, “Nearly all the domestically radicalized terrorists have been Muslims or converts to Islam,” is not logically derived from evidence. Rather, despite numerous examples of white, non-Muslim terrorist acts, such as Jared Loughner, Andrew Joseph Stack, and the Hutaree organization, Islamic codes only allow us to personify the language of terrorism upon young, brown, male bodies. In Jenkins’ statement, a clear connection between terrorism and Muslims is identified through *a priori* descriptions, such as “domestically radicalized.” Jenkins’ identification of the Muslim terrorists in his research is no more or no less radicalized than the three white, non-Muslim terrorist, and terrorism organizations.

The identification of terrorists as young, brown males does not only appear in logic and language, but also in day-to-day interactions between Muslim and non-Muslim persons. Airport

⁶³ Jenkins, Michael. “Would-Be Warriors: Incidents of Jihadist Terrorist Radicalization in the United States Since September 11, 2001.” RAND Corporation, Santa Monica, CA. 2010.

⁶⁴ The RAND Corporation. “History and Mission.” RAND Corporation.

⁶⁵ Ibid. Page 3.

⁶⁶ Ibid. Page vii.

security checkpoint provides an ongoing example of the interaction between these two perceived and constructed antagonistic bodies. A new form of racial profiling has occurred in the form of, “flying while Muslim,” in which “Arab and South Asian” looking individuals are being screened and checked more thoroughly at airports, as compared to other passengers.⁶⁷ Subsequently, these individuals face longer waits, a slower check-in process, and have been even forcibly removed from flights.⁶⁸

As of, April 14, 2012, the Transportation Security Administration, TSA, released a new, hi-tech machine that is designed to expedite the check-in process for those individuals deemed a non-security threat.⁶⁹ One might reasonably ask: which bodies would be considered “safe” and allowed through the quicker and faster check-in process? Conversely, the Islamiccode identifies young, brown males as potential threats to airport security, thus representing its anti-thetical “other” through which it implicitly reifies the American cultural standard. The new lines of high-security threats and low-security threats in airports draws a clear line between those individuals deemed legitimate American citizens, as opposed to those who are considered illegitimate citizens, and thus non-Americans. Islamicodes constructs diametrically opposed identities by identifying a threat based on physical features.

Muslim men, and their brown bodies, are recognized in mainstream American culture and the public sphere as sites of potential violence and terrorist acts. In short, the brown male body is configured as hyper-masculine capable of doing unspeakable harm. If such a portrayal signifies one extreme of the Islamicoded brown body, female brown bodies represent its polar opposite, embodying sites of oppression and virginity. Tessa Jowell, the former Culture Secretary of

⁶⁷ Reem. “Flying While Muslim.” <http://insideislam.wisc.edu/index.php/archives/3214>. September 24, 2009.

⁶⁸ Ibid.

⁶⁹ Booton, Jennifer. “TSA Tests High-Tech Check-in Machines.” <http://www.foxbusiness.com/travel/2012/04/16/tsa-tests-tech-savvy-check-in-machines>. April 16, 2012.

England, made airwaves when, in 2006, she articulated what many all throughout Europe and America were feeling. “Muslim women,” she argued, “who are heavily veiled, whose identity is obscured to the world apart from their husband, cannot take their full place in society.”⁷⁰ Such a statement stems from the common perception that Muslim women are essentially owned by their husbands and are forced to live in oppressive culture, which renders women at best as second-class citizens. Many critics have used the appearance of Muslim women as a way to suggest that Islam is inherently violent and oppressive.

The perception of Muslim women as oppressed has culminated into a media fervor surrounding instances of domestic violence of Muslim families. Characterized as “honor killings,” media coverage of Muslim family focuses on purportedly the deleterious impact of “Westernization” of the daughter. This was most famously seen in the February 2009 arrest of Muzzammil Hassan on suspicion that he murdered his estranged wife Aasiya Zubair.⁷¹ My aim here is not to diminish the atrocity of patriarchy and violence against women that occurs by all men of all cultures and faith. However, I want to problematize the media portrayal of domestic violence between Muslim individuals as “honor killings,” which is a unique portrayal of violence that has not occurred yet with any other ethnic and or religious minority in America. The media quickly began to portray this incident as an Islamic “honor killing,” but Hassan’s attorneys quickly announced that Hassan “isn’t even a practicing Muslim, and that public speculation has been unfair.”⁷² Regardless of such public statements that attempted to elicit how Hassan was not religious at all, as he neither prayed nor fasted, the act of domestic violence and the murder of his

⁷⁰ Daily Mail. “Muslim veil is a symbol of women’s oppression, says Jowell.” October 16, 2006. <http://www.dailymail.co.uk/news/article-410622/Muslim-veil-symbol-womens-oppression-says-Jowell.html>. Retrieved March 28, 2013.

⁷¹ Robbins, Liz. “Upstate Man Charged With Beheading His Estranged Wife.” The New York Times. February 17, 2009. <http://www.nytimes.com/2009/02/18/nyregion/18behead.html>. Retrieved March 28, 2013.

⁷² Ibid.

estranged wife was inherently Islamicoded because the violent brown male body had killed the oppressed brown female body.

Despite incessant media portrayal of oppressed and victimized Muslim women, a poll in 2006 revealed that “Muslim women do not think they are conditioned to accept second-class status or view themselves as oppressed.”⁷³ In fact, the poll analysts stated, “the hijab, or head scarf, and burqa, the garment covering face and body, seen by some Westerners as tools of oppression, were never mentioned in the women’s answers to the open-ended questions.”⁷⁴

The interplay of the Islamicoded brown body in American culture and public spheres affected the reporting and portrayal of the Iraq war in mass media. What began as a narrative premised in a call to arms against a nation that wielded weapons of mass destruction gradually, over the course of ten years, transformed into a narrative of “killing the bad guys,” and “liberating the people.” The media and politicians framed the narrative of the Iraq war as the “good guys” versus “the bad guys,” “insurgents,” and other Islamicoded terms that were based on hyper-masculating brown male-bodies as necessarily terrorist and violent, while, simultaneously, presenting the collapse of the former Iraqi regime as “liberation” in terms of freeing the oppressed brown female-body. On the ten-year anniversary of the Iraq War, Donald Rumsfeld tweeted, “10 yrs ago began the long, difficult work of liberating 25 mil Iraqis. All who played a role in history deserve our respect & appreciation.”⁷⁵ This is a dramatic change in rhetoric from Rumsfeld’s 2003 interview on CBS’ “Face the Nation,” in which Rumsfeld was

⁷³ Andrews, Helena. “Muslim Women Don’t See Themselves as Oppressed, Survey Finds.” *The New York Times*. June 8, 2006. http://www.nytimes.com/2006/06/08/world/middleeast/08women.html?_r=0. Retrieved March 28, 2013.

⁷⁴ Ibid.

⁷⁵ The Cajun Boy. “Donald Rumsfeld’s Iraq War Anniversary Tweet has Not Been Well-Received.” March 19, 2013. <http://www.uproxx.com/webculture/2013/03/donald-rumsfelds-iraq-war-anniversary-tweet-has-not-been-well-received/>. Retrieved March 28, 2013.

adamant that the Iraq War was justified because, "We have seen intelligence over many months that they have chemical and biological weapons, and that they have dispersed them and that they're weaponized and that, in one case at least, the command and control arrangements have been established."⁷⁶

In fact, many other media pundits have begun to use the rhetoric of the Iraq War being justified because the America "saved the Iraqi women." On March 21, 2013, ABC's "20/20" claimed that many Iraqi women are grateful for the Iraq War.⁷⁷ The segment continued, "They say there needs to be a clear commitment to democracy in Iraq, and that the United States and its allies will need to chaperon the transition."⁷⁸ Altogether, we can see how the Islamic codes of the brown body propagated the shift in the narrative of the Iraq War. Where there were no weapons of mass destruction to justify the war, there were violent and terrorist men that needed to be taken out. If the occupation of Iraq proved costly and expensive, the liberation of the Iraqi women would at least justify it. This Islamic coded narrative of war and occupation in the Middle East would prove to be useful for future wars with Islamic nations. The characterization of the Islamic male body, which innately oppresses their female counterpart, establishes its anti-thesis: America symbolizes freedom for women and progress for the rest of the Islamic world.

Conclusion

This chapter situates the epistemology of Islamic codes within the greater context of American culture and public spheres, as seen through the examples of masjids, clothing, and brown bodies. Islamic codes, as a form of knowledge, materializes into many facets of American

⁷⁶ Procon.org. "Iraq Statements by Former US Department of Defense Secretary Donald Rumsfeld." January 9, 2009. <http://usiraq.procon.org/view.resource.php?resourceID=687>. Retrieved March 28, 2013.

⁷⁷ ABCNEWS. "Iraqi Women Grateful for U.S. Campaign." ABC 20/20. March 21, 2013. <http://abcnews.go.com/2020/story?id=123738&page=1#.UVTPWK76yYk>. Retrieved March 28, 2013.

⁷⁸ Ibid.

society, and interweaves through the cultural and social milieu. As such, Islamicodes become embedded in the generic process of everyday interactions. The link between Islam and its hyper-masculine tendencies leads to a logical conclusion that Islamic men are inherently dangerous, capable of enacting terror in the name of their religion and of circumscribing the lives of women. In the process, the Islamicodes simultaneously constructs normative American culture, one that counteracts against the forces of incivility, violence, and terror. Beyond simply conceptually conflating terrorism with Islam, we have seen how this common sense form of knowledge has not only become pervasive in society, but has also lead to calls to action, and has had deadly results for many. As we will see in the following chapter, the utilization of Islamicodes become even more complex, with critical effects upon the Muslim American community in the form of counter-terror laws, policies, and tactics.

U.S. CRIMINAL CODES ARE ISLAMICODES

Introduction

According to a Department of Justice's list of prosecutions of terrorists, Muslims constitute over 80% of the total number of terrorism prosecutions, despite the fact that Muslims constitute only 1% of the US population.⁷⁹ The overwhelming number of Muslims implicated in terrorist-related crimes demonstrates the importance of the judicial system in interpreting and executing the legal codes. This chapter analyzes the American judicial system because it is principally responsible for not only impacting Muslims and Muslim Americans in an observable and measurable manner, but also interpreting and defining what constitutes a terrorist act. The judicial system, thus, represents an instrumental arm of the state in generating Islamicodes and wielding violence and coercion upon a specific ethno-religious population.

In demonstrating how the court system reproduces Islamicodes, this chapter examines three statutes that are most frequently used to interrogate and prosecute Muslims in America. Because these legal codes are written in abstract and ambiguous terms, the prosecutors' interpretation of the laws and the subsequent decisions of the courts effectively targeted and criminalized Muslims. Specifically, I show that the court's interpretation of the term "material support charges" is flexibly applied to prosecute disproportionate number of Muslims. Finally, building on Critical Race Theories, I argue that these various laws and statutes clearly do not conform to the "rule of law" principle. Instead, the selective application of the law shows that it is a mechanism of racial domination.

⁷⁹ IPT News. *Islamists Dominate DOJ's List of Terror Prosecutions*. March 9, 2011.

Critical Race Theory

The following is a brief literature review of Critical Race Theories that helped inform my theory of Islamic codes. Critical Race Theory is a mode of analysis that grew out of Critical Legal Studies. These two schools of thought present an alternative view of the rule of law and liberalism, in order to account for the legal injustices experienced by marginalized people. A common theoretical foundation of Critical Race Theorists is the belief that law functions as a mechanism of racial domination. I hope to utilize the theories, approaches, and methods of Critical Race Theory, which draw a crucial connection between race and the legal system, in order to illustrate the ways in which Muslims are targeted through the legal system. Although Critical Race Theory has seldom included the experiences of Muslim Americans and post-9/11 counter-terror laws, this does not diminish the importance of studying the relationship between being Muslim and counter-terror laws.

In Mari Matsuda's "Looking to the Bottom: Critical Legal Studies and Reparations," she posits that critical analysis of law originates in skepticism towards the liberal vision of the rule of law. Matsuda maintains that socially and politically marginalized population "can assist critical scholars in the task of fathoming the phenomenology of law and the defining the elements of justice."⁸⁰ Based on this perspective, Matsuda attempts to deconstruct the elements of the rule of law. First, the prosecution's argument that there is a neutral application of legal principles is false because "legal ideals are manipulable, and that law serves to legitimate existing maldistribution of wealth and power."⁸¹ Second, there are no external, universally accepted normative sources that can resolve conflicts of value. Instead, "the law, critical scholars

⁸⁰ Matsuda, Mari. "Looking to the Bottom: Critical Legal Studies and Reparations," in *Critical Race Theory: The Key Writings that Formed the Movement*, edited by Kimberle Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas, 63-80. New York: The New Press, 1995. Page 63.

⁸¹ Ibid. Page 64.

recognize, consists of language, ideals, signs, and structures that have material and moral consequences.”⁸² Lastly, Matsuda runs her alternative perspectives of the rule of law through reparation case studies. She argues that, while the government eventually paid reparations, social ills of certain communities were still not assuaged. In order to account for this differential outcome of reparations, the critical legal scholar must understand that reparations cannot come in the form of a standard legal judgment, and instead take into account “historical wrong, the recognition of continuing injury, and the commitment to redress, looking always to victims for guidance.”⁸³ Matsuda’s ultimate intention in showing the disconnect between the rule of law and its effects upon real communities and individuals, is meant to portray how a critical analysis of legal processes show the instability of our highly held legal categories. By not operating beyond the present framework, the chances of radical social change are limited, thus reproducing the present wealth and power structures.

I believe Matsuda’s work is both highly applicable to the expanding field of Muslim Americans within Critical Race Theory in several ways. First, by understanding that legal principles are not applied neutrally, nor are they founded as objective principles of law, we can contextualize counterterror laws in two very specific ways. The first way in which counter-terror laws can be contextualized is in analyzing the ways in which these policies intersect with the identities of race, class, gender, religion, etc., specifically the ethnic categories of the Middle East, and the religion of Islam. The second way in which counter-terror laws can be contextualized is in understanding the socio-historical context in which these counter-terror laws had arisen. Second, Matsuda’s claim that the law consists of “language, ideals, signs, and structures that have material and moral consequence” helps us both see and challenge the hidden

⁸² Ibid. Page 67.

⁸³ Ibid. Page 76.

symbols behind counter-terror laws. This will aid Muslim Americans in criminal cases where the prosecutor's arguments are riddled with Islamic codes that can be brought to light and displayed as utterly lacking substance. Lastly, Matsuda's methodology of applying her theory to specific case studies is important because the analysis of Muslim Americans in Critical Race Theory should incorporate actual cases that individuals experienced.

Derrick Bell Jr. expands legal realism into racial realism.⁸⁴ Bell begins with the following assertion: "Black people will never gain full equality in this country. Even those herculean efforts we hail as successful will produce no more than temporary 'peaks of progress,' short-lived victories that slide into irrelevance as racial patterns adapt in new ways that maintain white dominance."⁸⁵ What racial realism provides to a critical scholar are methods in which the fight is no longer for grand liberal ideals of "equality," "fairness," "justice," and instead it focuses on present legal and power dynamics that mask racial oppression. Bell proclaims that we must "end the commitment to racial equality because it merely perpetuates our disempowerment." "Rather," he elaborates, "we need a mechanism to make life bearable in a society where blacks are a permanent, subordinate class." Thus, we must be creating solutions within the context of reality, as opposed to ideals. Racial realism's aim is not to radically transform society or to achieve racial equality. Rather, the marginalized racial groups must recognize their position as permanently subordinate and fight it through new channels, utilizing law itself as a mechanism of liberation against the legal mechanisms of domination.

⁸⁴ Racial realism is defined as "a philosophy that requires us to acknowledge the permanence of our subordinate status. That acknowledgment enables us to avoid despair and frees us to imagine and implement racial strategies that can bring fulfillment and even triumph."

⁸⁵ Bell, Derrick Jr. "Racial Realism," in *Critical Race Theory: The Key Writings that Formed the Movement*, edited by Kimberle Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas, 302-309. New York: The New Press, 1995. Page 306.

Racial realism is an important concept to apply to the experiences of Muslim Americans and counter-terror laws, because it provides us a proper way to approach the situation at hand. By acknowledging the realities of counter-terror laws, which inherently place Muslim Americans at a lower legal status than that of other Americans, we can begin to understand how these laws are operating as a mechanism of ethnic and religious subordination. Rather than focusing our energies on ending racism in America, which is a grand ideal, we must rather focus our energies upon finding ways within the present legal system to make life more bearable for Muslim Americans charged with terrorism. By expanding Critical Race Theory to include Muslim Americans, racial realism provides solutions in utilizing the law itself as a mechanism against the counter-terror laws that oppress Muslim Americans.

Understanding law as a mechanism of racial domination is not enough. We must also be able to identify sub-mechanisms within the overall institution of the judicial system. In Charles Lawrence's "The ID, the EGO, and Equal Protection Reckoning with Unconscious Racism," he does just that by providing an analysis of the 1976, *Washington v. Davis* decision. This case established the doctrine of discriminatory purpose, otherwise known as the "Davis Doctrine."⁸⁶ The Davis Doctrine "requires plaintiffs challenging the Constitutionality of a racially neutral law, to prove a racially discriminatory purpose on the part of those responsible for the law's enactment or administration."⁸⁷ Several main arguments have arisen against the Davis Doctrine. One challenge emphasizes the notion that the Davis Doctrine places the burden of proof on the wrong side of the debate, thus forcing plaintiffs to prove that the motivation and inspiration of a law was racist, despite it being impossible to prove the state of mind or consciousness of another.

⁸⁶ Lawrence, Charles, R. III. "The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism," in *Critical Race Theory: The Key Writings that Formed the Movement*, edited by Kimberle Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas, 235-257. New York: The New Press, 1995. Page 236.

⁸⁷ Ibid.

Another challenge to the doctrine is that we must emphasize the impact of a law, not its intentions. However, Lawrence argues that neither of these arguments is sufficient for challenging the Davis Doctrine, and instead argues that an analysis premised within Freudian theory and cognitive psychology can better challenge the Davis Doctrine, because these two theories can prove the unconscious nature of racial discrimination.⁸⁸

Lawrence argues that the Davis Doctrine ignores much of what we have come to understand about human psychology, and how the human brain operates. “In order to trigger judicial recognition of race-based behavior,” he argues, “we must show a connection between unconscious racism and the existence of cultural symbols that have racial meaning.”⁸⁹ For Lawrence, “cultural meaning” of discriminatory acts is the best form of evidence available. In order to understand the cultural meaning of a law, Lawrence provides a test that can “evaluate governmental conduct to determine whether it conveys a symbolic message to which the culture attaches racial significance.”⁹⁰ This test requires judges to analyze the law as though they are anthropologists searching for the historical and social context in which the law takes place. This “cultural meaning test” has three parts. First, if research shows that a significant portion of the population thinks of the government’s actions within a racialized narrative, then “it would presume that socially shared, unconscious racial attitudes made evident by the action’s meaning had influenced the decision maker.”⁹¹ Second, laws that utilize specific forms of actions, language and symbols may develop new meanings, including meanings that repress certain feelings and attitudes towards others.⁹² Lastly, if a symbol is associated with race, then a clear process of stigmatization will occur through the enactment and enforcement of a law, thereby

⁸⁸ Ibid. Page 238.

⁸⁹ Ibid. Page 239.

⁹⁰ Ibid. Page 247.

⁹¹ Ibid.

⁹² Ibid.

burdening all members of a particular group, adding to the “pervasive, cumulative, and mutually reinforcing system of racial discrimination.”⁹³ Therefore, for Lawrence, the purpose of the “cultural meaning test” is to help plaintiffs conjure up more evidence than simply to prove disparate impact of law. Lawrence’s cultural meaning test provides plaintiffs with a method through which they can produce evidence that a substantial part of the population would interpret the enactment and enforcement of a law, not as the product of random selection but as a result of that group being treated as inherently inferior, dangerous, and violent.

The “Davis Doctrine” has proven to be a huge impediment for those who are suing the Federal Government.. It is important for Critical Race Theory to see how this obstacle would affect those who are suing the Federal Government on the basis that their counter-terror laws disproportionately target and affect Muslim American communities. Because the burden of proof is on the wrong side of the court, Lawrence provides a cultural meaning test that can be applied to cases involving Muslims being charged by a counter-terror statute, in order to understand how the law is being utilized to oppress and marginalize Muslim Americans. First, we must analyze the actual number of individuals who have been charged and see how they have been treated in legal system in a demonstrable and measurable manner. This includes gathering of statistical data that cover a wide array of methods in which Muslims are affected by counter-terror policies. First, in evaluating a law through Lawrence’s cultural meaning test in the case of counter-terror laws, we must understand the social and national narrative surrounding terrorism that play out in the courtroom. The cultural meaning test examines the presence of Islamicodes in the deliberation process of the Constitutionality of a particular counter-terror law. Second, the cultural meaning test allows us to present the Islamicodes in legal language and institutional

⁹³ Ibid. Page 248.

practices. Lastly, the cultural meaning test provides plaintiffs with the blueprint of explaining how a counter-terror law is associated with race through the “pervasive, cumulative, and mutually reinforcing system of racial discrimination.”

In sum, there is a clear lack of Muslim American scholarship within Critical Race Theory. However, these authors provide an outline of how one would incorporate Muslim Americans and counter-terror laws into mainstream Critical Race Theory. Matsuda’s work helps to better understand counter-terror laws within the context of the intersections of race, ethnicity, religion, and law, as well as to contextualize laws within the broader narratives of American society and culture. Bell’s racial realism provides an illustration of how Muslim Americans can be seen as underclass, which can be a position of both disempowerment and empowerment. Because laws have been utilized as a mechanism of racial domination, there is a small window in which laws can be turned into mechanisms of liberation for Muslim Americans who seek to challenge counter-terror laws. Finally, Lawrence’s cultural meaning test critically assesses certain aspects of terrorism cases, in order to see how and what kind of Islamic codes are being utilized to “prove” a Muslim defendant is a terrorist.

Due to the overall lack of Muslim American experiences within Critical Race Theory, I build on the existing theories and present a case study of counter-terror laws. In the following section, I attempt to review high-profile terrorism prosecutions since 9/11. Based on statistical data, I show the disproportional impact of counter-terror laws on Muslims. Then, I delve more in-depth into a critical aspect of counter-terror laws, namely the material support for terrorism statute. I conclude with several cases that I believe best illustrate the use of Islamic codes and laws as a way to marginalize and criminalize Muslim Americans.

Review of Terrorism Prosecutions

It has been over a decade since the horrific events of 9/11, which has been etched and engrained into our nation's history. The feelings and sentiments that permeated from the shockwaves of international media replaying those tragic images have had a dramatic impact upon many aspects of our society. September 11, 2001, taught our nation many things, but the lesson that stood out the most was the lack of preparation for such a catastrophe. However, the Federal Government wasted no time in enacting new domestic and foreign policies, new agencies, and new strategies to give themselves, and the American people, a sense of security.

In terms of international relations, the United States Federal Government began to practice a new form of war – preemptive warfare. The 2003 invasion of Iraq, serves as a prime example of the new strategy that enabled the United States to strike and topple the Iraqi government on the pretense that they may or may not use weapons of mass destruction. However, preemption was not only utilized in foreign policy, but also domestically in the legal and judicial system.

Preemptive prosecution utilizes abstract and illegitimate forms of police tactics, charges, evidence, testimonies, and courtroom procedures to convict an individual on the basis that they may, or may not be a criminal.⁹⁴ Despite the fact that laws and policies are objectively written and do not specifically target any group of people, the Muslim American community has bore the brunt of this tactic most frequently and harshly. Many Muslims have been convicted of terrorism related crimes, in which they faced contrived and exaggerated charges. Court cases

⁹⁴ Downs, Stephen. *Victims of America's Dirty War: Tactics and Reasons from COINTELPRO to the War on Terror*. February 2012. Page 6, 7.

have shown that Muslims can be guilty of terrorism, if the government can prove they are sufficiently Muslim. In short, preemptive prosecution is a courtroom tactic that selectively targets the Muslim community, and it represents a grave erosion of civil, constitutional, and human rights.

According to the New York University Center on Law and Security, there has been a total of 1,054 terrorism cases, 578 of which can be characterized as “jihadist.”⁹⁵ In all, the court system resolved 431 of these cases, and approximately 87% of all resolved cases have resulted in a conviction.”⁹⁶ The term, “Jihadist,” was defined by the Department of Justice during the 2005 case of Hamid Hayat. It states: “As used in this First Superseding Indictment, ‘jihad’ is the Arabic word for ‘holy war.’ In this context, jihad refers to the use of violence, including paramilitary action against persons, property or governments deemed to be enemies of a fundamentalist version of Islam.”⁹⁷ The sentences of these resolved cases are illustrated below⁹⁸:

Table 1,

Sentence Length	Number of cases that received that sentence
30+ Years	25
24 – 29 Years	7

⁹⁵ Terrorism Trial Report Card: September 11, 2001 – September 11, 2011. Center on Law and Security, New York University School of Law. Page 7.

⁹⁶ Ibid.

⁹⁷ Pipes, Daniel. *The U.S. Government Defines Jihad*. September 22, 2005.
<http://www.danielpipes.org/blog/2005/09/the-us-government-defines-jihad>.

⁹⁸ Terrorism Trial Report Card: September 11, 2001 – September 11, 2011. Center on Law and Security, New York University School of Law. Page 8

20 – 24 Years	12
15 – 19 Years	19
10 – 14 Years	29
5 – 9 Years	48
1 – 4 Years	67
< 1 Year	142

According to the Department of Justice, terrorism cases are characterized as either Category I, or Category II, depending on the type of charges. Category I cases include charges that are directly related to terrorism and national security matters.⁹⁹ Category I statutes constitute a total of 310 cases and read as follows:

... prohibit, for example, terrorist acts abroad against United States nationals, the use of weapons of mass destruction, conspiracy to murder persons overseas, providing material support to terrorists or foreign terrorist organizations, receiving military style training from foreign terrorist organizations, and bombings of public places, or government facilities.¹⁰⁰

Category II cases are those defendants who have had some sort of link to terrorism.¹⁰¹

These statutes include, “offenses such as those involving fraud, immigration, firearms, drugs, false statements, perjury, and obstruction of justice, as well as general conspiracy charges...”¹⁰²

The difference between Category I and Category II offenses is that the former constitutes crimes

⁹⁹ DOJ. “National Security Division Statistics on Unsealed International Terrorism-Related Convictions 9/11/01 – 3/18/10.” theplumline.whorunsgov.com/wp-content/uploads/2010/03/March-26-2010-NSD-Final-Statistics.pdf.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

of direct terrorism, whereas the latter involves more planning and aiding terrorism, rather than committing direct violence. Category II make up 268 of 578 court cases.¹⁰³

Of the cases that have ended in a conviction, roughly 37% of the defendants were found guilty by trial, where as 63% were found guilty by a plea bargain.¹⁰⁴ In comparison, of all the Federal criminal cases, 4% of the defendants were found guilty by trial, where as 96% were found guilty by plea.¹⁰⁵

Terrorism Criminal Codes

Of all the statutes from the United States Code of Law, three specific statutes have been used more than any other in the terrorism cases. These statutes include: 18 U.S.C. § 371, which has been used in over 200 cases; and, 18 U.S.C. § 2339A and 18 U.S.C. § 2339B, which together appear in over 100 cases.¹⁰⁶

The prosecutors in each of these cases attempted to present evidence to the jury that the defendant was implicated in some form of terrorist organizations. Despite receiving guilty convictions, 231 of the court cases found no known affiliation between the defendant and a terrorist organization.¹⁰⁷ The affiliation of the defendants is illustrated in the following table¹⁰⁸:

¹⁰³ Terrorism Trial Report Card: September 11, 2001 – September 11, 2011. Center on Law and Security, New York University School of Law. Page 9.

¹⁰⁴ Terrorism Trial Report Card: September 11, 2001 – September 11, 2011. Center on Law and Security, New York University School of Law. Page 11.

¹⁰⁵ Ibid.

¹⁰⁶ Terrorism Trial Report Card: September 11, 2001 – September 11, 2011. Center on Law and Security, New York University School of Law. Page 13.

¹⁰⁷ Terrorism Trial Report Card: September 11, 2001 – September 11, 2011. Center on Law and Security, New York University School of Law. Page 14.

¹⁰⁸ Ibid.

Table 2,

Number of Defendants	Terrorist Organization
231	No Known Affiliation
102	Al Qaeda
72	Hezbollah
37	Al Shabab
28	Hamas
23	Lashkar e Taiba
17	Taliban
13	Abu Sayyaf
12	Palestinian Islamic Jihad
10	MEK
33	Other

Prosecutions involving defendants who have affiliations to terrorist organizations must know that the organization in which they are aiding or helping is on the government’s terrorist list. This creates a gray area because “terrorist organizations,” such as Hezbollah, are a legitimate political party and government to many non-US governments. However, the Center on Law and

Security at New York School of Law argues that “in recent years, the percentage of prosecutions involving defendants with terrorist organization affiliation is increasing. The idea that terror organization affiliation is on the rise is buttressed, for example, by the increase in material support charges, in which 85% are conclusively associated with a terrorist group.”¹⁰⁹

Another aspect in the government’s cases against Muslim defendants on charges of terrorism, is that the prosecutor should be able to show that the defendant had a likely target in mind. The following table illustrates the type of target the prosecutor claims the defendant would have attacked in the 578 cases¹¹⁰:

Table 3,

Target Types	Number of Defendants
No Target	329
Foreign Civilian	116
Domestic Civilian	107
Foreign Soldiers	16
Domestic Soldiers	10

¹⁰⁹ Terrorism Trial Report Card: September 11, 2001 – September 11, 2011. Center on Law and Security, New York University School of Law. Page 16.

¹¹⁰ Terrorism Trial Report Card: September 11, 2001 – September 11, 2011. Center on Law and Security, New York University School of Law. Page 17.

Though terrorism is typically depicted as an international phenomenon, and the defendants are portrayed as “foreigners,” statistics show that the vast majority of the defendants in these cases constitute citizens of the United States.¹¹¹ The government was unable to determine the citizenship of 94 defendants, while 55 defendants were citizens of Pakistan.¹¹² United States, Pakistan, and “Unknown” categories constitute the three largest citizenship categories of the defendants.

The last piece of legal statistics I would like to present is the number of government informants and sting-operations that were utilized to bring about charges against defendants. Since September 11, 2001, 41% of terrorism cases involved a government informant.¹¹³ An informant is characterized as an agent who contacts a “potential” terrorist and assists and aids them in committing a contrived terrorist attack. “Sting operations often target American-born suspects who have expressed interest in committing jihadist crimes within the United States.”¹¹⁴ In ten cases, the defense presented entrapment as the method in which the defendant was charged with a crime; however, all ten defenses failed, and a successful entrapment defense has yet to occur.¹¹⁵

In conclusion, the statistics in terrorism court cases paint an interesting picture. The vast majority of defendants have been found to have no affiliation with a terrorist organization, the government was unable to conclusively find a target, and many of the Muslim defendants who are facing these charges are US citizens. Many questions arise in response this information. What

¹¹¹ Terrorism Trial Report Card: September 11, 2001 – September 11, 2011. Center on Law and Security, New York University School of Law. Page 22.

¹¹² Ibid.

¹¹³ Terrorism Trial Report Card: September 11, 2001 – September 11, 2011. Center on Law and Security, New York University School of Law. Page 26.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

exactly do the statutes necessarily implicate Muslim Americans as terrorists? What kind of evidence constitutes “material support”?

In the following section, I revisit Category I and II offenses and examine the three statutes that have appeared in the vast majority of terrorism cases. The three statutes include: 18 U.S.C. § 371, 18 U.S.C. § 2339A, and 18 U.S.C. § 2339B. I analyze the cases that ended in convictions by those codes and demonstrate how the government presented evidence and testimony to justify those charges. The following three cases illustrate these points: *United States v. Farhane*, *United States v. Ahmed*, and *United States v. Holy Land Foundation for Relief and Development*.

The U.S. code, 18 U.S.C. § 371, states:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or an agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.¹¹⁶

In 2005, there was a nationwide sweep of terrorism-related arrests.¹¹⁷ One of these individuals arrested was a New York bookstore owner named Abdulrahman Farhane.¹¹⁸ On April 16, 2007, the Department of Justice released a press release for the justification for convicting and sentencing Farhane for allegedly “conspiring to provide funds to overseas jihadists and for making false statements in connection with a terrorism investigation.”¹¹⁹ According to the court

¹¹⁶ 18 U.S.C. § 371

¹¹⁷ "Washington cab driver gets 15 years in prison for terror aid". *International Herald Tribune*. July 25, 2007. Retrieved April 1, 2012.

¹¹⁸ Preston, Julia. "Bail denied for Brooklyn Bookseller accused of financing terrorism." *The New York Times*, February 11, 2006. Retrieved April 1, 2012.

¹¹⁹ http://www.investigativeproject.org/documents/case_docs/387.pdf. Page 1.

documents, an undercover FBI agent made contact with Farhane at his bookstore in 2001.¹²⁰ Over the course of several meetings together, the agent and Farhane engaged in numerous conversations, all of which were recorded, unbeknownst to Farhane.¹²¹ Through friendly conversation, the agent persuaded Farhane to send money to “jihadists” in Chechnya and Afghanistan. On June 9, 2005, Farhane was arrested on charges of conspiracy because the FBI claimed that their agent’s recorded conversations with Farhane constituted a terrorist threat.¹²² Both the FBI and court found it legitimate to sentence Farhane to 13 years in prison for simply talking about potentially aiding people in a foreign nation, though he never actually gave money or weapons to those individuals. In other words, the FBI and legal system prosecuted a Muslim for practicing their First amendment right. This is a clear violation of the 14th amendment’s equal protection clause, and the guarantee of Constitutional rights for all American citizens. We can clearly see here how 18 U.S.C. § 371 is an abstract, ambiguous law that purposefully targets and convicts Muslim Americans.

The U.S. code, 18 U.S.C. § 2339A, states: “Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation...”¹²³ This section goes on to define certain aspects of the statute. For instance, “material support or resources” means:

“...any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ 18 U.S.C. § 2339A

include oneself), and transportation, except medicine or religious materials.”¹²⁴

On June 9, 2009, Syed Haris Ahmed was convicted under 18 U.S.C. § 2339A for providing material support for a potential terrorist attack.¹²⁵ Interestingly, though Ahmed is a naturalized American citizen, his trial came in the form of a bench trial, meaning there was no jury of his peers, and instead the Judge plays the role of both judge and jury.¹²⁶ According to court room documents, Ahmed “used the internet” to talk to individuals who shared similar beliefs in “Islam and jihad.”¹²⁷ The government’s evidence against Ahmed included videos he had made and put on the internet, which the government deemed it as “violent jihad propaganda and planning.”¹²⁸ However, these videos do not show how one would have aided terrorists in attacking the United States or any other place. This evidence was not clearly explained during the trial. Though the definition of “material support” includes “services,” “expert advice” and “equipment,” his Youtube videos do not simply fit the description of material support for terrorism.¹²⁹

Lastly, 18 U.S.C. § 2339B states:

“Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization...”¹³⁰

This section also defines what actions financial institutions may or may not take. It reads:

¹²⁴ Ibid.

¹²⁵ http://www.investigativeproject.org/documents/case_docs/1143.pdf. Page 1.

¹²⁶ Ibid.

¹²⁷ http://www.investigativeproject.org/documents/case_docs/1041.pdf. Page 2.

¹²⁸ Ibid.

¹²⁹ 18 U.S.C. § 2339A

¹³⁰ 18 U.S.C. § 2339B

Except as authorized by the Secretary, any financial institution that becomes aware that it has possession of, or control over, any funds in which a foreign terrorist organization, or its agent, has an interest, shall - (A) retain possession of, or maintain control over, such funds; and (B) report to the Secretary the existence of such funds in accordance with regulations issued by the Secretary.¹³¹

In 2007, the government charged the Holy Foundation for Relief and Development under 18 U.S.C. § 2339B for providing material support to a designated terrorist organization, specifically Hamas.¹³² The Holy Land Foundation was a charity organization that provided aid and relief for the Palestinian people, who lived in tremendous poverty and turmoil.¹³³ *Zakat* is one of the commandments of Islam, which means to provide charity. The Holy Land Foundation provided support for other charity organizations that operated within Palestine. Unbeknownst to the Holy Land Foundation, the government charged that Hamas operated these charity organizations.¹³⁴ During the trial, the government conceded that the donations were not specifically used for violence and that the Holy Land Foundation did not promote violence.¹³⁵ Despite this fact, five of the organization's board members were given multiple years of prison for merely helping the poor people of Palestine.

In law, there is a distinction between *de jure* laws and *de facto* laws. *De jure* laws are culturally neutral, impartial, and objective in language. These laws do not necessarily implicate any person, place, group, or thing, but rather states the law in broad, abstract terms, so as to show how it can be applied in various contexts. In contrast, *de facto* laws are how the *de jure* laws are applied and practiced in reality. Despite utilizing culturally neutral and impartial language, laws

¹³¹ Ibid.

¹³² http://www.investigativeproject.org/documents/case_docs/1851.pdf. Page 94.

¹³³ Downs, Stephen. *Victims of America's Dirty War: Tactics and Reasons from COINTELPRO to the War on Terror*. February 2012. Page 21.

¹³⁴ Ibid.

¹³⁵ Downs, Stephen. *Victims of America's Dirty War: Tactics and Reasons from COINTELPRO to the War on Terror*. February 2012. Page 22.

become *de facto* when they purposefully target a specific group of people. In my research, I attempted to illustrate how 18 U.S.C. § 371, 18 U.S.C. § 2339A, and 18 U.S.C. § 2339B function as *de facto* laws, despite their race-neutral language.

Though Muslims constitute only 1% of the entire United States population, 80% of terrorism cases involve Muslim.¹³⁶ This statistical anomaly and the reality of *de facto* laws elicit a deeper social issue. It is my contention that the disconnect between the language of the law and the practice of the law is not a simple case of Islamophobia. The theory of *Islamicodes* better contextualizes the overwhelming number of prosecutions involving Muslims under the terrorist charges.

What is driving the preemptive prosecution of Muslims in America is not an irrational fear of Muslims, but rather a deeper, social-epistemological issue. Since 9/11 certain forms of knowledge about Muslims have been established as the standard through which we understand terrorism. Islamicodes are coded words, objects, spaces, and bodies that are deemed somehow naturally and essentially “Islamic.” This codification of language, objects, and people as Islamic, also translates into institutions and institutional practices that are meant to specifically deal with Islamicoded objects, spaces, and bodies. The United States Codes, for instance, are *de jure* laws, however, when used against Muslims in a disproportionate manner, these US Codes become Islamicodes because the basic premise of these laws reinforces the ideology that Muslims are terrorists. This ideology and belief transcends Islamophobia or propaganda. It represents a systemic form of knowledge that is found across the key sectors of our society.

¹³⁶ IPT News. *Islamists Dominate DOJ's List of Terror Prosecutions*. March 9, 2011.

Material support for terrorism is clearly a very serious charge. Convictions result in imprisonment of up to fifteen years, and even the death penalty, if one's evidence of support leads to a death. When material support is the top charge, the resulting sentence can be upwards to seven times longer than those defendants not charged with terrorism. This is important because the prosecutors do not have to provide evidence and proof of intent on behalf of the defendant. As material support is presently defined, it effectively criminalizes certain forms of free speech, such as distribution of literature, promoting political advocacy, participating in peaceful assembly, human rights advocacy, donating money to charity, and providing humanitarian aid. These acts are lawful, non-violent activities, which constitute free speech protected by the First Amendment.

Since 9/11, there have been 443 charges of material support for terrorism.¹³⁷ However, these charges have not been consistent over time. For instance, between 2001-2006, material support constituted only 11% of the terrorism cases.¹³⁸ However, since 2006, and up until 2011, material support charges make up 87.5% of the cases.¹³⁹ Why did this dramatic increase occur? What changed in 2006, to help expand the use of the material support for terrorism charge? It is my aim to account for this dramatic spike by emphasizing the formal and informal ways material support for terrorism's definition has changed and expanded over the course of eleven years, increasing the number of Muslim-Americans who are at risk of being charged with this crime. The following section examines several key cases under the material support for terrorism charge, with a focus on the *U.S. v. Abu Ali* case, which established a significant legal precedent.

¹³⁷ The Center on Law and Security at NYU School of Law. Terrorist Trial Report: September 11 2001-September 11, 2011. New York: New York University School of Law, 2011. Page 19.

¹³⁸ Ibid.

¹³⁹ Ibid.

These cases demonstrate how federal prosecutors utilize Islamic codes to make an epistemological link between Islam and terrorism.

History of the Material Support Charge

Material support for terrorism was first legally created in the Antiterrorism and Effective Death Penalty Act of 1996.¹⁴⁰ The key rationales of the law include: First, “International terrorism is a serious and deadly problem that threatens the vital interests of the United States.”¹⁴¹ Second, “Some foreign terrorist organizations, acting through affiliated groups or individuals raise significant funds within the United States...”¹⁴² Therefore, the Federal Government must “prevent persons within the United States, or subject to the jurisdiction of the United States, from providing material support or resources to foreign organizations that engage in terrorist activities.”¹⁴³ Consequently, Congress amended section 2339A of title 18 of the United States Code, “Providing Material Support to Terrorists.” Material support covers the following services and modes of abetting terrorist acts:

“...currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.”¹⁴⁴

However, after 9/11, the Federal Government did not feel as though the definition of material support included all possible ways and methods an individual could aid a terrorist

¹⁴⁰ Antiterrorism and Effective Death Penalty Act of 1996. (U.S.H.R. 1710, Public Law 104-103 – Apr. 24, 1996).

¹⁴¹ Ibid. Title III, Section 301(a)(1).

¹⁴² Ibid. Title III, Section 301(a)(6).

¹⁴³ Ibid. Title III, Section 301(b).

¹⁴⁴ Ibid. Title III, Section 323(b).

network. In 2001, section 805 of the Patriot Act expanded the definition of material support to include “expert advice or assistance.”¹⁴⁵ This clause was found very troublesome by Constitutional and civil rights lawyers, who challenged this clause for several years in the court system. These challenges ultimately led to the passage of the Intelligence Reform and Terrorism Prevention Act. The aim of this act was to provide more detailed definitions of material support, specifically the term “training” and the phrase “expert advice or assistance.”¹⁴⁶ The newly expanded definition reads:

“Expansion of the material support definition to mean any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment facilities, weapons, lethal substances, explosives, personnel and transportation, except medicine or religious materials.”¹⁴⁷

The term “training” means “instruction or teaching designed to impart a specific skill, as opposed to general knowledge.”¹⁴⁸ The phrase “expert advice or assistance” refers to giving “advice or assistance derived from scientific, technical or other specialized knowledge.”

Since 2004, there have been no other formal changes to the material support charge. Though the definition has changed across time, this still does not sufficiently account for the significant uptick in material support charges after 2006. We must now analyze some of the key cases since 9/11 in order to understand how this charge plays out in a court of law.

Data

¹⁴⁵ USA PATRIOT Act (U.S. H.R. 3162, Public Law 107-56 – OCT. 26,2001). Title VIII, Section 805(a)(2)(B).

¹⁴⁶ Intelligence Reform and Terrorism Prevention Act (U.S.H.R. 10, Public Law 108-458 – Dec. 17, 2004). Title VI, Section 6603.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

All of my data came from The Investigative Project on Terrorism's (IPT) main website. It provides the following description of the organization. It reads:

A non-profit research group founded by Steve Emerson in 1995. It is recognized as the world's most comprehensive data center on radical Islamic terrorist groups. For more than a decade, the IPT has investigated the operations, funding, activities and front groups of Islamic terrorist and extremist groups in the United States and around the world.¹⁴⁹

Through the Freedom of Information Act, the IPT has acquired articles and documents pertinent to the terrorism cases since 9/11. Peter Hoekstra, a ranking member of the House Permanent Select Committee on Intelligence, described the IPT as "critical to our nation's security." "There is no other non-governmental group," he argued, "that has better intelligence or data on the threat to the United States and our allies. Making do with a bare bones budget, the IPT is a national treasure whose influence and achievements are unparalleled."¹⁵⁰

Data utilized in my research was chosen for several specific reasons. First, the courtroom documents provided by the IPT website were copies of the actual documents utilized in those particular cases. It was important to me to use such data due to its specificity and exactness in terms of data that directly resulted from the events. Second, the data elicited the ways in which the judicial process operated according to these cases. Many of the documents provided detailed information on how a terrorism case proceeded by documenting every conversation, argument, evidence, testimony, and institutional practice. Third, I chose the data due to its validity. These documents were not mere opinions of journalists or lawyers but factual observations of an event. Lastly, the contents provided me with a measurable form of data. By utilizing specific indicators within the narratives of the data, I was able to analyze statistical data by counting the number of times a certain phrase, tactic, or procedural process occurred.

¹⁴⁹ www.investigativeproject.org/about.php

¹⁵⁰ www.investigativeproject.org/about.php

Overall, the process of analyzing all of the documents was a long and arduous process. It was imperative that when I was analyzing the documents, I had to keep a couple of themes in mind, while simultaneously analyzing them through three specific lenses. The two themes that had to remain consistent throughout the entire process were content analysis and Islamicodes. Content analysis was a constant theme during the research process, as I was attempting to find, not the specific meanings of words, phrases, or arguments that took place in the documents, but how that specific content affected relations between individuals and groups. This allowed me to assess what exactly was enabled or disabled by specific content.

Another consistent theme throughout the research process was Islamicodes, or the merging of the concepts of Islam and terrorism. I looked for examples where Islam and terrorism were being conflated, merged, and paired together through specific forms of discourse, semiotics, and institutional practices. This is a very different form of analysis than content analysis. As opposed to simply summarizing, understanding, and comparing certain aspects of the content, Islamicodes allow us to understand how that content can become an epistemology, and therefore the form of knowledge that informs counter-terror laws.

Terrorism Court Cases

The material support for terrorism charge is a critical example of how Islamicode produces specific outcomes. Material support is also a concrete example of how Islamicodes inform the link between Islam and terrorism. Between 2001 and 2004, the vast majority of material support charges included individuals who provided weaponry, blueprints, money, and

other tangible, physical assets that could have potentially been used for an attack.¹⁵¹ However, a unique and particular case occurred in 2005 that challenged the meanings and definitions of material support. According to the Federal Bureau of Investigation, the ruling of *US v. Abu Ali* reflected one of the most important terrorism court cases in the last ten years.¹⁵² In the following, I provide an overview and analysis of the 2005 case *US v. Abu Ali* which challenged the definition of “expert advice or assistance” clause of the material support for terrorism charge. I supplement this analysis with examples of how the rulings of *US v. Abu Ali* fundamentally changed the ways in which the Federal Government handles and argues cases of material support for terrorism. More importantly, I provide evidence of how Federal prosecutors constructed the link between Islam and terrorism by utilizing Islamic codes through language, symbols, and institutional practices, thereby infringing upon the Constitutional rights and life chances of Muslim defendants.

Ahmed Omar Abu Ali is an American-born Muslim. He attended a high school in Virginia and was the valedictorian of his class.¹⁵³ Ali was described as a pious man, a good friend, and a family man. However, his arrest and detainment in 2003 shocked his community, family, and Muslims all across America. Having spent 20 months in prison without any formal charges pressed against him, the Federal Government spent two years building a terrorism case against Abu Ali, which resulted in two counts of providing material support for terrorism.¹⁵⁴

Federal prosecutors provided a long list of evidence, in which they did not have to prove how these pieces of evidence would result in acts of terrorism domestically and abroad. Rather,

¹⁵¹ www.fbi.gov/about-us/investigate/terrorism/terrorism_cases

¹⁵² Ibid.

¹⁵³ <http://query.nytimes.com/gst/fullpage.html?res=9A00E7DF153DF934A15751C0A9639C8B63&sec=&spn=&pagewanted=all>

¹⁵⁴ *US v. Ahmed Omar Abu Ali*. Superseding Indictment, September 2005 Term. United States District for the Eastern District of Virginia, Alexandria. Page 1.

they simply had to describe inconsequential and ambiguous evidence within the context of Islam and terrorism, in order to paint the picture of the defendant as a radical, Islamic jihadist. During the Indictment hearing, the Court ruled that “the term violent jihad refers to the use of armed force by, and on behalf of Muslims, to achieve objectives believed to be sanctioned by Islam.”¹⁵⁵ The Court referred to al-Qaeda as the “Islamic Army,” while also quoting Bin Laden and al-Zawahiri’s essay “International Islamic Front for Jihad on the Jews and Crusaders,” which states that, “killing Americans and their allies – civilian and military – is an individual duty for every Muslim who can do it in any country in which it is possible to do it...”¹⁵⁶ Federal prosecutors stated this as a matter of fact, without providing context or reference as to how this pertains to the defendant Abu Ali, effectively producing a façade that because Abu Ali shares the same faith as Bin Laden and al-Zawahiri, he inherently believes in everything they believe.

During the indictment, the following were some of the key pieces of evidence presented against Abu Ali that Federal prosecutors used to prove Abu Ali provided material support to terrorists through the “expert advice or assistance” clause. First, after raiding his home, Federal agents found a two-page document praising the Taliban leader Mullah Omar and condemning US foreign policy.¹⁵⁷ Prosecutors argued that Abu Ali’s support of Taliban leaders and condemnation of US foreign policy were consistent with the edicts of Islam, which inherently opposes “non-Islamic governments, particularly the United States, with force and violence.”¹⁵⁸ This discourse set the parameters of Abu Ali’s case within a specific linguistic boundary by assuming that terrorism is fully supported by Islam.

¹⁵⁵ Ibid. Page 4.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid. Page 6.

¹⁵⁸ Ibid. Page 1.

The second piece of evidence used against Abu Ali was his subscription to the magazine “Handguns.”¹⁵⁹ Although no physical handguns were found at Abu Ali’s home, prosecutors argued that simply subscribing to a magazine, which provides informative knowledge on the topic of handguns, sufficiently proved his interest in acquiring and utilizing firearms. Because he is a Muslim, the firearms would only be used towards jihad against the US. “Handguns” magazine essentially became a symbolic referent in the construction of the link between Islam and terrorism in Abu Ali’s case. Non-Muslim subscribers posed little to no threat against the Federal Government; however, a Muslim subscriber of the magazine became symbolically a terrorist.

The prosecutors also used a series of self-incriminating statements prior to his arrest and during his 20-month detainment in order to paint a picture of Abu Ali as a potential terrorist and a jihadist.¹⁶⁰ These audio tapes included Abu Ali stating that he supported jihad, opposed the state of Israel, and held theological beliefs about the end of time, one in which a great war would be waged between Jews, Christians, and Muslims.¹⁶¹ The audio tapes provided prosecutors the strongest piece of evidence that Abu Ali was able and did provide “expert advice or assistance” to terrorists because he was well informed on certain foreign policy topics, held anti-government views, and understood Islamic theology and beliefs.

On March 29, 2006, Abu Ali was sentenced to 30 years in prison. Abu Ali’s case established precedent for the material support for terrorism charge since the passage of the Intelligence Reform and Terrorism Prevention Act of 2004. This case established a legal precedent, which I refer to as the “Abu Ali Doctrine.” The Abu Ali Doctrine shows that the

¹⁵⁹ Ibid. Page 6.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

Federal Government was able to use his personal beliefs and views as “expert advice or assistance.” Even though the formal definition of material support does not define personal views and beliefs as “expert advice or assistance,” *US v. Abu Ali* informally merged the two together. I contend that the establishment of the Abu Ali Doctrine greatly expanded the definition of “expert advice or assistance” clause and subsequently led to tremendous increases in arrests and charges of the material support for terrorism since 2006.

Two additional cases illustrate how personal beliefs and political views were used to interrogate and criminalize Muslim Americans. The first case, *U.S. v. Ahmed*, occurred in 2009 and the second case, *U.S. v. Gojali*, was recently decided in 2012. According to the Department of Justice, Ahmed, along with his friend Sadequee, were found to have “become active on several web forums known to support the cause of violent jihad.” “These discussions,” the report elaborated, “quickly grew into an active conspiracy with others to provide material support to terrorists engaged in violent jihad.”¹⁶² The prosecutor charged that the defendants “intended to provide themselves as personnel to engage in violent jihad.”¹⁶³ “Video clips of symbolic and infrastructure,” it went on, “[are] targets for potential terrorist attacks in the Washington, D.C...”¹⁶⁴ Moreover, Ahmed allegedly “used the internet to develop relationships and maintain contact with each other and with other supporters of violent jihad in the United States, Canada, the United Kingdom, Pakistan, and elsewhere.”¹⁶⁵ Recorded discussions of potential attacks and videos posted on websites were ruled by the Court as “violent jihad propaganda and planning.”¹⁶⁶ The prosecutors concluded that the “Defendant Ahmed pledged himself as a foot

¹⁶² Department of Justice Press Release. United States Attorney’s Office Northern District of Georgia. December 14, 2009. Page 1.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid. Page 2.

¹⁶⁶ Ibid.

soldier in the war against Western civilization that certain violent jihadist organizations believe they are fighting.”¹⁶⁷ Ahmed was found guilty on all counts of material support for terrorism. Ahmed’s case is a clear example of the prosecutors linking Ahmed’s personal beliefs and views to that of “expert advice or assistance.” This was more easily done due to the legal precedent of the Abu Ali doctrine.

On November 16, 2012, 21 year old Arifeen Gojali and several of his other friends were arrested in Chino, California. Gojali and his friends had purchased plane tickets to Afghanistan and were planning to depart in a few days.¹⁶⁸ Federal prosecutors alleged in a criminal complaint that Gojali and his friends were planning on joining terror networks and the Taliban in Afghanistan, in order to be able to carry out acts of terrorism.¹⁶⁹ Authorities cited the evidence of al-Qaeda propaganda in their possession, as well as their excellent sharpshooting skills in paintball and air soft activities.¹⁷⁰ Other forms of evidence that prosecutors presented against Gojali include the contents, such as things he “Likes,” on his Facebook page. Labeled as “‘DEFENDANTS’ SOCIAL MEDIA,” the prosecutors listed all of the Islamist contents these men apparently “liked” or “shared” commentaries on the Facebook pages.¹⁷¹ Arifeen is presently charged with providing material support to terrorists.

Since its inception, the material support for terrorism’s definition was highly contested, changed, and expanded both informally and formally over time. Though it was not a prominent

¹⁶⁷ Ibid.

¹⁶⁸ Nelson, Joe. “Magistrate Deems Inland Empire Terrorism Suspect a Flight Risk, Denies Bail.” Inland Valley Daily Bulletin. November 26, 2012. Accessed November 30, 2012.
http://www.dailybulletin.com/reign/ci_22068205/terror-plot-suspect-airfeen-gojali-described-flight-risk

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Gallagher, Ryan. “Feds Monitor Facebook ‘Likes,’ Infiltrate Skype Chats To Build Terrorism Case.” Slate. November 29, 2012. Accessed December 2, 2012.
http://www.slate.com/blogs/future_tense/2012/11/29/facebook_likes_skype_used_to_build_fbi_case_against_california_terrorism.html

charge for many years after 9/11, a dramatic change occurred in the number of charges and convictions under material support after 2006. What began as a series of cases against defendants with actual, physical, and tangible weapons and assets that could lead to potential attacks between 2001 and 2006, the charges now included personal beliefs and views as material support for terrorism. This was done through the legal precedent of the *US v. Abu Ali* case, in which the Court found personal beliefs and views as constituting an important part of the “expert advice or assistance” clause of the material support for terrorism charge. This verdict and the Abu Ali doctrine greatly increased the number of Muslim-Americans that were charged with terrorism crimes. The Abu Ali Doctrine proves to be one the most important legal rulings regarding terrorism in recent times. Under the guise of protecting our national security, the Abu Ali Doctrine severely infringes upon the Constitutional rights and life chances of Muslim defendants by criminalizing political views, beliefs, and knowledge of Islamic theology. These examples show that the federal courts have not only expanded the interpretive scope of the law, but also established an unequivocal linkage between terrorism and Islam in prosecuting Muslims in America.

CONCLUSION

It is difficult to catalog the issue at hand in its entirety. The magnitude of 9/11, and the events that followed that day, are of gargantuan historic importance, because the affects can be readily seen in various facets of American society today. My aim with this thesis was to highlight one growing problem the Muslim American community faces today, and situate it within historical, cultural, legal, and epistemological context. The growing endemic of material support for terrorism charges against Muslim Americans is gravely important, due to the potential damage that can be done to individuals, families, and communities. In order to better understand this issue, I had to zoom-out my microscope analysis of this pressing legal issue, and see what other influences and pressures are surrounding these court cases. Realizing that legal battles do not happen in a socio-historical vacuum force the observer to attempt to situate these court cases in better contexts, so as to yield results that are both explanatory and solution driven.

However, this form of analysis is not the apotheosis of analyzing social issues, and is therefore riddled with weaknesses and limitations. For instance, despite remaining true to identifying the conceptual linkages between Islam and terrorism through theory, culture, and the legal system, there has been a lack of a solid research method. The lack of a consistent research method may have resulted in more expansive, or specific conclusions, that could have broadened our understanding of any one particular issue analyzed in this thesis. Also, there are many broad overgeneralizations being made in terms of the extent to which media, education, and governments have been affected by Islamic codes. Though I make I attempt to provide examples from various fields of society, my research ran the risk of assuming conclusions, more than proving them. Providing statistical evidence for all my claims would perhaps be more suited for a future dissertation, or journal article. Lastly, the analysis of the many issues that Muslim

Americans face came from second-hand sources, in the sense that the actual Muslim victim was not being interviewed, and instead a lawyer, or journalist, represented the views of that Muslim. This is a growing and pervasive problem, not only in my research, but in nearly all researches regarding the experiences of Muslim Americans that do not interview, or provide the voice of the marginalized individual enough. The main risk I run with this thesis regarding this issue is that I may accidentally be representing my self as the “representative of all Muslims,” which is something I clearly do not believe. Despite the fact that my own life experiences inspired me to endeavor upon this research project, I aimed to remove myself from my research as best as possible.

Acknowledging these limitations, I believe my thesis, in particular my theory of Islamicodes, is something many more people can add and expand with future work. I one day hope that I may be able to complete a dissertation so as to fully explicate Islamicodes. Until then, I hope others will utilize Islamicodes, and apply it to other social issues pertinent to the Muslim American community today. I hope that my thesis will enable Muslim individuals with more insight as to what they are experiencing, and understand these issues through Islamicodes, so as to be able to find channels and ways to improve the present social conditions for all Muslim Americans. I see a lot of potential in utilizing Islamicodes in public policy and legal battles, because Islamicodes will elicit a new perspective on an issue, that mainstream views have systematically ignored.

At the heart of the problem between where Islam meets the West is this subliminal, conceptual conflation that has, until now, remained invisible and unquestioned. How has a 1,400 year-old Abrahamic religion been associated with the global, political violence of the 21st century? I began with the question: how has the concept of Islam been merged together with the

concept of terrorism? This starting point is a crucial place to begin the analysis of how Muslims and non-Muslims will encounter and interact with one another in the West.

In the first section, I attempted to elicit how the conceptual conflation of Islam with terrorism has become a legitimate epistemology in America, that was constructed after 9/11 through three specific methods: discourse, semiotics, and power/knowledge. The national debate surrounding 9/11 had a specific parameter to it, in that what was presented by the media as an explanation for those events, was within the contexts of Islam and Muslims, as opposed to focusing on the hijackers individually, and instead, an entire part of the world and culture of people was implicated for that event. The discourse on terrorism provided both a perspective in analyzing global events, while simultaneously providing the language to discuss it, which is riddled with terms that both subliminally and manifestly implicate Islam and terrorism together. Terms such as “religious extremists” and “jihadists,” framed the discourse on terrorism in a manner that naturalized and essentialized Islam and terrorism together. This language was readily adopted in media, academia, and government, providing many filters through which this new Islamicoded language was channeled. Simultaneously with language, Islam and terrorism were being connected through symbolic markers, that readily defined what is Islamic, and what is American. These symbols, as Bourdieu explained, naturalize certain meanings, and does not allow for the critical questioning of the present order of society. Islamic symbols are riddled throughout the analysis of terrorism, whether it be private news sources or government. These images have deliberately been assigned as a marker that Islamic and terrorist, so as to conjure up interpretations of that symbol as being anti-American, or anti-democratic. The crescent moon and star is a classic symbol that has been associated with Islam and terrorism, that has been utilized in a variety of facets of society, in order to legitimize and naturalize Islamicodes.

Additionally, I presented how Islamicodes are produced, reproduced, and practiced by a variety of institutions, which have been rendered the social authority to define and present their knowledge of terrorism. The power/knowledge of terrorism allowed me to understand how particular structures serve as a way to produce specific social outcomes and relations between groups. In sum, the theory of Islamicodes provides an important way to understand the significance of post-9/11 perspective on the War on Terror, which is rooted in an ideological convergence of Islam and terrorism. This conceptual conflation has been overlooked, and critical analysis has yet to be properly addressed.

In the following section, I contextualized Islamicodes within American culture, and our every day interactions in American society. This chapter focuses on the transformative process of Islamicodes by examining how the formation of knowledge about Islam informs debates and representations of “things” Islamic, such as mosques, the hijab and turban, and the Islamic bodies. Islamicodes, as a form of knowledge, materializes into many facets of American society, and interweaves through the cultural and social milieu. As such, Islamicodes become embedded in the generic process of everyday interactions. The link between Islam and its hyper-masculine tendencies leads to a logical conclusion that Islamic men are inherently dangerous, capable of enacting terror in the name of their religion and of circumscribing the lives of women. In the process, the Islamicodes simultaneously constructs normative American culture, one that counteracts against the forces of incivility, violence, and terror. Beyond simply conceptually conflating terrorism with Islam, we have seen how this common sense form of knowledge has not only become pervasive in society, but has also lead to calls to action, and has had deadly results for many.

In the final section, I provided an in depth look into how Islamicodes have infiltrated the legal system, and has led to a gross infringement upon the Constitutional rights and life chances of Muslim Americans. What began as a series of cases against defendants with actual, physical, and tangible weapons and assets that could lead to potential attacks between 2001 and 2006, the charges now included personal beliefs and views as material support for terrorism. This was done through the legal precedent of the *US v. Abu Ali* case, in which the Court found personal beliefs and views as constituting an important part of the “expert advice or assistance” clause of the material support for terrorism charge. This verdict and the Abu Ali doctrine greatly increased the number of Muslim-Americans that were charged with terrorism crimes. The Abu Ali Doctrine proves to be one the most important legal rulings regarding terrorism in recent times. Under the guise of protecting our national security, the Abu Ali Doctrine severely infringes upon the Constitutional rights and life chances of Muslim defendants by criminalizing political views, beliefs, and knowledge of Islamic theology.

Overall, I believe Islamicodes provides a better explanation of the effects of 9/11 upon American society than Islamophobia. Islamicodes provides an analytical explanation as to how and why Islamophobia stems not from an irrational fear or emotion, but from a lived experience of Muslim Americans on a daily basis. By identifying Islamicodes as the main intellectual weapon, Muslims can now find new and creative ways to reformulate, redefine, and challenge the mainstream notions of our identity.

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