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Tolerating extremism : to what extent should intolerance be tolerated?

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CHAPTER FIVE

Contemporary social tensions

I. Introduction

Addressing contemporary social tensions in the context of this project requires focusing on a number of issues, particularly the economy, immigration and gender issues relevant to religion. The economic crisis that has struck both the US and Europe (“Eurozone”) has raised profound questions regarding Europe’s future.³³⁴ These questions address not only the future of the European Union but also whether European nations will be able to honor their financial obligation in the context of social benefits and the welfare state. These are not trivial questions; they are essential to understanding the danger of extremism and the danger it poses a danger to society.

Hand in hand with the economic crisis is the question of immigration to Europe; the spotlight naturally focuses on immigration from North Africa and Turkey.³³⁵ Discussions with a broad range of European academics, policy makers and security officials suggest that contemporary social tensions are particularly acute regarding immigration from North Africa. Those discussions highlight a powerful connection between the economic crisis and immigration; in many ways, the two are inexorably linked both in reality and perception.³³⁶

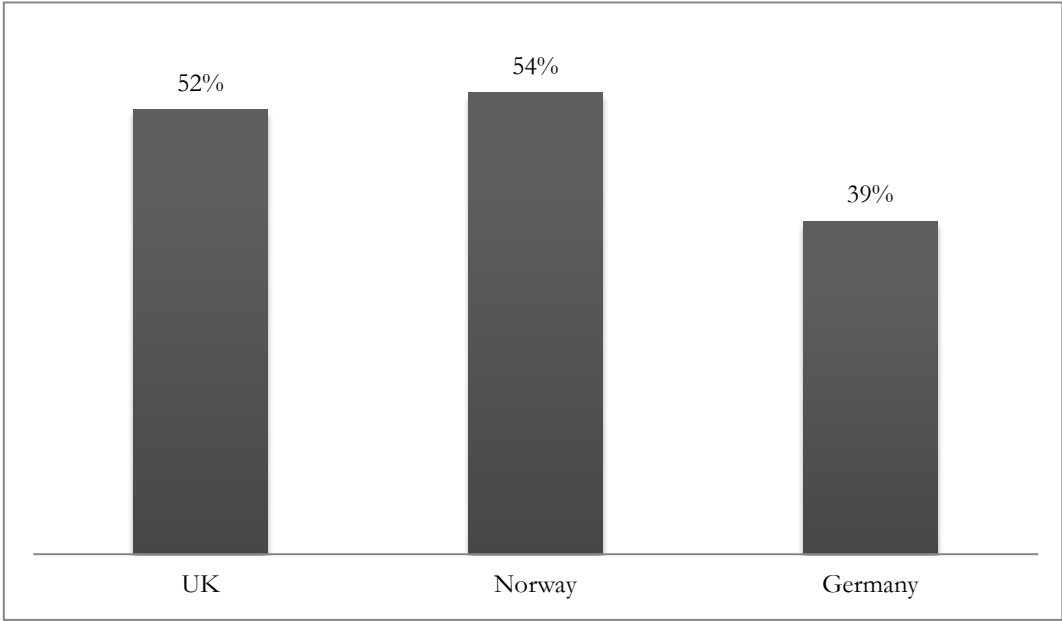
Negative View of Immigrants³³⁷

³³⁴ Tim Lister, The future of Europe: 3 scenarios, CNN (June 18, 2012, 11:23 AM), http://www.cnn.com/2012/06/15/world/europe/europe-future/index.html?hpt=hp_c1.

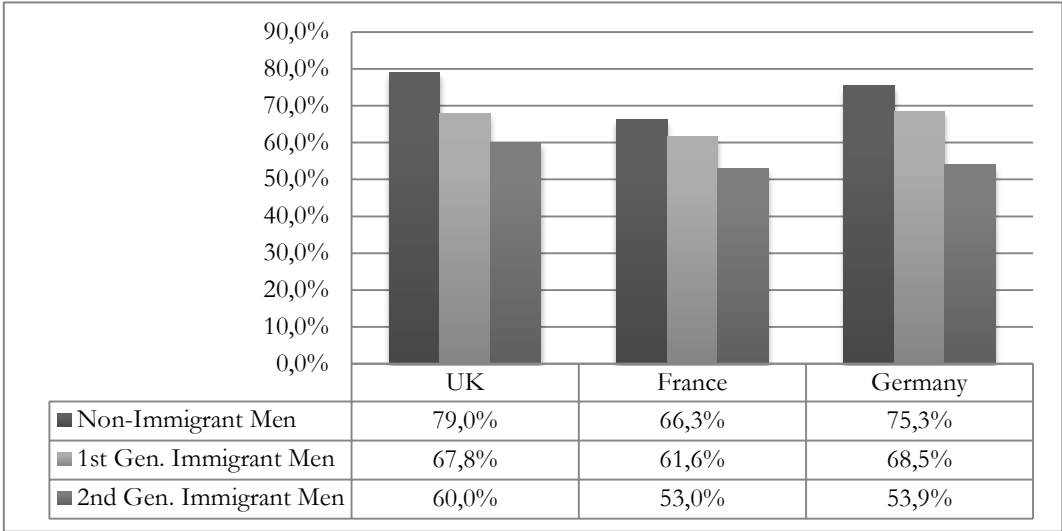
³³⁵ For a thorough and objective analysis, please see *Muslims in Europe: Promoting Integration and Countering Extremism*, CONGRESSIONAL RESEARCH SERVICE (Sep. 7, 2011), <http://www.fas.org/sgp/crs/row/RL33166.pdf>, last viewed June 17, 2012

³³⁶ See generally Soeren Kern, *Islam in Germany: “Germany Does Away with Itself”*, RIGHTSIDE NEWS, (June 16, 2012, 6:07 AM), <http://www.rightsidenews.com/2012061616432/world/geopolitics/islam-in-germany-ggermany-does-away-with-itselfq.html>; Jorn Madslie, *Norway’s far right not a spent force*, BBCNEWS, <http://www.bbc.co.uk/news/world-europe-14260195> (last updated July 23, 2011); Robert Bridge, *Rise of right-wing extremism rattles Europe*, RT (July 25, 2011, 7:03 PM), <http://rt.com/politics/norway-extremism-russia-multiculturalism/>; Sylvia Poggioli, *Norway Questions Its Tolerance Of Extremism*, NPR (July 26, 2011), <http://www.npr.org/2011/07/26/138696308/norway-questions-its-tolerance-of-extremism>.

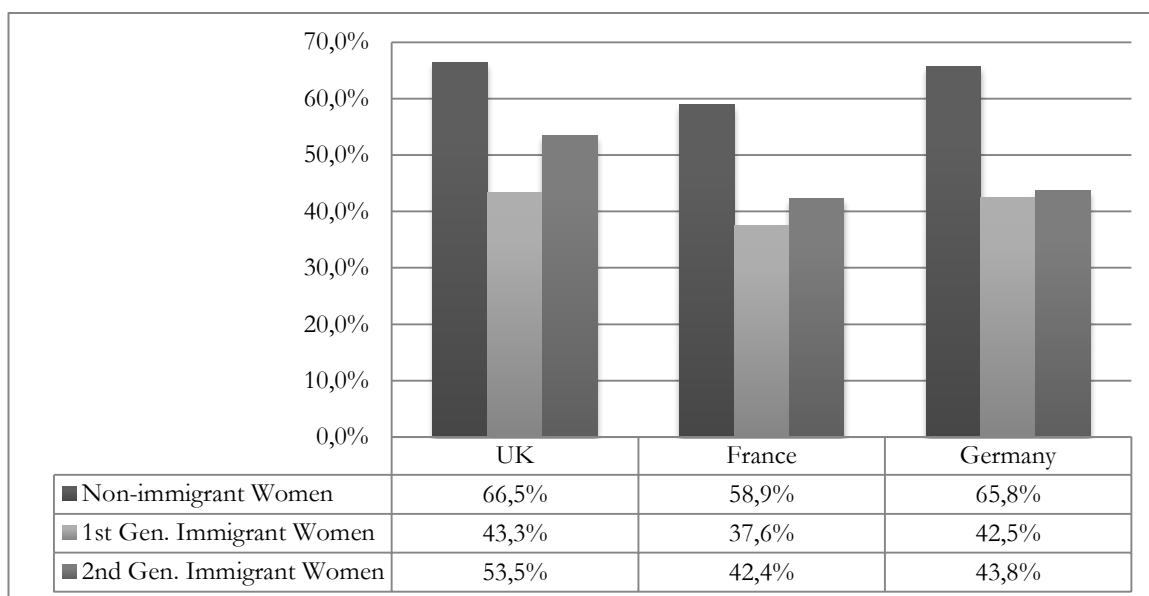
³³⁷ *Surveys show UK antipathy towards immigration is growing*, WORKPERMIT (Sep. 19, 2012), <http://www.workpermit.com/news/2012-09-19/surveys-show-uk-antipathy-towards-immigration-is-growing>; *Anti-Immigration Sentiment Rises in ‘Tolerant’ Norway*, NORWAY NEWS (Oct. 7, 2011, 11:47 AM), <http://www.norwaynews.com/en/~view.php?72Wb554BNb4825s285Jnf844TN3883QW76ECp353Nb48>; see Transatlantic Trends Report 2011 available at http://trends.gmfus.org/files/2011/12/TTI2011_Topline_final1.pdf.



Employment Rates³³⁸



³³⁸ Yann Algan, Christian Dustman, Albrecht Glitz, Alan Manning, *The Economic Situation of First and Second-Generation Immigrants in France, Germany and the United Kingdom*, 120-542 *The Econ. J.* F4-f30 (2010) available at <http://ideas.repec.org/a/ecj/econjl/v120y2010i542pf4-f30.html>.



However, the scope of this chapter extends beyond immigration and integration; at its core the chapter examines the very nature of society in an effort to provide a ‘snap-shot’ with respect to tensions between society and extremist groups and individuals. This is largely a descriptive chapter based on numerous interviews with both subject matter and country specific experts conducted in Holland, Norway, the UK and Israel. The interviews were conducted with a broad range of individuals including academics, politicians, members of the mainstream and alternative media, think tank ‘wonks’, law enforcement officials, convicted terrorists, national security officials, religious leaders and politicians.³³⁹ Many experts graciously agreed to continue the dialogue via phone conversation or written correspondence; others shared their research, both published and in manuscript form. In aiming to create a ‘visual’ regarding each society the attempt is to understand significant domestic issues that define contemporary society.

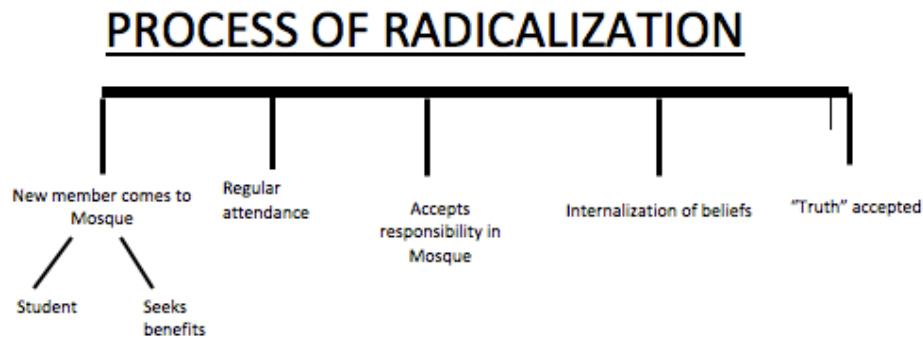
The four countries that are the particular focus of this chapter-----Holland, Norway, Israel and the UK---confront complicated intersections and forks in the road that require thoughtful resolution with one eye focused on today and the second on tomorrow. The complexity and tensions belies what Steven Pinker has suggested regarding the decline of violence.³⁴⁰ Because of the insidious manner in which extremism poses dangers to society, analysis of its nature and impact requires an examination beyond empirical data. That is, while empirical data may reflect a decrease in violence, extremism’s impact on society extends beyond specific acts of violence, whether against individuals or groups.

³³⁹ Notes of all conversations are in my records

³⁴⁰ STEVEN PINKER, THE BETTER ANGELS OF OUR NATURE: WHY VIOLENCE HAS DECLINED (Viking Adult, 2011).

By way of example: the demands by Israeli Orthodox Jews for gender discrimination on public transportation led the Israel Supreme Court, in the seminal case regarding separation on buses between the sexes, to ask whether “Have we gone back to the days of Rosa Parks”.³⁴¹ The harassment, humiliation and verbal abuse directed at women who either sat in the front of a bus or whose attire was arbitrarily deemed insufficiently modest are but examples of values predicated on extremist interpretation of religiosity. While numbers are undoubtedly important the long-term impact on individuals and society from extremism---whether religious or secular in orientation----must be both understood and addressed.

Essential to the discussion is recognition that extremism does not *inherently* endanger society; the question is in its manifestation and implementation. Thoughts alone do not pose a risk to society or specific individuals alone. However, when those thoughts are either ‘translated’ to action or are on the precipice of harm society must protect itself. Needless to say, much disagreement exists regarding the distance between the precipice and actual harm; defining that distance is essential in determining when society can impose limits on otherwise guaranteed rights and freedoms.



II. Holland

Among several European commentators there is a great concern that Europe today is largely composed of ‘parallel societies’.³⁴² In raising the specter of ‘parallel societies’ the focus is, in the Netherlands, on first or second-generation immigrants to Holland from Morocco and Turkey. In the context of social tensions a critical question is one of allegiance and identity; according to a leading Dutch academic Moroccan youth identify with Islam whereas Turkish

³⁴¹ HCJ 746/07 Naomi Regan v. Ministry of Transportation, http://elyon1.court.gov.il/files_eng/07/460/007/t38/07007460.t38.htm.

³⁴² See discussion in Chapter Three. One of the first authors who expressed concern about this was: Phillips, Melanie, *Londonistan: How Britain is Creating a Terror State Within*, Gibson Square, London 2006. She expressed similar ideas in: Phillips, Melanie, *The World Turned Upside Down: The Global Battle over God, Truth, and Power*, Encounter Books, New York and London 2010.

youth identify with Turkey.³⁴³

Jean Tille and Marieke Sloomman's research sheds light on the radicalization of Moslem youth in the Netherlands:

Muslims differ from the average resident of Amsterdam especially in the two core convictions. Muslims are three times more likely to consider their religion superior to others than the Christians in Amsterdam, and they are more likely than the average Amsterdammer to find the debate about Islam is conducted in a negative manner. These differences indicate a gap between many Muslims, especially Moroccans, and the average Amsterdammer in their religious beliefs (or at least in the manner these beliefs are formulated) and in their perception of the social discourse. Turkish Muslims agree with the average Amsterdammer in their perceptions of the debate about Islam although they are in general more orthodox than Moroccans. These differences seem relevant to us, because contrasts with the rest of society can lead to a mutual feeling of discord and of not being understood.³⁴⁴

This research is particularly relevant for it highlights both the reality and danger of alienation from mainstream society significantly facilitates the ability of extremists to 'prey' on disaffected youth contributing to their radicalization. In discussing immigration in the context of extremism the question is the degree of integration into larger society. That question, however, works 'both ways': to what extent does traditional Dutch society welcome immigrant values, mores and norms. Important with respect to this issue to reference the significant scholarship of Professor Paul Scheffer; Scheffer's book 'Immigrant Nations' is particularly insightful regarding a number of issues addressed in this chapter. Similar to Professor Minow's article regarding tolerating intolerance,³⁴⁵ Professor Scheffer writes:

It's clear that in times of large-scale immigration tolerance is put to the test. Innumerable people have arrived in the Netherlands after growing up in unfree societies. Sometimes, conservative Muslims express beliefs that were commonplace some 40 years ago, but that doesn't make them any less disturbing in the here and now. This was clearly demonstrated by a case known to the Dutch as the el-Moumni affair. A Rotterdam imam at the An-Nasr mosque, who had been banned from preaching in Morocco because of his radical beliefs, caused a huge stir when he delivered a sermon in which he said of homosexuality, among

³⁴³ Private conversation, records in authors notes.

³⁴⁴ Marieke Sloomman and Jean Tillie, *Processes of Radicalisation: Why some Amsterdam Muslims become radicals*, INST. FOR MIGRATION AND ETHNIC STUDIES. UNIV OF AMSTERDAM (Oct. 2006) available at <http://dare.uva.nl/document/337314>.

³⁴⁵ See Chapter One.

other things: 'If this sickness spread, everyone will be infected and that could lead to us dying out'³⁴⁶

Furthermore, according to Scheffer:

The Dutch now find themselves with a new religious community in their midst, and this time history, language and the constitution can't be assumed to serve as ties that will mitigate division. In the past it was possible to find shared points of reference.....The extent to which the Dutch underestimate the command of a common tongue as one of the essential sources of mutuality available in their fragmented country is remarkable.....In the Netherlands today, the Dutch language cannot be taken for granted as a shared vehicle, given many immigrants' limited proficiency in it³⁴⁷

In quoting August Hans den Boef, Scheffer points out that "Integration via the mosque means integration within religious communities that are divided along national and regional lines and led by their conservative male segments, which largely consist of people from tribal cultures who have little education. In Dutch Muslim communities most children attend black schools, or Islamic schools that are an extension of the mosque."³⁴⁸

With respect to social tensions in the context of immigrant communities Scheffer writes:

A nation that enjoys freedom of religion can make room for Islam only on condition that the vast majority of Muslims accept their duty to defend that same freedom for people with whom they fundamentally disagree. This attitude is lacking in many mosques, where the principles and institutions of liberal democracy are questioned and in some cases rejected. Governments have looked away for a long time, not wanting to cause conflict.³⁴⁹

In this vein, a major study undertaken by Ineke Roex, Sjef van Stiphout and Jean Tillie is of particular importance. According to this study:

"Sensitivity to radicalism and extremism is higher among orthodox Dutch Muslims. Their tolerance towards a multi-religious society is lower, they think that Dutch women have too much freedom, they politically participate less in society, they identify less with The Netherlands and, most importantly, they think, more than other groups, that violence is a

³⁴⁶ PAUL SCHEFFER, IMMIGRANT NATIONS 121 (Polity 2011).

³⁴⁷ *Id.* at 125.

³⁴⁸ *Id.* at 127.

³⁴⁹ *Id.* at 128.

legitimate means for religious goals.”³⁵⁰

In 1994 the European Court of Human Rights (Strasbourg) held:

“Freedom of thought, conscience and religion is one of the foundations of a ‘democratic society’ within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, skeptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it”³⁵¹

There is, then, a powerful tension between secular society and religious society; in examining contemporary social tensions the question is whether the two societies can co-exist under one umbrella. The question is posed not with respect to mainstream, moderate faith but in the context of an extremist articulation of faith in which civil law is secondary to religious law. In many ways the question goes to the nature of society; in the context of the extremist-moderate discussion the tension is to what extent should otherwise protected rights be honored by the state when they challenge, if not endanger, public order and offend group and personal sensitivities. The tension is significantly exacerbated in the context of immigration and alienation reinforced by an economic crisis that undermines society’s stability and structure.³⁵²

According to Tille and Slooman :

Feelings of deprivation are widespread among Muslims in the Netherlands. This feeling is fed by the current tone of debate. Although some feel victimised, there is a certain degree of actual socio-economic deprivation. For example, there has been an increase in the percentage of students from immigrant backgrounds who go on to higher education, from approximately a sixth in 1996 to around a quarter in 2002, but this is still far below the half of all students from a Dutch background who register for higher education. Secondary school drop-outs are also more common among young people with immigrant backgrounds. In Amsterdam, 6 percent of the native-born Dutch working population is unemployed, compared with 16 percent of the Turks and 28 percent of the Moroccans.

The situation of the Turks has improved since 1997, but that of

³⁵⁰ See Ineke Roex, Sief van Stiphout and Jean Tillie, *Salafisme in Nederland*, INSTITUUT VOOR MIGRATIE-EN ETNISCHE STUDIES, 2010 at viii.

³⁵¹ *Kokkinakis v. Greece*, 260 Eur. Ct. H.R. ¶ 16 (1993) (cited in Doe on page 43).

³⁵² For discussion regarding Norway see *Committee on the Elimination of Racial Discrimination*, UN (Mar. 11, 2011), available at http://reliefweb.int/sites/reliefweb.int/files/resources/FDF662F16DB156F385257853006165FB-Full_Report.pdf.

the Moroccans has deteriorated. Both the first and the second generation of immigrants are disappointed in the opportunities they have in the Netherlands....The first generation guest workers are mostly dissatisfied with their own housing situation and their financial position. They are also disappointed that their children do not have the social and economic opportunities they had hoped for. The younger generation, who see their future in the Netherlands, experiences stigmatisation and discrimination in their daily lives.

With respect to second-generation radicalization, Tillie and Slooman note:

Due to the disappearance of the national-ethnic ties and the contact with Dutch society, many young people seek their own version of Islam, 'pure' and free from the 'superficial' Moroccan traditions of their parents. This way the children can take their own respectable place in the community. Parents are often labeled as ignorant by their own children. Some of these developments are approved of by parents because they wish to see that their children take religion seriously, but some find the young people are becoming too strict. These parents then begin to fear that their children are putting too much distance between themselves and Dutch society, limiting their social options and opportunities.³⁵³

On the issue of self-identification, Tillie and Slooman comment:

In our conversations with the interview subjects, we learned that young people increasingly identify themselves with their religion. They call themselves 'Muslim' more often. This was noticed by Buijs, Demant and Hamdy. This trend towards identifying oneself as a Muslim is not only an individual self-identification, but also a result of labelling by others. In Dutch society, there is still a split between immigrants and the native-born Dutch – the terms 'allochtone' and 'autochtone', implying language skills and not ethnic background, are used frequently in the Dutch media and illustrate this division, increasingly formulated as Islamic versus non-Islamic. In so doing, a 'Muslim category' is created, especially by the media. Muslims are often spoken of as a group, in the Netherlands as well as internationally.³⁵⁴

Marginalization from mainstream society often leads to radicalization among young immigrants and natives alike. According to a European Commission's Expert Group on Radicalization:

³⁵³ *Id.* at 51.

³⁵⁴ *Id.* at 54.

At the global level, polarising tendencies and radicalisation processes can be witnessed within many religious, ethnic and cultural population aggregates. Within this global mood that is also characterised by widespread feelings of inequity and injustice a very acute sense of marginalisation and humiliation exists, in particular within several Muslim communities worldwide as well as among immigrant communities with a Muslim background established in European countries.

The widespread feeling of humiliation and uncertainty basically rests upon a whole array of widely diverging specific local circumstances. As in the past, it offers fringe groups an opportunity to justify their recourse to terrorism.³⁵⁵

III. Norway

Anders Breivik targeted the future generation of the Labor Party, young people at the vanguard of what he detests: a more multicultural, ethnically and religiously integrated Norway.³⁵⁶

“Following the horrific attacks that left 76 dead in Norway last week, many European leaders have been asking questions about the dangers of right-wing radicalization in the region. In recent years European Union member countries have seen growing support for right-wing populist groups but the attacks confessed to by Anders Behring Breivik took their anti-Islam, xenophobic ideology to an entirely new and deadly level.

In hopes of preventing similar events, this week both European Union interior ministers and the European law enforcement agency Europol pledged to review the dangers posed by far-right extremists within the 27 member states. The topic of radicalization has been tacked on to the agenda for the late September meeting of the Justice and Home Affairs Council, to which non-EU member Norway has now also been invited. Meanwhile, an EU anti-radicalization network already set in motion last year is set to take up its work earlier in the same month.

In a blog entry announcing the new measures on Monday, European Commissioner for Home Affairs Cecilia Malmström referred to Breivik's 1,500-

³⁵⁵ *Radicalisation Processes Leading to Acts of Terrorism*, EUR. COMM., May 15, 2008, available at http://www.rikcoolsaet.be/files/art_ip_wz/Expert%20Group%20Report%20Violent%20Radicalisation%20FINAL.pdf.

³⁵⁶ Eric Westervelt, *Norway 'Still Shattered' As Extremist Goes On Trial*, NPR (Apr. 15, 2012, 6:02 AM), <http://www.npr.org/2012/04/15/150661728/norway-still-shattered-as-extremist-goes-on-trial>.

page online manifesto³⁵⁷ saying that while it was clearly written by a disturbed individual, some of his sentiments were not uncommon to contemporary European political discourse. "I have many times expressed my concern over xenophobic parties who build their unfortunately quite successful rhetoric on negative opinions on Islam and other so-called threats against society," she wrote. 'This creates a very negative environment, and sadly there are too few leaders today who stand up for diversity and for the importance of having open, democratic and tolerant societies where everybody is welcome.'³⁵⁸

In June 2012 I spent the better part of a week in Norway; during the course of the week I met with a wide range of Norwegian academics, thought leaders, law enforcement/national security officials and politicians.³⁵⁹ Some of those I met with testified at Breivik's trial; others had followed it to varying degrees of intensity and interest. One individual was acquainted with a survivor of the attack and had mutual friends with one victim. I repeatedly emphasized that if not for Breivik, research relevant to this project would not have taken me to Norway. In the aftermath of July 22, 2011 my interlocutors fully agreed with my rationale.

They did so with a heavy heart both because of the horrific results of Breivik's attack and deep concern regarding a profound undermining of traditional Norwegian mores and norms. The initial finding that Breivik was insane was unanimously rejected; consensus was repeatedly articulated that Norwegian society must acknowledge homegrown extremism exists in its midst. A common refrain was were Breivik not an ethnic Norwegian³⁶⁰ the question of his sanity would not have been raised either by the Court or Prosecutor. In other words, internalizing that a right-wing ethnic Norwegian extremist murdered 77 fellow ethnic Norwegians poses significant challenges for Norwegian society.

On the other hand, hyperbole must be avoided; Breivik evidentially acted alone and his actions have not led others to commit to similar acts.³⁶¹ Unlike terrorist organizations such as al-Qaeda, Hamas, IRA and the Tamil Tigers Breivik is a lone wolf, closer to Timothy McVeigh³⁶² and the Unabomber³⁶³ than to Osama bin

³⁵⁷ See Breivik's Manifesto available at <http://www.breiviksmanifesto.com/> (last visited Jan 11, 2013).

³⁵⁸ *EU Declares Fight Against Right-Wing Extremism*, SPIEGEL (July 27, 2011), <http://www.spiegel.de/international/europe/after-norway-eu-declares-fight-against-right-wing-extremism-a-776985.html>; For a thoughtful discussion regarding the dangers of unlimited free speech see Sindre Bangstad, *Whatever Happened To Norway's Incitement Laws?*, INST. OF RACE RELATIONS, (Oct. 20, 2011), <http://www.irr.org.uk/news/whatever-happened-to-norways-incitement-laws/>.

³⁵⁹ Notes of all conversations in my records

³⁶⁰ Ethnic Norwegians here means "native."

³⁶¹ These lines are accurate to June 6, 2013

³⁶² See generally Ted Ottley, *Timothy McVeigh & Terry Nichols: Oklahoma Bombing*, TRUTV, http://www.trutv.com/library/crime/serial_killers/notorious/mcveigh/dawning_1.html (last visited Jan. 13 2012).

Laden. Breivik's manifesto, largely a 'cut and paste' of innumerable articles, blogs, commentary and writings of others claims Norwegian leaders have surrendered to 'cultural Marxism' thereby endangering contemporary Norway. A careful reading of the manifesto and discussions with Norwegian thought leaders indicates that 'cultural Marxism' is, in essence, an euphemism for 'multiculturalism' that favors and benefits immigrants, particularly Moslems. In other words, Breivik accuses Norway's leaders of capitulating to Islam harkening back to Churchill's warnings regarding the dangers of appeasement. From Breivik's perspective, "cultural Marxism" reflects a direct harm to contemporary Norwegian society and culture.

Breivik references the Norwegian government during the Second World War established by the Nazi's in the wake of Germany's occupation of Norway. In other words, according to Breivik, contemporary Norwegian leadership is the modern day Quisling; the reference is to Vidkun Quisling who collaborated with the Nazi's by serving in a puppet government.³⁶⁴ In other words, according to the manifesto, modern day Norwegian leadership much like Quisling is collaborating with an external force. Quisling collaborated with Nazi Germany while modern day Norwegian leaders are collaborating with Islam. In that vein, the Nazi occupation threatened Norway, while occupation by Islam endangers modern Norway. The fault, according to Breivik, lies with Norwegian leadership rather than with the immigrants themselves who are the beneficiaries of the former's policies. It is for that reason that Breivik directed his attack at present and future Norwegian leadership. Re-articulated: fault, according to Breivik, lies with national leaders rather than with those who benefit from misbegotten policy; the latter are beneficiaries, the former are legitimate targets.

On Friday July 22, 2011 a car bomb detonated in downtown Oslo blowing out windows in the Prime Minister's office and damaging the oil and finance ministries. As a result of this attack, 8 people were killed and 290 wounded. According to multiple sources the late hour (3:27 pm) of the attack minimized the loss of life. After detonation of the bomb Breivik drove to Utoeya Island, the site of a Labor Party youth camp. Traveling by ferry, dressed in police uniform and heavily armed Breivik immediately opened fire upon arrival on the island. Logistical difficulties encountered by Norwegian law enforcement officials enabled Breivik to conduct his attack largely undisturbed for over an hour. When police arrived Breivik immediately surrendered; his casualties numbered 69 killed, 33 wounded.³⁶⁵ Over the course of three hours Breivik's two attacks resulted in 77 deaths and over 300 wounded.

As quickly became apparent, Breivik's attacks were neither spontaneous nor

³⁶³ See generally Ted Ottley, *Ted Kaczynski: The Unabomber*, TRUTV, http://www.trutv.com/library/crime/terrorists_spies/terrorists/kaczynski/1.html (last visited Jan. 11, 2013).

³⁶⁴ Vidkun Quisling, Britannica available at <http://www.britannica.com/EBchecked/topic/487555/Vidkun-Quisling>.

³⁶⁵ For a timeline of the attacks see Timeline: How Norway's terror attacks unfolded, BBCNews, <http://www.bbc.co.uk/news/world-europe-14260297>, (last updated Apr. 17, 2012).

impulsive. Both the manifesto and his actions on July 22 reflect careful planning, significant attention to detail and rigorous self-discipline that enabled gathering materials necessary for both attacks. Breivik's statements at his trial before the Oslo District Court confirmed the intensity and depth of planning, the motivation for the attack, identification of the victims as traitors and complete lack of remorse.³⁶⁶ In addition, Breivik had planned on capturing and beheading former Norwegian Prime Minister Gro Harlem Brundtland who was also on the island; however, technical difficulties forced him to abandon this idea.³⁶⁷ Conversations with Norwegian security officials confirmed that Breivik 'flew under the radar' of the intelligence community and was, therefore, able to prepare, unabated, over the course of a number of years.³⁶⁸

Breivik's claim to belong to a secret organization modeled on the medieval Christian military order the Knights Templar has not been substantiated. Similarly, evidence supporting his claims to have links with far right British groups has not been presented. Conversations with Norwegian subject matter experts, including those who testified before the Oslo District Court confirmed Breivik's self-assessment that he was motivated by extreme right-wing ideology that, in the context of a civil war, seeks to protect Norway from multiculturalism, traitors and Moslems. In his statements before the Court, Breivik assumed responsibility for his actions; therefore, the sole question is whether Breivik was sane on July 22, 2011.

An initial psychiatric evaluation determined that he was insane, suffering from paranoid schizophrenia and therefore not responsible for his actions. Subsequent psychiatrist evaluations indicated Breivik is not psychotic and must be held accountable for his actions.³⁶⁹ The prosecution, in its closing statement, asked the Court to find Breivik insane; Breivik requested the Court find him sane but acquit on the grounds that he was protecting Norway from those who support and facilitate Islamic immigration.³⁷⁰ The question of Breivik's sanity is of paramount importance: if found insane then his actions can be dismissed as those of a 'psychotic', whereas if the Court finds him sane Norwegian society is confronted with powerful and troubling questions regarding its make-up and character. A public opinion poll found 74% of the public believes Breivik mentally competent to be sentenced to prison.³⁷¹

³⁶⁶ *Anders Brevik details Norway massacre plans, cite Al-Qaeda inspiration*, WASHINGTON POST (Apr. 20, 2012), <http://www.washingtonpost.com/world/exclude/anders-breivik-details-norway-massacre-plans-cites-al-qaeda-inspiration/2012/04/2/>;

³⁶⁷ Karen Kissane, *Breivik reveals chilling plan to behead PM*, SMH (Apr. 20, 2012), <http://www.smh.com.au/world/breivik-reveals-chilling-plan-to-behead-pm-20120419-1xaib.html>.

³⁶⁸ Private conversations; notes in author's records.

³⁶⁹ *Prosecutors in Norway call for Breivik insanity verdict*, BBCNEWS <http://www.bbc.co.uk/news/world-europe-18530670> (last updated June 21, 2012).

³⁷⁰ Balazs Koranyi, *Prosecutors want mass killer Breivik ruled insane*, REUTERS (June 21, 2012), <http://www.reuters.com/article/2012/06/21/us-breivik-trial-idUSBRE85K0TT20120621>.

³⁷¹ Julia Gronnevet and Karl Ritter, *Norway prosecutors assert Breivik insane*, YAHOO (June, 21, 2012), <http://news.yahoo.com/norway-prosecutors-assert-breivik-insane-184515198.html>.

The question of Breivik's sanity goes far beyond Breivik himself; it cuts to the core of homegrown right wing extremists 'living in our midst'. The overwhelming majority of individuals whom I met responded candidly when queried about their initial reaction to the news reports regarding the bombing (not the island attack): "I was stunned al-Qaeda had come to Norway" was the standard response.³⁷² However, when hearing reports regarding the second (island) attack my interlocutors articulated gradual awareness that the attacker must be an ethnic Norwegian. Their belief was predicated on an assumption that al-Qaeda would not deliberately attack a gathering of the Labor Party youth organization convening on Utoeya Island for their annual meeting. The initial reaction is similar to one expressed by many, including recognized experts, in the immediate aftermath of the Oklahoma City bombing.³⁷³

The difference between the two attacks is not insignificant; that difference contributed to the distinct responses. The first attack---a car bomb---is similar to innumerable acts of terrorism committed by terrorist organizations worldwide, over decades. It is for that reason that many expressed the sentiment "al-Qaeda in Norway". However, the second attack required information pertaining to the specific event and its location; committing the attack on the island was conditioned on information regarding logistics ----in particular ferry crossings--- that strongly suggested an act committed by an ethnic Norwegian.

Regarding Breivik, the commentary below by a Norwegian academic concisely summarizes the legal, moral, political, and cultural dilemma facing contemporary Norwegian society:

The case raises a profound moral-philosophical question for Norwegian society: Are we prepared in a thoroughly secularized society to accept and face up to the existence of evil in our midst, or must evil perpetrated by white ethnic Norwegians always be rendered as an articulation of mental illness? There is a precedent with regard to this in Norwegian courts: When non-white Norwegians kill their partners or wives, it is always rendered through the lens of 'culture' or 'religion'; when white Norwegians do the same it is always cast by the Courts and public as expressions of mental illness.³⁷⁴

This was not the first time right-wing extremists have committed violent acts in Norway:

On January 26 2001, fifteen-year-old Benjamin Labarang Hermansen was brutally stabbed to death in the eastern suburb of

³⁷² Notes in author's records; also see Oyvind Strommen, *Violent "Counter-Jihadism"*, FOREIGN AFFAIRS (July 27, 2011), <http://www.foreignaffairs.com/articles/67999/oyvind-strommen/violent-counter-jihadism>.

³⁷³ See generally John F. Sugg, *Steven Emerson's Crusade*, FAIR (Jan 1, 1999), <http://fair.org/extra-online-articles/steven-emersons-crusade/>.

³⁷⁴ Excerpt from email sent to author; full text in author's records.

Holmlia in Oslo by three young neo- Nazis. Hermansen had been born to a Norwegian mother and a Ghanaian father. Joe Erling Jahr (20), Ole Nicolai Kvisler (22) and Veronica Andreassen (18) were eventually charged with the murder. Jahr and Kvisler were sentenced to 18 and 17 years in prison, whereas Kvisler's girlfriend Andreassen was sentenced to 3 years in prison as an accomplice to the murder. The three had set out from a council flat in the nearby eastern suburb of Bøler armed with knives on the day of the murder, intending to 'to attack immigrants.'³⁷⁵

The background for Hermansen's murder:

On 19 August 2000, a group known as the Boot Boys organized a march in commemoration of the Nazi leader Rudolf Hess. Some 38 people, wearing "semi-military" uniforms, some with their faces covered participated. One of the central Boot Boys figures made a speech, in which he stated:

We are gathered here to honor our great hero, Rudolf Hess, for his brave attempt to save Germany and Europe from Bolshevism and Jewry during the Second World War. While we stand here, over 15,000 Communists and Jew-lovers are gathered at Youngstorget in a demonstration against freedom of speech and the white race. Every day immigrants rob, rape and kill Norwegians, every day our people and country are being plundered and destroyed by the Jews, who suck our country empty of wealth and replace it with immoral and un-Norwegian thoughts. We were prohibited from marching in Oslo three times, whilst the Communists did not even need to ask. Is this freedom of speech? Is this democracy? Our dear Führer Adolf Hitler and Rudolf Hess sat in prison for wh...at they believed in, we shall not depart from their principles and heroic efforts, on the contrary we shall follow in their footsteps and fight for what we believe in, namely a Norway built on National Socialism (...)" The Nazi salute was made and "Sieg Heil" shouted.³⁷⁶

Boots Boy leader Terje Sjoli was convicted on charges of racism and anti-Semitism; on appeal, the conviction was over-turned by the Supreme Court. In

³⁷⁵ See generally Sindre Bangstad, *After Anders Breivik's conviction, Norway must confront Islamophobia*, GUARDIAN (Aug. 28, 2012), <http://www.guardian.co.uk/commentisfree/belief/2012/aug/28/anders-breivik-norway-islamophobia-muslims>; see also *Newo-Nazis held for Oslo 'racist' murder*, BBCNEWS (Jan 29, 2001), <http://news.bbc.co.uk/2/hi/europe/1142780.stm>, Steve James, *Mass protests against racist murder in Norway*, WSWS (Feb. 11, 2001), <http://www.wsws.org/articles/2001/feb2001/norw-f13.shtml>.

³⁷⁶ See Committee Elimination of Racial Discrimination *available at* <http://www.unhcr.ch/tbs/doc.nsf/0/b0f01303db356e96c125714c004eb10f?Opendocument> (last visited Jan 11, 2013).

2004 this decision was appealed to the UN Committee on the Elimination of Racial Discrimination that issued an unusually strong opinion against the Norwegian Supreme Court.³⁷⁷ In their appeal the petitioners---the Jewish community of Oslo and the Norwegian Antiracist Center---contended they are victims of violations by the State party of articles 4 and 6 of the Convention.³⁷⁸

The thrust of their petition is that they were “not afforded protection against the dissemination of ideas of racial discrimination and hatred, as well as incitement to such acts, during the march of 19 August 2000; and that they were not afforded a remedy against this conduct, as required by the Convention”.³⁷⁹ The Committee’s final recommendation in its opinion is that “the State party take measures to ensure that statements such as those made by Mr. Sjolie in the course of his speech are not protected by the right to freedom of speech under Norwegian law.”³⁸⁰

However, the Boot Boys was not the first extreme right-wing xenophobic anti-immigration group in Norway³⁸¹ for the White Election Alliance party was established in 1993. Important to recall that previous anti-immigrant resistance movements were largely dominated by World War II resistance heroes. From an ideological-philosophical perspective, Breivik represents a contemporary resistance movement best described as the new Crusaders fighting the third attempt by Islam to conquer Europe with assistance of internal and external collaborators. While the electorate resoundingly rejected the White Election Alliance party its campaign attention drew to the ‘immigrant question’ and particularly the role, place and legitimacy of immigrants in Norwegian society.

³⁷⁷ See chapter 8 for additional discussion regarding this issue; *Id.*

³⁷⁸ Article 4 reads: States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination;

Article 6 reads: States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

³⁷⁹ Discrimination, *supra* note 406.

³⁸⁰ *Id.*

³⁸¹ For a discussion of this issue see <http://www.tau.ac.il/Anti-Semitism/asw98-9/norway.htm>, last viewed July 4, 2012.

The Alliance was a legitimate political party, fully engaged in the political process in direct contrast to the Boot Boys who were “more of a hooligan group than a political movement.”³⁸² White Election Alliance leader, Jack Erik Kjuus, who advocated the forced sterilization of adopted children and foreigners married to Norwegians was convicted in 1997 of racism; the Norwegian Supreme Court upheld his conviction.³⁸³

The White Election Alliance originated as a joint list for the 1993 general election for two registered political parties, both led by Jack Erik Kjuus. One of the participants were *Hjelp fremmedkulturelle hjem* [Help the aliens go home], a party originally formed in 1973 under the name *Ensliges parti* [The singles' party]. The other party, *Stopp innvandringen* [Stop immigration] was registered by Jack Erik Kjuus in 1988.

"Stop Immigration" was originally the heading of an advertisement put in the newspaper *Aftenposten* by Jack Erik Kjuus, then posing as leader of a *Tverrpolitisk velgerforbund* [Association of electors across the political spectrum]. The Association called for a referendum on a proposition recommending a total halt to granting refugees asylum. A complaint was filed against Kjuus and *Aftenposten* by the Antiracist Centre (ARC) for violation of the Penal Code Article 135a, known as the "racism article". The prosecution decided to drop the case. Chief Superintendent Anne Marie Aslakrud at the Oslo Police Department wrote in her recommendation to the Prosecution that the advertisement "ikke er rettet mot asylsøkerne, men (...) er en kritikk mot norsk innvandringspolitikk." [is not directed at the refugees, but (...) is a criticism against Norwegian immigration policies] The ARC complained to the Director General of Public Prosecutions, who found no reason to reverse the decision.

Following a campaign with immigration issues as a central topic, Stop Immigration was the choice of fewer than 9 000 voters in the 1989 elections. In relative numbers, this means 0,3 percent of the electorate, the best result for any of Kjuus' parties in general elections ever. In the local elections of 1991, Frank Hove was elected to the City Council of Drammen. Re-elected in 1995, he is the only representative of Stop Immigration with some measure of political success. In the general elections of 1993, the support for Stop Immigration was down to fewer than 2000 votes and in 1997 fewer than 500.

³⁸² E-mail received from Norwegian subject matter expert who requested anonymity, in author's records.

³⁸³ See Youth, Racist Violence and Anti-racist Responses in the Nordic Countries *available at* <http://www.nuorisotutkimusseura.fi/julkaisu/virtanen/3/4.html> (last visited Jan 13, 2013).

The Alliance participated in the general election in the counties of Akershus, Oslo and Buskerud, and received a total of 463 votes. The Fatherland Party ran in all counties, and achieved fewer than 4 000 votes altogether.³⁸⁴

A. Gaining Perspective-Responses

During the course of my visit to Oslo I met with a senior security official³⁸⁵; over two hours we discussed a wide range of security related issues focusing on Breivik, right-wing extremism and immigration to Norway. The official was candid with respect to the intelligence community's failure to recognize Breivik as a threat; the expression used was 'Breivik flew under the radar'. While I expressed surprise at certain aspects of the operational response to the island attack the official noted that circumstances notwithstanding---the island is 38 km/24 miles from Oslo, road conditions were less than ideal, only one police helicopter was available, initial responders were focused on the Oslo bombing and the first boat available to police nearly sunk---the police response was in accordance with procedures and guidelines.

While not underestimating the extraordinary impact of and human tragedy resulting from Breivik's attack the official was unhesitating in stating that Islamic extremism poses the most pressing threat facing Norway today.³⁸⁶ In doing so the official noted the vulnerability of both larger society and moderate Moslems to Moslem extremists who use Sharia to hinder integration by encouraging radicalization. The official noted that at public high school prayer meetings extremist Islamic views are articulated; in that vein the official expressed concern regarding the possible creation of a parallel society if state authorities and laws are not perceived as legitimate.³⁸⁷ Regarding parallel society the official emphasized the existence of insular communities in Oslo and reality of public schools with Norwegian citizens³⁸⁸ but not ethnic Norwegian teachers.³⁸⁹

In identifying Islamic extremism as posing the most significant danger to Norwegian society the official was not gainsaying the obvious threat posed by right wing extremist ethnic Norwegians; Breivik's acts and their results are undeniable with respect to their impact and harm. However in distinguishing between the two categories the official emphasized that Breivik was a classic 'lone wolf' with no organization, either in Norway or the UK, supporting,

336 Eric Lundeby, Free speech and political exclusion, PhD Thesis, University of Oslo (2000) available at <http://www.lundeby.info/EL%20Free%20Speech%20Dissertation.pdf>.

³⁸⁵ Name and position in author's records.

³⁸⁶ In earlier conversations I asked Dutch and Israeli security officials what single attack causes them 'to lose sleep at night; the former responded that an attack on MP Wilders, the latter responded an attack on an ELAL (Israel national airlines) plane.

³⁸⁷ See chapter 3,

³⁸⁸ Reference is to children of immigrants

³⁸⁹ For further discussion regarding schools in Europe today, see Scheffer, *supra* note 368; ethnic Norwegians refers to those who have been in Norway for generations and came from Germany, Sweden and Denmark.

facilitating or abetting him.³⁹⁰ This in contrast to Islamic terrorism that in the overwhelming majority of instances is committed by terrorist organizations, whether international or domestic in orientation.³⁹¹ A caveat is required: while identifying the threat posed by Islamic extremism---as compared to right wing extremism---the security official emphasized that, presently, the number of Moslem extremists in Norway is limited.

In differentiating between the two categories, the official suggested that right wing extremists are, broadly speaking, marginalized individuals with a weak ideology³⁹² whereas Islamic extremist terrorism is the result either of incitement by Imams or self-radicalization by the actor. In many ways, Breivik's actions are akin to the latter for he largely self-radicalized though his ideology was influenced by a number of individuals, in particular the blogger Fjordman.³⁹³ While Breivik represents a new form, perhaps latest incarnation is better term, of right-wing xenophobia in Norway the security official does not believe Breivik's actions will motivate others to follow in his footsteps. The evaluation represents an important perspective in assessing future "lone wolf" threats.

This assessment is arguably surprising given that Breivik was able to plan and execute his attack unencumbered by the security and intelligence community. Perhaps, the two threats---Islamic extremism and right wing extremism---are more connected than initially apparent. Breivik claims Europe is under attack from two distinct forces---Moslem immigrants and capitulating traitor governments ----therefore justifying his actions. There is an irony, if not intellectual inconsistency "at play" here: the intelligence community identifies extremist members of *that* immigrant community as *the* threat while Norway's deadliest attack was conducted by an ethnic Norwegian against other ethnic Norwegians.

To better understand the tensions and threats confronting Norwegian society it is necessary to examine three core issues: limits of free speech, the extent of integration and the role of immigrants in Norwegian society.³⁹⁴ While free speech will be discussed in chapter 6, we turn our attention to integration and immigration. Immigration to Norway can be divided into two distinct categories: cultural immigrants from Sweden and Denmark and job seekers from Pakistan, Turkey and Morocco. A large portion of immigrants from the later is able to gain

³⁹⁰ Breivik has claimed both to belong to a secret organization modeled on the medieval Christian military order the Knights Templar and that he was in contact with like minded individuals in the UK; neither claim has been substantiated.

³⁹¹ AMOS GUIORA, GLOBAL PERSPECTIVES ON COUNTERTERRORISM (Wolter Kluwer 2007).

³⁹² A careful reading of Breivik's manifesto suggests the label of 'weak ideology' is not applicable in his case.

³⁹³ Fjordman is the pseudonym of Peder Are Nøstvold Jensen is a Norwegian far-right anti-Islamic blogger; Jensen blogs extensively on the blog, Gates of Vienna, <http://gatesofvienna.blogspot.co.il/>, last viewed July 5, 2012.

³⁹⁴ For an informative discussion regarding integration in Europe see Rinus Penninx, Dimitrina Spencer and Nicholas Van Hear, *Migration and Integration in Europe: The State of Research*, UNIV. OF OXFORD (2008) available at <http://www.norface.org/files/migration-COMPAS-report.pdf>.

entrance into Norway via Family Reunification. Family reunification means that a family member abroad is reunited with one or more members of his or her family already living in Norway. Residence permits in connection with family reunification are granted primarily to spouses or children under 18 years of age. In order for a person abroad to be entitled to family reunification, that person must be a close relative of the person in Norway with whom reunification is being sought. In special cases, cohabitant, parent and other close relatives may be granted residence permits or work permits in Norway on the grounds of family reunification. Please note that the definition of the term close relatives in Norway often comprises fewer people than is the case in certain other countries,

As a general rule, the person who is granted family reunification must be guaranteed sufficient economic support. If the conditions for family reunification are satisfied, work permits are usually granted to persons who are over 18 years of age, regardless of whether or not they have received any job offers. A work permit granted on the grounds of family reunification usually gives the holder general access to work, i.e. it is not limited to a specific job or place of work. Work permits are also granted to applicants between 15 and 18 years of age, if consent has been given by their parents or other persons with parental responsibility for them. With respect to recent immigrants from Poland and the former Yugoslavia their categorization is unclear. Subject matter experts suggest 'cultural immigrants' a more appropriate term though many of these immigrants are job seekers similar to immigrants from non-European countries.³⁹⁵ Breivik's reference to immigrants, important to recall, is limited to Moslems; the Third Crusade is in direct response to his conviction that Moslems are seeking to conquer Europe.

The U.N. Committee on the Elimination of Racial Discrimination on February 22, 2011 heard the Norwegian delegation as follow up to the nineteenth and twentieth periodic reports of Norway regarding implementation of the provisions of the International Convention on the Elimination of all Forms of Racial Discrimination:

In preliminary concluding observations, Régis de Gouttes, the Committee Expert who served as country Rapporteur for the report of Norway, referred to issues of national legislation and the position that the Committee would like allotted to its recommendations in Norwegian domestic law. He also mentioned policies dealing with refugees, asylum seekers and migrants in Norway and expressed his concerns about the requirement of learning the Norwegian language, detention of unidentified individuals, access to jobs, medical care, education, interpretation

³⁹⁵ Important to note that non Norwegian Europeans (from Denmark and Sweden) are similarly job seekers (as an anecdote, a waiter from Denmark explained that economics and employment opportunities brought him to Norway).

services...³⁹⁶

In response the Norwegian delegate, Tora Aasland, Minister of Education and Research and Acting Minister of Children, Equality and Social Inclusion focused on the following issues:

The delegation leader said that Norwegian society was seen as homogenous despite the fact that immigrants and their children made up 11 per cent of the population. There were five national minorities living in Norway with people with backgrounds and roots from more than two hundred different countries and independent regions. This diversity was not only seen as a strength, it also contributed to Norway's economic growth and cultural enrichment. This was also a challenge to the government as the society was not immune to prejudice and xenophobia with people victims of stigmatization and discrimination. She stressed that integration policies were based on the fundamental values of Norway and included freedom of opinion and expression, gender equality, equal treatment and the right to marriage and choice of spouse.³⁹⁷

In the committee's final preliminary comments the following prescient warning was sounded:

The Rapporteur asked about instances of xenophobia and racist ideas by political leaders and media which might lead to racial violence and how the State could combat this. Mr. de Gouttes also talked about the discrimination experienced by minority groups. These were issues which would or should be included in the committee's final report.³⁹⁸

IV. Israel Today

Israel is at a crossroads on a number of critical issues; particularly important for our purposes are two separate issues: the relationship between the State and Orthodox Jews and the future of Jewish settlements in the West Bank. The first issue is purely domestic in nature while the second has clear domestic and

³⁹⁶ See *Committee on the Elimination of Racial Discrimination considers report of Norway*, UNOG (Feb. 22, 2011), http://www.unog.ch/80256EDD006B9C2E/%28httpNewsByYear_en%29/1CEB5B55C2F5DB19C125783F004D000E?OpenDocument.

³⁹⁷ *Id.*

³⁹⁸ See the 19th and 20th Reports found here http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/437/39/PDF/G1043739.pdf?OpenElementhttp://www.unog.ch/80256EDD006B9C2E/%28httpNewsByYear_en%29/1CEB5B55C2F5DB19C125783F004D000E?OpenDocument (last visited Jan. 11, 2013).

international ramifications and implications.³⁹⁹ The two issues are at the core of the contemporary Israeli debate. Regarding the Orthodox community the question is whether, broadly speaking, secular and religious-nationalist⁴⁰⁰ Israelis will continue to bear the financial and military burden from which the Orthodox are, largely, excused. Regarding settlements the question is directly related to resolution of the Israeli-Palestinian conflict and whether an independent Palestinian state will be established in the West Bank.

The essence of extremism of Israel is directly related to both issues: increasingly strident voices in the Orthodox community are demanding separation between the sexes not based on religious text and are actively engaged in rejecting calls for an equal burden.⁴⁰¹ As discussed below, the term 'state within a state' is particularly appropriate in describing the relationship between Orthodox Jews and Israeli society; extremism is inherent to the debate in the context of how this troubling paradigm is understood and manifested by certain voices in the Orthodox community. With respect to the religious nationalist community the questions regarding settlements, the Israel-Palestinian peace process and the West Bank are neither ephemeral, nor abstract. Quite the opposite: the future of

³⁹⁹ The overwhelming majority of the international community's criticism of Israel is focused on Israel's occupation of the West Bank and Gaza Strip (result of the 1967 Six-Day War) and the Jewish settlements built in both areas subsequent to the war. While Israel unilaterally disengaged from Gaza in 2004, the Palestinian Authority assumed power in Palestinian cities in the West Bank (the PA does not exercise control or power over Jewish settlements in the West Bank) and Hamas controls the Gaza Strip (resulting from elections) the international community focus on the West Bank is largely restricted to these two issues. While discussion regarding the legality/illegality of Jewish settlements in the West Bank is beyond the scope of this book its relevance to both the domestic political debate in Israel and Israel's standing---if not growing isolation---in the world today is beyond dispute. The following is but an example: in 2012 Prime Minister Netanyahu, at the urging of settlement leaders, appointed a committee comprised of legal scholars to examine the status of the West Bank. This committee, chaired by former Supreme Court Justice Edmund Levy, was convened largely with the intent (of those who advocated its convening) to counter the Sasson Report (written by Talia Sasson, a former senior Ministry of Justice official); the Sasson Report (the Report was commissioned by then Prime Minister Sharon) concluded that state funds had been diverted to building West Bank settlements and outposts that violated Israeli Law. The Prime Minister's Office acknowledged that Netanyahu received the Report two weeks after Justice Levy presented the Prime Minister with the Report (June, 2012); the reason for the delay was grave concern regarding how the international community would react to the Report which concluded that Israel was not an occupier in the West Bank and that the settlements are legal. International attention and condemnation were immediate; see Isabel Kershner, *Validate Settlements, Israeli Panel Suggests*, N.Y. TIMES, July 9, 2012, http://www.nytimes.com/2012/07/10/world/middleeast/israeli-panel-says-west-bank-presence-is-not-occupation-and-recommends-approval-of-jewish-settlements.html?_r=2&emc=tnt&tntemail1=y; *Wrong Time for New Settlements*, N.Y. TIMES, July 10, 2012, <http://www.nytimes.com/2012/07/11/opinion/wrong-time-for-new-settlements-in-the-west-bank.html?ref=opinion>.

⁴⁰⁰ I use the term 'religious nationalist' rather than 'nationalist religious' reflecting direct translation of the political party that historically represented this sector: Meflaga Da'tit Leumit (Religious Nationalist Party).

⁴⁰¹ This is a direct translation of the term used by protestors demanding draft of all Haredim to the IDF; perhaps a more accurate translation is 'shared burden' between the Haredim and the rest of Israeli society. It is an open question to what extent the demand for 'equal burden' includes Israeli Arabs who are not drafted to the IDF.

the West Bank and of Jewish settlements⁴⁰² raises profound religious, existential and philosophical concerns and questions for religious nationalist Jews.⁴⁰³ As repeatedly demonstrated, extremists in the religious nationalist camp are strident in voice and violent in action. Israeli authorities have confronted religious nationalist violence for over thirty years: murderous acts of the Jewish Underground⁴⁰⁴, the assassination of Prime Minister Rabin⁴⁰⁵, attacks against both Palestinian's living in the West Bank and IDF soldiers stationed in the West Bank.

While Rabin was the target of unmitigated, venomous incitement articulated by rabbis and right wing politicians⁴⁰⁶ religious nationalist extremists have engaged in violent action for decades. In large part the state has turned a blind eye; in many ways, Rabin paid the ultimate price for a reality whereby one sector of the population perceives itself as beholden to the Almighty rather than to state law. Tragically, Israeli governments----right and left alike----have failed to directly address this deliberate delegitimization. In the context of examining religious nationalist Jewish extremism, the questions are whether an assassination of a Prime Minister who orders the dismantling of Jewish settlements be deemed legitimate by rabbis, would IDF soldiers dismantling settlement be attacked and would Islamic holy sites be attacked.⁴⁰⁷

History has shown that secular and religious extremists in Israel attack both Jewish⁴⁰⁸ and Palestinian⁴⁰⁹ targets. It is for that reason that warnings issued by

⁴⁰² Whether built with permission (referred to legal) or without authorization (referred to as illegal settlements)

⁴⁰³ Needless to say, the issue similarly raises many questions for secular Jews opposed to the continued building of settlements in the West Bank and/or who favor a two state solution to the conflict.

⁴⁰⁴ Early-mid 1980's.

⁴⁰⁵ November 4, 1995.

⁴⁰⁶ In August, 1995 at a right wing demonstration a 'coffin' marked Rabin was carried; walking in front of the coffin was then Member of Parliament (today Prime Minister) Benjamin Netanyahu. At a mass rally in Jerusalem (October, 1995) a photograph of Rabin was photo-shopped so that he was wearing a kaffiya (traditional Arabic headwear) and an SS uniform; on the balcony looking down at the demonstrators carrying these placards stood MP Moshe Katsav (subsequently President of the State of Israel), Ariel Sharon (subsequently Prime Minister), Benjamin Netanyahu (subsequently Prime Minister) and Tzahi Hanegbi (subsequently Justice Minister); Alan Sipress, *Leah Rabin Says Netanyahu Reverses Gains Israel Faces Renewed Isolation And Peace Is On Hold, She Told The World Affairs Council. Arafat Drew Her Praise*, PHILLY (May 22, 1997), http://articles.philly.com/1997-05-22/news/25561645_1_tel-aviv-peace-rally-leah-rabin-prime-minister-benjamin-netanyahu; Hendrik Hertzberg, *Words and Deeds*, NEW YORKER, Jan. 24, 2011, http://www.newyorker.com/talk/comment/2011/01/24/110124taco_talk_hertzberg.

⁴⁰⁷ The Jewish Underground planned on blowing up the Dome of the Rock; according to experts such an action would have directly resulted in a regional war, if not more than that.

⁴⁰⁸ For example, in February, 1983 during a Peace Now demonstration urging Prime Minister Begin to adopt the findings of the Kahane Commission regarding Sabra and Shatila Emil Grunzweig was murdered by a grenade thrown by Yona Avrushmi, a right wing activist; see Emil Grunzweig Peace Now, <http://peacenow.org.il/eng/content/emil-grunzweig>, (last visited Jan. 11, 2013).

⁴⁰⁹ Ori Nir, *Short History of Israeli Right Wing Terrorism*, PEACE NOW (Nov. 13, 2009, 1:55 PM), http://peacenow.org/entries/short_history_of_israeli_right_wing_terrorism#.T_80a3AVxN0.

rabbis and settler leaders regarding violence that may ensue in the face of possible withdrawal from the West Bank are treated with the utmost seriousness by the Israeli security and intelligence community.⁴¹⁰ The actions of religious nationalist Jews are, obviously, important with respect to the domestic debate regarding the future of West Bank settlements. However, in direct contrast to the extremist actions of the Orthodox community events in the West Bank are newsworthy internationally resulting in extensive media coverage, reports by NGO's and statements by foreign leaders.

Orthodox Jews, as discussed below largely do not serve in the Israel Defense Forces and are the beneficiaries of an extraordinary political arrangement whereby the majority of orthodox adult males do not work in direct contrast to religious nationalist Jews who serve in the IDF and directly contribute to the Israeli economy akin to secular Jews. In the main, Orthodox Jews vote for Orthodox political parties whereas religious –nationalist Jews vote for right wing political parties committed to continued building of settlements in the West Bank.⁴¹¹ Focusing on specific issues will facilitate understanding Israeli society and the tensions between different population groups and the resulting dangers posed to society and state alike. The issues that will draw our attention are West Bank settlements, the 'equal burden' with respect to employment and military service, and gender discrimination in Orthodox Jewry.

In a crux, religious nationalist Jews want the continued building of settlements in the West Bank and extremists view any attempt to return the land to Palestinians as an act of treason; this view is predicated on the belief that the West Bank is God given to the Jewish people as stated in the Old Testament. Extremist rabbis issue proclamations, give sermons and write books that incite; targets of the incitement include Prime Minister Rabin assassinated by Yigal Amir who acting on rabbinical incitement concluded that assassinating Rabin would seriously impede the Oslo Peace Process between Israel and Palestinians. In addition to incitement against Rabin, rabbis have pushed the limits of free speech with respect to incitement against homosexuals, Israeli-Arabs and Palestinians.

As discussed in chapter 6 the limits of free speech in Israel are broadly perceived enabling speech that would be subject to prosecution in other countries. Regarding extremist religious nationalist Jews, the intelligence community's assessment is that the government decision to return part/s of the West Bank to the Palestinians, whether unilaterally or in the context of a peace agreement, would be met with violence directed against IDF soldiers, Palestinians and Israel

⁴¹⁰ *Jewish terrorism threat grows in West Bank*, UPI (Dec, 21, 2011), http://www.upi.com/Top_News/Special/2011/12/21/Jewish-terrorism-threat-grows-in-West-Bank/UPI-83091324497138/.

⁴¹¹ Explain myriad political parties.

political leaders responsible for policy.⁴¹²

The policy implemented by West Bank settlers is referred to as ‘price tag’⁴¹³; Ori Nir, Spokesperson of Americans for Peace Now and former Washington bureau chief of Israel’s Haaretz daily describes it in the following manner:

“Price Tag,” also known as “Arvut Hadadit” (Mutual Responsibility), is a set of violent tactics employed by national-religious Israeli settlers in the West Bank to deter Israeli law enforcement authorities from removing illegally-built structures from West Bank settlements. The tactics employed include attacks on Palestinians and their property, as well as attacks on Israeli military and police officers. These tactics are designed to obstruct and deter law enforcement inside settlements, but their ultimate goal is to deter Israeli leaders from implementing a possible future Israeli-Palestinian peace agreement that entails removing Israeli settlements from the West Bank.⁴¹⁴

In broad strokes, Prime Minister Netanyahu’s Likud led coalition is perceived as pro-settlement movement. However, settler leaders have voiced criticism of the government’s decision to implement Supreme Court decisions regarding the dismantling of illegal Jewish settlements. In addition, acts of settler violence against Palestinian’s are not an infrequent occurrence; settlers responsible for acts including damage to Palestinian property and attacks against Palestinians are, largely, not prosecuted.⁴¹⁵ This in direct contrast with respect to Palestinian terrorist attacks against Israelis; the intelligence community, IDF and law enforcement agencies conduct robust investigation, interrogation and prosecution of suspected Palestinians.⁴¹⁶

Religious Nationalists are not involved in gender-based issues including male-female segregation on public transportation or segregation between genders on sidewalks in orthodox neighborhoods, discussed below.

Judaism is divided into two distinct categories: Ashkenazi Jews whose

⁴¹² In that context, Carmi Gilon the former Head, Israel Security Agency (1994-1996) stated that a Prime Minister who decides to return the West Bank (in whole or in part) would be assassinated; Gilon, who resigned in the aftermath of the Rabin assassination (1995) made his comments in the documentary ‘Gatekeepers’. See *The Gatekeepers*, JFF, <http://www.iff.org.il/?CategoryID=745&ArticleID=1340> (last visited Jan. 11, 2013).

⁴¹³ For a compilation of ‘price tag’ related attacks on Palestinian targets see http://peacenow.org/entries/price_tag_timeline#.T_8hNXAVwDU, last viewed July 12, 2012; for a report regarding ‘price tag’ applied in Israel (in addition to the West Bank) see http://peacenow.org/entries/price_tag_terrorism_crosses_the_green_line#.T_8ivXAVxN0, last viewed July 12, 2012.

⁴¹⁴ Ori Nir, *Price Tag*, 44 CASE W. RES. J. INT’L L. 277, (2012).

⁴¹⁵ See Saed Bannoura, *Israel Fails To Prosecute Soldiers, Settlers, who Attack Palestinians*, UNHRC (Sep. 25, 2012), <http://www.imemc.org/article/64290>.

⁴¹⁶ Eyal Gross, *Security for israeli settlers, not for Palestinians*, HAARETZ, May 28, 2012, <http://www.haaretz.com/opinion/security-for-israeli-settlers-not-for-palestinians-1.433069>.

background is European and Sephardic Jews who come from North Africa and the Middle East. Hassidic Jewry was established in Eastern Europe; the Ashkenaz Orthodox community is divided into different communities, the largest are Lita'im and Hasidim of which the largest are Gur, Viznitz and Belz. The original religious political parties in Israel were Mizrahi and Hapoel Mizrahi, which joined forces in the 1950's and formed the National Religious Party. In the early 1980's Rabbi Shach, the head of the Lita'im, broke away from Gur and its political party, Agudat Yisrael, and created two new political parties: SHAS a Sephardic orthodox party and Degel HaTorah an Ashkenazi orthodox party. These distinct communities have different beliefs and varying degrees of orthodoxy making significant efforts to ensure the supremacy of their particular rabbi and community.

Over the past decades the Orthodox population in Israel has significantly grown; by way of example in 1977 there were 6 Orthodox members of the Knesset (Parliament) whereas in 2012 there are 16 Orthodox Members of Parliament. Commensurate with an increase in political power is an increasing stridency and extremism that affects both the State and society.

The expression 'state within a state'⁴¹⁷ is used to describe the relationship between Orthodox Jews and the nation state. Simply put: the term suggests that orthodox Jews⁴¹⁸ do not contribute to Israeli society on two distinct fronts as the majority of males do not work and the overwhelming majority do not serve in the IDF.⁴¹⁹ The overwhelming majority of orthodox Jews live in self-enclosed communities, often times in poverty or near-poverty, in Israeli cities including Jerusalem, Modi'in Illit, Bnei Brak and Bet Shemesh.⁴²⁰

As a result of political arrangements of mutual convenience Israeli government, both Likud⁴²¹ and Labor⁴²², have institutionalized and facilitated an infrastructure whereby adult Orthodox males study religious text rather than contribute to

⁴¹⁷ When I used this expression in conversation with a former Minister in a previous Israeli government he rejected the term suggesting that Orthodox Jews are more engaged in the State than commonly believed.

⁴¹⁸ To be distinguished from religious-national Jews.

⁴¹⁹ Israel is unique in that military service is compulsory for both males and females. It is the only country in the world that maintains obligatory military service for women. This continues the tradition of female fighters during Israel's War of Independence. Males serve for three years and females for just less than two years. Israel also has one of the highest recruitment rates in the world - some 80% of those who receive summons serve. Those who are exempt from service include most minority groups, those who are not physically or psychologically fit, married women or women with children, religious males who are studying in an accredited Jewish Law institution and religious females who choose to pursue 'national service' - community work.

⁴²⁰ NACHMAN BEN-YEHUDA, *THEOCRATIC DEMOCRACY: THE SOCIAL CONSTRUCTION OF RELIGIOUS AND SECULAR EXTREMISM* (Oxford Univ. Press 2010).

⁴²¹ Right-wing Israeli political party. It was founded in September 1973 to challenge the Israel Labour Party, which had governed the country since its independence in 1948, and first came to power in 1977.

⁴²² Israeli social-democratic political party founded in January 1968 in the union of three socialist-labour parties. It and its major component, Mapai, dominated Israel's government from the country's independence in 1948 until 1977, when the rival Likud coalition first came to power.

larger society. Important to note, as suggested by an Israeli subject matter expert, that the world views of Orthodox Jews and the rest of Israeli society are strikingly distinct; the phrase “we do not live in the State of Israel but rather in the Land of Israel” concisely summarizes the relationship between Orthodox Jewry and the rest of society.⁴²³

For the Orthodox Jew, the individual has no control over his destiny, as all decisions are God’s. To that extent, Orthodox Jews are not burdened by the complicated dilemmas that confront Israeli society for they do not participate in the larger national debate; the primary focus of Orthodox Jews with respect to the political process is ensuring continued government financial support of institutions that facilitate their ‘way of life’.

What has significantly contributed to a system whereby one sector in the Jewish population has a higher birth rate and whose contribution to the work force is significantly less than the rest of society is a two-tiered social benefit system. In 1977 then Prime Minister Begin implemented significant welfare payments for large families⁴²⁴; this legislation directly contributed to a Haredi birth rate significantly higher than that of secular and religious nationalist Jews. In addition, the Haredi birth rate was higher than that of the non-Jewish population.⁴²⁵ In addition to benefit payments for families, non-working males whose way of life dictates that they study religious text rather than working receive monthly allowances from the government.⁴²⁶ Orthodox Jews comprise 10% of the Israeli population⁴²⁷ with a birth rate of 6.5⁴²⁸ as compared to 2.7 for secular Israelis⁴²⁹ and 4.5 for Israeli Arabs⁴³⁰ and an employment rate significantly below that of secular⁴³¹, Arab-Israelis⁴³² and national-religious Jews⁴³³

Political considerations led Prime Minister Ben Gurion in 1948 to agree that

⁴²³ Private conversation; notes in author’s records.

⁴²⁴ See what is known as the “Large Families Law.”

⁴²⁵ Israeli-Arabs comprise approximately 20% of the Israeli population. See *Latest Population Statistics for Israel*, JEWISH VIRTUAL LIB. (Sep. 2012), http://www.jewishvirtuallibrary.org/jsource/Society_&_Culture/newpop.html.

⁴²⁶ See generally Yair Ettinger, *Israel to defend special welfare payments to yeshiva students before High Court*, HAARETZ (Nov. 13, 2012, 3:49 AM), <http://www.haaretz.com/news/national/israel-to-defend-special-welfare-payments-to-yeshiva-students-before-high-court.premium-1.477280>.

⁴²⁷ See generally Aaron Heller, *Israeli Draft Pits Secular Jews vs. Ultra-Orthodox*, HUFFINGTON POST (July 7, 2012, 3:09 PM), http://www.huffingtonpost.com/2012/07/07/israeli-draft-pits-secular-orthodox-jews_n_1655909.html.

⁴²⁸ Hleihel, A. 2011. Fertility among Jewish and Muslim Women in Israel, by Level of Religiosity, 1979-2009. Working Paper Series, No. 60, Jerusalem: Israel Central Bureau of Statistics (in Hebrew).

⁴²⁹ See facts and figures from TAUB CENTER FOR SOCIAL POLICY STUDIES IN ISRAEL (2009) available at <http://taubcenter.org.il/>.

⁴³⁰ *Id.*

⁴³¹ *Id.*

⁴³² *Id.*

⁴³³ *Id.*

Orthodox Jews receive deferments⁴³⁴; when that decision was made, much criticized today, there were 600 male draft age Orthodox Jews (out of a population of 600,000) whereas today there are 63,000 (Jewish population of almost 6 million)⁴³⁵. In order to create a mechanism whereby Orthodox Jews would be drafted into the IDF then Prime Minister Ehud Barak (2001) convened the Tal Commission⁴³⁶; the commission's suggestion that Orthodox males receive a deferment until the age of 22 at which point they could decide whether to serve or learn⁴³⁷ was adopted into law (2002). However, the government subsequently admitted that the Law did not satisfactorily resolve the question of induction of Orthodox Jews though proponents cited the establishment of a religious brigade within the IDF⁴³⁸ as an indicator of successful implementation.

Nevertheless, the Israel Supreme Court struck down the law; the President (akin to Chief Justice) of the Court, Dorit Beinisch wrote, ""The law, which has already been found in violation of the right to equality as part of the right to dignity, does not meet the proportionality standard and is therefore unconstitutional"⁴³⁹. The Court gave the government until August 1, 2012 to resolve the issue; failure to do so would result in automatic induction of all Orthodox Jews, a measure Orthodox rabbis and political parties deeply resist and oppose.

A. Orthodox Jewry and Women

Orthodox Jewry in Israel is, according to experts⁴⁴⁰, more extreme than in the past; while a number of issues reflect the increasing extremism two examples will be highlighted: separation of men and women on public transportation and on sidewalks in religious neighborhoods. Important to note that religious texts do not justify either measure; rather both are the result of Orthodox groups articulating extremist positions predicated on community and political considerations. Both measures have direct impact on the status of women in the religious community; both reflect sexual discrimination based on extremist interpretation of religious text that directly affects the rights and status of Orthodox women.

The Israeli Supreme Court held it was illegal to force women to sit in the back of public buses; nevertheless, the effort reflects a hardening of interpretation regarding gender and the status of women. While Orthodox Jewry, like other faiths, emphasizes modesty there is a sharp distinction between clothing

⁴³⁴ Ofer Aderet, *Battle over Haredi draft is decades old*, HAARETZ, Nov. 7, 2012, <http://www.haaretz.com/news/national/battle-over-haredi-draft-is-decades-old.premium-1.450291>.

⁴³⁵ Israeli Arabs are not drafted to the IDF but may volunteer to serve; according to a news report (July 8, 2012; Gali-Tzahal Radio) 2,400 Israeli Arabs volunteer (2012) as compared to 240 in 2006.

⁴³⁶ Justice Zvi Tal sat on the Israeli Supreme Court.

⁴³⁷ Orthodox Jews study religious text in yeshivot .

⁴³⁸ Nahal Haredi.

⁴³⁹ Aviad Glickman, *High Court rules against extending Tal Law*, YNET (Feb. 22, 2012, 12:53 AM), <http://www.ynetnews.com/articles/0,7340,L-4193034,00.html>.

⁴⁴⁰ Notes, names, emails and records of interviews with subject matter experts in author's files.

guidelines and measures that clearly discriminate against women. Measures directed at women are reflected in what has been described as a 'new religion unrelated to traditional Judaism'⁴⁴¹: it is a religion where 'kosher is not kosher enough'⁴⁴², conversions to Judaism can be cancelled, traditional female modesty is insufficient and separation of men and women is demanded with the exception of within the privacy of the home.'⁴⁴³ With respect to increasing extremism one commentator observed that the process reflects concern, if not fear, from the increasing liberalism of the 'outside' world. In particular, the perception amongst Orthodox Jews that secular Israelis are seeking to penetrate the closed community---in part through the Internet---and to create a barrier between the Orthodox and their faith.

In the context of this enhanced concern regarding external penetration strident extremism gains legitimacy. The 'guiding hand' of a leading rabbinical authority responsible for the increasing extremism is, apparently, not to be found. Rather, the enhanced extremism is the result of 'local initiative' that increasingly sets the tone in the Orthodox communities. One of the realities of enhanced extremism in a closed community is the inevitable 'competition' with respect to articulating and implementing increasingly extreme measures. The move to separate women from men on public transportation, for instance, was not the result of a decision by a leading rabbi rather it was, literally, a grassroots movement that 'snowballed' and took on a life of its own.

According to the Israel Research Action Center Annual Report (2011):

In last year's report, (2010, ANG) we noted that almost all the demands for segregation are manifested in an effort to push women to the back, physically and figuratively. This underlines the origins of such demands in patriarchal approaches that seek to perpetuate a gender-based hierarchy. Last year, most of the demands for segregation involved situations where men occupied the front section of public space, while women were relegated to the rear. In this report, however, there are also many instances in which women are completely excluded from public space, or an entirely separate space is created for them, silencing their voice. The trend to silence women's public voice attracted considerable public attention, particularly in such contexts as the deliberate exclusion of women from public billboards in Jerusalem, and incidents when religious soldiers refused to participate in army events that included singing by women performers.⁴⁴⁴

⁴⁴¹ Private conversation, notes in authors records.

⁴⁴² In an increasing number of restaurants in Jerusalem, a 'kosher certificate is no longer sufficient; rabbinical authorities are demanding 'Glatt' kosher which is both more expensive and requires greater dietary supervision.

⁴⁴³ Private conversation, notes in authors records.

⁴⁴⁴ Available at <http://www.irac.org.il/UserFiles/File/%2005.pdf> (in Hebrew).

In its ruling on the segregation of women and men on buses, the Israel Supreme Court sitting as the High Court of Justice held that coerced segregation is illegal:

The Petition filed at the beginning of 2007, concerns bus lines.....in which men and women were customarily separated. This is how the Petitioners described the prevailing reality:

“For approximately nine years, the public transportation companies.....have been operating bus lines which are called “*mehadrin* lines” [literally: “meticulous,” for orthodox or ultra-orthodox Jews who meticulously observe the religious laws]. On these lines... women are required to board by the rear door and to sit in the back of the bus, whereas men board by the front door and sit in the front seats. In addition, the women passengers are required to dress modestly (...). Women who do not resign themselves to these coercive arrangements and attempt to oppose them (.....)are humiliated and suffer severe verbal harassment, are made to leave the bus and are even threatened with physical violence.”

The Petitioners argued that these arrangements violate the principle of equality, the constitutional right to dignity, and freedom of religion and conscience – and that they are employed with no authority under the law. In effect, after four years of litigation (reviewed below), no one today can dispute that the coercive, dictated reality described above is illegal.⁴⁴⁵

In the words of Justice Rubenstein:

To clarify the situation for anyone to whom the above statement is not clear, *we will state: a public transportation operator – like any other entity under the law – is not entitled to tell, ask or instruct women where they should sit on a bus merely because they are women, or what they should wear, and they are entitled to sit anywhere they wish.* (emphasis in the original, ANG) Naturally, the same applies to men; however, for reasons that are not hard to understand, all the complaints refer to an insulting attitude toward women. When I go back and read the lines that were just emphasized above, I am amazed that it should have been necessary to write them in Israel in 2010. Have we gone back to the days of Rosa Parks, the African-American woman who, in refusing to give up her bus seat for a white passenger in 1955, helped to end racial segregation on buses in Alabama, United

⁴⁴⁵ H CJ 746/07 Naomi Ragen v. Ministry of Transportation, http://elyon1.court.gov.il/files_eng/07/460/007/t38/07007460.t38.htm.

States, in 1955)?⁴⁴⁶

Is it really even necessary to state that it is forbidden to *coerce or order* (emphasis in the original, ANG) a woman to sit in the back rows on the bus...? Is it really necessary to state that men who *harass* (emphasis in the original, ANG) a woman who sits outside the intended area... thereby commit a forbidden act and are liable to criminal prosecution? Does not any rational person, whether secular, religious, or Haredi, understand this without explanation?⁴⁴⁷

The description below best illustrates both the reality and impact of gender segregation based on religious extremism:

“Must it really be said that an **attack** (emphasis in the original, ANG) by men on a woman who deviated from the designated female seating area (as described in some of the affidavits that were filed) is prohibited, and is likely to lead to an action in criminal court? Is this not understood and self-evident to every decent person – secular, religious or ultra-Orthodox? In one of the affidavits that were appended to the Petition, the following description (with reference to 2004) appears:

The bus was completely empty of passengers. I chose to sit on a single seat at the front of the bus. When the bus began to fill up, several ultra-Orthodox men suddenly came up to me and insistently demanded that I get up from my seat and move to the back of the bus. I was utterly horrified. I answered that I did not see rules anywhere with regard to such an arrangement on the bus...

I was subjected to an incessant attack of verbal insults and physical threats; a large ultra-Orthodox man leaned over me and berated me quite loudly throughout the entire trip. Through all that time, the driver did not intervene... I felt as if I had been subjected to ‘psychological stoning’, although I had not done anything wrong (affidavit by Petitioner 1).

Woe to the ears that hear this! And where is human dignity, “which supersedes [even] a Torah (Biblical) prohibition” (Babylonian Talmud, Brakhot, 19b). Can anyone say that this event was reasonable? In another affidavit, which refers to 2006, a National Servicewoman describes how, when traveling very late at night (the bus left Jerusalem for Ofakim after 11:00 p.m.), she did not object to separating from her [male] traveling companion and

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.*

sitting in the back rows. Nonetheless:

From where I was sitting in the back, I noticed one of the passengers speaking to the driver, and after that, an uproar began next to the driver... *I understood that, as a woman, I was forbidden to approach the front of the bus myself.* (emphasis in the original, ANG) I called my partner, who was sitting in the front of the bus, on my mobile phone... My partner explained to me that passengers had spoken to the driver about how I was dressed. I should add that I was wearing a long-sleeved shirt and a skirt which came to just above the knees.

The uproar did not quiet down, and the driver turned to my partner *and demanded that we get off the bus in the middle of the road, in the dead of night* (emphasis in the original, ANG), ‘to avoid problems,’ in his words. Only after my partner passed me a long shirt, with which I was forced to cover my legs, did the uproar quiet down... The driver answered that this was Egged’s declared policy and that no one may board the ‘*mehadrin* lines’ in immodest attire (affidavit by Petitioner 2; emphases added – E.R.).

Even if we ignore the very fact of the gender separation, to which the female passenger was “resigned,” can we resign ourselves, in Israel in 2010, to the sentence “I understood that, as a woman, I was forbidden to approach the front of the bus myself”? Or to a driver who wants – Heaven help us – to make passengers get off the bus in the middle of the road, in the dead of night, because he claims that the girl’s attire does not comply with Egged’s modesty rules? I would not like to think that money – the wish to profit by operating the lines in question – would mean everything; the sages have already said “The Lord said, ‘The cry of Sodom and Gomorrah is great’ – on account of the maiden” (Sanhedrin 109b). Another affidavit stated that even the Petitioner’s proposal to cover her bare shoulders with additional clothing was not accepted by the passengers and the driver, and she *was not allowed to board the bus* (affidavit by Petitioner 5; emphasis in the original, ANG). Again: what about human dignity?”⁴⁴⁸

With respect to the increasing extremism in the Orthodox community Justice Rubenstein wrote:

It should also be noted that the phenomenon of “*mehadrin* lines” has not always existed... buses was mixed, even in places where the population was largely ultra-Orthodox, such as Jerusalem and Bnei Brak. This is, therefore, a recent phenomenon...It is possible – as has been proposed in various articles – that this is part of a

⁴⁴⁸ *Id.*

process of radicalization in ultra-Orthodox society.⁴⁴⁹

As reported in the Israel Action Research Institute annual report, segregation is not limited to public transportation; the report highlights gender segregation at funerals, government offices, health clinics and sidewalks. As Justice Rubenstein noted these examples highlight a process best described as radicalization in the Orthodox community; the radicalization, which is devoid of a 'guiding hand', has the practical import of discriminating against women in the name of religion. The lack of a 'guiding hand', however, does not diminish from the significance of the measures; in the name of religious extremism the community to which they belong actively discriminates against women. What is particularly troubling is the willingness of state officials to abide with extremism based gender discrimination. The following example of how a one community⁴⁵⁰ in Israel celebrated the Jewish holiday of Simhat Torah is instructive:

During the Simchat Torah celebrations in Mevasseret Zion at the end of the festival of Sukkot in 2011, which were sponsored by the local council, those present were asked to separate into two groups, one for men and one for women. Dozens of local residents left the event in protest.⁴⁵¹

With respect to segregated sidewalks:

Ahead of the festival of Sukkot in 2011, posters were displayed around Jerusalem urging women not to enter Mea She'arim Street during the water libation celebrations, which form part of the festival. The announcement asked women to use alternative routes (such as Shivtei Israel Street) in order to reach their homes, "and thereby help avoid mingling." Reports on this subject in Haaretz and on the Kikar Hashabbat website noted that the Toldot Aharon Hassidic sect was spending a large amount of money in order to hire stewards who would be stationed on the streets in order to enforce the segregation and in order to install partitions.

Jerusalem city councilor Rachel Azaria petitioned the Supreme Court against the imposition of segregation in the area around Toldot Aharon Yeshiva. Responding to the petition, the justices noted with displeasure that the previous ruling of the Supreme Court regarding segregated sidewalks had not been enforced. The justices noted the trend toward increasingly extreme patterns of gender segregation, and determined that this injures the residents of the neighborhood and constitutes the injurious domination of

⁴⁴⁹ *Id.*

⁴⁵⁰ In the name of full disclosure I reside in the referenced community, Mevasseret Zion; while my family did not attend the event, there is little doubt we would have, along with others, walked out.

⁴⁵¹ *Supra* note 477 at 38.

the residents by a minority in the neighborhood.⁴⁵²

V. United Kingdom

In undertaking an examination of extremism in the UK the initial question is whether the focus will be on ‘The Troubles’ in Northern Ireland or analysis of more current tensions. A number of conversations led to the decision to focus on the latter and leave the former to others. To that end, a week visit to London focused on Islamic extremism and right wing extremism. Meetings and interviews I conducted focused on both; discussions highlighted differences and similarities alike. Subject matter experts included academics, journalists, politicians, senior law enforcement and security officials, extremists, policy experts focusing on both forms of extremism and practicing attorneys.

A previous visit to London⁴⁵³ had been disconcerting; as I noted in ‘Freedom from Religion’:

I ended the trip with the troubling impression that British lawmakers were deliberately ignoring a serious problem confronting not only their own country, but democracies around the globe.....For one reason or another, the British government is not willing to acknowledge the reality of religious extremism in its country, and is often willing to go to great lengths to paint the problem in a different light....Some of the individuals I spoke to went even further, claiming that the true danger to the United Kingdom was not the threat posed by religious extremists, but the potential harm to British society that were to result were the government to emphasize the Islamic nature of religious terrorism.⁴⁵⁴

My trip coincided with intensive pre-Olympic planning by UK authorities; while I was in London the stunning incompetence of the private UK security company, G4S, hired to provide security during the Olympics was the subject of heated discussion in Parliament.⁴⁵⁵ In addition, the suicide bombing in Burgas, Bulgaria (July 18, 2012) highlighted the vulnerability of tourist buses and; in the aftermath of the attack “MI5 and New Scotland Yard are reportedly thought to have raised their threat assessment in light of the terrorist attack in Bulgaria on Wednesday that killed 5 Israelis, the bus driver and a suicide bomber. In addition, the Sunday Times reports, the Israeli government has dispatched agents from the Shin Bet and Mossad to protect its 38-strong delegation.”⁴⁵⁶ Perhaps reflecting a

⁴⁵² *Id.* at 35.

⁴⁵³ December, 2009 when researching ‘Freedom from Religion’.

⁴⁵⁴ GUIORA, *supra* note 9, at 2-3.

⁴⁵⁵ Richard Allen Greene, *Olympics security failure is ‘humiliating shambles,’ boss concedes*, CNN (July 17, 2012), <http://edition.cnn.com/2012/07/17/sport/olympics-security/index.html>.

⁴⁵⁶ *Report: Israel fears Iranian terror attack at London Olympics*, HAARETZ (July 22, 2012, 8:31 AM), <http://www.haaretz.com/news/diplomacy-defense/report-israel-fears-iranian-terror-attack-at-london-2012-olympics-1.452699>.

confluence of the two events, particularly security concerns relevant to the Olympics, conversations with subject matter experts suggested somber and sober recognition of the threats posed by extremists.

An earlier assessment by Scotland Yard Deputy Assistant Commissioner that “Islamic and terrorist are two words that do not go together”⁴⁵⁷ was replaced by analysis reflecting concern regarding home-grown terrorism, particularly acts committed by Islamic extremists. In addition, concern was articulated regarding the English Defense League particularly with respect to an attack similar to Breivik’s. In that vein, security officials and policy experts were largely unanimous in their assessment that the most pressing danger was posed by a ‘lone wolf’, particularly an Islamic extremist. In discussing the threat posed by ‘lone wolves’ unanimity was voiced regarding their intent but questions were raised regarding their capability.⁴⁵⁸

With respect to dangers posed by lone wolves, security officials were candid in their assessment that significant deficiencies exist with respect to intelligence monitoring, gathering and surveillance. Subject matter experts, security officials and policy analysts alike, were unanimous in dismissing dangers posed by external threats. Meetings with subject matter experts in London focused on two distinct threats: Islamic extremism and extreme right wing extremism. While my pre-determined emphasis was on extreme right wing extremism senior security officials with whom I met were clear that the gravest threat facing the UK today is Islamic extremism.

That is, while concern was expressed regarding extreme right wing movements⁴⁵⁹ the threat posed by such groups does not reach the level of Islamic extremism. British subject matter experts stressed that UK Moslem extremists are primarily interested in advancing a three part agenda: an Islamic world government, establishing Sharia in non Moslem majority countries (such as the UK) and imposing sanctions against Western armed forces in the Middle East. With respect to ERW, subject matter experts emphasized two points in particular: a powerful combination of xenophobic nationalism and support for the welfare state but not for immigrants.

In 1999 a young white man called David Copeland set off 3 nail bombs in the heart of London's black community (Brixton), Bangladeshi community (Brick Lane), and gay community (Soho) during one week, in which he killed three people and wounded 165 others. He was a former member of the British National Party and had then 'migrated' to a more extreme neo-Nazi organization which was an offshoot of a group calling itself Combat 18 (the 1 and 8

⁴⁵⁷ GUIORA, *supra* note 9 at 2.

⁴⁵⁸ For material on Lone Wolves see <http://www.lonewolfproject.org.uk/resources/LW-complete-final.pdf>, last visited August 12, 2012. Violent actions/terrorism: see LONE WOLF report that lays out in documented fashion violent acts committed by far right extremists AND raises important question whether LONE WOLVES really are lone wolves.

⁴⁵⁹ All the groups.

representing the numerical position of 'A' and 'H' for Adolf Hitler). But with fewer guns around, our incidents are not quite so common or severe usually as the US or other countries.⁴⁶⁰

However, the law enforcement and security community are allocating significant resources and energies to minimize the threat posed by both groups with the understanding that ERW groups have not committed acts of terrorism on the scale of Islamic extremists. Security officials and other subject matter experts repeatedly commented those responsible for terrorist acts in the UK, other than 'the Troubles' in Northern Ireland, were committed either by British citizens or those residing in the UK. While the importance of external influence was recognized 'outsiders' did not commit the acts themselves. Subject matter experts, security officials and policy analysts alike, were unanimous in dismissing dangers posed by external threats.

A. Right Wing Extremism

The English Defense League (EDL) is a working class, blue-collar group largely comprised of adult white males opposed to immigration fearful of losing their jobs in the broader context of an economic downturn. Much like ERW groups elsewhere in Europe they largely articulate three guiding principles: Europe is under attack (from immigrants); the need to 'reclaim our streets' (from immigrants) and the obligation to 'protect our values'. With deep roots in the football hooliganism that previously plagued the UK the EDL has engaged in violent behavior, particularly against Islamic women and at demonstrations.

The roots of the football hooligan culture are essential to the extreme right wing; perhaps it is most accurate to suggest that ERW culture mirrors that of football hooliganism. However, the relationship is complicated: while EDL songs are super-imposed on football songs (all teams have their own songs) the EDL unites fans from opposing teams who are otherwise deeply opposed to each other. That is, fans from opposing teams rally around the same political movement (EDL) because of their mutual deep opposition to immigration. However, distinct from the traditional football culture the EDL (unlike the BNP) has minority members as both Sikhs and Jews belong thereby manifesting the 'common enemy theory' (Moslems).

⁴⁶⁰ He joined the far-right British National Party in May 1997, at the age of 21. He acted as a steward at a BNP meeting, in the course of which he came into contact with the BNP leadership and was photographed standing next to John Tyndall, then leader. It was during this period that Copeland read *The Turner Diaries*, and first learned how to make bombs using fireworks with alarm clocks as timers, after downloading a so-called terrorists' handbook from the Web. He left the BNP in 1998, regarding it as not hardline enough because it was not willing to engage in paramilitary action, and joined the smaller National Socialist Movement, becoming its regional leader for Hampshire just weeks before the start of his bombing campaign. It was around this time that he visited his family doctor and was prescribed anti-depressants after telling the doctor he felt he was losing his mind.

In addition to the EDL there are 22 groups identified as xenophobic in the UK; to that end, concern was raised regarding ‘outlet’ for anger should the EDL cease to function given the centrality of its position amongst those who espouse extreme right wing positions.⁴⁶¹ Heightening the concern with respect to RWE is the worsening economic crisis in Europe; as history unemployment and its financial, family and social repercussions significantly enhance the dangers that emanate from targeting the ‘other’.

The EDL was largely created in response to a march organized by the extremist Islamic group “Ahle Sunnah al Jamah – a splinter group from the banned extremist group al-Muhajiroun”⁴⁶² that demonstrated against British soldiers returning from Afghanistan at a homecoming parade in Luton.⁴⁶³ In the aftermath of the Luton parade the group promised further marches against British soldiers returning from Afghanistan.

Unlike the British National Party (BNP) the EDL is not a political party rather it identifies itself as a movement that expresses working class anger; furthermore, the EDL seeks to distinguish itself from the BNP that is perceived as racist, anti-Semitic and fascist with clear Nazi undertones. While the BNP does not enjoy electoral success in British parliamentary elections⁴⁶⁴ the British right has performed well in European Parliament elections.⁴⁶⁵ The EDL does not have an ideologue akin to Peder Are Nøstvold Jensen who writes under the penname “Fjordman” and was widely quoted and cited in Breivik’s manifesto.⁴⁶⁶ Perhaps for that reason, the EDL is perceived as ‘negative’ as it is not focused on building but rather restricts its activities to espousing English values and solidarity predicated on opposition to immigration.⁴⁶⁷ To that end, the EDL advocates both limits on immigration and imposing language requirements as a condition for receiving citizenship.

The sentiment that “England has been taken from me without my consent’ is a powerful slogan for the ERW; it is a refrain I heard in Holland and Norway

⁴⁶¹ As an example: UKIP (UK Independent party) exemplifies the splinter trend in extremist far right parties;

⁴⁶² Matthew Taylor, Jenny Percival and Vikram Dodd, *Muslim group pledges more protests against UK soldiers*, GUARDIAN (Mar. 11, 2009, 1:26 PM), <http://www.guardian.co.uk/uk/2009/mar/11/muslim-group-anti-war-protests>.

⁴⁶³ Micheal Holden, *Anti-Islamist protest group to form a Freedom Party in Britain*, REUTERS (Mar. 24, 2012), <http://blogs.reuters.com/faithworld/2012/03/24/anti-islamist-protest-group-to-form-a-freedom-party-in-britain/>. Luton is of particular importance and concern: it is a divided city between Moslems and white working class and the possibility of further violence has been raised in the context of a tinderbox effect.

⁴⁶⁴ For a UK Parliament Party breakdown see <http://www.londonelects.org.uk/im-voter/results-and-past-elections/results-2012>.

⁴⁶⁵ With respect to poor election in UK elections it was suggested that the cause is powerful anti racist movements/trends in UK and because of a poor TV appearance by the party’s the leader (Griffin)

⁴⁶⁶ Breivik, *supra* note 386.

⁴⁶⁷ As was repeatedly reinforced in conversations in Norway, Holland and UK the phrase ‘anti-immigrant’ is code for ‘anti-Islam’ as those opposed to immigration are, consistently, focused on Moslem immigrants whether from Turkey, Morocco or Pakistan.

expressing, in essence, dismay at and opposition to immigrants. In emphasizing the centrality of British values the ERW accentuates the dangers posed by the 'other' whose power is enhanced by people in position of power who are facilitating the taking of England. In that vein, working class antipathy for former UK Prime Minister Tony Blair was repeatedly mentioned as illustrative in understanding the resentment towards a public leader identified with multiculturalism.⁴⁶⁸

Distinctions are important; the EDL is not inherently opposed to ethnicity but is opposed to symbols of Islam, in particular the hijab and niqab. In opposing---perhaps resenting---over expressions of Islamic identity the EDL demands to know whether individuals are Moslems or Brits.⁴⁶⁹ In asking this question the subtext is a 'loyalty check' for the concern is with overt expressions of religiosity, particularly Islam. There is, of course, an additional implied subtext: immigrants, in the guise of extremism, are detrimental to society even though their mere thoughts may not lead to terrorism. However, a public opinion poll indicated that British Moslems are the most patriotic British citizens as 81% feel British first and Moslem second; this in comparison to France where 46% of French Moslem who feel French first and Moslem second.⁴⁷⁰

B. The Islamic Community

According to subject matter experts whose research focuses on the Islamic community⁴⁷¹, Islamic extremists conduct their recruiting efforts away from the mainstream Islamic community. Unlike in the past, Imams are not the focal point either of recruitment or radicalization. Imams are not engaged in recruitment extremists and only a small minority is considered extremists; in conducting recruiting efforts outside the traditional Mosque structure extremists focus on the grass-roots level outside the traditional community. Regarding imams, the working assumption amongst experts is that Western educated imams will emphasize tolerance with respect to Western culture and values unlike those educated outside the UK.

Not dissimilar to recruiting efforts in other countries, recruiters focus their efforts on the following:

⁴⁶⁸ With respect to multiculturalism a comment repeatedly mentioned was that the British government wasted resources without knowing the context of specific groups.

⁴⁶⁹ DARREN MULLOY, *AMERICAN EXTREMISM: HISTORY, POLITICS AND THE MILITIA MOVEMENT* (Routledge 2004).

States that membership is typically of the lower educated.

⁴⁷⁰ Johnathan Paris, *Europe and Its Muslims*, *FOREIGN AFFAIRS* (Feb. 2007),

<http://www.foreignaffairs.com/articles/62281/jonathan-paris/europe-and-its-muslims>.

⁴⁷¹ Conversations on this issue were conducted with law enforcement officials, politicians and policy experts, including members of the Moslem community; all notes in author's records.

- 1) Individuals already allowed involved in low-level street crime;
- 2) Individuals whose home-life is perceived dysfunctional;
- 3) Individuals with an understanding that religion provides redemption who are susceptible to conviction that violence is legitimate;
- 4) Individuals not previously involved in violence who are recruited to an 'idea' rather than to 'action'; unlike the three categories above this category focuses on individuals, particularly those exploring their identity, attracted to an idea;
- 5) Two 'convenient' recruiting tools are the Rushdie affair¹ and the Srebrenica massacre
- 6) Important to note that the first three categories target individuals identified as having low self esteem and therefore perceived as vulnerable, searching for a sense of identity, attracted to martyrdom; in all four categories above economic circumstances are deemed by subject matter experts as irrelevant to the recruiting

Young radicalized Moslems do not view their parents Islam as legitimate primarily because it is rooted in Pakistani culture and therefore 'contaminated' by the very culture they left. In that vein, the second and third generation challenge their parents through enhanced faith, with particular emphasis on the hijab⁴⁷² and niqab⁴⁷³; for the younger generation the niqab is viewed as manifesting extreme rejection of western society. In that context, parents are perceived as having an ethnic, rather than religious, identity; the niqab is perceived as reflecting an extreme act of devotion that distinguishes the generations.

Subject matter experts repeatedly emphasized that recruiters, in focusing on action, engage in little instruction regarding faith-based issues (in contrast to the fourth category above) stressing 'rote learning' which is not predicated on textual reasoning or analysis. In numerous conversations, the terrorist attack on July 7, 2005 was mentioned as a significant 'wake-up' call for the British Moslem community. The coordinated attack targeting civilians using London's public transport system killed 52 individuals and wounded over 700.⁴⁷⁴

The challenge confronting UK law enforcement officials similar to that faced by counterparts elsewhere is determining when does extremism become a risk; re-

⁴⁷² *Hijab* in Arabic means "to cover" and is generally translated as "veil." Commonly worn today by Muslim women, the veil is a hair covering or scarf that covers the head, but *hijab* also refers to modest dress and seclusion — the system of separating women from men. See Michelle MacNeill, *The Practice of Veiling*, 101 (Jun. 5, 2009), <http://suite101.com/article/the-practice-of-veiling-a123005>.

⁴⁷³ Supporters of banning the full face cover emphasize it is a public safety measure, citing that criminals and Islamic terrorists have taken advantage of wearing the burqa to conceal their identities. Ban all face-covering masks in public places, including burqas. In 1975, a number of European towns banned the wearing of ski masks and motorcycle helmets in public, specifically because they covered the face, and so posed a security and crime risk. The same logic applies to the burqa. So, the ban on the burqa and niqab should be considered part of a broader ban on all face-covering masks in public, particularly in and around crowded areas and in public transportation. The Niqab is the face veil worn by Islamic women.

⁴⁷⁴ See *Report of the Official Account of the Bombings in London 7th July 2005*, HOUSE OF COMMONS, available at <http://www.fas.org/irp/world/uk/7-july-report.pdf> (last visited Jan. 12, 2013).

articulated: when does extremism in thought merge into extremism in action. To coin a phrase, determining when extremism violence replaces non-violent radicalism is the challenge confronting law enforcement officials. That challenge is relevant to both ERW and Moslem extremists; while the two groups have distinct motivations similarities are inevitable and reflect the commonality of extremists, regardless of their circumstances and conditions.

The discussion that follows regarding free speech and what, if any, limits should be imposed is, in many ways, the essence of this project. To fully understand, much less appreciate, the power and danger of incitement it is necessary to understand the fertile ground that beckons religious and secular extremists speakers. The discussion in the pages above was intended to highlight that reality; whether extremists are motivated by secular or a religious cause, the power of the speaker, in both paradigms, is extraordinary. Whether it is sufficiently powerful to warrant imposing limits is an “open” question; however, it is one that cannot be merely shrugged off as “inconvenient” because it is source of “discomfort”. Re-articulated: the power of speech is well documented and much discussed; the question is whether liberal society sufficiently and consistently understands the dangers it poses. It is to that question that we turn our attention.