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Campaigning on Campus: student Islamic societies and counterterrorism

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Abstract

Cooperation in counterterrorism policing increases when communities can be confident that legislation and policy is not implemented in an arbitrary or discriminatory fashion: the ability to challenge executive overstretch, abuse or misapplication of powers is vital for maintaining procedural justice. Through examining the experiences of the Federation of Student Islamic Societies (FOSIS), one of the oldest British Muslim civil society organisations, it shows how key structural features of the counterterrorism legal and policy framework - the wide definition of terrorism, the broad discretion in the use of stop and search powers at ports, and the expansion of Prevent into the opaque terrain of non-violent extremism - undermine cooperation.

Introduction

Since 2001, government policymakers and security practitioners have recognised the need to work with individuals and organisations in Muslim communities to protect the United Kingdom against the threat of international terrorism.¹ The potential benefits of effective partnership and cooperation include the improved flow of information and intelligence to the police, a reduction in the backlash against state actions, and increased community capacity for countering violent extremism.² This

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article focuses on the legal and policy framework of counterterrorism, which shapes the terrain within which partnerships are negotiated and trust is built. Careful calibration is needed to ensure that broad legal powers and policies support rather than undermine cooperation and partnership with community organisations.

Research on cooperation between the public and the police finds strong and consistent links between public willingness to cooperate and evaluations of the legitimacy of the police. Such legitimacy is shaped by experiences and expectations of procedural fairness.³ Furthermore, evaluations of procedural justice link to social group identity; thus, it is not only how an individual is treated that impacts their evaluation of procedural fairness, but how others belonging to their social group and community organisations representing that group are treated.⁴ Key features of fairness include the application of policies and rules in a way that is seen to be consistent and transparent. Such transparency and consistency is important in avoiding the perception that rules are applied on the basis of personal prejudice or bias but are instead seen to be the result of the application of objective information and criteria.⁵ The realistic possibility of identifying and challenging the abuse of executive powers is therefore important for procedural justice. The relationship between procedural fairness and cooperation appears to be particularly strong in the context of counterterrorism policing in the UK, as 'procedural justice concerns...prove better predictors of cooperation of British Muslims in counter-terrorism policing than either instrumental or ideological' reasons for cooperation.⁶

The British government has identified universities as a key site for recruitment by extremist organisations. This has made cooperation and partnership with both universities and student Islamic societies a primary focus in its counter-radicalisation strategy. The Counter-Terrorism and Security Act 2015 steps beyond voluntary cooperation and partnership and places a legal duty on universities to prevent people from being drawn into terrorism. Resistance to this, from teaching and student

unions, highlights the potential for new legal and policy tools to undermine rather than support cooperation.

Through a focus on the experience of the Federation of Student Islamic Societies (FOSIS) - an umbrella body representing student Islamic societies active in colleges and universities across the United Kingdom— and their encounter with counterterrorism law and policy, this article suggests that perceptions of fairness and equal treatment, vital to cooperation, are undermined by the fundamental structural features of the UK's counterterrorism legal and policy framework. It argues that the legal framework generates perceptions of arbitrary and discriminatory application. This arises from having ill-defined and broad offences, operating alongside wide discretionary powers that are sustained and deployed through constructing categories of suspicion in which Muslim identity plays a central role. Furthermore, it argues that a key shift in counterterrorism policy, the refocusing of the Prevent policy from an emphasis on violent radicalisation towards challenging non-violent extremism, has widened the scope of those falling within the reach of counterterrorism policy and created conditions in which the social welfare activities and activism of Islamic societies can become interpreted as indicators suggesting the potential for radicalisation. The final part of the article examines FOSIS's campaign to draw attention to the extensive use, or from their perspective misuse, of counterterrorism stop and search powers at airports. The FOSIS campaign, responding to the experience of its members, aimed at greater accountability of the use of executive powers through greater transparency. However, it could not overcome the structural features embedded in the architecture of the legal powers that allow for no-suspicion stops. Their campaign, while successful in forcing a government review on the use of stop and search powers, nevertheless highlights how key features of the counterterrorism legal and policy framework make it difficult for Muslims, as individuals or through collective civil society organisations, to challenge executive overreach or abuse.

The Federation of Student Islamic Societies

FOSIS is one of Britain's oldest grassroots Muslim civil society organisations. Founded in 1962, the early period of post-war largely post-colonial labour migration to Britain, FOSIS was created to serve the pastoral needs of the growing number of Muslim students from overseas studying in Britain. In its early period, the group's political activism focused on political developments in the Middle East, drawing it to the attention of the Muslim Brotherhood and Jama'at-i Islami, thus creating an 'Islamist legacy' that continues to colour its public reputation.⁷ For example, after 2005, those arguing for government to disengage from partnership with Islamist organisations cautioned against working with FOSIS. They argued that it was part of 'a sophisticated strategy of implanting Islamist ideology among young Muslims in Western Europe'.⁸ The British government's review of the influence of the Muslim Brotherhood in the UK was tellingly brief and careful in its evaluation of the influence of the Muslim Brotherhood, noting that associates and affiliates to the Brotherhood had 'at times' influenced FOSIS.⁹ It provided no further details on whether this was a reference to its early or more recent history, nor the nature and type of influence. However, the contrast with the review's more detailed account of the influence of the Muslim Brotherhood on other UK organisations suggests that the links with FOSIS is limited and historic. It is perhaps also a reflection of the change and diversity to be found in any student organisation, include student Islamic societies, where membership changes rapidly over short periods of time.

Today, FOSIS operates as an umbrella body that seeks to represent and serve Muslim students; its membership consists of affiliated student Islamic societies operating in British colleges and universities. These have a visible and active presence on many campuses. Three-quarters of Muslim students in London reported the presence of an Islamic society in their college and half said that they took part in its activities.¹⁰ Students join Islamic societies for a variety of reasons. Many enjoy the chance to network and meet other Muslim students; Islamic societies also provide an opportunity for charitable and other humanitarian work.¹¹ They lobby and advocate on issues arising

from the religious needs of Muslim student, most notably in relation to provision of prayer space. Relationships with university authorities can become strained when they mobilise students to protest against university policies that impact on religious practice.

In the 1990s, the growing participation of British Muslims in higher education should have created a greater role for student Islamic societies and FOSIS in the relationship between universities and Muslim students. Instead, growing concerns about the threat of religious fundamentalism and the visible presence of *Hizb-ut-Tahrir* on campuses culminated in a report from university authorities on extremism and intolerance and a National Union of Student's handbook on racism. Both documents were developed without consultation with FOSIS, even while other bodies seen as representatives of students that were the victims of the threat from Muslim religious fundamentalism, were consulted.¹² The conspicuous absence of FOSIS in the consultations implied the culpability of Muslim students generally in the extremist problem.¹³

After the July 2005 London bombings, concerns about extremism and radicalisation on campuses increased and universities became an arena of action for the Prevent policy. With the revision of Prevent in 2011, signalling a further shift in focus in the strategy from violent extremism to non-violent extremist ideas, universities have become a focal point for addressing concerns of radicalisation by identifying and challenging non-violent extremism. The government's relationship with FOSIS has therefore been a mixed one. On the one hand, there is recognition that FOSIS does represent a significant section of Muslim students and so there is a need for government to engage with such grassroots organisations. One indicator of the importance of FOSIS within the broader ecosystem of British Muslim civil society organisations, has been the willingness of senior British Muslim politicians from across the political parties to speak at FOSIS conferences despite negative media coverage.¹⁴ Senior civil servants and police officers attended and addressed the 2011 'Radical Thinking' conference on extremism on campuses organised by FOSIS and University College London Union Islamic Society.¹⁵ On the other hand, the role of FOSIS and student Islamic Societies have

come under intense scrutiny, particularly for the platform or space that some Islamic society events have given to speakers or organisations viewed as extremist. The government review of Prevent concluded that FOSIS 'could and should do more to ensure that extremists will be no part of any platform with which it is associated' and go to greater lengths to demonstrate their rejection of extremism.¹⁶

For Muslim civil society organisation, cooperation and engagement on counterterrorism entails a number of risks. Some community-based organisations are wary of working on counterterrorism as they believe this reinforces the perception of Muslims as a suspect community. There are also fears that counterterrorism initiatives are used for gathering intelligence and information about Muslim communities.¹⁷ Furthermore, there is a belief that those organisations dependant on state funding will self-censor and curtail criticism of government counterterrorism policies. For grassroots community groups, their effectiveness and therefore credibility as partners for cooperation can require that they retain space to remain vocally critical of aspects of government policy they disagree with while cooperating on common issues. For FOSIS this means engaging on issues of counterterrorism, through conferences and workshops, while reflecting the concerns and criticism of their members on aspects of counterterrorism policy.

Government demands for action and cooperation from Muslim civil society in addressing the threat to 'national' security ignores the gap that can exist between state and community perceptions of threats to safety and security.¹⁸ Such cooperation is also made more difficult when the concepts at the core of counterterrorism policy - terrorism, extremism and the relationship between the two - remain fluid, elastic and imprecise.

Staying within the law: the broad definition and wide scope of terrorism offences

The ability of a grassroots advocacy group like FOSIS to challenge any executive or institutional overreach, important for procedural justice, requires legal powers and duties to be defined with sufficient precision to identify and challenge their misuse. A legal duty on those involved in higher education to prevent terrorism, or prevent people from being drawn into terrorism, rest upon the ability to clearly identify actions that constitute terrorism.

This section examines the lack of clarity in the definition of terrorism. It argues that the wide range of actions that fall within the definition of terrorism and that could be prosecuted for ‘terrorism offences’, as well as the broadening of Prevent to cover non-violent ideas that lead to terrorism, expands the net of ‘suspect’ groups to organisations like FOSIS. The low threshold of a capacious definition of terrorism also contributes to permitting the extensive use of stop and search powers at airports. The impact of this on Muslim students, particularly international students, triggered FOSIS’s campaign challenging the use of these powers.

Fundamental to the architecture of British anti-terrorism legislation is the definition of terrorism contained in the Terrorism Act 2000.¹⁹ This definition provides the basis for constituting serious criminal offences out of actions which do not otherwise attract criminal liability; it also provides the trigger for the mobilisation of the full panoply of coercive executive actions from TPIMs and the proscription of organisations through to powers to stop and search individuals without the need for reasonable suspicion. The definition of terrorism is also relevant to the Prevent strategy, and the Prevent duty on universities, as this is aimed at preventing people from supporting *terrorism* or being drawn into *terrorism*.

The TA 2000 defines terrorism as any action (or the threat of action) which is ‘made for the purpose of advancing a political, religious, racial or ideological cause’.²⁰ Furthermore, the action must be ‘designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public’. The definition encompasses ‘action’ which involves serious violence either against a person or against property, as well as ‘action’ which creates ‘a

serious risk to the health or safety of the public or a section of the public', or is designed seriously to interfere or disrupt an electronic system.²¹ Thus, it includes violence against property and actions affecting health and safety that fall short of endangering life. Furthermore, the 'action' may be physical action but can also be, for example, the publication of ideas.²²

The types of action that can constitute terrorism are broadened further by the lack of any geographical limitations; the definition covers actions *anywhere in the world* that seeks to intimidate the public or section of the public *anywhere in the world* or to influence *any government in the world*.²³ The legislation makes no normative distinction between democratic states and dictatorships; thus, a defendant possessing material likely to be useful for terrorism directed at the overthrow of the Libyan regime of Colonel Gaddafi was guilty of an offence even though the UK government enabled and welcomed the subsequent regime change.²⁴ The definition of terrorism contained in the TA 2000 outlined above has been described as 'remarkably' and, in some instances, 'absurdly' broad.²⁵ In the UK Supreme Court, Lords Neuberger and Judge agreed that '[T]he definition of terrorism in section 1 in the 2000 Act is, at least if read in its natural sense, very far reaching indeed...the definition of 'terrorism' was indeed intended to be very wide...[and] is indeed as wide as it appears to be.'²⁶

Such a wide definition poses obvious problems for organisations, like FOSIS, that are concerned with procedural fairness in the application of the law. The definition is far from self-executing; it provides no clear indication about which of the actions that fall within the definition of terrorism will actually be treated as terrorism by the state. The academic, parliamentary and legal debate over the definition is populated with examples that highlight the potential reach of the law beyond anything that would be regarded as the proper focus of anti-terrorism law. For example, violence in the course of the 1983-84 miners' strike, or direct action against refugee detention centres or nuclear weapons facilities that involved damage to the perimeter fences of such locations fall within the scope of the definition of terrorism. To illustrate the far reaching breadth of the definition, David

Anderson QC, the Independent Reviewer of Terrorism Legislation, gives the example of a blog that argues (on religious or political grounds) against the vaccination of children for certain diseases, noting that 'if it were judged to create a serious risk to public health, and if it was designed to influence government policy, its publication would be classed by the law as a terrorist action'.²⁷ As the earlier examples indicate, many of the actions that fall within the broad definition of terrorism are rarely treated as terrorism, some may be dealt with through the ordinary criminal law and public order offences, and others are unlikely to attract any official sanction or attention. The fact that actions which fall within the definition of terrorism are not pursued as such is not due to legislative precision but the exercise of executive discretion and restraint.²⁸

The danger is that the wide discretion afforded to the state in the application of counterterrorism laws has the potential to lead to discriminatory practices, with the term terrorism determined by the identity or assumed identity of the individual rather than the nature of their actions. There is a risk that the term terrorist is reserved for 'categories of perpetrators with which it is stereotypically associated'.²⁹ For example, while the definition does not provide for any hierarchy between the different types of political, religious, racial or ideological causes, in practice not all causes are treated the same. Anderson notes that in Northern Ireland it was widely believed that Republican violence was viewed through the lens of terrorism while Loyalist actions were more often dealt with as issues of public order or ordinary criminality. He goes on to suggest that 'in Great Britain, there may also have been a tendency to categorise Islamist-inspired violence as terrorism more readily than what is still often referred to as "domestic extremism"'.³⁰ Furthermore, the definition encompasses actions motivated by political or ideological beliefs such as animal rights, yet as Lord Carlile, Anderson's predecessor as Independent Reviewer of Terrorism Legislation notes, 'it has become the practice to deal with animal rights terrorism not using terrorist provisions ... but under criminal law'.³¹ While it is possible to argue that the law should not treat all forms of possible terrorism with moral and legal equivalence, the current legal framework avoids such normative judgements.

Ordinary criminal law already covers violence against property and person as well as any attempt, incitement or conspiracy of such offences. However, the scale of the harm that a terrorist action can entail has provided justification for extending the reach of the criminal law beyond directly harmful actions to the conduct leading up to that harm. The wide definition of terrorism is central to a growing number of offences that include the dissemination of terrorist publications,³² acts preparatory to terrorism,³³ training for terrorism,³⁴ attending a place used for terrorist training³⁵ or failing to disclose information that might be of material assistance 'in preventing the commission by another person of an act of terrorism'.³⁶ The law, in these cases, is criminalising activities and conduct on the basis that they are likely to lead to terrorist action that is so harmful in its scale that it justifies this early intervention.

These developments can also be seen as part of a wider shift from a post-crime society, in which 'crime is conceived principally as harm or wrongdoing', to a pre-crime society, which 'shifts the temporal perspective to anticipate and forestall that which has not yet occurred and may never do so'.³⁷ Such offences may be better characterised as aimed at 'pre-emption' rather than 'prevention' as it points towards an outcome that cannot be proven.³⁸ MacDonald refers to these as 'precursor crimes', noting that the ordinary criminal law of attempts 'criminalises acts that are more than merely preparatory' while 'precursor crimes focus on various forms of preparatory conduct'.³⁹ The problem with such offences is that they 'hold a person responsible now for her possible future actions'.⁴⁰ The further away temporally from the harmful action, the less reliable the prediction of future harmful acts that the offence is seeking to pre-empt. In such circumstances, 'measures based on what is described as "circumstantial evidence" come perilously close to criminalising risky types (rather than acts) and thoughts (rather than deeds)'.⁴¹

The need to exercise discretion combined with a lack of clear guidelines on how it is exercised can add fuel to perceptions among some within Muslim communities that counterterrorism legislation is applied in a discriminatory fashion against Muslims.⁴² Such concerns are reinforced with examples of

cases where actions of non-Muslims that fall within the definition of terrorism do not appear to be treated as such. Notable cases include Robert Cottage, former member of the far right, British National Party, who was found with a stockpile of chemicals in his home and charged with possession of the chemicals under the Explosive Substances Act 1883,⁴³ and the lack of action against former SAS officer Simon Mann and Mark Thatcher (son of the former Prime Minister, Margaret Thatcher), both of whom were involved in 2004 in plans to overthrow the government of President Obiang of Equatorial Guinea.⁴⁴

For those who face prosecution for terrorism offences, the 'discrepancy between the wrong that the offence targets and what it actually encompasses' also means that the basis of their selection for prosecution does not lie in their actions alone.⁴⁵ Thus, great weight is placed on the discretion of the state on who to prosecute and this will be decided on the basis of whether or not the individual is seen to pose a threat to 'national security'. However, while the national security consideration is relevant for the prosecuting authorities in selecting a particular individual for prosecution, once that person is charged they will be judged by the law as set out in the statute. They cannot argue that the offence was not aimed at people like them, or that they have been unfairly selected for prosecution. This denies 'individuals the opportunity to address the reasons they have been selected for prosecution' and undermines 'the courts' ability to deliver procedural justice'.⁴⁶

For student Islamic societies a key concern is around the offence of encouragement of terrorism that was introduced in the Terrorism Act 2006. The TA 2006 makes it an offence to 'publish' or cause to be published a 'statement that is likely to be understood by some or all members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation, or instigation of acts of terrorism'.⁴⁷ The statute itself remains largely silent on the crucial issue of what constitutes direct or indirect encouragement or other inducement. In respect of indirect encouragement there is some limited elucidation; it includes 'every statement which glorifies the commission or preparation (whether in the past, in the future or generally) of acts

of terrorism'.⁴⁸ What is particularly concerning is that fact that the offences can be committed recklessly,⁴⁹ and irrespective of whether or not anyone is in fact encouraged.

In determining whether a statement is 'likely to be understood' by some of the members of the public to whom it is made as an encouragement or inducement, the context and audience become critical factors. During the passage of the legislation the government explained that 'no offence will be committed if a member of an audience at an academic lecture thinks, "Well, I am not encouraged to commit terrorist acts, but I can quite imagine that, *if this sentiment was expressed at a gathering of young Muslim men*, it could have an encouraging effect on them" (emphasis added).'⁵⁰ The Minister's comment, while trying to alleviate concerns about the chilling effect of the offence on free speech, inadvertently points toward the way in which statements made in the course of a student Islamic society talk or debate could be unlawful by virtue of the largely Muslim audience at such events, while the same statements would be unproblematic if made at other student society events.

A further concern is that the offence, while it does not have direct extra-territorial application, does apply to statements made in the United Kingdom in relation to actions overseas. This brings within the scope of the legislation statements by individuals that provide direct or indirect encouragement of acts of terrorism to those involved in violent political resistance to any government, irrespective of the nature of the regime or the opportunities for non-violent resistance. Through the membership of its affiliates, FOSIS became aware of the impact of the geographical breadth of the offence on Muslim students from countries with non-democratic, authoritarian, or military rulers. The ability for such students to express support for radical political change is curtailed by the risk that the government of such states can request that the UK authorities take action where there is any indirect incitement against them.

For FOSIS and student Islamic societies, a further concern is the potential for any organisation that encourages or promotes terrorism to be proscribed under the TA 2000.⁵¹ The promotion or

encouragement of terrorism 'includes any case in which activities of the organisation include the unlawful glorification of the commission of preparation of acts of terrorism' or where the organisation's activities 'are carried out in such a manner that ensures that the organisation is associated with statements containing any such glorification'.⁵² The wide scope of these offences leaves student Islamic societies uncertain about the boundaries of the criminal law and may have a chilling effect on the discussion and debates they host and the speakers they invite. As proscription is an executive action, it lacks the same safeguards that would apply to a criminal prosecution.

Concerns noted in this section regarding the broad legal definition of terrorism are amplified further by the expansion of counterterrorism policy to include 'extremism'. The lack of clear definition creates a broad discretionary space in which individuals or organisations can be labelled as extremist with limited scope of effective external challenge to the exercise of such power. It is within this context that the warning to FOSIS, in the 2011 Prevent Strategy, that it had 'not always fully challenged terrorist and extremist ideology within the higher and further education sectors,' and the demand that FOSIS members take 'a clear and unequivocal position against extremism and terrorism' could be seen as particularly worrying.⁵³

Extremism and radicalisation on campus

Prevent has been a strand of the Contest, UK Counter-terrorism strategy since its inception in 2003, however it was only after the 2005 London bombings, and the involvement of young British men, that Preventing Violent Extremism took on a more central role in the overall strategy.⁵⁴ Prevent aims to stop radicalisation, reduce support for terrorism and discourage people from becoming terrorists.⁵⁵ Under the Labour government, Prevent focused on countering 'violent radicalisation' and at times involved working with groups and organisation that clearly opposed violence but shared aspects of ideological views of those involved in violence. The Coalition government that came into power in 2010, published a revised Prevent Strategy in 2011. This strategy signalled a shift

and widening in the focus of Prevent to include the broader set of ideas that it argued underpinned radicalisation. Thus, 'preventing terrorism' involved challenging non-violent extremist ideas 'that are also part of a terrorist ideology'.⁵⁶

The need to work with communities on counterterrorism was recognised in the period after the July 2005 London bombings, as a wide range of individuals active across Muslim civil society participated in the Preventing Extremism Together working groups that met over the summer of 2005. Starting in 2007, the Prevent Strategy involved an investment of £150 million in Prevent projects, much of which went towards developing partnership or providing grants developing the leadership and capacity of Muslim civil society organisations. It is estimated that 44,000 individuals, mainly young Muslims, had participated in PVE programmes during its pilot year alone.⁵⁷ Concerns about the policy's focus on funding towards Muslim civil society led to criticism that it was 'stigmatising, potentially alienating' and failed 'to address the fact that that no section of a population exists in isolation from others'.⁵⁸ Such criticisms contributed to the decision to separate Prevent and Cohesion policy, with responsibility for Prevent being placed with the Office of Security and Counterterrorism (OSCT) within the Home Office.

The relocation of Prevent to the OSCT reinforced concerns that Prevent projects were being used to develop an apparatus of state surveillance, gathering information about Muslim communities.⁵⁹ At the same time, the attempt to develop partnership with communities, appears to have given way to a far greater emphasis on the role of public sector agencies in identifying young people 'at risk' of radicalisation.

This is solidified through the Counter Terrorism and Security Act (CTSA) 2015. The CTSA places a legal duty on public bodies, including universities, requiring them, in carrying out their functions, to have 'due regard to the need to prevent people from being drawn into terrorism'.⁶⁰ The statutory guidance accompanying this duty makes clear the expansive scope of this duty as it elaborates that 'being drawn into terrorism includes not just violent extremism but also non-violent extremism,

which can create an atmosphere conducive to terrorism and can popularise views which terrorists exploit'.⁶¹ Thus, the concern is not with all forms or expressions of non-violent extremism that can led to violence, rather it is only concerned with non-violent extremism related to the risk of terrorism. The need for a link with the potential for terrorist violence, ensures that expressions of homophobia, anti-Semitism and sexism by Muslims become a concern for security and counterterrorism policy while similar views from other students would be challenged through equality, diversity and anti-racism policies. The duty requires, 'frontline staff who engage with the public' to 'understand what radicalisation means and why people may be vulnerable to being drawn into terrorism as a consequence of it' as well as the 'relationship between extremism and terrorism'. Universities are required to 'provide appropriate training for staff involved in the implementation' of the duty.⁶² The specific guidance for universities calls on the need to manage the risk of radicalisation off campus from radicalised students, noting that 'change of behaviour and outlook may be visible to university staff'.⁶³ The Russel Group of Universities, in their response to the consultation on the draft guidance, noted that 'students often undergo a developmental period in their lives whilst at university and their time there can prove to be a transformational experience. It is not at all unusual for students to display changing behaviours which are a natural part of their development'.⁶⁴

One of the problems in creating a statutory duty that applies across the education sector is the policy's reliance on assumptions about radicalisation that remain deeply contested.⁶⁵ Radicalisation is identified by Prevent as 'the process by which people come to support terrorism and, forms of extremism leading to terrorism'.⁶⁶ Research on radicalisation highlight different factors that are understood to contribute to the process, and posit various models of the relationship between ideological, social and psychological factors as well as group and individual dynamics.⁶⁷ Unable to identify which individuals holding radical ideas will cross the line from radical ideas to terrorist violence, counter-radicalisation policies fall back on identifying 'indicators'. As there is no typical profile of an extremist and no single indicator of when a person could move from holding extremist

views to violent action, the reach of counterterrorism policies is wide and is used to justify greater levels of surveillance, deeper into Muslim communities and support pre-emptive intervention against those deemed to be 'at risk'.⁶⁸ The narrative of radicalisation, can lead to signs of what would otherwise be normal processes of childhood and adolescences or expressions of anger at social injustice becoming pathologised into indicators of risk and possible future terrorist violence.⁶⁹ Such models of radicalisation lead to universities (where young people are often away from home for the first time and are experimenting with new ideas and identities) being seen as sites of vulnerability to radicalisation.⁷⁰

Soon after the July 2005 London bombings there were reports expressing concerns about the threat of violent radicalisation on British Campuses.⁷¹ Prevent and Contest both identify university campuses as sites of radicalisation. The fear of violent radicalisation on campus soon led to accusations that student Islamic societies were incubators of violence and terrorism. However, the evidence to support this claim remains mixed. The Centre for Social Cohesion's 2010 report drew attention to the extremist preachers that have spoken at Islamic society events and the number of individuals convicted of terrorism that have been involved in student Islamic societies, assuming the link between a propensity to violence and holding extremist ideas. Their claim is undermined by their own data which finds that 15 per cent of convicted 'Islamist terrorists' had attended universities in the UK.⁷² As more than 40 per cent of Muslims leaving school at the age of 18 pursue higher education the data has been interpreted as showing that universities increase resilience, rather than vulnerability, to radicalisation.⁷³

The case of Umar Farouk Abdulmutallab, whose attempt in 2009 to detonate a bomb on an airplane in Detroit illustrates the problems in drawing a clear link between universities and radicalisation. Contrary to the Centre for Social Cohesion's claim - that Abdulmutallab's radicalisation while studying at University College London (UCL) was an established fact - the Universities Minister revealed that the Security Services had not been able to 'pinpoint whether the university experience

was the specific trigger'.⁷⁴ This was echoed by the Caldicott inquiry which found no evidence to support the claim that Abdulmutallab was radicalised while studying at UCL or that 'conditions at UCL during that time or subsequently are conducive to the radicalisation of students'.⁷⁵ Similarly, the 2012 Home Affairs Select Committee Report found there 'may be a much less direct link than was thought in the past' between university education and terrorist activity.⁷⁶ This led them to conclude that 'the emphasis on the role of universities by government departments is now disproportionate'.⁷⁷

With no clear and direct link between Abdulmutallab's university activities and subsequent terrorist violence, the focus shifts on to the broader notion of extremism and extremist activities. Thus, he is described as falling into the category of students that were 'attracted to and influenced by extremist ideology while at university' but who engaged in violence after leaving university.⁷⁸

It is within this wider focus on unacceptable *extremism* (rather than violence), that the 2011 Prevent Strategy singles out FOSIS for failing to 'fully challenge ...extremist ideology,' and demands that FOSIS members take 'a clear and unequivocal position against *extremism*' (emphasis added).⁷⁹ The 2011 Prevent Strategy, only goes some way towards identifying some of these unacceptable extremist ideas: this includes the claim that the West is perpetually at war with Islam, ideas that oppose the legitimacy of interactions between Muslims and non-Muslims and claims that Muslims 'cannot legitimately and or effectively participate in our democratic society'. More opaquely it includes 'problems' that 'Islamist extremists can purport to identify...to which terrorist organisations then claim to have a solution'.⁸⁰ The Prevent Strategy also notes that the extremist narrative exploits perceived or real grievances at the local context, including claims of discrimination. Similarly, Lord Carlile argued that 'support for extremism is often associated with a perception of discrimination...a sense of victimhood sometimes created, and always preyed upon by extremists'.⁸¹ This creates a danger of deterring or silencing organisations that attempt to identify and challenge discrimination

and Islamophobia by implicating them in inadvertently furthering, if not deliberately propagating, extremist narrative of Muslim victimhood and grievance.

Of particular concern to FOSIS and student Islamic societies is the potential that their core welfare activities, including advocacy and lobbying for the accommodation of religious needs is reframed as providing support for extremist narratives of grievance and Islamophobia. For example, the former Higher Education Minister Bill Rammell, argued that the 'unreasonable' demands for the accommodation of religious needs of Muslims students created grievances that can be exploited and push students towards extremism.⁸² This locates disputes over the right of Muslim female students to wear the niqab and disputes over the provision of adequate prayer space into the landscape of extremism.⁸³ In doing so, it exemplifies 'the way strategies of ... "preventing" "terror" have become so broad in scope as to include mundane requests for Muslim provisions.'⁸⁴ The legitimacy of such campaigns is brought into question when they are viewed through the prism of extremism as contributing to or perpetuating a terrorist narrative of Muslim victimhood. In fact, such a characterisation fails to see the extent that campaigns challenging discrimination and Islamophobia reflect claims of equal rights and engagement by Muslim as active citizens that are in fact a direct and effective challenge to any extremist narrative of disengagement or disempowerment.⁸⁵

Challenging stop and search at airports

The ability of civil society advocacy organisations to challenge the discriminatory or arbitrary use of discretionary powers is important to ensuring procedural fairness, a key determinant of cooperation with the state. This section explores the role of FOSIS in leading a grassroots Muslim civil society campaign to challenge the use of powers to stop and search individuals at ports and airports.

As a community-based organisation that is rooted in, and connected to, the lived experience of Muslim students through members of affiliated student Islamic societies, FOSIS became aware of the impact of airport stops under Schedule 7 of the TA 2000 at a time when this was not on the radar of mainstream human rights organisations. The impact and use of Schedule 7 remained largely unnoticed in mainstream public examination of counterterrorism law and policy until 2011: Schedule 7 was not included in the 2010 government Review of Counter-terrorism and Security Powers; it barely featured as an issue of concern in Lord Carlile's 2009 report as Independent Reviewer of Terrorism legislation;⁸⁶ nor was it included in the Equality and Human Rights Commission report on the operation of Stop and Search powers in England and Wales.⁸⁷ FOSIS's campaign played a key role in raising the profile of Schedule 7 stops.

Schedule 7 enables examinations to be carried out at ports and the border areas 'for the purpose of determining whether [the person being examined] appears to be a terrorist'; in other words, is or has the person stopped, 'been concerned in the commission, preparation or instigation of acts of terrorism'. The definition of terrorism noted earlier, ensures that the scope of people this power can be used to identify for questioning is broad. Crucially, while the purpose of these stops is to determine whether the person is a terrorist, there is no requirement to have reasonable suspicion of the person that is being stopped. This therefore grants significant and broad discretion to an examining officer in deciding which individuals to stop. In effect it requires the identification of individuals whose appearance, actions, or behaviour make them look like a terrorist. The Schedule 7 power is therefore not comparable to the body search of passengers and the screening of cabin baggage at airports as these are applied to all airport passengers and so do not involve the exercise of any significant discretion or selection.

The emergence of stops at airports as an issue for FOSIS reflected the demographic profile of its members: most are young British students largely in their late teens and early twenties; like other British students many travel abroad, in groups often for long periods with no clear itinerary or

purpose (i.e. backpacking); the membership also includes international students from countries with undemocratic and authoritarian rulers.

By 2009 FOSIS were sufficiently concerned about airport stops to create a Civil Liberties Division within their organisation to lead their campaign on Schedule 7. There were a number of elements to the campaign. Firstly, through workshops and information packs FOSIS sought to raise awareness among Muslim student of their legal rights if they found themselves stopped at an airport. This was particularly important as there is no right to a lawyer for a person stopped and examined under Schedule 7. Furthermore, refusing to answer questions is an offence under the TA 2000. Secondly, they developed their contacts with other campaign organisation and student groups. FOSIS's civil liberties officer became a key participant in the NGO Stopwatch, an umbrella group for organisations that campaign on accountability in the use of police stop and search powers. Thirdly, they utilised existing public and institutional accountability mechanism. They raised their concerns directly with David Anderson, the Independent Reviewer of Counter Terrorism Laws. According to Anderson, the 'main pressure for reform' of Schedule 7 came from FOSIS.⁸⁸ The impact of Schedule 7 featured prominently in the Independent Reviewers 2012 and 2013 reports, as well as in research by the Equality and Human Rights Commission.⁸⁹ FOSIS's work led Anderson to commend them for their 'strong and constructive campaigning record' in drawing attention to concerns about the use of stop and search powers at port, he also urged that in any government consultation reviewing the powers, FOSIS's voice is 'clearly heard'.⁹⁰ FOSIS also gave evidence to the Metropolitan Police Authority's (MPA) examination of police use of DNA data. The evidence from FOSIS appears to be the primary source for the MPA report's discussion around community concerns arising from the collection of DNA data from those stopped at airports under Schedule 7.⁹¹

A key part of their strategy was to increase the information in the public domain regarding the use of Schedule 7. Crucial to this was the use of Freedom of Information Act requests to obtain the release of data on the number of stops. The data released revealed the extensive use of the power. Between

2009-2014 over 338,000 people were 'examined'.⁹² Furthermore, half a million people each year are estimated to have been asked screening questions but not formally 'examined'.⁹³

Taking a cue from the challenge to the use of counterterrorism stop and search power in the street under section 44 TA 2000, FOSIS sought to establish that the power was used disproportionately against minority ethnic groups. However, no data on the ethnicity of those stopped was collected until 2009. An application for the release of post-2009 data was initially denied on grounds of national security. Its eventual release gained significant media attention.⁹⁴ It featured as a front page story in the Guardian and led to calls by David Lammy MP and Hamza Yusuf MSP for a review of Schedule 7. Anderson also gave greater attention to the impact of Schedule 7 stops and called for a review of the use of the power. The pressure paid off; a formal government review of Schedule 7 was undertaken in 2012. This led to some important changes in the legal framework for the use of the power as well as a significant reduction in its use.⁹⁵

The FOSIS campaign, while successfully contributing to the pressure for a review of Schedule 7, brings into sharp focus the difficulties of challenging the misuse of a power that rests on a structure of broad discretion. The inability to prove improper exercises of the power inherent within the structure of the discretion it created undermines any possibility of securing procedural fairness.

Judicial comments on the exercise of discretion to stop people using powers under s44 TA 2000 are relevant to Schedule 7, as both allow for stops without the need for reasonable suspicion.⁹⁶ In a case before the House of Lords and then the European Court of Human Rights, challenging the use of s44, it was argued that the wide discretion granted to police officers in selecting individuals for stops meant that the power could be exercised in an arbitrary manner, leaving the 'public...vulnerable to interference by public officials acting on any personal whim, caprice, malice, predilection or purpose other than that for which the power was conferred'.⁹⁷ The House of Lords, when considering the case had commented that s44 stops should be used to selectively target 'those regarded by the police as most likely to be carrying terrorist connected articles'⁹⁸ and 'cannot, realistically, be

interpreted as a warrant to stop and search people who are obviously not terrorist suspects'.⁹⁹ It endorses the use of profiles that provide predictive assessments of who is likely to be a risk. While risk-based profiles are a legitimate tool, where the profile is developed to include data about the characteristics of those who have been convicted of terrorism-related offences, caution is needed as it is likely to include individuals convicted of pre-emptive offences, which themselves criminalise activities and actions based on assumptions about the profile of risky individuals. The Strasbourg Court, in its judgement of the case concluded that the 'breadth of discretion conferred on individual police officers' created a 'clear risk of arbitrariness'. They also noted that 'in the absence of any obligation on the part of the officer to show a reasonable suspicion, it is likely to be difficult if not impossible to prove that the power was improperly exercised'.¹⁰⁰

Furthermore, the fact that there may be good reasons for the profile that gives rise to the suspicion does not prevent it from being stigmatising. A stop that is targeted, because it is based on a carefully developed profile or other evidence, is simultaneously more stigmatising when it is a false positive and contributes to feelings of humiliation and alienation.¹⁰¹ For Muslims such stops 'raise painful questions about how they are seen and positioned by others': they experience shock, hurt and confusion from the failure of the state to see them as 'respectable, moderate, law-abiding and contributing members of society'.¹⁰² The lack of complaints and challenges may reflect strategies for managing 'risky' Muslim identities through performances of 'safe' identities.¹⁰³

Until the FOSIS campaign highlighting the scale of Schedule 7 stops, its impact remained largely unnoticed and below the radar of civil society activists and watchdog bodies. The limited number of formal complaints were noted as an indicator of the 'remarkable docility with which passengers for the most part submit to police questioning'.¹⁰⁴ The lack of complaints conceals the profound anger and resentment that many British Muslims felt from their experiences of Schedule 7.¹⁰⁵ Furthermore, in a context where disproportionality is to be expected and accepted as evidence of effective policy implementation rather than discrimination, the lack of complaints reflects the

difficulty Muslims in particular are likely to encounter in establishing that their stop is based on the unlawful discriminatory or arbitrary exercise of the discretion. It is perhaps not surprising that the high profile test cases that mainstream civil liberties campaign groups have used to challenge the use of s44 (Gillian and Quinton) and Schedule 7 (Miranda), and that have gained public attention, concern non-Muslims; in other words, people that so obviously do not fit the profile of those who likely to be terrorist suspects.

Acknowledging the limits and difficulties that Muslim students face in mounting a credible legal challenge to the use of Schedule 7 powers, FOSIS, as a grassroots organisation has focused its advocacy and campaigning in working with student Islamic societies to raise awareness among young Muslims of their rights when they are stopped. By raising the profile of the use of the power in the media, campaigning with other NGOs and through dialogue with the Independent Reviewer of Terrorism Laws they contributed directly to the government's decision to review Schedule 7. Their campaigning places them in the broader British tradition of seeking social change and defending civil and political rights by applying 'pressure through law'¹⁰⁶ The success of their advocacy on schedule 7 highlights the vital role of grassroots community organisations in drawing attention to issues that directly affect Muslim communities.

Conclusion

Cooperation in counterterrorism policing increases when communities can be confident that legislation and policy is not implemented in an arbitrary or discriminatory fashion: the ability to challenge executive overstretch, abuse or misapplication of powers is vital for maintaining procedural justice. This article has argued that the wide definition of terrorism, the broad discretion in the use of stop and search powers at ports, and the expansion of Prevent into the opaque terrain of non-violent extremism, are all key structural features of the counterterrorism legal and policy framework that operate to deter cooperation.

For over 50 years FOSIS has been involved in providing services and support for Muslim students in British colleges and universities. Its experience of the counterterrorism legal and policy framework provides insight into how these structural weaknesses impact on students and how a community organisation resists and responds. The overreliance on executive discretion in the ‘targeting’ of prosecution on ‘real’ cases of terrorism reinforces perceptions that decisions to prosecute are based on unacknowledged or unarticulated factors and generates uncertainty. Key activities undertaken by FOSIS - advocacy, student mobilisation, protest around the accommodation of religious needs, campaigning against discrimination and islamophobia, partnership with the National Union of Student in leading the ‘Students not Suspects’ campaign against the implementation of the statutory duty on Prevent in universities – when viewed through the prism of the need to challenge non-violent extremism, risk becoming seen as contributing to an extremist narrative of grievance. These actions can however be better understood as examples of direct civic engagement. As such, they provide an effective challenge to those who reject democratic and civic engagement in favour of violence. Such an interpretation challenges the perception that FOSIS is not doing enough to address extremism; it acknowledges that the different modes, methods and approaches adopted by community organisations can be effective in supporting greater participation and integration. They contribute to deliberative politics by bringing the concerns and experiences of marginalised groups into the public domain, showing how community organisations, ‘attuned to how societal problems resonate in the private life spheres’ are able to ‘distill and transmit such reactions in amplified form to the public sphere’.¹⁰⁷

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² Adrian Cherney and Jason Hartley, “Community engagement to tackle terrorism and violent extremism: challenges, tensions and pitfalls,” *Policing and Society* (2015), pp. 1-14.

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- ¹¹ Miri Song, "Part of the British mainstream? British Muslim students and Islamic Student Associations," *Journal of Youth Studies* 15(2) (2012), pp. 143-160.
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- ¹³ Nabi. *How is Islamophobia Institutionalised?*, 109.
- ¹⁴ Andrew Gillighan, "Baroness Warsi and the Demons of Hate," *The Daily Telegraph*, 27 April 2013. Available at <http://www.telegraph.co.uk/news/politics/conservative/10022536/Baroness-Warsi-and-the-demons-of-hate.html> (accessed 01 May 2016).
- ¹⁵ See: [<http://fosis.org.uk/press-releases/1317-fosis-and-uclu-islamic-society-to-hold-radical-thinking-conference>] (accessed 01 May 2016).
- ¹⁶ Lord Carlile of Berriew QC, *Report to the Home Secretary of Independent Oversight of Prevent Review and Strategy* (London: The Stationary Office, 2011) 11.
- ¹⁷ Arun Kundnani, *Spooked: How not to Prevent Violent Extremism* (London: Institute for Race Relations, 2009).
- ¹⁸ Tufyal Choudhury and Helen Fenwick, *The Impact of Counterterrorism Measures on Muslim Communities in Britain* (London: Equality and Human Rights Commission, 2011).
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- ²⁰ Terrorism Act 2000, s1(1)(c).
- ²¹ Terrorism Act 2000, s1(2).
- ²² *David Miranda v Secretary of State for the Home Department and the Commissioner of the Police of the Metropolis* [2014] EWHC 255.
- ²³ Terrorism Act 2000, s1(4).
- ²⁴ *R v F* [2007] EWCA Crim 243.
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- ⁵² Terrorism Act 2006 s21.
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⁹⁶ The Supreme Court commented (obiter) that the power to stop under schedule 7, 'is not subject to any controls', and that before examining a passenger 'the officer is not even required to have grounds for suspecting that the person concerned falls within section 40(1) of the 2000 Act' *R v Gul* [2013] UKSC 64, para 64.

⁹⁷ *R (on the application of Gillan and another v. Commissioner of Police for the Metropolis and another* [2006] UKHL 12, para 34.

⁹⁸ *Gillan*, para 97.

⁹⁹ *Gillan*, para 35.

¹⁰⁰ *Gillan and Quinton v The United Kingdom* (2010) 50 EHRR 45, para 86. Following this ruling, the Protection of Freedoms Act 2013, repealed section 44 powers and replaced them with new powers under s47A-C and Schedule 6B.

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