

Traces of Terror

Counter-Terrorism Law,
Policing, and Race

VICTORIA SENTAS

Preview <http://www.pbookshop.com> Copyrighted Material

OXFORD
UNIVERSITY PRESS

OXFORD
UNIVERSITY PRESS

Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide. Oxford is a registered trade mark of
Oxford University Press in the UK and in certain other countries

© Victoria Sentas 2014

The moral rights of the author have been asserted

First Edition published in 2014

Impression: 1

All rights reserved. No part of this publication may be reproduced, stored in
a retrieval system, or transmitted, in any form or by any means, without the
prior permission in writing of Oxford University Press, or as expressly permitted
by law, by licence or under terms agreed with the appropriate reprographics
rights organization. Enquiries concerning reproduction outside the scope of the
above should be sent to the Rights Department, Oxford University Press, at the
address above

You must not circulate this work in any other form
and you must impose this same condition on any acquirer

Crown copyright material is reproduced under Class Licence
Number C01P0000148 with the permission of OPSI
and the Queen's Printer for Scotland

Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data
Data available

Library of Congress Control Number: 2013946324

ISBN 978-0-19-967463-3

Printed in Great Britain by
CPI Group (UK) Ltd, Croydon, CR0 4YY

Links to third party websites are provided by Oxford in good faith and
for information only. Oxford disclaims any responsibility for the materials
contained in any third party website referenced in this work.

1

Traces in Counter-Terrorism: An Introduction

The Australian Security Intelligence Organisation (ASIO) raided approximately 30 homes, all Muslim families, some with young children and babies, some with elderly men and women. As many as thirty men would surround a suburban Muslim home, all of them with black balaclavas, black flak jackets, with submachine guns ready to shoot. Sometimes they would knock first, but other times without warning, they would break down the front door of these homes with sledgehammers. They held grown men to the ground by putting their foot on their head, and confiscated those critical elements of terrorist activities: family videos, passports, birth and marriage certificates, scanners, printers, and in one case, the all-important tabloid newspaper. None of these raids led to any terror charges, but Muslims started feeling terrorised.¹

1.1 Introduction

Shortly after 9/11 stories were told in Australia of Muslims being stopped, questioned, and raided by police and security intelligence. Of being terrorized. These stories were repeated following the Bali bombings in October 2002. Collective experiences circulated of paramilitary raids at dawn, police guns drawn at people in circumstances of no imminent threat and from which no charges were laid. Then there were reports of police targeting the same young men, 'of Middle Eastern appearance', who were routinely

¹ Agnes Chong of the Australian Muslim Civil Rights Advocacy Network (AMCRAN) describes a series of raids in Sydney in November 2002. Agnes Chong, 'Anti-Terror Laws and the Muslim Community: Where Does Terror End and Security Begin?', *Borderlands e-journal* 5, no. 1 (2006), available at <http://www.borderlands.net.au/vol5no1_2006/chong_muslim.htm> (accessed 15 January 2007).

2 Traces in Counter-Terrorism: An Introduction

stopped before the war on terror. People reported being racially harassed by police in routine everyday interactions on the basis of their ethnicity and for being Muslim.² Interpersonal violence, vilification, and prejudice directed towards Arab and Muslim Australians from the body politic, escalated. Muslim women identifiable by their Islamic dress were the particular targets of physical violence.³

And then there is the dense regime of counter-terrorism law, introduced with speed between 2002 and 2006 and which remains highly contested. Expansive pre-emptive laws criminalizing preparatory actions; a broad definition of terrorist act extending to threats of violence; extraordinary powers of preventative detention and control orders; executive banning of 'terrorist organizations'; sedition offences; compulsory questioning and detention powers for ASIO, expanded police powers and more. The impacts of the laws have been widely identified as generating 'widespread fear' and alienation among Muslim communities.⁴ Also recognizable in counter-terrorism law (but far less identified and acknowledged) is the institutionalized racism it enables. These stories about counter-terrorism strategies reference readily knowable symbols of state force; militarized policing, expansive pre-emptive criminalization, and administrative forms of punishment collectively targeting Muslim people.

Allegations of discriminatory targeting over the 12 years that followed were met by Australian governments, police and security

² Human Rights and Equal Opportunity Commission (HREOC), *Isma-Listen: National Consultations on Eliminating Prejudice against Arab and Muslim Australians* (Sydney: Human Rights and Equal Opportunity Commission, 2004), 66–9; Scott Poynting et al., *Bin Laden in the Suburbs: Criminalising the Arab Other*, Sydney Institute of Criminology Series no. 18 (Sydney: Sydney Institute of Criminology, 2004); Scott Poynting and Victoria Mason, "'Tolerance, Freedom, Justice and Peace'?: Britain, Australia and Anti-Muslim Racism since 11 September 2001", *Journal of Intercultural Studies* 27, no. 4 (2006), 378–9.

³ Tanja Dreher, *Targeted: Experiences of Racism in NSW after September 11, 2001*, UTS Monograph Series no. 2 (Sydney: UTS Shopfront, 2005); HREOC, *Isma-Listen: National Consultations on Eliminating Prejudice against Arab and Muslim Australians*.

⁴ See Parliamentary Joint Committee on Intelligence and Security, *Review of Security and Counter Terrorism Legislation*, (Canberra: Parliament of the Commonwealth of Australia, December 2006), 23–37; Security Legislation Review Committee, *Report of the Security Legislation Review Committee (Sheller Report)* (Canberra: June 2006), 140–6.

agencies, and academia with a particular response. Firstly, political discourses claiming Islam's cultural incompatibility with Western values are now routinely understood to simplistically essentialize Islam and/or Islamism as causes of terrorist violence. Secondly, Muslim *perceptions* of coercive laws, police violence, and essentialist political discourse were identified as causing marginalization and alienation potentially conducive to political violence. In order to maintain a claim to violence prevention, counter-terrorism practices had to be refined. The recognizable strategies of state force and interpersonal racism in the stories told above were increasingly understood as forms of social exclusion and incongruent with the multicultural liberal tolerance of ethnic and religious difference. To be clear, this was not an immediate concern with the causes of exclusion occasioned by global socio-economic inequalities, imperial wars, and institutionalized racism. Rather, counter-terrorism's concern with social exclusion is its purported criminogenic effects, driven by the ambiguous yet authoritative thinking that social exclusion contributes to the violent radicalization of Muslims. In so far as social exclusion is agreed to violently radicalize Muslims, counter-terrorism has taken on the task of redefining and responding to very particular forms of exclusion. Thus, in response to the London bombings on 7 June 2005, social inclusion or cohesion as counter-terrorism strategy developed in Australian social policy, as it did in the United Kingdom.

The Howard Coalition government era of social cohesion after 9/11 (2001–2007) mobilized an assimilatory adherence to 'Australian values' for new migrants and Muslim communities through 'responsibilization' and civic participation in counter-terrorism. Community consultative structures were criticized for their tokenism and select engagement with community leadership courting a representative status. Australian communitarian counter-terrorism, however, has not been as forcefully critiqued for engendering the programmatic forms of surveillance against Muslim communities as Prevent agendas have in the UK. In part this reflects the particular formation and hegemony of Australian multiculturalism. In the Howard government era, counter-terrorism policy was valorized and feted as much as conditions and limits were placed on multiculturalism, as they continue to be placed today.

The Labor government's 2010 counter-terrorism policy refined its attention to the language of multiculturalism with the promotion of 'principles of equality, inclusion and democracy that help

4 Traces in Counter-Terrorism: An Introduction

to build resilience to violent extremism'.⁵ The discursive promotion of non-directive, open-ended processes of civic participation as better counter-terrorism can be read as lessons learned by government from prior authoritarian top down, cohesion-seeking communitarianism. In order to identify and prevent extremism, counter-terrorism includes informal and formal structures of engagement, community feedback on policies, and 'grassroots initiatives' sensitive to taking a heterogeneous approach to multiple 'causes of radicalization'. The 2010 establishment of a 'Countering Violent Extremism' taskforce in the Attorney-General's Department implemented a new community grant scheme, begun in 2011, which funds 'community driven projects' to counter-act alienation and other vulnerabilities to violent radicalization. There are growing civic engagement programmes with the police and community organizations, creating an umbrella of counter-radicalization initiatives, rather than an identifiable 'programme'. Communitarian counter-terrorism in Australia is tentative, emergent, and picking up pace.

The stories of the state are often told as though they have clear beginnings and ends. New stories start unencumbered by what came before. The conviction and sentencing of 23 Muslim men (2007–2011) to between five and 20 years' imprisonment garners a broad consensus that pre-emptive offences are necessary to disrupt violence. Whilst law is legitimated through the repetitive actions of conviction and imprisonment, counter-terrorism policing is legitimated through community engagement. Stories of terrorized (innocent) Muslims are framed as residues belonging to the past. Racial and religious profiling is simultaneously denied and relied upon by police and security agencies. Coercive and racialized practices have been purportedly ameliorated by a diverse array of institutional discourses and practices: police-community partnerships, multicultural liaison officers, multi-faith dialogue, engagement, and inclusion. In the voluble encounters between law, police, and the policed, diversity is affirmed as a national strength, multiculturalism is supported, and belonging offered. And there is not a trace of terror to be seen.

What has the re-organization of terrorism law and policing through community enabled? Alongside formal intentions for inclusive and nominally consensual practices, there remains a persistent

⁵ <<http://www.resilientcommunities.gov.au/aboutus/current-activities.html>>.

state project of racial regulation. Neither race-neutral nor anti-racist, race is reproduced anew. This book shows how idioms of inclusion, participation, and engagement better select suspect populations and enclose them into the state. Amid the privileging of policing by consent, the focus remains with categorizing difference, managing the political participation of the Muslim and the ethnic other, and circumscribing speech and belief. These modes of regulation exist as force and authority but act primarily through reifying identity and belonging. What remains are perceptible traces of other stories about counter-terrorism law and the policing of Muslims and ethnic minorities in Australia.

1.2 Questions

In all of its modalities, communitarian and penal, contemporary Australian counter-terrorism has become specifically *for* Muslims and targeted ethnic minorities. In other words, counter-terrorism law and policing reflect and produce a common sense that Muslims and targeted ethnic minorities are its proper subjects and should be policed. *Traces of Terror* examines features of counter-terrorism law and policing that subjectify Muslim and multi-ethnic peoples into moderates, extremists, or ethno-nationalists. My interest is with counter-terrorism as a mode of racial subjection. That is, the processes by which social subjects are produced as policed subjects and how this operates as a particular type of racial governance.

Drawing on critical race theory and Antonio Gramsci's analysis of hegemonic social relations, this book attempts to demonstrate counter-terrorism's role in reproducing the racial dynamics of modern state power. Race is made invisible yet orders counter-terrorism law and policing. Gramsci's concept of common sense identifies the subtle and implicitly understood forms of commonly held knowledge. Counter-terrorism is an ideological system—it reflects and produces common sense about relations of race, which do not appear to reference race. Alexis Shotwell has identified that: 'Thinking and talking about race and ethnicity is a dense complex project'.⁶ Racialized knowledge is layered and implicit, it does not present as

⁶ Alexis Shotwell, 'Commonsense Racial Formation: Wahneema Lubiano, Antonio Gramsci and the Importance of the Nonpropositional', in *Race and the Foundations of Knowledge: Cultural Amnesia in the Academy*, eds Joseph A. Young and Jana Evans Braziel (Illinois: University of Illinois Press, 2006), 51.

6 Traces in Counter-Terrorism: An Introduction

unitary or articulated in words or simply beliefs—it consists of effects and material practices. For Gramsci, common sense is an everyday, practical trace of ideology. Common sense is observable in the form of its fragments, ‘...an infinity of traces gathered together without the advantage of an inventory’.⁷ This book tests the mechanisms by which common sense operates to understand *what* knowledge counter-terrorism law and policing develops about targeted communities, and *how* counter-terrorism practices generate these understandings. *Traces of Terror* gathers the fragments in law and policing that identify the implicit understandings that animate these practices.

In Australian law, being Muslim becomes evidence of planning to do *something violent*. This proposition is to provoke the common-sense that there are no operative racial categories in law. Against the grain of terrorism law scholarship, this book explains how doing is intimately bound up with being. Counter-terrorism law gives attention to the particulars of subjectivity in myriad ways. There are, however, subtle and significant constraints emanating from this provocation that will be developed. Police and legal action appear to be propelled and encouraged by anxiety around efficacy and legitimacy in relation to race. Muslims and targeted ethnic minorities (Turkish Kurds, Somalis, and Tamils in this study) are acted against as the subjects of counter-terrorism through diverse practices: these practices are welcomed, evaded, and resisted. In addition to harassment and intimidation, policed peoples experience the regulation of political participation, belief, aspiration, association, and belonging. More broadly, the promotion and disruption of particular forms of ‘difference’ and ‘identity’ emerge as themes in the experience of counter-terrorism law and policing. State management of difference and identity suggest that the common sense reflected and shaped by counter-terrorism articulates a particular social order—one that limits freedom and depends on the regulation of Muslim and minority peoples to achieve its particular vision of society and nation. This social order is, I demonstrate, intricately bound with the traces of race and power.

The book also explores *how* counter-terrorism facilitates the common sense knowledge and practices that construct subjects policed by the law and communitarian forms of regulation. It analyses the

⁷ Antonio Gramsci, *Selections from the Prison Notebooks*, trans. Q. Hoare and G. Novell-Smith, ed. G. Novell-Smith (London: Lawrence & Wishart, 1971), 324.

consequences of the dual character of counter-terrorism law and policing: the coercive and the consensual. I take a materialist approach to counter-terrorism regulation in that coercion and consent are not dichotomous and opposing strategies. Instead, this book demonstrates how different modes of racial regulation coerce just as they are grounded in consent. Moreover, the dual character of law and policing strategies as coercion/consent illuminates the experience and effects of race and racism.

The relationship between law and police practice offered in this book does not suggest an architecture of social control. There are no architects or predictable orders of intention and effect. The police I interviewed, the judges whose pronouncements I cite and the politicians I have met are not panoptic architects. There is a line of implication from practices that seek to prevent harm or facilitate ‘social cohesion’ to those that may constrain subjects or propel discrimination or secure institutionalized racism. While I establish that this line is clear and direct, the way it operates is not dependent on intention. Practices have impacts and effects, some of which are intended by their authors, and others which are largely not. There is a line of implication between strategies and outcomes. By examining what is reflected and produced by counter-terrorism law and policing, this book contributes to a wider scholarship on the construction of race and the operation of power.

1.3 Motivations

Three motivations underlie this research. First, counter-terrorism law and policing comprise one of the most dynamic fields in the development of criminal law, the practice of policing, and the relationship between law and policing. A better understanding of counter-terrorism law and policing as a relational field might influence its future iterations differently than interpreting law and policing discreetly. This book does not provide recommendations on how to make counter-terrorism law or policing more democratic, more accountable, or less racist.⁸ My interest is in scrutinizing the forms of state regulation that assume a desirable status because

⁸ Mark Neocleous writes about his work on policing: ‘... the only hope for a text such as this is that it inspires others to continue the critique of power and administration, on the basis of which something other than “reform” might take place.’ Mark Neocleous, *The Fabrication of Social Order: A Critical Theory of Police Power* (London: Pluto Press, 2000), xv.

they are largely understood as reforms that ameliorate coercion/racism. Second, while counter-terrorism policing itself has been the subject of intense media fascination and scrutiny by academics, the impacts on Muslims and ethnic minorities have been the subject of limited studies in Australia.⁹ Legal scholarship has largely not examined the impact of law on affected peoples, and law remains disembodied from its subjects. Importantly, how people have been impacted shapes law and police practices. The experiences of those collectively policed form a critical axis in the relational processes of law, policing, and policy.

Finally and most significantly, this study seeks to understand how counter-terrorism law and policing is underpinned by the shifting social relations of race. In the vast literature written since 2001 the social reproduction of race remains under-researched and theorized in the particular relationship between counter-terrorism law and policing. With the invisibility of race in modern power we also see the conceptual downplaying of race, racialization and racism, and with it attention to the specific conditions and operative distinctions, which require that these concepts be articulated anew.¹⁰ This book attempts to animate a debate in criminological and socio-legal

⁹ The Human Rights and Equal Opportunity Commission's 2004 study includes a short section reporting respondents' experiences with police and security agencies. Human Rights and Equal Opportunity Commission, *Isma-Listen: National Consultations on Eliminating Prejudice against Arab and Muslim Australians*, 66–9. Poynting and Noble's report to the HREOC, 'Living with Racism: The Experience and Reporting by Arab and Muslim Australians of Discrimination, Abuse and Violence since 11 September 2001' (Sydney: Human Rights and Equal Opportunity Commission, 2004) details interviewees' experiences of profiling by ASIO, the police, and customs officers. Poynting and Noble, 'Living with Racism', 12–13. See also Noble and Poynting, 'Neither Relaxed nor Comfortable: The Affective Regulation of Migrant Belonging in Australia', in *Fear: Critical Geopolitics and Everyday Life*, eds Rachel Pain and Susan J. Smith (Avebury: Ashgate Publishing, 2008) 129–38. The Australian Muslim Civil Rights and Advocacy Network submissions to government enquiries on the laws document concerns with how the laws will potentially impact on Muslims, as well as examples of particular experiences. See for example Australian Muslim Civil Rights and Advocacy Network, *Submission to the Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia*, Review of the Listing Provisions of the Criminal Code Act 1995, February 2007. A larger volume of scholarship has considered the construction of Muslims in the war on terror in Australia. See for example Poynting and Mason, 'Tolerance, Freedom, Justice and Peace'; Agnes Chong, 'Anti-Terror Laws and the Muslim Community'; Poynting et al., *Bin Laden in the Suburbs*.

¹⁰ David Theo Goldberg, *The Threat of Race: Reflections on Racial Neoliberalism* (Malden: Wiley-Blackwell, 2009), 360–3.

study of counter-terrorism about the persistence of race in and through the multi-modal operations of state power.

1.4 Method and Sources

Counter-terrorism law and policing as subjects of study are neither static nor reducible to institutions, policies, or laws. This study follows how law and policing are present in lived relations and commonly held understandings by police and targeted communities. Therefore, the book refers throughout to the relational nature of counter-terrorism law and policing. My theoretical approach to law and policing as productive of the social relations of race underpins the methodology. As I noted, Gramsci's approach to common sense as implicitly held common knowledge prompts a method that examines its fragments across a range of sources. Common sense is, effectively, a method for examining the contradictory understandings of race that endure in actions and ideas and shape hegemony. I use an ethnographic and qualitative approach to find and follow these traces as residues in practice. Police practices and laws are analysed in relation to the experiences, standpoints, and social relationships of those policed and those who police. These relationships make meanings, constitute identities, and orchestrate or constrain political outcomes.

The focus of this study is on law enforcement practices and community experiences in Victoria. With a population of more than 5 million, Victoria comprises approximately one quarter of Australia's population. Most Victorians live in the capital city Melbourne, with a population of 3.3 million. In addition, because responsibility for law and policing is shared with the Australian Commonwealth Government, I also give attention to the Australian legal and policy context. Similarly, there are multiple agencies with counter-terrorism responsibility. While Victoria Police is the principal case study, I also consider select practices of the Australian Federal Police (AFP), the ASIO and interagency relationships. To appreciate how counter-terrorism law and policing operate, what they produce and their impacts, this study drew on a broad range of source material. These sources form the terrain for establishing counter-terrorism's common sense. Each type of source provides a unique vantage point on the book's key questions concerning law and police practice. Explored in combination, these sources corroborate my analysis. The study relies on five principal types of sources:

10 Traces in Counter-Terrorism: An Introduction

- Legislation and case law.
- Government counter-terrorism policy and parliamentary reviews of laws.
- Victoria Police representations of its own or other police agencies' practices, gathered through interview.
- Community representations of experiences of counter-terrorism, gathered through interview.
- Participant observation of community legal information sessions and police and other forums.

Because of the breadth of sources used in this study, select chapters include a short summary of the key sources featured in that chapter. The intention of these case study summaries is to provide some of the central facts relevant to each source and to enable the narrative of each chapter to develop on the basis of a foundational understanding of the sources. I briefly explain how these sources progress the enquiry of this book.

1.4.1 Law

A large number of State and Commonwealth laws have been passed since 2001. Counter-terrorism laws do not constitute a self-contained unitary system of rules within criminal law. The laws operate in an imbricated, complex way across legislation and with policy and policing practice. This book does not provide a systemic analysis of counter-terrorism laws. I selectively examine the operation of particular aspects of the Criminal Code Act (1995) (Cth) to evidence how the law operates as part of a social complex, which constitutes and regulates Muslims and ethnic minorities as policed subjects. I consider the definition of a terrorist act, preparatory offences in relation to the terrorist act, the designation of terrorist organizations, and related offences. I give close analysis to *R v Lodhi* [2006], *R v Ul Haque* [2007] and *R v Vinayagamoorthy & Ors* [2007]. These select cases illustrate not only the constitutive powers behind police action, but their interplay.

1.4.2 Policy

I analyse Victorian State and Commonwealth counter-terrorism and social cohesion policy, ministerial speeches and media releases. In addition I examine the reports of parliamentary committee enquiries reviewing legislation and decisions of the Commonwealth

Attorney-General in relation to proscribed organizations. A large volume of public submissions has been made to these enquiries by non-government organizations, statutory bodies, and the AFP, ASIO, and the Attorney-General's Department. In these layered, dynamic sources, counter-terrorism law and policing are contested terrain. Shifting and divergent accounts by government departments and police agencies reveal ambiguous rationales for laws and practices. Importantly for my methodological approach to hegemony, discussed in Chapter 2, these sources also reveal how government and police agencies adapt and shape policy and practice in response to claims made by civil society organizations.

1.4.3 Police

I conducted semi-structured interviews with 14 senior members of Victoria Police from specialist units, including Counter-Terrorism Coordination, Community and Cultural Division, Security Intelligence Group, Criminal Investigation Division, and Ethical Standards Division. My aim in speaking with police was not to gain an accurate portrayal of counter-terrorism police practice or to discover 'the truth' of their practice.¹¹ My interest was to reconstruct strategic police directions, official accounts, and aspirations for counter-terrorism policing, and the perceived basis for the police mandate, through the words of senior police. Such accounts are always interested, partial, contradictory, and adapted for the audience. My access to the police was facilitated by my association with an Australian Research Council Linkage Project conducted by researchers at Monash University in partnership with Victoria Police.¹² *Counter-Terrorism Policing and Culturally Diverse Communities: Final Report*

¹¹ Robert Reiner explains: 'Ultimately there is no way of knowing for certain whether what police do in front of observers, or what they say to interviewers, is intended to present an acceptable face to outsiders.' Robert Reiner, 'Police Research', in *Doing Research on Crime and Justice*, eds Roy D. King and Emma Wincup (Oxford: Oxford University Press, 2000), 220.

¹² My doctoral research was attached to and funded by the Australian Research Council (ARC) research project. My research was autonomous from the project and did not contribute to the Report. Sharon Pickering, Jude McCulloch, David Wright-Neville, and Pete Lentini, *Counter-Terrorism Policing and Culturally Diverse Communities: Final Report* (Melbourne: Monash University and Victoria Police, 2007); Sharon Pickering, Jude McCulloch, and David Wright-Neville, *Counter-Terrorism Policing: Community, Cohesion and Security* (New York: Springer, 2008).

12 Traces in Counter-Terrorism: An Introduction

was the first major study of community policing, social cohesion, and counter-terrorism in Australia. The report's data, recommendations, and conceptual orientation to counter-terrorism policing provide an important public source documenting, interpreting, and also guiding and shaping Victoria Police's institutional priorities and aspirations. One of the aims of the Monash University–Victoria Police project was to 'develop approaches to counter-terrorism policing that maximise opportunities for effective community–police cooperation while minimising the potential for an undermining of community–police relationships'.¹³ My aim was to scrutinize the institutional interests in representations of police approaches to counter-terrorism and to trace the social relations that shape the normative goals of police in relation to Muslim and non-Muslim multi-ethnic communities.

1.4.4 Community

I interviewed 39 individuals who had experienced counter-terrorism policing. I also engaged in participant observation of nine community legal education sessions (between 12 and 35 participants in each session). In addition I observed four forums attended by the police and community participants. Wardhaugh has noted that participant observation methodologically varies from complete observation to complete participation, with most researchers taking an approach somewhere in between.¹⁴ My participation varied depending on the context. In police forums I tended to observe without direct contributions. In community legal education sessions I facilitated several sessions. Where I did not facilitate sessions, I answered questions asked by attendees in trying to make sense of their own experiences of policing and law. The people who I interviewed were predominantly 'on the less powerful side of "ethnic relations"'¹⁵ and not involved in large or influential ethnic or Islamic community organizations. I spoke with three people who either self-identified as community leaders or were involved in

¹³ Sharon Pickering et al., *Counter-Terrorism Policing and Culturally Diverse Communities: Final Report* (Melbourne: Monash University and Victoria Police, 2007), 11.

¹⁴ Julia Wardhaugh, '“Down and Outers”: Fieldwork Amongst Street Homeless People', in *Doing Research on Crime and Justice*, eds Roy D. King and Emma Wincup (Oxford: Oxford University Press, 2000), 321.

¹⁵ Poynting et al., *Bin Laden in the Suburbs*, 6.

the management committees of small ethnic or Islamic community organizations. I have chosen to represent data which reflects a pattern in multiple interviews and participant observations, and I do not use quotes from single instances in order to imply they are representative.¹⁶ I triangulate and verify broad patterns and trends with other primary documentary sources or with previous research where available.

With proliferating studies on the causes of radicalization, counter-radicalization, and social inclusion, Muslim communities are over-researched as objects of enquiry. In the prevailing trends of state-centric research, Muslims are largely positioned both as the subjects of future dangerousness, and responsible for preventing terrorism through ‘civic participation’, including interaction with state agencies and programmes. Well-intended research practices can contribute to constrained political contexts as well as having both direct and indirect impacts for participants. Interviewing people vulnerable to state surveillance and criminalization raises fundamental ethical and political questions about who the research is for and how it will be used. These questions are shaped by the investments of power researchers deploy and disavow, as much as they are shaped by the potential actions of state agencies. My accounting of my own investments are partial and interested. I sought to minimize the potential to cause harm to participants by structuring the research in order to exclude self-incrimination. Foreseeable risks were discussed with potential participants in advance of consent to be interviewed. My intention has been to take responsibility for the impact of this research, and future unintended consequences. I attempted to do this by building long-term relationships with participants and their networks and organizations, where possible.

Together with some participants, I became involved in negotiating the effects of counter-terrorism in their lives and in their communities, including support and referral. In the process of researching this book I have been involved in community legal centre organized campaigns against counter-terrorism laws. I contributed to reviews of legislation, and appeared before Commonwealth Parliamentary committees to give evidence on the laws.

¹⁶ I am influenced by the approach taken by Steve Herbert, *Citizens, Cops and Power: Recognising the Limits of Community* (Chicago: University of Chicago Press, 2006), 11–12.

This work shaped the structure, method, and content of this book and my attempt towards a research praxis against the prevailing trends of state-directed agendas. I return to the implications of my standpoint for this research below.

1.5 Limits

The limits of this book are in its deliberate omissions, generated by the decisions made to pursue the most critical dimensions of the question I have posed. These limits contextualize the book within what remains unexplored and what further research could reveal.

Temporal. Counter-terrorism law and policing comprise a dynamic, changing field; this study is a moment of policing and law. The broader study begins with the introduction of counter-terrorism laws in 2001 and ends in 2009, a year after the election of the Rudd Labor Commonwealth Government. My fieldwork was conducted between 2005 and 2009, and in February 2010. I have also incorporated analysis of select policy developments up until 2012 to explore continuities and shifts. After my research was completed, a number of significant prosecutions were finalized, which would have provided further sources for the themes of this book.¹⁷ While this book is not intended to be a study of terrorism prosecutions, the framework I develop could be applied to such an endeavour.

Standpoint. My involvement in community advocacy created opportunities for the research. I was implicated in the processes I analyse and implicated in the outcomes of the research I conducted. It is inevitable and desirable that researchers shape the processes and social exchanges that make up not only data¹⁸ but how we interpret and make meaning of these social exchanges. At stake is the task of the researcher to critically account for their subject position in relation to their enquiry. The concept of the 'subject's position' acknowledges that the self is situated in the discursive and material fields which make up gender, sexuality, class, ethnicity, age, and social relations.¹⁹ For Perera and Pugliese, 'the positioned and situated

¹⁷ *Benbrika v R* [2010] VSCA 281; *R v Elomar* [2010] NSWSC 10; *R v Fattal et al.* [2011] VSC 681; *The Queen v Khazaal* [2012] HCA 26.

¹⁸ Reiner, 'Police Research', 221.

¹⁹ Stuart Hall, 'Encoding/Decoding', in *Culture, Media, Language*, ed. Centre for Contemporary Cultural Studies (London: Hutchinson, 1980).

nature of subjects, then, calls into question any claim that a subject may speak in a neutral, disinterested or universalizing manner'.²⁰ In some circumstances police and community respondents reacted to me, whether accurately or not, as a non-Anglo woman, as a student, as working for a community legal centre, as working for the police, as sympathetic, as antagonistic. I attempted to incorporate self-reflexive moments into my discussion of the research,²¹ perhaps more tentatively than I could have. Subject positions 'leave their traces in all texts'²² whether the author explicitly accounts for them or not.

Topical and conceptual. Because my interest is with the formations of race generated through counter-terrorism law and policing, I chose to focus on some of the constitutive (and thus normalized) features of law and police practice. The exceptional provides one point of entry to understanding common sense. My intention is to interrupt the subjectifying powers of the ordinary and most prevalent. For this reason, I deliberately chose not to explore the extensively commented upon cases of Mohamed Haneef, Jack Thomas, Mamdouh Habib, and David Hicks. I therefore chose not to study preventative detention, control orders and detention, and formal ASIO detention and questioning powers. In addition, while some of my research participants were refugees, I have not engaged in depth with the intersections between terrorism and migration law (see, however, the discussion in Chapter 7).

Finally, counter-terrorism law and policing has a historical legacy in the colonial policing of indigenous peoples in Australia. Most scholarship situates contemporary Australian counter-terrorism within the same realm as Cold War policing of leftists in the 20th century.²³ In my view, this historiography has neglected the colonial structures of race and racism in security apparatus and law, and the genealogy of counter-terrorism in policing indigenous resistance to colonization. In addition, the criminalization of migrants in the 20th century has sustained only a very limited study of security

²⁰ Suvendrini Perera and Joseph Pugliese, 'Keywords: Subject Positions', *Arena Magazine*, August–September (1994), 38.

²¹ See Reiner, 'Police Research', 221.

²² Perera and Pugliese, 'Keywords: Subject Positions', 38.

²³ See, however, Megan Davis and Nicole Watson, "It's the same old song": Draconian Counter-Terrorism laws and the Déjà vu of Indigenous Australians', *Borderlands e-journal* 5, no.1 (2006).

policing, and its continuities and discontinuities with colonial policing or with contemporary counter-terrorism. Such an enquiry is critical for a historicized understanding of racialized subject production. These important lines of enquiry ultimately extend beyond the boundaries of this research. Consequently, a limit of this book is that it does not unpack the neo-colonial legacies of counter-terrorism policing.

Source-based. I do not intend to make the words of those who spoke with me, or whom I observed, the views, opinions, or experiences of an entire singular community, or of any particular community. The limits of police words, of talking with the police about their practices, equate to the limits of looking to the police institution for an understanding of state power and hegemony or the production and reproduction of race. The limits of studying police and policing practice are explored throughout the book.

I sometimes descriptively refer to Muslim or ethnic minority ‘communities’, but do not intend to connote a category of religious or ethnic membership, or unitary interests. Collective identities are not communities, and neither are ethnicities communities.²⁴ I use ‘community’ to refer to how Muslims or targeted ethnic others are collectively acted against by counter-terrorism. Invocation of community as a natural category of interest may conceal the mechanisms and processes by which Muslims are collectively distinguished from non-Muslims by institutions, by civil society, and by those constituted as representative of the community. The transformative limits of the notion of community and the expansive constraining effects of the political use of community are themes examined in this book.

1.6 Chapter Overview

The next chapter establishes the conceptual foundations for my analysis of the source material. The common sense that Muslim and ethnic minorities should be policed is produced through two particular social dynamics in counter-terrorism. I explain how the relationships between coercion/consent and inclusive-exclusion secure racial hegemony. The operation of racial hegemony in liberal democracy does not depend on discrimination, inferiorization, or essentialism, but on regulating heterogenous difference, identifications

²⁴ Poynting et al., *Bin Laden in the Suburbs*, 261.

and belonging. I use the concept of racialization to distinguish the diverse mechanisms and practices that make Muslim and non-Muslim ethnic minorities policed subjects.

A series of distinctions between Islam and Muslim extremists, between legitimate religion and political ideology, are sustained in government policy, in legislation, and by the courts. Chapter 3 considers how the Muslim extremist operates as a racial category, an object of scrutiny, and the subject of the policing function of law. The requirement in the definition of terrorist act for an accused to advance a 'political ideological or religious cause' inaugurates the category of extremist in law. It locates belief and identity, while purporting to criminalize only actions: that is, motive is evidence of an extremist identity. Drawing on the prosecution of Fahem Lodhi as a case study, I explore how the 'motive' of violent jihad secures criminal responsibility in law. In turn, acts of preparation and possession rely on reading Islamism as incipient violence. Against the grain of terrorism law scholarship, Lodhi's case exemplifies the normal function of criminal law in knowing and regulating the dangerous subject. The concept of extremism elaborates the law's constitutive power to act against the cultural and religious assemblage of race.

Chapter 4 explains how police identify the Muslim extremist through the police work of 'counter-radicalization'. Police understand counter-radicalization to be an expansive, open-ended intervention against an equally open-ended and infinite process of radicalization. Whereas profiling attracts criticisms of racism, discrimination, or ineffective policing, counter-radicalization is welcomed by police as a nuanced means to understand communities and identify potential extremists. Like the previous chapter's exploration of the law's relation to extremism, policing draws an illusory distinction between targeting action rather than belief/identity. The counter-terrorism policing imperative to know communities, however, relies on monitoring Muslims and developing an understanding of their 'differences', including through speech, ethnicity, belief, and association. A connecting theme developed in later chapters is the suspicion evoked in police by the social distance of communities from the police. I explain how the commitment to a discourse of non-discrimination in counter-radicalization in practice obscures and facilitates greater regulation of racialized groups.

Chapter 5 begins with the alignment of counter-terrorism policing with multicultural social policy through the concept of social

cohesion. The official discourse of Australian governments in relation to terrorism exhibits two simultaneous tendencies: it serves to valorize multiculturalism as a policy of social integration, and it expresses the limits of multiculturalism for creating social harmony. Participation in dialogue between police and community mediates a symbolic exchange of recognition in return for national belonging. Muslim isolation, segregation, and mistrust of the police acquire significance as social conflict likely to radicalize and therefore result in violence. The promise of social cohesion carries with it an obligation for Muslims to participate in the organization of the state, by consenting to being policed. I argue that, while this process of participation is promoted as an inclusive one, it relies on particular characterizations of difference that facilitate assimilatory forms of containment.

Chapter 6 considers the impacts of informal police and ASIO questioning on those policed. This focus is crucial not only because I argue that being questioned 'by consent' is the most prevalent strategy of counter-terrorism policing, but also because it brings to the fore key themes of this book. Questioning makes policed subjects. Individuals are categorized as cooperative or uncooperative, suspicious or transparent, moderate or extremist. While people may resist, evade, or welcome policing, informal questioning overwhelmingly compels those policed to give an account of themselves and their communal positioning. In Chapter 4 police express hope that community engagement will soften the necessity of intelligence, make police less suspicious, and make their practice less punitive. In Chapter 6 those who are policed talk about consensual strategies as coercive instruments.

Chapter 7 explores how laws banning non-state armed actors as 'terrorist organizations' produce diasporic communities as suspect populations. Terrorist designation has serious consequences for many diasporas who fled conflicts yet remain connected to them. Understanding proscription as a police power, I examine its effects on Kurdish and Tamil diasporas. Security police rely on new offences to manage assertions of collective identity and are significant forces in neutralizing political claims. The chapter explains how diasporas' identity claims to conflicts over territory are racialized as familial and made suspect through the spectre of 'fronts' hidden within multiculturalism. The counter-terrorism offences arising from this regime pay particular attention to diverse forms of diasporic affiliation and effect. Both open-ended

legal categories and discretionary police agency practices criminalize ethno-political agency by recognizing and targeting *heterogeneity*. I argue both the intention and effect is to flatten and depoliticize ethnic identity as a precondition of liberal multicultural inclusion.

Counter-terrorism law and policing contribute understandings about the social relations of race neither readily categorized nor collectable in an inventory. They function to manage, reward, incapacitate, criminalize, include, and exclude those policed. In the concluding chapter I reflect on how we could understand criminalization, suspect community, and belonging. This book provides fragments of practices and the common sense they create and reflect. They are the traces of race and power that sustain hegemony.

Preview <http://www.pbookshop.com> Copyrighted Material