

BACKGROUND

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Foreign Fighters: The Rule of Law Is the Best Response to Islamist Fighters from Western Countries

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Abstract

Whenever possible, Western governments should hold fighters who joined Islamist foreign conflicts and then return to their home countries legally accountable for their actions under domestic or international law. Legal accountability—and, when appropriate, incapacitation—would send a much-needed signal to those who choose to join terrorists that future “foreign fighter” travel is completely unacceptable. It would also show citizens across North America and throughout Europe that governments understand their concerns about national security. Allowances will be made in rare circumstances—especially for the very young—but at a time of elevated terrorist threat, Western governments should adopt a “safety first” mindset that prioritizes law and order. The alternatives posited are a mix of the failed, unproven, or overly forgiving, with the Danish model sending the wrong signal concerning the acceptability of foreign fighter travel. Governments must also urgently address the problem of prison radicalization, first by isolating the most dangerous terrorist prisoners from the rest of the prison population, and also by avoiding overcrowding.

Of all the discussions about the dangers that Islamist terrorism poses to Europe, one of the areas that has received the most academic and policy focus is that on so-called foreign fighters. This phenomenon saw thousands of individuals leave their countries of origin to fight in the conflict in Syria and Iraq, many joining ISIS and its declared caliphate.¹

Over 5,000 fighters left Europe to fight in the Syrian conflict. While the number of returnees is unclear—although *The Wall*

KEY POINTS

- Multiple generations of foreign fighters from the West have now taken part in various Islamist conflicts abroad. A policy of ignoring or indulging this phenomenon has made the world much more dangerous. Western governments must not continue this grave mistake. Legal accountability is necessary.
- Western governments should consider all means under domestic law to incapacitate adult foreign fighters, including—but not limited to—prosecution.
- The common suggestion that holding terrorists accountable under the rule of law will make foreign fighters even more radical means that governments are being held hostage. This is an unacceptable state of affairs.
- While there is a place for de-radicalization initiatives, the success of such programs is uncertain and they should not be the “go to” approach. Islamist travelers and ISIS recruits should not be absolved of responsibility for the choice they made in traveling in the first place.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3288>

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Street Journal recently reported that both European and American officials believe that the numbers are lower than anticipated, and that a “major influx” is not now expected²—a July 2017 report by the European Commission’s Radicalisation Awareness Network (RAN) stated that “the average percentage of [foreign fighters] returning to Europe is around 30%.” This would put the total number at approximately 1,500.³

The U.S. must encourage its European allies to reject any default approach of reintegration and therapy, and adopt a rule-of-law-first approach. The U.S. should continue to work with European governments by helping to combat prison radicalization, with best practices being shared. Where appropriate, the U.S. must co-operate with European partners on establishing programs focused on integrating minors returning from the ISIS “caliphate” into a secular democratic society.

The Tolerant Approach to Foreign Fighters and Related Faulty Assumptions

The first part of this *Backgrounder* examines the various arguments made by prominent thought leaders, journalists, psychologists, academics, and Islamist pressure groups concerning the benefits that a more “tolerant,” non-prosecutorial approach brings in response to foreign fighters. The second part of the *Backgrounder* assesses the flaws in these approaches and advocates that, regardless of the

number of returnees, European governments must take a harder line.

Faulty Assumption #1: Foreign fighters in Syria Are Like the International Brigades and Likely Harmless. After the initial wave of travel by Western fighters to Syria post-2011, some attempted to depict these foreign fighters as analogous to the anti-Franco International Brigades.

“If George Orwell and Laurie Lee were to return from the Spanish civil war today, they would be arrested,” declared George Monbiot in *The Guardian*.⁴ Monbiot dismissed the prospect of foreign fighters being “motivated by the prospect of fighting a borderless jihad, and could return to Britain with the skills required to pursue it” as “guilt by association.” *Independent* columnist Boyd Tonkin also contrasted foreign fighters in Syria with Orwell, Lee, and other Brits in the International Brigades, bemoaning U.K. terrorism legislation for “appear[ing] to forbid all training or action in a foreign combat.”⁵ Marc Sageman, a terrorism scholar and author of the influential text *Leaderless Jihad: Terror Networks in the Twenty-First Century*, has also said that, today, “Orwell would be a jihadi.”⁶

Islamist pressure groups also sought to downplay the extent to which foreign fighters will pose any domestic threat upon return. A 2014 report by the Islamist pressure group CAGE argued that there was an “exaggerated causal link” between fighting in foreign conflicts and committing acts of domestic terrorism. CAGE suggested that the “very idea” that

1. A year-by-year sample of the literature includes Rachel Briggs and Tanya Silverman, “Western Foreign Fighters Innovations in Responding to the Threat,” Institute for Strategic Dialogue, 2014, https://www.isdglobal.org/wp-content/uploads/2016/02/ISDJ2784_Western_foreign_fighters_V7_WEB.pdf (accessed February 13, 2018); Charles Lister, “Returning Foreign Fighters: Criminalization or Reintegration?” Brookings Doha Center *Policy Briefing*, August 2015, <https://www.brookings.edu/wp-content/uploads/2016/06/En-Fighters-Web.pdf> (accessed February 13, 2018); Lisa Curtis et al., “Combatting the ISIS Foreign Fighter Pipeline: A Global Approach,” Heritage Foundation *Special Report* No. 180, January 6, 2016, <http://www.heritage.org/middle-east/report/combatting-the-isis-foreign-fighter-pipeline-global-approach>; and Richard Barrett, “Beyond the Caliphate: Foreign Fighters and the Threat of Returnees,” The Soufan Center, October 2017, <http://thesoufancenter.org/wp-content/uploads/2017/10/Beyond-the-Caliphate-Foreign-Fighters-and-the-Threat-of-Returnees-TSC-Report-October-2017.pdf> (accessed January 24, 2018).
2. Julian E. Barnes, Valentina Pop, and Jenny Gross, “Europe Doesn’t Expect Fresh Influx of Returning ISIS Fighters,” *The Wall Street Journal*, October 17, 2017, <https://www.wsj.com/articles/europe-doesnt-expect-fresh-influx-of-returning-isis-fighters-1508277877?mg=prod/accounts-wsj> (accessed January 24, 2018).
3. Marije Meines et al., “Responses to Returnees: Foreign Terrorist Fighters and Their Families,” RAN Centre of Excellence *Manual*, July 2017, p. 15, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf (accessed January 24, 2018).
4. George Monbiot, “Orwell Was Hailed a Hero for Fighting in Spain. Today He’d Be Guilty of Terrorism,” *The Guardian*, February 10, 2014, <https://www.theguardian.com/commentisfree/2014/feb/10/orwell-hero-terrorism-syria-british-fighters-damned> (accessed January 24, 2018).
5. Boyd Tonkin, “Will the Young Britons Fighting in Syria Be Allowed to Return Home and Resume Their Lives?” *Independent*, July 23, 2014, <http://www.independent.co.uk/news/world/middle-east/will-the-young-britons-fighting-in-syria-be-allowed-to-return-home-and-resume-their-lives-9624383.html> (accessed January 24, 2018).
6. Mehdi Hasan, “How Islamic Is the Islamic State? Not at All,” *New Republic*, March 12, 2015, <https://newrepublic.com/article/121286/how-islamic-islamic-state> (accessed February 8, 2018).

returning fighters posed a threat was “not supported empirically,” and that ISIS would not attack the West as it had “no such agenda.”⁷ (A cell of primarily French and Belgian ISIS returnees from Syria would kill 130 and injure 368 in Paris the following year.)

Some of the foreign fighters who have already returned to the West (or have stated they would like to do so) have also said they did not take part in any ISIS-associated violence. Harry Sarfo, who traveled to Syria from Germany, gave an interview to the *New York Times* expressing precisely this, shortly before a video was released in which he seemed to be shooting ISIS prisoners in Palmyra in June 2015. Shabazz Suleman, an ISIS recruit from the U.K., has also said he “hoped he didn’t oppress anyone” and was more focused on playing PlayStation and taking bike rides.⁸ Another foreign fighter has even claimed he was only in Syria to practice with herbal medicines.⁹

Faulty Assumption #2: Foreign Fighters Are Naive and Have No Real Connection to Terrorism. Dovetailing with this is the concept that foreign fighters only travel to Syria and Iraq out of naivety or because they have been brainwashed. Naivety is a descriptor cited numerous times in media articles examining the foreign fighter phenomenon.¹⁰ While this may be less surprising from sections of the media, in a December 2015 court case, it was even how a

judge described a British man attempting to join ISIS in Syria.¹¹ In France, those who actually trained and fought in Syria have also claimed “naivety” in court as an excuse for doing so.¹²

Commentators have cited a series of other benign pull factors alongside naivety, such as “compassion”; “familial expectations”; “empowerment”; “opportunis[m]”; and “mental health issues.”¹³ Preben Bertelsen, one of the psychologists behind the Aarhus model—an experimental approach in Denmark that seeks to integrate returning fighters—believes that the motivation is “a decent life” and the reason ISIS was able to get so many recruits was its “fight...for utopia.”¹⁴

When it comes to female recruits, another biased factor is offered: lust. The University of Kent academic Simon Cottee has pointed toward the CNN headline of “ISIS Using ‘Jihotties’ to Recruit Brides for Fighters,” and a BBC Newsnight report stating, “Attractive Jihadists Can Lure UK Girls to Extremism.”¹⁵

Faulty Assumption #3: It Is the West’s Fault. Western racism or flaws in Western socioeconomic and education models are commonly cited reasons for traveling to Syria. For example, one foreign fighter who left France for Syria criticized France for its supposed racism and lack of religious freedom.¹⁶ The extremist Lebanese activist Dyab Abou Jahjah also told CNN he blamed racism and “the level of exclu-

7. Asim Qureshi, “Blowback-Foreign Fighters and the Threat They Pose,” CAGE, 2014, p. 18, https://cage.ngo/wp-content/uploads/A4_CAGE_SYRIA_REPORT.pdf (accessed January 24, 2018).
8. Alex Crawford, “Shabazz Suleman: British IS Fighter Says He Spent Time ‘on PlayStation and Riding Bike,’” Sky News, October 31, 2017, <https://news.sky.com/story/shabazz-suleman-british-is-fighter-says-he-spent-time-on-playstation-and-riding-bike-11105793> (accessed January 24, 2018).
9. “In Syria, a Man from Dagestan Is Caught,” Kavkazr, January 8, 2018, in Russian, <https://www.kavkazr.com/a/28962561.html> (accessed January 24, 2018).
10. For example, Mary Anne Weaver, “Her Majesty’s Jihadists,” *The New York Times Magazine*, April 14, 2015, <https://www.nytimes.com/2015/04/19/magazine/her-majestys-jihadists.html> (accessed February 13, 2018), and Sanam Naraghi-Anderlini, “The Best Weapon to De-Radicalise Isis Returnees? Our Own Humanity,” *The Guardian*, September 15, 2017, <https://www.theguardian.com/commentisfree/2017/sep/15/de-radicalise-isis-reurnees-humanity-syria-bond-movie-bad-guys> (accessed February 13, 2018).
11. “Jailed: ‘Naive’ Blackburn Teen Was Trying to Reach Syria to Join Up with Islamic State,” *Lancashire Telegraph*, December 12, 2015, http://www.lancashiretelegraph.co.uk/news/14140156.JAILED____Naive____Blackburn_teen_was_trying_to_reach_Syria_to_join_up_with_Islamic_State/ (accessed January 24, 2018).
12. “Suspected Jihadis in Paris Trial Portray Themselves as Naive,” Associated Press, <https://www.apnews.com/d2692c123519429ab2cfbd61f3d1046f> (accessed February 13, 2018).
13. Naraghi-Anderlini, “The Best Weapon to De-Radicalise Isis Returnees? Our Own Humanity.”
14. Elisabeth Braw, “Inside Denmark’s Radical Jihadist Rehabilitation Programme,” *Newsweek*, October 17, 2014, <http://www.newsweek.com/2014/10/24/denmark-offers-returning-jihadis-chance-repent-277622.html> (accessed January 24, 2018).
15. Simon Cottee, “What ISIS Women Want,” *Foreign Policy*, May 17, 2016, <http://foreignpolicy.com/2016/05/17/what-isis-women-want-gendered-jihad/> (accessed January 24, 2018).
16. Vera Mironova and Sam Whitt, “A Glimpse into the Minds of Four Foreign Fighters in Syria,” *CTC Sentinel*, Vol. 7, No. 6 (June 2014), <https://ctc.usma.edu/posts/a-glimpse-into-the-minds-of-four-foreign-fighters-in-syria> (accessed January 24, 2018).

sion and...animosity and the discourse of people in power towards the Muslim community.”¹⁷

This is also a common argument in mainstream thinking. In an NPR feature examining this issue, Arie Kruglanski, a social psychologist at the University of Maryland who studies “violent extremism,” stated that “[o]rganizations like ISIS take advantage of people who, because of racism or religious or political discrimination, have been pushed to the margins of society.”¹⁸ This attitude mirrors that of Preben Bertelsen, who stated that a “lack of equal opportunities and exclusion” and “anti-immigrants or racist” political rhetoric led Danish citizens to fight in Syria.¹⁹

When a set of academics were asked what was causing Belgian citizens to travel to Syria, one factor offered by Herman Matthijs, professor of public finance at the Universities of Ghent and Brussels, was “problems in the education system.” Professor Martin Conway, a scholar at the University of Oxford, suggested that “economic difficulties, with a lot of people leading quite marginalised lives” and “problems of social integration” were key factors.²⁰

Faulty Assumption #4: Integration Is the Remedy. A spate of reporting has focused on the approach taken in the Danish city of Aarhus, where returning fighters from Syria—if they cannot be prosecuted, which the majority cannot under Dan-

ish law—are treated as misguided youngsters rather than terrorist supporters or terrorists themselves.²¹

This Danish model offers returnees the chance to take part in a voluntary counseling program, return to school or university, help in finding housing, and other services that would allegedly facilitate their integration into Danish society.

This has led to significant praise by some. For example, Naser Khader, a Danish member of parliament, wrote for the Hudson Institute in 2014 that it was “a proven success” and “its emphasis on dialogue as the key to success, works effectively.”²² Headlines read: “This Is How You Stop a Violent Extremist” and “A Danish City Has Turned Counter-Terrorism on Its Head, and it Works.”²³ *The Guardian* concluded that Denmark was at the “forefront of exploring new models for preventing extremism.”²⁴ Wassim Nasr, a France 24 terrorism analyst, described how this model did not tell returnees, “‘You’re criminals who will be punished.’ Instead, they say, ‘Okay, you did your duty and you helped the Muslim world. Now you have to disengage and keep up the fight in a non-violent way.’”²⁵

The Islamist lobby group CAGE has implied that a similar program is needed for the U.K., saying that “[i]f British Foreign Fighters intend to return, the UK government should assist them to reintegrate into British society, and not criminalise them.”²⁶ In October 2017,

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17. Clarissa Ward, “ISIS: Behind the Mask,” CNN, March 2017, <http://www.cnn.com/interactive/2017/03/europe/isis-behind-the-mask/> (accessed January 24, 2018).
 18. Hanna Rosin, “How a Danish Town Helped Young Muslims Turn Away from ISIS,” NPR, July 15, 2016, <https://www.npr.org/sections/health-shots/2016/07/15/485900076/how-a-danish-town-helped-young-muslims-turn-away-from-isis> (accessed January 24, 2018).
 19. Braw, “Inside Denmark’s Radical Jihadist Rehabilitation Programme.”
 20. “Why Do So Many Foreign Fighters in Syria Come from Belgium?” *Debating Europe*, April 19, 2016, <http://www.debatingeurope.eu/2016/04/19/why-do-so-many-foreign-fighters-in-syria-come-from-belgium/#.WnyF8ujwa70> (accessed February 8, 2018).
 21. See, for example, Jon Henley, “How Do You Deradicalise Returning Isis fighters?” *The Guardian*, November 12, 2014, <https://www.theguardian.com/world/2014/nov/12/deradicalise-isis-fighters-jihadists-denmark-syria> (accessed February 14, 2018), and Kelly Cobiella, “Denmark De-Radicalization Program Aims to Reintegrate, Not Condemn,” NBC News, May 24, 2015, <https://www.nbcnews.com/storyline/isis-terror/denmark-de-radicalization-n355346> (accessed January 24, 2018).
 22. Naser Khader, “The Danish Model for Prevention of Radicalization and Extremism,” Hudson Institute, August 14, 2014, <https://www.hudson.org/research/10555-the-danish-model-for-prevention-of-radicalization-and-extremism> (accessed January 24, 2018).
 23. Michelle Shephard, “This Is How You Stop a Violent Extremist,” *The Star*, August 20, 2016, <https://www.thestar.com/news/atkinsonseries/generation911/2016/08/20/where-a-cuppa-joe-and-kindness-help-counter-violent-extremism.html> (accessed February 14, 2018), and Allan Aarslev, “A Danish City Has Turned Counter-Terrorism on Its Head, and it Works,” *Apolitical*, September 8, 2016, <https://apolitical.co/aarhus-model-allan-aarslev-stopping-terrorism/> (accessed January 24, 2018).
 24. David Crouch and Jon Henley, “A Way Home for Jihadis: Denmark’s Radical Approach to Islamic Extremism,” *The Guardian*, February 23, 2015, <https://www.theguardian.com/world/2015/feb/23/home-jihadi-denmark-radical-islamic-extremism-aarhus-model-scandinavia> (accessed January 24, 2018).
 25. “France’s ‘Deradicalisation Gravy Train’ Runs Out of Steam,” *France 24*, August 2, 2017, <http://www.france24.com/en/20170801-france-jihad-deradicalisation-centre-closes-policy> (accessed January 24, 2018).
 26. Qureshi, “Blowback-Foreign Fighters and the Threat They Pose.”
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Max Hill, the U.K.'s Independent Reviewer of Terrorism Legislation, also commented that "we should be looking towards reintegration and moving away from any notion that we're going to lose a generation due to this travel."²⁷

Faulty Assumption #5: "Disillusioned" Fighters Can Immediately Become Useful Counter-Terror Messengers. Another strain of thought suggests that returning foreign fighters can be used in counter-messaging campaigns in order to undermine the ISIS narrative. Perhaps the most prominent official to make this argument is Gilles de Kerchove, the EU's counter-terrorism coordinator. "Some returnees who don't have 'blood on their hands' are a strong credible voice for counter-narrative purposes," Kerchove has stated. "They can explain what they have experienced, that they thought they were joining a nice idea of the caliphate but encountered people sexually abusing others, or being violent."²⁸

Kerchove was reflecting arguments made by others in the academic community and intelligence circles. For example, Richard Barrett, MI6's former global counter-terrorism director, has argued that, while the law must be followed, the British government should use disillusioned combatants to show how brutal ISIS' rule is, and deter others from joining the group.²⁹ Peter Neumann, director of the International Centre for the Study of Radicalization (ICSR), makes the same argument, stating that "the people who want to change their minds could become very powerful spokesmen who could show the difference between the reality on the ground and the Isis propaganda."³⁰

Faulty Assumption #6: Salafists and Political Islamists Can Act as a Firewall from ISIS. In a Brookings Institution paper on returning fighters,

Charles Lister argued that "a better informed and more comprehensive religious identity can in fact be a crucial barrier to violent extremism" and "quietist Salafism can represent an effective antidote to violent jihadism."³¹ Graeme Wood, an expert on ISIS and author of *The Way of the Strangers: Encounters with the Islamic State*, has also subscribed to the notion that "quietist Salafism offers an Islamic antidote to [Abu Bakr al-] Baghdadi-style jihadism."³²

These are familiar theories. Over the past decade it has often been argued that Muslims who subscribe to Western values are unhelpful in the war with radical Islam, as they lack "credibility." Therefore, it is the Salafists and non-violent Islamists who make the most effective allies, even though they do not adhere to values of equality, democracy, and liberty, their piety—but unwillingness to commit murder—means they serve as a firewall against ISIS or al-Qaeda and draw potential terrorists away from violence.

One of the most prominent proponents of this theory was Bob Lambert, a police officer in the Muslim Contact Unit of the London Metropolitan Police Service.³³ Emblematic of his approach was the time when the terrorists running Finsbury Park Mosque up until 2005 were removed from power—including Abu Hamza al-Masri, the cleric now serving a life sentence in the U.S.—and control of the mosque was handed over to Muslim Brotherhood and Hamas-linked figures.

Faulty Assumption #7: Prison Sentences, or the Threat of Them, Will Increase the Danger. A myriad of voices has argued that a rule of law approach to returning fighters will be counter-productive and lead to more violence.

27. Max Hill, "My Interview on the Today Programme on Thursday 19th October," Independent Reviewer of Terrorism Legislation, October 28, 2017, <https://terrorismlegislationreviewer.independent.gov.uk/my-interview-on-the-today-programme-on-thursday-19th-october/#more-3126> (accessed January 24, 2018).

28. Mark Townsend, "Returning Jihadis Could Help Combat Isis, Says EU Counter-Terrorism Chief," *The Guardian*, April 16, 2016, <https://www.theguardian.com/uk-news/2016/apr/16/returning-jihadis-help-combat-isis-syria-eu-terrorism> (accessed February 8, 2018).

29. Richard Barrett, "Disillusioned British Militants Have Role to Play in Fight Against Isis," *The Guardian*, September 6, 2014, <https://www.theguardian.com/commentisfree/2014/sep/06/richard-barrett-disillusioned-militants-fight-against-isis-mi6> (accessed January 24, 2018).

30. Tom Coghlan, "Let Us Come Home, Say Young British Jihadists," *The Times*, September 5, 2014, <https://www.thetimes.co.uk/article/let-us-come-home-say-young-british-jihadists-zbr2dthcwtd> (accessed January 24, 2018).

31. Lister, "Returning Foreign Fighters: Criminalization or Reintegration?"

32. Graeme Wood, "What ISIS Really Wants," *The Atlantic*, March 2015, <https://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/> (accessed January 25, 2018).

33. Robert Lambert, "Empowering Salafis and Islamists Against Al-Qaeda: A London Counterterrorism Case Study," *Political Science & Politics*, Vol. 41, No. 1 (January 2008), pp. 31-35, <https://www.cambridge.org/core/journals/ps-political-science-and-politics/article/empowering-salafis-and-islamists-against-al-qaeda-a-london-counterterrorism-case-study/48E441790EF90CCE903CBF3C69A69D2A> (accessed January 9, 2018).

Not surprisingly, this is a notion pushed by foreign fighters themselves. Due to a potential lengthy prison sentence, one U.K. fighter told researchers from the ICSR, “We’re forced to stay and fight, what choice do we have?”³⁴ Albert Berisha, who traveled to Syria to fight in 2013, has stated that “[i]t is hard to convince people to come back if they have two choices: stay and die inside Syria, or another bad choice, which is to end up in prison. Our state, our society, needs to give them a third choice, which is reintegration.”³⁵ CAGE has warned of an unspecified “unintended consequence” if a “heavy-handed approach” is taken.³⁶

Such assertions are common. A Dutch academic and Danish official both suggested that “coercive” approaches “might strengthen ‘the victim discourse’ within the Muslim community and thereby exacerbate the social conditions that can lead some individuals to participate in jihad.”³⁷ Arie Kruglanski at the University of Maryland has warned that “military and policing efforts” are counter-productive as “it’s only likely to inflame the sense there’s discrimination and motivate young people to act against society.”³⁸ The ICSR’s Neumann has also said that “[i]f you only have a law-and-order message then you risk creating a self-fulfilling prophecy where they simply go to the next battlefield and become really hardened extremists.”³⁹

Sanam Naraghi-Anderlini of the International Civil Society Action Network argues that not only will the threat of prosecution be counter-productive, so too would actual jail sentences, as “prisons

are key sites for recruitment and radicalization” and “could enable them to recruit a new cadre of supporters.”⁴⁰ To Naraghi-Anderlini, even government rehabilitation approaches are not an acceptable option. Instead, the key is “recognizing their humanity,” outsourcing integration to local communities and families, “caring,” and being “mindful of our own humanity.”

Charles Lister of the Middle East Institute also warns of the downsides of imprisoning foreign fighters, as “[t]here’s already a lot of evidence that prisons are not the best place to reverse radicalisation or reduce the establishment of extremist networks. In fact, in the UK, some of these [extremist] networks are reinforced in prison.”⁴¹

These are not just the views of academics or commentators. In the UK, even the Members of Parliament that make up the House of Commons Select Committee on Justice recommended not imprisoning lower-level terrorism offenders as there was the chance they could become even more radical once placed in jail.⁴²

Faulty Assumption #8: Citizenship Stripping Will Increase the Threat. Returnee fighters from the Syrian conflict have warned against governments stripping dual nationals of their Western citizenship in order to prevent them from returning to the West—this, too, would apparently lead to more violence. One Syrian returnee told Britain’s Channel 4 News: “If you take away people’s passports, for example, that will only cause more problems. If you treat them like criminals, they will only have more

34. Shiraz Maher and Peter Neumann, “Boris Johnson’s Proposal for British Fighters in Syria and Iraq Is Dangerous and Counterproductive,” *The Independent*, August 26, 2014, <http://www.independent.co.uk/voices/comment/boris-johnsons-proposal-for-british-fighters-in-syria-and-iraq-is-dangerous-and-counterproductive-9692303.html> (accessed January 25, 2018).
35. Alexander Smith and Vladimir Banic, “What Should the West Do With Fighters Returning from Syria and Iraq?” NBC News, October 12, 2017, <https://www.nbcnews.com/storyline/isis-uncovered/what-should-west-do-fighters-returning-syria-iraq-n800261> (accessed January 25, 2018).
36. Qureshi, “Blowback-Foreign Fighters and the Threat They Pose.”
37. Daniel Byman and Jeremy Shapiro, “Be Afraid. Be a Little Afraid: The Threat of Terrorism from Western Foreign Fighters in Syria and Iraq,” Brookings Institution *Policy Paper* No. 34, November 2014, <https://www.brookings.edu/wp-content/uploads/2016/06/Be-Afraid-web.pdf> (accessed January 25, 2018).
38. Rosin, “How a Danish Town Helped Young Muslims Turn Away From ISIS.”
39. Coghlan, “Let Us Come Home, Say Young British Jihadists.”
40. Naraghi-Anderlini, “The Best Weapon to De-Radicalise Isis Returnees? Our Own Humanity.”
41. Hussein Kesvani, “What Will Happen to Britain’s Returned Foreign Fighters from Iraq and Syria?” BuzzFeed, November 21, 2015, https://www.buzzfeed.com/husseinkesvani/what-will-happen-to-britains-returned-foreign-fighters-from?utm_term=.gq7vWyzWX#.evXwERLEq (accessed January 25, 2018).
42. Martin Bentham, “Let Terrorists Off Jail Because They May Become More Radicalised Inside, Say MPs,” *Evening Standard*, February 27, 2018, <https://www.standard.co.uk/news/uk/let-terrorists-off-jail-because-they-may-become-more-radicalised-inside-say-mps-a3776571.html> (accessed February 28, 2018).

hated in their hearts and then they might take revenge, because they will think ‘you have taken away my passport, you have destroyed my life.’”⁴³

Naraghi-Anderlini makes the same argument. If citizenship is withdrawn, she argued, it may lead these fighters to “be exiled and forced into the rump of Isis or similar groups, roaming the world as mercenaries.”⁴⁴ Preben Bertelsen, too, sees this threat regarding returning fighters. “I fear we’ll end up with nomadic young people having no other opportunity than criminality or violent destructiveness. Unless we help them get reintegrated they’ll look for a new group that’s probably even more aggressive.”⁴⁵

Benefits of the Rule of Law Approach

Between January 2014 and December 2017, there were 180 known Islamist terror plots or Islamism-inspired acts of violence in Europe. These took place in 17 different countries, leading to 357 deaths and 1,651 injuries.⁴⁶ The number of plots in Europe rose every year during the same period.

There have also been more than 100 Islamist plots or attacks in the U.S. since 9/11. Over the course of 2015 and 2016, the U.S. experienced 29 Islamist terrorist plots—more than all the attacks from 2010 to 2014 combined.⁴⁷

The U.S. government and governments across Europe must prioritize public safety. That means that the primary focus must be on incapacitating the terrorists through all lawful means, and prioritizing taking weapons-trained ISIS recruits off the streets.

Benefit #1: Establishing Boundaries. Over the past three decades, European governments have not routinely prosecuted their citizens who fought in Bos-

nia, Chechnya, Afghanistan, Kashmir, Yemen, Somalia, or Iraq and then returned to their home countries.

The result of this leniency was not gratitude toward the West from foreign fighters, more cohesive societies, and greater integration. The result was the fighting in Syria: the largest number of foreign fighters to ever head to one conflict, and subsequently the most severe Islamist terror threat that Europe has ever faced. Those advocating a soft approach toward foreign fighters in Syria should explain why this approach will be more successful than any other time.

This does not necessarily mean all rehabilitation initiatives are inherently useless, as there are seemingly successful case studies. Yet what constitutes success in these initiatives is so amorphous that they should be used very sparingly. That the Aarhus model, in Wassim Nasr’s formulation, tells returnees that they “did [their] duty and helped the Muslim world” is a completely counter-productive message that signals state approval of foreign fighter travel. It is notable that even in one of the supposed Aarhus success stories, a fighter who returned to Denmark because his wife was pregnant declared that not only did he still intend to return to Syria, he would not stop his newborn son if he wanted “to go to fight jihad.”⁴⁸

Benefit #2: Responding to Popular Concerns. A law-and-order approach also enables Western leaders to demonstrate to the population that they are responsive to the public’s fears about terrorism. A poll from Pew in May 2017 demonstrated how pervasive this fear was now across North America and Europe, with majorities in 12 countries polled either “somewhat” or “very” concerned about Islamist extremism.⁴⁹ Across 10 European countries, a median of 79 percent were concerned.

43. Darshna Soni, “Can Returning Jihadis Be Reintegrated into Society?” Channel 4 News, September 29, 2014, <https://www.channel4.com/news/can-returning-jihadis-be-reintegrated-into-society> (accessed January 25, 2018).

44. Naraghi-Anderlini, “The Best Weapon to De-Radicalise Isis Returnees? Our Own Humanity.”

45. Braw, “Inside Denmark’s Radical Jihadist Rehabilitation Programme.”

46. Robin Simcox, “European Islamist Plots and Attacks Since 2014—and How the U.S. Can Help Prevent Them,” Heritage Foundation *Backgrounder* No. 3236, August 1, 2017, <http://www.heritage.org/europe/report/european-islamist-plots-and-attacks-2014-and-how-the-us-can-help-prevent-them>.

47. David Inserra, “An Interactive Timeline of Islamist Terror Plots Since 9/11,” *The Daily Signal*, September 10, 2015, <http://dailysignal.com/2015/09/10/a-timeline-of-73-islamist-terror-plots-since-911/> (accessed January 25, 2018).

48. Soni, “Can Returning Jihadis Be Reintegrated into Society?”

49. Jacob Poushter, “Majorities in Europe, North America Worried About Islamic Extremism,” Pew Research Center, May 24, 2017, <http://www.pewresearch.org/fact-tank/2017/05/24/majorities-in-europe-north-america-worried-about-islamic-extremism/> (accessed January 25, 2018).

Following a series of plots carried out by those who recently moved to Europe, these worries have become bound up with the question of refugee flows. Pew polling from 2016 demonstrated that a median of 59 percent in Europe believed that the refugee crisis would lead to more terrorist attacks; and with precious little support for the belief that increased diversity would improve their country.⁵⁰ This ties in with a broader belief that the EU catastrophically mishandled the refugee issue. (The country that most approved of the way the refugee issue was handled was the Netherlands with 31 percent.)⁵¹ In fact, a February 2017 Chatham House/Kantar Public poll showed that a majority of Europeans from across 10 countries did not want any more immigration at all from Muslim-majority countries.⁵²

Simultaneously, populist or nativist parties have enjoyed a surge in popularity across Europe. There are a plethora of reasons as to why that may be, but legitimate concerns about Islamist terrorism likely plays at least some role.

The U.S. is not immune from these concerns. A Gallup poll in 2017 showed Americans were becoming less willing to attend large events due to the fear of terrorist attacks.⁵³ A CNN/ORC poll the previous year showed that nearly three-quarters of Americans feared an imminent attack, the highest number since 2003.⁵⁴

While governments must follow the policies they believe to be most prudent, there are clear concerns that are not being addressed. Taking a stringent approach to the ongoing fallout from Syria is one such way in which it must be hoped governments

can begin to assuage concerns: polling on the appropriate response to foreign fighters is sparse, but a poll in Canada showed 62 percent backing prosecution and only 28 percent a softer, more rehabilitative approach (10 percent were not sure).⁵⁵

Benefit #3: “Disillusioned” Returnees Must Earn Forgiveness After Being Held Legally Accountable. Fighters have already returned from Syria offering repentance, making a series of fanciful claims about the peacefulness of their activities while there, and outlining their disillusionment.

There certainly are those who were members of Islamist terror groups or moved in terrorist circles who became disillusioned with Islamist extremism. Some have offered their services to Western intelligence agencies and provided information on terrorist groups in an attempt to atone for this past.⁵⁶

This is not the only way in which former extremists can play a key role. There are those who fought abroad, returned, and have proven to be eloquent and important critics of Islamism in public. Yet pathways out of extremism are not instant; it can often take years to fully disengage from the ideology.⁵⁷

Therefore, ISIS returnees who truly are disillusioned should earn forgiveness rather than receiving it on a silver platter. Redemption must also constitute a full repudiation of Islamism and not just of ISIS. After all, al-Qaeda also rejected ISIS.

As Phil Gurski, a former member of Canadian intelligence services, has stated, “If rehabilitation is an option at some point...that process must come *after* prosecution. We cannot let these people return to a

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50. Jacob Poushter, “European Opinions of the Refugee Crisis in 5 Charts,” Pew Research Center, September 16, 2016, <http://www.pewresearch.org/fact-tank/2016/09/16/european-opinions-of-the-refugee-crisis-in-5-charts/> (accessed January 25, 2018).
 51. Bruce Stokes, “Euroskepticism Beyond Brexit,” Pew Research Center, June 7, 2016, <http://www.pewglobal.org/2016/06/07/euroskepticism-beyond-brexit/> (accessed January 25, 2018).
 52. Matthew Goodwin, Thomas Raines, and David Cutts, “What Do Europeans Think About Muslim Immigration?” Chatham House, February 7, 2017, <https://www.chathamhouse.org/expert/comment/what-do-europeans-think-about-muslim-immigration> (accessed January 25, 2018).
 53. R. J. Reinhart, “Terrorism Fears Drive More in U.S. to Avoid Crowds,” Gallup, June 20, 2017, <http://news.gallup.com/poll/212654/terrorism-fears-drive-avoid-crowds.aspx> (accessed January 25, 2018).
 54. Jennifer Agiesta, “Poll: Concern About Terrorist Attack at Highest Level Since 2003,” CNN, June 23, 2016, <http://www.cnn.com/2016/06/23/politics/terror-attack-poll/index.html> (accessed January 25, 2018).
 55. Michelle Zilio, “Canadians Prioritize Prosecution over Rehabilitation for Jihadi Suspects: Poll,” *The Globe and Mail*, December 27, 2017, <https://www.theglobeandmail.com/news/politics/canadians-prioritize-prosecution-over-rehabilitation-for-jihadi-suspects-poll/article37432097/> (accessed January 25, 2018).
 56. Such as Aimen Dean (a former member of al-Qaeda from Saudi Arabia) and Morten Storm (a Danish convert once connected to a variety of extremists around the world).
 57. British examples include Usama Hasan and Manwar Ali, who both fought in Afghanistan in the 1990s. Innes Bowen, *Medina in Birmingham, Najaf in Brent: Inside British Islam* (Oxford University Press, 2014), pp. 76-78.

normal life as if nothing happened.”⁵⁸ To do otherwise does a disservice to all those victims that have suffered—and continue to suffer—at the hands of ISIS.

Benefit #4: Consistency. It would be wrong to absolve Islamist travelers and ISIS recruits of the responsibility for their own choices; and a law-and-order approach demonstrates that Western countries have a consistent approach that does not treat foreign fighters as privileged cases. The state does not, for instance, excuse murderers and rapists as naive. Nor does it say that rapists and robbers should be central to anti-rape or robbery campaigns because they are now “disillusioned” with rape and robbery.

Related Problems and Issues

Prison Radicalization. While prison radicalization is a significant problem, the answer is not that foreign fighters should not be prosecuted in order to avoid jail: It means that efforts must be redoubled to put an end to prison radicalization.

How to do so is a contested topic. One dilemma is whether to isolate the most dangerous prisoners by putting them in special units or whether to disperse them among the prison population.

A useful case study is France, where estimates of the Muslim population in prisons is between 50 percent and 60 percent.

At the beginning of 2016, France established counter-radicalization units for around 20 Islamists regarded as potentially violent, but not irredeemable. These Islamists were given access to a host of benefits unavailable to other prisoners—language lessons, religious instruction, workshops, as well as access to historians and psychologists.⁵⁹ This approach backfired. These prisoners essentially formed their own ISIS affiliate, establishing their own *emir*, training together and planning to carry out an attack. In September 2016, Bilal Taghi, who

had previously attempted to travel to Syria, stabbed two French prison wardens. This counter-radicalization approach was scrapped in November 2016. Now, the tactic in France is to separate the most dangerous Islamists, putting them in specific, high-security units away from the prison population.⁶⁰ This is also U.K. government policy.

A related issue is over-crowding. French prisons are around 140 percent over capacity, mainly attributable to the French government’s response to ISIS’ November 2015 attacks in Paris.⁶¹ Over-crowding makes it harder to isolate prisoners, as they may have to share the same prison yard as the rest of the prison population, for example, or attend the same workshops.

A prudent response is needed. An October 2016 announcement that France plans to construct dozens of new prisons in response to overcrowding was a useful start, although even this number may be insufficient.⁶²

Post-Prison Support. There has been insufficient policy focus devoted to establishing pathways for those newly released from prison in order to prevent re-offending. There are hosts of challenges that can pertain to this: offenders being released into areas where they already have contact with pernicious influences, for example. Countering Violent Extremism (CVE) initiatives have a role to play in mitigating the impact of this, as does more traditional parole supervision.

Furthermore, while a lack of education or employment opportunities does not lead to terrorism or explain why Islamist ideology holds an appeal, some terrorism-related offenders may have simply never had a job or dropped out of school very early. In such cases, it is common sense for the state to guide newly released prisoners toward finding a job or considering further education.

58. “Canadians Get it Right When it Comes to Dealing with Returning Foreign Fighters,” Borealis Threat Risk and Consulting, December 27, 2017, <http://www.borealisthreatandrisk.com/canadians-get-right-comes-dealing-returning-foreign-fighters/> (accessed January 25, 2018).

59. Christopher de Bellaigue, “Are French Prisons ‘Finishing Schools’ for Terrorism?” *The Guardian*, March 17, 2016, <https://www.theguardian.com/world/2016/mar/17/are-french-prisons-finishing-schools-for-terrorism> (accessed February 15, 2018), and “Caged Fervor,” *The Economist*, September 17, 2016, <https://www.economist.com/news/europe/21707230-should-jails-segregate-jihadists-caged-fervour> (accessed January 25, 2018).

60. Tara John, “Inside the Heart of French Prisons,” *Time*, February 28, 2017, <http://time.com/4681612/french-prisons/> (accessed January 25, 2018).

61. “France’s Prison Population Reaches Historic High,” Telesur, July 19, 2016, <https://www.telesurtv.net/english/news/France-Prison-Incarceration-Levels-Hit-Historic-All-Time-High-20160719-0040.html> (accessed January 25, 2018).

62. “France to Build 33 New Prisons Across the Country,” *The Local*, October 6, 2016, <https://www.thelocal.fr/20161006/france-to-build-33-new-prisons-across-the-country> (accessed January 25, 2018).

Returning Children. Both North America and Europe must grapple with how best to approach the issue of children of foreign fighters returning from the “caliphate.” For example, there are still an unspecified number of American and British children thought to be in Syria and Iraq; almost 500 children with a connection to France; and around 89 connected to the Netherlands.⁶³

These children were either born there or had no choice about being there; may have been used in military operations; and have been taught to hate the West and exposed relentlessly to ISIS ideology and propaganda. As French Minister for the Armed Forces Florence Parly recently commented, “the challenge for us is to turn them into citizens again.”⁶⁴

What makes this an even greater challenge is that ISIS propaganda videos demonstrate Western children carrying out crimes that would normally be punishable with lengthy jail sentences. For example, a 13-year-old child with British citizenship has been taped shooting a Kurdish prisoner, and a four-year-old subject to the Crown has been shown to blow up a car containing prisoners of ISIS.

The age of criminal responsibility differs country by country, meaning there cannot be one uniform approach to dealing with such acts. (In Germany, that age is 14, for example, and in the U.K. just 10.) Prosecution of those under the age of criminal responsibility is impossible and it may not always be appropriate even for those of that age. Local government teams working with young offenders, foster care, psychologists, de-radicalization initiatives, and—for older children—security-service monitoring are all options that may be used, either in isolation or in combination.

These approaches have had some success already.⁶⁵ However, they will also certainly fail at times. Getting the response right will be an art, not a science, and in all likelihood, some of the children will retain virulent hostility to the countries they are now living in and require surveillance in the future.

Working with Non-violent Islamists. The method of relying on Salafists and political Islamists to forge a counter-extremism or counter-terrorism policy is a failed approach. A repudiation of the U.K.’s use of this method came in a 2011 governmental review of “Prevent,” Britain’s strategy for “preventing violent extremism.” The review concluded that “in trying to reach those at risk of radicalisation, funding sometimes even reached the very extremist organisations that Prevent should have been confronting.” It vowed not to “work with extremist organisations that oppose our values of universal human rights, equality before the law, democracy and full participation in our society.”⁶⁶

Each country will have to tailor its own approach as it sees fit. Yet there cannot be an obsession on counterterrorism at the expense of all else. Europe, particularly, needs more integrated, cohesive societies based on support for democracy, freedom, equality of the sexes, free speech, and religious freedom. Salafists and Islamists cannot deliver this, as they do not share these values.

Consequences of Inclusivity. One of the psychologists behind the Aarhus model, Preben Berntsen, has explained that “our main principle is inclusion.... We’re not stigmatising them or excluding them.”⁶⁷ This principle may be successful on occasion. However, there are significant problems attached to it. Some influences and ideologies in Muslim communities in the West are malignant and *need* to be excluded. In fact, an inclusive attitude to various forms of Islamism over recent decades has helped explain why the threat in the West is so pronounced.

This tolerant domestic approach could have international consequences. During a May 2017 speech in Saudi Arabia, President Trump encouraged Muslims to “drive them [extremists] out. Drive them out of your places of worship. Drive them out of your communities. Drive them out of your Holy

63. Robin Simcox, “Children of the Caliphate: Victims or Threat?” *Lawfare*, December 10, 2017, <https://www.lawfareblog.com/children-caliphate-victims-or-threat> (accessed January 25, 2018).

64. Martin Chulov, “Scorned and Stateless: Children of Isis Fighters Face an Uncertain Future,” *The Guardian*, October 7, 2017, <https://www.theguardian.com/world/2017/oct/07/children-isis-fighters-syria-raqqa-orphans-uncertain-future> (accessed January 25, 2018).

65. Richard Ford, “Boy, 9, Sent to Anti-Terror Scheme After Voicing Isis Support in Class,” *The Times (London)*, November 10, 2017, <https://www.thetimes.co.uk/article/boy-9-sent-to-anti-terror-scheme-after-voicing-isis-support-in-class-2hbt2fvmc> (accessed January 25, 2018).

66. British Government, “Prevent Strategy,” June 2011, p. 1, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf (accessed January 25, 2018).

67. Braw, “Inside Denmark’s Radical Jihadist Rehabilitation Programme.”

Land, and drive them out of this Earth.”⁶⁸ This was a worthy message. Yet the U.S. and Europe cannot credibly tell Muslim countries they need to drive out extremists, while the U.S. and Europe choose to indulge them domestically.

Recommendations

The approach to returning foreign fighters of both the U.S. government and governments in Europe should adhere to the following basic principles:

- **Hold them legally accountable: Prioritize prosecuting adult terrorists, regardless of gender.** The terror threat in Europe is dire and governments should assume the worst about those returning from ISIS-held territory. They likely have conflict experience and training. Prosecution will not always be possible—which is where de-radicalization programs may be of some use—but the priority should be taking such potential terror threats off the street and legally incapacitating them for as long as legally possible and necessary under the circumstances. Women returning from the “caliphate” should be treated no differently than men; the idea that the women who traveled to the caliphate were all naive, manipulated, or in thrall to charismatic men is as difficult to square with the facts as it is irrelevant.
- **Ensure that laws meet the challenges that foreign fighters pose on extra-territorial jurisdiction.** Some nations struggle to prosecute foreign fighters, as offences they committed did not take place in their country and they cannot exercise jurisdiction over them to hold them criminally accountable. Therefore, one of the keys to being able to prosecute more returning fighters is extending a state’s extraterritorial jurisdiction. The U.K. did precisely this with the Serious Crime Act 2015, which enabled the prosecution of U.K.-linked individuals “who have prepared abroad for an act of terrorism or who have trained abroad more generally for terrorist purposes, as if their actions had taken place in the UK.” In the future, this should enable prosecutions to take place that would not be otherwise possible.
- **Isolate the extremists in prisons and provide appropriate support to staff.** While knowing how best to deal with prison radicalization is an ongoing concern, isolating hardline Islamist prisoners appears to be the safest approach at present for dealing with extremism in prisons. However, frontline staff not only need support and training in order to deal with the unique challenges this poses—they also should not be expected to run overpopulated prisons indefinitely.
- **Establish programs focused on integrating children of foreign fighters into democratic society.** Unlike the adults who joined ISIS or fought in Syria, the children either did not go voluntarily or were not at age of responsibility for their actions. While prosecutions may be appropriate on rare, isolated occasions, the governments’ focus should be on trying to integrate children indoctrinated with ISIS’ ideology into Western society.
- **Provide support to newly released prisoners.** Some released prisoners may be ideologically and religiously committed and not capable of rehabilitation. Others can make positive contributions to society. Western governments should remain willing to work with the latter category of individuals in order to try to diminish the prospect of them re-offending.
- **Do not empower non-violent Islamists and Salafists.** As foreign fighters return, governments cannot be focused only on counter-terrorism, but also on how to reduce Muslim segregation and foster a greater sense of social cohesion. Empowering hardline Salafists and Islamists—who preach the virtues of Muslim separation from Western society—in governments’ counter-extremism policies does precisely the opposite.
- **Be wary of the message that a soft approach to returnees sends to allies abroad.** Significant amounts of diplomatic toil have been extolled in attempting to get countries across the world to crack down on terror networks operating in their borders and to focus attention on defeating Islamist ideology. If the West is seen as willing to negotiate on these factors much of this momentum will have been lost.

68. Ali Vitali, “Trump Tells Muslim Leaders: ‘Drive Out’ the Terrorists,” NBC News, May 21, 2017, <https://www.nbcnews.com/storyline/trump-s-first-foreign-trip/trump-speech-muslims-we-are-not-here-lecture-n762631> (accessed January 25, 2018).

Conclusion

Western states have now watched as multiple generations of Islamists travel to conflict zones across the world—from Bosnia and Afghanistan to Somalia and Yemen—with little legal accountability. Doing nothing has consequences. The idea that the West is a safer place because of this tolerant or lax approach is patently absurd.

In reality, the tolerant attitude toward Islamism has allowed the problem to mushroom to the extent that several Western states are stretched to full capacity in an attempt to stop regular carnage and bloodshed on their streets. This must change immediately.

Using the rule of law to incapacitate the offenders should be the starting point. Prosecution should always be on the list of options. However, an emphasis on prosecution does not mean there is no place for de-radicalization initiatives; a successful counter-terrorism strategy will have multiple components.

Presenting any measure that the West takes to crack down on Islamist activity—such as prosecution or the threat of it—as increasing the security threat directly concedes that terrorists can hold Western governments for ransom. This misguided approach pays too much heed to the requests of the foreign fighters. Upholding the rule of law is good policy; not prioritizing avoiding upset to terror-trained extremists.

These issues are not just relevant to the conflict in Syria, but to whichever conflict zone that is next for foreign fighters. Effective government policy can go some way in helping to deal with the blowback. However, a mindset shift is also necessary. One that would not provide an endless cycle of clichéd excuses for this travel; and one that stresses that if it does take place, there will be very clear legal and societal consequences.

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