The London School of Economics and Political Science

Examining the Interaction Between Family Law and Counter-Terrorism in the UK in Recent Years

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Declaration

I certify that the thesis I have presented for examination for the PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

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Abstract

Over the last years, the family courts of England and Wales have heard a growing number of cases, known as the radicalisation cases, where concerns about terrorism, extremism and radicalisation, and their impact on children, have been raised. The radicalisation cases are an important legal development, facilitating an unprecedented interaction between previously unrelated areas of law and policy: family and counter-terrorism. This thesis subjects the radicalisation cases to a close and critical analysis, examining the nature of, the reasons behind and the implications of the interaction between family law and counter-terrorism that they have engendered. It raises a number of questions including: why is this political problem- terrorism- being dealt with by the family courts? Why is the law *only now* interested in the terrorist and/or extremist *as a parent*? What are the implications of establishing the home as a new frontier in the fight against terrorism?

The thesis argues that the radicalisation cases have facilitated an extensive and far-reaching interaction between family law and counter-terrorism. It challenges simplistic official narratives which understand the radicalisation cases as an inevitable response to obvious child-protection risks arising out of recent developments within international terrorism. Rather, it maintains that the interaction between family law and counter-terrorism must be understood by reference to wider, significant changes in both family law and policy and counter-terrorism law, policy and discourse over the last years. It demonstrates how these changes, or *conditions of possibility*, which have opened up the family to increasing amounts of intervention, reconceptualised terrorism from a method of political violence to a *family problem* and expanded the reach of counter-terrorism are reflected and reinforced in the radicalisation cases themselves. It argues that the interaction between family law and counter-terrorism is a dangerous legal development that poses a number of worrying implications for human rights, the rule of law and open justice.

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Content

Chapter One

Introduction

1. Examining the Interaction Between Family Law and Counter-Terrorism

1.1 The Radicalisation Cases in the Family Courts

In August 2015, the British press began to report that the family courts were deciding dozens of cases involving children considered to be at risk of radicalisation.[1] The then Assistant Commissioner of the Metropolitan Police Service Mark Rowley revealed that more than 30 children of varying ages, including 'babes in arms,'[2] had been made wards of court or placed in foster care under interim care orders either because their parents were planning to take them to join the Islamic State in Iraq and Sham (ISIS) in the Middle East or because of concerns that the children were showing signs of radicalisation.[3] Rowley predicted that the number of children and families involved in family court proceedings due to fears of travel to ISIS-held territories in Syria and Iraq and/or radicalisation would increase in the coming months and years.[4]

By October 2015, the number of such cases appearing in the family courts was considered high enough to prompt Sir James Munby, the then President of the Family Division of the High Court, to issue *Guidance* on the 'radicalisation cases in the family courts.'[5] According to the *Guidance,* there had been an increasing number of,

[1] 'Radicalisation fears for 32 children protected by court' *BBC News* (London, 5 August 2015).
[2] Ibid.
[3] Ibid.
[4] Ibid.
[5] *Radicalisation Cases in the Family Courts: Guidance issued by Sir James Munby President of the Family Division on 8 October 2015*.

> '…cases coming before the Family Division and the Family Court where there are allegations or suspicions: that children, with their parents or on their own, are planning or attempting or being groomed with a view to travel to parts of Syria controlled by the so-called Islamic State; that children have been or are at risk of being radicalised; or that children have been or are at risk of being involved in terrorist activities either in this country or abroad.'[6]

The radicalisation cases are a significant legal development. Their recent emergence has facilitated a novel interaction between hitherto entirely separate areas of law and policy: family and counter-terrorism. While the family courts have previously considered the impact of religious fundamentalism[7] and on rare occasions, radical, political beliefs of parents on the welfare of their children,[8] this has never taken place within a counter-terrorism context. As such, the radicalisation cases represent an important *legal* moment. Their significance is reflected in the *Guidance* itself. Munby P stipulated that 'given the complexities of these cases…*all* cases falling within the description [discussed above] are to be heard by High Court Judges of the Family Division.'[9] Once family court proceedings are issued in a radicalisation case, 'the Designated Family Judge must be notified immediately.'[10] These stipulations, and the emphasis on caution and rigour throughout the *Guidance,* indicate the seriousness with which the unprecedented interaction between family law and counter-terrorism has been regarded by the senior family judiciary.

The radicalisation cases are also an important *political* development. Their political significance is reflected in some high profile interjections regarding the use of the family courts in the realm of counter-terrorism.[11] For example, in a speech to the think tank *Policy Exchange* in early 2018, Rowley compared parents who are convicted of terrorism offences to paedophiles and argued that the law should treat both categories of parents with greater

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[6] Ibid [1].
[7] Eg: *Buckley v Buckley* [1973] 3 Famm Laq 106, CA; *T v T* [1974] 4 Fam Law 190; *Hewison v Hewison* [1977] 7 Fam Law 106, CA; *Wright v Wright* [1981] 2 FLR 276, CA; *Re B and G (Minors: Custody)* [1985] FLR 134 and *Re R (A Minor) (Residence: Religion)* [1993] 2FLR 163. These cases are discussed in more detail in Chapter Eight.
[8] *Re P (Contact: Supervision)* 1996] 2 FLR 314.
[9] *Guidance* (n5) [4].
[10] Ibid [5].
[11] Other interjections are discussed in Chapters Two and Eight.

'parity.'[12] Although Rowley acknowledged that the family courts now routinely deal with children considered to be at risk of radicalisation, he called for even more intervention, urging authorities to remove children from the care of parents who are convicted of terrorism offences and/or who radicalise their children.[13] These comments were widely reported in the British press, instigating a conversation regarding the role of the family justice system in the fight against terrorism.[14]

1.2 Parameters of the Thesis: Research Questions, Definitions and Scope

This thesis examines the radicalisation cases. It maintains that they have facilitated an unprecedented and significant interaction between family law and counter-terrorism that requires careful and critical analysis. To that end, the thesis raises and investigates the three following questions: *how* have family law and counter-terrorism interacted in recent years, *why* have they interacted, and what are the *implications* of this interaction?

This thesis defines both family law and counter-terrorism broadly. Following family law scholar Fran Olsen, the term *family law*, which is used interchangeably with *family justice system*, includes 'statutes, regulations and court decisions involving…the formulation of families…the rights and duties of family members to each other [and]…the relationship of outsiders to family members.'[15] However, following Alison Diduck and Felicity Kaganas, this thesis takes an approach to family law that goes beyond the statutes and case-law.[16] Since state regulation of the family occurs at 'informal levels as well as the level of formal law,'[17] the approach to family law in this thesis encompasses the wider policy, operational and discursive context, including child-protection and safeguarding policies and the practices and discourses

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[12] Mark Rowley, 'Extremism and Terrorism: The need for a whole society response' (Colin Cramphorn Memorial Lecture, London, 26 February 2018).
[13] Ibid.
[14] E.g. Chris Greenwood, 'Four Far Right Plots were foiled in 2017 reveals Britain's top counter-terror officer as he says extremists should be treated like paedophiles and have their children taken away' *Daily Mail* (London, 26 February 2018) and Adam Deen and Muna Adil, 'Mark Rowley is right- reuniting children with extremist parents of any kind is irresponsible' *inews* (London, 28 February 2018).
[15] Fran Olsen, *The Politics of Family Law* (1984) 2 Law & Inequality: A Journal of Theory and Practice 1, 1.
[16] Alison Diduck and Felicity Kaganas, *Family Law, Gender and the State: Text, Cases and Materials* (Hart Publishing, 2012), 21.
[17] Ibid.

of child-welfare professionals. This thesis adopts an equally expansive approach to counter-terrorism, one that incorporates laws, practices, policies and discourses. Such a broad approach is necessary given that in the UK counter-terrorism has been integrated into the laws, policies and practices of a range of sectors, such as criminal justice, immigration and education.[18]

At this point it is important to define some key terms, in particular "terrorism," "extremism" and "radicalisation." These are, of course, highly contested terms that have been subjected to sustained scholarly criticism. However, to delineate the parameters of the study and to enable further analysis and critique, the official definitions will be outlined here. In the UK, terrorism is defined in legislation as the use or threat of serious violence against a person or property for the purpose of influencing the Government and for advancing a political, religious, racial or ideological cause.[19] *Islamist* terrorism, which is the primary focus of the radicalisation cases, is defined in Government policy as 'acts of terrorism perpetrated or inspired by groups or individuals who support and use violence as a means to establish their interpretation of an Islamic society.'[20] Extremism is defined as the 'vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.'[21] Radicalisation, in turn, is defined as 'the process by which a person comes to support terrorism and forms of extremism leading to terrorism.'[22] The "family" is also a contested concept. Although there are no statutory or common-law definitions of the term,[23] in academic literature the family is viewed both as a set of affective relationships and as a social institution.[24]

In terms of the scope of the study, firstly, this thesis examines the radicalisation cases that have appeared in the family courts of England and Wales between March 2013 and March 2020.[25] However, because the thesis seeks to identify and analyse the reasons behind their recent

[18] Basia Spalek, 'Introduction' in Basia Spalek (ed) *Counter-Terrorism: Community-Based Approaches to Preventing Terror Crime* (Palgrave Macmillan 2012), 2.
[19] S. 1Terrorism Act 2000.
[20] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism,' (Cm 9608, June 2018), 8.
[21] HM Government, 'Prevent Strategy' (Cm 8092, June 2011), 107.
[22] Ibid, 108.
[23] Diduck and Kaganas (n16), 21.
[24] David William Archard, *Children, Family and State* (Routledge, 2017), 66-69.
[25] March 2013 is the date of the first published radicalisation case. March 2020 was selected as the cut-off point.

emergence and the implications thereof, the radicalisation cases are placed within a broader historical context of family and counter-terrorism regulation. Secondly, this thesis focuses on the interaction between family law and counter-terrorism in the *United Kingdom*. Whilst there is evidence of comparable developments in other European jurisdictions,[26] due to size limitations, this project will not be taking a comparative approach. Finally, this thesis does not aim to provide an answer to the question of what can, or what should, the liberal state *do* about children being potentially radicalised at home or exposed to extremist ideologies. It does not seek to provide solutions or policy recommendations on how to tackle this "problem". Rather, it wonders (and critiques) how this "problem" has become to be identified and defined in the first place. It critically investigates *why* this question is being asked *now* and examines the *implications* of asking this question.

2. Methodology and Research Methods

In investigating how and why family law and counter-terrorism have interacted in recent years in the UK and the implications of this interaction, this thesis adopts a methodological orientation and deploys research methods that require exposition and justification. It is important to highlight, from the outset, the difference between *methodology* and research *methods*. Methodology denotes the epistemic framework and theoretical approach that underpins a given research project,[27] whereas the research methods are the practical tools used to conduct the research.[28]

[26] Rozemarjin van Spaendonck, *To School or to Syria? The foreign fighter phenomenon from a children's rights perspective* (2016) 12 Utrecht Law Review, 41 and Frances Sheahan 'Children, The Justice System, Violent Extremism and Terrorism: An overview of law, policy and practice in six European countries' (International Juvenile Justice Observatory, October 2018)
[27] Darren O'Donovan, 'Socio-Legal Methodology: Conceptual Underpinnings, Justifications and Practical Pitfalls' in Laura Cahillane and Jennifer Scheppe, *Legal Research Methods: Principles and Practicalities* (Clarus Press, 2016), 34.
[28] Ibid.

2.1 A Critical Methodological Approach

This thesis *critically* examines the recent interaction between family law and counter-terrorism. In doing so, it draws on the insights, perspectives and commitments of two main schools of thought: critical legal studies, in particular critical family law, and critical terrorism studies.

Critical legal studies seeks to identify and challenge the claims and assumptions about law within official or dominant discourses, particularly as they are to be found within liberal political and legal thought.[29] This thesis draws on a number of important claims about the nature of law, legal thinking and practice that have been made by critical legal scholars. Firstly, critical legal scholars reject the idea underpinning positivist liberal legal thinking that the law is an autonomous discipline and practice.[30] Instead, they argue that law 'is inextricably mixed in the totality of social relations and institutions.'[31] To critical legal scholars, 'law is profoundly social and political and is not completely comprehensible otherwise.'[32]As a result, critical legal studies adopts a holistic and interdisciplinary approach to legal scholarship that explores the relationship between law and the wider social, political and cultural context.[33]

Secondly, critical legal studies is interested in analysing the *constitutive* nature of law.[34] To critical legal scholars, law is both *constituted by* and *constitutive of* social and political reality.[35] Thirdly, critical legal scholars integrate the insights of social theory, in particular the ideas of Michel Foucault and Jacques Derrida regarding the contingency and indeterminacy of the social world, the relativity of truth and social constructionism, into their analysis of law.[36] By arguing that reality is socially constructed, social theorists are not claiming that there is no

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[29] Alan Hunt, *The Critique of Law: What is 'Critical' about Critical Legal Theory?* (1987) 14 Journal of Law and Society 5, 6-12.
[30] Christopher Norris, *Law Deconstruction, and the Resistance to Theory* (1988) 15 Journal of Law and Society 166, 167. 597.
[31] Alan Hunt, *The Theory of Critical Legal Studies* (1986) 6 Oxford Journal of Legal Studies 1, 10.
[32] Alison Diduck, *Law's Families* (LexisNexis Butterworths, 2003), v.
[33]Hunt (n31) 16.
[34] David M Trubek, *Where the Action Is: Critical Legal Studies and Empiricism* (1984) 36 Stanford Law Review 575, 589-604
[35] Hunt (n31), 37-38.
[36] Norris (n30) 166-169.

reality that exists separately from our consciousness and systems of representation.[37] Rather, by highlighting the socially constructed nature of reality, they claim that our ability to *know* reality is limited and that its *meaning* is, therefore, contested and constructed.[38] This emphasis on the relativity of truth and the role of social construction has a number of implications for law and legal scholarship. Because law is socially constructed, it is regarded as being historically and politically contingent.[39] Legal arrangements and institutions are not obvious or inevitable givens.[40] Rather, 'what counts as truth or justice in any given time is a reflex of various social, political and disciplinary interests.'[41] Therefore, the task of legal scholarship is to destabilise and 'take apart the self-evidence of the present.'[42] Stressing the importance of historicism,[43] critical legal scholars argue that legal research should identify the 'historical conditions of existence'[44] upon which apparently inevitable contemporary legal norms and practices depend. This critical legal methodology has both analytical and normative aspects.[45] Analytically, it seeks to identify and critique the *conditions of possibility* that enable the existence of certain legal practices and developments,[46] thereby providing 'an explanatory framework for divergent fates in comparable situations.'[47] Its normative aspect is reflected in the preoccupation with highlighting 'the dangers of the contemporary scheme of things.'[48]

Looking specifically at critical family law, in the words of Michael Freeman a critical approach insists that 'family law cannot be understood if it is assumed to operate neutrally, a-historically or cocooned from indices of power.'[49] Therefore, critical family law scholars maintain that legal research should socially locate family law[50] and underline its political and cultural significance.[51] Addressing the *politics of family law* within a critical family law methodology

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[37] Susan Silbey and Austin Sarat, *Critical Traditions in Law and Society Research* (1987) 21 Law & Society Review 165, 169.
[38] Ibid.
[39] Hunt (n31) 16.
[40] Michael Freeman, *Towards a Critical Theory of Family Law* (1985) 38 Current Legal Problems 153, 161.
[41] Norris (n30) 167.
[42] Nikolas Rose, *Beyond the Public/Private Division: Law, Power and the Family* (1987), 14 Journal of Law and Society 61, 61.
[43] Silbey and Sarat (n37), 170.
[44] David Garland, *Culture of Control: Crime and Social Order in Contemporary Society* (OUP, 2001), 2
[45] Ibid, 3.
[46] Michel Foucault, *The Archaeology of Knowledge* (Routledge, 2002), 46-49
[47] Hunt (n31), 42.
[48] Garland (n44), 3.
[49] Freeman (n40), 154-155.
[50] Ibid, 154.
[51] Olsen, (n15), 4.

means different things to different scholars.[52] To Freeman, it involves interrogating and revealing the ideological underpinnings of the fundamental concepts of family law, such as protection and welfare.[53] To Olsen, a critical family law methodology highlights the ways in which the arguments that counsel frame and the courts do or do not accept in individual family cases reflects politics and culture and shapes ideological understandings of the family and family life.[54] To Foucauldian scholars who view the family as an 'instrument of governmentality,'[55] the politics of family law underscores the role that family law plays in *constructing* the family as an instrument of government and in *disciplining* the family to further social and political agendas.[56] For feminist legal scholars such as Alison Diduck and Katherine O'Donovan, emphasising the politics of family law means identifying the ways in which the legal regulation of *private* familial relations involves the regulation of *public* social and political relations.[57] Feminist family law scholars point to the ways in which the public/private divide and selective invocations and applications of family "privacy" and non-intervention arguments sustain oppressive gender relations.[58] They also expose the gendered assumptions underpinning apparently gender-neutral family law principles and judicial discourses.[59]

This thesis also draws on the approach of critical terrorism studies. The critical terrorism studies movement emerged in the UK in the late 2000s in response to the perceived orthodoxy and shortcomings of traditional terrorism studies.[60] Although critical terrorism studies are diverse and multidisciplinary, they are held together by a number of core methodological commitments and theoretical perspectives that have been adopted in this thesis.[61] Firstly, as the name indicates, critical terrorism scholars adopt a *critical* approach that interrogates and challenges dominant assumptions and interpretations within the counter-terrorism context.[62]

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[52] Ibid.
[53] Freeman (n40),162
[54] Olsen (n14), 3.
[55] Maria Rosaria Marella, *Critical Family Law* (2011) 19 Journal of Gender, Social Policy and the Law 721, 721.
[56] Ibid.
[57] Alison Diduck and Katherine O'Donovan 'Introduction' in (eds), Alison Diduck and Katherine O'Donovan, *Feminist Perspectives on Family Law* (Routledge, 2007), 1.
[58] Carol Smart, *The Ties That Bind: Law, Marriage and the Reproduction of Patriarchal Relations* (Routledge 1984) and Frances E Olsen, *The Myth of State Intervention in the Family* (1985) 19 University of Michigan Journal of Law Reform 835.
[59] Joanne Conaghan, *Law and Gender* (OUP 2013), 90.
[60] Richard Jackson, *The Core Commitments of Critical Terrorism Studies* (2007) 6 European Political Science 244, 245.
[61] Lee Jarvis and Michael Lister 'Introduction,' Lee Jarvis and Michael Lister (eds) *Critical Perspectives on Counter-Terrorism* (Routledge 2015), 2.
[62] Ibid, 1.

Critical terrorism scholars are committed to questioning the purpose, logic and scope of counter-terrorism initiatives, especially when they are represented as being uncontroversial, unavoidable or desirable.[63] They are also interested in examining the *consequences* of counter-terrorism laws, policies and practices 'for the relations between different parts of the body-politic'[64] and for the individuals and communities affected.[65]

Secondly, critical terrorism scholars contest the 'tendency towards a-historicity'[66] within official counter-terrorism discourses, an approach which assumes that the 9/11 terror attacks in the United States were exceptional and treats post-9/11 terrorism as a "new" phenomenon.[67] While they recognise temporal specificity,[68] critical terrorism scholars argue that when attempting to understand the rationale behind, and implications of, new counter-terrorism initiatives, exploring '*why* changes within counter-terrorism regimes, logics and apparatuses take place is also of crucial importance.'[69]

Thirdly, critical terrorism scholars are cognisant of the politics of social labelling. Deploying a 'social constructionist ethos,'[70] they argue that terrorism is primarily a 'social fact rather than a brute fact.'[71] What acts are considered to be "terrorism" and what actors are identified as "terrorist" is not self-evident.[72] Rather, terrorism threats and terrorist identities are constructed through a process of *securitisation*. Particular ideologies, forms of politics and identities are securitised. That is, they are represented as existential security threats through a process of discursive construction within particular historical, political and cultural contexts.[73] This is not to say that political violence is not experienced as a real, brute fact by its victims and

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[63] Jarvis and Lister (n61), 2.
[64] Ibid.
[65] Ibid.
[66] Marie Breen Smyth, *A Critical Research Agenda for the Study of Political Terror* (2007) 6 European Political Science 260, 260.
[67] Jacob L Stump and Priya Dixit, *Critical Terrorism Studies: An introduction to research methods* (Routledge 2013), 3.
[68] Ibid.
[69] Jarvis and Lister (n61), 3. My emphasis.
[70] Priya Dixit and Jacob L Stump 'Introduction' in Priya Dixit and Jacob L Stump (Eds) *Critical Methods in Terrorism Studies* (Routledge 2015), 13.
[71] Richard Jackson 'Critical discourse analysis' in Dixit and Stump (ibid), 79.
[72] Ibid, 80.
[73] Matt McDonald, *Securitization and the Construction of Security (2008) 14 European Journal of International Relations* 563, 563.

survivors.[74] Rather, as Richard Jackson argues, the claim is that terrorism's wider cultural meaning, political significance and legal status is socially decided.[75] Therefore, critical terrorism scholars seek to identify and deconstruct the changing ways in which terrorist threats are constructed and to examine the impact of these discursive constructions on law, policy and practice.[76]

Finally, critical terrorism scholars are committed to incorporating feminist theory and gender analysis into their research.[77] Criticising the silence of traditional terrorism studies on the issue of gender, they highlight the gendered assumptions underpinning counter-terrorism laws, policies and practices and the implications thereof.[78]

2.2 Research Methods

When conducting a large-scale and interdisciplinary research project, combining and triangulating the data, evidence and insights gathered from a plurality of research methods allows for a more holistic and rigorous investigation of the research topic at hand.[79] In what follows, I will discuss the different research methods employed in this thesis before reflecting on some of the challenges faced along the research journey.

2.2.1 Case Selection and Grounded Theory

The 46 radicalisation cases published in the British and Irish Legal Information Institute's (BAILII) online database of cases provided the main data-set for this thesis. The cases were

[74] Jackson (n73), 79.
[75] Ibid
[76] Ibid, 82-84.
[77] Smyth (n66), 263.
[78] Margret Satterthwaite and Jayne Huckerby 'Introduction' in Margret Satterthwaite and Jayne Huckerby (Eds), *Gender, National Security and Counter-Terrorism: Human Rights Perspectives* (Routledge 2013), 3.
[79] Ian Dobson and Francis Johns 'Legal Research as Qualitative Research' in Michael McConville and Wing Hong Chui (Eds) *Research Methods for Law* (Edinburgh University Press, 2007), 21-23.

subjected to a close textual analysis using grounded theory, a qualitative research method that can be applied across disciplines.[80] Grounded theory closely analyses texts to construct themes that are "grounded" in the texts themselves.[81] As a research method, it 'demonstrates the causes and conditions under which [a phenomenon] emerges…and delineates its consequences.'[82] It was selected, therefore, because of its relevance to the research questions. Applying grounded theory, I began the research journey by closely and systematically analysing the radicalisation cases, identifying, categorising and examining the themes that emerged from this analysis.[83] Although the methodological and theoretical perspectives discussed earlier guided the initial search for ideas and influenced the emphasis of the analysis,[84] the themes and questions were mostly developed *inductively* from within the cases themselves.[85]

In applying grounded theory to the radicalisation cases, it became clear that the cases varied in their relevance. For example, some of the radicalisation cases were very short judgments that only outlined the facts and outcome of a particular case, whilst others only dealt with a specific or technical issue, such as the question of disclosure or media reporting. These cases did not allow for a more detailed, thematic analysis. Therefore, although all 46 radicalisation cases were subjected to a textual analysis, they are not discussed equally in the thesis. Rather, 26 radicalisation cases have been frequently used and more heavily relied upon due to their length and importance. These cases are summarised in a case digest provided in Annex Three.

2.2.2 Intertextual and Discourse Analysis

The radicalisation cases and relevant legislation, policy documents and practitioner and academic literature were also subjected to an *intertextual* analysis. Intertextuality is a research method that recognises the interconnectedness of texts.[86] An intertextual analysis places 'text

[80] Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide through Qualitative Analysis* (Sage Publications, 2006), 8
[81] Ibid, 2.
[82] Ibid, 10.
[83] Ibid, 2-9.
[84] Ibid, 16.
[85] Ibid, 48-50.
[86] Graham Allen, *Intertextuality* (Routledge 2000), 5.

in a network of intertextual relations,'[87] highlighting their influence on each other and identifying the commonality of concepts, themes and ideas contained within them.

The radicalisation cases were also subjected to a discourse analysis. Discourse analysis examines the use of language in texts and the ways in which language produces and reproduces meaning.[88] The decision to deploy discourse analysis was made because judicial discourses reflect the wider social, political and cultural context.[89] Judgments do not just contain the final decisions reached within a dispute,[90] they are also important *discursive expressions* which reflect and confer legitimacy on certain modes of thinking and political and moral norms.[91] Judicial discourses also indicate *temporality*; they highlight changes within legal thinking and mirror and buttress shifts within the socio-political and cultural context.[92]

2.2.3 Empirical Research Methods

When investigating an emerging area of law, using empirical research methods can support the investigation by generating new and illuminating data.[93] Therefore, Freedom of Information (FOI) requests under the Freedom of Information Act 2000 and interviews with key practitioners were also used as secondary research methods.[94]

FOI requests were made because it became clear early on in the research that the *published* radicalisation cases available on BAILLI's online legal database represented only 'a fraction of the cases decided.'[95] There are two possible reasons for this. The first pertains to the private nature of family court proceedings. A number of 'statutory restrictions on reporting family

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[87] Ibid, 1.
[88] Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M Kritzer (eds) *The Oxford Handbook for Empirical Legal Research* (Oxford University Press 2012), 942.
[89] Alison Diduck, *Ancillary Relief: Complicating the Search for Principle* (2011) 38 Journal of Law and Society 272, 276.
[90] Alison Diduck, *What is Family Law For?* (2011) 64 Current Legal Problems 287, 292.
[91] Ibid, 287.
[92] Diduck (n91), 275.
[93] Wing Hong Chui 'Quantitative Legal Research' in McConville and Chui (n81), 49-50.
[94] See: Annexes One and Two.
[95] Marina Wheeler, 'Radicalism and the Family Courts' (*UK Human Rights Blog*, 30 October 2015.)

proceedings are in place to protect children and family members and to ensure full and candid evidence is available to the court.'[96] Although judicial *Guidance* was issued in 2014 by Munby P, requiring that all judgments from the Family Division of the High Court and judgments in certain categories of family cases be published on BAILLI's online legal database,[97] in reality 'only a tiny minority of judgments'[98] are published. Secondly, the radicalisation cases are also sensitive on national security grounds. Many of the parents and children involved in the radicalisation cases are also involved in ongoing criminal proceedings. It appears that national security issues and concerns about prejudicing criminal trials prevent many radicalisation cases from being published.

To uncover the overall number of the radicalisation cases appearing before the family courts, FOI requests were sent on a regular basis to the Child and Family Court Advisory Service (Cafcass), a statutory non-departmental body which promotes the welfare of children involved in family court proceedings in England. Cafcass was selected to be the recipient of these requests because it had reported in July 2015 that it was collecting data on family cases featuring radicalisation concerns and had published a small study on the number and type of radicalisation cases appearing before the family courts.[99] It is worth noting here that Cafcass was very responsive and readily provided the requested information.

Elite interviews were also used for this thesis. Elite interviews are in-depth interviews conducted with a select number of individuals who hold 'important or exposed positions'[100] in their respective fields and can, therefore, provide expert knowledge and specialist opinions on a given topic. Having gone through the LSE's ethics approval process for interviews of this type, a total of eight elite interviews were conducted. My interviewees were five family barristers, one family solicitor and two senior members of staff at Cafcass. Their identities have been anonymised since this was requested by most of the interviewees. The interviewees were

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[96] Julie Doughty, Alice Twaite and Paul Magrath, 'Transparency through publication of family court judgments: An evaluation of the responses to, and effects of, judicial guidance on publishing family court judgments involving children and young people' (Nuffield Foundation, 9 November 2016), 6
[97] *Transparency in the Family Courts*: Guidance issued by Sir James Munby, the President of the Family Division, on 16 January 2014, paras 14 and 23.
[98] Doughty et al (n96), 6.
[99] 'Study of data held by Cafcass in cases featuring radicalisation' (Cafcass, 2016),1.
[100] Lewis Anthony Dexter, *Elite and Specialised Interviewing* (ECPR Press, 2006), 18

selected and approached based on their extensive experience working on the radicalisation cases. They were asked specific and open-ended questions regarding their experiences of working on the radicalisation cases and their reflections and views. Since all of my interviewees have highly specialised practitioner knowledge of the radicalisation cases, they were asked to elucidate and comment on issues, questions and themes arising from the textual analysis of the radicalisation cases.[101]

Given the high number of unpublished cases and the novel and fast-moving nature of this legal development, the interviews proved to be a valuable research method. The interviews generated new data about the radicalisation cases, particularly the unpublished cases, highlighted certain developments, confirmed and helped extract interpretations, themes and findings from the textual analysis and suggested new lines of enquiry. Direct quotations from the interviews are very rarely used in the thesis. Instead, the data generated from the interviews are mostly used to supplement, offer confirmation or support the research findings and interpretations.

2.2.4 Reflections, Challenges and Positionality

Critical legal research, especially feminist legal research, emphasises the importance of reflexivity.[102] Reflexivity denotes the sharing of reflections on the research process itself.[103] It involves a critical examination of the challenges and limits of the research and an awareness of the positionality of the researcher,[104] 'the dynamics of the research encounter …[and] the social embeddedness of the research process.'[105]

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[101] See: Annex One.
[102] Katherine T Bartlett, *Feminist Legal Methods* (1990) 103 Harvard Law Review 829, 883 and Samia Bano, 'Standpoint, Difference and Feminist Research' in Reza Banakar and Max Travers (eds) *Theory and Method in Socio-Legal Research* (Hart Publishing, 2005), 92.
[103] Karen Henwood, *Qualitative Research, Reflexivity and Living with Risk: Valuing and Practicing Epistemic Reflexivity and Centring Marginality* (2008) 5 Qualitative Research in Psychology 45, 45.
[104] Bartlett (n102), 883-885.
[105] Henwood (n103), 45.

The sensitivity of the research topic raised some challenges, most notably difficulties of access.[106] For example, many of the solicitors and barristers that were approached for interviews declined, even when assured that all identities will be anonymised, citing the sensitivity of the topic. The sensitivity of the topic also precluded access to the unpublished radicalisation cases. High Court clerks and Ministry of Justice staff cited both child-protection and national security as reasons for refusing access to the transcripts and case-files of the unpublished radicalisation cases. Although these problems with access did limit the data that was available for analysis, the published radicalisation cases and the eight elite interviews that were conducted provided a sufficiently rich data-set.

The novel and fast-moving nature of the research topic also posed some methodological challenges. The majority of the publicly available radicalisation cases were published during the research period, with new categories of radicalisation cases, issues and themes emerging throughout. Therefore, the cases had to be analysed and incorporated into the research findings as they were published. However, this challenge was ameliorated using grounded theory - an especially flexible research method that allows the researcher to reshape the data that they have collected and to integrate and develop new categories and themes on an ongoing basis.[107]

Finally, the concept of positionality, which derives from feminist methodology, refers to the social stand-point of the researcher.[108] Feminist legal scholars stress that knowledge is *situated*.[109] As such, they maintain that 'there is no aperspectivity'[110] in research and scholarship. Feminist legal scholars argue that a researcher's positionality influences their approach and even 'shapes the structure and substance of the research study.'[111] Therefore, instead of 'denying the importance of the standpoint of the researcher,'[112] positionality 'demands a critical analysis of their engagement in the research process.'[113] It requires

[106] Bano (n102), 97-100.
[107] Charmaz (n80), 45-48.
[108] Bartlett (n102), 880-882.
[109] Ibid, 101.
[110] Bartlett (n102), 885.
[111] Ibid.
[112] Bano (n102), 110.
[113] Ibid.

awareness of the 'dynamics of gender, race, culture, class and religious identity'[114] and how they interact with the research topic and process.

In this thesis, I recognise that my position as a British Muslim researcher who is active within the British Muslim community influenced my approach to the topic. Therefore, while researching, I regularly reflected on and interrogated the assumptions and preconceptions that I brought with me to this topic. My positionality also enhanced my awareness of the significance and gravity of the recent interaction between family law and counter-terrorism. Listening to the concerns and apprehensions of community organisations, leaders and ordinary members of the community, especially British Muslim women, I was cognisant of the seriousness and impact of this legal development.

3. Structure and Claims

3.1 Part I: The How Question

Part I of the thesis, which consists of Chapter Two, investigates *how* family law and counter-terrorism have interacted in recent years. This chapter assesses the nature and scope of the interaction, demonstrating that the importance of the radicalisation cases as a legal development goes beyond their novelty. The chapter begins with an excavation and analysis of some of the "facts and figures" surrounding the radicalisation cases, including the overall number of cases and the sociological make-up of the children and families involved, such as age, gender, religion, race, social class and criminal background. The chapter then goes on to situate the radicalisation cases within their legal and policy context. It demonstrates and examines how the radicalisation cases were part of the British state's non-criminal legal and policy responses to the rise of ISIS and the Foreign Terrorist Fighter (FTF) phenomenon, particularly as it pertained to and impacted children and families.

[114] Ibid, 100.

However, while Chapter Two agrees with early academic and policy literature in seeing the radicalisation cases as forming an important part of the UK's response to the problem of children and families travelling to ISIS-held territories, it cautions against viewing the interaction between family law and counter-terrorism primarily by reference to the issue of travel to ISIS-held territories. Situating the radicalisation cases within the wider UK counter-terrorism policy framework, the chapter argues against the somewhat reductive characterisation of the involvement of family law in counter-terrorism within early academic literature and Government documents as a creative and protective legal solution to the problem of children travelling to join ISIS. Although the chapter acknowledges that the issue of children and families travelling to ISIS-held territories in the Middle East dramatically increased the number of radicalisation cases appearing in the family courts, it nevertheless reveals and stresses the importance of the fact that the interaction between the family justice system and counter-terrorism policy predated the rise of ISIS.

Finally, through a comprehensive factual exposition of the radicalisation cases, Chapter Two highlights the heterogeneity and complexity of this interaction. The chapter demonstrates the diversity of the radicalisation cases in terms of the family law proceedings involved, the multiplicity of issues and concerns raised and their development over the years. In doing so, the chapter argues that while the radicalisation cases encompass the specific, difficult and novel issue of travel to ISIS-held territories in Syria and Iraq, the interaction between family law and counter-terrorism is a comprehensive, multi-faceted and enduring legal phenomenon whose significance goes beyond the specifics of ISIS and the FTF phenomenon.

3.2 Part II: The Why Question

Having identified and outlined how family law and counter-terrorism have interacted, the question that presents itself at this point is the following: *why* have family law and counter-terrorism interacted in recent years?

Chapter Three begins the exploration of this question by identifying an official explanation of the recent emergence of the radicalisation cases provided by the family judiciary and the Government, which claims that the radicalisation cases are simply about protecting children from straightforward, albeit new, child protection harms, as well as promoting their welfare. This official narrative understands the interaction between family law and counter-terrorism as an inevitable *reaction* to the latest manifestation of the terrorist threat that happens to affect families and children, and therefore engages the jurisdiction of the family justice system: ISIS' explicit targeting and radicalisation of children and the problem of children and parents travelling to join ISIS in Syria and Iraq. The chapter acknowledges the truth and legal accuracy of this official explanation in so far as it relates to the radicalisation cases concerned with preventing the travel of children and teenagers to ISIS-held territories. It agrees that the state has a legal duty under international and domestic law to protect children from the harm of death or serious physical injury that could result from children travelling or being taken to Middle Eastern war-zones.

However, Chapter Three challenges the sense of obviousness and inevitability underpinning the official explanation of the interaction between family law and counter-terrorism. In deconstructing the claims of the official explanation, the chapter emphasises the *politics* of child-protection, drawing on the work of scholars who highlight the *socially constructed* nature of harm within the child-protection context and the selective and historically and politically contingent nature of legal interventions in the family, even when made in the name of apparently obvious and neutral claims of protecting children from harm and promoting their welfare. Applying these lines of argument and critique, Chapter Three highlights the limits and inadequacy of the official explanation, arguing that preventing the travel of children to ISIS-held territories is not the only harm motivating the radicalisation cases. The local authorities and the family courts are equally, if not primarily, concerned with protecting children from a second, much less obvious or straightforward child-protection harm: extremism and radicalisation. This shows, the chapter claims, that ideas about harm, protection and welfare within the child-protection context are often reflective of shifting legal, political and cultural contexts and latent anxieties about threats to the "British" way of life and public interest.

After highlighting and deconstructing the limits of the official explanation of the radicalisation cases and the reasons behind their recent emergence in the family courts, Part II identifies and examines the *conditions of possibility* that enabled the interaction between family law and counter-terrorism. To that end, Part II claims that radicalisation cases reflect and reinforce important shifts and trends in family and counter-terrorism law, policy and discourse in recent decades in the UK.

Chapter Four explains the interaction between family law and counter-terrorism by reference to the significant legal, policy and ideological shifts in the way family and familial relationships, in particular the parent-child relationship, have been conceptualised and regulated in the last two decades. Adopting a Foucauldian approach to the family and its regulation, the chapter begins by exploring the *public* significance of the *private* family within legal and political thinking and practice. Becoming increasingly concerned with the threat that the working-class or "deviant" family can pose to social and political order and identifying the home as a potential site of danger to children, Chapter Four argues that the state has used the family as an instrument of governance and a tool of social and political control since at least the mid-20th century.

The chapter goes on to argue that the New Labour years transformed family regulation and governance in the UK. Under New Labour, social problems such as crime, anti-social behaviour, poverty, unemployment and lack of educational attainment were *familialised*. They were primarily attributed to the problematic child-rearing practices and poor choices of working-class and/or ethnic minority parents, as opposed to structural, socio-political and economic causes. This led to the emergence of a notably interventionist and rather punitive approach to "problem" families within law and policy, one which blamed parents and held them responsible for the crimes, misbehaviours and failures of their children. This, in turn, *politicised* the (working-class and/or ethnic minority) family, constructing it as a site of intervention. Furthermore, the chapter argues that the politicisation of the family and the increasingly interventionist turn within family law and policy under New Labour was not limited to this punitive or assertive dimension. It also encompassed "softer," welfare-oriented elements, including early childhood intervention, as a way of forestalling risks, maximising opportunities and the safeguarding agenda. Chapter Four argues that because, under New

Labour, child-protection laws, policies and agencies began to be concerned with safeguarding all children from an expanding list of risks and promoting their welfare, this increased the ability of the state to intervene earlier in family life. Finally, the chapter demonstrates how these significant shifts to the regulation of the family were expanded by the Coalition Government which developed a distinctly muscular approach to the regulation of the family, parenting and, in particular, mothering.

Chapter Five demonstrates how the increasing familialisation of social problems and the politicisation of the family paved the way for the familialisation of *Islamist* terrorism and the securitisation of the *Muslim* family within counter-terrorism policies and discourses, enabling the recent emergence of the radicalisation cases in the family courts. The chapter claims that the attacks on the US on 11 September 2001 led to a fundamental reconceptualisation of the terrorist threat. It argues that the emergence and influence of the "new" terrorism thesis, which distinguished between the "older" terrorism of nationalist, fascist and leftist terrorist groups and "new" Islamist terrorism, de-politicised and familialised Islamist terrorism. Within the "new" terrorism thesis and the global and national counter-terrorism policies and discourses which have been influenced by it, Islamist terrorism was interpreted not as a method of political violence but as a symptom of psycho-social dysfunction and an expression of the regressive and illiberal Islamic culture. This emphasis on the psycho-social and cultural or theological antecedents of Islamist terrorism, the chapter argues, turned attention within terrorism scholarship and counter-terrorism policy and discourse to the private sphere of the home and family. As such, the allegedly pathological and illiberal Muslim family emerged as one of the primary causes of Islamist terrorism.

Chapter Five argues that the *familialisation* of Islamist terrorism within post-9/11 global counter-terrorism discourses led to the *securitisation* of the Muslim family within the counter-terrorism discourses and policies and in the UK. Although this process of securitisation began under New Labour, the counter-terrorism policies and discourses of the Coalition and subsequent Conservative Government intensified the securitisation of the Muslim family. The chapter argues that counter-terrorism policies and discourses in the UK have increasingly constructed the Muslim family and home as a site of risk, where extremist ideologies are

nurtured away from the public eye and the radicalisation of children takes place. As a result, the chapter argues, the Muslim family and parenting (mothering in particular) have been increasingly targeted in the name of preventing and countering terrorism. The chapter also argues that the securitisation of the Muslim family is a specific instance of, and therefore shares similarities with, the politicisation of the family in Chapter Four. However, the chapter stresses that within counter-terrorism policies and discourses the Muslim family has been blamed, pathologised and regulated in distinctive ways. Finally, the chapter argues that the familialisation of Islamist terrorism and the securitisation of the Muslim family is reflected and reinforced by the radicalisation cases. Examining judicial discourses, in particular the ways in which the judges in the radicalisation cases conceptualise and approach the family, home and familial relations, the chapter highlights the influence of this reconceptualisation of the terrorist threat and the securitisation of the Muslim family within counter-terrorism policies and discourses on the recent emergence of the radicalisation cases.

Staying with post-9/11 counter-terrorism, Chapter Six focuses on the seismic changes that have occurred in the UK counter-terrorist landscape over the last two decades as a result of the reconceptualisation of the terrorist threat discussed in Chapter Five and its role in facilitating the recent interaction between family law and counter-terrorism. The chapter starts by considering the substantial expansion of the reach and remit of counter-terrorism that began under New Labour in response to the 7/7 attacks on London in 2005 but increased significantly as a result of the Coalition Government's reforms to counter-terrorism policy. It argues that in the UK, counter-terrorism is no longer just focused on preventing and tackling terrorist violence. Rather, counter-terrorism is now equally concerned with preventing and countering extremism and radicalisation - the ideological Islamist beliefs and the psycho-social processes that allegedly lead individuals to commit acts of terrorism. Chapter Six claims that counter-terrorism policies, programmes and even laws have become increasingly preventive and pre-emptive, targeting the pre-criminal space of extremist ideas and beliefs because they supposedly lead to terrorist violence *and* because they seek to undermine "fundamental British values" of liberalism, democracy and tolerance. The chapter argues that this shift from counter-*terrorism* to counter-*extremism* has transformed the nature and purpose of counter-terrorism in the UK; the counter-terrorist project is now an overtly ideological project that seeks to challenge and change the beliefs and values of its targets.

Chapter Six also considers the prominence of children and childhood within post 7/7 counter-terrorism, focusing especially on the Coalition Government's counter-terrorism policies, laws and discourses. The chapter claims that the state's interest in tackling extremism and radicalisation has translated into an interest in targeting the potential or *future* terrorist, the children and youth considered to be *vulnerable* to radicalisation. As a result, the chapter argues, children and their education and welfare have been increasingly prioritised within the UK's counter-terrorism policies and laws. The chapter demonstrates how this prioritisation is reflected in the co-optation of the language of safeguarding within counter-terrorism policies and discourses, the incorporation of counter-terrorism within the state's ordinary child-protection and safeguarding functions and the emphasis on early detection and intervention. Finally, Chapter Six situates the recent interaction between family law and counter-terrorism within the important changes in the UK's counter-terrorism landscape and traces and analyses their influence on judicial articulations of harm within the radicalisation cases.

3.3 Part III: Implications

Part III examines the *implications* of the interaction between family law and counter-terrorism in recent years.

Chapter Seven critically appraises the radicalisation cases. The chapter begins by outlining the arguments of a dominant narrative put forth by the family judiciary, family solicitors and barristers, some family law academics and think-tanks, which views the radicalisation cases in a positive light. This dominant narrative, the chapter finds, insists that the radicalisation cases are *ordinary* child-protection cases applying the *conventional* principles of family law. It presents the interaction between family law and counter-terrorism as an appropriate, proportionate and human rights-compliant legal development. Chapter Seven deconstructs this dominant narrative, agreeing instead with the few critical voices within academia and civil society that have regarded the radicalisation cases with trepidation and concern. The chapter challenges the claim that the radicalisation cases are ordinary child-protection cases. Although a minority of radicalisation cases do involve child-protection concerns that might be considered routine or ordinary, the chapter highlights the extensive influence of counter-terrorism policy,

practice and considerations on the radicalisation cases. Therefore, Chapter Seven argues that the radicalisation cases are more accurately described as 'family law versions of counter-terrorism'[115] than as ordinary child-protection cases. Through the radicalisation cases, the chapter claims, the family courts are essentially "doing" counter-terrorism by the backdoor.

Chapter Seven then goes on to critique the involvement of family law in the counter-terrorist endeavour, arguing that it represents a worrying legal development with dangerous implications. Firstly, the chapter contests the legitimacy of family law's involvement in counter-terrorism. It agrees with scholars who argue that since acts of terrorism are captured by both ordinary criminal and specific terrorism offences, the state's counter-terrorist response should prioritise criminal justice responses and avoid expanding into other areas of law that are traditionally unconnected to national security and that lack the procedural safeguards that are to be found in the criminal justice system.

Secondly, and adopting a critical perspective on family law, Chapter Seven argues that the involvement of family law in counter-terrorism is not a benign, proportionate or human rights compliant legal development, as the dominant narrative seems to suggest. By highlighting the indeterminacy of the welfare principle, the chapter questions the claim that the emphasis on the welfare principle in the radicalisation cases has ensured that the best interests of children, rather than counter-terrorism considerations, prevail. Finally, closely examining the outcomes of the radicalisation cases and the approach of the family judiciary to fundamental human rights, the chapter argues that the radicalisation cases have resulted in intrusive and, at times, draconian interventions in private and family life and have interfered with the right to religious freedom, non-discrimination and children's rights.

Chapter Eight, considers the implications of the interaction between family law and counter-terrorism for both family law and counter-terrorism law. It argues that although the

[115] Clive Walker, *Foreign Terrorist Fighters and UK Counterterrorism Law* in David Anderson, *The Terrorism Acts in 2015: Report of the Independent Reviewer in the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006* (December 2016), 128.

radicalisation cases continue and entrench a number of the pre-existing negative trends within both areas of law, their recent emergence in the family courts have has introduced some significant problematic changes that have altered both counter-terrorism law and family law. Firstly, Chapter Eight acknowledges that the emergence of the radicalisation cases builds on a number of widely-criticised recent trends in counter-terrorism law, including its tendency to bypass the criminal law, the securitisation of increasing areas of law and policy and the increased targeting of children. However, the chapter goes on to argue that the interaction between family law and counter-terrorism has fundamentally altered counter-terrorism law, giving the state unprecedented and considerable access to the home and enabling the legal regulation of family life in the name of national security. Similarly, the chapter demonstrates that the radicalisation cases build on and augment some of the problematic aspects of English family law, particularly the suspicions of some of the family judiciary towards strictly religious parents who belong to minority religious groups. However, the chapter also claims that the radicalisation cases have introduced some fundamental changes to family law including the importation of previously almost unheard-of processes and procedures, such as closed material procedures and electronic tagging, and have significantly departed from family law's broadly liberal approach to parental religious and political beliefs.

Finally, Chapter Nine concludes the thesis. After providing a brief summary of the claims in each of the three parts of the thesis, the chapter reflects on some of the broader issues and themes emerging from the recent interaction between family law and counter-terrorism and highlights suggestions for future research.

4. Contribution

Despite the significance of the radicalisation cases and the novelty of the interaction between family law and counter-terrorism, academic interest in the topic remains limited. At the start of my research journey, academic literature on the radicalisation cases was almost non-

existent.[116] During the course of my research, three other academic pieces on the topic were published;[117] these pieces have been discussed and debated throughout the thesis. While these academic commentaries are important, they have tended to focus on specific issues raised by the radicalisation cases, such as their treatment of parental religious beliefs or the type of orders that have been sanctioned. They have also addressed the radicalisation cases from *either* a family law *or* a counter-terrorism law perspective.

By contrast, this thesis has attempted to situate these cases within the critical literature on both counter-terrorism and family law. In particular, this thesis builds on and further develops the claims of critical terrorism scholars who have critiqued post-9/11 counter-terrorism laws, policies and discourses, interrogating their racialised and gendered assumptions, highlighting their proliferation within and increasing securitisation of social and civil life and examining their impact on human rights, the rule of law and justice. At the same time, this thesis also draws on a diverse body of literature that critically examines the history, nature and extent of the state's regulation of the family in the UK, and the gendered, racialised and classed dynamics thereof. The thesis also engages with family law scholarship which deconstructs and critiques English family law's fundamental principles (in particular the welfare principle), its identifications and constructions of harm and its approach to the religious beliefs and practices of parents, particularly those belonging to religious minorities.

By drawing on, applying and developing these lines of critique, this thesis aims to make a new scholarly contribution. It comprehensively examines an otherwise overlooked legal development, taking a critical and interdisciplinary approach that identifies and interrogates the legal, political, social and cultural *conditions of possibility* that made the recent emergence of the radicalisation cases in the family courts possible, and examines the implications of their emergence. It sees the radicalisation cases as an important legal *moment* that reflects important shifts and changes in family and counter-terrorism law, policy and discourse. By carefully

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[116] There was only one short piece that focused on the family justice system's response to the problem of children and families travelling to ISIS-held territories in Syria: Susan Edwards, *Protecting schoolgirls from terrorism grooming* (2015) 3 International Family Law 236, 236-237

[117] Jessie Blackbourn and Clive Walker, *Interdiction and Indoctrination: The Counter-Terrorism and Security Act 2015* (2016) 73 Modern Law Review 840, 848 and Rachel Taylor, *Religion as harm? Radicalisation, extremism and child protection* [2018] 30 Child and Family Law Quarterly, 41.

interrogating this moment, the thesis offers a critique of both of these areas of law and policy. It raises and offers reflections on important legal, political and theoretical questions regarding the state's changing approach to perceived security, ideological and cultural threats and the altering relationship between the state and the family.

Part I: *How* Have Family Law and Counter-Terrorism Interacted in Recent Years?

Chapter Two

Examining the Nature of the Interaction Between Family Law and Counter-Terrorism

1. Introduction

The previous chapter maintained that the recent emergence of the radicalisation cases in the family courts of England and Wales has facilitated an unprecedented interaction between family law and counter-terrorism. This chapter seeks to understand the nature of this novel development. It outlines, examines and evaluates *how* family law and counter-terrorism have interacted in recent years.

In section (2), I factually contextualise the radicalisation cases, discussing their overall scale and the sociological make-up of the children and families involved. In section (3), I situate the radicalisation cases within their wider legal and policy context, focusing on the UK's responses to the rise of the Islamic State of Iraq and Sham (ISIS), the Foreign Terrorist Fighter (FTF) phenomenon and the problem of children and families travelling to ISIS-held territories in the Middle East. I demonstrate how the radicalisation cases were part of the British state's response to the involvement of children and teenagers with FTFs and the impact that ISIS and the FTF phenomenon had on them. However, through a critical analysis of the radicalisation cases in section (4), I argue that it would be a mistake to focus on the cases that involve parents and/or children who are suspected of attempting or planning to travel to ISIS-held areas in Syria and Iraq. Positioning the radicalisation cases within the UK's wider counter-terrorism policy context and providing a comprehensive legal and factual outline of the cases that highlights their diversity and complexity, I show how they facilitated a far-reaching and enduring

interaction between family law and counter-terrorism that encompasses, but goes beyond, ISIS and the FTF phenomenon.

2. Factually Contextualising the Radicalisation Cases

The exact overall number of the radicalisation cases is unknown. As I mentioned in the previous chapter, there are currently 46 published cases (involving more than 31 families and 80 children) that deal with radicalisation concerns within the context of family proceedings.[1] However, not all of the radicalisation cases have been published. An indication of the overall scale of the radicalisation cases was given in a study conducted in 2016 by the Children and Family Court Advisory Service (Cafcass).[2] The study revealed that in the six months between July 2015 and December 2015 there were 54 family cases where radicalisation featured as a concern.[3] Moreover, the responses to the Freedom of Information requests (FOI) that I sent to Cafcass revealed that between 1 January 2016 -15 March 2020, 397 cases appeared before the family courts of England and Wales featuring radicalisation concerns[4] (see Figure 1).

[1] Some of these cases are follow-up cases or are connected to previously decided cases. Although most have been heard and decided in the Family Division of the High Court, a small minority have appeared before the Family Court and the Court of Appeal: 'Radicalisation Cases in the Family Courts': Guidance issued by Sir James Munby, President of the Family Division, on 8 October 2015,' [2].
[2] Cafcass, 'Study of data held by Cafcass in cases featuring radicalisation' (Cafcass, 2016).
[3] Ibid, 1 and HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism,' (Cm 9608, June 2018), 31.
[4] See: Annex Two.

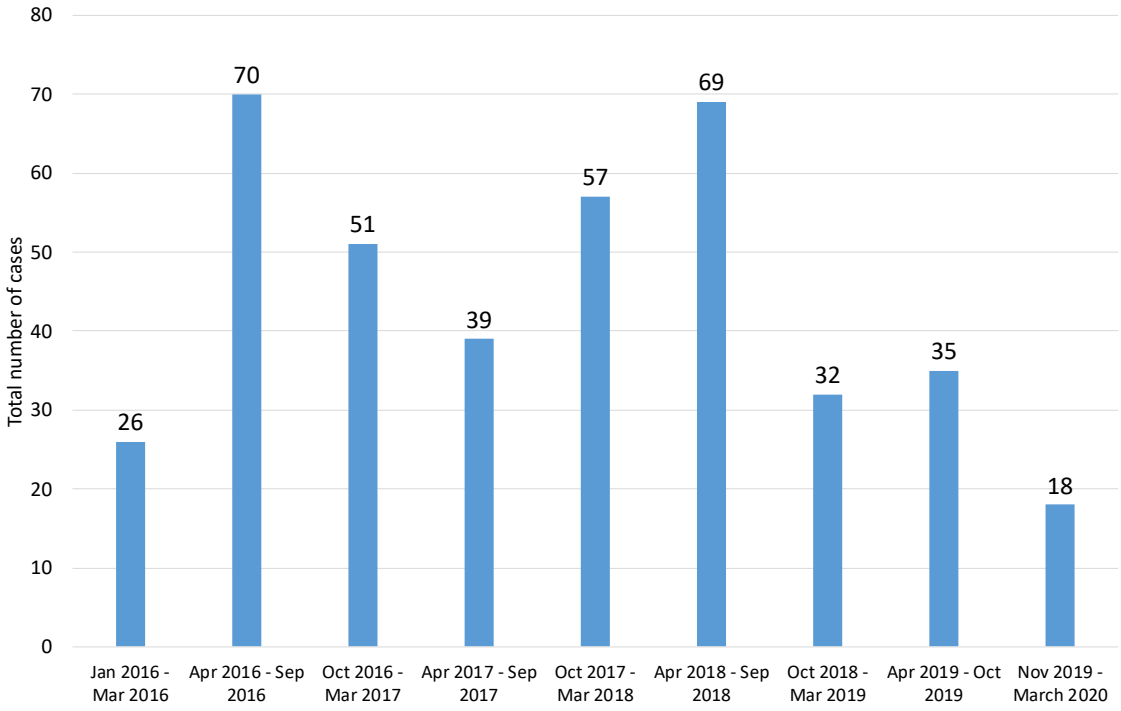

Figure 1

To understand how family law and counter-terrorism have interacted in recent years, it is also important to contextualise the radicalisation cases by examining the sociological make-up of the children and families involved. The heterogeneity of the radicalisation cases makes generalisations difficult. However, information gathered from textual analysis of the cases themselves and the interviews with Cafcass officers, barristers and solicitor who worked on the cases does indicate a number of noteworthy generic trends.

The first thing to note is that almost all of the children and families involved are Muslim.[5] Evidently, the type of radicalisation that is of interest to the local authorities and the family courts is *Islamist* radicalisation. Although there are a couple of published family cases where far-right extremism concerns have been raised,[6] these cases were not categorised as radicalisation cases.[7] Secondly, the families involved in the radicalisation cases come from a

[5] In some of the cases the parents no longer identify as Muslim, e.g. *Re M (Children)* [2014] EWHC 667 (Fam) and *Lancashire County Council v M and Others* [2016] EWFC 9.
[6] *Re A (Application for Care and Placement Orders: Local Authority Failings)* [2015] EWFC 11 and *Re V (Children)* [2015] EWHC B28 (Fam). My interviewees mentioned that there have been a couple of *unpublished* cases involving far-right extremism.
[7] The published cases involving far-right concerns were not listed as radicalisation cases in the President's *Guidance* on the

variety of socio-economic backgrounds and include both middle class and working-class families, although there appears to be a higher proportion of middle class families.[8] The families are described by the interviewees and by the judges as being mostly "normal," "stable" and "loving" families, where the only or main concern is radicalisation.[9] This mix of socio-economic backgrounds and relative normalcy and stability of the families involved sets the radicalisation cases apart from the very small number of family cases involving far-right extremism, which involve white working-class families and where the radicalisation concerns are accompanied by other concerns related to alcohol, drug abuse and violence.[10] It also distinguishes the radicalisation cases from the "usual" care cases which typically involve allegations of neglect, domestic violence, substance abuse and a general history of family chaos.[11] In the small number of cases where radicalisation concerns are raised alongside other matters, these are described as being "cultural" concerns that include social isolation, Female Genital Mutilation (FGM) and forced marriage.[12]

Thirdly, although the radicalisation cases feature both girls and boys, within the published radicalisation cases 39% of the children involved are girls while 61% are boys [see Figure 2].[13] As the discussion in Part II of the thesis will reveal, gender emerges as an important theme in the radicalisation cases. In the eyes of the judges, the risks involved 'differ according to gender.'[14] Whilst it is feared that radicalised boys might be seriously injured or even die during combat and become 'martyrs',[15] the fear is that girls will become 'Jihadi Brides'[16] and face sexual exploitation.

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radicalisation cases: *Guidance* (n1), [14].

[8] Interview with Barrister B, Barrister at Doughty Street Chambers (London, UK, 3 October 2017) and interview with Barrister E, Barrister at No5 Barrister Chambers (Telephone Interview, 21 May 2018).

[9] Although these are subjective terms, they were used by both the judges in the radicalisation cases: *London Borough of Tower Hamlets v B* [2015] EWHC 2491 (Fam), [5]; *Re X (Children) (No 3)* [2015] EWHC 3651 (Fam), [84]; *Re C, D, E (Radicalisation: Fact Finding)* [2016] EWHC 3087 (Fam) [6] and *HB v A Local Authority (Alleged Risk of Radicalisation and Abduction)* [2017] EWHC 1437 (Fam), [84].

[10] Interview with Cafcass Officer B, a senior employee at Cafcass (London, UK, 1 August 2017) and interview with Barrister E (n8).

[11] Andrew Bainham, *Private and public children law: an under-explored relationship* (2013) 25 Child and Family Law Quarterly, 138. Care proceedings are discussed in section (4).

[12] Interview with Cafcass Officer B (n10), interview with Barrister C, QC at St John's Buildings Barristers' Chambers (Telephone Interview, 30 October 2017) and interview with Barrister D, QC at 4PB Chambers (Telephone Interview, 1 November 2017. See also: Nikita Malik, *Radicalising our Children: An Analysis of Family Court Cases of British Children at Risk of Radicalisation 2013-2018* (Henry Jackson Society, February 2019), 39.

[13] See also: Malik (ibid), 20.

[14] *London Borough of Tower Hamlets v M and Others* [2015] EWHC 2350 (Fam), [4].

[15] Martin Downs and Susan Edwards, *Brides and martyrs: protecting children from violent extremism* (Family Law, 2015).

[16] *London Borough of Tower Hamlets v B* [2016] EWHC 1707 (Fam), [86].

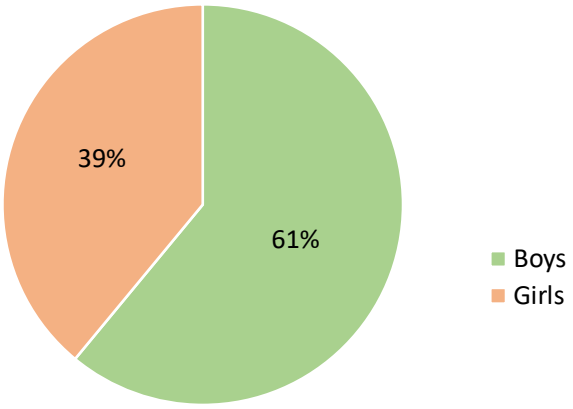

Figure 2

Fourthly, the radicalisation cases are concerned with children from a wide age-range, starting from 20 months and going up to 18 years (see Figure 3).[17] Interestingly, whilst the risk of radicalisation with regards to very young children between the ages of 0-10 appears to primarily stem from their parents, the concern with older children and teenagers is that they will radicalise themselves as a result of access to jihadist content online or through the influence of friends and siblings.[18] Despite the wide age distribution within the radicalisation cases and the different perceived sources of risk, judges have considered teenagers between 14-18 years to be 'particularly vulnerable.'[19]

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[17] *Re M (Wardship: Jurisdiction and Powers)* [2015] EWHC 1433 (Fam), [1] and *A Local Authority v Y* [2017] EWHC 968 (Fam), [1].
[18] Malik (n12), 10. See also: *London Borough of Tower Hamlets v B* (n16), Annex Report [30].
[19] *A Local Authority v Y* (n17), [1].

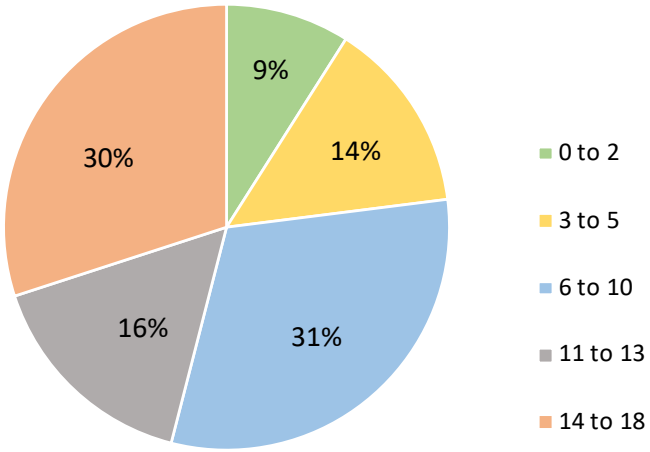

Figure 3

Finally, only 2% of the parents were actually convicted of terrorism offences (see Figure 4). While a sizeable minority of the radicalisation cases in the family courts were accompanied by concurring criminal terrorism investigations, in the vast majority of cases charges were dropped and/or investigations were discontinued.[20] A smaller minority of the parents were convicted of other non-terrorism offences (see Figure 4).

[20] The relationship between criminal and family law proceedings within the counter-terrorism context is explored in greater detail in Chapter Seven.

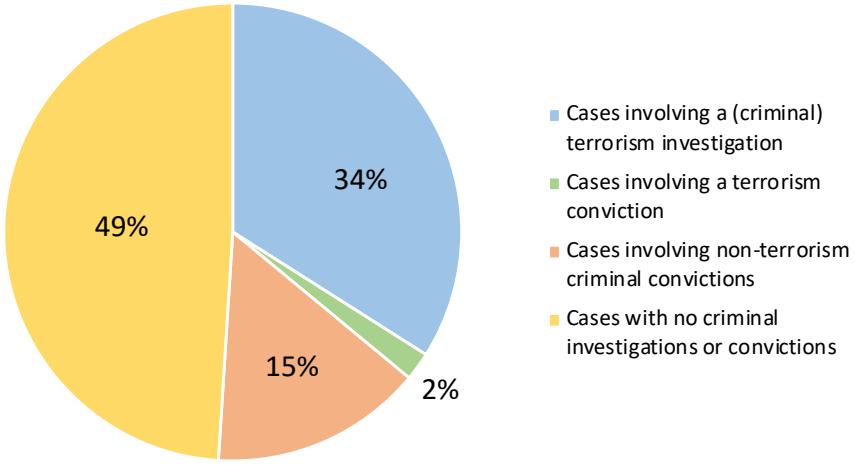

Figure 4

3. The Legal and Policy Context: The Rise of ISIS, the Foreign Terrorist Fighter Phenomenon and the Family Courts

The radicalisation cases have been brought to the family courts under the various statutory schemes and provisions of the Children Act 1989 (CA 1989). The CA 1989 includes private law provisions governing the exercise of parental responsibility[21] in issues related to the upbringing of children (i.e. residence, contact, religious upbringing and education) and the public law powers and duties that local authorities have in relation to the children and families in their areas.[22] Therefore, in the radicalisation cases ordinary child law under the CA 1989 applies. No specific measures have ever been introduced to enable the family courts to deal with children at risk of travelling to ISIS-held territories abroad, involvement in terrorism and/or radicalisation.[23]

[21] S. 3 (1) of the CA 1989 defines parental responsibility as the 'rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to a child or his property.'
[22] Andrew Bainham and Stephen Gilmore, *Children: The Modern Law* (Jordan Publishing, 2013), 54-55.
[23] This distinguishes the legal response to travel to ISIS-held territories in the Middle East and/or childhood radicalisation from the legal response to other, comparable, child-protection concerns such as FGM and forced marriage, where specific legislative measures were introduced empowering the family courts to make protection orders (e.g: s. 1 of the Forced Marriage (Civil Protection) Act 2007 and s. 73 and Sch 2 of the Serious Crime Act 2015.) However, childhood radicalisation was recently indirectly criminalised in the UK. See: S.5 of the Counter-Terrorism and Border Security Act 2019 and Home Office, 'Counter-Terrorism and Border Security Bill 2018: Overarching Fact Sheet' (6 June 2018), 1.

Nevertheless, a sharp increase in the number of radicalisation cases appearing before the family courts and the growth of media and public attention around the involvement of the family justice system in counter-terrorism coincided with the passing of the Counter-Terrorism and Security Act (CTSA) in 2015.[24] The CTSA 2015 is a significant piece of legislation that was introduced by the Coalition Government, amongst a host of other measures, to address the threat faced by the UK as a result of the establishment of ISIS in 2014 and the FTF phenomenon.[25] In what follows, I will demonstrate how the radicalisation cases formed part of the official UK response to the rise of ISIS and the FTF phenomenon, particularly as it pertained to children and families. I will outline some of the relevant factual particulars of the FTF phenomenon and the international and national legal and policy responses before discussing the role played by the radicalisation cases and family law more generally.

3.1 The Rise of ISIS and the FTF Phenomenon: Legislative and Policy Responses

FTFs are defined by the United Nations Security Council (UNSC) as,

> '…individuals who travel to a State other than their State of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict.'[26]

Around 6,000 individuals travelled from Western Europe to join ISIS and other terrorist organisations in Syria and Iraq.[27] Approximately 800 of the Europeans who travelled were from the UK, with around 20% being women and children.[28] Although travel to ISIS-held territories

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[24] Martin Downs, 'Police Anti-terrorism "Lead" calls for children to be protected from terrorist parents on a par with paedophilia' (UK Human Rights Blog, 1 March 2018) and interview with Cafcass Officer A, a senior researcher at Cafcass (Telephone Interview 11 November 2016).
[25] Jessie Blackbourn and Clive Walker, *Interdiction and Indoctrination: The Counter-Terrorism and Security Act 2015* (2016) 73 Modern Law Review 840, 840.
[26] UNSC Res 2178 (24 September 2014) UN Doc S/Res/2178, 2. Terrorism is not defined in this Resolution.
[27] Joana Cook and Gina Vale, 'From Daesh to 'Diaspora:' Tracing the Women and Minors of Islamic State' (International Centre for the Study of Radicalisation, 2018), 14.
[28] Katherine Brown, 'Returning Foreign Fighters- what are the ethical and practical responsibilities?' ('Perspectives,' University of Birmingham).

peaked in 2015 and early 2016, it began to decrease in late 2016 and 2017.[29] British FTFs have either been killed in combat or have returned to the UK.[30] Latest figures suggest that the UK has the highest rate of "returnee" FTFs in Europe; around 45% of the FTFs who travelled to join ISIS in Syria and Iraq have returned.[31]

As Clive Walker notes, in addition to military action, the official international and national responses to the rise of ISIS and the FTF phenomenon have been 'unrelenting.'[32] At the international level, the UNSC passed Resolution 2178 in September 2014, demanding that states take 'action against the threats to international peace and security caused by terrorist acts, including foreign terrorist fighters.'[33] The resolution specified that 'states must prevent suspected FTFs from entering or transiting their territories and must enact legislation to prosecute FTFs.'[34] The resolution also required member states to strengthen their policies and programmes that aim at countering violent extremism (CVE) in order to prevent the 'radicalisation, recruitment and mobilisation of individuals into terrorist groups and becoming foreign terrorist fighters.'[35] Noting these demands for action by the UNSC, the Council of Europe's Additional Protocol to the Convention on the Prevention of Terrorism 2015 required member states to prevent their citizens from travelling abroad for the purpose of terrorism.[36]

The fact that hundreds of British nationals had travelled to ISIS held territories in Syria and Iraq as FTFs posed a particularly urgent terrorist threat to the UK Government.[37] As a result, the terrorism threat level was raised to severe in August 2014.[38] In responding to ISIS and the FTFs phenomenon, the UK focused on both 'preventing citizens from attempting to join the Syria and Iraq conflicts as well as preventing those who are abroad and suspected of supporting

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[29] 'RAN Manual-Responses to Returnees: Foreign Terrorist Fighters and Their Families' (Radicalisation Awareness Network, July 2017), 7.
[30] Lizzie Dearden, 'Only one in 10 jihadis returning from Syria prosecuted, figures reveal' *Independent* (London, 21 February 2019).
[31] 'European Union Terrorism Situation and Trend Report 2019' (Europol, 27 June 2019), 42.
[32] Clive Walker, *Foreign Terrorist Fighters and UK Counter-Terrorism Laws* (2018) 2 Asian Yearbook of Human Rights and Humanitarian Law 177, 177.
[33] Ibid and UNSC Res 2178, (n26). The call for action was reiterated by the Security Council in UNSC Res 2249 (20 November 2015) UN Doc/ S/ Res/2249.
[34] UNSC Res 2178, (ibid), 1.
[35] Ibid, 6.
[36] CETS No.217.
[37] Blackbourn and Walker (n25), 844.
[38] Walker (n32), 177.

the activities of Islamic State… from returning home.'[39] A combination of criminal and non-criminal measures were used to interdict suspected would-be FTFs and to prevent or manage their return.[40]

In terms of criminal justice responses, the absence of a specific offence criminalising the act of being a FTF meant that the authorities in the UK relied on pre-existing terrorism offences, mainly preparatory offences criminalising conduct that involves preparation for an act of terrorism.[41] However, given the difficulties in establishing motivation and intent for engaging in preparatory terrorist conduct and the challenge of collecting admissible evidence from war-zones that could establish guilt to the criminal standard of proof, criminal justice responses unsurprisingly formed only a small part of the overall response to the FTF phenomenon.[42] The Government relied more heavily on both pre-existing and new citizenship, immigration and travel measures to disrupt the travel of suspected would-be FTFs[43] and to prevent, or at least manage, the return of incoming FTFs.[44]

Implementing the UN Security Council's call under Resolution 2178 for member states to strengthen their CVE policies and programmes,[45] the Government also expanded and fortified its existing counter-radicalisation programmes, most notably the *Prevent* Strategy and the *Channel* programme. The *Prevent* Strategy, officially introduced in 2006,[46] is one of four strands that make up the UK Government's official counter-terrorism policy, CONTEST.[47] Its stated aim is to 'safeguard and support those vulnerable to radicalisation to stop them from becoming terrorists or supporters of terrorism.'[48] The *Channel* programme, which has been running in England and Wales since 2007, is connected to the *Prevent* Strategy. It is a multi-

[39] Jessie Blackbourn, Deniz Kayis and Nicola McGarrity, *Anti-Terrorism Law and Foreign Terrorist Fighters* (Routledge Focus, 2018), 65.
[40] Blackbourn and Walker (n25), 840.
[41] Blackbourn, Kayis and McGarrity (n39), 25-26.
[42] Ibid, 14-21.
[43] E.g. Schedule 1 of the CTSA 2015 allows a constable to temporarily retain an individual's passport and travel documents if they reasonably suspect that they are attempting to exit the country to engage in terrorism abroad.
[44] E.g. ss 2-15 of the CTSA 2015 introduced Temporary Exclusion Orders (TEOs). See: Blackbourn and Walker (n25), 850-851.
[45] UNSC Res 2178, (n26), 6.
[46] Although *Prevent* existed since 2003, it was officially activated in 2006.
[47] The other strands are Pursue, Protect and Prepare: HM Government, 'CONTEST' (n3).
[48] Ibid, 5.

agency programme that provides support to those considered to be at risk of radicalisation.[49] Part V of the CTSA 2015 elaborated and reinforced both the *Prevent* Strategy and the *Channel* programme.[50] Section 26 of the CTSA 2015 introduced the 'Prevent Duty,' placing the *Prevent* Strategy on a statutory footing for the first time. Section 36 of the CTSA 2015 introduced 'a statutory obligation for local authorities to maintain'[51] the *Channel* programme.

3.2 The FTF Phenomenon, Children and the Family Courts

The FTF phenomenon is a multifaceted phenomenon. One of its important facets is that not all those who travelled to ISIS-held territories actually engaged in combat.[52] Rather, there was 'a wide spectrum of involvement [ranging from] those fighting on the front line to children who were taken by their parents to the conflict zones or were even born there.'[53]

The involvement of children, both as FTFs and as the children of FTFs, is an important aspect of the rise of ISIS and the FTF phenomenon.[54] ISIS adopted an explicit policy of targeted recruitment directed at children and young people.[55] The numbers indicate that 25% of those who travelled from Western Europe to join ISIS were minors under the age of 18 and 47% of the returnees from Western Europe are minors.[56] The official numbers for the UK are, however, lower. Recent studies indicate that 50 minors travelled from the UK to ISIS-held territories, representing 6% of the overall number of British individuals who travelled from the UK and less than 1% of the overall number of returnees.[57] Official estimates also suggest that approximately 100 children were born to British parents in ISIS-held territories.[58]

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[49] Blackbourn and Walker (n25), 864.
[50] Ibid, 841.
[51] Ibid, 864.
[52] Blackbourn, Kayis and McGarrity (n39), 4.
[53] Ibid.
[54] Walker (n32), 190.
[55] '*Handbook* Children Affected by The Foreign-Fighter Phenomenon: Ensuring a Child Rights-Based Approach' (United Nations Office of Counter-Terrorism UN Counter-Terrorism Centre, 30 September 2019), 9-13.
[56] Cook and Vale (n27), 14.
[57] Ibid, 17.
[58] Joana Cook and Gina Vale, 'From Daesh to 'Diaspora' II: The Challenges Posed by Women and Minors After the Fall of the Caliphate' (International Centre for the study of Radicalisation, July 2019), 21.

The impact of the rise of ISIS and the FTF phenomenon on children was immediately recognised by international bodies as an important and complicated issue that required careful legal and policy responses. Therefore, in Resolution 2178 discussed above, the UNSC called on member states to address the FTF phenomenon by 'preventing radicalisation to terrorism and [the] recruitment of foreign terrorist fighters, including children.'[59] Following the demise of ISIS, the concern with children increased. In its Resolution 2396 addressing the threat posed by returning FTFs, the UNSC reminded members states that although "returnee" children may have supported, facilitated and committed terrorist acts, the prosecution of children must accord with international law and must respect their rights and dignity.[60] The resolution also underscored the importance of member states considering options beyond criminal prosecution, such as rehabilitation strategies, stressing that "returnee" children are often themselves the victims of terrorist organisations.[61] The use of family law interventions, including the removal of children from the care of FTF parents and the regulation of parental responsibility, was identified as a non-criminal justice option by the UN Office for Counter-Terrorism, although it emphasised that such a measure must only be used if other, less intrusive, measures are not available.[62] In so far as the FTF phenomenon impacts children, family law was regarded as a domestic area of law that could provide specialist, albeit intrusive, solutions.

The UK Government also responded to the problem of children either becoming FTFs or travelling with FTFs by using a combination of criminal justice and non-criminal justice measures. In terms of criminal justice responses, the rise in the number of children arrested for terrorism offences in the years between 2015-2018 is noticeable.[63] Particularly in 2017 and 2018, minors under 18 accounted for 6% of terrorism arrests, representing the highest proportion of under 18s arrested since data collection began in 2001.[64] However, non-criminal

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[59] UNSC Res 2178, (n26), [4].
[60] UNSC Res 2396 (21 December 2017) UN Doc S/Res/ 2396, [31] and [37].
[61] Ibid, 31. Also see: UNGA Res 72/284 (26 June 2018), [39].
[62] '*Handbook*' (n55), 52-53.
[63] Walker (n32), 190.
[64] Ibid. See: Home Office, 'Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes, and stop and search, Great Britain, quarterly update to September 2015 Statistical Bulletin 08/15' (London, 2015), 1 and Home Office, 'Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes, and stop and search, Great Britain, quarterly update to December 2018' (London, 2018), 14.

justice responses were more prevalent.[65] For example, in August 2015, the Government issued a guidance to parents and guardians detailing how they can request the cancellation of the passport of a child who is at risk of travelling to ISIS-held territories abroad.[66] Children considered to be at risk of travelling on their own and the children of outgoing and incoming FTFs have also been referred to the *Channel* programme.[67] If the child in question is considered to be at risk of radicalisation, a *Channel* panel led by the local authority will offer the child tailored support in areas including education, employment, mental health support and ideological mentoring to equip them with the skills necessary to resist being drawn into terrorism.[68] While participation in the *Channel* programme is voluntary, if support from *Channel* is declined by the parent or guardian of a child considered to be at risk of significant harm, the *Channel* panel might consider that a referral to statutory services under the CA 1989 is necessary.[69]

According to Walker, the more frequent state response to the children of FTFs or the children who are themselves at risk of becoming FTFs has been recourse to the family courts.[70] Walker argues that the more traditional, adult-focused counter-terrorism laws and policies were ill-equipped to deal with the specific issues and concerns that arise out of the involvement of children in the FTF phenomenon.[71] Walker maintains that criminal, administrative and police-led counter-terrorism initiatives are geared towards the protection of national security and do not take into consideration the welfare interests and specific needs of children as required by international human rights law.[72] Family law plugged in some of the gaps within the UK Government's counter-terrorism arsenal.[73] Therefore, in seeking an effective and appropriate response to the problem of children travelling to ISIS-held territories, Walker claims that the UK authorities 'inventively resorted'[74] to family law.

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[65] Walker (n32), 201.
[66] Ibid, 194. See: HM Passport Office, 'Cancelling the passport of a child at risk of radicalisation' (London, 25 August 2015).
[67] HM Government, 'CONTEST' (n3), 37-38.
[68] Ibid, 37.
[69] Ibid, 39.
[70] Walker (n32), 201.
[71] Ibid.
[72] Ibid; i.e. Article 3 United Nations Convention on the Rights of the Child.
[73] Blackbourn and Walker (n25), 848.
[74] Ibid.

In a similar vein, Susan Edwards argues that criminal law does not take into account or adequately address the vulnerability of children who travelled or who attempted to travel to ISIS-held territories.[75] According to Edwards, children at risk of involvement in the FTF phenomenon require protection as opposed to criminalisation.[76] Edwards maintains that the family courts led the way in terms of protecting children, especially girls, from being targeted by ISIS for recruitment and potential travel to Syria and Iraq without unnecessary criminalisation.[77] Looking at radicalisation cases involving wardship proceedings, Edwards argues that family law provided the state with creative, non-criminal solutions that have enabled it to both protect children who are at risk of travelling to Syria and Iraq, and return those children who have been taken by parents to Syria and Iraq.[78]

A similar characterisation of the radicalisation cases is also present in Government literature. For example, in its 2015 report on the implementation of CONTEST, the Government stated that as part of its coordinated effort to prevent travel to areas impacted by the Syrian and Iraqi conflicts, the family courts protected children from travelling to ISIS-held territories.[79] The Government claimed that by the end of 2015, around 50 children had been protected by the family courts from travel to conflict zones in the Middle East.[80] Similarly, in her review of integration policies in the UK, Dame Louise Casey, a former Government official specialising in social welfare issues, identifies the radicalisation cases as successful examples of the Government's campaign to prevent travel to ISIS-held territories.[81] Finally, in its latest CONTEST policy document, the Government stated that in addition to policing, administrative law and other measures pertaining to citizenship and passports, the family courts were relied on to 'stop individuals suspected of wishing to engage in terrorism from travelling overseas to Syria and Iraq.'[82]

The preceding discussion shows that in responding to the challenge posed by ISIS and the FTF

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[75] Susan Edwards, *Protecting schoolgirls from terrorism grooming* (2015) 3 International Family Law 236, 236-237.
[76] Ibid, 237-238.
[77] Ibid.
[78] Ibid, 241-242. Wardship is discussed in section (4).
[79] HM Government, 'CONTEST: Annual Report for 2015' (Cm.9310, London, 2016), 16.
[80] Ibid.
[81] HM Government, 'The Casey Review: A review into opportunity and integration' (December 2016), 134.
[82] HM Government, 'CONTEST' (n3), 50.

phenomenon, the UK Government both adapted its existing counter-terrorism legislation and introduced new measures. What is striking about the UK's response is the "whole of Government" approach.[83] The Government relied on the criminal jurisdiction, administrative jurisdiction, immigration and citizenship laws, as well as pastoral programmes.[84] The resort to the family justice system in cases involving children formed an important part of this holistic response to the FTF phenomenon.

4. The Legal and Policy Context: Beyond ISIS and the FTF Phenomenon

It is not surprising, therefore, that the radicalisation cases were understood and characterised as an important protective response to the FTF phenomenon and the issue of children and families travelling to Syria and Iraq. The previous section shows that in Government and early academic literature, the radicalisation cases are discussed almost exclusively by reference to governmental responses to the FTF phenomenon.[85] According to these accounts, the radicalisation cases represent a necessary 'foray by family law into the realms of counter-terrorism'[86] in response to a set of specific and urgent set of circumstances: the rise of ISIS, its targeting and recruitment of children and the problem of children travelling, either on their own or with their FTF parents, to ISIS-held territories in the Middle East.

But while this particular context is certainly important for understanding the nature of the interaction between family law and counter-terrorism in recent years, it neither fully captures nor conveys the complexity and wider significance of the radicalisation cases. Therefore, although I acknowledge that the rise of ISIS and the FTF phenomenon are important features of the interaction between family law and counter-terrorism in recent years, in this section I will argue against viewing the interaction exclusively, or even primarily, through the lens of

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[83] Fionnuala Ni Aolain, 'Human rights impact of policies and practices aimed at preventing and countering violent extremism: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism' (Human Rights Council, 24 Feburary-20 March 2020), 12.
[84] Blackbourn, Kayis and McGarrity (n39), 12.
[85] I say *early* academic literature because the few subsequent academic pieces on the radicalisation cases, considered and discussed in Parts II and III, acknowledge their wider importance.
[86] Clive Walker, *Foreign Terrorist Fighters and UK Counterterrorism Law* in David Anderson, *The Terrorism Acts in 2015: Report of the Independent Reviewer in the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006* (December 2015), 128.

ISIS and the issue of travel. This section will examine the wider counter-terrorism policy landscape and will highlight the diversity of the radicalisation cases, both in terms of the kind of family law proceedings they involve and the nature of the concerns that led to their emergence in the family courts in the first place. In doing so, this section will argue that the radicalisation cases have facilitated a fuller, more comprehensive interaction between family law and counter-terrorism that embraces and goes beyond the FTF phenomenon.

4.1 Counter-Terrorism Policy, Child-Protection and Safeguarding

It is true that the interaction between family law and counter-terrorism only really began to gather momentum and garner public and media attention as a result of the rise of ISIS and the FTF phenomenon. However, it is important to recognise that the interaction between counter-terrorism policy and the child-protection and safeguarding systems, which are important pillars of public family law and the wider family justice system, predated the issue of children and families travelling to ISIS-held territories.

Since at least 2007, extremism and radicalisation have been treated as child-protection and safeguarding risks, which local authorities and other state agencies working with children must prevent and counter. As pointed out earlier, in 2007, the New Labour Government introduced the *Channel* programme. Significantly, *Channel* was presented as a safeguarding programme that focused its efforts on young people under 18 years of age and 'relied upon the vigilance and cooperation of social workers, youth workers, health workers and teachers'[87] in identifying those deemed at risk of radicalisation. Consequently, preventing and countering terrorism, extremism and radicalisation began to be treated as a safeguarding matter.

In its *Prevent* Strategy guidance to local authorities and partner agencies in 2008, the Government *explicitly* identified extremism and radicalisation as child-protection and

[87] Vicki Coppock and Mark McGovern, "*Dangerous Minds"? Deconstructing Counter-Terrorism Discourse, Radicalisation and the "Psychological Vulnerability" of Muslim Children and Young People in Britain* (2014) 28 Children and Society 242, 246.

safeguarding concerns.[88] Since then, in both its counter-terrorism policy literature[89] and child-welfare policy documents,[90] both the New Labour and Coalition Government increasingly stressed the need for schools and children's services departments in local authorities to incorporate preventing terrorism, extremism and radicalisation into their usual safeguarding and child-protection duties.[91] As a result, both the *Prevent* Strategy and *Channel* were embedded within children's child-protection and safeguarding protocols. This culminated in the introduction of the 'Prevent Duty' under the CTSA 2015 discussed earlier. Under section 26 of the CTSA 2015, a number of specified public bodies, including local authorities, schools, child-care providers, the police and health and social care providers, are under a legal obligation to 'have due regard to the need to prevent people from being drawn into terrorism.'[92]As such, preventing terrorism became a *statutory* duty.

This construction of radicalisation and extremism as child-protection and safeguarding risks was also present within official and media discourses well before the FTF phenomenon brought it centre-stage. In early 2014, before the declaration of the ISIS Caliphate and the escalation of the concern with FTFs, the then Mayor of London Boris Johnson claimed that a record number of Muslim children were being radicalised by their parents at home.[93] Therefore, he argued, the 'law should obviously treat radicalisation as a form of child abuse… so that those children who are being turned into potential killers or suicide bombers can be removed into care - for their own safety and for the safety of the public.'[94] These comments sparked a conversation on the role that the law, in particular family law, can play in protecting children from radicalisation within their homes.[95]

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[88] HM Government, 'The Prevent Strategy: A Guide for Local Partners in England. Stopping people becoming or supporting terrorists and violent extremists' (2008), 47.
[89] HM Government, 'Channel: Supporting Individuals Vulnerable to Recruitment and Violent Extremism (2010) and HM Government, Channel: Vulnerability assessment framework' (October 2012), 2.
[90] Department for Children, Schools and Families (2010), 'Working Together to Safeguard Children' chapter 11 and HM Government, (2015) 'Working Together to Safeguard Children' chapter 1.
[91] 'A Guide for Local Partners' (n88), pg. 27 and 47. See also: HM Government, 'Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children' (July 2018), 12-13.
[92] Ss. 6 and 26 of the CTSA 2015.
[93] Boris Johnson, 'The children taught at home about murder and bombings' *Daily Telegraph* (London, 2 March 2014).
[94] Ibid.
[95] 'Boris Johnson: Children at risk of radicalisation should be in care' *BBC News* (London, 3 March 2014); Thomas Bridge, 'Take children at risk of radicalisation into care, Boris Johnson says' *LocalGov* (3 March 2014) and 'In Theory: Is 'radicalisation' child abuse?' *LA Times* (7 March 2014).

Therefore, while the interaction between family law and counter-terrorism can be *partly* understood as a response by the state to the problem of children travelling to ISIS-held territories, a consideration of the wider policy and discourse context shows that the interaction between counter-terrorism policy and child-protection and safeguarding policies and systems predated this specific phenomenon. The family justice system, in the form of child-protection and welfare agencies, had already been involved in preventing and countering extremism and radicalisation, and a place for the family courts within counter-terrorism was already established within the public imagination.

4.2 The Diversity and Complexity of the Radicalisation Cases

This fuller, more comprehensive interaction between family law and counter-terrorism is also reflected in the history, diversity and complexity of the radicalisation cases themselves. Although the Government and early academic literature focuses almost exclusively on the radicalisation cases involving planned or attempted travel to ISIS-held territories in the Middle East, there are 'many different manifestations of "radicalisation" within family law proceedings.'[96]

In what follows, I divide the radicalisation cases into three main categories according to the family court proceedings that are involved: private law radicalisation cases, wardship radicalisation cases and public law radicalisation cases. I then provide a detailed, factual exposition of the radicalisation cases under each category. Doing so allows for a deeper and more critical analysis of the interaction between family law and counter-terrorism. It shows that whilst some categories of radicalisation cases did indeed form part of the state's response to the FTF phenomenon, the same cannot be said of other categories which are motivated by a multiplicity of concerns, address a variety of issues and cannot be reduced to the specifics of ISIS and the FTF phenomenon.

[96] Cafcass Study (n2), 7.

4.2.1 Private Law Radicalisation Cases

Private law family cases arise when the courts are called upon to adjudicate a dispute between parents over specific aspects of their child's or children's upbringing.[97] They commonly, although not exclusively, develop in the context of a divorce or separation.[98] Under section 8 (1) of the CA 1989, as amended by the Children and Families Act 2014, there are three main private law orders, commonly referred to as section 8 orders, which the courts can make when resolving private family disputes. These orders, which regulate the exercise of parental responsibility, are Child Arrangement Orders,[99] Prohibited Steps Orders[100] and Specific Issue Orders.[101] In resolving such disputes, the courts must apply the welfare principle under s.1 of the CA 1989, which stipulates that when deciding a matter pertaining to a child's upbringing, the child's welfare is the court's paramount consideration. When applying the welfare principle, the courts usually need to also consider the statutory checklist of welfare factors listed under section 1 (3) of the CA 1989.[102]

Radicalisation concerns have been raised in private law proceedings between disputing parents. Only a small number of the published radicalisation cases are private law radicalisation cases.[103] However, Cafcass' study shows that between June 2015 and January 2016, 20% of the radicalisation cases involved private law proceedings.[104] Cafcass' responses to FOI requests, as captured by Figures 5 and 6 below, indicate that the number of private law

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[97] Bainham and Gilmore (n22), 193.
[98] Sonia Harris-Short, Joanna Miles and Robert George, *Family Law: Texts Cases and Materials* (OUP 2015), 729.
[99] A Child Arrangement Order regulates arrangements relating to with whom a child is to live, spend time or otherwise have contact.
[100] A Specific Issue Order gives directions for the purpose of determining a specific question which has arisen or which may arise in connection with any aspect of parental responsibly for the child.
[101] A Prohibited Steps Order prevents a party with parental responsibility (usually a parent) from making certain decisions regarding the child's upbringing.
[102] The welfare checklist includes the ascertainable wishes of the child, their physical, emotional and educational needs, the likely effect on the child of any change in their circumstances, the child's age, sex and background, any harm that they have suffered or are likely to suffer, the capability of each parent or other relevant persons to meet their needs and the range of powers available to the court under the CA 1989. It is worth noting, however, that the welfare checklist under s. 1 (3) CA 1989 does not apply to every situation where the welfare principle is applied (i.e. in decisions involving the inherent jurisdiction.) Moreover, the application of the welfare checklist is compulsory only in circumstances detailed in s 1(4), which include a contested application to make, vary, or discharge a s.8 order or an application to make, vary, or discharge a special guardianship order or an order under Part IV of the Act.
[103] Only three of the published radicalisation cases involve private law proceedings. According to my interviewees, the majority of private law radicalisation cases have not been published.
[104] Cafcass Study (n2), 2.

radicalisation cases increased and steadied over the years and now form the majority of the radicalisation cases. Therefore, although publicly available information about private radicalisation cases is mostly missing and although they have been ignored in the Government and early academic literature, they form an important part of the recent interaction between family law and counter-terrorism and warrant closer attention.

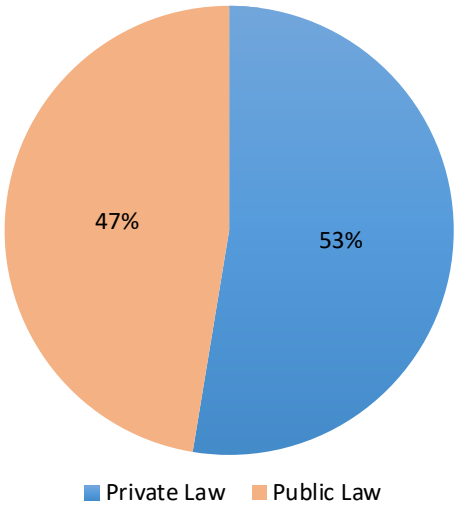

Figure 5

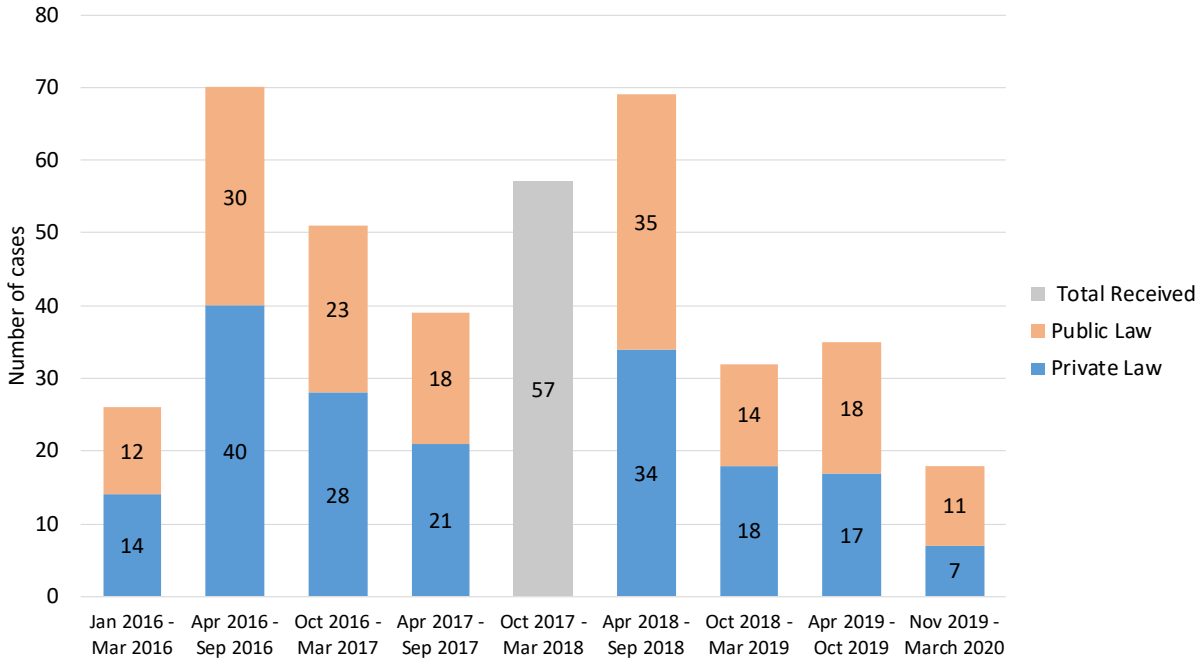

Figure 6[105]

The published private law radicalisation cases involve disputes over the issue of contact between separating or separated parents. In these cases, one parent accuses the other of holding extremist beliefs that can radicalise and therefore harm the child(ren) in question. For example, in *Re M (Children)*,[106] the first published radicalisation case, the mother alleged, during the course of a dispute regarding the amount of contact between the father and his children, that the father had forced his son to watch Jihadist DVDs in order to radicalise him. Similarly, in *Re M (Children),*[107] the second published radicalisation case, the mother made a number of serious allegations against the father. However, following the accusation made by the mother during the course of the proceedings that the father tried to indoctrinate the children with extremist ideas, the local authority also applied for a supervision order and the hearing was adjourned to investigate the radicalisation accusations further. Finally, in *Re A and B (Children: Restrictions on Parental Responsibility: Radicalisation and Extremism)*[108] the

[105] The data provided by Cafcass for October 2017-March 2018 was not divided into public and private radicalisation cases; only the total number of radicalisation cases was disclosed. See: Annex Two.
[106] *Re M (Children)* [2013] EWCA Civ 388.
[107] (n5).
[108] [2016] EWFC 40.

mother made an application for a number of section 8 orders, accusing the father of being an extremist individual who supported the cause of Islamist terrorist groups, such as ISIS.

Interestingly, in the private law radicalisation cases, allegations of extremism and radicalisation have proved difficult to substantiate and have mostly been unsuccessful, failing to reach the requisite evidentiary threshold.[109] Yet, as Figure 6 indicates, this has not deterred disputing parents from making accusations of radicalisation against each other in private law proceedings. My interviewees speculated that the reason why allegations of radicalisation continue to form 'part of the separation weaponry'[110] used by disputing parents against each other is that some parents and their counsel think that making an accusation of radicalisation is a strategic way of giving an otherwise unremarkable family case a higher profile and sense of urgency.[111] They suggested that since radicalisation is a present-day 'moral panic,'[112] it has become all too easy for a parent who does not wish for their child to have contact with the other parent to make allegations of radicalisation.[113] It seems that radicalisation is becoming a contemporary social (and legal) category of parental deviance.[114]

Although the number of published private law radicalisation cases remains small, these cases are nonetheless important in terms of understanding the nature of the interaction between family law and counter-terrorism in recent years. Firstly, they show that the emergence of the radicalisation cases in the family courts predated the rise of ISIS and the FTF phenomenon. The first published radicalisation case just referred to, *Re M (Children)*,[115] was decided in early March 2013 and the second published radicalisation case, *Re M (Children)*,[116]appeared in the

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[109] Re *A and B* (ibid); *Re M* (n106), and interview with Cafcass Officer B (n10). Although some of the interviewed barristers said that allegations in the unpublished private law radicalisation cases they have been working were substantiated: interview with Barrister B (n8) and interview with Barrister E (n8).
[110] Anthony Douglass, 'The Needs of Children in Cases Featuring Radicalisation' *Cafcass Blog* (London, 22 November 2016).
[111] Interview with Cafcass Officer B (n10) and interview with Barrister C (n19). There is a parallel between accusations of radicalisation and accusations of child sexual abuse in private law disputes. The latter encouraged academic concern. See: Elissa P Benedek and Diane H Schetky, 'Allegations of sexual abuse in child custody and visitation disputes' in Elissa P Benedek and Diane H Schetky (eds), *Emerging Issues in Child Psychiatry and the Law* (Brunner/Mazel, 1985).
[112] Cafcass Officer B (n10). See: Chapter Three.
[113] Interview with Solicitor A, Solicitor at Fountain Solicitors (Telephone Interview, 9 May 2018).
[114] Parental "deviance" is discussed in Chapter Five. See: Helen Reece, *Was there, is there and should there be a presumption against deviant parents?* [2017] Child and Family Law Quarterly 9, 10–14.
[115] (n106).
[116] (n5).

family court in early March 2014, meaning that in both cases proceedings were initiated months, if not years, before children and families started to travel to ISIS-held territories in the Middle East. Secondly, it is not surprising that the allegations and concerns that were raised in these cases do not involve travel to Syria and Iraq. The focus in these cases is on the alleged religious *extremism* of parents. These facts, and the growth over the years in the number of private law radicalisation cases appearing before the family courts (Figures 5 and 6 above), demonstrates why the interaction between family law and counter-terrorism should not be understood chiefly as a response to the specifics of ISIS and the FTF phenomenon.

4.2.2 Wardship Radicalisation Cases

Even though, as Figures 5 and 6 indicate, in the overall majority of cases radicalisation concerns have been raised within the context of private family court proceedings, the majority of the *published* radicalisation cases involve either wardship and/or public law proceedings. Whereas in private family law the state intervenes in the lives of families at the behest of the disputing parents, the nature of the state's involvement in the lives of families in wardship and public law cases is different. In the latter category of cases, the state (through its local authorities and courts) intervenes *compulsorily* in the lives of families to protect children from significant harm.[117]

One of the striking aspects of the radicalisation cases is the use of wardship under the inherent jurisdiction of the High Court.[118] The inherent jurisdiction stems from the ancient common law duty of the Crown as *parens patriae* ('parent of the nation')[119] to protect its subjects, particularly children and the vulnerable.[120] The power of the Crown to protect has since been vested in the High Court. Wardship is one of the tools available to the High Court under the

[117] Reece (n114), 10.
[118] Edwards, (n75), 237-240.
[119] John Seymour, *Parents Patriae and Wardship Powers: Their Nature and Origins* (1994) 14 Oxford Journal of Legal Studies 159, 159.
[120] Rob George, *The inherent jurisdiction and child protection* (2015) 37 Journal of Social Welfare and Family Law 250, 250.

inherent jurisdiction.[121] When invoked, it grants the High Court parental responsibility over a child so that all major decisions that need to be made in the child's life, including travel abroad, must be referred back to the High Court for approval, allowing it to supervise the child's welfare on an ongoing basis.[122] Although the CA 1989 strictly regulated and limited wardship, leading to a significant reduction in its use in family cases,[123] because the status of a ward of the High Court of England and Wales is internationally recognised,[124] it is still used in family cases with an international dimension, including international abduction cases and cases where girls are feared to be at risk of FGM or forced marriage abroad.

As such, wardship was viewed as being particularly appropriate in the radicalisation cases involving alleged, attempted or planned travel to ISIS-held territories. The reliance of local authorities and family courts on wardship orders in these early radicalisation cases led some to argue that the wardship jurisdiction has enjoyed something of a revival in recent years.[125] In these cases, wardship was used to either prevent children and/or parents from travelling to ISIS-held territories or to repatriate those who had already attempted to cross the Turkish-Syrian borders to join terrorist groups. However, the majority of the wardship radicalisation cases involve older children who attempted or are judged to be at risk of attempting to travel, *on their own*, to ISIS-held territories and whose parents are unable to protect them. This is because, generally speaking, care and/or supervision proceedings for children who are 16 years or above are uncommon and are regarded as only having a limited effect.[126]

For example, in *Re Y (A Minor: Wardship)*[127] the local authority applied for wardship orders because it feared that Y, a 16-year-old boy whose brothers had already died in Syria, was at risk of going to Syria himself, especially since his mother was unable to prevent him from travelling. In granting the local authority's application, Hayden J found that Y was at risk of following his brothers to Syria and that wardship provided a useful and proportionate way of

[121] Ibid.
[122] Ibid.
[123] Ibid.
[124] *London Borough of Tower Hamlets v M and Others* (n14), [9].
[125] Malik (n12), 23.
[126] Care/supervision orders cannot be ordered if a child is 17 years of age: S. 31 (3) CA 1989. See also: Sarah Williams, 'Radicalisation: a proportionate response' (Family Law Week, 28 October 2015).
[127] [2015] EWHC 2098 (Fam), [4].

protecting him.[128] In *Brighton and Hove City Council v. Mother*,[129] the same judge considered the local authority's application for renewing Y's wardship. Fearing that Y was still at risk of radicalisation and travel to Syria and finding that wardship had protected him from these risks thus far, Hayden J granted the local authority's application for renewal. However, the local authority was concerned that Y would be unprotected after turning 18, when wardship automatically falls away. As such, in *A Local Authority v Y*,[130] Hayden J approved a bespoke service agreement that centred around Y's needs and was designed to prevent his radicalisation and travel to Syria until he turned 21.[131]

The parents' perceived inability to adequately protect teenage children from suspected travel is also present in *London Borough of Tower Hamlets v M and Others*,[132] a case involving two separate wardship applications by two local authorities regarding a number of children in their areas who were deemed to be at risk of travelling to Syria. Likewise, in *Re Z*,[133] Hayden J granted the local authority's application to make Z (a 17-year-old girl) a ward of court.[134] Z was regarded by the local authority to be radicalised after she attempted to travel to Turkey with the intention of going to Syria. Finding that Z was at risk of both travelling to Syria and being subjected to a forced marriage, Hayden J found that she was in need of the protection afforded by a wardship order. By contrast, *Re M (Wardship: Jurisdiction and Powers)* [135] is a slightly different wardship case involving parents who allegedly attempted to travel to Syria with their young children. The local authority applied to make four children wards of court after the family was detained by the Turkish authorities near the Syrian border. Munby P made the children wards of court to ease their repatriation to the UK.[136]

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[128] Ibid.
[129] [2015] EWHC 2099 (Fam).
[130] [2017] EWHC 968 (Fam), [10].
[131] The local authority's Director of Children's Services agreed to authorise a bespoke service to Y that mirrors the support that is given to care leavers and that Y would have been legally entitled to had he been the subject of a care order, rather than a wardship order.
[132] (n14).
[133] [2015] EWHC 2350 (Fam)
[134] Ibid, [7].
[135] (n13).
[136] Given the cooperation of the parents, the wardship orders were discharged in *Re M (Children) (No 2)* [2015] EWHC 2933 (Fam).

The preceding discussion indicates that unlike private law radicalisation cases, wardship cases are concerned with either preventing children from travelling to ISIS-held territories or repatriating them back to the UK in cases where they had already travelled abroad. As such, it is fair to say that *wardship* radicalisation cases have formed an important part of the British state's response to the problem of children and families travelling to ISIS-held territories in the Middle East. The involvement of the family courts in counter-terrorism before the rise of ISIS appears to have provided the authorities in the UK with a non-criminal and child-centred option for dealing with the children at risk of travelling with or becoming FTFs. This option was then taken up by the authorities in response to the FTF phenomenon. According to all of my interviewees, while the family justice system had been involved in counter-terrorism before the emergence of the FTF phenomenon, the involvement was minimal and not widely recognised. This changed alongside the high number of wardship radicalisation cases appearing in the family courts during 2015 and early 2016 and their associated media attention, thereby entrenching and making visible the interaction between family law and counter-terrorism.

4.2.3 Public Law Radicalisation Cases

The overwhelming majority of the *published* radicalisation cases involve public law proceedings. Public family law authorises state intervention and regulation of private and family life. The CA 1989 outlines the duties and powers that local authorities have to support and protect children in their vicinity.[137] These can be divided into two categories: those specified in Part III of the CA 1989 that allow local authorities to offer *voluntary* early help and support services to children and families 'in need'[138] who are free to accept or reject them, and those specified under Parts IV and V of the CA 1989 that empower local authorities to investigate[139] concerns or allegations of significant harm and to take action and intervene, with court authorisation, in a *compulsory* manner.[140]

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[137] Thomas Chisholm and Alice Coulter, 'Safeguarding and radicalisation: Research Report' (Department for Education, August 2017), 8.
[138] S.17 CA 1989.
[139] S.47 CA 1989.
[140] Ss 31, 44 and 46-48 CA 1989.

i. Voluntary Child-Protection

As I mentioned earlier, under section 26 of the CTSA 2015 public bodies, including local authorities, have a statutory duty to prevent individuals, including children, from being drawn into terrorism. The CTSA also compels local authorities to maintain the *Channel* programme in their areas in order to safeguard referred individuals who are considered to be at risk of radicalisation. Once a referral is made, the local *Channel* panel (comprising of the relevant local authority, the police for the area and, depending on the nature of the referral, social workers, representatives from schools and colleges, the National Health Service or youth offending services) assesses whether the case is appropriate for *Channel*.[141] If, following an assessment using a specialist 'vulnerability assessment framework,'[142] the referred individual is deemed to be at risk of radicalisation, the panel will provide a support plan to help ensure that the risks are identified and addressed.[143]

In addition to the introduction and expansion of *Channel*, a radicalisation-specific safeguarding programme, counter-radicalisation was also streamlined into *mainstream* child-protection and safeguarding protocols. Therefore, existing child-protection and safeguarding regulations provide local authority children's services with a framework to help them 'identify and support vulnerable children, young people and families where radicalisation is a potential risk factor.'[144] Families with children at risk of radicalisation qualify for early help support programmes offered by local authorities, including family therapy interventions and parenting support programmes.[145] Children at risk of radicalisation are also recognised as 'children in need.' Under section 17 (1) (a) of the CA 1989, every local authority has a general duty to safeguard and promote the welfare of children who are 'in need' in their area.[146] In *A v. London Borough of Enfield*,[147] C (a 17-year-old girl) applied for judicial review of the local authority's decision

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[141] HM Government, 'Channel Duty Guidance. Protecting vulnerable people from being drawn into terrorism: Statutory guidance for Channel panel members and partners of local panels' (2015), 7.
[142] HM Government, 'Vulnerability assessment framework' (n89), 11.
[143] Ibid, 9.
[144] Chisholm and Coulter (n137), 8-9.
[145] Ibid, 24. See also: HM Government, 'CONTEST' (n3), 31.
[146] Schedule 2 Part I of the CA 1989 sets out a range of tasks that assist a local authority in carrying out its s. 17(1) duty, including assessing children 'in need' within the area, taking reasonable steps to prevent abuse and neglect and providing accommodation to protect children from ill-treatment.
[147] [2016] EWHC 567 (Admin).

to refuse to provide her with accommodation as a child 'in need'.[148] C had been assessed by two local authorities to be at particularly high risk due to radicalisation concerns after leaving her home twice at the age of 16, travelling alone to Turkey and Egypt and living with a man who was being monitored by counter-terrorism police. In finding the local authority's refusal to provide accommodation to be 'fundamentally flawed,' [149] Hayden J stressed that radicalisation is a 'new facet of safeguarding and child-protection'[150] and is covered by the definition of 'need' in section 17 (1).[151]

Although these two approaches allow for different types of voluntary local authority involvement and support in the lives of children considered to be at risk of radicalisation, there are points of overlap. While the *Channel* programme is set apart from the broader safeguarding work of local authorities under section 11 of the Children Act 2004, *Channel's* delivery frequently overlaps with the wider safeguarding duties of local authorities, especially 'where vulnerabilities have been identified that require intervention from social services.'[152] In such cases, links are established between the *Channel* programme, social services and other relevant sectors to ensure referred individuals receive appropriate support.[153] If the referred individual is known to social services or if there is a concern that they are at risk of significant harm, the social worker will be present at all the *Channel* panel meetings and be involved in all decisions about the child.[154]

The point here is that counter-terrorism was streamlined into the child-protection and safeguarding functions of local authorities before and has outlasted the FTF phenomenon, becoming an established, perhaps even permanent, fixture of public family law. Local authorities are required to safeguard *all* children at risk of radicalisation irrespective of the issue of travel and to offer early help and support services to their families. This reflects the multifaceted nature of the recent interaction between family law and counter-terrorism which

[148] Ibid, [1].
[149] Ibid, [42].
[150] Ibid, [36].
[151] Ibid.
[152] HM Government 'Channel Duty Guidance' (n141), 4.
[153] Ibid, 4.
[154] Ibid, 7.

goes well beyond the exigencies of ISIS and the issue of travel to Syria and Iraq.

ii. Compulsory Child-Protection

The distinction between *voluntary* and *compulsory* intervention in the lives of children and families is not watertight. For example, while participation in *Channel* is voluntary and requires the consent of the parent or guardian of the child, if parental consent is not given in a case where the child is thought to be at risk, social services from the relevant local authority must be involved.[155] If the child is thought to be at risk from significant harm, statutory assessments may need to be carried out by a social worker under section 17 or section 47 of the CA 1989.[156] Moreover, as Judith Masson and Felicity Kaganas point out, voluntary services and agreements between local authorities and parents can easily turn into compulsory intervention.[157] In fact, according to my interviewees, in the majority of the public law radicalisation cases care and/or supervision proceedings, the ultimate form of compulsory child-protection was initiated *after* voluntary offers of assistance were resisted by the parents.[158]

In radicalisation cases involving public law proceedings, the local authority applies to the court for care and/or supervision orders under Part IV of the CA 1989. Section 31(1) (a) of the CA 1989 defines a care order as an order that places a child in the care of the relevant local authority and a supervision order is defined as an order that puts a child under the supervision of the relevant local authority.[159] Before granting a care or supervision order, the court must be satisfied, on the balance of probabilities, that the child concerned is suffering or is likely to suffer significant harm attributable 'to the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect' of a parent.[160] If the court is satisfied that this test, known as the threshold criteria, is met, it moves to the welfare

[155] Ibid, 16.
[156] Ibid, 16-17.
[157] Judith Masson, Deborah McGovern, Kathy Pick and Maureen Winn Oakley, *Protecting Powers: Emergency Intervention for Child Protection* (NSPCC, 2007), 160 and Felicity Kaganas 'Child Protection, Gender and Rights' in Julie Wallbank, Shazia Choudhry and Jonathan Herring (Eds) *Rights, Gender and Family Law* (Routledge, 2010), 53-55.
[158] Interview with Barrister A, Barrister at 1 Crown Office Row Chambers (London, 29 September 2017).
[159] S. 35 CA 1989.
[160] S. 31 (2) CA 1989.

stage. At the welfare stage, the court must assess whether making a care or supervision order is in the child's best interests.[161] If both tests are met, the court can grant the local authority's application. Once care or supervision proceedings have begun, the court can make interim care or supervision orders to protect the child until the final hearing.[162]

Local authorities have initiated care and/or supervision proceedings in the radicalisation cases for a myriad of reasons. Public law radicalisation cases involving care and/ or supervision proceedings can be divided into two main categories: cases involving planned, attempted or actual travel to ISIS-held territories in Syria and Iraq and cases involving concerns that a child has been, or is at risk of being, radicalised as a result of exposure to extremism. Although the earlier public law radicalisation cases focused on the issue of travel to ISIS-held territories, they also tended to contain allegations of extremism, suggesting that such a neat distinction between the two categories of public law radicalisation cases is not water-tight.

Travel Cases: Travel to and Return from ISIS-Held Territories

There are two main types of public law radicalisation cases where travel to ISIS-held territories is an important concern. In the first type, the local authority initiates care and/or supervision proceedings in response to the attempted or planned travel of parents to Syria or Iraq. The second type involves parents, primarily mothers, who have returned to the UK with their children from former ISIS-held territories in Syria and Iraq. These cases began to appear in the family courts as early as 2016 but increased in number following the collapse of ISIS in 2018.[163] Unlike the wardship radicalisation cases, which aimed to *prevent* children from travelling or being taken to ISIS-held territories abroad, these cases deal with the *implications* of the planned, attempted or actual travel on the *welfare* of the children in question. They therefore go beyond simply preventing travel and treat attempted or planned travel to Syria as evidence

[161] Ss. 1(1), 1 (3), 1(4)(b); 31A and 41 of the CA 1989. See also: *Humberside County Council v B* [1993] 1 FLR 257; *Re B-S (Adoption: Application of s 47(5))* [2013] EWCA Civ 1146 and *Re G (Care Proceedings: Welfare Evaluation)* [2013] EWCA Civ 965.
[162] S.38(2) of CA 1989.
[163] Cameron Glenn, 'Timeline: The Rise, Spread, and Fall of the Islamic State (Wilson Centre, 28 October 2019).

of a harmful extremist mindset and unacceptable parenting behaviour. Therefore, although radicalisation cases involving "returnee" parents may appear to be about travel to ISIS-held territories, a closer examination shows that they are *really* concerned with the issue of extremism.

A. Planned or Attempted Travel to ISIS-Held Territories

In the first type of travel cases, the local authority alleges that the parent(s) intended to travel with their children to ISIS-held territories abroad, thereby either significantly harming their children or placing them at risk of significant harm.

In *Leicester City Council v T*,[164] the mother was arrested at the airport as she attempted to board a flight to Munich and was accused of attempting to travel to Syria. Her luggage was found to contain a hidden itinerary for Istanbul and her electronic devices contained photos of children wearing the ISIS emblem. Keehan J granted the local authority's application for care orders and removed the children from her care, finding that the mother, motivated by her extremist ideology, intended to travel with her children to ISIS-held territories in Syria and had been in contact with Islamist extremists to facilitate her journey.

Similarly, in *A Local Authority v M and Others*,[165] the mother was detained with her four children by the Turkish authorities in a town close to the Syrian border and deported back to the UK. She was arrested upon arrival and later convicted of child abduction. Her children were placed in foster care. Newton J found that the mother was an active supporter of proscribed organisations and had exposed her children to extremist ideologies, thereby causing them to suffer significant emotional harm. As a result, Newton J decided that the children should remain in foster care pending a more comprehensive assessment of the father who, it was held, had passively condoned the mother's extremism and failed to protect his children from their

[164] [2016] EWFC 20 (Fam).
[165] [2016] EWHC 1599 (Fam).

influence.[166] Similar findings were also made in *Re Y Children (Findings of Fact as to Radicalisation) Part 1*[167] and *Re Y (Children) (Radicalisation) (Findings of Fact 2).*[168] Following a stop and search at a ferry port and a raid on the home, extremist propaganda was found on the electronic devices of the father and his adult offspring. Parker J found that the father had made plans to take the younger children to Syria and had inculcated them with extremist beliefs, thereby causing them significant harm. She therefore made an order removing the three younger children from the father's care.

In *Re X, Y and Z (Disclosure to the Security Service*),[169] the local authority alleged that the father was involved with ISIS and engaged in terrorist conduct both prior to and after leaving the UK for Syria, and that the mother was intending to travel with the child to join the father in Syria. During the course of the proceedings the mother filed a statement admitting to the allegations made by the local authority. The court found that the father was involved in terrorism-related activity, that the mother was aware of the father's involvement and that both parents planned to take the child to Syria. The court also gave permission for both the mother's statement and the court's findings to be disclosed to the Metropolitan Police Service, the Crown Prosecution Service and the Secret Service.

By contrast, very different conclusions were reached by Munby P in *Re X (Children); Re Y (Children),*[170] an interim decision involving two different but related families. In both cases the respective local authority had applied for care orders, accusing the parents of intending to travel to ISIS-held territories Syria. In *Re X (Children)*, the mother was detained whilst boarding a flight to Turkey with her four children. Her children were removed under an interim care order after she refused to sign an agreement with the local authority. In *Re Y (Children)*, the local authority removed the children under an interim care order after their parents were detained by the Turkish authorities close to the border with Syria and deported back to the UK. In both cases, Munby P found that while the risks that the children faced if their parents took them to

[166] This case includes a follow-up case, *A Local Authority v M and Others* [2017] EWHC 2851 (Fam), discussed below.
[167] [2016] EWHC 3826 (Fam).
[168] [2016] EWHC 3825 (Fam).
[169] [2016] EWHC 2400 (Fam).
[170] [2015] EWHC 2265 (Fam).

Syria were grave, the risk of flight could be controlled. Therefore, Munby P discharged the interim care orders and returned the children to their homes, ordering a comprehensive package of protective measures that included curfews and electronic tags. In the final hearings of *Re X (Children) (No3)*[171] and *Re Y (Children) (No 3)*[172] respectively, Munby P dismissed the care proceedings, finding that both local authorities were unable to substantiate their allegations against the parents.

The local authority's application for care orders in *HB v A Local Authority (Alleged Risk of Radicalisation and Abduction)*[173] was also dismissed for similar reasons. In that case, the children were placed under police protection after the mother was detained whilst trying to board a flight to Dubai with large amounts of cash. The local authority asserted that the mother, whose ex-husband and brother were involved with Islamist militants in Somalia and Syria, had been attempting to take the children to Syria and held extremist views supportive of ISIS. However, MacDonald J dismissed the local authority's application, citing the lack of convincing evidence proving that the mother held extremist views that could have motivated her to travel to join ISIS in Syria.

B. Return from ISIS-Held Territories

The decline of ISIS initially led some commentators to predict that the family courts would be inundated with cases dealing with parents and children returning home from former ISIS-held territories.[174] However, in reality, few of the published public law radicalisation cases have, in the words of Knowles J in *A Local Authority v A Mother and Others*,[175] 'considered the position of families who have returned'[176] from Syria and Iraq. There are, to date, only three published radicalisation cases involving "returnee" parents and their children.

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[171] (n9).
[172] [2016] EWHC 503 (Fam).
[173] (n9).
[174] Chris Barnes, *Radicalisation Cases in the Family Courts: Part 4: Three-year Review* [2018] Family Law 197, 200.
[175] *A Local Authority v A Mother and Others (Fact-Finding)* [2018] EWHC 2054 (Fam).
[176] Ibid, [8]. However, according to the Government, 40% of those who travelled to join ISIS have returned to the UK and the majority of the "returnees" have been 'women with young children;' HM Government, 'CONTEST' (n3), 18.

A Local Authority v T[177] was the first published radicalisation case to deal with a parent who had actually lived in ISIS-controlled territories. In that case, the mother had taken Y, her months-old infant son, with her to Raqqa, a former ISIS-stronghold city in Syria where they lived for over a year. Upon her return to the UK the mother was arrested by counter-terrorism police, convicted of a number of terrorism offences and sentenced to six years in prison. Y was placed in foster care. Russell J granted the local authority's application for care orders, finding that Y was psychologically harmed as a result of his experiences in Syria.

The second "returnee" case is *A Local Authority v A Mother and Others,*[178] which concerned J, a two-year-old girl who was born in Syria. Her parents had met and married in the UK and then lived in ISIS-held territories in Syria and Iraq. In late 2017, the parents were arrested by the Turkish authorities after crossing the Syrian-Turkish border with J, intending to return to the UK. Whilst J and the mother were deported back to the UK, the father remained in Turkish detention, facing criminal proceedings in that jurisdiction. Finding that by choosing to enter and live in a war-zone the mother had exposed J to serious harm, Knowles J removed J from the care of her mother. In the third "returnee" case, *Re M (Care Proceedings: Disclosure)*,[179] the parents in question travelled separately to ISIS-held territories in Syria where they subsequently met and got married. While living in Syria, the parents had two children. The family then left Syria and returned to the UK. Upon their arrival, the parents were arrested for terrorism offences. The children were placed in temporary foster care and the local authority issued care proceedings.[180]

It is interesting to note here that the family courts appear to treat actual travel to ISIS-held territories abroad as parental conduct that warrants the most draconian of public family law outcomes: removal, regardless of whether or not the parents have been convicted of terrorism offences. That parents who have not been convicted of terrorism offences can still have their

[177] [2016] EWFC 30.
[178] (n175). This case includes two judgments, a fact-finding one and a welfare one: *A Local Authority v A Mother and Others* [2018] EWHC 2056 (Fam).
[179] [2019] EWCA Civ 1364. This is the first radicalisation case to be decided in the Court of Appeal.
[180] The dispute centred around the issue of disclosure; the substantive outcome has not been published.

children removed from them highlights the draconian nature and the utility, from a more cynical national security perspective, of family law's recent involvement in counter-terrorism.[181]

Extremism Cases: Parental Extremism and Childhood Radicalisation

With the decline of ISIS and the significant drop in the number of children and families travelling to Syria and Iraq, the issue of travel became less important and the focus of the family courts turned to the harm, or risk of harm, posed by extremist ideology. Radicalisation cases where extremism is the primary or only concern can be divided into three subcategories: cases where extremism concerns are raised alongside travel concerns; cases where extremism concerns are raised alongside other criminal, mental health and/or child-protection concerns and cases where extremism is the only concern. These extremism cases are factually diverse, raising a number of complex legal questions and issues, indicating that the interaction between family law and counter-terrorism goes deeper than has generally been appreciated in the Government and early academic literature.

A. Allegations of Extremism in Conjunction with Allegations of Planned or Attempted Travel to ISIS-Held Territories

In a number of radicalisation cases, allegations that a child is radicalised or is at risk of radicalisation due to exposure to extremism are made *alongside* parallel allegations regarding planned or attempted travel to ISIS-held territories in the Middle East. What differentiates these cases from the travel cases discussed above is that extremism emerges as the main concern of the court. While travel concerns might have *triggered* local authority involvement, within the judgments themselves, the issue of travel is, for the most part, tangential and is treated as a background fact.[182]

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[181] See: Chapters Seven and Eight.
[182] Some of the travel cases discussed above could also fall into this category.

For example, in *Re C, D, E (Radicalisation: Fact Finding)*,[183] the local authority applied for care orders for three children whose parents were accused of espousing extremist religious beliefs *and* attempting to travel to ISIS-held territories in Syria. Due to insufficient evidence supporting the travel allegations, the focus of the case was on the alleged extremist beliefs of the parents and their impact on the children. After examining the electronic communications and social media accounts of both parents, Cobb J found that the parents held extremist beliefs supportive of ISIS which could indoctrinate and harm their children. The parents were placed on electronic tags until it was found that they had cooperated effectively with the local authority and had rejected their previous extremist beliefs. Since there was no evidence that the children had been radicalised by their parents' (now renounced) extremist views, Cobb J decided that it was in their best interests to remain at home and for the care proceedings to be brought to an end.[184]

Parental extremism was also the main subject of the dispute between the local authority and the Secretary of State for the Home Department (SSHD) in *Re C (A Child)*, a case involving three separate decisions. The local authority issued care proceedings in relation to C, after receiving information from the Counter-Terrorism Command (CTC) that the father had held extremist views and previously travelled to and fought with terrorist groups in Syria. The child was subsequently made the subject of an interim supervision order. In order to assist with care proceedings, the court had previously granted the local authority's application for disclosure of information from the SSHD and the CTC regarding any extremist beliefs and conduct in the family. In the first decision, *Re C (A Child) (Care Proceedings: Disclosure)*,[185] Pauffley J dismissed the SSHD's application to have the disclosure order discharged. However, in *Re C (A Child) (Application for Public Interest Immunity)*,[186] the SSHD's application for Public Interest Immunity in relation to the disclosure order was granted. Following a closed material session,[187] Pauffley J upheld the SSHD's evaluation that disclosure of the materials held by the

[183] (n9).
[184] *Re C,D,E (Children) (Radicalisation: Welfare)* [2016] EWHC 3088 (Fam).
[185] [2016] EWHC 3171 (Fam).
[186] [2017] EWHC 692 (Fam). Public Interest Immunity allows one party to the litigation to refuse to disclose evidence to the other party/parties on the basis that the disclosure could damage the public interest.
[187] See: Chapter Eight.

Home Office and the CTC would create a risk to national security. Finally, in *Re C (No 3) (Application for Dismissal or Withdrawal of Proceedings)*,[188] the local authority applied to withdraw the original care application, arguing that it lacked sufficient evidence that would allow it to prove to the court that the child was at risk of significant harm. Dismissing the local authority's application, Pauffley J held that withdrawing care proceedings in a case involving serious allegations of parental extremism was not appropriate.

It is worth noting that in these two cases the parents were not being accused of attempting to take their children with them to ISIS-held territories abroad. Rather, the travel allegations levelled at the parents related to past travel and its impact on their parenting. Therefore, although these cases might, at first glance, appear to be concerned with travel to ISIS-held territories, a closer analysis shows that what the family courts are primarily interested in here is the *parenting* of accused terrorists and extremists. This again reflects the complicated and wide-ranging nature of the interaction between family law and counter-terrorism which, in its concerns, focus and motivations, goes well beyond the issue of ISIS and the FTF phenomenon.

The question of alleged extremism also dominated Jackson J's inquiry in *Lancashire County Council v M and Others*.[189] Already known to the Counter-Terrorism Unit of the local police force, the father was accused of having an extremist Islamist mindset and having previously attempted to travel to Syria. However, since there was insufficient evidence to substantiate allegations of travel plans to ISIS-held territories, the case focused on the father's extremism and the mother's inability to protect the children. Finding that the children were suffering harm caused by a combination of factors including the father's extremist beliefs, Jackson J granted the local authority's application for care orders.

Concerns about parental extremism and childhood radicalisation also motivated local authority and family court intervention in *London Borough of Tower Hamlets v B*.[190] The local authority

[188] [2017] EWFC 37 Fam.
[189] (n5).
[190] (n19).

applied to remove B (a 16-year-old girl) and her siblings, from the care of their parents. B had previously been made a ward of court after she was removed from a flight to Istanbul, from where she was intending to travel to Syria. However, care proceedings were initiated after an analysis of the family's electronic devices revealed large amounts of terrorist propaganda, leading to the arrest of B and her parents on suspicion of possessing information likely to be useful to a person committing or preparing to commit an act of terrorism. Hayden J removed B from her home, finding that exposure to extremist content had caused her to suffer significant emotional harm. In the second decision arising out of the same facts, *London Borough of Tower Hamlets v B,*[191] Hayden J's investigation focused on the role that the parents played in B's radicalisation. Although the parents did not themselves subscribe to extremist ideologies, Hayden J found that their strict adherence to Islam and the nature of their activism on the Palestinian cause created the conditions that led to B's radicalisation. Nevertheless, because removal from the family home had failed to meet B's welfare needs, Hayden J allowed B to return home under a comprehensive care plan that provided for the active involvement of the social worker and the vigilant monitoring of the electronic devices used in the home by the police and social services.

The discussion above shows that while the issue of travel might certainly have *precipitated* family law's involvement in some of the extremism cases, the concern of the family court in these cases is not with preventing travel to ISIS-held territories. Rather, the focus in these cases is with alleged parental extremism and childhood radicalisation. The reasons behind family law's engagement with these counter-terrorism policy terms, the implications thereof and its scrutiny of the beliefs of parents and children will be discussed in Parts II and III of the thesis. Nevertheless, it is important to stress again here that family law's involvement in the realm of counter-terrorism far exceeds and goes much deeper than the specific issue of travel to ISIS-held territories in the Middle East.

[191] (n16).

B. Allegations of Extremism *and* Other Criminal, Mental Health and/or Child Protection Allegations

Earlier in this chapter I argued that while a family background of chaos, violence, criminality and neglect is common within "ordinary" care and/or supervision proceedings, it does not reflect the situation in the radicalisation cases where family stability and generally "good" parenting are common, and where the issue of radicalisation is the only real concern. However, it should be noted that whilst this is true of the majority of the radicalisation cases, in a very small number of cases extremism concerns were raised by local authorities alongside other concerns relating to the behaviour of the parent in question, such as criminal conduct, mental health issues and/or neglect.

In *Re A and B (Children)*[192] the local authority had been involved with the children for most of their lives due to the father's persistent absence through imprisonment and the constant changes made in the arrangements for the children's care and schooling. However, matters escalated after the mother received messages from the children informing her that the father had renewed their passports and was planning to take them to a Middle Eastern country. Moreover, the police had recently raided the father's home as result of a separate criminal investigation and found Islamist propaganda in the form of books and DVDs in the house. Therefore, as part of the father's parenting assessment, the psychiatrist and the family assessor were instructed to assess whether the father held extreme religious views. However, the father's religious views, extreme or otherwise, formed a very small part of the overall final investigation. For although Her Honour Judge Atkinson granted the local authority's application for care orders, the reason was the chaotic family life and the father's inadequate parenting, rather than his alleged extremism.

Extremism concerns also formed a small part of the overall issues raised by the local authority

[192] [2016] EWFC B43.

in *Re ZH*,[193] a case involving an eight-year-old girl. The family was already known to the local authority as a result of a referral to social services from the mother's GP due to mental health concerns and the mother's subsequent detention under section 136 of the Mental Health Act 1983 following a violent altercation with a social worker. However, the local authority only issued care proceedings after the mother took her daughter to Heathrow airport with a view to travelling to the Middle East. Due to concerns that the case might involve extremism, it was allocated to the Family Division of the High Court, although it later transpired that the case did not in fact present radicalisation issues. Nevertheless, Baker J still granted the local authority's application for a care order, finding that the deterioration of the mother's mental health precluded her from being able to meet her daughter's needs.

Finally, extremism concerns were also considered in *Re NAA (A Child: Findings on Death of Parents: Convenient Forum)*.[194] The case concerned NAA, a two-year-old girl whose mother had been murdered the previous year and whose father, charged with the mother's murder, had committed suicide in prison. As a result, NAA was placed in foster care under an under interim care order. Before she died, the mother had alleged that the father was violent towards her. The father, in turn, had accused the mother of being radicalised after becoming involved with Islamist extremist groups. The case was brought, in part, in order to make findings of fact regarding the events that had led to NAA being placed in care. After assessing the evidence, Her Honour Judge Atkinson found that the mother had been killed by the father, that prior to the murder she had suffered regular domestic violence at the hands of the father and that there was no evidence to suggest that the mother was radicalised or involved with extremist organisations.

In these cases, the extremism concerns appear to have added a dimension of urgency to what are otherwise ordinary care cases, escalating local authority and family court involvement. This suggests that despite the extensive nature of the interaction between family law and counter-terrorism and the insistence, within certain practitioner circles, that these cases are ordinary

[193] [2017] EWFC 14.
[194] [2017] EWFC B76.

child-protection cases,[195] in reality, the family justice system appears to regard accusations of extremism with more seriousness than other more "routine" child-protection issues. It is also worth noting the weak and mostly unsubstantiated nature of the extremism allegations in these cases. It has been suggested that this could hint at more problematic aspects of the interaction between family law and counter-terrorism, such as the racial and religious profiling of parents.[196]

C. Freestanding Extremism Allegations

In the third and final category of extremism cases, extremism is the only concern that motivates the local authorities to seek compulsory statutory intervention in the private and family life of the children and parents in question. Although cases involving stand-alone allegations of extremism without concerns related to travel to ISIS-held territories were something of a rarity at the start (i.e. between 2015-2017), with time they have come to dominate the work of the family courts in the radicalisation cases.[197]

The first radicalisation case involving freestanding allegations of extremism is *Re K (Children)*.[198] The parents were investigated by the police due to concerns that they might have become involved in terrorist-related activity and hold extremist views. The parents were arrested and then released following a police raid on the family home where extremist materials were discovered on the parents' social media accounts. As a result, the children were removed and placed in foster care. However, given the lack of sufficient evidence, the local authority applied to withdraw the care proceedings. Although Hayden J granted their application, he nonetheless expressed his concern that the materials shared by the parents in their social media accounts revealed an extremist religious perspective.

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[195] See:Chapter Seven.
[196] Asim Qureshi, 'Separating Families: How PREVENT Seeks the Removal of Children' (Cage, September 2018).
[197] Interview with Cafcass Officer B (n10), interview with Barrister A (n158) and interview with Solicitor A (n113).
[198] [2016] EWHC 1606 (Fam).

Local authority applications to withdraw care proceedings were also granted in two other factually similar radicalisation cases. In *A Local Authority v X, Y and Z*,[199] the children had already been on the local authority's radar following the father's arrest and conviction for soliciting murder and providing financial assistance for the purpose of terrorism. However, care proceedings were only initiated as a result of more recent communications from counter-terrorism police. The local authority alleged that the father, who was the subject of a Terrorism Prevention and Investigation Measure (TPIM[200]), possessed extremist materials supportive of ISIS on his electronic devices and the mother had taken her children to events where radical views were expressed. However, since there was no evidence that the children themselves were radicalised or exposed to their parents' extremism, the local authority applied to withdraw the care proceedings and MacDonald J agreed. Similarly, in *Re A, B, C, D and E,*[201] the local authority was concerned about the wellbeing of five children whose father was the subject of a TPIM, had been involved with a proscribed extremist organisation and expressed views supportive of ISIS. However, doubting whether the evidence that it possessed would be sufficient, the local authority applied to withdraw the care proceedings. In granting the local authority's application, Knowles J found that there was no evidence to suggest that the children had been radicalised by the parents' extremist beliefs.

A very different conclusion was reached by Knowles J in *A City Council v A Mother and Others*.[202] The case concerned three children whose parents were accused of holding extremist beliefs supportive of terrorism. A police search of the parents and older siblings at an airport led to the discovery of terrorist propaganda on their electronic devices. Although it initially only recommended intervention by *Prevent*, the local authority decided to issue care proceedings after a police raid on the family home led to the arrest of the parents and two of the adult siblings in relation to terrorism charges. Granting the local authority's application for care orders, Knowles J found that the children were at risk of suffering physical and emotional harm as a result of the parents' support of ISIS.

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[199] [2017] EWHC 3741 (Fam).
[200] TPIMs are executive measures designed to limit the activities of individuals suspected of involvement in terrorism but who, due to the sensitivity of the evidence, cannot be prosecuted in a criminal court: Terrorism Prevention and Investigation Measures Act 2011.
[201] [2018] EWHC 1841 (Fam).
[202] [2019] EWHC 3076 (Fam).

The risks to the physical and emotional wellbeing of children caused by exposure to parental extremism was also at the heart of the dispute in *Re I (Children) (Child Assessment Order)*.[203] In this case, the father was imprisoned in 2015-2016 following his conviction for terrorism offences. The local authority was concerned about the impact of the father's extremist beliefs on the children, especially since he had taken some of the children to meetings attended by extremists and extremist images had been found on one of the children's mobile phone. Therefore, following the father's release on licence in 2018, the local authority conducted an assessment which concluded that further assessments and interventions were necessary. However, because the parents opposed these interventions and refused to consent to an assessment of the children, the local authority applied for a child assessment order under section 43 of the CA 1989 to determine whether the children were impacted by their father's violent extremist ideology. In this Court of Appeal case, Jackson LJ decided that a child assessment order was necessary because the father's extremist views posed inherent risks to the children.[204]

Emotional harm caused by exposure to parental extremism was also the focus of Newton J's evaluation in *A Local Authority v M and Others*,[205] which was the final welfare decision following from the earlier *A Local Authority v M and Others* case discussed above.[206] The issue for the court was whether the four children, who had been radicalised by their now imprisoned mother, should be returned to the care of their father given his previous passivity in the face of the mother's extremism. Finding that the father had made significant strides and was being supported by the social worker, the *Channel* programme and the de-radicalisation experts at his local mosque, Newton J sanctioned the return of the children to his care.

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[203] [2020] EWCA Civ 281.
[204] Under s.43 (1)-(6) CA 1989, a child assessment order can be made if the applicant local authority reasonably suspects that the child is suffering or is likely to suffer significant harm, an assessment of the child is required to enable the local authority to determine whether they are suffering or are likely to suffer significant harm and that it is unlikely that an assessment can be made in the absence of an order. When a child assessment order is in force, those responsible for the child have a duty to make them available for assessment.
[205] (n166).
[206] (n165).

In the case of *Re S (Care Proceedings: Extremism)*[207] it was the children who had reported their parents for attempting to radicalise them through exposure to extremism. The local authority removed the children and initiated care proceedings after an older sister sent an email to ChildLine complaining that she and her siblings were being abused by their parents. During the course of the investigation, the children claimed that in addition to beatings, the parents tried to brainwash them into adopting extremist views by forcing them to watch images and videos of beheadings committed by terrorist groups. They also complained that their parents expressed anti-Semitic and homophobic views. Russell J approved the local authority's application for an interim care order. This is a rather unusual radicalisation case because it involves *children* making accusations of parental extremism, rather than a local authority or a parent. It is interesting to note that extremism and radicalisation appear to be widely recognised as categories of child abuse, even by children themselves.

5. Conclusion

In this chapter I examined *how* the interaction between family law and counter-terrorism has taken place in recent years by factually and legally contextualising the radicalisation cases. In doing so, this chapter has argued against the tendency within Government and early academic literature to view the radicalisation cases only by reference to the geopolitics of ISIS and the FTF phenomenon. By situating the radicalisation cases within the counter-terrorism policy framework and by providing a close and detailed factual and legal exposition of the cases themselves, the chapter claimed that the importance of the radicalisation cases goes beyond the problem of children and families travelling to join ISIS in the Middle East. Through the radicalisation cases, this chapter has demonstrated how the concerns, concepts and lexicon of counter-terrorism have infiltrated deeply into family law.

The divergent and, at times, apparently contradictory conclusions in the radicalisation cases are noticeable features of the discussion in this chapter. It is worth emphasising here what John

[207] [2018] EWHC 645 (Fam).

Dewar refers to as the 'chaos of family law.'[208] Family law deals with areas of social life that are emotional, contradictory and complicated.[209] To accommodate the paradoxes of family life, judges are accorded wide discretion in order to attend to 'the detailed particular of each case.'[210] The interaction between family law and counter-terrorism, as the above exposition of the radicalisation cases demonstrates, is equally complicated and reflects the paradoxes and inconsistencies of family life. The individuated nature of these decisions also reflects the wide judicial discretion that is a hallmark of family law. While some judges have readily made findings regarding the travel plans and ideological inclination of parents, others have been more reticent. That some judges appear willingly to have embraced the role to be played by the family courts in the area of counter-terrorism while others appear to be more cautious and apprehensive indicates that there are different levels of enthusiasm for the interaction between family law and counter-terrorism amongst the family judiciary. It also highlights the factual diversity of the radicalisation cases, as well as the difference in approach within the family judiciary to the important and complex legal questions presented by these cases regarding the precise nature of the harm caused to children by extremism and radicalisation, whether the existence of extremism warrants compulsory state intervention in private and family life, how and to what extent extremism and radicalisation are new categories of parental deviance and what forms of family law interventions are appropriate within the fraught area of counter-terrorism and national security. These questions and the answers given to them, which will be discussed and critiqued in Parts II and III of the thesis, indicate that the issues facing the family courts in the radicalisation cases are much more complicated and go far beyond the simple issue of preventing travel to ISIS-held territories in Syria and Iraq.

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[208] John Dewar, *The Ordinary Chaos of Family Law* (1998) 61 Modern Law Review 467, 467.
[209] Ibid.
[210] Ibid, 468.

Part II: *Why* Have Family Law and Counter-Terrorism Interacted in Recent Years?

Chapter Three

Protecting Children from Harm and Promoting their Welfare? Deconstructing the Official Explanation

1. Introduction

Part II of this thesis seeks to identify and critically examine *why* family law and counter-terrorism have interacted in recent years. To enable the investigation and critical interrogation of this "why" question, section (2) of the chapter identifies and outlines an official explanation of the radicalisation cases proffered by the family judiciary and the Government. This explanation claims that the radicalisation cases are simply about protecting children from obvious or straightforward (albeit new) child-protection harms, as well as promoting their welfare. It understands the interaction between family law and counter-terrorism as a natural and obvious response to a new terrorist development that happens to directly affect children and, therefore, engages the state's child-protection duties and the jurisdiction of the family courts: namely, the rise of ISIS, its targeting of children and the issue of children and families that travelled to ISIS-held territories in the Middle East.

While section (2) agrees that the radicalisation cases involving concerns that a child or group of children are at risk of travel to ISIS-held territories do indeed address recognisable child-protection risks, section (3) argues for a more critical understanding of the radicalisation cases and the reasons behind their recent emergence in the family courts - an approach that recognises the *politics* of child-protection. Drawing on the insights of scholars who argue that harm and abuse within the context of child-protection is often socially constructed through a process of labelling that is inherently political and that the social and cultural context and the state's policy agendas influence which behaviours and practices are identified as harmful to children and which are not, section (4) highlights the limits of the official explanation. Firstly, section (4)

argues that the official narrative does not adequately explain why the radicalisation cases emerged at this *particular point in time*. Secondly, and more significantly, section (4) contends that the official explanation does not address and account for the radicalisation cases that are primarily or exclusively concerned with the impact of extremism and radicalisation on children, as opposed to the risk of travel to ISIS-held territories.

2. The Official Explanation

One way to answer the "why" question would be to point out, as Hayden J does in *London Borough of Tower Hamlets v M and Others*,[1] that the family courts are and always have been 'in the vanguard of change in life and society. Where there are changes in medicine or in technology or cultural change, so often they resonate first within the family.'[2] The claim here is that in the radicalisation cases the family courts are *reacting* to a new kind of terrorist threat, represented by ISIS and the Foreign Terrorist Fighter (FTF) phenomenon, that directly affects families and, in the words of Hayden J in *Re K (Children)*,[3] 'presents a distinctive danger to . . . children.'[4] This is the official explanation of the radicalisation cases and the interaction between family law and counter-terrorism that they have facilitated, shared by the family judiciary and Government.[5] It holds that the state has a legal obligation, under both domestic and international law, to *protect* children from the kinds of new, but ultimately straightforward, child-protection *harms* that might result from travelling to join terrorist organisations abroad and to promote their *welfare* interests.

In so far as it relates to the radicalisation cases that seek to prevent children from travelling to ISIS-held territories, this official explanation of the recent interaction between family law and counter-terrorism can be regarded as being both factually and legally accurate. As demonstrated in Chapter Two, children were specifically targeted by ISIS for recruitment. A

[1] [2015] EWHC 869 (Fam).
[2] Ibid, [57].
[3] [2016] EWHC 1606 (Fam).
[4] Ibid, [24].
[5] HM Government, 'CONTEST: Annual Report for 2015', Cm 9310 (2016), 16 and HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism', (Cm 9608, June 2018), 30.

significant number of children travelled, either on their own or with their parents, to Syria and Iraq and participated in terrorist violence, both in the UK and aboard.[6] Moreover, recent studies indicate that the family has played an increasingly important role in the radicalisation of young people.[7] These studies show the family was, and still is, central both to ISIS' ideology and recruitment strategies.[8] Many of those who travelled from the West to Syria and Iraq had familial ties to ISIS.[9] Moreover, they were usually either parents who travelled with their families or were encouraged to form new families soon after arrival.[10] As a result, ISIS has been represented as a terrorist organisation that espouses 'a family ideology.'[11]

Therefore, to an extent, the radicalisation cases where travel or risk of travel to ISIS held-territories is the main concern can be seen as fairly straightforward child-protection cases. The harms that could arise out of entry into a dangerous war-zone are, in the words of Munby P, 'self-evident.'[12] They include 'really serious bodily injury [and] even death,'[13] 'inhuman treatment or punishment'[14] and 'sexual… exploitation.'[15] Since the children at risk of travelling to Syria and Iraq face harms that are, according to Munby P, 'at the extreme end' of the child-protection 'spectrum,'[16] the 'state is properly obligated to protect them.'[17]

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[6] Carolyn Hamilton, Flavia Colonnese and Maurice Dunaiski, 'Children and Counter-Terrorism' (United Nations Interregional Crime and Justice Research Institute, 2016), 3.
[7] Lynn Davies, Zubeda Limbada, Laura McDonald, Basia Spalek and Doug Weeks, *Country Report: United Kingdom* in Stijin Sieckelinck; Micha de Winter (Eds) 'Formers & Families: Transitional Journeys in and out of violent extremisms in the United Kingdom, Denmark and the Netherlands' (Connect Justice, 2015), 62.
[8] Peter Bergen, Courtney Schuster and David Sterman, 'ISIS in the West: The New Faces of Extremism' (New America, November 2015), 2.
[9] Olivier Roy, *Jihad and Death: The Global Appeal of Islamic State* (Hurst and Company, 2016), 24
[10] 'RAN Manual: Responses to returnees: Foreign terrorist fighters and their families' (Radicalisation Awareness Network, July 2017), 7.
[11] Haula Noor, 'When parents take their children to die in jihadist suicide bombings, what can be done?' *The Conversation* (15 May 2018).
[12] *Re X (Children); Re Y (Children)* [2015] EWHC 2265 (Fam), [24].
[13] Ibid, [70].
[14] *Re M (Wardship: Jurisdiction and Powers)* [2015] EWHC 1433 (Fam), [32].
[15] *London Borough of Tower Hamlets v B* [2016] EWHC 1707 (Fam), [20].
[16] *Re X (Children); Re Y (Children)* (n12), [70].
[17] *London Borough of Tower Hamlets v B* [2015] EWHC 2491 (Fam), [5].

3. The Politics of Child-Protection and the Social Construction of Harm

However, the fact that *some* of the harms identified in the radicalisation cases fall within the remit of the state's child-protection and welfare duties should not preclude a more critical interrogation of the radicalisation cases and the reasons behind their recent emergence in the family courts. For as Michael Freeman argues, 'the protective function of family law…must not be taken for granted.'[18] Although references to the protection of children and the promotion of their welfare might underpin 'the official version of various institutions and practices,'[19] Freeman maintains that often 'the reality may be rather more problematic.'[20] This is because apparently neutral concepts, such as protection and welfare, which are 'taken for granted as inexorable givens,'[21] are value-laden concepts that reflect and even serve ideological and political considerations.[22] Therefore, Freeman argues, their invocation within official discourses should be examined more critically.[23] Similarly, and looking in particular at the counter-terrorism context, Vicki Coppock and Mark McGovern highlight the symbolically powerful nature of seemingly benevolent concepts such as protection and welfare, warning that their ostensibly benign nature can facilitate and legitimate 'enhanced state surveillance practices and interventions.'[24]

Therefore, applying these lines of critique to the "why" question, in what follows I will deconstruct the official explanation of the recent interaction between family law and counter-terrorism. I will highlight the importance of social construction within child-protection in terms of determining what is considered to be harmful and abusive to children and the role of the historical, cultural and political context in influencing these social constructions of harm and abuse. In doing so, I will show that the official explanation's characterisation of the radicalisation cases as a simple, protectionist state response to the latest manifestation of the

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[18] Michael Freeman, *Towards a Critical Theory of Family Law* (1985) 38 Current Legal Problems 153, 156.
[19] Ibid.
[20] Ibid.
[21] Ibid, 156.
[22] Ibid, 162-172.
[23] Ibid, 156.
[24] Vicki Coppock and Mark McGovern, *"Dangerous Minds"? Deconstructing Counter-Terrorism Discourse, Radicalisation and the "Psychological Vulnerability" of Muslim Children and Young People in Britain* (2014) 28 Children & Society 242, 252.

terrorist threat imbues the cases and the reasons behind their recent emergence in the family courts with a problematic sense of inevitability that obscures what Nigel Parton calls the 'politics of child-protection.'[25]

Firstly, it is important to emphasise the role of social construction in determining what is considered to be harmful to children.[26] According to scholars associated with the social constructionism school of thought, what is harmful to children is rarely a self-evident reality.[27] Rather, certain phenomena, behaviour and practices are socially *labelled* as harmful to children.[28] Therefore, drawing on Howard Becker's work on social deviance,[29] Alison Diduck and Felicity Kaganas contend that behaviours and practices *come to be regarded* as harmful to children.[30] In a similar vein, Richard Gelles suggests that certain practices are identified, socially constructed and labelled by policy-makers as harmful to children.[31] This is done, Harry Hendrick argues, through a process of social construction that is selective, value-laden and inherently political.[32]

The social constructivist approach has been criticised for its 'relativistic orientation.'[33] If social problems such as harming and abusing children are constructs, then 'there is no "reality" or "underlying cause" that can explain why phenomena come to be strongly viewed as something to be anxious about and act against.'[34] Moreover, for these critics, it is morally objectionable to consider the abuse of children 'as anything other than real.'[35] However, viewing social

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[25] Nigel Parton, *The Politics of Child Protection: Contemporary Developments and Future Directions* (Palgrave Macmillan 2014), 10-11.
[26] Nigel Parton, David Thorpe and Corrine Wattam, *Child Protection: Risk and the Moral Order* (Macmillan Press LTD 1997), 67.
[27] Ibid, 70.
[28] Ibid.
[29] Howard Becker, *Outsiders: Studies in the Sociology of Deviance* (Free Press 1963), 162.
[30] Alison Diduck and Felicity Kaganas, *Family Law, Gender and the State: Text, Cases and Materials* (Hart Publishing, 2012), 624.
[31] Richard Gelles, *The Social Construction of Child Abuse* (1975) 45 American Journal of Orthopsychiatry 363, 363 and Robert Dingwall, John Eekelaar and Topsy Murray, *The Protection of Children: State Intervention and Family Life* (Blackwell 1983), 3.
[32] Harry Hendrick, *Child Welfare: Historical dimensions, contemporary debates* (The Policy Press, 2003), 159 and Nigel Parton, *Governing the Family: Child Care, Child Protection and the State* (Macmillan 1991), 4-8.
[33] Ellie Lee, Jennie Bristow, Charlotte Faircloth and Jan Macvarish, *Parenting Culture Studies* (Palgrave Macmillan, 2014), 17.
[34] Ibid.
[35] Parton et al (n26), 70.

problems as socially constructed does not mean that they do not exist.[36] As such, whilst social constructionists acknowledge that harm and abuse are certainly experienced by children and their families, they emphasise that their *meaning* and wider cultural, political and legal significance is contested.[37] Social constructionists are, therefore, less concerned with the question of whether or not harm to children exists and more concerned with examining *why* a particular practice or phenomenon *comes to be viewed* as harmful to children.[38]

Secondly and relatedly, it is important to note the role that the historical, cultural and political context plays in determining which behaviours and practices are considered harmful and abusive to children and which are not.[39] For whilst *actual* conditions may or may not alter for groups of children,[40] moral panics can result in the "discovery" of categories of harm and abuse to children which have, in fact, always existed before.[41] The concept of a moral panic, developed by the sociologist Stanley Cohen, denotes the emergence of a 'condition episode, person or group of persons…[that come to be]…defined as a threat to societal values or interests,'[42] generating a disproportionately negative reaction in society.[43] According to Chas Critcher, the dominant discourse within the majority of the moral panics that have gripped the UK is a discourse about childhood, in particular the abuse of and perceived harm to children.[44] For example, the public reaction to the death of seven-year-old Maria Colwell at the hands of her stepfather in 1973 became a moral panic.[45] This resulted in a government inquiry in 1974, which was 'crucial in establishing the issue of [child] abuse as a serious social problem,'[46] despite the fact that child abuse had of course always existed in British society. Other moral panics, such as the Cleveland sexual abuse scandal of 1987[47] and the alleged ritual and satanic

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[36] Ibid, 72.
[37] Ibid, 71.
[38] Ibid, 70.
[39] Laura Hoyano and Caroline Keenan, *Child Abuse: Law and Policy Across Boundaries* (Oxford University Press, 2007), 7.
[40] Hendrick (n32) 159.
[41] Ibid and Paul Daniel and John Ivatts, *Children and Social Policy* (MacMillan Press 1998), 204.
[42] Stanley Cohen, *Folk Devils and Moral Panics: The Creation of Mods and Rockers* (Harper Collins, 1973), 9.
[43] Ibid.
[44] Chas Critcher, *Moral Panics and The Media* (Open University Press, 2003), 155.
[45] Hendrick (n32), 163.
[46] Ibid.
[47] Critcher (n44), 85. The Cleveland sexual abuse scandal refers to the events in 1987 when 121 children were diagnosed by paediatricians using a controversial test (Reflex Anal Diliation) as having been subjected to sexual abuse and were removed from their homes. Most of the children were returned home following a report, authored by Elizabeth Butler-Sloss, which concluded that most of the diagnoses were incorrect, although in later years it was claimed that the diagnoses were in fact correct.

abuse scandal of 1989-1991,[48] were also instrumental in identifying ostensibly "new" categories of harm and abuse to children that had, in fact, always existed before.[49]

However, as Hendrick warns, 'it would be wrong to see [these moral panics] as simply arising from the more specific concerns about injury' and harm to children.[50] Rather, collective fears and concerns regarding the collapse of the British way of life often provided the political, social and cultural context that enabled the "discovery" of existent categories of harm to children.[51] Moral panics around apparently "new" categories of child abuse and harm to children are, therefore, *symptomatic*. They go beyond the problem of actual harm and express political, cultural and popular anxieties about perceived threats to the 'established values system'[52] and the wider public interest.[53]

This, then, is the *politics* of child-protection. Child-protection laws and initiatives are seldom 'exclusively or even mainly concerned with protecting children.'[54] Rather, as Hendrick argues, 'child-protection …[is] inseparable from [the] major political issues' of the day.[55] Concerns about protecting children are deeply political and are often connected to and form part of larger national social, cultural and political agendas.[56] The state identifies existent behaviours and practices as being harmful to children through a process of social and political construction that reflects and reinforces its shifting ideological, cultural and political priorities.

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[48]Critcher (n44), 89. In the 1980s, social workers became convinced of the existence of ritualised sexual and satanic abuse within families. In the early 1990s, dozens of children were either taken into care as a result of allegations of ritual sexual and satanic abuse. However, a Government commission inquiry later found that there was no evidence of ritual sexual and satanic abuse.
[49] Critcher (n44), 155.
[50] Hendrick(n32), 165.
[51] Parton (n32), 5-6; Hendrick (n32), 159.
[52] Garland (n49), 13.
[53] John Eekelaar, *What is 'Critical' Family Law?* (1989) 105 Law Quarterly Review 244, 256.
[54] Hendrick (n32), 40.
[55] Ibid.
[56] Ibid and Parton (n25), 10-11.

4. The Limits of the Official Explanation

Drawing on these insights from scholars who emphasise the social construction of harm and the politics of child-protection, this section will highlight the limits of the official explanation of the recent emergence of the radicalisation cases in the family courts.

Firstly, the official explanation does not adequately explain the *recent* nature of the family justice system's direct and extensive interaction with and involvement in preventing and countering terrorism,[57] despite the long history of children being impacted and even involved in terrorism and political violence in the UK.[58] Indeed, as social work academics Tony Stanley and Surinder Guru argue, although terrorism has historically impacted children in the UK both directly and indirectly,[59] until 2013-2014 when 'social workers were required to make statutory interventions'[60] in the name of preventing childhood radicalisation, child-protection laws, policies and agencies were 'largely absent from engaging with issues of terrorism.'[61] As a result, and fuelled by a 'moral panic'[62] about the radicalisation of children and the risk of their

[57] It is worth noting here that *secondary* data on the British state's legal and policy responses to terrorism in Northern Ireland during the period of the "Troubles" (1968-1998) such as academic literature suggest that the family justice system was never directly or extensively involved in preventing and countering Northern Irish terrorism, (see: Greg Kelly, 'Social Work and the Courts in Northern Ireland' in Howard Parker (Ed) *Social Work and the Courts* (Edward Arnold, 1979), 185; Marie Smyth, *Social Work, Sectarianism and Anti-Discriminatory Social Work Practice in Northern Ireland* (University of Ulster, 1994), 13; Marie Smyth and Jim Campbell, *Social Work, Sectarianism and Anti-sectarian Practice in Northern Ireland* (1996) 26 The British Journal of Social Work 77, 90; Greg Kelly and John Pinkerton, 'The Children (Northern Ireland) order 1995: Prospects for Progress?' in Malcolm Hill and Jane Aldgate (Eds) *Child Welfare Services: Developments in Law, Policy, Practice and Research* (Jessica Kingley 1999), 46-47; Deirdre Heenan and Derek Birrell, *Social Work in Northern Ireland* (Policy Press, 2011), 23- 22 and Joe Duffy, Jim Campbell and Carol Tosone, 'Voices of Social Work Through the Troubles' (British Association of Social Workers, 7 February 2019), 7). However, I accept that engagement with *primary* sources such as interviews with key stakeholders (i.e. social workers and family lawyers active during the period of the Troubles) and case-law and case-files from the period might highlight some of the more indirect and informal ways in which the family justice system could have been used to regulate the lives of those suspected or convicted of terrorism in Northern Ireland. The potential for comparisons between the radicalisation cases and legal responses to terrorism in Northern Ireland are explored further in the concluding chapter.

[58] Helen Brocklehurst, 'The Nationalisation and Militarisation of Children in Northern Ireland' in Helen Brocklehurst, *Children as Political Bodies: Concepts, Cases and Theories* (DPhil thesis, University of Wales, 1999); Orla T Muldoon, *Children of the Troubles: The Impact of Political Violence in Northern Ireland* (2004) 60 *Journal of Social Issues* 453. Children in Northern Ireland: Abused by Security Forces and Paramilitaries' (Human Rights Watch [Formerly Helsinki Watch], July 1992), 1 and Ed Cairns, 'Society As Child Abuser: Northern Ireland' in Wendy Stainton Rogers, Denise Hevey and Elizabeth Ash (Eds) *Child abuse and Neglect: Facing the Challenge* (The Open University, 1989),119.

[59] Tony Stanley and Surinder Guru, *Childhood Radicalisation Risk: An Emerging Practice Issue* (2015) 27 Social Work in Action 353, 359.

[60] Ibid.

[61] Ibid.

[62] Ibid, 354. E.g: Adam Withnall, 'Boris Johnson: Muslim children being 'taught crazy stuff' at home should be taken into care' *Independent* (3 march 2014) and Tom McTague, 'Nicky Morgan orders review on home schooling amid fears children having minds 'poisoned'by radicalised parents *Independent* (19 December 2015).

involvement in terrorist violence,[63] Stanley and Guru argue that childhood radicalisation has only recently been 'constructed'[64] as a 'new category of [child] abuse,'[65] notwithstanding its historic existence. [66]

The recent construction of childhood radicalisation as a new and emerging category of child abuse and harm illustrates how often the state's decision to intervene in private and family life in the name of protecting children, even from seemingly obvious harms, is more likely to reflect a different social and cultural context and shifting set of political priorities rather than real changes in the actual lived experiences of children.[67] For although harm to children is, in the words of Hendrick, 'ever present,'[68] political interest in the "problem" at hand can lead to the "discovery" and construction of new categories of harm that have always existed.[69] While the state's concern for children's protection and welfare can be genuine, it is also inextricably linked to, and cannot be separated from, the state's wider political concerns.[70] Therefore, identifications and constructions of harm and interventions in the name of protecting children and promoting their welfare often reflect and further the state's policy agendas.[71]

Secondly, and relatedly, the official explanation overlooks the radicalisation cases which are primarily, or solely, concerned with allegations of extremism. For as I argued in Chapter Two, the judges deciding the radicalisation cases identify *two* main harms from which they claim children should be protected: travel to ISIS-held territories and extremism and radicalisation. Whereas the first harm does at least raise some traditional and familiar child-protection risks, the same cannot be said of the second type of harm. Extremism and radicalisation, and the ways in which they are approached by the judges in the radicalisation cases will be discussed and critiqued in more detail in Chapters Six and Seven. However, at this point in the analysis it is worth highlighting a few points. Firstly, extremism and radicalisation are highly politicised

[63] Stanley and Guru (n59), 353-354.
[64] Ibid, 356.
[65] Ibid, 353.
[66] Ibid, 359
[67] Hendrick (n32), 159.
[68] Ibid.
[69] Ibid.
[70] Ibid, 40.
[71] Ibid.

security terms that originate from and are defined by counter-terrorism policy, specifically the *Prevent* Strategy. Up until recently, they were entirely alien to child-protection law and policy. Secondly, while it is true, as I argued in Chapter Two, that extremism and radicalisation have been treated by the Government as child-protection and safeguarding risks in recent years, it is also worth highlighting the lack of consensus amongst child-protection practitioners regarding the categorisation and treatment of extremism and radicalisation as child-protection and safeguarding risks.[72] Social workers and social work academics have even cautioned against defining radicalisation and extremism as child-protection risks,[73] arguing that whereas child-neglect, physical and sexual abuse can be easily identified as presenting recognisable child-protection harms and safeguarding risks, when it comes to extremism and radicalisation it is not clear exactly *what* children are being protected from.[74]

The point here is that extremism and radicalisation do not themselves pose obvious child-protection harms. Rather, they have been identified and constructed as such for the purpose of furthering the objectives of the state's (expanding) counter-terrorism policy and national security agenda. Therefore, the family courts are not, as per the official explanation, simply protecting children from the latest manifestation of the terrorist threat. Rather, the radicalisation cases reflect and indeed augment these politicised and securitised constructions of harm.

5. Conclusion: Identifying the *Conditions of Possibility*

This chapter questioned and deconstructed the official explanation of the interaction between family law and counter-terrorism in recent years. Emphasising the politics of child-protection, the chapter has challenged the a-political sense of *inevitability* underpinning the official claim that the radicalisation cases emerged in the family courts in response to a novel terrorist threat that targets and harms children. Instead, the critical analysis in this chapter highlights the role

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[72] Thomas Chisholm and Alice Coulter, 'Safeguarding and radicalisation: Research report' (Department for Education, August 2017), 4-6.
[73] Stanley and Guru (n59), 353.
[74] David McKendrick and Jo Finch, *'Downpressor man': securitisation, safeguarding and social work* (2017) 5 Critical and Radical Social Work 287, 293 and Joint Committee on Human Rights, *Counter-Extremism (Second Report of Session 2016–17)*, HL Paper 39/HC 105 (22 July 2016), 5.

played by changing social, and cultural context and the role of the state's wider policies and agendas in *constructing* the involvement of children in terrorism, extremism and radicalisation as child-protection harms.

So how and why, then, were terrorism, extremism and radicalisation constructed as child-protection harms, thereby facilitating the recent emergence of the radicalisation cases in the family courts of England and Wales? The remainder of Part II will be dedicated to critically interrogating this question, identifying and examining the *conditions of possibility* that enabled the recent interaction between family law and counter-terrorism. To that end, the three following chapters will claim that the recent interaction between family law and counter-terrorism has been facilitated by, reflects and reinforces important social, cultural, political and ideological shifts and changes in both family and counter-terrorism law, policy and discourse.

Chapter Four

Changes to the Conceptualisation, Regulation and Governance of the Family

1. Introduction

In this chapter, I investigate the "why" question by examining how shifts in the way that the family has been conceptualised, regulated and governed in the UK have contributed to the recent emergence of the radicalisation cases. This is because understanding why two apparently very separate areas of law and state activity, namely family law and counter-terrorism, have interacted in recent years requires a recognition of the *public* significance of the *private* family and its status as an instrument of social and political control. Drawing on the work of social theorists such as Jacques Donzelot,[1] Nikolas Rose[2] and Nigel Parton[3] who deploy a 'Foucauldian paradigm of the family'[4] and the history of its policing and governance, section (2) will argue that although liberal theory emphasises the essentially private nature of the family, in *reality* the family has always had an important public function within liberal states and societies. Recognising that the family, especially the working-class family, can pose a threat to social and political order and can be a site of risk to children, the British state has used the family as an instrument of governance[5] to reinforce prescribed norms[6] and to control and discipline its "dangerous" populations since the late 19th century.[7]

However, in section (3) I will agree that although by the mid 20th century the family was 'fundamental to the government of the social economy'[8] in the UK, I will maintain that to

[1] Jacques Donzelot, *The Policing of Families* (John Hopkins University Press 1979).
[2] Nikolas Rose, *Governing the Soul: The Shaping of the Private Self* (Routledge 1990).
[3] Nigel Parton, *Governing the Family: Child Care, Child Protection and the State* (Macmillan 1991), 5.
[4] Jose Luis Moreno Pestana, 'Jacques Donzelot's The Policing of Families (1977) in Context' in Robbie Duschinsky and Leon Antonio Rocha (Eds) *Foucault, the Family and Politics* (Palgrave Macmillan 2012), 121.
[5] Donzelot (n1), 48.
[6] Rose (n2), 127.
[7] Parton (n3), 16.
[8] Nikolas Rose, *Beyond the Public/Private Division: Law, Power and the Family* (1987), 14 Journal of Law and Society 61, 70.

understand why the radicalisation cases only *recently* emerged in the family courts, it is important to examine the major changes to the regulation of the family and family life that have been instituted over the last two decades. To that end, I will argue that New Labour's electoral victory in 1997 and its thirteen years in government transformed the way in which the family is goverened and regulated in the UK, leading to a more distinctly interventionist approach to the legal and social regulation of the family. In section (4) I will argue that this interventionist turn within family laws and policies continued and expanded under the Coalition Government, leading to the development of an authoritarian approach to the regulation of the family.[9] Finally, I will claim that these important changes to family regulation and governance during the past two decades are part of the *conditions of possibility* that made the emergence of the radicalisation cases and the interaction between family law and counter-terrorism possible.

2. The *Public* Significance of the *Private* Family in Liberal Thinking and Practice

In liberal states such as the UK, family privacy is a constitutionally embedded and legally protected principle.[10] In liberal thinking, the overarching concern with delineating the limits of legitimate state action has manifested itself in a distinction between the *public* and *private* spheres of social life, with an imagined 'opposition between the realm of legitimate public regulation and the realm of freedom from intrusion, personal autonomy and private choice.'[11] As a result, liberal states have long been reluctant to subject the family to substantial amounts of regulation and have tended to imbue their laws and policies with a degree of respect for family privacy.[12]

However, according to Rose, since at least the 1960s, the existence of the private and mostly unregulated family has been seriously doubted and challenged within critical legal literature.[13]

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[9] Nigel Parton, *The Politics Of Child Protection: Contemporary Developments And Future Directions*, (Palgrave Macmillan, 2014), 150.
[10] Andrew Bainham, *The Privatisation of the Public Interest in Children* (1990) 53 Modern Law Review 206, 206.
[11] John Dewar, *Law and the Family* (Butterworths, 1992), 5. See also: Eva Gamarnikow, *Public and the Private: Social Patterns of Gender Relations* (Heinemann, 1983).
[12] Bainham (n10), 207 and Mavis Maclean, 'Introduction' in Mavis Maclean (Ed) *Making Law for Families* (Hart Publishing, 2000), 1.
[13] Rose, (n2) 125-127.

Feminist, post-structural and other critics have argued that the liberal state leaves the family unregulated *only* to the extent that it 'adequately perform[s] functions which are thought to be in the public interest.'[14] If the family fails to uphold the public interest or its members behave in ways that threaten social and political order, the liberal state replaces non-intervention with social and legal regulation of family life.[15] Therefore, although in *theory* liberal thought espouses an ideology of family privacy, in *reality* there has always been a 'contradiction between the insistence on intimacy being maintained in the private realm'[16] on the one hand, and the 'constant interventions to regulate the intimate'[17] on the other. The liberal state, Michael Freeman argues, is continually drawing and redrawing the boundaries between the public and the private, such that 'the private sphere is constituted and reconstituted by the public sphere.'[18] As a result, Freeman contends, the family does not exist as 'separate from and in opposition to the state.'[19] Rather, the private family is intrinsically linked to public governance and plays an important role in achieving the 'objectives of public regulation.'[20]

To support the argument that in liberal states the *private* family serves important *public* functions,[21] two claims have been put forward by critics. The first, more theoretical claim pertains to the centrality of the family in sustaining political order and, by corollary, the threat that the "wrong" kind of family poses to liberal political order.[22] The second, more historical claim refers to the important role that the family plays in instilling its members, especially children, with certain norms and values regarded as being essential for liberal citizenship.[23]

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[14] Bainham (n10), 207.
[15] Ibid.
[16] Paul Reynolds, *Disentangling Privacy and Intimacy: Intimate Citizenship, Private Boundaries and Public Transgressions* (2010) 20 Human Affairs 33, 39.
[17] Ibid.
[18] Michael Freeman, *Towards a Critical Theory of Family Law* (1985) 38 Current Legal Problems 153, 170.
[19] Ibid.
[20] Rose (n8), 70-71.
[21] Donzelot (n1), 20 and Pestana(n4), 121;
[22] Alice Hearst, 'Domesticating Reason: Children, Families and Good Citizenship' in Anne McGillivray (Ed) *Governing Childhood* (Dartmouth Publishing Company 1997), 200.
[23] Ibid.

2.1 The Threat of the Private Family: Conflicting Loyalties and Problematic Child-Rearing

According to Alice Hearst, 'in a liberal state the family is as much a threat to the political order as it is essential to it.'[24] In a similar vein, Carol Pateman argues that within liberal thinking, the family 'is a form of association that stands … in conflict with'[25] the state. Hearst and Pateman suggest two reasons behind why the family might be a regarded as a threat.[26] Firstly, within liberal thinking there is a concern that 'family loyalties may impede allegiances to the political order.'[27] The concern here is that strong familial bonds and attachments can potentially undermine loyalty to the state.[28] Therefore, the closer family members are to each other and the more fealty that they feel for one another, the greater the potential threat that the family poses to liberal political order.[29]

Secondly, critics argue, the liberal state fears that the family may inculcate its members, especially children, with 'values at odds with those most conducive to perpetuating established structures of authority in the public sphere.'[30] Because the family may fail to instil its members with the right kind of values and to 'imbue children with fealty to extant structures of authority,'[31] it is considered a potential source of subversion. Therefore, controlling the private family is integrally related to maintaining the state's stability and continuity.[32] As a result, according to Hearst, regulating the 'family was inscribed in liberal thought.'[33]

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[24] Ibid.
[25] Carol Pateman, *"The Disorder of Women:" Women, Love and the Sense of Justice* (1980) 19 Ethics 20, 24.
[26] Ibid, 23.
[27] Hearst (n22), 200.
[28] Ibid, 201
[29] Ibid, 208 and Pateman (n25), 21-29.
[30] Hearst (n22), 201.
[31] Ibid, 208.
[32] Ibid, 204.
[33] Ibid.

2.2 The Family and Liberal Subjectivity in the 19th and 20th Centuries: Techniques of Normalisation and Moralisation

Although in *theory* the family generally speaking posed a threat to liberal political order, in *practice* it was the working-class and/or "deviant" family that was seen as threatening.[34] According to Parton and Donzelot, the late 19th and early 20th centuries saw 'the emergence of a new set of discourses which were interrelated via their common interest in the family.'[35] Collective anxieties about the upbringing and socialisation of working-class children and the potential threat that they posed to moral, social and political order and the wider national interest led to a number of developments 'in which the family, in particular the working class family, became the site of projects of citizenship focused on the normalisation of deviant, difficult and dangerous children.'[36] In the UK, the idea that certain "problem families" with improper childrearing practices were responsible for a variety of social problems such as crime and juvenile delinquency took hold in the late 19th and early 20th centuries.[37] This led to an increase in the monitoring and regulation of parenting within working-class or "deviant" families.[38] Therefore, although "normal" families did not necessarily experience *overt* state intervention, for working-class and/or "deviant" families, respect for the right to privacy depended on their ability to bring up "good" children according to an approved set of values and to conform to certain norms and ideals of family life.[39]

The point here is that during the late 19th and early 20th centuries, the British state and wider civil society began to increasingly believe both that social 'problems had their genesis in the family'[40] and also that the solution to these problems resided in the family.[41] Therefore, according to Donzelot, during that period there was a general shift in approach from 'government *of* the family' to 'government *through* the family.'[42] In Donzelot's view, the

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[34] Ibid, 203.
[35] Parton (n3), 11 and Donzelot (n1), 48-95.
[36] Anne McGillivray, 'Introduction: Governing Childhood' in McGillivray (n22), 6.
[37] Parton (n3), 13 and Rose (n2), xxix.
[38] Hearst (n22), 203.
[39] David McCallum, *Coercive normalization and family policing: the limits of the 'psy-complex' in Australian penal systems* (2007) 16 Social and Legal Studies 113, 114.
[40] Parton (n3), 77.
[41] Ibid.
[42] Donzelot (n1), 48. My emphasis.

family became an important *agent* of the state and an instrument of socialisation, essential for conveying certain prescribed social norms into the private sphere.[43] Pointing to the rise of state, professional and philanthropic interventions into the lives of working-class families, Donzelot claims that the (working-class) family became a site of intervention, thereby losing its autonomy.[44] In a similar vein, Rose contends that the 19th and 20th centuries witnessed the proliferation of projects and initiatives which sought to shape, regulate and responsibilise[45] working-class families for the sake of realising particular political and social ends.[46] In particular, working-class parenting was subjected to increasing levels of monitoring as a result of the introduction of child-protection legislation, which empowered local authorities to evaluate parenting, assess standards of care provided to children and to intervene to remedy perceived shortcomings.[47] These developments, Rose maintains, 'opened up'[48] the family to greater levels of state scrutiny and regulation.[49]

Importantly, however, Foucauldian scholars of the family argue that although the family was being increasingly used for the sake of achieving the state's various social and political objectives, this was not done coercively or under the threat of sanction.[50] Rather, the aim of many of the initiatives directed at working-class families in the late 19th and early 20th centuries was the 'construction of subjective values.'[51] According to Rose, the regulation of the family over the last two centuries was motivated by the idea that the family 'was crucial to the means whereby personal capacities and conducts could be socialised, shaped and maximised in a manner which accorded with the moral and political principles of liberal society.'[52] By targeting those who were considered to be "outside" of, and therefore a potential threat to, society (i.e. the poor and the criminal or sexually deviant,) the family was seen as crucial in terms of transmitting values and shaping, in a non-coercive manner, the subjectivities of individuals and modulating them into citizens.[53]

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[43] Ibid, 70.
[44] Donzelot (n1), pgs. 34-36 and 187.
[45] Rose (n8), 70.
[46] Ibid. See also: Nikolas Rose, *Powers of Freedom: Reframing Political Thought*, 74-76.
[47] Rose (n8), 70.
[48] Rose (n2), 124.
[49] Ibid.
[50] Rose (n8), 73.
[51] Ibid.
[52] Ibid, 68.
[53] Ibid, 70 and 128 and McGillivray (n22), 6-8.

This was achieved, Donzelot contends, through two main techniques of governmentality: moralisation and normalisation.[54] The technique of moralisation involved the use of charity and the provision of financial and material assistance in order to encourage working-class families to behave morally.[55] Normalisation, in turn, denoted the 'attempts to spread specific' or 'approved norms'[56] to working-class families through education and health initiatives, child-protection legislation, youth courts and social work interventions.[57] In Donzelot's view, these "soft" regulatory techniques 'diminished the significance of coercive forms of power in the regulation of parents and their children.'[58] Therefore, Rose argues, the state governed the family and utilised the relations within it to further social and political agendas, not through coercion but through the *production* of families and parents, in particular mothers, who *wanted* to live according to these norms.[59] Here, 'images of normality generated by experts,'[60] particularly medical experts, psychologists and social workers and 'representations of motherhood, fatherhood and parental conduct'[61] influenced and shaped the subjectivities of individuals so that parents 'could *themselves* normalise… their lives, their conduct and those of their children.'[62] Through these techniques, images and representations, families could 'govern their intimate relations and socialise their children according to social norms'[63] without the need for state coercion.[64]

This is all to say that the privacy of the family within liberal states and societies has always been mostly theoretical. Since the late 19th century in the UK, the family was increasingly identified and treated as an instrument of social and political control. Recognising the capacity for the private family to pose a threat to liberal political order, the state sought to intervene in the family lives of the populations it regards as dangerous in an attempt to normalise and socialise them in accordance with specific norms and to shape and regulate their personhood

[54] Donzelot (n1), 70.
[55] Parton (n3), 13.
[56] Ibid.
[57] Pestana (n4), 133.
[58] McCallum (n39), 115.
[59] Rose (n8), 73.
[60] Rose (n2), 132.
[61] Ibid.
[62] Ibid. My emphasis.
[63] Ibid.
[64] Ibid.

and subjectivity. Consequently, the family emerged as an important instrument of government.[65]

3. New Labour and the Politicisation of the Family[66]: Increasing Interventions into and Regulations of Family Life

The discussion in the preceding section shows that although liberal thinking is underpinned by the apparent dichotomy between the private and public spheres, in reality, by the mid-20th century, the idea that the private family can potentially threaten social and political order was already established. The family was, by that point, treated as a potential site of state intervention and a space where liberal subjectivity and citizenship can be modulated. However, to understand why the radicalisation cases have only *recently* appeared in the family courts it is important to highlight the significant changes to the regulation and governance of the family that have taken place since the advent of New Labour in 1997.

It is true that as matter of *formal* law, not much has changed in the area of family law, particularly child-protection. The main legislative framework that has been used over the last three decades is the Children Act (CA) 1989[67] and its relevant provisions. Although the Children Act that was passed under the New Labour Government in 2004 will be discussed at more length later in this Chapter, it is worth noting that its focus was 'on structural procedural reform aimed at improving planning, interventions and integration.'[68] The CA 1989, therefore, remained 'the legislative foundation of the child protection system.'[69] And indeed scholars have regarded the CA 1989 as a piece of legislation that achieves a reasonable 'balance between

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[65] Donzelot (n1), 48.
[66] Val Gillies, *From Function to Competence with the New Politics of the Family* (2011) 16 Sociological Research Online, paras 6.1-6.3.
[67] Lisa Bunting, Claire McCartan, Janice McGhee, Paul Bywaters, Brigid Daniel, Brid Featherstone and Tom Slater, *Trends in Child Protection Across the UK: A Comparative Analysis* (2018) 48 British Journal of Social Work 1154, 1156.
[68] Ibid, 1156.
[69] Ibid.

the state and the family,'[70] protecting both children from significant harm and the famiies from intrusive and unjustified state intervention.[71]

However, if we take the broad definition of family law discussed in Chapter One, which goes beyond formal statutes and case-law and encompasses the wider policy, practice and discursive contexts,[72] it becomes clear that since the advent of New Labour in 1997, there have been significant reforms leading to a more interventionist approach to the regulation of the family.[73] According to Barbara Fawcett, Brid Featherstone and Jim Goddard, although the previous 'Conservative governments had introduced a number of significant measures - such as the Children Act 1989, the Child Support Act 1991 and the Family Law Act 1996 - they were much less interventionist'[74] in their approach to the family than their New Labour successors. Therefore, there is consensus in the academic literature that New Labour introduced a 'new public politics of the family,'[75] such that the family became a 'highly politicised'[76] site of intervention.

The family, children and childhood more generally, were 'at the core of New Labour's social programme.'[77] The notable emphasis placed on the family between 1997-2010 partly stemmed from New Labour's philosophical orientation, in particular the Third Way approach and New Labour's attempts to reform and modernise the welfare state.[78] In New Labour's vision, the Third Way represented a modern compromise between the social justice focus of the Old Left and the individual responsibility and the neoliberal, free market ideas of the New Right.[79] The

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[70] Nigel Parton, *The Contemporary Politics of Child Protection: Part Two (The Baspcan Founder's Lecture 2015)* (2015) 25 Child Abuse Review 9, 10 and Heather Keating, *Suspicions, sitting on the fence and standards of proof* (2009) 21 Child and Family Law Quarterly 230, 230-231.
[71] Ibid.
[72] Fran Olsen, *The Politics of Family Law* (1984) 2 Law & Inequality: A Journal of Theory and Practice 1, 1 and Alison Diduck and Felicity Kaganas, *Family Law, Gender and the State: Text, Cases and Materials* (Hart Publishing, 2012), 21.
[73] Bunting et al (n67) 1156 and Barbara Fawcett, Brid Featherstone and Jim Goddard, *Contemporary Child Care Policy and Practice* (Palgrave Macmillan 2004), 14.
[74] Ibid, 1.
[75] Val Gillies, 'Troubling families: parenting and the politics of early intervention' in Stephen Wagg and Jane Pilcher (eds) *Thatcher's Grandchildren? Politics and Childhood in the Twenty-First Century* (Palgrave Macmillan 2014), 207.
[76] Gillies (n66), para 8.1.
[77] Parton (n9), 41.
[78] Ibid, 30-32.
[79] Karen Broadhurst, 'Safeguarding Children through Parenting Support: How Does *Every Parent Matter*?' in Karen Broadhurst, Chris Grover and Janet Jamieson (Eds) *Critical Perspectives on Safeguarding Children* (John Wiley &Sons, 2009) 5.

position of children and families was central to the Third Way philosophy in two main ways.[80] On the one hand, New Labour was concerned with improving the life chances of children, tackling their poverty (or, in the language of New Labour, *disadvantage* and *social exclusion*) and providing them with equal opportunities for the future.[81] Because New Labour was convinced that how children grow up determines their future prospects, it saw children and childhood as important social investments for the state.[82] On the other hand, the neoliberal and moral dimension to New Labour's Third Way philosophy, which was concerned with the personal responsibilities of individuals and families, led to the development of a more authoritarian approach that held parents personally responsible for the crimes and failures of their children and tried to monitor, regulate and reform the behaviour of children and parents more closely.[83]

However, New Labour's preoccupation with the family was not just the result of its ideological commitments; it was also influenced by the events of the time and the wider concern about children and childhood. Since the 1990s, and especially after the murder of the toddler James Bulger in 1993 at the hands of two ten-year old boys, political and media commentators warned that childhood in the UK was in "crisis."[84] Because the murder intensified an already prevalent moral panic about the upbringing of children, during the mid-1990s childhood became 'a key site for Government intervention.'[85] The murder was pivotal in shaping the direction of New Labour's laws and policies relating to children and families and led to a more assertive and active governmental regulation of children and childhood.[86]

Therefore, whilst the British state has always regulated the family and family life, the advent of New Labour marked a 'significant turning point.'[87] This change was reflected in the

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[80] Parton (n9), 32.
[81] Ibid, 38-39.
[82] Ibid, 28-32.
[83] Broadhurst et al (n79), 6.
[84] Allison James and Adrian L. James, *Constructing Childhood: Theory, Policy and Social Practice* (Palgrave Macmillan 2004), 169.
[85] Nigel Parton, *Safeguarding Childhood* (Palgrave Macmillan 2006), 98.
[86] Fawcett et al (n73), 37.
[87] Ellie Lee, Jennie Bristow, Charlotte Faircloth and Jan Macvarish, *Parenting Culture Studies* (Palgrave Macmillan, 2014), 80.

emergence of a distinct family policy.[88] Whereas previously, and as a result of the influence of its 'strong liberal heritage,'[89] an explicit family policy did not exist in the UK, under New Labour a clear family policy began to emerge.[90] However, New Labour's family policy was somewhat contradictory.[91] On the one hand, an increasing number of social problems, particularly youth crime and anti-social behaviour, were *familialised* and attributed to the inadequate parenting and child-rearing practices of "problem" families. This lead to the development of assertive measures targeting the "problem" families perceived to be responsible for the majority of youth crime and anti-social behaviour.[92] But on the one hand, concerns about the impact of disadvantage and social exclusion on children and a belief in early intervention as a way of maximising their opportunities led to the emergence of the safeguarding agenda - a "soft," welfare-orientated approach to child-protection that emphasised supporting *all* families for the sake of safeguarding *all* children.[93]

In what follows, I will discuss both of these aspects of New Labour's family policy, arguing that while they may have been motivated by different concerns, they both *politicised* the family and family relations, especially the parent-child relationship, and ushered in a new era of family governance.

3.1 The Assertive Approach[94]: The Familialisation of Crime and Anti-Social Behaviour and The Blaming and Responsibilising of Parents

New Labour's assertive and interventionist approach to "problem" families resulted from its increasing *familialisation* of a growing number of social problems. Familialisation, a concept that was coined by feminist and critical legal theorists, refers to the 'transformation of political

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[88] Ibid, 79.
[89] Mary Daly, *Shifts in family policy in the UK under New Labour* (2010) 20 Journal of European Social Policy 433, 433.
[90] Ibid and Lee et al (n87), 79.
[91] Val Gillies, *Meeting parents' needs? Discourses of 'support' and 'inclusion' in family policy* (2005) 25 Critical Social Policy 70, 73.
[92] Parton (n9) 61-64.
[93] Nigel Parton, *'From dangerousness to risk': The growing importance of screening and surveillance systems for safeguarding and promoting the well-being of children in England* (2010) 12 Health, Risk &Society 51, 60.
[94] Ibid, 60.

concerns into personal and familial' ones.[95] When political or social problems are familialised, they are reconceptualised and 'recast…[into] private, family problems.'[96] Familialisation, therefore, denotes the privatisation of certain public and societal issues.[97] Although the familialisation of social problems began in the late 19th and 20th centuries,[98] scholars agree that in recent years, and particularly during the New Labour years, political and social issues have been 'increasingly familialised.'[99]

Under New Labour, poverty, truancy, unemployment, lack of educational attainment, crime and anti-social behaviour were familialised. The familialisation of these various social problems led to the increasing responsibilisation of the family, and parents in particular.[100] Side-lining the wider socio-economic and political context, individual parents were held to account for the crimes, misbehaviour and lack of educational attainment of their children and tasked with the responsibility of addressing these otherwise structural issues.[101] As a result, certain "problem" families were blamed for disproportionately causing many of Britain's social problems.[102] Government discourses and policies *explicitly* linked crime and anti-social behaviour to 'parenting deficits'[103] and treated "bad" and inadequate parenting as a 'causal factor in children's criminality.'[104]

To address these "problem" families, a more assertive and interventionist approach to the family and its regulation was developed.[105] In 2006, for example, the Government launched its infamous *Respect* policy agenda,[106] which aimed to identify and intervene in problematic and chaotic families that, according to the Government, were responsible for their children's anti-

[95] Rose (n8), 66.
[96] Alison Diduck and Katherine O'Donovan 'Feminism and Families: Plus ca Change?' in Alison Diduck and Katherine O'Donovan (Eds) *Feminist Perspective on Family Law* (Routledge 2006), 14.
[97] Ibid.
[98] Rose (n8), 66.
[99] Alison Diduck, *Shifting Familiarity* (2005) 58 Current Legal Problems 235, 236.
[100] Nikolas Rose, *Government and Control* (2000) 40 The British Journal of Criminology 321, 334-336.
[101] Ibid and Dimitra Hartas, *Parenting, Family Policy and Children's Well-Being in an Unequal Society: A New Culture War for Parents* (Palgrave MacMillan, 2014), 126.
[102] Parton (n9), 64.
[103] Gillies (n91), 73.
[104] Fawcett et al (n73), 9.
[105] Parton (n9), 64 and Hartas (n101) 140.
[106] Matthew Tempest, 'Blair launches 'respect' action plan', *The Guardian* (London 10 January 2006).

social behaviour.[107] The measures contained within the agenda, which was set out in detail in the *Respect Action Plan,*[108] included measures ensuring that parents take responsibility for their children's (mis)behaviour, intensive family intervention and support schemes for "hard-to-reach" families backed with welfare sanctions for parents who refuse to take up offers of help and the strengthening of summary responses to anti-social behaviour.[109]

Because youth crime was directly linked to family failure and deficient parenting, New Labour also merged its family policy with its efforts to tackle crime and anti-social behaviour.[110] As a result, parenting and 'parental responsibility lay at the centre of a range of policies in the broad criminal justice' arena.[111] It is true that under the preceding Conservative Government, parental responsibility for children's crimes was emphasised, particularly with the passing of the Criminal Justice Act in 1991 and the Criminal Justice and Public Order Act 1994 which introduced the hitherto unknown notion that 'parents could be fined for their failure to control their children's behaviour.'[112] Nevertheless, under New Labour, parental responsibility within the criminal justice arena was significantly expanded.[113] For example, the Crime and Disorder Act of 1998 allowed the courts to make Parenting Orders against the parent or guardian of a child who committed a crime.[114] These Parenting Orders required parents to attend parenting programmes and to change their child's behaviour.[115] Failure to do so could result in the parent being fined.[116] The Criminal Justice Act 2003 and the Anti-Social Behaviour Act 2003 made parents even 'more responsible for their children's crimes and misdemeanours.'[117] For example, the Anti-Social Behaviour Act increased the number of parenting sessions that a parent could be asked to attend under Parenting Orders and expanded the range of 'grounds on which a parenting order is available.'[118] A parent could also be invited to enter into a Parenting Contract if his or her child has engaged or is *likely* to engage in criminal activity and/or anti-

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[107] Stephen Crossley, *'Realising the (troubled) family,' 'crafting the neoliberal state'* (2016) 5 Families, Relationships and Societies 263, 267.
[108] Respect Task Force, 'Respect Action Plan' (Home Office, 2006).
[109] Charlie Cooper, *The Respect Agenda: fit for purpose?* (2007) 67 Centre for Crime and Justice Studies 8, 9.
[110] Gillies (n91), 98.
[111] Parton (n9), 41.
[112] Helen Reece, 'From Parental Responsibility to Parenting Responsibly' in Michael Freeman (Ed) *Law and Society* (Oxford University Press 2006), 467.
[113] Ibid.
[114] Lee et al (n87), 85. See: ss 8-13 of the Crime and Disorder Act 1998.
[115] Ibid.
[116] Ibid.
[117] Reece (n112), 459.
[118] Ibid, 465.

social behaviour.[119] With these new measures, Dimitra Hartas argues, the responsibility and culpability of parents in relation to their children's crimes 'was elevated to an unprecedented degree.'[120]

Therefore, although engaging with parents within the youth justice context certainly did not begin under New Labour, the distinct 'authoritarian flavour'[121] to the measures introduced under New Labour was new. According to Reece, these changes led to a 'cataclysmic shift in the meaning of parental responsibility'[122] within English family law. Rather than being understood, as it had been before, as the authority that parents had by law to decide how to raise their children,[123] parental responsibility was reframed as parental *accountability* to the state and its agencies.[124] In reframing parental responsibility as parental accountability, Reece argues that parents were no longer simply given the 'authority to discipline their children' and 'assumed to be doing their utmost to exercise control over them.'[125] Instead, parents were 'held directly accountable for their children's misdeeds.'[126]

Under New Labour, then, the family, and especially the parent-child relationship, were subjected to increased levels of *politicisation*.[127] But it is important to recognise that although in theory under these policy and legislative measures all families were politicised and subjected to intense levels of scrutiny and intervention, in reality there were 'deeply gendered and classed'[128] dimensions to New Labour's increasing regulation of the family. Firstly, in terms of gender, despite the gender neutral term "parenting" being used in the policies and official measures, given the gendered reality of caring responsibilities in the UK, it was "mothering" that was more heavily scrutinised, responsibilised and closely regulated.[129] There was, as Val

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[119] Ibid. See: ss 25-26 of Anti-social Behaviour Act 2003.
[120] Hartas (n101), 72.
[121] Fawcett et al (73), 107.
[122] Reece (n112), 463.
[123] Ibid.
[124] Ibid.
[125] Ibid, 465.
[126] Ibid.
[127] Gillies (n66), 6.1-6.3.
[128] Gillies (n75), 209.
[129] Lee et al (n87), 9.

Gillies pointed out, a 'heavily gendered allocation of parental responsibility'[130] within these criminal and youth justice initiatives such that these laws and policies had a greater impact on mothers.[131] Secondly, these measures also exhibited a class and race bias.[132] They tended to target the child-rearing practices of working-class and/or ethnic minority parents,[133] guided by a belief that poorer, marginalised parents were at risk of transmitting and 'reproducing a cycle of disadvantage and anti-social behaviour.'[134] So whilst theoretically parenting in general was scrutinised, responsibilised and blamed, in reality these measures targeted and disproportionately impacted working-class and/or ethnic minority mothering.[135]

3.2 The 'Welfare-Orientated' Approach:[136] *The Safeguarding Agenda, Early Intervention and Parental Support*

In addition to the assertive and punitive approach discussed above, New Labour also developed a universal, more welfare-focused approach to child-protection law, policy and practice which came to be known as the safeguarding agenda.[137] The safeguarding agenda is an expansive child-welfare agenda, aiming at ensuring, or *safeguarding*, the welfare and well-being of *all* children.[138] While it is true that the concept of safeguarding was introduced in the CA 1989, it was only really embedded within child-protection law, policy and practice following the election of the New Labour Government in 1997.[139]

The emergence of the safeguarding agenda can be attributed to New Labour's philosophy on children and childhood more generally.[140] Within the Third Way vision, children were regarded

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[130] Val Gillies, 'Is poor parenting a class issue? Contextualising anti-social behaviour and family life' in Martina Keltt-Davis (Ed) *Is Parenting a Class Issue?* (Family and Parenting Institute 2010), 47.
[131] Ibid.
[132] Gillies (n75), 209.
[133] Val Gillies, *Childrearing, Class and the New Politics of Parenting* (2008) 2 Sociology Compass 1079, 1080.
[134] Ibid, 1079.
[135] Ibid, 1080.
[136] Parton (n93), 60.
[137] Broadhurst et al (n79), 1.
[138] Ibid, 2.
[139] Ibid.
[140] Parton (n85) 6.

as important social investments for the state.[141] Wanting to see children become productive future citizens, New Labour's safeguarding project was motivated by the belief in the importance of supporting all children but especially those facing social exclusion and disadvantage so that they can fulfil and maximise their potential.[142] The emergence of the safeguarding agenda can also be attributed to the importance of risk and risk management to New Labour's public policy programme.[143] In the late 1990s, Karen Broadhurst, Chris Grover and Janet Jamieson argue, social problems were 'increasingly conceptualised in terms of individuals, families and communities and populations deemed to be "at risk," with interventions targeted to prevent and ameliorate these risks.'[144] Within the area of child-protection and welfare, the idea that the children of late modernity are facing a growing list of risks that could negatively determine their life chances and lead them towards a life of criminality, poor educational outcomes and unemployment influenced the development and trajectory of the safeguarding agenda.[145]

In seeking to support all children, promote their welfare and protect them from a variety of risks, the safeguarding agenda transformed child-protection policy and practice.[146] Rather than just focusing on detecting, identifying and responding to instances of child abuse and protecting a small number of children from significant harm, the state sought a broader, more proactive approach which aimed to safeguard the emotional and physical health, well-being and development of *all* children.[147] This broadening of the concerns and objectives of child-protection was also underpinned by an emphasis on early intervention.[148] To prevent the emergence of certain risk factors that could lead to the engagement of children in crime, anti-social behaviour and drug and alcohol abuse and to 'improve the educational achievement, health, mental health [and] social inclusion' of children,[149] early intervention in the lives of

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[141] Carolyn Taylor, 'Safeguarding Children: Historical Context and Current Landscape' in Broadhurst et al (n79), 27.
[142] Ibid.
[143] Broadhurst et al (n79), 4.
[144] Ibid, 8.
[145] Parton (n9), 90-93.
[146] Ibid, 8.
[147] Ibid, 60. E.g. s.11 Children Act 2004 imposed a duty on a number of 'key agencies' such as local authorities and schools 'to safeguard children and promote their welfare.' See also: HM Government (2006) 'Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children,' 2-4 and Department of Health (2000) 'Framework for the Assessment of Children in Need and their Families: Guidance Notes and Glossary,' 4-5.
[148] Nigel Parton, *The 'Change for Children' Programme in England: Towards the 'Preventive-Surveillance State'* (2008) 35 Journal of Law and Society 166, 185.
[149] Parton (n93), 60

children was identified as being essential.[150] Child-protection policy and practice became increasingly preoccupied with identifying "at risk" children and subjecting them to earlier intervention.[151] As a result, the child-protection responsibilities, which now also included the wider "safeguarding duties" of local authorities, schools, the police and other agencies, were significantly broadened, bringing an increasing number of children under the state's gaze and control.[152]

Within the safeguarding agenda, parents and parenting played a central role. "Good" and responsible parenting was identified as essential for children's development and welfare.[153] The idea that parents, through appropriate governmental support and advice, can and should detect, manage and ameliorate the risks faced by their children underpinned the safeguarding agenda and its affiliate early intervention and family support services.[154] Therefore, the New Labour Government did not just hold "bad" parents responsible for social problems; it was also concerned with cultivating "good parenting" to prevent the emergence of social problems and to raise children who are productive future citizen workers.[155] To that end, a number of parenting advice and support initiatives emerged, seeking to transmit "good" parenting skills and practices to parents, particularly working-class and/or ethnic minority mothers, based on the 'assumption that this will lead to better outcomes [for their] children.'[156]As a result, an increasingly prescriptive and directional approach to parenting developed under New Labour.[157] The state was no longer just concerned with ensuring that parents do not harm their children and protect their children from immediate threats.[158] Rather, as Felicity Kaganas argues, 'the state [was] now demanding more: parents are expected to do good.'[159]

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[150] Parton (n148), 179
[151] Parton (n85), 91. E.g. HM Government (2003), *Every Child Matters* (Cm 5860) and Children Act 2004.
[152] Parton (ibid), 169. E.g. S.11 of Children Act 2004 and HM Government (2006) 'Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children', 39-73.
[153] Hartas (n101), 76.
[154] Ibid.
[155] Lee et al (n87), 92 and Hartas (n101), 14-15.
[156] Parton (n85), 109. Examples include the *Parenting Early Intervention Pathfinder*, the *Parenting Early Intervention Programme* and the *Sure Start* programme.
[157] Gillies (n91), 77-85.
[158] Felicity Kaganas, 'Child protection, gender and rights' in Julie Wallbank, Shazia Choudhry and Jonathan Herring (Eds) , *Rights, Gender and Family Law* (Routledge 2010), 44.
[159] Ibid..

Through the safeguarding agenda, a wider approach to family regulation was introduced and a more expansive role for the state was envisioned.[160] Although the welfare-oriented approach to family law and policy was perhaps less punitive than the assertive approach, it was just as - if not more - interventionist and subjected the family and parenting to equally intense amounts of state scrutiny, regulation and *politicisation*.

4. Family Law and Policy Under the Coalition Government: Continuing the Authoritarian Approach

The preceding discussion demonstrates that although family governance and regulation under New Labour were driven by apparently contradictory concerns oscillating between a draconian approach that blamed parents for the misdeeds of their children and a "soft" welfare-focused approach, both of these approaches represented an 'attempt to govern and control at the family level.'[161] In doing so, New Labour 'repositioned [the]…family and family life as *public* rather than *private* concerns'[162] and altered the boundaries between the state and the family.[163]

This increasingly interventionist approach to the regulation of the family continued and was extended by the Coalition Government. As Suki Ali argues, from the start, the Coalition Government placed the family at the heart of its political and social agenda.[164] Although children were not as central to the Coalition Government's vision as they were to New Labour,[165] there were nevertheless important continuities.[166] Sharing New Labour's belief in the role that prevention can play in breaking 'the cycle of disadvantage'[167] and the need for parenting within working-class and marginalised communities to be improved, the Coalition Government built on New Labour's twin emphasis on early intervention to forestall the

[160] Parton (n148), 186.
[161] Gillies (n91), 75.
[162] Val Gillies, *Childrearing, Class and the New Politics of Parenting* (2008) 2 Sociology Compass 1079, 1080.
[163] Lee et al (n87), 76. My emphasis.
[164] Suki Ali, *Governing Multicultural Populations and Family Life* (2014) 65 The British Journal of Sociology 82, 82.
[165] Parton (n9), 141.
[166] Emily Ball, Elaine Batty and John Flint, *Intensive Family Intervention and the Problem Figuration of 'Troubled Families'* (2016) 15 Social Policy & Society 263, 263-264.
[167] Gillies (n162), 1079.

development of certain "risks" in the lives of children and the need to subject parenting to increased monitoring and regulation.[168] Importantly, however, the Coalition Government *sharpened* the more interventionist and punitive aspects of New Labour's family policy and *weakened* its "softer," more welfare-focused elements.[169] The advent of austerity and the Coalition Government's programme of welfare reform led to significant cuts to local authorities' children's services and family support programmes.[170] This and the strong moral overtone adopted by the Coalition Government, which blamed crime and anti-social behaviour on the decline of personal responsibility and the "social deficit" of "Broken Britain," resulted in a move away from the universal, welfare-orientated approach of New Labour.[171]

The Coalition Government's more authoritarian approach towards regulating the family and family life[172] was reflected in the launch of its flagship *Troubled Families* programme. The programme was launched partly as a response to the riots that took place in a number of English cities in August 2011, following the police killing of Mark Duggan in London.[173] The riots sharpened the authoritarian tone of the Coalition Government's family policy.[174] The "troubled" families of inner cities were blamed for the riots and the chaos and the criminality that ensued.[175] The discourse that emerged in the immediate aftermath of the riots motivated and was reflected in the workings of the *Troubled Families* programme which was launched in December 2011.[176] The programme, which was modelled on similar intensive family intervention projects under New Labour's *Respect* agenda discussed above,[177] involved a host of family interventions delivered by local authorities targeting England's most chronically unemployed, troubled and troubling families.[178] Under the programme, families that live in overcrowded housing, with unemployed and unqualified parents who suffer from physical

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[168] Parton (n9), 109.
[169] Brid Featherstone, Kate Morris and Sue White, *A Marriage Made in Hell: Early Intervention Meets Child Protection* (2014) 44 British Journal of Social Work 1735, 1739.
[170] Parton (n9), 149.
[171] Ibid, 146-155. See also: HM Government, 'PM's speech on the fightback after the riots' (15 August 2011).
[172] Parton (n9), 150.
[173] Carol Hayden and Craig Jenkins, *'Troubled Families' Programme in England: 'wicked problems' and policy-based evidence* (2014) 35 Policy Studies 631, 634.
[174] Crossley(n107), 268.
[175] David Cameron, Former Prime Minister, 'Fightback After the Riots' (Speech delivered in Oxfordshire, 15 August 2011). See also: Stephen Crossley and Michael Lambert, *Introduction: 'Looking for Trouble?' Critically Examining the UK Government's Troubled Families Programme* (2017) 16 Social Policy & Society 81, 81.
[176] Ian Butler, *New families, new governance and old habits* (2014) 36 Journal of Social Welfare & Family Law 415, 416.
[177] Ibid, 415 and Ball et al (n166), 263-264.
[178] Ruth Levitas, 'There may be 'trouble' ahead: what we know about those 120,000 'troubled' families' (Poverty and Social Exclusion in the UK: Policy Response Series No 3, 21 April 2012), 7-10.

and/or mental illnesses and disabilities are invited by the local authority to sign up to the programme and are assigned a family worker who coordinates intensive, multi-agency interventions designed to "turn" their lives "around."[179] Although presented as a family *support* programme, families that refuse to participate in the programme could face the threat of eviction and even prosecution.[180]

The muscular tone of the Coalition Government's family policy was also reflected in the reforms to child-protection and adoption laws, policies and practices undertaken between 2010-2015. According to Nigel Parton, the Coalition Government developed an authoritarian approach to child-protection that led to the reconfiguration of the child-protection system along draconian lines.[181] The Coalition Government's interest in reforming the child-protection system was signalled early on when it announced a review of the entire system in May 2010.[182] The review, known as the Munro Review, re-emphasised the importance of early intervention initiatives and recommended that the Government ensure local authorities provide early help services to the children and families in their areas.[183] In accepting and implementing most of the review's recommendations,[184] the Coalition Government instigated an important shift in approach to child-protection.[185] More emphasis was placed on the need to protect children not just from abuse, maltreatment and neglect but also from an expanding list of risks caused by inadequate parenting.[186] Social workers were also given a more important role and were afforded with a greater level of flexibility that allowed them to intervene in the lives of children and families in a more 'authoritative, timely and decisive manner.'[187]

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[179] Butler (n176), 415-418 and Hayden and Jenkins (n173) 636-638.
[180] Ibid.
[181] Parton (n9) 154-155.
[182] Department for Education (2011) 'The Munro Review of Child Protection: Final Report- A child-centred system' and Parton, *The Munro Review of Child Protection: An Appraisal* (2012) 26 Children and Society 150, 150.
[183] Department for Education (ibid), pgs 7-11, 36, 44-46 and 69. Parton (ibid), 152.
[184] Department for Education (2011), 'A child-centred system: The Government's response to the Munro review of child protection,' 12-18.
[185] Ibid, 153.
[186] Ibid, 152. See also: HM Government (2013) 'Working Together To Safeguard Children,' 7.
[187] Parton (n9), 134. See: Department for Education (n184), 7-8; Eileen Munro, 'The Munro Review of Child Protection-Progress Rreport: Moving towards a child centred system' (Department for Education, May 2012), 9-15 and HM Government (2013) 'Working Together to Safeguard Children,'18-24. It is worth noting here that it is Government *policy documents* and *statutory guidances* that placed an increased emphasis placed on the role played by social workers and afforded them greater flexibility, leading to more authoritative interventions. There was no new legislation that gave social workers increased powers.

Within this increasingly assertive child-protection system, greater emphasis was placed on the need to remove children from dangerous homes and to place them within state care.[188] Influenced by the tragic and highly publicised death of Baby Peter Connelly in 2008,[189] the Coalition Government expressed a 'stronger endorsement of the benefits of child removal in cases of maltreatment and child neglect.'[190] Therefore, for the Coalition Government, "early intervention" did not just mean providing support to families of young children and identifying risks as it did to the New Labour Government. It also meant intervening early to remove children from their homes into state care on a statutory basis.[191] The Coalition Government's enthusiasm for the compulsory removal of children led to a rise in the number of children coming into state care in the UK, particularly ethnic minority children.[192]

The assertive flavour to the Coalition Government's family agenda was also reflected in the reforms to adoption law and policy that it introduced in order to increase the use of adoption.[193] A belief in the need to 'weaken the link between maltreated children and [their] birth families'[194] and concerns that the insistence on the ethnic matching of ethnic minority children in adoption was leading to delays in their placement[195] led the Government to reform adoption laws and policies with the explicit aim of making adoption easier.[196] To that end, the Coalition Government launched an *Action Plan for Adoption* in 2012[197] and passed the Children and Families Act in 2014 making adoption simpler and doing away with the duty to consider race, ethnicity, culture and language when placing children for adoption.[198] As a result, the number of children being adopted, particularly ethnic minority children, rose in the UK, even in cases where the adoption was contested by the birth parents.[199]

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[188] Ibid, 152.
[189] Ibid.
[190] Derek Kirton, *'Kinship by design' in England: reconfiguring adoption from Blair to the coalition* (2012) 18 Child and Family Social Work 97, 99. See: Department for Education (2012), 'An Action Plan for Adoption: Tackling Delay,' 8-9.
[191] Parton (n9), 152.
[192] Butler (n176), 420. See also: Department for Education, (2021) 'Children looked after in England, including adoptions' and Department for Education, 'Adopted and looked after children' (14 June 2021).
[193] Ibid, 423. Adoption has the legal effect of terminating the parental rights and responsibilities of the birth parents.
[194] Kirton (n190), 99.
[195] Ali (n164), 83.
[196] Butler (n176), 420.
[197] Department for Education, 'An Action Plan' (n190).
[198] Ali (n164), 85. See also Part 1 of the Children and Families Act 2014, particularly ss 2 and 3.
[199] Butler (n176), 421-422.

The family generally, and parenting more specifically, became central to the Coalition Government's vision and its restructuring of the welfare state.[200] The Coalition Government's muscular and somewhat authoritarian legal and policy approaches to the family increased the state's power to intervene in, regulate and govern the family.[201] However, once again, it is important to note that it was working-class and ethnic minority mothers that mainly experienced the Coalition Government's muscular approach to, and regulation of, family life.[202] For as Ali argues, the Coalition Government's discourses, its response to the riots in 2011 through the *Troubled Families* programme and its policy and legislative approach to child-protection and adoption were classed, gendered and racialised.[203]

5. Conclusion

This chapter has explained the recent interaction between family law and counter-terrorism by reference to the significant changes to the way in which the family has been conceptualised, regulated and governed. Underlining the *public* significance of the *private* family within liberal thinking and practice, the chapter began by complicating the alleged distinction between the private sphere of the home and family and public governance, arguing that since the late 19th and 20th centuries the family has emerged as an important instrument of governance and an agent of moralisation and normalisation.

However, the chapter argued that the last two decades have altered the relationship between the family and the state in the UK. The chapter demonstrated how under both the New Labour and Coalition Government, poverty, crime, anti-social behaviour and a host of other social and political problems were increasingly familialised and being directly linked to family failure and deficient, irresponsible parenting. By constructing poverty, crime, and anti-social behaviour as symptoms of "bad" parenting (and in particular "bad" working-class and/or ethnic

[200] Crossely (n107), 273. See also: HM Government (2015) 'Children looked after in England including adoption: 2014 to 2015.'
[201] Hartas (n101), 120.
[202] Parton (n9), 140.
[203] Ali (n164), 89-90.

minority mothering) the role of the broader political, socio-economic and cultural context is obscured. Instead, social and political problems are attributed to "problem" or dysfunctional families and inadequate childrearing practices. As a result, the status of the family as the "problem" and the image of the home as a site of risk and danger to children was augmented within law, policy and discourse. The chapter claimed that this increasing familialisation of social and political problems and the resulting responsibilisation of parents has led to a much more interventionist approach to the regulation of the family in the UK. Highlighting the proliferation of policies and government programmes and the introduction of some laws that enabled state agencies to scrutinise, monitor and responsibilise parents and the increasing interventions in private and family life in the name of child-protection brought on by the advent and growth of the safeguarding agenda and its early intervention ethos, the chapter argued that the family has been subjected to unprecedented amounts of intervention and politicisation. The state is more willing and able to intervene in a decisive and increasingly authoritarian manner in family life, not just to protect children from significant harm but to prevent their exposure to an expanding list of risks and to safeguard and promote their welfare.

These important legal, policy and ideological changes to the conceptualisation, regulation and governance of the family are important in terms of understanding the interaction between family law and counter-terrorism in recent years. The following chapter will demonstrate how the increasing familialisation of social and political problems and the politicisation of the family paved the way for the familialisation of terrorism and the securitisation of the family within post-9/11 counter-terrorism policies and discourses, enabling the recent emergence of the radicalisation cases in the family courts.

Chapter Five

The Familialisation of *Islamist* Terrorism and the Securitisation of the *Muslim* Family

1. Introduction

The increasingly robust interventions into and regulations of family life discussed in the previous chapter suggest that the family justice system was primed for the recent emergence of the radicalisation cases. However, as this chapter will demonstrate, the radicalisation cases and the interaction between family law and counter-terrorism that they facilitated need to also be explained by reference to the momentous changes and shifts within post-9/11 counter-terrorism policy and discourse, especially changes to the way in which the terrorist threat has been conceptualised as a result of the emergence and influence of the "new" terrorism thesis, the 9/11 attacks and the advent of the "War on Terror."

To that end, section (2) of this chapter will argue that the recent interaction between family law and counter-terrorism needs to be situated within and seen as a further example of the recent *familialisation* of Islamist terrorism. This section demonstrates how the prevalence of the "new" terrorism thesis within post-9/11 terrorism scholarship and global and UK counter-terrorism discourses has de-emphasised the structural, *political* causes of Islamist terrorism and instead prioritised its supposed *cultural* and *psychological* causes. These cultural and psychological explanations of Islamist terrorism, the section argues, have turned the attention of counter-terrorism policies and discourses to the private sphere, emphasising the role that the Muslim family plays in creating Islamist terrorists.

Section (3) argues that the familialisation of Islamist terrorism and its construction as a Muslim family problem within global and national counter-terrorism discourses has led to the *securitisation* of the Muslim family within UK counter-terrorism policy and discourse. This section will demonstrate how counter-terrorism policies and discourses have increasingly

located the terrorist threat within the Muslim family, constructing the Muslim home and familial relations, particularly the parent-child relationship, as seedbeds of radicalisation and identifying them as appropriate targets of counter-terrorist action. Section (3) will also argue that the ways in which counter-terrorism policies and discourses in the UK construct, target and regulate Muslim families has been enabled by, and echoes, the historical targeting and regulation of the family and its more recent politicisation discussed in Chapter Four. However, this section will emphasise that the recent securitisation of the Muslim family is also a *specific instance* of the more general politicisation of the family. To that end, section (3) identifies some of the distinctive ways in which the Muslim family has been pathologised and Muslim parents blamed and responsibilised within counter-terrorism policies and discourses.

Finally, in section (4), I will demonstrate how the familialisation of Islamist terrorism, the securitisation of the Muslim family and their specific and distinctive pathologisations and problematisations of the Muslim family is reflected and reinforced in the radicalisation cases. Closely examining and unpicking judicial rhetoric in the radicalisation cases, I argue that the way in which the judges conceptualise, represent and approach the family, the home and familial relations echoes, augments and extends both the *familialisation* of Islamist terrorism and the *securitisation* of the Muslim family.

2. A Reconceptualised Terrorist Threat: Familialising Islamist Terrorism

In this section I will argue that the recent emergence of the radicalisation cases in the family courts must be understood by reference to the familialisation of Islamist terrorism within global and UK post-9/11 counter-terrorism discourses. Familialisation, as I demonstrated in Chapter Four, is a process that involves recasting social or political problems into family problems, resulting in the *privatisation* of *public* problems.[1] Therefore, the claim here is that although terrorism is at its core a *political problem,* in recent decades Islamist terrorism has been

[1] Alison Diduck and Katherine O'Donovan (Eds) *Feminist Perspective on Family Law (Routledge 2006)*, 7 and Rudi Dallos and Eugene McLaughlin, 'Introduction' in Rudi Dallos and Eugene McLaughlin (Eds) *Social Problems and the Family* (SAGE Publications 1993), 2-3.

constructed as a *family problem*. As a result, the *private* sphere of the home and family has now become highly relevant in understanding and countering the hitherto *public* phenomenon that is terrorism.

It is important to stress here that familialisation is a discursive, politically and historically contingent process.[2] As Rudi Dallos and Eugene McLaughlin argue, social and political problems are socially constructed as familial ones.[3] Laws, policies and discourses 'relocate'[4] what are essentially public political or social problems into 'the private world'[5] of home and family. That essentially public problems *become* family problems is reflected in the fact that terrorism, which has always been regarded in the UK as a political problem that primarily manifests itself in the *public* rather than *private* sphere,[6] has been familialised in recent years. Up until recently, 'public… spaces…overwhelmingly defined the locales'[7] of global and domestic terrorist violence and counter-terrorist responses. What occurred in 'private, intimate spaces [remained] outside the circle of notice.'[8]

The recent familialisation of terrorism, has been enabled by a reconceptualisation of the terrorist threat within post-9/11 terrorism research and global and national counter-terrorism discourses. In what follows, I will discuss this changing conceptualisation of terrorism, arguing that the reconceptualisation of the terrorist threat has foregrounded the importance of the private sphere and the role that family life and domestic relations play in causing Islamist terrorism within counter-terrorism discourses.

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[2] Diduck and O'Donovan (n1), 21.
[3] Dallos and McLaughlin (n1), 4-5.
[4] Ibid, 3.
[5] Ibid.
[6] Fionnuala Ni Aolain, *Situating Women In Counterterrorism Discourse: Undulating Masculinities And Luminal Femininities* (2013) 93 Boston University Law Review 1085, 1119.
[7] Ibid.
[8] Ibid.

2.1 The De-politicisation of Islamist Terrorism

The familialisation of Islamist terrorism can largely be attributed to the emergence of the "new" terrorism thesis and its influence on global and national post-9/11 counter-terrorism discourses. According to the "new" terrorism thesis, which was debated in the 1980s but became popular after the 9/11 attacks on the United States, the Western world faces a new and essentially different kind of terrorist threat posed by fundamentalist Islam.[9] Proponents of the "new" terrorism thesis, which included terrorism researchers closely affiliated with Western states, security officials and policy-makers,[10] argued that Islamist terrorism differed significantly from the old terrorism of leftist, fascist or nationalist groups, both in terms of the objectives sought and the methods used.[11]

A key point of difference that is fundamental in terms of understanding the recent familialisation of Islamist terrorism and the subsequent emergence of the radicalisation cases in the family courts is the role of politics. According to Arun Kundnani, the "new" terrorism thesis 'distinguished between older, *political* forms of terrorism inspired by nationalism, communism or fascism, and the new *Islamic* fundamentalist violence.'[12] Whereas the wider political context was considered significant in terms of explaining the old terrorism of the pre-9/11 era,[13] within the "new" terrorism thesis, the political context was treated as being 'largely irrelevant in explaining why terrorist violence occurs.' [14] Because it was difficult in the aftermath of the 9/11 terrorist attacks to talk of the structural causes of terrorist violence for

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[9] Martha Crenshaw, *The Causes of Terrorism* (1981) 13 Comparative Politics 379-399; Bruce Hoffman, *Inside Terrorism* (Indigo, 1998); Walter Laquer, *The New Terrorism: Fanaticism and the Arms of Mass Destruction* (OUP, 1999); Marc Sageman, *Understanding terror networks* (University of Philadelphia Press, 2004) and Martha Crenshaw, '"New" vs "old" terrorism: a critical appraisal' in Rik Coolsaet (ed), *Jihadi terrorism and the radicalisation challenge in Europe* (Ashgate, 2008).

[10] Martha Crenshaw, *The Debate over 'New' vs 'Old Terrorism* (2008) 4 Values and Violence 117, 133; and David Miller and Tom Mills, *The terror experts and the mainstream media: the expert nexus and its dominance in the news media* (2009) 2 Critical Studies on Terrorism 414, 414.

[11] Magnus Hornqvist and Janne Flyghed, *Exclusion or culture? The rise and the ambiguity of the radicalisation debate* (2012) 5 Critical Studies on Terrorism 319, 324. See also: Jonny Burnett and Dave Whyte, *Embedded Expertise and the New Terrorism* (2005) 1 Journal for Crime, Conflict and the Media 1. The argument was that in contrast to "old" terrorism, which was based on local rather than global ambitions and used violence in a calculated and limited manner, the "new" terrorism of Islamist terror groups was more lethal in its methods, global in its ambitions and primarily motivated by religious fanaticism.

[12]Arun Kundnani, *Radicalisation: the journey of a concept* (2012) 54 Race & Class 3, 4. My emphasis.

[13] Arun Kundnani, 'A Decade Lost: Rethinking Radicalisation and Extremism' (Claystone, January 2015), 14.

[14] Ibid, 15.

fear that this might be interpreted by public and media commentators as an attempt to excuse or justify acts of terrorism,[15] proponents of the "new" terrorism thesis directed 'their attention on the individual level.'[16] Therefore, when it came to exploring the reasons behind terrorism, Kundnani argues that one of the main differences 'between the older terrorism studies' and the "new" terrorism thesis was the 'move away from a macro focus on…politics' and a 'descending to the level of the individual'.[17] As a result, terrorism, which had always been regarded as a *politically* motivated form of violence, was de-politicised.[18]

In de-politicising Islamist terrorism by downplaying its political causes, the "new" terrorism thesis focused on the 'cultural-psychological disposition that (supposedly) creates terrorists.'[19] According to Kundnani, the cultural aspect of the *cultural-psychological disposition* refers to the theological approach to the study and analysis of terrorism which views 'holding a set of [Islamic] religious beliefs' as a 'plausible indicator of terrorist risk.'[20] This approach asserts that there is an important 'continuity between terrorism and Islamic culture.'[21] Therefore, within the "new" terrorism thesis, the post-9/11 terrorist threat was understood and portrayed as being different primarily through a *cultural lens*.[22] Influenced by Samuel Huntington's idea of a "clash of civilisations," which claimed that Western civilisation was under an existential threat from fundamentalist Islam,[23] terrorism scholars and counter-terrorism policy makers wedded to the "new" terrorism thesis adopted a culturalist approach to terrorism which emphasised the role of Islamic theology, Islamist ideology and Muslim culture in causing terrorist violence.[24] The psychological aspect of the *cultural-psychological disposition* refers to the role of social-psychological processes in propelling individuals towards terrorist violence.[25] The psychological approach claims that often psychological crises and experiences

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[15] Peter Neumann, *Perspectives on Radicalisation and Political Violence: papers from the first International Conference on Radicalisation and Political Violence, London, 17–18 January 2008* (London, International Centre for the Study of Radicalisation and Political Violence, 2008), 4.
[16] Kundnani (n13), 15.
[17] Ibid, 8.
[18] Kundnani (n12), 6 and Jeroen Gunning and Richard Jackson, *What's so 'religious' about 'religious terrorism?* (2011), 4 Critical Studies on Terrorism 369, 371.
[19] Kundnani (n12), 5-7.
[20] Ibid, 9.
[21] Hornqvist and Flyghed (n11), 324.
[22] Ibid.
[23] Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (Simon and Schuster, 1996).
[24] Jonthan Githens-Mazer and Robert Lambert, *Why conventional wisdom on radicalization fails: the persistence of a failed discourse* (2010) 86 International Affairs 889, 889.
[25] Kundnani (n12), 10-17.

of emotional distress combine with socialisation processes to radicalise vulnerable Muslims and lead them towards joining terrorist organisations.[26]

It is worth highlighting here some of the limits of the "new" terrorism thesis, particularly the claim made by its proponents that "new" terrorism is motivated by theology or religious culture, as opposed to political conviction.[27] A number of political scientists and critical terrorism scholars have cautioned against overemphasising the religious nature and causes of the terrorism committed by Muslims.[28] For although it is true that religious conviction is a core feature of contemporary terrorist groups, Andreas Gofas argues that, historically speaking, religiously inspired terrorism is not a new phenomenon.[29] Many ostensibly secular "old" terrorist organisations were also motivated by religion. Therefore, Gofas contends, the religious element is neither novel or unique enough 'to legitimise the concept of "new terrorism."'[30] Moreover, empirically speaking, clearly distinguishing religious terrorist groups from secular ones is difficult. Many supposedly religious terrorist groups are inspired by secular nationalist rhetoric and 'emerged within a … particular political and modern context.'[31] By the same token, many of the defining features of religious terrorism are also present in secular terrorist groups.[32]

Yet despite the critiques that have been levelled at the "new" terrorism thesis, its proponents continue to de-politicise Islamist terrorism. By associating the *cultural-psychological disposition* with Islamist terrorism, the "new" terrorism thesis de-emphasises politics and the role that Western foreign and social policies play in causing terrorism and stresses the cultural and psycho-social causes of Islamist terrorism. In what follows, I will claim that this move *away* from politics *towards* culture and psychology is crucial to understanding the

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[26] Ibid, 20.
[27] Andreas Gofas, *'Old' vs 'New' Terrorism: What's in a Name?* (2012) 8 International Relations 16, 18 and Kundnani (n13), 19-25.
[28] Olivier Roy, *Jihad and Death: The Global Appeal of Islamic State* (Hurst Publishers, 2017) and Adrian Guelke, 'Secrets and Lies: Misinformation and Counter-Terrorism' in Richard English (Ed), *Illusions of Terrorism and Counter-Terrorism* (OUP, 2015), 104.
[29] Gofas (n27), 26.
[30] Ibid. Gunning and Jackson suggest that groups such as ETA are motivated by Catholicism. See: Gunning and Jackson (n18), 377. It could be argued that the terrorism of the IRA was, in part, religiously motivated. See: David Berman, Stephen Lalor and Brian Torode, *The Theology of the IRA* (1983) 72 Irish Quarterly Review 137, 137-138.
[31] Gunning and Jackson (n18), 377.
[32] Ibid.

familialisation of Islamist terrorism and the subsequent interaction between family law and counter-terrorism in recent years. I will critically analyse this new conceptualisation of terrorism, arguing that its prioritisation of the alleged cultural and psycho-social root causes of Islamist terrorism has facilitated an unprecedented turn to and focus on the private realm within global and UK counter-terrorism discourses.

2.2 Terrorist Culture: The Role of Regressive Cultural Norms and the Muslim Family Problem

The familialisation of terrorism can largely be attributed to the rise and predominance of culturalist approaches to terrorism in the post-9/11 era. As I argued earlier, within the "new" terrorism thesis, Islamist terrorism has been understood as being "new" and different primarily through a cultural lens.[33] Whereas the terrorism of "old" groups is viewed as a *political* form of violence, pursuing essentially political aims,[34] Islamist terrorism is interpreted as the product of an essentially 'alien culture.'[35] The belief that Islamic culture is a "root cause" of Islamist terrorism has meant that terrorist attacks perpetrated by Muslims are not just understood as attacks on the state and its institutions but as attacks on and threats to Western cultural values, civilisation and way of life.[36] By emphasising its cultural origins, the "new" terrorism thesis interprets Islamist terrorism as an expression of the cultural values of the Muslim Other.[37]

To understand the rise and popularity of this culturalist approach to Islamist terrorism, it is necessary to discuss the emergence of a global and national 'Muslim problem.'[38] Globally speaking, the idea of a Muslim problem dates back to the Islamic Revolution in Iran in 1979.[39]

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[33] Ibid. See also: 'IRA are not al-Qaeda says Blair' *BBC News* (London 26 July 2005).
[34] Ibid, 371.
[35] Arun Kundnani, *The Muslims Are Coming: Islamophobia, Extremism and the Domestic War on Terror* (Verso, 2014), 55.
[36] Ibid, 10. See also: Conor Gearty, *Liberty and Security* (Pluto Press 2013), 96-100 and Mahmood Mamdani, *Good Muslim, Bad Muslim: A Political Perspective on Culture and Terrorism* (2002) 104 American Anthropologist 766.
[37] Kundnani (n35), 39; Sherene Razack, *Casting Out: The Eviction of Muslims From Western Law and Politics* (University of Toronto Press, 2008) 5-10; and Ralph Grillo *Muslim Families, Politics and the Law: A Legal Industry in Multicultural Britain* (Routledge 2015), pgs. 7 and 130.
[38] Shamim Miah, *Muslims, Schooling and Security: Trojan Horse, Prevent and Racial Politics* (Palgrave Pivot, 2017), 2; Arun Kundnani, (ibid)10 and Grillo (ibid), 272.
[39] Miah (ibid), 2.

It denotes the perceived civilisational, ideological and security threat to the West posed by fundamentalist Islam and Muslims.[40] Looking specifically at the UK, the idea of the Muslim problem has its origins in the Salman Rushdie Affair in the late 1980s (and the subsequent "Fatwa") and the disturbances that followed.[41] The Rushdie Affair, and in particular the reaction of segments of the British Muslim community to it, created a 'shift in the perception of Islam in British consciousness.'[42] What was particularly worrying to the British Government about the Rushdie Affair and other subsequent incidents, such as the riots in the North of England in 2001 and demonstrations against the Danish cartoons of Prophet Mohammed in 2005, was the apparent illiberalism and intolerance of large swathes of the British Muslim population, precipitating concerns about the fundamentalism of British Muslims and their segregation from the supposedly liberal and tolerant mainstream British society.[43] These anxieties led to the development of a distinctly culturalist, and some would argue racialised,[44] official and popular narrative around Muslims in the UK.[45] As a result, Muslims were Othered and represented as posing a serious, perhaps even existential, threat to the liberal, progressive values of Britain and the British way of life.[46]

This uneasiness about Muslim cultural difference intensified following the 7/7 terrorist attacks in 2005 in London.[47] Official responses to the 7/7 attacks, committed by "home-grown" terrorists, blamed multiculturalism's indulgence of the problematic cultural norms and practices of Muslim communities and its failure to create a common sense of Britishness for the emergence of a segregated and alienated Muslim community.[48] For example, during a

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[40] Ibid; Razack (n37), 9-10.
[41] Ryan Salgado-Pottier, *A Modern Moral Panic: The Representation of British Bangladeshi and Pakistani Youth in Relation to Violence and Religion* (2008) 10 Anthropology Matters.
[42] Ibid.
[43] Ibid. See also: Suki Ali, *Governing Multicultural Populations and Family Life* (2014) 65 The British Journal of Sociology 82, 88.
[44] Razack (n37), 5-8; Miah (n38), 3 and Victoria Sentas, *Traces of Terror: Counter-Terrorism Law, Policing and Race* (OUP, 2014), 20.
[45] Grillo (n37), 40. It is important to note here the role of the British (tabloid) press in perpetuating a culturalist narrative, particularly in the years immediately following the 7/7 attacks. See: George Morgan, *Global Islamophobia: Muslims and Moral Panic in the West* (Ashgate 2012), 91- 96.
[46] Grillo (n37), 130; Razack (n37), 5-10 and Jocelyn Cesari, 'The Securitisation of Islam in Europe' (*Changing Landscape of European Liberty and Security* 2009). Islam has also been constructed as posing an existential threat to European culture and civilisation more broadly: Douglas Murray, *The Strange Death of Europe: Immigration, Identity, Islam* (Bloomsbury Continuum, 2017).
[47] Salgado-Pottier (n41).
[48] E.g. Home Office, 'Community Cohesion: A Report of the Independent Review Team Chaired by Ted Cantle' (2001); Trevor Phillips, Former Chairman for Commission on Race Equality 'After 7/7: Sleepwalking to Segregation'(Speech given to Council for Community Relations 2005, Manchester, 15 September 2005) and Tony Blair, Former Prime Minister, 'Duty to Integrate' (Speech given in Downing Street, London, 8 December 2006).

speech on counter-terrorism in 2006, the then Prime Minister Tony Blair portrayed the fight against terrorism as a 'clash about civilisations'[49] between those who believe in liberal values such as tolerance, liberty and equality and those whose cultural values are 'reactionary and regressive.'[50] This 'culture talk,'[51] which viewed terrorism as part of a much wider clash of civilisations between the liberal democratic West and the regressive illiberalism of fundamentalist Islam, became even more pronounced during the years of the Coalition Government.[52] David Cameron's speech to the Munich Security Conference in 2011 blamed the rise of Islamist extremism in the UK on the country's 'passive tolerance'[53] of regressive cultural practices within 'segregated communities.'[54] Therefore, Islamist terrorism was increasingly depicted within public discourses as a symptom of the regressive cultural values of Muslims and a particularly important manifestation of the Muslim problem.

Within the culturalist approach to terrorism and the discourse of the Muslim problem more generally, the importance of the *private* sphere of the home and family is noticeable. In a way, this is perhaps rather unsurprising. As post-colonial feminists argue, culture is 'often perceived to be located within the private and domestic arenas of home and family.'[55] The family, they highlight, is regarded as being responsible for cultural and ideological reproduction and for transmitting the values and ways of life of communities to future generations.[56] The ethnic minority family, and in particular the Muslim family, is seen 'as the institution *par excellence* within which [cultural] "difference" is reproduced.'[57] Looking particularly at the British context, the Muslim family has come to symbolise the cultural Otherness of Britain's Muslim communities, becoming, in the words of Ralph Grillo, 'a highly politicised site of contestation.'[58] For while Britain's perceived Muslim problem has a number of fronts, including immigration and integration, unregulated mosques, sharia councils, hate-preachers,

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[49] Tony Blair, Former Prime Minister 'Battle for Global Values' (Speech given to the Foreign Policy Centre London, 6 March 2006).
[50] Ibid.
[51] Mamdani, (n36), 766.
[52] Gearty (n36), 96-100.
[53] David Cameron, Former Prime Minister 'Speech on Radicalisation and Islamist Extremism' (Speech given to the Munich Security Conference, Munich, 5 February 2011).
[54] Ibid. See also: Jim Jose, *A liberalism gone wrong? Muscular liberalism and the quest for monocultural difference* (2015) 5 Social Identities: Journal for the Study of Race, Nation and Culture 44.
[55] Naaz Rashid, *Veiled Threats: Representing the Muslim Woman in Public Policy Discourses* (Policy Press 2016), 6.
[56] Nira Yuval-Davis and Floya Anthias 'Introduction' in Nira Yuval-Davis and Floya Anthias (Eds) *Woman-Nation-State* (Macmillan 1989), 9.
[57] Grillo (n37), 30.
[58] Ibid, 7.

sexual grooming gangs and, of course, terrorism, recent years have seen an increasing political and legal focus on problematic *domestic* cultural practices associated with Muslim families, such as forced, arranged, polygamous and "sham" marriages, Islamic divorce, Muslim fostering, Female Genital Mutilation (FGM) and male circumcision.[59]

From the start, then, Britain's Muslim problem was identified and treated as a Muslim *family* problem. The construction of the immigrant Muslim family within public discourses, policies and the law as a site where problematic cultural difference occurs began under New Labour, with the pathologisation of Muslim family practices, such as arranged and transnational marriages (pejoratively referred to as "sham" marriages) and the child-rearing practices of Muslim immigrant parents.[60] However, the pathologisation of the perceived cultural practices of Muslim families intensified during the years of the Coalition Government. The last decade witnessed the development of increasingly muscular and interventionist legal and policy approaches to a number of domestic cultural practices, most especially FGM[61] and forced marriage,[62] which have been depicted within public and popular discourses as practices that most epitomise the cultural segregation and Otherness of sections of Britain's Muslim population.[63]

It is not surprising, therefore, that the culturalist approach to terrorism views Islamist terrorism as yet another manifestation of the Muslim family problem. For within the culturalist narrative,

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[59] Ibid. See also: Alistair Jones, 'Islamic divorce in the English courts: human rights and sharia law' (*LSE British Politics and Policy Blog*, 24 August 2018); Susan Edwards, *Negotiating Faith, Culture and Gender in J v B and the Child AB* (2018) 48 Family Law Journal 56, 56-59 1-4 and Suhraiya Jivraj and Didi Herman, '*It is difficult for a white judge to understand': orientalism, racialisaion and Christianity in English child welfare cases* (2009) 21 Child and Family Law Quarterly 283.

[60] Home Office, *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain* (2002), 10 and 91-99 and Irene Gedalof, *Unhomely Homes: Women, Family and Belonging in UK Discourses on Migration and Asylum* (2007) 33 Journal of Ethnic and Migration Studies 77, 84-86.

[61] Although FGM was criminalised in the Prohibition of Female Circumcision Act 1985, the drive towards more criminalisation and assertive legal intervention was reflected in ss 70-74 of the Serious Crimes Act 2015, which introduced a number of new wide-reaching FGM offences. See: Ruth Gaffney-Rhys, *Recent developments in the law relating to female genital mutilation* (2016) 28 Child and Family Law Quarterly 87, 96.

[62] Civil measures designed to *explicitly* tackle forced marriage were put in place as early as 2007, with the Forced Marriage (Civil Protection) Act 2007. However, forced marriage was criminalised by the Coalition Government in 2014. The Anti-Social Behaviour, Crime and Policing Act 2014 introduced a number of widely construed forced marriage offences. See: Mohammad Mazher Idriss, *Forced Marriage- the need for criminalisation?* (2015) 9 Criminal Law Review 687.

[63] Mairead Enright, *Choice, Culture and the Politics of Belonging: The Emerging Law of Forced and Arranged Marriage* (2009) 72 The Modern Law Review 331, 334.

a 'family centric view'[64] of Islamist terrorism and its causes has developed.[65] In understanding Islamist terrorism as an attack on Western culture, the Western way of life has come to be represented in familial terms.[66] According to Gargi Bhattacharyya, within the culturalist global post-9/11 discourses, the Western family 'serves as a metaphor for the relations of care that exemplify all that is best in our way of life.'[67] This ideal Western family, argue Deborah Cowen and Emily Gilbert, is 'contrasted with depictions of the failed and violent families'[68] of the fundamentalist Muslim cultures that produce terrorists.[69]

One particular supposed feature of Muslim family life has been singled out and directly linked to terrorism: a regressive attitude to gender relations.[70] Culturalist explanations of terrorism identify the status of women in Muslim families and gender relations within Muslim homes as one of the root causes of Islamist terrorist violence.[71] Highlighting problematic domestic cultural practices, such as arranged and forced marriages, FGM and honour-based violence, the proponents of the culturalist approach assert that there is a *causal* relationship between the patriarchal practices of Muslim families and extremism and terrorism.[72] For example, in a speech on counter-terrorism and integration in 2006, Blair directly linked the phenomenon of "home-grown" terrorism to the cultural practices of certain groups within the British Muslim community that contradict British values, such as forced marriage and honour killings.[73] Almost a decade later, the issue of travel to ISIS-held territories in Syria and Iraq and youth radicalisation more generally were also connected within Government discourses to problematic Muslim domestic practices. In a speech on tackling extremism, the then Prime Minister David Cameron spoke of the need to tackle the Islamist ideology that impels teenagers

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[64] Rashid (n55), 115.
[65] Deborah Cowen and Emily Gilbert 'Fear and the Familial in the U.S. War on Terror' in Rachel Pain, Susan J Smith and Stephen Graham (Ed) *Fear: Critical Geopolitics and Everyday Life* (Ashgate 2008), 50. E.g. George W Bush, 'Address to a Joint Session of Congress and the American People' (20 September 2001) and George W Bush, 'Remarks by President Bush on the Global War on Terror' (Paul H Nitze School of Advanced International Studies, The John Hopkins University, 10 April 2006).
[66] Gargi Bhattacharyya *Dangerous Brown Men: Exploiting Sex, Violence and Feminism in the 'War on Terror'* (Zed Press 2008), 8.
[67] Ibid.
[68] Cowen and Gilbert (n65), 54.
[69] Ibid. See also: Amy Kaplan, *Violent Belongings and the Question of Empire Today: Presidential Address to the American Studies Association*, October 17 2003 (2004) 56 American Quarterly 1, 1-5; Loyld DeMuse, 'Childhood Origins of Terrorism' (*The Emotional Life of Nations*, 2002) and Ian Buruma and Avishai Margalit, *Occidentalism: The West in the Eyes of its Enemies* (Penguin, 2004).
[70] Grillo (n37) 38.
[71] Ibid.
[72] Ibid, 21. See also: Michael Kimmel, 'Gender, Class and Terrorism' (*Chronicle of Higher Education*, 8 February 2002)
[73] Blair (n48).

'to run off to Syria'[74] and that has allowed communities to continue to practice the 'brutality of Female Genital Mutilation…[and] the horrors of forced marriage' against their children.[75] Similarly, in a speech on tackling extremism and protecting children from ISIS recruitment in 2016, the then Secretary of State for Education Nicky Morgan announced a package of new measures to ensure that children 'are safe not just from radicalisation, but also from female genital mutilation [and] forced marriage.'[76]

The culturalist approach to terrorism explicitly links the Muslim family problem with Islamist terrorism. It claims that the root cause of both Islamist terrorism and unacceptable domestic practices such as FGM, forced marriage and honour-based violence is a regressive, illiberal culture located in, transmitted and reproduced by the Muslim family. It is important to note here the influence of feminists on the culturalist approach to terrorism and the emergence of the family-centric narrative around Islamist terrorism.[77] Looking at these culturalist approaches to terrorism, critical feminist scholars have noted 'strong echoes of [a] feminist language.'[78] Although it is true that feminist rhetoric has been appropriated and instrumentalised within counter-terrorism discourses, certain strands of feminism have also been actively 'complicit in tying [the] promotion of women's human rights to national security goals.'[79] Drawing a direct link between Islamist terrorism and the supposed patriarchal and regressive Islamic family values, practices and relations, the increasing involvement of feminism within counter-terrorism discourses has disrupted the hitherto predominant public / private divide in terrorism research.[80] That feminist and counter-terrorist discourses increasingly share overlapping concerns and a 'common intellectual ground'[81] is reflected in the increasingly explicit links being drawn by feminist commentators between domestic violence and Islamist terrorism.[82]

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[74] David Cameron, Former Prime Minister 'Speech on Extremism' (Speech given to Ninestiles School, Birmingham, 20 July 2015.
[75] Ibid.
[76] Nicky Morgan, Former Education Secretary 'Speech about tackling extremism; (Speech given to Bethnal Green Academy; London, 19 January 2016).
[77] Razack (n37), 17-20 Bhattacharyya (n66), 18-26.
[78] Ni Aolain (n6), 1085. See also: Margret Satterthwaite and Jayne Huckerby 'Introduction' in Margret Satterthwaite and Jayne Huckerby (Eds), *Gender, National Security and Counter-Terrorism: Human Rights Perspectives* (Routledge 2013), 3.
[79] Fionnuala Ni Aolain and Jayne Huckerby, 'Gendering Counter-Terrorism: How to, and How not to - Part II' (*Just Security*, 3 May 2018).
[80] Ni Aolain (n6), 1106.
[81] Ibid, 1101.
[82] Jayne Huckerby, *In Harm's Way: Gender and Human Rights in National Security* (2020) 27 Duke Journal of Gender Law and Policy 179, 193. The same link is also being made between far-right terrorism and domestic violence. See:

Examining the profiles of recent ISIS affiliated or inspired terrorists, feminists have argued that there is a direct connection between domestic violence and Islamist terrorism.[83] According to feminist commentators, the men who terrorise the public are often the same men who abuse women in the privacy of their homes. Therefore, Islamist terrorism, like other forms of public violence, often 'begins at home.'[84]

2.3 Terrorist Psychology: The Role of Dysfunctional Childhoods and Pathological Childrearing

The familialisation of terrorism and the emergence of the radicalisation cases can also be attributed to the prevalence of psychological approaches to the study of terrorism and its causes in post-9/11 terrorism scholarship that have influenced global and national counter-terrorism discourses.[85] The "new" terrorism thesis, as I argued earlier, places emphasis on the psycho-social causes of Islamist terrorism and claims that certain terrorist psychologies and forms of socialisation compel individuals to commit acts of terrorist violence.[86] The increased prevalence of these psycho-social analyses of Islamist terrorism have *privatised* the causes of Islamist terrorism.[87] The idea that a terrorist psychology propels individuals into committing terrorist acts of violence has led to increased focus within scholarly and policy circles on the role that 'childhood development and familial relations within fundamentalist Muslim communities'[88] play in radicalising young Muslims and turning them into terrorists.[89] As a result, within the 'large body of post 9/11 literature on terrorism … families have been viewed as playing a psychological role in radicalisation.'[90]

Suzanne Moore, ''Lone-wolf' terrorists and domestic violence: it's time to start joining the dots' *The Guardian* (London, 29 October 2018).

[83] Janey Stephenson, 'The Correlation Between Domestic Violence and Terror Is Distressingly Stark' *Grazia* (London, 29 March 2017).

[84] Margaret Talbot, 'Terror Begins at Home' *New Yorker* (New York, 16 June 2016).

[85] Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Duke University Press, 2007), 57.

[86] Ibid, 56.

[87] Ibid.

[88] Deborah Cowen and Emily Gilbert 'Citizenship in the "Homeland": Families at War' in Deborah Cowen and Emily Gilbert (Eds) *War, Citizenship, Territory* (Routledge, 2008), 265.

[89] Ibid.

[90] Lynn Davies, Zubeda Limbada, Laura McDonald, Basia Spalek and Dough Weeks 'Formers & Families: Transitional Journeys in and out of violent extremisms in the UK' (Connect Justice, 2015), 62.

Particularly relevant is the way in which the increasing 'speculations about the factors that contribute to the psychological make up of a terrorist'[91] have focused counter-terrorism discourses on the role that the socialisation of children within Muslim families in the West plays in the creation of a supposed Islamist 'terrorist mind-set.'[92] One psycho-social explanation of Islamist terrorism that has influenced UK counter-terrorism policy holds that second and third generation Muslims living the UK face a greater risk of radicalisation because of their desperate search for an identity and their feelings of alienation from their parents and wider family.[93] The claim here is that intergenerational conflicts within Muslim families lead to the kind of psychological crises and emotional distress that drives young Muslims towards terrorism.[94] Other influential psycho-social approaches view Islamist terrorism as the product of pathological child-parent relationships and childrearing practices.[95] Family members, especially parents who hold radical views,[96] are blamed for radicalising their children.[97] Even when the radicalisation of young people is not seen as the direct consequence of parental indoctrination, psycho-social explanations of Islamist terrorism have viewed pathological families as important contributors to the psychological childhood distress that 'underpin[s] processes of radicalisation.'[98]

These prevalent psycho-social explanations of Islamist terrorism have turned attention to the role played by the Muslim family in causing terrorism and creating terrorists.[99] According to Cowen and Gilbert, the increased reliance on psycho-social explanations of Islamist terrorism has meant that 'failure of family is understood as a cause … of terrorism.'[100] The emphasis on the pathological families and troubled childhoods of terrorists, as opposed to the political and structural issues that could have motivated them, has meant that Islamist terrorism is now

[91] Bhattacharyya (n66), 52.
[92] Puar(n85), 54.
[93] Rashid (n55), 94.
[94] Kundnani (n12), 14.
[95] Bhattacharyya (n66), 58.
[96] Davies et al (n90) 6. See also: Cameron (n74).
[97] Davies et al (ibid), 62.
[98] Ibid.
[99] Benjamin Lee and Kim Knott, 'The Family and Ideological Transmission' (Centre for Research and Evidence on Security Threats, March 2017) .
[100] Cowen and Gilbert (n88), 261.

chiefly 'understood through the lens of the failed family.'[101] By marginalising political causes of terrorism, these psycho-social explanations depict the Islamist terrorist as 'the deranged product of the failed … family.'[102]

3. The Securitisation of the Muslim Family

The previous sections demonstrated how the de-politicisation of Islamist terrorism through the emphasis on cultural and psycho-social analyses of terrorism has enabled its familialisation in recent years. It is this important change in the counter-terrorist landscape that explains why terrorism has only recently been familialised in the UK. This section claims that the recent familialisation of Islamist terrorism within post-9/11 counter-terrorism discourses has, in turn, led to the *securitisation* of the Muslim family in the UK. The securitisation of the Muslim family denotes the recent construction of the Muslim family and home, within the UK's counter-terrorism policies and discourses, as spaces where extremist ideologies are developed and nurtured and where the radicalisation of children and adults takes place. It also denotes the increased targeting and regulation of the Muslim family in the name of preventing and countering terrorism, extremism and radicalisation.

It is worth noting from the outset that although the securitisation of the Muslim family began under New Labour, it significantly increased after the election of the Coalition Government in 2010. It seems that David Cameron's overtly culturalist and civilisational approach to counter-terrorism, signalled early on during his speech on multiculturalism at the Munich Security Conference[103] and his reform of counter-terrorism policy along distinctly "muscular liberal" lines,[104] intensified the securitisation of the Muslim family, such that the Muslim family became central to the state's counter-terrorism agenda. The recent emergence of the

[101] Ibid, 265.
[102] Puar (n85), 53.
[103] Cameron (n53) and Conor Gearty, *Is attacking multi-culturalism a way of tackling racism- or feeding it? Reflections on the Government's Prevent Strategy* (2012) 2 European Human Rights Law Review 121, 121-125.
[104] John Holmwood and Therese O'Toole, *Countering Extremism in British Schools: The Truth About the Birmingham Trojan Horse Affair* (Policy Press 2018), 45. This point is elaborated in Chapter Six.

radicalisation cases in the family courts and the subsequent interaction between family law and counter-terrorism has been facilitated by and can be regarded as a culmination of the increasing securitisation of the Muslim family.

In what follows, I outline and examine how the Muslim family has been securitised in UK counter-terrorism policies and discourses in recent years, arguing that the family, and in particular the Muslim family, is increasingly spoken about, spoken to, governed and regulated in counter-terrorism policies and discourses.

3.1 The Muslim Family as a Site of Risk: Blaming and Responsibilising Muslim Parenting

According to Madeline-Sophie Abbas, in recent years counter-terrorism policies and discourses in the UK have increasingly focused their attention on 'Muslim families and households.'[105] The Muslim family, and particularly the religiously conservative or orthodox Muslim family, has been increasingly treated within Government discourses as a suspicious entity that facilitates the radicalisation of its members. As a result, argues Shereen Fernandez, within counter-terrorism policies and discourses 'attention has turned to what is occurring in Muslim homes.'[106] The focus on the Muslim family is reflected in two important recent developments: the securitisation of familial relations, in particular the parent-child relationship, within counter-terrorism discourses, campaigns and initiatives and the securitisation of the home within counter-terrorism policies and its construction as a site of danger.

Firstly, within counter-terrorism discourses, Muslim family relationships have been subjected to increasing suspicion and accused of enabling radicalisation journeys.[107] Although Muslim family relations have generally been subjected to scrutiny and suspicion, the main focus in

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[105] Madeline-Sophie Abbas, *'I grew a beard and my dad flipped out!' Co-option of British Muslim parents in countering 'extremism' within their families in Bradford and Leeds* (2018) Journal of Ethnic and Migration Studies 1, 14.
[106] Shereen Fernandez, *The Geographies of Prevent: The Transformation of the Muslim Home into a Pre-Crime Space* (2018) 7 *Journal of Muslims in Europe* 167, 178.
[107] Sara Ashencaen Crabtree, *Problematizing the context and construction of vulnerability and risk in relation to British Muslim ME groups* (2017) 36 Journal of Religion & Spirituality in Social Work: Social Thought 247, 257 and 'RAN Manual-Responses to Returnees: Foreign Terrorist Fighters and Their Families' (Radicalisation Awareness Network, July 2017), 21.

counter-terrorism discourse has been on the parent-child relationship. Within these discourses, 'parenting and childrearing practices have increasingly come to be held to account'[108] for the radicalisation of young Muslims. The securitisation of Muslim parenting began under New Labour following the 7/7 attacks on London which precipitated concerns regarding the home lives and upbringing of would-be "home-grown" terrorists.[109] However, under the Coalition Government and with the rise of ISIS and the emergence of the FTF phenomenon in 2014, the focus on Muslim parents increased.[110] Within counter-terrorism discourses, Muslim parents have been directly and indirectly blamed for the radicalisation of their children and 'held responsible for not doing enough to tackle terrorism within their families.'[111] These discourses suggest that by culturally segregating their children from wider society, sending their children to Islamic schools that teach a narrow religious curriculum, raising their children according to particularly orthodox Islamic norms and values inimical to tolerant, liberal values and failing to report their suspicions to the authorities, Muslim parents raise children who are vulnerable to extremism and radicalisation.[112]

However, as with the gendered dimension to the politicisation of parenting discussed in the previous chapter, the securitisation of Muslim parenting is similarly gendered. According to Gargi Bhattacharyya, mothering is a particularly important theme within post-9/11 counter-terrorism discourses which blame Islamist terrorism on the perceived failures of mothering in fundamentalist Muslim communities and families.[113] The mother who fails appropriately to raise and nurture her children is held responsible for bringing up terrorist sons and daughters.[114] Looking specifically at counter-terrorism discourses in the UK, Naaz Rashid found that the 7/7 attacks in London raised concern amongst politicians and media commentators about Muslim 'mothering and home-making practices,'[115] and the potential role that Muslim mothers play in

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[108] Rashid (n55), 108.
[109] Ibid, 107-108 and Crabtree (n107), 258. E.g. Jonathan Wynne-Jones and Martin Beckford, 'Muslim Parents to Blame for Children Turning to Extremism" *The Telegraph* (London, 10 June 2008).
[110] Crabtree (ibid) 257-258. E.g. Tom Whitehead, 'Parents must be responsible for stopping children going to Syria not police, say senior officer' *The Telegraph* (London, 9 March 2015) and Vikram Dodd, 'Jihadi threat requires move into 'private space' of UK Muslims, says police chief' *The Guardian* (London, 24 May 2015).
[111] Imran Awan and Surinder Guru, *Parents of foreign "terrorist" fighters in Syria - will they report their young?* (2017) 40 Ethnic and Racial Studies 1, 5.
[112] Ibid. See also: HM Government, 'The Casey Review: A review into opportunity and integration' (December 2016), 47-58.
[113] Bhattacharyya (n66), 51- 52. See also: Laura Sjoberg and Caron E Gentry, *Mothers, Monsters, Whores: Women's Violence in Global Politics* (Zed Books 2007), 31-33.
[114] Bhattacharyya (ibid), 52-54.
[115] Rashid (n55), 118.

creating terrorists. With the rise of ISIS and the concern about the number of women with children who travelled to ISIS-held territories abroad, Shakira Hussein maintains that 'Muslim mothers are increasingly rendered suspect for their supposed role in raising potential terrorists.'[116]

Secondly, as Fernandez points out, under the Coalition and Conservative Governments counter-terrorism policy, and specifically the *Prevent* Strategy, has increasingly treated the Muslim home as a risky 'space that requires intervention and monitoring,'[117] expanding 'the reach of counter-extremism measures into the private sphere.'[118] That there has been a growing emphasis on the home within counter-terrorism policy is clear when we compare the latest iterations of the *Prevent* Strategy with earlier ones. A close examination of the 2006 and 2009 versions of the *Prevent* Strategy under New Labour shows an emphasis on *public* spaces as sites of extremism and radicalisation. For example, under the 2006 *Prevent* Strategy, the Government expressed particular concern at the 'influence of particular mosques'[119] and 'universities'[120] on the development of extremist narratives and the potential for young men to be 'radicalised whilst in prison.'[121] There is no mention of the family home as a site of radicalisation. Similarly, the Government claimed in the 2009 *Prevent* Strategy that 'radicalisers exploit open spaces in communities and institutions, including mosques, educational establishments, prisons and youth clubs,'[122] omitting to mention family homes as spaces which radicalisers can also exploit.

By contrast, the Coalition Government's revised *Prevent* Strategy published in 2011 shows a concern for what takes place in private settings. Vowing that there will be 'no ungoverned space in which extremism is allowed to flourish,'[123] the Government claimed that extremist

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[116] Shakira Hussein, *From Victims to Suspects: Muslim Women Since 9/11* (Yale University Press, 2019), 230. 230.
[117] Fernandez, (n106), 178.
[118] Ibid, 167.
[119] HM Government (2006), 'Countering International Terrorism: The United Kingdom's Strategy' (Cm 6888), 13.
[120] Ibid, 12-13.
[121] Ibid, 13.
[122] HM Government (2009), 'Pursue, Prevent, Protect, Prepare: The United Kingdom's Strategy for Countering International Terrorism' (Cm7547), 188.
[123] HM Government, 'Prevent Strategy', (Cm 8092, June 2011), 9.

'activity has been displaced from public spaces,'[124] such as mosques to 'areas and venues which are less public.'[125] The Government maintained that although 'public spaces, for example university campuses and mosques'[126] are still used as 'radicalising locations,'[127] it warned that 'private and more concealed locations such as homes'[128] are being increasingly used to spread extremist ideologies and to radicalise vulnerable individuals, especially children.[129] Likewise in its guidance on the statutory 'Prevent Duty' introduced under the Counter-Terrorism and Security Act of 2015, the Government emphasised that schools and child-care providers need to be aware that the risk of radicalisation can 'come from within the family'[130]and that an effective countering of radicalisation requires 'engagement with parents' and monitoring of 'family life.'[131] The family is even more prominent in the Conservative Government's revised *Prevent* Strategy of 2018.[132] The Government states that it aims to ensure that 'families are not exploited or groomed into following the path of violent extremism'[133] and is working with 'families and local communities to build awareness of the risks of radicalisation.'[134]

3.2 Countering Terrorism at the Family Level: Parents as Counter-Terrorism Partners

However, the recent blaming of the family and parenting, and in particular mothering, for the radicalisation of children and the construction of the home as a site of risk represents *one aspect* of the securitisation of the Muslim family. This is because the securitisation of the Muslim family is a complex phenomenon and involves its construction as both the cause of terrorism and its potential antidote: as both a *problem* and a possible *solution*.

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[124] Ibid, 81.
[125] Ibid, 108.
[126] Ibid.
[127] Ibid.
[128] Ibid.
[129] Ibid.
[130] Department for Education, 'The Prevent Duty: Departmental advice for schools and childcare providers' (June 2015), 5.
[131] Ibid, 6.
[132] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism', (Cm 9608, June 2018).
[133] Ibid, 12.
[134] Ibid, 33.

Over the last years, the UK Government has tasked Muslim parents with the responsibility of preventing and countering the radicalisation of their children.[135] For example, in 2006 during a visit to East London, the then Home Secretary John Reid urged Muslim parents to protect their children from extremists and to look out for the 'tell-tale signs'[136] of radicalisation. However, under the Coalition Government, an even greater onus was placed on Muslim parents to monitor their children for signs of radicalisation.[137] A number of campaigns were launched and/or funded by the Government urging Muslim parents 'to be watchful of their children's attitudes, their thoughts, beliefs and activities,'[138] and offering to equip them with the skills necessary to spot the signs of radicalisation and to monitor their children's online activity.[139] Parents were also given specific powers that enable them to remove their children's passports[140] if they suspect that they intend to travel abroad to join a terrorist organisation.[141] Importantly, however, Abbas argues that the 'co-option of Muslim parents' [142] within the Coalition Government's counter-terrorism policies and discourses was not limited to surveillance. Examining political and media discourses, Abbas argues that in addition to monitoring their children's religious views, practices and interactions, Muslim parents were encouraged to bring up their children according to a "moderate" version of Islam that 'is in line with state prescriptions.'[143] Therefore, as part of their parental responsibility, Muslim parents are now required to teach their children a "correct" version of Islam that complements, rather than undermines, the secular liberal values of British society. [144]

The discussion above suggests that parenting has been increasingly treated almost as a partner institution within counter-terrorism policies and discourses. Like the police, intelligence services, local authorities, community organisations and schools, Muslim parents have a role

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[135] Abbas (n105), 1.
[136] Ibid, 3. See also: Alan Travis, 'Defiant Reid clashes with Islamist radicals' *The Guardian* (London 21 September 2006).
[137] Abbas (n105), 2.
[138] Ibid.
[139] One example, among many, is the 'Educate Against Hate' website launched by the Department for Education that gives parents advice on how to protect children from extremism and spot the signs of radicalisation: http://educateagainsthate.com
[140] HM Government (2015), *Cancelling the Passport of a Child at Risk of Radicalisation*.
[141] Abbas (n105), 2.
[142] Ibid, 1.
[143] Ibid, 14.
[144] Ibid.

to play in preventing and countering terrorism.[145] Failure to effectively play that role renders them irresponsible parents who are complicit in their children's radicalisation.[146]

However, this engagement with the Muslim family and parenting is, once again, gendered.[147] Muslim women have been the focus of the Government's attention within counter-terrorism policies and campaigns that seek the support and collaboration of the Muslim family.[148] The *Prevent* Strategy, in particular, views women as being 'best placed to challenge extremism and radicalisation'[149] within their families and claims that Muslim women are uniquely capable of challenging extremism and radicalisation.[150] It is important to note here the emphasis on mothers and mothering within the *Prevent* Strategy and wider counter-terrorism discourses.[151] Assuming, firstly, that 'women are guided by maternal instincts that promote peace'[152] and secondly that Muslim 'mothers [are] at the heart of the family,'[153] the *Prevent* Strategy emphasises the importance of Muslim mothers and mothering in countering terrorism, extremism and radicalisation. Therefore, recent years have witnessed the emergence of a number of Home Office sponsored programmes which position Muslim mothers as 'the first line of defence against extremism.'[154] Influenced by statements from influential figures in the security and intelligence community that say mothers can play a 'critical role in steering children away from extremism,'[155] these initiatives aim 'to give mothers of young Muslims … [the] online know-how to stop children being radicalised.'[156] Therefore, while a gender-neutral language of parenting is deployed,[157] in reality a 'maternalist logic'[158] pervades counter-terrorism policies and discourses in the UK.

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[145] Abbas (n105), 1.
[146] Ibid, 2 and Crabtree (n107), 259.
[147] Katherine Brown, 'Gender and counter-radicalization: women and emerging counter-terror measures in Satterthwaite and Huckerby (n78), 50.
[148] Awan and Guru (n111), 5.
[149] Bhattacharyya (n66), 52.
[150] Brown (n147), 45.
[151] Rashid (n55), 106.
[152] Brown (n147), 41.
[153] Rashid (n55), 107-108. E.g. Department for Communities and Local Government, 'Empowering Muslim Women: Case Studies' (2008), 41.
[154] Gabriella Swerling, 'Mothers Taught to be the first line of defence against extremism' *The Times* (London, 5 November 2018).
[155] Camilla Turner, 'Telegraph, mothers play a 'critical role' in steering children away from extremism, says head of MI6' *The Telegraph* (London, 6 May 2018).
[156] Stephen Chittenden, 'Are Muslim mothers the cure for radicalisation?' *BBC News* (London, 4 April 2014).
[157] Rashid (n55), 107.
[158] Brown (n147), 41.

The point here is that the familialisation of Islamist terrorism within post-9/11 counter-terrorism discourses has resulted in the Muslim family becoming increasingly *visible* within and *central* to UK counter-terrorism. These counter-terrorism policies and discourses suggest that the source of the Islamist terrorist threat is located within the Muslim home; Muslim family relations are potential seedbeds of extremism and both the problem of Islamist terrorism and its possible solution reside with Muslim parents, especially Muslim mothers.

3.3 The Specific *Problem of the Muslim Family in Counter-Terrorism Discourses*

The securitisation of the Muslim family appears to be a *specific instance* of the historical public regulation of the private family and its more recent politicisation discussed in Chapter Four. Echoing the wider discourses and approaches to the family, counter-terrorism policies and discourses represent terrorism as yet another social or political problem caused by family failure and "bad" parenting, as opposed to structural socio-political factors. They also simultaneously construct the family as a source of threat or site of risk and as a potential partner institution in (counter-terrorist) governance. However, it is also important to recognise some of the *distinct* ways in which the Muslim family has been pathologised and Muslim parents blamed and responsibilised within counter-terrorism policies and discourses.

Firstly, the securitisation and pathologisation of the Muslim family echoes and reinforces the idea, discussed in Chapter Four, that by inculcating its members with values inimical to the state's interests the private family can potentially threaten liberal political order. The Muslim family has come to symbolise the cultural Otherness of Muslims and is regarded as being responsible for transmitting and reproducing the very regressive cultural values and practices that are considered to be causally linked to Islamist extremism and terrorism, such as forced marriage, FGM, honour-killings and other Muslim family problems. Therefore, the Muslim

family is portrayed as being too traditional, unmodern and excessively patriarchal, existing outside of and potentially undermining liberal mainstream British society.[159]

Consequently, the *conservative* and *orthodox* parenting of Muslim parents is singled out for attention within counter-terrorism policies and discourses.[160] Muslim parents who espouse orthodox forms of religiosity and bring up their children according to illiberal Islamic values are increasingly regarded as 'particularly suspicious'[161] and treated as 'potential seedbeds'[162] of Islamist extremism. A particularly relevant example of this is the treatment of home education within counter-terrorism policies and discourses in recent years. Although the issue of home education generally and the risks that it can pose to children has caused the Government concern for some time, a particularly heightened level of anxiety was expressed regarding Muslim parents who choose to home educate their children or send them to schools that provide a narrow Islamic curriculum.[163] Fearing that in isolating their children from mainstream British society and inculcating them with illiberal values that are potentially contrary to "fundamental British values" such parents put their children at risk of radicalisation,[164] more decisive action began to be taken against Muslim parents who home educate their children.[165]

Secondly, the securitisation of the Muslim family reflects, once again, in a *specific* way, the idea that strong familial bonds and loyalties can potentially undermine loyalty to the state. For as Ralph Grillo argues, whereas Government discourses have tended to regard the "problem" of the working class and/or black family as a problem of '*too little* family,'[166] the "problem" of the Muslim family has tended to be understood as being one of '*too much* family.'[167] Therefore,

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[159] Grillo (n37) 30 and HM Government 'Casey Review' (n112) 101.
[160] Crabtree (n107), 257.
[161] Ibid, 257-258.
[162] Abbas (n105), 4.
[163] Daniel Monk, '*Out of School Education' and Radicalisation: Home Education Revisited* (2016) 1 Education Law Journal 17, 17.
[164] Ibid. See also: Martin Myers and Kalwant Bhopal, *Muslims, home education and risk in British society* (2018) 39 British Journal of Sociology of Education 212.
[165] E.g. Department for Education, 'Out-of-school settings: call for evidence' (Government Consultation, 26 November 2015) and Eleanor Busby, 'All home schooled children to be registered amid radicalisation fears under Government plans' *The Independent* (London 2 April 2019).
[166] Grillo (n37), 39.
[167] Ibid.

while successive Governments have been keen on strengthening working class and/or black families,[168] the assumed 'close-knit'[169] nature of the Muslim family and the strength of its claims on its members[170] is portrayed as problematic and potentially dangerous. The concern is that the closeness of Muslim families and the strength of the filial attachments that family members feel for each other can prevent them from reporting their suspicions to the authorities[171] and can isolate and segregate Muslim families from the influence of the state and wider British society.[172]

Thirdly, the familialisation of Islamist terrorism and the securitisation of the Muslim family pathologises Muslim parenting in a distinctive way. Unlike crime and anti-social behaviour, which are blamed on chaotic domestic lives, "absent" fathers and insufficiently authoritative parenting within working-class and/or black families, within global and national counter-terrorism policies and discourses, Islamist terrorism is not blamed on family breakdown or laissez-faire parenting. Rather, uniquely pathological accounts of parent-child relations within Muslim families have emerged which claim that generational differences between Muslim immigrant parents (particularly mothers[173]) who do not speak English at home and who cling on to their ethnic culture and their second-generation children, create identity crises and intergenerational conflicts that make 'Muslim youth vulnerable to radicalisation.'[174] In other accounts, the idea is that young second-generation Muslims living in the West feel stifled and alienated by their overbearing parents' ethno-cultural norms and expectations and rebel by choosing the path of Islamist extremism.[175] Therefore, a somewhat unique narrative of parental failure and blame can be detected in counter-terrorism policies and discourses.

Finally, in suggesting that Muslim parents have an important role to play in preventing and countering terrorism, the securitisation of the Muslim family represents a specific instance of

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[168] Val Gillies, Rosalind Edwards and Nicola Horsley, *Challenging the politics of early intervention: Who's saving children and why* (Policy Press, 2017), 19.
[169] Grillo (n37), 39.
[170] Ali (n43), 90.
[171] Awan and Guru (n111), 1-5.
[172] HM Government 'Casey Review' (n112), 101.
[173] Awan and Guru (n111), 5.
[174] Abbas (n105), 5 and Rashid (n55), 108. E.g. Cameron (n53) and Cameron (n74).
[175] Kundnani (n35), 39.

family and parental *responsibilisation* and its use as an instrument of governance. As I demonstrated in Chapter Four, when parents are responsibilised, they are tasked with the duty of furthering and achieving the state's goals through normalisation and moralisation.[176] Under New Labour and the Coalition Government, preventing social problems such as crime and anti-social behaviour, managing childhood risks and raising productive and "good" citizen workers of the future have increasingly been framed as parental responsibilities, as opposed to state and societal duties.[177] Failure to parent responsibly invites strong state opprobrium and sanction.[178] Within the counter-terrorism context, Muslim families, and in particular Muslim parents, are tasked with the responsibility of preventing the radicalisation of their children by challenging extremist ideologies, inculcating them with the right kind of values, vigilantly detecting signs of radicalisation and reporting suspicions and concerns to the authorities. If they fail to actively counter extremism within their homes and a family member becomes radicalised, then the family is held responsible for this radicalisation.

4. The Familialisation of Islamist Terrorism and the Securitisation of the Muslim Family in the Radicalisation Cases

The discussion in the preceding sections demonstrates the increasing prominence of the family within post-9/11 counter-terrorism discourses. The changing conception of the terrorist threat in recent years has *familialised* Islamist terrorism. Rather than being viewed as a form of political violence, Islamist terrorism is interpreted and presented as being a symptom of psychological dysfunction and an expression of regressive and illiberal cultural values. This reconceptualisation of terrorism has turned the attention of terrorism scholars and global and national counter-terrorism discourses to the private sphere of the home and family. Problematic and pathological Muslim familial relations, forms of intimacy and childrearing practices emerge as primary causes of Islamist terrorism. This, in turn, led to the *securitisation* of the

[176] Nikolas Rose, *Powers of Freedom: Reframing Political Thought*, 74-76.
[177] Dimitra Hartas, *Parenting, Family Policy and Children's Well-Being in an Unequal Society: A New Culture War for Parents* (Palgrave MacMillan, 2014), 15.
[178] Ibid.

Muslim family within UK counter-terrorism policies and discourses and its depiction as a potential site of risk and a legitimate target of counter-terrorist intervention.

The recent emergence of the radicalisation cases in the family courts and the resulting interaction between family law and counter-terrorism can be regarded as a further instance of the wider familialisation of Islamist terrorism and the securitisation of the Muslim family. In what follows, I will trace and examine the influence of these important shifts within global and UK counter-terrorism policy and discourse on the radicalisation cases. Through a close analysis of the judicial discourse, I will demonstrate that the ways in which the judges approach concerns regarding the radicalisation of children and their conceptualisation and representation of the family, the home and familial relations reflects, reinforces and further develops family-centric explanations of Islamist terrorism, the securitising narratives around the Muslim family and the specific and distinct ways in which the Muslim family and family relations, especially the parent-child relationship, are pathologised and responsibilised within counter-terrorism policies and discourses.

4.1 The Muslim Family Problem: Family Pathology, Perverse Intimacy and Gender in the Radicalisation Cases

The judicial rhetoric in the radicalisation cases, in particular the way in which the judges approach and articulate the issue of travel to ISIS-held territories and the radicalisation of children, mirrors and underlines the family-centric culturalist approaches to Islamist terrorism discussed earlier. A strong link between regressive and patriarchal forms of Muslim domesticity and extremism and radicalisation is asserted in a number of ways in the radicalisation cases, connecting Islamist terrorism and extremism with the wider Muslim family problem.

4.1.1 Travel to ISIS-Held Territories Abroad, FGM and Forced Marriage

In the radicalisation cases, close links are made between the issue of children travelling to ISIS-held territories abroad and other Muslim family problems such as forced marriage and FGM. For example, in *Re Z,*[179] the risk of forced marriage and the risk of travel to Syria were closely connected. In this case, the mother applied for the return of Z's passport (which had been confiscated by the police after Z attempted to travel, on her own, to Syria) in order that Z could travel to visit extended family in Denmark. The mother had initially explained that she wanted her daughter to 'reintegrate back into her family and reabsorb its values,'[180] and did not mention any plans regarding attending a wedding. However, later conversations between the mother, Z's brother and the police revealed that the visit to Denmark was planned around a family wedding.[181] Concerned at the inconsistencies in the mother's explanations regarding the reasons for the planned travel, the local authority initiated wardship proceedings. The local authority's application for wardship orders was approved based on what Hayden J saw as the double-risk that Z faced: 'details suggest not only that she may be intending to travel to an ISIS country but also that she may herself be the subject of a planned, arranged or perhaps forced marriage.'[182]

Likewise, in *Re M (Wardship: Jurisdiction and Powers)*,[183] Munby P held that although the use of the wardship jurisdiction has been declining, it was still an 'appropriate remedy'[184] in cases involving children being taken, or at risk of being taken abroad 'for the purposes of forced marriage … female genital mutilation or … where the fear is that a child has been taken abroad to travel to a dangerous war-zone'.[185] Similarly, while the Department for Education's report on the radicalisation cases attempts to investigate the similarities between radicalisation and

[179] [2015] EWHC 2350 (Fam).
[180] Ibid [5].
[181] Ibid, [4].
[182] Ibid [6].
[183] [2015] EWHC 1433 (Fam).
[184] Ibid, [32].
[185] Ibid.

other forms of abuse, two particular categories of abuse are singled out for comparison: FGM and forced marriage.[186]

In these radicalisation cases,[187] three very different harms - forced marriage, FGM and travel to ISIS-held territories in Syria and Iraq - are clustered together and presented as risks to the physical integrity of children that are united by the *foreignness* of their geographic and cultural locality; they take place abroad, away from *normal* British cultural and family life. Therefore, travel to ISIS-held territories was not simply understood by the judges in these radicalisation cases as a danger to the life and physical integrity of children. Rather, the physical danger to children was also understood and represented as another manifestation of Britain's Muslim family problem. Those travelling to join ISIS in Syria and Iraq are seen as unintegrated individuals who have become alienated from mainstream British life because of their rejection of British cultural values, suggesting that the concern with children travelling to join ISIS was part of a much wider moral panic about Muslim cultural difference and the Muslim family problem in the UK.

4.1.2 Domestic Violence

The idea that Islamist terrorism emerges from and is intrinsically connected to pathological family forms is also reflected in the link between terrorism and extremism and domestic violence that emerges in the radicalisation cases.[188]

One family issue that has been identified in some of the radicalisation cases is a history, or an alleged history, of domestic violence.[189] For example, in the three published private law

[186] Thomas Chisholm and Alice Coulter, 'Safeguarding and radicalisation: Research Report' (Department for Education, August 2017), pgs. 9 and 28.
[187] The Department for Education's report on the radicalisation cases suggests that these connections were also made in other unpublished radicalisation cases. See: Chisholm and Coulter(ibid), 27-28; interview with Cafcass Officer B, a senior employee at Cafcass (London, UK, 1 August 2017) and interview with Barrister B, Barrister at Doughty Street Chambers (London, UK, 3 October 2017.)
[188] Bhattacharyya (n66), 58.
[189] Domestic violence is mentioned in seven radicalisation cases.

radicalisation cases, allegations of extremism and radicalisation against the fathers were accompanied by accusations of domestic violence. In *Re M (Children)*,[190] Ryder LJ found that the father had assaulted and raped the mother.[191] Similarly in *Re A and B (Children: Restrictions on Parental Responsibility: Radicalisation and Extremism)*,[192] Russell J found that the father had been a 'controlling and coercive'[193] husband who had subjected the mother to physical abuse and deliberately kept her 'isolated from her friends.'[194] Domestic violence also emerges as an important issue in some public law radicalisation cases. In *Re A, B, C, D and E*,[195] Knowles J highlighted the fact that there had been previous local authority involvement with the family as a result of allegations of 'domestic abuse made by the mother against the father.'[196] The allegations of domestic violence against the father in *Re Y Children (Findings of Fact as to Radicalisation) Part 1*[197] were even stronger. In that case, Parker J pointed out that in addition to the 'asserted history of domestic violence by him'[198] against both his first and second wife, the father had also been 'convicted in 2002 of rape or attempted rape of his second wife.'[199]

However, domestic violence is not just identified as a potentially relevant issue in radicalisation cases where allegations of extremism are levelled against a father. The issue also surfaces in a couple of radicalisation cases where the *mother* is accused of being an extremist. For example, the family in *Leicester City Council v T*,[200] a case involving allegations by the local authority that the mother was an extremist who tried to travel with her children to ISIS-held territory in Syria, had previously come to the attention of the local authority as a result of a domestic violence referral in 2010.[201] Although the issue of domestic violence was not investigated further in *Leicester City Council v T*,[202] it was an important concern to Her Honour Judge Atkinson in *Re NAA (A Child: Findings on Death of Parents: Convenient Forum)*,[203] a case

[190] [2013] EWCA Civ 388.
[191] Ibid, [2].
[192] [2016] EWFC 40.
[193] Ibid, [36].
[194] Ibid.
[195] [2018] EWHC 1841 (Fam).
[196] Ibid, para 16.
[197] [2016] EWHC 3826 (Fam).
[198] Ibid, [12].
[199] Ibid.
[200] [2016] EWFC 20.
[201] Ibid, [8].
[202] (n200).
[203] [2017] EWFC B76.

involving proceedings in relation to a two-year-old girl whose parents had died. Her Honour Judge Atkinson found that the mother, whom the child's paternal family claimed had been an extremist woman, 'was killed by the father'[204] and that 'prior to her death the mother had suffered regular domestic violence at the hands of the father.'[205] It seems, therefore, that whereas some of the fathers accused of extremism and radicalisation are also *perpetrators* or alleged perpetrators of domestic violence, some of the mothers accused of extremism and radicalisation seem to have also been *victims* of domestic violence.[206]

I am not claiming here that the radicalisation cases establish, or even imply, direct links between involvement in domestic violence (either as a victim or a perpetrator) and extremism. Indeed, the cases discussed above preclude such a conclusion. In some of the cases where domestic violence allegations were substantiated, the judges found that accusations of extremism could not be established to the requisite standard of proof.[207] Conversely, in some of the cases where the judges were able to find that the individual in question was an extremist, the history or alleged history of domestic violence was not explored further.[208]

Nevertheless, these cases are important because they seem to at least reflect the apparent link, discussed earlier, asserted by feminist scholars and commentators between Islamist terrorism and extremism and domestic violence. In adopting an approach that unsettles the distinctions between forms of violence that are deemed to be domestic and apolitical and forms of violence regarded as public and political, these feminist approaches have turned public and scholarly attention to the pathological private lives, relationships and identities of alleged terrorists and extremists. How the alleged terrorist and/or extremist behaves at home and the nature of his (or her) intimate relationships have become important preoccupations for those commenting on, analysing and researching Islamist terrorism and extremism. Therefore, although a link between domestic violence and terrorism and extremism is not directly established in the

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[204] Ibid, [4].
[205] Ibid.
[206] Mothers who are the victims of domestic violence tend to be over-represented in care proceedings. See: Catherine Humphreys, *Avoidance and confrontation: social work practice in relation to domestic violence and child abuse* (1999) 4 Child and Family Social Work 77.
[207] *Re M* (n190); *Re A and B* (n192) and *Re NAA* (n203).
[208] *Re A, B, C, D and E* (n195) and *Leicester City Council v T* (n200).

radicalisation cases, the relative importance of the issue of domestic violence echoes recent discourses which suggest that the aberrant *public* identities of terrorists and/or extremists is potentially mirrored in and reinforced by their perverse *private* identities as perpetrators (or victims) of domestic violence.

4.1.3 Pathological Marriages

This suggestion is also reinforced by the way in which marriage and marital relationships are approached and represented in some of the radicalisation cases. For example, in *A v London Borough of Enfield*,[209] Hayden J expressed concern at C's decision to marry 'a much older man'[210] 'against the express wishes of her parents.'[211] That C 'underwent a Nikah, a preliminary ceremony to a Muslim marriage, with a man in his thirties'[212] who was 'being monitored by the police in light of his radicalised views'[213] put her, according to Hayden J, at a greater risk of radicalisation. Being intimate with and married to an extremist was interpreted here as a relationship that is, itself, a manifestation of C's extremism and vulnerability to further radicalisation.

But whilst marriage and its connection to extremism is only briefly examined in *A v London Borough of Enfield*,[214] it emerges as a much more important theme in *A Local Authority v A Mother and Others*.[215] In that case, the parents got married shortly before travelling to join ISIS in Syria.[216] From the start of the judgment, 'how the parents met, formed a relationship and married'[217] were identified as central questions for the investigation into whether or not the mother harmed or posed a risk of harm to her child. Knowles J agreed with the local authority that the 'swift'[218] nature of the wedding and the circumstances surrounding the parents'

[209] [2016] EWHC 567 (Admin).
[210] Ibid, [35].
[211] Ibid, [25].
[212] Ibid.
[213] Ibid.
[214] (n209).
[215] [2018] EWHC 2054 (Fam).
[216] Ibid, [118].
[217] Ibid, [19].
[218] Ibid, [62].

introduction to each other indicated that 'the marriage was not an end in itself but a means to allow the mother and the father to attain their goal of living in the ISIL caliphate.'[219] As a result, Knowles J dedicated much of her judgment to unpicking 'the genesis of the parents' relationship, how they came to meet and marry, why they married so quickly, the nature of that relationship and whether the relationship gave rise to a risk of future harm.'[220] Pointing to 'the speed with which the decision to marry had been taken - within about a week or two - at a time when this couple barely knew each other'[221] and the fact that the wedding ceremony had been conducted 'in secret,'[222] Knowles J agreed with the local authority that the marriage between the father and mother was 'a marriage for a purpose, namely that of travel to Syria.'[223]

By constructing the marriage as an inauthentic marriage conducted for an ulterior purpose, the marital relationship is pathologised. Indeed, throughout the judgment, Knowles J was keen to emphasise that the marriage lacked any genuine love and affection; 'this marriage was brokered in a business-like manner'[224] and 'the courtship, in any view, was not [a] romance,'[225] the father 'simply wanted a wife, probably any wife, to be able to pursue his goal and in the mother he found a willing participant.'[226] This strong and somewhat condemnatory language, which echoes the language of "sham" marriages used in Government immigration policy and discourses surrounding Muslim family practices,[227] depicts the marriage of the parents as one that fails to meet a Western ideal of what a *real* marriage *should* look like. The marriage is therefore represented as a means to an end, insincere and unwholesome.

By closely scrutinising and condemning the parents' marital relationship, Knowles J foregrounded the *intimate*, *familial* and *private*, suggesting that they are crucial to understanding terrorism, extremism and radicalisation. Finding that 'the marriage was part and parcel of [the father's] plans to travel to Syria and fight for ISIL,'[228] Knowles J suggests that

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[219] Ibid.
[220] Ibid.
[221] Ibid, [118].
[222] Ibid, [124].
[223] Ibid, [127].
[224] Ibid, [90].
[225] Ibid, [125].
[226] Ibid, [61]. My emphasis.
[227] Gedalof (n60), 87.
[228] (n215), [127].

this particular marriage enabled, and is in fact an expression of, the parents' extremism. Whereas the father and mother's radicalisation *publicly* manifested itself in their journey to (and in the case of the father, fighting for) ISIS in Syria, it *privately* manifested itself in their marriage to each other.

The pathologisation of the marital relationship and its close association with terrorism, extremism and radicalisation is even more clearly expressed in *A Local Authority v M and Others*.[229] What is noticeable about this case is that much of the judgment is dedicated to exploring, in detail, the nature of what Newton J identified as a 'most unequal and skewed marital dynamic' [230] between the mother and the father and its role in the mother's radicalisation. In fact, Newton J went as far as to claim that,

> '…the *root* of the mother's ability to pursue her consuming interest in all matters Islamic founds in the unequal relationship between the mother and the father; she educated and articulate, brought up in the UK; he a much simpler man brought up in Pakistan.'[231]

That the incompatibility of the marriage and the 'significant cultural (as well as ideological) gap'[232] between the spouses is directly to blame for the mother's radicalisation is repeated throughout the judgment;

> '…whilst she was wedded to the ideal of an Islamic marriage, in practice it was little more than lip service. The father told me that he had loved his wife. She did not repay the compliment, she had not loved him…[she] evidently had no respect for him either. That she had no opinion of him *is in part how her extremism was able to develop*.'[233]

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[229] [2016] EWHC 1599 (Fam).
[230] Ibid, [52].
[231] Ibid, [57] My emphasis.
[232] Ibid, [74].
[233] Ibid, [45]. My emphasis.

Although in this case the issue is not necessarily one of religious or cultural patriarchy, by maintaining that the mother's unfulfilling private life (being in a loveless and unsatisfactory marriage) led directly to her radicalisation, Newton J suggested that extremism has its genesis in pathological intimate and familial relations. This way, Islamist terrorism and the sources of the Islamist terrorist threat are privatised.

It is noteworthy that the judicial language in this and other cases discussed in this section regarding the influence of family-centric, culturalist approaches to Islamist terrorism is gendered. In the radicalisation cases, the suggestion that girls and women become involved in extremism and support and join terrorist organisations for *personal* and *familial,* rather than political, reasons (i.e. because they are the victims of their patriarchal families and wider culture, are married to extremist men or live unfulfilling home lives) domestically positions girls and women and insists that their agency is privately located in the home and family.[234] As a result, the (political and moral) agency of girls and women who are accused of being extremists or are considered to be at risk of radicalisation is ignored and undermined. This approach to women's engagement in extremism and possible terrorism in the radicalisation cases supports the arguments made by Fionnuala Ni Aolain that 'the category of women combatants or even women as tacit supporters of [terrorist] violence poses particular quandaries'[235] for state officials and law and policy makers. As the women and girls engaged in terrorism and extremism transgress acceptable notions of femininity and womanhood (inherently peaceful, caring and nurturing), they are essentialised and infantalised within counter-terrorism discourses.[236]

4.2 Family Dysfunction and Intergenerational Conflicts in the Radicalisation Cases

The radicalisation cases also appear to reflect and further reinforce psycho-social explanations of Islamist terrorism which, as I argued earlier, claim that familial dysfunctional and

[234] Brown (n147), 46.
[235] Ni Aolain (n6), 1091.
[236] Rashid (n55), 8.

intergenerational conflicts increase the psychological susceptibility of young Muslims to radicalisation.[237]

For example, in *Re Y (A Minor: Wardship)*[238] the fact that Y had 'grown up in an *extraordinary family*, where the male members are plainly committed to waging jihad in war-torn Syria'[239] was immediately identified by Hayden J as being the main reason why he is vulnerable to radicalisation. By representing radicalisation as a process that 'goes on within families committed to [a particular] type of belief'[240] and in finding that Y was 'at risk of following in the footsteps of his brothers by travelling to Syria,'[241] Hayden J suggested that engagement in terrorism is a sort of family commitment for certain types of problematic or "extraordinary" families. In fact, throughout the case, Hayden J does not seem interested in ascertaining Y's own beliefs and views on Syria or radical Islam. Nor does Hayden J examine whether or not there is sufficient evidence to prove that Y himself espouses or is likely to espouse extremist ideologies supportive of terrorism. Although Hayden J briefly acknowledges the fact that Y's uncle being a former detainee in the Guantanamo Bay Detention Centre[242] had caused Y to 'feel aggrieved [by a] sense of injustice,'[243] this fact is quickly shelved and is not cited as a reason why Y might be susceptible to radicalisation. Instead, the focus is a-political, almost entirely on Y's dysfunctional family background, including his mother's 'depressed'[244] state, his brothers' involvement in the conflict in Syria and their role in contributing to his psychological vulnerability to radicalisation. Therefore, Y emerges as being 'extremely vulnerable, *because of his family's history*, to radicalisation.'[245]

In other cases, the radicalisation of young people, particularly girls, is interpreted as being a manifestation of intergenerational conflicts within and as a form of rebellion against their

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[237] Puar (n85), 53-56.
[238] [2015] EWHC 2098 (Fam).
[239] Ibid, [2]. My emphasis.
[240] Ibid, [25].
[241] *A Local Authority v Y* [2017] EWHC 968 (Fam), para 17.
[242] (n238), [3].
[243] Ibid, [8].
[244] Ibid, [5].
[245] Ibid, [10]. My emphasis.

families.[246] Of note here is *A Local Authority v A Mother and Others*.[247] After observing that the mother, 'unlike other members of her family…prayed five times a day' [248] and 'adopt[ed]…clothing different to that habitually worn in the family,'[249] Knowles J 'formed the distinct impression that her devotion to her faith,'[250] which eventually led to her radicalisation, 'was in part a reaction to the more western way of life which had been adopted by her father.'[251] Again, the religious and political agency of young women is side-lined in favour of familialising psycho-social explanations.

A similar familialising psycho-social explanation of radicalisation is also present in *A v London Borough of Enfield*.[252] Although C's family are described as not being a particularly religious family who repeatedly reported their concerns about her potential radicalisation to the police and even confiscated her passport in an attempt to prevent her from travelling to Syria,[253] they nonetheless emerge as a problematic and dysfunctional family. In maintaining that 'C was kept under very close supervision by her parents' such that 'her freedom of movement [was] very significantly curtailed,'[254] Hayden J portrays the family as controlling and their attempts at protecting their daughter from travelling to Syria are interpreted as oppressive practices. Moreover, in reiterating that C had left her family home to marry an extremist man because she felt that 'her family were not strict enough Muslims'[255] and had attempted to travel to Syria because 'she wanted to live in an environment that was observant to stricter Islamic codes of behaviour,'[256] Hayden J implies that C attempted to travel to Syria in rebellion against her irreligious family.

In understanding and constructing the suspected, attempted or actual travel to ISIS-held territories in Syria and/or radicalisation using a psychoanalytic framework that attributes it to

[246] Rashid (n55), 94.
[247] (n215).
[248] Ibid, [89].
[249] Ibid, [93].
[250] Ibid, [89].
[251] Ibid.
[252] (n209).
[253] Ibid, [4]-[5].
[254] Ibid, [8].
[255] Ibid, [13].
[256] Ibid, [4].

familial dysfunction, these radicalisation cases *privatise* the causes of Islamist terrorism and obscure the political agency of the young people, especially the young women, involved.

4.3 Radicalised Homes: The Muslim Family and Home as Sites of Risk

The idea of the Muslim family as a risky and potentially threatening space, which underpins the securitisation of the Muslim family, echoes throughout a number of the radicalisation cases. The idea was rather ominously captured by the concept of 'radicalised homes,'[257] coined by Hayden J in *A Local Authority v Y*.[258] In that case, Hayden J asserted that 'children and adults in radicalised homes have their will overborne to such a degree that their capacity to make decisions concerning their safety may have become distorted.'[259] In a similar vein, Parker J maintained in *Re Y Children (Findings of Fact as to Radicalisation) Part 1*[260] that children 'being brought up in a radicalised Islamic household'[261] can be 'subjected to and inculcated with harmful ideas and attitudes.'[262] Phrases such as radicalised homes and radicalised Islamic households are evocative of the language of "broken homes" and "troubled families" discussed in Chapter Four and imply that radicalisation is, at its core, a *family problem*. The idea is also reflected in less explicit but equally illuminating judicial comments, such as Hayden J's observation in *London Borough of Tower Hamlets v B*[263] that 'the family, as a construct, is infinitely variable and inevitably so too is the route by which children become radicalised within their family.'[264] The suggestion that children can be radicalised *within* their families in an infinite number of ways constructs the family as a dangerous space where children can be indoctrinated into extremism.

Looking closely at how the relationship between the family and extremism and radicalisation is conceptualised and approached in the radicalisation cases reveals that in the eyes of the

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[257] (n241), [36].
[258] Ibid.
[259] Ibid, [36].
[260] (n197).
[261] Ibid, [4].
[262] *Re Y (Children) (Radicalisation) (Finding of Fact 2)* [2016] EWHC 3825 (Fam), [14].
[263] [2016] EWHC 1707 (Fam).
[264] Ibid, [9].

judges, the family can become a risky space for two main reasons. Firstly, some radicalisation cases appear to suggest that the essentially closed and private nature of the family makes it a threatening location where children can be radicalised away from the scrutinising gaze of the state and the influence of wider society. Secondly, other radicalisation cases suggest that family bonds and fealties can potentially undermine loyalty and allegiance to the state. These judicial constructions of the family echo and reinforce both the *general* idea of the private family as a potential source of threat to liberal political and social order and a site of risk for children and the more *specific* concern with the security and cultural threat posed by close-knit and unintegrated Muslim families.

4.3.1 Privacy as Danger: Home Education and Radicalisation

A close reading of some of the radicalisation cases suggests that what makes the family particularly dangerous is its essentially *private* and *closed* nature. In *London Borough of Tower Hamlets v B,*[265] Hayden J expressed his concern that 'this family [was] resistant to the State and its involvement in their life,'[266] complaining that there was, 'in both parents, a deep vein of resistance to authority.'[267] Here, the inscrutability of the family and its existence beyond the reach of the state appears to make it especially threatening. Consequently, Hayden J warned that because 'in this household … the resistance to intervention'[268] was 'so complete,'[269] the safety of B and her siblings 'cannot be assured.'[270] Likewise, the closeness and isolation of the family from wider society in *Re Y Children (Findings of Fact as to Radicalisation) Part 1* [271] appeared to intensify both the local authority and the court's concerns. Parker J noted that in that case, a 'cleaving to the family'[272] had led to the 'further isolation of the children from mainstream society'[273] and a 'general distortion of their thoughts, wishes and feelings'[274] that made them even more vulnerable to radicalisation. The image that is painted in these cases is

[265] (n263).
[266] Ibid, [93].
[267] Ibid, [123].
[268] *London Borough of Tower Hamlets v B* [2015] EWHC 2491 (Fam), [24].
[269] Ibid.
[270] Ibid.
[271] (n197).
[272] Ibid, [36].
[273] Ibid.
[274] Ibid.

of the family home as an insulated space where radical beliefs can become embedded and promoted away from the reach of the state and influence of wider society.

The specific risk that the private and closed nature of the family home poses within the context of the radicalisation cases was articulated in the cases where the issue of home education was raised as a concern. In these cases, the judges accepted local authority claims regarding the radicalisation risk posed by home-education, reflecting the influence of the recent securitisation of home education and its identification as a choice exploited by fundamentalist Muslim parents who culturally segregate their families and radicalise their children with extremist norms that undermine "fundamental British values."[275] For example, that B was educated at home was identified by Hayden J in *London Borough of Tower Hamlets v B*[276] as a particularly concerning issue; 'it is obviously significant that the mother elected to educate B at home.'[277] The obvious significance of B's home education for Hayden J seems to lie in the role that it played towards her eventual radicalisation.[278] Being home educated meant that B was socially isolated; her 'opportunities for social interaction [were] inevitably limited.'[279] Her isolation meant that she became more interested in and susceptible to ISIS propaganda.[280] By contrast, her sister's attendance at a local school allowed the sister to engage 'with the world in a healthy and energetic way'[281] and provided her with 'an immunisation to the radical agenda.'[282] This reference to social isolation and its direct linking to the process of radicalisation suggests that home education is conducive to radicalisation because it insulates children from the influence of wider society.[283]

Precisely how social isolation can facilitate the radicalisation of children was elucidated further by Newton J in *A Local Authority v M and Others*.[284] Pointing to the mother's concern that 'if

[275] Myers and Bhopal (n164), 212.
[276] (n263).
[277] Ibid, [116].
[278] Ibid, [17].
[279] Ibid.
[280] Ibid, [71], [103] and [118].
[281] Ibid, [140].
[282] Ibid.
[283] See also: *A City Council v A Mother and Others* [2019] EWHC 3076, [30].
[284] (n229).

the children attended secular schools [they might] "catch"… homosexuality'[285] and finding that in home educating the children the mother 'deliberately kept the children apart from wider society,'[286] the mother's refusal to send her children to mainstream schools was identified as another example of her rejection of liberal values. The mother's decision to home educate her children was, therefore, construed as an expression of her extremism; 'the mother's extremist views … were reflected in the education provided to the children, who were home educated.'[287] The implication here is that home education is dangerous because it allows fundamentalist parents to inculcate their children with extreme views while ejecting the potentially mitigating influence that mainstream schooling can have on the beliefs that their children adopt.

However, it is not just insulation from mainstream values that makes home education problematic. Some radicalisation cases suggest that home education is dangerous because it precludes state access to the children and family in question. In *A Local Authority v M and Others*,[288] Newton J suspected that the mother opted to home educate her children to allow her to indoctrinate them into her extremist beliefs without state interference; 'with little or no effective supervision or oversight from … the authorities,'[289] educating the children at home provided the mother with the 'perfect way of circumventing the system [and] avoid[ing] awkward questions.'[290] Home education emerges as a risk here because it prevents the state, through its schools and welfare-services, from monitoring what beliefs and values children are taught at home and from detecting signs of radicalisation.

These radicalisation cases suggest that the problem of home education and its ability to facilitate the radicalisation of children lies in the fact that it makes the privacy of the family and its separation from the public realm almost complete. Since there is no way for the state to instil such children with its own values or to detect what beliefs they are being taught at home,

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[285] Ibid, [48].
[286] Ibid, [49].
[287] Ibid.
[288] (n229).
[289] Ibid, [61].
[290] Ibid, [49].

home education gives parents almost total control over their children and their children's future: they are beyond the state's reach and society's influence.

4.3.2 Family Loyalty: A Case of 'Too Much'[291] Family?

It is not just the privacy of the family and its opacity that makes it dangerous within the context of the radicalisation cases. There is a sense that part of what makes the family a risky space is the closeness of the family members and their fealty to each other, reflecting the wider concern that familial bonds and affinities can potentially undermine allegiance to the liberal state (as discussed in Chapter Four) and the particular concern with the close-knit nature of Muslim families (as discussed earlier in this chapter).

For example, in *London Borough of Tower Hamlets v B,*[292] Hayden J appeared to be uncomfortable with B's 'strong loyalty to her parents and her siblings.'[293] The strength of B's affinity with her family was problematic, Hayden J suggested, because it prevented B from attributing responsibility to her family for her radicalisation; 'she certainly identifies no blame to her parents.'[294] Similarly, although the mother in *A Local Authority v A Mother and Others*[295] had accepted the court's findings that her husband, the father, had been 'involved in fighting for ISIL whilst in Syria'[296] and maintained that she had effectively ended her relationship with him,[297] Knowles J could not find that the mother no longer posed a risk to her daughter because 'the impression she gave … was of loyalty and affection for the father, which belied an honest acceptance of the findings I made about his behaviour.'[298] Here, the strength and irrationality of family attachments are identified as dangerous.[299] The use of the word *loyalty* in both these

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[291] Grillo (n37), 39.
[292] (n263).
[293] Ibid, [2].
[294] Ibid.
[295] [2018] EWHC 2056 (Fam).
[296] Ibid, [27].
[297] Ibid.
[298] Ibid.
[299] See: *Re Y (Children) (Radicalisation) (Finding of Fact 2)* (n262), [36] for a similar suggestion.

cases is also telling. It suggests that loyalty to the family can compete with and potentially undermine loyalty to the state, its values, laws and institutions.

The precise nature of the threat that loyalty to the family can pose to the state, and in particular, the state's interest in countering terrorism, was elucidated in other radicalisation cases. Firstly, in some cases, the judges suggest that individuals can become radicalised due to their closeness with other family members who espouse extremist ideologies. For example, in *A Local Authority v Y,*[300] Hayden J agreed with the local authority that the involvement of Y's brothers in the conflict in Syria made him 'particularly vulnerable to radicalisation'[301] because 'Y may wish to follow his brothers to war and perhaps ultimately death.'[302] In finding that 'Y may wish to follow the path that his brothers have walked,'[303] Hayden J suggests that young men join terrorist organisations and participate in acts of terrorism out of a sense of affinity and loyalty to their family. This sense of inevitability here, which suggests that the propensity to engage in terrorism is almost hereditary, reflects recent discourses examined in Chapter Three and suggests that Islamist extremism is mainly transmitted through family ties such that when it comes to groups such as ISIS, 'terrorism runs in the family.'[304]

The influence of this discourse, which draws a link between radicalisation and kinship ties, especially sibling relationships,[305] is apparent in a number of radicalisation cases. In *Re Y Children (Findings of Fact as to Radicalisation) Part 1,*[306] the local authority rather unusually sought findings against both the father and the 'three adult children,'[307] accusing them of exposing the younger children to extremist beliefs and attempting to remove them to ISIS-held territories abroad.[308] Similarly, in depicting the 'especially close relationship between the mother and her sister' as a 'closeness of ideology'[309] and maintaining that the mother 'took an active part in the political Islamic movement [by] virtue of her close family relationship

[300] (n241).
[301] Ibid, [1].
[302] *Re Y (A Minor: Wardship)* (238),[4].
[303] Ibid.
[304] Kate Brannen, 'With ISIS, Terror Runs in the Family' *This Week* (New York, 4 December 2015).
[305] Roy(n28), 16-20.
[306] (n197).
[307] Ibid, [18].
[308] Ibid, [30].
[309] *A Local Authority v M and Others* (n229), [38].

through her sister,'[310] in *A Local Authority v M and Others,* Newton J suggested that the extremism was transmitted through the sisterly bond. By interweaving the radicalisation process into sibling relationships, these and other radicalisation cases suggest that strong familial bonds are dangerous because the closeness and fealty that characterise kinship relations can facilitate radicalisation.[311]

Secondly, some radicalisation cases suggest that the fidelity that family members may feel towards each other is risky because it can prevent them from reporting suspicious family members, reflecting and reinforcing the recent Government discourses discussed above that express concern at the apparent reluctance of Muslim family members to report radicalised or potentially radicalised children to the appropriate authorities. For example, in *A Local Authority v A Mother and Others,*[312] Knowles J reiterated her frustration at the fact that 'the mother's family never reported her missing'[313] when she travelled to Syria. Similarly, in *A Local Authority v M and Others*[314] Newton J repeatedly expressed a strong sense of despair at the fact that 'no one in this family was actively prepared to condemn the mother in her beliefs or actions'[315] or notify the authorities when she went missing even though 'the wider family were well aware of the mother's extreme … views'.[316]

There is a sense here that in prioritising their *private relationships* over their duties as *citizens* and in displaying loyalty and refusing to betray each other, family members fail to display loyalty to the state and can potentially even betray it. The judicial discomfort with the strength of familial attachments and their representation as potentially conducive to radicalisation mirrors the claim highlighted earlier, that the "problem" of the Muslim family is a problem of 'too much' family.[317] These cases suggest that the tight-knit nature of Muslim families can

[310] Ibid.
[311] E.g. *London Borough of Tower Hamlets v B* (n263), [138]-[140] and *A City Council v A Mother and Others* (n283), [8].
[312] (n215).
[313] Ibid, [57].
[314] (n229).
[315] Ibid, [41].
[316] Ibid, [73].
[317] Grillo (n37), 39.

conceal the existence of extremism within the family home and can frustrate the reach of the counter-terrorist state.

4.4 Family Failure or Family Success? Narratives of Blame and Responsibilisation

The strength of the Muslim family and the loyalty that family members display towards one another is one of the reasons why the family is presented as risky in the radicalisation cases. Even if family members do not directly radicalise each other, the radicalisation cases suggest that the strength of kinship ties and loyalties prevent them from reporting each other to state authorities. Recall also, that in Chapter Two I pointed out that the families involved in the radicalisation cases are not, for the most part, stereotypical "problem" families. They differ from the (stereo)typically violent and unstable families which usually appear in care proceedings and which are blamed for crime, anti-social behaviour and other social problems.[318] Rather, the families in question are often described as loving and caring families with happy, well-behaved and academically successful children.[319] The point here is that a narrative of family *success,* rather than family *failure,* seems to emerge in the radicalisation cases. This is also reflected in the fact that the family appears to be a *solution* rather than simply a *problem* when it comes to dealing with childhood radicalisation. In most of the radicalisation cases, the judges appear reluctant to permanently remove the children away from their families, preferring instead for the children to either be monitored at home whilst in the care of their parents or, if necessary, to remove the children to the care of extended family members.[320]

Yet, by maintaining that the solution to the problem of childhood radicalisation rests with the (nuclear and/or extended) family, the family is still *responsibilised*. For it reflects and reinforces one of the distinctive aspects of the securitisation of the Muslim family discussed in the previous section, which suggests that preventing extremism and radicalisation is a family responsibility, essentially tasking family members with the duty of "doing" counter-terrorism

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[318] Ibid.
[319] See: E.g. *Re X (Children); Re Y (Children)* [2015] EWHC 2265 (Fam), [28] and [47] ; *Re C, D and E (Radicalisation: Welfare)* [2016] EWHC 3088 (Fam), [5] and *Re Y (Children) (No 3)* [2016] EWHC 503 (Fam), [41].
[320] See: Chapters Seven and Eight.

at home. Families that do not fulfil this duty, by not doing enough to prevent and counter radicalisation within their homes, are blamed.

For example, in *A Local Authority v M and Others*,[321] Newton J criticised the mother's 'complicated and unreliable family'[322] for its passive reaction to the mother's radicalisation; 'no one in this family was actively prepared to condemn the mother in her beliefs or actions…it is in this way that the very extreme views of the mother can be said to have been nurtured, never once challenged or checked by those around her.'[323] By reproaching the mother's family for not doing more to actively counter the mother's extremist beliefs, Newton J suggested that the family has abdicated its responsibility. Similarly, in *A Local Authority v A Mother and Other*,[324] Knowles J suggested that the mother's espousal of extremist thinking resulted from the fact that she lived 'within a family that could do nothing to act as a counterbalance'[325] to her radicalisation. Therefore, although this particular family, which lived a 'more western way of life'[326] was not directly blamed for the mother's radicalisation, it was, nonetheless, indirectly censured for its passivity towards the mother's extremist beliefs and failure to proactively counter them. In these cases, radicalisation emerges as a distinct form of *family failure*.

4.5 Parents and Parenting (and Mothers and Mothering) in the Radicalisation Cases: Narratives of Blame, Responsibilisation and Deviance

Although the family in general is scrutinised, blamed and responsibilised in the radicalisation cases, the familial relationship that is accorded most importance is the parent-child relationship. This is unsurprising given both the nature and focus of family court proceedings. In public law proceedings, the court is required to assess whether the child in question is suffering or is likely to suffer significant harm,

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[321] (n229).
[322] Ibid, [38].
[323] Ibid, [41].
[324] (n215).
[325] Ibid, [62].
[326] Ibid, [89].

> '…attributable to (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or (ii) the child's being beyond parental control.' [327]

Public law proceedings, therefore, assess the *adequacy* of parenting; their aim is to 'protect children from inadequate parents.'[328] Because public family court proceedings are concerned with the adequacy of parenting, the judges in the radicalisation cases dedicate much of their time to evaluating the parenting of the fathers and mothers before them.

In a number of radicalisation cases, the question of whether a parent is an extremist is determined in tandem with a wider 'comprehensive parenting assessment.'[329] For example, the father in *Re A and B (Care Proceedings)*[330] was subjected to a 'full parenting assessment.'[331] As part of that assessment, the psychiatrist 'was invited to consider whether the father held extreme views'[332] and 'whether the father's views, whatever they may be, were impacting on his parenting of his children.'[333] The close link between extremism on the one hand and parenting on the other also emerged as an important theme during the interviews. In fact, according to one of the barristers, the radicalisation cases are essentially concerned with assessing the upbringing of children and its role in childhood radicalisation.[334] By intertwining the question of extremism with the issue of parental adequacy, these radicalisation cases familialise extremism, linking it to child-rearing practices, and securitise parenting, identifying it as a root cause of radicalisation and eventual terrorism.

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[327] S.31 (2) Children Act 1989.
[328] Andrew Bainham, *Private and public children law: an under-explored relationship* (2013) 25 Child and Family Law Quarterly, 138, 138.
[329] E.g: *A Local Authority v X, Y and Z (Permission to Withdraw)* [2017] EWHC 3471, [23]; *A Local Authority v A Mother and Others* (n215), [17] and *Re I (Child Assessment Order)* [2020] EWCA Civ 281, [6].
[330] [2016] EWFC B43.
[331] Ibid, [30].
[332] Ibid, [44].
[333] Ibid.
[334] Interview with Barrister E, QC at No5 Barrister Chambers (Telephone Interview, 21 May 2018).

The judicial preoccupation with parenting takes two main forms in the radicalisation cases. Firstly, in cases involving children who have been radicalised or are at risk of radicalisation, the judges examine the role that parents and parenting play in the radicalisation of children. Here, a narrative of blame and responsibilisation can be detected. Secondly, the judges are interested in the alleged extremist and/or terrorist *as a parent*. In doing so, they raise the question of whether individuals who are considered to be threats or potential threats to the *public* are also, as a result, "bad" or 'deviant'[335] parents. However, the preoccupation with parents and parenting in the radicalisation cases is gendered. Therefore, whereas parents are generally scrutinised and responsibilised in the radicalisation cases, mothers are criticised more harshly and disproportionately blamed in comparison to fathers.

4.5.1 Radicalisation as a Parenting Failure

A narrative of parental blame is present in most of the radicalisation cases. Even in cases where the parent is not an extremist, the radicalisation of children is depicted as a parenting failure. For example, despite the fact that B had radicalised 'herself by viewing a surfeit of death-related images'[336] in *London Borough of Tower Hamlets v B,* Hayden J still placed primary responsibility for B's radicalisation on her parents; 'whilst she undoubtedly bears responsibility for her actions, the greater responsibility lies with her parents who have let her down badly.'[337] That the father was 'not, himself, motivated by an extremist agenda'[338] and did not 'deliberately indoctrinate or infect his daughter with radicalised beliefs'[339] was not enough to absolve him from responsibility. Rather, the very fact that his daughter was able to radicalise herself by accessing ISIS propaganda was, according to Hayden J, 'directly attributable to his *failings* as a *parent*.'[340] Therefore, even though her parents did not indoctrinate her with extremist ideas, this case suggests that by allowing B to become radicalised, her parents failed her; 'in some

[335] Helen Reece, *Was there, is there and should there be a presumption against deviant parents?* (2017) 29 Child and Family Law Quarterly 9, 9.
[336] *London Borough of Tower Hamlets v B* (n263), [94].
[337] Ibid, [141].
[338] Ibid, [140].
[339] Ibid, [84].
[340] Ibid. My emphasis.

respects this has nothing to do with faith, political views or radicalisation. It is *above all* a significant *parenting deficiency*.'[341]

A narrative of parental blame can also be detected in *A Local Authority v M and Others*.[342] Although Newton J conceded that there was no evidence to suggest that the father 'shared the mother's extremist views,' [343] the father was still blamed for the radicalisation of his children; '[h]e is responsible by association, knowing of the mother's extreme beliefs, but allowing her, unchallenged, to make and implement all the educational decisions… He has abdicated his responsibility for the children.'[344] Here, Newton J suggests that even when parents do not inculcate their children with extremist thought, they are still to be held primarily responsible for their radicalisation. In these and other radicalisation cases, therefore, radicalisation is identified as a *parenting failure*.[345] Like crime, antisocial behaviour and poor educational attainment, radicalisation (and the terrorism that it supposedly leads to) is treated as a problem for which inadequate parenting, rather than structural political factors, is primarily responsible.

It is interesting to note here that the parenting failure in these radicalisation cases appears to be a failure to display proactive parenting and to vigilantly identify and manage the risk of radicalisation faced by their children. This rather prescriptive approach to parental responsibility is present in *Lancashire City Council v M and Others*.[346] Although he acknowledged that the mother in that case was 'a quiet and peaceful person'[347] who wanted 'a happy home'[348] for her children and was ambitious for them 'to do well at school,'[349] Jackson J stressed that 'there is more to being a parent than that.'[350] As a parent, Jackson J remonstrated, 'you have to make good plans for your children, you have to know what is right for them and be strong enough to try to make it happen'[351] and you must 'protect your children from bad

[341] Ibid, [98]. My emphasis.
[342] (n229).
[343] Ibid, [62].
[344] Ibid, [74].
[345] E.g: *A City Council v A Mother and Others* (n283), [39] and *Re Y Children (Findings of Fact as to Radicalisation) Part 1* (n197), [78].
[346] [2016] EWFC 9.
[347] Ibid, [15].
[348] Ibid.
[349] Ibid.
[350] Ibid, [16].
[351] Ibid.

influences.'[352] Applying this prescription to the case at hand, Jackson J concluded that the mother's inability to protect the children from the extremism of the father and the fact that she was 'extremely slow'[353] in recognising that the father had planned to take the family to the Middle East meant that 'the mother has not been a good parent.'[354]

The idea that insufficiently proactive and risk-averse parenting is to blame for children's radicalisation is even more clearly present in Hayden J's analysis of the role that the parents played in B's radicalisation in *London Borough of Tower Hamlets v B*.[355] Hayden J was particularly troubled by the fact that both the father and the mother had failed to fulfil their promise to the local authority and the police to 'purchas[e] and install filtering software devices in the household'[356] in order to prevent B from 'accessing inappropriate websites'[357] containing ISIS propaganda. Hayden J maintained that because the father 'was simply not prepared to monitor B's use of the computer in the way that he promised'[358] and the 'mother made no effort at all to restrict her daughter's use of the internet,'[359] B became radicalised by accessing a 'colossal'[360] amount of ISIS content online, feeling 'no inhibition from viewing what she wanted.'[361] In expressing his incredulity that 'this father [who] had nearly lost his daughter to Syria'[362] had been so careless, Hayden J said that 'one would have expected nothing less than hawkish vigilance on behalf of a parent in such circumstances.'[363] Finding that 'the mother was not sufficiently protective or vigilant as her daughter became radicalised,'[364] Hayden J suggested that B's radicalisation resulted from, and is itself a reflection of, significant parenting failures.

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[352] Ibid.
[353] Ibid, [27].
[354] Ibid, [17].
[355] (n263).
[356] Ibid, [85].
[357] Ibid.
[358] Ibid, [94].
[359] Ibid, [123].
[360] Ibid, [28].
[361] Ibid, [95].
[362] Ibid, [87].
[363] Ibid.
[364] Ibid, [106]-[108].

Likewise, in *Re Y Children (Findings of Fact as to Radicalisation) Part 1,* [365] Parker J remarked that she was 'very struck by the father's reaction to the discovery of extremist material'[366] on his daughter's electronic devices. That the father 'scarcely asked why she had this material'[367] on her phone and failed to 'tackle the issue at all'[368] reflected, according to Parker J, 'a remarkable derogation of parental responsibility.'[369]

These radicalisation cases demonstrate that even if parents are not extremists and have not radicalised their children, they may still be to blame for the radicalisation of their children. Parents who do not recognise the signs of radicalisation in their children and who fail to proactively manage the radicalisation risk do not display "good" parenting skills and are, therefore, held responsible for the eventual radicalisation of their children.

4.5.2 Constructing Extremism as a New Category of Parental Deviance: The Extremist and/or Terrorist as a Parent

But what of parents who themselves espouse Islamist ideologies and support extremist and/or terrorist organisations? Here, I want to argue that in the radicalisation cases the extremist parent emerges as a deviant parent. There is, according to Helen Reece, a 'judicial presumption against'[370] parental deviance within family court proceedings, such that parents who are considered deviant are disfavoured.[371] Parental deviance is defined 'as a norm violation that meets with opprobrium.'[372] Categories of parental deviance, Reece argues, are 'created by society.'[373] Parental deviance is, therefore, the product of social 'labelling.'[374] In their decisions, family judges often reflect and confirm social categories of parental deviance.[375]

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[365] (n197).
[366] Ibid, [99].
[367] Ibid.
[368] Ibid.
[369] Ibid. See also *A Local Authority v M and Others* (n229), [75] for a similiar approach.
[370] (n335), 9.
[371] Ibid.
[372] Ibid.
[373] Ibid, 10.
[374] Ibid.
[375] Ibid.

Importantly, moreover, family judges also *create* categories of parental deviance by constructing certain forms of parental behaviour as deviant.[376] Building on this, in what follows, I suggest that in the radicalisation cases, extremism and radicalisation are constructed as new categories of parental deviance.

Admittedly, applying Reece's 'parental deviance framework'[377] to the radicalisation cases is not a straightforward exercise. This is because, firstly, Reece emphasises that deviance in this context needs to be distinguished from the kind of deviance that attaches itself to parents who harm their children through physical abuse that results in death or serious injury.[378] Rather, Reece focuses on the ways in which a 'parent's freestanding deviance,'[379] which falls 'short of criminality,'[380] is treated by the family courts.[381] Secondly, Reece looks almost exclusively at 'private family law disputes'[382] between separated parents, arguing that such cases 'offer a particularly clear window into what judges see as deviant.'[383] According to Reece, since in private law proceedings 'the family has invited the law inside'[384] its affairs, the judges 'do not have the option that is available in most other legal disputes of adopting the liberal stance that people's deviance falling short of criminality is of no interest.'[385] By contrast, the majority of the published radicalisation cases considered in this thesis involve public law proceedings where children are considered to have suffered or to be at risk of suffering significant harm.

Nevertheless, I think that Reece's parental deviance framework is still relevant and can be applied to the radicalisation cases. For as I demonstrated in Chapter Two, although the majority of the published radicalisation cases are public law radicalisation cases, the empirical data reveals that more than half of all the radicalisation cases are private radicalisation cases. More importantly, even in radicalisation cases involving public law proceedings, the family judges are mostly concerned with the kind of deviant parental conduct that falls below the threshold

[376] Ibid, 11.
[377] Ibid.
[378] Ibid, 9-10.
[379] Ibid, 10.
[380] Ibid.
[381] Ibid.
[382] Ibid, 9.
[383] Ibid.
[384] Ibid.
[385] Ibid.

of criminality identified by Reece. The primary concern of the family judges in the radicalisation cases, as Chapters Six and Seven will show, is with extremism and radicalisation - the 'pre-criminal'[386] space of ideas, beliefs and processes of socialisation.

Re X (Children) (No3)[387] was the first case that identified extremism as a new form of parental deviance. Munby P stated that in a case involving allegations of extremism, 'the mother's qualities as a parent are not, of themselves, any assurance.'[388] This is because, Munby P explained, 'the reality [is] that not every parent is necessarily as steeped in the values of a post-Enlightenment Europe as we might like to imagine.'[389] Therefore, 'people can be otherwise very good parents (in the sense which society would generally use the phrase) while yet being driven by fanaticism, whether religious or political'[390] that can expose their children to danger. The implication here is that "good" and loving parenting is not enough to exonerate parents from reproach. Parents also need to subscribe to the liberal and secular values of post-Enlightenment Europe to avoid suspicion and censure. To hold views that are too orthodox or that reject the post-Enlightenment European consensus could make an otherwise good parent deviant.

The idea that conventionally "good" parenting is not enough when there are accusations of parental extremism was emphasised and elaborated in a number of subsequent radicalisation cases.[391] For example, although Cobb J noted in *Re C,D,E (Children) (Radicalisation: Fact Finding)*[392] that 'it is clear … that both parents love their children and care for their well-being'[393] and even conceded that 'the children have experienced many aspects of positive parenting,'[394] he was, nonetheless, 'concerned about the children [being]…in the care of parents who held such radical views about Islam.'[395] In *Re C (No3) (Application for dismissal*

[386] Therese O'Toole, 'Prevent: from 'hearts and minds' to 'muscular liberalism''(Public Spirit, November 2015).
[387] [2015] EWHC 3651 (Fam).
[388] Ibid, [91].
[389] Ibid.
[390] Ibid.
[391] See: *Re Y (Children) (No 3)* (n319), [22] and *A City Council v A Mother and Others* (n283), [39].
[392] [2016] EWHC 3088 (Fam).
[393] Ibid, [6].
[394] Ibid.
[395] Ibid.

or withdrawal of proceedings),[396] extremism was even more explicitly identified as a new, distinct category of parental deviance. Pauffley J reproached those seeking to argue that in this and other radicalisation cases 'the parents' care of their children has been observed to be very good' for 'rather missing the point of these proceedings.'[397] A radicalisation case, Pauffley J explained, is not an ordinary 'neglect or physical abuse case.'[398] Rather, in these cases, it is the 'alleged extremist mindset [and] terrorist sympathises'[399] of parents that 'represent[s] a danger'[400] to children, no matter how loving or 'very good'[401] their parenting may otherwise be.

By constructing extremism as a new category of parental deviance, the radicalisation cases express a novel interest in the extremist and/or terrorist *as a parent*. Whereas previously the state was primarily interested in the *public* identity of the terrorist and the security threat that they posed to the public, the radicalisation cases suggest that the *private* or *parental* identity of the extremist and/or terrorist and their relationship with their children is also now of concern to the state. The existence of parental extremism and or engagement in terrorism is now also considered as being itself a form of "bad" or deviant parenting.

4.5.3 Mothers and Mothering: Disproportionate Blame and Harsher Censure

The emphasis on the responsibilisation of parents in the radicalisation cases reflects and reinforces the familialisation of Islamist terrorism and the securitisation of the Muslim family discussed earlier in this chapter. Rather than viewing terrorism as an unlawful method of political violence, the radicalisation cases suggest that it is the product of parenting failures, deficiencies and deviancies. Parents who do not practice a certain, normative standard of proactive parenting, believe in Islamist ideologies and practice a fundamentalist or orthodox

[396] [2017] EWFC 37.
[397] Ibid, [66].
[398] Ibid.
[399] Ibid.
[400] Ibid.
[401] Ibid.

version of Islam emerge as suspicious and deviant and are blamed and held responsible for the radicalisation of their children.

However, the focus on parents and parenting in some of the radicalisation cases is also gendered. In comparison to the fathers, mothers appear to be subjected to closer scrutiny, harsher censure and disproportionate blame. In a way, the gendered focus on mothers and mothering in the radicalisation cases is to be expected. Mothers are disproportionately blamed in comparison to fathers for a host of social and political problems ranging from crime, anti-social behaviour, lack of educational attainment [402] and, more recently, extremism and terrorism.[403] In their childrearing, mothers are increasingly expected to adhere to gendered, classed and racialised policy and discursive prescriptions and to live up to certain normative ideals of "good" mothering.[404] If they fall short of these ideals (for example if they or their children commit crimes, engage in anti-social behaviour or espouse extremist views and support terrorist organisations) they are deemed to be "bad" mothers deserving of opprobrium and sanction.[405]

These gendered biases in the approach to parenting within wider policies and discourses are reflected in some of the radicalisation cases.[406] A close analysis of the judgments shows that in some cases mothers are disproportionately blamed for the radicalisation of their children in comparison to fathers. In *London Borough of Tower Hamlets v B*,[407] for example, Hayden J found that the conduct of both the father and the mother paved the way for B's radicalisation;

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[402] Val Gillies, 'Is poor parenting a class issue? Contextualising anti-social behaviour and family life' in Martina Keltt-Davis (Ed) *Is Parenting a Class Issue?* (Family and Parenting Institute 2010) and 47-48 and Hunter and Nixon(n268), 9.
[403] Bhattacharyya (n66), 52-54 and Hussein (n116), 230.
[404] Val Gillies, *Meeting parents' needs? Discourses of 'support' and 'inclusion' in family policy* (2005) 25 Critical Social Policy 70, 77.
[405] Dorothy E Roberts, *Motherhood and Crime* (1993) Penn Law: Legal Scholarship Repository, 102 and Carol Smart, *Women, Crime and Criminology: A Feminist Critique* (Routledge and Kegan Paul, 1976), 33.
[406] Although this section focuses on two main cases, mothering emerges as an important theme in *Leicester City Council v T* (n200); *Re C, D, E (*n319*)* and *A Local Authority v A Mother and Others* (n229) and (n295).
[407] (n263).

> '…the father's own insensitivity to death related images and the mother's dedication to a highhanded Islamic code of belief … [were] the predominant forces in this household which led to B's radicalisation.'[408]

However, a comparison of the language used to describe the mother and father suggests that in this case the mother emerges as the more culpable parent. For even though Hayden J conceded that the mother was not an extremist ('I do not find that the mother held radicalised beliefs'),[409] there is still a strong sense that the mother's religiosity and approach to Islam are culpable; 'I have found on the spectrum of Islamic observance she [the mother] is at the most committed end. In this family those beliefs proved to be fertile ground for B's journey to radicalisation.'[410] So although Hayden was clear that the mother had not radicalised her daughter, in finding that 'B's concept of Islam [and] her views resonate'[411] very closely with those of her mother, Hayden J (in)directed much of the blame for B's radicalisation on the mother. Indeed, by asserting, towards the end of the case, that 'the mother certainly would have known that her daughter was dangerously enthusiastic about ISIS'[412] and even wondering 'whether she was directly involved in her daughter's attempt to leave the country,'[413] Hayden J came very close to accusing the mother of facilitating her daughter's radicalisation and encouraging her attempted journey to Syria.

By contrast, the father was portrayed more sympathetically. Unlike the 'controlling'[414] and 'authoritative'[415] mother, the father was described by Hayden J as a 'kind, warm and generous'[416] man with 'a sense of humour.'[417] Hayden J also approved of the way in which the father spoke about his faith 'in language that was moderate, unforced and lacking in zealotry,'[418] noting that 'in this respect he is dramatically different to his wife'[419] who holds

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[408] Ibid, [124].
[409] Ibid, [125].
[410] Ibid.
[411] Ibid, [111].
[412] Ibid, [119].
[413] Ibid.
[414] Ibid, [126].
[415] Ibid.
[416] Ibid, [97].
[417] Ibid.
[418] Ibid, [96].
[419] Ibid, [97].

'zealous Islamic beliefs.'[420] And although Hayden J found that 'the father did indeed show [B] videos or pictures of Muslims being killed or burnt alive'[421] and exposed her to the kind of propaganda that led to her radicalisation, he does not emerge as culpable in the same way as the mother. For according to Hayden J, the father was motivated to show B these graphic images and videos of death out of 'humanitarian instincts.'[422] Therefore, Hayden J concluded that 'there is a naivety to the father's behaviour rather than a deep-seated destructive agenda.'[423] Through his sympathetic portrayal of the father, Hayden J was prepared to explain and even rationalise the father's behaviour - a preparedness that was not extended to the mother. Therefore, although in this case neither the father nor the mother were extremists and neither directly radicalised B, the father was depicted in a more positive light and emerges as an essentially benign, if somewhat misguided, parent.

Similarly, the father in *A Local Authority v M and Others*[424] also appears sympathetic and innocuous in comparison to the 'tough and uncompromising'[425] mother who, in her attempt to take the children with her to ISIS-held territories in Syria, 'trampled all over [the father].'[426] In that case, Newton J stressed that 'the father is essentially a decent man,'[427] whose main fault was that he 'was too weak to do anything'[428] about the mother's 'strong willed'[429] personality. His weak and passive personality, Newton J claimed, 'permitted the mother to, in effect, run rings around him.'[430] Like the father in *London Borough of Tower Hamlets v B*,[431] the father in this case was depicted by Newton J as being a simple, naïve man whose religiosity, unlike that of the mother, is nonthreatening: 'the father is an unsophisticated, poorly educated traditional man … who whilst practicing is not devout.'[432] Although the father was held 'responsible by

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[420] Ibid, [140].
[421] Ibid, [78].
[422] Ibid.
[423] Ibid, [98].
[424] (n229).
[425] Ibid, [68].
[426] Ibid, [53].
[427] Ibid.
[428] Ibid, [47].
[429] Ibid, [45].
[430] Ibid, [57].
[431] (n263).
[432] (n229), [32].

association'[433] for the radicalisation of the children and was chastised for 'turning a blind eye'[434] to the mother's increasing extremism, he was nonetheless spared serious reproach;

> 'I have no doubt that the father knew [about the mother's extremist views and attempted journey with the children to Syria] … I do not equate that however to necessarily being in sympathy with those views … all evidence points to a weak man overwhelmed by his wife, her family and her circumstances.'[435]

The charged and gendered language used in these radicalisation cases suggests that the judges are rather uncomfortable with strong and authoritative mothers. The negative tone here implies that there is perhaps something wrong with a mother whose mothering practices are more closely aligned with conventional concepts of fatherhood (authority and control) than motherhood (love and nurture). Therefore, the mothers in these radicalisation cases are not just subjected to disproportionate blame and harsher criticism, they are also portrayed as unloving and un-matronly mothers.

5. Conclusion

This chapter offered a critical investigation into *why* family law and counter-terrorism have interacted in recent years, focusing on the influence of the reconceptualisation of the terrorist threat and the ensuing significant changes in the post-9/11 global and national counter-terrorism and security landscape.

The chapter highlighted the emergence of a "new" terrorism thesis and its reconstruction of the terrorist threat which has depoliticised and familialised Islamist terrorism. It claimed that the emphasis within scholarly and policy circles on the cultural and psychological (as opposed to

[433] Ibid, [74].
[434] Ibid.
[435] Ibid, [73].

the political) causes of Islamist terrorism has turned attention to the *private* sphere and the role that perceived pathological familial relations within Muslim communities, particularly regressive gender relations and problematic child-rearing practices, play in "creating" the Islamist terrorist. This privatisation of the root causes of Islamist terrorism and the increasing concern with Muslim family life in the name of counter-terrorism, the chapter argued, opened the way for the securitisation of the Muslim family and its increased targeting and regulation within UK counter-terrorism discourse and policy. To that end, the chapter maintained that the Muslim home, family life and family relations, in particular the parent-child relationship, are approached with increasing suspicion and blamed for the radicalisation of adults and especially children. At the same time, the chapter demonstrated how the Muslim family, and in particular Muslim mothers, are also recruited into the state's counter-terrorist project and tasked with the responsibility of preventing and countering terrorism, extremism and radicalisation within their own homes.

Finally, the chapter argued that these changes to the conceptualisation of the Islamist terrorist threat, the increased targeting and regulation of the Muslim family, parenting and mothering in the name of counter-terrorism and the specific ways in which counter-terrorism policies and discourses have pathologised and problematised the Muslim family echo throughout the radicalisation cases themselves. By closely attending to and unpicking the judicial rhetoric and tracing the way in which the Muslim family, home and parenting are represented, the chapter argued that the radicalisation cases are influenced by, augment and extend the familialisation of Islamist terrorism and the securitisation of the Muslim family.

Chapter Six

Expanding the Remit of Counter-Terrorism: Preventing Extremist Ideology and Safeguarding Vulnerable Children

1. Introduction

The preceding chapter explained the recent emergence of the radicalisation cases in the family courts by reference to the familialisation of Islamist terrorism and the securitisation of the Muslim family within post-9/11 counter-terrorism discourses and policies. This chapter continues to investigate the "why" question by examining the important shifts and changes within the UK counter-terrorism landscape. While the previous chapter located the recent interaction between family law and counter-terrorism within broader *conceptual* changes, in particular the *reconceptualisation* of the terrorist threat and the *discursive* representations and *constructions* of the family, home and familial relations within global and national counter-terrorism discourses and policies, the focus of this chapter will be on UK counter-terrorism policy, law and practice.

The chapter examines the role played by the seismic changes over the last two decades to counter-terrorism law and policy in enabling the recent interaction between family law and counter-terrorism. The chapter claims that these changes, which began under New Labour following the 7/7 terrorist attacks on London in 2005 but were significantly extended under the auspices of the Coalition and Conservative Governments, considerably expanded the reach and remit of counter-terrorism in the UK and altered its nature and purpose, creating the conceptual space and establishing the legal and policy architecture that made the recent emergence of the radicalisation cases possible.

To that end, section (2) highlights and examines the rise and prominence of the concept of radicalisation within post-7/7 counter-terrorism thinking and practice in the UK and the role it

played in instituting the increasingly preventive and pre-emptive turn that counter-terrorism laws and policies began to take. This emphasis on prevention and pre-emption, section (2) claims, transformed counter-terrorism law and policy in two fundamental ways that enabled the emergence of the radicalisation cases and are reflected therein. Firstly, section (3) argues that counter-terrorism in the UK began to be ideological, seeking to prevent and counter not only criminal acts of terrorism but also the *pre-criminal* space of extremist ideologies that allegedly lead to terrorism and threaten the UK's liberal democratic values. Secondly, section (4) notes the growing pre-occupation with early intervention in counter-terrorism laws and policies, particularly as a result of the changes introduced by the Coalition and Conservative Governments, and the drive towards identifying vulnerable children and safeguarding them from the radicalising influence of extremist ideology. Finally, section (5) argues that these changes in counter-terrorism law and policy, which have significantly broadened the focus of counter-terrorism and expanded the reach and remit of the counter-terrorist state, are mirrored in and reinforced by judicial articulations of harm in the radicalisation cases themselves.

2. The Rising Concern with Radicalisation and the Preventive Turn in UK Counter-Terrorism

In UK, and more generally, European counter-terrorism policies and discourses, the "new" terrorism thesis' de-politicisation of Islamist terrorism and its emphasis on the supposed cultural and psychological antecedents of Islamist terrorist violence (discussed in the previous chapter) manifested itself in an increasingly prevailing interest in *radicalisation*. Radicalisation is a relatively new concept.[1] The concept rose to prominence and became popular with terrorism scholars and UK and European counter-terrorism policy makers after the Madrid bombings of 2004, the 7/7 London bombings in 2005 and the new era of European "home-grown" terrorism that these attacks introduced.[2]

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[1] Anthony Richards, *The problem with 'radicalization': the remit of Prevent and the need to refocus on terrorism in the UK* (2011) 87 International Affairs 143, 144.

[2] Arun Kundnani, *Radicalisation: the journey of a concept* (2012) 54 Race & Class 3, 3; Peter Neumann, 'Introduction' In: *Perspectives on radicalisation and political violence. Papers from the first international conference on radicalisation and political violence*. (International Centre for the Study of Radicalization and Political Violence 2018) and Peter Neumann and Scott Kleinmann, *How Rigorous is Radicalization Research?* (2013) 9 Democracy and Security 360, 361-363

The concept of radicalisation encapsulates both the cultural and psycho-social approaches to Islamist terrorism discussed in the previous chapter; radicalisation was conceptualised as a psychological and social process that leads (usually young and/or vulnerable) individuals to support and eventually commit acts of terrorism. Importantly, the radicalisation process was understood as a theological process that is primarily fuelled by *extremism* - fundamentalist interpretations and ideological approaches to Islam which reject and seek to undermine Western liberal democracy.[3] The idea here is that individuals become radicalised and therefore more susceptible to committing terrorist violence because of their exposure to Islamist ideology.[4] The claim is that the presence of and exposure to a Salafi-Jihadi ideology can trigger the radicalisation process and lead vulnerable individuals into terrorism.[5] Highly literalist interpretations of Islam, the rejection of liberal values and the belief in the essential irreconcilability between Islam and the West were identified as indicators of a propensity towards radicalisation and, potentially, terrorism.[6]

The idea that Islamist terrorism has its roots in extremism established a *causal link* between Islamist ideology and terrorist violence.[7] This approach to Islamist terrorism and its "root causes" became known as the conveyor-belt theory of radicalisation,[8] which maintains that terrorism is the result of psycho-social and theological radicalisation journeys that start with exposure to extremist Islamist ideology and end in support for, and even engagement in, acts of violent terrorism.[9] The concept of radicalisation and the conveyor-belt theory are highly contested and have been subjected to sustained criticism from political scientists and critical

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[3] Kundnani (ibid), 17 and Christopher Baker-Beall, Charlotte Heath-Kelly and Lee Jarvis, 'Introduction' in Christopher Baker-Beall, Charlotte Heath-Kelly and Lee Jarvis (Eds) *Counter-Radicalisation: Critical Perspectives* (Routledge 2014), 6. See also: Bruce Hoffman, *Inside Terrorism* (Indigo, 1998); 85-89 and Mark Jurgensmeyer, *Terror in the mind of God: the global rise of religious violence* (University of California Press, 2003) 127-128.
[4] E.g. Quintan Wiktorowicz, *Radical Islam Rising: Muslim Extremists in the West* (Rownman & Littlefield Publishers, 2005) and Mitchell D. Silber and Arvin Bhatt, *Radicalization in the West: the Homegrown Threat* (New York City Department, 2007).
[5] Jonathan Githens-Mazer and Robert Lambert, *Why conventional wisdom on radicalization fails: the persistence of a failed discourse* (2010) 86 International Affairs 889-899.
[6] Ibid.
[7] Kundnani (n2) 11-14.
[8] Arun Kundnani, *The Muslims Are Coming: Islamophobia, Extremism and the Domestic War on Terror* (Verso, 2014), 94.
[9] Ibid.

terrorism scholars.[10] The critics argue, firstly, that the term radicalisation is ambiguous.[11] Although there is an international consensus regarding the political, cultural and security threat that is posed by radicalisation, the term is plagued by conceptual confusion.[12] A clear, robust and universally accepted definition of the term is missing.[13] It is not clear what exactly radicalisation is or who the radicalised are.[14] The concept was used, as Peter Neumann puts it, to capture and describe 'everything that happens before the bomb goes off.'[15]

Secondly, and perhaps more importantly, critics claim that the supposed link between holding extremist Islamist ideological beliefs and the propensity to commit terrorist violence is lacking in empirical evidence.[16] Although most of these critics concede there might be a *prima facie* correlation between terrorist violence and Islamist/Salafi ideology, correlation, they stress, is not the same as causation.[17] For example, after examining the profiles of hundreds of al-Qaeda and ISIS members, Olivier Roy found that there was no causal link to be found in empirical data between religious extremism and terrorist violence.[18] Although Roy stressed that religious fundamentalism poses considerable social problems, his own empirical studies indicate that it is not the source of terrorism and does not necessarily lead to it.[19] Similarly, Jonathan Githens-Mazer and Robert Lambert's case-studies found that the presence of religious ideology was not enough to explain why certain individuals commit acts of terrorist violence.[20] Even some proponents of the concept of radicalisation concede that a significant proportion of the research that supports the Government's claims regarding the conveyor belt theory is empirically weak.[21]

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[10] Baker-Beall, Heath-Kelly and Jarvis (n3),4 and Andrew Hoskin and Ben O'Loughlin, *Media and the Myth of Radicalisation* (2009) 2 Media, War and Conflict 207, 207.
[11] Peter Neumann, *The Trouble with Radicalization* (2013) 89 International Affairs 873, 873.
[12] Baker-Beall, Heath-Kelly and Jarvis (n3), 4.
[13] David Barrett, *Tackling Radicalisation: the limitations of the anti-radicalisation prevent duty* (2016) 5 European Human Rights Law Review 530, 531.
[14] Richards (n1), 143.
[15] Neumann, (n2), 4.
[16] Arun Kundnani, 'A Decade Lost: Rethinking Radicalisation and Extremism' (Claystone, January 2015),19; Githens-Mazer and Lambert (n5) 889-900 and Neumann and Klienmann (n2), 373-377.
[17] Kundnani (ibid), 19 and Olivier Roy, *Jihad and Death: The Global Appeal of Islamic State* (Hurst Publishers, 2017), 58-59.
[18] Roy (ibid), 58-68 and Olivier Roy, 'Al Qaeda in West as a Youth Movement' (Centre For European Policy Studies, August 2008), 3-8.
[19] Ibid. See: Jamie Bartlett, Jonathan Birdwell and Michael King, *The Edge of Violence* (Demos, 2010), 13.
[20] Githens-Mazer and Lambert (n5), 891-899.
[21] Neumann and Kleinman (n2), 373-377.

Despite the dearth of empirical evidence to substantiate the links between extremism and terrorism (via radicalisation), the concept of radicalisation took a strong hold with counter-terrorism policy makers in the UK.[22] As a result of the growing pre-occupation with radicalisation, counter-terrorism in the UK became increasingly preventive and pre-emptive.[23] Counter-terrorism laws and policies were no longer just concerned with countering *terrorism*. They are also equally concerned with countering and preventing *radicalisation* and *extremism* - the ideologies and beliefs and the social and psychological processes that supposedly lead individuals to commit acts of terrorist violence.

The preventive and peremptory turn within counter-terrorism laws and policies changed counter-terrorism in the UK in two significant ways. The first change denotes the increasing emphasis within counter-terrorism laws and policies on tackling the extremist *ideologies* that supposedly lead to and justify terrorist violence, resulting in a shift from the language of counter-*terrorism* and violence to the language of counter-*extremism*, ideas and values. The second change denotes the drive towards earlier intervention to prevent *vulnerable* individuals from turning into terrorists, which has manifested itself in a growing concern with children within counter-terrorism policy and law and their construction as subjects of counter-terrorism. In many ways, these developments, which fundamentally changed the nature and purpose of counter-terrorism in the UK, facilitated the recent emergence of the radicalisation cases in the family courts. Importantly, while these changes were introduced by the New Labour Government in response to the 7/7 terrorist attacks of 2005, they were developed and significantly extended as a result of the Coalition Government's major overhaul of the UK's official counter-terrorism policy CONTEST in June 2011 and its response to the threat posed by the rise of ISIS in 2014.

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[22] Kundnani (n2), 8–9 and Jytte Klausen, *Counter-Terrorism After 7/7: Adapting Community Policing to the Fight Against Domestic Terrorism* (2009) 35 Journal of Ethnic and Migration Studies 403, 403–405. The concepts also became popular at the European Union and UN levels: UNSC Res 1642 (14 December 2005) UN Doc/S/Res/1642

[23] Christos Boukalas, *U.K. Counterterrorism Law, Pre-Emption, And Politics: Toward 'Authoritarian Legality?'* (2017) 20 New Criminal Law Review 355, 471.

3. From Counter-Terrorism to Counter-Extremism: The *Prevent Strategy* and the Increasing Concern with Ideology

Following the 7/7 attacks in 2005, the terrorist threat facing the UK and the counter-terrorist response to it began to be increasingly understood and characterised in policy documents and political discourse in *ideological* terms. Islamist extremist ideology was identified in the UK as the "root cause" of international and "home-grown" terrorism.[24] If terrorism is to be fought, it was increasingly claimed, Islamist ideology *itself* must be confronted. Counter-terrorism was, as a result, framed as an ideological battle to prevent the radicalisation of individuals and communities deemed susceptible or *vulnerable* to the extremist message of Islamist propaganda.[25] However, although the need for the state to tackle the circulation of extremist Islamist ideology was identified as a priority from the start,[26] a close examination of the changes to counter-terrorism law and policy, in particular changes to the *Prevent* Strategy throughout the years, shows a shift from the "softer," more communitarian "hearts and minds" approach adopted by New Labour to the overtly robust and ideological approach of "muscular liberalism" employed by the Coalition and Conservative Governments.[27] As a result, the reach and remit of the state's counter-terrorist response was significantly expanded,[28] paving the way for the emergence of the radicalisation cases and the expansion of counter-terrorism into family law.

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[24] Tony Blair, Former Prime Minister, 'Duty to Integrate' (Speech given in Downing Street, London, 8 December 2006) and David Cameron, Former Prime Minister 'Speech on Radicalisation and Islamist Extremism' (Speech given to the Munich Security Conference, Munich, 5 February 2007).
[25] Department for Communities and Local Government, 'Preventing Violent Extremism: Winning Hearts and Minds,' (2007), 10.
[26] HM Government, 'Countering International Terrorism: The United Kingdom's Strategy' (July 2006 CM 688), 2.
[27] John Holmwood and Therese O'Toole, *Countering Extremism in British Schools: The Truth About the Birmingham Trojan Horse Affair* (Policy Press 2018), 45.
[28] Anthony Richards, *Characterising the UK Terrorist Threat: The Problem with Non-violent Ideology as a Focus for Counter-Terrorism and Terrorism as the product of "Vulnerability"* (2012) 3 Journal of Terrorism Research 17, 18-19.

3.1 The "Hearts and Minds" Approach: "Home-Grown" Terrorism, Community Partnerships and Preventing Violent Extremism

The fact that the 7/7 bombers were British "home-grown" terrorists, as opposed to foreign or international terrorists, caused the New Labour Government much concern and reoriented the focus of its approach to counter-terrorism towards tackling the new and emerging problem of "home-grown" terrorism.[29] The Government's response to the 7/7 attacks centred around its efforts to restrict the dissemination of speech that justifies, inspires or incites terrorism.[30] In terms of legislation, the Government passed the Terrorism Act 2006 which created two new terrorism offences that tackled not just acts of terrorist violence but also the direct and indirect incitement to terrorism.[31] Although the 2006 Act was directed at all speech that justifies and encourages terrorism, as Conor Gearty notes, *in practice* the target was speech that supports the violence of Islamist terrorist organisations.[32] However, New Labour's efforts to tackle "home-grown" terrorism were not restricted to these "hard" counter-terrorism measures. The Terrorism Act 2006 and its criminalisation of speech that encourages terrorism was accompanied by "softer" forms of counter-terrorism – that is, ostensibly non-coercive measures that seek to *prevent* terrorism, rather than just respond to it, by winning the "hearts and minds" of those considered to be at risk of radicalisation.[33] In the UK, the *Prevent* Strategy, the fourth pillar of the UK's official counter-terrorism policy CONTEST, is an important "soft" counter-terrorism measure. The *Prevent* Strategy, which had been developed in 2003, was activated in 2006 in response to the 7/7 attacks.[34]

The professed policy aim of the *Prevent* Strategy was 'preventing terrorism by tackling the radicalisation of individual.'[35] Through the *Prevent* Strategy, therefore, countering

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[29] Kundnani (n8), 39 and Naaz Rashid, *Veiled Threats: Representing the Muslim Woman in Public Policy Discourses* (Policy Press 2016).
[30] Kent Roach, *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge University Press, 2012), 241.
[31] Clive Walker, *Decennium 7/7: The United Kingdom terrorist attacks on July 7, 2005 and the evolution of anti-terrorism policies, laws and practices* (2015) Festschrift für Internationale Strafrechtsdogmatik 545, 552. See: ss 1-2 of Terrorism Act 2006.
[32] Conor Gearty, *Liberty and Security* (Pluto Press 2013), 103.
[33] Lamia Fakih, 'Soft measures, real harm: Somalia and the US "War on Terror" in Margret Satterthwaite and Jayne Huckerby (Eds), *Gender, National Security and Counter-Terrorism: Human Rights Perspectives* (Routledge 2013), 83.
[34] Paul Thomas, *Youth, terrorism and education: Britain's Prevent programme* (2016) 35 International Journal of Lifelong Education, 171, 172. It is worth noting that the *Prevent* Strategy does not apply to Northern Ireland.
[35] 'Countering International Terrorism' (n26), 9.

radicalisation became a central tenet of UK counter-terrorism.[36] However, it is important to note that while the need to tackle extremist Islamist ideology was identified by the New Labour Government as important, confronting ideology was not the sole concern. Rather, a close examination of the different iterations of the *Prevent* Strategy published under New Labour in 2006 and 2009 respectively, suggests that radicalisation was to be prevented and countered both by challenging the Islamist ideologies that support and lead to terrorism *and* confronting the societal disadvantages and the 'structural problems that may lead to radicalisation,'[37]such as 'inequalities and discrimination'[38] and lack of community cohesion and integration.[39] Extremist ideology was, therefore, seen as one cause among a number of other causes of radicalisation and eventual terrorism.[40]

To tackle radicalisation, New Labour adopted a communitarian and localised method of implementation that connected the delivery of the *Prevent* Strategy with its wider community-cohesion and integration policies and youth outreach programmes.[41] It sought to prevent radicalisation by 'promoting shared values, supporting local solutions, building civic capacity and leadership and strengthening the role of faith institutions and leaders.'[42] Radicalisation and terrorism were, therefore, to be tackled through a partnership between local authorities and the leaders, youth and women of the British Muslim community.[43] Importantly, moreover, *Prevent's* focus under New Labour was more specifically geared towards tackling ideologies that are themselves *violent*.[44] Indeed, when *Prevent* was revised in 2009, the need to tackle violent extremism and the ideologies that lead to violent extremism was placed at the heart of the *Prevent* Strategy.[45]

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[36] Ryan Hill, *Counter-Extremism in British Schools: Ensuring Respect for Parents' Rights over Their Children's Religious Upbringing* (2017) British Journal of Educational Studies 1.
[37] 'Countering International Terrorism' (n26), 1.
[38] Ibid.
[39] HM Government, 'Pursue Prevent Protect Prepare: The United Kingdom's Strategy for Countering International Terrorism' (March 2009 Cm 7549), 89-90.
[40] Ibid, 44.
[41] Holmwood and O'Toole (n27), 52-54.
[42] 'Preventing Violent Extremism: Winning Hearts and Minds' (n25), 5.
[43] Thomas (n34), 450. See also: HM Government 'The Prevent Strategy: A Guide for Local Partners in England. Stopping people becoming or supporting terrorists and violent extremists' (2008), 27.
[44] Anthony Richards, *From terrorism to 'radicalization' to 'extremism': counterterrorism imperative or loss of focus?* (2015) 91 International Affairs 371, 323 and Phil Edwards, 'How (not) to create ex-terrorists: Prevent as ideological warfare' in Baker-Beall, Heath-Kelly and Jarvis (Eds) (n3), 55-58.
[45] 'Pursue Prevent Protect Prepare: The United Kingdom's Strategy for Countering International Terrorism' (n39), 11.

Therefore, under New Labour and in response to the 7/7 attacks in 2005 and the growing concern with the problem of "home-grown" terrorism, the focus of counter-terrorism widened. Firstly, counter-terrorism laws and policies, were no longer just concerned with tackling terrorist violence. They were also concerned with preventing terrorism by countering the radicalisation process and the violent extremist ideologies and speech that can justify and contribute towards leading individuals to committing acts of terrorism. Secondly, by incorporating preventing and countering radicalisation and violent extremism into its wider community engagement and integration policies, New Labour expanded the remit of counter-terrorism beyond the confines of security policy into other policy areas traditionally uninvolved in the protection of national security.[46]

3.2 The "Muscular Liberal" Approach: Illiberal Ideologies, Non-Violent Extremism and the Emergence of Counter-Extremism

However, expressing dissatisfaction with New Labour's approach to tackling terrorism, the Coalition Government conducted a large-scale revision of the *Prevent* Strategy which led to its 'strategic reconfiguration.'[47] The revised *Prevent* Strategy, which was launched in June 2011, was even more overtly ideological, signalling a move away from the "softer," communitarian "hearts and minds" approach of New Labour to a more robust approach of "muscular liberalism."[48]

The ideological orientation of the revised *Prevent* Strategy was reflected in the fact that there was no longer much recognition of the structural factors and societal issues, that were identified in the 2006 and 2009 iterations of *Prevent*, as causes of radicalisation.[49] The Coalition

[46] Richards (n28), 19.
[47] Christos Boukalas, *The Prevent Paradox: destroying liberalism in order to protect it* (2019) 72 Crime, Law and Social Change 467, 469.
[48] Holmwood and O'Toole (n27), 45.
[49] Instead, potential structural causes of radicalisation and terrorism, such as discrimination and social and foreign policy, were referred to as 'perceived injustice[s].' See: HM Government, 'Prevent Strategy' (Cm 8092, June 2011), 16.

Government's *Prevent* Strategy focused almost entirely on tackling the ideological causes of, and challenge posed by, terrorism.[50] To the Coalition Government, extremist ideology was the main cause of terrorist violence. To that end, radicalisation was redefined in the 2011 *Prevent* Strategy as 'the process by which a person comes to support terrorism and forms of extremism leading to terrorism.'[51] Arguing that the previous iterations of *Prevent* 'failed to recognise the way in which terrorist ideology makes use of ideas espoused by extremist organisations,'[52] the Coalition Government identified 'challenging ideology and disrupting the ability of terrorists to promote it [as] a fundamental part of *Prevent*.'[53] Because terrorist groups such as al-Qaeda 'draw on extremist ideas,'[54] the Government insisted that 'preventing people becoming terrorists will require a challenge to extremist ideas [as well as] intervention to stop people beginning to move away from extremist but legal groups into proscribed illegal terrorist organisations.'[55] More importantly, the 2011 *Prevent* Strategy was clear that the effective countering of terrorism required confronting not just '*violent* extremism'[56] but also challenging '*non-violent* extremism,'[57] that is, the ideologies and beliefs that may create an atmosphere 'conducive to terrorism.'[58] Claiming that terrorist groups 'often draw upon ideologies which have been developed, disseminated and popularised by extremist organisations that appear to be non-violent,'[59] the Coalition Government clarified that its approach to preventing terrorism will include 'challenging extremist and *non-violent* ideas that are also part of terrorist ideology.'[60]

Under the Coalition Government, then, the focus of counter-terrorism policy significantly broadened, targeting not just terrorism but equally the non-violent but extremist ideologies that supposedly justify, support and lead to terrorism.[61] This move towards a muscular, distinctly ideological approach to counter-terrorism was even more clearly expressed in the first official definition of extremism provided by the Government. According to the 2011 *Prevent* Strategy,

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[50] Ibid. 6-7.
[51] Ibid, 108.
[52] Ibid, 7.
[53] Ibid, 43. My emphasis.
[54] Ibid, 24.
[55] Ibid.
[56] Ibid, 25. My emphasis.
[57] Ibid, 19, 23 and 50. My emphasis.
[58] HM Government (2011) 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (Cm8123), 59.
[59] 'Prevent Strategy'(n49), 19
[60] Ibid, 23. My emphasis.
[61] Richards(n28), 19 and Boukalas (n47),472.

extremism is the 'vocal or active opposition to fundamental British values including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.'[62] As this definition makes clear, the values listed as fundamental British values 'comprise the core values of political liberalism.'[63] With this definition of extremism, counter-terrorism in the UK became explicitly counter-ideological, targeting the illiberal and undemocratic ideologies that are allegedly associated with Islamist terrorist organisations, particularly those associated with Salafist or political Islam.[64] Drawing a distinction between 'the liberal British citizen and the anti-liberal unBritish extremist,'[65] the *Prevent* Strategy of 2011 deemed subscribing to an Islamist ideology and/or particularly literalist interpretations of Islam that reject and actively oppose liberal democratic or "fundamental British values" as an indicator of a propensity towards terrorist violence.[66]

However, a close reading and analysis of the 2011 *Prevent* Strategy suggests that in the eyes of the Government, Islamist ideologies and strict interpretations of Islamic law that 'reject notions of integration or cohesion and regard democracy itself as illegitimate'[67] are harmful not just because the values and ideas that they espouse can justify and cause terrorist violence but also because these values and ideas are, *in and of themselves*, antithetical to, and can undermine, the "fundamental British values" of liberty, democracy, equality and tolerance. The focus throughout *Prevent* on the intolerance, hate and antipathy to democracy and personal freedoms that is expressed and promoted by non-violent Islamist ideologies[68] and groups suggests that the Coalition Government regarded 'extremism as an existential threat *per se*.'[69] Illiberal and undemocratic ideologies are themselves as dangerous as the terrorism and violence that they might lead to.

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[62] 'Prevent Strategy' (n49), 107.
[63] Boukalas (n47), 470.
[64] Richards (n28), 19-20 and 'Prevent Strategy' (n49), 44-47.
[65] Boukalas (n47), 470.
[66] The *Prevent* Strategy of 2011 does refer to the threat that 'extreme right-wing terrorism' poses to the UK. See: (n49), 15. However, the Strategy is heavily focused on Islamist extremism and terrorism.
[67] 'Prevent Strategy' (ibid), 45-47.
[68] Ibid.
[69] Boukalas (n47), 471. My emphasis.

Therefore, as is evident, a shift in focus from counter-*terrorism* to counter-*extremism* began to emerge in the UK. Extremism was to be prevented and countered because it can create an atmosphere 'conducive to terrorism'[70] *and* because it promotes values and ideals that reject the liberal democratic consensus upon which a collective sense of Britishness is imagined to rest. This shift was reinforced after the launch of the Government's first Taskforce on Extremism following the murder of Drummer Lee Rigby in Woolwich in May 2013 - the first terrorist attack in the UK since the 7/7 bombings of 2005.[71] The Taskforce's report published in December 2013 identified and sought to address the gaps in the Government's approach to extremism.[72] Importantly, the report focused exclusively on *Islamist* extremism, as opposed to extremism more generally, which it defined as the 'distorted interpretation of Islam'[73] which 'betrays Islam's peaceful principles,'[74] rejects 'liberal values such as democracy, rule of law and equality'[75] and 'seeks to impose a global Islamic state governed by their interpretation of Islam.'[76]

According to Clive Walker, the report by the Taskforce on Extremism signalled the emergence of a separate counter-*extremism* policy in the UK[77] that overlaps with, but is also distinct from, the UK's counter-*terrorism* policy.[78] This counter-extremism policy was developed further under the Conservative Government which came into power in May 2015. In June 2015, the Government drafted the Extremism and Safeguarding Bill that aimed to strengthen law enforcement agencies' power to regulate and ban extremists who promote views undermining "fundamental British values". The bill outlined a host of civil measures, such as Banning Orders for extremist organisations and Extremism Disruption Orders to limit harmful activities of an extremist nature.[79] 2015 also saw the launch of the Government's first ever *Counter-Extremism Strategy*.[80] The strategy explained that in the eyes of the Government, the harm of extremism extends *beyond* causing and justifying terrorist violence to include the promotion

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[70] See: 'CONTEST'(n58), 59.
[71] 'David Cameron launched anti-terror task force to tackle extremism' *The Guardian* (London 26 May 2013).
[72] HM Government, 'Tackling Extremism in the UK: Report from the Prime Minister's Task Force on Tackling Radicalisation and Extremism' (December 2013).
[73] Ibid.
[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] Clive Walker, *Counter-Terrorism and Counter-Extremism: The UK Policy Spirals* (2018) Public Law 725, 736.
[78] Ibid, 736-739.
[79] HM Government, *The Queen's Speech* (2015), 2. The bill never turned into an Act of Parliament.
[80] HM Government, *Counter-Extremism Strategy* (Cm 9148 October 2015).

of 'intolerance, hatred and bigotry'[81] and the encouragement of isolation and rejection of democratic values within communities.[82]

The Government's commitment to countering extremism was augmented following the 2017 general election.[83] In implementing its manifesto commitment to 'defeat extremism, especially Islamist extremism,'[84] the new Conservative Government established the UK's first Commission for Countering Extremism in January 2018 and tasked it with the responsibility of identifying different types of extremism and advising the Government on policies and laws that may be required to tackle it.[85] In June that year, the Government also published its updated *Prevent* Strategy,[86] which continued to emphasise the ideological causes of Islamist terrorism and the threat it poses.[87] For example, the 2018 *Prevent* Strategy states that 'there is no precise line between…terrorist ideology and extremist ideology,'[88] since both support and justify the violence committed by terrorist groups, such as al-Qaeda and ISIS. However, the updated *Prevent* Strategy also reiterates the claim that extremist narratives do not just justify and cause terrorist violence - they also lead to 'wider social harms,' including 'the promotion of hatred, the erosion of women's rights [and] the spread of intolerance.'[89] According to the 2018 *Prevent* Strategy, tackling extremism is necessary to 'protect the values of our society - the rule of law, individual liberty, democracy, mutual respect [and] tolerance.'[90]

The discussion above demonstrates the increasing emphasis on ideology within the UK's counter-terrorism policy.[91] It has targeted non-liberal and non-democratic extremist ideologies that are associated with terrorism but that are also considered to be dangerous and threatening

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[81] Ibid, 10.
[82] Ibid, 11-13.
[83] Clive Walker (n77), 743.
[84] 'Forward Together: Our Plan for a Stronger Britain and a Prosperous Future' (The Conservative and Unionist Party Manifesto, 18 May 2017), 55.
[85] Home Office, 'Factsheet on the Commission for Countering Extremism' (25 January 2018).
[86] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism,' (Cm 9608, June 2018).
[87] For example, the Strategy dedicates one section to discussing 'terrorist ideology' and another to 'terrorist methodology,' signalling that the Government considers the ideological threat posed by Islamist terrorism to be just as serious and dangerous as the physical and security that it poses. See: Ibid, 16-17.
[88] Ibid, 23.
[89] Ibid.
[90] Ibid. It is interesting to note here that the phrase "fundamental British values" is not used.
[91] Richards (n28), 17.

in their own right.[92] As a result, counter-terrorism in the UK has been redefined; the shift to counter-*extremism* has significantly expanded the remit and reach of counter-terrorism.[93] The Government's focus is no longer on just countering terrorism by responding to *criminal acts* of terrorist violence but the 'pre-criminal'[94] or 'pre-terrorist'[95] space of extremist ideas, orthodox and/or Islamist beliefs.[96] Fearing that certain illiberal ideological beliefs propel individuals towards terrorist violence and undermine "fundamental British values," the Government now seeks to 'neutralise the threat of terrorism not only before it materialises but before it is [even] formed'[97] in the mind of the future terrorist. It seeks to intervene, as early as possible, to prevent the 'the formation of non-liberal subjectivities.'[98]

The emergence of the radicalisation cases is a reflection of this pre-emptive and ideological turn in counter-terrorism, particularly since the 2011 reforms to the *Prevent* Strategy. As I previously argued, the family is often regarded as the primary space where ideology is transmitted;[99] families are not only responsible for biological reproduction, they are also responsible for *ideological reproduction*.[100] Moreover, as I demonstrated in Chapter Four, historically in the UK, the family has been treated by the state as the place where subjectivity is formed and personhood is cultivated.[101] If the terrorist threat is primarily ideological and if counter-terrorism requires the regulation and prevention of non-liberal subjectivities, it makes sense for family law - the law that regulates the family and that allows for the earliest possible state intervention - to be involved in preventing and countering terrorism.

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[92] Ibid, 19-20.
[93] Richards (n44), 379.
[94] Therese O'Toole, 'Prevent: from "hearts and minds" to "muscular liberalism"'(*Public Spirit*, November 2015).
[95] Fionnuala Ni Aolain, 'Human rights impact of policies and practices aimed at preventing and countering violent extremism: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism' (Human Rights Council, 24 February-20 March 2020), 10.
[96] Boukalas (n47), 469.
[97] Ibid, 471.
[98] Ibid, 471-472.
[99] Ralph Grillo *Muslim Families, Politics and the Law: A Legal Industry in Multicultural Britain* (Routledge 2015), 30.
[100] Nira Yuval-Davis and Floya Anthias 'Introduction' in Nira Yuval-Davis and Floya Anthias (Eds) *Woman-Nation-State* (Macmillan 1989), 9.
[101] Nikolas Rose, *Governing the Soul: The Shaping of the Private Self* (Routledge 1990), 160.

4. Safeguarding the Vulnerable: The Focus on Children and Early Intervention

The increasingly pre-emptive turn within counter-terrorism law and policy is not just reflected in the growing pre-occupation with preventing the formation of extremist mindsets. It is also reflected in the drive towards earlier intervention and the concern with protecting and safeguarding the *vulnerable* from radicalisation. For as Christos Boukalas argues, over the years, the *Prevent* Strategy has increasingly focused not only on those who transmit extremist ideologies 'but also on their audience'[102] - the individuals and groups considered to be vulnerable to the radicalising influence of extremism.

As a number of political scientists and critical terrorism scholars have noted, the idea that Islamist terrorism emanates from, and is a product of, *vulnerability* has been a persistent theme within post-9/11 counter-terrorism, especially in the UK.[103] The idea that the terrorist or potential terrorist is primarily a *vulnerable subject*, as opposed to a moral and political agent, is somewhat odd and counter-intuitive. For as Anthony Richards and Simon Cottee point out, neither the 7/7 bombers[104] nor those who have committed acts of terrorism in the name of ISIS can be accurately described as vulnerable individuals.[105] Although it is true, as I pointed out in Chapters Two and Three, that young people travelled to ISIS-held territories and engaged in ISIS-inspired terrorism in the UK and abroad, the numbers remain very small.[106] The empirical data shows that the average age of those who travelled and joined ISIS is between 24-26.[107] The data also shows that most of the European teenagers who joined ISIS did *not* do so out of naivety and vulnerability.[108] Rather, studies suggest that the teenagers who joined ISIS *decided* to do so for a number of (highly objectionable but) serious, *political* reasons including socio-

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[102] Boukalas (n47), 471.
[103] Richards (n1), 151; Simon Cottee, 'Terrorists Are Not Snowflakes' Foreign Policy (27 April 2017) and Aishlinn O'Donnell, *Contagious ideas: vulnerability, epistemic injustice and counter-terrorism in education* (2016) Educational Philosophy and Theory 1.
[104] Richards (n1), 23.
[105] Cottee (n103).
[106] Ibid.
[107] Ibid and Peter Bergen, Courtney Schuster and David Sterman, 'ISIS in the West: The New Faces of Extremism' (New America, November 2015).
[108] Cottee (n103).

economic and political grievances, political conviction or a sense of revolutionary idealism and rebellion.[109]

Therefore, as Vicki Coppock and Mark McGovern suggest, the idea of vulnerability found within counter-terrorism policies and discourses is not the 'inherent vulnerability'[110] that results from young age and biological immaturity but a *socially constructed* vulnerability.[111] Yet, a close examination of the language and discourse used in the different iterations of the *Prevent* Strategy and its related policy documents indicates that the idea of the potential terrorist as a vulnerable individual in need of support and protection underpins counter-terrorism policy. For example, in its guide to local partners on the delivery of the *Prevent* Strategy published in 2008, the Government claimed that violent extremism is caused by a combination of factors that include vulnerability to the message of violent extremists.[112] By 2018, individuals who committed acts of terrorist violence in the UK in the name of ISIS were referred to by the Government in its latest *Prevent* Strategy as 'individuals who are vulnerable to [extremist] messages.'[113]

In identifying vulnerability as the defining characteristic of the (future or potential) terrorist, the *Prevent* Strategy and its related programmes broadened the focus and expanded the scope of counter-terrorism policy and law (at a later stage) in two closely related ways. Firstly, children were identified and constructed as *Prevent's* main target group. Secondly, extremism, radicalisation and even the terrorism that they allegedly lead to were constructed as child-protection and safeguarding risks. As a result, earlier intervention to help identify, refer and support vulnerable individuals was increasingly treated as one of *Prevent's* main policy priorities. Consequently, children, and in particular Muslim children, and child-welfare and

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[109] Roy (n17), pgs. 27-37 and 56-75 and Stijn Siecklinck, Femke Kaulingfreks and Micha De Winter, *Neither Villains Nor Victims: Towards an Educational Perspective on Radicalisation* (2015) 63 British Journal of Educational Studies 329, 335.
[110] Vicki Coppock and Mark McGovern, *"Dangerous Minds"? Deconstructing Counter-Terrorism Discourse, Radicalisation and the "Psychological Vulnerability" of Muslim Children and Young People in Britain* (2014) 28 Children and Society 242, 248-249.
[111] Ibid.
[112] 'The Prevent Strategy: A Guide for Local Partners' (n43), 5.
[113] Ibid, 7.

child-protection institutions have increasingly become the target of counter-terrorism policies and discourses.

4.1 The Increasing Focus on Children

The emphasis on vulnerability discussed above has manifested itself and is reflected in the increasing focus on (Muslim) children within counter-terrorism policies and discourses and their construction as the group that is most vulnerable and in need of protection and safeguarding from radicalisation.[114] The prioritisation of children is one of the persistent features of post-7/7 UK counter-terrorism. Under New Labour, children were indirectly prioritised. The *Prevent* Strategy emphasised the importance of youth engagement and identified schools and children and youth services as important strategic partners in *Prevent's* delivery.[115] However, the focus on children as the target group of counter-terrorism programmes was made explicitly clear by the Coalition Government. Within its policy literature, the Government began to associate the radicalisation process and vulnerability to extremist Islamist ideology with the supposed risks posed by childhood experiences and youth transitions.[116] For example, in the '*Channel Vulnerability Assessment Framework,'*[117] a document provided to *Channel* practitioners to 'guide decisions on whether an individual needs support to address their vulnerability to radicalisation,'[118] the 'engagement factors'[119] that the document asks *Channel* practitioners to look out for and assess as possible indicators of a disposition towards radicalisation[120] include 'being at a transitional time of life,'[121] having 'a desire for political or moral change'[122] and feeling 'a need for identity, meaning and belonging.'[123]

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[114] Vicki Coppock, *"Can You Spot a Terrorist in Your Classroom?": Problematising the Recruitment of Schools to the "War on Terror" in the United Kingdom*'(2014) 4 Global Studies of Childhood 115, 116.
[115] 'The Prevent Strategy: A Guide for Local Partners' (n43), 7-10 and 'Preventing Violent Extremism: Winning Hearts and Minds' (n25), 8-10.
[116] Hill (n36), 3.
[117] HM Government, 'Channel: Vulnerability assessment framework' (October 2012).
[118] Ibid, 2.
[119] Ibid.
[120] Ibid.
[121] Ibid.
[122] Ibid.
[123] Ibid.

Importantly, what made these relatively normal childhood and youth experiences dangerous indicators of potential radicalisation was their association with *Muslim* children. Experiences presumed to be particular to Muslim children, such as the assumed disaffection of Muslim youth, their alienation from mainstream society, their struggles with identity and belonging and interest in world politics, were singled out as potential triggers of radicalisation.[124] As a result, the usually innocuous and unthreatening thoughts and behaviours of children and young people were constructed as being risky and potentially dangerous when the children in question are Muslim children.[125]

The increasing securitisation of the Muslim childhood experience was also reflected in the Coalition Government's growing concern with the education of Muslim children within its counter-terrorism discourses and practices. It is true that New Labour had identified schools as important partners in the fight against terrorism and highlighted their importance in terms of identifying and supporting children who are considered to be at risk of radicalisation and challenging extremist ideology by promoting the values of tolerance and equality.[126] However, the enlistment of schools in the state's counter-terrorism project intensified during the years of the Coalition Government, particularly following the political and legal responses to the Trojan-Horse Scandal in 2014.[127] The scandal erupted after an anonymous letter, now believed to be a hoax, led to multiple investigations initiated by the Department for Education into an alleged plot by Islamist hardliners to take over a number of schools in Birmingham.[128] In response, the Government made the active promotion of fundamental British values within schools a *legal* requirement to be assessed and, if necessary, investigated by the Office for Standards in Education, Children's Services and Skills (OFTSED).[129] The rise in the number

[124] Coppock and McGovern (n110) 246-250.
[125] Ibid.
[126] Department for Children, Schools and Families (2008), 'Learning Together To Be Safe: A Toolkit To Help Contribute To The Prevention Of Violent Extremism' 10-13.
[127] Thomas (n34), 181 and Holmwood and O'Toole (n27) 1-10.
[128] Shamim Miah, *Muslims, Schooling and Security: Trojan Horse, Prevent and Racial Politics* (Palgrave Pivot, 2017), 27-15 and 25-31.
[129] Department for Education, 'Promoting fundamental British values as part of SMSC in schools: Departmental advice for maintained schools' (November 2014) and s.26 CTSA 2015.

of Muslim children referred to the *Channel* programme through schools[130] and the increasingly interventionist role taken by OFTSED in its inspection and assessment of how far schools with high numbers of Muslim pupils actively promote "fundamental British values"[131] and prevent and counter radicalisation, have led some scholars to claim that recent years have witnessed the securitisation of the education of Muslim children.[132]

The increased monitoring of Muslim children and their construction as "at risk" and "risky" individuals with the potential to become 'tomorrow's terrorists'[133] expanded the subjects of the counter-terrorist state.[134]

4.2 Counter-Terrorism as Safeguarding and the Importance of Early Intervention

The increasing focus on children and their identification as a group particularly susceptible to extremist messaging was perhaps most clearly expressed in *Prevent's* co-optation of the language of "safeguarding" and its construction of extremism and radicalisation as new child-protection and safeguarding risks.[135] This began, as I demonstrated in Chapter Two, in 2007 when New Labour introduced the *Channel* programme and began to call, in both its counter-terrorism and child-protection policy documents, for the prevention of terrorism, extremism and radicalisation to be incorporated into the usual child-protection and safeguarding duties of schools and local authority children's services.[136]

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[130] 'Prevent scheme: Anti-terror referrals for 2000 children' *BBC News* (London 9 November 2017) and Home Office, 'Individuals referred to and supported through the Prevent programme: England and Wales, April 2019-March 2019'(19 December 2019), 1.
[131] Miah (n128), 37. See also: HM Government, 'Amanda Spielman's speech to the Policy Exchange think tank' (9 July 2018).
[132] Miah (ibid), 26-28 and 37-40; Thomas (n34), 180. See also: 'Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools' (*Rights Watch UK* 2016).
[133] Coppock and McGovern (n110), 249. Although, of courses this is a common and historical dichotomy that is not particular to Muslim children. See: Harry Hendrick, *Child Welfare: Historical dimensions, contemporary debates* (The Policy press 2003), 1.
[134] Jessie Blackbourn, Fiona De Londras and Lydia Morgan, *Accountability and Review in the Counter-Terrorist State* (Bristol University Press 2020), 30.
[135] McGovern and Coppock (n110), 242; Tony Stanley and Surinder Guru, *Childhood Radicalisation Risk: An Emerging Practice Issue* (2015) 27 Social Work in Action, 353.
[136] E.g. 'Learning Together To Be Safe' (n126), 12-18 and Department for Children, Schools and Families (2010) 'Working Together to Safeguard Children'chapter 11.

The Coalition Government was even more keen on establishing extremism and radicalisation as new safeguarding risks, requiring the engagement and involvement of social workers and other bodies and agencies engaged in child-protection.[137] As a result of the passing of the Counter-Terrorism and Security Act in 2015, discussed in detail in Chapter Two, and its introduction of the new statutory 'Prevent Duty,' local authorities, schools, child-care providers and other public bodies were asked 'to have due regard to the need to prevent people from being drawn into terrorism'[138] and to incorporate the *Prevent Duty* into their existing statutory child-protection and safeguarding responsibilities.[139] The CTSA 2015 also required local authorities to embed the *Channel* programme within their existing child-protection and safeguarding procedures.[140] The *Prevent* Strategy of 2018 took this even further by stating that 'the purpose of *Prevent* is at its heart to safeguard and support vulnerable people to stop them from becoming terrorists'[141] and claiming that *Prevent* works in a similar way to other safeguarding programmes.[142] *Prevent* (and *Channel*) were explicitly identified, or perhaps recast, as safeguarding endeavours. According to the Government, countering extremism and radicalisation safeguards children and safeguarding children requires countering extremism and radicalisation; to counter terrorism *is* to safeguard children.

In order to safeguard those vulnerable to radicalisation, *Prevent* and its affiliated programmes seek to identify children and young people at risk of radicalisation and to intervene as early as possible to prevent or even reverse the process of radicalisation.[143] Therefore, in addition to *Channel*, which is described by the Government as an early-intervention programme,[144] *Prevent* increasingly focused its efforts on improving the institutional capacity of frontline sectors, such as local authority children's services, schools and health-care providers to detect the signs of radicalisation in children, to refer children feared to be susceptible to radicalisation and to develop multi-agency responses and early intervention systems that can divert

[137] Stanley and Guru (n135), 353
[138] Coppock and McGovern (n110), 244.
[139] HM Government '*Revised* Prevent Duty Guidance for England and Wales' (July 2015), 6.
[140] Ss 36-38 CTSA 2015.
[141] 'CONTEST' (n86), 29.
[142] Ibid.
[143] Boukalas (n47), 475.
[144] 'Channel: Vulnerability assessment framework' (n117), 2.

vulnerable young people away from supporting or becoming involved in terrorism.[145] By streamlining *Prevent* and *Channel* into the early intervention and support powers of local authorities, schools and other public bodies, successive governments attached the increasingly expansive safeguarding and early intervention laws, policies and initiatives discussed in Chapter Four to the counter-terrorist endeavour. As such, the reach of the counter-terrorist state and its capacity to intervene in and regulate the lives of children (and, by extension, their families) in the name of safeguarding children from extremism, radicalisation and the terrorism that they supposedly lead to was significantly extended.

5. The Influence of the Changing Counter-Terrorism Landscape on the Radicalisation Cases

The recent emergence of the radicalisation cases in the family courts has been enabled by and underlines the significant broadening of the focus and purpose of counter-terrorism laws and policies discussed in this chapter. By 2013, the year that the first published radicalisation case appeared in the family courts,[146] the state was not just interested in preventing and countering terrorist violence but in countering and preventing the non-violent but extreme illiberal Islamist ideologies and literalist interpretations of Islam that could lead the vulnerable, especially children, towards the path of terrorism and that can undermine the liberal and democratic values of Britain. From 2015, when the number of radicalisation cases appearing in the family courts began to soar,[147] counter-terrorism laws and policies were increasingly tasking schools and nurseries, local authority children's services and health-care providers with the responsibility of detecting and safeguarding vulnerable children from extremist ideas, beliefs and values that might turn them into terrorists and/or illiberal, intolerant individuals who reject and undermine "fundamental British values."

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[145] E.g. 'The Prevent Strategy: A Guide for Local Partners' (n43), 27; 'Prevent Strategy' (n59), 8 and 'CONTEST' (n86), 31-36.
[146] See: Chapter Two
[147] Ibid.

That these significant changes to counter-terrorism provided the *conditions of possibility* for the emergence of the radicalisation cases can be seen from the way in which the judges articulate - or *struggle* to articulate - the harms from which they claim the local authorities and family courts are protecting children. Focusing on judicial articulations of harm is instructive here because, as I mentioned in Chapter Two, in public family law cases, which form the bulk of the published radicalisation cases, the concept of harm is of crucial importance. Under section 3(2)1 of the Children Act (CA) 1989, a court can only make care and/or supervision orders if it finds that a child is suffering or is likely to suffer significant harm attributable to the care of its parents. And although the concept of harm is not as foundational in private family law cases, where the main guiding principle is the welfare principle,[148] the concept is still relevant. Judges who are faced with the question of determining the welfare of children in private family cases must consult the welfare checklist in section 1(3) of the CA 1989 and have due regard to a number of factors including 'any harm which [a child] has suffered or is at risk of suffering.'[149] The concept of harm, therefore, *justifies* family law intervention in a particular area of family and social life. Attending to judicial articulations of harm is illuminating because it highlights how the family judiciary, and of course the local authorities bringing the cases, understand their role and rationalise their involvement in the realm of counter-terrorism. Moreover, as I argued in Chapter Three, harm within the child-protection context is also socially constructed. Judicial articulations of harm reflect and confer legitimacy on wider political, cultural and social context, the prevailing- and changing- concerns and policy agendas of the state and dominant ways of thinking about children and childhood.

In what follows, I will closely examine and unpick the ways in which the family judges approach and articulate the two main harms that they identify in the radicalisation cases: the harm of travel to ISIS-held territories and the harm of extremism and radicalisation. I will claim that these judicial articulations of harm reflect, reinforce and further entrench the important shifts and changes that have taken place in counter-terrorism law, policy and practice in the UK.

[148] S.1(1) CA 1989.
[149] S. 1 (3)(e) CA 1989.

5.1 The Centrality of Extremism and Radicalisation to Assessments of Harm

A close analysis of the radicalisation cases suggests that judicial approaches to and assessments of harm are influenced by the increasing centrality of the concept of radicalisation and the preoccupation with identifying, preventing and countering extremist ideology within wider counter-terrorism law and policy. For even in the cases where the main harm being assessed is whether or not a child or a parent has attempted or is likely to attempt to travel to ISIS-held territories abroad, the judges appear, for the most part, to be preoccupied with searching for the existence of parental extremism.

For example, although Munby P maintained that in *Re X (Children); Re Y (Children)*,[150] 'the fundamental issue … relates to the degree of risk of the parents seeking to remove the children and take them to Syria,'[151] a close examination of the case shows that the question of whether the parents hold extremist Islamist beliefs was in fact *the* central question, key to determining whether or not the parents were attempting to travel to Syria.[152] In *Re X (No 3)*,[153] the local authority tried to make its case against the mother, who was accused of attempting to travel to join ISIS in Syria, without 'reliance on the risk of radicalisation.'[154] However, the question of whether or not the mother was a 'radical fundamentalist'[155] in fact dominated Munby P's investigation. Although various aspects of the local authority's evidence against the mother were seen by Munby P as 'convincing,'[156] the local authority's application for care orders was dismissed because of the 'absence of any evidence that the mother was a radical Islamist.'[157] Because it was unable to prove that the mother was someone with extremist views, Munby P was 'unable to conclude that the local authority ha[d] proved'[158] that the mother was planning to take her children to Syria.

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[150] [2015] EWHC 2265 (Fam).
[151] Ibid, [89].
[152] Ibid, [29]-[34].
[153] [2015] EWHC 3651 (Fam).
[154] *Re X (Children); Re Y (Children)* (n150), [30].
[155] *Re X (No 3)* (n153), [8]-[10].
[156] Ibid, [93]-[94].
[157] Ibid.
[158] Ibid, [106].

Similarly, in *HB v A Local Authority (Alleged Risk of Radicalisation and Abduction),*[159] MacDonald J refused the local authority's application for wardship and care orders because there was no evidence indicating that the mother held extremist beliefs sympathetic to ISIS.[160] Even though MacDonald J found that the 'mother told lies concerning the purpose of her trip'[161] to Gaziantep, a Turkish town close to the border with Syria, where she met her ISIS-militant ex-husband,[162] he was still unable to find that she was planning to take her children to ISIS-held territories because 'the absence of any … evidence of radicalisation or extreme beliefs or ideology… reduces the likelihood that the travel attempted was motivated by a desire to … remove herself and the children to Syria.'[163]

By contrast, the existence of an extremist ideological mindset was not a disputed issue in the factually very similar case of *Leicester City Council v T.*[164]The mother was detained and arrested at Birmingham airport and had her children removed from her after she checked in a disproportionately large amount of suitcases for a family holiday to Munich.[165] Her luggage contained suspicious items, such as photos of the ISIS emblem on her phone, a hidden travel itinerary that included flights to Istanbul and telephone numbers of individuals suspected to be members of ISIS.[166] Given that the case was decided after *Re X (Children) (No3)*,[167] it is unclear and perhaps even unlikely that the existence of these suspicious items alone would have been enough to convince Hayden J to conclude the mother was intending to take her children with her to join ISIS in Syria. Nevertheless, because in this case Hayden J believed that the 'mother's intention to cross into Syria was driven by a religious ideology,'[168] it was possible for the court to find that the mother attempted to take her children with her to Syria and to expose them to significant harm there.

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[159] [2017] EWHC 1437 (Fam).
[160] Ibid, [80] and [99]-[100].
[161] Ibid, [87].
[162] Ibid, [88].
[163] Ibid, [83].
[164] [2016] EWFC 20.
[165] Ibid, [9].
[166] Ibid, [10].
[167] (n153)
[168] (n159), [15].

By suggesting that lack of evidence proving the existence of parental extremism equals to a lack of evidence proving intention to travel to and join terrorist organisations abroad, even in cases where material evidence is highly suspicious, these cases highlight the critical role that extremism and radicalisation play in judicial assessments of risk of harm. It is evident, therefore, that extremism and radicalisation emerge as important concepts, even in the aforementioned "travel" radicalisation cases.[169] Even when a judge is primarily preoccupied with determining whether or not a parent has attempted, or is likely to attempt, to leave the jurisdiction in order to join terrorist groups abroad, the question of whether or not that parent believes in an extremist Islamist ideology is of fundamental importance.

5.2 Beyond the Harm of Travel to ISIS-Held Territories: Extremism and Radicalisation as Free-Standing Harms

However, extremism and radicalisation are not only relevant insofar as they can help the family courts to determine whether or not a parent or a child has attempted, or is at risk of attempting, to travel to ISIS-held territories abroad. A concern that a parent and/or child holds extremist beliefs is identified and treated in these cases as a separate, *free-standing* harm from which children must be protected. Reflecting and reinforcing the significant expansions to the remit and reach of the counter-terrorist state, it appears that the judges deciding the radicalisation cases are equally, if not more, concerned with detecting the pre-terrorist ideological views and radicalisation processes that allegedly lead vulnerable children towards the path of terrorism.

A close examination shows that in the majority of radicalisation cases involving public law proceedings, the allegations made by local authorities are separated by the judges into two overarching questions to be investigated and answered separately: the question of attempted or likely travel to Syria and the question of extremism and radicalisation. For example, in *Re C, D, E (Radicalisation: Fact-Finding)*,[170] Cobb J divided the issues facing the court into two principal questions. Firstly, 'what was the purpose of the proposed trip which was terminated

[169] See: Chapter Two.
[170] [2016] EWHC 3087 (Fam).

by the police intervention,' in particular whether 'the parents were destined for Syria, Iraq or ISIS controlled State' and secondly, whether 'the parents…hold beliefs of an extremist or radicalised nature.'[171] This two-fold articulation of the questions to be investigated was repeated in subsequent radicalisation cases involving public law proceedings.[172] Therefore, although the question of whether a child and/or a parent have been radicalised due to exposure to extremism often informs and is closely related to the question of travel to ISIS-held territories abroad, the two questions are, for the most part, approached independently, indicating that the harm of radicalisation through indoctrination into extremist beliefs is treated by the family judges as an *independent* harm deserving of judicial attention *in its own right*. The increasingly prevalent claim within counter-terrorism policy, discussed earlier in the chapter, that extremist ideas are intrinsically undesirable and can, on their own, pose a threat to children's welfare, appears to have influenced and is in fact reinforced by the judicial articulations of harm in these cases.

With the decline of ISIS and the significant drop in the number of children and families travelling to the Middle East, the concern of the family courts in the radicalisation cases increasingly moved, in the words of Macdonald J, 'beyond the question of threatened or actual removal from the jurisdiction'[173] to ISIS-held territories abroad. The family courts became increasingly pre-occupied with investigating 'what materials the children have been exposed to at home' and whether or not the parent in question 'supports the cause of the so-called Islamic State'[174] to assess the 'welfare impact of the alleged beliefs and sympathies of a parent'[175] on the children. Therefore, in a growing number of radicalisation cases, the concern of the family court was not, as Newton J put it in *A Local Authority v M and Others*[176] 'just [with] the behaviours of parents.'[177] Rather, in the radicalisation cases that appeared following the decline of ISIS, family courts were primarily concerned with the question of 'whether and in what circumstances the religiously motivated views of parents are so harmful to their children that the State should intervene to protect.'[178]

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[171] Ibid, [26].
[172] E.g. *HB v A Local Authority (Alleged Risk of Radicalisation and Abduction)* (n159), [46] and *Re Y Children (Findings of Fact as to Radicalisation) Part 1* [2016] EWHC 3826 (Fam), [19].
[173] *HB v A Local Authority (Alleged Risk of Radicalisation and Abduction)* (n159), [122].
[174] Ibid, [11].
[175] Ibid, [122].
[176] [2016] EWHC 1599 (Fam).
[177] Ibid, [6].
[178] Ibid.

The earliest and perhaps clearest example of this is *London Borough of Tower Hamlets v B*.[179] Although the case only came to the attention of the local authority after B was apprehended as she attempted to travel to join ISIS in Syria, the relevance of the issue of travel was quickly dismissed. Hayden J stressed that the risk in that case was 'not one of flight.'[180] The main concern of both the local authority and the court was, rather, with the impact of the 'very significant amount of radicalising material'[181] that was found on the household computer on B's 'emotional and psychological'[182] wellbeing. Here, Hayden J was unequivocally clear, and had 'no hesitation in concluding,'[183] that as a result of exposure to 'extremist content,'[184] B had suffered 'serious emotional harm.'[185] With this, extremism was clearly recognised as a free-standing harm and a 'new facet of child protection.'[186] The idea that extreme religious *views*, and not just religiously-inspired extremist *behaviours*, can cause harm to children highlights the influence of the expansions in counter-terrorism law and policy (particularly the focus on ideology) on the way in which the judges identify harm in the radicalisation cases.

This clear identification of extremism as a free-standing harm is also apparent in *Re K (Children)*.[187] Although in that case, Hayden J reluctantly granted the local authority's application to withdraw care proceedings because the evidence of extremism and radicalisation was 'difficult to establish,'[188] he nonetheless maintained that it 'might be axiomatic that a child brought up by radicalised parents or parent is, by virtue of that fact alone, at an unacceptable risk of significant harm.'[189] The strong language here and the use of the word 'unacceptable' suggests that Hayden J was keen to emphasise that while in *this* particular case the evidence presented to the court might not have been sufficient to conclusively prove that the parents held extremist beliefs that harmed or could have harmed their children,[190] children *can* suffer significant harm if they are brought up by extremist parents.

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[179] [2015] EWHC 2491 (Fam).
[180] Ibid, [32].
[181] Ibid, [14].
[182] *London Borough of Tower Hamlets v B* [2016] EWHC 1707 (Fam), [73].
[183] (n181), [28].
[184] Ibid, [14].
[185] Ibid, [28].
[186] Ibid, [51].
[187] [2016] EWHC 1606 (Fam).
[188] Ibid, [25].
[189] Ibid, [12].
[190] Ibid, [21].

The point here is religious beliefs that are deemed to be extremist are treated in the radicalisation cases as being *in and of themselves* harmful to children. Therefore, in the words of MacDonald J, extremism emerges as a 'new type of harm'[191] from which children must be protected. Crucially, moreover, MacDonald J added that, if found, this new category of harm 'may justify state intervention in family life.'[192] The need to protect children from inappropriate exposure to extremist beliefs and ideologies and the possibility of radicalisation justifies, on its own, coercive and, at times, even draconian interventions.[193]

For example, in *Re C, D, E, (Radicalisation: Fact-Finding)*[194] it is the likelihood that the children will suffer significant harm if they are exposed to and radicalised by the 'extremist views'[195] of their parents that seems to justify the electronic tagging of the parents. For although Cobb J was unable to find that the parents had intended to travel with their children to ISIS-held territory in Syria,[196] he did nonetheless find that the parents had 'espoused and promulgated [online] extreme and/ or radical views about Islam' which their children were at risk of absorbing.[197] It was the existence of parental extremism that motivated Cobb J to decide, 'for the protection of the children [that] the electronic tagging will remain in place.'[198] The only harm Cobb J believed that the children were at risk of suffering was the harm of radicalisation as a result of exposure to extremism and the need to protect the children from this harm appears to have justified a form of state intervention as coercive as electronic tagging. In suggesting that extremist religious views are harmful enough to children and deleterious to their welfare that they justify draconian state intervention, Cobb J's decision in this case reflects the important shifts in UK counter-terrorism policy and practice discussed earlier.

That the harm of radicalisation as a result of extremist indoctrination alone can justify particularly coercive forms of state intervention was made explicitly clear in *Re Y (Children)*

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[191] *HB v A Local Authority (Local Government Association intervening)* [2017] EWHC 524 (Fam), [119].
[192] Ibid.
[193] See Chapter Seven.
[194] (n170).
[195] Ibid, [113].
[196] Ibid, [106]-[107].
[197] Ibid, [110] and [117].
[198] Ibid, [123].

(Radicalisation) (Finding of Fact 2).[199] In that case, Parker J decided 'that the three younger children …should be removed from the family home and be placed with foster parents.'[200] In sanctioning the children's removal, Parker J stressed that the findings she had previously 'made in respect of the radicalisation in the father's home,'[201] namely that the father had exposed his children to extremist materials and regularly took them to attend talks and rallies involving Islamist preachers,[202] were themselves 'sufficient … to justify intervention … irrespective of… the alleged plan to remove the children to the Middle East.'[203] The radicalisation of children and their exposure to extremist ideas and images was, therefore, identified as a legitimate ground for the most drastic form of state intervention in private and family life: child removal.[204]

From this, we can see that family courts have found, in a growing number of radicalisation cases,[205] that extremist religious beliefs which can radicalise children are *in and of themselves* harmful to children and that their existence in a family can, on its own, justify significant amounts of state intervention.[206] It is worth noting here that my interviewees expressed both surprise and unease at how readily the family courts have accepted allegations of harm based on extremism and their willingness to assess and even make findings regarding the religious beliefs of parents. This is because in assessing whether the religious views of parents are extremist in nature and in finding them to be harmful to children, the radicalisation cases appear to have significantly departed from established family law principles.[207] Although there is a long-established body of family case law where the family courts have limited the traditionally wide discretion given to parents to bring up their children according to their own religious beliefs and doctrines,[208] the way in which the radicalisation cases have approached concerns regarding extremism and radicalisation go beyond the usual restrictions on the responsibility

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[199] [2016] EWHC 3825 (Fam). This was a follow-up case to *Re Y Children (Findings of Fact as to Radicalisation) Part 1* (n172).
[200] Ibid, [1].
[201] *Re Y Children (Findings of Fact as to Radicalisation) Part 1* (n172), [101].
[202] Ibid, [102]-[115].
[203] *Re Y (Children) (Radicalisation) (Finding of Fact 2)* (n199), [6].
[204] A outcome was reached in *London Borough of Tower Hamlets v B* (n182), [149].
[205] E.g. *A Local Authority v A Mother and Others* [2018] EWHC 2056, [50]-[55]; *A City Council v A Mother and Others* [2019] EWHC 3076, [13]-[19] and *Re I (Child Assessment Order)* [2020] EWCA Civ 281, [15] and [35].
[206] See also: Brenda Hale, *Freedom of Religion and Freedom from Religion* (2017) Ecclesiastical Law Journal 3, 13.
[207] This point is discussed in more detail in Chapter Eight.
[208] See: Rex Ahdar, *Religion as a Factor in Custody and Access Disputes* (1996) 10 International Journal of Law, Policy and the Family 177 and Carol Hamilton, *Family, Law and Religion* (Sweet and Maxwell, 2003).

of parents in the religious upbringing and education of their children. In the past, family courts have restricted the ability of parents to include their children in religious *practices* and have been concerned with the secular or social effects of certain religious beliefs and practices on the physical and emotional well-being of the children in question.[209] Nevertheless, it is rare for the family courts to find that the *religious beliefs* of parents are harmful to children.[210] In maintaining that certain religious beliefs are so unacceptable and dangerous that they are in and of themselves harmful to children, the radicalisation cases, influenced by recent developments in counter-terrorism policy and discourse, change this.

That the shift in focus from counter-*terrorism* to counter-*extremism* and counter-*radicalisation* and the construction of extremism and radicalisation as new child-protection and safeguarding risks may help to explain the recent emergence of the radicalisation cases is evident from these judicial articulations of harm. *Prevent's* pre-occupation with challenging extremist ideologies, its identification of Muslim children as the group most vulnerable to radicalisation and its construction of extremism and radicalisation as child-protection and safeguarding concerns is reflected in and reinforced by the way in which the judges treat radicalisation and exposure to extremist beliefs as new stand-alone harms from which children must be protected.

5.3 The Harm of Extremism and Radicalisation

But what is it specifically about extremism and radicalisation that the judges find harmful to children and, therefore, warranting of compulsory state intervention?

According to Rachel Taylor, there are two main approaches to the harm of extremism and radicalisation in the family courts.[211] The first approach emphasises the role that extremism and

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[209] Ahdar (ibid), 180. This is most clear in cases involving Jehovah's Witness parents refusing blood transfusion treatment for their children. E.g. *Re R (Minor: Medical Treatment)* [1993] 2 FLR 757 and *Re O (Medical Treatment)* [1993] 2 FLR 149.
[210] Hamilton (n208), 201.
[211] Rachel Taylor, *Religion as harm? Radicalisation, extremism and child protection* (2018) 30 *Child and Family Law Quarterly* 41, 51.

radicalisation play in leading to terrorist violence.[212] The idea here, which appears to reflect the New Labour approach to the *Prevent* Strategy, and its emphasis on *violent* extremism discussed earlier in the chapter, suggests that radicalisation is harmful when it involves active support for, and a belief in, the causes and ideologies of violent and proscribed terrorist organisations. The second approach that Taylor identifies involves cases where 'non-violent radicalisation might be seen as harmful in itself, regardless of whether it is likely to cause future violent acts.'[213] This second approach reflects the focus on *non-violent* extremism under the Coalition Government and the identification of extremism within the 2011 *Prevent* Strategy and subsequent counter-extremism policy documents as a threat *per se*. In distinguishing these two approaches to the harm of extremism and radicalisation, Taylor claims that whereas *violent* extremism and radicalisation in the form of active support for violent terrorist organisations is definitively identified in the radicalisation cases as a new category of harm that can justify compulsory state intervention, the same cannot be said of non-violent extremism and radicalisation - i.e. the espousal of non-violent but illiberal, intolerant Islamist ideas and beliefs.[214] Taylor argues that non-violent extremism and radicalisation rarely, if ever, provide 'the *sole ground* for findings of significant harm'[215] and that, therefore, the question of whether *non-violent* extremism and radicalisation can constitute a stand-alone category of harm has been left open by the family courts and seems rather unlikely.[216]

In what follows, I will agree that there is a divergence in judicial approaches to the harm of extremism and radicalisation. Some of the judges appear to be more inclined to treat violent extremism and radicalisation as a definitive, new category of harm capable of justifying state intervention. However, and disagreeing with Taylor's conclusions, I will claim that while judges in some of the radicalisation cases might appear to be primarily concerned with violent forms of radicalisation that could indoctrinate children into supporting and potentially even participating in terrorist violence, a closer reading of the cases suggests that they are also, if not equally, concerned with the impact of non-violent but illiberal, undemocratic and intolerant religious beliefs and values on the well-being and upbringing of children.

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[212] Ibid.
[213] Ibid, 52.
[214] Ibid, 51-52
[215] Ibid, 51.
[216] Ibid, 52-53.

5.3.1 Violent Extremism and Radicalisation: Violent Causes and Violent Images

The first approach, which suggests that it is the active support of and ideological alignment with violent terrorist groups that is harmful to children, can be detected in a number of radicalisation cases. For example, in *Re M (Children)*,[217] Holman J was careful to stress that radicalisation does not simply mean 'that a set of Muslim beliefs and practices is being strongly instilled.'[218] Rather, according to Holman J, radicalisation involves 'negatively influencing (a child) with radical fundamental thought which is associated with terrorism' [219] and 'indoctrinating' them with ideologies 'involving the possibility of terrorism.'[220] This focus on *terrorist violence* was made even more explicit in *Re K (Children)*.[221] Hayden J stressed that the harm that the family courts are seeking to protect children from is 'the process by which a person comes to support terrorism as opposed to merely extreme religious beliefs.'[222] In these cases, the judges distinguish between active support for the goals, objectives and violent methods of terrorist organisations and the holding of extreme or fundamentalist religious beliefs and illiberal ideological views, suggesting that the latter does not, on its own, justify findings of harm and compulsory state intervention.

The idea that for parental extremism to be considered harmful by the family courts it needs to go 'beyond non-violent ideology into active support for terrorism and extreme depictions of violence'[223] is also reflected in a number of other radicalisation cases. For example, in *A Local Authority v M and Others*,[224] the mother did not only expose her children to illiberal and intolerant views but had 'actively involved the children in advocating violence.'[225] The mother had attempted to travel with her children to ISIS-held territory in Syria, was involved with a

[217] [2014] EWHC 667 (Fam).
[218] Ibid, [23].
[219] Ibid.
[220] Ibid.
[221] (n187).
[222] Ibid, para 15.
[223] Ibid.
[224] (n176).
[225] Ibid, [49].

group of women who 'actively promote the political beliefs of ISIS,'[226] took her children to political rallies 'in the presence of many known political extremists'[227] and radicalised her children to the extent that they themselves expressed 'chilling'[228] views supportive of ISIS atrocities. Similarly, in *A City Council v A Mother and Others*,[229] Knowles J stated that the harm to the children stemmed from the fact that 'the mother is a strong, if not fanatical, sympathiser of terrorism'[230] and had 'behaved in a way which was likely to encourage her children to sympathise with the so-called Islamic State and violent extremism.'[231] Likewise in *Re Y Children (Findings of Fact as to Radicalisation) Part 1,*[232] Parker J was concerned that by taking his children to demonstrations where affiliates of proscribed organisations and even 'convicted terrorists'[233] were present and sharing 'very shocking and very disturbing'[234] materials and images with them, the father exposed his children 'to the risk of becoming involved in violent activities in support of political/religious aims.'[235]

The idea that actively supporting the ideologies and methods of terrorist groups is what makes extremism and radicalisation harmful is also present in cases where the main concern is with a radicalised child rather than a radicalised parent. For example, in *London Borough of Tower Hamlets v B,*[236] Hayden J found that B had suffered 'serious emotional harm'[237] as a result of her exposure to the 'very significant amount of radicalising material'[238] which included 'very violent videos and images produced by ISIS.'[239] Moreover, B had not only 'believed in the cause that the Islamic State was fighting for'[240] but was, in fact, 'frank about her intentions to travel to the Islamic State.'[241]

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[226] Ibid, [19].
[227] Ibid.
[228]Ibid, [70].
[229] (n205).
[230] [19].
[231] Ibid, [22].
[232] (n172)
[233] Ibid, [72].
[234] Ibid, [98].
[235] Ibid, 37. See also: *Re I (Children)* (n205), [15].
[236] (n182).
[237] Ibid, [28].
[238] Ibid, [14].
[239] Ibid, [60]-[67].
[240] Ibid, [67].
[241] Ibid, [8].

The concern with *violent* extremism in these radicalisation cases suggests that what the judges find especially harmful about extremism and radicalisation is their potential to turn vulnerable and impressionable children into supporters or even purveyors of terrorist violence. The conveyor-belt theory of radicalisation discussed earlier in the chapter which suggests that exposure to certain Islamist ideologies can lead the vulnerable, especially Muslim children, towards supporting and participating in terrorist violence, appears to underpin the approach to harm in these radicalisation cases.

5.3.2 Beyond Terrorist Violence: The Concern with Illiberal and Intolerant Ideologies and Conservative Interpretations of Islam

However, a closer look at these and other radicalisation cases suggests the harm of extremism and radicalisation is not confined to their potential to lead individuals to support and participate in terrorism. Rather, it appears that in many radicalisation cases the judges are equally concerned that the children in question are being indoctrinated with illiberal, intolerant and hateful views that reject and undermine "fundamental British values".

For example, in the *Re M (Children)*[242] case discussed above, Holman J distinguished between the lawful religious instruction of children and between instances where 'a child is being indoctrinated or infected with thoughts involving the possibility of "terrorism," *or*, indeed, hatred for their native country which is England or another religion such as Christianity.'[243] The latter, Holman J stressed, 'is potentially very abusive indeed.'[244] In this case, it seems that inculcating children with unpatriotic and hateful views that teach children to hate their country and to hate others is regarded as being *just as harmful* as radicalising them with violent extremist ideologies supportive of, and potentially conducive to, terrorism.

The idea that extremist views are harmful to children because they can turn children into

[242] (n217).
[243] Ibid, [23]. My emphasis.
[244] Ibid.

tomorrow's terrorists and/or because they indoctrinate them with illiberal and intolerant views antithetical to "fundamental British values" is also present in a number of other radicalisation cases discussed in the previous subsection. In *A City Council v A Mother and Others,*[245] Knowles J emphasised that the children in that case were 'at risk of physical harm, should they decide as teenagers to travel abroad to further the aims of the so-called Islamic State or to participate in terrorist activities in this jurisdiction',[246] as well as 'emotional harm'[247] and 'developmental impairment'[248] because 'exposure to their parents' beliefs … will affect their ability to integrate into their community if they are brought up to hate and despise those amongst whom they will live and work.'[249] Similarly, in addition to her concerns that the children in *Re Y Children (Findings of Fact as to Radicalisation) Part 1*[250] would become supporters and potential committers of terrorist violence, Parker J was also anxious about the fact that the children were being radicalised into 'adopt[ing] "them and us" views in relation to other members of society, other religions and racial groups [and] defiance of the law.'[251] Likewise, in *A Local Authority v M and Others*[252] Newton J found that the mother had 'exposed her children to a risk of emotional and psychological harm'[253] by 'exposing her children to radical views [regarding] free-mixing, alcohol, homosexuality, democracy, Judaism and, more worryingly, how and in what way Sharia and the Caliphate should be established across the world.'[254] By expressing concern with the values and norms according to which children are raised, the judges in these cases seem to reinforce the shifts within counter-terrorism law and policy introduced by the Coalition and Conservative Governments, which treat Islamist ideologies as being dangerous because of their support for terrorism and because illiberal and undemocratic ideologies undermine "fundamental British values" and societal cohesion and integration.

In their approach to the harm of extremism and radicalisation, the judges also appear to reflect and augment the increasing discomfort with literalist interpretations of Islam and orthodox

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[245] (n205).
[246] Ibid, [23].
[247] Ibid.
[248] Ibid, [24].
[249] Ibid, [23]-[24].
[250] (n172).
[251] Ibid, [37]. See also *Re I (Children)* (n205), [21].
[252] (n176).
[253] Ibid, [annex].
[254] Ibid, [70].

forms of Islamic observance and their association with extremism within counter-terrorism law and policy. For while the judges in the radicalisation cases attempt to distinguish between holding fundamentalist religious views and following conservative forms of Islamic observance on the one hand, and harmful extremism or radicalisation on the other, and tend to insist that they are not conflating orthodox Islamic beliefs and practices with extremism, this distinction is often difficult to maintain in practice. This can be seen from the way in which strict or literalist Islamic observance is problematised in some of the radicalisation cases. For example, in exploring the reasons behind B's radicalisation in *London Borough of Tower Hamlets v B,*[255] Hayden J was clearly uncomfortable with the mother's 'zealous Islamic beliefs.'[256] So although Hayden J insisted that he was not finding 'that the mother held radicalised beliefs,'[257] the degree of the mother's Islamic observance was, nonetheless directly linked to B's radicalisation; 'I have found on the spectrum of Islamic observance she is at the most committed end. In this family those beliefs proved to be fertile ground for B's journey to radicalisation'.[258] Therefore, even though committed and heightened Islamic observance is not in and of itself a sign of extremism, it is still identified by Hayden J as an enabling condition of extremism and radicalisation. Even if parents who have a strong commitment to Islamic principles are not treated as being, *ipso facto*, extremists, their religiosity and the strength of their religious beliefs are still problematised and treated as a cause of radicalisation.

Similarly, although Russell J was clear in *Lancashire County Council v M and Others*[259] that the father's 'extreme views'[260] would not 'on their own…have made it necessary to remove the children'[261] from their home, the fact he 'doesn't tolerate different views, races or religions,' is 'against democracy' and 'hates gay people'[262] was highlighted to explain why, in the view of the court, the father 'is no ordinary believer' but 'a bigot'[263] whose views risked harming the children. By the same token, a lack of 'strict Islamic observance,'[264] including the fact that the

[255] (n182).
[256] Ibid, [125].
[257] Ibid, [124].
[258] Ibid, [125].
[259] [2016] EWFC 9.
[260] Ibid, [21].
[261] Ibid, [22].
[262] Ibid, [26].
[263] Ibid.
[264] *Re A and B (Children: Restrictions on Parental Responsibility: Radicalisation and Extremism)* [2016] EWFC 40, [125].

father 'broke the Ramadan fast'[265] in *Re A and B (Children: Restrictions on Parental Responsibility: Radicalisation and Extremism)*[266] and the mother in *Re NAA (A Child: Findings on Death of Parents: Convenient Forum)*[267] 'did not wear a hijab … or pray during the day'[268] were treated in each respective case as evidence that they were not extremist parents.

Therefore, whilst non-violent but illiberal religious views and conservative forms of Islamic observance may not always be treated as constituting a separate category of harm, many of the judges deciding the radicalisation cases are clearly uncomfortable and apprehensive about the fact that, in the words of James Munby P in *Re X (Children) (No 3)*,[269] 'not every parent is as steeped in the values and belief-systems of post-Enlightenment Europe as we might like to imagine.'[270] The Orientalist undertone to this statement shows that the radicalisation cases may be underpinned by a narrative of Western cultural superiority that sees the parental rejection of post-Enlightenment European values as being undesirable and even potentially harmful to children.

In conclusion, then, although the judges in the radicalisation cases attempt to distinguish between the mere holding of religiously extreme views and the active support and espousal of the goals of terrorist organisations, in reality they are both influenced by and have reinforced, the recent developments in the conceptual armoury of the UK's counter-terrorism policy. Counter-terrorism laws and policies, as I demonstrated earlier, collapse the conceptual distinctions between terrorism, extremism and radicalisation, constructing them as a single threat that must be confronted. A closer look at the radicalisation cases shows that they too exhibit a tendency toward the same conflations. Radicalisation as a result of exposure to extremist ideologies is regarded as being harmful to children because of the supposed link between radicalisation and extremism and terrorist violence *and* because such beliefs are intolerant and contradict and undermine liberal democratic or "fundamental British values."

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[265] Ibid.
[266] (n264).
[267] [2017] EWFC B76.
[268] Ibid, [47].
[269] (n153).
[270] Ibid, [96].

6. Conclusion

This chapter situated the interaction between family law and counter-terrorism within the wider considerable changes to the nature, aims and scope of counter-terrorism law and policy and expansions to the reach and remit of the counter-terrorist state in recent years. The chapter traced the rise and prominence of the concept of radicalisation and the conveyor-belt theory of terrorism within post-7/7 counter-terrorism practice in the UK, arguing that its influence on counter-terrorism law and policy has meant that counter-terrorism in the UK has become increasingly pre-emptive and preventive. The chapter claimed that as a result the changes which were instigated by the New Labour Government following the terrorist attacks of 2005 but were significantly extended and developed by the Coalition and Conservative Government, counter-terrorism laws and policies in the UK now seek to tackle not just terrorist violence but the pre-criminal or pre-terrorist space of extremist, illiberal Islamist ideologies that supposedly radicalise vulnerable children and propel them towards the path of supporting and possibly committing acts of terrorist violence and that undermine the liberal democratic values of British society.

Focusing on the increasing emphasis within counter-terrorism law and policy on preventing and countering violent and non-violent *extremism*, the construction of children as a target group of the counter-terrorist state and the redefinition of counter-terrorism as safeguarding and child-protection, the chapter demonstrated how these important expansions created the conceptual space and established the legal and policy frameworks that made the recent emergence of the radicalisation cases possible. Finally, by deconstructing judicial articulations and constructions of harm, the chapter claimed, and demonstrated, that the radicalisation cases are underpinned by, reinforce and further underscore the wider shifts and changes in counter-terrorism law, policy and practice.

Part III: Implications

Chapter Seven

Appraising the Radicalisation Cases: The Dangers of Family Law's Involvement in Counter-Terrorism

1. Introduction

Having critically examined the nature of and reasons behind the recent interaction between family law and counter-terrorism, this final part of the thesis seeks to identify and assess its *implications*. This chapter aims to appraise the radicalisation cases. It claims that their recent emergence ought to be viewed with concern and argues that the interaction between family law and counter-terrorism that they have facilitated is a dangerous legal development, with a number of worrying implications.

In section (2), I maintain that in evaluating the implications of the recent interaction between family law and counter-terrorism, it is possible to identify a dominant narrative, subscribed to by the family judiciary, family lawyers, think-tanks and some academics, which views the radicalisation cases in a positive light and argues that the family judges have been careful to uphold the conventional principles of family law, thereby protecting the family courts from being co-opted for counter-terrorism ends. In section (3), I challenge the claims of the dominant narrative. Arguing against the treatment of extremism and radicalisation as child-protection and safeguarding concerns and highlighting the extensive influence of counter-terrorism thinking, policy and practice on the radicalisation cases, I claim that the radicalisation cases cannot be accurately described as *ordinary* child-protection cases, agreeing that they are essentially 'family law versions of counter-terrorism.'[1]

[1] Clive Walker, *Foreign Terrorist Fighters and UK Counterterrorism Law* in David Anderson, *The Terrorism Acts in 2015: Report of the Independent Reviewer in the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006* (December 2015), 128.

In section (4), I critique family law's involvement in counter-terrorism. Emphasising the fact that terrorism is, at its core, a crime that can and should be primarily addressed through the criminal justice system, I argue that the radicalisation cases have facilitated an unnecessary bypassing of the criminal law and a dangerous expansion of counter-terrorism into family law - an area of law that lacks the procedural safeguards necessary for countering terrorism in a fair and proportionate manner. Finally, in section (4), I develop the critique of family law's involvement in counter-terrorism further by deconstructing the dominant narrative's benign view of the radicalisation cases and family law more generally. Arguing that a closer, more critical examination of the radicalisation cases reveals the intrusive and at times draconian interventions that they have sanctioned, their discriminatory potential and lack of a robust human rights analysis, I highlight the dangers of the interaction between family law and counter-terrorism in recent years.

2. Evaluating the Interaction Between Family Law and Counter-Terrorism: The Dominant Narrative

In evaluating the implications of the recent interaction between family law and counter-terrorism, we can identify a prevailing narrative, subscribed to and proffered by the family judiciary, family solicitors and barristers, think tanks and some academics. This dominant narrative, which can be regarded as an extension of the official narrative that I identified and critiqued in Part II, regards the radicalisation cases in a positive light.

The dominant narrative claims, firstly, that in the radicalisation cases the family courts are filling a gap in the state's counter-terrorism arsenal, particularly when those at risk of involvement in terrorism are children.[2] To that end, the dominant narrative praises the family courts for their creative adaptability in the face of new and challenging threats, allowing the

[2] Susan Edwards, *Protecting schoolgirls from terrorism grooming*, (2015) 3 International Family Law Journal 236, 236.

state to carry out its duty to protect children.[3] Here, the resort of the family judges to the wardship jurisdiction in the earlier radicalisation cases involving fears of travel to ISIS-held territories is cited as an example of such flexibility.[4] As discussed in Chapter Two, wardship transfers parental responsibility to the High Court, giving it control over all major decisions in a child's life and allowing it to supervise the child's welfare on an ongoing basis. Although its use declined after the passing of the Children Act (CA) 1989, the radicalisation cases led to something of a revival in its use.[5] The family judges regarded it as a useful tool that allowed them to prevent children from travelling to ISIS-held territories or to order their return if they were already abroad.[6]

However, while this narrative argues that the family judges have been flexible in their approach to the radicalisation cases, it also stresses that they have not lost sight of the conventional principles of family law.[7] Commentators point to three particular principles which they claim have been upheld in the radicalisation cases: the threshold criteria, the welfare principle and human rights. As discussed in Chapter Two, the threshold criteria, found in section 31(2) of the CA 1989, stipulate that a court may grant a local authority's application for care or supervision orders only if it is satisfied, on the balance of probabilities, that the child in question is suffering or is likely to suffer significant harm attributable to the care given or likely to be given by their parent. According to Heather Keating, whilst the threshold criteria certainly does seek to protect children from significant harm, it also simultaneously aims 'to protect parents and families from unwarranted state intervention.'[8] As such, in a number of seminal cases such as *Re H (Minors) (Sexual Abuse: Standard of Proof)*[9] and *Re B (Children) (Care Proceedings: Standard of Proof)*,[10] the House of Lords clarified that 'mere hunches'[11] regarding, or suspicions[12] of, actual or likely harm do not meet the threshold criteria. Rather, in their

[3] Chris Barnes, 'Radicalisation cases in the Family Courts: Part 4: Three-year review (Family Law, 2018), 203-204; Martin Downs and Susan Edwards, 'Brides and Martyrs: Protecting Children from Violent Extremism' (Family Law, 2015), 1075-1076 and Nikita Malik, 'Radicalising our Children: An Analysis of Family Court Cases of British Children At Risk of Radicalisation 2013-2018' (Henry Jackson Society, February 2019), 3.
[4] Edwards (n2), 236.
[5] Malik (n3), 39.
[6] See Chapter Two.
[7] Damian Woodward-Carlton, 'Radicalisation and the Family Courts' (Family Law, 2019), 757.
[8] Heather Keating, *Re MA: The Significance of Harm* (2011) 23 Child and Family Law Quarterly 115, 118.
[9] [1996] AC 563 (HL).
[10] [2008] UKHL 35.
[11] Heather Keating, *Suspicions, sitting on the fence and standards of proof* (2009) 21 Child and Family Law Quarterly 230, 231.
[12] See: *Re H* (n9), per Lord Nicholls at [572]-[4] and *Re B* (n10), per Baroness Hale at [59].

interpretation of section 31 (2) of the CA 1989, the House of Lords have made it clear that anything less than proven facts indicating actual or likely significant harm will fail to satisfy the threshold criteria.[13] The dominant narrative argues that in the radicalisation cases, the judges have rigorously applied the threshold critiera, insisting on the need for local authorities to provide *cogent* evidence of actual or likely harm before sanctioning state intervention.[14]

Proponents of the dominant narrative also claim that the family courts have upheld the welfare principle in the radicalisation cases. The welfare principle stipulates that when a court makes a decision that relates to the upbringing of a child, the child's welfare is its paramount consideration.[15] Commentators have praised the way in which the judges deciding the radicalisation cases have prioritised the welfare of children over and above wider counter-terrorism considerations.[16]

Finally, the family courts have also been praised for their careful defence of the human rights of the parents and children involved.[17] Commentators point to the relatively low number of children who have been permanently removed from their home in the radicalisation cases and argue that the family courts have upheld the right of children and parents to respect for private and family life under Article 8 of the European Convention on Human Rights (ECHR).[18] In a similar vein, commentators have praised the family courts for upholding Article 9 of the ECHR by defending the religious rights of parents and children. For example, Susan Edwards has lauded the family judges for 'guarding against Orientalised misconceptions of Islamic devoutness,'[19] arguing that they have resisted and even challenged the 'popular stereotyping of devout Muslim families as being prone to "radicalisation."'[20]

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[13] Ibid. See also Keating (n11), 231.
[14] Susan Edwards, *Negotiating Faith, Culture and Gender in J v B and the Child AB* (Family Law, 2018), 57–58.
[15] S. 1 CA 1989.
[16] Anthony Douglas, 'The Needs of Children in Cases Featuring Radicalisation' (Cafcass Blog, 22 November 2016).
[17] Downs and Edwards (n3), 1078.
[18] Malik (n3) 54 and Woodward-Carlton (n7), 760.
[19] Edwards (n14), 57-58.
[20] Ibid.

In praising the family courts for upholding the conventional principles of family law, the dominant narrative suggests that in the radicalisation cases *ordinary* family law, as opposed to *covert* counter-terrorism, prevails. This claim was also captured by MacDonald J's final comments in *HB v A Local Authority (Alleged Risk of Radicalisation and Abduction)*.[21] Macdonald J concluded his judgment by reminding the parties and himself that while 'Islamist extremism and the radicalisation consequent upon it exist at present as a brutal and pernicious fact in our society,'[22] it is still 'important … that the court holds fast to the cardinal precepts of fairness, impartiality and due process that underpin the rule of law in our liberal democracy.'[23] The implication here is that in the radicalisation cases, the family courts have resisted the erosions to due process, fairness and impartiality to which some developments in counter-terrorism law have led.[24] The radicalisation cases, the argument goes, are *ordinary* child-protection cases as opposed to counter-terrorism "by the backdoor."

3. Ordinary Child-Protection or 'Family Law Versions of Counter-Terrorism'[25]?

The dominant narrative suggests that even though the radicalisation cases are unprecedented and have thrown up new challenges, the family justice system has been able to successfully respond to and meet these challenges by upholding the fundamental principles of family law. In claiming that the radicalisation cases are ordinary child-protection cases, the dominant narrative attempts to refute the claim made by some critics that the radicalisation cases essentially represent 'family law versions of counter-terrorism.'[26]

In this section, I will deconstruct the claims of the dominant narrative, agreeing with, developing and adding to some of the critiques levelled at the radicalisation cases within academia and civil society. Firstly, I will challenge the claim that the radicalisation cases are ordinary child-protection cases. Although I will agree that some of the radicalisation cases

[21] [2017] EWHC 1437 (Fam).
[22] Ibid, [103].
[23] Ibid.
[24] See: s(4) of this Chapter and in Chapter Eight.
[25] Walker (n1), 128.
[26] Ibid.

present the local authorities and the family courts with recognisable child-protection concerns, I will contend that this does not apply to most of the radicalisation cases. In doing so, I will argue against the *construction* of terrorism, extremism and radicalisation as child-protection harms, warning that these are contentious terms that come from, and should remain confined to, national security policy. Secondly, I will highlight the extensive influence of counter-terrorism policing, intelligence and expertise on the radicalisation cases. I will demonstrate how at every stage, from initial referral to final outcome, the radicalisation cases are influenced by, reinforce and implement the logic, concerns and goals of counter-terrorism policy and practice. Given the extent of counter-terrorism's influence on the radicalisation cases, I will conclude that it is difficult to view them as ordinary child-protection cases.

3.1 Ordinary Child-Protection? Challenging the Claims of the Dominant Narrative

The dominant narrative insists that although the radicalisation cases might be a new category of family case-law, they essentially seek to protect children from clear and recognisable child-protection harms.[27] Looking at the types of issues raised in the radicalisation cases shows that a very small contingency of cases, highlighted and discussed in Chapter Two, do indeed raise what might be considered traditional child-protection concerns, such as domestic abuse, severe mental health problems and involvement in criminality.[28] It is worth repeating, however, that the number of such cases remains small.

But what of the radicalisation cases involving allegations - or even admissions - of attempted or actual travel to ISIS-held territories in the Middle East? As I pointed out in Chapter Three, the prospect of children travelling to war-zones in Syria and Iraq, witnessing and even potentially participating in terrorist violence there raises not only obvious but also highly serious risks of harm that clearly engage the child-protection duties and domestic and international human rights obligations of the state. Nevertheless, I think that we need to be careful about taking this to mean that the radicalisation cases essentially represent ordinary

[27] Woodward Carlton (n7), 757.
[28] See: Chapter Two.

child-protection case-law and that, therefore, the interaction between family law and counter-terrorism should be viewed favourably. There are two reasons for this.

Firstly, as I demonstrated in Chapter Three, even though an issue or a phenomenon may *seem* objectively harmful to children, harm is a 'conceptually foggy'[29] social and legal concept. Harms to children, even when seemingly obvious, are often pointed out and "discovered" through a process of social construction that is historically and politically contingent.[30] There is also an inherent selectivity to social, political and legal constructions of harm to children.[31] This is reflected in, for example, the absence of the family courts from the state's response to the involvement of children and parents in far-right terrorism and extremism, despite the growing number of children and parents involved in far-right terrorism in recent years.[32] These discrepencies in the state's treatment of children and parental involvement in terrorist violence should preclude against the characterisation of the radicalisation cases as obvious child-protection cases.

Secondly and more importantly, as we have already seen, the radicalisation cases are not only concerned with preventing or dealing with the impact of travel to ISIS-held territories abroad. The previous chapter demonstrated that the judges in the majority of the radicalisation cases are in fact concerned with identifying the existence of *extremism* and *radicalisation* and assessing their impact on the welfare of children. Therefore, even though Hayden J drew direct parallels between the process of radicalisation and 'the process of grooming that one sees in the context of sexual abuse,'[33] claiming that both are 'strikingly similar,'[34] a more critical analysis suggests that it is difficult to categorise extremism and radicalisation as recognisable or ordinary child-protection issues.

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[29] John Kleinig, *Crime and the Concept of Harm* (1978) 15 American Philosophical Quarterly 27, 27.
[30] Harry Hendrick, *Child Welfare: Historical dimensions, contemporary debates* (The Policy Press, 2003), 69.
[31] Ibid.
[32] E.g. 'Teenage neo-Nazis jailed over terror offences' *BBC News* (London, 18 June 2019) and Daniel de Simone, 'National Action: The new parents and the neo-Nazi terror threat' *BBC News* (London, 12 November 2018). This point is elaborated in section (4).
[33] *Brighton and Hove City Council v Y* [2015] EWHC 2099 (Fam) [25].
[34] Ibid.

This is because extremism and radicalisation are *security* terms that come from, are defined in and arguably should remain restricted to, *counter-terrorism policy*.[35] Although extremism and radicalisation have increasingly been treated as child-protection and safeguarding concerns, it is important to emphasise here *Prevent's* leading role in their construction as such. It was *Prevent* and its closely affiliated programme *Channel* that first identified extremism and radicalisation as child-protection and safeguarding risks in 2007 and 2008.[36] While child-welfare policies have required public bodies such as local authorities and schools to incorporate countering terrorism, extremism and radicalisation within their child-protection and safeguarding protocols since at least 2010, as we saw in Chapter Two, this only became a *statutory* requirement with the introduction of the 'Prevent Duty' under the Counter-Terrorism and Security Act (CTSA) 2015. Moreover, the construction of extremism and radicalisation as child-protection and safeguarding risks has been strongly contested by social work academics and practitioners. They argue that whereas child-neglect and physical and sexual abuse can be easily identified as child-protection and safeguarding risks, when it comes to extremism and radicalisation it is not clear *exactly* what children are being protected from.[37] It is fair to say, therefore, that the child-protection concerns that underpin the radicalisation cases involving allegations of extremism and radicalisation are not obvious and would not have existed had it not been for counter-terrorism law and policy.

At this point, it could be argued that preventing the radicalisation of children and their exposure to extremist ideologies, even in cases where there are no concerns about possible travel to war-zones, could still potentially achieve important child-protection goals by diverting children from becoming supporters, or even purveyors, of terrorist violence.[38] However, whilst this might seem like an intuitively appealing argument, it is, nonetheless, problematic. Firstly, this line of argument repeats the claims of the conveyor-belt theory of radicalisation discussed in the preceding chapter, which rest on a flawed assumption that exposure to and the espousal of Islamist extremist ideologies leads to the involvement of individuals in terrorism. This

[35] In the radicalisation cases, the judges do not provide their own definitions of these terms, relying instead on definitions that are found in the *Prevent* Strategy.
[36] See: Chapter Two.
[37] Tony Stanley and Surinder Guru, *Childhood Radicalisation Risk: An Emerging Practice Issue* (2015) 27 Social Work in Action 353.
[38] Rachel Taylor, *Religion as harm? Radicalisation, extremism and child protection* (2018) 30 *Child and Family Law Quarterly* 41, 50.

assumption lacks sufficient empirical justification and has been severely criticised and rejected by terrorism scholars.[39] In particular, as Rachel Taylor points out, 'there is very little empirical research that is concerned with children and little literature that looks at violent extremism from the perspective of the threat of harm to individual children.'[40] Therefore, this argument is based on an insufficiently evidenced and widely criticised assumed link between Islamist extremist ideology and terrorist violence, especially when it relates to children.

Secondly, and relatedly, it is worth highlighting here that section 31(2) of the CA 1989, as interpreted in the appellate courts, does not require the local authority to demonstrate that exposure to or espousal of extremist ideologies and beliefs will inevitably lead to the child in question to become involved in terrorism. This is because under section 31 (2), a care or supervision order can be granted 'where significant harm has not yet occurred but is *likely* to occur.'[41] In a number of important decisions, the House of Lords have interpreted this to mean that there must be 'no more than a *real possibility*'[42] of significant harm occurring in the future.[43] The courts have also suggested, in cases such as *Re H (A Minor) (Section 37 Directions)*,[44] that assessments of the 'liklihood of future harm [are] not restricted to the immediate or medium term future;'[45] rather, 'anticipated harm even years in advance will suffice.'[46] As Jonathan Herring observes, this is a 'remarkably "pro-child protection" stance of the law to take.'[47] These judicial interpretations of the threshold criteria mean that a 'child can be taken away from parents even though the child has not been harmed…[as long as] it can be shown that there is a real possibility that the child will suffer significant harm' at some point in the future.[48] Within the context of the context of the radicalisation cases, this means that the threshold criteria will be met if the local authority can show the court, on the facts of the particular case at hand, that there is a real possibility that parental extremism or childhood

[39] Jonathan Githens-Mazer and Robert Lambert, *Why conventional wisdom on radicalization fails: the persistence of a failed discourse* (2010) 86 International Affairs 889, 896 and Olivier Roy, *Jihad and Death: The Global Appeal of Islamic State* (Hurst Publishers, 2017).
[40] Taylor (n32), 56.
[41] Keating (n8), 118. My emphasis.
[42] Keating (n11), 236. My emphasis.
[43] See: *Re H* (n9) and *Re B* (n10).
[44] [1993] 2 FLR 541.
[45] Joanna Miles, Rob George and Sonia Harris-Short, *Family Law: Text, Cases and Materials* (OUP, 2019), 859.
[46] Ibid.
[47] Jonathan Herring, *Family Law* (Pearson Education Ltd, 2017), 644.
[48] Ibid.

radicalisation will, at some point in the future, lead the child or children in question to become involved in terrorism.[49]

Furthermore, it is important to emphasise that more often than not the suspected harm in the radicalisation cases involving allegations of extremism and radicalisation is an 'emotional'[50] and 'psychological'[51] harm that is, by the judges' own admission, 'insidious'[52] and difficult to assess.[53] So we find, for example, that in *A Local Authority v M and Others*,[54] exactly *how* the children suffered emotional and psychological harm as a result of their exposure to their mother's extremist views is left unarticulated.[55] Instead, ambiguous and elusive conclusions about emotional harm are drawn without specific expert psychological assessment of the emotional and psychological impact that exposure to extremist ideologies has had on the particular children in question.

Therefore, it is difficult to disagree with Taylor's argument that neither the Government nor the family courts have clearly articulated the child-protection harms faced by children considered to be at risk of radicalisation through exposure to extremism with any sufficient 'clarity.'[56] Since it is not exactly clear how 'eliminating extremism'[57] *actually* safeguards and 'protects individual children from harm,'[58] the radicalisation cases cannot be described as ordinary child-protection cases.

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[49] E.g: *A City Council v A Mother and Others* [2019] EWHC 3076, [22] and *Re Y Children (Findings of Fact as to Radicalisation) Part 1* [2016] EWHC 3826 (Fam), [37].
[50] [2016] EWHC 1599 (Fam), [annex].
[51] Ibid.
[52] *Brighton and Hove City Council v Mother, Y* (n33), [9].
[53] Ibid.
[54] (n50).
[55] See also *London Borough of Tower Hamlets v B* [2016] EWHC 1707 (Fam), [94] and [135].
[56] Taylor (n38), 54.
[57] Ibid.
[58] Ibid.

3.2 The Role of Counter-Terrorism Policing, Intelligence and Expertise in the Emergence of the Radicalisation Cases

Another reason why the radicalisation cases cannot simply be viewed as ordinary family law cases relates to the considerable involvement and influence of counter-terrorism policing and intelligence and radicalisation expertise in the cases.

One of the remarkable aspects of the radicalisation cases is the particularly extensive involvement of counter-terrorism police. Whilst the involvement of the police and the existence of parallel criminal proceedings is not uncommon in care proceedings, what makes the radicalisation cases distinctive is the *unusually* high levels of police involvement, in particular the counter-terrorism police.[59] In almost every published radicalisation case, family court proceedings were only initiated by the local authority following communications or referrals from the Counter-Terrorism Unit of local police forces and/or the Counter-Terrorism Command.

In a number of radicalisation cases, communications from counter-terrorism police to the local authority usually accompanied wider, ongoing terrorism investigations. As Hayden J put it in *Re S*,[60] in cases that involve 'the radicalisation of minors [often] there will be both proceedings within the Family Division and a concurrent police investigation.'[61] For example, in *Re M (Wardship: Jurisdiction and Powers)*,[62] the local authority issued wardship proceedings as a result of communications from the Counter-Terrorism Unit suggesting that the parents 'intended to cross the Syrian border for the sake of joining IS.'[63] Similarly, in *Re C (a Child)*,[64] the local authority applied for care orders on the basis of communications from the Counter-Terrorism Command which suggested that the father is an Islamist extremist.[65] The

[59] Thomas Chisholm and Alice Coulter, 'Safeguarding and radicalisation: Research Report' (Department for Education, August 2017), 26.
[60] [2015] EWHC (Fam).
[61] Ibid, [3].
[62] [2015] EWHC 1433 (Fam).
[63] Ibid, [8.]
[64] [2016] EWHC 3171 (Fam).
[65] Ibid, [6]- [7].

radicalisation cases, therefore, often emerged in the family courts within the context of wider counter-terrorism operations.

Other radicalisation cases appeared in the family courts as a result of police referrals to local authorities following a stop and search, examination, detention or arrest under terrorism legislation. An example of a referral following a stop and search is *Re Y Children (Findings of Fact as to Radicalisation) Part 1*.[66] In that case, the local authority initiated care proceedings following a stop and search at a ferry port and a search of the family home by counter-terrorism police raised concerns 'about the father's … radicalisation and intention to travel with the children to Syria.'[67] In other cases, examination and/or detention of a parent under Schedule 7 of the Terrorism Act 2000 is behind local authority involvement.[68] For example, examination under Schedule 7 led to wardship and care proceedings in *HB v A Local Authority (Alleged Risk of Radicalisation and Abduction)*.[69] The mother and her children were removed from a flight by officers from the Counter-Terrorism Command and examined.[70] The examination raised a number of concerns about the mother and, as a result, the children were placed under police protection and the local authority applied for wardship and care orders.[71] In other radicalisation cases, proceedings were initiated by the local authority as a result of referrals from the police to social services departments following the arrest of a parent and/or an older child on suspicion of committing terrorism offences.[72]

Given the central role played by counter-terrorism policing in bringing these cases to the attention of the family justice system, the discussion above demonstrates why it is difficult, and rather inaccurate, to characterise the radicalisation cases as ordinary child-protection cases. The majority of the published radicalisation cases appeared in the family courts *only because*

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[66] (n49).
[67] Ibid, [19].
[68] Schedule 7 Terrorism Act 2000 enables an officer to stop, question and/or detail individuals at ports and airports to determine whether or not they are likely to engage in acts of terrorism.
[69] (n21).
[70] Ibid, [35]-[39].
[71] See also: *Re Z* [2015] EWHC 2350 (Fam).
[72] *Re C, D, E (Radicalisation: Fact Finding)* [2016] EWHC 3087; *London Borough of Tower Hamlets v B* [2015] EWHC 2491 (Fam); *A Local Authority v T and Ors* [2016] EWFC 30; *A Local Authority v A Mother and Others (Fact-Finding)* [2018] EWHC 2054 (Fam); *Re M (Children)* [2019] EWCA Civ 1364 and *Re I (Child Assessment Order)* [2020] EWCA Civ 281.

and as a direct result of counter-terrorism policing operations. This view of the radicalisation cases as being counter-terrorism *led* appears to be shared by some of the judges themselves. For example, in *Re C (A Child)*[73] Pauffley J emphasised that in that case, 'there would have been no [family law] proceedings had it not been for information communicated to the local authority by the SO15 [the Counter-Terrorism Command].'[74] Although Pauffley J was referring here to one specific case, during the interviews some of the barristers and solicitors also felt that unlike the usual child-protection cases, which are led by the children and social services departments within local authorities, the radicalisation cases they worked on were led by the counter-terrorism police and security agencies.[75] Therefore, it appears that the child-protection concerns within many of the radicalisation cases do not exist independently of counter-terrorism policing operations and would not have otherwise elicited the attention of the family justice system.

The significant influence of counter-terrorism practice on the radicalisation cases is also reflected in the role that counter-terrorism intelligence and radicalisation expertise play in the cases. In many of the radicalisation cases, the evidence presented to the family courts regarding parental extremism was often disclosed to the local authority by the counter-terrorism police and intelligence agencies.[76] The extent of local authority and family court dependence on the evidence and intelligence gathered and shared by counter-terrorism police was most clearly reflected in *A Local Authority v M and Others*.[77] The local authority's main sources of evidence against the mother consisted of 'police photographic evidence of the three children attending a number of …rallies …in the company of convicted terrorists and hate preachers'[78] and 'police evidence of written material seized from the family home containing evidence of extreme beliefs including speeches given by the mother at meetings which were extreme and…homophobic.'[79] These pieces of evidence were instrumental in convincing Newton J that the mother was an extremist individual who radicalised her children. In reaching that conclusion, Newton J acknowledged that he had been 'enormously assisted by the close

[73] (n64).
[74] Ibid, [6].
[75] Interview with Barrister C, QC at St John's Buildings Barristers' Chambers (Telephone Interview, 30 October 2017) and interview with Solicitor A, Solicitor at Fountain Solicitors (Telephone Interview, 9 May 2018).
[76] See: *Re K (Children)* [2016] EWHC 1606 (Fam) [5] and [15].
[77] (n50).
[78] Ibid, [18].
[79] Ibid.

cooperation [of the] counter-terrorism police [who made] available a significant quantity of focused, highly relevant material.'[80]

In other radicalisation cases, counter-terrorism police officers and even undercover agents were invited by the family courts to give evidence during the course of the proceedings.[81] The most striking example of this was in *Re Y (Children) (Finding of Fact 2)*.[82] Parker J 'heard evidence from Z, an anonymous undercover officer'[83] who had closely followed the activities of the father and his associates. Z's testimony regarding the father's membership to the proscribed organisation *Al-Muhajiroun* (ALM) and his attendance with the children at events where views supportive of ISIS were expressed provided the court with some of the most damning evidence against the father.[84] In fact Z's testimony against the father played a key role in encouraging Parker J to find that 'the father was at the very least indifferent to the effect on his boys of hearing what were likely to be firebrand inflammatory speeches,'[85] and even going as far as to assert that 'the most likely explanation is that he wanted them to be exposed to those expressions of opinion and belief.'[86]

Importantly, the role of counter-terrorism policing, intelligence and expertise is not confined to providing significant proportions of the evidence against the parents; counter-terrorism expertise is also relied on to *interpret* the meaning and importance of the evidence at hand, to identify and assess the risks present and to determine the best outcome for the children in question. Here, the role played by radicalisation experts in assisting the family judges to establish the risk of harm in a number of radicalisation cases deserves attention. The starkest example of extensive reliance on the opinions and assessments of a radicalisation expert is *Re Y (Children) (Finding of Fact) Part 1*.[87] Throughout the case, Parker J relied upon the analysis and conclusions of 'RX, a practicing Muslim cleric who provides advice on religious and

[80] Ibid, [28].
[81] *Re C (A Child) (No 2) (Application for Public Interest Immunity)* [2017] EWHC 692 (Fam), [3]-[16] and *Re C (No 3) (Application for dismissal or withdrawal of proceedings)* [2017] EWFC 37, [5]-[6].
[82] [2016] EWHC 3825.
[83] Ibid, [39].
[84] Ibid, [62]-[79].
[85] Ibid, [78].
[86] Ibid.
[87] (n49).

cultural matters and who has considerable experience of radicalisation.'[88] What is noticeable about this particular example is Parker J's deference to RX's evidence. RX's interpretations of the meaning of certain gestures and poses within the photographic evidence and his impressions of the religious views of the children were accepted by Parker J without much probing, questioning or contextualisation. For example, RX's view that a 'photograph of the two younger boys [showing them with] a forefinger extended and lifted up'[89] indicated a rejection 'of a secular Rule of Law'[90] and 'is often used by suicide bombers as a prelude to the explosion' of their devices[91] was accepted by Parker J. Although RX acknowledged that the gesture is also used 'at the holiest moment of [Islamic] prayer' to 'signify the oneness and uniqueness of the Almighty,'[92] this more benign, and mainstream, interpretation of the gesture was side-lined.[93] Since other possible interpretations were ignored by RX, to whom Parker J defers as the 'expert in the radicalising elements in the [Islamic] religion,'[94] their salience was not properly explored.[95]

In other radicalisation cases, the risk assessments carried out by radicalisation experts directly influence the outcome of the case. For example, in *Re C, D, E (Welfare: Radicalisation)*[96] 'an expert in radicalisation'[97] was appointed by Cobb J 'to assess and advise in the case.'[98] After conducting an 'initial vulnerability assessment of the parents,'[99] the radicalisation expert worked closely with the parents 'over a period of three months, focusing predominantly on their belief systems.'[100] Because the radicalisation expert was able to report that the parents 'moderated their views,'[101] 'questioned their earlier core assumptions around extremist

[88] Ibid, [23].
[89] Ibid, [92].
[90] Ibid.
[91] Ibid.
[92] Ibid.
[93] Shafi Musaddique, 'BBC apologises for describing common Islamic gesture as an 'ISIS salute' *The National* (London, 5 August 2019).
[94] (n82), [110].
[95] See also: *London Borough of Tower Hamlets v B* (n55), [9] and [28].
[96] [2016] EWHC 3088 (Fam).
[97] Ibid, [8].
[98] Ibid.
[99] Ibid, [9].
[100] Ibid.
[101] Ibid, [11].

dogma'[102] and now 'reject wholeheartedly their previous ideological beliefs,'[103] Cobb J was able to discharge the interim care orders and end the electronic tagging of the parents.[104]

It is of course understandable that in dealing with a new area of risk and in interacting with an unfamiliar area of law and policy, the family courts should rely upon the expertise of those who better understand and are familiar with this area of practice. The use of experts within family court proceedings is routine; given the multiplicity of the issues that affect children and families and that come within the purview of family law, family judges often seek expert assistance to understand complicated issues and to reach informed decisions.[105] Moreover, excessive judicial deference to experts is not unique to the radicalisation cases; undue judicial deference has long been identified as a problem within English family law.[106] However, within the context of the radicalisation cases, excessive judicial deference to and reliance upon radicalisation experts to interpret the meaning of evidence and to assess risks is especially problematic. The radicalisation expertise cohort is closely connected to and is often directly funded by the Government.[107] Radicalisation experts tend to work closely with counter-terrorism policy-makers.[108] Their work is often informed by and implements the theoretical orientations and goals of counter-terrorism policy.[109] By deferring to and accepting the assessments and recommendations of radicalisation experts, the judges allow counter-terrorism policy and practice to heavily inform the way in which risk is identified in the radicalisation cases and to even determine some of the outcomes.

Even in cases where radicalisation experts were not appointed, counter-terrorism policy often still appeared to guide the approach of the judges and influence the outcomes. In some radicalisation cases the judges referred to and used the *Channel Vulnerability Assessment*

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[102] Ibid.
[103] Ibid, [2]-[3].
[104] See also: *A Local Authority v M and Others* [2017] EWHC 2851 (Fam).
[105] Sarah J Brown, Leam A Craig, Rebecca Crookes, Amy Summerfields, Natalie Elizabeth Corbett, Joanne Lackenby and Erica Bowen, 'The use of experts in family law: understanding the processes for commissioning experts and the contribution they make to the family court' (Ministry of Justice Analytical Series, 2015), 30.
[106] Elaine Sutherland, *Undue Deference to Experts Syndrome?* (2006) 16 Indiana International and Comparative Law Review 381, 381-383.
[107] Arun Kundnani, *Radicalisation: the journey of a concept* (2012) 54 Race & Class 3, 3-5 and Peter Neumann and Scott Kleinmann, *How Rigorous is Radicalization Research?* (2013) 9 Democracy and Security 360, 361-363.
[108] Derek Silva, Radicalisation: *The Journey of a Concept Revisited* (2018) 59 Race and Class 1, 7.
[109] Ibid.

Framework, a key component of the *Prevent* Strategy that is primarily used to assess the vulnerability of individuals referred to the *Channel* programme, to determine whether or not a child is at risk of radicalisation.[110] For example, in *Re Y (A Minor: Wardship),*[111] Hayden J used the *Channel Vulnerability Assessment Framework* to determine whether Y was at risk of radicalisation.[112] Applying factors listed in the framework as indicators of propensity towards radicalisation, such as 'feelings of grievance and injustice'[113] and 'a need for identity, meaning and belonging,'[114] Hayden J found that 'so many of the[se] features … seem apposite to Y's own life.'[115] As a result, Y was considered 'extremely vulnerable … to radicalisation.'[116]

In the radicalisation cases the bulk of the evidence that determines significant harm and risk is provided and analysed by counter-terrorism police and intelligence officers. Counter-terrorism policy frameworks measure vulnerability to radicalisation. Counter-terrorism practitioners and radicalisation experts interpret the evidence, assess the risks and suggest courses of action. Counter-terrorism provides the facts and interprets the facts; risk is assessed primarily from a counter-terrorism perspective. Since counter-terrorism policing, policy and practice set the terms of reference and determine the focus of the radicalisation cases, it is difficult to describe them as ordinary child-protection cases. Rather, it seems that in the radicalisation cases, the family courts are "doing" counter-terrorism by the "backdoor."

4. The Dangers of the Interaction Between Family Law and Counter-Terrorism

Having established that the radicalisation cases have facilitated family law's participation in the state's counter-terrorist endeavour, in this section I will argue against the claims of the dominant narrative, which suggest that the radicalisation cases are proportionate and human rights-compliant. In critiquing the involvement of family law in counter-terrorism and

[110] HM Government, 'Channel: Vulnerability assessment framework' (October 2012), 2.
[111] [2015] EWHC 2099 (Fam).
[112] Ibid, [8].
[113] Ibid.
[114] Ibid.
[115] Ibid.
[116] Ibid, [10]. See also: *A City Council v A Mother and Others* (n49), [28].

maintaining that the radicalisation cases represent a worrying legal development, I will firstly contend that when preventing and tackling terrorism, the state should prioritise criminal justice responses. Drawing on the insights of critical scholars of counter-terrorism law, I will argue that the criminal law has a plethora of ordinary as well as specific, terrorism offences that can prevent terrorism and even extremism and radicalisation without the need to expand into other areas of law which lack the openness and potential for accountability and the procedural safeguards of the criminal justice system. Secondly, by adopting a critical approach to family law I will argue that the fundamental principles of family law are not as powerful in resisting the influence of the demands and aims of counter-terrorism policy and practice nor as benign as the dominant narrative assumes them to be.

4.1 Prioritising Criminal Justice Responses to Terrorism

According to Clive Walker, since the 7/7 attacks in 2005, the UK's legal response to terrorism has taken two main forms.[117] The first involves a 'strategy of criminalisation: implementing legal measures that seek criminal justice outcomes.'[118] It is important to note here what Conor Gearty calls the 'plethora of crimes on offer on the anti-terrorism menu.'[119] For in addition to the ordinary crimes of murder, offences against the person and criminal property damage, successive UK Governments have introduced an array of *specific* terrorism offences.[120] These offences have become progressively more preventive and proactive with the years, capturing preparatory, inchoate and at times even "pre-inchoate" terrorist conduct.[121]

Despite the availability of a wide range of preventive terrorism offences that can facilitate very early intervention, the UK authorities have tended to prefer using the second approach, which

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[117] Clive Walker, *Keeping Control of Terrorists Without Losing Control* (2007) 59 Stanford Law Review, 1395, 1400.
[118] Ibid.
[119] Conor Gearty, *Human Rights in an Age of Counter-Terrorism: Injurious, Irrelevant or Indispensable?* (2005) 58 Current Legal Problems 25, 28.
[120] Ibid.
[121] Lucia Zedner and Andrew Ashworth, *The Rise and Restraint of the Preventive State* (2019) 2 The Annual Review of Criminology 429, 429.

involves non-criminal measures designed to prevent and disrupt *potential* terrorist conduct.[122] Non-criminal preventive measures include Control Orders and their replacement Terrorism Prevention and Investigation Orders (TPIMs) which are executive, non-trial based measures that allow the Home Secretary to impose a number of restrictions on terrorism suspects.[123] Other non-criminal preventive measures include citizenship deprivation orders and other immigration and travel restrictions, as well as the *Prevent* Strategy and its affiliated programmes such as *Channel*.[124] These non-criminal preventive measures are often directed at individuals who are suspected of being involved, or are considered to be at risk of becoming involved, in terrorism related activity but cannot be prosecuted for lack of sufficient evidence and/or due to the sensitivity of the evidence which precludes against an open criminal trial.[125]

Non-criminal preventive measures have been strongly criticised for undermining natural justice, human rights and the rule of law.[126] Critical terrorism scholars point in particular to Control Orders and their successors, TPIMs, which impose draconian restrictions such as electronic tags, curfews and restrictions on movement and communication based on evidence that is presented to a judge using closed material proceedings from which the suspected terrorists and their counsel are denied access and using a civil standard of proof.[127] They argue that non-criminal counter-terrorism measures have created a parallel system of justice and terrorism prevention that undermines transparency, denies suspected terrorists the right to an open trial and imposes highly intrusive measures using a lower, civil standard of proof.

In many ways, the radicalisation cases can be described as (yet another) non-criminal counter-terrorism measure. And given theIR rights-curtailing nature, when assessing new non-criminal developments in counter-terrorism practice we must critically interrogate why 'the alternative

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[122] Helen Fenwick, 'Criminalization and Quasi-Criminalization of Terrorism: Emerging Trends and Tensions with Human Rights Law in the UK' in Darryl K Brown, Jenia Iontcheva and Bettina Weisser (Eds) *The Oxford Handbook of Criminal Process* (OUP, 2019), 680.
[123] Control Orders were introduced by the Prevention of Terrorism Act 2005. They were replaced with TPIMs, introduced by the Terrorism Prevention and Investigation Measures Act 2011. See: Helen Fenwick, *Designing ETPIMs around ECHR Review or Normalisation of 'Preventive' Non-Trial-Based Executive Measures?* (2013) 76 Modern Law Review 867.
[124] Walker (n117), 1401.
[125] Eva Nanopoulos, *European Human Rights Law and the Normalisation of the 'Closed Material Procedure': Limit or Source?* (2015) 78 Modern Law Review 913, 913-915.
[126] Helen Fenwick, *Recalibrating ECHR Rights, and the Role of the Human Rights Act Post 9/11: Reasserting International Human Rights Norms in the 'War on Terror'?* (2010) 63 Current Legal Problems 153, 153.
[127] Nanopoulos (n125) 913-916.

that dare not speak its name,'[128] that is *criminal prosecution*, is being bypassed.[129] Therefore, and drawing on the insights of critical terrorism scholars, in the following discussion I will argue that the state should prioritise the first 'criminal justice model'[130] of counter-terrorism.

Admittedly, applying this line of critique, which has been developed in response to and is largely directed at non-criminal executive or policy-based counter-terrorism measures that are used as an alternative to criminal prosecution, to the radicalisation cases is not straightforward. This is because, firstly, the radicalisation cases do not represent an alternative to criminal prosecution. Often, parents facing family court proceedings also face parallel criminal proceedings. Secondly, the radicalisation cases are not "extraordinary" executive or non-legal measures. Although, as I argued in the preceding section, the radicalisation cases are highly unusual cases that cannot be described as ordinary child-protection, they are still family court cases as opposed to executive or policy-based measures.

Therefore, taking these differences into consideration, in what follows I start by acknowledging that, given its recent construction as a child protection issue and an emerging category of child abuse, the state's response to terrorism is not limited to criminal law, but rather extends to the child-protective laws and policies, including family law. I highlight the different aims and functions of, and processes deployed by, criminal and family justice interventions in cases involving child-protection concerns, recognising some of the drawbacks of relying on the criminal justice system within both the child-protection and counter-terrorism contexts.

Nevertheless, I argue that the radicalisation cases and the involvement of family law in preventing and countering terrorism still contributes to the problematic culture of sidelining criminal law and expanding counter-terrorism into other, less qualified areas of law and policy. After emphasising the essentially *criminal* nature of acts of terrorist violence, highlighting the existence of wide range of specific terrorism offences that allow the state to effectively prevent and counter-terrorism and insisting on the comparative importance of the procedural

[128] Gearty (n119), 43.
[129] Ibid.
[130] Christos Boukalas, *U.K. Counterterrorism Law, Pre-Emption, And Politics: Toward 'Authoritarian Legality?'* (2017) 20 New Criminal Law Review 355, 363.

safeguards provided by the criminal trial, I maintain that from the perspective of accountability, transparency and human rights protection, the criminal juistice model of counter-terrorism should be emphasised and prioritised. I conclude by arguing the radicalisation cases and the involvement of family law in the counter-terrorist efforts represents an unnecessary, and ultimnately dangerous, bypassing of the criminal law.

4.1.1 Criminal vs Family Law Responses to the Harm and Abuse of Children: The Limits of Criminal Law

As I will argue in more detail later in this chapter, acts of terrorism (both violent and non-violent) are captured by ordinary, as well as terrorism specific, criminal laws and are, therefore, essentially *criminal* in nature. Nonetheless, and regardless of whether or not one agrees with its construction as such, we have already seen that terrorism is also treated today by the state as a child-protection concern. This means that when the state seeks to prevent and counter terrorism, it does not just see itself as tackling a crime; it also sees itself tackling a new and emerging category of child abuse.

Therefore, before the need to prioritise the criminal justice model of counter-terrorism is explored any further, we need to acknowledge that criminal law is only *one* aspect of the state's legal response to cases involving allegations and/or instances of harm to or abuse of children. For as Laura Hoyano and Caroline Keenan point out, 'legal responses to child abuse are not confined to one legal doctrine.'[131] Rather, both criminal and civil areas of law, including of family law (as well torts and international, regional and domestic human rights law) respond to the harm and abuse of children.[132] We also need to recognise that criminal and civil legal responses to child abuse are motivated by different objectives and seek to achieve divergent outcomes.[133] Criminal law is retrospective, aiming to establish guilt and to punish instances of

[131] Laura Hoyano and Caroline Keenan, *Child Abuse: Law and Policy Across Boundaries* (OUP, 2007), 6.
[132] Ibid.
[133] Ibid.

child abuse.[134] Family law interventions, by contrast, have more preventative and 'protective purposes'[135] and prioritise the welfare and best interests of the child in question.[136]

These divergent motivations and aims are reflected in the different legal principles and concepts that underpin, and the processes and standards of proof deployed by, criminal and civil responses to child abuse and harm. For example, cooperation and 'partnership between a child's family and the state'[137] is one of the fundamental principles underpinning the CA 1989, reflecting the preventative and protective ethos of family law and contrasting with the adversarial nature of criminal justice interventions.[138] Another example is the standard of proof contained in section 31(2) of the CA 1989. Whereas section 31(2) deploys 'the usual standard of proof for evidence in civil cases that the court must be satisfied on the balance of probabilities … the criminal standard requires proof beyond reasonable doubt.'[139] It is interesting to note here that some of the family judges have considered whether, given the gravity of accusations of child abuse and the seriousness of the potential consequences,[140] 'there should be a higher standard of proof for allegations of child abuse'[141] that is closer to the criminal standard of proof.[142]

However, the appellate courts have rejected this suggestion,[143] making it 'clear that there is only one standard of proof in care proceedings: that of the civil standard of balance of probabilities.'[144] Because 'the focus of family law is on the future progress of the child victim'[145] and the aim of family law interventions 'is to guard the child from further harm, not to blame' the alleged perpetrator,[146] the main question for the court is whether, on the balance

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[134] Bernard M. Dickens, *Legal Responses to Child Abuse* (1978) 13 Family Law Quarterly 1, 22.
[135] Ibid, 20.
[136] Heather Keating, '"When the Kissing has to Stop': Children, Sexual Behaviour, and the Criminal Law' in Michael Freeman (Ed), *Law and Childhood Studies* (OUP, 2012), 266.
[137] Hoyano and Keenan (n131), 35.
[138] Ibid, 927.
[139] Ibid, 64.
[140] This point is discussed in more detail below.
[141] Hoyano and Keenan (n131), 65.
[142] See: *Re G (No2) (A Minor)* [1988] 1FLR 314 (Fam Division) 321 B; *Re W (Minors) (Sexual Abuse: Standard of Proof)* [1994] 1FLR 419 (CA) 429 and Re H (n9).
[143] Hoyano and Keenan (n131), 65.
[144] Keating (n11), 231.
[145] Hoyano and Keenan (n131), 180.
[146] Ibid.

of probabilities, the child is suffering (or likely to suffer) significant harm.[147] As a result, 'this threshold test can be satisfied …even if the parent or carer's action was not deliberate'[148] or even if, in parallel criminal proceedings, the evidence is not sufficient enough to meet the beyond reasonable doubt standard of proof.[149] So when it comes to cases involving child-protection issues, criminal and family justice responses play different roles, are motivated by different concerns and engage different processes and standards of proof.

It is also important to highlight some of the *disadvantages* of prioritising the criminal justice system. This is because, as Hoyano and Keenan point out, there is 'much debate about whether'[150] the criminal law should be resorted to, or at least privileged, in cases involving child-protection concerns. Firstly, and arguably most importantly, critics argue that the welfare of children is not *as* central to the criminal justice as it is to the family justice system.[151] Criminal law, they stress, 'is retrospective and punitive.'[152] It is concerned with protecting the safety of the wider public through the containment and deterrence of offenders.[153] It therefore focuses on 'whether the alleged abuser deserves punishment,'[154] rather than on the question of whether punishment will *in fact* be in that particular child's best interests.[155] Secondly, as Hoyano and Keenan demonstrate, when it comes to child abuse and harm, the criminal law of England and Wales is outdated, insufficient and 'remains piecemeal in its development.'[156] With the exception of the recent proliferation of legislation aimed at tackling child sexual abuse,[157] which have developed in response to significant levels of public anxiety and media attention and pressure,[158] much of the criminal law on child abuse has, for decades now, 'remained almost entirely untouched.'[159]

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[147] Ibid.
[148] Ibid.
[149] Ibid.
[150] Ibid, 121-22.
[151] Ibid.
[152] Hoyano and Keenan (n131), 122.
[153] Keating (n136), 202.
[154] Hoyano and Keenan (n131), 122.
[155] Dickens (n134), 22.
[156] Ibid.
[157] Ss 5-24 Sexual Offences Act 2003; s. 67-68 Serious Crime Act 2015 and s.176 Policing and Crime Act 2017.
[158] Hoyano and Keenan (n131), 213.
[159] Ibid, 214.

Finally, it is also worth pointing here to some of the *specific* disadvantages reliance on the criminal justice system in the counter-terrorism context. As was mentioned earlier, terrorism offences are broadly defined,[160] with widely construed precursor, inchoate and even "pre-inchoate" terrorism offences.[161] For example, section 57 of the Terrorism Act 2000 criminalises the possession of anything 'in circumstances that could give rise to a reasonable suspicion' that it could be used 'for a purpose connected with the commission, preparation or instigation of an act of terrorism.'[162] Section 58 of the same Act criminalises the collection and possession of 'information of a kind likely to be useful to someone committing or preparing an act of terrorism.'[163] Section 5 of the Terrorism Act 2006 contains 'the very broad offen[ce] of engaging in any conduct in preparation for terrorism.'[164] These offences are future orientated, with a 'broad, unspecified actus reus'[165] that criminalises almost 'any conduct leading to [terrorism], including conduct that would otherwise be lawful.'[166] They also include 'defences of innocent or reasonable possession'[167] which has essentially created a reversed burden of proof,[168] since 'the onus is on the defendant to prove that possession, collection and preparation were undertaken for purposes other than terrorism.'[169] By stretching the scope of criminal liability and penalisation, Christos Boukalas argues that some of these broad and indeterminate terrorism offences can be regarded as rather authoritarian in nature, compromising and potentially undermining the core functions of criminal law.[170]

4.1.2 An Unnecessary and Dangerous Bypassing of Criminal Law?

Clearly, then, the limits of the criminal justice system when it comes to dealing with child-protection concerns and the illiberal nature of many terrorism offences must be borne in mind before the criminal justice model of counter-terrorism can be favoured. Nevertheless, in what

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[160] Fenwick, (n122), 688.
[161] Ibid, 679-80 and Boukalas (n130), 366.
[162] S.57 (1) Terrorism Act 2000.
[163] S. 58 (1)(a) Terrorism Act 2000.
[164] Fenwick (n122), 683. See: ss 5(1)-(3) Terrorism Act 2006.
[165] Boukalas (n130), 365.
[166] Ibid.
[167] Fenwick (n122), 684. See ss.57 (2) and 58(3) Terrorism Act 2000.
[168] Fenwick, Ibid.
[169] Boukalas (n130), 365.
[170] Ibid, 370-372.

follows I will agree with critical terrorism scholars who claim that 'in terms of maintaining the legitimacy and credibility of the use of state power against terrorism, there are [overall] greater advantages to using the criminal [justice] system.'[171] To that end, I will demonstrate how and why from the perspective of constitutionalism, rule of law adherence and human rights protection the radicalisation cases and the interaction between family law and counter-terrorism denote an unnecessary, and at times troubling, bypassing of criminal law.

Firstly, as I observed earlier in the chapter, acts of terrorism are *criminal* acts of political violence.[172] Although the previous subsection acknowledged that terrorism, extremism and radicalisation have recently been constructed and treated by the UK Government as child-protection concerns, this thesis has consistently maintained, and indeed has demonstrated, that such a construction is problematic, unconvincing and highly contested – not least by child protection professionals. By contrast, although terrorism scholars and counter-terrorism policy-makers disagree fiercely on how to define terrorism,[173] they nonetheless seem to agree that acts of terrorism involve, at their core, the unlawful and criminal use of violence for the achievement of political or ideological ends.[174] Terrorists are, first and foremost criminals; as such, they should face criminal sanctions following a criminal trial.[175]

It is worth pointing out here that insisting that the state prioritises the criminal justice model of counter-terrorism does not mean that the state's counter-terrorist response will be *reactive* rather than *proactive*.[176] As we saw in the previous sub-section, when countering and even preventing terrorism, the state has at its disposal an endless supply of increasingly widely construed terrorism offences that capture the most precursory of terrorist conduct, including the dissemination of extremist speech that justifies and supports terrorism and has the potential

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[171] Fenwick (n122), 699.
[172] Section 1 Terrorism Act 2000.
[173] Conor Gearty, *Terror* (Faber and Faber ,1991) 1-5 and 13 and *Richard English, Terrorism: How To Respond* (OUP, 2009) 1-5.
[174] Ibid, 1-2; Ben Saul, 'Defining "Terrorism" to Protect Human Rights' in Deborah Staines (Ed), *Interrogating the War on Terror: Interdisciplinary Perspectives* (Cambridge Scholars Press 2007), 190-195 and Conor Gearty, *Terrorism and Morality* (2004) 61 Whitehall Papers 19, 19-20.
[175] Helen Fenwick, *Responding to the ISIS threat: extending coercive non-trial-based-measures in the Counter-Terrorism and Security Act 2015* (2016) 30 International Review of Law, Computers & Technology 174, 185.
[176] Helen Fenwick, *Proactive counter-terrorist strategies in conflict with human rights* (2008) 22 International Review of Law, Computers and Technology 259, 259-260.

to radicalise vulnerable individuals.[177] Because these widely construed terrorism offences exist, Fenwick maintains that 'the infrastructure for [the] use of criminal prosecutions in a *preventive* … sense is already in place.'[178] And as Gearty points out, the UK has a

> 'a very strong prosecutorial team determined to protect the public within the ordinary [criminal] law and this has led to numerous arrests and charges under the current law – the ordinary law of murder, criminal damage and offences against the person and so on as well as the special terrorism law[s].'[179]

The existence of this wide range of broad offences that can facilitate early intervention and can capture the most inchoate of terrorism-related activity suggests that criminal law not only should but also *can* 'take the main role'[180] in preventing terrorism.

Secondly, insisting that those suspected or accused of involvement in terrorism related activity should, first and foremost, be tried in the criminal courts is also important because the criminal trial is open and therefore promotes the principle of open justice - a principle that is fundamental to the functioning of a liberal democracy.[181] Fairness, natural justice and accountability demand that those accused by the (powerful) state of serious wrongdoing are afforded the right to defend themselves and to challenge the accusations under the scrutinising gaze of the media and the attention of the wider public.[182] Moreover, as Fenwick points out, 'the requirement to prove mens rea in a criminal trial means that the personal responsibility of the defendant is demonstrated publicly.'[183] This reduces the likelihood that miscarriages of justice are committed in the name of preventing and countering terrorism.[184] The criminal justice system also affords the accused with important procedural safeguards,[185] most notably

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[177] Boukalas (n130), 355-357.
[178] Helen Fenwick, *Redefining the Role of TPIMs in combatting "home-grown" terrorism within the widening counter-terror framework* (2015) European Human Rights Law Review 41, 49-50. My emphasis.
[179] Gearty (n119), 44. See also Boukalas (n130), 365-366.
[180] Fenwick (n175), 185.
[181] Fenwick (n122), 699.
[182] Walker (n117), 1401.
[183] Ibid, 700.
[184] Ibid, 701.
[185] Fenwick, (n176) 260.

a higher standard of proof that requires the state to substantiate its claims beyond reasonable doubt before sanctions are imposed[186] and the existence of trial by jury.[187]

By contrast, even though the majority of the parents involved in the radicalisation cases have either not been charged or have been acquitted of terrorism offences, they still stand accused of substantial terrorism-related wrongdoing. They face serious legal consequences, such as electronic tagging and other forms of considerable state intervention in their private and family life,[188] as well as significant reputational damage.[189] The family judges make serious findings against parents (i.e. that they glorify terrorism, support terrorist organisations, are violent or non-violent extremists who have radicalised, or who are likely to radicalise, their children[190]) and sanction intrusive measures using a lower, civil standard of proof.

Regarding the lower, civil standard of proof, it is worth considering here the claim made by the dominant narrative that in the radicalisation cases the judges have strictly and rather stringently applied the threshold criteria specified in section 31(2) of the CA 1989 and discussed earlier in the chapter.[191] When claiming that the family judges have rigorously applied the evidentiary burden, requiring local authorities to provide *cogent* evidence of harm or likely harm as a result of radicalisation before sanctioning compulsory state intervention, the dominant narrative has highlighted the approach of Munby P in *Re X (Children) (No 3)*[192] and *Re Y (Children) (No3)*.[193] Although the evidence against the parents regarding their travel plans and attempts to join ISIS in Syria in both cases was strong and, in the words of Munby P, 'cr[ied] out for an explanation,'[194] and despite the fact that the parents' consistent lying made the court 'suspicious,'[195] Munby P insisted that 'suspicion is not enough.'[196] Maintaining that

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[186] Conor Gearty, *Liberty and Security* (Pluto Press 2013), 75.
[187] David Whittaker, *Counter-Terrorism and Human Rights* (Routledge, 2009), 62.
[188] This is discussed below.
[189] E.g: the father in *Re X (Children) (No3)* [2015] EWHC 3651 (Fam), [74] expressed his concern at the impact of the family court proceedings on the children's reputation at school.
[190] See: Chapter Six.
[191] Martin Downs, 'Police Anti-terrorism "Lead" calls for children to be protected from terrorist parents on a par with paedophilia' (UK Human Rights Blog, 1 March 2018).
[192] (n189).
[193] [2016] EWHC 503 (Fam).
[194] Ibid, [96].
[195] Ibid, [105].
[196] Ibid.

'findings of fact … must be based on evidence ... and not on suspicion or speculation,'[197] Munby P dismissed the care applications, highlighting the lack of 'evidence … worth the name … to support the assertion that these loving and devoted parents would be motivated to expose their children to the realities of life in Syria.'[198] The approach of Munby P and a couple of other family judges to the threshold criteria[199] has led proponents of the dominant narrative to claim that a particularly forensic approach to the threshold criteria is present in the radicalisation cases.[200]

Nonetheless, the fact that the threshold criteria has been carefully applied in some of the radicalisation is not sufficient to ameliorate some of the human rights risks that follow from the involvement of family law in counter-terrorism. This is because while a forensic assessment of the evidence is present in *some* radicalisation cases, it is absent in many more others, even when the cases are factually similar. This becomes clear when the approach of Munby P to the evidence in *Re X (Children) (No3)*[201] is compared to the approach of Parker J in the factually almost identical case of *Re Y Children (Findings of Fact as to Radicalisation 2)*.[202] In *Re X (Children) (No3)*,[203] the existence of ISIS flags and extremist materials was not regarded by Munby P as sufficient evidence that the parents were extremist individuals motivated by their ideological convictions to seek to join ISIS in Syria.[204] The lack of *cogent* evidence proving the ideological motivations of the parents meant that although the dubious luggage items, the inconsistent explanations and even lies regarding the attempted journey to the Turkish-Syrian border left Munby P feeling highly suspicious as to the purpose of their journey, he did not find that the children were harmed or at risk of harm.[205]

By contrast, Parker J's approach to similar evidence and similar allegations in *Re Y Children (Findings of Fact as to Radicalisation 2)*[206] was very different. Unlike Munby P, Parker J drew

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[197] Ibid, [20].
[198] (n189), [57].
[199] See: *A Local Authority v X, Y and Z* [2017] EWHC 3741 (Fam) and *Re A, B, C, D and E* [2018] EWHC 1841 (Fam).
[200] Downs (n191); interview with Solicitor A (n75) and interview with Barrister C (n75).
[201] (n189).
[202] (n82).
[203] (n189).
[204] Ibid, [47].
[205] Ibid, [111].
[206] (n82).

negative inferences from suspicious, albeit rather inconclusive, pieces of evidence and accorded considerable weight to inconsistencies in the evidence of different family members.[207] For example, the existence of photos of the children at home in camouflage, with weapons around them and a video displaying a flag similar to the one used by ISIS led Parker J to find that 'these children have been encouraged from a very early age to adopt these postures and gestures which are linked with violence.' [208] Rejecting any other, possibly innocuous, explanation of the photographs and videos, and the fact that they had been taken long before the emergence of ISIS,[209] Parker J went as far as to proclaim that 'it is not too strong to regard it [the photograph] as grooming of these children to see themselves as political/religious warriors.'[210] Nor did Parker J demand cogent evidence of extremism before granting the local authority's application for care orders, asserting that she did 'not need to find [out] how extreme B's views are in order to adhere to [her] finding that this is a radicalised family environment.'[211] There is, therefore, a diversity of judicial approaches to the threshold criteria in the radicalisation cases. Munby P's particularly forensic approach is not shared by all of the judges deciding the radicalisation cases.[212]

Furthermore, the evidentiary standard that is used in the family courts, however rigorously it is applied, is still the civil standard of proof. It is already, therefore, lacking in the safeguards afforded by a criminal standard of proof of beyond reasonable doubt that arguably should be applied to individuals who are accused of the serious allegations present in the radicalisation cases, especially those pertaining to glorification and support for terrorism and potential involvement in terrorist related activity. The risk to human rights and the potential erosion of rule of law principles that this poses is reflected in the fact that in some of the radicalisation cases where the most draconian family law outcomes were ordered, the police were unable, for lack of sufficient evidence, to charge the parents in question with terrorism offences.[213] It is therefore hard to disagree with the claim made by some of my interviewees that family law

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[207] Ibid, [82]-[94].
[208] Ibid, [94].
[209] Ibid.
[210] Ibid, [95].
[211] Ibid, [36].
[212] *Leicester City Council v T and Others* [2016] EWFC 20; *London Borough of Tower Hamlets* (n55); *Re K (Children)* (n76) and *A Local Authority v T and Others* (n72).
[213] *Leicester City Council v T and Others* (ibid); *Re Y (Children) (Finding of Fact 2)* (n82) and *A Local Authority v A Mother and Others* [2018] EWHC 2056 (Fam).

involvement in some of these cases is a form of backhanded criminalisation or a way to apply pressure on parents who might be suspected of involvement with terrorist and/or extremist organisations but who, for lack of sufficiently robust evidence, have not been charged or have been acquitted.[214] Given the private nature of family court proceedings, this is done away from the scrutinising media gaze and the public accountability that comes with open legal proceedings. Therefore, the radicalisation cases appear to have established yet another parallel, opaque and rights-curtailing system of terrorism prevention.

The preceding discussion disrupted the dominant narrative's largely positive view of the radicalisation cases, critiquing the interaction between family law and counter-terrorism that they have engendered by putting forward two different, but closely related claims. Firstly, it has claimed that the involvement of family law in the state's counter-terrorist endeavours represents an *unnecessary* bypassing of the criminal law. Maintaining that terrorism is, fundamentally, a crime and pointing to the existence of a wide range of general and specific offences that facilitate early intervention and can capture the most prepatory of terrorism-related activity, it has demonstrated why the criminal justice system should be 'the focus of counter-terrorism efforts.'[215] Secondly, the preceding discussion has contended that from the perspective of human rights protection, open justice and accountability, the recent interaction between family law and counter-terrorism represent a *dangerous* bypassing of the criminal law. Arguing that non-criminal counter-terrorism measures, including most recently the radiclaisation cases, do not provide those accused by the state of engagement in terrorism-related activity with the same procedural safeguards as those provided by criminal prosecution, the discussion suggested that the radicalisation cases perpetuate UK counter-terrorism's disturbing 'culture of criminal process avoidance.'[216]

[214] Interview with Solicitor A (n75) and interview with Barrister C (n75).
[215] Fenwick (n176), 268.
[216] Fenwick, (n175), 185.

4.2 Deconstructing the Benign View of Family Law: A Critique

By praising the family courts for upholding the conventional principles of family law, such as the welfare principle and their sensitivity to the rights of the parents and children involved, the dominant narrative implies two things about the nature of family law's involvement in counter-terrorism. Firstly, it suggests that the cardinal precept of family law, the welfare principle (also known as the paramountcy principle[217]) has empowered the family courts to focus on the best interests of the child in question and to therefore resist the undue influence of counter-terrorism concerns and considerations. Secondly, by stressing that the approach of the family courts is proportionate and human rights compliant, the dominant narrative suggests that family law's involvement in counter-terrorism is a positive, essentially benign legal development.

In what follows, although I will acknowledge that there is *some* truth to these particular claims made by proponents of the dominant narrative, I will also warn against taking this to mean that the family courts have resisted the influence of counter-terrorism or that the radicalisation cases are proportionate and human rights compliant. Drawing on insights from critical scholars engaged in deconstructing benign understandings of family law,[218] I will argue against the dominant narrative's overly - perhaps dangerously - optimistic view of family law in general and the radicalisation cases specifically. Firstly, I will argue that this view appears to misunderstand the nature and history of the paramountcy principle, obscuring its capacity to facilitate, rather than resist, the influence of counter-terrorism thinking and practice. Secondly, I will argue that this view overlooks the potentially draconian, rights-curtailing and discriminatory nature of family law orders in general and the outcomes in the radicalisation cases more specifically, even if they might appear at first as non-interventionist, proportionate and human rights-compliant. I will argue that this view of family law and the radicalisation cases as essentially benign is problematic, therefore, because it prevents a full and critical appreciation of the consequences of family law's involvement in counter-terrorism in recent years.

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[217] Helen Reece, *The Paramountcy Principle: Consensus or Construct* (1996) 49 Current Legal Problems 267, 267.
[218] Lynne Wrennall, *Surveillance and Child Protection: De-Mystifying the Trojan Horse* (2010) 7 Surveillance and Society 304, 304-306.

4.2.1 The Indeterminacy and Malleability of the Paramountcy Principle: Security is Welfare

The family judges have been emphatic that in the radicalisation cases the welfare of the child or children before them is of paramount importance, regardless of the wider considerations of counter-terrorism policy and practice. The welfare or paramountcy principle was clearly asserted in one of the earliest radicalisation cases, *London Borough of Tower Hamlets v M and Others*.[219] In that case, Hayden J stated that 'it is the interest of the individual child that is paramount. This cannot be eclipsed by wider considerations of counter terrorism policy or operations.'[220] This strong affirmation of the paramountcy of children's welfare interests over and above the demands of counter-terrorism was repeated by family judges in a number of cases[221] and shows, according to the dominant narrative, that the best interests of children inform and guide the decisions reached by the judges in the radicalisation cases, rather than the priorities of counter-terrorism policy and practice.[222]

The problem with this claim, however, is that it misunderstands the paramountcy principle and its relationship to wider state policies and concerns. The claim assumes that there is a clear dichotomy between the welfare interests of children on the one hand and counter-terrorism concerns and considerations on the other and that, therefore, in their decisions, family judges can prioritise the former over the latter. However, such a clear-cut dichotomy cannot, and does not, exist in practice. For as Harry Hendrick demonstrates in his exploration of the history of child welfare in England and Wales, within law and policy concern for children's welfare is never 'isolated from other … national anxieties and concerns.'[223] What is considered to be in the best interests of a child is not independent of or separate from the state's 'social, political, economic and cultural concerns.'[224] Looking specifically at the welfare principle as enshrined

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[219] [2015] EWHC 869 (Fam).
[220]Ibid, [18].
[221] E.g. *Leicester City Council v T and Others* (n212), [17]; *Re X (Children); Re Y (Children)* [2015] EWHC 2265 (Fam), [17] and *London Borough of Tower Hamlets v B,* (n55) [143]. See also: *Radicalisation Cases in the Family Courts: Guidance issued by Sir James Munby President of the Family Division on 8 October 2015*, [4].
[222] Edwards (n14), 56.
[223] Harry Hendrick, *Child Welfare: Historical dimensions, contemporary debates* (The Policy press 2003), 20.
[224] Ibid, 40.

in the CA 1989, Alison Diduck and Felicity Kaganas argue that the paramountcy principle is 'noted for its indeterminacy.'[225] According to Helen Reece, this 'indeterminacy of the paramountcy principle has allowed other policies and principles to smuggle themselves into children's cases.'[226] The indeterminacy and malleability of the paramountcy principle, Reece argues, even allows the principles and policies that are in fact 'extraneous to children's welfare'[227] to 'exert influence from behind the smokescreen of the paramountcy principle'[228] and to be 'justified in terms of the child's best interests.'[229]

The same could be said of the relationship between counter-terrorism and the operation of the paramountcy principle in the radicalisation cases. As I noted earlier, the *Prevent* Strategy and the statutory 'Prevent Duty' have constructed extremism and radicalisation as child-protection and safeguarding concerns. Boukalas argues that in doing so, the Government has aligned its child welfare policies and institutions 'with the security apparatus,'[230] blurring the distinction between child-welfare and national security. Therefore, 'the logic of security and the logic of welfare have been … intertwined.'[231] To prevent and counter terrorism, extremism and radicalisation is to protect children and promote their welfare and vice versa. Consequently, even if the judges attempt to focus on the best interests of the child in front of them, the welfare of children cannot really be distinguished from the wider aims and priorities of counter-terrorism policy and practice.

It is not surprising, therefore, that in the radicalisation cases, the welfare of children is often constructed in a way that aligns with and complements the counter-terrorism and national security interests of the state. For example, in *A Local Authority v M and Others*,[232] Newton J stressed that in this case, the 'focus and paramount concern is solely with the welfare of each

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[225] Alison Diduck and Felicity Kaganas, *Family law, Gender and the State: Text, Cases and Materials* (Hart Publishing, 2012), 384.
[226]Reece (n217), 268.
[227] Ibid, 296.
[228] Ibid.
[229] Ibid.
[230] Christos Boukalas, *The Prevent Paradox: destroying liberalism in order to protect it* (2019) 72 Crime, Law and Social Change 467.
[231] Francesco Ragazzi, *Countering terrorism and radicalisation: Securitising social policy?* (2017) 37 Critical Social Policy 164, 172.
[232] (n104).

of the children'[233] and that 'wider issues of public protection are for others.'[234] To that end, Newton J agreed with the children's appointed guardian that 'the children's best interests would be best served'[235] by returning the children to their father's care rather than finding them 'some as yet unidentified foster home.'[236] Part of the reason why return home was considered to be in the best interests of the children was that it was 'in fact more likely that they will be at risk of further radicalisation if they are not permitted to return home.'[237] The 'considerable distress'[238] that would be felt by the children as they lived apart from their father was likely, in Newton J's view, to increase their 'vulnerability to extremist views.'[239] In contrast, if they return home the children will receive the 'support of *Channel*'[240] and their father will be given training to 'ensure that the risk of … exposure … to radicalism/extreme political beliefs [is] kept to a minimum.'[241] In this case, therefore, return home was considered to be in the best interests of the children *because* it was the outcome most likely to prevent their radicalisation.[242]

A similar line of reasoning can be detected in *A City Council v A Mother and Others*.[243] Knowles J authorised care orders that allowed the children to remain at home only after the parents 'signed a written agreement with the Local Authority'[244] stipulating that 'the family will engage with *Prevent*'[245] and that 'the parents will ensure that the older members of the family do not expose any of the younger children to websites or downloaded materials endorsing or supporting violent jihad or organisations which may be in breach of anti-terrorism legislation.'[246] Again, therefore, whilst return home under the auspices of a care order was considered to be the outcome that was most 'consistent with the children's welfare,'[247] it was conditional on engagement with the *Prevent* programme and a written undertaking by the

[233] Ibid, [3].
[234] Ibid.
[235] Ibid, [41].
[236] Ibid.
[237] Ibid, [47].
[238] Ibid, [16].
[239] Ibid.
[240] Ibid, [49].
[241] Ibid, [7].
[242] See also: *London Borough of Tower Hamlets v B* (n55), [115].
[243] (n49).
[244] Ibid, [36].
[245] Ibid.
[246] Ibid.
[247] Ibid, [33].

parents 'to ensure that their younger children are not exposed to … [views] supportive of violent jihad.'[248] The point here is that even though the family judges insist that in the radicalisation cases the welfare of the child, rather than security considerations, is their paramount concern, a closer analysis shows that in reality security and welfare are not as antithetical to each other as they might seem. Often in the radicalisation cases, security *is* welfare.

But whilst convergence between the welfare principle and counter-terrorism aims and priorities in these two cases might appear implicit, it was explicit in other radicalisation cases. An important example here is *Re X, Y and Z (Disclosure to the Security Service)*.[249] MacDonald J granted the Metropolitan Police Service permission to disclose to the Security Service a copy of the mother's statement and a judgment containing findings against her. Although MacDonald J did 'acknowledge the very clear tension that exists in maintaining the confidentiality of the family proceedings … [and]… the strong public interest in ensuring the effective operation of police and intelligence agencies engaged in counter-terrorism,'[250] he nevertheless concluded that in this case 'the onward disclosure of the information requested by the security service' will 'be to the benefit of Z.'[251] This is because, MacDonald J maintained, the 'identification and prosecution of criminal conduct by one or both of the parents will assist in formulating more informed safeguarding for Z.'[252] In fact, MacDonald J went as far as to proclaim that disclosure to the Security Service was also 'in the welfare interests of children more generally'[253] because 'it is plainly in the welfare interests of children … that suspected terrorist activity is investigated, and where necessary, protective measures taken and criminal sanctions deployed.'[254] In MacDonald J's view, then, assisting security services and the state in its counter-terrorism operations is in the best interests of this child and promotes and safeguards the welfare interests of all children.

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[248] Ibid, [36].
[249] [2016] EWHC 2400 (Fam).
[250] Ibid, [57].
[251] Ibid, [61].
[252] Ibid.
[253] Ibid, [62].
[254] Ibid.

A similar claim was made by Pauffley J in *Re C (No 3)*.[255] Pauffley J refused the local authority's application to dismiss care proceedings or permit their withdrawal. What is particularly interesting here is one of the reasons Pauffley J gave to explain her decision. Referring to an initial communication from the Counter-Terrorism Command, which claimed that the father holds an Islamist extremist mind-set and had travelled to Syria to fight with Islamist groups, Pauffley J asserted that 'there would be an inherent incongruity in one arm of the State maintaining that the father is a terrorist with an Islamist extremist mind-set whilst another appears powerless to take any step so as to protect the welfare interests of the child.'[256] This explanation suggests that the counter-terrorism police and security services and the family justice system are, and should be, united in what they seek to achieve.

The point here is that the judges in the radicalisation cases have complemented and reinforced, rather than challenged and resisted, counter-terrorism policies, considerations and priorities. The indeterminacy of the paramountcy principle has therefore been instrumental in facilitating a conceptual and operational overlap between the priorities and aims of the family justice system and the priorities and aims of counter-terrorism and national security.

4.2.2 Draconian Outcomes and Potential Discrimination

Having established that the conventional principles of family law, and in particular the welfare or paramountcy principle, have not helped the family courts to resist the influence of counter-terrorism policy and practice and have, in fact, facilitated the achievement of the state's counter-terrorist agenda, at this point it is important to critically appraise the human rights impact of family law's involvement in the realm of counter-terrorism.

The dominant narrative has praised the family courts for adopting a human rights-compliant approach to the radicalisation cases. Proponents of the first narrative have pointed to the

[255] (n81).
[256] Ibid, [72].

relatively low number of permanent removals ordered to argue that the radicalisation cases are proportionate, fair and just. Looking at the outcomes and final orders sanctioned by the judges demonstrates that the permanent removals are indeed a rarity in the radicalisation cases. Of the published radicalisation cases, only four cases have resulted in the permanent removal of children from the care of their parents. Moreover, in these cases removal has tended to follow some of the most serious findings against the parent(s) in question. For example, the children in *A Local Authority v T and Others*[257] and *A Local Authority v A Mother and Others*[258] were permanently removed from the care of their mothers after both mothers admitted that they had travelled to and lived in ISIS-held territories in Syria with their children.[259] Importantly, in both of these cases, the children were placed with a grandparent after permanent removal, supporting the claim made by the dominant narrative that in the radicalisation cases the family judges have preferred to keep the children within the care of the extended family and have been careful to guard against family break-up.

This preference for less interventionist outcomes is also reflected in the type of care orders that have been sanctioned in the radicalisation cases. Care orders are, of course, intrusive orders that divide parental responsibility for a child between the parents and the local authority and empower the local authority to remove a child from his or her home. However, in the radicalisation cases, the judges appear to prefer to grant care orders that allow children to remain at home under the care of their parents.[260] Other less onerous outcomes and forms of intervention such as supervision orders, wardship orders and voluntary agreements between families and the local authorities and "children in need" plans have been even more frequently ordered by the family courts in the radicalisation cases.[261] These outcomes would appear to lend credence to the claim made by the dominant narrative that the family judges have held on to the fundamental principles of family law, including its perceived non-interventionist stance and respect for private and family life.[262]

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[257] (n72).
[258] (n213).
[259] Although that is not always the case. In a *Leicester City Council v T and Others* (n212) and *Re Y (Children) (Finding of Fact 2)* (n82) the children were removed based on findings that the parents were extremists who had *attempted* to take the children with them to Syria.
[260] E.g. *Lancashire County Council v M and Others* [2016] EWFC 9, [42].
[261] These are discussed below.
[262] Judith Masson, *Managing Risk Under the Children Act 1989: Diversion in Child Care?* (1992) 1 Child Abuse Review 103, 104.

The dominant narrative claims that the family court's respect for human rights is also reflected in the sensitivity displayed in some of the radicalisation cases to the religious rights of the parents and the children under both English family law and the ECHR.[263] Again, there is some truth to this assessment. For example, in *Re A and B (Children: Restrictions on Parental Responsibility: Extremism and Radicalisation)*[264] Russell J severely berated counsel for the mother for putting forward allegations of extremism and radicalisation against the father 'without evidence.'[265] In doing so, counsel for the mother had, according to Russell J 'effectively sought to equate Islam with radicalisation.'[266] Russell J emphatically rejected such a suggestion as unacceptable, stressing that the family courts would not 'accept or tolerate any suggestion that adherents of the Islamic Faith, or any other faith, are ipso facto, supporters of extremism.'[267]

Clearly, then, there is a certain amount of truth to the argument put forward by the dominant narrative regarding the proportionate final outcomes in some of the radicalisation cases and the maintaining of human rights standards. However, in what follows, I will warn against overemphasising (the significance of) these small displays of proportionality and human rights compliance. Looking closely and critically at the type of outcomes that have been ordered in the radicalisation cases, I argue, firstly, that focusing too much on the relatively low number of permanent removals obscures some of the other intrusive forms of intervention that have been facilitated by the family courts. Secondly, I argue that rather than addressing extremism and radicalisation more generally, the radicalisation cases exhibit a bias against perceived Islamist extremism and radicalisation, suggesting that the interaction between family law and counter-terrorism is potentially discriminatory. This discriminatory aspect and the intrusive nature of the interventions sanctioned in the radicalisation cases are exacerbated by the fact that an adequately thorough human rights analysis is absent.

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[263] Edwards (n14), 56-59.
[264] [2016] EWFC 40.
[265] Ibid, [119].
[266] Ibid.
[267] Ibid.

i. Beyond Permanent Removals

Draconian and Punitive Outcomes

The power to remove a child from his or her home is one of the greatest powers the state has and must, therefore, be approached critically. Although permanent removals are a rarity in the radicalisation cases, that does not mean they are non-existent; as already noted four of the published radicalisation cases resulted in permanent removal.[268] Looking closely at the *specific* nature and implications of the outcomes involving permanent removal indicates that these outcomes are rather draconian.

For example, in *Re Y (Children) (Findings as to Radicalisation) Part 2*,[269] while 'the three younger children [were]… removed from the family home and placed with foster parents,'[270] the older sister was 'placed separately from her two brothers.'[271] Therefore, in this case the children were not only permanently removed from their father and family home, they were also separated from each other. An equally drastic permanent removal was ordered in *A Local Authority v A Mother and Others*.[272] In that case, Knowles J decided that the young girl's welfare required her permanent removal from the care of her mother and 'her placement with the paternal grandmother under the auspices of a special guardianship order.'[273] The severity of this outcome was exacerbated by two further stipulations. First, Knowles J ordered a reduction in the contact time between the mother and her daughter who was, at that time, in foster care despite the mother's strongly expressed 'desire to see [her daughter] as often as she does now.'[274] This reduction in contact was necessary, Knowles J maintained, because 'contact at a greater frequency runs the risk of unsettling'[275] the girl who 'must undergo a difficult

[268] See: *A Local Authority v T and Others* (n72); Leicester *City Council v T and Others* (n212); and *A Local Authority v A Mother and Others* (n213). The interviewees said that they had come across permanent removals in the unpublished radicalisation cases they worked on.
[269] (n82).
[270] Ibid, [1].
[271] Ibid.
[272] (n213).
[273] Ibid, [7].
[274] Ibid, [63].
[275] Ibid.

process of putting down new roots in her grandmother's home.'[276] The weakening of the 'strong bond between mother and daughter'[277] through further significant reduction in the contact time afforded to the mother makes this a particularly draconian outcome.

Secondly, since the daughter was to be raised by her non-Muslim paternal grandmother, Knowles J acknowledged that she will no longer 'be brought up as a Muslim.'[278] Whilst Knowles J recognised that this amounted to a limitation on the girl's 'right to manifest her religious beliefs,'[279] he maintained that this will be 'mitigated by the paternal grandmother's willingness to educate and inform J about her religious and cultural heritage so that in due course she can make her own choices.'[280] However, the fact that the paternal grandmother is a Christian and had raised her son, the girl's father, as a Christian was not given sufficient attention.[281] This means that the girl in question will not be entering a religiously neutral environment. Rather, she is entering and will be raised in a Christian environment. As Suhraiya Jivraj and Didi Herman argue, although 'an implicit Christian normativity'[282] within family court proceedings involving children tends to render Christianity 'invisible,'[283] when a non-Christian child is removed from his or her religious home and community and permanently placed with a Christian family, they are potentially 'placed on the road to conversion.'[284]

Finally, while it is true the removal in the radicalisation cases usually follows serious findings against the parents in question, it is not always clear that permanent removal was necessary or desirable from the perspective of the child's welfare needs. For example, in *A Local Authority v A Mother and Others,*[285] to deal with the risk of travel to ISIS-held territories, the mother informed the court that 'she will agree to any supervision requirements'[286] and even proposed

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[276] Ibid.
[277] Ibid, [44].
[278] Ibid, [49].
[279] Ibid.
[280] Ibid.
[281] *A Local Authority v A Mother and Others* (n72), [16].
[282] Suhraiya Jivraj and Didi Herman, '*It is difficult for a white judge to understand': orientalism, racialisaion and Christianity in English child welfare cases* (2009) 21 Child and Family Law Quarterly 283, 297.
[283] Ibid, 292.
[284] Ibid.
[285] (n213).
[286] Ibid, [43].

'injunctive relief so as, for example, to prevent her from travelling abroad.'[287] It is not clear why these less interventionist measures were rejected by Knowles J in this case and were not considered by the judges in the other radicalisation cases involving permanent removal, especially since in earlier radicalisation cases, electronic tagging was seen as a sufficient measure for protecting children at imminent risk of travel to ISIS-held territories in Syria and/or radicalisation. Nor is the emotional harm that could be caused to the children as a direct result of removal from the care of their parents given sufficient consideration in these radicalisation cases. For as Hayden J conceded in *London Borough of Tower Hamlets v B,*[288] removal is not necessarily beneficial to children, even those who have been radicalised in their homes.[289] But, as Lynne Wrennall argues, removals are not always ordered by the family courts because they are in the best interests of the children or because they meet their needs. Rather, removals can have a 'punitive'[290] quality to them.

Therefore, focusing on the relatively low number of permanent removals may obscure the draconian and perhaps even unnecessary and punitive nature of this particular outcome in this small number of cases.

Frequent Temporary Removals

Even if *permanent* removals are a rare outcome in the radicalisation cases, *temporary* removals under either police protection and emergency protection orders (EPOs) or interim care orders are not. Police protection and EPOs are mechanisms that exist under Part V of the CA 1989 and allow either the police or the local authority to protect children from harm in cases of emergency. Police protection is a power, whereas an EOP is, as the name suggests, a court order Under section 46 of the CA 1989, if a police constable has reasonable cause to believe that a child is likely to suffer significant harm, he or she can remove the child under police

[287] Ibid.
[288] (n55).
[289] Ibid, [143]-[147].
[290] Wrennall (n218), 306.

protection to a suitable accommodation[291] or ensure that the child's removal from a place they are being accommodated in is prevented.[292] When a child comes into police protection, a designated officer is charged with making enquiries about the situation of the child in question[293] and must release the child if he or she no longer thinks that there is reasonable cause to believe that the child is likely to suffer significant harm.[294] EPOs provide alternative forms of immediate emergency protection to police protection.[295] Under section 44 of the CA 1989, the court can grant a local authority's application for an EPO if it is satisfied that there is reasonable grounds to believe that the child is likely to suffer significant harm if they are not removed[296] or enquiries are being made by the local authority and these enquiries are being unreasonably obstructed but there is reasonable cause to believe that access to the child is urgently required.[297] An EPO gives the local authority parental authority over the child whilst the order is in force,[298]although it must return the child home as soon as it considers it safe to do so.[299]

Although the period of separation that results from police protection and EPOs, lasting between several hours[300] to two weeks,[301] removal under these measures is still concerning for a number of reasons, undermining, the rights of both parents and children.[302] Firstly, the threshold criteria under both police protection and emergency protection orders is very low, requiring no evidence of actual or likely harm but simply a reasonable cause to believe that harm may occur in the future.[303] The fact that police protection and EPOs facilitate significant state intervention based on a very low evidentiary threshold has led Masson to claim that they are drastic measures.[304] Secondly, neither police protection nor EPOs afford parents with a meaningful

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[291] S. 46(1)(a) CA 1989.
[292] S.46(1)(b) CA 1989.
[293] S.46 (3).
[294] S.46(5).
[295] Miles, George and Harris-Short (n45), 905.
[296] S. 44(1)(a)(i) CA 1989.
[297] S.44(1)(a)(ii) CA 1989.
[298] S.44(5)(b) CA 1989.
[299] S.44(10)-(12) CA 1989.
[300] A child cannot be kept under police protection for more than 72 hours; see s.46(6) of CA 1989.
[301] A child can be removed under an EPO for a maximum of eight days: s. 45(1) CA 1989. A local authority can apply to extend this for an extra 7 days if it has reasonable cause to believe that the child is likely to suffer significant harm if the EPO is not extended: s.45(5) CA (1989).
[302] Judith Masson, *Fair Trials in Child Protection* (2006) 28 Journal of Social Welfare 15, 16-24.
[303] Ibid.
[304] Judith Masson, 'Human Rights in Child Protection: Emergency Action and Its Impact' in Peter Lodrup and Eva Modvar (Eds), *Family Life and Human Rights* (Gyldendal Norsk Forlag A, 2004), 475.

opportunity to contest their child's removal.[305] In the case of police protection, there is no mechanism allowing parents to challenge the removal of their children.[306] Although there are not many published cases dealing with police protection, Masson's extensive empirical research has revealed that they are used in a draconian manner, at times as a way to avoid court oversight and accountability.[307] Emergency protection orders can often also involve the removal of children *without notice* to the parents and grant parental responsibility to the applicant local authority. And although parents can apply to discharge an EPO,[308] Masson's empirical research suggests that limited time and resources often preclude parents from actually contesting EPOs or participating meaningfully in EPO hearings.[309]

More common in the radicalisation cases is the temporary removal of children from their families under interim care orders. Because care proceedings can be lengthy, under section 38(1) of the CA 1989 the court can adjourn proceedings and make an interim order that can protect the child until the final hearing[310] or it can make an interim order whilst investigations under section 37(1) of the CA 1989 are carried out.[311] A court can only make an interim order if it is satisfied that, given the circumstances of the case, there are reasonable grounds for believing that the threshold criteria as specified in section 31(2) of the CA 1989 are met.[312]

Even though the removal of children under interim care orders is temporary, it still involves a drastic state measure. Firstly, 'an interim order has the same legal effect as a final order,'[313] granting the local authority parental responsibility over the child.[314] Secondly, an interim care order usually lasts for the duration of proceedings.[315] This means even though removal under care interim orders is temporary, in practice it can last from several months up to more than a

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[305] Masson (n302), 24-27.
[306] Judith Masson, *Emergency intervention to protect children: using and avoiding legal control* (2005) 17 Child and Family Law Quarterly 75, 95.
[307] Ibid, 79 and 93.
[308] S.45(8)-(11) CA 1989.
[309] Masson, (n302) 27 and Masson (n304), 475.
[310] S.38(1)(a) CA 1989
[311] S. 38(1)(b) CA 1989.
[312] S.38(2) CA 1989.
[313] Miles, George and Harris-Short (45), 910.
[314] S. 38 (6)-(7). See also: *Re L (Interim Care Order: Power of Court* [1996] 2 FLR 742.
[315]Miles, George and Harris-Short (45), 910.

year.[316] For example, in *Re X (Children)*,[317] the children remained in foster care under interim care orders for four months before they were returned home after their parents were fitted with electronic tags.[318] Perhaps the longest temporary removal was experienced by the children in *A Local Authority v M and Others*,[319] who spent over two years in foster care before being returned to the care of their father.[320] As Andrew Bainham argues, for the anxious parents whose children have been removed and who are threatened with the permanent removal of their children, the idea that these are simply *temporary* removals is not reassuring.[321]

Thirdly, this problematic aspect of temporary removal under interim care orders is compounded by the fact that the threshold requirement at the interim stage is significantly lower than the threshold criteria for final orders discussed earlier. Bainham argues that 'virtually anything negative in a parent's history will satisfy'[322] the threshold criteria at the threshold stage. Given that the interim threshold is so low, Bainham found that it is 'futile much of the time' for the parents 'to contest the interim threshold.'[323] Since they are so rarely opposed, interim care orders are often granted readily by the family courts.[324] This is reflected in some of the radicalisation cases.[325] Thirdly, interim care orders allow the relevant local authority to obtain parental responsibility for the children in question and grants it considerable amount of control over the trajectory of the care proceedings.[326]

The point here is that focusing on the low number of permanent removals obscures the extent of state intervention that the radicalisation cases have otherwise facilitated in the private and family lives of the children and parents involved. Looking beyond the issue of removal and examining the processes, measures and final outcomes sanctioned by the family courts highlights the significant amount of state intervention enabled by the radicalisation cases.

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[316] Andrew Bainham, *Interim Care Orders: Is the Bar set too Low?* (2011) Family Law 374, 377.
[317] (n221).
[318] (n221). See also: *A City Council v A Mother* (n49) and *Lancashire County Council v A Mother* (n260) for similar.
[319] (n104).
[320] See also: *Re K (Children)* (n76) and *Re S (Care Proceedings: Extremism)* [2018] EWHC 645 (Fam).
[321] Bainham (n316), 377.
[322] Ibid.
[323] Ibid.
[324] Ibid, 374.
[325] *Re K (Children)* (n76) *and Re M (Children)* (n72).
[326] Bainham (n316), 378.

In the majority of the radicalisation cases, the children were returned home after a period of temporary removal pending final hearings. However, in many of these cases, the return of children to their homes depended on parental compliance with intrusive measures that facilitate the monitoring of children in their home and the close scrutiny and regulation of family life, either through electronic tags, care orders or supervision and wardship orders.

A. Electronic Tagging

In *Re X (Children); Re Y (Children),*[327] Munby P decided to return the children home and to replace the interim care orders with a 'comprehensive and far-reaching package of protective measures.'[328] This package included the removal of passports, provision for monitoring through unannounced visits by the local authority, regular reporting at police stations and electronic tagging.[329] In addition, Munby P also insisted that the parents must 'supply to the local authority… the details of any social media accounts and email accounts which [they] or the children may have together with the passwords.'[330] Likewise, in *Re C, D, E (Radicalisation: Fact Finding)*,[331] Cobb J allowed the children to return home 'as long as the parents were electronically tagged and firm arrangements were in place for the monitoring of the children'[332] and the parents agreed to a 'tightly worded contract with the Local Authority' granting it access to the children.[333]

In these cases, return home did not end state intervention. Rather, the return of the children depended on parental compliance with conditions that grant the state considerable power to

[327] (n221).
[328] Ibid, [88].
[329] Ibid, [49]-[50].
[330] *Re X; Re Y (Children) (No2)* [2015] EWHC 2358 (Fam), [13].
[331] (n72).
[332] Ibid, [124].
[333] Ibid, [2].

regulate their daily life and relationship with their children. The host of measures and conditions outlined above place the families in question under intense scrutiny and facilitate a degree of state surveillance that is similar to and almost as draconian as executive counter-terrorism measures, such as Control Orders and TPIMs.

B. Care Orders

Even though care orders that require the permanent removal of children are rare in the context of the radicalisation cases, care orders generally are not. Care orders grant the applicant local authority parental responsibility and allow it to remove the children without further application to the court, thereby severely restricting parental freedom and closely regulating the parent-child relationship. Moreover, whilst theoretically under a care order parental responsibility is shared between the parents and the local authority, in reality the local authority controls what happens to the children in its care; parents cannot exercise their parental responsibility in ways that are incompatible with the local authority's care plans.

A close examination of the radicalisation cases which have resulted in care orders indicates that these care plans can be coercive. For example, in *London Borough of Tower Hamlets v B*,[334] Hayden J asked the local authority to develop a care plan that allowed the police and social services to access and monitor the family computer and ensured that the social worker was 'not deflected by [the] controlling or manipulative behaviour' of the mother.[335] To further manage the mother's controlling behaviour, Hayden J specified that the care 'plans for all the children should enable them to get space from the mother'[336] and that, therefore, 'the mother should not attend the children's *Prevent* sessions and neither should [she] collect them from school.'[337] The care plan that was authorised in this case enabled considerable local authority and police surveillance of the family and closely regulated the mother's relationship with her children.

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[334] (n55).
[335] Ibid, [124].
[336] Ibid.
[337] Ibid.

A similarly prescriptive care plan was authorised by Knowles J in *A City Council v A Mother and Others*.[338] In that case, the children were returned home under a care order that required the parents to commit to and sign 'a written agreement with the Local Authority'[339] which stipulated that 'the family will engage with *Prevent*, that the family's electronic devices will be subject to inspection on request and may also have monitoring software installed'[340] and that prohibited the family from making 'trips outside this jurisdiction without prior consultation with the Local Authority and its express agreement in writing.'[341] The agreement also required the parents to 'ensure that the older members of the family do not expose any of the younger children' to views 'endorsing or supporting violent jihad.'[342] This stipulation essentially transformed the parents into counter-extremism agents in their own home, requiring them to actively prevent the exposure of their children to extremist thought and to monitor the flow of ideas within their family. That the family court comes dangerously close to facilitating thought policing was made alarmingly clear in Knowles J's remark regarding the 'magnitude of the task which lies ahead for the local authority and its partner agencies in seeking to recalibrate the beliefs of these parents towards a more inclusive and tolerant acceptance of those living in this country who do not observe the Muslim faith.'[343] In this case, then, recalibrating the beliefs of the parents is required before the children can be returned home to their parents.

C. Supervision and Wardship Orders

Although a supervision order was made in only one of the *published* radicalisation cases,[344] other empirical studies and my interviews indicate that supervision orders are, and have increasingly become, a common outcome.[345] Supervision orders are less interventionist than care orders. The child remains at home and parental responsibility is not shared between the

[338] (n49).
[339] Ibid, [36].
[340] Ibid.
[341] Ibid.
[342] Ibid.
[343] Ibid, [38].
[344] *Re C (No2)* and *Re C(No3)* (n81).
[345] Cafcass, 'Study of data held by Cafcass in cases featuring radicalisation' (Cafcass, 2016), 5; interview with Solicitor A (n75) and interview with Barrister C (n75).

parents and the local authority. While a supervision order empowers a designated officer (the supervisor) to advise, assist and befriend the child and to provide advice to the parents, it does not authorise the supervisor to enter the home and access the child. Nevertheless, supervision orders can still be coercive. Lack of parental compliance with the advice of and requests from the supervisor can persuade the supervisor to apply for a care order.

As was discussed in section (2), the dominant narrative argues that the high number of wardship radicalisation cases shows that the family courts prefer outcomes that are less intrusive than care orders. It is true that wardship orders can be regarded as less invasive than care orders - they allow the child to remain at home and they do not require the local authority to conduct as many assessments.[346] However, focusing on the comparison between wardship orders and care orders obscures the invasive dimension to wardship orders. A wardship order, as Hayden J highlighted in *Brighton and Hove City Council v Y*,[347] 'removes parental responsibility from [the] parent [and] places it in the hands of the High Court.'[348] Because a wardship order vests parental responsibility in the High Court, all of the major decisions relating to the child's upbringing 'require the approval of the High Court for as long as the wardship order is in operation.'[349] This is a significant restriction on parental autonomy.

Informal State Intervention: Bespoke Agreements and "Children in Need" Plans

Lauren Devine argues that under the CA 1989, the state has 'a variety of processes at its disposal which effectively enable continuous and open-ended monitoring of family life.'[350] For even when *formal* state intervention under care, supervision or wardship orders ends, local authorities and the family courts can extend intervention by offering the family support and

[346] *Brighton and Hove City Council v Y* (n33), [22].
[347] Ibid.
[348] Ibid, [17].
[349] *London Borough of Tower Hamlets v M and Others* (n219), [5].
[350] Lauren Devine, *The adequacy of remedies in respect of unsubstantiated accusations of child abuse* (2017) 29 Child and Family Law Quarterly 43, 45.

voluntary services under *informal* and bespoke agreements and "children in need" plans. Although these might at first appear to be less intrusive than formal court orders, they should nevertheless be approached with caution because they can facilitate considerable state regulation and impact the rights of children and parents.[351]

Firstly, according to Judith Masson, informal agreements and services allow local authorities to monitor families.[352] Moreover, since services are often provided on the understanding that failure to cooperate will lead to compulsory state interventions, these informal types of intervention allow the local authority to regulate family life and change the way the family behaves.[353] Secondly, Masson argues that informal agreements between local authorities and parents provide an opportunity for coercion.[354] This is because, as Felicity Kaganas points out, an agreement between the local authority and parents 'is generally weighted in favour of professionals.'[355] The imbalance of power creates the potential for pressure and coercion.[356] Finally, given that informal state intervention takes place beyond formal court orders, Masson claims the lack of public scrutiny and the lack of procedural guarantees is also a cause for concern.[357]

These coercive aspects to informal types of intervention are reflected in the radicalisation cases. For example, in *A Local Authority v Y*,[358] Hayden J was concerned that Y would be unsupported when he turned 18 and the wardship order would automatically expire. Therefore, Hayden J approved a 'bespoke service … designed around [Y's] own needs'[359] that 'will last until the age of 21.'[360] The purpose of this bespoke service, according to Hayden J, was to enable the local authority to continue to be involved in Y's life so as 'to ensure that Y [does] not travel'[361]

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[351] Masson (n302), 94-96.
[352] Ibid.
[353] Felicity Kaganas, 'Child protection, gender and rights' in Julie Wallbank, Shazia Choudhry and Jonathan Herring (Eds), *Rights, Gender and Family Law* (Routledge 2010), 61.
[354] Masson (n302), 82.
[355] Kaganas (n353), 54.
[356] Ibid.
[357] Masson (n302), 94-96.
[358] [2017] EWHC 968 (Fam).
[359] Ibid, [10].
[360] Ibid.
[361] Ibid, [6].

to Syria and 'to permit a flexible approach that allow[s] Y to be protected at home'[362] with the targeted support and assistance of the agencies involved in his safeguarding and protection. Through this informal, bespoke agreement, the state was able to continue to intervene in, monitor and regulate Y's life even after its formal intervention had to be brought to an end. Importantly, moreover, Hayden J indicated that in addition to support, Y 'will also have to agree to information sharing which will involve submitting to a degree of intrusion.'[363] Therefore, even though the informal intervention in Y's life was couched in the benign terms of support and assistance, it still contained an element of coercive intrusion and rights-curtailment.

This intrusive and rights-limiting dimension to informal intervention was even clearer in *Re C,D,E (Welfare: Radicalisation)*.[364] Cobb J decided to 'discharge the interim care orders and make no further orders.'[365] However, a closer analysis of the case suggests that this decision depended on the parents' compliance with two informal but intrusive interventions. The first involved the parents working closely, over a period of nine-months, with a radicalisation expert 'in relation to their attitudes to Islam.'[366] After working with the parents 'on their belief system,'[367] including their 'beliefs on ex-communication; … the notion of jihad; … the parents' understanding of the difference between extremist beliefs and Islamic normative beliefs around theologically justified reasons for political rebellion; …[and] diversity within the Islamic tradition, pluralism and the rule of law…'[368] the expert reported, and Cobb J accepted, that 'the parents now reject their previous ideological beliefs which they now acknowledge to have been extreme and unorthodox.'[369] Therefore, only after being 'sufficiently satisfied'[370] that the religious 'attitudes of the parents have genuinely changed,'[371] did Cobb J bring the proceedings to an end. Secondly, even though formal proceedings were brought to an end in this case, Cobb J allowed for local authority involvement in the life of this family to continue *informally* by

[362] Ibid.
[363] Ibid, [10].
[364] (n96).
[365] Ibid, [2].
[366] Ibid, [3].
[367] Ibid.
[368] Ibid.
[369] Ibid.
[370] Ibid, [17].
[371] Ibid.

placing 'all three children' on a '"Children in Need" plan',[372] entitling the family to a host of child and parental support services under section 17 of the CA 1989.

The discussion above shows why the dominant narrative's focus on the low number of permanent removals that have resulted from the radicalisation cases is misleading. Although permanent removal is certainly the most severe form of state intervention in family life, this should not obscure the fact that there are other intrusive forms of state intervention that have been facilitated by the radicalisation cases. Highlighting and critically analysing these other forms of intervention shows why the recent involvement of family law in counter-terrorism is, in fact, a troubling legal development.

ii. Potential Discrimination and an Absent Human Rights Analysis

What makes family law's recent involvement in counter-terrorism even more troubling is the discriminatory aspects of family law in general and the radicalisation cases in particular and the absence of an adequate and robust human rights analysis that can offset both their draconian and discriminatory features. In what follows, I will develop both of these claims further. I will argue, firstly, that the radicalisation cases focus on Muslims at a potentially discriminatory double-standard. Secondly, I will maintain that this potential discrimination and the intrusive interventions into private and family life discussed earlier are not addressed or rectified in the radicalisation cases given that an appropriately rigorous human rights analysis appears to be missing.

Double Standards?

Like other areas of law, family law suffers from a race problem. Empirical studies have shown that ethnic minority children, including Muslim children, are over-represented within the state

[372] Ibid, [2].

care system in England and Wales.[373] Ethnic minority families, again including Muslim families, report experiencing discrimination and racial stereotyping within the family justice system.[374] This wider context must be borne in mind when the interaction between family law and counter-terrorism is evaluated. For as I indicated in Chapter Two, the families involved in and impacted by the radicalisation cases are all Muslim families from ethnic minority backgrounds. To date, there are no published radicalisation cases involving allegations of far-right extremism and radicalisation. This has remained the case despite the increase both in far-right terrorism and government measures tackling the rise of far-right extremism and terrorism in recent years.[375]

For example, in *Re A* (*Application for Care and Placement Orders: Local Authority Failings)*,[376] the local authority claimed that the father had been an active member of the far-right group the English Defence League (EDL), that he had been involved in organising violent protests and had espoused racist views.[377] However, Munby P maintained that 'the mere fact … that the father was a member… of the EDL is neither here nor there, whatever one may think of its beliefs and policies.'[378] Dismissing the applications for a care order, Munby P went as far as to state that '[m]embership of an extremist group such as the EDL was not, without more, any basis for care proceedings.'[379] There are, of course, important differences between Islamist and far-right radicalisation, extremism and terrorism, not least the level and intensity of the threat posed by jihadist terror groups such as ISIS. But for allegations as serious as active and violent involvement in a far-right organisation as notorious as the EDL in a climate of rising far-right extremism and terrorism, to be so quickly and strongly dismissed as irrelevant without further probing hints at a possible double-standard.

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[373] E.g. Charlie Owen and June Statham, 'Disproportionality in Child Welfare' (Department for Children, Schools and Families, June 2009) 6 and Sariya Cheruvallil-Contractor, Savita De Sousa, Mphatso Boto Phiri and Alison Halford, 'Among the last ones to leave? Understanding the Journeys of Muslim Children in the Care System in England' (Department for Education and Penny Appeal, May 2018), pgs. 13 and 30.
[374] Ibid.
[375] See: HM Government 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (Cm 9608 June 2018), 8 HM Government, 'Fact sheet: Right wing terrorism' (20 September 2019).
[376] [2015] EWFC 11.
[377] Ibid, [64]-[69].
[378] Ibid, [71].
[379] Ibid.

Likewise, allegations of far-right extremism were also marginalised and largely ignored in *Re V (Children)*.[380] While the focus of the case was on the alleged sexual abuse committed by the father against the children,[381] part of the case against the father included allegations that 'he was a supporter of Hitler'[382] and had made comments in front of his children 'suggesting exposure to what might be characterised as extreme right-wing prejudices.'[383] But even though the father 'conceded that the reference to his fascination with Hitler had substance to it',[384] and accepted that the comments he made regarding what 'the Nazis did to [the] Jewish population… [were] frightening,'[385] this particular allegation was not explored by Wood J further, nor was the potential impact of the father's neo-Nazi views on the children subjected to any investigation. That these allegations of far-right extremism were not even probed or questioned further by the judge once again highlights a possible double-standard within the family justice system's approach to allegations of extremism and radicalisation.

This attitude to allegations of far-right extremism differs significantly to the approach of the family courts in the radicalisation cases where allegations of Islamist extremism and radicalisation are taken more seriously and are subjected to investigation. For example, in *Re A and B (Children)*,[386] a case that is factually similar to *Re V*,[387] the local authority applied to the court for care orders primarily because of the father's long criminal history which, the local authority argued, caused the children instability and emotional harm.[388] Part of the local authority's case against the father included concerns regarding extremist materials found in the home.[389] The psychologist instructed to conduct the father's parenting assessment was also 'invited to consider whether the father held extreme views'[390] and 'whether the father's views, whatever they be, were impacting upon his parenting of his children.'[391] There is, therefore, a discrepancy in the way in which the family courts respond to and treat allegations of Islamist

[380] [2015] EWHC B28 (Fam).
[381] Ibid, [4].
[382] Ibid.
[383] Ibid, [49].
[384] Ibid.
[385] Ibid, [102].
[386] [2016] EWFC B43.
[387] (n380).
[388] (n386), [24].
[389] Ibid, [25].
[390] Ibid, [44].
[391] Ibid.

extremism and far-right extremism, indicating the possible existence of racial and religious bias and potentially even discrimination.

A Missing Human Rights Analysis

The impact of both the potential discrimination present in the radicalisation cases and the draconian and intrusive outcomes is exacerbated by the fact that an appropriately thorough consideration of the human rights of the children and parents involved is almost non-existent.

The lack of a robust human rights analysis in the radicalisation cases is rather unsurprising. As David Bonner, Helen Fenwick and Sonia Harris-Short found in their study of the relationship between family law and the Human Rights Act (HRA) 1998 - the principal piece of human rights legislation in the UK - within the family law context, 'judicial reasoning under the Human Rights Act is most conspicuous by its absence.'[392] Despite the 'general growth of what is now commonly referred to as a "human rights culture" in the UK,'[393] Harris-Short argues that there is still much 'opposition to the use of rights-based reasoning in the family law context.'[394] Although resistance to the HRA is apparent in many areas of law, Shazia Choudhry and Helen Fenwick argue that such 'resistance is especially and increasingly apparent in the field of family law'.[395] This is not to say that the HRA has had no impact on family law. Some scholars argue that the HRA has had a positive impact on public family law. Harris-Short, for example, argues that in care proceedings, the family courts have implemented the demands of the HRA by 'imposing increasingly high standards on local authorities in terms of their decision-making processes,'[396] resulting in positive changes 'to both law and social work

[392] David Bonner, Helen Fenwick and Sonia Harris-Short, *Judicial Approaches to the Human Rights Act* (2003) 52 International and Comparative Law Quarterly 549, 572. See also: Shazia Choudhury and Jonathan Herring, *European Human Rights and Family Law* (Hart publishing, 2010).
[393] Sonia Harris-Short, *Family Law and the Human Rights Act 1998: Judicial Restraint or Revolution* (2005) 3 Child and Family Law Quarterly 329, 330.
[394] Ibid, 329.
[395] Shazia Choudhry and Helen Fenwick, *Taking the Rights of Parents and Children Seriously: Confronting the Welfare Principle under the Human Rights Act* (2005) 25 Oxford Journal of Legal Studies 453, 453.
[396] Harris-Short (n393), 342.

practice.'[397] Nevertheless, Harris-Short maintains that resistance to rights based-reasoning prevails within family law,[398] including within care proceedings.[399]

The resistance to human rights analysis within family law is expressed in two main ways, both of which are reflected in the radicalisation cases. The first involves a cursory, formulaic and superficial human rights analysis where human rights issues and potential concerns are quickly dismissed 'without … any serious attempt at a substantive analysis.'[400] Here, the comments made by Cobb J towards the end of *Re C, D, E (Radicalisation: Fact Finding)*[401] are representative of this limited human rights analysis. After approving the local authority's application for interim care orders and authorising the electronic tagging of the parents, Cobb J confined the human rights analysis in this case to a brief and very generic paragraph: 'I have consciously reflected on the rights of these parents, under Article 9 of the ECHR to freedom of thought and religion, including the right to manifest their religion or belief … they have similar potent rights under Article 10 of the ECHR to freedom of expression and the right or freedom to hold opinions and to receive and impart information and ideas without interference.'[402] A similarly limited human rights analysis is present in *Re M (Wardship: Jurisdiction and Powers)*.[403] After making wardship orders, Munby P provided assurances that the orders made represent 'a proportionate interference with the rights of the mother, the father and the children under Article 6 and 8' of the ECHR.[404] The second, more common, approach to human rights analysis within family cases involves a total failure to engage with human rights at all.[405] This tendency of the family courts to be 'silent'[406] on human rights is reflected in the high number of radicalisation cases where any mention of human rights is entirely missing.[407]

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[397] Ibid, 340.
[398] Ibid, pgs. 350 and 360.
[399] Ibid.
[400] Bonner et al (n392), 578.
[401] (n72).
[402] Ibid, [32].
[403] (n62).
[404] Ibid, [9].
[405] Bonner et al (n392), 576.
[406] Ibid.
[407] In 26 of the overall 46 published radicalisation cases, mention of human rights is entirely missing.

Therefore, contrary to the claim put forward in the dominant narrative, which maintains that in deciding the radicalisation cases the family judges have applied a human rights analysis and have adopted a human rights compliant approach, it appears that considerations of human rights are largely absent within the radicalisation cases. Whilst it is true that in the cases that have prevented children from travelling to ISIS-held territories the judges have taken into account and protected the rights of children to life and their right to freedom from torture and inhuman and degrading treatment under Articles 2 and 3 of the ECHR, their other rights to respect for private and family life, freedom of religion, equality and non-discrimination and the rights of their parents have not been adequately considered.

5. Conclusion

In this chapter, I subjected the radicalisation cases to a critical appraisal and claimed that the interaction between family law and counter-terrorism that is facilitated by the radicalisation cases is a worrying legal development with concerning, perhaps even dangerous, implications. In evaluating the implications of the emergence of the radicalisation cases, the chapter identified a dominant narrative found in the cases themselves, practitioner commentaries, civil society reports and academic literature. This narrative regards the radicalisation cases as a positive legal development and praises the family judges for maintaining the conventional principles of family law. It characterises the radicalisation cases as ordinary child-protection cases. The chapter critically interrogated the claims of the dominant narrative. Challenging the characterisation of the radicalisation cases as ordinary child-protection cases and highlighting the significant influence of the logic, priorities and goals of counter-terrorism law, policy and practice on the radicalisation cases, the chapter argued that the cases are shaped by, reinforce and even implement the aims and considerations of counter-terrorism policy and practice.

After maintaining that the radicalisation cases have facilitated the extensive, if surreptitious, involvement of the family courts in the counter-terrorist endeavour, the chapter critiqued and emphasised the dangers of this involvement. Insisting that, since terrorism is essentially a crime that can and should be primarily responded to and tackled using the criminal law and highlighting the intrusive outcomes and potentially discriminatory impact of the radicalisation

cases, the chapter argued that the interaction between family law and counter-terrorism is a concerning legal development with serious implications for human rights, equality and open justice.

Chapter Eight

Implications for Counter-Terrorism Law and Family Law

1. Introduction

The radicalisation cases, this thesis has claimed, have facilitated an unprecedented interaction between two previously unconnected areas of law: family law and counter-terrorism law. The involvement of family law in counter-terrorism and the expansion of counter-terrorism into family law has obviously impacted *both* areas of law. This chapter identifies and assesses the implications of this recent interaction, arguing that although the radicalisation cases continue and further develop some of the pre-existing negative trends within both areas of law, ultimately their emergence in the family courts has introduced a number of significant and problematic changes that have altered both counter-terrorism law and family law. These changes, the chapter demonstrates, add to the authoritarian tendencies in both areas of law, limiting fundamental rights and undermining the principle of open justice.

In section (2), I argue that although the radicalisation cases build on and augments a number of concerning recent trends within counter-terrorism law, the involvement of the family justice system in preventing and countering terrorism has altered counter-terrorism law in the UK in a number of significant and alarming ways. By expanding the number of jurisdictions available to the counter-terrorist state, I contend that the interaction between family law and counter-terrorism allows the state to directly target the family and to regulate the parent-child relationship in the name of counter-terrorism, signifying an unprecedented expansion of counter-terrorism law and posing serious challenges to children's rights, as well as the right to respect for private and family life. Likewise, in section (3), I argue that although the radicalisation cases draw on and further entrench some pre-existing and widely criticised trends within English family law, their recent emergence has introduced important changes that have securitised family law, interfered with the right to an open and fair hearing and limited the religious rights of minority parents.

2. The Implications of the Interaction on Counter-Terrorism Law

In this section, I will examine the implications of the recent interaction between family law and counter-terrorism for counter-terrorism law. Firstly, I will demonstrate how the radicalisation cases build on and accentuate some of existing concerning trends within counter-terrorism law. However, identifying some of the significant changes to counter-terrorism law and practice that have been introduced as a result of the recent emergence of the radicalisation cases, I will argue that the involvement of family law in counter-terrorism has altered the face of counter-terrorism law in the UK in a number of important and problematic ways.

2.1 Building on the Problematic Features of Counter-Terrorism Law

In a way, the emergence of the radicalisation cases is symptomatic of and entrenches a number of pre-existing problematic recent developments in post-9/11 counter-terrorism law in the UK. Firstly, although the involvement of the family justice system in counter-terrorism is novel, the proliferation in the number of jurisdictions available to the counter-terrorist state and the expansion of counter-terrorism into traditionally unrelated areas of law and policy is not.[1] As I argued in the preceding chapter, in the UK, counter-terrorism interventions have increasingly *bypassed* criminal law.[2] Rather than simply charging terrorism suspects with terrorism offences and bringing them to trial, counter-terrorism law has resorted to using preventive *administrative* measures such as Control Orders and their successors, Terrorism Prevention and Investigation Measures (TPIMs).[3] It is also worth noting, as Lucia Zedner points out, that in recent years the state has increasingly 'resort[ed] to immigration law as a tool of counter-terrorism,'[4] leading to its securitisation.[5] The radicalisation cases and the involvement of

[1] Jessie Blackbourn, Fiona De Londras and Lydia Morgan, *Accountability and Review in the Counter-Terrorist State* (Bristol University Press 2020), 21.
[2] Christos Boukalas, *U.K. Counterterrorism Law, Pre-Emption, And Politics: Toward 'Authoritarian Legality?'* (2017) 20 New Criminal Law Review 355, 366.
[3] See: Chapter Seven.
[4] Lucia Zedner, *Citizenship Deprivation, Security and Human Rights* (2016) European Journal of Migration and Law 1, 3.
[5] Ibid. My emphasis.

family law in counter-terrorism continues this trend towards bypassing the criminal law and the securitisation of other areas of law. In fact, some of the orders sanctioned in the radicalisation cases that were discussed in the previous chapter, such as electronic tagging, extended curfews, passport confiscation, regular announced and unannounced visits and the monitoring of electronic devices, strongly resemble the restrictions imposed by Control Orders and TPIMs.[6] It could also be said that the radicalisation cases have enabled the state to resort to family law as a tool for counter-terrorism, leading to its securitisation.

Therefore, counter-terrorism laws and measures have been 'mainstreamed across the domains of law and government.'[7] Counter-terrorism law has increasingly expanded into areas of law and policy 'traditionally unrelated to national security,'[8] permeating a number of jurisdictions.[9] As a result, counter-terrorism law can no longer be regarded as temporary or exceptional. Rather, it has been normalised into the ordinary or 'banal'[10] areas of the legal system, becoming a 'quotidian part of law, institutions and activities and preoccupations of the state.'[11] Here, the interaction between family law and counter-terrorism can be regarded as the latest example of the mainstreaming of counter-terrorism.

Secondly, although the direct nature and extent of the targeting and regulation of the family for the sake of preventing and countering terrorism is, as I will demonstrate below, unprecedented, this is not the first time that counter-terrorism measures have impacted the family and securitised the home. TPIMs, and their predecessor, Control Orders, impacted the private and family lives of those subjected to them.[12] As I highlighted in the previous chapter, individuals subjected to TPIMs (or who were subjected to Control Orders) are electronically tagged at all times, required to abide by curfews, subjected to unannounced visits by and searches from the police and security services and have their electronic communications and equipment

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[6] E.g: *Re X (Children); Re Y (Children)* EWHC 2265 (Fam) and *Re C, D, E (Radicalisation: Fact Finding)* [2016] EWHC 3087.
[7] Blackbourn et al (n1), 21.
[8] Ibid.
[9] Ibid, 27.
[10] Ibid, 31.
[11] Ibid, 1.
[12] Lucia Zedner, *Preventive Justice or Pre-Punishment? The Case of Control Orders* (2007) 60 Current Legal Problems 174, 176.

monitored. Since these measures granted counter-terrorism officials access to the home and enabled the monitoring and supervision of home life, Zedner argues that they 'impinge[d] on the right to respect for private life'[13] and represented a 'significant interference with family life.'[14]

Thirdly, as will become clear below, although the impact of the radicalisation cases on the rights of children is particularly noticeable, it is important to recognise that counter-terrorism measures, laws and policies have led to 'extensive violations of children's rights' in recent years.[15] Human and children's rights organisations have expressed concern about the increasing criminalisation of children under counter-terrorism laws, arguing that they do not appropriately distinguish between adult and children offenders or take into consideration the specific circumstances and needs of children.[16] They have also highlighted the negative impact of "soft" counter-terrorism policies and measures, like the *Channel* programme and the introduction of the statutory 'Prevent Duty' in schools, on the human rights of children.[17] The 'Prevent Duty,' they argue, has securitised the education of children, has had a chilling effect on their activism and freedom of expression and has subjected children – especially Muslim children – to potentially discriminatory monitoring.[18] Yet, the impact that both "hard" and "soft" counter-terrorism laws, policies and measures have had on the rights of children has not really been acknowledged by the UK Government or taken into account within parliamentary and independent reviews of terrorism legislation.[19] Finally, the weak human rights analysis and the lack of attention and concern displayed within the radicalisation cases regarding the human rights of the parents and children concerned appears to reflect and exacerbate the general lack of concern and attention afforded to human rights within counter-terrorism law and policy.[20]

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[13] Ibid, 182.
[14] Ibid.
[15] 'Caught in Cross Fire: an international survey of anti-terrorism legislation and its impact on children' (Child Rights International Network, November 2018), 4.
[16] Ibid, 8.
[17] 'Eroding Trust: The UK's PREVENT Counter-Extremism Strategy in Health and Education' (Open Society Justice Initiative, 2016), 15-18.
[18] Ibid and 'Prevent and the Children Rights Convention' (Institute of Race Relations).
[19] 'Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools (Rights Watch UK, July 2016).
[20] Conor Gearty, 'Terrorist threats, anti-terrorism and the case against the Human Rights Act' in Frederick Cowell (ed), *Critically examining the case against the 1998 Human Rights Act* (Routledge, 2017).

2.2 Changing Counter-Terrorism Law

However, although it appears that the radicalisation cases continue some of the pre-existing controversial features of the counter-terrorist state, their recent emergence in the family courts represents a *watershed* moment in UK counter-terrorism law. In what follows, I will discuss some of the important and worrying changes to counter-terrorism law that have been effected by the advent of the radicalisation cases and the involvement of family law in the counter-terrorist endeavour.

Firstly, as I demonstrated in the previous chapter, communications and referrals to the social services departments of local authorities, which could then lead to family court proceedings, have now become a routine part of terrorism investigations where children and/or parents are involved. Parents who are stopped, searched or arrested under terrorism legislation and/or parents who are subjected to TPIMs now face *both* criminal proceedings, or administrative court proceedings in the case of TPIMs, and concurrent family court proceedings.[21] Whereas previously family law was uninvolved in counter-terrorism, in recent years it has been streamlined into and has become a routine part of counter-terrorism practice, expanding the number of jurisdictions that are open and available to the counter-terrorist state.

Secondly, bringing the family justice system within the fold of counter-terrorism law has expanded the type and number of sanctions that the state can impose on terrorists and suspected terrorists. Family court orders, as the discussion in the previous chapter indicated, can be prescriptive and draconian. In families where there are accusations of terrorism, children can be removed from their homes, parental responsibility can be transferred to the High Court or otherwise restricted and the nature of the parent-child relationship and the minutiae of everyday family life closely monitored and regulated. For the first time, the state now has the power and capacity to remove the children of convicted and suspected terrorists from their care and to

[21] E.g. *Re Y Children (Findings of Fact as to Radicalisation) Part 1* [2016] EWHC 3826 (Fam); *HB v A Local Authority (Alleged Risk of Radicalisation and Abduction)* [2017] EWHC 1437 (Fam) *A Local Authority v X, Y and Z* [2017] EWHC 3741 (Fam) and *Re A, B, C, D and E* [2018] EWHC 1841 (Fam).

closely monitor and supervise their relationship with their children. That this is a significant development in counter-terrorism law is reflected in the strong media and political backlash against recent threats made by the Chief Constable of Northern Ireland that the children of paramilitaries engaging in terrorist activity there could be taken into state care.[22] The public furore in Northern Ireland at the idea of 'using children as pawns in the fight against terrorism'[23] and the widespread calls for the Chief Constable to withdraw his threats illustrates just how, until very recently, the (direct and extensive) involvement of family law in counter-terrorism was unthinkable and in fact remains politically highly controversial when its target is not Islamist extremism.

Thirdly, as I briefly mentioned in the previous chapter, in the radicalisation cases, family law has interfered in the family lives and regulated the parenting of individuals even when they have not been convicted of terrorism offences.[24] In some radicalisation cases, the parenting and family life of those released from prison following convictions for terrorism offences were scrutinised, assessed and monitored.[25] Family law is therefore intervening in the lives of individuals who have not committed any criminal wrongdoing or who have already been punished for their criminal actions. Indeed, many of the parents in the radicalisation cases were not even accused of engagement in *terrorism*. Rather, the concern was that they were *extremists* engaged in *extremism*. This is an important distinction because whereas terrorism is defined in law and there are clear, albeit widely construed and problematic, terrorism offences,[26] the same cannot be said of extremism. Extremism is not a crime, nor is the term even defined in law. There is only a vague and value-laden policy definition of the term.[27] In fact, the Coalition and Conservative Governments have both consistently failed to produce a precise, legally workable definition of extremism.[28] The Joint Committee on Human Rights advised that because 'it is far from clear that there is an acceptable definition of what constitutes [as] extremism,' any

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[22] Michael McHugh, 'Children not being used as pawns in fight against terrorism, says police chief' *Belfast Telegraph* (Belfast, 05 September 2019).
[23] Ibid. The issue of comparisons between the radicalisation cases and counter-terrorism in Northern Ireland will be discussed in Chapter Nine.
[24] E.g. *A Local Authority v A Mother and Others (Fact-Finding)* [2018] EWHC 2054 (Fam); *Re C, D, E (Radicalisation: Fact Finding)* (n6); *Re Y (Children) (Finding of Fact 2)* [2016] EWHC 3825; *A City Council v A Mother and Others* [2019] EWHC 3076.
[25] *Re I (Child Assessment Order)* [2020] EWCA Civ 281.
[26] Alan Greene, *Defining Terrorism: One Size Fits All?* (2017) 66 International Comparative Law Quarterly 411, 411-415.
[27] HM Government, 'Prevent Strategy' (Cm 8092, June 2011), 107.
[28] David Anderson, 'Extremism and the Law' (Treasurer's Lecture Middle Temple Hall, 18 March 2019), 3.

legal definition of the term would 'likely prove unworkable.'[29] In a similar vein, the United Nation's Special Rapporteur on Counter-Terrorism and Human Rights has warned that because extremism is a vague term lacking in legal certainty, it 'is incompatible with the exercise of certain fundamental human rights'[30] and should not be used 'as a basis for the adoption of new strategies.'[31]

Yet, in the radicalisation cases, this ambiguous and contentious term is directly imported from the *Prevent* Strategy and is used to inform judicial articulations of harm and assessments of welfare. The radicalisation cases have embedded this definition of extremism within case law, thereby conferring judicial legitimacy on a contested policy definition. Parents who have not committed any terrorism offences but who are deemed to be extremists according to a legally imprecise and value-laden definition face losing their children or otherwise having their parental responsibility significantly limited and their private and family life significantly interfered with and regulated. Therefore, even though extremism is not a crime nor is it clearly defined in law, engagement in extremism now has clear and serious *legal* consequences.[32]

Furthermore, the radicalisation cases have given the counter-terrorist state unprecedented access to the private realm of the home and family. The family and familial relationships, in particular the parent-child relationship, are now directly regulated in the name of preventing and countering terrorism. As a result, the impact of counter-terrorism on the right to respect for private and family life and on children's rights have become increasingly important issues. The types of outcomes sanctioned by the judges deciding the radicalisation cases, which were discussed in detail in the previous chapter, the parenting and child assessments and the regular visits by social workers and radicalisation experts interfere significantly with the right to respect for private and family life of both the children and parents involved.

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[29] Joint Committee on Human Rights, *Counter-Extremism (Second Report of Session 2016–17)*, HL Paper 39/HC 105 (22 July 2016), 3.
[30] Fionnuala Ni Aolain, 'Human rights impact of policies and practices aimed at preventing and countering violent extremism: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism' (Human Rights Council, 24 February-20 March 2020), 5.
[31] Ibid.
[32] See also: *R (Butt) v Secretary of State for the Home Department* [2019] EWCA Civ 256.

The radicalisation cases also impact the rights of children. For example, the right of children to a voice within legal proceedings affecting them is notably absent in the radicalisation cases.[33] Even though judges are required, under section 1(3) of the Children Act (CA) 1989, to ascertain and give weight to the views and wishes of children when making decisions regarding their upbringing, the children in the radicalisation cases are conspicuously silent. Their views appear to be relevant only in so far as they help determine whether or not they have been radicalised and exposed to extremism.[34] In the very rare occasion that a child is invited to express a view with regards to the substantive outcome of the case, for example B's wish to remain at home in the care of her parents in *London Borough of Tower Hamlets v B,*[35] their views and wishes are overridden.[36]

Similarly, some of the radicalisation cases also interfere with the religious rights of children. For example, in *A Local Authority v X, Y and Z* [37] the mother complained that the social worker 'asked the children on a number of occasions about their views in relation to ISIS and wearing the hijab.'[38] Although MacDonald J noted that the social worker's parenting assessment made clear that she had indeed questioned one of the girls 'about wearing the hijab and what her parents would do if she did not wear it'[39] and had quizzed the other children 'about ISIS and matters of religion,' [40] the issue was not investigated further. The biased and potentially discriminatory nature of these questions, which appear to problematise Muslim religious practices such as hijab-wearing, and the potentially chilling effect that they have on the children's political expression and exploration were not even acknowledged, much less explored in the case. Yet, because in these cases the court's paramount concern is with the welfare interests of the children in question, the impact of these decisions on children's rights,

[33] Article 12 United Nations Convention on the Rights of the Child.
[34] *A Local Authority v X, Y and Z* (n21); *Re ABCDE* (n2) and *A Local Authority v M and Others* [2017] EWHC 2851 (Fam).
[35] [2015] EWHC (Fam).
[36] Ibid, [2]-[32] See also: *Re Y (A Minor: Wardship)* [2015] EWHC 2099 (Fam).
[37] (n21).
[38] Ibid, [41].
[39] Ibid.
[40] Ibid.

the agency of children and their status as rights-holders is not adequately considered or addressed.[41]

Clearly, the radicalisation cases have effected important and highly problematic changes to the counter-terrorism landscape in the UK. By involving family law in the counter-terrorist endeavour, the radicalisation cases expanded the reach of counter-terrorism law into family life, allowing it to regulate the family and to construct the home as a new frontier in the state's battle against terrorism. As a result, counter-terrorism now interferes with and potentially limits the right to respect for private and family life and children's rights to a greater, much more obvious extent.

3. The Implications of the Interaction for Family Law

The same could also be said about the impact of the radicalisation cases and the interaction between family law and counter-terrorism on English family law. For although the radicalisation cases have been enabled by and build on some widely criticised features of family law, their recent emergence has also introduced two particularly noteworthy and concerning changes that require careful consideration: the use of "extraordinary" measures and processes, such as electronic tagging and closed material procedures (CMP), and the approach of the family courts to the religious and political beliefs of parents.

3.1 Securitising Family Law: Electronic Tagging and Closed Material Procedures

In deciding the radicalisation cases, the judges have imported practices and procedures from counter-terrorism law that are unfamiliar to the usual workings of the family justice system. One example is the use of electronic tagging. Electronic tagging was first ordered by Munby P

[41] Jane Fortin, *Accommodating Children's Rights in a Post Human Rights Era* (2006) 69 Modern Law Review 299, 300-304.

in the case of *Re X (Children); Re Y (Children)*.[42] In that case, Munby P acknowledged that while 'the use of electronic tagging is very familiar in the criminal jurisdiction'[43] where it is primarily used in the national security context, 'in the family jurisdiction its use, although not without precedent, is fairly infrequent.'[44] Whereas electronic tagging is uncommon within family law, it is frequently used in counter-terrorism law. Although electronic tagging was only ordered in one other published radicalisation case,[45] my interviewees indicated that it has been ordered more frequently in unpublished radicalisation cases.[46] This increased use of electronic tagging suggests that family law's involvement in counter-terrorism has securitised family law, embedding and perhaps even *normalising* extraordinary counter-terrorism practices.

The use of closed material procedures (CMP) in the radicalisation cases is another example of the importation and normalisation of extraordinary counter-terrorism measures to the family justice system.[47] CMP have the effect of excluding one of the parties to a case, typically the non-Government party, from part of the hearing to enable the court to consider evidence that is deemed to be sensitive for national security reasons.[48] CMP emerged in the UK in response to the European Court of Human Rights (ECtHR's) decision in *Chahal v UK*.[49] In that case, the ECtHR found that the procedure which was in place at the time in immigration and counter-terrorism cases, which denied those subjected to deportation orders on national security grounds access to the materials upon which the deportation order was made, constituted a breach of the right to liberty. The ECtHR highlighted the use of CMP in cases where national security was at stake as a potential remedy.[50] In response, Parliament enacted the Special Immigration Appeals Commission Act 1997, which introduced CMP in the UK for the first

[42] (n6), [49]-[50].
[43] Ibid, 80.
[44] Ibid.
[45] Electronic tagging was ordered by Cobb J in *Re C, D, E* (n6), [15]. Electronic tagging was also considered in *London Borough of Tower Hamlets v B* (n35), [32].
[46] Interview with Cafcass Officer B, a senior employee at Cafcass (London, UK, 1 August 2017), interview with Barrister B, Barrister at Doughty Street Chambers (London, UK, 3 October 2017) and interview with Barrister E, QC at No5 Barrister Chambers (Telephone Interview, 21 May 2018).
[47] William Tyzack, *Closed material procedures in English family law: development in the shadow of national security and some comparisons with other EU Member States* (2017) International Family Law 223, 223.
[48] The excluded party is usually represented by an appointed and security vetted special advocate: Eva Nanopoulos, *European Human Rights Law and the Normalisation of the 'Closed Material Procedure': Limit or Source?* (2015) 78 Modern Law Review 913, 916.
[49] [1996] 23 EHRR 413.
[50] Ibid.

time. Since then, the use of CMP has expanded significantly and can now be used in all civil cases where disclosure of sensitive material might risk national security.[51]

CMP significantly depart from and undermine the principle of open justice and the fundamental rights to due process, natural justice and a fair hearing.[52] It is true that the use of CMP is not entirely new to the family justice system.[53] Before the radicalisation cases, CMP were used by the family courts in one case,[54] and considered in two other cases involving police claims to public interest immunity.[55] However, the emergence of the radicalisation cases expanded the use of CMP within family law.[56] Although CMP were used or contemplated in two of the published radicalisation cases, my interviewees mentioned that CMP have been used in several other unpublished radicalisation cases.[57] In fact, in his *Guidance* on the radicalisation cases, Munby P stated that family judges 'need to consider…whether there is a need for a closed hearing or the use of a special advocate.'[58] What is particularly striking here, as William Tyzack has pointed out, is that whilst the *Guidance* 'specifically emphasised that there must be an identified need'[59] for CMP, 'it was not suggested in the *Guidance* that the use of [CMP] … is a matter of last resort,'[60] indicating the relative ease and perhaps enthusiasm with which the family courts have adopted procedures that are familiar to the counter-terrorism landscape but are, to a large extent, rare in the family justice system and that undermine natural justice and the right to a fair hearing.

[51] Justice and Security Act 2013.
[52] Nanopoulos (n48), 917.
[53] Tyzack (n47), 224.
[54] *Re T (Wardship)* [2010] 1 FLR 1048.
[55] *BCC v FZ and others* [2013] 1 FLR 974; *Chief Constable v YK and others* [2011] 1 FLR 1493.
[56] Tyzack (n47), 223. See: *Re X, Y and Z (Disclosure to the Security Service)* [2016] EWHC 2400 (Fam) and *Re C (No 3) (Application for dismissal or withdrawal of proceedings)* [2017] EWFC 37.
[57] Interview with Barrister C, QC at St John's Buildings Barristers' Chambers (Telephone Interview, 30 October 2017) and interview with Solicitor A, Solicitor at Fountain Solicitors (Telephone Interview, 9 May 2018).
[58] 'Radicalisation Cases in the Family Courts': Guidance issued by Sir James Munby, President of the Family Division, on 8 October 2015, [7].
[59] Tyzack (n47), 225
[60] Ibid.

3.2 Parental Religious (and Political) Beliefs and Harm: A Significant New Development

The second, perhaps more significant, change to family law resulting from the radicalisation cases pertains to the family courts' approach to the religious and, at times, political beliefs of parents. In Chapter Six, I argued that in the radicalisation cases the family judges identify extremist beliefs as being *in and of themselves* harmful to children and capable of justifying compulsory state intervention in private and family life. In the radicalisation cases, the judges assess whether certain religious parental beliefs are extremist; non-violent but illiberal, intolerant or hateful religious beliefs are treated as potentially harmful to children. The judges also encourage parents to reform and recalibrate religious beliefs identified as extremist. In fact, in a number of radicalisation cases, the children were only returned home to the care of their parents after their parents worked with court appointed radicalisation experts on "moderating" their religious beliefs and explicitly renouncing their former extremist views.[61]

As Baroness Hale notes in an extrajudicial opinion expressed in an academic article, this is a significant new development which departs from the traditional approach to parental religious beliefs in English family law .[62] Under English family law, the right of parents to determine the religious upbringing and education of their children is strongly protected.[63] The modern right of parents to bring up their children according to the beliefs and practices of a particular religion is an aspect of their parental responsibility under section 3 (1) the CA 1989.[64] Here, it is important to note that English family law gives parents a particularly wide discretion to determine the religious upbringing of their children.[65] This liberal approach stems from a presumption in English family law that parents, rather than the state, usually know what is best for their own children.[66] As a result, English family law attaches special weight to the religious decisions of parents in relation to their children, taking seriously the fact that for many religiously devout parents, the religious upbringing of their children is a core religious

[61] See: Chapter Seven.
[62] Brenda Hale, *Freedom of Religion and Freedom from Religion* (2017) Ecclesiastical Law Journal 3, 10.
[63] Anthony Bradney, *Religion, Rights and Laws* (Leicester University Press 1993), 46.
[64] Rex Ahdar and Ian Leigh, Religious *Freedom in the Liberal State* (2010 0UP), 196.
[65] Rachel Taylor, *Responsibility for the Soul of the Child: The Role of the State and Parents in Determining Religious Upbringing and Education* (2015) 29 International Journal of Law, Policy and the Family 15, 18.
[66] Ahdar and Leigh (n64), 194. See: *R (Williamson) v Secretary of State for Education* [2005] UKHL 15, [72].

obligation and a manifestation of their own right to religious freedom.[67] Therefore, when it comes to parental responsibility for the religious upbringing and education of children, the law displays a pronounced deference to parents.[68] It also adopts a position of neutrality, insisting that the family courts are 'perfectly neutral in matters of religion.'[69]

This does not mean, of course, that the right of parents to determine their children's religious upbringing and to transmit their religious beliefs and practices is absolute or unfettered.[70] Rather, the right is subject to the state's duty to protect children from harm and to promote their welfare.[71] The law prohibits religiously inspired practices that are regarded as being harmful to children including forced marriage, Female Genital Mutilation (FGM), religious prohibitions on blood transfusions and corporal punishment within educational settings.[72] In private law cases involving disputes over religious upbringing and education between separated parents, the law has also restricted the ability of parents to practice certain *legal* religious practices because, although legally permissible, such practices are deemed to be contrary to the welfare interests of the children in question.[73] For example, in a number of disputes between separated Muslim and non-Muslim parents over the issue of male circumcision, the family judges prohibited the Muslim parent from circumcising their son, stipulating that the circumcision of a child requires the consent of both parents.[74] Although a legally permissible practice, in these cases the judges cited the pain, risks and the physical and psychological damage inflicted by circumcision as reasons why it is contrary to the best interests of the children in question.[75]

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[67] Carolyn Hamilton, *Family, Law and Religion*, (Sweet and Maxwell 2003), 140-142.
[68] Ahdar and Leigh (n64), 194.
[69] *Re Caroll (An Infant)* [1931] 1 KB 317, [36].
[70] Hamilton (n67), 144.
[71] Ibid.
[72] Catherine Shelley, *Beating Children Is Wrong, Isn't It? Resolving Conflicts in the Encounter Between Religious Worldviews and Child Protection* (2013) 15 Ecclesiastical Law Journal 130, 134. See: *Re R (Minor: Medical Treatment)* [1993] 2 FLR 757 and *Re O (Medical Treatment)* [1993] 2 FLR 149.
[73] Hamilton (n67), 186.
[73] Susan Mumford, The *Judicial Resolution of Disputes Involving Children and Religion* (1998) 47 International and Comparative Law Quarterly 117, 143.
[74] E.g. *Re J (A Minor) (Prohibited Steps Order: Circumcision)*[1999] 2 FLR 678; *Re S (Specific Issue Order: Religion: Circumcision)* [2004] EWHC 1282 *Re L and B (Children) (Specific Issues: Temporary Leave to Remove From the Jurisdiction: Circumcision* [2016] EWHC 849 (Fam).
[75] Suhraiya Jivraj, *The Religion of Law: Race, Citizenship and Children's Belonging* (Palgrave Macmillan 2013), 70.

In other private law cases involving disputes over the religious upbringing and education of children, the family courts have suggested that particularly austere and restrictive religious lifestyles that cause children to live in isolation from mainstream society and that can limit their future education and employment prospects can contravene the welfare interests of children.[76] In these disputes, the judges have tended to deny granting residence to and have rejected the schooling choices of the parent with a more austere and narrow religious lifestyle, highlighting a judicial discomfort with parents who are considered to be religiously zealous or fanatical.[77] They suggest that there is a presumption that the children of parents who are strongly committed to their religious principles and lifestyle will be at risk of indoctrination and that a religiously narrow and isolated life is detrimental to children's welfare.[78] It is worth pointing out that this judicial discomfort with parental religious zeal is primarily directed against parents belonging to minority religious groups.[79] According to Anthony Bradney, although parents from minority religions which encourage adherents to live separately from mainstream society no longer regularly lose custody of and access to their children, recent case law nonetheless demonstrates that 'living differently continues to be seen as being largely harmful to a child'[80] and that parents 'who hold to religious opinions that are contrary to the mainstream traditions of the day continue to be disadvantaged.'[81] Although these cases usually involve parents belonging to New Age or counter-cultural religious sects such as Jehovah's Witnesses, the Exclusive Brethren and The Family,[82] case law from more recent years highlights an increased judicial discomfort with parents who belong to *mainstream* religions but adopt a more conservative or orthodox form of religiosity, in particular parents belonging to the Ultra-Orthodox Jewish community.[83] In these cases, academics argue, the family judiciary have expressed a 'preference for [the] more secular'[84] upbringing of children and

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[76] *Re R (A Minor) (Residence: Religion)* [1993] 2FLR 163; *Hewison v Hewison* [1977] 7 Fam Law 106, CA; *Buckley v Buckley* [1973] 3 Famm Laq 106, CA; *T v T* (1974) 4 Fam Law 190; *Wright v Wright* [1981] 2 FLR 276, CA and *Re G (Education: Religious Upbringing)* [2012] EWCA Civ 1233.
[77] Rex Ahdar, *Religion as a Factor in Custody and Access Disputes*, (1996) 10 International Journal of Law, Policy and the Family 177, 181-88.
[78] Richard Lee, *Custody Disputes and Alternative Religions in the Courts of England and Wales* (2008) 23 Journal of Contemporary Religion 63, 73.
[79] Ibid, 69.
[80] Anthony Bradney, *Law and Faith in a Sceptical Age* (Routledge, 2011), 117.
[81] Ibid.
[82] Ibid, 118.
[83] E.g. *Re G (Education: Religious Upbringing) and Re M (Children) (Ultra-Orthodox Judaism: Transgender Parent)* [2017] EWCA Civ 2164. See: Tamara Tolley, *Hands-Off or Hands-On?: Deconstructing the 'Test-Case' of Re G within a Culture of Children's Rights* (2014) 77 Modern Law Review 110; Rachel Taylor, *Secular Values and Sacred Rights: Re G (Education: Religious Upbringing)* (2013) 25 Child and Family Law Quarterly 336 and Daniel Monk, *Muscular Liberalism and the best interests of the child* (2018) 77 Cambridge Law Journal 261.
[84] Tolley, (ibid), 120.

imposed majoritarian liberal values and secular parenting standards on religiously orthodox parents, creating a disadvantage for parents belonging to conservative religious minorities whose parenting might not abide by the liberal and secular values of the majority.[85]

From this, it is clear that the family courts have regulated and limited the exercise of parental responsibility for the religious upbringing and education of children. Nevertheless, the radicalisation cases still represent a significant departure from family law's traditional approach to parental responsibility for the religious upbringing of children. This is because, firstly, whereas the focus of the judges in the radicalisation cases is on the religious *beliefs* of the parents, in cases dealing with parental disputes over the religious upbringing of children, the family courts generally claim that they are concerned with *religious practices* and/or the *social effects* of parental religious beliefs on the physical and emotional welfare of children.[86] For example, in the case of *Re R*,[87] Purchase LJ stated that it is 'not part of the court's function to comment on the tenets, doctrines and rules of any particular section of society.'[88] Rather, he stressed, the court is interested in assessing 'the *impact* of the tenets and rules of society upon a child's future welfare.'[89] Because the family courts maintain a position of neutrality when disputes between parents are religious in nature, they generally distinguish between the religious beliefs of parents *per se* and the consequences of those beliefs on children. This distinction is, moreover, required under European human rights law.[90] The ECtHR has repeatedly held that whilst domestic family courts may treat parents differentially because of the *social effects* of parental beliefs on the children, differential treatment and distinctions based solely on the religious beliefs of a parent are unacceptable.[91] Therefore, before the emergence of the radicalisation cases, it was rare for the family courts to find that the religious beliefs of parents are *themselves* harmful to children.[92]

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[85] Taylor (n83), 342.
[86] Ahdar and Leigh (n64), 212 and Taylor (n65), 23.
[87] (n76).
[88] Ibid, [171].
[89] Ibid. My emphasis.
[90] Taylor (n65), 23.
[91] E.g. *Hoffman v Austria* [1994] 17 E.H.R.R. 293 and *Vojnity v Hungary* [2013] ECHR 426. See: Brigitte Clark, *Treading a tightrope: the fragility of family and religious minority rights in the jurisprudence of the European Court of Human Rights* (2017) 29 Child and Family Law Quarterly 23, 37.
[92] Hamilton (n67), 201.

I say rare, rather than unprecedented, because in *one* previous reported case, *Re B and G (Minors: Custody),*[93] the family courts did find that certain religious beliefs can themselves contravene the welfare interests of children. The case concerned two children whose father had been awarded custody after the parents, who were both Scientologists, separated. However, after leaving the Church of Scientology, the mother sought custody of the children, maintaining that the children would be damaged if they were brought up according to the beliefs of their Scientologist father. In deciding to award custody to the mother, Latey J stated that 'Scientology is both immoral and socially obnoxious'[94] and that its beliefs and doctrines were 'corrupt, sinister and dangerous'[95] because they seek to 'capture people, especially children and indoctrinate them.'[96] Although in the appeal the Court of Appeal did acknowledge that these remarks were 'unfortunate,'[97] Latey J's decision to award custody to the mother was upheld. The Court of Appeal found that Latey J was entitled to make findings about religious beliefs since this was necessary for assessing the nature and degree of the risks that the children faced.[98] It is important to stress, however, that this approach to religious parental beliefs is extremely rare. Up until the recent radicalisation cases, *Re B and G*,[99] decided decades ago, was the *only* reported family case where parental beliefs themselves were assessed and considered objectionable.

Secondly, before the advent of the radicalisation cases, it was even rarer, and in fact unprecedented, for the family courts to find the *political* views of parents to be harmful to children. For example, in *Re P (Contact: Supervision),*[100] the mother applied to have the children's contact with their father terminated, accusing the father of being a Nazi sympathiser, holding extreme political views and racist and anti-Semitic attitudes and of taking photographs with his son dressed in Nazi clothing. However, in that case, Wall J dismissed the relevance of these allegations and went as far as stating that a father who holds objectionable political views cannot be denied access to his children.[101]

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[93] [1985] FLR 134.
[94] Ibid, [157].
[95] Ibid.
[96] Ibid.
[97] *Re B and G (Minors) (Custody)* [1985] 1 WLUK 9, per Dunn and Purchas LLJ.
[98] Ibid.
[99] (n93) and (n97).
[100] [1996] 2 FLR 314.
[101] Ibid, [321].

Finally, most of the cases where the family courts regulate and limit regulation of parental responsibility for the religious upbringing and education of children are *private* family cases. Save for particularly severe religiously inspired practices such as forced marriage, FGM, corporal punishment in schools and medical decisions affecting the life and health of children, English family law has shown a marked reluctance to compulsorily intervene in families under public law proceedings as a result of concerns about the religious beliefs and practices of parents. The reason for this was most clearly articulated by Baroness Hale in *Re B (A Child) (Care Proceedings)*[102]:

> 'We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse anti-social political or religious beliefs.'[103]

The radicalisation cases change this. In radicalisation cases involving public law proceedings, the judges have not only been willing to assess the religious and political beliefs of the (Muslim) parents involved, they have also been willing to find that certain religious and political beliefs are *in and of themselves* harmful to children and that their existence within a family can justify compulsory intervention. In doing so, the radicalisation cases have limited and closely regulated the parental responsibility and the religious (and political) rights of parents from a minority religious background.

The interaction between family law and counter-terrorism in recent years has, then, introduced some notable and concerning changes to family law. A number of problematic measures and procedures which are frequently used in counter-terrorism law, but which are by and large alien to the usual workings of the family justice system, such as electronic tagging and CMP, have been imported to and normalised within family law. The introduction of CMP in particular is concerning. Given that family court proceedings are already held in private, with limited media

[102] [2013] UKSC 33.
[103] Ibid, [143].

reporting and to the exclusion of the public, adding another layer of opacity can have serious human rights, open justice and accountability repercussions. The construction of extremist religious and political beliefs in the radicalisation cases as free-standing harms has also altered the approach of the family courts to parental religious and political views, especially within the context of public law proceedings. The right of parents, especially Muslim parents, to transmit their religious beliefs to their children is now subjected to increasing regulation and greater limitation.

4. Conclusion

This chapter examined the implications of the recent interaction between family law and counter-terrorism for both areas of law. It claimed that although the radicalisation cases epitomise and exacerbate some of the pre-existing and controversial features of family law and counter-terrorism law, their emergence has introduced a number of significant and at times highly worrying developments in both areas of law.

Chapter Nine

Conclusion

This thesis critically examined the radicalisation cases and analysed the nature of, reasons behind, and implications of the novel interaction between family law and counter-terrorism that they facilitated.

Part I of this thesis examined *how* family law and counter-terrorism have interacted in recent years, evaluating the nature and scope of the interaction by providing a factual exposition of the radicalisation cases and situating them within their broader statutory and policy context. Although the radicalisation cases formed an important part of the UK's legal and policy responses to the rise of Islamic State in Iraq and Sham (ISIS) and the emergence of the Foreign Terrorist Fighter (FTF) phenomenon, Part I argued against viewing them solely through the lens of ISIS and the issue of children travelling with, or as, FTFs in Syria and Iraq. Critically examining the wider counter-terrorism policy context and closely analysing the different types of radicalisation cases, the diversity of the issues that they raise and their development over the years, Part I highlighted the extensive and enduring nature of the interaction between counter-terrorism and family law, arguing that it encompasses but goes well beyond the geopolitics of ISIS and the specificities of the FTF phenomenon.

Part II interrogated *why* the radicalisation cases have appeared in the family courts at this point in time in particular. It identified and critiqued an official narrative which claims that the radicalisation cases are simply about protecting children from straightforward, albeit new, child-protection harms arising out of the ISIS' targeting and recruitment of children. Emphasising the *politics* of child-protection, Part II argued that rather than regarding the radicalisation cases as an inevitable response to the obvious harms emerging from the latest manifestation of the terrorist threat, a changing legal, social and cultural context and shifts in the state's policy agendas led to the *construction* of terrorism, extremism and radicalisation as child-protection harms and the consequent emergence of the radicalisation cases in the family courts.

Part II then identified and analysed the *conditions of possibility* that led to the emergence of the radicalisation cases, arguing that the interaction between family law and counter-terrorism that they have facilitated has been enabled by, reflects and reinforces huge shifts in both family law and policy and counter-terrorism law and policy and discourse that were introduced by New Labour and significantly extended by the Coalition and Conservative Governments. It highlighted, firstly, the important changes within family law and policy over the last years, which have increasingly held certain "problem" families and "bad" parenting choices, as opposed to structural, socio-economic and political factors, responsible for a host of social problems such as crime and anti-social behaviour, arguing that they subjected the family and, and in particular the parent-child relationship to intense and unprecedented amounts of scrutiny, regulation and politicisation. The development of increasingly assertive and, under the Coalition Government, draconian family laws and policies encouraged proactive and at times compulsory forms of early intervention to safeguard children from a growing array of risks expanded the state's family law and policy arsenal, creating the legal infrastructure and the normative and conceptual space that made the emergence of the radicalisation cases possible.

Secondly, Part II situated the radicalisation cases and the ensuing interaction between family law and counter-terrorism within the shifting global and national post-9/11 counter-terrorism and security landscape. It argued that a new understanding of the terrorist threat has de-politicised and familialised Islamist terrorism, thus demonstrating how the emphasis within scholarly and policy circles on the psychological and cultural (as opposed to the political) causes of Islamist terrorism has turned attention to the *private* sphere and the role that perceived pathological familial relations within Muslim communities, particularly regressive gender relations and dysfunctional child-rearing practices, play in "creating" the Islamist terrorist. This *familialisation* of Islamist terrorism and its construction as a Muslim family problem, Part II claimed, led to the *securitisation* of the Muslim family and its increased targeting and regulation within UK counter-terrorism discourses and policies. This privatisation of the root causes of Islamist terrorism and the increasing concern with, and regulation of, the Muslim home and family life in the name of counter-terrorism, Part II demonstrated, echo throughout

and are reinforced by the judicial approaches to and conceptualisations of the family, the home, parenting and mothering in the radicalisation cases.

Part II also examined the role of the changes within post-7/7 counter-terrorism policy, law and practice in the UK, which began under New Labour but were significantly developed by the Coalition and Conservative Governments, in instituting the legal and policy infrastructure that directly enabled the recent interaction between family law and counter-terrorism. These changes, which expanded the reach and remit of counter-terrorism laws and policies and altered their purpose, include: the focus on ideology, the targeting of the pre-criminal space of extremist beliefs that allegedly lead to terrorism and that threaten fundamental British values and the drive towards earlier intervention in order to identify, and safeguard, vulnerable children from radicalisation. Part II demonstrated how the expansion of the counter-terrorism state and the preoccupation with safeguarding and protecting vulnerable children from the radicalising influence of Islamist extremist ideology have enabled, and are reflected and augmented in the judicial articulations of harm in the radicalisation cases themselves.

Finally, Part III identified and assessed the *implications* of the interaction between family law and counter-terrorism in recent years. It critically appraised and evaluated the radicalisation cases and claimed that their recent emergence in the family courts and the interaction between family law and counter-terrorism that they have facilitated is a worrying legal development. Contesting a dominant claim that presents the radicalisation cases as ordinary child-protection cases, Part III argued that they represent, in fact, a dangerous expansion of the counter-terrorist state that has a number of serious implications for the rule of law, open justice and the human rights of the children and parents involved. It also demonstrated how the emergence of the radicalisation cases both accentuates the pre-existing negative features of counter-terrorism law and family law and adds new, significant and problematic changes that curtail fundamental freedoms, undermine natural justice and enhance the interventionist and authoritarian tendencies of both areas of law.

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Clearly, then, the radicalisation cases in the family courts of England and Wales and the resulting interaction between family law and counter-terrorism is a significant legal development with far-reaching implications. This makes the lack of political controversy around their recent emergence rather surprising. For whereas the mere suggestion that the family courts could be deployed in the fight against terrorism in Northern Ireland produced, as we saw in the previous Chapter, a huge political backlash and interjections from Sinn Féin politicians,[1] other than the very few anxious community, civil society and academic voices cited in this thesis, there is a notable political indifference regarding the radicalisation cases and the involvement of the English and Welsh family justice system in the counter-terrorism endeavour. The lack of criticism, even from politicians belonging to the British Muslim community and/or politicians who are usually vociferous in their criticisms of perceived excesses in the state's counter-terrorism responses, suggests that they seem to enjoy a certain amount of political legitimacy. Some of the underlying themes and threads within the critical examination of the "why" question and the discussion of the implications in this thesis, which essentially offered indirect critiques of the state of both family law and policy and counter-terrorism law and policy in the UK, go some way towards explaining why the emergence of the radicalisation cases and the interaction between family law and counter-terrorism has raised so few (political) eyebrows:

> Firstly, although the targeting of the family within the counter-terrorism context is new, identifying the family as the source of, and potential solution to, the problem of Islamist terrorism and extremism and tasking family members with the responsibility of preventing and countering radicalisation in their own homes reflects the wider, neo-liberal tendency of responsibilising the family and, by corollary, irresponsibilising the state.[2] Because family practices and parenting choices, rather than structural socio-economic and political conditions and the policies and practices of the state, cause social and political problems, the family is primarily responsible for preventing and

[1] Michel McHugh, 'Children not being used as pawns in fight against terrorism, says police chief' *Belfast Telegraph* (Belfast, 5 September 2019).
[2] Karen Broadhurst, 'Safeguarding Children through Parenting Support: How Does *Every Parent Matter*?' in Karen Broadhurst, Chris Grover and Janet Jamieson (Eds) *Critical Perspectives on Safeguarding Children* (John Wiley &Sons, 2009), 6.

tackling these problems. By increasingly delegating its responsibilities to the private family, the state is absolved and its role in creating, or at least exacerbating, social and political problems is obscured.

Secondly, the radicalisation cases and the significant interventions into family life that they have sanctioned highlight just how conditional family privacy has become. To avoid scrutiny, opprobrium and sanction, parents should display "good" parenting and raise responsible, successful and – increasingly – tolerant, even liberal, children. Parents should not be absent, too lax or indulgent, but neither should they be too authoritative, overbearing or controlling. There should not be too little family nor too much family: rather, it should be just right.

Thirdly, the lack of political controversy surrounding the radicalisation cases and the relative ease with which family law became involved in counter-terrorism is indicative of the pervasiveness of the safeguarding agenda and the elasticity and malleability of the welfare principle. The obligation to safeguard all children from an expanding list of risks to their well-being and to promote their welfare has been widely dispersed across the public sector. The ubiquity of the notion of safeguarding, its symbolic purchase and its power – because of its seeming benevolence – to legitimate significant amounts of state power and surveillance is reflected in the fact that the state was able easily to redefine counter-terrorism as a form of safeguarding – again with hardly any resistance or pushback. Relatedly, the indeterminacy of the welfare principle and its predisposition towards facilitating the achievement of the state's priorities and policy agendas allowed local authorities and the family courts to view and present their involvement in counter-terrorism as uncontroversial. Because preventing and countering terrorism safeguards children and promotes their welfare, the involvement of family law in the counter-terrorist endeavour becomes understandable and even desirable.

The lack of political controversy is also reflective of the ubiquity of counter-terrorism and national security and their normalisation across law, policy and civil society. For

as academic commentators have pointed out, 'counter-terrorism is everywhere in the contemporary UK.'[3] Counter-terrorism laws and policies have been mainstreamed across various areas of law, policy and regulation. All of the state's legal jurisdictions, public bodies and civil servants are expected to prevent and counter terrorism, extremism and radicalisation. Civil society and communities (and now, families), are also expected to support the state in its counter-terrorist efforts. Counter-terrorism unites the state and all of its laws, institutions and agencies, society and citizens around the goal of protecting national security.[4] The pervasiveness of counter-terrorism, which is now reflected in the involvement of family law in counter-terrorism and the securitisation of the family, suggests that the Coalition Government delivered on its promise, stated in the revised *Prevent Strategy* of 2011, that there would be 'no ungoverned space in which extremism is allowed to flourish without firm challenge and, where appropriate, legal intervention.'[5]

Finally, the fact that in the radicalisation cases the family courts have constructed illiberal and intolerant religious beliefs as being in and of themselves harmful and has sought to protect children from their influence, at times compulsorily, with relative ease reflects the wider tendency towards regulating thought and the prevalence of the notion that individuals can be harmed by dangerous or objectionable *ideas*.[6] This tendency is, of course, prevalent in counter-terrorism policies and programmes, most notably *Channel* which seeks to challenge and even change the beliefs of participants. But it also exists outside of the counter-terrorist context. Liberal states are increasingly interested in reforming the ideas of their citizens and challenging beliefs perceived to be illiberal or non-egalitarian.[7] The liberal state today appears uncomfortable with individuals who believe in ideas and causes that challenge or reject the liberal status

[3] Jessie Blackbourn, Fiona De Londras and Lydia Morgan, *Accountability and Review in the Counter-Terrorist State* (Bristol University Press 2020), 21.
[4] Christos Boukalas, *The Prevent Paradox: destroying liberalism in order to protect it* (2019) 72 Crime, Law and Social Change 467.
[5] HM Government, 'Prevent Strategy' (Cm 8092, June 2011), 9.
[6] Peter Ramsay, *Is Prevent a safe space?* (2017) 12 Education, Citizenship and Social Justice 143, 144.
[7] Corey Brettschneider, *When the State Speaks, What Should It Say?* (Princeton University Press, 2012), 6.

quo. It is increasingly anxious about individuals who believe too strongly, whether those beliefs are religious or, lately, environmental.[8]

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What does this thesis leave undone and what are some of the possible future research projects that could be inspired by this thesis? For reasons of time and space, this thesis has not been able to investigate at more length the private law radicalisation cases where allegations of extremism and radicalisation are made by one parent against another within the context of a dispute about contact or residence. The overwhelming majority of these cases remain unpublished. Yet they raise a number of interesting and important questions about the interaction between family law and counter-terrorism: do these radicalisation cases also overwhelmingly deal with Islamist radicalisation and Muslim parents? Why are parents accusing each other of extremism and radicalisation? Do these allegations assist or hinder the parents making them? What are the sociological and gendered dynamics at play here – are mothers more likely to accuse fathers of being extremists or vice versa? What do these cases tell us about the banality of counter-terrorism,[9] its prevalence within British society and its securitisation of home life and family relations?

The thesis was also unable to investigate the *impact* of the interaction between family law and counter-terrorism on the families involved and the wider community. How do the parents and other family members experience family law's involvement in their life in the name of preventing and countering terrorism? How gendered is this impact, especially for mothers who might be accused of radicalisation but are also the victims of domestic violence? How does that challenge the official or dominant narratives regarding the interaction between family law and counter-terrorism in recent years? What impact has this legal development had on the British Muslim community?

[8] 'Extinction Rebellion: Counter-terrorism police list group as 'extremist' in guide' *BBC News* (London 10 January 2020).
[9] Blackbourn et al (n3), 21.

Finally, again due to time and space limitations, this thesis has not conducted a comparative analysis. As I stated in the introduction, there is also evidence that similar developments are occurring both at the European Union level and in other European jurisdictions. A comparative project that identifies and assesses the similarities and differences, and the regional and international human rights implications of the involvement of family law in counter-terrorism, seems both possible and necessary. A *historical* comparative project also appears possible and necessary. It could compare the recent interaction between family law and counter-terrorism with counter-terrorism responses during the period of the "Troubles" in Northern Ireland (1968-1998). Such a project would provide an important contextual perspective to the research conducted here on the interaction between family law and counter-terrorism in the UK. It can investigate, to what extent, if any, was the family intervened in and regulated in the name of national security in Northern Ireland? Even if it appears, at the level of formal law, that the family courts were absent from the state's counter-terrorist efforts in Northern Ireland, would an empirical analysis that goes beyond statues and case-law and conducts interviews with social workers, family lawyers and child-protection practitioners active at the time uncover some of the subtle and more insidious forms of interference and regulation at the family level? And if so, how classed and gendered was this regulation? How does this compare with the radicalisation cases?

Annex One

Interview Questions Template

1. When did you first start dealing with/ coming across family law cases dealing with radicalisation and extremism concerns in your practice?
2. How many of the radicalisation cases have you dealt with?
3. Have all of the radicalisation cases you worked on/came across gone to the (high) court?
4. What kind of family law proceedings were involved: wardship; care and/or supervision proceedings; private family law proceedings?
5. How did these cases end up in the family courts- that is, how did the family involved come to the attention of the local authority in question? What was the procedure involved?
6. What are the types of allegations that have been levelled at the parents in these cases?
7. What kind of findings have the courts made in the radicalisation cases you have come across?
8. Generally speaking, what kinds of outcomes have these cases resulted in? That is how were they resolved? Through court orders (if so what type?) Is there a relationship between the radicalisation cases and *Prevent* and *Channel*?
9. Regarding demographics, who are the families involved in the radicalisation cases? Could you please tell me something about the religious, ethnic, class background of the families? Did you mostly deal with cases affecting mothers or fathers? What was the age distribution and the gender balance of the children in question?
10. Have you dealt with cases involving far-right extremism? Are there signs of far-right extremism being of concern to family courts? Extremism from other religions? Are we likely to see these kinds of cases in the future?
11. What are some of the emerging themes and trends that you have noticed from working on these cases?
12. How would you appraise the family courts' experience so far with and approach to the radicalisation cases?

13. Is there anything you would like to add about your experience of working on these cases?

Annex 2

Child and Family Court Advisory and Support Service (Cafcass) Responses to Freedom of Information (FOI) Requests

FOI request - CAF 17-09 Radicalistion Cases

Below data relates to the period 1st January 2016 to 31st January 2017.

Below shows cases with Radicalisation highlighted on the case.

Data Source: Data taken from the Cafcass national database (ECMS).

ECMS is a live system, continually updated and is subject to change when further updates are made.

Please note: Family Court Advisor/Guardian flags radicalisation as a child need, these cases are not 'confirmed' cases of radicalisation.

The ECMS data does not show whether the children being subject to public law proceedings was because of concerns of radicalisation.

All cases will come through Family court proceedings.

Month Year	Private Law	Public Law	Total Received
Jan-16	8	8	16
Feb-16	1	2	3
Mar-16	5	2	7
Apr-16	18	3	21
May-16	2	12	14
Jun-16	2	5	7
Jul-16	8	5	13
Aug-16	7	3	10
Sep-16	3	2	5
Oct-16	10	9	19
Nov-16	2		2
Dec-16	8	4	12
Total	74	55	129

FOI request - CAF17-148 - Number of Cases Featuring Radicalisation

Below data relates to the period 1st June 2016 to 30th September 2017.
Data Source: Data taken from the Cafcass national database (ECMS).
ECMS is a live system, continually updated and is subject to change when further updates are made.
Below shows cases with Radicalisation highlighted on the case by Cafcass Social worker.
Please note: Family Court Advisor/Guardian flags radicalisation as a child need which is NOT mandatory to record on the system.
The ECMS data does not show whether the children being subject to public law proceedings was because of concerns of radicalisation.

MonthYear	Private	Public	Total Received
Jun-2016	3	4	7
Jul-2016	4	5	9
Aug-2016	4	3	7
Sep-2016	2	1	3
Oct-2016	6	2	8
Nov-2016	2		2
Dec-2016	6	3	9
Jan-2017	1		1
Feb-2017	5	3	8
Mar-2017	2	7	9
Apr-2017	2	7	9
May-2017	1	1	2
Jun-2017	6	4	10
Jul-2017	3	2	5
Aug-2017	5	2	7
Sep-2017	4	2	6
Total	56	46	102

FOI request - CAF18-030 - Radicalisation Cases

Below data related to applications received between 1st October 2017 to 28th February 2018
Below shows cases with Radicalisation highlighted on the case for the child by Cafcass Social worker.
Please note: Family Court Advisor/Guardian flags radicalisation as a child need which is NOT mandatory to record on the system.
Data Source: Data taken from the Cafcass national database (ECMS).
ECMS is a live system, continually updated and is subject to change when further updates are made.

Month/year	Number of Children
Oct 2017	8
Nov 2017	7
Dec 2017	10
Jan 2018	10
Feb 2018	10
Total	45

FOI request- CAF18-102 - Radicalisation Cases

Below data related to applications received between 1st March 2018 to 30th September 2018.
Below shows cases with Radicalisation highlighted on the case for the child by Cafcass Social worker.
Please note: Family Court Advisor/Guardian flags radicalisation as a child need which is NOT mandatory to record on the system.
Data Source: Data taken from the Cafcass national database (ECMS).
ECMS is a live system, continually updated and is subject to change when further updates are made.

Month/year	Private Law	Public Law
Mar-2018	<6	6
Apr-2018		<6
May-2018	8	<6
Jun-2018	<6	
Jul-2018	8	<6
Aug-2018	<6	8
Sep-2018	<6	9

FOI request - CAF19-080 - Radicalisation stats

Below data related to applications received between 1st October 2018 to 31st March 2019.
Below shows cases with Radicalisation highlighted on the case for the child by Cafcass Children's Guardian/Family Court Advisor
Please note: Family Court Advisor/Children's Guardian flags radicalisation as a child need which is NOT mandatory to record on the system.
Please note there can be more than on child to an application.
Data Source: Data taken from the Cafcass national database (ECMS).
ECMS is a live system, continually updated and is subject to change when further updates are made.

	Private	Public
Total	18	14

FOI request - CAF19-178 - Radicalisation stats

Below data related to applications received between 1st January 2015 to 31st Ocotber 2019.
Below shows cases with Radicalisation highlighted on the case for the child by Cafcass Children's Guardian/Family Court Advisor
Please note: Family Court Advisor/Children's Guardian flags radicalisation as a child need which is NOT mandatory to record on the system.
Please note there can be more than one child to an application.
Data Source: Data taken from the Cafcass national database (ECMS).
ECMS is a live system, continually updated and is subject to change when further updates are made.

1) Below table shows applications received from 1st April 2019 to 31st October 2019

	Private	Public	Total Received
Total	17	18	35

FOI request - CAF 20-041

Below data related to applications received between 1st November 2019 to 15th March 2020.
Below shows cases with Radicalisation highlighted on the case for the child by Cafcass Children's Guardian/Family Court Advisor.
Please note: Family Court Advisor/Children's Guardian flags radicalisation as a child need which is NOT mandatory to record on the system.
Please note there can be more than one child to an application.
Data Source: Data taken from the Cafcass national database (ECMS).
ECMS is a live system, continually updated and is subject to change when further updates are made.

Private	Public	Total Received
7	11	18

Annex Three
Case Digest

Case	Summary of Facts	Outcome
Y (A Minor: Wardship) [2015] EWHC 2098 (Fam)	The local authority applied for wardship orders in relation to Y, a 16-year-old boy whose older brothers had fought and died in Syria. The local authority was concerned that, as a result of his family history and the inability of his mother to protect him, Y was at risk of radicalisation and travel to Syria himself. Hayden J found that Y was indeed at risk of radicalisation and travel to war-zones in Syria.	Wardship order granted.
Brighton and Hove City Council v. Mother [2015] EWHC 2099 (Fam)	Fearing that Y was still vulnerable to radicalisation, the local authority applied to renew Y's wardship order. Hayden J took the opportunity to consider the history and utility of the wardship jurisdiction.	Wardship order renewed.
A Local Authority v. Y [2017] EWHC 968	The local authority was concerned that since Y when would turn 18, the wardship order would automatically end and he would remain unprotected from the risk of radicalisation and travel to Syria. Hayden J approved a bespoke agreement between the local authority and Y, modelled on the support offered to state care leavers and designed around the need to protect Y from radicalisation.	Agreement approved.
Re Z [2015] EWHC 2350 (Fam)	The local authority applied for a wardship order in relation to Z, a 17-year-old girl who it feared was at risk of radicalisation and travel to Syria. Z had previously already attempted to board a plane to Istanbul for the purpose of travelling to ISIS-held territories in Syria. The Counter-Terrorism Unit was concerned at Z's plans to travel to a family wedding in Denmark and her family's lack of candour. Hayden J found that Z was at risk of both radicalisation and a forced marriage.	Warship order granted.

London Borough of Tower Hamlets v. M and Others [2015] EWHC 2350 (Fam)	This case involved two separate applications for wardship orders regarding a number of children in the area considered to be at risk of radicalisation and possible travel to ISIS-held territories in the Middle East. Hayden J found that the children were indeed at risk of radicalisation and that the parents were unable to adequately protect the children from both risks.	Wardship order granted.
Re M (Wardship: Jurisdiction and Powers) [2015] EWHC 1433 (Fam)	The local authority made an ex-parte application for wardship orders in relation to four children whose parents had been detained by the Turkish authorities near the Syrian border. Munby P found that a wardship order could ease their repatriation to the UK.	Wardship order granted.
Re M (Children) (No 2) [2015] EWHC 2933 (Fam)	Munby P found that the parents had cooperated well with the local authority. A social worker found that the children were being well-cared for and that the religious beliefs of the parents no longer posed any concerns for the safety of the children.	Wardship order discharged and children placed on "child in need" plans.
Re X (Children); Re Y (Children) [2015] EWHC 2265 (Fam)	The judgment combined two cases, *Re X* and *Re Y* (discussed separately in the following two rows) involving two separate but related families. The respective local authorities applied for care orders, alleging that the parents were religious extremists and had intended or attempted to travel with their children to ISIS-held territories in Syria. Munby P found that the children in both set of cases could be returned to their homes, pending final hearings, under a comprehensive package of protective measures that ensured that parents could not attempt to travel to Syria.	Electronic tagging, passport confiscation and reporting at police station.

Re X (Children) (No3) [2015] EWHC 3651 (Fam)	The local authority applied for care orders in relation to four children who lived with their mother. Their mother was intercepted at the airport, carrying large amounts of luggage containing suspicious items. The local authority alleged that the mother was an extremist who had attempted to take the children with her to ISIS-held territories in Syria. The mother claimed that she had planned to travel to Turkey to meet up with a man she met while collecting money for Syrian refugees in the UK. Munby P stated that although he was suspicious about the mother's motives and found that she lied to the court, the local authority was unable to substantiate its claims that she was an extremist who was motivated by religious fundamentalism to relocate to ISIS-held territories in Syria.	Care proceedings dismissed.
Re Y (Children) (No 3) [2016] EWHC 503 (Fam)	In this case the local authority applied for care orders in relation to four children. The parents had been detained, alongside other adult members of the extended family by the Turkish military near the Syrian border. The local authority alleged that the parents had been attempting to cross the border to join ISIS in Syria, whereas the parents maintained that they were sight-seeing. Again, although Munby P was highly suspicious of the parents' motives and found that they had lied in their evidence to the court, he concluded that the local authority was unable to provide any cogent evidence proving that the parents were extremists and failed to make its case against the parents to the requisite evidentiary standard.	Care proceedings dismissed.
Re Y Children (Findings of Fact as to Radicalisation) Part 1 [2016] EWHC 3826 (Fam).	The local authority had previously been involved in the family as a result of the father's alleged domestic violence. In this case, however, the local authority applied for care orders in relation to three children as a result of concerns regarding the father's alleged extremist beliefs and attempted travel to ISIS-held territories in Syria. The family had been detained at a ferry port in Harwich and terrorist propaganda videos were found on some of the children's electronic devices. After examining the family's electronic	Children remained in foster care pending final hearing.

	devices and reviewing the evidence of a radicalisation expert who assessed the beliefs of the children and the father, Parker J found that the father was an extremist and had harmed or risked causing his children harm by indoctrinating them with extremist ideas.	
Re Y (Children) (Radicalisation) (Finding of Fact 2) [2016] EWHC 3825	In the second judgment Parker J assessed whether the father and his adult offspring had attempted to take the children to ISIS-held territories in Syria. Parker J also investigated whether the father had taken his children to talks and rallies organised by proscribed organisations. After assessing the evidence, including oral evidence from undercover police officers, Parker J found that the father and his adult children had attempted to travel with the children to ISIS-held territories and that the father took his children to talks and rallies attended by members of proscribed organisations where extremist and inflammatory speech was shared.	Care orders granted and children removed.
A v. London Borough of Enfield [2016] EWHC 567 (Admin)	In this case A, an 18-year-old girl, applied for judicial review of the local authority's refusal to provide her, a "child in need" under section 17 of the Children Act 1989, with accommodation as per section 20 of the 1989 Act. The police considered A to be at risk of radicalisation after she left her home and travelled, without her family's consent, to Turkey and had lived with a man regarded by the counter-terrorism police to be an extremist. In deciding the case, Hayden J found that children at risk of radicalisation are children 'in need' and are therefore owed a range of support services by their respective local authorities under ss 17-20 of the Children Act 1989.	Application granted.
London Borough of Tower Hamlets v B [2015] EWHC 2491 (Fam)	The local authority applied to remove B, a 16-year-old girl, from her parents' care. B had previously attempted to travel to join ISIS in Syria and had been made a ward of court. However, care proceedings were issued following a raid on the home and B's arrest with her parents on terrorism charges. Hayden J found that B had suffered emotional	Application for removal granted.

	harm as a result of accessing significant amounts of extremist propaganda.	
London Borough of Tower Hamlets v B [2016] EWHC 1707 (Fam)	In this case the local authority sought final care orders in relation to B, who had been in foster care for 9 months. Hayden J found that B had been radicalised and had suffered emotional and psychological harm as a result of exposure to ISIS imagery, videos and literature. Although her parents were not themselves extremists, Hayden J found that they had facilitated B's radicalisation journey and had given the authorities the false impression that they were monitoring her online activity. However, since removal had failed to meet B's welfare needs, Hayden J ordered that she be returned home under a comprehensive care plan that allowed for the monitoring of the family's electronic devices and the support of a proactive social worker.	Care order granted; B returned home under a care plan.
A Local Authority v. M and Others [2016] EWHC 1599 (Fam)	The local authority applied for care orders in relation to four children. In that case the mother was detained by the Turkish authorities near the Syrian border. After her return to the UK the mother was arrested and convicted for child abduction and, at the time of the proceedings, was serving a prison sentence. Newton J found that the mother was an extremist, had radicalised and emotionally harmed her children by taking them to rallies where hate preachers spoke and had attempted to take them with her to ISIS-held territories in Syria. Newton J found that the father had silently and passively condoned the mother's extremism and failed to proactively protect the children form her influence. The children were to remain in foster care pending a full assessment of the father.	Children remained in foster care pending the final welfare hearing.

A Local Authority v. M and Others [2017] EWHC 2851	Newton J found that the father, with the help of *Channel*, radicalisation experts at his local mosque and the social worker, had made great strides. He had learnt English and was receiving training on how to spot and deal with signs of radicalisation. After reviewing the evidence of psychiatrists, radicalisation experts and the recommendations of the children's Guardian, Newton J decided that it would be better for the children to be returned home and for the father to continue to be supported by the *Channel* programme, his mosque and the social worker.	Children returned home with coordinated and long-term assistance from the local authority and *Channel*.
Re C,D,E (Children) (Radicalisation: Fact Finding) [2016] EWHC 3087 (Fam)	The local authority applied for care orders in relation to three children. The children had been placed in foster care after their parents had been arrested for alleged terrorism offences as they were about to board the train to France. Although the charges were dropped and the children returned home, the parents were fitted with electronic tags. The local authority alleged that the parents were religious extremists supportive of ISIS and had been attempting to travel to the Middle East to possibly join ISIS there. After reviewing the social media content of the parents, Cobb J found that they were extremists and that their views could radicalise and harm their children.	Electronic tags to remain in place pending final welfare hearing.
Re C,D,E (Children) (Radicalisation: Welfare) [2016] EWHC 3088 (Fam)	Since the parents had cooperated with the local authority and had worked with a radicalisation expert on changing their previous extremist religious views and because there were no other welfare concerns regarding the children, Cobb J decided to end the formal proceedings.	Interim care orders discharged and children placed on "child in need" plans.

Lancashire County Council v. M and Others [2016] EWFC 9	In this case the local authority applied for care orders in relation to three children whose parents were now separated. The father was already known to the Counter-Terrorism Unit for his extremist beliefs. Secret police recordings revealed that he was an Islamist extremist and had previously expressed interest in travelling to war-zones in Syria. The local authority issued care and wardship proceedings after the family travelled to Turkey. The children were returned to the UK, following the wardship order. Although Jackson J found that there was insufficient evidence to substantiate allegations that the father was attempting to take his family to war-zones in the Middle East, he did find that the father was an extremist and that the mother had failed to protect her children from the father's influence.	Care orders granted.
Re K (Children) [2016] EWHC 1606 (Fam)	Care proceedings had been initiated in this case after a police investigation into the activities of the parents which arose out of concerns that he parents might have become involved in terrorist-related activity and held extremist views. Hayden J found that the parents did hold extremist views supportive of ISIS but agreed with the local authority that there was insufficient evidence to show that the children had suffered or were likely to suffer significant harm through exposure to their parents' extremist beliefs.	Care proceedings withdrawn.
HB v A Local Authority (Alleged Risk of Radicalisation and Abduction) [2017] EWHC 1437	The mother in that case had been stopped and detained under Schedule Seven of the Terrorism Act 2000 as she attempted to travel, with large amounts of cash, to Dubai. The local authority applied for care and/or wardship orders, alleging that the mother came from a family of extremists, had extremist views sympathetic of ISIS and had tried to provide financial support to individuals associated with ISIS. MacDonald J found that the local authority had not been able to substantiate any of its allegations against the mother.	Applications refused.

A City Council v. A Mother and Others [2019] EWHC 3076 (Fam)	In this case the local authority applied for care orders in relation to three children after receiving communications from counter-terrorism police following the search and arrest of the parents and their adult children at Gatwick airport. The local authority alleged that the parents held extremist beliefs supportive of ISIS. Knowles J found that the children were at risk of suffering harm as a result of the parents' fanatical religious beliefs and support for terrorist organisations.	Care orders granted.
A Local Authority v A Mother and Others (Fact-Finding) [2018] EWHC 2054 (Fam)	The local authority applied for care orders in relation to J, a 2-year-old girl who had been born in ISIS-held territories in Syria. Her parents had met and married in the UK before leaving to join ISIS in Iraq and then Syria. The parents decided to leave Syria with their child and were detained by the Turkish authorities. Whilst the father was facing criminal proceedings in Turkey, the mother returned home to the UK. Knowles J found that the mother had held extremist beliefs and had harmed her child by living in ISIS-held territories in Syria and Iraq. Knowles J found that there was still a risk that the mother would try to remove J from the jurisdiction and could inculcate her with extremist ideology and harm her through radicalisation and indoctrination.	J remained in foster care pending welfare hearing.
A Local Authority v A Mother and Others [2018] EWHC 2056 (Fam)	Given that the mother had harmed her daughter and remained loyal and committed to her husband, the father, Knowles J found that J was still at risk of harm and granted the local authority's care application. Knowles J also found that, in order to settle in her new home with the paternal grandmother, the contact time between J and the mother should be reduced.	Care orders granted and J removed from the care of her mother.

A Local Authority v X,Y and Z [2017] EWHC 3741 (Fam)	The local authority in this case had issued care proceedings in relation to three children, alleging that the father, who was the subject of a Terrorism Prevention and Investigation Measure was an extremist and a member of a proscribed organisations and that the mother was also a religious fundamentalist who had taken her children to gatherings where extremist views were expressed. Agreeing with the local authority that there was insufficient evidence to prove that the children in question had been exposed to extremism or had suffered or were likely to suffer significant harm, MacDonald J approved the application to withdraw proceedings.	Care proceedings withdrawn.

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