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PT

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About

Perspectives on Terrorism

Established in 2007, *Perspectives on Terrorism* (PT) is a quarterly, peer-reviewed, and open-access academic journal. PT is a publication of the International Centre for Counter-Terrorism (ICCT), in partnership with the Institute of Security and Global Affairs (ISGA) at Leiden University, and the Handa Centre for the Study of Terrorism and Political Violence (CSTPV) at the University of St Andrews.

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The International Centre for Counter-Terrorism (ICCT), founded in 2010, is a think-and-do tank based in The Hague, Netherlands. We provide research, policy advice, training and other solutions to support better counter-terrorism policies and practices worldwide. We also contribute to the scientific and public debates in the fields of counter-terrorism and countering violent extremism, notably through our publications and events.

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Editorial

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Words of Welcome

Dear Reader,

We are pleased to announce the release of Volume XVIII, Issue 4 (December 2024) of *Perspectives on Terrorism* (ISSN 2334-3745). This Open Access journal is a joint publication of the International Centre for Counter-Terrorism (ICCT) in The Hague, Netherlands; the Handa Centre for the Study of Terrorism and Political Violence (CSTPV); and the Institute of Security and Global Affairs (ISGA) at Leiden University. All past and recent issues can be found online at https://pt.icct.nl/.

Perspectives on Terrorism (PT) is indexed by JSTOR, SCOPUS, and Google Scholar, where it ranks No. 3 among journals in the field of Terrorism Studies. *Jouroscope*™, the directory of scientific journals, has listed PT as one of the top ten journals in the category "free open access journals in social sciences", with a Q1 ranking. Now concluding its eighteenth year of publication, PT has close to 8,000 registered subscribers and many more occasional readers and website visitors in academia, government and civil society worldwide. Subscription is free and registration to receive an e-mail of each quarterly issue of the journal can be done at the link provided above. The Research Articles published in the journal's four annual issues are fully peer-reviewed by external referees, while Research Notes and other content are subject to internal editorial quality control.

In the first article of this issue, Kristy Campion and Emma Colvin draw on interviews with countering violent extremism (CVE) practitioners to highlight conditions that may make vulnerable young Australians more susceptible to various forms of recruitment into terrorist networks. Then Gabriella Fattibene, Orla Lynch, James Windle, Grant Helm, Joe Purvis, and Liina Seppa present a case study about the extreme far-right ecosystem in Ireland.

This issue contains a Special Section of research articles that address critical intersections of extremism, courts and justice systems, guest-edited by Rachael Monaghan and Bianca Slocombe. In the first of these articles, Chloe Squires describes a broad range of methodological, practical, and conceptual barriers that hamper research on terrorism trials in England and Wales, and suggests new methods which can promote transparent interdisciplinary legal research. Then Rachel Monaghan and Bianca Slocombe draw from an original dataset to identify patterns of differences in the lengths of sentences received by individuals convicted of terrorism, terrorism-related and violent extremism offences over a 21-year period in the UK. Next, Simon Copeland, Emily Winterbotham and Marine Guéguin examine how the conduct of terrorism trial proceedings in France and the UK, and particularly the 'performative strategies' of the parties involved, affect the sentences handed down by the judge following a guilty verdict. In the following article, Adam Fenton examines the mechanisms for prosecuting and sentencing prisoners convicted of terrorism offences in Indonesia, using case studies to illustrate inconsistencies and discrepancies in legal processes. In the final article in this Special Section, Keiran Hardy explores the decision-making processes followed by Australian courts when making decisions about imprisonment in terrorism cases, focusing on both their initial sentencing under criminal offences for terrorism, and post-sentencing punishment under a Continuing Detention Order (CDO) scheme.

In our Research Notes section, Anthony Richards and John Morrison propose a strategic conceptual model for countering terrorism and extremism in the UK, one that emphasises the distinction between extremism of thought and extremism of method, and allows for the

possibility of extremist thought that does not lead to violence, and/or the possibility of extremism of method (including terrorism) in pursuit of non-extremist ideology. Then Christopher Kehlet Ebbrecht and Layla van Wieringen examine whether the term "anti-government extremism" is useful as an analytical construct, raising questions about the extent to which the term uniformly reflects attitudes and/or actions that are both extremist and anti-governmental.

In our Resources section, Judith Tinnes provides an extensive bibliography on terrorism and justice systems, courts and detention. Our Book Reviews Associate Editor, Joshua Sinai, has compiled a review of the book *Jihadi Intelligence and Counterintelligence: Ideological Foundations and Operational Methods* by Ferdinand J. Haberl. This is followed by several brief announcements about *Perspectives on Terrorism* from the Editorial Team. This issue of the journal has been produced in collaboration between James Forest, Anna-Maria Andreeva and Rachel Monaghan, with considerable assistance from Nina Prillwitz, for which we are very grateful.

Prof James Forest, Editor-in-Chief

PT PERSPECTIVES ON TERRORISM

RESEARCH ARTICLE

Foreign and Familiar: Recruitment Pathways of Young People Engaged With Extremism in Australia

Kristy Campion* and Emma Colvin

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Abstract: It has been established by leaders of the Australian national security community, such as the Australian Security Intelligence Organisation and the Australian Federal Police, that young people are being increasingly recruited into extremism. To date, few Australian studies have examined this issue using primary source data. This article seeks to understand the conditions which may make vulnerable young Australians more susceptible to recruitment, recruitment pathways, and forms of recruitment. To address this, primary sources were consulted, and frontline countering violent extremism (CVE) practitioners were interviewed. It was found that there is no typical pathway for young Australians to be recruited to extremism and that recruitment can be both foreign (informed by transnational networks and organisations) and/or familiar (within the immediate domestic environment of the young person). We identified the continued significance of online vectors, but further established the ongoing relevance and power of offline engagement for the recruitment of young people. Finally, we suggest that multiple intersecting vulnerabilities render young people more susceptible to recruitment, with data that suggests they may be naïve to their being recruited in the first place.

Keywords: Extremism, recruitment, Australia, networks, vulnerability

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Introduction

The recruitment of young people to extremist and terrorist organisations has been a feature of the Australian national security discourse for some time. This was energised again recently during the 2024 Inquiry into Right Wing Extremist Movements in Australia, which fielded submissions from the Department of Home Affairs and the Australian Federal Police highlighting their concern about the engagement of young Australians in violent extremism.[1] This follows a 2023 parliamentary inquiry, where the Department of Home Affairs expressed concerns about the decreasing age of recruitment, with young people being targeted to further the dissemination of extremist propaganda and inciting others to violence.[2] While there is considerable scholarship on recruitment trajectories to violent extremism internationally and demonstrable awareness of the challenge in the counter-terrorism community of practice, it nevertheless represents a lacuna in the academic field of knowledge in the Australian context.

This article examines the recruitment of young Australians into extremism. To do this, it draws on primary source data, compiled through interviews with frontline countering violent extremism (CVE) practitioners and the analysis of case file data of young people who have participated in the associated CVE program. There were three primary research questions. First, what conditions may render vulnerable young people susceptible to recruitment by extremists? Second, how were young people being recruited into extremism? And third, who was recruiting young people into extremism? These questions, it was theorised, would help build a better knowledge foundation for understanding the susceptibility of young people to engage in extremism and potentially illuminate under-recognised factors. In doing so, it provides an evidence-based analysis of the recruitment of young Australians to violent extremism, debunking common stereotypes across fields of practice and scholarship.

It was found that there is no typical pathway for young Australians to be recruited to extremism and that recruitment can be both foreign (informed by transnational networks and organisations) and familiar (within the immediate domestic environment of the young person). In suggesting this, we highlight the significance of domestic organisations, and also the part played by family and peer networks. We also identified the continued significance of online vectors, but further established the ongoing relevance and power of offline engagement for the recruitment of young people. We challenge the discourse in Australia which focuses on the online environment without concomitant consideration of offline engagement. Finally, we identify that multiple intersecting vulnerabilities render young people more susceptible to recruitment, with data that suggests some are naïve to their being recruited in the first place. To demonstrate this, an overview of the literature will first be provided, followed by the methodology and research questions, findings, and then a discussion which orientates the outcomes in the Australian national security discourse.

Extremist Recruitment of Young People to Violent Extremism

The recruitment of young people has been a topic for Australian researchers for nearly a decade. The driver behind the research was established recently by Barracosa and March, who highlighted that 25 percent of counter-terrorism convictions were of young people—and among them, ten percent between 2014 and 2018 involved jihadism.[3] The problem is, of course, hardly new. The Kurdistan Workers Party (PKK) was thought to have used "forced recruitment" of young people to swell its ranks, provoking anti-PKK demonstrations in 2015.[4]

There is a significant body of scholarship that seeks to explain the recruitment of young people in extremism, although it has been suggested that this body of scholarship lacks evidential rigour, with only fifteen of 16,582 studies containing primary source data.[5]

Limited evidence-based studies exist on the recruitment of Australians to extremist or terrorist organisations. Harris-Hogan and Barrelle undertook a longitudinal study of violent Salafi-Jihadist (VSJ) milieus, analysing seventeen years of data on Australian VSJ, including demographic characteristics and illicit activities.[6] They suggested that during the third 'wave' of jihadists post-2017, the demographic shifted, with the average age decreasing. A third of jihadists (33 percent) were young people and a majority had planned or committed terrorist act offences. They explain recruitment susceptibility through social identity factors, biological and neurological development, and social networks (including relatives and peers). The social network element is key, given that a compelling proportion (86 percent) of young extremists had family members, fellow students, or peer connections with VSJ milieus.

We now turn to the greater body of international literature, which typically exhibits composite, macro-level, and micro-level explanations for recruitment. While some of these relate to distinct sociopolitical contexts, they provide insight into conceptions of youth recruitment beyond a Western lens. In some contexts, this relates to child soldiers in armed groups, which provides a different lens on the engagement of young people in political violence. As will be detailed below, this can be impacted by structural conditions such as education or socioeconomic context. While these distinctions are important, they also offer greater insight into both the normality of the engagement of young people in political violence and their exploitation by adults with ambitions beyond their welfare. It further foregrounds the essentiality of youth around the world being socialised, recruited, or even, in some cases, forced into adult undertakings that they may not entirely understand.

Composite Explanations

Composite explanations for youth recruitment arose primarily in association with researching VSJ milieus. Asal et al. centralised the role of the family in a child deciding to join jihad, following other studies that suggested that family context did not matter.[7] Families are noted as an avenue for recruitment into militancy in the Palestinian context as well.[8] Asal found that in the Pakistani context, lower socioeconomic families or particularly religious families were more likely to consent to a child participating in VSJ in the hope or promise of financial reward, while wealthier families were less likely to consent. Unemployment and education levels did not affect parental consent.

One of the leading studies is by Horgan et al., who examined the recruitment of children into the Islamic State in Iraq and Syria (ISIS).[9] They note that ISIS recruited children from internally displaced populations, including foreign fighter families; from local impoverished communities (to wit: there was a financial incentive for parents); incentivised through public contests; from orphanages; by accepting child volunteers/runaways; and by abduction and/or slavery. Children were used as fighters, suicide bombers, spies, and recruiters themselves, and were also indoctrinated with Salafi jihadist ideology while witnessing punishments such as beheadings, crucifixions, and stonings. Horgan et al. identified a multifaceted socialisation process: 1) seduction through peripheral exposure; 2) schooling through direct exposure to material and personnel; 3) selection through focused attention, screening and grooming for roles; 4) subjugation through physical and psychological brutalisation; 5) specialisation through training; and 6) stationing, with deployment to assigned roles. They noted that age, maturity, development, socioeconomic, and caregiver aspects may be considerations in recruitment but concluded that more data is needed.

Babatunde contended that Boko Haram's recruitment of youth has made it "the most ferocious armed gang".[10] The preaching of religious ideology and propaganda was essential to recruitment, in addition to filling power vacuums led by poor governance through charity work and financial reward. When the pull of piety declined, the recruitment strategy switched to promising welfare. Other drivers included peer and family relationships, or alternative futures. For example, girls were able to avoid early marriage by joining Boko Haram and gaining protection and sometimes religious instruction. Similarly, a report by Darden suggests that youth are vulnerable to terrorist recruitment due to proximity to a terrorist group, economic vulnerability, marginalisation (social or political), social networks, and propaganda.[11] The individual's context and local sociopolitical and economic contexts are also factors in recruitment. Once recruited, it is suggested that most male youth assume combat roles while female youth are more often employed in support or recruitment roles. They noted that youth can be motivated by a search for identity, ideological appeal, perceptions of exclusion or grievance, economic reward, prospect of fame, or personnel connections.

Pethő-Kiss and Gunaratna also demonstrate the multifaceted aspects of recruitment in extreme right-wing contexts.[12] They note that recruitment has been seen to be gradual and dynamic, occurring in numerous settings and forms, driven by family or social networks, and informed by propaganda. They suggest that recruitment, including that targeting youth, is informed by low barriers for entry into movements, personal interactions online (such as via video games, alternate tech sites, and social media), and personal interactions offline (such as via leafletting, meeting at schools or on school buses or campuses, and through charities) are frequently exploited mechanisms for recruitment.

Macro-level Explanations

Macro-level explanations seek to explain youth recruitment via bigger societal forces and systems, such as economic deprivation. Blazak conducted early research into extreme right-wing (XRW) youth recruitment by examining skinheads in North America.[13] Using macro-level anomie to identify micro-level behaviour, Blazak suggests that anomie is a factor motivating adolescent recruitment to skinhead gangs, identifiable by "non-utilitarianism, maliciousness, and negativism".[14] The disconnects between aspiration, opportunity, and individual material needs were notable factors, but ultimately Blazak argues that the young skinheads, who typically identify as white and heterosexual, constructed and reacted to negative stimuli in form of the threat, supposedly represented by antiracism, LGBTIQA+ rights, feminism, multiculturalism, and other forms of progressivism. The threats to the cultural anomie are therefore threats to ethnic or racial status, to gender status, to heterosexual status, and to economic status. This was particularly insightful for the Australian context.

Mieriņa and Koroļeva examined the factors behind the involvement of young people in the XRW in fourteen European countries.[15] They suggested that young people in post-socialist countries tend to hold more negative predispositions (such as xenophobia and ethnonationalism), which align with XRW concepts despite varying or low immigration rates in the countries examined. Moreover, resource stress, status deprivation, and unemployment were suggested to be key factors, inferring that XRW ideology was more appealing to insecure groups. Adelaja and George explore this concept in the Sub-Saharan Africa context, where even employed youth are in poverty (70 percent).[16] This theoretically increases susceptibility, due to the aggravation of grievances associated with contextual factors, such as institutional corruption. Bad governance has also been suggested to predispose Nigerian youths to recruitment,[17] as has disadvantage (often related to poverty and low socioeconomic status), the tactical use of drugs, fake romances, the promise of financial reward, and (in some cases) direct kidnapping/human trafficking.[18]

Micro- or Identity-based Explanations

Micro-level explanations typically relate to personal or individual contexts, particularly with reference to identity and the quest for significance. In the Maldives, Speckhard et al. suggest that youth are vulnerable due to three issues: lack of education and employment opportunities, lack of informed religious instruction, and substance abuse.[19] When coupled with feelings of hopelessness, and driven by a quest for significance, young people can be more susceptible to the promises of jihadists for opportunity and redemption. Similarly, Doosje et al. draw on Dutch youth to provide a framework for determinants in susceptibility for engaging with XRW.[20] They suggest that resonance with Dutch identity, perceived injustice and threat, and relative deprivation are important background determinants. An Italian study of XRW youth by Dechezelles suggests cultural framing influences involvement alongside social, familial, and biographical experiences.[21] Bizina and Gray also suggested that in their search for identity, purpose and acceptance, young people may turn to extremism.[22] Lynch reviewed constructions of Muslim youth in the UK and found it tangled problematically in notions of identity crisis, alienation, and intergenerational conflict, where British Muslim youths were being constantly challenged to prove their trustworthiness and loyalty to British culture.[23]

Turner-Graham examined XRW expressions on microblogs such as Tumblr to understand engagement online.[24] They suggest that microblogs become places of virtual community and identity, where participants frame themselves as rebellious outsiders. In these online communities, the 1940s are celebrated as a lost golden age, promoting the blue-eyed, blonde-haired ideals of the fascist body cult. Turner-Graham suggests this is the "perfect fodder for the rebellious teen".[25] Miller-Idriss also shifts away from formal engagement to cultural participation in the XRW, examining other visual artefacts such as meme culture, iconography, lyrics, and aesthetics.[26] Miller-Idriss challenges scholarship that explains engagement via economic uncertainty, instead suggesting that cultural threats are a stronger predictor, tying in with the concomitant emotional impulses to belong and identify with a group and to reject and rebel against mainstream (adult) society. Such identity-based explanations highlight the often-overlooked engagement elements such as quests for meaning or significance, relationship certainty, or reframing deficits as systemic unfairness.

Suyanto et al. examined exposure to radical ideologies in Indonesian universities and found that recruitment trajectories were dynamic.[27] Some were searching for a purer religious model, others joined because of peers, disillusionment with their academic performance, and/or became engaged unintentionally. The scholarship on youth recruitment into XRW milieus is hardly comprehensive, but the diverse disciplinary approaches highlight some prominent explanations. These include the desire for belonging, which can be associated with status, prestige, privilege, or protection; the quest for a secure identity, which can be associated with collective identities, aesthetic expressions, and cultural styles; and rebellion avenues, where negative dispositions, hostilities, grievances, and oppositional sentiment can be expressed. There is no single explanation of how or why young people are susceptible to recruitment. More, perhaps, can be learned of youth vulnerability to recruitment by pivoting to vulnerability literature.

Youth Vulnerability

The vulnerability of young people requires further and separate explanation, given the demographics intrinsic to the study cohort. Simi and Futrell interviewed 128 current and former white supremacists from five different organisations to understand engagement better.[28] They found that socialisation at home significantly influenced individuals' learning of the movement's norms, values, and ideals. Koehler conducted a theoretical assessment of violent

extremism in association with toxic stress and substance abuse issues among adolescents.[29] While acknowledging that much research on mental health and terrorism focuses on adults, Koehler considered the recruitment of children and adolescents but "does not focus on mental health issues or child abuse as a potential precursor".[30] He suggests that engagement in extremism poses risks to physical and mental well-being, with extremists exploiting traumatic and therapeutic factors to encourage group commitment and embedment in the milieu.

Woodbury-Smith et al, in a paper on autism spectrum disorder (ASD) and extremism, note that vulnerability to extremism may be influenced by how individuals with ASD are treated.[31] They emphasise that "the appeal of belonging... may be stronger in people who do not experience a sense of community and belonging in other contexts".[32] They also highlight that other contributing factors, such as poor empathy, a history of trauma, childhood sexual and physical abuse, and neglect remain significant gaps in research. However, Druitt et al. suggest that existing scholarship cannot definitively conclude that individuals with ASD are more vulnerable to engagement with extremism than others.[33] This was significant for this project, given the early indications of ASD in the dataset.

Turning to other vulnerabilities, Dryden discussed the role of child protection in countering youth recruitment within the UK's PREVENT strategy.[34] He highlighted factors such as the need for belonging and unmet needs, political grievances, and theology and religion. Dryden suggested that youth are still often perceived as security risks rather than as victims. He noted that children in out-of-home care are particularly vulnerable due to experiencing trauma and a range of social, psychological, and behavioural challenges. Windisch et al. measured the scope and nature of adverse childhood experiences (ACEs) through a questionnaire and interviews with 91 North American white supremacists.[35] They found that 63 percent of these individuals had experienced four or more adverse experiences before the age of eight, a rate higher than both a high-risk comparison sample (55 percent) and the general US population (16 percent). The interviews revealed maladaptive coping strategies that increased susceptibility to extremism. While acknowledging that a single traumatic event might lead to engagement in extremism, they found that such engagement was more likely the result of multiple cumulative ACEs. This research complements linked work by Logan et al., who compared ACE exposures before age eighteen between XRW and extreme left-wing (XLW) cohorts.[36] They noted a distinct difference, with 70 percent of the XRW cohort having been exposed to ACEs, compared to 50 percent of the XLW cohort. This was relevant to this paper's data, given the early indications of ACEs. With this complexity in mind, we turn to the recruitment of young people within the scope of our project.

Methodology

This project aims to understand how and why young people may be recruited into extremism drawing on available evidence from New South Wales, Australia. The project had three phases. First, a literature review was undertaken which examined security studies and criminal justice literature to better understand the recruitment of young people and the vulnerability associated with young people – especially as identified in criminal justice contexts. Ethics approval was applied for and received, enabling the second phase of the project. In this phase, the research team conducted interviews with members (*n=6*) of the Engagement Support Unit (ESU) within the Department of Communities and Justice, New South Wales government, Australia. The interviews were semi-structured and thematic, and ranged from forty to seventy minutes in length. The interviewees were assigned gender-neutral pseudonyms to protect their privacy.

Following this, case files (*n=17*) related to young people engaged in extremism were reviewed, and de-identified at the time of access. It was noted in the ethics approval that some sensitive data, such as political beliefs or criminal history, would be accessed as part of the research. The case files were also referred to by pseudonyms. The data selection and collection were informed by two perspectives. The first was the criminal justice perspective, which sought to understand three overlapping contexts of the young person's life: personal, social, and environmental. The second was a CVE perspective that sought to understand the engagement of young people through a synthesis of factors centralised in *The Radical's Journey* by Kruglanski et al., which identifies the primacy of needs, narratives, and networks in extremist engagement contexts.[37] This was selected as Kruglanski et al.'s N Trilogy theory has been applied to both extreme right-wing and jihadist actors, making it a viable fit for the study based on the ideological division of the cohort. Because of this two-pronged data collection approach, there were overlaps. For example, the criminal justice collections on personal context (i.e. vulnerabilities) overlapped with the CVE collections on needs. We found this enriched the dataset with greater insight, rather than unbalancing the project.

The files and the interview transcripts were subject to basic quantitative and in-depth qualitative methods. Quantitatively, descriptive statistics were derived from the raw data that provide an overview of key demographic characteristics and factors of clients. Because of the limitations inherent with a small dataset, gender was omitted. Qualitatively, the data was analysed using inductive thematic analysis, generating themes from the data through which to organise and better understand it. These reoccurring patterns and themes were considered both in isolation of – and in conjunction with – the interview transcripts, to better understand the responses and answer the research questions. The research questions and associated data collection points are provided in Table 1.

Table 1: Research Questions and Data Collection Summary

Question	Detail	Data context	Data collection point
Research question #1	*What conditions may render young people susceptible to recruitment?*	Criminal justice considerations on the personal, social, and environmental contexts of young people; CVE considerations on needs.	• Identifiable vulnerabilities • Ideological familiarity • Prior offenses • Education • Relationship security • Stressors
Research question #2	*How were young people being recruited into extremism?*	CVE considerations on needs being met by recruitment (i.e. belonging); and offline and online networks.	• Deliberative recruitment • Nondeliberative recruitment • Online vectors • Offline vectors
Research question #3	*Who was recruiting young people into extremism?*	CVE considerations on needs (via organisations) networks via identifiable engagement	• Transnational networks • Domestic networks • Organisational involvement • Other recruiters

Before turning to the findings, it is necessary to establish the definitions of key concepts in this paper. For the purpose of this study, recruitment was defined as the process through which an individual becomes part of an extremist organisation – including coercive recruitment, child

recruitment, and open, non-coercive forms, as inspired by Alakoc et al.[38] This is distinct from radicalisation, which is defined as the process through which an individual comes to accept or adopt the extremist beliefs, attitudes and social mores associated with a political, religious or ideological system and condone violence in pursuit of them.[39] Vulnerability is defined as the factors that make an individual more susceptible to harmful or unlawful activity, often related to personal, environmental or social factors. As Druitt et al. suggest, "vulnerability describes an individual's openness or susceptibility for engagement" in extremism.[40] Susceptibility, as a separate concept, refers to the likelihood of a vulnerable person being influenced or drawn into harmful or unlawful behaviour. Vulnerable people, particularly those with trauma histories, may have poor attachments.[41] This may leave them more susceptible to joining networks that may be harmful, in order to find belonging and security.

Findings

To understand the engagement of young people, it is essential to establish the demographic details. Out of the seventeen client cases reviewed, sixteen were male and one was female, making a gendered analysis unfeasible. The age range at the time of engagement with the programme was 13–27 years, with a median age of nineteen and a mean age of twenty. The inclusion of the older clients was due to their age at time of involvement, rather than current age. Thirty-five percent of the individuals were from rural areas, and almost 60 percent were from the western suburbs of Sydney. Seven individuals identified as belonging to an ethnic minority, though some files lacked explicit information on cultural or ethnic heritage. All cases fell into two threat categories: Salafi jihadism (specifically) or Islamist extremism (more generally), and right-wing extremism (including white supremacy, neo-Nazism, fascism, and white nationalism). There were no identified anti-government individuals. Breaking it down further, 47 percent of cases were linked to violent Salafi jihadism, while 53 percent were linked to right-wing extremism. This breakdown enables meaningful cross-comparison between VSJ and XRW cohorts. We now return to our research questions.

Research Question #1: What conditions may render vulnerable young people susceptible to recruitment?

Young people have innate vulnerabilities which may render them more vulnerable to recruitment. This includes a measure of ideological familiarity, prior offences, educational outlook, relationship security, and stressors, which influence their overall susceptibility.

Innate Vulnerabilities

The study examined the vulnerabilities of young people concerning mental health, neurodiversity, adverse childhood experiences, and other factors, which will be detailed in another work (Authors, forthcoming). This research established that young Australians were susceptible to extremism due to multiple intersecting vulnerabilities. Of the cases reviewed, 70 percent indicated the presence of mental health issues such as depression, anxiety, and post-traumatic stress disorder. These were formally diagnosed. Several files indicated the presence or suspicion of autism spectrum disorder (ASD) or attention deficit hyperactivity disorder (some were diagnosed, some were awaiting diagnosis, and one was found to have a contrary diagnosis after formal examination). Nearly 60 percent of cases showed comorbidity of neurodiversity with behavioural disorders. Around 70 percent of individuals had experienced significant Adverse Childhood Experiences (ACEs), with some cases involving multiple ACEs for a single individual. Over half had experienced some form of victimisation, such as bullying or social isolation, often in educational settings. Some had experienced out-of-home care or

had interactions with the criminal justice system. As one interviewee suggested, "They all have their vulnerabilities or susceptibilities." These factors suggest inherent vulnerabilities that could render young people more susceptible to manipulation, grooming, or recruitment into extremist organisations (Authors, forthcoming).

Ideological Familiarity

Considering the ages and ideological categories, it was essential to assess the depth of their ideological knowledge. This was done by examining the data traces which suggested they might identify with an in-group, and attribute grievances to an ideological outgroup. Identification with an in-group indicates the bounded community they feel part of, and believe needs defending. The attribution of grievances identifies the outgroup community they blame for societal issues, thus justifying violence against them. This method has limitations, as ideological knowledge might not always be apparent from the data, and the amount of data can vary. Overall, 59 percent of cases showed that the individuals had familiarity with core ideological knowledge, though, in the remainder of cases, there was insufficient data to determine this.

Prior Offenses

One of the core considerations for legislating against terrorism in Western democracies is the threat or use of violence, encompassing preparatory, planning, and execution stages. Extremist ideologies, as noted in academic scholarship, typically endorse violence to achieve their goals. This endorsement of violence is often deemed necessary for classification as extreme. Therefore, detailing the nature of the offences and the individual's history of violence is crucial to contextualise whether violence is a normal part of their approach to dispute resolution. In 76 percent of cases, individuals had prior offences ranging from juvenile misconduct like truancy to more severe crimes such as stalking, harassment, assault, grievous bodily harm, and potentially domestic violence (as indicated by an Apprehended Violence Order). The most serious offences included threats (including death threats), possession of weapons/firearms, aggravated break and enter, arson, possession of explosives, possession of child abuse materials, advocacy for terrorist acts, preparation for terrorist acts, and creating or collecting documents for terrorist acts.

Education

The educational achievements of extremists vary, particularly in hierarchical terrorist organisations, and their relevance is debated.[42] Brockhoff et al., Korotayev et al., and Danzell et al. contend that lower education levels may be linked to terrorism.[43] The US dataset PIRUS supports this, indicating low educational achievement is common, with few radicalised persons holding advanced degrees.[44] In this project, the cases show that 82 percent were struggling academically. For young people, home stability can be crucial to academic progression. Nearly 65 percent of young people in this study had experienced instability, including family upheaval, domestic violence, severe illness, loss of the family home, links to organised crime, drug use in the family, child sex abuse, financial insecurity, and personal medical conditions.

Relationship Security

Relationship security (this is sometimes assessed as intimate relationships, such as in TRAP-18) is one way to consider the strength and security of attachments (poor attachment theory being noted as a maladaptive coping mechanism). For this study, relationship security was used to refer to secure attachments or social connections, whether with an intimate or non-intimate

romantic partner, or through friendships with peers. Relationship security may also be used in certain contexts as a mechanism to gain a greater understanding of the social engagement – or alternatively the isolation/alienation – of an individual, as well as providing insight into the young person's attachments. Only around 18 percent of cases reviewed indicated the presence of strong relationships, either with peers or romantic partners. Generally, the cohort did not exhibit strong or secure attachments.

Stressors

The final susceptibility consideration is stressors. Stressors can highlight a deficit in social support or environment, and reinforce feelings of isolation or grievance. Ideologies, moreover, can provide a simple explanation for the individual's environment and its deficits, allowing stressors to be attributed to a dehumanised outgroup or a malevolent actor (for example). Some 82 percent experienced stressors, ranging from changing schools to losing their homes, being sexually assaulted, mental health issues, bullying, family incarceration, experiences of family domestic violence (both as a witness and victim), financial insecurity, family bereavement, illness, bullying, drug abuse, and witnessing death.

Research Question #2: How were young people being recruited into extremism?

Following a review of exposure vectors, two recruitment avenues were identified: deliberative and nondeliberative. This occurred in online and offline environments.

Exposure Vectors

It is rarely possible to establish the point of first exposure to extremism, especially with the complex interplay of online and offline environments. Pauwels and Hardyns suggest exposure comes in many forms, and can be active or passive.[45] Across the cases, the main exposure vectors included direct relationships, such as family or friends, direct recruitment by organisations, online forums, or international travel. In a small amount of cases, it was not possible to identify a clear exposure vector due to data scarcity. Some 50 percent of the VSJ cases showed signs of exposure through a direct relationship, around 12 percent through travel, and the remainder unknown. Nearly 12 percent of XRW cases exposed through a direct relationship, 33 percent through organisational exposure, 11 percent on online forums, and the remainder unknown. The data was further suggestive of some young people aligning themselves with prominent organisations (such as Islamic State), without having ever been in direct contact.

Deliberative Recruitment

It was not possible from the available data to identify specific recruitment operations in a linear fashion. However, once accounting for the conditions which may foster vulnerability and susceptibility (as identified in RQ1), it was simply enough to note that the young people were vulnerable by their circumstances. Subsequent to this, it was possible to distinguish incidences of deliberative recruitment. As noted earlier, 33 percent of XRW cases showed signs of deliberate recruitment by an organisation. These organisations were primarily domestic, and related to white supremacy, white nationalism, and neo-Nazism. For the VSJ cohort, it was not possible to confirm if Islamic State supporters had been actively recruited by Islamic State. With rare exceptions, both online and offline environments influenced this form of recruitment.

Nondeliberative Recruitment (Socialisation)

The other recruitment dynamic observed was non-deliberative recruitment (or socialisation), also occurring in online or offline contexts. This is where the young people became socialised to or with extremist organisations without being deliberately or actively recruited. This can occur when young people are unconsciously seeking a sense of belonging, whether in an organisation, community, or family context, as noted by interviewees. The interviewees suggested this can happen within the family, in other (criminal) organisations, or in online forums. As Alex explained,[46]

> *It does seem to be, 'I was playing this game in this chat group and they introduced me to this and there was this whole group of people and they seemed really cool and exciting and different, or I was bored and this was exciting or I saw this YouTube and that led to this YouTube which led to this YouTube'.*

Engagement with others may have promoted a sense of community, belonging, and importance. As one interviewee suggested, "Online he felt like he had friends and was making a name for himself." In some cases, as identified by Morgan, this can occur when a young person becomes involved with a criminal organisation, which just so happens to have an ideology attached to it. There was a common denominator with the socialisation paradigm: naiveté. Interviewees reported that the young people did not realise that they were becoming socialised to an ideology or recognise they were being recruited deliberately. As suggested by Taylor, "I don't know if they know that they're being recruited until after it happens." Further:

> *…they always seem to be quite surprised that they've got into trouble. They didn't realise that talking to someone about killing Jews was illegal. And I think that they – there does seem to be this commonality that they didn't realise that they're actually going down that rabbit hole. Until they were well and truly down the rabbit hole.*

This highlights the vulnerable nature of the cohort, who may not understand, be able to identify, or control the circumstances around their engagement in extremism.

Offline Engagement

Offline engagement remains a recruitment avenue. Recruiting drives can foster engagement opportunities, project the presence of the extremist group, promote organisational cohesion, and otherwise make its members feel part of something. For the VSJ cohort, around 62 percent demonstrated offline engagement in some form. This included family and friend networks (direct relationships), as well as meeting in person with extremists they had met online. Locations included mosques, bookstores, people overseas, or in prison. There was insufficient data for the remainder. For the XRW cohort, over 44 percent demonstrated offline engagement through direct relationships, at seemingly social events such as barbecues, organisation meetings, primary school and high school.

This offline engagement was clear in some families. Blake identified one case where the young person's "father has got his own grievances, that's for sure," while Morgan observed that some "families are quite anti-government." Alex also agreed with this, stating "there's definitely some clients where there's someone in the family that has shared the beliefs." Again, Taylor notes, some of their young people's exposure has been familial, where there was "definitely an element of permissiveness within the family unit". Quinn observed this to happen where it has occurred in respect to the grandmother or grandfather, brother, father or uncle. This can go beyond permissiveness or tolerance to direct encouragement, as explained by Rory:

> *And [young person] I was talking about … they were using dad's social media platform to espouse right wing hate, and dad thought it was great and encouraged him. So he was pleasing dad.*

Offline engagement, therefore, remains an important factor in recruitment contexts.

Online Engagement

The VSJ cohort was commonly synchronously engaged online, with close to 87 percent of the cohort demonstrating online engagement. A minority did not demonstrate online engagement, perhaps due to their higher level of offline engagement. For the XRW cohort, 77 percent demonstrated online engagement, while 22 percent did not demonstrate online engagement, again, perhaps due to their high level of offline engagement. Some of this online exposure is driven by curious peers, as Quinn noted that, "kids of a similar age saying, 'Oh, have you seen this? Have you seen that? But this—you can find it here.'" In other cases, the exposure to materials is more calculated, as Taylor explains:

> *They're all being led online by other peoples who are unnamed. But definitely being fed information, fed pictures, being fed the violent gore videos, they're receiving these from external players.*

In the interviews, the practitioners reported that recruitment can and does vary depending on the age of the young person, and how engaged they are online. In one instance, Blake commented that the young person was "being groomed quite well to probably perform some act for this guy to claim." Quinn seconded this, stating "with this social media and internet use, there's obviously a lot of online grooming to engage young people." Social media allows recruiters to test the responses of their targets, as Quinn elaborated:

> *That space is really unregulated and it's very easy for someone to then come in there and see who the person is that doesn't get picked for teams and doesn't get picked to play consistently in a group of the same people and sort of identify them as somewhat vulnerable or maybe there's a capacity there where they could be groomed online.*

Even in cases where it may not be calculated grooming, recruiters could arguably "identify them as somewhat vulnerable or maybe there's a capacity there where they could be groomed online." As noted by Rory, the young person:

> *…starts to get further and further, further down a rabbit hole. Someone's helping that. Someone is assisting them on their journey.*

Research Question #3: Who was recruiting young people into extremism?

Young people are recruited into extremism via transnational and domestic networks, with domestic networks the most common. It was difficult to evidence active recruitment by transnational networks such as Islamic State due to data deficits, however, it was identifiable amongst domestic XRW organisations.

Transnational and Domestic Networks

In some cases, it was difficult to determine the actual contact with a transnational entity. For the VSJ cohort, a minority appeared to be purely engaged via transnational networks, through

international travel and, later, online transnational engagement. By contrast, a quarter had engagement with domestic networks, such as in correctional facilities, or through a local cell pledged to Islamic State. The identification of both transnational and domestic networks via friends and family accounted for a quarter of the cases. There was insufficient information to categorise the remainder (for example, one young person was suggested to have been in contact with an undercover officer who they believed was a representative of a terror organisation).

For the XRW cohort, it was not possible to categorise the network engagement of nearly 45 percent of the cohort based on the available data. By contrast to the VSJ cohort, however, there were indications of a higher rate of domestic entities at play, with nearly 34 percent of the individuals engaged with a named domestic network or group. A minority engaged purely online with a transnational entity (which was potentially unaware of the young person's interest), and just over 10 percent engaged with both a transnational network and domestic network. While hardly overwhelming by raw data breakdowns, this serves to highlight the endurance and ongoing relevance of domestic entities.

Organisational Involvement

With the VSJ cohort, the organisation with which the young people felt engaged, was overwhelmingly Islamic State. This is even though there were ideological contradictions in the data that suggested a less-than-perfect understanding of the Islamic State vision. Further, it was not possible from the data to verify whether any of the young people supporting Islamic State had direct contact with the terror network. For the XRW cohort, nearly 34 percent of the young people appeared engaged with (primarily domestic) organisations that could be catalogued within the white supremacy, white nationalist, fascist, and neo-Nazi milieu – the 'traditional' extreme right. For the remaining 67 percent, there was no organisation specified, but the beliefs still fitted within the traditional extreme right. It bears to reason that in some cases, the young person's recruitment was less about ideology, and more about community. As one interviewee suggested, "they've gone through that sort of cycle of latching onto something that gave them a sense of family, a sense of community."

Discussion

These findings paint an interesting picture of the recruitment of young people into extremism in Australia, and speak to three points of contestation: the role of the online environment in extremism, the power and reach of transnational terror networks (and what can be done), and the youth demographic itself.

Free-Form Engagement Environments

The focus on online extremism in the Australian context is well-established by national security stakeholders.[47] Headlines abounded in 2022 with tales of children as young as ten being radicalised on social media.[48] This was emphasised in the 2024 Parliamentary inquiry into Right Wing Extremist Movements in Australia, which contained a specific Term of Reference being "a.(v) the role of the online environment in promoting extremism," but no reference to offline environments.[49] Often, the importance of the offline environment is reduced in these discourses. It is suggested here that both online and offline environments influence the recruitment of young people into extremism, while acknowledging that, in some cases, it was difficult to verify the extent or nature of that engagement. The data is certainly suggestive of considerable online and offline engagement. It must be noted, however, that the internet plays a part in the everyday lives and interests of nearly all Australians. In the digital age, it would

be highly unusual for a young person curious about a topic *not* to search for it online. Even if young people do not deliberately search for extremist content, they may still be exposed to it. In a study by Costello et al., it was suggested that around 65 percent of young people surveyed had been exposed to hate material online over three months.[50] This was in a study of 1,034 random survey respondents, rather than extremists, but nonetheless demonstrates the frequency of exposure in the general population.

In terms of offline engagement, recruiters appear to have engaged with young people at school or home environments, and provided young people with attention, validation and a sense of community. In one chilling tale, a young person was groomed by the parents of their peers while still in primary school, and later taught how to surveil targets and fight. In another case, the young person was groomed online and groomed other younger people themselves. There is considerable complexity to this issue, and it is erroneous to focus on the online environment to the exclusion of the offline environment. Much like the perverse outcomes of the stranger danger phrase (which overlooked the data that children were more likely to be harmed by someone they knew), it is important to recognise that extremists are not always anonymous users on social media, but can be friends, family, or the parents of peers. The recruitment of young Australians is best conceptualised as a free-from-engagement environment, with no standard recruitment process or dynamic.

Both Foreign and Familiar

A similar misconstruction exists with respect to the shadowy international terror threat. The Australian list of terrorist organisations is dominated by international threats such as Islamic State, al Qaeda, and Abu Sayyaf Group. Only three XRW organisations are listed in Australia (The Base, Sonnenkrieg Division, and National Socialist Order, formerly Atomwaffen Division).[51] It is rarer still for domestic organisations to be listed, even when members of these domestic organisations are facing trial for acts that meet the terrorism offence threshold. This indicates an overwhelming focus in the national security posture towards listing internationally-based organisations and networks, but not domestic organisations. This further allows for presumptions about what can, and can not, be done about the recruitment of young people in terms of jurisdictional reach.

In contradiction to this security posture, this research emphasises the significance of domestic organisations and vectors for recruitment. Young people might support foreign terrorist organisations, but it is uncommon for them to have direct and exclusive contact with these organisations. Instead, deliberate recruitment could be identified through domestic organisations, in social, educational, or familial settings. To restate this, a third of the XRW cohort and a quarter of the VSJ cohort demonstrated seemingly exclusive engagement with domestic organisations, compared to international engagement which was 11 percent and 12.5 percent, respectively. For the rest (44 percent XRW and 37.5 percent VSJ), it was unknown. In some cases, both transnational and domestic engagement was indicated (25 percent VSJ, 11 percent XRW). This suggests that domestic organisations and networks should not be trivialised or overlooked. Given the targets of extremist recruitment are young Australians, targeted substantively by Australian extremist entities, it would seem logical that such entities be considered for listing as a mechanism to inform the public and deter engagement.

Domestic entities can and do play impactful roles in engaging young people in extremism. This impact may be more marked when considering the role of the family and family environments. The role of the direct social environment, such as family, was highlighted by practitioners. Blake noted in one instance where the father's views were in close alignment with the young person's; Morgan also noted that the families could be quite anti-government; while Rory states

that young people can be highly influenced by male role models such as fathers, brothers, and uncles. Also, according to Quinn:

> *The other thing upon reflection would probably be that in a lot of those cases, they retrospectively identify that they also did have a family member who potentially was of a certain ideological view, but at that time they didn't understand what that was. Being they're young, they don't know about ideology, but when someone explains it to them and gives them examples of what that looks like, they can then look back and, reflectively, they then talk about, 'Oh, actually my dad and my uncle were quite like that, but I didn't realise that at the time.' Or, 'On my mum's side of the family, my grandmother was very much about—this is a certain type of ideology.' But it was not talked about as an ideology. It was just this is what she believes in. Or the dad and uncle—this is just what they've done because that's what their dad did.*

Quinn highlights well the likelihood of young people being more accepting of the beliefs of their parents or family. This is hardly a deviation from the broader Australian public, where young people are frequently involved by their families in political causes. In Australia, a young person cannot be seen as politically responsible or mature until the age of eighteen, so it is unrealistic to expect young people to be able to immediately identify potentially extremist beliefs in their family or social environments, and reject them.

The role of the family was not universal, according to the practitioners. The variability of this was highlighted by Alex, who said, "there's definitely some clients where there's someone in the family that has shared the beliefs. But I'd say, there's just as many where either there was just limited to no close connections within the family…" This was supported by Taylor, who provided more detail on the variability of that direct social environment:

> *Some of them have been familial…the one I was saying who was raised by […their] uncles. I don't even know if they were actual uncles or not. Another client was married to somebody who really compelled…[them] to commit an act of ideological extremism, violence.*

As this suggests, the reality of young people engaging in extremism in Australia is that there can, and may be, family endorsement, awareness, or in some cases, normalisation of extremism. The engagement of young people is not purely initiated by predatory foreign recruiters on behalf of prominent terror organisations: sometimes, it is in the family. At other times, it exists within the immediate environment of the young person, and the young person may not have the political maturity or power to identify the organisation or its beliefs as aberrant to the Australian mainstream.

Naiveté and Vulnerability

The stereotype of happy families with no knowledge of their young person's extremism is a simplistic view. Family often plays a significant role in a young person's engagement with extremism. This was a persistent theme which manifested both in the file reviews and the interviews with practitioners. This is also highlighted by Harris-Hogan and Harris-Hogan and Barelle in studies that argue the role of family or peer relationships are key to understanding jihadist network evolution in the Australian context.[52] Our research suggests there is considerable complexity to the young person's ecosystem which informs their overall susceptibility and potential engagement pathway. This susceptibility is informed by numerous (and often comorbid) vulnerabilities inherent to both the young demographic, and the power differentials which may be at play.

As was indicated in the Findings, the cohorts examined in this research present multiple intersecting vulnerabilities, which range from personal experiences of victimisation and abuse, unstable living or family conditions, adverse childhood experiences and trauma, neurodiversity, mental health issues, and so on. These young people have fewer protective factors than others, which may speak to their being targeted for recruitment or naiveté about what they were being recruited into. The practitioners, for example, reported that the young people did not realise that they were becoming socialised to an ideology, or recognise they were being recruited deliberately. Some were unaware, not only of their recruitment, but of the very idea that their conduct was unlawful. Online spaces contributed to the normalisation of some of this conduct. This was identified by Quinn, who explained:

> *Everybody meets somebody online at some point. So it's not considered an unusual thing to occur. But I don't know that they can also then take it the next step further and identify exactly what it was within that conversation that hooked them or was that next step that was actually—achieving that pathway to recruitment. I don't know if they can identify that.*

Rory also commented: "I'm not even sure if they know the truth themselves." Young, vulnerable Australians may be said to be naive to the circumstances that lead to their recruitment, and the motives of the recruiters themselves. This highlights another aspect: such vulnerable young people cannot be expected to understand, identify, or necessarily control the circumstances that led to their engagement in extremism. At the time of writing, it is not a crime in Australia for an adult to recruit a child to a terrorist organisation. To expect (or seek to build) resilience in the young person overlooks the agency, power and relative impunity of the predatory adult recruiter.

Conclusion

This research sought to illuminate underexamined considerations in the recruitment of young Australians to extremism. It has been argued that there are a number of intersecting and often comorbid vulnerabilities in a young person and their ecosystem, which renders them more susceptible to recruitment by extremist organisations. Our findings, albeit limited, have challenged stereotypes about young people engaged in extremism, and detailed the difficulties within their personal, social and environmental contexts. We have further highlighted the significance of naivety among this young cohort, and sought to synthesise this within context. While no typical recruitment pathway for young Australians was identified, we have aimed to highlight the ongoing relevance of domestic organisations in addition to international organisations, with further encouragement for the listing of domestic entities. We aimed to illuminate that while extremist ideologies are often considered foreign, in many cases, they are familiar to young people through direct relationships.

Further, this study challenges the focus applied to online extremism in Australian professional security discourse, as demonstrated by the 2024 Parliamentary inquiry noted above. In contrast to this focus on online, we have demonstrated domestic and offline factors nevertheless remain an important part of the recruitment vortex, and well within the Australian jurisdictional reach to confront. Both online and offline environments are important to the recruitment of young people: it is not simply a social media problem. Given the expanse of this problem within the Australian domestic context, we encourage policymakers to utilise the existing tools at the disposal to deter the recruiters from targeting vulnerable young Australians. Finally, this study may also support and inform understandings of youth engagement with extremism in other

comparable jurisdictions and practice contexts. Ultimately, more research is needed both in Australia and beyond to comprehend the nuance of engagement and work towards better disengagement outcomes for vulnerable young people.

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PT PERSPECTIVES ON TERRORISM

RESEARCH ARTICLE

The Far-Right Ecosystem in Ireland: History and Contemporary Trends

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Abstract: It is often claimed that there is little to no organised extreme right-wing (ERW) presence in Ireland. The absence of the ERW is often attributed to Ireland's 'civil war' political system, however, in recent years, the country has witnessed an increase in both far-right and ERW activity via online activism, street protest, and even violence. Perhaps the most prominent manifestation of the ERW is in the online space, and this article seeks to understand the Irish online ecosystem by focusing on social media influencer activity, their role in the propagation of ERW ideas, the spread or contagion of ideas into and out of the Irish eco-system, and the themes that are dominant in this space. This exploratory study, which analysed 422,156 social media posts across four platforms (1 October 2020 to 30 June 2021), found that Twitter and Telegram played a more facilitatory role than YouTube and 4chan in the proliferation of ERW content in Ireland. The most frequently mentioned extreme right-wing influencers were Irish, British, and American public figures and social media influencers, and the majority of location mentions referenced the United States, followed by the United Kingdom. The most popular themes were global conspiracy theories followed by anti-left, alt-right, anti-black, and anti-government sentiments. The article concludes that there is ERW presence in Ireland, and it has its own online ecosystem aimed towards creating division and spreading ideologies of hate and, in some instances, a call to action.

Keywords: Conspiracy, far-right, extreme right-wing, Ireland, online, social media

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Introduction

While it is often stated that there is little to no organised extreme right-wing (ERW) presence in Ireland,[1] recent reports document a surge in ERW activity across the country, and point to an increasingly coherent presence, particularly in online spaces.[2] Considering Ireland's unique political history and, unlike its European neighbours, lack of a significant ERW party political presence, understanding the emergence and spread of right-wing ideas and activism in Ireland is very much rooted in local and national issues. The ideas that have come to dominate ERW rhetoric in the state are, however, linked to popular international narratives circulating widely amongst ERW communities, albeit locally interpreted.

Cas Mudde identifies the far-right as an umbrella term, centred on authoritarianism and nativism, under which sits the ERW.[3] Bjørgo and Ravndal, drawing upon Mudde, identify that the *extreme* right-wing rejects democracy and "promote[s] violence or other illegal or non-democratic means as legitimate".[4] This article focuses on the ERW, but acknowledges the fuzzy boundaries between the far-right and ERW. Thus, when we reference ERW, we are referring to the community within the far-right that encourages violent or anti-democratic means, while when we reference the far-right, we are referring to authoritarian and nativist ideology more broadly.

Using this framework, this article provides an overview of the contemporary history of the far-right presence in Ireland, followed by an exploration of the themes that are popular amongst and propagated by online far-right influencers in Ireland in an effort to understand issues of context and contagion of the far-right in the Republic of Ireland.

Globalisation of Far-Right Ideology

Contemporary Trends and Strategies

Although many far-right movements have their own unique brand of far-right nationalism arising from local history, culture, and political context, there is increasing concern about the potential for the globalisation of far-right ideology.[5] Whereas the far-right movement has long been fragmented into various groups - neo-Nazis, incels, white nationalists, etc. - recent events and political victories have shown the consequences of the collective organisation of these groups and the mainstreaming of far-right ideology.[6]

Whilst disparate far-right factions pose their own threats, the collective organisation of these ideologically different groups under a singular influence poses its own dangers.[7] Though there has long been far-right extremist and graphic content in circulation,[8] far-right actors have been able to mainstream and globalise ideology by 'casting a wide net' to capture an audience susceptible to far-right messaging or tangentially related to the movement, exposing people to vague, 'common-sense' content that they may be ideologically aligned with before being exposed to more extreme far-right messaging.[9]

Online Spaces and the Globalisation of Conspiracy Theory Rhetoric

Perhaps the most prevalent tools for far-right globalisation are the use of conspiracy theory rhetoric and online spaces. Far-right actors have been adept at utilising online spaces since the dawn of the internet with Stormfront appearing on some of the earliest dial-up message boards.[10] While there are far-right online spaces catering to every group, there is also a proliferation of content related to far-right conspiracy theories. Theories like Pizzagate (a conspiracy theory related to the larger canon of QAnon, which alleges American politicians and elites are involved

in ritualistic child abuse), and anti-vax theories have reached a wider audience on platforms like YouTube, TikTok, and Instagram.[11] Some of this content does not appear overtly far-right in nature to the average viewer, but can lead to an algorithmic bias towards additional far-right content.[12] This has had the effect of exposing a wider audience of people to far-right conspiracy theories despite the context in which they originated. It seems that the trend in far-right contagion has shifted away from local, homegrown ultra-nationalist movements (though this remains a central tenet for many far-right groups and actors) and towards the global stage where conspiracy theories abound.

Far-Right Activists Online

One of the contemporary trends in far-right discourse over recent years is the rise of far-right online activists or 'influencers' that attempt to drive discourse. While far-right activists have utilised the internet since the earliest dial-up message boards, social media has become a tool for far-right activists to create division and attempt to radicalise others.[13] Although online far-right content encompasses a broad spectrum of ideology, online content is used to create a cohesive community or network online.[14] The speed with which social media activity facilitates responsiveness to emerging social issues has also markedly increased in recent years, with online activism translating into offline action, often resulting in violence. While causal links between the online and offline remain unclear, research suggests that content shared via far-right social media sites creates a shocking and dehumanising rhetoric that contributes to ERW violence.[15]

Historical Context

The 'Absence of the Far-Right' in Ireland

As in other states in Europe, local conditions have a significant impact on the emergence of far-right movements and political parties.[16] And while racism, ethnic and national chauvinism and anti-immigration sentiment certainly exist within Ireland[17] - a coherent far-right has yet to gain traction as a political force.[18] Perhaps somewhat simplistically, Kavanagh has claimed that the increased presence of populist right-wing parties has been "more of a characteristic of the core, or more economically advanced, European countries" rather than smaller countries, such as Ireland.[19]

Perhaps more telling is the history of party politics on the Island. Fianna Fáil and Fine Gael, Ireland's two main centre-right political parties, trace their origins to before the formation of the State. The two parties have dominated Irish political and family life for generations and a key facet of their ethos and ideology is nationalism, specifically as it relates to independence from Britain and the annexation of the northeast of the country into what is known as Northern Ireland.[20] While the landscape of Irish politics has changed significantly since the War of Independence and the Civil War of the 1920s, national politics still operates within the well-known framework of 'civil war politics'. The two centrist parties, Fianna Fáil and Fine Gael as well as Sinn Féin, were formed either before or in response to the Civil War of 1921; their constitutional positions remain closely tied to this period of Irish history.[21]

While Ireland long functioned as a two-party political system, Sinn Féin has enjoyed a significant rise in popularity in recent years. Sinn Féin is a self-described republican socialist party seeking the reunification of the island of Ireland and the removal of British rule from Northern Ireland. It once operated as a political arm of the Provisional Irish Republican Army (PIRA); a paramilitary organisation engaged in guerilla warfare with the British state during the Troubles (1969-1998).[22] Long the fringe party of Irish politics, it is now often seen as the

only viable alternative to the two dominant centre-right parties (Fianna Fáil and Fine Gael). At the time of writing, it was the most popular (albeit still currently in opposition) political party on the island, North and South.[23]

In addition to these and other mainstream political parties, there are a small number of far-right parties registered in Ireland. The largest far-right party, The National Party, was formed in 2016 by individuals from Irish nationalist, Eurosceptic, and pro-life movements; its platform is built on xenophobia, social conservatism, and ethnonationalism. While members of the National Party contribute to far-right content online, they have no presence in the Irish government and performed poorly in the 2020 national election: none of its candidates received over two percent of first-preference votes,[24] and none were elected to parliament.[25] The party's leader, Justin Barrett, ran unsuccessfully for the Dublin Bay South by-election, in 2021.[26]

Ideology and the Far-Right

Ultra-nationalism is a dominant theme expressed by the very diverse far-right actors operating across Europe. While not the only criteria for defining the far-right, nationalism is one of the five features of far-right ideology identified by Cas Mudde and plays a key role in delineating the boundaries of far-right movements.[27] In Ireland, the history of British rule, the Irish War of Independence and the partition of the island, and relatedly the system of politics that emerged in its aftermath coupled with the ongoing influence and outcome of The Troubles (1969-1998) blocked the emergence of successful far-right political parties. This, it is commonly argued, is due to Sinn Féin's ownership of the nationalist rhetoric normally employed by far-right parties in other jurisdictions.[28] While internal spats play out between the mainstream political parties regarding the ownership of this rhetoric,[29] narratives of nationalism in Ireland are difficult to separate from the unique situation resulting from the partition of the island into North (UK) and South (Republic). That is, those with strong nationalistic views do not need to seek out far-right parties; they can instead opt to support Sinn Féin. However, inclusivity is a key component of Sinn Féin's ideology. They have publicly defended "the rights of immigrants, Travelers, homosexuals [sic] and other minority groups."[30] For example, in 2001, it presented a policy, Many Voices, One Country which states:

> *As Ireland becomes a more multi-cultural country, the challenge is to embrace our growing diversity as a source of strength and opportunity. To do this we must begin by opposing racism, discrimination and intolerance of any kind wherever it occurs.*[31]

Furthermore, in June 2022, Sinn Féin's First Minister Designate Michelle O'Neill called for tougher hate crime legislation:

> *There can be no place for sectarianism, racism, misogyny or discrimination in our society.*[32]

The party has also lobbied for improvements to the Direct Provision mechanism for supporting refugees and asylum seekers. They advocated for it to be replaced with an asylum policy which would "treat people with dignity,"[33] and have accused the Irish Nationality and Citizenship Act (2004), which removed automatic citizenship for those born in the state, as racist.[34]

Further complicating the ecosystem of the far-right in the Republic of Ireland is the complexity of local politics in Northern Ireland, where the label 'far-right' is often associated with Loyalist parties and factions who stand in direct opposition to nationalist movements both north and south.[35] For example, Mudde categorises the Democratic Unionist Party (DUP) as a populist far-

right political party.[36] Therefore, in some respects, the main rival parties in Northern Ireland, the Democratic Unionist Party (DUP) and Sinn Féin, both serve the identity functions traditionally met by far-right political parties but with opposing ideologies.[37]

While understanding the far-right, and thus ERW, in Ireland does not require a fundamentally different framework from other countries in Europe or the UK, its emergence and evolution must be understood in context. The manifestation of the far-right in Ireland largely adheres to Mudde's definition of far-right groups in that they endorse at least three of the following five features: nationalism, racism, xenophobia, anti-democracy, and belief in the strong state.[38] However, due to the history and context of Irish nationalism and the political party system, the emergence of the far-right in Ireland has followed a different trajectory. Ireland's political legacy linked to civil war politics has resulted in essentially a three-party political system that has predominantly resulted in power sharing in government. This system emerged at the foundation of the state and is linked to positions regarding the constitutional status of Northern Ireland and British rule on the Island. Sinn Fein, the political wing of the Provisional Irish Republican Army, now a popular party both north and south has long been the Nationalist party and as such nationalism in Ireland refers not to the interpretation broadly seen across Europe or even in America, but the removal of the border between the Republic of Ireland and Northern Ireland. Sinn Fein, ostensibly a left-leaning, pro-immigration party, has thus occupied the space that in other jurisdictions has been dominated by right-wing organisations. As such, the far-right political landscape is not easily compared to our European neighbours, however, at the level of social and online activity, there are synergies that are irreverent of this history.[39] That said, Ireland experienced many of the conditions which have given rise to populist and far-right parties across Europe: widespread political corruption, "plummeting levels of party identification, an increasingly anti-political media, unprecedented immigration, a swift decline of the Church's influence,"[40] coupled with a fluctuating economy, memories of state-enforced austerity measures and a contemporary housing crisis.

ERW Activism and Violence in Ireland

Since 2019, there has been increased media and grey literature coverage of the far-right in Ireland, both in terms of far-right political parties and the emergence of far-right online 'influencers'. Influencers refer to people who present themselves on social media as "a public persona to be consumed by others."[41] Influencers gain followers across social media platforms by creating content that appeals to their audience, mostly through vlogs, livestreams and response videos. Influencers often establish a voice and credibility by cultivating a sense of authenticity and personal connection in their content and by capturing strong emotions, often by addressing topics of social concern; COVID-19 was particularly relevant here.[42] Many influencers encourage their audience to engage with their content by liking and sharing, which impacts algorithmic engagement, and exposes their audience to a wider network of influencers with similar ideology, thus building connections and ensuring that receptive audiences see their content.[43] While the majority of online influencer activity is not extreme in that it does not support, advocate for or glorify violence explicitly, much research and media attention focused on actual and potential violent extremism.[44] While An Garda Síochána's (Irish police force) annual reports contain no mention of far-right activity in Ireland, the Garda Commissioner has referenced the concerning rise of the far-right on a number of occasions. Furthermore, Europol's 2019 *European Union Terrorism Situation and Trend Report* highlighted the emergence of a coherent far-right in Ireland. The report states that the Irish far-right has a strong internal network throughout the country and is linked with far-right networks in North American and various European countries. Arson attacks on direct provision (asylum services) centres driven by anti-immigration ideologies were also reported.[45] For example, hotels in Donegal and Leitrim were set alight in a bid to prevent them from being used to house

those seeking international protection.[46] The 2022 Europol report also noted how a man with British nationality, who "sympathized with right-wing extremism", was arrested for importing components to manufacture firearms using a 3D printer.[47]

The Institute for Strategic Dialogue (ISD) recently tracked an increase in Irish and Irish-linked far-right groups spreading misinformation and conspiracy on Telegram, an encrypted messaging app, and the Global Project Against Hate and Extremism found evidence that conspiracy theories imported from abroad were prominent among Irish far-right online groups.[48] In terms of political purchase and popularity on social media, commentators and researchers have pointed to Telegram groups directing users to disseminate racist misinformation, "troll" or hijack hashtags for social movements, and make memes promoting far-right misinformation.[49] This trend of hijacking hashtags was observed in other contexts, specifically on German-speaking Twitter on which far-right party *Alternative für Deutschland* used COVID-19-related hashtags to promote their content.[50]

The Impact of COVID-19 on the Contagion of Far-Right Conspiracy

As this project took place in the midst of the COVID-19 pandemic, it is important to consider how the narratives around COVID-19 impacted far-right activity globally and within Ireland. The COVID-19 pandemic highlighted the potential for contagion within the global far-right network and represented a turning point for the mobilisation of the far-right in Ireland.[51]

A significant body of research supports the idea that the far-right in Europe operates as a transnational network, sharing information with other far-right activists and influencers in other countries.[52] Even where language barriers are an issue, far-right groups manage to interact by using visual images and memes as a form of knowledge exchange.[53] Ironic or humorous memes are also used to soften the tone of far-right or conspiratorial messages making them more widely appealing.[54] Taken together, the goal of online strategies can be to 'justify and legitimize racist attitudes", trivialise issues, deny the existence of prejudices, reframe news stories to fit far-right narratives and/or harm the outgroup through denigration, bullying and the generation of 'moral panic.'[55]

In the case of Irish far-right groups, there is emerging evidence that international conspiracy theories have gained traction among an Irish audience.[56] The Global Project against Hate and Extremism found that far-right groups in Ireland were influenced by American far-right-associated conspiracy theories such as Agenda 21 and Cultural Marxism.[57] The COVID-19 pandemic further exacerbated far-right contagion and conspiracy in Ireland, both online and offline.[58] Ireland saw anti-lockdown protests organised or attended by far-right groups, as well as the online dissemination of conspiracy theories relating to the pandemic,[59] such as the Great Reset.[60] The Institute for Strategic Dialogue's report on Irish far-right activity on Telegram revealed that far-right content intersected with Irish anti-lockdown and COVID-19 conspiracy theory content, with nine percent of messages on COVID-19 related Telegram channels originating from a far-right source.[61] This highlights the interplay between Irish anti-lockdown and COVID-19 conspiracy theory communities and the far-right. Due to this, it was important to examine the volume of COVID-19-related topics in Irish ERW online spaces in order to understand the interplay between pandemic discourse and ERW rhetoric, and how much these spaces potentially overlap.

The remainder of this article seeks to understand the far-right online ecosystem in Ireland by focusing on influencers and their role in the propagation of dominant ERW ideas seen in other jurisdictions as well as the manner in which they are using local and global social issues as

content to garner support online. Using data gathered from Irish-linked sites and individuals, this article explores the process by which ERW ideas are created, shared and made relevant to Irish audiences.

Methods

The present study is part of a larger piece of research which analysed 422,156 social media posts across four platforms, posted between 1 October 2020 and 30 June 2021. The objective of the study was to explore the extreme right-wing ecosystem in Ireland during the COVID-19 pandemic and identify any links between conspiracy theories and the extreme right-wing.

To ensure compliance with the UK Regulation of Investigatory Powers Act (RIPA) and General Data Protection Regulation (GDPR), the research was limited to explicitly publicly accessible platforms and accounts. To ensure that a reasonable expectation of privacy was not breached, data was only collected from accounts that satisfied one of two criteria:

1. The account had more than one thousand followers/subscribers on one single platform or;
2. The account had more than two thousand followers combined across platforms if the account was designated as explicitly public facing (e.g. online journal).

In order to map the extreme right-wing online ecosystem, the research team developed a set of keywords that included names of known extreme right-wing groups and influential personalities in Ireland. These keywords were used as a base to manually identify a core community and subsequently collect further keywords including relevant influencers, groups, channels and threads across Telegram, Twitter (now X), YouTube and 4chan.[62]

These platforms have varying levels of moderation, and differing community standards. Telegram is a privacy-first messaging app which allows users to create channels, groups, and private messages. For the purpose of this study, only public channels and groups with no barriers to access were used. 4chan is a largely unmoderated forum that is known for its propensity for shocking and extreme content.[63] YouTube and Twitter (now X) are the two mainstream platforms examined; YouTube has a higher level of moderation.

A 'snowballing technique' in which these original spaces were monitored for mentions of *other* spaces, which were then included in the sample. These new spaces were also manually investigated by the authors to establish their relevance to the Irish-specific ERW ecosystem (i.e. whether they contained links to known Irish ERW influencers or groups. The snowball sampling yielded a total of 162 'spaces' featuring high volumes of extreme right-wing content directly relevant to Ireland. They were composed of 85 Telegram groups, 53 Twitter influencers and 23 YouTube channels which involved clear sharing of extreme right-wing narratives and content. On 4chan, a subsection of */pol/* called *Éire/pol/* was identified. At this point, a series of internal automated data collection tools were deployed. All posts from these spaces—between 1 October 2020 and 30 June 30 2021—were scanned for extremist content. This totalled 422,156 unique posts.

All of the data collected was then run through a data enrichment process involving the use of keyword tagging software.[64] This led to the creation of a database of 2,428 recurrent keywords which featured in extreme posts. This aided the understanding of popular themes and narratives discussed by the audience, popular influencers and the presence of discussions relating to other English-speaking communities. The breakdown of keywords developed are

as follows: 1,915 extreme right-wing relevant keywords, 139 COVID-19-related keywords, 77 keywords referencing specific 'influencers' and 275 keywords indicative of discussions of themes commonly identified in other English-speaking countries.

Ethics

Ethical clearance was provided by the Social Research Ethics Committee. All data collected was anonymised to ensure no URLs or usernames were collected. Data was subsequently cleaned prior to analysis to further ensure that no personal identifiable information was retained.

Results

Figure 1: Breakdown of Post Volumes by Platform

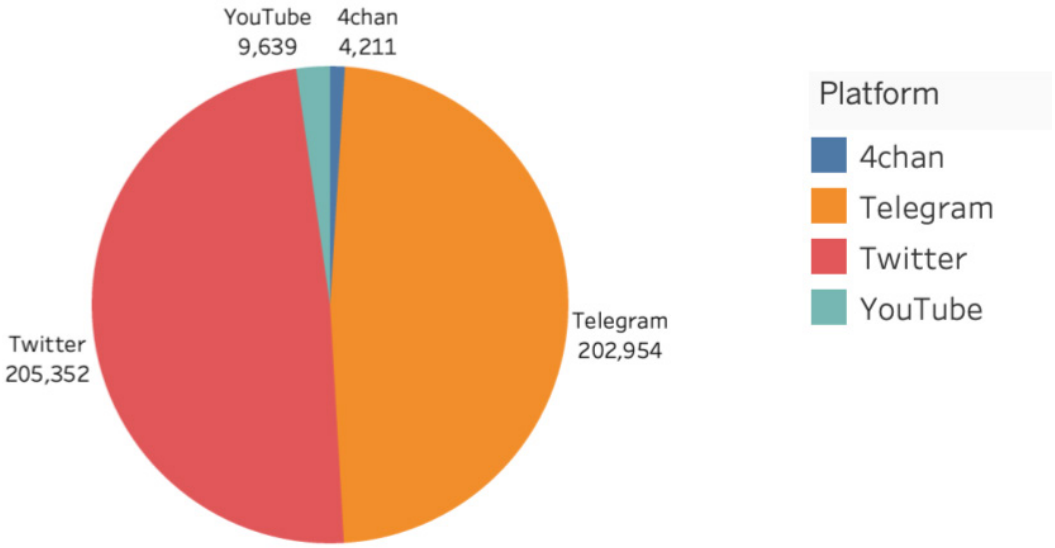
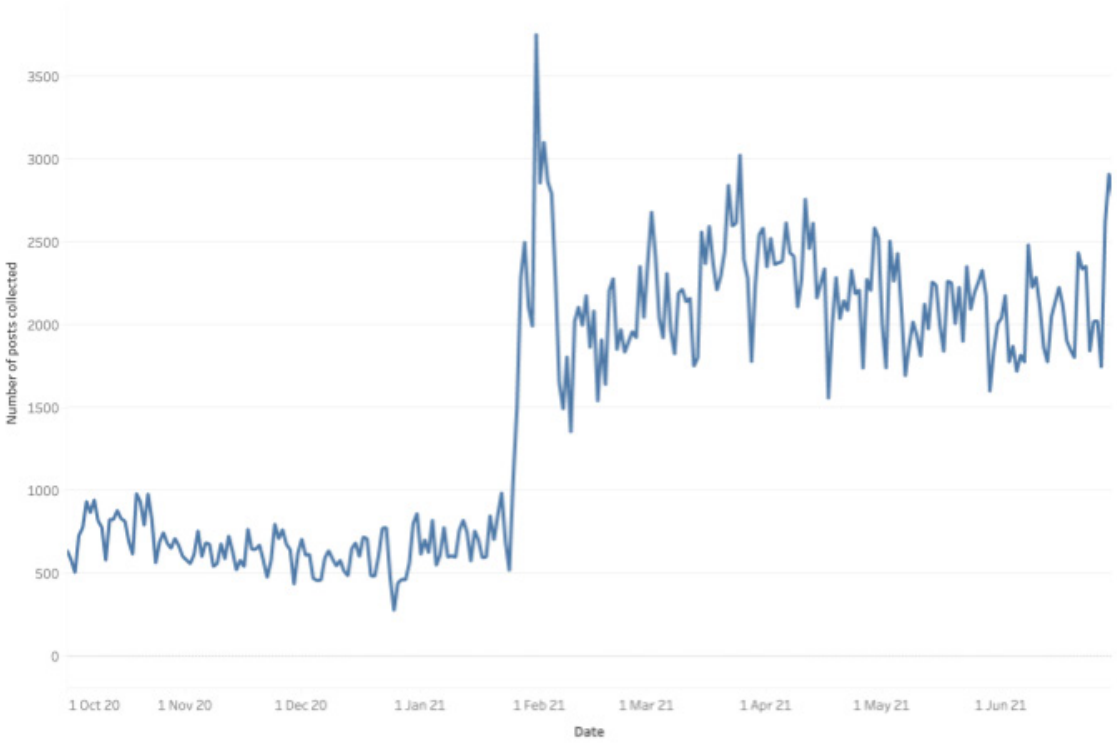


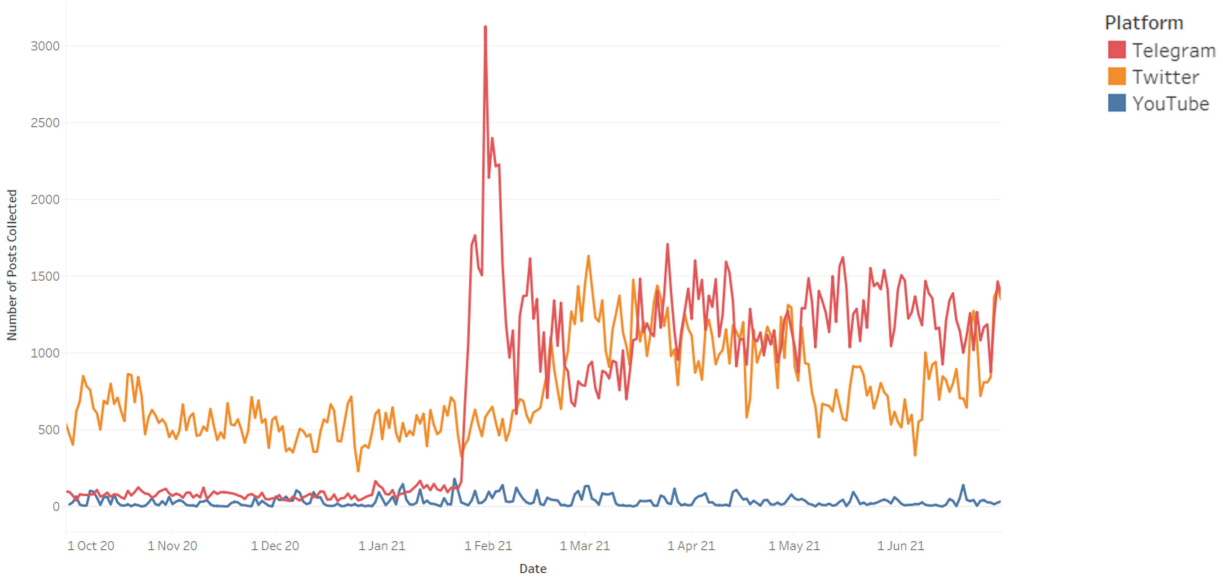
Figure 2: Volumes of Posts over Time



The breakdown of the 422,156 unique posts by platform shows that the dataset was heavily dominated by content from Twitter and Telegram. All of the unique posts collected for the analysis originated from online spaces which at some point over the collection period saw high volumes of content relevant to far-right narratives. This said, not every individual post was extreme in nature in the sense that it encouraged, supported or glorified violence. As this was not the focus of this study, we can not know if individual posters held far-right views, but we do know they all posted in confirmed ERW online spaces.

There was a substantial rise in engagement with ERW spaces online across all four platforms from January 2021. This peaked in February 2021, before stabilising at moderately fluctuating levels for the remainder of the period under review (Figure 1 and 2). The volume of total posts over time suggests that Telegram and Twitter played a far more facilitatory role than YouTube and 4chan in the proliferation of ERW content in Ireland (Figure 1). Indeed, 4chan was by far the least used social media platform, accounting for less than one percent of posts, followed by YouTube (two percent). Both Twitter and Telegram accounted for approximately 48 percent of posts each.

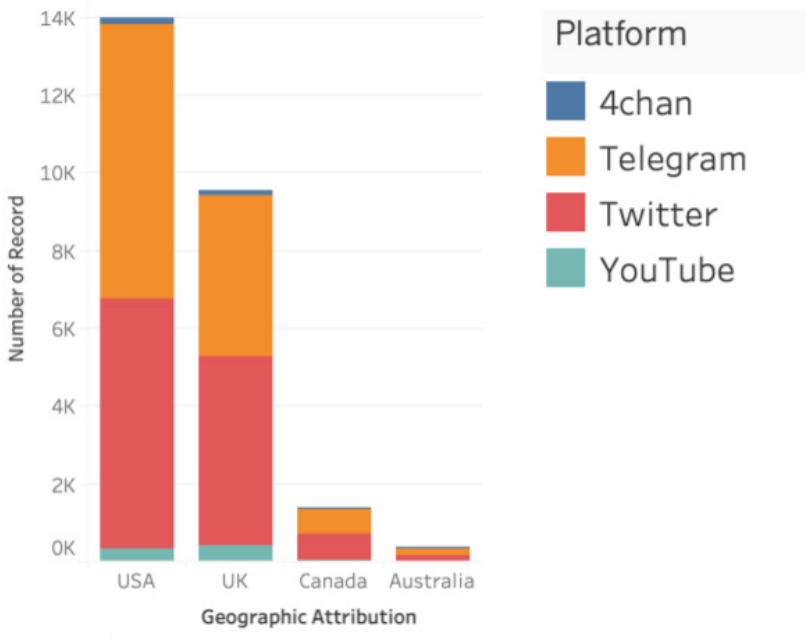
Figure 3: Volumes of Posts over Time by Platform



A further breakdown of raw volumes of posts over time shows how the surge in the volume of posts in January 2021 was driven primarily by activity on Telegram (Figure 2). Upon further inspection of the 162 far-right relevant spaces identified, one specific Telegram group was identified as being responsible for driving most of the surge from February 2021. The peak of activity from February can be attributed to one Telegram group. The fluctuations on Twitter seem to follow peaks and troughs on Telegram. This may suggest a dispersal from the more niche (Telegram) to more mainstream (Twitter) platforms.

Geographic Attribution and Contagion

Figure 4: Geographic Attribution of Posts

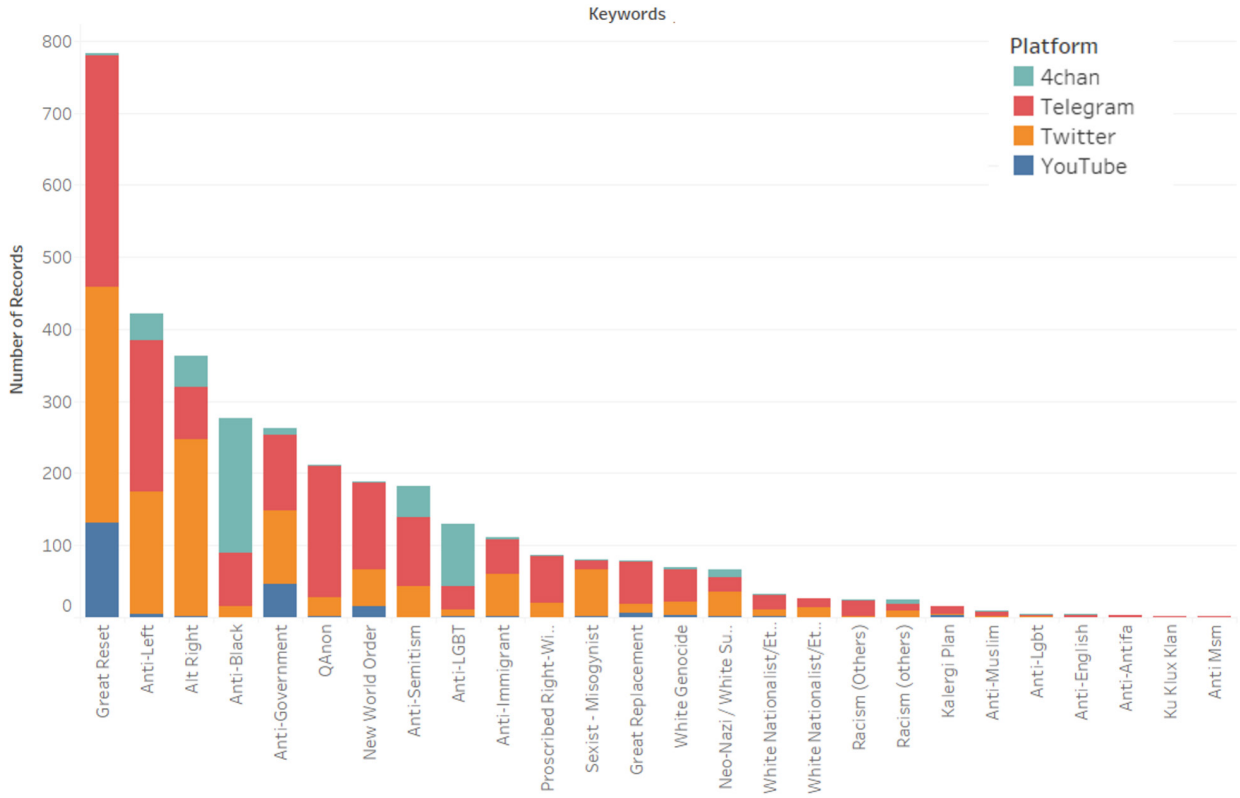


Understanding how ERW ideas might emerge in Ireland and where they emerge from, was of interest to this study. In terms of the individuals in question, 1,959 of the unique posts contained reference to at least one of the 77 influencer-specific keywords and this translated to 39 unique far-right influencers mentioned across all relevant spaces. In terms of where, the analysis revealed how countries other than Ireland were key parts of the discussion and vital to informing ERW narratives in *Irish* online spaces.[65]

As such, whilst the online environment is borderless, and some far-right ideas are unique to specific environments, other ideas spread across national borders and emerge in various formats influenced by the local context. In order to understand how this happens and consider how the contagion of ERW ideas comes about, we searched geographic mentions within posts. Just under six percent (N = 25,329) of the 422,156 posts analysed provided reference to a location-related keyword. While there are limitations to this process, it gives an idea of the transnational linkages relevant to understanding the overall ecosystem.

The majority of geographical mentions were for the USA, which may be unsurprising considering the media coverage of alt-right protests and Donald Trump's presidency during this period. Indeed, mentions relevant to the USA were often not directly tied to Irish societal issues and politics, but rather focused on discussions surrounding Donald Trump, alt-right US influencers, QAnon and/or COVID-19 conspiracies in the USA. Mentions of the UK were often more directly tied to discussions of events in Ireland, such as comparisons on regional COVID-19 measures as well as criticism of British involvement in Ireland.

Figure 5: Thematic Breakdown of Posts



The breakdown of popular themes by platform suggests a general trend of conspiratorial content. "The Great Reset" was the most commonly discussed theme, across all platforms, except 4chan. YouTube posts were dominated by references to more common conspiracies, which often contain less overtly discriminatory messages, including the "Great Reset", "New World Order" and other anti-government themes. The most prevalent themes on 4chan were more directly racist and violent in nature, and the greatest volume of violent sentiment targeting specific groups was observed, including against people who are left-wing, black, Jewish, and members of the LGBTQIA+ community. The greatest number of anti-black, antisemitic, and anti-LGBTQIA+ posts were found on 4chan, which is a peripheral and somewhat underground platform, and largely avoids censorship from regulators.

The key themes observed on Twitter and Telegram were similar: the Great Reset, followed by anti-left, alt-right (predominantly on Twitter) and anti-government. There was a much smaller anti-black sentiment on Twitter, a theme that was almost non-existent on YouTube. It is interesting, however, that misogynistic and anti-immigration sentiments were discussed more openly on Twitter.

Although the keyword tagging process has limitations, this data contributes to an understanding of the ERW ecosystem in Ireland and the differences and similarities between far-right sentiments in other countries. It has shown how different social media platforms host different views. The popular themes among these posts - The Great Reset, anti-left, alt-right, anti-black, and anti-government sentiment – are pillars of global far-right ideology. Additionally, location-based keyword tagging provides evidence that far-right discourse in these spaces is influenced by the events and environments in other countries, especially in the US. Although the far-right in Ireland manifests differently than in other contexts, ERW sentiment and global conspiracy theories abound in these online spaces.

Conclusion

The far-right ecosystem in Ireland is constructed differently than far-right ecosystems in other European contexts due to Ireland's political and cultural history. Therefore, it is difficult to compare the far-right in Ireland to other contexts. Although there is a longstanding belief that there is no far-right presence in Ireland because the country has so far avoided the presence of any successful far-right parties in national politics,[66] this article demonstrates that Irish far-right networks are using online platforms to build their base, discuss and disseminate misinformation, conspiracy theories, and divisive and discriminatory rhetoric.

Several commentaries have noted how, in the US, the alt-right has sought to influence "meta-politics, or how people think about politics" rather than change party politics. That is, the role of social media communications and physical protests is cultural change by ensuring people talk about the issues and mainstreaming and normalising ideologies of hate.[67] Translating this to the Irish case, while Irish far-right political parties may fail at the polls, social media platforms can be effective in spreading hate, which due to the mainstreaming effect, is often the primary objective of new online far-right networks. The evidence from this study demonstrates that the goal of the far-right in Ireland is to, if not succeed politically, succeed in influencing meta-politics in creating distrust in mainstream institutions and political parties. Like many of their ERW colleagues in Europe, mainstreaming ERW ideas is success in its own right.

This research shows that the ERW ecosystem in Ireland spans across online platforms, and while different platforms seem to attract different topics, the themes attracting the greatest attention are global conspiracy theories and anti-left, alt-right, anti-black, and anti-government sentiments. Many of these posts involved discourses surrounding far-right influencers, both Irish and international, as well as discussion of other countries, mainly the US but also the UK.

According to keyword tagging, YouTube was mainly dominated by conspiratorial content and content with an anti-government sentiment whereas themes such as anti-left, anti-black, and alt-right sentiment were largely popular on Twitter and Telegram. It is possible that people are exposed to conspiracy theory content on YouTube due to its widely acceptable content and more extremist content is then accessed on platforms with less restrictive community guidelines, like Twitter and Telegram.[68] It may be no coincidence that the most violent content was found on 4chan – the least regulated of the four platforms. This may suggest that regulatory frameworks can be an effective means of limiting harmful content, and displacing content to less popular social media sites can result in reducing the number of individuals engaging in harmful content. Indeed, some studies have suggested that such partial displacement can be an indicator of the more general effectiveness of the intervention.[69]

The prevalent themes suggest that conspiracy theories are an important aspect of the Irish ERW ecosystem, given that keywords such as 'the Great Replacement' were prominent across platforms.[70] Conspiracy theories are an important tool for disseminating far-right ideology and, tapping into mainstream coverage and support. Many conspiracy theories seek to exploit relevant social issues and interpret them using a far-right framework. While some conspiracy theories may seem initially unrelated to far-right ideology on the surface (such as those surrounding the COVID-19 pandemic), they often contain elements of ethnonationalism at their core.[71]

In conclusion, there is a far-right presence in Ireland although it has not manifested in the same manner as in other jurisdictions. Although the far-right has yet to produce any party political successes, it does have its own burgeoning online ecosystem aimed towards creating division and spreading ideologies of hate. While the Irish national political system will likely prevent, for

now, a right-wing party from gaining significant support the potential harms via mainstreaming of racist, xenophobic and discriminatory ideas should not be underestimated. Not only have there been cases of far-right extremist violence in Ireland, but acts of violence perpetrated in the UK, USA, and elsewhere across Europe should highlight the dangers of complacency.[72] Indeed, Bliuc and colleagues' systematic review of cyber-racism research concluded that online strategies, including those identified in this article, can potentially mobilise support for far-right ideologies, and increase recruitment for far-right groups.[73] As such, even if online discussions seldom translate into physical violence, or far-right political parties are kept away from government, the spread of ideologies of hate is sufficient justification for the state to pay attention to what is happening online.

Limitations and Future Research

While this study is exploratory in nature, it does provide points for future research. The keyword tagging process has limitations, including that it did not capture sentiment, so further research should take a more detailed or qualitative approach to the themes covered in these spaces. Additionally, since this data was collected in 2020 and 2021, it is likely that this data no longer represents current trends as accurately as the nature of ERW discourse is ever-changing. However, it does broach important questions for future research: firstly, especially in light of the impact of the COVID-19 pandemic on far-right contagion, research should focus on how conspiracy theories are used as tools of dissemination by the online far-right in Ireland, especially in regards to current events. Secondly, the question of whether the Irish ERW ecosystem is influenced more by American far-right rhetoric than its European counterparts is of critical importance. Another question of importance is to what degree far-right discourse seems to cluster around or be driven by far-right influencers. Finally, although this study cannot draw any conclusions on the connection between online activity and real-world violent activism, future research must focus on how the online ERW spaces manifest offline, in Ireland and beyond.

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PERSPECTIVES ON TERRORISM

SPECIAL SECTION: EXTREMISTS IN THE COURTROOM

Introduction to the Special Section on Extremists in the Courtroom

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What happens to extremists in the courtroom is a topic that has been receiving increasing interest from scholarly research and law enforcement communities.[1] For example, research published earlier this year in *Perspectives on Terrorism* examined sentencing disparities in United States federal terrorism cases[2] and introduced the Indonesian Terrorism Cases Database[3] developed by the Jakarta-based Centre for Detention Studies. In the latter, the authors note that "the lack of an accessible terrorism case database that can be utilised by various parties remains a big gap in the prevention and prosecution of terrorism in Indonesia."[4] Similar sentiments in relation to data are echoed with respect to female violent extremists within the criminal justice system: "there is still a considerable lack of data-driven, empirical research on female violent extremist offenders."[5] Moreover, there is data missing for whole countries like the United Kingdom (UK).[6] Thus, the absence of data is a key issue identified in the recent literature and includes data not only on sentencing outcomes but also on the conduct of terrorism trials and the decision-making processes involved in sentencing and post-sentence decisions.

This Special Section of *Perspectives on Terrorism* seeks to advance understanding of this issue by presenting five articles that examine a range of topics concerning extremists in the courtroom, highlighting a number of recurring themes. The first article by Chloe Squires explores the methodological, practical and conceptual barriers that hinder research on terrorism trials in England and Wales, including the identification of relevant cases and the inaccessibility of legal language and terminology. Her research suggests new methods that could promote more transparent interdisciplinary legal research, and practical measures that could make researching terrorism trials easier.

In the next article, we (Rachel Monaghan and Bianca Slocombe) analyse the sentencing outcomes of individuals convicted of terrorism or violent extremism-related offences in the UK over a 21-year time period, using data from an original dataset compiled by the research team from publicly accessible sources. Analysis of the dataset allowed for the testing of a range of hypotheses in relation to motivation, offence type, gender, age, having co-defendants, and facing multiple charges.

This is followed by Simon Copeland, Emily Winterbotham and Marine Guéguin's examination of several trials in the UK and France with respect to the conduct of trials, and particularly the 'performative strategies' of the parties involved. They argue that terrorism trials are much more than merely the formal application of the law, and that defendants employ very different strategies or approaches in the courtroom. The authors further examine the sentences that guilty defendants receive, and consider the impact of defendants tried *in absentia* upon sentencing.

Next is an article by Adam Fenton that discusses the mechanisms for prosecuting and sentencing prisoners convicted of terrorism offences in Indonesia, and draws upon case studies that illustrate particular aspects of terrorism – including excessive lenience or harshness and the treatment of women and children. Data on arrests, sentencing, and executions of terrorism suspects for the period 2003-2015 are analysed, revealing that over ninety percent of those convicted in Indonesia for terrorism offences received sentences of ten years or less in prison, and that very few offenders received longer sentences or the death penalty.

And in the final article of this Special Section, Keiran Hardy examines sentencing and post-sentence decisions under Australia's counter-terrorism laws, and argues these are risk-averse, not risk-based. The author contrasts and critically analyses the decision-making processes followed by Australian courts when making decisions about imprisonment in terrorism cases.

He suggests that at both stages of decision-making – sentencing and post-sentence – Australian courts favour punishment, deterrence and community protection over the need to rehabilitate offenders.

It is hoped that this Special Section will contribute to our knowledge of what happens to extremists in the courtroom by providing an evidence-based understanding of sentencing outcomes, the decision-making processes involved in sentencing decisions, the strategies used by defendants at trial and the barriers to researching terrorism trials.

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Bianca Slocombe, Special Section Editor, is an Assistant Professor at the Centre for Peace and Security at Coventry University and has been utilising her expertise in psychology and behavioural science in the field of protective security. She also has expertise in experimental and statistical methods.

Endnotes

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PERSPECTIVES ON TERRORISM

SPECIAL SECTION: EXTREMISTS IN THE COURTROOM

Putting Legal Research on Trial: A Reflection of Challenges Investigating Legal Research in England and Wales

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Abstract: In 2024, governments continue to grapple with legal and political ramifications posed by repatriating foreign terrorist fighters (FTFs). Criminal justice systems and governments taking different approaches to returning individuals suspected of committing acts of terrorism overseas has become an area of international contestation. Inconsistency in repatriating FTFs has highlighted differences between legal systems across Europe, Asia, and North America. In England and Wales, growing interest in the repatriation and prosecution of terrorists has outlined barriers to effective research on terrorism trials and legal decision-making processes. Dismantling barriers to researching the courtroom is central to promoting legal transparency and accountability, understanding how appropriate legal responses to terrorism are articulated and enforced, and drawing attention to the potential impact of implicit biases in the prosecution of terrorists in the criminal justice system. The study of terrorism trials and sentencing is an interdisciplinary endeavour which allows for the fields of law, terrorism studies, and criminology to investigate intersections between criminality, justice, and national security. However, relatively little work has explored these junctures. This article outlines methodological, practical, and conceptual barriers which hamper research on terrorism trials in England and Wales and suggests new methods which can promote transparent interdisciplinary legal research.

Keywords: Terrorism, criminal justice, agency, research methods, legislation, counter-terrorism, ethnography, open justice

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Introduction

Interest in the use and applicability of counter-terrorism legislation has re-emerged as a pertinent issue since the fall of the Islamic State in Iraq and Syria (ISIS) 'caliphate,' which lost its final territory of Baghouz in March 2019.[1] An estimated 52,808 men, women, and children travelled from eighty countries across the world between 2013-2019 to support ISIS.[2] In 2021, it was estimated that around 2,500 of the 5,300 European men, women, and children remain in North-East Syria and Iraq, though exact current figures are difficult to discern.[3] Although European countries are unified by the challenge of having large numbers of citizens remaining in these territories, there is no consensus on how foreign terrorist fighters (FTFs) overseas should be handled.[4] While counter-terrorism laws have been subject to ongoing research, the territorial defeat of ISIS confronted multiple states with comparable legal and security challenges, including tensions between national and international law and potential challenges with rehabilitation and reintegration.[5] Despite suggestions that failing to repatriate FTFs could continue to fuel future terrorist activity, state responses continue to vary widely, with some opting to repatriate and rehabilitate, return and prosecute, or revoke citizenship altogether.[6] These differing approaches across jurisdictions have prompted a renewed scholarly interest in legal responses towards terrorism suspects.

In seeking to gain a greater understanding of the legal mechanisms used in responding to suspected terrorists, in-person observation of court trials has proven a useful research methodology in countries including Germany, the Netherlands, and France. With few exceptions, in-person legal research methods remain notably absent from the current research landscape of terrorism literature addressing England and Wales.[7] Data from the Global Repatriations Tracker demonstrate that Germany, the Netherlands, and France have repatriated significantly more women and children from camps, prisons, and other detention facilities in northeast Syria since the start of 2019 than the UK, which, perhaps, partly explains the increased use of courtroom observations in these countries.[8] However, nineteen individuals were prosecuted for terrorism-related offences across Britain in the year ending March 2023, suggesting that a lack of data is not to blame for a failure to utilise observational research methods.[9]

In England and Wales, law and legal institutions are considered to play a key role in the operation of society. To ensure that the operation of the law is transparent and held to account, criminal justice is subjected to the open justice principle, which stipulates:

> *It is a central principle of criminal justice that the court sits in public so that the proceedings can be observed by members of the public and reported on by the media. Transparency improves the quality of justice, enhances public understanding of the process, and bolsters public confidence in the justice system.* [10]

However, longstanding and multifaceted issues with the criminal justice system are creating court backlogs, delayed trials, and a lack of court reporters, posing issues that run parallel to the growing interest in legal processes surrounding suspected terrorists.[11]

As well as building trust in the operation of the criminal justice system, a transparent and accessible legal system can help to facilitate in-person research methods, a key strand of which is ethnography. While the duration of time a researcher needs to be embedded in an environment to constitute an ethnographic study is debated, ethnographic research comprises several tools which have been frequently applied to the legal context. A legal ethnography is a method of research in which the researcher immerses themselves:

> *In a social field, setting, or arrangement in order to comprehend the actors' social relations, their practices and their representations of themselves and the world. To do that, the ethnographer employs a variety of techniques: participant observation, interviewing, conducting surveys, engaging in naturally occurring conversations, and collecting documents as well as audio-visual materials.* [12]

This methodological tool kit allows the researchers to use the most appropriate methods to immerse themselves in their research environment and adapt to various circumstances and barriers. Such approaches are valuable in terrorism research to provide insight into the way trials are conducted, shedding light on "the routines and practices, the symbolism and social identities, and the day-to-day interactions, happenings and occurrences taking place around us."[13] The courtroom facilitates legal processes and practices which, unless observed in person, remain unseen and unanalysed. Therefore, terrorism research benefits from in-person observation of trials to capture insights which are difficult or impossible to generate from other methodologies.

With in-person attendance of court proceedings being a useful methodology, the core argument advanced in this article is that the legal system in England and Wales contains barriers which hamper valuable empirical socio-legal terrorism research. Building from global insights utilising ethnographic research methods in terrorism research, this article questions the lack of observational data used in England and Wales, examines barriers to legal research on terrorism cases, outlines the implications of these obstacles for socio-legal terrorism research, and prescribes methods which can help overcome these barriers. This is achieved by situating the courtroom as an important environment in terrorism research, reflecting on personal fieldwork experiences and barriers to conducting research in the courtroom environment, and discussing the implications these hurdles pose to quality interdisciplinary research and the administration of justice.

The following analysis is based on six weeks of fieldwork between November 2023 and March 2024, during which the author conducted a legal ethnography of two terrorism trials held in the Old Bailey and one terrorism trial held in Westminster Magistrates Court. This fieldwork presented practical, linguistic, and conceptual obstacles which, it is argued, continue to hamper the feasibility of conducting legal ethnographies or observations of terrorism trials in England and Wales. The arguments presented are delivered from the perspective of a non-legal scholar, and this article is, therefore, not a comment on the substance of legal doctrine but on the barriers to interdisciplinary legal research.

The Courtroom

It is generally agreed that the courtroom is central to upholding and exercising the rule of law, but it is not a neutral arena.[14] Rather, the courtroom acts as a 'theatre' that stages the performances of several actors, including the defendant, their counsel, and prosecution parties.[15] In an adversarial system, the prosecution holds the "burden of presenting a persuasive and complete narrative" but, building from the same set of facts, the defence party have a different story to tell, "with the goal to persuade the trier of facts (i.e. the judge or jury) that their side's story is the only valid version."[16] Consequently, criminal trials are "intertextually constructed communicative events" whereby 'stories' are composed and exchanged, with the jury deciding which version of events is true based on the evidence provided.[17] If the courtroom is a theatre, performances are dependent on and regulated by a script. With the legislation (or scripts) surrounding terrorism frequently changing in response to changing threats and

global events, courtroom performances are also continually changing.[18] Terrorism trials act as "concrete spaces where relatively new terrorism laws are given meaning," reflecting how our understanding of processes unfurling in terrorism trials remains continually incomplete and requires sustained analysis.[19]

Importantly, the analysis of terrorism trials encourages the interrogation of broader legal and social developments around terrorism. Courts, and the trials which play out within them, are more than places of 'truth-finding'; they also function by "moralizing guilt directly or indirectly for their audience."[20] Linguistic and sociological perspectives have been useful in helping to illustrate the foundational role of language in constructing 'facts' in court proceedings, as well as the utility of strategic lexical and grammatical choices in framing courtroom narratives around agency and responsibility by foregrounding and backgrounding elements of the case that "play a decisive role in the outcome of the trial."[21] Narratives, then, play an important role in decisions made in the courtroom, and observing the practice of law can be considered "paramount to understand questions of how the law shapes, renders, undermines and uplifts justice within society."[22] Therefore, criminal trials are sites in which interpretations of evidence are exchanged to persuade the jury of one version of events over the other and are not necessarily reflections of the truthful version of events.

Terrorism trials are one of the few environments whereby different actors, such as the defendant, investigating police, victims, family members, and the public come together to form "a nexus between terrorist violence, law enforcement and public opinion."[23] The social world which is developed and operates within this environment is therefore significant to understand because of the potential impact it holds for the different parties in the room. For academics and researchers interested in understanding counter-terrorism legislation or legal decision-making processes around terrorism, trials are an opportunity to witness "justice in progress", which could act to inform and enhance the operation of counter-terrorism measures.[24] This also stands true for the power structures seen to operate within the courtroom, meaning that analysing terrorism trials "allow[s] the socio-legal constitution of terrorism to be studied with its inherent power structures at different scales."[25] A question, then, arises. What are the barriers researchers face in accessing the courtroom as a site of data collection in terrorism research?

Existing Research

A rich body of global literature analyses terrorism trials and the role that they can play in community reparations, knowledge production around the law, and cross-jurisdictional trends in repatriation and prosecution.[26] A subsection of this research has utilised in-person, ethnographic, or observational research to gain an in-depth understanding of the intricate processes involved in legal proceedings addressing suspected terrorists. This kind of research has helped to document the material used in court trials, situating the operation of the court system within broader debates surrounding the law as a counter-terrorism tool and/or a manifestation of state violence towards marginalised groups and communities.[27] Literature emerging from European states—including Germany, France, Norway, The Netherlands, Sweden, and Denmark—has addressed legal responses to far-right terrorists and the repatriation of FTFs from Syria and Iraq, while research from Nigeria has analysed terrorism trials of Boko Haram.[28] Usefully, existing ethnographic terrorism research helps to illustrate the utility of the approach in generating data which, unless obtained through in-person research, remains unseen, unheard, and unanalysed.

A prominent theme of research uses in-person attendance in the courtroom to dissect processes that construct and deconstruct temporalities in legal proceedings. Insights from The Netherlands show the methods in which prosecutors organise events to form a timeline that "arrive[s] at a narrative of anticipating catastrophic future violence."[29] It is observed that, with the prediction and prevention of future terrorism risk at the centre of counter-terrorism measures, legislative discourses are constructed, re-ordered, and mobilised to support conviction.[30] Similarly, research in Nigeria questions this forward-orientated logic of prevention because some members of Boko Haram were arrested for membership of a proscribed organisation years before the group became formally proscribed, suggesting that notions of proscription are "imagined, contested, and made real in legal discourse."[31] The processes by which time is constructed to hold increased or decreased significance during terrorism trials also links to evidential elements of the proceedings. For example, Anwar reflects on the growing importance of social media as a form of evidence in terrorism trials that is used to organise and shape time to "provide valuable information on events that occurred there-and-then, to prosecute in the here-and-now."[32] This 'making or sorting time', it is argued, shows a temporal shrinking of legal subjects, which fits evidence "into a clear, clean and linear story that can serve as a basis for conviction without the messiness of everyday lives."[33] Here, it is evident that terrorism trials do not simply reflect the series of events which lead to the criminal behaviour in question. Rather, the actions and intentions of the defendant are portrayed and the sequence of events re-organised to serve defence or prosecutorial narratives.

With legislative frameworks responding to the changing landscape of terrorist threats and behaviours, terrorism trials are ever-changing.[34] This is perhaps most evident when considering long-standing assumptions of women as passive victims of terrorism. The growing understanding that women can, and do, play a range of active roles in terrorism has shaped novel prosecution tactics to capture the full range of offending carried out by women, particularly in ISIS.[35] In Europe, a range of national and international laws have been used to prosecute women for crimes including pillaging, outrages upon personal dignity, child recruitment into an armed group, and war crimes.[36] The Counter Extremism Project has helped to give further insight into these processes by documenting the progress of numerous trials of terrorism suspects, detailing the material of trials, the evidence used, and the outcome of proceedings. In one prominent trial, evidence given in court demonstrated that the female defendant "not only took care of the household, but also translated propaganda, participated in two ideological trainings, and was instructed in the use of firearms."[37] These insights contribute to understanding gender dynamics within ISIS by highlighting the numerous and varied identities held by women associated with the group. By reinforcing the lack of linearity of terrorism offending, this work helps to inform broader questions about gendered and racialised biases in counter-terrorism measures. In its broadest sense, analysing evidence used in terrorism trials outlines the complexities of terrorism trials, situating legal developments within the broader political and national security context.

Beyond providing insight and clarity around legal processes and developments, a key benefit of observational terrorism trial research is the ability to include the voice and perspective of suspected terrorists in research. In France, terrorism trials broadly perform two functions: fact-finding, and an investigation of personalities. In this latter category, Weill suggests that trials allow the defendant to account for their version of events, providing an opportunity—sometimes the only opportunity—for the accused to give a public account of their story, and families to gain insight into the actions of their loved one.[38] This emotional element is an important factor frequently overlooked in media coverage of terrorism trials. However, emotions can also cause barriers to researchers attempting to conduct in-person terrorism trial research. For example, in Denmark, researchers attending terrorism trials whilst researching Salafi-Jihadist FTFs felt

uncomfortable due to unexpected ethical considerations and emotional demands arising as part of courtroom research, including navigating the ethical nuances of being around family members of defendants in the courtroom.[39]

Literature addressing the prosecution and sentencing of terrorists in England and Wales is growing, but despite the clear benefits of observational research, the methodology remains largely absent. Three significant studies have developed unique databases seeking to understand patterns of sentencing and investigate how race, gender, age, ideology, or contextual factors may impact trial outcomes for individuals charged with terrorist crimes.[40] Key findings from these studies show that women tend to receive shorter sentences than men for terrorism-related offences; ideology-based discrepancies are found in the sentencing of minors associated with far-right and Islamist terrorism; and the proximity of sentencing to major terrorist incidents significantly affects sentencing outcomes.[41] Yet, these investigations into sentencing and prosecutions in England and Wales, surprisingly, have not yet turned to use in-person attendance at court hearings and trials. Rather, studies have typically used mixed-methods approaches, which triangulate numerous data sources, including legal documents, court transcripts, interviews, media coverage, open-source government data, and legal databases such as the *LawPages, Lexis Nexis*, and *Westlaw UK*.[42]

Observing trials is not impossible in England and Wales, with ethnographic studies outside of terrorism analysing differences in jury practice between America and England and Wales, the substance of legal proceedings, and issues that arise in immigration tribunals.[43] However, the methodology is not commonly used in terrorism research. Aside from journalistic reporting or analysis from legal terrorism experts, one study uses an ethnographic approach to analyse the Stansted-15 protesters' trial, situating the criminal justice response as a form of repressive and disciplinary state power leveraged over activists. In doing so, Hayes et al. illustrate the courtroom performances and prosecutorial methods utilised to "displace the political."[44] Despite the terrorism-related element of the protest charges, the study firmly focuses on social movements and activism rather than political violence, while similar research approaches are yet to be fully utilised in terrorism studies.

Overall, existing global literature outlines rich academic inquiry into terrorism trials and the prosecution process, providing insights into the effectiveness of counter-terrorism legislation, theorisations of the courtroom, and where potential biases may be visible within this environment. Research outside of England and Wales provides a vision of the exercise of justice, which otherwise remains unseen. While ethnographic terrorism research remains fragmented and focuses "mostly on partial processes within the courtroom [such as] narratives, argumentation, or interactions," growing research forms a basis of comparative analysis, which looks to find similarities and differences between the operation of legal systems.[45] Integrating England and Wales into the development of this field requires the erosion of research barriers set out below.

Methodology

This article forms part of a wider project investigating the prosecution of female terrorists in England and Wales. Between November 2023 and March 2024, the author attended three terrorism-related trials to analyse potential gendered narratives present in courtroom proceedings. Two of these cases were held at the Old Bailey (Case 1 and Case 2) and one at Westminster Magistrates Court (Case 3).[46] Due to the low numbers of suspected female terrorists prosecuted in England and Wales and complications arising from the COVID-19 pandemic, Cases 1 and 3 were the first publicly known cases of women prosecuted for terrorism-related offences

since 2021.[47] Case 2, the prosecution of a male defendant, arose during the deliberation period of Case 1 and provided the opportunity to compare potential gendered narratives present in terrorism prosecutions held in England and Wales.

The author attended these trials and employed observational research methods throughout. Attendance of these three trials forms the basis of the following discussion which outlines barriers to legal research and theorises issues that this holds for terrorism research and legal transparency. The courtroom is a publicly accessible environment, meaning that permission is not generally required to observe open court proceedings, and taking notes is permissible. Wider regulations and laws prohibit observers in the public gallery from using recording devices, taking photos, or talking during court proceedings.[48] These regulations were followed throughout. During the trials, broader reflections of the courtroom environment were documented by hand. Holding conversations with members of staff or other individuals in the public gallery was not part of the research methodology used, however, over six weeks of courtroom attendance, naturally occurring conversations were had and overheard. In these instances, any thoughts or reflections on these discussions were anonymised, and personal circumstances were not recorded. Ethical approval was sought to attend terrorism trials as part of the wider doctoral research project and was granted by the University of St Andrews in 2023.

The United Kingdom is formed of three distinct legal jurisdictions—Scotland, Northern Ireland, and England and Wales. This article discusses processes which unfold during courtroom proceedings in England and Wales and should not be extrapolated to reflect potential research barriers in other UK jurisdictions. Similarly, though the Old Bailey and Westminster Magistrates Courts are locations where many terrorism-related crimes are prosecuted, similar crimes are prosecuted nationwide. While comparable research barriers may hamper research more broadly, these are not captured by this study.

Findings

Practical Barriers

Members of the public attend the public gallery for several reasons, ranging from an interest in pursuing a legal career, to being tourists coming to view the most famous court in England and Wales. Attending the court is not an issue, but locating, accessing, and keeping up with the relevant case is a challenge for friends, family, and the public alike. The ways that these practical barriers manifest are explored below.

1) Identifying a Relevant Case

With court cases being held throughout the week, individuals with a generalised interest in the court can arrive on the day able to watch some kind of legal proceedings. However, members of the public wishing to attend a particular type of case—such as murder, fraud, or terrorism—face several complexities because little information about cases being held in the court is communicated to the public.

Court lists are published daily by each court, providing the details of cases taking place the following working day. A major issue is that court listings only contain the initials (or sometimes the name) of the defendant, the time and courtroom in which the hearing is due, and their court case reference number. Therefore, without existing insight into the case, it is difficult to establish

if a relevant case is being held on the day. A helpful resource, *Insight Old Bailey*, provides details of some interesting cases that are being held in court the following day, but a similar resource is not provided at Westminster Magistrates or other courts in England and Wales.

Not only are court lists relatively unhelpful in identifying a case, but they also give little prior notice about forthcoming proceedings. This complicates matters for research and assumes the researcher can cancel any commitments for the foreseeable future to attend, that they live in the local area, or have the time/money/connections to reside nearby temporarily or commute daily. While attending a trial is simple enough, identifying a case relevant to the researcher is a challenge.

2) Access Barriers

While court proceedings are open to the public, accessing the courtroom itself can be challenging—even after overcoming barriers to finding a relevant trial. Upon arrival at the court, admission for friends and family members of defendants is rightfully prioritised, leaving members of the public to fill any seats remaining in the courtroom. However, this means that individuals attending the public gallery for research purposes frequently miss elements of the proceedings and, on some occasions, it took so long to enter the court that proceedings had already ended. During breaks in legal proceedings, members of the public are required to vacate the public gallery and wait in the hallway or waiting area of the court. Re-admittance to the courtroom is dependent on the court clerk alerting security to the imminent beginning of proceedings. Unfortunately, the clerk may often forget to call through, meaning that even when inside the building, sections of proceedings would be missed.

Understanding proceedings can also be frequently impaired by the inability to hear individual(s) speaking in the courtroom. Due to the physical distance between courtroom actors and the public gallery—which, in the Old Bailey, is a balcony above the courtroom, and at Westminster Magistrates Court a glass box at the back of the courtroom—microphones are often required to enable the public to hear courtroom discussion. However, courtroom microphones do not always work, making it difficult to hear the legal proceedings as they are unfolding. Not only does this make it difficult to hear, but it also makes it difficult to take notes for later reflection. In this sense, whilst proceedings are physically attended, they are not understood.

A further issue experienced by many at the Old Bailey is the long list of restricted items and the lack of storage facilities. For both courts, individuals must pass through airport-style security when entering the building. However, permitted and restricted items differ at each court, with the public being able to take electronics (phones, laptops, etc) and drinks into Westminster Magistrates Court, but not into the Old Bailey. This meant that many individuals are turned away from entering the Old Bailey after a long period of queuing because of carrying an unknowingly prohibited item. Though a list of prohibited items is available online, it is not exhaustive. Moreover, due to a lack of on-site storage facilities, individuals who have prohibited items must pay to use nearby locker facilities before returning to the courtroom, which can be disruptive to the public attempting to observe the administration of justice.[49]

3) Changing Dates and Times

Legal proceedings are unpredictable and subject to change at any time. Often, a trial does not begin when it is scheduled to, pre-trial and preparatory hearings cannot go ahead, or jurors are late or unwell, meaning that the court is unable to sit that day. All these factors can contribute to a trial taking longer (or shorter) than the expected timeframe and can cause frustration for

all parties involved in or observing the trial. Whilst some of these issues are thought to relate to broader issues in the criminal justice system—such as a lack of judges, or overcrowding at prisons creating issues in transporting defendants from prison to court on the day—unpredictable legal proceedings are disruptive for the public and, often, the media.[50]

At the Old Bailey, for example, friends and family of a defendant have frequently expressed their frustrations about the lack of communication and clarity around the development of the case, and were frequently turned away from the court as they had not been made aware of cancellations or delays. In the course of this research, conversations with members of court staff highlighted how family members and friends of defendants often became irritated with staff as a result of changing circumstances and false assumptions that security staff have insight into legal proceedings.

For researchers, a central issue is time. It is rare to be able to dedicate time to a trial with an unclear start date or duration, or when there may be delays in the proceedings. This is a costly task which, without funding or financial stability, cannot be carried out. Barriers to legal research, therefore, not only make it challenging to garner valuable insights from the courtroom environment but also arguably continue to perpetuate privilege in the academy.

Linguistic Departures

Roscoe Pound's 1910 differentiation between "law in the books" and "law-in-action" continues to apply in today's context.[51] That is, academic inquiry into terrorism is distinct from legal practices of terrorism. These distinctions are extrapolated into the language and concepts used to discuss 'terrorism' in its various applicable environments, creating two central barriers to research: a lack of shared language, and the inaccessibility of legal language and terminology- or 'legalese'. A lack of shared terminology between law and other disciplines is particularly pertinent concerning concepts such as agency and culpability. For some, agency is "central to offender decision making and desistance from crime," meaning that the concept has been useful for the disciplines of terrorism studies and criminology.[52] In law, the notion of culpability is central to "determine how much the offender should be held accountable for his act."[53] Though the subject of inquiry at hand is similar for both concepts—the intention of the individual—these two distinct approaches are underpinned by different methodologies, logic, terminology, ideas, and practices, complicating the interdisciplinary study of law. This is compounded by the inaccessibility of legal language and terminology, which complicates courtroom research for non-legal scholars and the public. These barriers are examined further below.

1) Agency and Culpability

Agency, a contested and ambiguous concept, is frequently invoked to discuss actors within criminology and terrorism studies. Despite a lack of definitional agreement, a prominent perspective considers agency to be linked to action and understanding the consequences of such actions. For the purposes of this article, agency is understood as "behaviours in which a person chooses to engage in order to shape his or her experiences within social structures in sight of his or her understanding of the social structures that surround and constrain his or her options."[54]

Agency is a particularly prominent concept in analyses of female terrorist actors due to prevailing assumptions that women are generally "compassionate, mothers and caregivers not having the capacity to instil violence and terror."[55] These perceptions are problematic because "the interlinked assumption is that [women] are also more moderate"—an assumption which is at odds with an established knowledge base outlining the diverse range of women's support

for and involvement in terrorism and violent extremism.[56] Increasingly, it is argued that agency is not a binary notion in which an individual is simply in control of their actions or not.[57] Rather, agency is complex, shifting between time, cultures, and structures. This is particularly salient regarding FTFs who, in travelling to ISIS, traversed cultural and contextual norms. Failing to understand the full range of agency for women linked to terrorism limits countering violent extremism (CVE), meaning that the conceptualisation of agency can have broad implications for national security.[58]

The concept of agency does not play a prominent role in legal proceedings. Rather, sentencing in England and Wales is underpinned by three different concepts: culpability, capacity, and harm. In practice, this means that a person cannot be found guilty of an offence unless it can be proven that a criminal act has been carried out (*actus reus*), and that the suspect had a 'guilty mind' at the time the offence was committed (*mens rea*).[59]

Culpability is assessed "with reference to the offender's role, level of intention and/or premeditation, and the extent and sophistication of planning."[60] In England and Wales, most crimes are accompanied by factors which demonstrate culpability, ranked on three levels of severity. For example, for an indictment of 'encouragement of terrorism', culpability can be demonstrated by "the intention to provide assistance" or "encourage others to engage in terrorist activity."[61] The higher the degree of culpability demonstrated, the higher the sentence which can be imposed by the judge. However, demonstrating culpability does not automatically demonstrate capacity. The notion of capacity seeks to understand the mental state of the individual at the time of committing a crime and plays a pivotal role in the sentencing process. We lack capacity if, at the time of the offence, there was an impairment or disturbance in the functioning of the mind or brain, which means that:

> *We are unable to understand information relevant to the specific decision; unable to retain that information for as long as is required to make the decision; or to use or weigh that information as part of the decision-making process; and, finally, if we cannot communicate our decision.*[62]

Lacking capacity has an impact on the degree of culpability that can be demonstrated and, therefore, on the sentence.

A third key element is harm. The degree of harm caused by the offence is also linked to the sentence given and, like culpability, is pre-defined and ranked. For an indictment of 'encouragement of terrorism', levels of harm can be demonstrated by "evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life", or a "statement or publication provides instruction for specific terrorist activity endangering life."[63]

Together, culpability, harm, and capacity form a praxis for sentencing, but the lack of shared language between terrorism studies and law poses a problem for research and practice by hindering the transference of ideas from academia into practice, and fragmenting ideas of accountability in terrorism. For example, claims that women involved with terrorism "tend to receive more lenient treatment in the criminal justice system, based on (often false) gendered assumptions about their limited agency" cannot be fully investigated without the establishment of a common language between 'agency' and 'culpability.'[64]

Agency and culpability are nuanced notions which, it is argued, share the belief that committing an act, criminal or otherwise, does not necessarily prove an intention to do so. For example, an individual with a mental illness can carry out an act of terrorism but can lack the capacity to fully understand their actions at the time. This does not mean the act has not been carried

out, but that there are nuances to be considered about the intention to carry out such an act. Some existing courtroom research looks to understand how agency is constructed in legal proceedings, yet this term is not fully reconcilable with legal terminology.[65] Bridging these terms could help researchers more effectively draw from different bodies of literature and conceptual frameworks, as well as help build an accessible interdisciplinary socio-legal perspective of terrorism that does not necessitate a legal background.

2) 'Legalese'

Even if a member of the public or researcher identifies a case relevant to their interest or study and gains access to the courtroom, there is no guarantee that the individual will be able to understand the trial unfolding before them. 'Legalese' can make understanding legal proceedings particularly difficult, even when in the room.[66] It is widely remarked that the legal profession "uses language that contains a substantial amount of technical vocabulary and a number of distinct (often archaic) features and may be difficult for the lay public to understand."[67] Frequently, the discussion of legal matters involves such jargon, and understanding the direction of the dialogue is difficult, especially when unhelpfully partnered with a lack of working microphones.

However, the language used during a trial becomes noticeably more accessible when the jury is in the courtroom, because they are responsible for deciding whether the defendant is guilty, and therefore, it is of central importance for the jury to understand the case fully.[68] This means that understanding proceedings—when they can be heard—is often easier when the jury is in the court. However, many types of hearings can occur before a jury joins a trial, and at a Magistrates Court, a jury is not used at all.[69] The Contempt of Court Act 1981 forbids the public to speak in the gallery, meaning that there is little to no infrastructure to help the public fully understand the proceedings that they are observing, and asking for clarification is, if not impossible, certainly unwise.[70]

To the researcher, all hearings can provide data and insight into the operation of the legal system—not only those in which a jury takes part—raising important questions about the transparency of proceedings held without a jury and measures in place to help non-legal actors understand legal hearings. Justifiably, legal actors conducting a criminal trial are likely less concerned with the public understanding the proceedings than successfully conducting their role in the administration of them. However, the open justice principle stipulates that "the public has the right to know what takes place in the criminal courts."[71]

Whilst legal terminology serves a clear purpose in the courtroom, the very way that law is discussed can be, in and of itself, a barrier to understanding the processes taking place in the courtroom because "it is often couched in [obscurity]" and "involves stuffy rituals and forms of address that only those "in the know" seem to truly understand."[72] With the open justice principle allowing "the public to scrutinise and understand the workings of the law," legal jargon does not pose a barrier to *hearing* legal proceedings, but a tangible obstacle to *understanding* legal proceedings.[73] As such, overcoming the many barriers already discussed does not guarantee the ability to access legal proceedings fully.

Implications

This article has outlined conceptual, practical, and linguistic barriers to conducting observational research on terrorism trials in England and Wales. These barriers have far-reaching implications

for research and the administration of justice by enabling a lack of accountability of the legal system, creating an overreliance on media coverage of courtroom proceedings, and reinforcing data fragmentation. The implications of these barriers are discussed further below.

Lack of Accountability

Public attendance of court proceedings can hold the criminal justice system to account by putting pressure on witnesses to tell the truth and uncovering any personal biases of judges, lawyers, and juries.[74] Given the importance of transparency in open justice, it is a surprise that so many barriers hamper in-person criminal justice research, particularly considering research in England and Wales finds inconsistencies in terrorism sentencing depending on gender, age and ideology, and proximity to an attack.[75] A 2022 inquiry which set out to understand how the ongoing digitisation of the courtroom impacts open justice finds that members of affiliated media and the public face problems accessing relevant court cases.[76] The review cited court lists as being a key issue to accessing proceedings, as well as acknowledging that information on future cases or the outcomes of closed cases are difficult for the public to locate.

The open justice principle emphasises the role of the media in the sharing of information and holding the judicial process to account. It also stresses the importance of the public being able to attend the court to build confidence in legal processes. In creating this distinction and failing to consider the importance of researchers, the operation of the court system creates a media/public divide, overlooking the role that research and researchers play in the scrutiny and accountability of the criminal justice system. In this context, 'public' also refers to 'researchers', meaning that foregrounding the role of the media in open justice indirectly backgrounds the importance of research.[77] Without being fully transparent to the public—and by extension, researchers—full accountability of the criminal justice system cannot be achieved. *CourtWatch London* explains that "what happens in the courts can have a huge impact on the lives of individuals and communities," yet large portions of decision-making happen behind closed doors "where injustice can go unnoticed and unrecorded."[78] To help combat this, *CourtWatch* volunteers attended Magistrates' hearings across London to hold the law to account where possible but, again, faced barriers in doing so—including issues with court lists and not being able to hear proceedings consistently.[79] Attending court hearings to promote accountability conforms to the argument put forward by Faria et al. which suggests that demonstrating 'tenacity' by attending terrorism trials can be viewed as a form of activism which "push[es] against normative and violent courtroom moves and even influences outcomes."[80] However, barriers to courtroom attendance stifle the opportunity to gather data on terrorism trials, understand how and where biases may manifest and are perpetuated, and routinely hold the system to account.

Overreliance on Media Coverage

Barriers to the public accessing and understanding legal proceedings inadvertently create an overreliance on media coverage to explain and account for trials and legal proceedings. While it would be inaccurate to suggest that media have unrestricted access to the courtroom environment, accredited journalists face fewer barriers to accessing courtroom proceedings. At the Old Bailey, accredited journalists are provided with a separate entrance and seating arrangement in the courtroom itself, can enter the courtroom with electrical items and, in some cases, view the evidence provided to the jury. Additionally, technologies, such as Cloud Video Platform (CVP) links, may be made available if the reporter is unable to make the case in person to enable remote access to the hearing.[81] However, these are not equally available to the public, and when requesting a CVP link during the period of the fieldwork, this was not followed up by

the court. The use of online technologies does not always operate perfectly, but the additional insights they can offer are generally prioritised for journalists to support their ability to report on legal proceedings.

Whilst the open justice principle emphasises the role of the media in promoting legal transparency, court reporting is rapidly declining.[82] A recent interview with *CourtNews UK* highlights that the ongoing digitisation of the courtroom is having an impact on court reporters and the information made available to them—"so much of legal proceedings are effectively concealed from reporters," even those with an office inside the Old Bailey.[83] While new reforms can allow for those directly involved in the case and accredited journalists to have access to a CVP link, court documents are now sometimes shared "privately online between barristers and the judge without ever being heard in court."[84] These barriers, in many ways, are similar to those faced by the public and researchers. With declining numbers of court reporters contributing to a "democratic deficit", it has been noted that "the vast majority of the court and judicial activity taking place at any one moment of time will not be subject to media scrutiny."[85] Placing media at the centre of legal transparency means that justice is predicated on editorial decisions as to what is newsworthy and fails to account for media bias, or the fact that media outlets cannot report on all court hearings.[86] Whilst media coverage is important to hold the justice system to account, relying on this as the primary way that legal decision-making is communicated to the public is insufficient and unsustainable. Barriers to public attendance (and, consequently, academic research) must be diminished in order to supplement media coverage. If transparency is a key tenet of democracy, the need to examine the failures of open justice to provide consistent insight into the operation of the courts is urgent.

Data Fragmentation

Barriers to in-person research methods could discourage researchers from attempting to conduct courtroom fieldwork. With increased academic attention being paid to the role of law and legal processes in terrorism, scholarship focusing on the England and Wales contexts frequently leans on transcription services or media coverage of trials. Though these sources offer the next-best access to the courtroom, both offer incomplete images of courtroom proceedings.

Whilst transcripts are a useful data source, their insights are limited. In-person attendance of the courtroom exposes subtleties in language, tone, and delivery of comments, infusing observational research with a depth which is not possible to attain from court transcripts alone. For example, in-person research gives witness to the demeanour of lawyers, "constructing displays of style and competence that command the attention of their audience and imbue their arguments with persuasive force."[87] Cross-examination tactics often utilise prolonged pauses or ironic tones to convey additional meanings to the judge and jury of the case.[88] In this sense, subtleties of meaning and the construction of a version of events are frequently communicated non-verbally and, therefore, not captured in court transcripts despite their important role.

Aside from frequently being costly and difficult to attain, reliance on transcripts and other statistical data drastically reduces the insights which can be generated. Large areas of the court system cannot be accounted for by transcripts. For example, proceedings from Magistrates Courts are not recorded and, therefore, not transcribed, meaning that it is almost impossible to understand how Magistrates proceedings unfold without being present in the courtroom.[89] This is significant with first hearings and some trials of terrorism-related crimes being carried out at a Magistrates Court.[90]

Secondly, in terrorism trials—like any other trial—the defendant may choose to give evidence to the court. This provides an invaluable primary resource, hearing first-hand their account of events, which can help to enrich and inform evidence-based research of terrorism trials. However, these insights are diluted by transcripts and media coverage. Being in close proximity to terrorism suspects, hearing their voices, and observing their body language humanises defendants in a way that cannot be achieved by reading transcripts or news coverage.[91] With the courtroom being one of the few environments in which "the word of the accused is heard publicly,"[92] in-person research can be an emotionally demanding endeavour. The emotions felt by the researcher in these circumstances are unique and can serve as a "basis for weaving more accurate and situated narratives."[93] Presently, terrorism research does not tend to include the voices, perspectives, and opinions of terrorism suspects themselves, and this resource is underutilised.

Thirdly, though 'culpability' and 'agency' have different functions, the two concepts are fundamentally concerned with ascertaining the intent of the individual in question. The separation of these terms reinforces academic and legal conceptual silos, failing to realise the value of interdisciplinary perspectives. Terrorism has been well-established as a legal concept holding relevance across different disciplines, including criminology, sociology, psychology, and law.[94] Researchers with an interest in deepening their understanding of legal proceedings may not have a legal background and find it difficult to fully understand legal matters as they unfold. Complex legal language poses a barrier to non-legal scholars who recognise the importance of socio-legal insights to support interdisciplinary research but have not spent years specialising in criminal law. Therefore, the ability to research terrorism trials has a wide potential cross-disciplinary impact which is hampered by legal jargon and a lack of shared language between disciplines.

Conclusions

A lack of primary data has been described as the 'Achilles Heel' of terrorism studies.[95] Not only does terrorism studies continually recycle existing secondary data, but it also struggles to utilise new methodologies to gather data. In the case of observational methods, it appears that practical and linguistic research barriers outlined in this article are more acutely felt in England and Wales compared to other jurisdictions.

To mitigate these barriers, five key recommendations are put forward. First, the creation of court research accreditations would permit researchers enhanced access to the courtroom which mirrors that of media access and allow for the creation of independent and empirical evidence-based research, aiding multi-disciplinary analysis and enhanced understanding of legal proceedings more generally. Research accreditations must be available in a prompt manner which reflects the fast-paced changes to legal proceedings. Secondly, court lists must be improved for the public and researchers to attend cases that they are interested in to enhance public and academic scrutiny. In line with wider recommendations from Transform Justice and the open justice inquiry, court lists should include a basic summary of the indictment and be released promptly—ideally providing more advanced notice than the prior working day.[96] This could be supplemented by online resources helping the public to decode legal jargon and gain a fuller understanding of the proceedings they observe, whether a jury is in attendance or not. Thirdly, court reporters and initiatives such as *CourtWatch London* are important to promote legal transparency and illustrate issues with existing open justice provisions. There is a need for further investment in these initiatives, and others like it, to encourage accountability of the criminal justice system and improve knowledge of and access to legal proceedings nationwide. Fourth, a common framework is needed between law and other disciplines to bridge together

thematically similar terminology, such as that of 'agency' and 'culpability'. Simplifying and bridging these complex but similar ideas may prove insightful for terrorism studies, criminology, law, and other disciplines. Further work is needed to fully understand how this might be achieved, but a useful starting point is to recognise the multidisciplinary significance of legal proceedings and foreground the role that intention plays in 'agency' and 'culpability'. Finally, considering the barriers outlined in this article and the dwindling numbers of court reporters in England and Wales, attending a court hearing is stymied by many factors, meaning that court transcripts must be made easier and cheaper (or free) to acquire. Court transcripts are the only way of obtaining insight into the direction of court proceedings without being in the courtroom in person. Additional barriers to then accessing court transcripts mean that large sections of criminal justice can go unseen and unscrutinised, failing to promote the transparency of justice.

Attending terrorism trials holds potential insights for various disciplines, as well as producing relevant data for agencies dealing with terrorism offenders post-conviction. Importantly, being present in court proceedings offers valuable insights beyond those obtainable by court transcripts, though in some instances, transcripts may remain our only option. Gathering data which remains uncaptured in other research methodologies, attending terrorism trials provides the opportunity to witness the constructions of narratives within legal proceedings and observe defendants giving evidence. Eroding barriers to the in-person analysis of terrorism trials is key to accessing the benefits of ethnographic legal research and could introduce new methodological possibilities to the field of terrorism studies.

While the barriers outlined in this article are based on the personal experiences of the author and cannot be assumed to be universal experiences of researchers in this environment, it remains true that these barriers hamper legal research within England and Wales and raise methodological issues with comparative studies between other jurisdictions. Enhancing open justice will help facilitate in-depth interdisciplinary research, bring insights from England and Wales in line with the existing global research landscape, enable cross-country comparative research, and increase the examination of justice for media, public, and researchers alike.

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PERSPECTIVES ON TERRORISM

SPECIAL SECTION: EXTREMISTS IN THE COURTROOM

Sentencing Outcomes for Extremist Actors in the United Kingdom, 2001-2022

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Abstract: Few studies have examined the sentencing outcomes of individuals convicted of terrorism or violent extremism-related offences in the United Kingdom (UK). Home Office data can tell us the number of persons arrested for terrorist-related activity and subsequent outcomes, such as charges and convictions by legislation, but this data does not provide a complete picture of the prosecution landscape for extremist actors in the UK. This is due in part to the existence of three distinct legal jurisdictions (England and Wales, Scotland, and Northern Ireland) and also to differences in the types of data collected and counting practices in operation. Moreover, the official data available publicly are only summary statistics, with no separate data for Scotland. This article addresses this research gap in our knowledge of the prosecution landscape for extremist actors in the UK by utilising data from an original dataset compiled by the research team from open sources on the sentencing outcomes of individuals (n=809) convicted of terrorism, terrorism-related, and violent extremism offences over a 21-year period (April 2001-March 2022). The analysis of this dataset has allowed us to test a range of hypotheses in relation to not only motivation but also offence type, gender, age, co-defendants and having multiple counts (i.e. facing multiple charges). Limitations of the study are also discussed.

Keywords: Terrorism, sentencing, prosecution, imprisonment, legislation, counter-terrorism

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Introduction

Surprisingly, there are no overall official statistics for the United Kingdom (UK)[1] with respect to individuals charged and/or convicted of terrorism and terrorism-related offences.[2] This is due to there being three distinct legal jurisdictions (England and Wales, Scotland, and Northern Ireland) in operation, and also to differences in the types of data collected and counting practices. According to Home Office data for the period from 9/11 until the end of March 2023, 1,495 persons have been charged with terrorism and terrorism-related offences in Great Britain, and of those prosecuted, 88 percent were convicted.[3] In Northern Ireland (NI), from April 2001 until the end of August 2024, 937 persons were arrested under s. 41 of the Terrorism Act 2000 were charged with criminal offences including terrorism and terrorism-related offences.[4] Of those persons arrested under s. 41 of the Terrorism Act 2000 and subsequently prosecuted between April 2013 and December 2021, 72 percent were convicted of terrorism or terrorism-related offences.[5]

Although the official data can inform us of the number of persons charged, prosecuted, convicted etc.,[6] very little is known about the sentencing outcomes of extremist actors who have engaged in terrorism or violent extremism in the UK. Despite indications of inconsistencies across jurisdictions and the potential influence of extraneous variables on sentencing (e.g. racial or ethnic background of the offender), there exists a lack of research and investigation of the prosecution landscape for extremist actors. For example, does sentencing vary in the UK for extremist actors depending upon the legal jurisdiction? Does the ideological motivation behind an extremist actor's criminal offence affect whether they are charged under terrorism or non-terrorism legislation? Can differences in sentencing outcomes be observed with respect to the extremist actor's ideological motivation or gender? It is the answers to such questions that this research is concerned with.

The significance of the research lies not only in the provision of detailed UK-wide data on the sentencing outcomes of extremist actors, which has the potential to inform policy and practice in this area but also in our ability to test (through hypotheses) the perceptions held by the public/experts regarding inconsistency or unfairness in the criminal justice system. Such views can underpin distrust in the legal system and government with respect to the punishment of certain types of extremist offenders.

The following article is a summary of our 2023 CREST report[7] and is structured as follows: we first outline previous research, then introduce the current study—including aims, research questions and methods—before discussing results and conclusions, as well as limitations of the study.

Previous Research

Much of the existing research on the prosecution of extremist actors has been conducted in North America. Overall, findings from research conducted in the United States (US) suggest that international terrorists are more likely to be punished more severely than domestic terrorists,[8] politically motivated offenders convicted of the same crimes as non-politically motivated offenders receive longer sentences,[9] crime severity was a significant predictor of sentence length,[10] and terrorists were twice as likely as non-terrorists to be found guilty following a trial.[11] Additionally, not pleading guilty was associated with longer sentence length[12] and a greater number of counts was found to increase the likelihood of being prosecuted, tried, and convicted.[13] Research also suggests that the implementation of federal sentencing guidelines in the US resulted in the incarceration rate for terrorists and non-terrorists increasing substantially, while the average sentence length for terrorists significantly decreased.[14] The

ideological affiliation of individuals was found to affect their treatment within the criminal justice system, with eco-terrorists receiving shorter sentences than left-wing and right-wing terrorists,[15] while jihadists were more likely to be investigated and charged than single-issue or far-left group members.[16] Research on the effect of contextual factors—namely, a major terrorist attack (i.e. the Oklahoma City bombing and 9/11) found that there was an increase in the number of individuals charged within two years after such attacks, but that the average sentence length decreased.[17]

Offender characteristics (such as race) were not found to have an impact on sentence length, but age did appear to impact the likelihood of an investigation being undertaken—namely, it increased with age.[18] Gender was found to result in differential (preferential) treatment within the criminal justice system for those women engaged in terrorism-related activity in terms of arrest, conviction, and sentence lengths.[19] Such findings are consistent with research on gender and the wider criminal justice system, which found that gender has a role to play, with women offenders often receiving differential (preferential) treatment and sentencing outcomes—such as being less likely to be convicted,[20] and if convicted receiving lenient custodial sentences compared to male offenders.[21]

Research conducted in Canada found that findings of guilt in terrorism trials (62 percent) were comparable to non-terrorism trials (63 percent).[22] However, terrorist offenders were found not to be receiving discounted sentences for guilty pleas and it was found that a guilty plea increased sentence severity.[23] Further, according to research by Nesbitt, of the 56 individuals charged with a terrorism offence in Canada between December 2001 and December 2019, all involved al-Qaeda (AQ)-inspired males and all non-terrorism cases where hate had been identified as a motive for the offence involved far-right extremists.[24] Moreover, he argues that the choice of offences that offenders are charged with is influenced by the very nature of Canada's terrorism and hate speech offences and that the "legislative history and the resultant practice has created what looks like systemic discrimination, where AQ-inspired extremism is charged, prosecuted and sentenced differently and more seriously than similarly ideological far-right violent crime."[25]

In terms of the UK, there has been little academic research on this topic in comparison to North America, and what has been undertaken falls into two main areas: the penology of terrorism[26] (e.g. the impact of legislation or policy generally), and research on specific types of terrorism and extremism (namely Islamist or right-wing).[27] Research on the penology of terrorism has identified the categorisation of terrorist prisoners as 'especially' dangerous, which in the post-9/11 period has seen sentences "severely ratcheted up in two directions: lengthier determinate sentences plus more indeterminate life sentences."[28] More recent research on sentencing trends suggests that legislative changes "inevitably impose greater severity" due to the nature of the changes, which allow for enhanced sentencing of offences under non-terrorism legislation, where the offence is considered terrorism, the increase of maximum sentence terms, and the reform of notification requirements.[29] Amirault and Bouchard's study of terrorist convictions in England and Wales examined the impact of legislative factors (e.g. the type of legislation under which the offender was convicted) and incident-based contextual factors (e.g. being sentenced following a major terrorist act) on sentencing outcomes.[30] They found that offenders convicted under terrorism legislation received shorter sentences than those convicted under non-terrorism legislation; offenders motivated by Islamic extremism received significantly longer sentences than offenders not motivated by Islamic extremism; and offenders sentenced after a major terrorist incident (in this case after the July 2005 bombings in London) are "punished

less harshly"—although they acknowledge they may have discovered a "lingering 9/11 effect."[31] Additionally, having co-defendants was found to increase sentence length, and crime severity "was found to be a significant predictor of increased sentence severity."[32]

Research on UK counter-terrorism legislation and extreme right-wing terrorism found the most common offence individuals were convicted of was the collection of information useful for terrorism (s. 58 of the Terrorism Act 2000) followed by membership of a proscribed organisation (s. 11 of the Terrorism Act 2000), and dissemination of terrorist publications (s. 2 of the Terrorism Act 2006).[33] Blackbourn notes that those involved in far-right terror attacks have been convicted of a range of terrorism offences (e.g. encouraging terrorism and collecting information); however, she also found that the offence of preparation of acts of terrorism (s. 5 of the Terrorism Act 2006)— which has become she argues, "one of the most consistently used offences in the UK's counterterrorism regime"—has not been used that often for far-right offenders.[34]

In contrast, research on Islamist terrorism found that the most common principal offences were the preparation of acts of terrorism (s. 5 of the Terrorism Act 2006), possession of items/collection of information useful for terrorism (ss. 57 and 58 of the Terrorism Act 2000), and fundraising offences (ss. 15-18 of the Terrorist Act 2000).[35] Stuart's study revealed 69 percent of offenders were convicted under terrorism legislation and 31 percent under non-terrorism legislation, and that more than half of those convicted (54 percent) pleaded guilty, with 96 percent of offenders receiving a custodial sentence.[36]

From the discussion of the extant literature, we can see that there has been, to date, no research that has looked at the whole of the UK in terms of extremist actors (despite claims to the contrary). Indeed, Amirault and Bouchard state that their sample of convicted terrorist offenders is for the UK, but this is not the case, as their sample is drawn from information from the Crown Prosecution Service's website, which only covers England and Wales.[37] When comparing sentencing outcomes in England and Wales to sentencing outcomes in NI, Appleton and Walker conclude that terrorists convicted in NI receive more lenient treatment than terrorists convicted for "equivalent activity in Britain", yet Scotland is omitted from their discussion.[38] Moreover, the research conducted by Jupp and Stuart only considers one type of terrorism each, namely, right-wing and Islamist, respectively.[39] Thus, the research contained in this summary article seeks to provide a more comprehensive picture of the sentencing outcomes for extremist actors in the whole of the UK over a 21-year time period.

The Current Study

Our research is only concerned with those individuals (extremist actors) convicted of terrorism, a terrorism-related or violent extremism offence as defined in either legislation, government guidance or by the prosecution authorities in the UK between the beginning of April 2001 and the end of March 2022. Terrorism offences are those contained in specific terrorism legislation, such as the Terrorism Acts 2000 and 2006.[40] Terrorism-related offences are contrary to either common law (e.g. murder or conspiracy to murder) or other legislation such as the Explosive Substances Act 1883. The research is not concerned with offences of entering into a funding arrangement for the purposes of terrorism (s. 17 of the Terrorism Act 2000), unless those individuals charged with such offences were demonstrably motivated by advancing the terrorist cause. Nor was it concerned with offences such as refusal to submit to a search or answer questions at the UK border by a police, customs or immigration officer (s. 7 of the Terrorism Act 2000), as it was not possible to ascertain that the refusal to comply was motivated by terrorism. Violent extremism offences are those defined by the Crown Prosecution Service as:

[t]he demonstration of unacceptable behaviour by using any means or medium to express views which:

- *Foment, justify or glorify terrorist violence in furtherance of particular beliefs;*
- *Seek to provoke others to terrorist acts;*
- *Foment other serious criminal activity or seek to provoke others to serious criminal acts; or*
- *Foster hatred which might lead to inter-community violence in the UK.*[41]

Such offences would include those arising from the written word (e.g. publications, notes and internet entries) and through spoken words (e.g. the creation of audio and video recordings of speeches and chanting). Specific offences that could be considered include incitement to disaffection (various Acts of Parliament), sedition and seditious libel (common law), and the distribution, showing or playing of a visual or audio recording with the intent to stir up racial or religious hatred, or based on sexual orientation (ss. 21-23, Public Order Act 1986). Additionally, a number of offences under the Terrorism Act 2000 (e.g. terrorist financing offences ss. 15-18) and the Terrorism Act 2006 (e.g. encouragement of terrorism s. 1) are included for consideration as violent extremism offences.

Aims and Research Questions

The overarching aim of this research is to provide a better understanding of the prosecution landscape for extremist actors in the UK by describing, analysing and comparing the sentencing outcomes of such offenders in the three legal jurisdictions of the UK between April 2001 and March 2022. In order to achieve this overarching aim, we addressed three research questions:

- **RQ1. What criminal offences are extremist actors being convicted of?**
  (RQ1.1) What perceptions are held about patterns or differences in the use of legislation?
  (RQ1.2) Are there differences in the use of legislation across jurisdictions and motivation groups?
- **RQ2. What sentences are extremist actors receiving?**
  (RQ2.1) Does the sentence differ in terms of ideological motivation for the offence?
  (RQ2.2) Does the sentence differ depending on the legal jurisdiction?
  (RQ2.3) What, if any, are the impacts of other extraneous variables on sentencing (e.g. ideological motivation, legal jurisdiction, gender).
- **RQ3. Is there any evidence of a change over time with respect to sentencing outcomes?**

Methods

The research aims to deliver a comprehensive insight into the prosecution landscape for extremist actors in the UK in terms of the offences that extremist actors are convicted of, and the sentences received, using an interdisciplinary mixed-method approach. A comprehensive review and amalgamation of the existing academic literature was completed, including the identification of potential variables of interest for this study. Qualitative semi-structured interviews (n=15) were conducted with expert stakeholders (i.e. representatives from law enforcement, prosecution, the legal profession, relevant government departments and public bodies, academic experts, and other expert observers) to explore some of the findings from the

literature.[42] Discussions also included perceptions of any extraneous variables that participants recognise might affect outcomes (location, racial or ethnic background of the offender, ideological motivation etc.).

A database of convicted extremist actors (namely, individuals convicted of terrorism, terrorism-related or violent extremism offences) in the UK was created from a variety of publicly available information sources, including sentencing remarks made by judges, Court of Appeal judgments, legal research databases (e.g. the British and Irish Legal Information Institute, Lexis, Westlaw and lawpages.com), media reports, prosecution authorities websites, reports by the Independent Reviewer of Terrorism Legislation and law enforcement, news items on police websites, academic articles, and think tank publications (e.g. research on Islamist terrorism published by The Henry Jackson Society). To mitigate potential source limitations, triangulation of sources was undertaken, with legal sources given precedence where available. A number of individuals convicted of terrorism offences were omitted from the database as they did not appear to have a terrorist motivation as noted by the judge or prosecution.[43] A very small number of individuals who appeared as co-defendants with extremist actors and were convicted of terrorism-related offences under non-terrorism legislation were also not included, as it was not clear they had a terrorist motivation.[44] In total, 809 extremist actors in the UK were identified from publicly available information and included in the database.

Additionally, a content analysis of a sample of sentencing remarks from criminal cases involving extremist actors was undertaken, and the findings were used to support the development of the working hypotheses about the factors that shape sentencing outcomes.[45] Hypotheses relating to charging and prosecution (informed by interviews) and relating to sentencing outcomes (informed by interviews and content analysis) were quantitatively tested via statistical analysis of the database.

Quantitative Analysis

In our database, individual entries reflect individuals sentenced (n=809), although some individuals shared offences. The database contains 522 unique offences (389 individuals who do not share offences, and 420 individuals who share the remaining 133 cases). Groups of individuals sharing a single offence range from two to eleven offenders. Though individuals share offences, they may differ in total counts (i.e. number of charges), plea, and sentencing outcome. Shared offences were accounted for in the statistical analysis of the database, since individuals' sentences for the same offence are likely to be treated more similarly. Thus, multilevel regression modelling is used to account for the hierarchical/nested nature of the data, with shared offence treated as a level two variable (i.e. the multilevel regression model takes account of the clusters of individuals with shared offences when determining the impact of predictors on outcomes).

Operationalisation of Variables

The database included a number of variables, which we will now discuss. For the purposes of the research, the principal offence an individual was convicted of was used, namely the offence that has the statutorily longest maximum sentence. In some cases, there were a number of offences that the extremist actor was convicted of, which all carried the same longest maximum sentence. In such cases, we used either the first mentioned offence or the offence with the greatest number of counts from the publicly available information. The sentence outcome is the initial sentence in months handed down by the trial judge at sentencing. Subsequent appeals

against conviction or sentence are not included, as we are solely interested in the sentence handed down in the first instance. Nor are increases in sentences as a result of the Unduly Lenient Sentence scheme recorded.[46]

***Offence type*:** Table 1 provides a breakdown of offence type and is comprised of three groups based on the legislation used (for an individual's principal offence).

Table 1: Offence Type

	Frequency	%
Terrorism	359	44.4
Terrorism-related	231	28.6
Violent extremism	219	27.1
Total	809	100.0

Motivation: As can be seen in in Table 2, three main groups of ideologically motivated offenders were present in the database plus a small number of individuals motivated by a range of ideologies, which formed the 'Other' group.[47]

Table 2: Motivation Group

	Frequency	%
Islamist	499	61.7
NI-related	145	17.9
Right-wing	130	16.1
Other	35	4.3
Total	809	100.0

***Jurisdiction*:** As already noted, there are three legal jurisdictions in the UK—namely England and Wales (E&W), Northern Ireland (NI), and Scotland. Table 3 provides a statistical summary of extremist actors in each.

Table 3: Jurisdiction

	Frequency	%
E&W	661	81.7
NI	126	15.6
Scotland	22	2.7
Total	809	100.0

***Co-accused*:** This is a binary variable (had co-accused or did not). A total of 378 individuals did not have co-accused (46.7 percent), and a total of 431 did have co-accused (53.3 percent). Note that this differs slightly from the shared offences accounted for in the database, since some people had co-accused offenders who were found not guilty and, therefore, not sentenced (i.e. were not entered into our sentencing data).

***Plea*:** This is a binary variable (guilty plea or not guilty plea) related to the principal offence for which the offender is charged. A total of 466 offenders gave guilty pleas (57.6 percent), compared to 341 who did not (42.2 percent). There were two values in the database which did not accord with this binary, so they were treated as missing.[48]

***Sentence*:** There is no perfect measure of sentencing outcomes that accounts for inconsistencies across jurisdictions and uncertainty regarding the actual term to be served in any instance.[49] We operationalise sentence length as the totality of the sentence given by the judge or magistrate (including custodial and/or licence elements).[50] Sentence length is operationalised in months, in keeping with previous studies examining sentencing outcomes. Sentence months range from five to 960, with 797 valid sentences (twelve missing values; M = 99.52; SD = 109.419). The measure of sentence months has an extreme right skew and was log-transformed for analysis, meeting assumptions of normality (M = 4.14; SD = 0.97).[51]

Age: Though age at the time of arrest or charge is a useful measure, this information was missing for many individuals. Age at the time of conviction is more readily available through publicly available sources, and was obtainable for most offenders. For offenders with both age at charge and age at conviction recorded, the strong positive correlation approaches one (r=0.993), indicating that the two measures do not differ significantly, and perhaps suggesting that the average time from charge to sentencing is relatively consistent across subjects (sentenced individuals in our data set). Therefore, we are satisfied with age at conviction, as it retains maximum data. Age ranged from fifteen to 79 years, with 794 valid subjects (fifteen missing values; M = 30.63; SD = 10.02). Age has a moderate right skew and was log-transformed for analysis, meeting assumptions of normality.

Total counts: The total number of counts (charges) for which an offender was convicted of ranges from one to two hundred (M = 3.53; SD = 8.571), with a median of two counts. There is one missing value (information about counts is not available). The right skew of this measure is so extreme that no transformation approaches normality. The decision was made to cap the number of counts at six (this cap aligned best with assumptions for regression analysis predicting sentence), retaining a scale variable with effects capped at six or more counts (i.e. the impact on counts is expected to plateau after six counts are reached).

***Ethnicity binary*:** Though the ethnicity of offenders was reported in some cases, it was not always possible to determine. Publicly available information, including photographs of offenders, allowed for a binary, only of white versus non-white offenders. This measure is included in analyses, recognising its reductive and simplistic nature. White offenders make up 39.1 percent of subjects, and non-white offenders make up 60.9 percent.

***Gender*:** Males comprise 91.7 percent of the database, with only 67 subjects being female. Though this split is undesirable for analysis, the female group does not demonstrate an inflated standard error for sentencing outcomes.

Severity Limitation

One potentially confounding factor throughout this study is the absence of a severity measure. Within the extant academic literature on the sentencing of terrorists, we found two such measures, neither of which are appropriate for the breadth of sentences in this database. The first, an ordinal crime severity measure, involved a list of 29 US federal crimes, which are given a number; one being least severe (i.e. miscellaneous), through to 29 most severe (i.e. treason).[52] However, ordering in this way does not capture differences that exist within

offences of the same crime. To account for severity in our database, it would be important not only to understand what crime an offender committed (e.g. preparation of acts of terrorism contrary to s. 5 of the Terrorism Act 2006), but to compare severity both within this category and across other categories. The second measure utilised by Amirault and Bouchard, involved a simple binary variable of "decreased threat to human lives" and "increased threat to human lives."[53] We did consider constructing a crime severity measure using maximum sentences as stated within legislation but maximum sentences have been subject to change over the years, or incorporating Amirault and Bouchard's severity measure, but we felt that none of the available measures would have captured severity differences within an offence.

Having said that, severity is important. A logical assumption is that offences of greater severity will result in longer sentences. The statistical models presented in this article demonstrate significant impacts of variables like gender on sentencing outcomes. We can conclude, for example, that females receive shorter sentences than males, but we cannot conclude whether this is a result of bias in the system or related to a phenomenon of females committing less severe offences. Likewise, equivalent sentence lengths across ideological groups may indicate equitable use of legislation, but equivalent sentences for groups that differ in severity of offences would actually indicate discrepancies. When pleading guilty is shown to predict shorter sentences, we cannot be sure whether a guilty plea reduces sentences or whether people might be more likely to plead guilty to less serious offences (though we have found no evidence for this). Similarly, if a greater number of total counts increases sentences, we need to consider that these variables might be correlated (an individual with more counts might be more likely to have committed a more severe offence). All results should be interpreted with this caveat in mind.[54]

One strength of the current study is the use of mixed methods. In some cases, combining statistical results with data from interviews and existing literature can provide insight into the nature of an effect.

Results

RQ1. What criminal offences are extremist actors being convicted of?

Insights from both the interviews and the small body of literature available for the UK informed us that we should expect NI-related extremist actors to be charged more frequently with terrorism-related offences (i.e. not under terrorism legislation), and non-Northern Ireland-related extremist actors to be charged more frequently with terrorism offences (including Islamist extremist actors). While NI-related extremist actors are primarily arrested under s. 41 of the Terrorist Act 2000, this is not translated into charges and convictions brought under terrorism legislation. Indeed, the Independent Reviewer of Terrorism Legislation noted in their 2023 report that "[a]s with previous years, Northern Ireland accounted for a very high proportion of arrests made under section 41 of the Terrorism Act 2000…. This year the Northern Ireland figure was eighty percent of all section 41 arrests in the United Kingdom (last year it was 75 percent)."[55] An interviewee with considerable knowledge of law enforcement in Northern Ireland explained that arrests under s. 41 do not always translate into charges under terrorism legislation, as many involved "straightforward [offences e.g.] setting off a bomb or firing a gun or committing a murder" and that substantive charges (i.e. possession of explosives or firearms) were more likely to be used than "something that might be a little bit more difficult to prove" such as planning, conspiracy, and the preparation of an act of terrorism offences.[56]

Insights from interviews also informed us that we should expect right-wing extremist actors to be charged with violent extremism offences rather than terrorism or terrorism-related offences. As an academic expert on right-wing violence and extremism opined

> *"in this current violent space you're not seeing a lot of [...] people being arrested for violent offences, in that they've gone out and done something—rather, arrests are often for incitement with much more violent talk in ... [the digital] space than actual violence."*[57]

In terms of specific offences, insights from the interviews suggested that the evidential threshold for proving the offence of possession or collection of information useful for terrorism (s. 58 of the Terrorism Act 2000) is relatively low, therefore, we would expect to see it frequently used.[58] Additionally, it was suggested that the evidential threshold for proving the offence of membership of a proscribed organisation (s. 11 of the Terrorism Act 2000) was very high in NI vis-à-vis E&W and that charges for terrorist financing offences (ss. 15-18 of the Terrorism Act 2000) were rarely brought, therefore we would expect to see relatively few convictions for this type of offence in NI and more in E&W.[59] In light of these findings, we formulated the following hypotheses:

- **Hypothesis 1:** Islamist extremist actors are more likely to be convicted of terrorism offences (e.g. offences under terrorism legislation but excluding those considered as violent extremism).
- **Hypothesis 2:** Right-wing extremist actors are more likely to be convicted of violent extremism offences.
- **Hypothesis 3:** NI-related extremist actors are more likely to be convicted of terrorism-related offences (e.g. offences under non-terrorism legislation) than for terrorism offences or violent extremism offences.

We are interested in offence type by jurisdiction (E&W, NI, Scotland) and by motivation of offender (Islamist, NI-related, right-wing). Ideally, we would have looked at an interaction between jurisdiction and motivation (to understand whether perpetrators of different motivations are sentenced differently across jurisdictions). However, cross-tabulations of jurisdiction and motivation (see Table 4) demonstrate that each motivation group is sentenced almost exclusively in a single jurisdiction (NI-related in NI, and Islamist and right-wing in E&W). Therefore, both variables cannot be used in the same analysis. We decided to focus on motivation for two reasons. Firstly, it separates Islamist and right-wing offenders that are otherwise lumped together under the jurisdiction of E&W. Secondly, data from Scotland is retained amongst the three motivation groups (with only 22 offenders, there are potential problems with including Scotland as a group for analysis).

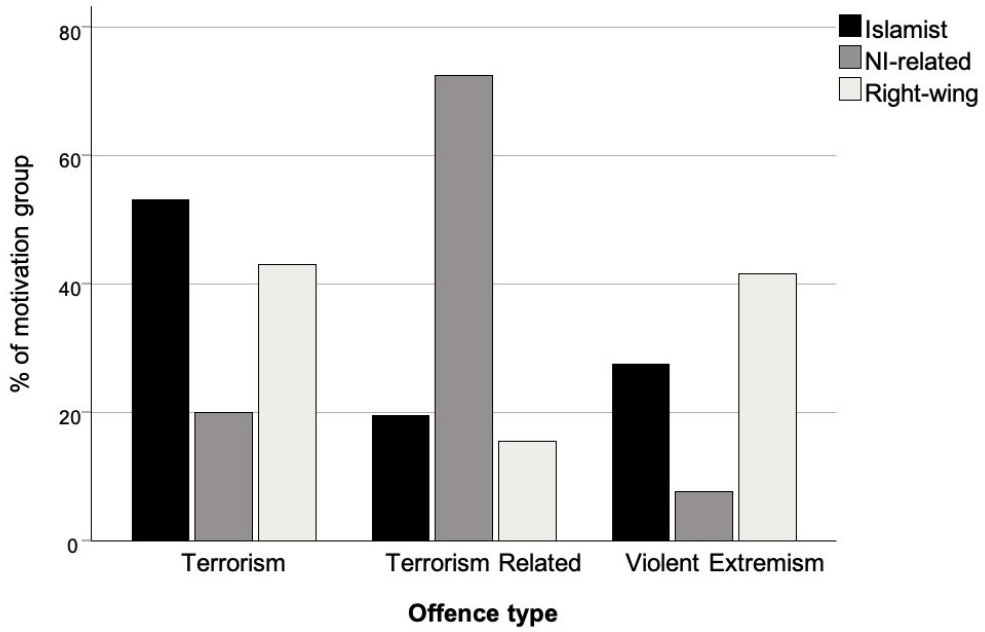
Table 4: Jurisdiction by Motivation Cross-Tabulation

	E&W	NI	Scotland	Total
Islamist	494	1	4	499
NI-related	12	124	9	145
Right-wing	123	1	6	130
Other	32	0	3	35
Total	661	126	22	809

We found support for Hypotheses 1, 2, and 3. Analysis of the database showed that consistent with expectations from the interviews, NI-related offenders tend to be most frequently convicted under non-terrorism legislation for terrorism-related offences (rather than terrorism or violent extremism offences). Consistent with expectations from the interviews and the extant literature, in E&W (where most Islamist offenders are sentenced), convictions are most frequently secured under terrorism legislation. This is also the case in Scotland. In E&W, Islamist offenders are most frequently convicted of terrorism offences, whereas right-wing offenders are most frequently convicted of both terrorism and violent extremism offences.

A chi-square analysis and regression model predicting offence type (and accounting for nesting of offences) supported these results.[60] The findings are summed up by the descriptive statistics in Figure 1. Islamist extremist actors are more likely to be convicted of terrorism offences (Hypothesis 1) and NI-related extremist actors are more likely to be convicted of terrorism-related offences (Hypothesis 3). We hypothesised that right-wing extremist actors would be convicted most frequently with violent extremism offences (Hypothesis 2). Sentencing data showed that right-wing offenders were convicted of terrorism offences at a comparable level to violent extremism offences, they were also the most likely of all groups to be convicted under violent extremism (providing support for Hypothesis 2).

Figure 1: Offence Type by Motivation of Offender



Rather than severity in this model, the greatest potential confounding factor is the nature of offences committed. It appears that motivation impacts the offence type a person is convicted of, but what is not clear is whether individuals from different motivation groups actually tend to commit offences that fall more readily within one offence type (or whether there are contextual and political reasons for the results). In this case, qualitative data helps to shed light on the results. As already noted, insights from the interviews with respect to NI suggested that NI-related extremist actors were more likely to be prosecuted and convicted of terrorism-related offences, as substantive charges—such as possession of explosives or firearms—were preferred to the broader offence of preparation of acts of terrorism.[61] Many of the offences considered as violent extremism (e.g. incitement) do not readily apply in the context of NI. Moreover, it was suggested that terrorist financing offences are not readily pursued in NI in comparison to E&W.

RQ2. What sentences are extremist actors receiving?

Insights from interviews and the extant literature informed us that we should expect Islamist extremist actors to receive lengthier sentences than non-Islamist extremist actors, and that right-wing and Northern Ireland-related extremist actors would receive shorter sentences than others. In terms of right-wing offenders, it was suggested that in the past

> *"there was certainly people who would've got away with stuff that kinda wasn't taken as an act of terrorism but as an oh well he's got all these [terrorist] manuals but he's a decent white lad who isn't going to do anything about it."*[62]

The case of Ben John is illustrative of this point: John had downloaded some 70,000 white supremacist documents and bomb-making instructions, and was found guilty of possessing information likely to be useful for preparing an act of terror (s. 58 of the Terrorism Act 2000, which carries a maximum sentence of fifteen years), but was given a suspended sentence and ordered to read literary classics (e.g. Dickens, Austen and Shakespeare) and return to court to be tested on them. The judge was "not of the view that harm was likely to have been caused."[63] With respect to Northern Ireland, the former Independent Reviewer of Terrorism Legislation, David Anderson KC noted in his report "[i]t has been suggested to me that terrorist offences in Great Britain are more heavily sentenced than equivalent offences in Northern Ireland."[64] Previous research discussed in the review of extant literature also suggests that the number of counts, having co-defendants, gender, race, and entering a guilty plea also has an impact on sentencing. In light of these findings, we formulated the following hypotheses:

- **Hypothesis 1:** Islamist extremist actors receive lengthier sentences than non-Islamist extremist actors
- **Hypothesis 2:** NI-related extremist actors receive shorter sentences than other extremist actors
- **Hypothesis 3:** Extremist actors with co-defendants receive longer sentences than those without co-defendants
- **Hypothesis 4**: Multiple counts result in longer sentence lengths
- **Hypothesis 5**: Female extremist actors receive shorter sentences than male extremist actors.

Predicting Sentencing Outcomes

The model shown below predicts sentencing outcomes by several predictors including motivation.[65] As discussed earlier, jurisdiction and motivation cannot be included in a single model, however, two iterations are run to cover both and check for consistency. A multilevel linear regression model was run predicting overall sentence length from age, ethnicity, motivation (or jurisdiction), plea, co-accused, total counts, gender, and offence type. The total number of sentences included in the initial model was 782 (27 were excluded due to missing data, including unspecified sentences, or mental health-related sentences). The model includes random intercepts for shared offences and random slopes for offence type. Non-significant predictors were removed in a series of steps to make a more parsimonious model:

- Age removed (p=0.342)
- Ethnicity removed (p=0.432)
- Motivation removed (p=0.066)

The model with five remaining predictors is identical from this point to the model including jurisdiction, as motivation and jurisdiction are both removed at this stage. That is, no matter whether the motivation group or jurisdiction is included, the final model is identical. The final model output is shown in Tables 5 and 6.

Table 5: Multilevel Regression Predicting Sentence Length (Fixed Effects)

	df	**F**	**p**
Plea (binary)	1	53.802	<.001
Co-accused (binary)	1	9.555	.002
Total counts (cap 6)	1	53.938	<.001
Offence type	2	68.438	<.001
Gender	1	27.594	<.001

Table 6: Multilevel Regression Predicting Sentence Length (Estimates of Fixed Effects)

	Estimate	**SE**	**t**	**p**	**95% CI (lower)**	**95% CI (upper)**
Plea (not guilty)	-.417	.0569	-7.335	<.001	-.529188	-.305740
Plea (guilty)	0	0	.	.	.	.
Co-accused (no)	-.235	.0761	-3.091	.002	-.384951	-.085664
Co-accused (yes)	0	0	.	.	.	.
Total counts (cap 6)	.118	.016	7.344	<.001	.086745	.150034
Legislation: Terrorism	.465	.0811	5.734	<.001	.305488	.624141
Legislation: Terrorism-related	1.083	.0923	11.689	<.001	.900694	1.264678
Legislation: Violent extremism	0	0	.	.	.	.
Gender (male)	.505	.096	5.253	<.001	.316070	.693285
Gender (female)	0	0	.	.	.	.

Plea: Those who plead guilty receive sentences ~34 percent less than those who do not plead guilty (those who do not plead guilty receive sentences 1.5 times longer than those who do).

Gender: Sentence length for males is ~66 percent longer than for females.

Total counts: For each additional count (effect capped at six counts), sentence length increases by ~12.5 percent.

Co-accused: Those with co-accused receive sentences that are ~27 percent longer than those without co-accused (or those without co-accused receive sentences ~20 percent shorter).

Offence type: Violent extremism has the shortest sentences (compared to terrorism and terrorism-related). Terrorism-related offences result in the longest sentences.

- Compared to violent extremism, sentences for terrorism-related offences are approximately double (~95 percent longer)
- Compared to violent extremism, sentences for terrorism offences are ~60 percent longer (1.6x as long)
- Compared to terrorism offences, sentences for terrorism-related offences are ~85 percent longer.

Descriptive analysis and the regression model predicting sentencing indicate that sentences do not differ significantly across jurisdictions or motivation groups. This contradicts qualitative findings that indicate sentences in NI are shorter than in E&W (few cases in Scotland). However, there are many outliers for sentence length in E&W which may account for perceptions of longer sentences in E&W across the board.[66]

In predicting overall sentence, ethnicity and motivation were not significant predictors (accounting for all other variables in the model). These were variables that were expected to have an impact based on insights from the interviews, the extant literature on the prosecution of extremist actors, and the wider criminological literature. Age was also non-significant. However, these results do align with Yon and Milton's research on extremism in the US, which found that factors such as age and race had less of a consistent impact on the severity of the legal outcome than leadership activity and the commission of an act of violence.[67] In terms of age, they did find that the likelihood of an initial investigation being undertaken increased with age – we note that this could be possible in the UK, but our database does not include data on initial investigations (only outcomes for those eventually sentenced), and at this point, age within our model does not seem to have an impact.

We recognise limitations of the operationalisation of ethnicity in particular, since we are working with a binary. Having co-defendants predicted increases in sentence length, which aligns with previous research.[68] The gender variable was found to have an impact in our model on predicting sentencing outcomes and aligns with not only the findings of unequal sentencing rates between male and female terrorists in the US but also with findings in the wider criminological literature.[69] Research concerned with gender and sentencing has found that female offenders (if convicted) received shorter custodial sentences compared to their male counterparts. A potential confounding factor could be that women commit lesser offences; however, analysis of the list of offences committed by women in our database[70] combined with qualitative evidence, including sentencing remarks reported in the media,[71] suggest this is likely a genuine gender effect.

Though the motivation group was not a significant predictor in the model, the association between motivation and offence type is clear. We know that Islamist offenders are more likely than expected by chance (i.e. if there was no association between motivation and offence) to be convicted of a terrorism offence, and less likely than expected to be convicted of a terrorism-related offence. NI-related offenders are far more likely than expected to be convicted of terrorism-related offences and less likely than expected to be convicted of either terrorism or violent extremism offences. Right-wing offenders are more likely than expected to be convicted of violent extremism and less likely for terrorism-related offences. Given this association, we must consider that the impact of offence type, to some extent, reflects indirect impacts on motivation groups, despite motivation not being retained as a separate predictor in the model.

An individual expected to receive the greatest sentence based on the model (and acknowledging that this does not account for the severity of the offence) is a male with co-accused offenders, who does not plead guilty, is accused of multiple counts, and is charged under a terrorism-

related offence.[72] In terms of the five hypotheses, we did not find that Islamist extremist actors receive lengthier sentences than non-Islamist extremist actors (Hypothesis 1). Contrary to the qualitative findings, we did not find that NI-related extremist actors receive shorter sentences than other extremist actors (Hypothesis 2). We did find that extremist actors with co-defendants receive longer sentences than those without co-defendants (support for Hypothesis 3). We did find multiple counts resulted in longer sentence lengths (Hypothesis 4) and that female extremist actors receive shorter sentences than their male counterparts (Hypothesis 5).

RQ3. Is there any evidence of a change over time with respect to sentencing outcomes?

In addition to the impact of sentencing guidelines, other events or contextual changes may impact the use of legislation or sentencing outcomes. Insights from the extant literature suggest that in the US and the UK, offenders were punished less severely after a major terrorist incident.[73] However, there is also reason to expect increases in the number and severity of sentences following some incidents (for example, following a clampdown on right-wing groups after the murder of Jo Cox MP in 2016[74]). Given a lack of clarity about the impact of terrorism events on sentencing, we do not formulate specific hypotheses. Instead, a visual analysis was used to explore trends and changes over time and facilitate a discussion of alignment with key events and contextual changes. Specifically, we were interested in the sentencing outcomes for right-wing offenders, and/or the number of right-wing offenders convicted and sentenced in the aftermath of the murder of Jo Cox MP in 2016. Additionally, we were interested in the sentencing outcomes and/or convictions for Islamist offenders in the aftermath of the 7/7 bombings in 2005 and/or in the aftermath of the Ariana Grande attack in 2017, and whether they show any evidence of an increase or decrease.

This section is based only on descriptive analysis and visualisation of the data, and can speak only to a correlation between context and outcomes. Though we cannot draw conclusions from the analysis, it is possible to analyse trends. Note that the year of sentencing is used as there is only one missing value for the sentencing year in the database (compared to more substantial missing values for the year of arrest, year of charge, and year of conviction). Since sentencing often takes place in the year(s) following an arrest and charge, we must consider that impacts may take longer to appear in sentencing data.

Overall trends are explored first, including all sentences. Figure 2 shows the number of individual offenders and number of cases sentenced by complete year in the dataset (2002-2021). Figure 3 shows the mean and median sentence length by year. It appears that the number of cases per year has increased relatively steadily over time, with a sharp decrease in 2020 (presumably due to Covid impacts). A peak in sentence length appears evident in earlier years; however, this is based on a very small number of cases (just three sentences in 2004 where sentences peak). As the number of cases/offenders increases, sentence length appears to remain relatively steady (with a mean around one hundred months, and a median around fifty months). This might indicate that only the most severe cases in the UK were being sentenced in the early 2000s. Of those sentenced during this period (2001 – 2003), some 72 percent were for offences which carried a potential maximum sentence of life imprisonment.

Figure 2: Number of Offenders and Cases Sentenced by Year (Overall)

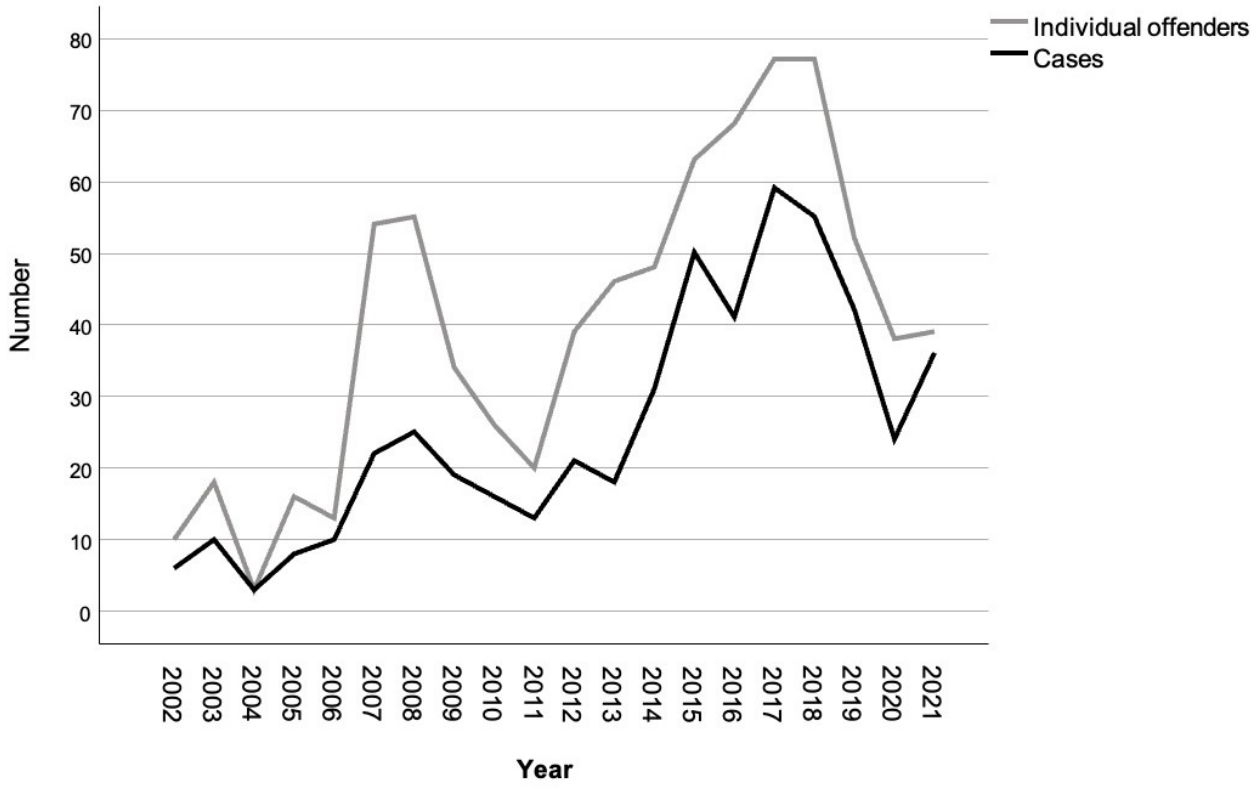
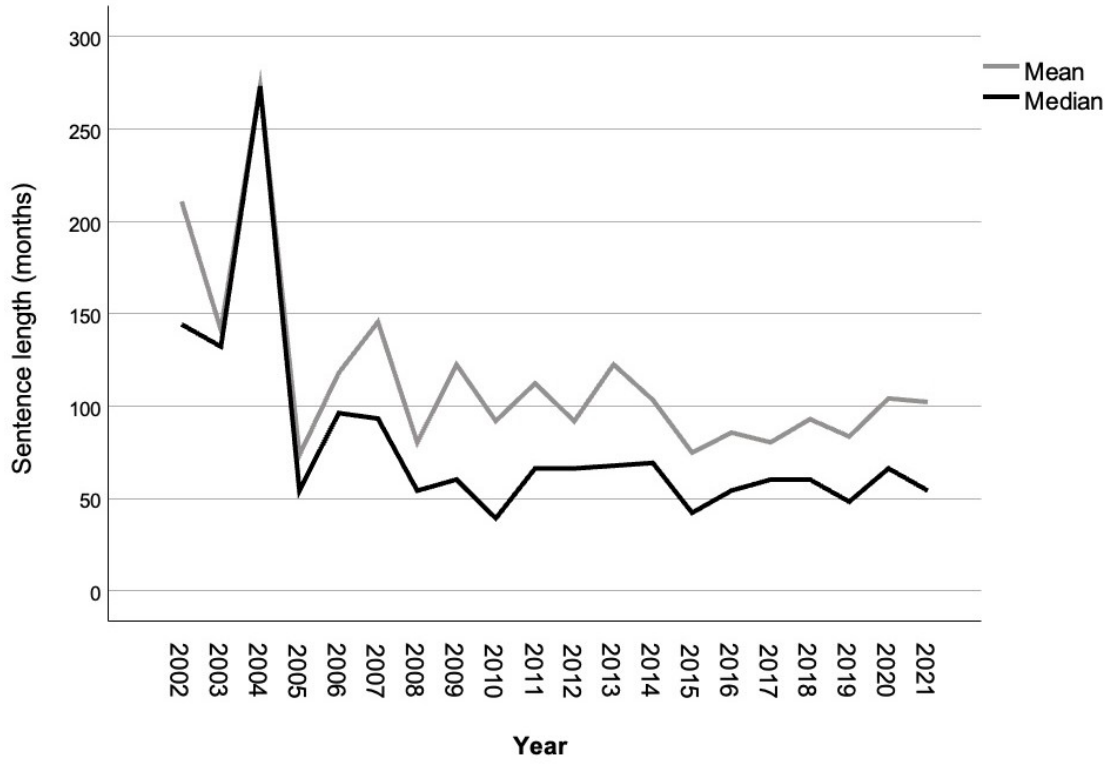


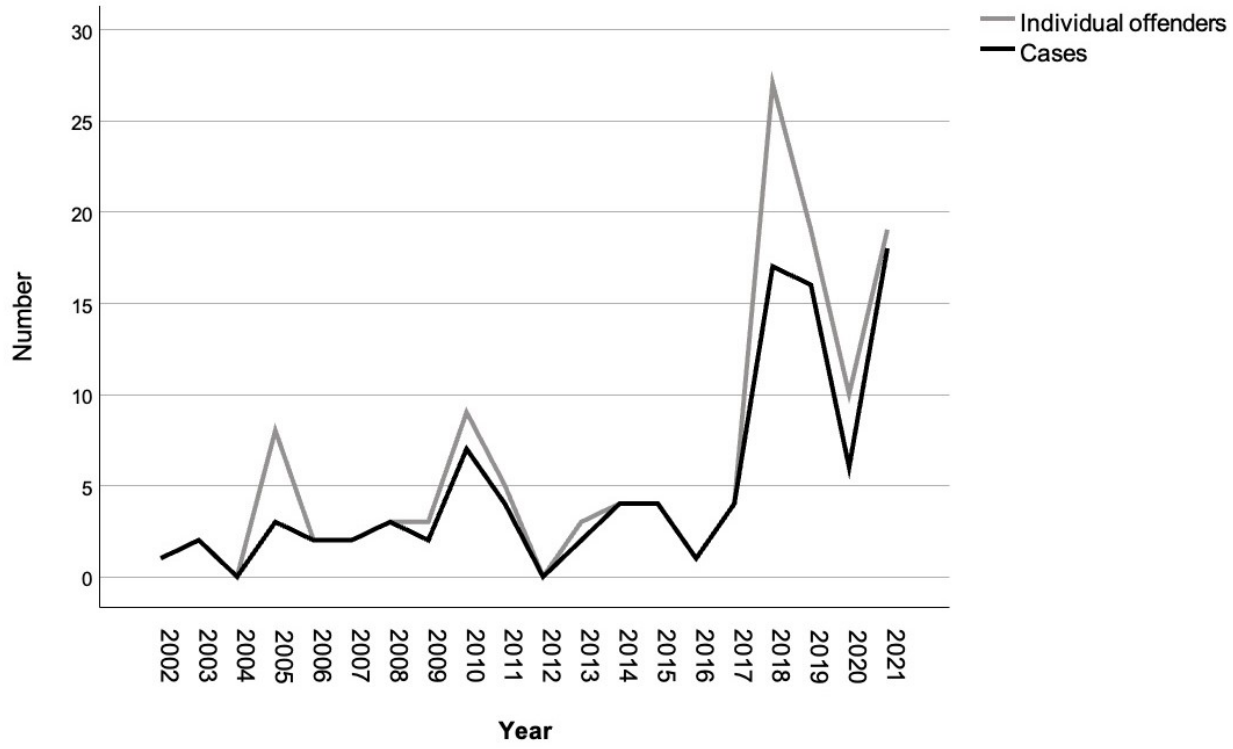
Figure 3: Mean and Median Sentence Length by Year (Overall)



Results for Islamist offenders mirror the results for offenders overall (i.e. trends do not look meaningfully different from Figure 2 and Figure 3), including a spike in the number of offenders in 2007-2008, which may reflect an increase after the 7/7 bombings in 2005 (though there is no corresponding change in sentencing outcomes). As in overall results, a second peak is evident in the number of Islamist sentences around 2017. This is likely too early to align with the contextual impacts of the Ariana Grande attack in 2017, and this peak does not continue in subsequent years. The peak roughly corresponds to the period when ISIS called for supporters to undertake attacks in their home countries, and nearly forty percent of those convicted were charged with the offence of preparation of terrorism acts.

Right-wing sentences show a striking spike in 2016, however this graph is not included since the 2016 sentencing mean is based on only one sentence rather than being indicative of a trend. The 2016 spike relates to the sentencing of the individual responsible for the terrorist murder of Jo Cox MP and shows only that this sentence was unusually long. More interesting for right-wing offences is a spike in the number of cases and offenders sentenced beginning in 2018 (see Figure 4), perhaps a result of the clampdown (e.g. the proscription of National Action in December 2016) on right-wing groups in the aftermath of Jo Cox's murder. A sharp decrease in 2020 is again presumed to be related to Covid.

Figure 4: Number of Offenders and Cases Sentenced by Year (Right-wing)



Conclusions

Perceptions of inconsistency in sentencing across jurisdictions, across groups of offenders, and across time are evident in the UK. However, there has been a significant lack of data and empirical evidence regarding the sentencing of extremist actors, making testing and verification difficult. The current study sought to provide a better understanding of the prosecution landscape for extremist actors in the UK by describing, analysing, and comparing the sentencing outcomes of

individuals convicted of terrorism, terrorism-related and violent extremism offences in each of the three legal jurisdictions of the UK since the beginning of April 2001 through to the end of March 2022.

Our results demonstrate that NI-related extremist actors are far more likely to be convicted of terrorism-related offences than terrorism or violent extremism offences. This is one of the clearest differences evident from the data. To a lesser extent, right-wing offenders are more likely than other motivation groups to be convicted of violent extremism offences, and Islamist offenders are more likely to be convicted of terrorism offences. Statistical modelling demonstrated that sentence length is influenced by offence type, plea, and total counts (all variables with legitimate impacts), but sentence length is also impacted by extraneous factors of gender and co-accused (i.e. whether an offender has co-defendants). Despite qualitative evidence to the contrary, ethnicity (white or non-white), age of an offender, and ideological motivation were not shown to have an impact on sentences. Unlike previous research, we did not find that Islamist extremist actors tend to receive longer sentences than other extremist actors on average nor that sentences in NI are shorter than elsewhere in the UK.

In terms of gender, we find that the sentence length for males is nearly two-thirds longer than for females, accounting for other variables. This is consistent with prior research, which found that men and women engaged in terrorist-related activity receive differential treatment within the US criminal justice system, with female terrorists receiving shorter sentences.[75] As noted in the extant literature on terrorist sentencing—and further supported by the findings reported here—a guilty plea has a significant impact on sentence length.[76] This was not surprising as judges and magistrates have to consider a reduction in sentence for a guilty plea.[77] Analysis of sentencing over time revealed that sentence length has remained relatively steady over the years included in the dataset (despite indications that it has increased).

Although these findings provide important insight into the prosecution landscape of extremist actors in the UK, some important limitations must be noted. In examining the prosecution landscape, we do so only by examining those extremist actors who have been convicted and sentenced—therefore, our sample is inherently characterised by a selection bias. As we have utilised publicly available information, we are aware such an approach has its own drawbacks[78] in that the level of detail varies, and at times, we were reliant on media coverage to identify extremist actors. Subsequently, our dataset only includes those convicted extremist actors we could find, and not all cases will have been reported in the media due to a lack of newsworthiness or reporting restrictions. Despite limitations of the use of publicly available information and potentially missing cases, we feel these were outweighed by the benefits of now being able to share our data with other researchers. Moreover, the findings presented in this study provide much-needed information about the prosecution landscape for extremist actors in the UK by describing, analysing, and comparing the sentencing outcomes of individuals convicted of terrorism, terrorism-related, and violent extremism offences in each of the three legal jurisdictions of the UK. By creating the database, we have extended the existing data (mostly aggregate figures held within separate jurisdictions) to a database appropriate for analysis, including the principal offence and type of offence that extremist actors are convicted of UK-wide, their motivation, the principal offences of those extremist actors convicted in NI, and provided separate Scotland-only data. Using the new data, we have been able to test a range of hypotheses in relation to not only motivation and sentence lengths for all extremist actors in the UK over a 21-year period, but also sentencing outcomes by type of offence, ideological motivation, gender, plea, having multiple counts, ethnicity, age, and co-defendants. We are also able to explore trends.

From conducting this research, we would suggest there is a need for UK-wide data on the prosecution landscape for extremist actors with a consistent approach to data collection. This would allow not only for certainty regarding the number of offenders included, but also for more reliable and nuanced measures to be created and utilised in research (e.g. more precise data on ethnicity, nationality, details of prior convictions, etc.). Given the scope of this study, there are, of course, areas for future research, including the development of a better severity measure, which would capture severity between and within offences. This would also be improved if information was fed directly from the source, since useful details are often missing in publicly available information, including the media, limiting post-hoc analyses. In light of our findings on gender, a more thorough examination of this is required.

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Endnotes

1 The United Kingdom is made up of Great Britain (namely, England, Scotland and Wales and their collective islands) and Northern Ireland.

2 A terrorism offence is an offence under terrorism legislation and a terrorism-related offence is an offence under non-terrorism legislation, which is considered to be terrorism-related.

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42 Relevant stakeholders and academic experts were approached via email. A number of those contacted declined the opportunity to be interviewed or failed to respond to email requests. Additionally, some potential interviewees who had initially agreed to take part in the research did not respond to follow-up requests to set up a date/time for the interview to go ahead. Ethical approval was secured from both Coventry University's Research Ethics Committee (Ethical Approval – P126258) and the Centre for Research and Evidence on Security Threats' (CREST) Security Research Ethics Committee and due consideration given to informed consent, data protection, confidentiality and anonymity.

43 Examples include Roger Smith and Vincent Potter. Smith was convicted in 2017 of possessing a document for terrorist purposes (s. 58 of Terrorism Act 2000) and two counts of having explosive substances (s. 4 of the Explosive Substances Act 1883). The prosecution informed the jury that they did not believe Smith was a terrorist or that he was going to personally commit an act of terror. For more details see "Nottingham man who got explosives fearing 'Isis attack' jailed," BBC, 12 January 2017, https://www.bbc.co.uk/news/uk-england-nottinghamshire-38593289. Potter was convicted in 2018 of an offence contrary to s. 114 of the Anti-Terrorism, Crime and Security Act 2001 as he had sent a hoax 'anthrax' letter to the Prime Minister. The prosecution said there was no evidence of any specific terrorist motivation by Potter – see Lizzie Dearden, "Man who sent hoax anthrax letter to Theresa May jailed," *The Independent*, 2 November 2018, https://www.independent.co.uk/news/uk/crime/theresa-may-anthrax-letter-hoax-vincent-potter-jailed-trial-court-sussex-a8614776.html.

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45 A total of 53 sentencing remarks were identified and collected from publicly available sources and of these 20 were randomly selected for analysis. See Monaghan et al., *Prosecuting Extremists in the UK* for more details.

46 In certain cases, the Attorney General has the power to refer to the Court of Appeal sentences for certain offences that they believe are unduly lenient. This has become known as the unduly lenient sentence scheme. The scheme was established by the Criminal Justice Act 1988 and came into force the following year. The purpose of the scheme is to address gross errors in sentencing and an application to review a sentence must be made within 28 days from when the sentence was imposed. If the Court of Appeal agrees that the sentence was unduly lenient it may increase the sentence. Likewise, in NI, the Director of the Public Prosecution Service has the power to ask the Court of Appeal to review a sentence on the grounds that it is unduly lenient and in Scotland, the Lord Advocate may request a review

47 The 'Other' group included individuals motivated by the environment, misogyny, separatism (i.e., Scottish, Tamil, Sikh, and Kurdish), and anti-Muslim sentiments.

48 One involved a not fit to plead and the other involved multiple counts of the principal offence where the individual pleaded both guilty and not guilty.

49 See Monaghan et al., *Prosecuting Extremists in the UK* for a more detailed discussion on this.

50 We also do not differentiate between other elements in sentencing such as suspended sentences, community or youth rehabilitation orders, probation or intensive referral orders etc.

51 We do not separate sentence for principal offence from overall sentence. As we are relying on publicly available information to construct the database, it was not always possible to determine whether the total sentence length was for the principal offence only or if consecutive sentences for multiple offences or counts was factored in. However, most sentences for multiple counts run concurrently, rather than consecutively, so in most cases the total sentence will match the sentence for a principal offence. For those individuals given indeterminate sentences (i.e., life) where there is no fixed end date, we have used the minimum amount of time (tariff) the offender must spend in prison before becoming eligible to be considered for release on licence (as the exact period on licence is unknown). We appreciate this isn't perfect, but since such tariffs are usually lengthy, they represent the severity of the indeterminate sentences whilst maintaining their length in a logical order relative to other cases. Indeed, we could see no discussion in the academic research of how those with life or indeterminate sentences were treated in the data. Moreover, the Sentencing Council in their average custodial sentence lengths for those terrorism offences covered by sentencing guidelines excludes such individuals from their calculations – see "Terrorism Offences: Data Tables," Sentencing Council (2022), https://www.sentencingcouncil.org.uk/publications/item/terrorism-offences-data-tables-2/. In cases where a 'whole life order' is handed down (n=3), there is no specified minimum custodial sentence before the offender can be considered for release on licence. Since a whole life order reflects a lifetime in prison, we use the figure of 960 months (80 years) to reflect the severity of this sentence.

52 This severity measure is used in many of the studies utilising data from the American Terrorism Study, see for example, Smith and Damphousse, "Punishing Political Offenders" and Shields et al., "Their Day in Court."

53 Amirault and Bouchard, "Timing is everything."

54 See Monaghan et al., *Prosecuting Extremists in the UK* for a thorough exploration of severity as confounding, including an exercise in testing the effects of severity in this study.

55 Jonathon Hall, *The Terrorism Acts in 2021: Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Terrorism Acts 2000 and 2006* (London: The Stationery Office, 2023), 143, https://terrorismlegislationreviewer.independent.gov.uk/terrorism-acts-in-2021/.

56 Former senior detective (NI), interview by lead author, 30 November 2022.

57 Academic expert, interview by lead author, 30 September 2022.

58 This view is also confirmed by the Independent Reviewer of Legislation in his 2022 report. See Hall, *The Terrorism Acts in 2020,* 90.

59 Former senior detective (NI), interview by lead author, 30 November 2022.

60 See Monaghan et al., *Prosecuting Extremists in the UK* for more details.

61 Former senior detective (NI), interview by lead author, 30 November 2022.

62 Academic expert, interview by lead author, 30 September 2022.

63 Caroline Davies, "UK judge orders rightwing extremist to read classic literature or face prison," *The Guardian*, 1 September 2021, https://www.theguardian.com/politics/2021/sep/01/judge-orders-rightwing-extremist-to-read-classic-literature-or-face-prison. John's suspended sentence was referred to the Court of Appeal under the Unduly Lenient Sentence scheme and squashed. He subsequently was sentenced to two years in prison with a further year on licence on his release. For more details see, "Ben John's sentence increased following personal intervention by the Solicitor General," Attorney General's Office, 19 January 2022, https://www.gov.uk/government/news/ben-johns-sentence-increased-following-personal-intervention-by-the-solicitor-general--3.

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70 28 percent of women in our database were convicted of offences with maximum sentences of life imprisonment.

71 For example Jamila Henry was given a suspended 12 month custodial sentence for trying to travel to Syria on her sister's passport. The judge in his sentencing remarks said "I have decided in your case I can take an exceptional course, which will immediately allow you to re-establish contact with your child and put your life in order" (quoted in Duncan Gardham, "Young mother who stole her 'party girl' twin sister's passport so she could join ISIS in Syria for a second time is spared jailed so she can be with her young child," *Mail Online*, 31 July 2015, https://www.dailymail.co.uk/news/article-3181556/Young-mother-stole-party-girl-twin-sister-s-passport-join-ISIS-Syria-second-time-spared-jailed-young-child.html. Henry had previously made two abortive attempts to travel to Syria in 2014, but was twice stopped at Heathrow and Luton airports. She eventually succeeded in travelling to Syria via Dover and Belgium but returned to the UK with her son. In March 2015, she was deported from Turkey and arrested by counter-terror police at Luton airport.

72 Examples would include individuals involved in a plot to blow up a number of transatlantic flights using liquid explosives smuggled on to planes in 2006 – see [2011] EWCA Crim 1260 and Vikram Dodd, "Leader of airline bomb plot told he will spend 40 years in jail," *The Guardian*, 14 September 2009, https://www.theguardian.com/uk/2009/sep/14/airline-bomb-plot-trial-judgement. The plot's ringleader, Abdulla Ahmed Ali received a life sentence with a minimum custodial tariff of 40 years in prison. Co-accused Assad Sarwar and Tanvir Hussain also received life sentences with minimum custodial tariffs of 36 years and 32 years respectively.

73 Damphousse and Shields, "The Morning After"; Amirault and Bouchard, "Timing is everything."

74 Raquel da Silva, João P. Ventura, Cátia Moreira de Carvalho and Mariana Reis Barbosa, "'From Street Soldiers to Political Soldiers': Assessing How Extreme Right Violence Has Been Criminalised in Portugal," *Critical Studies on Terrorism* 15, no. 1 (2022), 102-120, https://doi.org/10.1080/17539153.2022.2031134; Jupp, "From Spiral to Stasis?"

75 Alexander and Turkington, "Treatment of Terrorists"; Jackson et al., "Gender and Criminal Justice Responses."

76 Smith and Damphousse, "Punishing Political Offenders"; Bradey-Engen et al., "The Time Penalty."

77 For E&W see s. 144 of the Criminal Justice Act 2003. In NI, in accordance with Article 33 of the Criminal Justice (Northern Ireland) Order 1996, an offender who pleads guilty may expect some credit in the form of a reduced sentence. In Scotland, reductions in sentencing for a guilty plea are enshrined in s. 196 of the Criminal Procedure (Scotland) Act 1995, which provides that the court must take into account the stage in the proceedings at which, and the circumstances in which, the offender indicated their intention to plead guilty.

78 Other research using open-source data has noted similar issues, see Paul Gill, "The Data Collection Challenge: Experiences Studying Lone-Actor Terrorism," Resolve Network, 24 February 2020, https://resolvenet.org/research/data-collection-challenge-experiences-studying-lone-actor-terrorism.

PERSPECTIVES ON TERRORISM

SPECIAL SECTION: EXTREMISTS IN THE COURTROOM

Playing to the Gallery: The Impact of Courtroom Performance on the Sentences Received by Convicted Terrorists in the UK and France

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Abstract: Terrorism trials, particularly those that address events of national significance, are performative spaces. As such, these proceedings carry a risk of becoming public spectacles. Aside from trying to 'win' the trial in a legal sense, the various parties involved may use the courtroom to present narratives about justice and injustice, the legitimacy of a political or ideological cause, or even attempt to undermine the judicial process entirely. Conversely, terrorist suspects often deploy established performative templates in the hope of receiving a shorter prison sentence, in particular, by demonstrating remorse for their actions. Despite this, our understanding of the impact of the 'theatre' of terrorism trials is limited, with existing analysis focusing largely on the reception of different performances and narratives by audiences outside the courtroom, namely the media and the public. This article examines how the conduct of these proceedings and the 'performative strategies' of the parties involved impact the sentences handed down by the judge as a result of a guilty verdict. Focusing on the UK and France, it interrogates the sentences received by guilty defendants in several high-profile terrorism cases. Included is an examination of the 'absent presence' of defendants who are tried in absentia and the impact this nonappearance might have upon sentencing. Analysing their sentencing remarks, it also evaluates how judges interpret, account for, and present these factors as part of their decision-making processes.

Keywords: Terrorism trials, terrorism laws, prosecuting terrorism, sentencing, terrorism and the media

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Introduction

Trials in European courts for individuals accused of terrorism offences have significantly increased over the past ten years.[1] Such proceedings play an important role in how European countries have attempted to negotiate and respond to terrorism, including addressing the aftermath of mass casualty attacks or events of national significance. Serving as a nexus between terrorist violence, law enforcement, the judicial system, and public opinion, trials represent more than just the formalist "application of neutral law".[2] Rather, they are contested spaces where the arguments and performances of the different parties clash, including narratives about the legitimacy of a political or ideological cause and justice and injustice. Despite this significance, research has scarcely looked at how terrorism is dealt with in the courtroom.[3] As such, our understanding of the 'theatre' of these proceedings and the impact of the performances of the different parties on the justice delivered remains limited. For terrorist defendants, trials represent an important space to confront and contest public perceptions of them and their actions. As Bögelein et al. argue:

> *Court proceedings juxtapose the ideational and narrative constructs of terrorist subjects and their imagined physical, psychological, and social attributes with the actual men and women who stand trial for engaging in terrorist activities and who rarely correspond to those imagined constructions.*[4]

Terrorists are known to give considerable thought to their performances in court.[5] Like other criminal defendants, they may draw upon existing templates and expectations (for example, playing the role of the reluctant and coerced accomplice) in an attempt to minimise their culpability and any punishment they receive.[6] However, unlike those accused of ordinary crimes, terrorist defendants may not be concerned with 'winning' the trial in the traditional sense by avoiding imprisonment and may even refuse to play the role of 'defendants' at all.[7] Instead, they may use proceedings as a speaking platform to advance their ideological beliefs or attempt to discredit or challenge the judicial process.[8] Despite the significant and often severe personal consequences for terrorist defendants, existing analysis has focused almost entirely on the reception of the performances and narratives by audiences outside the court, namely the media and the public. There has been virtually no analysis of the impact on terrorist defendants. This article addresses this gap and interrogates how and where the performative dimension of trials factors into the sentences received by those convicted of terrorism-related offences.

Existing Research

While official data exists on the number of persons charged, prosecuted, and convicted in different jurisdictions, research on the sentencing of terrorist offenders remains relatively limited.[9] Existing work largely attempts to understand how sentence length may be impacted by demographics or the characteristics of the defendant. Overall, this research suggests that characteristics such as age or race do not impact sentence length.[10] A notable exception, however, is gender. Several studies find that women found guilty of terrorism-related offences receive different, often preferential, treatment by the criminal justice system.[11] For example, in their study of individuals convicted of terrorism-related offences across the UK between April 2001 and March 2022, Monaghan et al. find that the "sentence length for males is nearly two-thirds higher than for females, accounting for other variables."[12] As the authors argue, this is consistent with research on the wider criminal justice system that finds that women are less likely to be convicted and receive less severe sentences than their male counterparts.[13]

There has been significantly less research on how the conduct of a terrorism trial may impact the sentence received in the event of a conviction. Some work suggests that the longer the duration of a terrorism trial, the more severe the sentence a defendant will receive.[14] However, little analysis of the impact of a defendant's actions or performance in court on the punishment received could be identified.[15] The exception is a body of work that approaches terrorism trials as communicative and performative spaces where the different sides use acts and strategies to persuade various audiences, both inside and outside the courtroom, about the legitimacy of their narratives and the injustice of the other side.[16] This is significant given that in virtually all terrorism trials, procedural fairness mandates that the defendant must be given the opportunity to make submissions to the court.[17] Prosecuting states often fear that terrorist defendants might use this platform to make ideological statements, attempt to inspire existing or potential supporters, and convince new audiences that their actions and cause are legitimate. Despite these fears, there have been very few examples of terrorists using the courtroom to make prolonged ideological or political statements.[18] Instead, terrorist defendants have typically been confined to shouting single lines or slogans before being silenced or removed from the court by the judge.[19] Yet, performances extend beyond merely making statements. Terrorist defendants may use specific acts, body language, or gestures to advance their political agenda and communicative strategy. Gestures of defiance, such as refusing to stand for the judge or court, are commonly used to communicate a rejection of the proceedings or the justice system. Similarly, salutes or the raising of a closed fist have served to signal the defendant's ongoing commitment to a particular cause or ideology.[20]

Whether focusing on gestures, statements, or other actions, the performative strategies of terrorist defendants have traditionally been approached as efforts to influence audiences outside the courtroom. Compared to ordinary criminal defendants who usually seek to maintain a low profile, terrorist defendants may seek to exploit the media attention that often accompanies these proceedings.[21] Analysis of the high-profile trial of Anders Breivik, for example, highlights how the defendant attempted to use the televised proceedings to directly address and even apologise to an audience of supporters, real or imaginary, that he had constructed.[22] Attempts to utilise the media as a communicative tool have been seen in other cases. Two female Irish Republican Army (IRA) defendants, for example, exploited the highly gendered reporting about their appearances during their trial. Frequently changing their clothing during breaks in proceedings, the defendants played up to newspaper narratives emphasising the apparent contradiction between their beauty and the danger that they posed. The defendants were able to successfully exploit this trivialisation to project a sense of innocence in the press coverage of their trial, including outlets traditionally unsympathetic to their political cause and the use of violence.[23] Despite these examples, however, the propaganda value of terrorist defendants' performances in court remains contentious. Research has found very little evidence of terrorist and violent extremist groups using trials in their propaganda or criminal proceedings generating any significant interest or discussion among their supporters and sympathisers.[24] A notable exception is a statement issued by the Provisional IRA following the conviction of several members framing their steadfast defiance and assertion of their Republican beliefs in the openly hostile atmosphere of a British courtroom as a heroic act that would only inspire others to take action.[25] Interestingly, this statement also presents the long sentences handed out by the judge as 'proof' of the British state's fear of Irish nationalism.[26]

Researching Terrorists' Courtroom Performances

Despite offering a unique lens to understand how societies negotiate and respond to terrorism, there are several challenges in researching terrorists' courtroom performances and their impact. The first is access to relevant data. Though it is possible for researchers to attend trials and

witness these performances first-hand, the process is time-consuming and expensive, especially as many terrorism trials last weeks or even months. Given the public interest, terrorism trials are often heavily covered by the media – something that provides a useful starting point for thinking about courtroom performances. Nevertheless, there are several considerations and limitations associated with relying on press reporting to understand courtroom performance. First, reporting naturally presents only a partial or incomplete picture of proceedings. Like researchers, reporters are often not able to attend trials in their entirety and instead tend to focus on key events such as the opening or closing statements of the different parties. Press coverage also prioritises incidents that are newsworthy with the potential for certain high-profile incidents to colour descriptions of the defendant's conduct across the entirety of the trial. Finally, as research on terrorism trials has demonstrated, different outlets have their own editorial stances and framing of events – something that may impact how terrorist defendants and their performances in court are presented.[27]

Transcripts or recordings of court proceedings represent another avenue to understand the defendant's performance. These records are often difficult for researchers to access, however. In England and Wales, for example, the process of applying for copies of court transcripts is lengthy and expensive. Written transcripts also only provide a record of what was said and are absent of key details that contextualise how remarks were delivered and received, or that allude to the defendant's nonverbal conduct in the courtroom. Other court documents, however, may contain relevant information. In England and Wales, the judge's sentencing remarks may be published on the grounds of public interest in significant or high-profile cases, including those for terrorism-related offences. Since July 2022, it has also been possible to film the sentencing remarks of judges in the Crown Court.[28] In France, judges' sentencing remarks and other court documents are not made publicly available. It has been possible to film trials that are considered of 'interest for the constitution of historical archives' since 1985 – an option that was exercised with the November 13 attacks trial.[29] Recordings of the trial, however, will not be available to the public for fifty years.[30] It is a lengthy and heavily administrative process for researchers to access these recordings. As such, it was necessary to rely on media reporting of the judge's sentencing remarks in this instance.

Sentencing remarks provide an important insight into terrorism trials for several reasons. First, they represent the point of 'closure' of a case; "once the remarks are finished, the proceedings end in the first instance, the courtroom is vacated and, if there is a custodial sentence, the convicted person is 'taken down.'"[31] In summing up a trial, judges present "an 'official version' of the facts of the case, but also a moral appreciation of such facts and the circumstances surrounding them."[32] These remarks are also unique in that they are clearly addressed at audiences both inside and outside the courtroom; "sentencing remarks are mainly, or seemingly, made at the defendant, but also indirectly speak to victims, victims' families, and what is more important, society at large."[33] Sentencing remarks also contain details that are useful for understanding the courtroom performance of the defendants. The judge is required to explain in their remarks any aggravating or mitigating factors that may impact the length of the sentence handed out. Often, this includes consideration of a defendant's actions and conduct during the trial, and the judge's assessment of this performance. As such, analysis of these documents can reveal templates that dictate terrorists' performances in court, including those aimed at reducing the severity of any punishment they might receive. Despite being a potentially rich source of data, studies analysing sentencing remarks are relatively scarce.[34]

Methodology

An exploratory study was undertaken to understand how the courtroom performances of terrorist defendants factored into judges' sentencing considerations in terrorism-related cases. The decision to focus on cases in England and Wales was taken since it was known that judges' sentencing remarks are commonly published in full in these countries and can be accessed without time-consuming or expensive application processes. To provide a comparative element to this analysis, an in-depth study of the November 13 attacks trial (known as 'V13' in France) was also undertaken, given one of the author's intimate knowledge of the trial. Keyword searches (e.g. 'sentencing remarks' and 'terrorism', or 'terrorism offences', or 'the Terrorism Act') were conducted to identify relevant data. An initial starting point was the Courts and Tribunals Judiciary website, which contains a searchable database of court documents and transcripts.[35] This was supplemented with searches of the National Archives[36] and the dedicated Sky News YouTube channels that have hosted official video recordings of the sentencing remarks of judges in the Crown Court since 2022.[37] Finally, searches of legal databases (Lexis+ UK, Westlaw) were carried out, as well as those using popular search engines. This process identified a large number of potentially relevant cases. This pool was then narrowed through the application of certain exclusion criteria. First, the decision was made to focus on trials conducted within a ten-year period (2014-2024). Instances where the defendant or defendants plead guilty to all charges were omitted. In such cases, without a full trial, there are limited opportunities for the judge to observe and hear from the defendant at length. Similarly, cases relating to the appeal of either an existing conviction or sentence were also excluded, again, as the presiding judge would not have witnessed the defendant's initial courtroom performance. Finally, the remaining remarks were screened to include only those that contained statements by the judge about the defendant's conduct, actions, or behaviour in the courtroom. Nevertheless, the frequency and detail of references to the defendant's courtroom performance varied considerably across the remarks examined – something that is reflected in the analysis and focus on certain trials.

In total, sentencing remarks from twelve terrorism-related trials conducted between February 2014 and March 2024 remained (Figure 1, see below). Six of these trials were for offences inspired by far-right ideology, five for offences inspired by Islamist ideology, and one where the defendant's ideological motivation was mixed. In two cases, the trials featured two defendants, bringing the total number of individuals sentenced to fourteen. The remarks were produced by ten different judges, with two judges presiding over two trials each.

These sentencing remarks, along with relevant press reporting on each trial, were analysed using inductive content analysis. Given that the sentencing remarks gathered are generally short (usually only a few pages), the coding process was conducted manually. Although it was not possible to access the sentencing remarks from the French judges in the November 13 attacks trial, the media reporting provides a detailed record of the performative strategies deployed in court to enable a degree of comparison. This includes detailed interviews that court president Jean-Louis Périès has given after the trial, in which he discusses his perceptions of the courtroom performances of Salah Abdeslam and the other defendants.[38]

Table 1: Details of the Twelve Sentencing Remarks Analysed

Date	Defendant(s)	Court	Judge	Sentencing Outcomes
18 March 2024	Jacob Graham	Manchester Crown Court	Mr Justice Goose	Thirteen years in prison.
10 November 2023	Joe Metcalfe	Leeds Crown Court	Mrs Justice Cheema-Grubb	Ten years in prison with an extended licence period of six years.
31 August 2023	Ashley Podsiad Sharp	Sheffield Crown Court	His Honour Judge Jeremy Richardson KC	Extended Sentence of thirteen years in prison, comprised of a custodial term of eight years and an extension period of five years.
23 June 2023	Kristofer Kearney	London Central Criminal Court	His Honour Judge Richard Marks KC	Four years and eight months in prison with a two-year extended licence period.
13 April 2022	Ali Harbi Ali	London Central Criminal Court	Mr Justice Sweeney	Life imprisonment, with a whole life order; life imprisonment with a minimum term of thirty years concurrent.
19 October 2021	Matthew Cronjager	London Central Criminal Court	His Honour Judge Mark Lucraft QC	Eleven years and four months in a young offenders institution.
23 March 2018	Ahmed Hassan	London Central Criminal Court	Mr Justice Haddon-Cave	Life in prison with a minimum term of 34 years.
2 February 2018	Darren Osborne	Woolwich Crown Court	Mrs Justice Cheema-Grubb	Life in prison, with a minimum term of 43 years.
8 December 2017	Mohammed Abdallah	London Central Criminal Court	Mrs Justice McGowan	Six years in prison and a period of extended licence of five years.
23 November 2016	Thomas Mair	London Central Criminal Court	Mr Justice Wilkie	Life imprisonment, with a whole life order.
6 September 2016.	Anjem Choudary and Mohammed Rahman	London Central Criminal Court	Mr Justice Holroyde	Each sentenced to five years and six months in prison.
26 February 2014	Michael Adebolajo and Michael Adebowale	London Central Criminal Court	Mr Justice Sweeney	Life in prison with a whole life order (Michael Adebolajo). Life in prison with a minimum term of 45 years (Michael Adebowale).

Results

The Exceptionality of a Trial and the Courtroom Setting

Several themes emerge across the sentencing remarks examined. The decision of the defendant to plead not guilty in England and Wales, especially in cases where there was overwhelming or irrefutable evidence of their guilt, is clearly considered an aggravating factor by many judges. Their sentencing remarks often reflect the idea that by 'forcing' a full trial the defendant intends to use the proceedings as a means to inflict further harm.[39] For example, a jury required just eighteen minutes of deliberation before finding Ali Harbi Ali guilty of the murder of MP Sir David Amess and the preparation of acts of terrorism.[40] During sentencing, the judge highlighted the brave and dignified behaviour of the victim's family despite "the ordeal of the trial", something that he noted "was forced upon them by the Defendant's cowardly refusal to face up to his guilt."[41]

In cases where the defendant offered an alternative account of events or attempted to mitigate their responsibility for their actions, judges' sentencing remarks reflect a desire to make a public record that these assertions are untrue. Several judges make a point of emphasising their own refusal to believe the defendant, their evidence, or the performance they have given.[42] Understandably, given their responsibility for determining guilt, judges' remarks tend to focus on the defendant's attempts to fool the jury.[43] Several judges refer to how the jury ultimately "saw through" the defendant's courtroom performance and understood their real views and intentions.[44] Darren Osborne, who drove a van into a crowd near a north London Mosque, killing one person and injuring twelve others, initially offered no defence to all the charges against him. However, as the prosecution closed its case, Osborne changed his mind and denied being the driver of the vehicle involved in the collision.[45] Justice Cheema-Grubb, presiding over the trial, opened their sentencing remarks by criticising the defendant's changing strategy; "Darren Osborne you have been convicted on overwhelming evidence by an intelligent British jury who saw through your pathetic last-ditch attempt to deceive them by blaming someone else for your crimes."[46] The choice of language is revealing, in particular, the description of the defendant's 'pathetic' performance and the contrasting emphasis on the intelligence of the jury. Framing the two parties in these ways, the judge's statement performs several narrative functions. First, it reinforces the notion that the judicial system works and will ultimately root out the truth and deliver the 'correct' verdict. As such, it is a 'pathetic' endeavour for terrorists like Osborne, to think that their courtroom performances can trick the jury or (by extension) the wider public from which they have been drawn. The inclusion of the term 'British' also suggests that the defendant's actions have been universally condemned and rejected by the wider public and that the desperate actions of terrorists like Osborne will not undermine the unity of a tolerant society.

Narratives about the exceptionality of the courtroom and its relationship with society are also reinforced in different ways in the sentencing remarks examined. Actions or statements made in the space of the court are understandably afforded particular significance. For example, the judge in Darren Osborne's trial made clear that the defendant's decision to repeat his ideological motivations and hatred of Muslims was particularly transgressive "in the grave atmosphere of a criminal trial, before a jury of your fellow countrymen."[47] Doing so highlighted that Osborne's commitment to these extremist beliefs transcended any loyalty he felt towards society. Terrorist defendants may also reinforce the idea of the exceptionality of the courtroom space through their words and actions. For example, it was only once (while present in the courtroom) that Salah Abdeslam decided to break the six years of silence he had maintained

in the run-up to the trial. Abdeslam's testimony also appears to reflect his respect for the trial process – in particular, his admission that within this setting "the minimum we owe to the victims, it is to tell the truth, to be honest."[48]

The Importance of Displaying Shame, Remorse, and Change

Despite being provided with extensive pre-sentencing assessments, the sentencing remarks examined reveal that judges place significant stock in being able to make their own observations of the defendant and their courtroom performance over the course of the trial.[49] Presiding over the November 13 attacks trial, court president Jean-Louis Périès stated that it was important to let Salah Abdeslam "express himself" in order to "know who we were dealing with."[50] This also includes aspects of the defendant's performance that might not be fully captured by court transcripts. Judges often refer to defendants as bright, intelligent, or thoughtful. Such courtroom performances are, however, problematic for defendants who argue that they were unaware of the severity of their actions.[51] Matthew Cronjager, convicted of preparing acts of terrorism, stated during his trial that he had merely been "blowing hot air" in making incriminating statements online and that none of the plans discussed had "seemed real."[52] Unconvinced, the judge in his case highlighted that this courtroom performance was not only incongruous with these claims but was even an aggregating factor for his offences; "in giving evidence in the trial it was obvious that you are a bright and intelligent young man. In a way that makes the content of some of the messages you sent all the more troubling."[53]

Unsurprisingly, judges' sentencing remarks often focus heavily on remorse, and whether the defendant's performance sufficiently demonstrated contrition.[54] Through both their words and their actions the defendant is expected to display respect for the court, the judicial process, and the gravity of their situation. This narrative is reinforced by parties both directly involved in proceedings as well as those covering them. Press reporting on the trial of Darren Osborne, for example, made a point of emphasising how the defendant appeared "unfazed by the courtroom, though at times distracted."[55] Other observers similarly highlight Osborne's casual attitude to proceedings, including his attempts to make jokes in court.[56] The judge's sentencing remarks clearly suggest that this aspect of Osborne's courtroom performance impacted their decision-making when it came to sentencing; "your conduct and language in court exposes your unreformed attitude and lack of insight."[57]

Several judges reinforce an idealised notion of the repentant defendant who comes to see the error of their ways over the course of the trial, having been confronted with the harm of their actions. According to this narrative, this change should be reflected in the defendant's evolving courtroom performance. As the only known surviving member of the Islamic State cell directly involved in the 13 November 2015 Paris attacks, public and press attention centred on Salah Abdeslam. Media reporting provides a detailed record of his evolving courtroom performance, with his every word, move, and reaction drawing extensive commentary. At the start of proceedings, Abdeslam made considerable efforts to project his defiance. Dressed in black and wearing a black face mask, he described himself to the court as "an Islamic State soldier."[58] His initial performance was also marked by several provocative outbursts that disrupted the trial and prompted the judge to briefly suspend proceedings.[59] The press duly focused on these dramatic incidents ("Salah Abdeslam gets angry and violently throws away his microphone," "Insolent, provocative, intolerable,"[60] "Abdeslam continues to provoke"[61]).

However, the notion of change – in particular, the defendant's evolving attempts to understand his actions over the course of the trial – is clearly present in the media's coverage of proceedings. This reporting reflects the incongruous and sometimes contradictory nature of Abdeslam's performance which would alternate "between moments of annoyance, loud outbursts, small

jokes, provocative remarks, rather polite statements, and declarations that he claims to be sincere."[62] The press also engaged in a (sometimes compassionate) discussion of the competing identities that Abdeslam was forced to balance, and how this would result in the different characters that appeared across his time in the courtroom.[63] Interestingly, Abdeslam directly acknowledged the co-productive relationship between the image constructed of him by the press and his performance in the courtroom. He describes his initial efforts to play up to this depiction; "we create this character that everyone wants to see, this monster deprived from humanity. I let this image grow on purpose."[64] Press narratives, however, shifted over the course of the trial, relaying the growing sense of empathy that appeared to emerge between the different parties, including Abdeslam and the other defendants. Whilst this coverage did not excuse Abdeslam's actions, the press did frequently repeat his apologies and even calls for leniency from the court.[65] Completing a dramatic turnaround, Abdeslam ended his testimony with a tearful apology to the victims and a plea to the court not to view him as "a killer."[66] Despite very clearly displaying change, Abdeslam's performative strategy did not ultimately result in a less harsh sentence, but rather quite the opposite. He was sentenced to life imprisonment with no possibility of compression or reduction. During the trial, Abdeslam had claimed that he had decided not to go through with detonating his suicide vest, claiming "I gave up … not out of fear, not out of cowardice, but because I didn't want to."[67] This narrative, however, was significantly undercut by evidence demonstrating that, in fact, his explosive vest was dysfunctional, with the judge ultimately dismissing Abdeslam's account of events during sentencing.[68] Nevertheless, it does appear that Abdeslam's courtroom performance, and very public displays of change and remorse resulted in more sympathetic press and public perceptions of him.

A Strategy of Absence?

So far, this article has interrogated terrorist defendants' conduct in the courtroom and how these performances may have impacted the sentences these individuals received. However, terrorist trials may also take place in circumstances where the defendants are absent – for example, where their location is unknown, they are presumed dead, or they are incarcerated elsewhere. Trials *in absentia* – or proceedings where the defendant is not physically present in the courtroom – remained largely under-explored in the criminological literature, perhaps because of the exceptionality and rarity of such proceedings. Trials *in absentia* have only been allowed in England and Wales, for example, since 2001. France similarly allows trials *in absentia* in limited circumstances, with the requirement that parties must be notified about proceedings. However, this inevitably raises questions about how notice can be granted in circumstances where the fate of certain parties is unknown. Judge Périès claimed that summoning letters were sent to each of the 20 defendants in the trial. However, six defendants failed to respond as specified by the clerk and would, therefore, be judged *in absentia*, since none of them had justified their absence.[69] Of these, five were missing or killed (Oussama Atar, Jean-Michel and Fabien Clain, Omar Drif and Obeida Aref Dibo), and one was incarcerated in Turkey (Ahmed Dahmani).[70]

Circumstances where the defendant is not present and, therefore, judged and sentenced without the option to represent themselves offer an interesting point of comparison when considering the impact of courtroom performances. As the cases examined demonstrate, much of the defendant's performance is physical, their body playing important practical and symbolic roles.[71] The way the defendant behaves, moves, interacts, and reacts to others in court is interpreted by the judge and may be exploited by the prosecution, defence, and the media. Absence and presence need not be thought of as binary positions, however; rather, a space between the two exists that is open for individuals' own construction of meaning.[72] The influence of a defendant may nevertheless persist and impact proceedings even if they are not physically in the courtroom. The presence of brothers Fabien and Jean-Michel Clain, both

presumed dead in Syria, was felt during the November 13 attacks trial via the testimony of their sister, Anne. Speaking via video link from a prison where she is currently serving nine years for aiding a terrorist enterprise, she nevertheless expressed her disgust that her brothers were "part of that monstrosity" [the Islamic State]. Press reporting stressed how Anne was "polite, cooperative and articulate," a clear juxtaposition to her brothers.[73] Her testimony also reproduced highly gendered templates about her own engagement in terrorism and how her brothers' influence was largely responsible for her actions.[74] With her brothers absent from the courtroom, there was little challenge to this portrayal of the family's internal dynamics. In the end, the court went beyond the requests of the *Parquet National Antiterroriste*[75] for minimum terms of 22 years or thirty years in prison for all of those judged *in absentia,* condemning each to life imprisonment with no possibility of parole, with the exception of Ahmed Dahmani, who received thirty years in prison.[76]

There is also a question of whether absentia might constitute a performative strategy in its own right. Over the course of the November 13 attacks trial, Salah Abdeslam came to learn the value of his testimony for proceedings and exploited the fears of the court, public, and press that he would return to the silence he had maintained in the years leading up to the trial. At points Abdeslam and his fellow defendants refused to appear in the courtroom – something they argued were acts of protest against their mistreatment and conditions of imprisonment in Fleury-Mérogis prison.[77] Not only did this strategy risk denying the victims and the French public the chance at closure, but it also challenged the state's claim of authority over the defendants' bodies and capacity to enforce justice.[78] Abdeslam pushed this strategy of absence further, clearly threatening that he might permanently deprive the trial of his presence if his demands were not met; "living with cameras 24 hours a day, I find it unfair … It may be what can lead to suicide."[79] In the end, Abdeslam and the other defendants were forcibly compelled to return to the courtroom after days on strike – something that supports the importance the court and state placed on their attendance during the proceedings.[80]

Conclusion

As this article has demonstrated, terrorism trials are much more than merely the formal application of the law. Rather, the different parties in the courtroom all give their own performances that will ultimately be weighed in both determining guilt and any appropriate punishment. The performance of the defendant is generally the most heavily scrutinised. It is clear that this extends beyond merely what those in the dock say. Instead, the sentencing remarks of judges reflect a continuous assessment of their demeanour, conduct, and actions, as well as their statements. Despite judges' appreciation of these performances, assessing their impact remains difficult. Even within the relatively small sample size examined, the defendants employed very different strategies or approaches in the courtroom. In several cases, these followed predetermined narrative scripts, namely demonstrating deference to the court, respect for the judicial process and trial, and most importantly, displaying remorse, shame, and change. Where a defendant contravened these expectations, this transgression appears to have impacted the judge's sentencing decision, at least to the extent that they felt that it was necessary to highlight in their remarks.

Judges' sentencing remarks also commonly make reference to instances where the conduct and disposition of terrorist defendants conflict with or undercut their arguments or account of events. Several note the incongruity between the defendants' bright and engaged performances and the idea that they were somehow unaware of the acts they were engaging in or their severity. For terrorists looking to minimise their sentence, it is clear that these aspects must hang together; their performance being an important chance to reinforce and drive home their narratives or accounts of events. Finally, in looking at instances where the defendant was not

present in the court for whatever reason, it appears that this absence may count against them when it comes to sentencing. Narratives from both society and the court emphasise that justice is best delivered with the guilty party in court to face the accusations levelled against them. In circumstances where this is not possible, there seems to be little dispensation given.

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PT PERSPECTIVES ON TERRORISM

SPECIAL SECTION: EXTREMISTS IN THE COURTROOM

Sentencing Inconsistencies in Terrorism Cases in Indonesia: Issues of Enforcement and Fairness

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Abstract: This article examines the mechanisms for prosecuting and sentencing prisoners convicted of terrorism offences in Indonesia, using case studies to illustrate inconsistencies and discrepancies in legal processes. It begins by briefly outlining the legal processes for criminal sentencing and the realities of sentencing practices in the Indonesian context. Data on arrests, sentencing, and executions of terrorism suspects in the period 2003-2015 are analysed, revealing that over ninety percent of Indonesia's convicted terrorists were sentenced to ten years or less in prison, with only a small percentage receiving longer sentences or the death penalty. The article argues that while sentencing of terrorists is overwhelmingly lenient, the lack of sentencing guidelines, an emphasis on judicial discretion, absence of the doctrine of precedent, lack of access to previous decisions of lower courts, and opacity of sentencing outcomes in reported decisions all contribute to inconsistency in judicial reasoning and sentencing, ultimately denying natural justice to individuals who come before the courts. The second part of the article examines individual cases which illustrate particular aspects of terrorism sentencing, such as excessive lenience or harshness, inaccurate or opaque indictments/judgements, and the treatment of women and child terrorism offenders.

Keywords: Indonesia, terrorism, sentencing, judicial discretion, fairness, natural justice, law enforcement, prosecution, imprisonment

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Introduction

This article provides a rare and detailed insight into the criminal sentencing practices of Indonesian courts with a focus on the outcomes of terrorism trials. As the largest country in the Association of Southeast Asia Nations (ASEAN), the largest Muslim-majority country in the world, and the third largest democracy,[1] Indonesia's approach to countering domestic terrorism has international significance. Indonesia's treatment of its terrorist prisoners reverberates in its foreign relations with neighbours and partners in the region and globally, particularly those directly affected by terrorist activity within the country. Indonesia represents a crucial part of the global response to terrorism and its success or failure in eradicating terrorism is therefore of global significance.

It may be said at the outset that Indonesia's counter-terrorism (CT) agencies have achieved considerable success.[2] Research for this article found that between 2003 and 2015 a total of 1,017 terrorists were arrested, convicted, released or killed in police operations. Since 2015, several hundred—possibly thousands—more terrorists have been arrested in anti-terrorism operations. A June 2023 report by the Australian Strategic Policy Institute estimated "since 2000, Indonesia has arrested around 3,000 offenders for a range of terrorism-related offences."[3] In the aftermath of the terrorist bombings of two nightclubs in Bali in 2002, Indonesia's president and parliament swiftly enacted anti-terrorism legislation and worked with partner nations to boost its counter-terrorism capacity. This article examines a particularly important and active period in Indonesian counter-terrorism responses from 2003 to 2015 covering several notable developments such as: the post-2002 anti-terrorism legislative reforms; the discovery and police raid of a massive terrorist training camp in Aceh in 2010; multiple attacks in Jakarta and Java in the mid to late 2000s orchestrated by Noordin M Top; the activities of the Mujahideen Indonesia Timur (MIT) led by Santoso in Central Sulawesi; and the sudden appearance of the Islamic State of Iraq and Syria (ISIS) in 2014, a development that had enormous impacts on Indonesian terrorist activities.[4]

This is a vital period during which CT enforcement achieved significant results. However, terrorist recidivism is frequently raised as an issue. Writing about global rates of terrorist recidivism in 2020, Renard claims that the fear of terrorists recidivating is overblown, with actual recidivism rates (based on Europe and UK statistics) of "less than five percent", and even lower (three percent) for England and Wales.[5] In contrast, an Institute for Policy Analysis of Conflict (IPAC) report published in 2020 found that according to Indonesian statistics, recidivism rates there are significantly higher at 11.39 percent with 94 out of 825 released terrorists committing further terrorist acts.[6] In this context, with Indonesian terrorists two to three times more likely to return to terrorism than their European or UK counterparts, the sufficiency of Indonesia's sentencing may be questioned. That is the overall goal of this research article. The analysis concludes that sentences in Indonesian terrorism cases are insufficient to achieve the philosophical goals of punishment, both retributive and consequential, as discussed further below.

This article's significance and logic are based on a number of assumptions. First, with regard to the philosophy and ethics of punishment, it will assume that both utilitarian and retributive causes are served by punishing particular individuals for particular crimes.[7] In other words, punishment for crimes provides benefits to society insofar as it deters the offenders themselves and wider society from committing like acts; that is special and general deterrence. It also provides opportunities for the rehabilitation of offenders and may protect society from danger when an offender is incarcerated. However, other retributive functions of punishment are also served insofar as punishment serves to satisfy a demand for retribution for crimes committed, to appease society's need for justice to be served, and to recognise the offender as a responsible

human actor, someone who deserves punishment for their crime. Therefore, the article will not discuss in detail the philosophical foundations of punishment, rather it will assume that both utilitarian and retributive goals are of value to society, and that these goals should be borne in mind when determining whether sentencing for particular crimes, in this case, terrorist crimes, are sufficient or appropriate according to the circumstances.

Second, the article will assume that a strong and effective judicial structure—within which criminal sentencing will form a key element—is a key component of any criminal justice system, and particularly of a robust counter-terrorism response. In determining the severity of punishment, therefore, a judge should have regard to both the utilitarian benefits of the punishment, the gravity of the offence and consistency with the punishments of others for similar offences. Sentences which are grossly disproportionate to the crimes committed, or which are demonstrably inconsistent, cause damage to the image of the law as a fair and just institution in the eyes of the community which it is meant to serve.

This article examines the sentencing of convicted terrorist offenders in Indonesia based on data from 2003 to 2015. As such, it does not consider or take into account revisions to Indonesia's anti-terrorism legislation (Law No. 15 of 2003 hereinafter "the ATL") which occurred in 2018,[8] nor revisions to the Criminal Code that were finalised in December 2022.[9] Further research is required to examine what impacts (if any) those revisions—or any other revisions to relevant criminal processes—have had on the sentencing outcomes of terrorists post-2018.

The discussion begins by briefly outlining the criminal trial process in Indonesia, noting some of its salient differences from common law systems, and their impacts on sentencing outcomes. It then examines quantitative and qualitative data from a number of cases to illustrate different aspects of terrorist sentencing in Indonesian courts. The analysis concludes that several flaws exist in the judicial treatment of terrorists giving rise to inconsistencies in sentencing outcomes attributable to various causes, and makes some policy recommendations in this regard.

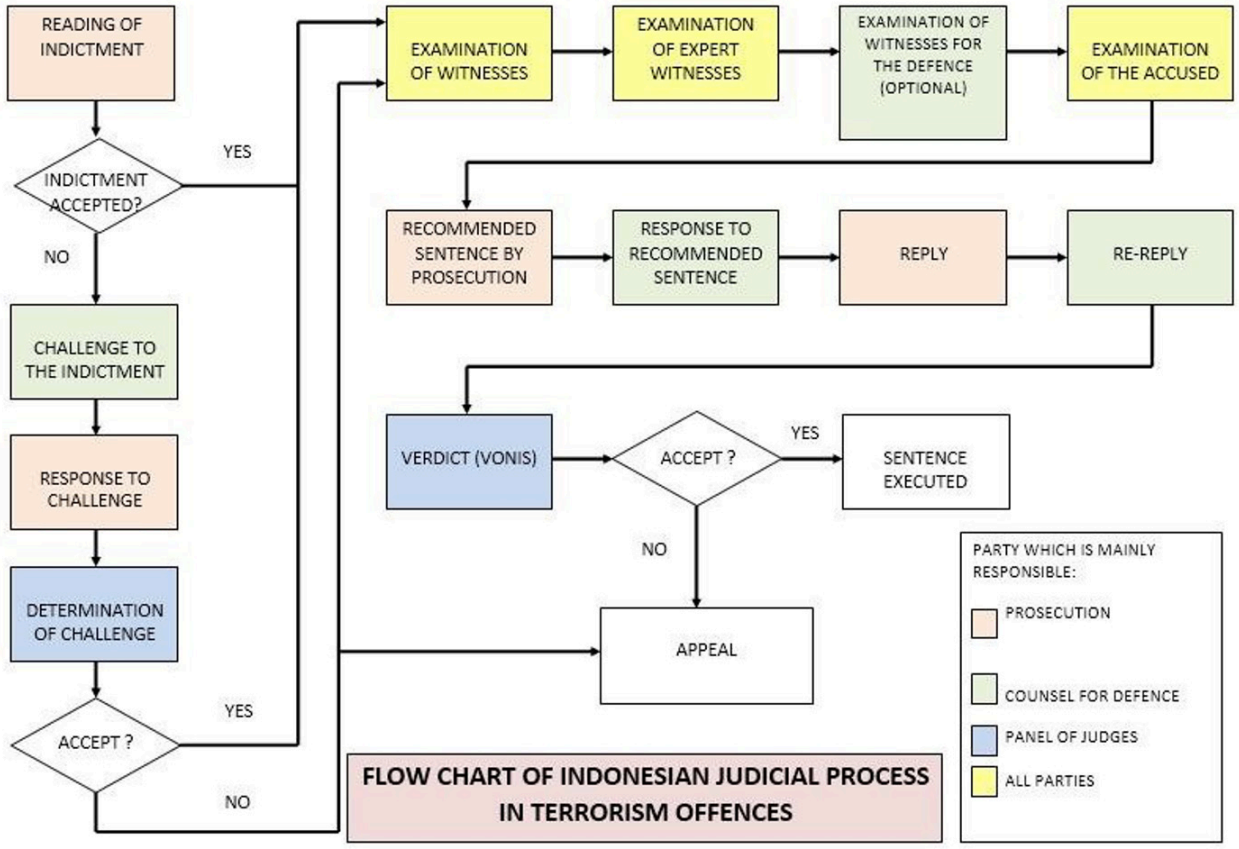
The article takes a legal doctrinal approach analysing primary legal texts including relevant articles of the Indonesian Criminal Code ('KUHP' Kitab Undang-undang Hukum Pidana)[10], the Indonesian Criminal Procedural Code ('KUHAP' Kitab Undang-undang Hukum Acara Pidana)[11] and the ATL, as well as primary court documents including Police Investigation Reports ('BAP' Berita Acara Pemeriksaan), and written court decisions or *putusan* of the District Courts and appeal courts including the Supreme Court and the Constitutional Court. Primary data were collected from interviews[12] with key informant interviewees, terrorism experts and practitioners, combined with quantitative and qualitative data from multiple sources including the Indonesian National Police, the National Counter Terrorism Agency ('BNPT' Badan Nasional Penanggulangan Terorisme), and NGO observer organisations including the International Institute for Peace Building, the Centre for Radicalism and Deradicalisation ('PAKAR' Pusat Kajian Radikalisme dan Deradikasilisasi), the International Crisis Group (ICG), Institute for Policy Analysis of Conflict (IPAC), and KontraS (the Commission for the Disappeared and Victims of Violence). The article uses secondary sources, including NGO and media reports, where necessary to confirm facts regarding the arrest and release dates of convicted terrorists.

Indonesian Criminal Sentencing Process

Some discussion of Indonesian criminal procedure is needed to understand the processes prosecutors and courts use in determining sentences for convicted criminals including terrorists. Unlike common law systems, at the reading of the indictment, the accused is not asked to enter a plea. Rather, while the indictment may be challenged, a trial will proceed despite

the accused admitting the offence. This is due to Articles 183-4 of the KUHAP which mandate that judges must arrive at a guilty verdict based on a minimum of two of the five accepted categories of admissible evidence. The testimony of one witness, including the accused him or herself, is therefore not sufficient to establish guilt—see Article 189(4). As such, a full trial proceeds regardless of admissions of guilt. The accused can, therefore, not expect a reduction of sentence for pleading guilty, nor does plea bargaining apply—that is, the process of prosecutors reducing or lowering charges in return for a guilty plea. Further, under the KUHAP, verdict and sentencing (vonis) are carried out simultaneously, unlike common law jurisdictions where the determination of guilt and sentencing are two separate stages.

Figure 1: Flow Chart of Indonesian Criminal Prosecutions



Source: Recreated by the author based on a diagram from The Centre for Radicalism and Deradicalisation Studies (PAKAR - Pusat Kajian Radikalisme dan Deradikalisasi)

As Figure 1 illustrates, at the conclusion of evidence from witnesses and the accused, prosecutors make a recommendation to the court for an appropriate sentence known as a *tuntutan*. Quantitative data shows that in a majority of cases, courts routinely impose a sentence that is approximately seventy percent of the *tuntutan*, displaying a highly formulaic approach to sentencing. Further, qualitative analysis of written court decisions shows there is, in a majority of cases, a lack of detail that dissects the sentences apportioned under different charges. The doctrine of precedent does not apply in the same way as in common law systems, nor do prosecutors 'hand up' examples of sentences in similar cases for the judges' consideration. Judges, therefore, enjoy significant discretion at sentencing and may impose any custodial sentence from the legislative minimum (if one is provided – where no minimum is stated the minimum sentence is one day, per Article 12(2) of the KUHP) up to the legislative maximum. This combination of factors—which include a general ascription of God as the ultimate source

of justice in line with the first tenet of the state philosophy of Pancasila[13]—and a paucity of access to past decisions of courts results in sentencing outcomes that display inconsistency, inaccuracy, and contradictions, therefore frequently denying natural justice to accused persons who come before the courts. The analysis further concludes that while there are inconsistencies in sentencing outcomes, and in some limited cases, sentences are overly harsh, in most cases, the treatment of terrorist convicts has been overwhelmingly lenient. This arises from a general perception in the judiciary, and possibly the wider public, that religiously inspired terrorists are fundamentally decent people who have gone astray.

While Indonesia's ATL carries a maximum penalty of death under twelve of its articles, the death sentence is rarely used in terrorism cases. Out of 130 death row prisoners in Indonesia in 2013, only two were sentenced to death on terrorism charges, in both cases for their involvement in the bombing of the Australian Embassy in 2004 (two terrorism convicts, Edi Setiono and Taufik bin Abdullah Halim, who were initially sentenced to death for their involvement in the Atrium Mall bombing of 2001, had their death sentences converted to life imprisonment). Further, the vast majority—around ninety percent—of Indonesia's convicted terrorists are sentenced to imprisonment of ten years or less. For example, of the 268 imprisoned Indonesian terrorists in 2016, eighty percent (215) were due for release before the end of 2020. From 2004 to 2015, less than two percent of convicted terrorists were sentenced to life imprisonment, and 0.3 percent were sentenced to death (see Table 1). An analysis of sentencing in Indonesian terrorism cases indicates significant internal and external discrepancies in the severity of punishments for offences of comparable culpability. This indicates a level of demonstrable unfairness which exists within the Indonesian judicial system and compromises principles of natural justice and the rule of law, and consequently carries the potential to negatively impact perceptions of justice within the Indonesian community and internationally.

Data on Arrests, Deaths and Sentencing in Terrorism Cases

An examination of statistics in terrorism cases from 2003 to 2015, shown in Table 1, and some basic calculations, shows that a total of 1,017 suspects were arrested, convicted, released, or died (as suicide bombers or in police raids). A total of 482 prisoners were convicted, served their sentences and released, and 86 were released for insufficient evidence.

Table 1: Data of Terrorist Suspects in Indonesia as of March 2015.

No.	Description	Total No. (persons)
1.	Detained and under investigation	30
2	On trial	37
3	Imprisoned	268
4	Died during raid operation	99
5	Died as suicide bomber	12
6	Executed - Capital Punishment	3
7	Released due to weak evidence	86
8	Released after serving prison sentence	482
Total		**1017**

Source: Presentation by Tito Karnavian, ASRENA Kapolri (Assistant Chief of Indonesian Police for Planning and Budgeting), Jakarta Foreign Correspondents Club, Jakarta, March 2015.

An analysis which includes the sentences of the 268 imprisoned terrorists as of 2015 shows that out of the 750 convicted terrorists since 2003 (not including those killed or released for lack of evidence), 63 (8.4 percent) were sentenced to more than ten years imprisonment.[14] Allowing for statistical error, it may be concluded that over ninety percent of Indonesia's terrorists were sentenced to ten or less years in prison.

Just 29 prisoners (3.9 percent of all cases) were sentenced to more than fifteen years imprisonment, while for fourteen others (1.9 percent), the sentence was life imprisonment. In two cases (0.3 percent)—excluding three prisoners from the 2002 Bali bombing—convicted terrorists were sentenced to death.[15] Since the executions of three of the 2002 Bali bombers in 2008, no other convicted terrorists have been executed, although two terrorists (Achmad Hasan and Iwan Dharmawan, convicted of the Australian Embassy bombing) remained on death row. They have also been the only two to receive the death sentence since 2004. By comparison, as of 2013, a total of 128 prisoners were on death row for other, non-terrorism, offences: 68 for murder and sixty for drugs offences.[16] Of the 268 imprisoned Indonesian terrorists in 2015, 215 (eighty percent) were due for release by the end of 2020.

It has been argued that one reason the number of terrorists who receive the death sentence is low is because some—and possibly the most culpable—are killed before they get to trial. Some kill themselves in suicide attacks, others are killed by police. From 2003 to 2015, 99 terrorist suspects were killed in police operations and twelve were suicide bombers. In 2013, the Indonesian human rights NGO KontraS, arguing that the death penalty does not deter terrorists, noted:

> *Authorities seem to have caught onto this [that the death penalty is not a deterrent], and appear now to rely on extra-judicial killings to eliminate terrorist cells. Notably, there are two convicted terrorists sentenced to death, despite regular raids of terrorist cells by Densus 88, the elite Indonesian anti-terrorism brigade. This is in large part because few of the suspects tracked down by Densus 88 ever make it to trial; many are gunned down in the field.*[17]

Figures 2 and 3 (See below) demonstrate two important facts. First, higher numbers of convicted drug offenders and murderers are sentenced to death than terrorists. Second, a trend among drug cases is noted involving higher use of the death sentence for foreigners than Indonesians. The most likely category of offender to receive the death sentence in Indonesia based on these statistics is a foreign drug smuggler, rather than an Indonesian convicted of terrorism offences. Despite varying opinions on the operational necessity of killing terrorist suspects in police raids, to argue that "few of the suspects tracked down by Densus 88 ever make it to trial" ignores the over seven hundred suspects who, in fact, made it to trial, and significantly misrepresents the reality. One could argue that the number of suspects killed in police raids (just under ten percent) is too high and indicates a possible need for police to review their use of force procedures.[18] Further, a case may be made for the greater use of non-lethal weapons such as flash-bang grenades and knock-out gas "designed to temporarily incapacitate, disable or disorient targets rather than kill them" during police counterterrorism operations.[19] However, the facts do support the assertion that "few suspects ever make it to trial." The vast majority of terrorist suspects do, in fact, make it to trial, and the vast majority of those are convicted of a terrorism offence.

Figure 2: Executions Based on Category of Crime 1999-2015.

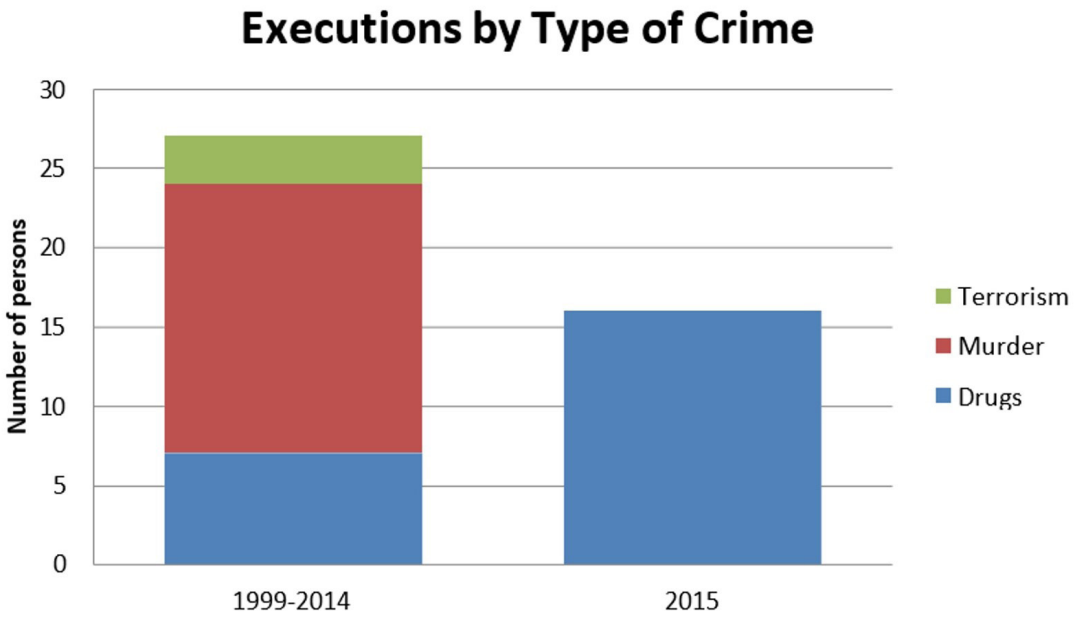
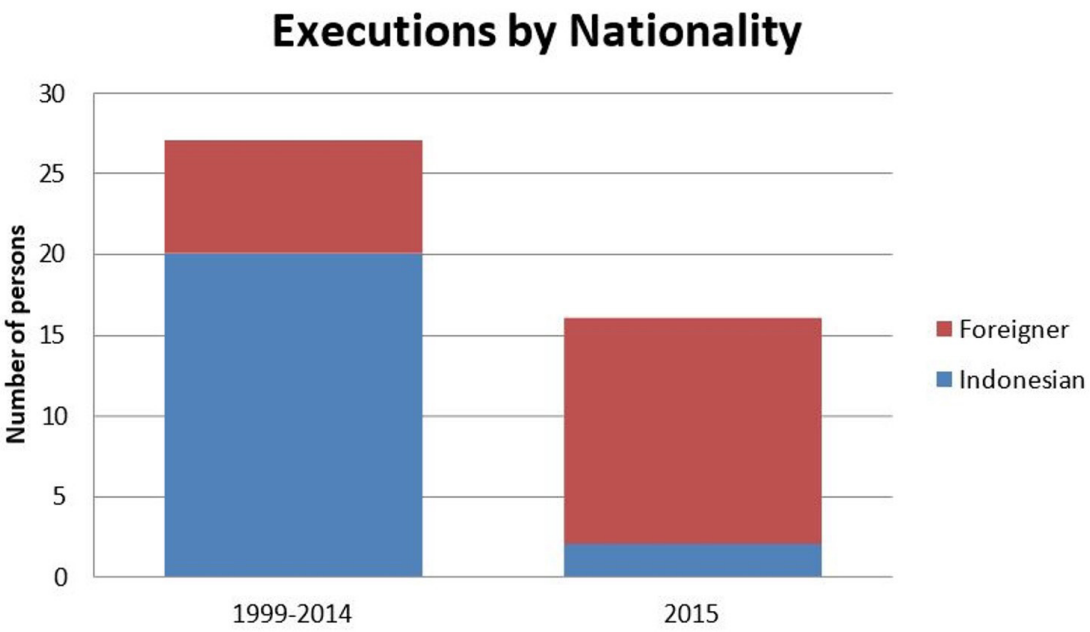


Figure 3: Executions Based on Category of Nationality 1999-2015.



Source: Kontras.org

Whether the death penalty is a deterrent to terrorists is a worthy question. In the most heinous cases, life imprisonment may represent a greater punishment insofar as it thwarts the individual's desire to become a martyr. However, it is also worth questioning why so few terrorists who come before the courts are sentenced to death, or even life imprisonment. Sentences of convicted jihadist terrorists appear lenient by comparison with other violent offenders. Jones noted that while Papuan separatists are not charged with terrorism, the sentences they receive are far

heavier than those for jihadists. Jones referred to the case of a jihadist terrorist who "helped kill two police in April 2010 in Java", who was sentenced to six years imprisonment, then continued to discuss how Papuan ethno-separatists are treated by the courts:

> *When the perpetrators are caught, which is rare, they get the book thrown at them. A group involved in the killing of two soldiers and the theft of guns in Wamena in 2003 got 18 years to life; the men involved in killing security officers at a demonstration in Abepura in 2006 got 15 years. A six-year sentence in Papua for a crime involving the death of a policeman would be unthinkable.*[20]

The lighter sentencing and better treatment of jihadist terrorists is likely due to a prevalent perception within Indonesian political and judicial thinking that separatism is a worse offence than jihadism, and that jihadists "are fundamentally decent men gone astray."[21] The much higher numbers of drugs offenders and murderers on death row suggests that the courts also view them as being more morally culpable than jihadist terrorists.

On the question of lighter sentences for jihadist terrorists, Hiariej posits:

> *The reason the death penalty is much more frequent in drugs and murder cases than terrorism cases, is because terrorism is regarded as being based on Islamic ideology. Therefore, judges are very careful in deciding the sentence for the accused. Eighty percent of Indonesians are Muslim. International pressure is definitely a factor, cases like the Bali bombing where most of the victims were Australian. For other terrorism cases, where the victims are only Indonesians, then there is no international pressure, and the sentences are lighter. It has a big influence on the courts' treatment of the accused.*[22]

The issue of Indonesian courts' lenient treatment of terrorist suspects raises the question of whether the sentences imposed are sufficient to achieve the philosophical aims of punishment—that is, special and general deterrence, rehabilitation and retribution. It may be argued that where ninety percent of terrorists receive sentences of less than ten years after planning or participating in violent attacks, especially where they result in injuries or fatalities, and given the virulent ideology of hatred attached to terrorism crimes, the sentences are insufficient to achieve any of the three stated goals of punishment. A sentence of four to six years for a violent terrorism offence, especially after remissions are taken into account, is arguably insufficient to deter either the offender or others, to successfully rehabilitate the offender, or to appease the demand for retribution in the eyes of the victims and the community. Demonstrably lenient sentences in the vast majority of terrorism cases do not therefore sufficiently serve the aims of punishment, or the broader interests of justice.

However, the analysis must also take account of the varying degrees of culpability of defendants. A 'layer system' has been described by the National Counter Terrorism Agency ('BNPT') and divides suspects into four categories based on their levels of culpability:

1. The central or hard core leaders and ideologues: the most radical and the most radicalising.
2. Militants/radicals/operatives: less radical than the first layer, but they are the ones who carry out the operations.
3. Supporters: those who provide support in the form of funding, information, harbouring criminals.
4. Sympathisers: those who are sympathetic to terrorist ideals and operations.[23]

Sentences must therefore reflect the culpability of defendants and their level of involvement in a terrorist act.

Sentencing of terrorist offenders may be measured by comparison to the objective yardstick of the maximum legislative penalty allowable, or by comparison to sentences in other categories of crime, or by internal comparison with other sentences in the same category. Illustrating the inconsistencies and irregularities in the charges brought by prosecutors and the sentences handed down in cases of jihadist terrorism will form the next part of the article.

Case Analysis of Irregularities in Sentencing and Judicial Process[24]

The argument presented in this section is that a significant number of irregularities and inconsistencies exist among the arrests, charging and treatment of terrorist suspects within the Indonesian judicial system which may ultimately affect sentencing outcomes. These include: sentences which are demonstrably inconsistent—i.e. too lenient or harsh in the circumstances; sentences which may be the result of irregular external pressures such as judicial bribery; or political or diplomatic pressure; inaccurate or insufficient charging of offenders by prosecutors; opaque reasoning and poor standards of written decisions handed down by judges; wrongful arrests by police; or arrests where police exceeded their legislative powers; wrongful shootings of suspects by police; and torture of suspects in detention. The following section will use summaries and selected details of cases (taken from police investigation reports, court decisions, and media reporting) where necessary to illustrate key points.

Suspects often make extensive admissions of their actions, including violent acts, but deny moral culpability, citing religious justification. The admissions of suspects may be used as evidence and significantly facilitate prosecutions in this area. Were suspects to suddenly stop making such admissions, the job of police and prosecutors in securing convictions would be made significantly more difficult.

Whether Indonesian courts have been too lenient or too harsh may be measured against a number of different benchmarks. As terrorism researcher Taufik Andrie commented, "I think the deradicalisation outcomes are better from softer sentences; harsher sentences serve only to, in many cases, further radicalise and antagonise terrorists."[25] Others have argued that terrorists "must get heavier sentences", with some suggesting a minimum ten-year sentence for any person convicted of terrorism.[26] This article argues that the sufficiency of sentences ought to be measured by reference to the philosophical aims of punishment mentioned above—that is, special deterrence, general deterrence, retribution and rehabilitation. Where sentences are not sufficient to achieve those aims, they are too lenient. However, given the concerns outlined by Andrie, further research is needed to determine which sentencing approaches are most effective in achieving desired rehabilitation outcomes. Government deradicalisation programs are also relevant in this context, although a detailed consideration of this area is outside the scope of this article.

According to former head of BNPT Ansyaad Mbai, "we [in Indonesia] have the weakest legal system to counter terrorism and radicalism," noting that "no system existed in the surveillance of the approximately 250 terrorists released from prison, [and] the court sentences handed to terrorists were relatively light, such as Abdullah Sonata whose prison term was cut to 3.5 years from the original seven."[27]

Emphasising the need for more experienced judges who have greater background knowledge of the issue and can therefore hand down more nuanced sentences, Karnavian argues that special terrorism judges are needed (as is the case in France), judges with greater background

knowledge in order to aid in "accurate sentencing." Additionally, "mere sympathisers can turn radical if they are sentenced too heavily […] those difficult to deradicalise should be given harsher sentences and kept in isolation, if necessary."[28]

Too Lenient

In 2010, evidence discovered during a police raid on a terrorist training camp in the province of Aceh indicated Abu Bakar Ba'asyir's involvement as an ideologue, organiser, and financer. Ba'asyir was charged with seven offences under the ATL, and sentenced to fifteen years. On appeal to the Jakarta High Court his sentence was reduced to nine years. Following a further appeal to the Supreme Court, he was found guilty of "planning or mobilising others to use or possess weapons and ammunition for a terrorist act." [29] Though both the death penalty and life imprisonment were available as penalties, the Supreme Court reinstated the original punishment of fifteen years imprisonment. Some observers have suggested that Ba'asyir is not a generator of ideas, but rather a puppet who can be manipulated by those close to him who 'whisper' in his ear.[30] However, his influence as leader of Jamaah Anshorut Tauhid (JAT) cannot be denied. Given Ba'asyir's pivotal role as ideological driver, financer and recruiter for the Aceh camp, an enterprise which was responsible for the deaths of multiple police officers and civilians, the sentence is arguably too lenient, especially given that Ba'asyir refused to show remorse and denied the validity of the court itself. Ba'asyir was released from prison in January 2021.[31]

Indonesia is a polite, stratified society placing high value on contrition and seeking forgiveness from social superiors. An important (perhaps dominant) factor in sentence mitigation is the behaviour of the accused during the investigation and trial. Umar Patek was sentenced to twenty years for terrorist acts including the devastating Bali bombing of 2002.[32] Despite his repeated terrorist offences, which caused the deaths of hundreds of individuals, and having evaded capture for over ten years, Patek's cooperative, remorseful attitude (whether genuine or contrived) was a factor in avoiding death or life imprisonment. Patek admitted his involvement in mixing explosives for the Bali bombing of 2002 which killed over two hundred people. However, he also apologised to families of the victims at the trial. Patek was released from prison in December 2022.[33]

Fadli Sadama was a core Jamaah Islamiyah (JI) member since 2003, with international terrorist links to Malaysia and Southern Thailand. He served as a weapons supplier and leader of Kumpulan Mujahidin Indonesia in Medan, and was actively involved in a deadly bank robbery of the CIMB Niaga bank in Medan in 2010. He was arrested three times, and participated in a violent riot and prison break in 2013.[34] In his trial for the bank robbery and attack on the Hamparan Perak police station, he was sentenced to eleven years imprisonment.[35] According to Andrie, "his sentence should have been at least twenty years. He's a dangerous individual on the inside or the outside."[36] In 2017, Fadli Sadama received an Independence Day remission of five months off his sentence, leaving two years, eight months to be served.[37]

Abdullah Sunata was responsible for sourcing weapons and served as a military commander at the Aceh training camp in 2010. He had previously been arrested on terrorism charges in June 2006, sentenced to seven years and released on parole in May 2009 (and this in itself raises serious questions about parole procedures—i.e. he was sentenced to seven years and released after less than three years).[38] Prosecutors said Sunata could face the death penalty,[39] but at trial recommended a sentence of fifteen years. The court sentenced Sunata to ten years, even after taking account of his prior offences. In its deliberations, the court considered Sunata's

politeness during the trial, and noted that he had a family and young children. The indictment could have included further charges such as 'conspiracy to use weapons' (per Article 15 jo. 9 of the ATL), but did not for unknown reasons.

Too Harsh

By comparison to the sentences of individuals such as Ba'asyir (fifteen years), Sadama (eleven years) and Sunata (ten years), Pepi Fernando's sentence of eighteen years[40] for masterminding a series of—largely ineffectual—attacks is arguably too harsh. By reference to the objective gravity of the offences however, which indirectly resulted in one fatality and serious injury to a police officer who attempted to defuse a book bomb, the sentence is sufficient, or may be regarded as too lenient (the prosecution had recommended a life sentence).[41] The judge asserted that Fernando had been polite and cooperative, and admitted clearly and honestly all his actions.[42] The case illustrates the paradoxes of sentencing in the Indonesian context, as it is capable of being viewed as both too harsh and too lenient depending on the perspective. It is noteworthy that Fernando, who served his sentence in a maximum security prison on Nusa Kambangan, may have been further radicalised in prison.[43] On the contrary, his wife Carmelita, involved in the same set of attacks, and given a light sentence of two years after cooperating with police, subsequently divorced Fernando, deradicalised, expressed regret, and ceased all involvement in jihadism.[44] Fernando was released from prison in 2023 after serving eleven and a half years.[45]

On the other hand, there have been instances of courts handing down harsh sentences to minor players. Harry Setya Rahmadi was sentenced to five years[46] for providing lodging to wanted fugitive Noordin Top for approximately one week at his residence in Semarang. By objective standards, the sentence of five years sends a strong message to the community, that anyone who becomes even peripherally involved in terrorism will be dealt with sternly. By comparison with sentences in other cases of clearly greater culpability, Rahmadi's sentence seems grossly unfair. For example, Mohammad Jibriel (see below), a key player in financing and executing the Jakarta Marriott bombing of 2009, was sentenced to five and a half years.

The 'Semarang Group' led by Subur Sugiato was responsible for the second Bali bombing of 2005 and the perpetrators received relatively harsh sentences. The leader Sugiato was one of the few terrorist defendants to be sentenced to life imprisonment.[47] Dwi Widiarto and Wawan Suprihatin played only minor logistical support roles, essentially as couriers, and were sentenced to ten years each.[48] Anif Sulhannudin, who volunteered for the role of suicide bomber but was rejected by the leaders of the plot, was sentenced to fourteen years even though his eventual involvement was also minimal.[49] Again, viewed from the perspective of the objective gravity of the offence and general deterrence, the sentences send a clear message. However, by comparison to the sentences of major ideologues, repeat offenders, drivers and organisers of terrorist attacks, such as Ba'asyir, Sadama and Sunata, the sentences of these minor players seem incongruously harsh. Similarly, a number of participants who had relatively minor roles in the Aceh training camp received harsh sentences, such as Munir, whose only role was to direct people to the camp and was sentenced to seven years.[50] Compare that with the sentences of Mohammad Jibriel (five and a half years), Afief Abdul Majid (four years) Sunata (ten years) or Aman Abdurrahman (nine years), for example, all of whom are much more influential and entrenched in their terrorist ideology yet whose sentences do not reflect their vastly greater culpability.

Cases which attract significant international media and political attention tend to result in the harshest sentences from Indonesian courts. Iwan Darmawan and Ahmad Hasan were sentenced to death[51] for their pivotal involvement in the bombing of the Australian Embassy in Jakarta on 9 September 2004, which killed ten people and wounded 150. Of the hundreds of defendants in terrorism trials, other than three convicted of involvement in the Bali bombing of 2002, these two defendants are the only ones to receive the death penalty. Though the three Bali bombers were executed in 2008, as of 2021 Darmawan and Hasan remained on death row.[52] The case displays serious inconsistencies in sentencing, which are exacerbated by the gravity of the death sentence handed down. It is unclear why these two defendants received the death sentence, when their co-defendants, or others in cases of analogous culpability, such as the Marriott bombings or the second Bali bombing of 2005, did not. The defendants' lack of remorse was likely a factor in the final sentence. Hasan rejected the verdict saying that it was the result of foreign intervention and that his conviction was a sham.[53] Following the verdict, Australian Prime Minister John Howard released a statement expressing his faith in the Indonesian legal system.[54] The influence of foreign parties over the outcome, whether through political or diplomatic channels, is possible though difficult to confirm.

Justice Collaborators

There have been several cases where individuals have provided information and become prosecution witnesses (*saksi yang memberatkan*), assisting in the capture and conviction of fellow terrorists, and received significantly reduced sentences as a result. Luthfi Haidaroh (aka Ubaid – see below) is one notable example. Deni Carmelita (above) is another. Khairul Ghazali was a member of a group which committed multiple attacks in Medan, resulting in fatalities, and was sentenced to five years.[55] It was the lowest sentence from his group and half of the recommended sentence, and it is likely that his cooperation with police, participation in anti-radicalism programs and authoring of a book which praised the work of Densus 88[56] were all factors in his lenient sentence.

Salahuddin[57] was a key actor in the bombing of a Christian church in July 2001, which killed five people and injured dozens, and the Atrium mall bombing in August 2001 in Jakarta, which injured six people. He was charged with two co-accused, Edi Setiono and Taufik bin Abdul Halim, who were convicted and sentenced to twenty years and life imprisonment respectively. It is likely that Salahuddin, whose arrest in 2006 during a police raid to capture Noordin Top was followed by a string of arrests, gave extensive information to police, and was rewarded with a lenient sentence of just four and a half years.

Luthfi Haidaroh (aka Ubaid) was a key functionary within JAT. He acted as treasurer, training manager, and recruiter, and sat on the JAT's Shari'a Council. He was sentenced to ten years for conspiracy and assisting in the use of weapons for terrorism for his involvement in the Aceh training camp. Considering the objective gravity of his offences and his role in JAT, his sentence seems light. However, as a justice collaborator, he gave evidence as a prosecution witness in the trial of Ba'asyir, thereby earning a significant reduction. In light of this, some have argued that his sentence should have been in the region of six to eight years.[58] The case also illustrates the questionable practice of using an element of the offence as an aggravating factor in sentencing. Among the reasons cited for lengthening the sentence was that the defendant had "caused fear or anxiety in the community." As one of the elements of a charge of terrorism itself, it should arguably not be taken into consideration for sentencing.

Bribery

Given the documented corruption within the Indonesian judiciary,[59] it is tempting to conclude that lenient sentences—for example, those of Patek, Jibriel, Sunata, Sadama or even Ba'asyir (some of whom should arguably have been sentenced to death or life imprisonment)—could be the result of judicial bribery. However, it appears unlikely that bribery is a factor in most terrorism cases. Observers note that they have seen no indication of bribery by lawyers from the Muslim Defence Team, who represent virtually all terrorist suspects.[60] The research did not find any investigations of terrorism trial judges by the Corruption Eradication Commission ('KPK' Komisi Pemberantasan Korupsi), which was actively prosecuting corruption by public officials in this period.

Meanwhile, an examination of the circumstantial evidence surrounding the case of Saudi national Ali Abdullah, alleged to have partially financed the Marriott bombing of 2009, cannot rule out judicial bribery. Abdullah's case is the only known instance of an Indonesian court completely acquitting a defendant of all terrorism charges. Despite clear evidence which linked the accused to one of the main actors in the bombing (Syaifuddin Zuhri), the charge of providing financial or material aid to a terrorist—which was found proven by the Supreme Court[61]—was overturned on judicial review.[62] Abdullah had spent considerable time with Zuhri, including attending Islamic study sessions while also in the company of Dani Dwi Permana, one of the suicide bombers in the attack. Evidence also showed that Abdullah transferred money to an acquaintance who was introduced to the defendant by Zuhri, which was allegedly used to purchase materials for the bombing. The defendant claimed he had no knowledge that Zuhri was involved in terrorism, which formed the basis of his defence. The prosecution seems to have substantially weakened their case by charging the defendant with intentionally giving aid, rather than under article 11 of the ATL, which criminalises collecting funds for a purpose that ought to be suspected of being used for a terrorist attack. Given that almost all terrorist cases brought to trial result in convictions, the case is anomalous. As Andrie noted:

> *I believe he knew what he was doing. People like Syaifuddin Zuhri and Ibrahim are not good guys. If you give them money, it is reasonable to assume they will use it for terrorism.*[63]

Given that there was considerable evidence against the accused, his is the only case of complete acquittal on terrorism charges—and since he was a financer of terrorism, he would have had direct access to significant funds, so bribery cannot be ruled out.

Inaccurate/Insufficient Indictments

The case of Muhammad Jibril Abdul Rahman[64] illustrates two separate aspects of irregularities in the judicial system: inaccurate drafting of the indictment and external influence on the sentence. Police alleged that the accused was tasked by Noordin Top (a wanted fugitive at the time, and a friend of the accused) to source funds from an al-Qaeda contact in Saudi Arabia for the 2009 Marriott hotel bombing.[65] A witness also testified that he overheard the accused giving instructions and motivation to the suicide bomber, Dani Dwi Permana, just prior to the bombing, and he destroyed identification cards and other evidence after the attack. Given the accused's position in facilitating the financing of the attack—and taking into account the circumstances, in which he knew (or at the very least ought to have suspected) the money's purpose—it is highly irregular that he was not charged with financing terrorism. Instead, he faced only the lesser charge of concealing information, for which he received a sentence of five and a half years. The defendant's father's position as head of the Majelis Mujahidin Indonesia (MMI)— an influential, radical Muslim council—may have assisted in putting political pressure on Densus 88 during the investigation and trial.[66]

Aman Abdurrahman is considered one of the most influential Indonesian jihadist ideologues, on a level equal to, or greater than, Abu Bakar Ba'asyir. He contributed funds to the Aceh training camp, recruited participants, and assisted in concealing fugitives after the camp was raided by police. In 2010, he was charged with conspiracy, unlawful use of weapons and explosives, and aiding and concealing terrorists. However, he was only convicted of assisting a terrorist financially, and was sentenced to nine years.[67] It is not clear why Abdurrahman was not convicted on the other charges, despite considerable evidence. The sentence is surprisingly lenient given Abdurrahman's senior role as an influential ideologue, and when compared to sentences handed to minor players such as Munir, whose job was to direct people to the camp (he was sentenced to seven years imprisonment during the same court session). Notably, Abdurrahman continued to issue fatwahs from his jail cell on Nusa Kambangan island,[68] including one where he pledged to serve his entire nine-year sentence without applying for remissions, and thereby earn 'pure freedom' (*bebas murni*) rather than conditional freedom (*bebas bersyarat*) with parole conditions. He also urged his incarcerated followers to do the same. Abdurrahman was due for release in 2018; however, he was charged with inciting (while incarcerated) a string of terrorist attacks from 2016 to 2018, resulting in at least fifty deaths. He was convicted and sentenced to death, and he remains on death row at the time of this writing.[69]

Another convicted financer of the Aceh camp, Afief Abdul Majid, also represented the first prosecution for ISIS-related activities to come before the courts in Indonesia, and acted as a test case for prosecutions under provisions of the ATL and the Criminal Code. Though the defendant admitted travelling to Syria, joining ISIS, swearing allegiance to the caliph and participating in military training, the court sentenced Afief to only four years imprisonment for the funding Aceh charge, including time served. The sentence was slightly lighter than those of Syarif and Usman (four and a half years), who were also convicted of financing the Aceh camp, and did not reflect Afief's senior position in JAT as an influential ideologue, nor his involvement with ISIS.[70]

A significant development in the case of senior JAT ideologue Afief Abdul Majid occurred in late 2015. After being sentenced to four years by the Central Jakarta District Court for funding the Aceh training camp in 2010 (the court ruled that the defendant's self-confessed actions in support of ISIS did not constitute criminal acts)[71] the case was appealed by prosecutors to the Jakarta High Court. The appeals court affirmed the conviction for funding and, importantly, convicted Afief under Article 15 (no. 7) of the ATL for his activities in support of ISIS, which included travelling to Syria and participating in military training, swearing allegiance, and declaring support for ISIS. The High Court's decision reversed the trial court's ruling that the defendant's activities related to ISIS did not constitute criminal activity. However, lawyers for the defendant announced that they would appeal the decision to the Supreme Court. Among the bases for the appeal was an objection regarding a technicality that expert evidence read out at the appeal was inadmissible, as the expert witnesses did not appear to testify at trial.[72]

Opaque and Poor Judgements

Usria was a driver and general assistant for a group that carried out random shootings of Javanese workers in Aceh (causing three fatalities), and attempted a bombing assassination of the Governor of Aceh. He was sentenced to four years.[73] The written judgement illustrates the flawed (albeit common) practice of cutting and pasting large slabs of facts from the indictment and brief of evidence directly into the court's decision. No attempt was made to distinguish between the shootings—actual terrorist acts—with the factually separate charge of attempted assassination.[74] The judgement is, therefore, not only opaque and lacking in legal reasoning,

but it also (like many other judgements) displays frequent typographical errors and computer 'glitches' which affect the visual presentation of the decision, and, in some cases, blurs the substantive meaning.

Wives of Terrorists

Because of the nature of fundamentalist Islam and other aspects of Indonesian social culture, wives of jihadist terrorists are not likely to be in a position to exercise independent judgment, even though their actions or omissions carry criminal consequences. However, wives of terrorists have been successfully prosecuted in several cases, which illustrate some key aspects of Indonesia's judicial processing of terrorists. Putri Munawaroh, the wife of Adib Susilo, was sentenced to three years[75] for assisting her husband in providing food and lodging to Noordin Top and two others, considerably less than the *tuntutan* of eight years. The court noted that the defendant was polite, cooperative, and had an infant son.

Rukayah, the wife of convicted terrorist and Bali bomber Umar Patek, was sentenced to 27 months for falsifying data relating to her passport application, two-thirds of the recommended four years.[76] The prosecutors did not appeal, illustrating the unofficial rule of thumb that they are generally satisfied with sentences which are no less than two-thirds of the recommendation. The sentence of over two years for a fraud offence where it was not alleged that the defendant had knowledge of the actual attacks committed by her husband, stands in stark contrast with the case of Deni Carmelita, wife of Pepi Fernando, who was actively involved in—and had knowledge of—terrorist attacks, and who received a sentence of two years.[77] In their sentencing comments, the judges noted that Carmelita was the mother of three young children (one of whom she had been pregnant with at the time of the trial). Given the defendant's position as wife of the leader of the group, and knowledge of the actions of her husband (which caused death and injuries), the sentence—which is at the very lightest end of the spectrum—does not reflect the gravity of her offences.

Notably, these three women—all of whom received similar sentences—had completely different rehabilitation outcomes. Munawaroh, whose husband was killed in the same police raid which killed Noordin Top in 2009, and who received the staunch support of the Islamist community during her trial, remained radicalised. Rukayah, on the contrary, acted as a deradicalising influence on her husband Patek, and may have played an important role in his decision not to continue waging jihad in Indonesia and to seek forgiveness for his crimes. Carmelita, who expressed remorse and cooperated with police, divorced her husband and has since deradicalised.[78]

Child Terrorists

Children are deemed under the law as not fully capable of making informed, independent decisions, so lenience is generally warranted. However, this concept becomes problematic in the case of child terrorists such as Fajar Novianto, a self-radicalised and self-taught bomb-maker who was actively involved in training other militants in bomb-making while under eighteen years of age.[79] He was charged with both conspiracy and unlawful use of explosives, but was sentenced to two years, in accordance with the rule that child defendants are entitled to a one-third reduction of sentence. However, for acts as potentially dangerous as those committed by the defendant in this case, in particular instructing others in bomb-making, the sentence is extremely lenient by both objective and subjective standards and, arguably, does not achieve any of the objectives of punishment. A group in Klaten that was planning bombings of several targets (including a police station and a church) was infiltrated by police. Three

of the defendants were under eighteen and received sentences of four to six years.[80] These cases illustrate the real danger posed by terrorism committed by Indonesian children and the challenges of determining appropriate sentences for child defendants accused of terrorism.

The Role of Admissions/Confessions by Defendants

Mohammad Imran was recruited by ISIS and attempted to leave Indonesia with his wife and child using false travel documents. He was arrested at Soekarno-Hatta International Airport after a tip-off from Densus 88. He freely admitted falsifying his (and his family members') passports in order to fulfil his desire to join ISIS and live under Shari'a law. He was also attracted by the enticement of a large monthly salary. The court sentenced him to one year and six months for falsifying travel documents.[81] The case illustrates four important aspects of terrorist prosecutions in Indonesia. First, suspects frequently make incriminating admissions of fact. Second, while they make admissions of fact they do not admit the culpability or criminality of their actions, citing religious justifications as being superior in authority to the laws of the government. Third, despite their admissions, Indonesian law requires further corroborating evidence for a court to convict—one source of evidence alone, i.e. the accused's admissions, is not sufficient. Fourth, prior to the ATL revisions of 2018, a legal vacuum relating to support for ISIS (or any other terrorist organisations) meant that prosecutors were unable to obtain convictions for supporting or being members of such groups even where sufficient evidence existed. The 2018 revisions included offences of recruiting members and having contact with a terrorist organisation, however, further research is required on how the relevant articles are applied in practice.[82]

Wrongful Arrests and Illegal Police Actions

Pursuant to Article 28 of the ATL, Indonesian police were previously authorised to detain a person who is strongly suspected of committing a terrorism offence based on sufficient preliminary evidence for up to seven days (this was increased to fourteen days in the revisions of 2018). After that time, if the evidence is insufficient to support a charge the person must be released. Despite the claim that "the Indonesian police have been scrupulous about releasing those they have decided not to charge,"[83] there have been cases where the police have acted outside their legal powers.

Thontowi describes the arrests of thirteen "activists, some of whom had been to Afghanistan" who were arrested from a number of mosques following the Marriott bombing of 2003.[84] The police were accused of abduction because "in some cases it was only after 23 days that the police passed on any information to the families as to what had occurred."[85] The Legal Aid Institute handling the complaint took "legal action against police" and was handling "16 reports of missing persons who had allegedly been detained by the police."[86]

Ikhsan Miarso, a religious leader from Solo, was arrested on suspicion of terrorism and detained for thirty days before being released without charge.[87] Syaifudin Umar (also known as Abu Fida) was arrested in 2004 in connection with Noordin Top and Azahari. He was held for more than ten days and allegedly beaten and tortured before being released (allegedly suffering amnesia as a result of the torture). When he was found, partially dressed in a dazed state at a hospital, his body was bruised, lacerated and burned (allegedly from cigarettes), and some fingernails were missing or partially removed.[88] No police files (or BAP) exist regarding this case, and no further investigation or judicial process occurred. Umar's legal team argued that his arrest had not been accompanied by any official warrant or documentation. In 2014, he was arrested again on ISIS-related charges.[89]

Other credible allegations of torture have been referred to above. Some reports indicate that Indonesian police have mistreated not only terrorism suspects but also their legal representatives. Lawyers representing Amrozi, during his trial for the Bali bombing of 2002, claimed they were "slapped and hit in the face" by plain-clothes police in "an attempt to influence the fair and independent judicial process."[90]

Cooperative Courts, Insufficient Sentences

From the perspective of the Indonesian government or foreign governments engaged in sustained anti-jihadist campaigns, Indonesia's courts have performed admirably by achieving a near hundred percent conviction rate of defendants brought before them for terrorist crimes. Courts have generally taken an approach to statutory interpretation that accommodates convictions. For example, in the case of Agung Prastyo, the West Jakarta District Court (taking into account the public protection purposes of the ATL) embraced a broad definition of an "attempt" in support of law enforcement authorities lawfully intervening at an earlier stage than would be allowed under the general criminal law, in order to prevent terrorist attacks.[91] This approach is significant as it indicates a willingness of the courts to accept a derogation of defendants' rights for the cause of countering terrorism. This appears even more salient as the ATL itself is silent on the question of broadening the definition of a criminal attempt. The court also expressed its support for a broader approach to aiding and abetting than that contained in the Criminal Code,[92] again to allow authorities to intervene and facilitate arrests where a strict interpretation would not allow it.

However, this judicial willingness to accommodate extraordinary methods in countering terrorism may be seen as commendable from the perspective of governments seeking to implement a firm counterterrorism regime. From the perspective of defendants, it may be viewed as an unwarranted derogation of long-held rights under criminal law. Further, the approach of Indonesian courts—which emphasises judicial discretion—frequently leads to results that may be viewed as unfair and inconsistent when compared with results in other cases. From the point of view of terrorist defendants, the prospect of acquittal after being charged with a terrorist offence is very small and significantly diminished due to the extraordinary approach of the courts.

However, while conviction rates are high, sentences handed down in terrorism cases are relatively light. Around ninety percent of convicted terrorists are sentenced to ten years or less, with the average sentence of around six to eight years.[93] As offenders may apply for parole after serving two-thirds of their sentence, the actual average length of prison time served for terrorist offences is therefore less than five years. The number of terrorists on death row is far less than the numbers of convicted murderers or drug offenders. This raises the serious issue of whether Indonesian courts' sentencing of terrorists is sufficient to achieve any of the core purposes of criminal punishment such as general and specific deterrence, rehabilitation and retribution.

Conclusions and Recommendations

Indonesia's counterterrorism authorities compiled an impressive record of identifying, tracking, and capturing over one thousand terrorism suspects between 2003 and 2015, using a dedicated counterterrorism police detachment (Densus 88) with support from a national counter-terrorism agency (BNPT). Despite some deficiencies in the drafting of indictments as outlined above, a special task force of forty to fifty specially-trained prosecutors brought

the cases to trial with an almost-perfect conviction rate. However, the sentencing stage was characterised by poorly stated judgements which lacked clear legal reasoning and detailed explanations of how convictions and sentences were arrived at.

Large inexplicable discrepancies exist in the sentences of terrorist offenders, indicating serious flaws in sentencing processes. Some offenders whose culpability was demonstrably high received inexplicably lenient sentences, while others received inexplicably harsh sentences. The opacity of such results produced by the judicial process indicates major deficiencies in the capacity of Indonesian courts to deliver clear, reasoned, consistent judgements in terrorism trials, and further, that external factors such as international media, political or diplomatic pressure likely influence the decisions handed down in Indonesian courts in some cases. While there is ample evidence to conclude that corruption is commonly a factor in the outcomes of other criminal trials (at least in trials where large sums of money are involved), there is little to suggest that this is the case in terrorism trials. Most likely, this is because the defendants themselves are unable to pay large cash sums for their defence (most of them rely on the Muslim Defence Team) or because they have ideological objections to both bribery and/or are seeking to mitigate the sentences for acts which they do not consider to be morally culpable. Some defendants go so far as to deny the validity of the court itself, and to refuse to seek early release when it is available.

There are a number of factors which may contribute to inconsistency in sentencing, including the absence of the doctrine of precedent, poor access to prior decisions of other courts, and an emphasis on judicial discretion in determining sentences. Most important, perhaps, is a lack of specialised training for the judiciary. Unlike police and prosecutors—both of which have dedicated terrorism units—the judiciary does not have specially-trained members to preside over terrorism trials. At most, judges who have tried a previous terrorism case are often assigned to another, becoming terrorism specialists by default. Calls to establish a special terrorism court have had some support, and the BNPT is the logical body to champion this cause. At the time of writing, however, it appears that little progress has been made in this area.

Some judicial practices of duplicating information from prosecution documents with little legal analysis and/or assigning court functionaries to complete written judgements have led to opacity in judicial outcomes which should be addressed. Judgements sometimes show misspellings, inconsistencies in the spellings of names, grammatical errors, computer glitches, and repeated copying and pasting of facts and aliases—all of which can affect the substantive meaning of the judgment, and therefore demand greater attention to detail to improve their coherence, readability, flow and logical analysis.

Further, judgements routinely fail to apportion sentences for separate convictions on different offences. Instead, one sentence is given at the conclusion of the decision, which may cover multiple counts of the same offence or multiple convictions for different offences. A judge may consider repeated offences as a reason for increasing the sentence, and he or she may also consider whether the accused has prior convictions as a reason for increasing—or a lack of prior convictions for reducing—the sentence. The court's sentencing comments are, in most cases, very brief and commonly include trivial considerations such as whether the accused was polite during the trial. Other considerations—such as whether the accused showed remorse or cooperated with police—may also be included, and can lead to significant reductions of sentence.

In general, Indonesian courts (with some notable exceptions) have been overwhelmingly lenient in their treatment of convicted terrorists. Around ninety percent of offenders are sentenced to

imprisonment of ten years or less. Between 2003 and 2015, fourteen offenders were sentenced to life imprisonment, and five individuals were sentenced to death,[94] despite frequent terrorist attacks that killed police and civilians numbering in the hundreds. In terms of achieving the three main purposes of punishment—deterrence, rehabilitation and retribution—sentences in Indonesian terrorism trials are insufficient. While some argue that longer sentences (especially in the case of minor players) serve only to further radicalise those who have good prospects for rehabilitation, longer sentences (which fulfil the aims of general deterrence and retribution) should be combined with more effective and standardised prison programmes for deradicalisation, and with further training of prison staff for effectively handling terrorist inmates. Further, attention should be given to the processes for remissions to ensure that only deserving prisoners (those who are truly remorseful and reformed) receive reductions to their sentence. While a wide-ranging overhaul of Indonesian criminal law and procedure is beyond the scope of this paper, certain specific actions are proposed in order to create greater levels of effectiveness, consistency and predictability in judicial responses to terrorism.

First, special training is needed for judges and court staff, instructing them in the special characteristics of terrorism and counter-terrorism. Such training should emphasise the extraordinary gravity of terrorism offences and, therefore, the special need for general deterrence. It should also emphasise the de-politicisation of the definition of terrorism, the independence of the judiciary, and a logical approach to analysing terrorism in accordance with its legal elements. Such training should act as a precursor to the creation of a special terrorism court, modelled on other special courts such as the corruption or fisheries courts, and the BNPT should take responsibility for advancing this initiative in cooperation with the Ministry of Law and Human Rights.

Courts should clearly identify which articles of the law the accused was convicted of and clearly apportion sentences based on each count of each offence (where multiple offences are brought) rather than taking the formulaic approach of a blanket sentence of around two-thirds of the prosecution's *tuntutan*. Prosecutors likewise should pay more attention to the careful construction of the indictment and clearly deconstruct and analyse facts and law to determine precisely the applicable articles and the number of counts of each offence.

Judicial training should include standards and practices of written judgements. Judgements should begin with a brief statement of the salient facts of the case, not simply copy and paste the facts from the indictment. They should establish which facts are agreed on, identify the matters in contention, whether legal or factual, and relate the articles of law to the facts. By not doing so, the opacity of judgements creates inaccessibility to the law which is equivalent to a denial of natural justice to those who seek it, and makes a coherent study of the law near to impossible. It adds to the arbitrariness of the judiciary and its negative image in the eyes of the public.

Overall, the counter-terrorism efforts of police during the period covered were very effective at infiltrating and disabling terrorist groups. The laws and mechanisms were effective in obtaining convictions and putting terrorists behind bars. However, as a system which produces fair, accountable, transparent results, the judicial system was (during the period studied) an almost complete failure. This may be of secondary importance to governments, including Indonesian and foreign, whose main concern is the effectiveness of counter-terrorism regimes and the safety of their constituents. However, a Kantian analysis would condemn this approach, which marginalises the rights of individuals to fair treatment before the law. While the situation continues, the perceived integrity of the Indonesian judicial system remains compromised.

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PERSPECTIVES ON TERRORISM

SPECIAL SECTION: EXTREMISTS IN THE COURTROOM

Sentencing and Post-Sentence Decisions Under Australia's Counter-Terrorism Laws: Risk-Averse, Not Risk-Based

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Abstract: Under Australia's counter-terrorism laws, sentenced offenders face the possibility of continuing detention for rolling three-year periods after serving a term of imprisonment. At both stages of decision-making – sentencing and post-sentence – Australian courts favour punishment, deterrence and community protection over the need to rehabilitate offenders. The need to pre-empt terrorist risks is clear, but these processes lack a sufficient evidence base about recidivism and risk assessment. In this article, I compare, contrast and critically analyse decision-making processes followed by Australian courts when making decisions about imprisonment in terrorism cases. These decisions are made at two different stages: (1) initial sentencing under criminal offences for terrorism, and (2) post-sentence under a Continuing Detention Order (CDO) scheme. Whereas initial sentencing decisions are made under criminal law and impose punishment on offenders, CDOs fall under civil law and are considered non-punitive, even though they extend the initial punishment. Neither stage relies on a strong evidence base to predict future behaviour, and yet assumptions about future risk are given sufficient weight to justify ongoing deprivations of liberty and undermine core principles of criminal justice.

Keywords: Terrorism, sentencing, radicalisation, deradicalisation, risk assessment, detention, punishment

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Introduction

Sentencing is a complex decision-making process involving significant judicial discretion, made more difficult again when offenders follow a radical ideology. To a greater degree, the process for sentencing terrorist offenders is shaped by the political needs of parliaments, reducing judicial discretion. At the same time, judges are entrusted to predict future behaviour, both in the original sentencing decision and when deciding whether terrorist offenders should be detained or supervised beyond their sentence. While navigating these challenges, judges must balance the need to rehabilitate terrorist offenders—to promote effective long-term outcomes—against the need for immediate community protection. With more terrorist offenders approaching release in Australia, developing fairer and more effective long-term strategies to address this delicate balancing act is increasingly urgent.

In this article, I critically analyse sentencing and post-sentence decisions made by Australian courts in terrorism cases. The reason for analysing these two distinct decision-making processes together is that judges at both stages must consider the risks of future terrorist behaviour while balancing rehabilitation against community protection. Arguably, the processes are also not entirely distinct: terrorist offenders now face the prospect that they may still be detained after serving a term of imprisonment, if they still pose an 'unacceptable risk' to the community. The possibility of post-sentence detention means that the original punishment handed down by the court may not reflect the total period of imprisonment they ultimately serve. Both processes can be viewed along the same timeline, from conviction at the end of trial to an offender's ultimate release.

In Part One, I briefly outline Australia's counter-terrorism laws. This is for two reasons. First, Australia's legal definition of terrorism—which targets conduct or threats with a political, religious, and ideological motive—explains the focus in judicial decision-making on an offender's radical ideology. Second, the preventive (or preparatory) nature of Australia's criminal offences for terrorism explains why courts have favoured punishment, deterrence and community protection over the need to rehabilitate offenders. This preventive rationale guides the predictive exercise that judges perform to assess likely future behaviour.

Part Two examines sentencing decisions. I begin by outlining general approaches to sentencing under Australian law, before explaining additional considerations raised in terrorism cases. While sentencing courts must consider an offender's prospects for rehabilitation, judges clearly favour deterrence, incapacitation and community protection. This is justified by reference to the criminal offences for terrorism, which were designed by the federal parliament to anticipate and avert serious risks of harm. Sentencing judges are also bound by a statutory non-parole period for terrorism offenders. In these ways, the amount of discretion available to sentencing judges in terrorism cases is limited by the legislative branch, though sentencing courts could still give greater weight to rehabilitation, especially for younger offenders.

Part Three examines post-sentence decisions. These are made under a continuing detention scheme created in 2016 in response to threats from the Islamic State (IS). In Australia, the Commonwealth Attorney-General can apply to a state Supreme Court for an order approving the ongoing detention of a terrorist offender beyond the terms of their original sentence. The powers have survived constitutional challenges.[1] A single order can be approved for up to three years, but there are no limits on their renewal,[2] meaning terrorist offenders can, in theory, be held indefinitely if they are assessed as likely to pose an ongoing, 'unacceptable risk' to the community. Given the serious risks that terrorist offenders can pose to the community, the need to pre-empt harm at both stages is justifiable and consistent. But it does create a uniquely challenging situation where an offender can be imprisoned, potentially indefinitely,

for something they are still only considered likely to do—without yet causing harm to others. This challenges core principles of criminal justice, including proportionality and finality in sentencing and the presumption of innocence. It is especially concerning given the lack of validated tools that post-sentence courts can rely upon when assessing future risk. Sentencing courts have been directed by the federal parliament to undertake a predictive exercise that is more risk-averse than risk-based, with little focus on rehabilitation and no clear path towards effective long-term outcomes.

Australia's Counter-Terrorism Laws

Before 2002, Australia did not have any national counter-terrorism laws. Following 9/11 and Resolution 1373, issued by the United Nations Security Council on 28 September 2001, Australia began significant lawmaking in response to terrorism. The overall framework and the core offences and powers were created by the conservative Howard government between 2002 and 2007. During those years, which included responses to the 2005 London bombings, 44 pieces of legislation were enacted at a rate of one new statute every 6.7 weeks.[3] In total, in the two decades following 9/11, the Australian federal parliament enacted 96 counter-terrorism laws.[4] Roach called this "hyper-legislation,"[5] as Australia's lawmaking far exceeded that of its closest allies and countries with higher terrorism threat levels.

Most of the criminal offences for terrorism rely on a statutory definition of a 'terrorist act.' This is found in section 100.1 of the *Criminal Code Act 1995* (Cth) ('Criminal Code'). It has three main requirements, relating to motive, intention, and harm. First, a terrorist act is a conduct or a threat that is designed to advance a "political, religious, or ideological cause."[6] Normally, the reason why someone commits a crime is not relevant at trial, as part of the substantive elements of an offence, but this motive requirement is considered the defining element that distinguishes terrorism from murder and other serious offences. Second, the conduct or threat must be designed to influence a government by intimidation or to intimidate a section of the population. This is a more typical *mens rea* requirement. Third, the conduct must cause (or the threat relate to) one in a long list of possible harms, including death, serious injury, serious risks to health or safety, serious property damage, or serious interference with electronic systems. There is an exemption in the definition for protest, advocacy, dissent, and industrial action,[7] but the scope of this is yet to be tested in court.

Most of Australia's terrorism offences follow divisions 101 and 102 of the Criminal Code. Division 101 contains a series of preparatory or precursor offences, including training for terrorism, possessing 'things' connected with preparation for terrorism, and collecting or making terrorist documents. A catch-all preventive offence is found in section 101.6, which sets a penalty of life imprisonment for "any act in preparation for, or planning, a terrorist act."[8] There is an offence for completed terrorist acts,[9] but this is rarely prosecuted. Of 102 prosecutions between 2002 and 2023, only seven related to a completed terrorist act, and even then, two were for aiding and abetting a terrorist act and no others involved fatalities.[10]

Division 102 contains group-based offences relating to terrorist organisations. A terrorist organisation is an organisation that is directly or indirectly engaged in preparing, planning, or assisting in the commission of a terrorist act.[11] This can be proven either as an element of an offence, or an organisation can be proscribed by the Governor-General on the advice of the Australian government. If proscribed, a terrorist organisation may also be one that advocates terrorism. This means to urge, counsel, encourage, provide instruction in, or promote terrorism—or praise the doing of a terrorist act where there is a substantial risk that someone might engage in one as a result.[12] In late 2024, there were thirty proscribed organisations, including three

right-wing groups.[13] Where a group of individuals is found to be a terrorist organisation, either in court or by virtue of its listing, this triggers a series of offences for leadership, membership, recruitment, training, funding, support, and association.[14]

These and other offences in Australia's counter-terrorism laws go beyond traditional notions of attempt and conspiracy. Ordinarily, an attempt would require conduct that is "more than merely preparatory" to the commission of an offence.[15] The counter-terrorism laws turn preparation and many other precursor activities into substantive offences. More than that, inchoate liability (attempt and conspiracy) can be applied on top of these pre-emptive offences, meaning it is a crime (for example) to 'conspire to prepare' a terrorist act. This was the offence charged in *Elomar*,[16] which is discussed in detail in the next section. To avert serious risks of harm, a maximum penalty of life imprisonment applies where two or more people agree to commit an unspecified terrorist act at an unspecified future time.[17]

In this respect, the laws are 'doubly pre-emptive': inchoate liability added to preparatory offences targets early activities based on their connection to some ultimate, projected harm. For this reason, Australia's counter-terrorism laws, like the UK's on which they were based, are said to adopt a 'pre-crime' approach that punishes people primarily for what they are likely to do at an unspecified future time.[18] A sentencing judge must now consider how likely it was that harm would have been caused, and how extensive that harm would have been.[19]

This helps to avert serious risks of harm, and without these offences, many of the interrupted plots and plans may well have progressed to cause significant losses of life. Measures targeting the prevention—not just the commission—of terrorist acts were also required of UN member states by Security Council Resolution 1373.[20] But in achieving these aims for counter-terrorism, the offences certainly challenge the traditional, post-hoc logic of criminal justice, in which offenders are convicted where it can be proven beyond a reasonable doubt that they completed a criminal act that caused identifiable loss or harm to others.[21] In terrorism cases, courts must reason through what that harm might have been when the ultimate outcome of the preparation – averted by an arrest – will never be known.

These challenges are exacerbated now that courts can later be required to assess future risk in post-sentence decisions.[22] In 2016, the federal Parliament created a continuing detention scheme that allows terrorist offenders to be held beyond their original sentence. The Commonwealth Attorney-General, as the responsible minister for the Australian Federal Police, can apply to a state Supreme Court for a Continuing Detention Order (CDO). These allow an offender to be held beyond the terms of their original sentence. An order can be approved by the court where the offender poses an "unacceptable risk" of committing a serious terrorism offence.[23] A single order can be approved up to a maximum of three years, but there are no limits on the number of subsequent orders that can be issued against the same person.[24]

In theory, a terrorist offender can be held indefinitely in an Australian prison under recurring CDOs if they do not rehabilitate and remain an unacceptable risk to the community. As the original offence will likely have been preparatory, this means they could be imprisoned for life based on the likelihood that they would have caused harm to the Australian community and continue to pose an unacceptable risk.

Sentencing Terrorist Offenders

Broadly speaking, courts sentencing terrorist offenders follow the same overall process as for all other offenders. Under section 16A of the *Crimes Act 1914* (Cth) ('Crimes Act'), supplemented

by the common law, sentencing judges must consider a long list of factors, including the nature of the offending, any harm caused to victims, the offender's age, mental capacity, whether they expressed remorse and any aggravating or mitigating circumstances. They must consider recognised purposes of punishment, including retribution, deterrence, community protection, and rehabilitation.[25] They must consider core principles of sentencing, including proportionality, totality, consistency, and the need for individualised justice.[26]

Of course, these factors do not always point in the same direction.[27] Sentencing judges undertake a complex decision-making process, in which any evidence relevant to punishment is weighed up together in a method called 'instinctive synthesis.'[28] The High Court has firmly rejected the idea of a 'two-tier' approach, in which indicative punishments are tweaked up and down in individual cases.[29] Judicial discretion is considered paramount. In *Elias v The Queen* [2013] HCA 31, the High Court summed up this overall approach:

> *The factors bearing on the determination of sentence will frequently pull in different directions. It is the duty of the judge to balance often incommensurable factors and to arrive at a sentence that is just in all of the circumstances. The administration of the criminal law involves individualised justice, the attainment of which is acknowledged to involve the exercise of a wide sentencing discretion.*[30]

Sentencing judges, then, have long held a wide, protected discretion in Australian courts to arrive at punishments that they consider to be fair in each individual case.

In terrorism cases, sentencing judges follow the same overall approach, but the relevance of ideology (arising from the statutory definition of terrorism) and the pre-emptive nature of the laws raise additional challenges. In *Elomar*,[31] five offenders were convicted of a conspiracy to prepare a terrorist act. They had collected large amounts of ammunition and attempted to purchase chemicals to be used in making an explosive device. The offenders received prison sentences ranging from 23 to 28 years' imprisonment. In sentencing, Whealy J in the NSW Supreme Court explained the preventive purpose behind the terrorism offences. His comments are worth quoting at length, as they sum up the dominant approach:

> *The broad purpose of the creation of offences of the kind involved in the present sentencing exercises is to prevent the emergence of circumstances which may render more likely the carrying out of a serious terrorist act. Obviously enough, it is also to punish those who contemplate action of the prohibited kind. Importantly, it is to denounce their activities and to incapacitate them so that the community will be protected from the horrific consequences contemplated by their mindset and their actions. The legislation is designed to bite early, long before the preparatory acts mature into circumstances of deadly or dangerous consequence for the community. The anti-terrorist legislation, relevantly for the present matter, is concerned with actions even where the terrorist act contemplated or threatened by an accused person has not come to fruition or fulfilment. Indeed, the legislation caters for prohibited activities connected with terrorism even where no target has been selected, or where no final decision has been made as to who will carry out the ultimate act of terrorism.*[32]

This was not the first time the terrorism laws had been interpreted according to their pre-emptive purpose. Whealy J first developed the approach in *Lodhi*,[33] then again in *Touma*,[34] but in *Elomar* he gave a lengthy exposition when sentencing multiple offenders and by that time, the idea had solidified that the terrorism offences were designed to "bite early,"[35] regardless of whether the offenders had selected a target or progressed their plans to finality.

According to well-established methods of statutory interpretation,[36] courts routinely look to the purpose of the legislation to determine its scope and meaning. It is a core tenet of the separation of powers that parliaments are the lawmakers and courts the 'law interpreters.' Courts cannot substitute a different meaning from the one parliament intended, or in this case, disagree with the policy choice that terrorism offences aim to prevent future harm. However, under the terrorism laws, this otherwise routine interpretive exercise means that sentencing processes become partly predictive, as judges must consider the extent of harm that would have been caused to the Australian community had the offenders' plans succeeded.[37] The offenders are not to be punished as if the harm *had* succeeded,[38] but the likely seriousness of the harm and the likelihood of it occurring are key considerations when determining the seriousness of the offence. Otherwise, there is nothing to distinguish how serious an act of preparation for terrorism is in one case compared to any other. The laws are triggered early before any attempt has been made – so any attempts to purchase chemicals, ammunition, or research online materials must be distinguished by the intended outcomes.

This is where ideology becomes most important to sentencing, as the apparent strength of an offender's radical beliefs is used to gauge how likely they were to follow through with their plans and how extensive the harm would have been. In *Elomar*, Whealy J considered it "inevitable," based on the offenders' extreme views, that they would have supported the loss of life as an outcome, even though there was insufficient evidence they intended to kill.[39] In addition, the "extremist zeal" of the group was said to make the conspiracy "more likely to be successful" than an individual acting alone.[40] While details of the planned attack had not yet been decided, the court considered the offenders' ultimate act would have been "one that would make a significant difference to the Government and the community."[41] Despite acknowledging that some of the group's efforts were "amateurish," "inept" and "clumsy,"[42] Whealy J believed there was a "clear and logical inevitability" that the plans would have been put into effect "sooner rather than later," had it not been for the authorities intervening.[43]

Intuitively and practically speaking, there is nothing that stands out from Whealy J's judgment as highly problematic. The offenders were planning an act of terrorism which could have caused serious harm to the Australian community. They believed in an extreme ideology that brought the group together and committed them to that goal. They progressed their plans to a certain stage by, among other things, collecting ammunition and attempting to purchase chemicals. Those plans were likely to continue and come to fruition soon. Legally speaking, though, the idea that courts are to consider the 'inevitability' of anyone's beliefs, intentions or actions is unsustainable.

The problem is not that inevitability is always assumed. In *Fattal*, the seriousness of offending was later found to be lower because the planned attack was *not* inevitable to the same extent as in *Elomar*.[44] The problem is that courts are considering at all how inevitable one averted attack is compared to another, when (and precisely because the laws are pre-emptive) those attacks will never happen. Courts make many complex decisions, but weighing degrees of hypothetical inevitability is not a typical judicial task. The instinctive synthesis of evidence to gauge what someone is likely to do in the future is not the same as a structured risk assessment – and in any case, as will be seen in the next section, more structured risk assessment tools cannot reliably gauge how terrorist offenders are likely to behave. What results is an instinctive, risk-averse approach to sentencing, guided by the legitimate, justifiable need to protect communities, but without an underlying evidence base.

Judicial confidence in the likelihood of harm occurring dictates that retribution, deterrence, denunciation and community protection are all to be given substantial weight as purposes of punishment over the need to rehabilitate terrorist offenders and any mitigating factors. Courts have phrased the weighting in different ways, but the general principle has been continually reaffirmed. In *Besim*, the Victorian Supreme Court of Appeal explained, following *MHK*,[45] that sentencing courts in terrorism cases "must give full weight to protection of the community."[46] Mitigating factors are to be given "substantially less weight than in other forms of offending."[47] In *Alou*, a case relating to the fatal shooting of a civilian police employee, the NSW Supreme Court explained that community protection, punishment, denunciation and deterrence are the "primary considerations," with less weight given to mitigating factors.[48] In those cases, the young age of the offenders was considered relevant but secondary, as the "ameliorating effect of youth" is "diminished quite measurably in terrorism cases."[49] In *Abbas*, Justice Tinney in the Victorian Supreme Court summed up the accepted approach in these terms:

> *Little time in your plea hearing was spent addressing the matter of your prospects of rehabilitation. This is not surprising. The authorities dictate that the prospects of rehabilitation will generally have little part to play in sentences imposed for terrorism offences.*[50]

This consensus has been reinforced by a statutory rule that requires sentencing judges in terrorism cases to apply a minimum non-parole period (NPP). Under section 19AG of the Crimes Act, NPPs for terrorism offences must be set at three-quarters of the head sentence. In *Besim*, Croucher J in the Victorian Supreme Court commented that he would have allowed for the young offender's earlier possible release, if not for the minimum NPP:

> *Had I been allowed the usual discretion to do so, I would have fixed a non-parole period of six years, particularly given Mr Besim's youth, previous good character, plea of guilty, remorse and prospects of rehabilitation. But, in my view, the law does not allow me to fix that non-parole period and work backwards to the corresponding head sentence. Rather, I must fix what I consider to be the appropriate head sentence and then fix the non-parole period in accordance with the limitation imposed by s 19AG. That is what I have done.*[51]

Despite the offender's youth, remorse, and good prospects of rehabilitation, the sentencing judge needed to impose a more significant penalty than he otherwise would have arrived at, due to a combination of (1) the earlier cases emphasising community protection and (2) the minimum NPP. The minimum NPP is the more direct fetter on judicial discretion, but both have been dictated by the federal parliament, as the judicial focus on community protection over rehabilitation arises from the laws' pre-emptive design.

By continuing this approach, sentencing courts in terrorism cases are missing opportunities to achieve better long-term outcomes, both for the offenders and the Australian community. There is nothing that courts can do about the minimum NPP, but there is greater flexibility available in sentencing to emphasise rehabilitation and individualised justice. The current approach was developed originally in older cases through *Lodhi*, *Touma* and *Elomar*, where older offenders were planning larger-scale attacks. It is less appropriate for younger offenders with greater prospects for rehabilitation, as in *Besim*, and yet the same approach has been applied across the board. Achieving community protection in the short term will undermine it in the long term if rehabilitation continues to have "little part to play" in sentencing.[52] For now, rehabilitation is left to a "cautious hope," as Whealy J put it in *Lodhi*, that an offender's extreme views will dissipate in prison over time.[53] When this does not happen, the solution so far is simply for the original term of imprisonment to continue.

Continuing Detention

Under division 105A of the Criminal Code, the Attorney-General may apply for a Continuing Detention Order (CDO) when a terrorist offender is approaching release. The scheme was introduced in 2016 in response to threats from Islamic State. At that time, and until recently, the power to request a CDO lay with the Home Affairs Minister.[54]

A CDO may be sought in relation to serious terrorism offences attracting a maximum penalty of 7 years or more.[55] If a CDO is approved by a judge, the offender will continue to be imprisoned beyond their original sentence. A CDO can be approved by a state Supreme Court where it is satisfied to a "high degree of probability" that the offender poses an "unacceptable risk" of committing a serious terrorism offence, and there is no less restrictive measure available that would be effective in preventing that risk.[56] This is a civil standard of proof and does not involve any further test of criminal guilt. A CDO can be approved up to a maximum of three years, but successive orders can be made in relation to the same person.[57] There is no limit on the number of successive orders, so in theory, an offender can be held indefinitely beyond their original sentence.

While CDOs continue the original detention, legally speaking they are not considered punitive. This was confirmed by the High Court in a challenge against the first use of the law—a CDO issued against Abdul Nacer Benbrika.[58] Benbrika was originally sentenced to fifteen years imprisonment for directing the activities of a terrorist organisation.[59] The organisation was a group of men found to be preparing a terrorist act, possibly against the Australian Football League Grand Final or the Melbourne Grand Prix.[60] The group was not connected to al-Qaeda or another listed organisation. Their plans involved conversations, sharing and watching extremist material, and some minor criminal activity (such as car rebirthing) to fund the group's activities.[61] They had conversations with an undercover police officer about bomb-making, but they had not attempted to source bomb-making materials,[62] so they were not charged with a conspiracy to prepare a terrorist act, like the offenders in *Elomar*.

Benbrika was denied parole, and in late 2020, the Home Affairs Minister applied for a CDO, which was approved by the Victorian Supreme Court.[63] Benbrika challenged the constitutional validity of the laws in the High Court on the ground that courts were issuing punishment without a test of criminal guilt—a breach of the separation of powers. The High Court found the laws to be constitutionally valid as CDOs were designed for community protection and not additional punishment.[64] This result was not surprising based on a long line of High Court decisions before it.[65] Benbrika was imprisoned for a further three years beyond his sentence, until December 2023. He was then released and placed under an Extended Supervision Order (ESO) for twelve months, subject to thirty conditions.[66]

To confirm Benbrika's CDO, the Victorian Supreme Court considered evidence from several expert psychologists. This process is provided for in division 105A, as the court can appoint one or more relevant experts if they are likely to materially assist in the decision-making process.[67] Both parties can also call their own expert witnesses. Before approving a CDO, a court must consider, among other things, any risk assessments from expert witnesses or corrective services, any rehabilitation programs the offender has participated in, the offender's criminal history in relation to serious terrorism offences, their compliance with any previous parole obligations or post-sentence orders, and the views of the sentencing court.[68]

In Benbrika's CDO hearing, the psychologists called as expert witnesses disagreed strongly on the value provided by the VERA-2R risk assessment tool.[69] Two psychologists trained in the tool, who were called as expert witnesses for the government, were supportive of the insights

it provided and confident in their assessment that Benbrika posed an ongoing risk to the Australian community. Another, one of Australia's most experienced forensic psychologists, was called on behalf of Benbrika. He was highly critical of VERA-2R, saying there was "remarkably little" research into it and that that it barely met the requirements of structured professional judgment (SPJ).[70] He testified there was no validated method for assessing the future risks posed by terrorist offenders, because the sample size of recidivist terrorists is extremely low, and the evidence that does exist globally suggests that terrorist offenders have a much lower rate of reoffending (as low as two to four percent) compared to other criminal populations.[71] He would have required something 'blatant' in Benbrika's interviews, such as an admission of future plans, to overturn the statistical likelihood that he would not reoffend.[72] Ultimately, though, the court viewed the VERA-2R assessments as beneficial to assessing Benbrika's risk to the community and confirmed the CDO. The assessments were not the only factor in the court's decision, but they were highly influential.

The court may well have held differently, had the Home Affairs Minister at the time (and now federal opposition leader) shared with it a 150-page consulting report on VERA-2R that was completed for his department.[73] In that report, two radicalisation researchers at the Australian National University reached very similar conclusions to those offered by the expert psychologist called for Benbrika. They found that VERA-2R had a "weak evidence base" and was unlikely to predict future extremist behaviour any better than chance.[74] They recommended that the authors of the tool conduct "far more thorough evaluations of the wider theoretical and empirical literature to help develop risk factors that accurately reflect behavioural trajectories towards radicalisation and terrorist violence."[75]

This report was made public only after the Independent National Security Legislation Monitor (INSLM) required the Home Affairs Department to produce it as part of his inquiry into the CDO powers.[76] The INSLM is an independent statutory office that conducts inquiries into whether Australia's counter-terrorism laws are effective, proportionate, necessary, and contain appropriate protections for individual rights.[77] The consulting report had not been disclosed to Benbrika and his legal team, but neither had the government made any public interest immunity claims to protect it. The INSLM found that the government simply "suppressed" the report, and that there was no excuse for failing to provide it, as it was clearly a relevant document that would influence the outcome.[78] The report contained no operational information that would have justified withholding it.[79] The INSLM found it "plainly and obviously wrong" for the government to claim, after the fact, that it was not relevant.[80]

Balancing the doubts about VERA-2R against the significant costs to liberty from imprisonment, the INSLM recommended that the CDO powers be abolished.[81] He concluded that imprisonment is "too profound a thing to be determined by prediction about the future based on this risk assessment process," which he described as "confounding."[82] That the additional detention, constitutionally speaking, is not considered punitive,[83] does little to change the outcome that an offender's original imprisonment is extended.

The INSLM was highly critical of CDOs and recommended that the powers be repealed.[84] In part, this was also because the laws included no requirement that the offender be rehabilitated during their continued detention. An offender's prior rehabilitation must be considered when approving the CDO,[85] but a CDO itself has no rehabilitative purpose. This much was confirmed by the Victorian Supreme Court, when Benbrika's lawyer tried to argue that rehabilitation should be considered as part of his continuing detention:

> *I think Mr Walters read too many unwritten words into ss 105A.7(1)(b) and into s 105A.8(1)(a). The stated purpose of the legislation is clear, and the safety and protection of the community is to be achieved, where appropriate, by the continuing detention of terrorist offenders who pose an unacceptable risk of reoffending. The question of whether an offender has rehabilitated is clearly relevant to the overall question whether he or she will pose an unacceptable risk, but the focus in s 105A.8(1)(a) is not on rehabilitation.*[86]

Following Benbrika's challenges and the INSLM's report, it is clear that a CDO can be issued to extend a terrorist offender's imprisonment, without any attempt to rehabilitate them. Offenders can participate in any deradicalisation programs that are available, and their efforts to rehabilitate must be considered relevant if the government applies for a subsequent order. However, the statutory purpose of the scheme is simply to hold them on a recurring basis for community protection. Achieving more effective long-term outcomes is based only on the same 'cautious hope', expressed in *Lodhi*, that their risk may diminish over time. If not, their detention may continue, potentially amounting to a life sentence that was not considered appropriate as the original punishment.

That Benbrika transitioned from maximum security to a CDO, then to an ESO, suggests that CDOs will not routinely be used to imprison terrorist offenders indefinitely. However, there remains, in the INSLM's words, "an irrebuttable risk of injustice."[87] It is impossible for an offender held or supervised post-sentence to prove they would not have reoffended if they were released without conditions. Regardless of the individual risk posed by Benbrika, the scheme creates a problematic cycle for all offenders with no clear exit point. How can detainees make a convincing argument they will not re-offend if they are not given the opportunity, and if their prior terrorist offending justifies their continuing detention?

With more hardened ideologues like Benbrika, who have a proven capacity to influence others,[88] the argument for community protection is undoubtedly strong. But the fundamental challenge—whether to deprive someone of their liberty based on assessments of their future behaviour—remains. The issue is not that VERA-2R provides no useful assistance to courts or invariably leads to false positives. As the Victorian Supreme Court noted, expert witnesses use the tool in combination with their experienced clinical judgment.[89] More so, as Psyzora et al. discuss, the core issue is that courts are engaged in the relatively new task of assessing risks posed by violent extremists, which raises "unique challenges" and many unanswered questions, including who is an appropriately placed expert to reliably gauge such risks.[90]

Meanwhile, the individual impacts are clear, when a deprivation of liberty is extended beyond the offender's original punishment. So, too, are those on core principles of criminal justice. Proportionality and finality in sentencing require that a punishment should fit the crime and that courts should achieve some final or certain resolution to disputes. The CDO scheme, at its core, allows possibly recurring extensions on what was initially considered an appropriate penalty for the crime committed. This also undermines the presumption of innocence: an offender, after serving what the sentencing court considered an appropriate punishment, must be considered innocent in the eyes of society once more.

Resolving these challenges is not a zero-sum game between recurring imprisonment and irreparable harm. There are many ways that risks posed by released terrorist offenders can be managed. Australia's counter-terrorism laws are extensive: there are control orders, preventative detention orders, citizenship stripping and deportation, extensive surveillance powers, and investigation and arrest for further criminal offences.[91] This could be for training,

support, association, possessing 'things' or documents connected with preparation for terrorism, and many other crimes. These are all triggered, as Whealy J put it in *Elomar*, "long before the preparatory acts mature into circumstances of deadly or dangerous consequence for the community."[92]

Conclusion

Sentencing terrorist offenders involves additional challenges on top of an already complex decision-making exercise. The starting point—instinctive synthesis—is the same, as sentencing judges weigh up many different factors to arrive at appropriate punishments in individual cases. However, the preventive nature of Australia's terrorism offences and a statutory rule to impose three-quarters of NPPs means their overall discretion is reduced. As a result, sentencing courts have explicitly given less weight to rehabilitation in favour of retribution, deterrence, denunciation, and primarily, community protection.

At the post-sentence stage, community protection continues as the dominant consideration. An offender can participate voluntarily in deradicalisation programs that are available to them, and their efforts at rehabilitation are relevant to whether an order will be issued – but the scheme has no rehabilitative purpose or component. In theory, an offender could be imprisoned indefinitely under recurring post-sentence orders, with no attempt to rehabilitate them. At both stages, there is simply a "cautious hope" that their extreme views and the danger they pose to the community will diminish over time.[93] Rehabilitation is said to have "little part to play."[94]

In these ways, Australian courts in terrorism cases undertake a predictive exercise without a sufficient evidence base. At the sentencing stage, there are no structured risk assessments, only instinctive or intuitive ideas about what the evidence shows they were likely to do next. At the post-sentence stage, risk assessments under VERA-2R play the dominant role, but the tool is highly divisive. The Victorian Supreme Court may well have decided not to approve Benbrika's CDO, the first issued under the scheme, had an independent consulting report on VERA's deficiencies been made available to the defence.[95]

These judicial decision-making processes, shaped by parliament, are more risk-averse than risk-based. They arise from a justifiable need to protect the Australian community from terrorism, but they must be bolstered by investments to develop more reliable risk assessment tools and a stronger, local evidence base around terrorist risk and recidivism.

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Endnotes

1 Minister for Home Affairs v Benbrika [2021] HCA 4.

2 Criminal Code Act 1995 (Cth), s 105A.7(6).

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25 Veen v R (No 2) (1988) 164 CLR 465.

26 Elias v The Queen [2013] HCA 31.

27 Veen v R (No 2) (1988) 164 CLR 465.

28 AB v R (1999) 198 CLR 111; Makarian v The Queen (2005) 228 CLR 357.

29 Ibid.

30 Elias v The Queen [2013] HCA 31, at [27].

31 R v Elomar [2010] NSWSC 10.

32 Ibid, at [79].

33 Lodhi v The Queen (2006) 199 FLR 303.

34 R v Touma [2008] NSWSC 1475

35 R v Elomar [2010] NSWSC 10, at [79].

36 Acts Interpretation Act 1901 (Cth), s 15AA.

37 R v Touma [2008] NSWSC 1475, at [83].

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39 R v Elomar [2010] NSWSC 10, at [60].

40 Ibid, at [64].

41 Ibid, at [60].

42 Ibid, at [68].

43 Ibid.

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46 DPP v Besim [2017] VSCA 158, at [113].

47 Ibid, at [114].

48 Alou v R [2019] NSWCCA 231, at [165].

49 Ibid, at [170].

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55 Criminal Code Act 1995 (Cth), s 105A.3.

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57 Ibid.

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59 R v Benbrika [2009] VSC 21.

60 Ibid. See also Shandon Harris-Hogan, "Australian Neo-*Jihadist* Terrorism: Mapping the Network and Cell Analysis Using Wiretap Evidence," *Studies in Conflict & Terrorism* 35, no. 4 (2012): 298-314, https://doi.org/10.1080/1057610X.2012.656344.

61 R v Benbrika [2009] VSC 21. Note that "car rebirthing" refers to the crime of stealing a car and giving it a new identity by modifying or removing identifying information (and sometimes swapping parts from another car) before selling it to an unsuspecting buyer.

62 Ibid.

63 Minister for Home Affairs v Benbrika [2020] VSC 888.

64 Minister for Home Affairs v Benbrika [2021] HCA 4.

65 As the High Court said in Benbrika [2021] HCA 4, at [41]: "This Court has consistently held … that detention that has as its purpose the protection of the community is not punishment."

66 "Decision in Attorney-General v Benbrika," Attorney-General's Department, last modified 19 December 2023, https://ministers.ag.gov.au/media-centre/decision-attorney-general-v-benbrika-19-12-2023. The ESO regime was created in 2021 and allows for release on conditions (similar to probation or parole).

67 Criminal Code Act 1995 (Cth), s 105A.6.

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69 Violent Extremist Risk Assessment 2 Revised, Custodial Institutions Agency, Ministry of Justice and Security, The Netherlands, last modified 2 February 2024, https://www.vera-2r.nl/.

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84 Donaldson, *Review into Division 105A*, 104.

85 Criminal Code Act 1995 (Cth), s 105.6AB.

86 Minister for Home Affairs v Benbrika [2020] VSC 888, at [411].

87 Donaldson, *Review into Division 105A*, 104.

88 For example, Benbrika had 51 visitors during his imprisonment, many of whom were considered 'not appropriate': Minister for Home Affairs v Benbrika [2020] VSC 888, at [37]. See also Harris-Hogan, "Australian Neo-*Jihadist* Terrorism."

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91 See Hardy and Williams, "Two Decades."

92 R v Elomar [2010] NSWSC 10, at [79].

93 Lodhi v The Queen (2006) 199 FLR 303, at [75].

94 The Queen v Abbas [2018] VSC 553, at [150].

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PERSPECTIVES ON TERRORISM

RESEARCH NOTE

Terrorism, Extremism and the 'Grey Area' in Between: Towards a Strategic Conceptual Model of Response in the UK

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Abstract: This research note proposes a strategic conceptual model for countering terrorism and extremism in the UK both now and in the future. In particular, the model aims to address three challenges that the authors argue have yet to be adequately resolved: i) the conceptual paradox of labelling certain non-violent but extremist ideologies as 'conducive' to or linked to terrorism; ii) the related problem of the merging of extremism of method and extremism of thought in the UK that has arguably blurred the remit of counter-terrorism; and iii) the challenge as to where to draw the distinction between so-called 'terrorist-related' extremism and 'non-terrorist-related' extremism. The proposed dual model emphasises the distinction between extremism of thought and extremism of method and outlines the implications that this has for response. The model allows for the possibility of extremist thought that does not lead to violence and the possibility of extremism of method (including terrorism) in pursuit of non-extremist ideology. Terrorism, rather than being viewed as separate from extremism, can, therefore, be seen as a subset of extremist methods. The hope is that this model represents an initial step in providing greater conceptual clarity and a clearer framework from which to tackle both terrorism and extremism.

Keywords: Terrorism, extremism, counter-terrorism, counter-extremism, conceptual, model

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Introduction

The UK has, in recent years, sought to develop an effective strategic response to the challenges of both terrorism and extremism. While several iterations of the CONTEST counter-terrorism strategy have been released since its first publication in July 2006, it launched its Counter-Extremism Strategy in October 2015 and formed the Commission for Countering Extremism (CCE) in March 2018. Although a number of strategies for countering terrorism and extremism have been outlined through these initiatives, this research note proposes a strategic conceptual model for countering terrorism and extremism that attempts to address what it argues are three problem areas that have yet to be adequately resolved: i) the conceptual paradox of characterising certain non-violent but extremist ideologies as 'conducive' to terrorism, or, more lately, as 'the ideology of terrorism' (and the implications of this), ii) the related problem of the inclination to merge extremism of method with extremism of thought in the UK that has arguably blurred the remit of counter-terrorism and iii) the challenge as to where to draw the distinction between so-called 'terrorist-related' extremism and 'non-terrorist related' extremism (concerning which the CCE has noted public confusion).

Conceptualising Terrorism as a Method

In any discussion on the parameters of counter-terrorism, one has to consider how terrorism is conceptualised in the first place. Through scrutinising the academic conceptual literature on terrorism over the past five decades,[1] and while a universally agreed definition has eluded both the policymaking and academic communities, it is possible to discern some areas of consensus. One of the most apparent of these is that terrorism entails violence or the threat of violence. A second is that terrorism is viewed as politically motivated (although there have been definitions that broaden motivation to religious and other 'ideological' causes). A further area of general consensus from the academic literature emphasises the psychological dimension of terrorism – its shock value and its intent to generate a psychological impact beyond the immediate victims to a wider audience who are the intended recipients of the 'terrorist message'.

A fourth area of consensus, and one that is of most pertinence to this article, is that terrorism should be conceptualised as a particular method of political violence. This does not allude to the particular types of violence used but rather, whatever form the violence might take, to its use in generating a wider psychological impact beyond the immediate victims for a political motive. Conceptualising terrorism as a method enables us to appreciate that there have been various types of actors that have employed the method of terrorism, including states, guerrilla groups, and extreme fringes of social movements, as well as terrorist organisations.

Terrorism has also been carried out as a method in the name of a wide range of ideologies. There are clearly some doctrines where the endorsement and justification of violence and terrorism are embedded in them (such as those of the Islamic State of Iraq and Syria (ISIS) or al-Qaeda), but such ideologies cannot take ownership of terrorism. This is because terrorism has also been carried out in the name of causes that are not in themselves inherently violent, such as nationalism, anti-abortion, animal rights and so on. Thus, if we are aiming to generate an understanding of terrorism that applies to all cases, it is important to conceptualise terrorism as a method, rather than as a phenomenon that is only specific to certain ideologies or actors. As such, in those cases where terrorism has been employed in the name of ideologies that are not intrinsically violent, the culpability lies with those who adopt this method, rather than with any non-violent ideology itself.

The Characterisation of the Terrorist Threat in the UK

It would be fair to suggest that from the mid-2000s, when the discourse of 'radicalisation' emerged in the UK, it was unclear as to precisely who the term 'radicalised' referred to and the extent to which counter-terrorism and counter-radicalisation were concerned with just violence and trajectories towards violence, or extremist but non-violent ideological thought as well. The 2011 version of Prevent provided greater clarity on this, and the intention was clear – that UK counter-terrorism strategy was not just concerned with those who were violent but also with an extremist but non-violent ideology said to be 'conducive' to terrorism. This, as the first author has previously argued,[2] appears to be something of a paradox. Conceptually, most terrorism scholars have viewed terrorism as ineluctably about violence and/or the threat of violence. Therefore, if an ideology is truly non-violent, it cannot itself be culpable for terrorism and conversely, if it is 'conducive' to terrorism, then one would expect some kind of doctrinal endorsement for terrorism (in which case it would not then be non-violent).

This broader counter-terrorism focus on the way people think ideologically as well as what they do has evolved within a context that has witnessed the merging of the discourses of terrorism and radicalisation—and, more recently, of terrorism, radicalisation and extremism—and this convergence has arguably served to blur the important distinction between extremism of method (in this case terrorism) and (non-violent) extremism of thought.[3] This has implications for the remit of both counter-terrorism and counter-extremism.

This is not to suggest that ideology is unimportant when countering terrorism. It certainly is in two ways. Firstly, there are belief systems in which violence is integral, and there may also be ideologies that have been interpreted, adapted or distorted to explicitly justify the use of terrorism and in which terrorism may then become 'ideologically embedded'. Secondly, the ideological framework in general of those employing the method of terrorism can indicate the parameters for both terrorist target selection and the lethality of the violence used.[4] Both of these are of indisputable concern to counter-terrorism.

The idea of a non-violent ideology that is 'conducive' to terrorism, however, represents something of a conceptual paradox. One could argue that the reach of counter-terrorism has ventured beyond the parameters of countering terrorism and into the realms of countering non-violent extremism, leaving the theoretical possibility that those who may deplore the method of terrorism and violence are nevertheless being placed within the 'terrorism space' by virtue of their 'extremist' but non-violent ideological beliefs. Specifically, for example, those who may peacefully endorse the idea of an Islamic 'caliphate' would be seen to adhere to a 'terrorist ideology' and as part of the terrorist problem.

The blurring of extremism of method and extremism of thought is evident in the latest iterations (2018 and 2023) of the UK's CONTEST strategy. While neither makes reference to extremist but non-violent ideology as being 'conducive' to terrorism, the 2023 version does refer to 'terrorist ideology' without defining it[5] and the 2018 iteration emphasises the need to 'respond to the ideological challenge of terrorism'.[6] In their references to 'terrorist narratives' and 'radicalisation', neither iterations draw any distinction between narratives of violence and (non-violent) ideological thought.[7]

We are therefore given to understand that ideological aspirations that are not in themselves violent may be deemed as linked to terrorism and as part of a 'terrorist narrative'. In the 2018 version of the Prevent strategy, there are 45 references to 'radicalisation.'[8] The much shorter Prevent section in 2023 includes nine references, and, while the two versions do not define the term, the government has defined radicalisation as "the process by which a person comes

to support terrorism and extremist ideologies associated with terrorist groups".[9] To be clear, 'radicalisation' here must therefore be taken to include—in addition to terrorism or trajectories towards the use of terrorism—the pursuit of non-violent ideological aspirations. In other words, this can include the same ideological aspirations as those employing terrorism but pursued in a non-violent way. For example, the peaceful call for a caliphate would seem to be part of an 'extremist ideology associated with terrorist groups.'

To demonstrate further this lack of the important distinction between extremism of method and extremism of thought, it is worth drawing upon other examples from the strategy. There appears to have been no particular need to define what is meant by 'terrorist content',[10] 'terrorist material online',[11] 'terrorist-related content',[12] or 'terrorist propaganda'[13] – it is therefore not clear whether these refer to just narratives of—and justifications for—violence or to non-violent ideological aspirations as well. One can reasonably draw the conclusion, however, that all of these terms include 'extremist' but non-violent ideology that is 'associated with terrorist groups'. To reiterate, those who may be adamantly opposed to the use of violence, but who peacefully advocate such ideology, are then paradoxically perceived as being part of the 'terrorism problem'.

The distinction also appears to have been overlooked in the definition of extremism that was adopted in the Prevent strategy of 2011, which was "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."[14] This implied that any activity (peaceful or otherwise) was extremist if it was carried out in support of an extremist ideology. Conversely, the definition excluded 'extremist' methods that might be undertaken in support of 'non-extremist' ideologies. One would not consider Scottish or Welsh nationalism, for example, as extremist doctrines but it is certainly possible that extremist methods could be employed in pursuit of them.[15]

As the first author has previously argued,[16] this Prevent definition, then, appeared to extrematise activity, whatever activity that might be, if it was carried out for an extremist cause. Hence a peaceful, public and legal protest in support of extremist views would itself become an act of extremism. At the same time, it excluded the possibility of extremist activity being carried out in the cause of a non-extremist doctrine. Yet, it makes no analytical sense to extrematise the method just because of antipathy towards the goal, nor, conversely, to dilute the extreme nature of the method just because one has greater sympathy with the cause. Adopting such positions would have parallels with the subjective application of the term 'terrorism' at the expense of a more objective analytical approach.[17] Thus, if we are to engage with the concept of extremism, and most particularly in a counter-terrorism context, one could strongly argue that a clearer distinction needs to be made between extremism of (non-violent) thought and extremism of method, because it is surely violence and the threat of violence, which is integral to terrorism, that should be of primary concern to counter-terrorism.

There may be two possible reasons that lie behind this convergence. The first is that this particular (non-violent) ideology has been linked to terrorism because it represents the non-violent version of the doctrine of ISIS and al-Qaeda – these similar ideological goals mark the former as associated with terrorism. Secondly, and linked to the first, there is a concern over the numbers that have transitioned through this 'non-violent ideology' or through 'non-violent organisations' to become adherents to, and perpetrators of, the violent dogma of ISIS.

There does appear, however, to be an empirical hiatus in relation to whether non-violent but extremist organisations represent a firewall against, or a conveyor belt towards violence. Lorenzo Vidino, while emphasising the need for further research in this area, suggests that

"given this lack of empirical evidence, intuitively it can be argued that in some cases non-violent Islamist groups act as firewalls while in others as conveyor belts. Radicalization is a highly individualized and unpredictable journey."[18] It is also often difficult in practice to draw distinctions between those who adhere to non-violent doctrines and organisations and those who do not. For example, some have drawn attention to the difference between strategic and principled non-violence. Emman El-Badawy (for instance) contends that, while at the individual level, there may be informal ties between violent and non-violent groups, at the group level, in cases of principled non-violence, such groups are likely to be regarded as firewalls against terrorism, whereas strategic non-violence is open to future adaptation and hence the possibility that groups adopting this approach could at some point serve as conveyor belts to terrorism.[19] The suspicion is that non-violent extremists will eschew violence, not because of a principled moral approach but rather because it is ineffective or inexpedient at a particular time.

The issue of transition between non-violence and violence, and the challenge that this presents, is not, however, the core focus of this research note. Rather, the concern here is to develop a strategic conceptual framework that can potentially offer greater clarity in underpinning responses to both terrorism and extremism in the UK context. If there are those who have crossed the threshold into violence, for example, to align themselves with ISIS, then they have embraced a violent ideology and the method of violence. This should not then mean that their former 'non-violent ideology', if it is truly non-violent, is expediently characterised as 'conducive' to terrorism or as a 'terrorist ideology'.

The above discussion has been limited to what the government and the Commission for Countering Extremism (CCE) refer to as "extremism that leads to terrorism". The CCE noted that "[CONTEST] states that extremism that doesn't lead to terrorism is addressed by the Counter Extremism Strategy".[20] What, then, are the criteria that determine which non-violent but extremist ideologies do not lead to terrorism and those that do? While one can discern the current impulse to characterise the non-violent version of ISIS ideology, for example, as linked to terrorism, the CONTEST strategy notes that the rejection of "the principles of participation and cohesion" is "associated with an increased willingness to use violence".[21] Does this, therefore, mean that any undemocratic ideology is potentially 'conducive' to terrorism (or might become 'the ideology of terrorism'), and in what circumstances can such 'conduciveness' be applied to those 'extremisms' of the future? The central contention here remains, however, which is that a non-violent ideology or organisation, cannot itself be culpable for, or conducive to, terrorism if it is truly non-violent.

These are important questions because they have significant implications for i) the remits of counter-terrorism and counter-extremism, ii) who is included in the 'terrorism space' and therefore of concern to counter-terrorism, and iii) on who might and might not be included as viable cooperative partners and effective dissuaders of violence in the response to terrorism.[22]

Non-terrorist-related Extremism

The Countering Extremism Commission, in its nationwide consultation exercise, observed public confusion in relation to the government's concept of extremism and 'grey areas' between extremism and terrorism:

> *Government policy is clearly divided up into three distinct areas: terrorism, extremism and integration…They recently released an updated Counter Terrorism Strategy (CONTEST) in June 2018, which states that extremism that doesn't lead to terrorism is addressed by the Counter Extremism Strategy (2015) … Two years after the publication of the CE Strategy,*

> *however, few people around the country are clear on this separation, or its benefits…People have repeatedly expressed confusion about the government's definition of extremism…The Commission believe [sic] a holistic understanding of extremism is required and recognise that there are often grey areas of overlap between … extremism and terrorism.*[23]

The CCE's assessment[24] of CONTEST's view that 'extremism that doesn't lead to terrorism is addressed by the Counter Extremism Strategy' seems to be followed, then, by a degree of scepticism as to whether such a clear distinction can be made between 'terrorism-related' and 'non-terrorism related' extremism. If the CCE's remit is indeed limited to non-terrorism-related extremism or is 'outside of terrorism'[25] then one might infer that this would exclude non-violent extremist ideology said to be 'conducive' to terrorism (or the 'ideology of terrorism').[26] Otherwise, it might seem contradictory to suggest that such extremism can be both conducive to terrorism and non-terrorism related.

Yet, such extremism does appear to be within the remit of the CCE. Its report on hateful extremism of February 2021 includes activity that, although "not [meeting] the terrorism threshold", helps "to create a climate conducive to terrorism, hate crime and violence" and that "glorifying terrorists and their murderous actions help create a climate that is conducive to terrorism and such extremist activity should be outlawed as part of a new legal hateful extremism framework."[27]

Thus, confusion and overlap seem to be evident not just between what is considered 'terrorism-related' and 'non-terrorism-related' extremism but also, in this case, between the remit of counter-terrorism and the CCE's remit in countering extremism. The Commission itself noted, for example, that "[the] Government should be clearer on the difference between work to counter terrorism and to counter hateful extremism."[28]

Conceptualising Extremism

It is, of course, impossible to construct a value-free definition of extremism. Perceptions of what constitutes extremism can vary widely, but what one can do is attempt to conceptualise extremism in a particular context to establish a benchmark or a 'mainstream' against which extremism can be identified as "beyond the norm".[29] As such, any British definition of extremism can never be a universal 'truth' but would be one that is tailored to a particular (British) context, hence the Prevent definition has included "vocal or active opposition to fundamental British values" as well as "calls for the death of members of our armed forces". For many, extremism is the antithesis of democracy, that democratic values "are rejected by extremists, such as popular sovereignty, the equality of all citizens, freedom of belief and freedom of speech."[30] Perhaps, in the British context, extremist thought is best understood as contravening democratic values and presumably, therefore, British values.

An important part of this conceptual discussion, as argued earlier, is to acknowledge the distinction between extremism of method and extremism of thought. Cassam, in his philosophical analysis of extremism, also notes this distinction, referring to the notion of 'methods' extremism (as distinct from 'positional' or 'ideological' extremism) with these methods as 'extreme in and of themselves'[31], while Eatwell and Goodwin also capture these two distinct dimensions:

> *Extremism is, therefore, best seen as having two dimensions – an action-based one and a values-based one….it is possible to conceive of using extreme actions in defence of liberal democratic values. For example, violent street protest could be used against a state that abused civil liberties, such as the right to freedom of speech. Conversely, it is possible to use democratic means to advocate anti-democratic values…*[32]

Ronald Wibtrope, in his research in this area, usefully categorises three types of extremists – those who are: i) extreme by method but not by goal; ii) extreme by goal and method; and iii) extreme by goal but not method.[33]

In their two pyramids model of radicalisation, Clark McCauley and Sophia Moskalenko draw the distinction between the radicalisation of opinion and the radicalisation of action, and emphasise that the language used in academia and policymaking must reflect and not impede this. They presented these as two separate[34] and psychologically different forms of radicalisation. Their approach has been reflected in Schuurman and Carthy's recent analysis that compared the radicalisation trajectories of a total of 206 individuals, half of whose radicalisation led to involvement in terrorist violence and half whose radicalisation did not. Within their analysis, they found that "membership of an extremist group is associated with *non*-involvement in terrorist violence."[35] They explain this finding by emphasising that the majority of extremist organisations in Western countries recognise the powers that the state can yield against them, especially if they resort to the use of terrorism. They, therefore, seek to socialise their membership into engaging barely within the boundaries of what is legally permissible. This finding that extremist group membership is less likely to lead to involvement in terrorism further emphasises the need to differentiate between our understanding of, and approach towards, terrorism and extremism.

So where do these deliberations lead us in terms of addressing terrorism, extremism and the 'grey area' in between, and in relation to generating a sustainable conceptual framework that might serve as a strategic template for future extremisms? One could perhaps propose a basic model as depicted in Figure 1 below.

Figure 1: The Dual Model of Extremism

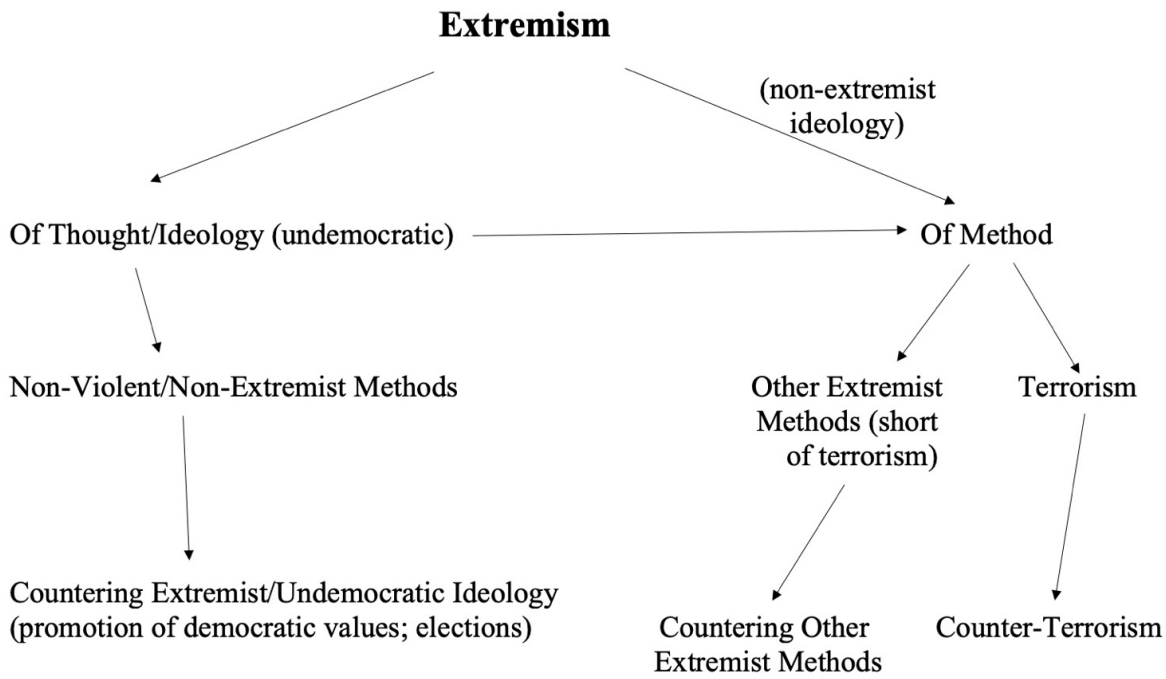

Figure 1 presents the proposed dual model of extremism. On the left-hand side is extremism of thought/ideology and on the right-hand side is extremism of method. Second down on the left-hand side is extremism of thought that is non-violent, does not endorse terrorism or any other extremist methods and is within the law. Of course, those who espouse undemocratic ideology still embrace the democratic right to peaceful freedom of expression, even if the goal is

to undermine democracy (however unpalatable this may be to the majority). The appropriate response to this, as represented in the figure, is to encourage the national and societal consolidation and promotion of democratic values as a counter to dissenting doctrines, along with elections that provide the means for public expression and rejection of such ideologies.

Germany serves as a pertinent and informative example of where countering extremism is inextricably linked with the promotion of democracy. It does this through its 'Federal Government Strategy to Prevent Extremism and Promote Democracy'[36] and through initiatives such as 'Live Democracy! Active against Right-wing Extremism, Violence and Hate'[37] and 'Cohesion Through Participation'.[38] At the heart of the German approach is a series of measures designed to prevent and confront those rejecting the system of values, law, and democracy. This is achieved by the Federal Government promoting democratic participation, supporting those who advocate democracy locally, and attempting to protect and strengthen social cohesion and human dignity. Their focus is on a range of different forms of extremism, including left and right-wing, Islamophobia, 'Islamic' radicalisation, antisemitism, homophobia, transphobia, and antiziganism.[39] This has included support provided across Germany to local authorities as 'Partnerships for Democracy.'[40] Within the German case, then, it is clear that the prevention of extremism is very much tied in with the promotion of democracy.

Returning to the model, the arrow linking extremism of thought/ideology to extremism of method indicates ideology that endorses and justifies extremist methods. These methods may include terrorism (or 'violent extremism' to denote violence advocated on behalf of an extremist ideology) or extremist methods short of terrorism (see below). The arrow linking extremism to 'of methods' denotes such methods being carried out for non-extremist doctrines (as indicated in brackets).

As noted, the model accommodates the notion that there may be other extremist methods that fall short of terrorism. One challenge may be in deciding what the parameters are for these other extremist methods and, indeed, whether the legal/illegal threshold is a satisfactory one to determine this, or whether the law needs to be reviewed and refined to ensure that all activities that are deemed 'extremist' are criminalised. While for illegal activity, there may be criminal justice intervention, the CCE, in its 'Hateful Extremism…' report of 2021, was concerned that the law was inadequate in dealing with much pernicious activity, in particular, what they termed as 'hateful extremism'. The report drew attention to such behaviours as "inciting and amplifying hate" and "the obstruction of civic engagement [and] community cohesion."[41] Other extremist methods might also include what Berger refers to as "[h]ostile acts [that] can range from verbal attacks … to discriminatory behaviour."[42]

At the time of writing, the new Labour government (elected in July 2024) has announced a review of the UK's counter-extremism strategy. Alongside 'Islamist' and 'far-right' extremism, the review is reported to be considering the inclusion of 'extreme misogyny' as a form of extremism.[43] This relates to concerns around the emergence of the 'incel' or involuntary celibate movement and the dissemination of misogynistic communication online, as well as, in some cases, the endorsement and use of violent methods. Once again, while clearly the use of violence (and its threat) constitutes an extremist method and so in such cases can arguably be regarded as terrorism because of the ideological motivation, the challenge is also to determine what constitutes 'other extremist methods' that might fall short of terrorism.

The above model attempts to offer a conceptual approach and framework for addressing all forms of extremism (including terrorism). In particular, it does not exclude the possibility of extremism of method on behalf of non-extremist ideology. Secondly, rather than being viewed

as separate from extremism, terrorism can be seen as a subset of extremist methods. Thirdly, the model allows for the possibility of extremist ideologies (i.e. undemocratic ones) that do not lead to violence.[44]

Conclusion

If one is to generate a 'holistic understanding of extremism' that the Countering Extremism Commission has called for, then a strategic conceptual framework needs to be developed that adequately captures both extremism of thought and extremism of method, including (but not exclusively) the use of terrorism. This research note proposes such a framework that includes those who may hold to non-extremist doctrines but who opt for extremist methods and, conversely, those who hold extremist views but do not employ extremist methods, neither of which possibilities are adequately reflected in the UK government's approach to extremism. The model also includes extremisms that are 'not related to terrorism'. It is hoped that the above represents an initial step in providing greater conceptual clarity and a clearer framework from which to tackle extremism and terrorism both now and in the future.

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PT PERSPECTIVES ON TERRORISM

RESEARCH NOTE

Critical Perspectives on Anti-Government Extremism

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Abstract: While the Global North is still facing the challenge of traditional forms of violent extremism (e.g. right-wing, left-wing, and militant Islamism), intelligence services and scholars alike have highlighted potential threats from novel extremist orientations that have (re) emerged over the past decade. One such variant is captured by the notion of anti-government extremism, which in its most simple form describes extremist attitudes or actions that oppose government and institutions of authority. In this research note, we offer critical perspectives on anti-government extremism as an analytical construct. Specifically, we raise questions concerning the extent to which the current definition of anti-government extremism always captures attitudes and/or actions that are indeed i) extremist, and ii) anti-governmental. We then discuss the implications and potential negative constitutive effects these unanswered conceptual issues may raise in relation to preventing and countering violent extremism (P/CVE), and conclude with a call for further debate and research on the theoretical and analytical merits of anti-government extremism.

Keywords: Anti-government extremism, radicalisation, political violence, P/CVE

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Introduction

Over the past years, scholars in the field of preventing and countering of violent extremism (P/CVE) have been paying increasing attention to individuals and groups that oppose, distrust, and/or actively revolt against government or state institutions, seemingly motivated by narratives not captured by traditional extremist ideologies, such as right-wing, left-wing, or militant Islamist extremism.[1] In the wake of anti-Covid demonstrations, an apparent global rise in conspiracy thinking, and a growing popularity of fringe groups such as QAnon and sovereign citizen movements like the "Reichsbürger", this seemingly novel phenomenon has been picked up by professionals and academics alike. In current reports, it goes by many different names, including anti-establishment extremism, anti-elitist extremism, anti-authority extremism, anti-institutional extremism, and anti-democratic extremism.[2] In this research note, we subsume these different labels under the recently coined umbrella term of anti-government extremism, which appears to be the most common denominator of this phenomenon and, in its most simple form, describes extremist attitudes and/or actions that oppose government and institutions of authority.[3]

Lately, scholars have emphasised a need for more research into the conceptual and analytical nature and value of anti-government extremism. This need is perhaps most strongly articulated in a special issue of this journal published in 2022, which specifically aimed "to open a scholarly discussion on (...) and give us a better grasp on this slippery AGE [anti-government extremism, ed.] concept and phenomenon."[4] Articles in this special issue and a sequel issue[5] have already contributed to several advancements in the field, including conceptual matters,[6] analyses of anti-government movements,[7] threat assessment of anti-government extremism,[8] and perspectives on anti-government related P/CVE.[9] However, as noted by Bjørgo and Braddock, one pivotal question remains unanswered: "Is anti-government extremism a useful descriptive or analytical concept at all?"[10]

In this research note, we address this gap in the literature by offering a critical perspective on the descriptive and analytical value of anti-government extremism as a concept. Based on current perspectives, we specifically argue that it is questionable to what extent attitudes and actions labelled as anti-government extremism are indeed always i) extremist and/or ii) anti-governmental. After addressing these conceptual inconsistencies in turn, we conclude this research note with a brief discussion of their unanswered status for future research and professional P/CVE related work focusing on anti-government sentiments.

Historical and Contemporary Perspectives on Anti-Government Extremism

It seems natural that a research note offering critical views on anti-government extremism should start by outlining historical and current perspectives on the phenomenon and concept. In their editorial introduction in the aforementioned special issue, Bjørgo and Braddock describe how anti-government extremism appears to take different expressions in terms of its organisation, relation to conspiracy theory beliefs, collective action modus operandi, and targets of violence. Specifically, they highlight four forms of anti-government extremism: i) movements, networks, and individuals that reject the legitimacy of government on a principle basis, including refusal to adhere to or obey state authorities and regulations; ii) communication of conspiracy theory beliefs that undermine the legitimacy of either government, state institutions, specific policies, or political figures; iii) demonstrations and opposition to specific policy issues; and iv) political violence, threat, harassment, and/or plots targeted against politicians, or government officials.[11] The common characteristic of these different expressions is that they all revolve around some

form of opposition to an established government, and thus bare close resemblance to the most basic form of anti-government extremism as defined in the introduction to this research note. In this regard, Sam Jackson emphasises that while this basic definition lacks important nuances (as we will outline below), it is indeed the focus on government as a primary or consistent "source or course of perceived crisis"[12] that sets anti-government extremism apart from other extremist orientations or terrorism in general. Borrowing the terminology of Webber and Kruglanski and their notion of "terrorism legitimizing narratives", one could say that governments – or state authorities more generally – thus represent the culprit of a perceived grievance which might lead to a moral justification for political violence.[13]

Although being described as a unique form or variant of extremism, the concept of anti-government extremism has historically been linked to other extremist ideologies. Later in this research note, we will dive deeper into the paradoxes surrounding these ties. Nonetheless, it is generally accepted that anti-government extremism is "nothing new", but, in fact, has a long history. For instance, Bjørgo and Braddock describe how anti-government extremism is deeply connected to three historical "waves of far-left extremism".[14] Following the historical analysis of the evolution of left-wing extremism by Davies and Zdjelar, they argue that anti-government extremism can be traced back to the anarchist revolutions in Russia and Western Europe from the 1880s to 1920 (the "first wave"), throughout the anti-colonialist opposition from the 1920s to 1960s ("second wave"), and culminating with the rise of the New Left from approximately 1960 to the 1990s ("third wave").[15] While ideological movements in all these periods shared anti-government sentiments, Bjørgo and Braddock emphasise that there were also important differences between them. For instance, while the anarchist first wave, in general, rejected *all* forms of government or state authority, the anti-colonialist movements opposed *specific* governments. Moreover, New Left movements comprised both anarchist groups (e.g. the German Red Army Fraction or Italian Red Brigades), and Marxist-Leninist groups (e.g. the Japanese Red Army), which opposed Western imperialism.

With the substantial decline in left-wing extremism over the past decades, it seems, however, that anti-government extremism "has increasingly taken a turn towards the far right."[16] For instance, in a recent conceptual paper, Jackson explicitly subsumes anti-government extremism under certain forms of right-wing extremism "that seeks to restore some imagined golden past," while acknowledging that such a perspective also may be influenced by his specific US research context.[17] This proposed link between anti-government extremism and right-wing extremism is, however, not isolated to the US, but also marks a general trend noted by both scholars and intelligence services in a European context.[18]

Additionally, Jackson also offers several noteworthy perspectives on how to expand and nuance the most basic definition of anti-government extremism. First, he presents a key conceptual distinction between *ideological* anti-government extremism, which opposes government on a general level, and *issue-driven* anti-government extremism, which opposes government on a finite number of policy areas. While he notes that it can be difficult to distinguish the ideological and issue-driven variants from one another and that the boundaries between them are indeed blurred, he argues that the distinction may provide a valuable explanation for cultural variations in the prevalence of anti-government extremism (e.g. differences between the US and Europe).

Second, Jackson emphasises that although anti-government extremists generally oppose the government, they may react to government change in different ways. For instance, while some will retain their anti-government stance and view a new government "as a change without a difference",[19] others might abandon their (previous) anti-government sentiments and identify with new leadership. While this latter possibility may seem counterintuitive to the

notion of anti-government extremism (as we will discuss in more detail later), he argues that fading government opposition may reflect a position of purely issue-driven anti-government extremism that will disappear with changing policies.

Finally, it is mentioned that there may be cultural differences in both the scope and nature of anti-government extremism. Jackson is, for instance, very transparent about his US-based approach to the subject and notes that anti-government extremism, particularly in its ideological form, may be most present there due to the nation's strong libertarian sociopolitical history. As other researchers show, anti-government extremist movements — although it is difficult to entangle the extent to which these are ideological or issue-driven — also appear to exist in both Australia and several European countries.[20]

Altogether, the historical and contemporary perspectives outlined above represent important contributions and advancements in understanding the notion of anti-government extremism. At the same time, it is our contention that these current perspectives raise further questions to be answered, particularly regarding the descriptive and analytical value of anti-government extremism as a concept. For instance, if anti-government extremism can be considered a variant of, or subsumed under, either left-wing or right-wing extremism, to what extent is it indeed an "extremist" orientation in its own right? Likewise, if certain anti-government extremist movements can get behind (particular) governments and/or institutions of authority, to what extent are they indeed "anti-governmental"? For the remainder of this research note, we explore these questions in greater detail and discuss their potential implications for the conceptual and analytical value in relation to anti-government extremist research and P/CVE.

While we do not claim to have all the answers to these questions, we believe that an important first step in acquiring them is to voice concerns that can guide future research and P/CVE practice. In this regard, and in commending the important and detailed conceptual work of others, we should also emphasise our specific European research context. Just as Jackson argues that his US-focused approach does not necessarily translate to other cultural contexts, so may it be that the perspectives we offer here will find more merit in some regions or countries in the world than others. Moreover, we should also mention that the following critical perspectives should not be considered a direct critique of any specific academic work on anti-government extremism. Rather, we view our own comments as contributions to the cumulative body of work aimed at better understanding the violent radicalisation towards (anti-government?) extremism.

To What Extent is Anti-Government Extremism Indeed "Extremist"?

To discuss the "extremist" nature of anti-government extremism, it is necessary to first offer some definitions on the concept of extremism itself. While commonly acknowledged as highly contested, there seems to have emerged a consensual view that extremism denotes the final stage or position that follows a process of cognitive (attitudes) and/or behavioural (actions) radicalisation.[21] Extremism is usually categorised into different violent extremist ideologies or "orientations"—e.g. right-wing, left-wing, religious, nationalist/separatist, and single-issue extremism[22] What sets these extremist orientations apart is that they differ in terms of who they regard as the main culprit of their particular grievance(s), and the main objectives they strive towards.[23] For example, as described by Doosje et al., the main concern of many right-wing extremist groups is safeguarding the perceived high-status position of the "white race",

where immigrants are considered a key threat. For left-wing extremists, the main concern is often a more equitable distribution of wealth, goods, and resources, where the constitutive unjust effects of capitalism are seen as the core enemy.

While acknowledging the existence of these specific variants of extremism, there are some who have started to pay greater attention to the *generic* aspects of violent extremism—i.e. the psychological underpinnings that *all* specific extremist orientations share.[24] From a generic perspective:

> *"(...) extremism in itself can be defined as an intense desire for and/or pursuit of universal and comprehensive change in one's own and the common life socially, culturally and/or societally, where the concern for human coexistence is set aside (Bertelsen, 2016; 2018). Such a definition accentuates extremism as both a) an attitude towards constructing or reconstructing one's life or sociocultural context in a significantly different way than they currently are constituted (Schmid, 2013) and b) intolerance and setting aside concerns about human coexistence (Bertelsen, 2016)."*[25]

In addition, various scholars have come to acknowledge that *the legitimisation of violent action* in pursuit of this "universal and comprehensive change" is another core characteristic which allows us to distinguish extremism from related concepts of political protest like "radicalism" and "activism".[26] While radicals and activists alike might support similar social, political, or ideological changes, radicals often only support or engage in illegal action without endorsing or carrying out violence that targets civilians, whereas activists typically operate within the bounds of peaceful and/or lawful methods. Extremists, on the other hand, justify the use of violence as a necessary and acceptable means to achieve their goals, viewing such actions as integral to the process of enacting profound transformation.

These defining features of violent extremism give rise to at least two questions regarding the extremist nature of movements, attitudes, and actions associated with anti-government extremism. First, to what extent can anti-government extremism indeed be considered extremist in a generic and/or specific sense? Second, to what extent does anti-government extremism involve a cognitive and/or behavioural legitimisation of violence? Starting with the latter question, it seems that the justification of terrorist violence inherent to generic extremism cannot always be found in anti-government sentiments and movements labelled as such. For instance, while there were numerous anti-government protests during the Covid-19 pandemic and lockdowns, most of these events were indeed democratic in nature with relatively few protesters engaging in violent or illegal activities.[27] Similarly, despite alarmist discourses in the public debate, the amount of actual terrorist attacks planned or committed by anti-government extremists appears to be sparse and, in prevalence, hardly comparable to those by right-wing extremist groups or jihadist movements more generally. The 2021 attack against the US Capitol is arguably the most well-known violent manifestation of anti-government extremism to date, although, here too, questions remain about the extent to which the event truly constituted a terrorist attack, or rather an "insurrection", "siege", or "rally". All in all, this general lack of (justification for) terrorist violence begs the question as to whether the observed *general* rise in anti-government sentiments usually has more to do with "radicalism" — i.e. government or state opposition that may appear controversial, counter-mainstream, and in some cases even illegal, but does not (generally) endorse or use violence against civilian populations — rather than extremism in itself. In the end, it suggests that only a handful of people in the so-called anti-government movement may actually be eligible for being labelled as extremists.[28]

At the same time, for those arguably rare instances where the legitimisation of violence is indeed a part of anti-government sentiments or ideologies, it still remains difficult to see the merits of anti-government extremism as a *specific* extremist orientation. This relates back to our previous comments on the ways that specific strands of extremism differ in what they consider to be the main culprit of their particular grievance(s) and the main objectives they strive towards.[29] As Jackson argues, anti-government extremism — in contrast to other varieties of extremism — does not target the government as a proxy, but as *the* intended target of their ideology. In other words, to anti-government extremists, "the government is not a victim that stands in for a broader target that the actor hopes will be terrorized by their act."[30] With this quotation, Jackson appears to refer to the difference between *performative* versus *instrumental* forms of (ideological) violence. Performative violence is symbolic in nature, in the sense that the violent act serves as "moral messaging,"[31] whereas instrumental violence is aimed at serving a strategic purpose. According to Mark Juergensmeyer, terrorist acts are inherently performative (at least to some extent), as their ultimate goal is to spread fear in society and send a message of ideological superiority to their perceived "audience".[32] As such, performativity (or symbolic messaging) is the core characteristic that sets terrorist acts apart from insurgency violence, war crimes, and homicides. Since Jackson maintains that this secondary objective is missing in anti-government extremists' ideologies, where the government appears to be targeted for instrumental reasons instead, one may question whether this truly constitutes ideological "extremism" in the traditional sense.[33]

The merits of labelling anti-government extremism as a specific extremist orientation in its own right can seem even harder to justify given its relations to other extremist ideologies. Indeed, if anti-government extremism historically has been associated with far-left anarchism,[34] and now has taken a turn to the far-right,[35] it seems that—at least theoretically—it *can* run the full spectrum of (political) extremist ideologies. It is therefore questionable what, if anything, sets it apart from both left-wing and right-wing extremism – or even nationalist or separatist extremism, when looking at specific anti-governmental manifestations such as the anti-colonialist movements in Europe during the 20th century,[36] or contemporary American Sovereign Citizen Movements and the German Reichsbürger movement.[37] In other words, in those cases where anti-government movements or sentiments include a legitimisation of violence, it is quite easy to see how such attitudes and/or actions match generic aspects of extremism quite well—e.g. the intense desire or pursuit of comprehensive change where the concern for human coexistence is set aside—and yet difficult to see how they move beyond these generic features and take a specific form of their own.

Following this reasoning, the current comparison between anti-governmentalism and right-wing extremism has received ample scholarly attention. Traditionally, within the field of P/CVE, anti-governmental attitudes were considered to be a key *characteristic* of right-wing extremist movements, rather than a form of extremism in itself. Indeed, over the past decades, various scholars and actors have explicitly operationalised right-wing extremism in relation to anti-governmentalism.[38] For example, according to Johnson, between 1993 and 1999, the FBI provided various definitions of right-wing extremism, each of which encompassed the element of anti-governmentalism as a central feature.[39] Furthermore, in 2013, Gruenewald and colleagues defined individuals and groups adhering to the far-right as, among others, "suspicious of centralized federal authority, reverent of individual liberty (especially their right to own guns, be free of taxes)," and noted that they "believe in conspiracy theories that involve a grave threat to national sovereignty and/or personal liberty and a belief that one's personal and/or national "way of life" is under attack and is either already lost or that the threat is imminent", which very much mirrors the contemporary descriptions of respective anti-government extremist groups.[40]

More recently, others—much like Jackson—have proposed that anti-government extremism is, in fact, a specific *variant* of right-wing extremism, which should be considered against a broader typology of various extremist manifestations.[41] For example, according to Perliger, right-wing extremism consists of four distinct types of social movements—respectively white supremacists, pro-life activists, fundamentalists and anti-governmentalists.[42] While such distinctions do not render the concept of anti-governmentalism useless per se, they do raise questions about its exact relation to right-wing extremism. To what extent does the emergence of "anti-government extremism" as a category on its own reflect a more general change in our understanding of right-wing extremism – moving away from *conservatism* as its main central feature, and embracing the objective of radical societal *change* instead? Although Jackson suggests that the relation between right-wing extremism and anti-governmentalism is ultimately context-specific (with stronger convergence in the US, but less of an overlap in Europe) – this answer is not satisfactory when our understanding of right-wing extremism in itself appears to be shifting, too.[43]

Finally, it has been suggested that anti-governmental attitudes or institutional distrust are rather *risk factors* for ideological radicalisation more generally[44] which raises even more questions about the validity of "anti-government extremism" as a distinct concept. In taking a risk-factor approach, the causal relation between anti-government sentiments and (radicalisation towards) extremism becomes blurred even more, which is a caveat that has generally remained unaddressed by scholars. Are Covid-scepticism or conspiracy-thinking the *result* or the *cause* of government distrust?[45] While existing reflections on anti-government extremism seem to imply that the former precedes the latter – there is currently insufficient empirical evidence that can support this assumption.

To What Extent is Anti-Government Extremism Indeed "Anti-Government"?

In addition to the considerations outlined above, the notion of "anti-governmentalism" raises questions as well. Overall, understanding the current wave of general institutional distrust through the lens of "anti-governmentalism" suggests that groups and individuals that sympathise with this sentiment denounce all forms of government, as is common for those anti-governmentalists self-identifying as anarchists.[46] In reality, however, it is increasingly acknowledged that the wave of radicalised conspiracy thinkers the Global North is currently facing takes a (sometimes contradictory) stance towards prevailing (democratic) powers and institutions.[47] In the context of the United States, for example, various anti-government extremist groups have proven to be strong supporters of Donald Trump — including the Proud Boys, the Oath Keepers and various QAnon strands.[48] Although scholars such as Jackson provide various scenarios for how anti-governmental extremist groups may evolve in the wake of a change in government leadership, the core critique – that anti-governmentalists do not appear to be *anti*-government per se (or, at the very least, are still able to find authority in existing political structures and/or institutions) — still holds up.

The US is not unique in this regard, as similar examples can be found in other countries as well. For example, in the Netherlands, the far-right party Forum for Democracy (FvD) has become a prevalent political actor spreading conspiracy theories, antisemitic rhetoric, climate change denialism, and pro-Russian discourse.[49] Over the years, its frontman Thierry Baudet has turned into an important voice of anti-government sentiments and vaccination scepticism. In 2022, Baudet even publicly declared his belief in a reptilian world order — although this was later downplayed as a "metaphor" — in reference to David Icke's antisemitic conspiracy theory,

which has recently regained popularity among anti-governmentalists.[50] Although it is hard to say whether 'true' anti-governmentalists acknowledge Baudet and his FvD party as a legitimate political authority, both were frequently featured at anti-government protests in the wake of the Covid pandemic.

These observations are mirrored in other political contexts as well. Wolfgang Gedeon, a politician affiliated with the German Alternative für Deutschland (AfD), previously suggested that the Covid-19 virus was, in fact, created as an American bioweapon.[51] Moreover, in the United Kingdom, pro-Brexit politician Nigel Farage has been accused of spreading conspiracy theories in relation to the European Union, portraying it as an undemocratic and corrupt institution that seeks to undermine national sovereignty, and about the philanthropist George Soros, suggesting that Soros and his Open Society Foundations have undue influence over global politics.[52] Other internationally known politicians, such as Matteo Salvini (Italy), and heads of state, including Viktor Orbán (Hungary) and Jair Bolsonaro (Brazil), have similarly been accused of spreading anti-globalist, anti-immigration and/or anti-vaccination conspiracies.

The examples above resonate with empirical studies suggesting that there is indeed a link between populism and the belief in (and spreading of) misinformation and conspiracy theories more generally.[53] To illustrate, the conspiracist idea that the Covid-pandemic was not just a man-made crisis but was systemically coordinated by a malicious government (the so-called "plandemic" theory) strongly resonates among populist political parties in general.[54] This is not surprising, considering populism itself appeals to a divide between "the elite" and "the people", which mirrors the rhetoric of anti-governmentalists.[55] Moreover, as Frens, Van Buuren and Bakker show, both draw on the use of so-called "empty signifiers",[56] referring to words or phrases "frequently used by groups that seek to gain a voice in the political sphere" but that are essentially devoid of any meaning.[57] Altogether, the observation that anti-governmentalism is, in fact, very much featured by (and possibly even amplified) by political authorities might justify moving beyond an anti-government focus at large. It could be valuable to explore other conceptualisations, such as "anti-authoritarian extremism" or "anti-institutional extremism" —a shift already observed in the discourse of the Dutch General Intelligence Agency and Danish Intelligence Service— to reflect how such attitudes can manifest themselves in a conventional governmental setting as well.[58] Additionally, these broader concepts acknowledge that sentiments of hostility or distrust are not focused on the government per se, but also extend to academic institutions, medical professionals (including so-called "Big Pharma") and the media at large.[59]

Lastly, drawing on the differentiation between ideological and issue-driven anti-government extremism as introduced by Jackson, one may wonder to what extent these specific forms can indeed be considered "anti-government".[60] This is particularly the case for the strand of "issue-driven anti-government extremism", which, as Jackson writes, "opposes a government because of that government's stance (or course of action) on an issue."[61] Jackson mentions issues such as immigration, economic policies, and abortion rights as examples of topics that issue-driven anti-government extremists may focus on. However, it remains unclear to what extent such a movement is then *anti*-government per se, since it is not the government itself, but dissatisfaction with governmental policies and/or decisions that lie at the heart of this ideological strand. It thus raises the pressing question of where "regular" opposition towards a specific governmental administration (such as the Biden administration in the US context) ends, and anti-governmentalism begins.

From this point of view, it is similarly unclear if (and how) Jackson's concept of issue-driven anti-government extremism relates to what is generally considered "single-issue extremism" in other

strands of the radicalisation literature. This concept commonly refers to those ideologies where one particular (usually political) topic inspires extremist attitudes and/or actions. G. Davidson Smith, who was among the first to provide a definition, described it as "extremist militancy on the part of groups or individuals protesting a perceived grievance or wrong usually attributed to government action or inaction"[62] – which obviously bears strong similarities to the definition of issue-driven anti-government extremism that Jackson provides. Although the heterogeneous nature of single-issue extremism caused it to receive only limited scholarly attention over the decades,[63] the term itself is well-accepted and still commonly used in empirical studies on extremism today.[64] This could bring into question both the empirical validity and academic necessity of new concepts like "issue-driven anti-government extremism"– and makes us wonder if this phenomenon is not better captured with existing and commonly well-accepted frameworks such as single-issue extremism.

Discussion and Conclusion

In this research note, we have explored the conceptual value of "anti-government extremism". Although over the past years, much has been written about this phenomenon already, its exact contribution to the field of radicalisation and P/CVE remains unclear, and many questions surrounding its relation to other concepts persist.[65] By breaking the concept down into its main components (those being "extremism" and "anti-governmentalism") we illustrated how the notion of anti-government extremism suffers from at least two unresolved issues. First, we argued that although anti-government extremism indeed *can* be considered extremism in a generic sense, there are good reasons for not considering anti-government extremism as a specific extremist orientation itself. The reason for this is that although ideological anti-government extremism more or less is equivalent to violent extremism in a generic sense through the desire for comprehensive sociocultural/political change, anti-government "ideologies" or issues can, in many cases, be subsumed under other extremist orientations, such as right-wing, left-wing, nationalist or separatist extremism. Additionally, despite various scholarly attempts at bridging the two, the relation between right-wing extremism and anti-government extremism remains unclear, where the latter can be understood as either a *key characteristic,* a *variation* or a *risk factor* of the latter. Moreover, movements, ideologies, and/or issues or sentiments labelled as anti-government extremist do not necessarily contain a legitimisation of violence, which would be a defining feature of extremism.

Second, the degree to which anti-government extremism is indeed *anti*-government remains questionable. Based on previous studies, we discussed how various respective anti-government groups take a contradictory stance towards prevailing democratic institutions: rather than denouncing the entire legitimacy of government altogether, some seem to be able to find authority in conservative political figures such as Donald Trump. Moreover, the spread of "evil elite" conspiracy theories and misinformation has become generally well-embedded within the rhetoric of populist parties across the globe – especially in the wake of the Covid-19 pandemic[66] —further putting the generic "anti-government" nature of these sentiments into question. Last, we pointed at the resemblance that so-called issue-driven anti-government extremism bears to the concept of single-issue extremism – and question whether the latter suffices in understanding the former.

Altogether, the considerations discussed in this research note might provide more questions than answers regarding the conceptual and analytical value of anti-government extremism in the field of radicalisation research and P/CVE. As suggested, it might be beneficial to abandon the notion of anti-government extremism altogether to avoid conceptual inflation within the radicalisation literature, and thereafter only speak of anti-government sentiments in relation to other forms of extremism—e.g. right-wing, as authors like Jackson propose. Alternatively,

one could simply view opposition to the government as a specific element within a broader extremist ideology—which then also would depend on the particular government in power. Another viable solution would be to move away from the "extremism" frame altogether, and opt for a different umbrella term instead. One such term could be "radicalism", a concept that in an ever-polarising world has fallen somewhat out of fashion, but which might be a better fit to interpret the anti-governmental sentiments currently observed.

In addition to discussions on which conceptual approaches are best suited for understanding movements and sentiments currently labelled as anti-government extremist, it is our contention that future studies on the topic also should contemplate what trends and tendencies the conceptual rise of "anti-government extremism" might reflect. Critical terrorism scholars might be of the opinion that labelling attitudes and actions as anti-government extremist does not do much else besides securitising government distrust and dissatisfaction. In our opinion, it should be pivotal to address this question in conjunction with examining the empirical validity of this term. Taking a securitisation approach requires, on the one hand, a critical look at the role security actors and institutions have played in the (re)emergence of this concept, and how it relates to their security agendas. For example, the fact that in recent years, the Dutch intelligence services shifted their focus from "anti-government activism" to "anti-institutional extremism" following criticism of their perceived criminalisation of (lawful) protests and demonstrations,[67] is an interesting observation that could help us better understand authorities' approach to this concept and the role that processes of securitisation may play. On the other hand, answering this question requires a self-critical attitude on behalf of government authorities – as well as a willingness to understand the legitimate sentiments that may lie at the root of individuals' distrust and dissatisfaction. This relates back to a point previously raised in this research note regarding the possibility of approaching anti-government attitudes as a risk factor for extremist radicalisation, rather than a form of extremism in itself. Such an approach might do more justice to the experiences and perceptions of those involved. Moreover, in the long run, it might prove a more effective strategy, too, as governments "labelling" distrusting individuals and groups as "extremist" can create a self-fulfilling prophecy as it indirectly confirms and thus amplifies those sentiments.[68]

Another road to explore is the extent to which the concept of anti-government extremism has reemerged due to a possibly increased hybridisation of radicalisation processes; i.e. a tendency for the demarcation lines between traditional distinct extremist orientations to become increasingly blurred.[69] While the exact scope of such hybridisation (or what others refer to as salad-bar extremism, a mixed ideology, ideological convergence, or other terms)[70] is still unknown, scholars and intelligence services have placed particular emphasis on cases of lone-actor grievance-fuelled violence which seem to be motivated by extremist ideologies that are mixed together to form novel violent narratives. A recent example of this is the case of the Allen, Texas, shooting in 2022 where the perpetrator, Mauricio Garcia, appeared to be motivated by a "fuzzy" and "bizarre" mix of far-right extremism and misogynous incel ideology.[71] Moreover, intelligence services highlight how there seems to be a high level of ideological convergence between particularly right-wing ideology, conspiracy theory beliefs, and anti-government sentiments.[72] In this regard, we argue that it is worthwhile to pursue whether the conceptual resurgence of anti-government extremism might reflect an attempt to obtain an analytical grasp of an observed tendency for extremist ideologies to break their (at least presumed) traditional boundaries. On the one hand, we can see why an ideological category that appears to put greater emphasis on the generic rather than specific aspects of violent extremism can seem like an intuitive way of understanding such hybrid extremism. However, since anti-government extremism, as we have illustrated, often is treated as an extremist orientation in its own right, we remain sceptical as to whether this is the best way forward.

While we acknowledge that a global trend in governmental distrust and dissatisfaction can be observed, and even though the hybridisation of extremist ideologies and groups is a worrying phenomenon in itself,[73] in this note, we raised various concerns about "anti-government extremism" as a "new" conceptual and analytical tool. In our opinion, the field of P/CVE would benefit from further examination before adopting this concept as a given – particularly because of its murky relations to pre-existing phenomena such as right-wing extremism and single-issue extremism. In future studies, the empirical validity of anti-government extremism will, therefore, need to be examined more rigorously. Because in the end, while Jackson argues that a lack of universal agreement on the demarcations of anti-government extremism does not hamper the value of the concept per se, we maintain that the importance of definitional clarity is not to be underestimated. In a field where contested terminology can have significant real-life implications (in legislation, policymaking or elsewhere), conceptual consensus should indeed, at the very least, be strived for.

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PERSPECTIVES ON TERRORISM

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Bibliography: Terrorism and Justice Systems, Courts, and Detention

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Abstract: This bibliography contains journal articles, book chapters, books, edited volumes, theses, grey literature, bibliographies and other resources on the multifaceted relationship between terrorism and incarceration. It covers multiple aspects, including the radicalisation of prisoners, the risk assessment of detainees, and human rights issues relating to imprisoned terrorists and terrorism suspects. It focuses on recent publications (up to November 2024) and should not be considered as being exhaustive. The literature has been retrieved by manually browsing more than two hundred core and periphery sources in the field of Terrorism Studies. Additionally, full-text and reference retrieval systems have been employed to broaden the search.

Keywords: Bibliography, resources, literature, terrorists, terrorism suspects, courts, detention, imprisonment, incarceration, prisons, prison radicalisation, risk assessment, human rights issues

NB: All websites were last visited on 10.11.2024. For an inventory of previous bibliographies, see: https://archive.org/details/terrorism-research-bibliographies

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Judith Tinnes has a background in Information Science. Dr Tinnes works for the Leibniz Institute for Psychology (ZPID) in an open-access publishing programme for scholarly journals. Additionally, she serves as Information Resources Editor to 'Perspectives on Terrorism'. In her editorial role, she regularly compiles bibliographies and other resources for Terrorism Research and runs the execution monitoring project 'Counting Lives Lost' (CLL).

PERSPECTIVES ON TERRORISM

BOOK REVIEW

Jihadi Intelligence and Counterintelligence

Reviewed by Joshua Sinai*

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Ferdinand J. Haberl, *Jihadi Intelligence and Counterintelligence: Ideological Foundations and Operational Methods* (Gewerbestrasse, Cham, Switzerland: Springer, 2023), 329 pp., US $ 139.99 [Hardcover], ISBN: 978-3-0312-4743-9.

In August 2021, the Taliban's forces succeeded in surprising the US and Afghan forces by rapidly taking over Afghanistan's regime following a two-decades long insurgency. On 7 October 2023, Hamas' forces carried out an unexpectedly massive and easily accomplished cross-border attack against Israeli towns along the Gaza border, which exploited Israel's complete unpreparedness and societal disarray. The successes of these military campaigns by hybrid terrorist/guerrilla forces demonstrated the importance of the roles of intelligence and counterintelligence capabilities by asymmetric insurgents against their more powerful government adversaries.

This subject is excellently examined by Ferdinand Haberl in Jihadi Intelligence and Counterintelligence: Ideological Foundations and Operational Methods. It is one of the few comprehensive and detailed accounts on how terrorist organisations conduct intelligence operations against their government adversaries and how, especially in the case of Jihadi insurgents, the operational methods are drawn from their social and political movements' religious narratives and military foundations.

Dr Haberl, the Deputy Director of the Austrian Fund for the Documentation of Religiously Motivated Political Extremism (Documentation Centre Political Islam), is well positioned to examine these subjects, as it enables him to incorporate his extensive collection of data on jihadi terrorist attacks, their recruitment methods, manuals and statements throughout the book.

The volume's seventeen chapters examine topics such as the nature of intelligence in general, and the operational and strategic levels and components of Jihadi intelligence operational warfare. They also cover how the Shura Council, the Intelligence and Military Councils, authorise and manage intelligence operations, and their intelligence departments, such as how the operatives of the Islamic State's multi-purpose *Emni* (which consists of the internal police force, foreign operations unit, and intelligence and security branch) executes the operations. Also covered is how intelligence collection, counterintelligence, and internal security operations are conducted (such as their use of encryption, secret communications, active and passive deception and denial practices, and maintaining safe houses for their operatives and weapons), as well as intelligence operations in cyberspace.

Especially innovative is the author's discussion of how the jihadi organisations and their operatives justify and legitimise their intelligence and counterintelligence operations by drawing on Islamic texts and practices beginning with the time of the Prophet Muhammad through the current era, through jihadi publications such as al-Qaeda's *Inspire* and *Open Source Jihad* magazines, and the Islamic State's *How to Survive in the West – a Mujahid Guide*. Such publications, the author explains, validate the connection between the Prophet Muhammad's military strategy with the Jihadi organisations modern approach to warfare (p. 212). It is important to understand this connection, the author explains, since the Jihadi organisations believe they are "walking in the footsteps of the Prophet" by reestablishing the Islamic Caliphate, by "willing to die for their ideologies and interpretations of Islam."

The Jihadi organisations' sophisticated utilisation of the latest intelligence and counterintelligence technologies include the use of the encrypted Telegram communications app, and exchanging information among operatives through online video wargames, which include video calls and chat functions that are difficult for security services to track as "it is commonplace to talk in military terms, bombs or weapons…" (pp. 225-226).

Another component of intelligence operations the author explored is how they are used to shape the ideological narratives whose objective is to "recognize the weaknesses of Western societies," such as the "problematic integration of certain Muslim communities" in Western countries in order to increase their alienation and radicalise them away from the Greyzone's integration into those societies "towards a Jihadi interpretation of Islam" and its corresponding militant activities (pp. 281-282).

The author concludes with the caution that "we must not be blinded by the initial territorial and military victory over IS or other Jihadi groups. The Islamic State has in fact morphed into an 'idea' and a mainly ideological construct rooted in Jihadi operational art, which is far from being defeated" (p. 315).

Haberl's *Jihadi Intelligence and Counterintelligence: Ideological Foundations and Operational Methods* is highly recommended as an indispensable resource for academic and government analysts to understand the intelligence components of the Jihadi organisations' political and military warfare against their adversaries, which is essential in effectively countering their insurgencies. The use of intelligence operations in the recent asymmetric military warfare by Jihadi organisations such as the Taliban, Hamas and Hezbollah further validate the author's work.

Dr. Joshua Sinai is Book Reviews Editor for Perspectives on Terrorism

Announcements

Events Calendar

On behalf of *Perspectives on Terrorism*, the team at the International Centre for Counter-Terrorism (ICCT) has launched a new online Events Calendar, at: https://pt.icct.nl/resources/events-calendar. The Calendar will provide readers with up-to-date information for events relevant to the study of terrorism and counter-terrorism, including workshops, conferences, meetings, and other online and in-person events around the world. We invite organisers of such events throughout our global research community to submit the essential information (dates, times, locations, website URL for more details, etc.) to us as early as possible, so we can help encourage attendance and participation in these events. Please send this to pt.editor@icct.nl.

Special Section Ideas for 2025

We are exploring the possibility of publishing a "Special Section on Artificial Intelligence and Terrorism" in one of our issues planned for 2025. Please contact pt.editor@icct.nl if you are interested in contributing a Research Article, Research Note, Bibliography or Book Review Essay on that topic. Also, we invite suggestions for other topics about which the journal might consider publishing a Special Section. Please send those to the address noted above.

Call for Book Reviewers

The Editorial Team at *Perspectives on Terrorism* is eager to expand our Book Review section to begin including reviews of books published in languages other than English. Each year, many books on terrorism and counter-terrorism-related topics are published in languages other than English that go largely unnoticed by English-speaking scholars. If you would be interested in contributing to this initiative, please contact pt.editor@icct.nl.

Note of Gratitude

We wish to extend a sincere and heartfelt Thank You to Anna-Maria Andreeva for her excellent work as the Managing Editor of *Perspectives on Terrorism* for the past two years. Anna will be pursuing a new opportunity in 2025, and will be greatly missed. ICCT plans to identify a new Managing Editor for the journal within the coming weeks. A hearty Thank You also goes out to Rachel Monaghan for all her work guest editing the Special Section on "Extremists in the Courtroom" for this issue of the journal. Finally, and most importantly, thank you to the many peer reviewers who have dedicated their time and energy to ensuring the quality of the research manuscripts selected for publication in the journal. It is this critical—yet often "invisible"—work that makes any scholarly journal function effectively, and by doing so each of you has made a valuable contribution to strengthening the field of terrorism and counter-terrorism studies.

Announcements

Call for Nominations for a New Editor-in-Chief for *Perspectives on Terrorism*

James Forest will be transitioning out of the Editor-in-Chief position for *Perspectives on Terrorism* during the second half of 2025. The new Editor-in-Chief of the journal will be selected by the journal's Steering Committee, comprised of leaders at the three institutions that now co-publish the journal: The International Centre for Counter-Terrorism (ICCT), the Institute of Security and Global Affairs (ISGA) at Leiden University, and the Handa Centre for the Study of Terrorism and Political Violence (CSTPV) at the University of St Andrews. Nominations for this position (including self-nominations) are welcome and can be sent via email to pt.editor@icct.nl.

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