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THE RISE OF DENATIONALISATION AND THE 'TERRORIST' NON-CITIZEN: ASSESSING CITIZENSHIP REVOCATION POLICY IN THE UK

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All Citizens Are Equal, But Some Citizens Are More Equal Than Others.

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Though my hope for this world is shaken, my faith in humanity is not.

Table of Contents

Introduction

i. Origins of the discussion

Whilst by no means a new phenomenon, the act of depriving a citizen of their nationality, or denationalisation, has taken on a new relevance with the advent and subsequent demise of Islamic State (IS, also known as the Islamic State in Syria/ISIS, the Islamic State in the Levant/ISIL, or by the Arabic acronym DAESH). Emerging out of the Islamic State of Iraq in 2006, and rising to international prominence in 2013, the Salafi Jihadist group based primarily in Syria and Iraq, embarked upon a mission of violent conquest, taking swathes of land and with it drawing thousands of fighters from worldwide, claiming a 'caliphate' by June 2014[1]. Aggressive recruitment tactics specifically targeted foreigners, with unprecedented success, surpassing the numbers of those that fought the Soviet Union alongside the Afghani mujahideen in the Soviet War from 1979 to 1989.[2] Whilst reports vary, the International Centre for the Study of Radicalisation and Political Violence (ICSR) estimated foreign fighter numbers could have reached around 20,000[3] and of those, 850 British.[4] Significantly to this paper, of the IS affiliates, around 4700 were women and 4600 were minors.[5]

Pursuant to strong international efforts, the caliphate was proclaimed to have fallen in 2019, with the final remaining few cornered in the Syrian city of Baghuz and many fighters and

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1 Joana Cook and Gina Vale, 'From Daesh to Diaspora, Tracing the Women and Minors of Islamic State' *ICSR Report (*2008):3 https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-'Diaspora'-Tracing-the-Women-and-Minors-of-Islamic-State.pdf Last accessed 20th October 2019

2 Peter R. Naumann, 'Foreign fighter total in Syria/ Iraq now exceeds 20,000; surpasses Afghanistan conflict in the 1980s', *International Centre for the Study of Radicalisation and Political Violence (ICSR)* 26th January 2015 https://icsr.info/2015/01/26/foreign-fighter-total-syriairaq-now-exceeds-20000-surpasses-afghanistan-conflict-1980s/ Last accessed 20th October 2019.

3 Julia Rushchenko, "UK Counterterrorism, Foreign Fighters and Criminal Justice Responses in Europe", *'New Vista' Journal University of West London*, Volume 3 Issue 1 (2017):23

4 Dan Sabbagh, 'Britain must repatriate Isis fighters, warns US defence secretary' *The Guardian* 6th September 2019, https://www.theguardian.com/world/2019/sep/06/britain-must-repatriate-isis-fighters-warns-us-defence-secretary Last accessed 12th January 2020

5 Cook and Vale, *From Da'esh to Diaspora,* 21

their families dispersed in prisons and detention camps[6]. Accordingly, hundreds of Western affiliates of the group found themselves in a precarious situation; having seemingly abandoned their home country in favour of this now-collapsed state, yet hoping to return. Though state responses varied in response to the foreign fighter issue, one approach taken was the expansion of denationalisation powers, effectively nullifying citizenship, and thus any corresponding rights, as a counter-terrorism measure. At the forefront of such expansionary measures was the United Kingdom, with the amendment of already comparatively broad denationalisation legislative powers. High profile cases, such as that of British-born teenager Shamima Begum who joined IS in 2015, exemplified this strong counter-terrorism stance as her citizenship was stripped.

Powers of citizenship revocation detailed in the British Nationality Act of 1981 were updated several times, in 2002, 2006 and 2014, handing the Home Secretary powers to revoke citizenship in cases where it is considered that the person "has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom" under the new Immigration Act. Significantly, in 2014 this power was also extended to include cases where statelessness could ensue, arguably standing in contradiction to the 1961 Statelessness Convention that the UK is party to. Whilst the conflict underlying the statelessness issue has been widely discussed, falling short of that, even in cases where statelessness would not arise, little attention has been paid to the compatibility of such policies with international human rights obligations in general, particularly in light of the ongoing situation in Syria. Moreover, the discussion has centred largely around male foreign fighters, while the provisions reserved for women and children under international human rights law and the exceptional circumstances applying to such cases require special attention.

This thesis will therefore attempt to answer the question of whether the UK's policy of citizenship revocation under the Immigration Act can be justified, placed within a framework

[6] Martin Chulov, 'The rise and fall of the Isis 'caliphate'', *The Guardian* 24th March 2019, https://www.theguardian.com/world/2019/mar/23/the-rise-and-fall-of-the-isis-caliphate Last accessed on 20th October 2019

analysing practice, relevant case studies and international human rights law. This specific question will be placed within the broader backdrop of the legitimacy of denationalisation policy, addressing relevant literature, and examining this with respect to the present global situation. The aims of the thesis are to establish whether such policies are compatible with liberal democracy, to assess to what extent UK policy potentially conflicts with human rights obligations, and to give prominence to the particular issues raised by the issues of women and children in the post-IS context, arguing that such issues require special consideration. Limitations dictate that this study will be confined to denationalisation policy and practice in the UK, and whilst the emergence and evolution of the state of play will be explored, a temporal emphasis will be placed on the policy adjustments of 2002 onwards and ramifications leading to the present day. While citizenship revocation can be applied for numerous reasons, this study will focus on those cases specifically invoked as a counter-terror measure.

ii. Chapter Overview

Following the introduction, the first chapter will trace the roots and development of banishment and exile being used as a punishment, from Greek city states through the emergence of the modern state, considering changes in the law and the concept and perception of citizenship following the First and Second World Wars and up to the present day. The popular contemporary view of citizenship as a privilege rather than a right will also be explored. Amidst such global changes and the introduction of international human rights law, relevant covenants and conventions will be explored in the second chapter, positioning a contemporary practice of citizen revocation within a legal framework.

The third chapter will conduct a literature review centred around the compatibility of this practice with liberal democracy, taking into account arguments concerning statelessness, arbitrariness and invidiousness, finding that though technicalities of international human rights law arguably do not directly contradict UK policy, there are certain other duties inferred in legal theory that cannot be reconciled with the revocation of citizenship, both procedurally and conceptually. Conceptions of the citizen-state relationship and the impact

this has upon changing policy and perception will also be explored. The discussion will also examine contradictions in the efficacy of citizenship revocation as achieving its ends as a counter-terrorism tool, finding both security and symbolic rationales for such acts lacking and even verging on counter-productive as well as identifying its failings in terms of fulfilling commitments to the international community in the global fight against terror.

Having asserted this, the fourth section will zero in on the UK's Nationality, Immigration and Asylum Bill and its development and use since 2002 to the present day. The issues raised in the previous chapter will be analysed practically with respect to particular cases of citizenship revocation, and placed within the global context of terror and counter-terror measures. The following chapter will develop more fully the ascent and demise of IS, and their campaign of recruitment targeted at foreign, particularly Western, fighters. The unique role of 'ISIS Brides' will be elaborated and the pivotal case of Shamima Begum will be introduced in this fifth chapter. The arguments previously proffered will be applied to this case study, in an attempt to highlight and give a practical example of some of the issues given rise to by the present UK position on revocation of citizenship, eventually looking to establish in which conditions it could be a legitimate response.

Considering the above, the sixth chapter will address the various alternative responses to the issue of foreign terrorist fighters, and also their families, with respect to the ongoing situation, including elimination, prosecution abroad, repatriation and rehabilitation. Finally examples of best practice will be explored highlighting the Danish Aarhus model of anti and deradicalisation strategies as an initiative not only to be effective but also one that respects the human rights that are at risk of being violated by the existing UK approach.

iii. Definitions

It is important here to outline and clarify some of the key terms used in this thesis:

Firstly, the terms *denationalisation* and *citizenship revocation* will be used here as interchangeable concepts, referring to the involuntary loss of one's citizenship; the legal relationship between an individual and the state, carried out by the government as a sanction

or as a security measure. Denationalisation covers removal of the legal status of any citizen, whether acquired through birth in state territory - *ius soli,* through descent from a State national - *ius sanguinis,* or through naturalisation - acquiring citizenship though not falling under either previous category.[7] The delineation between denationalisation and denaturalisation is historically relevant, as previous approaches have distinguished between acquisitions of citizenship with respect to its revocation, however, as as all denaturalisation in the present day amounts directly to the former two concepts, the differentiation need not be elaborated further.

The term '*ISIS brides*' is used to refer to women who have left their homes, usually to marry IS fighters and live in accordance with the principles of Sharia law, in this case in what had been claimed as the Caliphate (areas of Syria and Iraq under IS rule 2014 - 2019).[8] Though highly reductionist, with this thesis recognising female affiliates of IS as fulfilling a varied and complex role rather than merely that of a bride, the buzz term 'ISIS bride' has been popularised by both media and officials and also comprises a range of connotations significant in the assessment of the treatment of what could neutrally be called female IS affiliates. Thus, the arguably loaded term 'ISIS brides' remains significant in the subsequent discussion (though acknowledging this caveat, the term will continue to be used in inverted commas). Many 'ISIS brides' could be considered to be 'foreign fighters' under the definition provided latterly here, though the distinction between the roles and terms will be addressed in the thesis.

The definition of Foreign Terrorist Fighters provided by the UNSC Resolution 2178 as "individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or

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[7] `Audrey Macklin, The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?. In: Bauböck R. (eds) *Debating Transformations of National Citizenship. IMISCOE Research Series.* Springer, Cham (2017):164

[8] Julia Rushchenko, "UK Counterterrorism, Foreign Fighters and Criminal Justice Responses in Europe" *'New Vista' Journal University of West London*, Volume 3 Number 1 (2017):25

the providing or receiving of terrorist training, including in connection with armed conflict"[9] will be accepted in this thesis as equally applicable for the term '*foreign fighters'* used here. The Resolution was brought about specifically to 'address…the growing issue of foreign terrorist fighters' in 2014 and in direct relation to the context being discussed here, and thus is deemed to be sufficient on this basis. Reference to 'preparation for' and receipt of terrorist 'training' including, but not exclusively, 'in connection with armed conflict' means the roles alleged of many 'ISIS brides' fall under this category.

[9] UN Security Council Resolution 2178/(2014), *Addressing the Growing Issue of Foreign terrorist Fighters* 24 September 2012, https://www.un.org/sc/ctc/focus-areas/foreign-terrorist-fighters/ Last accessed 21st October 2019

Chapter 1: On the Origins of Exile and Banishment

1.1 A Brief History of Banishment

Deriving from the Latin word 'exilium', exile has been a commonplace practice for millenia. We can consider exile, or more properly, going into exile, as the act of leaving the territory where one holds citizenship or equivalent status, potentially as a voluntary option to be taken in order to avoid punishment or other retribution in light of crimes committed. Banishment differs somewhat in that it is the imposed expulsion of an individual, often involving the loss of citizenship or equivalent status, which bears a stronger resemblance to the concept of denationalisation explored in this thesis. [10]

In Ancient Rome, banishment was enforced to differing degrees. The first form, *relegatio* involved banning the former citizen to any place outside of Rome proper, and involved no technical loss of citizenship.[11] In this way, the subject could receive punishment for any crimes and could no longer interfere with social order within the territory - the eventual destination of the subject was of indifference to the banishing authority. The second form, *deportatio*, indicative of modern day deportation, was more severe, in which citizens were expelled, typically in chains, to the outer edges of the empire, usually as punishment for a crime.[12] Whilst of course procedural recourse remains very different, the concept corresponds to modern day denationalisation, considering denationalisation in the form where the manner of citizenship acquisition is of no significance. Deportation differs in the sense that it is more commonly used nowadays to refer to sending somebody back to their country of citizenship, rather than out of it, e.g. for illegal immigrants, an issue not falling under the remit of this thesis.

Prior to Roman banishment, the Ancient Greeks remain perhaps the most notorious

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10 Gordon P. Kelly, *A History of Exile in the Roman Republic*. (Cambridge: Cambridge University Press 2006):4

11 Ibid

12 Lee H. Bowker. "Exile, Banishment and Transportation" *International Journal of Offender Therapy and Comparative Criminology* Volume 24, Number 1 (1980):67

perpetrators of this practice. Often thought of as the origin of what we now conceive of as democracy, the city state of Athens held the power to expel and revoke the citizenship of many Athenians, not only resident foreigners, and did so readily[13]. Once used as a means by which to expel one's rivals, in order to overcome abuse or arbitrary use of such practice, the concept of *ostracism* was developed, which was a democratic procedure, holding individuals to a public vote determining their inclusion or exclusion in the *polis*[14]. Indeed, in this case the Greeks not only did not see banishment as running counter to their democratic standards, but rather as contributory to their preservation. Circumstances in which banishment could be used were wide-ranging and varied including somewhat subjective crimes such as arrogance, cowardice and being threatening to civic virtue as well as desertion.[15] Such concepts of exile and banishment in Antiquity can be seen as both acts of punishment, but also of social control. The concept must, however, be conceived of in the context of Empires and City States with a strong emphasis on territory, and yet with little concern or responsibility for the situation beyond the confines of the state which were not delineated in the way we conceive of borders today.

Pertaining to the modern state, exile was famously widely-used throughout the Renaissance and beyond as a political tool.[16] In the 1600s, Hobbes himself spent 11 years in exile in France and accordingly, this concept was not regarded as standing in contradiction to his musings on law and right, claiming it was no punishment at all[17]. His sixth law of nature claimed 'Compleasance; that is to say, That every man strive to accommodate himselfe to the rest', and those who did not were free to be 'by the builders cast away as unprofitable,

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13 Benjamin Gray, "From Exile of Citizens to Deportation of Non-Citizens: Ancient Greece as a Mirror to Illuminate a Modern Transition" *Citizenship Studies*,Volume 15 Number 5 (2011):565-582

14 Sara Forsdyke, "Exile, Ostracism and the Athenian Democracy" *Classical Antiquity*, Volume 19 Number 2 (2011) pp.253-258.

15 Matthew J. Gibney, "Should Citizenship Be Conditional? The Ethics of Denationalization." The Journal of Politics Volume 75, Number 3 (2013):654.

16 Randolph Stern. *Contrary commonwealth: the theme of exile in medieval and Renaissance Italy, (*Berkeley, CA: University of California Press 2000):21

17 James Loxley, "Not Sure of Safety: Hobbes and Exile" in P Major (ed.), *Literatures of Exile in the English Revolution and its Aftermath*, Ashgate Publishing (2010):146

and troublesome'.[18] Beccaria, in the 18th century, further justified the practice, claiming, 'anyone who disturbs the public peace, who does not obey the laws which are the conditions under which men abide with each other and defend themselves, must be ejected from society" in a chapter, notably titled 'Parasites', claiming this banishment denotes the political death of the former citizen; "banishment is the same as death in respect to the body politic".[19] Taking a more considered approach, in the *Philosophy of Law* 1790, Kant's view centred largely around the reciprocal implications of exile, in the sense that so should every citizen reserve the right to emigrate, or similarly go into exile, thus the citizen can be legitimately banished as punishment by the state, making him "an outlaw within the territory of his own country". Using language pertinent to the contemporary assessment presented henceforth, he stated any subject "who has committed a crime that renders all society of his fellow-citizens with him *prejudicial to the state*" could be liable to such treatment.[20]

Contemporaneously, and to be considered as having been espoused in a society based on the concept of Westphalian sovereignty and thus the birth of the modern state as we know it, Voltaire adopted a view more in line with that of contemporary international theory. In 1764, he compared the practice of banishment to "throwing into a neighbour's field, the stones that incommode us in our own"[21], considering not merely the concerns of the banishing state, but equally the obligations to other states. This is a particularly salient stance when addressing the current state of play, in the consideration of the implications of citizenship revocation; whether states' commitments to other states or to the wider international community as a whole should come into play, an idea explored in depth in the third chapter of this thesis. In a similar vein, Cornelius van Bynkershoek claimed banishment as contrary to kinship, proposing enforcing punishment domestically as a more practical alternative, the idea of putting them to work in workhouses proffered,[22] allying with the contemporary argument

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18 Thomas Hobbes, *Leviathan*, ed. R. Tuck Cambridge: Cambridge University Press, (1991):15:106.

19 Cesare Beccaria, *On Crimes and Punishments*, (Indianapolis, IN: Hackett. 1986):56

20 Immanuel Kant, *The Science of Right*, trans by W. Hastie, Clark, (NJ: Law Book Exchange. 2002):205

21 Voltaire, *A Philosophical Dictionary: Volume II*, *London, W. Dugdale, 1843):192.

22 Cornelius Van Bynkershoek, *Quaestionum juris publici libri duo,Vol II*, trans by T. Frank,

that existing domestic prosecutorial procedure should be applied.

In the 18th and 19th centuries, the problem of where subjects were banished to was heightened, with the rise of nationalism leading to an increased significance of borders and national identity, and resultantly who could be considered to be 'in' and 'out'. The rate of population growth also had an impact, with Fischer-Williams stating "it is no longer possible to send undesirables abroad. Slops may be thrown out of the window of a settler's hut on a prairie; in a town such practice is inadmissible'.[23] Banishment could no longer be viewed as an inconsequential act of punishment or attempt to maintain the social order - in a system gradually developing to more closely resemble the international society of today, one's neighbours had to be considered in any moves made. Accordingly, recipient countries became more conscious of the issue, potentially unwilling to accept another state's problem, and awareness of each state's responsibility for their own citizens grew. Similarly, a shift away from the transportation of criminals, particularly by the British, towards punishment in a modern penitentiary contributed to a change of perspective. [24]

Coinciding with this shift, emerged the modern concept of citizenship. The French Revolution of 1789 is viewed as having given birth to the *French Declaration on the Rights of Man*, and with it the legal status of citizens, with corresponding civil and political rights and a legal reciprocal relationship between citizen and state.[25] This henceforth conferred a dual significance to citizenship, the protection of the rights of citizenship and the rights and interests of the state. Pertaining today, and of paramount importance to the themes discussed in this thesis, the connection between and deep-rootedness of rights in citizenship is asserted; with Hannah Arendt observing that the most basic political and civil rights flow through one's

(Oxford, Clarendon 1930)2,17.

23 John Fischer-Williams, "Denationalization", *British Yearbook of International Law* (1927);57.

24 Matthew J. Gibney "Should Citizenship Be Conditional? The Ethics of Denationalization." *The Journal of Politics* 75, no. 3, May 2013:649.

25 Bobbie Mills, "A privilege, not a right: Contemporary debates on citizenship deprivation in Britain and France" *Centre on Migration, Policy and Society* Working Paper No. 130, University of Oxford (2016):4

citizenship, or even the right to have rights.[26] Considering these developments, we reach the turning point of banishment morphing into the more concrete idea of the revocation of citizenship or denationalisation, which must now be considered to be intrinsically linked to the concept of rights.

1.2 The Emergence of Denationalisation in the UK

1.2.1 - Historical Developments

The first attempt to legally codify the power to revoke citizenship was undertaken by the Gladstone Government of the UK in 1870, proposing to parliament that the Home Secretary should have the power to remove the status of any naturalised citizen who 'acted in a manner inconsistent with his allegiance as a British subject'. Interestingly, and markedly so due to the reasons provided, the government rejected the bill. Concerns surrounding the arbitrariness of the power were cited, and further it was suggested by Lord Haughton to be 'a very transcendental power—more than ought to be entrusted to any man'.[27] Additionally, its invidiousness was questioned, noting a two tier system of citizenship being created; an irrevocable standard for the British-born and a secondary, subordinate level for naturalised citizens.[28] It is important to note that the arguments from arbitrariness and from invidiousness were originally floated a century and a half ago, giving strength to their ubiquitous nature, and will be returned to in the assessment of modern policy.

It was nearly half a century later that the first legislation regarding the revocation of citizenship was introduced. In 1914, amidst the context of the looming Great War, The British Nationality and Status of Aliens Act handed the Home Secretary powers to void any fraudulently acquired citizenship. Whilst fraudulently acquired citizenship is not the focus of this paper, any legislation has to be understood within the appropriate historical frame of

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26 Hannah Arendt, *The Origins of Totalitarianism*, (New York, Harcourt Books, 1994);296

27 House of Lords, March 10, (1870):1616.

28 Matthew J. Gibney, "The Deprivation of Citizenship in the United Kingdom: A Brief History" *Journal of Immigration, Asylum and Nationality Law* Volume 28 Number 4 (2014):326

reference, as it acted as a precursor to a series of very important successive changes. With the onset of the First World War came a lot of anti-German sentiment, wariness of espionage and mistrust of foreigners. An altered perception of the 'ins' and the 'outs' in the eyes of the British people may have paved the way for stricter laws to be introduced than at any other time. The idea that citizenship could be contingent was the first time a possibility, cemented by the introduction of the Aliens Restriction Act 1914, facilitating mass internment and deportation for suspect foreigners. Disregarding the concerns of their predecessors about a two-tier or conditional citizenship system, the following year a group of Conservative politicians began a campaign calling for naturalised German citizens to be stripped of their citizenship, particularly those gaining citizenship since the start of the war. In 1918, as a further broadening of legislation, grounds for denaturalisation were cited, including transfer of loyalty, bad character, disloyalty to the sovereign or treason.[29]

The reasoning provided centred around the idea of the reciprocal contract of citizenship. Upon becoming naturalised, a commitment to the state is deemed to be made; 'a statement of good character, a promise to be of good behaviour, a promise of loyalty'[30] asserting here firmly the acceptability of a contingent form of citizenship. In language again reminiscent of that used currently, any citizen 'not conducive to the public good' could have their status at risk, on the condition that they were in fact naturalised, rather than British-born, and thus this contract of tacit consent was established. Furthermore, not unlike the policy accepted today, the amendments made were not as a result of ongoing conceptual discussion concerning the evolving nature of citizenship, but rather in direct response to a perceived threat, and targeted at a certain group or secondary tier of citizens. Formerly, the designated group had been Germans in light of the First World War, as it is presently towards 'terrorists' with regard to the 'War on Terror'. The current target can be designated further as Muslim terrorists, considering how Irish terrorism had long since been a particularly problematic issue in the UK, yet had not triggered the same response. The ideas of citizenship as a social contract, the invidiousness of a two-tier citizenship and the legitimacy of a contingent citizenship will be

29 Gibney, *The Deprivation of Citizenship*, p328

30 House of Commons Debate, 12 July (1918):624.

explored more in depth later.

Three more legislative acts of note occurred in the development of denationalisation policy in the 20th century: in 1948 to introduce the sub-group of 'registered' citizens (e.g. those in the Commonwealth); in 1964 in view of the UN Convention on the Reduction of Statelessness and finally in 1981 due to a particular case of espionage. Particularly worthy of discussion is the UK involvement in the Statelessness Convention of 1961. A key supporter in the progression of the convention, the UK had to retrospectively adjust its own legislation to be in line with a section of the act, making it unlawful to denaturalise an individual on criminal grounds if this would result in statelessness, running counter to UK policy. The 1964 British Nationality Act therefore actually limited citizenship deprivation power by the Home Office. Nevertheless, less than 20 years later, this power was debated again, and the issue of statelessness revisited with the government claiming that it was an individual's own fault if he was made stateless.[31] The British Nationality Act of 1981 affirmed that both naturalised and registered citizens had 'sought and been granted citizenship' and as such were subject to the possibility of its possible revocation under the idea of the reciprocal contact of citizenship.[32] Though the denaturalisation powers were expanded, there still remained a two-tier system, with the citizenship of British-born citizens standing superior to those of others, leaving policy open to the argument from invidiousness.

1.2.2 The UK Nationality, Immigration and Asylum Bill 2002

After nearly a century of the revocation of citizenship remaining a relatively low profile concern, the turn of the 21st century ushered in a new era of the perceived 'ins' and 'outs' in the UK. In 2001 came a series of violent, ethnically-motivated riots in the northern British town of Oldham. The violence was seen as a manifestation of long-standing tensions between white, and, in particular, Muslim residents of the town, representative of a lack of integration

31 House of Lords Debates, 13 October (1981):304.

32 House of Lords Debates, 23 July (1981):448.

and polarisation and antagonism between the communities.[33] The unsettled mood and perhaps anti-Muslim feeling in the country was then drastically escalated following the infamous terrorist attacks of September 11th perpetrated by Muslim fundamentalists, later on in the same year. Amongst a heightened atmosphere of anti-Muslim sentiment and mistrust, in a scenario not dissimilar to the anti-German movement of the previous century, denationalisation policy was amended again.

A Government White Paper named 'Secure Borders, Safe Haven' was produced, signalling the government's intention to amend denationalisation laws to illustrate the state's 'abhorrence' of certain crimes in light of the recent developments, and leading to the pivotal 'Nationality, Immigration and Asylum Bill' of 2002.[34]

The Bill consisted of three important changes to legislation concerning the revocation of citizenship. The first significant amendment made was the broadening of the conditions stipulating under what conditions citizenship could be removed. Where previously the points had been explicitly enumerated, it then became only necessary for the holding of one's citizenship to be 'seriously prejudicial to the vital interests' of the United Kingdom in the opinion of the Home Office.[35] This wording brought the UK policy in line with the 1997 European Convention on Nationality, which in article 7 states nationality cannot be lost except in cases of 'conduct seriously prejudicial to the vital interests of the State Party'[36] (though the UK has neither ratified nor signed the convention). Whilst this alignment with EU could be seen as commendable, further clarification of which acts constitute such conduct is not provided, leaving this relatively subjective judgement purely at the discretion of the Home Secretary, opening the door for ambiguity and even arbitrariness. A right to appeal was also added, though the efficacy of such powers will be explored in depth later, especially considering that in the 2004 Asylum and Immigration Act, it was stated that an individual

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33 Nafeez Mosaddeq Ahmed et al, *The Oldham Riots Discrimination, Deprivation and Communal Tension in the United Kingdom*, London: Islamic Human Rights Commission, (2001):1

34 Gibney, *Should Citizenship Be Conditional?*, p653

35 Gibney, *The Deprivation of Citizenship*, p331

36 Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS 166.

could be deprived of their citizenship before an appeal had been heard. [37]

A further change expanded powers of revocation to be applied to all British citizens, including naturalised, registered and for the first time, British-born citizens. This can again be seen as an extension and strengthening of powers on behalf of the State, meaning arguments previously discussed concerning two-tier citizenship could seemingly be responded to, under the premise that all citizens would be subject to the same laws regardless of how it was obtained. The change was presented as a way to equalise citizenship, however it may have arisen surrounding fears of terrorism, particularly amongst Muslims, with Home Office Minister Angela Eagle alluding to such in her claims that the Bill was updated in response to 'national security threats and non-state threats'[38]. The expansion of powers as a counter-terrorism measure were further suggested in Lord Filkin's assertion that the new deprivation provisions would "deter and prevent future conduct" and provide "an additional sanction" against "treason and subversion", even when an individual was not convicted of a crime.[39] This amendment could arguably then be viewed not as an anti-discrimination measure, but rather as an act to remove limits to denationalisation as a punishment in cases of so called 'home-grown terrorism', irrespective of whether the suspect had been born in Britain.

Besides, the third important addition required that even considering the above, citizenship could not be revoked if the person would end up stateless as a result, aligning with the UK's commitments to the Statelessness Convention and designs to be party to the European Convention on Nationality. The upshot of this effectively meant that only citizens who had another citizenship outside of the UK could be subject to denationalisation powers, hence reaffirming a two-tier citizenship, albeit in a way more fitting with international standards. In equalising the treatment regardless of the means of acquisition of citizenship, but then adding the caveat of avoiding statelessness, a subgroup of those with dual-nationality is

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37 Amanda Weston, 'Deprivation of Citizenship – by Stealth' *Institute of Race Relations*, June 9 2011 http://www.irr.org.uk/2011/june/ha000018.html Accessed 23rd October 2019.

38 House of Commons Committee, 30 April 2002:56

39 House of Lords Debate, 9 October 2002:279

created as having an inferior citizenship regardless of circumstance, including consideration of which other nationality is held.

2006

No more than 4 years after the terrorist attacks of 11th September in the USA, came the terrorist attack on the London transport system of 7th July 2005. The perpetrators, who were Islamic terrorists, were also born and raised within the UK and would come to be representative of what would be considered 'home-grown terrorists'.[40] This perhaps provoked another reassessment of who could be considered as the 'ins' vs the 'outs', and also fanned terrorism fears in the UK in general. Claiming that the existing legislation was not sufficient to deal with this threat, parliament moved to amend powers of denationalisation again; reducing the reasons from being conduct 'seriously prejudicial to the vital interests of the state', to being conduct merely not 'conducive to the public good', a term used in immigration law where it is used in the context of deportation of non-nationals.[41] According to the Home Secretary Charles Clark, examples of such behaviour included glorifying terrorist violence and fostering hatred that might lead to inter-community violence[42] providing a clear indication that there was a clear target for this amendment, which passed in 2006. What had already been a loosely defined standard for denationalisation was now even more subject to the discretionary powers of the Home Secretary.

2014

In 2010, a new Conservative government took power in the UK, and with this came a significant increase in the use of denationalisation powers. Where the powers before largely retained a symbolic security function, they were now employed by the government in a more active way, arguably as a response to the surge of British citizens going to join IS overseas

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40 Manni Crone & Martin Harrow "Homegrown Terrorism in the West" *Terrorism and Political Violence*, Volume 23 Issue 4:522

41 Sandra Mantu, *Citizenship in times of terror: citizenship deprivation in the UK,* The ECPR Standings Group (2015);15

42 'Clarke Unveils New Deportation Rules' *BBC News (online)*, 24 August 2005 http://news.bbc.co.uk/2/hi/uk_news/politics/4179044.stm Accessed 23rd October 2015

during this period. Foreseeably, in 2013 came an announcement for further amendments to denationalisation policy. Not only did the new bill extend even further the power to make a citizenship deprivation order, but this could be done so even if the person would be made stateless, so long as the nationality had been obtained through naturalisation. Two key observations must be made here: first of all, in reinstating the possibility to make individuals stateless, the UK had rescinded its apparent desire to align more closely with international regulations; and further, in ascertaining that only those of naturalised status could be subject to this revocation, the inferiority of citizenship acquired through naturalisation had been restored. A caveat was made where there must be reasonable grounds for believing that the person is able to become a national of another country or territory, though 'reasonable grounds' were not elaborated upon, nor were any issues concerning the difficulty of the acquisition process considered.

It is this most recent, and most robust, form of the policy that has been applied more urgently and liberally than ever. It can be concluded from the evolution of the policy that since 2014, this government has had in its arsenal a wider-ranging set of grounds for denationalisation, than at any other time, including during the First World War. Furthermore, adjustments in policy can be seen to have been made to target a specific set of people, suspected terrorists, regardless of the nature of the acquisition of citizenship, thus incorporating 'home-grown' terrorists. It can then be claimed that British citizenship exists as contingent upon certain standards of behaviour accepted by the government. Moreover, given the exemplified application of the policies, in particular concerning the recent surge of citizenship revocations, we can see that these standards of behaviour centre around the issue of terrorism and are part of a larger discourse about security.

1.3 Citizenship; A Privilege or a Right?

Much of what is discussed in this paper hinges on the vital status attributed to citizenship. However, the idea of 'citizenship', how it has been conceived, and what is conferred by it, has also taken a convoluted journey and must be addressed. In the case of the UK in Calvin's Case of 1608, 'liegance', corresponding to modern day allegiance, was seen to be the mutual

bond and obligation between the king and his subjects, whereby servants should obey and serve the king, and the king must maintain and defend his subjects. This applied to all subjects born into sovereign rule and also those who had naturalised, with the latter having to affirm their allegiance. The relationship therefore imposed irrevocable duties on behalf of the subjects and king alike. Under Common Law, the bond was perpetual, with it becoming illegal for even the subject to cede their citizenship, considering their part of the bargain, and this remained the case until the second half of the nineteenth century. [43]

As touched upon previously, with the French Revolution emerged the legal status of citizens, and derived from this came corresponding civil and political rights. Subjects born, or naturalised in the newly-established system would thereby be entitled to certain rights. This newly-devised relationship between state and citizen was based not around allegiance to a sovereign, but also to the rights and interests of the state, in a sort of social contract reminiscent of Rousseau. The former idea of passive allegiance or loyalty to the state became outdated, as did the duties connected to it (however loyalty as a citizen's duty made an important comeback in the 20th century).

This state of affairs of citizenship and rights therefore begs the question, does the State have an obligation as part of this pact to grant citizenship, seeing as one is seen to be necessary for the other. The problem lies herein; in a world where human beings are obliged to live in one nation or another, and the very act of existence theoretically entails rights, to posit citizenship as the key to accessing such rights, automatically appoints states to the position of duty-bearers - the duty to fulfil a pre-existing 'right to citizenship'. If we consider this to be so, states thus become responsible for addressing the issue of ius sanguinis versus ius soli, asserting to whom the duties of each state are owed. To assert citizenship as a right, implies all are entitled to it, vesting citizenship in the right-bearer; a right belongs to the one who bears it. Conversely, to phrase citizenship as a privilege, as has become the modern trend, warrants desert. Though colloquially it is common to hear something described as a privilege,

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[43] Shai Lavi, "Punishment and the Revocation of Citizenship in the United Kingdom, United States, and Israel." *New Criminal Law Review: An International and Interdisciplinary Journal* Volume 13, Number 2 (2010):9-10

a meeting with an important person for example, it is to be read in this particular case as being an honour. In a legal sense, a privilege belongs not to the recipient, but to the patron who bestows it, and it is here we find the capacity for states to additionally decide upon the conditions upon which it would willingly ascribe, and accordingly deprive, citizenship status.

In this case, we can deduce thus: if citizenship is a privilege and not a right, governments are not obliged to grant citizenship. Furthermore, if there are no rights where there is no citizenship, and there is no obligation to grant citizenship, we can reason that in the power to grant or deny citizenship, states have the capacity to grant and deny rights or rather, the state responsibility to provide rights does not exist. Of course this is an over-simplification of the situation, as in reality there exist multiple other channels of recourse, legislative and otherwise, that make this assertion impracticable, but from a purely theoretical standpoint it seems illogical to claim there is no duty on states to facilitate access to rights and thus untenable to view citizenship as merely a privilege.

And yet, it is presented so: "Citizenship is a privilege, not a right", recited UK Home Secretary Theresa May in 2013,[44] "Citizenship is a privilege. It is not a right", declared US Secretary of State Hillary Clinton [45] and "Citizenship is not a right, it is a privilege", reaffirmed Canada's Citizenship and Immigration Minister Chris Alexander in 2014[46]. There can remain no doubt of the positioning of citizenship 'status' in the international community amongst leaders; tying in nicely with the policies of their respective countries espousing a contingent, revocable form of citizenship. In particular, Tyler notes that in the UK, the practice of citizenship as a privilege was cemented with the introduction of the British Nationality Act of 1981, where under a period of neo-liberal transformation, the act intended to delegitimise the claims to citizenship of former colonial subjects, and has been used ever

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44 "Theresa May Strips Citizenship from 20 Britons Fighting in Syria", *The Guardian* 23 December 2013, https://www.theguardian.com/politics/2013/dec/23/theresa-may-strips-citizenship-britons-syria Accessed 23rd October 2019

45 Charlie Savage & Carl Hulse, "Bill Targets Citizenship of Terrorists' Allies", *The New York Times* 6 May 2010, https://www.nytimes.com/2010/05/07/world/07rights.html Accessed 23rd October 2019

46 Audrey Macklin. Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien *Queen's Law Journal*. Volume 40 Number 1 (2014):9.

since as a targeted policy of citizen design.[47]

A further interesting point to note is that while the rhetoric of citizenship as a privilege rather than a right is championed by governments, the inter-related concept of nationality, defined as the belonging of an individual to a state, remains very much asserted as a right in international human rights law.

[47] Imogen Tyler "Designed to Fail: A Biopolitics of British Citizenship", *Citizenship Studies,* Volume 14 Number 1 (2010):62.

Chapter 2: A Legal Right to Citizenship?

On the 5th October 2016, the then-Prime Minister Theresa May uttered, "If you believe you're a citizen of the world, you're a citizen of nowhere. You don't understand what the very word 'citizenship' means."[48] Indeed, as previously touched upon, the meaning of citizenship in a legal context is not straightforward. The term, littered profusely through domestic law, speeches and discourse, remains notably absent from much of international law. Whilst the concept is outlined in no uncertain terms by most individual states; what is entailed in 'citizenship', holding the status of 'citizen' or the relevant rights derived thus, when elevated to any supranational context, it is replaced with the term 'nationality'. T.H. Marshall describes citizenship as "a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed."[49] Nationality, on the other hand, refers to a membership of a state, falling short of including the corresponding rights and duties, yet it is deeply entrenched in international law, featuring in core documents from the Universal Declaration of Human Rights (UDHR) to the International Covenant on Civil and Political Rights (ICCPR) and beyond.

This difference in application and conception would then imply a huge gulf in what can be deemed to be nationality, and what can be considered citizenship. However, this notion appears somewhat incongruous when we take into account the fact that outside of specialised fields, the two words are generally used to the same effect. Moreover, if we infer from the previously established definitions that nationality is merely citizenship but without the associated rights and duties, the idea of nationality is rendered merely an empty, ascribed status not constitutive of much. In fact, in "Nationality and Statelessness: A Handbook for Parliamentarians", the then-UN High Commissioner for Refugees (UNHCR), and now-

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48 Theresa May 'Conference Speech' (Birmingham, UK, 5th October 2016) *The Spectator (online)* https://blogs.spectator.co.uk/2016/10/full-text-theresa-mays-conference-speech/ Accessed 8th November 2017

49 T.H. Marshall, "Citizenship and social class." In *States and societies* (ed.) D. Held, 248-60. Oxford: Basil Blackwell 1983(1950):253

Secretary General of the United Nations, Antonio Gutierrez, stated in a foreword that, "Citizenship or nationality ((...) are used interchangeably in this handbook, just as they usually are in international law)".[50]

If we accept that citizenship and nationality are all but synonymous in the eyes of the law, it becomes more difficult to defend the idea of citizenship as a privilege yet, conversely, nationality as a right. Though the former premise is somewhat over-reaching, it is not unreasonable to argue that the presently existing gap between the concepts of citizenship and nationality can be reconciled, at least in terms of international law. This chapter will inspect the codification of the right to nationality in international human rights law, considering that such established norms can potentially be applied to the issues concerning the revocation of citizenship. Other examples of law applicable to such cases will also be addressed forthwith, highlighting the special protections afforded to women and children, the issue of statelessness and also procedural rights. This chapter seeks primarily to present the relevant material, and an assessment of legitimacy and applicability will be incorporated into the following chapter.

2.1 The Right to Nationality, Freedom of Movement and the Right to Reside

The **1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws** first established the necessity of nationality, claiming that:

> *"every person should have a nationality and should have one nationality only"*.[51]

Yet the most definitive assertion of the right to nationality came in 1948 with the Universal Declaration of Human Rights.

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[50] United Nations High Commissioner for Human Rights, *Nationality and Statelessness: A Handbook for Parliamentarians* (2005):3 https://www.un.org/ruleoflaw/files/Nationality%20and%20Statelessness.pdf Accessed on 9th November 2019

[51] League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 13 April 1930 http://eudo-citizenship.eu/InternationalDB/docs/Convention%20on%20certain%20questions%20relating%20to%20the%20conflict%20of%20nationality%20laws%20FULL%20TEXT.pdf Accessed 9th November 2019

Article 15 of the UDHR (1948) states that:

> *(1) Everyone has the right to a nationality.*
>
> *(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.*[52]

While at first glance this seems to be categorical with respect to a comprehensive right to nationality and the right not to be deprived of it, the inherent ambiguity of how to interpret 'arbitrary' deprivation raises a serious conundrum, with no further definition provided in the document. Furthermore, though the right is positively established, there is no explicit duty imposed on States to be the bearer of this duty. This leaves a somewhat theoretical grey area leaving states to determine interpretation, though further light comes to be shed in subsequent discussion, concerning namely the International Covenant on Civil and Political Rights of 1966.

Article 12(4) of the ICCPR provides that:

> *4. No-one shall be arbitrarily deprived of the right to enter his own country.*[53]

Primarily, and crucially, the use of 'no-one' does not discriminate between nationals and aliens, and would technically apply to nationals of a country who have been stripped of their nationality for being in violation of international law, as supported by the Committee on the Convention of Political and Civil Rights (CCPR) in a general comment interpreting this statement.[54] Furthermore, again, the use of the term "arbitrarily" requires clarification. In the same report, the CCPR states actions to be arbitrary where they strip a person of nationality or expel him/her to another country with a view to prevent that person from entering his/her own country, crucially asserting, 'that there are few, if any, circumstances in which

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52 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948 https://www.un.org/en/universal-declaration-human-rights/ Accessed 9th November 2019

53 UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966 https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx Accessed 9th November 2019

54 UN Human Rights Committee (HRC), *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9 para:20

deprivation of the right to enter one's own country could be reasonable'.[55] Though this refers directly to the freedom of movement, the notions of nationality, citizenship and freedom to enter one's country are inextricably linked - to strip one's nationality is tantamount to denying their right to freedom of movement.

It is also claimed that "necessity, proportionality, and reasonableness" are crucial in ascertaining what can be considered arbitrary, key points that will be returned to in depth.[56] The UN Human Rights Committee (HCR) has further added that "the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the ICCPR and should be, in any event, reasonable in the particular circumstances."[57] In an additional comment on Article 9 of the ICCPR, the HCR stated that "the notion of 'arbitrariness' must not be equated with 'against the law' but must be interpreted more broadly to include such elements as inappropriateness and injustice."[58] Though such comments have not been made with direct reference to the arbitrary deprivation of citizenship (or right to enter), they become a useful tool in deciphering the specifications of the declarations from a legal standpoint.

The HRC further, and of utmost relevance to the topic at hand, elaborated the concept in the Annual Report 'Human Rights and Arbitrary Deprivation of Nationality' stating that the removal of citizenship must be in pursuit of a legitimate aim, must be proportionate, must not be discriminatory, must abide by procedural fairness and have the possibility to be challenged by a court.[59] Combining the array of comments and assertions provided by

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55 UNHCR: CCPR General Comment, para 21

56 Mirna Adjami and Julia Harrington "The Scope and Content of Article 15 of the Universal Declaration of Human Rights," *Refugee Survey Quarterly*, Volume 27 Number 3 (2008):101

57 UN Human Rights Committee (HRC), *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988 http://hrlibrary.umn.edu/gencomm/hrcom16.htm Accessed 9th November 2019

58 Adjami and Harrington, '*The Scope and Content of Article 15*' p101.

59 UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, 14 December 2009, A/HRC/13/34 https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/175/12/PDF/G0917512.pdf?OpenElement Accessed 9th November 2019

international human rights bodies, these above five criteria can be taken as key considerations in establishing arbitrariness, but also, importantly, elements of inappropriateness and injustice must be evaluated. These criteria will be accepted as applicable generally in international human rights law, as they will be with reference to the specific articles delineated prior.

Furthermore, the 1997 **European Convention on Nationality Article 7** enumerates a series of very specific criteria which can allow for *the loss of nationality ex lege or at the initiative of a State Party* including engaging in:

> *d) conduct seriously prejudicial to the vital interests of the State Party*[60]

It is this terminology which is replicated in the British 'Nationality, Immigration and Asylum Bill' of 2002, in an attempt to bring UK policy in line with European standards, but also decades prior, featuring similarly in the Convention against Statelessness (which will be addressed in due course). However again, what is constituted by 'seriously prejudicial' and likewise 'vital interests' are left to some extent open to interpretation, so explanation must be gleaned from elsewhere in assisting with the elucidation of these concepts. In a discussion of this phrase with respect to the interpretation of the Convention Against Statelessness, the UNHCR issued a report indicating that, "the conduct covered by this exception must threaten the foundations and organization of the State whose nationality is at issue. The term "seriously prejudicial" requires that the individuals concerned have the capacity to impact negatively the State. Similarly, "vital interests" sets a considerably higher threshold than "national interests"".[61] This is of particular importance with respect to the theme of foreign fighters, and an analysis will be developed later on.

Whilst not expressly mentioned in the **European Charter of Human Rights (ECHR) of**

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60 Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS 166 https://rm.coe.int/168007f2c8 Accessed 10th November 2019

61 UN High Commissioner for Refugees (UNHCR), *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")*, March 2014 https://www.ohchr.org › hrc › session25 › documents › a-hrc-25-28_en Accessed 10th November 2019

1950, some cases have been referred to as interfering with **Article 8: Right to respect for private and family life, home and correspondence.**[62] However, more significantly,

Article 3 of the Fourth Protocol to the ECHR on the Prohibition of Expulsion of Nationals states that:

> *1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.*
>
> *2. No one shall be deprived of the right to enter the territory of the state of which he is a national.* [63]

We encounter again the non-discriminatory expression 'no-one', thus making this article of key use in European cases, including those addressed in this thesis as it can be used to further expound the European legal position concerning the right to nationality, and thus tentative citizenship, and freedom of movement for *nationals* of states. It must be noted here that the UK is neither party to the European Convention on Nationality nor the Fourth Protocol to the ECHR, in spite of seeming attempts by previous governments to bring domestic legislation in line with such documents. Yet European law and case law can be integral in the setting of customary law, exemplified in **Van Duyn vs Home Office** of **1974,** a case concerning a Dutch National who was deprived of entry to the United Kingdom. In the ruling, the **European Court of Justice** claimed that:

> *"It is a principle of international law ... that a state is precluded from refusing its own nationals the right of entry or residence".*[64]

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62 Council of Europe: European Court of Human Rights, *Deprivation of citizenship*, January 2018 https://www.echr.coe.int/Documents/FS_Citizenship_Deprivation_ENG.pdf Accessed 10th November 2019

63 Council of Europe, *Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto*, 16 September 1963, ETS 46 https://www.echr.coe.int/Documents/Library_Collection_P4postP11_ETS046E_ENG.pdf Accessed 10th November 2019

64 Yvonne Van Duyn v. Home Office, (No. 41/74), 1974, E.C.R. 1337 https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:61974CJ0041 Accessed 10th

We can thereby conclude that whilst not expressly delineated in international human rights law, there are a plethora of documents whereby we can place the concept of citizenship issues. This legal backdrop serves to act as a legitimate reference point as the thesis narrows the focus to UK policy and specific cases.

2.2 Special Protections for Women and Children

Whilst the aforementioned rights are theoretically applicable to all, or rather of which 'no-one' can be denied, a right to nationality for women is also asserted in the Convention on the Nationality of Married Women (CNMW), the Convention on the Elimination of Discrimination Against Women (CEDAW) and the right to nationality for children in the Convention on the Rights of the Child (CRC). Women and persons below the age of 18 are attributed special conventions in view of their differing roles and needs in society; as mothers, as wives, as children, and additionally due to an historic lack of acknowledgement of such requirements. Considering the focus of this thesis, it is essential to examine whether there could be further protections afforded to women and children under international law; a distinct legal positioning indicative of their unique role, an idea which would be, in principle, of paramount importance when considering the case of 'ISIS brides'. The existence of such additional layers of protection concerning the revocation of citizenship of women and children in this context could entail a requirement for a tailored, non-uniform treatment in the eyes of the law, an idea at odds with the present prevailing international response.

The **1957 Convention on the Nationality of Married Women** concerning the equal rights of women outlines the right to nationality of a woman irrespective of her husband.[65] This is important to note, particularly if we take into account that, given the situation of foreign fighters, males in an identical situation are nowhere afforded the equal corresponding right with respect to their wives.

November 2019

[65] UN General Assembly, *Convention of the Nationality of Married Women*, 29 January 1957, A/RES/1040 https://treaties.un.org/doc/Treaties/1958/08/19580811%2001-34%20AM/Ch_XVI_2p.pdf Accessed 17th November 2019

Reiterating this, **Article 9 of the CEDAW** states:

> *1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality.*
>
> *2. States Parties shall grant women equal rights with men with respect to the nationality of their children.* [66]

While not elaborating any further or specific new rights, and expressly as equal to men rather than surpassing them, the existence of additional affirmation works to cement the defensibility of the concept with regards to international law. More significantly, however, is the equal nationality rights afforded to the children.

Article 7 of the CRC states:

> *(1) The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents*
> (2) *States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

While **Article 8** claims:

> *(1) States Parties undertake to respect the right of the child to preserve his or her identity, including nationality … as recognized by law.*
> **(2)** *Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection.*

Article 39 asserts that:

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[66] UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx Accessed 18th November 2019

> *States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of ... armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.* [67]

We can further support this supposition by looking to the **Declaration on Social and Legal Principles relating to the Protection and Welfare of Children**.

Article 8 states:

> *"The child should at all times have … a nationality … . The child should not, as a result of foster placement, adoption or any alternative regime, be deprived of his or her … nationality … unless the child thereby acquires a new … nationality."*

Reading these documents together, it can be plausible to interpret thus; as the CRC may potentially prohibit a state from revoking the nationality of a child, and a woman has equal nationality rights to her children, (and the state is obliged to ensure care for the child by the parents as far as possible), there exists the possibility that in the case of foreign fighters, the mother would be given the same protections under international law and thus the revocation of their citizenship by states could be prohibited.[68] The extra-territorial reach of the CRC has been affirmed by the CRC Committee[69], and under article 39, the obligations of the state with respect to an appropriate environment for the child combined with the care from parents, applies directly to the case of mothers and children remaining in Syria after the IS conflict.

Moreover, notwithstanding the rights of the mother, it is clear from the articles that the deprivation of the nationality of children is unquestionably deserving of special treatment,

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67 UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations https://www.ohchr.org/en/professionalinterest/pages/crc.aspx Accessed 18th November 2019

68 Shiva Jayaraman, "International Terrorism and Statelessness: Revoking the Citizenship of ISIL Foreign Fighters" *Chicago Journal of International Law Volume* Volume 17 Number 1 Article 6 178 (2016):197

69 CRC Committee, 'General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin', *UN Doc CRC/GC/2005/6* (1 September 2005) https://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf Accessed 18th November 2019

and in the case of children of foreign fighters (or in this case, the so-termed 'ISIS brides') the deprivation of nationality that undoubtedly results from the revocation of the citizenship of the mother runs counter to international human rights obligations, especially considering that the CRC is the most ratified convention in history.

2.3 The Issue of Statelessness

When Arendt made her pivotal assertion linking citizenship to the right to have rights, the broader context was in regard to the plight of the stateless. For Arendt, herself for many years a stateless 'refugee', the stateless were pariahs, political outcasts, suffering not one loss but three: the loss of a home, the loss of government protection, and, finally, the loss of "a place in the world which makes opinions significant and actions effective".[70] Statelessness remains a condition taken very seriously by the international community and human rights laws take a strong stance. Though the revocation of citizenship does not necessarily result in statelessness, states' commitments against the eventuality of such a condition are a key consideration when discussing the legality of policy. This is never more true than with reference to the existing UK policy which in fact expressly permits statelessness ensuing from citizenship stripping in certain instances.

The 1961 Convention on the Reduction of Statelessness

Falling under the traditional sphere of sovereignty, a great deal of deference has generally been afforded to states regarding the issue of nationality. However, following the 1954 Convention on the Status of Stateless Persons, designed to ensure a minimum set of human rights for people not recognised by any state, the 1961 Convention took an additional step in its aims to prevent and reduce statelessness, attempting to further codify the right to a nationality and impose certain obligations on states. It called upon states to establish safeguards in domestic law helping to work towards the prevention of statelessness in conditions of birth and throughout the course of life (significant due to the absence of any definitive treaty or customary law expressly prohibiting citizenship revocation, meaning

[70] Hannah Arendt, *The Origins of Totalitarianism*, 296

domestic nationality law would take precedent).

Article 8 of the Convention on the Reduction of Statelessness outlines:

> (1) *A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.*[71]

Thus, in cases of denationalisation, it would be prohibited to strip any individual of their citizenship, unless they held this status validly elsewhere. In other words, only dual nationals would be subject to such a policy. This article however goes on to elaborate that statelessness may be considered legitimate so long as the person in question:

> *(3) ii. has conducted himself in a manner seriously prejudicial to the vital interests of the State;*[72]

The ambiguity implied by such phrases can be addressed by the same reasoning as that expounded in Section 2.1 of this thesis, but to reiterate will be restated here with reference to the UNHCR clarification that; "the conduct covered by this exception must threaten the foundations and organization of the State whose nationality is at issue. The term "seriously prejudicial" requires that the individuals concerned have the capacity to negatively impact the State. Similarly, "vital interests" sets a considerably higher threshold than "national interests"".[73]

Concerning the contradiction between the UK's international obligations in preventing statelessness and its most recent policy stating otherwise, it must be noted that the UK included a reservation when signing the Convention disregarding the rules in the previous article and reserving the right to revoke the nationality of any individual acting prejudically towards national interests.[74] Whether the conduct we discuss falls within the remit of being

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71 UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations https://www.unhcr.org/protection/statelessness/3bbb286d8/convention-reduction-statelessness.html Accessed 18th November 2019.

72 ibid

73 UNHCR, "*Interpreting the Statelessness Convention"*, 2014.

74 Jayaraman, *"International Terrorism and Statelessness"* p206

'seriously prejudicial to the vital interests of the state' will be addressed in due course.

A further quandary needing attention brought about by this Convention concerns the implication that denationalisation may be permitted on the condition that the person would not be made stateless, effectively legitimising the revocation of citizenship of dual-nationals. Bizarrely, we can envisage a situation where two people, Person A, holding just one citizenship and Person B, holding dual citizenship, can be differently prosecuted for an identical seriously prejudicial act; with B liable to have their citizenship revoked, yet with A being protected against this treatment under international law. Furthermore, we have the prospect of a race to denationalisation, where both states with responsibility for an unwanted individual may rush to strip the citizenship of a dual national first, whilst it would still be permitted by international law, as will be exemplified forthwith with the case of Abu Hamza, a dual national of the UK and Egypt.

Whilst states' duties to try and prevent statelessness are apparent, there clearly exists a significant grey area and lack of clarity, allowing each country a significant amount of leeway under which parameters these obligations override their domestic policy on denationalisation, shown nowhere more clearly than with the UK, which, for over half a century, has maintained their right to revoke citizenship regardless.

2.4 Procedural Rights

The final legal standard of central importance to the issue of citizenship revocation, is the idea of procedural due process. Though procedure may differ widely throughout the international community, key to this thesis yet also containing practice of particular note, UK policy will be discussed.

Article 8 of the Convention on the Reduction of Statelessness, states that a:

> *(4) "Contracting State shall not exercise a power of deprivation … except in accordance with law, which shall provide for the person concerned the right to a fair*

hearing by a court or other independent body." [75]

Equally, the ICCPR and the UDHR assert an individual's right to access domestic courts in line with the customary principle of due process. Two key issues must be raised here; firstly, the possibility of procedural fairness when a person has their citizenship revoked while they are out of the country, and secondly, the level of transparency in any such hearing.

Notwithstanding the practical difficulties of notifying and informing a person in absentia, some consideration must be given to logistical issues surrounding the right to appeal. In 2004, a clause was added to the British Asylum and Immigration Act meaning the government had the power to enforce their revocation act before their appeal had been heard, with the loss of citizenship 'almost immediately after the notice of intention to deprive' was served whereas formerly the deprivation was suspended until the appeal process would be complete.[76] Consequently, some deprivation orders by the Home Office have been carried out without being reviewed and frequently the deadline for appeal has been missed.[77]

Furthermore, the British Home Office refused to explain the reasons for depriving citizenship in eleven of the thirteen cases from 2006–2010.[78] It falls largely to the Home Secretary, one individual, to decide where citizenship can be revoked, and if it is decided that the decision was taken due to reliance on information which the Home Secretary's opines should not be made public, either in the interests of national security, in the interests of the relationship between the United Kingdom and another country, or in the public interest then the appeal process can bypass normal procedure and be diverted to the Special Immigration Appeals Commission (SIAC).[79] The upshot of this is that the content of the process can be kept secret,

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75 UNGA, *Convention on the Reduction of Statelessness.*

76 Amanda Weston, 'Deprivation of Citizenship – by Stealth' *Institute of Race Relations UK (online)* 9th June 2011 http://www.irr.org.uk/news/deprivation-of-citizenship-by-stealth/ Accessed 18th November 2019

77 ibid

78 Leslie Esbrook, "Citizenship Unmoored: Expatriation as a Counter-Terrorism Tool" *University of Pennysylvania Journal of International Law* Volume 37 Number 4 (2016):1311

79 Patrick Weil and Nicholas Handler, "Revocation of Citizenship and the Rule of Law: How Judicial Review Defeated Britain's First Denaturalization Regime" *Law and History Review* Volume 36 Number 2 May (2018):352

relying on closed material and an appointed advocate representing the former citizen in absentia of the individual in question. As a result of this circumvention of ordinary proceedings, citizenship can be revoked without the appellant even being made aware of the evidence presented against them.[80] In theory, in order to justify such egregious interference with individual rights, a relatively robust burden of proof should fall upon the state, one seemingly evaded by policy in the UK.

[80] Ibid

Chapter 3: The Present State of Affairs: Compatibility of Citizenship Revocation and Liberal Democracy

Having established the relevant legal framework as a reference for the revocation of citizenship, this chapter seeks to take a more analytical stance, examining how the concept is viewed by scholars, academics and other relevant bodies in practice. As discussed earlier, some elements of doubt could be raised concerning the compatibility of certain states' policy and international law. The arguments expounded hereafter attempt to build on this, addressing whether beyond the dubious legal positioning, there exist contradictions between the act of citizenship revocation and the very foundations on which the states carrying out denationalisation are built, i.e. liberal democratic values. In the first section, different theories between how the relationship or contract between the state and the citizen is played out are assessed, before going on to address justifications from security and symbolic standpoints. The key issues of arbitrariness, invidiousness and statelessness are discussed with reference to ongoing scholarly debates in this area, finally looking at the legitimacy of citizenship revocation with respect to international obligations. Taking into account the work of key players in the field such as Matthew Gibney, Audrey Macklin and Patti Lenard, the chapter aims to demonstrate how the stripping of citizenship as a punishment stands at odds with the aims it purports to fulfil and contradicts some fundamental commitments of any liberal democracy.

3.1 Conceptions of the State/Citizen Relationship

Though frequently discussed, there is unsurprisingly no consensus surrounding the nature of the relationship between a state and its members, whether approached from a more liberal perspective or the view expounded in civil republican discourse. With respect to the ideas discussed herein, the liberal view revolves around citizenship as a status entitling the individual to rights, whereas the civil republican view endorses more strongly the reciprocal nature of the bond between member and state, and as the two ideas are not necessarily incompatible there exists a substantial spectrum of plausible interim approaches. Therefore, as the issue of the legitimacy of citizenship revocation relies heavily on whether there is, and

if so the extent of, contractual obligations between state and citizen and resultant contingency or conditionality of membership, the proponents, arguments for and implications of differing approaches must be addressed.

To take a prevalent view from the interim spectrum; the liberal state as an association of rights-bearing individuals contracted together in a society, it would be logical to suppose that an individual not upholding their part of the bargain could have their corresponding benefits of being part of the society removed as a consequence. In fact, it is this straightforward thinking that bolsters much of the discussion proclaiming the revocation of citizenship as a perfectly acceptable course of action.[81] Wellman goes further, viewing the state to be the same as any other association in a liberal society, on the grounds that there is no specific limit where an organisation is permitted to diverge from the norm of freedom of association rights. Thus, in the same way a golf club may exclude non-members on the grounds it deems appropriate, as can a state.[82] Beccaria also subscribed to the idea of an implicit contract of the state and citizens, viewing banishment as an appropriate response for those not obeying the conditions under which men abide with each other and defend themselves.[83]

A possible response to this relies on the idea of consent. Though consent in a state is often viewed as tacit, essential for the functioning of a society under a theoretical social contract, it is reductive to claim that a state's members, as due by birth or by circumstance, are voluntarily consenting members as they would be in a golf club. There is no lawyer reading the rules and regulations or code of conduct at the hospital, which, once signed, permits the new-born potential membership holder entry into the state association. Nor is there an alternative Plan B offered for those not wishing to remain within the confines of their state's conception of acceptable behaviour. For naturalising citizens this reasoning holds less weight and could be countered with the argument that a certain level of consent has been given, and also that, at least for dual nationals, there does exist a Plan B. However, arguments to be

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81 Shai Lavi, 'Citizenship Revocation as Punishment: On the Modern Bond of Citizenship and Its Criminal Breach' *The University of Toronto Law Journal* Volume 4 (2011):783, 795.

82 Wellman, Christopher Heath. "Immigration and Freedom of Association." *Ethics* 119, no. 1 (2008):111

83 Beccaria, *On Crimes and Punishments*, 56

offered throughout this chapter such as invidiousness, statelessness and arbitrariness work to counter this. After all, even for naturalised citizens this hypothetical list of conditions does not exist, rather the decision is at the whim of the state, or in the case of the UK, in the hands of a single person. The law of the country does not act as necessary and sufficient guidelines for members, rather an evolving, yet largely undefined notion of what is conducive to the public good as the key tenet. It could also be explored to what extent the state has fulfilled its duty to the citizen who acts in such a way as to warrant citizenship stripping, explored in this chapter forthwith.

Another conception of citizen and state is that offered by a liberal nationalist approach. Theorists of such a discourse have expanded upon the idea of contracting individuals, going beyond even the state as an association, instead providing that states more closely resemble the character of a community, with members of such a community granted as such via the event of their birth therein. This view raises questions of its own. To view the state as a community suggests a collaborative element, the implication being that the actions of individual members are intrinsically linked to the wider community as a whole. Liberal nationalists David Miller, Yael Tamir and Michael Walzer have used the phrase "communities of character" where members share a common public culture and collective identity - effectively a shared responsibility.[84]

Herein lies two key considerations. Firstly, if we take the state to be a common public culture, we then have to concede that the state community played a hand in the raising, and resultant behaviour, of members. From this angle, the culture is indistinct from the members that make it up in the sense that the membership and society are effectively one and the same. Secondly, with a view to the revocation of citizenship, the state would also have to accept the repercussions resulting from members' actions and accept the responsibility for dealing with them, rather than handing this over to another state. We can also circle back to the previously addressed idea that a state may not have fulfilled fully its contractual obligations in the raising of the citizen.

[84] Gibney, Should Citizenship Be Conditional?, 650

The first idea is somewhat precarious. To argue that a state plays a role in the shaping of its citizens seems uncontroversial; the fabric of society and members are tightly interwoven and conceptually inseparable - one ceases to exist without the other. However, to base this assertion on the premise that this society, or indeed this state, is based on a common public culture seems erroneous. Few states nowadays would so much as claim to be based on a collective identity or common culture, though states may espouse something of this nature, e.g. a recent move towards the promotion of 'Britishness' or 'British values' in the UK. To consider the case of foreign fighters, we must make clear the difference between state and society. While a foreign fighter may be a member of a state, through birth, through blood or through naturalisation, this is a far cry from claiming that they are a member of the society, and it would be even more farfetched to deem them part of a common culture. There exists a contradictory element in claiming those who will later be deemed to be prejudicial to the interests of the state, are consenting members of the culture and the society encapsulated therein. In brief, there is something profoundly anti-state about leaving one's place of birth or residence in order to fight against the principles it embraces, and anti-society in foregoing the benefits once held in such a place.

This seemingly plays into the hands of those in favour of citizenship revocation - in the committing of anti-state, anti-society acts, the member willingly relinquishes the related benefits thus warranting the stripping of citizenship and any associated rights. However, denying the state responsibility over its citizens on the grounds of a lack of common culture, does not absolve the state of its duties and role played. Moreover, it could be argued that in some cases, the very reaching of the point where members act in a manner against the state evidences a failure on behalf of the state, to which they must take some form of culpability. Of course, to suggest that a state is solely responsible for producing its own terrorists is at best excessive, and at worst, incendiary. However, it is not unreasonable to consider a state may have inadvertently incited some level of disaffection or belligerence amongst certain members or groups. Though admittedly this may not apply to citizens en masse, rather specific cases, the idea of the alienation of Muslims in society could be a case in point in this respect. Britain's most senior counter-terrorism officer in 2019, Neil Basu, claimed that "up to 80 per cent of those who wanted to attack the UK were British-born or raised, which

strongly indicated domestic social issues were among the root causes".[85]

Furthermore, regardless, it is implausible to claim that the state holds no part of responsibility for its members. There may be differing views on whether this responsibility extends to include the socialisation of the member and so on, yet nothing can relieve the state of its involvement with the once embraced citizen. All humans in existence must be physically present in one country or another. For a state to wash its hands of a citizen as and when it deems fit, not only suggests the active rescindment of the state's desire to deal with any issues, but moreover entails the offloading of responsibility to another state. It is problematic for a state to absolve itself of the responsibility for its citizens. It is an even further stretch to claim that it should become the responsibility of another state, which is effectively what the revocation of citizenship necessitates.

Consider the United Kingdom, a state with a common law system that has been administered since the Middle Ages. Since the Calvin Case of 1608, where the permanence of the bond between state and subject was asserted, the enduring bond has been repeatedly affirmed. In the case of *Johnstone v Pedlar* of 1921, Viscount Finlay states, "One who is by birth or by naturalisation a British subject, and commits treason still, of course, remains for all purposes a British subject, and must be treated as such in every respect'.[86] This is further affirmed by Lord Atkinson's assertions claiming, "the fact that he has shown himself unworthy of the Sovereign's protection, has abused his privileges and violated his allegiance, cannot ... terminate the protection with all the rights that flowed from it which the Sovereign extended to him, or withdraw the implied licence which the Sovereign gave to him to reside in this country".[87] In the words of Williams, who reiterated this view, "it seems that the duty of protection persists even though the subject is not acting in the spirit of his duty of allegiance".[88] Recent UK policy could therefore be seen to be making a stark divergence from the legal

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85 Vikram Dodd "Counter-terror Chief Says Policing Alone Cannot Stop Terrorism" *The Guardian (online)* 6th August 2019 https://www.theguardian.com/uk-news/2019/aug/06/counter-terrorism-chief-calls-for-greater-social-inclusion Accessed 9th December 2019

86 Johnstone v Pedlar [1921] 2 AC 262

87 Ibid

88 Glanville Williams, 'The Correlation of Allegiance and Protection',*Cambridge Law Journal* Volume 10 Number 1 (1948):57

traditions and customary law that exist at its very foundations.

Though a range of conceptions of the citizen's position in the state are explored here, a common thread seems to be the implicit duties that exist, accepted to varying extents, between the two parties. Yet, to legitimise the stripping of citizenship upon the lack of compliance of the state member, while the corresponding contribution made by the state remains undefined and accepted as legally unenforceable seems questionable. Nobody is claiming that the citizen should be able to act in a manner prejudicial to their own state without repercussions, yet the withdrawal of the responsibility of the state may not necessarily be a logical, automatic response, with the absolution of any involvement in fact an ill-considered remedy, most of all in the UK which is working against its own legal tradition. An act such as the revocation of citizenship which necessarily entails a loss of many fundamental rights, could seemingly only rarely be justified.

3.2 Justifications

Though when scrutinised the act of citizenship revocation appears to be at odds with much of the foundation and legal tradition of liberal democratic states, the use in practice has not only gained predominance in recent years, but many states and parties appear to be active champions of such policies. We must then discover with which rationale states seek to justify these acts, and further whether the basis provided is defensible in reality. In democratic theory, a state must be prepared to provide justifications for its actions, in particular where there is a coercive impact, an argument strongly put forward by Patti Lenard, using it as a basis for the incompatibility of the practice with liberal democracy.[89] Pillai and Williams provide two main, somewhat overlapping justifications for citizenship revocation policy in the present climate, that from security, and the interconnected symbolic function.[90] These two camps will be addressed, yet certain criteria will be applied to attest their legitimacy on these grounds; whether they are perceived to be likely to achieve their desired objective,

[89] Patti Tamara Lenard, "Democracies and the Power to Revoke Citizenship" *Ethics and International Affairs* Volume 30 Number 1 (2016):81

[90] Sangeetha Pillai and George Williams "The Utility of Citizenship Stripping Laws in the UK, Canada and Australia" *Melbourne University Law Review* Volume 41 Number 2 (2017):848

whether alternative methods or responses have been explored, and whether it is the least burdensome option. Lenard echoes this, reiterating these three criteria to be met in order to be justifiable, and identifying the broad policy aims of revocation to be deterrence from terrorist actions (since the loss of citizenship would be too high a price to pay) and to permit a government to refuse re-entry to or deport individuals "with nefarious intent".[91]

3.2.1 Security

The most obvious reason provided for stripping unwanted individuals of their citizenship status is that the state is merely acting to fulfil its fundamental duty of protection to its people. At first glance, by outlawing the individuals considered a threat to the state, the danger is reduced, and security improves thus. Further arguments to be evaluated from a security standpoint include the idea of deterrence and also to hinder the spread of dangerous ideals and materials. Pillai and Williams undertook work with a specific focus on common law systems (UK, Canada and Australia), having significance here with reference to the UK based issue raised in the previous subsection. The work references the idea that for the nations concerned, recent events have produced an increased number of undesirable citizens, requiring a legislative response. They observe that these citizens are viewed to pose a threat to national security and thus managing this risk of harm warrants removal from the citizenry and the nation.[92]

In practice, the security narrative is not merely the general protection of citizens in the face of certain events. In contemporary society in these countries, there is one security threat highlighted as pre-eminent: terrorism, or more specifically, Islamic terrorism. We have to look no further than the evolution of UK policy, conveniently correlating with certain events: 2002 - subsequent to 9/11, 2006 - triggered by the 7/7 bombing, and 2014 - in response to the increased numbers joining IS. Terrorism had long since been a problem in the United Kingdom with the Irish troubles of the last century, yet no such policies had even so much as been debated. It is also no coincidence that in the aftermath of 9/11, the USA, amongst other states, took the opportunity to make sweeping reforms of security policy often drastically

91 Lenard, *"Democracies and the Power to Revoke Citizenship",* 85

92 Ibid 858

curtailing the rights of citizens as a side-effect. Yet public fear permitted such actions as states and citizens rallied round the flag. Indeed, as further noted by Pillai and Williams, "justifications have tended only to invoke national security in general terms, rather than providing a persuasive and specific explanation of why citizenship stripping is a necessary or desirable means via which to pursue national security objectives".[93]

Proponents of strong denationalisation would cite this as a strong argument - that the security of citizens is paramount, and a state's obligations to protect its members should override any other concerns. Whilst it is absolutely essential to provide protection for citizens against terrorism, of which Islamic terrorism is a significant subset, it could be argued that whilst ostensibly such state positions were absolutely justified in their aims, the underlying reason may actually have been more of a symbolic gesture (addressed forthwith) than a genuine effective ploy. (Indeed, an entire further thesis would be necessary to explore the questions surrounding the expansion of security policy in the 21st century and thus is beyond the remit of this thesis). Taking the focus identified here, Islamic terrorism (not expressly the target, though assumed here to be so) we must consider whether the revocation of citizenship is first of all conducive to its security aims.

An important point to consider is that by denying a potentially dangerous individual the right to enter a country, the issue of surveillance and tracking becomes a far more difficult and costly operation, whether indeed it would be practical at all. Leaving a prospective terrorist unchecked and untraceable abroad is probably not a desirable situation for those wishing to protect their countries from attacks. Focusing on the particular case of foreign fighters deemed to have taken part in conduct counter to the state during engagement with IS, it seems even more risky to keep such individuals grouped together in detention centres, in close quarters, in what can only be assumed to be conditions unfavourable to the parties responsible (many citizenship-stripping states among them). Moreover, the very threat of citizenship revocation may have the unintended consequence of driving certain acts or individuals underground to avoid detection or suspicion, rather than deterring them from any such action. Where a state loses track of or fosters the invisibility of the actions of possible threats, this

93 Ibid 883

could potentially be seen as counter-productive for security.

Additionally, when we address the idea that one intended aim of denationalisation policy would be to prevent the spread of dangerous ideals or radicalisation, forcing communications underground would just make the detection of potential threats more difficult. In contemporary society, rather than meetings and physical recruiting, much dissemination of information and contact between members of certain groups occurs online, lessening the challenge that the obstacle of obstructed freedom of movement would entail. Terrorist organisations tend to be vast transnational networks, either already under surveillance as much as possible or managing in some ways to fly under the radar. Either way, the revocation of an individual's citizenship does not remove their threat to society.

As a response to these two issues, and a further evaluation of whether this would be the best, and least burdensome path, would be the alternative option of trying and imprisoning potentially dangerous citizens. If imprisoned, the threat posed by these individuals would all but be eliminated, whilst theoretically the judicial system could help give a more accurate depiction of those deserving of punishment and those not - when a state washes their hands of a former citizen, it also denies itself the possibility of uncovering and investigating the truth and thus identifying possible areas for prevention in the future. In fact, in the UK, denationalisation powers have been used predominantly against those who were at the time outside of the country.[94] Notwithstanding the complications surrounding the almost non-existent and arguably intentionally difficult to navigate process of appeal, it seems here as rather the simpler option for the Home Office. When compared to arranging for the legal process to be fulfilled, an act of denationalisation takes far less resources and is significantly less time-consuming.

This could be angled to be an argument in favour of citizenship stripping; that the least burdensome option for the state would be the preferred choice. However, the objective aiming to be achieved here is increased security for the nation, and even the most hard line supporter of denationalisation could not realistically contend that a terrorist behind bars poses

[94] Ibid 884

more of a threat than a free one overseas. In fact, it should be noted that in their examination of the common law states, Pillai and Williams found that citizenship revocation powers had actually done little to meaningfully enhance national security.[95]

Sandra Mantu's focus on citizenship deprivation specifically in the UK highlighted the worrying fact that the UK executive explained that it wished to be able to deprive citizenship irrespective of the behaviour in question, including if there had been no criminal conviction.[96] This would posit citizenship as a more severe punishment and yet carried out under less stringent conditions. Pillai and Williams also note the use of citizenship stripping in one unusual instance - outside of terrorism: the case of Shabir Ahmed, the convicted ringleader of a child sex grooming gang who had his citizenship stripped by the UK Home Office in 2012 (along with associates). Though within the boundaries established by the denationalisation policy, this was a clear expansion of the powers in a situation falling outside the usual remit of the security narrative.[97] Taking these assertions into account, we can conclude that the security rationale cannot be the sole justification.

3.2.2 Symbolic

A state could be argued to have succeeded in its security aims when the population feels secure. Pillai and Williams note that "it has been suggested that, in certain instances and when employed in moderation, measures that appear to be targeting threats that attract high levels of anxiety can play a helpful role in engendering a feeling of security, even if their risk-minimisation effect is low."[98] So even if we find the security rationale wanting, perhaps the symbolic function could be sufficient alone, assuaging the fears of the masses, creating the perception that the major threat has been identified and is being dealt with. Nevertheless, this rationale must again be subject to the standards of achieving its aims and being the best option.

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95 Ibid

96 Mantu, *Citizenship in times of Terror,* 13

97 'Shabir Ahmed: Sex Gang Leader Appeals over Deportation', *BBC News* 16th February 2016, https://www.bbc.com/news/uk-england-manchester-35590906 Last accessed 7th December 2019

98 Pillai and Williams *The Utility of Citizen Stripping Laws* 884.

Indeed, in the UK, powers of citizenship revocation retained largely as a symbolic function up until the new security era of the 21st century ushered in by the events of September 11th. In the 30 years leading up to 2002, not a single person had had their citizenship stripped outside of those acquired through fraud.[99] British Home Office figures show that between 2006 and 2016, 50 people were stripped of British citizenship on the grounds of it being conducive to the public good. More significantly, in 2017, 104 people were denationalised,[100] just 3 short of the number stripped in a twenty year interwar period from 1926 to 1946.[101] This exponential increase is linked directly to the foreign fighter phenomenon in question here, and identifies the symbolic function of reassuring the public that specifically the threat of terrorists, in particular Muslim terrorists, is being handled.

While this does tie in with a narrative prevalent in the media and it society, i.e. that the enemy is Muslim, this attributes very little credit to the general public. While there exists a level of fear-mongering surrounding specific groups in society, the people en masse are unlikely to be duped by this idea, as we consider the issues of homegrown terrorism, such as that in the London bombings of 2005, and also a recent rise in the number of attacks being carried out by white nationalists. It could be argued that muslims are being scapegoated, the utilitarian tactic of publicly punishing few, in order to allay the fears of the many, leading to a more pacified nation - for the greater good. Notwithstanding the ethical and moral objections that could be presented, such a strategy could also potentially serve only to add fuel to the fire, not just with the Muslims on home soil, but also those still abroad, in pursuit of their path home. The aforementioned decision to strip Muslim sex-offender Shabir Ahmed of his citizenship, despite no connection to terrorism, feeds into the anti-Muslim version of the story.

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99 Gibney, *Deprivation of Citizenship*, 330

100 When can governments revoke citizenship? *The Economist* 8th March 2019 https://www.economist.com/the-economist-explains/2019/03/08/when-can-governments-revoke-citizenship Accessed on 7th December 2019

101 Public Records Office, Home Office, 213/579

Additionally, should the government wish to maintain the symbolic gesture of citizenship as a privilege contingent on certain behaviour - the conduct duty bound in the state citizen relationship - an incongruity emerges as not all citizens are liable to be subject to this treatment. This is not something that is likely to go unnoticed by members of the general public. While the effect of helping the population feel secure, there may be further unintended side effects as the transparency of such intentions becomes apparent.

The final point to be made is whether again it is the best option. The sharp increase in the number of denationalisation orders may, of course, act as a deterrent to some people who wish to engage in conduct against the public good. However, it can be optimistically claimed that the wave of foreign fighters leaving for conflict abroad, at least with reference to the IS situation, is all but over. The people remaining in detention camps are being made examples of, and of course, though their actions shouldn't go unpunished, a blanket rule to be applied to all seems extreme when we consider the vast range of roles that could have been played by participants e.g. a child who happened to be born in a certain time or place versus an 'IS bride' versus murderers, organisers and ringleaders. To respond in an identical manner to differing severities of crime seems unjust and unproportional. Though logistically challenging and time and resource-heavy, perhaps some form of trial may work more effectively to deter the more heinous of crimes. We must again consider the advantages of keeping track of people deemed to be a threat, and the importance of making an effort not to ignite further retaliation.

All things considered, the jury is still out on whether the symbolic and security functions can justify the practice of citizenship revocation, as there can be no comparison it is hard to say whether there has been deterrence, improved security or a reduction in the number of attacks. It is too soon after the surge in use of the practice to cast aspersions on potential aftermath or repercussions. Indeed, one poll of UK citizens found that 78% supported the Home Secretary's decision to remove Shamima Begum's citizenship because of her IS

involvement.[102] That being said, even if it were to pass these tests and be accepted as justifiable in certain circumstances, there are still some deeply concerning issues that make the practice at odds with the very values underpinning liberal democracy which must be addressed, and yet have largely been ignored, by policymakers.

3.3 Arbitrariness

The second chapter in this thesis made an attempt to clarify what could be considered to be an arbitrary deprivation of citizenship based on the international legal framework. To restate the key findings, the act should be in pursuit of a legitimate aim, must be proportionate, must not be discriminatory, must abide by procedural fairness and have the possibility to be challenged by a court, as well as avoiding inappropriateness and injustice. A key scholar in the field of citizenship, Audrey Macklin, provides her indicia of arbitrariness as including disproportionality, unreasonableness, denial of procedural fairness, lack of independent judicial engagement, discrimination and a desire to effectuate exile.[103] While mainly in line with the second chapter's findings, the final point, desire to effectuate exile is a key addition and will be analysed in turn. Falling short of arguing that all citizenship deprivation orders can be considered arbitrary, this section seeks to establish, echoing again the idea evidenced in international law, that the conditions for an act to warrant deprivation of citizenship, and not be arbitrary, are rarely met, with each of the indicia addressed in turn to help assert this.

3.3.1 In Pursuit of a Legitimate Aim

While the alleged security aims are ostensibly legitimate, the previous subsection on the justifications for citizenship deprivation demonstrates that there is more to this issue than there first appears. In the pursuit of security, there may be equally elements of undermining it, and in attempts to symbolise to the public that the threat is being dealt with, and likewise to any potential threats that they will be dealt with strongly, states may be potentially adding

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102 Harry Carr "Shamima Begum: 78% of Britons support revoking IS bride's UK citizenship" *Sky News (online)* 20th February 2019 https://news.sky.com/story/shamima-begum-78-of-britons-support-revoking-is-brides-uk-citizenship-sky-data-poll-11643068 Accessed 9th December 2019

103 Macklin *"Citizenship Revocation"* 15

fuel to the fire. This section aims not to repeat the arguments of the last, yet will reassert that security aims are at best not conclusively established (or would have to be done so on individual merits) and at worst, disproportionately targeted at Muslims. Furthermore, with the revocation of citizenship being carried out for the most part whilst those concerned are abroad, the aim could be considered to be effectively exiling the former citizen, a legally questionable issue to be addressed later on in this chapter.

3.3.2 Proportionality

One defence that could be proffered in favour of the legitimacy of the revocation of citizenship, broached by Gibney, is that some states, including the United States, still support the death penalty as an appropriate punishment in response to some crimes. On this basis, it seems absurd to suggest that a citizen can admissibly have their life taken away by, yet not their citizenship.[104] If what is considered the harshest form of punishment there is can be handed down for the most heinous crimes, it can logically be argued that the subjective parameters can be adjusted to allow for the revocation of citizenship, proportionate to a specific set of crimes (or rather, conduct).

However, to support the argument from capital punishment, we must first accept, which this paper does not, death as an acceptable form of punishment (the vast body of arguments around this issue beyond the scope of this paper). Even if this could be, we cannot ignore that in liberal democracies, such as the United States, the death penalty is used sparingly, rarely and, importantly, further to a considerable and in depth legal process, not to mention the fact that in most countries it is, in fact, unlawful. This therefore seems to be a flawed premise on which to base any meaningful analogy or argument. An additional position to be considered, pivotal to the discussion of proportionality, is that of Supreme Court Judge Chief Justice Warren in the landmark case of *Trop v Dulles.* Warren concluded that the revocation of citizenship was indeed a fate worse than torture, and death.[105]

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104 Gibney *"Should Citizenship Be Conditional"* 13

105 Trop v. Dulles, 356 U.S. 86 (1958)

Shah Lavi also addresses this issue, claiming that it is not the severity of the crime that justifies the revocation of citizenship, rather the uniqueness of the nature of the breach of the constitutional bond.[106] He goes further adding that from this perspective, it could be argued that all crimes constitute such a breach, though he positions himself short of this statement, claiming that only political crimes can merit political punishments, such as citizenship stripping. Granted, terror is included in such crimes, but only it is added that "only acts of a certain kind or magnitude...with the capacity to fundamentally undermine the possibility of self-government", also ceding that citizenship revocation is an "exceedingly harsh punishment". [107]

Whilst accepting this limits the scope of cases in which this can be applied, it does not yet posit the act of citizenship revocation itself disproportionate to the crimes. A more in depth look must therefore be taken at the crimes, or rather conduct, as, in the UK case, it has been established that here the former is not necessary for the latter. Shiva Jayaraman distinguishes between acts of terrorism, those committed on domestic soil, and those committed abroad, for example during the conflict addressed in this thesis. Jayaraman highlights the UNHCR guidelines referencing a "very high threshold" that must "threaten the foundations and organizations of the State" before questioning whether terror acts committed abroad could be considered to fall into this category. Considering the situation of IS affiliates, we again encounter a sliding scale. While the organisation as a whole has perpetrated and threatened attacks on Western nations (and at the very least threatens its ideals), it is not clear whether this can be extended to individuals by virtue of their membership. If so, this would theoretically also entail 'IS brides', though to state plainly that their conduct constitutes a threat to the foundations and organisations of the state seems to be a substantial overstatement in a discourse on proportionality.

3.3.3 Reasonableness

Notoriously difficult to define, even in legal theory, reasonableness can be conceived of

106 Lavi "*Citizenship Revocation as Punishment"* 798

107 Ibid

differently, to the extent that this is justifiable through discourse respecting the requirements of the legal system. [108] It would not then be illogical to deem a possible interpretation of unreasonable to be 'without reason'. Literally, as previously mentioned, the UK Home Office refused to give reasons for citizenship deprivation in 11 out of 13 cases between 2006 and 2010.[109] The very nature of this lack of reason would almost automatically equate to an arbitrary act if no acceptable explanation could be provided for the absence of information surrounding the removal of citizenship. Considering the severity of the punishment, one would expect the burden of proof to fall squarely on the shoulders of the states. Assuming that generally reasons are provided (the UK in this period notwithstanding), they would furthermore have to be shown to be good enough, potentially leading on to the issue of judicial fairness.

A further issue, again with particular reference to the UK, is that a crime need not even have been committed. The UK has in fact alluded to the idea that the intended purpose of citizenship revocation is expulsion. In 2014, then-Home Secretary Theresa May stated "the whole point of the measure is to be able to remove certain people from the UK".[110] The Prime Minister at that time David Cameron also stated "We must also keep out foreign fighters who would pose a threat to the UK.... What we need is a targeted, discretionary power to allow us to exclude British nationals from the UK". [111] Combined with the relaxing of the legislation to constitute merely not being conducive to the public good, we can see that the UK government appears to be carving out for itself a very broad space within which to manoeuvre, bypassing the legal system of checks and balances that would normally be applied within which the principle of reasonableness could be established or not. Though this principle can only be applied properly again to individual cases relative to the severity of conduct, or as Lavi would argue relevant to the specific nature of conduct, it seems unlikely

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108 Olivier Corten. "The Notion of "Reasonable" in International Law: Legal Discourse, Reason and Contradictions." *The International and Comparative Law Quarterly* Volume 48 Number 3 (1999): 624

109 Esbrook *"Citizenship Unmoored"* 1311

110 House of Commons Debates, 30 January 2014, col 1043

111 House of Commons Debates, 1 September 2014, col 26.

to claim that an individual's actions are so terrible that they forfeit their right to citizenship, yet they have not acted badly enough that they have broken any law.

3.3.4 Procedural Fairness

As previously asserted, all individuals are provided with a procedural right in the eyes of the law (see Chapter 2). In a nutshell, this means the right of an individual to have access to a court, and in most cases also representation. In an attempt to avoid arbitrary removal of citizenship, the individual must be able to enforce this right, with the possibility to challenge or appeal the decision made, or at the very least hear the evidence that is being brought against them. Correlating with this, falls Macklin's supposition of the need for independent judicial engagement in order to keep deprivation orders in check. This section will first tackle the idea broadly, before once more focusing on the most pertinent, and apparently most questionable, case of the United Kingdom.

The act of depriving an individual of their citizenship as in practice today, is in fact an administrative punishment. It can be handed down to an individual irrespective of their presence or absence within the country, and largely bypassing the procedures that are mandated by law that would be applied with respect to criminal law, and thus are generally not subject to judicial review. Upon receipt of a deprivation order, which first of all must be made plainly apparent, the person in question should then be able to have some form of legal recourse, such as an appeal. Safeguards are put in place not only to protect the rights of the individual, but also to legitimise the process, protecting it from criticism and preventing it from being abused. This means that all decisions of a state should be issued in writing and should be open to effective administrative or judicial review.[112] A full explanation of reasons leading to the revocation should be provided, as well as the procedure for appeal being laid out.

[112] Draft art. 17 of the International Law Commission's Draft Articles on Nationality of Natural Persons in relation to the Succession of States, with commentaries, YB ILC (1999) Vol II (Part Two) 38.

The first problem evident is particularly poignant with respect to the issue of foreign fighters. If an individual is outside of the state at the time of the revocation, the way by which the authorising body informs the recipient could be particularly difficult, and also time-consuming, creating difficulties if there were a deadline for an appeal to be brought. Further, the physical path to recourse would be also largely hindered by the absence of the person in the state, problematic for the state in that both the UDHR and ICCPR establish the right of the individual to access the domestic court. Considering that the current trend of depriving IS affiliates of their citizenship is actually openly professed to be a refusal of allowing them back into the country, we can conclude that for the most part, this right to procedural fairness is being routinely flouted.

In the UK, the party responsible for the decision to strip an individual of their citizenship is the Home Office, and more specifically, the Home Secretary who alone takes a unilateral decision, determining whether denationalisation should occur, further to the numerous criteria discussed here. Not only, to quote Lord Haughton, is it 'a very transcendental power—more than ought to be entrusted to any man'[113] (or in the case of Theresa May, woman), but it also violates conventional understandings of due process.[114] There is no independent judicial engagement before, during or after the decision-making process, nor is there a transparent procedure whereby an independent body or committee can evaluate the proof, evidence or facts, leaving the gates wide open for accusations of the arbitrariness of orders. In fact, if the Home Secretary considers their facts and evidence to be better kept confidential, the Special Immigration Appeals Commission can be appointed, obscuring this process entirely. Further obstructing the individual's right to recourse, a clause was added to UK legislation in 2004 allowing the enforcement of a deprivation act almost immediately after the notice of intention is served with just 28 days to appeal (see Section 2.4). When we consider the difficulty in notifying the individual concerned, combined with the immediate effect of the order and the lack of transparency of reasoning and evidence, the difficulty for those being suitably informed, prepared and physically able to undertake an appeal becomes

113 House of Lords, March 10, (1870):1616.

114 Jayaraman, *International Terrorism and Statelessness*, 202

apparent.[115]

3.3.5 Discrimination

There are two key ways that the current practice of citizenship revocation is seen to be discriminatory. The first concerns discrimination against dual citizens and is what will be referred to here as the argument from invidiousness. This argument holds a lot of weight and requires a lot of attention and as such, will be addressed in depth in the following section of this chapter. The second, which has been alluded to, is the potential discrimination against Muslims. Though the policy of citizenship revocation of course holds no such limits or preferences with regards to its application, we must look at the practice to see if, intentionally or not, it is having a discriminatory effect.

Tufyal Choudhury argues that in the post 9/11 security landscape, young Muslims have been increasingly identifed as targets for policy intervention, noting that in particular in the UK the powers have so far been used almost exclusively against British Muslim men.[116] One response would be that whilst there may be a correlation between deprivation orders and Muslims, this must be taken in context: the rising threat of citizens leaving the country to join IS lead to the rise in revocations. The fact that the majority of recipients are Muslim men is due to the nature of IS, and the nature of the crimes committed. Taking Lavi's unique punishment position, it is only this specific type of crime that warrants such punishment, the citizenship is not being revoked because of the religion of the individual, but it just so happens that exclusively people of this religion are carrying out this crime. Joppke argues in the same vein by noting how the nature of terrorism has changed. The surge in revocations over the previous few years, he argues, is in response to a new kind of terrorism; 'one that transcends borders and is committed by people who explicitly posit themselves outside the political community of the nation-state'.[117] (2015: 11)

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115 Weil and Handler, *"Revocation of Citizenship and the Rule of Law"* 352

116 Tufyal Choudhury 'The radicalisation of citizenship deprivation.', *Critical social policy*, Volume 37 Number 2 (2017):242

117 Christian Joppke 'Terrorists Repudiate their own Citizenship', in A Macklin and R Baubock (eds.) *The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?*.

Though the case of Irish or Northern Irish terrorism could be referenced again here in response, a workable analogy cannot really be brought due to the vast differences in the contexts. What Choudhury does develop though is not the idea that Muslims are purposefully targeted, but that in the UK the idea of security in the new landscape became intrinsically linked to the ideas of 'British values' and 'Britishness'. Positing those who may not adhere to these as the enemy, people with other heritage, religion etc, we can see how discrimination may emerge. However, this in itself is insufficient, as at no point are Muslims in particular identified as the non-British outsiders. There are other indicators however. Choudhury points out, allying with this paper, that the timing of the expansion of powers coincided with major Islamic attacks of terrorism, and the list of crimes that are enumerated in the legislation are deliberately targetting methods as used by known Islamic terrorist organisations.

There seems to be a missing link in Choudhury's reasoning however - all these aspects are merely targetting 'Terrorism' and if it is largely Muslims that happen to commit acts of terrorism, then it should be largely Muslims that receive the associated punishment. In equating attacks on terrorism with attacks on Muslims, he rather reiterates the kind of thinking that perpetuates the vilification of Muslims in society. The aforementioned case of Shabir Ahmed, the head of a sexual abuse and trafficking ring, who with three associates had their citizenship stripped and were resultantly deported, is particularly interesting considering they are amongst the only individuals to have received this kind of punishment for offences not related to terrorism (justified instead by reference to organised crime) and they are also Muslim.[118] However, as a unique case, this alone cannot be considered sufficient evidence in support of Choudhury's claims.

Whilst discriminatory practice against Muslims has not necessarily been proven, in the UK

Florence: European University Institute. (2015):11

[118] Azeezah Kanji "Denationalisation: A Punishment Reserved for Muslims" *Al Jazeerah* 10th January 2019 https://www.aljazeera.com/indepth/opinion/denationalisation-punishment-reserved-muslims-190109164026878.html Accessed 12th December 2019

there is absolutely some merit to the pitting of the 'Others' against those who are 'British' value-led and there is undeniably a connection between the practice and Muslims. Gibney highlighted a historical trend of citizen revocation acts being profoundly shaped by the status or background of the person it is undertaken against, exemplified in the present day by the overwhelming focus on citizens with backgrounds from Muslim-majority countries.[119] Macklin states, "current citizenship revocation practice in the UK happens to be a phenomenon directed almost exclusively at Muslim males".[120] Though not addressed in depth here, with the present climate as it is in America, it is highly plausible that a similar state of affairs could be permissible. The alignment of an individual's values with those prized by the government is not correlated with their likelihood to commit any kind of offence, and is certainly not correlated with whether their behaviour is conducive to the public good. Much of the rhetoric surrounding the security rationale is that it could work as a preventative measure, yet, in identifying those likely to perpetrate such acts it seems feasible that discriminatory practice may play a part.

In 'A Legacy of Xenophobia', Honig states:

> Foreignness is a symbolic marker that the nation attaches to the people we want to disavow, deport or detain because we experience them as a threat. The distinction between who is part of the nation and who is an outsider is not exhausted or even finally defined by working papers, skin colour, ethnicity or citizenship. Indeed, it is not an empirical line at all; it is a symbolic one, used for political reason.[121]

Of course, this issue cannot be fully extricated from the issue of discrimination against dual-nationals, which will be more completely addressed in due course.

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119 Matthew J. Gibney, "Denationalisation and discrimination", *Journal of Ethnic and Migration Studies* (2019):2

120 Macklin, "*Citizenship Revocation*", 7

121 Bonnie Honig, "A Legacy of Xenophobia: A Response to David Cole's 'Their Liberties, Our Security.'" Boston Review: A Political and Literary Forum Online 27, Number 6 (December 2002/January 2003) https://bostonreview.net/archives/BR27.6/honig.html Accessed 12th December 2019

3.3.6 Effectuation of Exile

Audrey Macklin postulates that the use of citizenship revocation is effectively a two-step exile. Though a country cannot deport its own citizens, this can be circumvented by seeking to, "first, strip citizenship; second, deport the newly minted alien."[122] She also interprets the law in a way that deems deprivation of nationality in order to expel (or exile) the individual, against international law. In 2000 the International Law Commission (ILC) reviewed the law concerning the expulsion of aliens, and drafted provisions with Article 8 stating,"(a) state shall not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or her."[123] The Special Rapporteur, in aiming to clarify the same point in the UDHR and thereby ICCPR (see Chapter 2) asserted, "a deprivation of nationality, insofar as it has no other justification than the State's desire to expel the individual, would be abusive, indeed arbitrary."

Macklin's argument that two-step exile could be contrary to international law, by virtue of its arbitrariness, can be extended to cover the instance of those physically overseas. There is no need for deportation, that step took place as the individual left the country, yet the end goal, the expulsion of the former citizen, is the same. In the UK, no secret has been made of the fact that the expulsion of citizens is the aim of its deprivation orders (recall Cameron's calls for a "targeted, discretionary power to allow us to exclude British nationals from the UK")[124]. Referring back to the Special Rapporteur's comments, it is added that the prior assertion, "should not be interpreted as affecting a State's right to deprive an individual of its nationality on a ground that is provided for in its legislation". This could be interpreted in two ways. The first, as presumably would be argued by the UK, is that domestic policy regarding to whom it wishes to apply denationalisation tactics supersedes their obligations under the international treaties. The second, put forward by Macklin, is that, " the Special

122 Audrey Macklin, *The Return of Banishment*, 164

123 UNGA, International Law Commission, Expulsion of Aliens: Texts and Titles of the Draft Articles Adopted by the Drafting Committee on Second Reading, UN Doc A/ CN.4/L.832, 20 May 2014, art 8.

124 House of Commons Debates, 1 September 2014, col 26

Rapporteur is disqualifying two-step exile, while leaving intact denaturalisation for fraud or misrepresentation, or loss of citizenship on grounds of dual nationality". This reading posits the UK use of its denationalisation powers (with respect to mono-nationals) as arbitrary under the premise that expulsion, or exile, is the purpose.

Considering these indicia of arbitrariness, it can be concluded that although there is no one definitive aspect which renders the act of citizenship revocation as a concept to be arbitrary, it is apparent that the road to a non-arbitrary order is paved with a series of ethical and legal pitfalls making it a difficult one to justify. The lack of transparency and attention to legal due process requirements in such decisions work strongly to suggest that many decisions made concerning the issue of IS fighters and affiliates wishing to return home could be considered arbitrary, and thus illegal under international law. Significantly, it must also be pointed out that there seems to be little attempt by governments or relevant bodies by way of proving they are keeping within the confines of international law, with their desire to appease the security concerns of the public, hand-in-hand with suspicions around Muslims and Islamic extremism reigning supreme.

3.4 Invidiousness

Patti Lenard describes democratic citizenship today as "egalitarian, that is, it protects an equal basic package of rights for all citizens."[125] However, as evident from this thesis, the status of citizenship held by different individuals can be more or less secure on the grounds of its acquisition or of other conditions. It is this idea, the baseless differing treatment of certain individuals, that Gibney describes as invidiousness. [126]Discrimination against and between citizens should be counter to the principles of a liberal democracy, yet citizenship revocation law actively enforces such a practice in the sense that birth-right and naturalised citizens have predominantly been treated differently, effectively creating first and second class citizens.

In the United Kingdom, between the years of 1914 and 2002, it was only possible to remove

125 Lenard, *"Democracies and the Power to Revoke Citizenship"*, 73

126 Gibney, *"Should Citizenship Be Conditional?"* 18

the citizenship of those who had acquired this status via naturalisation. This posits citizenship acquired in this way as of inferior value by virtue of its comparative insecurity, thus creating discrimination between naturalised and birthright ctizens and allowing for the inequality of differing punishments for identical crimes. To subject unequal access to security of residence discriminates against individuals on the basis of their national origin. In an apparent attempt to rectify the situation, the amendments of the law in 2002 made it so that all individuals, regardless of the nature of their citizenship, could have this removed. The government claimed that by doing this they were intending to remove the distinction, seeing as the previous law gave the message that naturalised citizenship was second class, which in 2002 may have been a particularly dangerous message given the fraught climate of the time. [127] Indeed, "there cannot be different grades of Britishness in the eyes of the law. You are either British or you are not".[128]

Yet, this move towards a more equal citizenship could be argued to be merely window dressing, when we consider the fact that the duality of the security of citizenship was not avoided by these changes, but rather just shifted. Where previously there had been a singling out of naturalised citizens, those who were in possession of more than one citizenship then became the group unfairly discriminated against. The law continued to hold that in line with the state's obligations to avoid statelessness, it wouldn't be possible to remove the citizenship of anybody if this would result in statelessness. Effectively, this meant that those who have a second citizenship to fall back on could be subject to citizenship revocation, again, clearly discriminatory if it means there is a second class citizenship group being formed, or if more unequal punishments are handed out for identical acts. As Lenard points out, there is an inherent danger in supporting the idea that dual-nationality citizens are more risky or are a bigger potential threat than any others. Likewise, she highlights the troubling reasoning behind making a connection between revocation policies and state threatening crimes as this

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127 Ibid

128 Philip Hensher "It's wrong to strip Abu Hamza of his citizenship" *The Independent* (Online) 3rd April 2003 https://www.independent.co.uk/voices/commentators/philip-hensher/its-wrong-to-strip-abu-hamza-of-his-citizenship-113481.html Accessed 18th December 2019

may infer a correlation between citizenship status and the propensity to carry out crimes.[129]

A further change was made to legislation, eventually making it possible to revoke the citizenship of anybody, even if they would be made stateless as a result, the caveat being that it was necessary for the Home Secretary to have reasonable grounds to believe that the individual would be able to acquire a further nationality. Notwithstanding the dubious nature of 'reasonable grounds', nor the obvious conflict with statelessness obligations, the amendment does not negate the claims of invidiousness when we consider the following as pointed out by Gibney. A stateless individual may be able to physically remain in the country; they may be resident in the country, and presumably it would not be the responsibility of the UK government to ensure they are successful in their pursuit of their potential other nationality. Compare this situation with a dual citizen, for example of Iraq or Haiti, who may be forced to rely on their alternative nationality who may be thrust into a situation with infrastructural or human rights issues. [130] Additionally, when we focus on the issue of foreign fighters in Syria, we can see that regardless, states are forcing recipients of deprivation orders to remain in the detention camps - devoid of appropriate rights and more importantly without consular access or the practical possibility and means to obtain their alternative citizenship.

This issue is of high relevance to the case of Shamima Begum. Explored in depth later, the British citizen may well fall under the 2014 addition, including those that could be reasonably believed to be able to acquire another nationality as subject to citizenship deprivation orders. Having Bangladeshi family, there is a potential that she would be able to obtain citizenship there, though this is disputed by the Bangladeshi government. Furthermore, it is claimed that should she try to enter Bangladesh, there would be a possibility that she could be hanged.[131] There are specific intricacies to this case that place it on particularly difficult legal ground, and thus will be expanded upon in more depth in due course.

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129 Lenard, *"Democracies and the Power to Revoke Citizenship",* 83

130 Gibney, *"Should Citizenship Be Conditional?"* 19

131 "Shamima Begum: Stripping citizenship put her at risk of hanging, court hears" *BBC (online)* 22nd October 2019 https://www.bbc.com/news/uk-50137470 Accessed 18th December 2019

3.5 International Obligations

As a progression from the ancient practice of banishing individuals outside city or state limits, in contemporary society, it is becoming increasingly unrealistic to conceive of the actions and consequences of similar practices considering a state in isolation. These days, to be outside of one state automatically confers a presence in another thus making the international obligations of states, to the global community and also to one another, a pertinent issue. A state's authority to revoke the citizenship of an unwanted citizen effectively presupposes another state lacking that same authority. As previously considered, where an individual must exist physically in some place on the planet, we must view the expulsion of any individual as an imposition of such individual on another state, raising difficulties concerning not only international cooperation and international law, but also procedural issues and challenges to sovereignty.

The first issue centres around the idea, supported by Patti Lenard, that one state is merely 'offloading' their failed, or undesirable citizen to another state. [132] Pillai and Williams embolden this claim, seeing that this offloading "is likely to produce tensions between governments".[133] When we consider the principle of responsibility for citizens that is attributed to states, it becomes a curious situation where another state could be expected to shoulder this burden, aside for perhaps the case of dual citizens. Dual nationality instances throw up a series of alternative issues to be discussed. As highlighted by Jayaraman, if an undesirable individual were to be in possession of dual citizenship, we can conceive of a situation in which both countries could race to be the first to denationalise, forcing the individual to take on the second nationality yet leaving the other state theoretically powerless to revoke citizenship under the duty to avoid resultant statelessness. There is the further issue that in such instances, states may rush to revoke, increasing the possibility for mistakes.[134] Additionally, in expelling a dangerous citizen to another country, or forcing such a case upon another state, you could be seen to be exporting a threat, with a lack of consideration and

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132 Lenard, *"Democracies and the Power to Revoke Citizenship",* 88

133 Pillai and Williams "*The Utility of Citizen Stripping Laws",* 887

134 Jayaraman, "*International Terrorism and Statelessness",* 203

respect for the integrity and sovereignty of the receiving state, damaging international relations and fracturing co-operation.[135] The act could also undermine the cohesion needed to tackle cross-jurisdictional security issues, all deeply concerning, echoing Fischer-Williams assertion, "it is no longer possible to send undesirables abroad. Slops may be thrown out of the window of a settler's hut on a prairie; in a town such practice is inadmissible".[136]

Nowhere is this more clearly exemplified than the case of Abu Hamza Al-Masri, a dual national of the UK and Egypt, who in 2002 was deemed to be conducting himself in a manner seriously prejudicial to the interests of the UK, where he was a radical Muslim cleric. As Abu Hamza would remain an Egyptian citizen, the UK proceeded with a deprivation order.[137] However, at that time under UK law, all appeals processes had to have been completed before the order came into effect. In this case, the procedures had taken nearly 8 years, by which time the Egyptian government has already removed his Egyptian citizenship. The final outcome was that in effecting the original UK deprivation order, the government would be rendering Abu Hamza stateless against international law, and was thus not permissible. [138] Currently in the UK, waiting for the completion of the appeals process is no longer customary, hence the potentiality for rushed or ill-considered races to denationalisation increases.

David Miller seeks to resolve this problem. In his response to Lenard, Miller asserts that, "the relevant question is where they have lived during the years when their political identities were being formed" referring to the responsibility of states in their socialisation of the citizen, including the inculcation of democratic values and national loyalty.[139] While this seems a logical response to the very particular case of a dual-nationality race, if we apply this reasoning to off-loading in general (as Lenard does) or to the particular area in question here,

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135 ibid

136 John Fischer-Williams, "Denationalization", *British Yearbook of International Law* (1927);57.

137 *Abu Hamza v. Secretary of State for the Home Department*, SC/23/2003, United Kingdom: Special Immigration Appeals Commission (SIAC), 5 November 2010

138 Pillai and Williams,"*The Utility of Citizen Stripping Laws",* 883

139 David Miller, "Democracy, Exile, and Revocation: A Reply to Patti Lenard" *Ethics & International Affairs* Volume 30, Number 2 (2016):269

IS affiliates who have had their citizenship revoked, the argument begins to lack relevance. In these cases, the responsibility (or burden) is passed initially onto the state in which they are presently detained - which for the most part is Syria. Not only did this state have very little to do with the socialisation of the majority of foreign terrorist fighters (if we, of course, consider IS to be an entirely distinct entity from the state of Syria) but more importantly, in dealing with potentially dangerous or high-risk individuals, it seems somewhat illogical to offload the biggest threats to the country least-equipped to deal with them. There appears to be an element of irresponsibility in a relatively secure and stable country identifying a threat to international peace and then off-loading said threat onto a struggling, war-torn state with active radical factions and limited infrastructure. As will be explored in depth later, in the case of Shamima Begum the UK sought to shift the burden onto Bangladesh, which was not involved to any extent in her socialisation, nor would be equipped to deal with the case with respect to human rights.

Leading on from this, international obligations in the global fight against terrorism must also be addressed. With respect to IS affiliates, a citizenship deprivation order effectively forces the individual to remain with the terrorist organisation. Jayaraman points out that the revocation, or even threat thereof, "further disincentivizes him from renouncing his participation in a terrorist organization".[140] Considering that it is accepted that terrorism is a global threat, characterised by advanced transnational organisations and operations, it seems unreasonable to suggest that a state is responsible for fighting terrorism only within the strict confines of their geographical territory. Rather, the commitment must be to international terrorism in general. Jayaraman goes on to say that while denationalisation "allows a particular state to absolve itself of both legal and moral responsibility and jurisdiction over that person…. It does little to combat terrorist groups such as ISIL or impede their activities and recruitment",[141] further stating that there may well be a legal obligation of the state to pursue and apprehend the individual in question if they have credible evidence that its

140 Jayaraman, "*International Terrorism and Statelessness",* 210

141 Ibid 211

national is a terrorist.[142] Jayaraman makes a strong case: circling back to the legitimacy of the policy, there must be a reasonable expectation that it can fulfil its aims. If this professed security tool is not working in favour of international security, and is arguably working against international law, then further questions must be asked of its legitimacy.

A final note must be made concerning what has generally been considered to be a crucial pillar of democracy and international relations - respect for state sovereignty. Here we will rely on the Weberian concept of modern sovereignty as linked to exclusive command over territory. The expulsion of an unwanted national is one state deciding who may or may not be allowed within their territory. This inevitably takes away the recipient state's right to decide in the same way, effectively infringing upon their right not to receive undesirable aliens. In order to expel a dual national, the other state must at least be consulted and should ideally consent, unlikely considering the individuals concerned are predominantly high-risk or suspected terrorists, or we may be faced with a world, as in the case of Abu Hamza, wherein states self-interestedly compete to rid themselves of the undesirable, or as with Shamima Begum where they could face death. In the case where statelessness may ensue, made possible by the UK policy outlining that this is permissible so long as the Home Secretary has grounds to believe another citizenship can be obtained, the stripping nation would potentially violate the right of the holding state to choose who may be present in their state, and therefore violate their sovereignty. There seems to be a lot to be said for Voltaire's conception of "throwing into a neighbour's field, the stones that incommode us in our own"- ideally, whilst said neighbour is not looking and cannot protest.[143]

3.6 Statelessness

Touched upon multiple times previously, the conflict between the revocation of citizenship and the possibility of ensuing statelessness is unavoidable, but never so obviously as in the present UK policy. Subsection 2.3 of this thesis clearly lays out the strong obligations under international human rights law, from the 1961 Convention on the Reduction of Statelessness,

142 Ibid 212

143 Voltaire, *A Philosophical Dictionary: Volume II*, London, W. Dugdale, (1843):192.

to Article 3 of the Fourth Protocol to the ECHR on the Prohibition of Expulsion of Nationals, and appropriate case law. Though exceptions are made allowance for, the threshold for achieving such a circumstance in which statelessness can be permissible are extraordinarily high, as delineated in the subsection. The major issue refers back to the issue of sovereignty; the previous section placed a large significance on the capacity of a state authority to have complete control of their territory and who should be allowed in as a defence against the off-loading of undesirables. Yet, this same argument could similarly be used to defend the revocation of citizenship in the name of sovereignty, in a sphere where states have largely been given a wide berth and deference has been afforded to domestic policy.

However, the same response can be applied as that to off-loading - crying sovereignty entails a level of contradiction. By stripping a citizen of their only nationality, though by all intents and purposes they are stateless, or without a state in the legal sense of the word, the individual still physically belongs in one sovereign realm or another. The severity of the issue in fact goes further, there is no second nationality with which to fight over who bears the burden of providing for the rights of the unwanted citizen, the rights are simply not provided for. Gibney provides for this point, highlighting how "despite the growing reach of international human rights law in providing a legal basis for the treatment of non-citizens in recent decades, all states reserve some important rights, entitlements and privileges solely for citizen".[144] With reference to the topic at hand, IS affiliates in detention camps in Syria would be forced to remain there, presumably without any of the rights that should be afforded to any citizen or non-citizen. This is not to argue that international law obligations to avoid statelessness should supersede domestic law, but rather that the domestic law of a liberal democracy should not allow for statelessness at all.

United Kingdom policy does, however, flagrantly flout such obligations. Subsection 1.1.2 outlines how the 2014 amendment to the Nationality, Immigration and Asylum Bill extended Home Office powers to be able to do so even if the person would be made stateless as a result,

144 Gibney, *"Should Citizenship Be Conditional?"* 13

so long as the nationality had been obtained through naturalisation and that the Home Secretary had reasonable grounds to believe the person able to become a national of another country. The first point to mention is that this is comparatively an incredibly hard-line approach to statelessness considering the devastating effect on human rights it is considered to have, with Gibney describing it as unjust and contradictory with liberalism. [145] Secondly, the naturalisation caveat becomes a case for the argument from invidiousness. Thirdly, and of great importance, is the pragmatic futility of the clause specifying reasonable grounds of gaining citizenship elsewhere. It would presumably be very much known to the Home Office, it being ostensibly their area of expertise, the difficulties faced by a convicted or even suspected terrorist of legally obtaining another nationality, particularly one of a country they have never held citizenship in before, and even less so if that attempt has to be made from within a detention camp in a country with no consular assistance i.e. Syria.. The attempts made to reconcile the policy with obligations against statelessness by including this clause are virtually needless - in removing the sole citizenship status of an individual, regardless of other considerations, you render them de facto stateless.

Though the Statelessness Convention does specify the exception to allow for statelessness if 'vital interests' of the state are in danger, as has been previously addressed in many cases no such attempt to prove this level of conduct is made, leaving deprivation orders resulting in statelessness largely arbitrary. Furthermore, as the European Convention on Nationality's Explanatory Report states, "the obligation to avoid statelessness has become part of customary law"[146] and it is therefore an uncompromising approach on behalf of the UK to diverge from such custom, and an uncompromising stance to leave the holding state to shoulder the burden. In fact, in the words of Matthew Gibney, "UK governments now have at their disposal laws to strip citizenship that are arguably broader than those possessed by any other Western democratic state".[147]

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145 ibid

146 Council of Europe *Explanatory Note to the European Convention on Nationality*, 33 (Nov. 6. 1997) https://rm.coe.int/16800ccde7 Accessed 28th December 2019

147 Gibney, "*The Deprivation of Citizenship"*, p326

Chapter 4: UK Policy in Context

With a view to ascertaining the legitimacy of present UK law with respect to the issue of IS affiliates, it becomes relevant to analyse in depth not only this particular state of play, but also crucially how, and under what circumstances, the law and its practice has developed in such a manner. Focusing specifically on the UK, this chapter seeks to retrace the evolution of the law and its amendments since 2002 (see section 1.2.2), highlighting a few pivotal cases of citizenship revocation, each with vastly varying circumstances and outcomes. Each case will be examined upon this legal backdrop, first with respect to the background, then the details of the case, before being analysed with reference to the criteria for acceptability proffered in the previous chapter. Once the context has been clearly established, the idea of a citizen/enemy binary, with the terrorist as a non-citizen, will be held up against it, adding an additional element to consider in the justification of such cases. The intricacies of the cases themselves and any evaluation of the outcomes of the case are beyond the scope of this paper and rather the aim here will be set out the context, highlighting any weaknesses or inconsistencies in the law.

4.1 The Nationality, Immigration and Asylum Act and Abu Hamza

The post 9/11 security landscape was unlike anything the world had seen before. With repercussions of the terrorist attack emanating out all over the Western world, fear and perceived risk were heightened, from governments through to individuals. Prior to this event, the major experience the UK had had with terrorism was that of the Irish terrorism, carried out mainly by the Irish Republican Army in various forms.[148] In addition to this, it has been calculated that there had been 250 international terrorism incidents involving the United Kingdom between 1970 and 1992.[149] Yet with the 2001 attacks came a whole new conception of the international terrorist threat, and the existing legislation in the UK was resultantly

[148] Bradley Bamford, "The United Kingdom's "War Against Terrorism"," *Terrorism and Political Violence*, Volume 16 Number 4, (Winter 2004):738

[149] Bruce W. Warner, ''Great Britain and the Response to International Terrorism.'' in David A. Charters (ed.), The Deadly Sin of Terrorism: Its Effect on Democracy and Civil Liberty in Six Countries (Westport, Connecticut: Greenwood Press, 1994):13

deemed by the British government to be in need of updating, in order to sufficiently deal with the state's 'abhorrence' at certain crimes.[150]

The Legislative Act that acted as a precursor, the British Nationality Act of 1981, had listed more explicitly under which circumstances citizenship would be liable to be deprived (e.g. disloyalty, trading with the enemy).[151] Considering the new climate, in 2002 the government thought a more apt, updated version should be that the holding of citizenship would be considered to be "seriously prejudicial to the vital interests" of the state and was also extended to the native born citizen. This broadening of the bill, elaborated in section 1.1.2, handed the government, or more specifically the Home Office, far more power concerning the deprivation of citizenship and meant it could act in ways that it was not able to previously.

Abu Hamza, an Egyptian-born radical Islamic cleric had been known to intelligence services around the world for several years before his citizenship deprivation order was handed out. He began preaching at the Finsbury Park Mosque in London in 1997, and soon after questions began circulating surrounding his involvement in kidnappings and bomb plots in Yemen.[152] Much of the furore surrounding Abu Hamza revolved around his impassioned public speeches relating to jihad and terrorism whilst he was living in the UK, many arguably tantamount to inciting racial hatred and violence. On the 4th of April 2003, pursuant to the 2002 amendment coming into force 3 days prior, Abu Hamza was given notice making him aware of the Home Secretary's decision to make an order depriving him of his British citizenship.[153] Under a further provision of the amendment, the Home Secretary was able to certify that the decision had been taken in part in reliance on information which in his opinion should not be made public for reasons of national security, and thus the reasons were kept

150 Home Office, "Secure Borders, Safe Haven: Integration with Diversity in Modern Britain" (London: The Stationery Office, 2002)

151 *British Nationality Act*, 1981 Chapter 61, 30 October 1981

152 Paul Arnell "The Legality and Propriety of the Trials of Abu Hamza" *Bergen Journal of Criminal Law and Criminal Justice,* Volume 4 Number 2 (2016):198-199

153 *Abu Hamza v. Secretary of State for the Home Department*, SC/23/2003, United Kingdom: Special Immigration Appeals Commission (SIAC), 5 November 2010

secret and the case dealt with by the Special Immigration Appeals Commission (SIAC).[154] In *Abu Hamza v Secretary of State for the Home Department,* specific reference is made to the amendment, with the new 'seriously prejudicial' standard allowing for deprivations to take place where they would previously not have been able to.[155]

Another addition made in 2002 mandated an appeals process, and seeing as the Home Secretary considered the case to be one that needed to be seen in private by the SIAC, so was the appeal, and upon its launch the deprivation order was thus suspended. However, the case did not follow a straightforward path. At this time in the UK, it was not permissible to remove an individual's citizenship should that result in their becoming stateless. Being a dual-national however, meant that the revocation of Abu Hamza's British citizenship would leave him with his Egyptian citizenship intact. Interestingly, upon hearing upon the UK's intent, the Egyptian authorities undertook steps of their own to remove Egyptian citizenship, and due to the lengthy appeals process in the UK, the Egyptian citizenship was removed before the British process had been carried out.[156] The SIAC was left with no choice but to cancel the deprivation order "on balance of probabilities that he would be made de jure stateless by the order".[157]

Some key issues are raised in this case. Firstly, the absurdity of a 'race to denationalisation' is exemplified perfectly between the time elapsed between the British order and the Egyptian denial of citizenship. Any attempt to carry out a legitimate act resulting in legitimate ends could never be accomplished through such a race, this would end up being the case of whoever acts fastest, acts most righteously which is clearly an inconceivable premise. In order to avoid receiving an unwanted individual on their territory, the Egyptian government were actively incentivised to revoke Abu Hamza's nationality, which if universalised as a

154 Ibid:para 2

155 Ibid

156 Duncan Gardham "Abu Hamza keeps British Citizenship" *The Guardian* 5th November 2010 https://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/8113979/Abu-Hamza-keeps-British-citizenship.html Accessed 5th January 2020

157 *Abu Hamza v Secretary of State*

practice could lead to mistakes and rushed or arbitrary decisions. This case highlights the practical foibles of citizenship revocation as a policy when looked at from an international perspective.

Furthermore, it is interesting to note that though born (1958) and raised in Egypt, Abu Hamza had been living outside of Egypt since 1979 and most of the acts presumably related to the order had been carried out in the UK.[158] If we use David Miller's approach in asserting where responsibility for an unwanted citizen lies, ("the relevant question is where they have lived during the years when their political identities were being formed") it would be safe to say that Egypt would be the clear favourite for holding the lesser responsibility out of the two.[159] This therefore includes more than a hint of 'offloading', with the UK government casting the unwanted citizen to another state irregardless of the circumstances, legal grounding or international relations (presumably this was a fractious time for UK-Egypt relations). An additional point of note is the discrimination and invidiousness faced due to Abu Hamza's dual-citizenship making him liable for this sort of treatment, where a mono-national or birth-right citizen would not be treated the same way.

A final obvious issue is the decision to keep all details of the case secret. The principle of legal certainty holds that the law must be clear, adequately accessible and foreseeable to the person concerned. The principle of due process further provides all individuals with a procedural right; access to a court and in most cases representation. Further, decisions of a state should be open to effective administrative or judicial review. Any divergence from these principles may leave the decision subject to claims of arbitrariness. By keeping the details of the case secret, the individual was not expressly given any indication of the reasons for the deprivation order, nor were the conditions provided for any kind of viable appeals process or review as the defendant should, at the very least, hear the evidence to be brought against them. A strong argument for this being an arbitrary deprivation could have been made here, before falling to the stateless objection. Subsequent to this case, as of 2004, citizenship

[158] Arnell, *The Legality and Propriety of the Trials of Abu Hamza,* 198

[159] Miller, *Democracy, Exile, and Revocation*, 269

deprivation order appeals no longer had a suspensory effect, and the original order would be in force from the moment that it was made.[160]

As one of the first of its kind, it becomes apparent from the analysis of the case that the objections of statelessness, arbitrariness and international obligations were not weighing too heavily on the minds of the UK Home Office in this new era. It seems that this was not so much a case of the law being changed and the Abu Hamza case falling under it, but rather that the law being changed in order to intentionally apprehend individuals such as he, and amidst the anti-terror climate such sweeping and otherwise controversial changes in practice received little in the way of opposition.

4.2 The Immigration, Asylum and Nationality Act and David Hicks

Just as the attacks in the US in 2001 could be argued to have prompted (and aided the support for) the legal changes brought about in the UK in 2002, it would seem that the London underground attack in 2005 equally paved the way for the further amendments made in 2006. In the amendment, the former standard of being 'prejudicial to the vital interests of the state' was now relaxed to cover any conduct considered, 'not conducive to the public good'.[161] In a very telling statement, Prime Minister of the time Tony Blair announced that the "rules of the game are changing" in a speech specifically referencing the legal contradictions with the European Convention of Human Rights but claiming this was warranted "in view of the changed conditions in Britain".[162]

Australian-born Islamic convert David Hicks was detained in the notorious prison camp Guantanamo Bay in 2005 in relation to terror offences. As Hicks' mother had been born and

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160 Sandra Mantu, *Contingent Citizenship: The Law and Practice of Citizenship Deprivation in International, European and National Perspectives*. Brill: Martinus Nijhoff. (2015):220-224

161 *United Kingdom: Immigration, Asylum and Nationality Act 2006* [United Kingdom of Great Britain and Northern Ireland], 2006 Chapter 13, 30 March 2006 http://www.legislation.gov.uk/ukpga/2006/13/contents Accessed on 6th January 2020

162 Tony Blair, "Prime Minister's Statement on Anti-Terror Measures" (5th August 2005) *Guardian* (online) https://www.theguardian.com/politics/2005/aug/05/uksecurity.terrorism1 Accessed 6th January 2020

raised in the UK, citizenship law dictated that he would be entitled to British citizenship *ius sanguinis*. Being made aware that the UK government had previously negotiated the release of several of its citizens, Hicks launched his application in an attempt to gain his British citizenship that same year in the hope that he may receive the same treatment.[163] Using the law in force at the time, the government initially attempted to deny Hicks's right to citizenship. This challenge was contested, resulting in a lengthy legal battle with senior judges finally ordering the Home Secretary to grant Hicks British citizenship[164], blocking the revocation on the grounds that conduct prior to the acquisition of citizenship was not enough to show current disaffection or disloyalty.[165] In fact, one of the presiding judges Lord Justice Pill, highlighted the fact that no argument could claim "conduct of an Australian in Afghanistan in 2000 and 2001 is capable of constituting disloyalty or disaffection towards the United Kingdom, a state of which he was not a citizen, to which he owed no duty and upon which he made no claims". In brief: his actions were not seriously prejudicial to the state of the United Kingdom.

Though the Hicks saga began in 2005, it continued into the following year, with the individual eventually being notified of the attainment of his British citizenship in early July 2006. Notably, in the interim, the 'not conducive to the public good' amendment had entered into force. While the court ruling had understandably judged Hicks' conduct not to be in conflict with the 'seriously prejudicial' standard, after the passing of the 2006 amendment, it needed only to be not 'conducive to the public good'. On the very same day as obtaining his British citizenship (perhaps not coincidentally on the first anniversary of the London terror attacks) Hicks was informed of the Home Office's intent to remove his newly acquired citizenship under the reasoning of this very amendment. [166]

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163 Sandra Mantu "'Terrorist' citizens and the human right to nationality", *Journal of Contemporary European Studies*, Volume 26 Number 1, (2018):33

164 Vikram Dodd, "Reid revoked citizenship of Guantánamo detainee" (11th January 2007) *Guardian (online)* *https://www.theguardian.com/uk/2007/jan/11/world.politics* Accessed 6th January 2020

165 Mantu, *"Terrorist Citizens"* 33

166 Annabel Crabb, "Law strips Hicks of UK citizenship in hours" *The Sydney Morning Herald (online) (*20th August 2006) https://www.smh.com.au/world/law-strips-hicks-of-uk-citizenship-in-

As per the Abu Hamza case, this posits David Hicks not as an individual who happened to merely fall foul of the law, but rather as a proximate cause for its very creation and enactment. Though in this case, the letter of the law in terms of appeals process, notification and so on was followed more reliably, some serious questions have to be asked about the legitimacy of legislation tailored to suit the needs of the government for each individual case. Hicks was designated as undesirable by the UK and the Home Office had decided he wasn't to receive citizenship.So when frustrated by the courts and its own legal system, and aided by the horror of the memory of the terror attacks months prior, amended the law to suit its aims. This practice not only flies in the face of international law in practice, but also is a major red flag for an arbitrary deprivation of citizenship. This argument is backed further when we consider that the in-depth legal safeguard checks and balances judicial review system of the UK, passing through multiple courts and appeals was, in the end, able to be overturned by a singular act by effectively a singular person when the Home Secretary ordered the deprivation of Hicks' citizenship. The case is a complex one, and the aim here is not to assess or support Hicks' claim for British citizenship, but rather to point out the ruthlessness of the British system in practice.

4.3 Al-Jedda and The Immigration Act

Hilal Al-Jedda was an Iraqi refugee who after fleeing his homeland in 1992, had sought and been granted asylum in the UK, eventually acquiring British citizenship through naturalisation in 2000. Upon obtaining his British citizenship, his former Iraqi citizenship was effectively lost, as per Iraqi law at that time.[167][168] When journeying to Iraq in 2004, he was apprehended by the British forces for terror offences and held in Iraq for 3 years. On 14 December 2007, the Home Secretary signed an order depriving Al-Jedda of his British

hours-20060820-gdo7r2.html Accessed 6th January 2020

[167] Alice Ross and Olivia Rudgard, "Al-Jedda: The Man Mentioned 11 Times by Home Office as it Tried to Change Immigration Bill" *The Bureau of Investigative Journalism* (11th July 2014) https://www.thebureauinvestigates.com/stories/2014-07-11/al-jedda-the-man-mentioned-11-times-by-home-office-as-it-tried-to-change-immigration-bill Accessed 6th January 2020

[168] Guy S.Goodwin-Gill, "Mr Al-Jedda, Deprivation of Citizenship, and International Law" *Revised draft of a paper presented at a Seminar at Middlesex University (14 February 2014):1*

citizenship, on the grounds that his conduct was not conducive to the public good (connections with violent Islamist groups, responsibility for recruiting terrorists outside Iraq and facilitating their travel and the smuggling of bomb parts into Iraq).[169] Al-Jedda then went to Turkey and launched an appeal.

In 2008, Al-Jedda appealed to the Special Immigration Appeals Commission, basing his argument on multiple areas including the jurisdiction and also details of specific laws. The critical issue however revolved around statelessness - if removing Al-Jedda's British citizenship left him stateless then this would be unlawful under the legislation of the time (as well as under international law). The appeal bounced backwards and forwards between the SIAC and the Court of Appeal centering on this issue.[170] One of the Home Secretary's arguments was that although Iraqi law at the time mandated the foregoing of one's Iraqi citizenship upon the acquisition of another, the law had since changed and Al-Jedda would be able to reacquire Iraqi citizenship. The court disregarded this, claiming "the only question that the Secretary of State had to answer was whether the person held another nationality at the date of the order" and finally found in favour of Al-Jedda, blocking the deprivation order on the grounds that it would leave him stateless.[171] This final outcome was ruled in October 2013.

If the thread is followed through the cases of Abu Hamza and David Hicks, then it would not be too much of a stretch of the imagination to suggest that the frustration felt by the government was a participative factor in the 2014 amendment to the legislation on citizenship. This is strongly shown in the discussion surrounding the bill, where Al Jedda's name was mentioned 11 times by May and fellow Home Office minister James Brokenshire as the Immigration Bill passed through parliament.[172] Amongst other key changes, in 2014 the powers of the Home Office were once again expanded and could now be used against

169 *Al-Jedda v. United Kingdom* , Application no. 27021/08, Council of Europe: European Court of Human Rights, (7 July 2011):1:14

170 Goodwin-Gill *"Mr Al-Jedda"*, 1

171 Ross and Rudgard, *"Al-Jedda"*

172 Ibid

individuals even if they were to be made stateless, so long as there were reasonable grounds for believing that the person would be able to become a national of another country - a clause used to mitigate the conflict between the difficulties of the Al-Jedda case but also in a nod to civil liberties and commitments against statelessness. It is also the final example of the most recent three amendments, each seemingly formed around individual cases of undesirable citizens in the eyes of the British government in an attempt to achieve their desired ends. The changes of 2014 clearly stand strongly at odds with the UK's international obligations to help combat statelessness, as well as a clause claiming that the statelessness issue could only be applied in the case of naturalised citizens repositioning the laws as once again discriminatory and invidious.

4.4 The Deaths of Mohamed Sakr and Bilal Al-Berjawi

Despite being subject to claims of lack of procedural fairness, invidiousness, arbitrariness and of causing statelessness, the aforementioned cases are by no means the most sinister. Mohamed Sakr was born in London to Egyptian national parents, making him a birth-right British citizen and Egyptian dual national. Along with his close friend, Bilal Al-Berjawi a Lebanese-born naturalised British citizen who had also been raised in London, the pair were subject to surveillance by the British government and under suspicion of being involved in terrorist activities. In 2009, they departed for Somalia, reportedly becoming involved with al Shabaab, an Islamist militant group with links to al Qaeda, rising to senior ranks.[173] In September 2010, the families received notice from Home Secretary Theresa May of intent to remove their British citizenship, on the grounds that they were involved in terrorism-related activity.[174] It is claimed by Sakr's family that in spite of their Egyptian nationality, their son

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[173] Chris Wood and Alice Ross, "Former British Citizens killed by drone strikes after passports revoked" *The Bureau of Investigative Journalism (*27th February 2013) https://www.thebureauinvestigates.com/stories/2013-02-27/former-british-citizens-killed-by-drone-strikes-after-passports-revoked Accessed 7th January 20

[174] Chris Woods, "Parents of British man killed by US drone blame UK Government" *The Bureau of Investigative Journalism,* (15th March 2013) https://www.thebureauinvestigates.com/stories/2013-03-15/parents-of-british-man-killed-by-us-drone-blame-uk-government Accessed 7th January 2020

had never had anything other than a British passport.[175] In June 2011, Al-Berjawi was wounded by a US drone strike, and in 2012, both men were killed in the same manner.[176]

Of course, there is no direct link between the revocation and the deaths of the former citizens, but there are significant concerns raised therein. While plausibly merely a coincidence, by revoking the citizenship of the two men the UK absolved itself of any responsibility for their fate, potentially hanging the former nationals out to dry with respect to any further actions that they were subject to, in this case a drone strike and resultant execution. As Lenard points out, it is plausible that the possibility of their deaths was facilitated by the fact that US commanders were aware that they would no longer be killing citizens of one of their allies.[177] Considering the pair were raised in the UK, it would be a brazen move by the government to not only disregard all actions of the men and consequences done unto them, but to be - whether actively or passively - complicit in any attack against them. In theory, it could even be thinkable for a country to attack its own former citizen as once the individual is no longer a national, no further obligations, duties or bonds remain. Lenard rationally argues that this example would constitute an illegitimately severe punishment, and falls squarely under what would be considered to flout the principle of proportionality.[178] There is also a fair case for claiming that however the citizen/state bond is conceived, the UK could not absolve itself of its responsibility, particularly of Sakr who was 100% born and raised in the UK.

Further questions were raised in the case of British-born Mohamed Sakr. This was a departure from previous use of the Home Office powers, in that although stripping from British born citizens had been permitted by previous amendments, it had not been used as such. Though theoretically he would be able to obtain Egyptian citizenship, his family claimed he had never held any other passport than British and was left effectively stateless by the order. Further, when endeavouring to fight the deprivation order, the family were told that Sakr would have

175 Ibid
176 Woods and Ross, "*Former British Citizens Killed*".
177 Lenard, *"Democracies and the Power to Revoke Citizenship",* 88
178 Ibid

to undertake this from the UK - having had his passport already removed, there were clearly practical obstacles. This also would include an offloading of responsibility onto either Egypt, in spite of it having no connection or responsibility to Sakr, or Somalia as the holding state and be an effectuation of exile considering the subject's incapacity to return without the means. The case read as a veritable checklist of how not to play by the rules of citizenship deprivation, all before considering the unimaginable reality that the state may have been instrumental in the death of its former citizens.

4.5 The Terrorist as a Non-Citizen

Considering the trajectory of UK policy in the 21st century, one overall observation that can be made of these cases is that the substantial weight given to security matters by the government tends to overshadow the UK's commitments to fairness, morality and even the law. Frequently, norms of procedural fairness and due process, the principle of proportionality and obligations to other states and to prevent statelessness, are routinely disregarded in the name of the 'public good'. With respect to the particular issue of citizenship revocation, a target group has been identified and designated as the 'enemy' - in the modern era the enemy is labelled 'terrorist'. This targeted 'terrorist' as a result of a set of unspecified actions is regarded to be unworthy of British status, due to non-British actions or tendencies and thus the customary procedure and protocol usually afforded to the British people is accordingly circumvented. Patrick Sykes points out how in the UK, a society formerly seen to be aiming towards a goal of multiculturalism, became a community normatively grounded in shared values, with all the exclusionary consequences that has for those who do not conform.[179]

Macklin further develops this idea, arguing in the post 9/11 society, the terrorist is a "modern pirate" viewed as "a common enemy of all humankind. He is loyal to no state and menace to all". As such, he is no longer a human, and merely an embodiment of risk.[180] This analysis

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179 Patrick Sykes, "Denaturalisation and conceptions of citizenship in the 'war on terror'", *Citizenship Studies (*June 2016):3

180 Audrey Macklin, 'On producing the alien within: A reply', in A Macklin and R Baubock (eds.)

goes some way to frame how a government may regard it as acceptable to forego individual rights as the UK ostensibly has in the cases provided in this chapter. Macklin refers to Jakob's theory of the citizen/enemy binary as the government's theoretical justification for behaving in such a way. The idea is that whilst the citizen is subject to the usual normative framework within criminal law, the enemy - here, the terrorist - is exempt from being treated as a rights-bearing subject. The incongruity of the distinction between citizen and enemy within criminal law is resolved by making the enemy a non-citizen, in this case via the act of a citizenship deprivation order.[181] Echoing this sentiment, yet identifying specifically Muslims as the non-citizens, Choudhury argues that the shifting sands in the UK since 9/11 have resulted in the positioning of Muslims as merely 'tolerated citizens' required to demonstrate their Britishness, and those Muslims holding extremist views as 'failed citizens'. Up until the more recent developments concerning IS, this 'terrorist' was almost exclusively the Muslim male.

Though engaging in terrorism at any stage, from planning, inciting others, carrying out an attack etc, is of course amongst the most heinous of crimes, it is necessary to restate once again what is at stake when a citizen has their status revoked. As a 'meta-right', the source from which all additional rights flow, asserting the terrorist - any terrorist - to be unworthy of citizenship deprives them of all the rights and protections entailed thus.[182] It is also largely regarded to be justifiable, if ever, only in the most extreme cases. As we step forward into the following chapter which will focus on the most recent events in the terror narrative, it is worth remembering that until very recently, next to nobody was considered by the UK to be worthy of such harsh treatment (noting that for the 30 years before 2002, not a single citizenship deprivation order was issued other than for fraud).[183] The proliferation of the use of citizenship revocation, alongside the positioning of the terrorist as the enemy (or non-citizen to-be) have combined to normalise the use of deprivation orders as a punishment for

The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?. Florence: European University Institute. (2015):54

181 Macklin, *'Citizenship Revocation'*, 51

182 Audrey Macklin, 'Kick-off Contribution' in A Macklin and R Baubock (eds.) *The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?*. Florence: European University Institute. (2015):2

183 Gibney, *Deprivation of Citizenship*, 330

terrorism in recent years, thus bypassing all tests of proportionality and further, any such binary labelling ‘terrorists’ as non-citizens has failed to take into account differing degrees of threat that are contained within the heading ‘terrorist’. With the exponential rise of citizenship revocation since 2014, the application of any proportionality tests remains absent.

Chapter 5: The Foreign Fighter Phenomenon and Citizenship Revocation

While frustrations felt by the UK in the Al-Jedda case may have affected certain aspects of the 2014 Immigration Act, the amendment must also be viewed with respect to the broader context of the time. 2014 was a pivotal year in the assertion of the Islamic State as a force to be reckoned with and politicians began to take notice.[184] A surge of foreign fighters began leaving their countries to join the brutal extremist organisation and in recognition of the threat should they return, governments around the world began to amend laws with respect to citizenship, with the UK, the Netherlands, France, Denmark and Israel, all amending laws permitting the revocation of the citizenship of both naturalized and birthright citizens. This new perceived threat was in direct relation to nationals who had joined IS or other jihadist groups abroad and still holding their citizenship could legally re-enter their home state at any time. This chapter endeavours to chart the unique conditions occurring at this time with respect to the rise of IS and also the phenomenon of foreign fighter involvement, which combined, resulted in such a significant repositioning of citizenship policy. Following this, the less-chartered territory of IS brides will be examined with particular reference to the critical case of Shamima Begum, a young British woman who had her citizenship revoked by the British government further to her involvement with IS, a decision affecting also her child who died soon after. An analysis of UK policy will be provided, highlighting the key inadequacies and establishing conditions that should be met if citizenship revocation is to be in keeping with international law.

5.1 The Rise of the Islamic State and Western Foreign Fighter Involvement

For many years, the group most feared and most synonymous with terrorism was Al-Qaeda. Following the invasion of Iraq in 2003, there was a shift within the country and a group which would come to be known as the Islamic State reorganised itself as an official affiliate of Al-Qaeda based in Iraq.[185] It is claimed that in this time, Al-Qaeda in Iraq considered the group's

184 Mantu, *Citizenship in Times of Terror,* 21

185 Jayaraman, *International Terrorism and Statelessness,* 183

tactics to be too extreme and from this, the Islamic State of Iraq (ISI) was born in 2006.[186] In 2011 as war broke out in Syria, ISI acted in support of and alongside anti-government groups, such as Al-Nusra, against the Assad regime. In 2013, the two groups merged, becoming ISIL (Islamic State in the Levant) and the following year both Al-Qaeda and Al-Nusra cut the organisation off leaving it to exist as an extreme, independent body. In this form in 2014 the group increased military operations in Iraq and Syria, driving the Iraqi government out of portions of the country and leading to what came to be known as the 'Islamic State', with large swathes of territory across Iraq and Syria under IS control.[187]

The severity of the threat of IS was heightened further due to recruitment tactics and an international appeal not seen before, even by Al-Qaeda. One thing that IS is known for is its use of social media and file-sharing platforms in the process of recruitment and also in disseminating its message and ideology to a global audience.[188] It has also been argued that IS propaganda is disproportionately aimed towards foreign nationals, as their messages are released first in English, French and German, and later translated into languages such as Urdu, Indonesian and Russian, languages spoken in countries where groups may have traditionally looked to garner support.[189] It is also noted that converts to Islam make up a disproportionate number of foreign fighters, making this group of people a focus, and a key part of the message, for IS.[190] In 2015, the International Centre for the Study of Radicalisation and Political Violence (ICSR) estimated that around 20,000 foreign fighters had joined IS, with around a fifth of them being from Western European states.[191] 850 British people are believed to have joined IS.[192] A further key feature of this new style of organisation and recruitment was that of these IS affiliates, around one quarter were women and children.[193]

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186 Ibid 184
187 Ibid 185
188 Ibid
189 Rushchenko, *Counter-terrorism, Foreign Fighters and Criminal Justice*, 25
190 Ibid
191 Naumann, *Foreign fighter total in Syria/Iraq.*
192 Sabagh, *Britain must repatriate Isis fighters.*
193 Cook and Vale, *From Daesh to Diaspora.*

Two key observations must be made here. Firstly, if we accept that the targeting of Western Europeans is in fact purposeful, we must evaluate the possible ends of which they are in pursuit. One possible suggestion could be that this asserts the dominance of IS over certain nations who are no longer in control of their citizens: a powerful message to be conveyed as a further string in the bow of IS. There would also be the added threat of returning nationals. In recruiting citizens of certain countries, the threat to the state is imposed more dramatically, as there is the additional concern that once radicalised and trained, members may use their passport to return to their home country (as they hold the legal right to do) ready to continue the fight armed with knowledge, contacts and extreme views. If this were to be an intended aim of IS, then it could be argued that the desired effect was achieved, considering the strong response by governments - if the intent is to provoke terror or fear in the societies they oppose, then the amendments of citizenship policy could be viewed as arising from such a provocation.

Secondly, the inclusion of women and children adds an extra element that cannot be ignored. It is claimed that the recruitment of women is carried out in a different way, inviting them to fulfil different roles, largely off the battlefield as wives and in other positions. The recruitment drive was not merely aimed at establishing a military component, but more broadly in establishing a new society with all the components of family that it would be comprised of. The term '*jihadi brides*' or what is referred to in this thesis as '*ISIS brides*' has since arisen, with reference to the women who have left their homes in order to join IS, potentially marry fighters and live in accordance with the principle of Sharia law.[194] Many of these women marry soon after arriving in Syria or Iraq and give birth to children. Though the ascribing of the term 'bride' assigns a relatively passive role, it has been argued that many of them have been trained in the use of weapons and can also take other prominent roles in IS operations.[195] While any decision to leave your home country to take part in a known

194 Rushchenko, *Counter-terrorism, Foreign Fighters and Criminal Justice*, 25

195 Daniel Milton and Brian Dodwell, "Jihadi Brides? Examining a Female Guesthouse Registry from the Islamic State's Caliphate" *Combating Terrorism Centre - CTC Sentinel* Volume 11 Number 5 (May 2018):16 https://ctc.usma.edu/jihadi-brides-examining-female-guesthouse-registry-islamic-states-caliphate/

terrorist organisation is clearly contrary to state interests, it is a stretch to categorise the acts of organisers and ringleaders as equal to those of 'ISIS brides'. This therefore poses the question of whether the level of one's aid or assistance to a group must be considered in the determining of the consequences, or, as the UK government has opted, any aid or support to a terrorist organisation should be constitutive of the conduct required to be not conducive to the public good. Further questions still must be asked about the role of the children, both those taken by their parents and those born as a result of IS partnerships.

A brief mention here must be given to the unprecedented success of such recruitment campaigns. Motivations behind the decisions of those joining the organisation are multiple and complex. Julia Rushchenko lists reasons such as marginalisation in their home countries, bullying, peer pressure, a desire to get married, a need to acquire the sense of belonging and also for thrill-seeking.[196] Other angles include ideological or religious motivations, perhaps based on frustration and anger over the perceived worldwide oppression of Muslims.[197] Importantly, in an angle somewhat different to other organisations in prominence before, was the portrayal of the Islamic State as the promised land, an attractive place for a fresh start, a place where Muslims had significance, purpose and meaningful roles.[198] British teenager Shamima Begum cited videos of 'the good life' as contributing to her motivations for joining IS.[199] Social networks served as an important tool, linking existing women of IS and potential recruits in the telling of their stories and the relatively porous border between Turkey and Syria became the gateway, as new recruits took their place.[200]

Yet the promised land was short-lived. Following strong international efforts and stories of in-fighting, after a period of decline and retreat, the caliphate was proclaimed officially over

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196 Rushchenko, *Counter-terrorism, Foreign Fighters and Criminal Justice*, 25

197 Seran de Leede. "Western Women Supporting IS/Daesh in Syria and Iraq – An Exploration of Their Motivations." *International Annals of Criminology* 56, no. 1-2 (2018):43

198 Anita Perešin, "Why Women from the West Are Joining ISIS." *International Annals of Criminology* 56, no. 1-2 (2018):39

199 "Shamima Begum: 'I didn't want to be IS poster girl'" *BBC* (online) 18th February 2019 https://www.bbc.com/news/uk-47276572 Accessed 12th January 2020

200 Jayaraman, *"International Terrorism and Statelessness",* 187

in 2019. Men, women and children, reportedly numbering in total around 11,000 people from all over the world, emerged from their final stronghold to be housed in detention camps nearby. Opposition Kurdish forces were responsible for the imprisonment and detention of the IS affiliates in what could only be described as a gruelling undertaking.[201] Since then, a report from the United Nations claimed that on the 18th April 2019, the main camp of Al-Hol detention camp held approximately 75,000 people (65,000 having arrived in the previous 100 days), of which 15% were foreigners and astonishingly, 90% were women and children (though of course the reliability of any figures in such unstable conditions cannot be guaranteed).[202] More recent figures from the Egmont Institute put the overall number of Europeans detained at a minimum of around 1,200, composed mostly of young children. The majority of the adults are women.[203] The looming question of what to do with the fighters, and their families, remains.

This prompted the crisis being faced presently by many detainees. The UK and Denmark are amongst those who have opted to remove the citizenship of alleged IS fighters and other affiliates, with Germany and Sweden considering similar plans.[204] The upshot of this means that, with little hope of having their case heard through the proper recourse, many individuals remain stranded in squalid conditions in Syrian detention camps with no valid documents for travel or access to assistance - many are de facto stateless. Another option is that some German and French nationals have been transferred to Iraq for prosecution. For this to become common practice would be a highly worrying state of affairs, considering that recent Iraqi trials of foreigners have resulted in sentences including death by hanging. Though the repatriation of children is considered a viable option by most European governments, in

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201 Chulov, *"The Rise and Fall of the Isis 'Caliphate'"*.

202 "'Foreign children' in overwhelmed Syrian camp need urgent international help, says top UN official," *UN News* (online) (18thApril 2019) https://news.un.org/en/story/2019/04/1036901

203 Rick Koolsaet and Thomas Renard, "New figures on European nationals detained in Syria and Iraq" *Egmont Institute* (15th October 2019) http://www.egmontinstitute.be/new-figures-on-european-nationals-detained-in-syria-and-iraq/ Accessed 13th Jaanuary 2020

204 "Why European Countries Are Reluctant To Repatriate Citizens Who Are ISIS Fighters" *NPR (*online) 10th December 2019 https://www.npr.org/2019/12/10/783369673/europe-remains-reluctant-to-repatriate-its-isis-fighters-here-s-why Accessed 13th January 2020

reality this has not transpired on any notable scale with the UK, Germany and France repatriating a small number of children.[205] Calls have come from the US for European governments to take back their former citizens, though the situation remains dire. Alternative options for dealing with the crisis will be explored in more depth in the following chapter.

5.2 The UK Response

Largely related to the events in Syria and Iraq around this period, British citizenship revocation soared. Further to the Immigration Act in 2014 and added to by the rise in IS affiliates wishing to return to the country, UK citizen deprivation orders steadily climbed: in 2014 the figure was 4, then 5 the following year, up to 14 in 2016. In 2017 the number of deprivation orders sky-rocketed to 104.[206] Following the collapse of the caliphate, the availability of more recent figures concerning deprivation orders has been more difficult to come by, yet there have been some very high profile cases, including the revocation of the citizenship of Alexanda Kotey and El Shafee Elsheikh, two Britons who came to be known as the "Beatles" by their captives, who have since been detained in the US, Jack Letts, known as 'Jihadi Jack' by the media who has Canadian citizenship through his father, and Shamima Begum, which will be explored in this thesis.[207] It has also been reported that 30 British men are amongst the IS fighters being held in a Syrian jail alongside an unspecified number of women and children in detention centres.[208]

The UK response is predominantly viewed to be one of denial, leaving any Britons remaining

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205 Ibid

206 Lizzie Dearden, "Shamima Begum: Number of people stripped of UK citizenship soars by 600% in a year" *The Independent* (online) 20th February 2019 https://www.independent.co.uk/news/uk/home-news/shamima-begum-uk-citizenship-stripped-home-office-sajid-javid-a8788301.html Accessed 13th January 2020

207 Anthony Dworkin, "Beyond good and evil: Why Europe should bring ISIS foreign fighters home" *European Council on Foreign Relations (ECFR)* 25th October 2019 https://www.ecfr.eu/publications/summary/beyond_good_and_evil_why_europe_should_bring_isis_foreign_fighters_home Accessed 13th January 2020

208 Dan Sabbagh, "Thirty Britons believed to be among Isis fighters held in Syria" *The Guardian (*online) 6th December 2019 https://www.theguardian.com/world/2019/dec/06/thirty-britons-believed-to-be-among-isis-fighters-held-in-syria Accessed 13th January 2020

in the territory to fend for themselves. In this way, the denial and ignorance effectively places the nationals in a similar position to those who have had their citizenship revoked, in the sense that they are not free to move and are unable to travel or seek assistance. Their country has refused to take any responsibility for them. It is seen that this response is generally in tune with the public mood, that, 'the British government is broadly reflecting public opinion in regard to both fighters and non-combatants. It is content to leave them in Syria for now and to allow the current limbo to persist.'[209] Considering the vast numbers of people still physically in Syria, alongside limits of Kurdish forces resources and also the issue of the Turkish insurgency of 2019, it seems somewhat unfeasible that this perspective can exist as a long-term solution.

One argument provided is that there is no consular assistance available within Syria considering the circumstances. Another is that as they had made the decision to travel to another country in order to join a known terrorist organisation, they deserve no help.[210] A further concern proffered by the governments involves the idea that there may be legal difficulties in the prosecution process - for example, in the UK the use of intercept evidence in court is prohibited, which means that once individuals return, they may walk free, increasing the security threat. The director of the International Centre for the Study of Radicalisation, Shiraz Maher, explains that, "much of what is called "battlefield evidence" in this case would not be admissible in court, either falling short on evidential grounds or because of the manner in which it was obtained."[211] It has been countered that other evidence such as testimony from victims or associates, social media evidence, or other evidence including ISIS membership forms or fingerprints on weapons; and evidence from other intelligence sources could be used. The UK government also raised concerns that charges may be sought to be dismissed on the grounds of an unlawful returns process from Syria to

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209 Shiraz Maher, "The case of Shamima Begum shows there are no easy choices for the West as Isis collapses" *The New Statesman (online)* 14th February 2019 https://www.newstatesman.com/world/middle-east/2019/02/case-shamima-begum-shows-there-are-no-easy-choices-west-isis-collapses Accessed 14th January 2020

210 Sabbagh, "Thirty Britons believed to be among Isis fighters held in Syria"

211 Maher, "The Case of Shamima Begum".

Europe, though some legal experts claim these concerns are overstated.[212]

The UK's official position as stated on the government website is that: "The Home Office has a wide range of powers to disrupt travel and manage the risk posed by returnees. The Home Secretary can exclude non-British nationals from the UK and in some circumstances, may strip dangerous individuals of their British citizenship where that individual wouldn't be made stateless."[213] This explicit reference to statelessness ensures that publicly the government appears to be in compliance with international law, yet it is apparent that in practice this includes both dual nationality, and those that it believes are entitled to citizenship in another country (not possessed at the time of the deprivation order). Even if such claims could be accepted on a legal basis, there also exists the issue of invidiousness, as only dual nationals or potential dual nationals are to be subject to this treatment. Due process is also clearly brought into question, as well as the shirking of responsibility by offloading onto another state or body, all issues to be developed later on in this chapter.

The issue of what to do with children remains an even thornier issue. Generally, European leaders have accepted a responsibility to offer to help children taken to, or born subsequent to joining IS and many returns of children have been made, demonstrating the logistical possibility. The British government follows this example yet Home Office minister Baroness Williams of Trafford, while confirming the return of a number of children, also stated, "We will not put British officials' lives at risk to assist those who have left the UK to join a proscribed terrorist organisation," in an apparent reference to the lack of consular support.[214] Additionally, the majority of those who have returned are orphans due to the fact that most of the children reside in the camps with their mothers, and as child separation is illegal without the mother's agreement, they will remain there. The administering forces of the camps are also aware that by allowing children to return home, they would be left holding

212 Anthony Dworkin, "Beyond Good and Evil"

213 UK Government Report, "UK action to combat Daesh" *Gov UK* https://www.gov.uk/government/topical-events/daesh/about Accessed 14th January 2020

214 "Syria: 'Small number' of children return to UK" *BBC (online)* 10th April 2019 https://www.bbc.com/news/uk-47885484 Accessed 14th January 2020

the responsibility for their mothers indefinitely.[215]

While seemingly there remains some consensus that children generally adhere to victimhood, there are no clear lines delineating which roles should be treated in which ways. For example, in the case of Shamima Begum, though classified by the media as an 'ISIS bride', she was aged just 15 when she departed the UK. There are also multiple non-combatant roles: many, but not all, women for example would fall into this category and there are also men claim to have made the journey but not engaged in fighting. We must recall that much of the IS propaganda surrounded the proposed 'good life' of a new society for Muslims. Maher proposes the idea that voluntary travel to the Islamic State equates to, "ideological commitment and support for the group's overarching worldview". He sees that the 'propaganda of the deed' means the act constitutes a higher purpose than itself, serving to inspire, motivate or, indeed, warn onlookers.[216] This would imply an equal treatment for all who voluntarily (and thus potentially excluding young children) travelled to the Islamic State. At present, in their refusal to assist any detainees (aside from young children) this is the policy the UK is continuing to follow.

5.3 The Case of Shamima Begum

5.3.1 Case Details

A particularly high-profile and controversial case is that of British teenager Shamima Begum. In February 2015, UK citizen Shamima Begum started her passage to join the Islamic State using her sister's passport. She was 15 at the time. She was accompanied by two school friends, 15 and 16. A few days later the three girls crossed the border from Turkey into Syria, eventually reaching the IS headquarters in Raqqa. Begum was married to a 23 year old Dutch convert just a few days later. Her two companions are believed to have died in the conflict.

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215 Azadeh Moaveni, "We must not abandon the women and children of Isis in camps in Syria" *The Guardian* (online) 27th November 2019 https://www.theguardian.com/commentisfree/2019/nov/27/women-isis-syria-camps-refugees Accessed 14th January 2020

216 Maher, "The Case of Shamima Begum".

In February 2019, she was found by a Times journalist, heavily pregnant in the Al-Hol detention camp in Syria. It was discovered that she had had two children, both of whom had died due to disease or malnutrition. She later gave birth to a third child, who has since died in detention. When she was found, she was interviewed by the media bringing her to the attention of the public, in these interviews expressing her desire to return to the UK.[217]

Soon after, whilst still caring for her newborn she received a letter from British Home Secretary Sajid Javid informing her that her British citizenship had been revoked under the 2014 standard identifying behaviour 'not conducive to the public good'. This order meant that Begum would not be able to reenter the UK, obtain a British passport or receive any assistance to leave the detention facility in Syria. Her son died in the camp a few days later. One of the reasons given by the British government for the legality of the order, was that as Begum's mother was in possession of Bangladeshi citizenship, she would theoretically be able to obtain an alternative nationality, and as a result not be left stateless. Under British law, the decision was effective immediately, yet she would still be entitled to launch an appeal. She was granted legal aid and began the appeals process soon after though presently remains in the Al-Roj camp, with the possibility to relay information to a lawyer, though in a limited capacity.[218]

In February 2020, the Special Immigration Appeals Commission (SIAC) unanimously found against Begum, asserting that she had not been improperly deprived of her citizenship. The court held that Begum was not left stateless by the order as she was entitled to Bangladeshi citizenship though it did concede that under the current circumstances, as she cannot play any meaningful part in her appeal, it would not be fair and effective. They further acknowledged that the conditions she is experiencing in the camp are in breach of her rights under article 3 of the European Convention which prohibits torture, and inhuman or degrading treatment or punishment, yet claim that this does not apply to her case, as in Syria,

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217 Duncan Gardham, "Shamima Begum faces Extreme Scenario in Citizenship Appeal" *The Guardian* (online) 24th October 2019 https://www.theguardian.com/uk-news/2019/oct/24/shamima-begum-faces-extreme-scenario-in-citizenship-appeal Accessed 15th January 2020

218 Ibid

she is beyond its reach. At present, Begum's lawyers are appealing the decision.[219]

In assessing the case, four immediate issues arise which will be assessed in turn. Most apparent is the issue of whether this citizenship deprivation order results in statelessness (contrary to the SIAC ruling), which would be against international law. Secondly, the issue of due process and procedural fairness must be assessed. Thirdly, the idea surrounding international obligations will be looked at, before the often overlooked issue that as Ms Begum was 15, and for all intents and purposes still technically a child when she departed the United Kingdom, she should theoretically also be legally classed as such for much of the time period under consideration.

5.3.2 Statelessness

Born and raised in the UK, at the time of events Shamima Begum held British nationality. Under previous formations of the British Nationality Act, revoking this nationality would be illegal as it would mean she would be left stateless as a result - against both domestic and international law. However, subsequent to the Al-Jedda case, amendments permitted the order in the case that the Home Secretary had reasonable grounds to believe that another nationality could be obtained. The UK government claimed that as Begum's mother was Bangladeshi, she would be able to obtain Bangladeshi citizenship by descent, thus falling within the remit of the law. They also submitted that any risks that she would be facing at the time would be unrelated to the citizenship decision, and were a consequence of her decision to travel to Syria.[220]

Under Bangladeshi law, a UK national born to a Bangladeshi parent is automatically a

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219 Owen Bowcott, "Shamima Begum loses first stage of appeal against citizenship removal" *The Guardian (*online) 7th February 2020 https://www.theguardian.com/uk-news/2020/feb/07/shamima-begum-loses-appeal-against-removal-of-citizenship Accessed 11th February 2020.

220 Dominic Casciani, "Shamima Begum: Stripping citizenship put her at risk of hanging, court hears" *BBC* (online) 22nd October 2019 https://www.bbc.com/news/uk-50137470 Accessed 15th January 2020

Bangladeshi citizen, something that would apply in this case. The difficulty lies in the idea that if a person doesn't make efforts to activate and retain their status, it remains dormant, and lapses at the age of 21. As Begum was 19 years of age at the time of the deprivation order, it has been argued that she would be entitled to obtain Bangladeshi citizenship. On the opposing side, she has never made any attempts to activate or retain this status, nor has she ever visited Bangladesh or spoken the language. The Bangladeshi Ministry of Foreign Affairs insists Begum is not a Bangladeshi citizen and there is "no question" of her being allowed into the country. It has been further stated that if she arrived covertly she would be hanged.[221] The European Convention on Human Rights (ECHR) prohibits any state party from transferring its nationals to a country where they are at risk of being sentenced to death, as does the principle of non-refoulement.[222]

While the UK may refer to specificities of Bangladeshi law to make its case, under international law, a stateless person is someone who is "not considered as a national by any state under the operation of its law".[223] Considering the Bangladeshi government's refusal to consider Begum to be a Bangladeshi national (or to have the potential to become one) she falls squarely under this definition of a stateless person in international law. Furthermore, the caveat exists that the Home Secretary must have reasonable grounds to believe that she would be able to obtain another citizenship. While this would have been arguable at the outset of the citizenship deprivation procedure, the Home Secretary can no longer claim that they hold this belief in light of Bangladesh's public renunciation. Another interesting point to note is that at the time of writing, Ms Begum was 20 years of age. As the appeal remains at present with the SIAC, and could be ongoing for some time, it can be assumed that her supposed entitlement to Bangladeshi citizenship will have lapsed by the end of the process.

While British law has been carefully manipulated over the previous two decades to permit

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221 "Shamima Begum: What is her legal status?" *BBC* (online) 21st February 2019 https://www.bbc.com/news/uk-47310206 Accessed 15th February 2020

222 Anthony Dworkin, "Beyond Good and Evil"

223 UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf Accessed 15th January 2020

citizenship revocation in more and more instances, the UK's obligations to avoid statelessness have remained clear and consistent. Though there may have originally been a claim that Ms Begum could plausibly gain Bangladeshi citizenship, as the case has developed it is now clear that that is no longer the case. The 2020 ruling maintained that at the time of the removal of her citizenship, she was a citizen of Bangladesh by descent, by virtue of Bangladeshi nationality legislation, and thus was not to be gifted or denied by the Bangladeshi government.[224] However, considering the Bangladeshi response, it is evident that the deprivation order leaves Begum de facto, if not de jure, stateless: without a nationality, without the protection of any state and effectively without any rights. Through her association with terrorism, she has been designated as not worthy of citizenship or any of the rights associated with it by the British government, effectively using their claim to security to overrule international law. This could also be viewed as a dangerous precedent for any individuals remaining in the camp when we consider how comfortable the UK government is with adjusting the law with reference to specific cases and the fact that other governments in similar situations may look to this high-profile case as an example.

5.3.3 Procedural Fairness

As per international and domestic law, once the deprivation of Shamima Begum's citizenship had been carried out, though it was effective immediately, there was still the possibility to appeal. Further to the amendments of the law, the initial decision may be made entirely by the Home Secretary, without any requirement to consult another party. The unilateral decision then enters into force, before an appeal can be launched in response. With the case of Shamima Begum, as is the case with many affiliates of IS, this decision is taken when the recipient is out of the country, in spite of the fact that this would mean the appellant may be unable to return to the country to initiate the process. As an individual's right to access domestic courts should be guaranteed, in line with the customary principle of due process, whether the UK procedure for removal citizenship is lawful must be assessed, with this

[224] Bowcott, "Shamima Begum loses first stage of appeal'.

example in particular as a case in point to highlight issues in the system overall.

Firstly, should an individual not be able to travel to their home country to initiate the procedure, we can already claim that rights are being violated. It is potentially only due to the publicity surrounding her case that she has been able to launch her appeal however, and others in similar situations may not have any such a possibility. The circumstances still remain deeply objectionable however. One of Shamima Begum's representatives, Tom Hickman QC, claimed that, 'if someone is unable to appeal in any meaningful way, it must be unlawful".[225] In Begum's case, though she was able to pass instructions to her lawyers from Al Hol camp, the lawyers appealing against the action say they have not been able to discuss the case against her in any detail, and a hearing has been told that this is an extreme scenario in which she will be unable to fight the case against her.[226] The limited contact is said to be due in large part to prohibitions imposed on access to detainees by camp authorities on certain access to people detained in the Al-Roj camp to which was later moved. Though the case against her emphasises the circumstances in which she left, her lawyers have argued that it is simply not possible to receive any information about her intentions, the circumstances in which she left, what she has been doing, family relations etc whereby they could counter these arguments. In short, Begum is unable to mount a fair and effective legal challenge, verified by the 2020 SIAC ruling.

There are also deeply concerning issues to be raised concerning the Special Immigration Appeals Committee. Though it is understandable that in certain cases there may be security reasons for not making the facts of the case public, it is once again the unilateral decision of the Home Secretary to decide which cases fall into this category. The very transcendental power once again comes into play as one person is able to effectively revoke a citizen of their nationality, based on a unilateral decision that the information is a security concern and therefore must be kept secret. The potential for misuse and arbitrary decisions here is dangerously apparent, before even addressing the deeply troubling idea that the appellant is expected to make a counter-case without being made aware of much of the information being

225 Gardham, *"Shamima Begum"*

226 Ibid

brought against them. Considering the lack of communication between Begum and her representatives, it can safely be assumed that they will be stabbing in the dark with regards to the truth. This is not necessarily to say that the truth would change the outcome in this situation, but from a legal and ethical perspective, it at least deserves to be heard.

5.3.4 International Obligations

Not considering the obligations of the state in preventing statelessness addressed previously, international obligations to fighting global terrorism and also commitments to international cooperation and cohesion must be addressed. It has been safely established that Shamima Begum was born, raised, socialised and radicalised within the UK and we can thus conclude that the responsibility lies with this state. Her status as an IS affiliate, role within the organisation and whether she poses a security threat to the UK or anywhere else, would be based largely on conjecture and are thus beyond the scope of this paper. However, it can be accepted that the vast numbers of IS affiliates housed in camps in Syria are not only a potential threat in their present existence but also a practical catastrophe that cannot be maintained long term.

By denying responsibility for its former nationals, the UK essentially ensures that those individuals will remain indefinitely in the detention camps and prisons in Syria administered by Kurdish forces. There are several key implications that can be deduced from this. First of all, by keeping thousands of potentially dangerous, and largely like-minded people grouped together may only serve to reinforce the ideals and behaviour that the governments are intending to counter. It would be negligent of any government to say that no threat is posed by the group en masse, and the only logical solution would be for each country to take responsibility for deciding the next steps of their own nationals (the revocation of citizenship does not dictate what the next steps should be, merely what they are not to be). Consider alongside this the additional problem in October 2019 after conflict arose between Turkish and Syrian forces in the area, with a reported 750 IS affiliates escaping the camps.[227] It must

[227] Bethan McKernan, “At least 750 Isis affiliates escape Syria camp after Turkish shelling” *The*

also not be forgotten that the Kurdish forces, despite their significant efforts alongside the international efforts fighting IS and heavy enduring presence, are not state forces and are effectively a militia, not holding the appropriate authority to oversee prosecutions or repatriations in accordance with international law.

Imagine a situation wherein an already existing state had numerous villages with known radicalised and violent extremists. Imagine further that many of these prisoners had been imprisoned for criminal activity (in some cases, of the most extreme kind) and were beginning to escape to surrounding areas. Furthermore, add in that the kind of ideology being championed in these villages and prisons was one that held the Western world as its sworn enemy. It is almost unthinkable that governments would not step in in one way or another to try and limit any potential harm. In fact, the UK and the US have a proven history, even recently, of stepping into situations in a similar region to that being addressed here, regardless of any direct threat posed to themselves. It seems incongruous then, that should some of the inhabitants of these 'villages' be nationals, this would act as a deterrent to involvement.

By declining to accept Shamima Begum back into her home country and effectively forcing her to stay in the camp in Syria, the UK sets a dangerous precedent for other countries waiting to see how the case plays out with respect to returning fighters. If other countries decide to follow suit, this ticking time bomb could remain there indefinitely (run by a group with finite sources and limited support) posing an ongoing and potentially increasing threat to society as a whole. In this case, it seems the UK is taking the easy option for its own benefit. Lord Anderson described the decision as "far simpler" as "you don't need the permission of the court, you sign an order and you don't have to deal with them. You simply pull the rug out from under them and they can't come back."[228]

Considering the details of the Begum case, it is not just the Syrian forces that could argue that the UK is offloading its citizen, there could also be a claim from Bangladesh. The legality of the deprivation order rests squarely on the fact that Begum may hold or has the potential

Guardian (online) 13th October 2019 https://www.theguardian.com/world/2019/oct/13/kurds-say-785-isis-affiliates-have-escaped-camp-after-turkish-shelling Accessed 16th January 2020

[228] Lizzie Dearden, *"Shamima Begum"*

to hold Bangladeshi citizenship. Were this not the case, the Home Secretary would not be within their rights to argue the case at all, as statelessness would be virtually guaranteed. It is therefore implied that the UK expects Begum to claim for and be accepted into Bangladeshi citizenry (though of course, Bangladesh has vehemently denied this will be the case). Not only have no attempts been made to consult Bangladesh before the assumption was made, but also there exists an element of arrogance in claiming that though Begum is not worthy of British citizenship, she would be fine in Bangladesh. Born, raised and radicalised in Britain, and having never stepped foot in Bangladesh, it seems completely at odds with all reason that Bangladesh should be made responsible for her.

Lord Anderson mentions on this point that, "It could be seen as an abdication of responsibility to remove citizenship from someone who was radicalised in our country, who left when she was a child, and who we are relatively well-equipped to deal with, whether by prosecution or deradicalisation."[229] This is a further interesting addition. With its relative stability and established judicial system, there seems to be no reason for the UK to claim they are not prepared to handle the case of a few individuals, other than the security justification (countered by the prospect of a successful prosecution) or the symbolic justification. The latter may be the reason more strongly aligned with the truth. Reports have shown that the majority of individuals are not in favour of Begum being allowed to return to the UK.[230] Considering there have been 2 general elections in the last 3 years in the UK, this stance may be an attempt to appease the public and convince them the government takes a strong stance on terror (rather than the seemingly less electable premise of abiding by international law and human rights). Indeed, the Home Secretary Sajid Javid was accused by one of Begum's lawyers of a "politically-driven abuse of power" to try to further his "own personal political objective" of becoming prime minister.[231]

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229 Ibid

230 Harry Carr, "Shamima Begum: 78% of Britons support revoking IS bride's UK citizenship - Sky Data poll" Sky News (online) https://news.sky.com/story/shamima-begum-78-of-britons-support-revoking-is-brides-uk-citizenship-sky-data-poll-11643068 Accessed 17th January 2020

231 Hanna Yusuf and Steve Swann, "Shamima Begum: Lawyer says teen was 'groomed'" *BBC (*online) 31st May 2019 https://www.bbc.com/news/uk-48444604 Accessed 17th January 2020

One final point that requires attention is echoed in the political party the Liberal Democrats' statement that the UK should "learn lessons as to why a young girl went to Syria in the first place."[232] This factor is crucial. If the UK government wishes to use this case a deterrent to other people wishing to follow the same path as Begum, then perhaps a more effective counter-terrorism strategy would be preventative, determining the root causes and mistakes of how this situation, and others similar, have been able to transpire, and seek to avoid similar situations in the future. If, as it can be suspected, the alienation and vilification of Muslims in society is a contributory factor in their being pulled away from mainstream society, this further example-making may serve only as more fuel to the fire in the long-term struggle against extremism.

In the case of Shamima Begum, it has emerged that other girls at the school she attended had left for Syria which led to Begum and two of her friends being interviewed by police without the knowledge of their parents. Lawyers allege that this pushed the girls into leaving as they were made aware they were being monitored and her parents also claim had they known, there could have been a chance to prevent them leaving, accusing the local council of mishandling the case.[233] They call upon the UK for holding responsibility for "arguably the worst case of child radicalisation in the western hemisphere" and effectively failing to prevent Begum and associates from being groomed into becoming victims of child trafficking. While this may appear to be an extreme contention, it must be accepted that without the possibility to speak to Ms Begum, the truth of the matter will not be able to be established either way, and furthermore, certain visible factors of her situation along with her age should clearly have led to her being flagged as a vulnerable person.

5.3.5 Legal Classification as a Child

As she has been dubbed an 'IS bride' by the press and the international community, it is often forgotten that at the time of her leaving for Syria, Shamima Begum was just 15 years old,

232 Lizzie Dearden, *"Shamima Begum"*

233 Yusuf and Swann, *"Shamima Begum: Lawyer says teen was 'groomed'".*

and thus she remained a child (certainly so in the UK). Though her citizenship was revoked when she was 19 and had legally reached adulthood, the period of time preceding entails additional questions to be asked of the UK government with respect to the prevention and protection of minors under their guardianship. As her lawyers have argued, there are events leading up to the case that pose serious questions of the local authority's handling of the potential radicalisation of several school girls, as well as a lack of clarity over how her case can be classified, amidst some claiming that under international law she could technically be a 'child soldier' along with the related legal protections afforded to such a status.

Article 1 of the **Convention of the Rights of the Child (CRC)** states:

> *A child is recognized as every human being under 18 years old, unless national laws recognize an earlier age of majority.*[234]

As UK national laws do not recognise an earlier age, it is apparent that at the time of her departure, Begum was legally a child in the eyes of the law. As party to the CRC, it seems that the UK would seemingly have owed some level of protection and prevention to their minor national prior to her reaching the age of majority, which were the first three years of her involvement with IS. Considering Begum's lawyers claims of authorities failing to prevent her falling victim to trafficking, there may be some basis for claims of her rights as a child not being protected. The UNODC Handbook defines the exploitation of a child as 'the use of the child in work or other activities for the benefit of others and to the detriment of the child's physical or mental health, development and education.'[235] It seems clear that the sophisticated tactics of IS in their recruitment of children could be viewed as grooming. Additionally, encouraging children to leave their families, travel to a war zone, marry and bear children must be considered exploitation in this sense as these experiences can be

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234 UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p.3

235 United Nations Office on Drugs and Crime, "Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System" (2017):7 https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf

regarded as being seriously detrimental to physical and mental health. Not to mention, in this case, that by the age of 19, Begum had to grieve the loss of 3 children, an unimaginable situation to be faced with at such a young age.

Moreover, the UK is party to the **Optional Protocol to the CRC on the Involvement of Children in Armed Conflict** which states:

> **4.2** *States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.*[236]

Under this optional protocol, which is equivalent to the highest legal standard for the protection of children from non-state groups, no distinction is made between voluntary and involuntary recruits. Additionally, the protocol applies extraterritorially. This means the UK had a duty to try and prevent the very situation that had arisen in the case of the schoolgirls leaving for Syria, but also that the obligation would remain until she was 18 years old - for some time after her departure. Capone states that the UK remains legally obligated under Article 4 (2) OPCRC to 'take all feasible measures to prevent children's recruitment and use by NSAGs (non-state armed groups)', even after the child leaves the territory.[237] No such attempts appear to have been made here.

Though it may be too late to make the case that these failures on behalf of the UK negate the course of action following, it does work towards providing some basis in law for the UK's responsibility with respect to its citizens, and emphasising the disregard shown for it. Acknowledging the UK's assertion of intent to return 'children' to its territory, we are faced with the curious scenario in which Begum may have theoretically been classed as a victim of the conflict for the first period of her time in Syria, yet have transformed into a danger to the state on the day of her 18th birthday. From the strength of the UK's response, it can be safely

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[236] UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 25 May 2000 https://childrenandarmedconflict.un.org/tools-for-action/optional-protocol/ Accessed 19th January 2020

[237] Francesca Capone,'Child Soldiers: The Expanding Practice of Minors recruited to Become Foreign Fighters', in de Guttry, A., Capone, F., Paulussen, C. (eds.), *Foreign Fighters under International Law and Beyond*, The Hague: T.M.C. Asser Press (2016):195

assumed that this would not have been the case, and that the nature of Begum's involvement would have meant she was treated as the latter throughout her time, though how this would have been justified in the law remains to be seen. As this example is hypothetical (just as arguably are the UK government's attempts to justify their actions in law) it will not be further elaborated here, merely presented as an example to highlight the contradictions and the lack of clarity surrounding classifications of roles within this conflict. Certain key facts in the case of Ms. Begum may also point to a more considered response than that of abandonment, considering the missed obligations for the protection and prevention of her situation.

Considering all of the above points mentioned here, there appears to be a strong case that the revocation of the citizenship of Shamima Begum is incompatible with international law on the grounds that she would be made de facto, if not de jure, stateless by the decision. There is the added issue of the impossibility of acting in accordance with the principles of procedural fairness and due process given her present situation. Though there exists no specific legal contradictions in the citizenship revocation order with respect to international obligations and her legal classification as a child at the time of departure, there is a strong argument that an alternative response may have been more appropriate and proportionate, with respect to the UK's disregard for its obligations to both Ms Begum and other states. In spite of these assertions, it can be also proffered that the UK government at this time intends to give little consideration in aligning its stance on the revocation of the citizenship of IS affiliates with international law.

5.4 Conducive to the Public Good? An Analysis.

In the words of Matthew Gibney, the UK's citizenship deprivation powers, "are arguably broader than those possessed by any other Western democratic state'.[238] Further, as evidenced here, they are not afraid to use these powers. The policies are not uncontroversial,

[238] Gibney, "*The Deprivation of Citizenship"*, p326

as indicated by the media furore over the case of Shamima Begum, yet outside of the worlds of academia and journalism they have run into little opposition or resistance. However, such strong laws are not universalizable - for all states to act in a similar manner would be inconceivable - nor are they proven to be particularly effective aside from the goal of appeasing the public. Some of the issues raised by the use of these powers by the UK in practice will be discussed here in an attempt to demonstrate the failings, inadequacies and inconsistencies of the law.

5.4.1 What constitutes a 'terrorist'?

Though used almost exclusively against Muslim 'terrorists', the use of the standard 'conducive to the public good' leaves an exceptionally broad scope within which the government can provide rationale for citizen revocation - there are theoretically endless ways in which a Home Secretary could endeavour to justify a deprivation order in this way. Taking into account the path of the legal amendments, government commentary and use in practice, it is clear that this strict punishment is reserved primarily for utilisation within the sphere of 'terror', and the lack of definitions and specificities means the 'conducive' standard works as a 'one size fits all' to serve whatever the government's ends may be. The UK government and much of the general public seem to have a shared conception of what, and who, the target is in the contemporary climate; any individual who voluntarily left the UK to join the Islamic State is regarded as a 'terrorist' and is thus undeserving of British citizenship - a 'non-citizen'.

The UK Terrorism Act 2000 defines terrorism as the use or threat of an action which: "involves serious violence against a person, involves serious damage to property, endangers a person's life, creates a serious risk to the health or safety of the public; or is designed seriously to interfere with or seriously to disrupt an electronic system" in circumstances where, "the use or threat is designed to influence the government or to intimidate the public or a section of the public; and the use or threat is made for the purpose of advancing a political, religious or ideological cause."[239] Of further relevance, particularly given the

[239] *United Kingdom: The Terrorism Act 2000* [United Kingdom of Great Britain and Northern

reactive nature of the UK government, is the tightening of counter-terrorism legislation in April 2019. The new laws included, "recklessly expressing support for, or publishing images of flags, emblems or clothing in a way which suggests you are a member or supporter of a proscribed organisation and certain preparatory terrorism offences, including encouragement of terrorism or the dissemination of terrorist publications" as offences warranting serious jail terms.[240]

As per established UK style, there is a stark difference between a 'terrorist' in 2000 and a 'terrorist' in 2019. Admittedly, the emergence of IS presented a new form of the terrorist threat, which UK legislators intended to account for. The danger however, is that, as the vagueness of what is 'conducive to the public good' evolves, also what can be considered to be 'terror', 'terrorism' or a 'terrorist' will evolve similarly as an open-ended concept. The all encompassing term 'terrorist' has a unique impact on the public, with their violent rejection and vilification of anything associated with this term. We are then faced with the possibility that what can be considered to constitute a terrorist will evolve in an ever-broadening way, and as a result, who can permissibly be rejected, or deemed a 'non-citizen' will engulf increasingly larger groups of the population.

In practice, what this means is that 'ISIS brides' are now to be treated as 'terrorists', as exemplified by the case of Shamima Begum. While under the 2019 definition this may be warranted, a slippery slope could be seen to emerge. The UK government has not publicly provided any particular instances of her terrorist actions, rather it is her support for IS that places her into the 'non-citizen' category. This sets a worrying precedent. Aided by acting in the name of 'counter-terrorism', the UK government is able to garner public support for orders which are, at best, controversial under international human rights law giving them near free rein. This raises the issue of whether eventually children or other vulnerable groups could theoretically fall victim to the same approach. It will now never be known what the UK

Ireland], 2000 Chapter 11, 20 July 2000 http://www.legislation.gov.uk/ukpga/2000/11/contents Accessed 20th January 2020

240 *United Kingdom: Counter-Terrorism and Border Security Act 2019* [United Kingdom of Great Britain and Northern Ireland], 2019 Chapter 3, 12th April 2019 http://www.legislation.gov.uk/ukpga/2019/3/contents Accessed 20th January 2020

reaction would have been to Begum's new-born son, who would have legally been a British citizen and whom the UK would have been duty-bound to protect under the CRC.

The open-endedness of both UK policy in terrorism and citizenship revocation could almost certainly lead to arbitrary and illegal citizenship deprivation orders. Governments have always been able to capitalise on public fear in order to achieve purported aims, and media rhetoric and public hysteria around terrorism is no different (alongside of course the reality of the presence of the threat). It stands to reason that there may exist extreme circumstances in which a government could reasonably argue for the justifiability of a citizenship revocation order, however more explicit terms should be provided as to what this entails, and a more in depth exploration of the actions of an individual should be considered before tarring them with the brush of the terrorist 'non-citizen' in order to make laws fairer and more reasonable.

5.4.2 Compatibility with International Law

As explored in the second chapter of this thesis, the right that stands most obviously in potential conflict with citizenship revocation, is the right to nationality, asserted unequivocally in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, all the way down to the European Convention on Nationality and the Additional Protocol to the European Convention on Human Rights. Repeatedly, it is specified that nobody can '*arbitrarily'* be denied a nationality. In this thesis, the remit for what is to be considered arbitrary is determined by whether it is in pursuit of a legitimate aim, proportionate, discriminatory, procedurally fair and has the possibility to be challenged by a court.

The UK's repeated maxim that citizenship is a privilege and not a right flies in the face of this, when we consider the largely correlated concepts of nationality and citizenship (discussed in detail in section 1.3). As shown in the previous chapter, the parameters of a non-arbitrary order are regularly flouted in the UK. Although difficult to measure, there are arguments on both sides as to whether present UK policy is in pursuit of a legitimate aim. The claim to want to protect British citizens is a worthy one, yet the effectiveness of the

policy can be challenged on two major grounds. Firstly, considering the sophisticated nature of complex, transnational organisations in the digital age, it is difficult to say whether the physical presence of a suspected terrorist significantly increases the risk to the territory, or whether the act may in fact work to incense alternative opponents. Secondly, there is a danger of driving networks and dangerous individuals underground. It could be argued that in the case of Shamima Begum, the revocation of her citizenship was brought about by the media attention given to her. Now acting as a warning of what not to do, theoretically, others in a similar situation could choose to bide their time and lay low, out of the attention of the government in order to slip unnoticed back into society unpunished.

Questions of proportionality must also be addressed, when we consider the slippery slope emerging from the UK's open-ended approach to what merits denationalisation. Many IS affiliates claim to have been non-combatants in the conflict, including Begum who stated she was 'just' a housewife. The truth of these claims is not to be assessed here, rather the question of whether a blanket punishment can be applied to all those designated as a 'terrorist' in the same way, from street cleaners to ring leaders, from child brides to organisers. (The truth of such claims should, however, be assessed by the UK government). In any discussion surrounding proportionality, it must also not be forgotten that the revocation of citizenship has been deemed by some to be a fate worse than torture, and death.[241] Whether there is a far more appropriate solution - in terms of proportionality and effectiveness - will be explored in the following chapter.

A further feature of international law potentially at odds with UK policy is the extra protections afforded to women and children under the Convention on the Elimination of Discrimination Against Women and the Convention on the Rights of the Child. As Jayaraman points out, as the CEDAW gives a woman equal nationality rights to her children and the CRC potentially prohibits a state from revoking a child's nationality, by reading the two conventions together one could argue that an 'ISIS bride' having given birth whilst abroad

241 Trop v. Dulles, 356 U.S. 86 (1958)

may be afforded protections under international law by virtue of her child.[242] The state certainly owes some level of protection to the child, something that was seemingly not considered in the stripping of Shamima Begum's citizenship as she took care of a new-born son in a camp known for dangerous conditions. It is impossible to say, but it is plausible that the death of the son could have been avoided had the UK government reacted in a different way.

It is also evident from the events of Al-Jedda onwards, that the present UK policy does not comply with their international obligations to prevent statelessness. Steps have been taken by the British government, none so evident as the amendment to the law in 2014, in an attempt to bypass laws preventing revocations resulting in statelessness. It is clear from the case of Shamima Begum, that the UK government has no concern for the reality of the outcome, rather providing just enough in the way of legal reasoning (e.g. the reliance on the dormant Bangladeshi nationality) to present an acceptable argument. While the Statelessness Convention allows for statelessness if 'vital interests' of the state are in danger, no attempt to show that this is the case has been addressed and as such, it is generally accepted that this caveat is applicable only in the most extreme of cases.

Finally, in assessing the UK policy's compatibility with international law, the failures and lack of transparency in the appeals process must be mentioned. Firstly, though setting a time frame within which to appeal of 28 days may not seem overly restrictive at first glance, when we consider that the vast majority of deprivation orders have been carried out while the individual in question is overseas and the lines of communication are more difficult, problems begin to emerge. Many appellants may miss the deadline date due to practical constraints. In the case of Shamima Begum, although she was able to launch an appeal, communicating all necessary information, if any information at all, has been proven to be an arduous task, not to mention the fact that by making public certain information about her case, she may be putting herself in danger. Her physical presence in the court is out of the question and it could be argued that this constitutes a breach of her right to due process.

[242] Jayaraman, "*International Terrorism and Statelessness",* 197

Concerning the lack of communication regarding the appeal, to reiterate Tom Hickman QC, 'if someone is unable to appeal in any meaningful way, it must be unlawful".[243]

There are also difficulties with the secrecy of the process. As the SIAC is able to carry out trials and appeals based on 'closed' information, cases can exist when people have their citizenship stripped without ever hearing the evidence being brought against them. Though of course national security is a legitimate reason for holding back certain pieces of particularly sensitive information, the lack of transparency in such trials is of great cause for concern, especially when we consider the magnitude of the decision being handed down. It is a principle of law that information must be clear, adequately accessible and foreseeable to the person concerned. It is also apparent that in order to defend oneself in any meaningful way, there must be access to the evidence being put forward by the opposition. This level of secrecy in the UK process is a red flag when it comes to assessing which decisions can be considered arbitrary, as may be the primary indicator that the UK's citizenship deprivation policy has overstepped what is allowed under international law.

Considering the above, it can be concluded that there are some inadequacies of UK policy in practice in achieving what has been deemed acceptable in international law. Following the reactive trajectory of citizenship revocation policy in the 21st century, it can also be observed that this is not merely an oversight on the part of the UK government, but that policy has been intentionally manipulated in order to serve whichever ends suit the government, whilst making some pretences to adherence to international law (for example the clause that acts as a nod to preventing statelessness, or the mandatory appeals procedure that almost ensures an inadequate appeal). The UK makes no attempt to assert the proportionality nor the reasonableness of its decisions, and there is limited evidence suggesting it is an effective strategy in countering terrorism. A final deeply troubling fact is that such an important decision can be made unilaterally by the Home Secretary - one individual, elected as an MP by their constituents, yet appointed to the position by the Prime Minister, and thus by no

[243] Gardham, *"Shamima Begum"*

means above politics and external influence. Some steps would need to be made in order to realign the deprivation process in the UK in a way that it would not be subject to claims of arbitrary decisions.

5.4.3 Under what conditions could citizen revocation be permissible?

Accepting the failings of existing UK law, it becomes necessary to establish if citizenship revocation could ever be justifiable in international law and if so, under which conditions. In order to ascertain whether it could ever be justified, we need look no further than the explicit references in international law that single out *non*-arbitrary deprivations of citizenship. Presumably, any such reference would be redundant should there be an absolute prohibition. So far, most of the conclusions have indicated that the severity of citizenship revocation means it should be reserved for only the most extreme cases. Assessing again the criteria for justifications in practice, the following section will look to establish under what conditions the practice of citizenship revocation could rightfully be used.

Accepting then that the right to nationality is paramount, and that a state's obligations to preventing statelessness supersedes a country's particular security concerns, the first condition to be met must be that all necessary steps are taken to avoid stripping citizenship at all - it should only be used as a last resort. Furthermore, in order to avoid statelessness, these safeguards should be especially enforced with regards to mono-nationals, who by having their only nationality removed would effectively no longer have access to any human rights. Unfortunately, a potential consequence of these two conditions used in conjunction could be to conclude that citizenship revocation can only be used as a last resort in cases of dual nationals, which may lead to discrimination, or the ever-tricky second class of dual nationals.

One possible response is that the consideration should not rest on whether the individual has another citizenship to potentially fall back on - in practice this idea is absurd. In the present UK system, the argument relies on the idea that the denationalised individual could theoretically claim another citizenship, but applied practically, it would be nigh on

impossible for somebody, proven to be so undesirable that they become subject to a deprivation order, to be willingly accepted into another citizenry (as per Shamima Begum or Abu Hamza). This present thinking cannot stand. An alternative solution could be that rather than assessing whether they theoretically have another nationality, a procedure can be agreed to determine which country holds the greater responsibility for the individual and the actions answerable for the order. As per Miller's assertion, "the relevant question is where they have lived during the years when their political identities were being formed".[244]

Though there would still be a level of invidiousness in that an individual acquiring a citizenship as their second nationality would be in a position where they would be more likely to have it revoked, this would not be absolute, and may correlate with the amount of time spent in the country or whether they have family in the country, amongst other factors that could contribute to establishing a fairer practice. In the case of Shamima Begum, the primarily responsible state would undoubtedly be the UK. Similarly, in the case of Al-Jedda the UK would be judged most responsible. In the case of Abu Hamza, there could be some dispute, but it would more likely again fall to the responsibility of the UK. For David Hicks, this would clearly be Australia. For the first three examples, the UK should not be able to remove the citizenship, and should look for other alternatives for dealing with the situation. In the case of David Hicks, the permissibility of the citizenship revocation order would be able to proceed past this first hurdle. A more suitable first criteria for a citizenship revocation order could therefore be that a country may only revoke the citizenship of an individual (for terror-related reasons) when they do not hold the lion's share of the responsibility for the forming of that person's political identity.

Another important safeguard should be the legitimacy of the process. One major lacking in the UK policy as it stands is the 'very transcendental power' held by one individual. In order to be legitimate, there should be at least a basic system of judicial review or deliberation in determining whether the deprivation order is just or not. A high burden of proof must fall on

[244] Miller, "Democracy, Exile, and Revocation: 269

this committee or board to prove that the citizenship revocation would be proportionate to the offence, would be effective in achieving its purported aims, and was also being done as a last resort. Considering there is agreement, then the utmost attention must be paid in informing the individual clearly and expressly not only the reasons for the deprivation but also the appeals procedure, which should differ for those who are in and out of the country. Provisions should be made for those having their citizenship stripped whilst abroad so that they are able to be physically present or present in some capacity and have access to a free and fair trial or hearing.

It would be impossible to conjecture the outcome of the cases discussed here when applied to these standards, as this would only be established through a thorough analysis of each case on an individual basis, yet it is clear to say that the above standards have not been achieved by any examples presented in this thesis. It is not to say that an example does not exist, but rather that the use in practice in its present form falls short of the standards that could be expected of a fair revocation system. That being said, perhaps as Leslie Esbrook states, "in today's globalized world, where threats are directed not at nations but at versions of societies that are present nearly everywhere and the relationship between a State and its citizenry at times seems to take backstage to a more unified, global solidarity...It is time for an affirmative rejection of citizenship-stripping, once and for all."

Chapter 6: Exploration of Alternatives

In light of the difficulties and adequacies of citizenship revocation as highlighted by this thesis, it really must be assessed as to whether denationalisation is the best response to the situation being faced. The argument from the point of national security has yet to be proven in a meaningful way - in their current abandonment of national and former nationals, the foreign fighter phenomenon and terrorism as the transnational global threat that it is are being ignored. This could serve to merely displace or defer the problem, with the potential to actually enrage it in the long-term. Furthermore, it can be said with some degree of certainty that citizenship revocation, especially in the rampant form as practised by the UK, disregards some basic obligations to human rights and the rule of law. For liberal democracies to resort to such an extreme form of punishment somewhat undermines the very principles on which they are founded, and is a dangerous forewarning of the progressive erosion of fundamental individual rights in favour of security and populism. This chapter seeks to address alternative and arguably more fitting options for dealing with the present crisis, before addressing some examples of best practice.

6.1 Dealing with the Problem

Since the emergence of the recent wave of the foreign fighter phenomenon, governments have known they had a hand to play in managing the global crisis. In 2013, the Netherlands and Morocco worked to develop a set of guidelines for governments on how to best deal with foreign fighters, the Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the Foreign Terrorist Fighter Phenomenon.[245] This was adopted by the Global Counter-Terrorism Forum in 2014, covering four areas: radicalisation, recruitment and facilitation, travel and fighting and, crucially, return and reintegration.[246] Though non-binding, the guidelines act as a natural precursor to a series of key United Nations Security

[245] '*The Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon*', Global Counterterrorism Forum (GCTF) September 23 2014 https://www.thegctf.org/documents/10162/140201/14Sept19_The+Hague-Marrakech+FTF+Memorandum.pdfAccessed 25th January 2020

[246] Ibid

Resolutions on the issue of foreign fighters. The 2014 UN Resolution 2178 called on states to act with respect to the foreign terrorist fighter phenomenon, with subsequent resolutions 2253 strengthening the call amidst the continued crisis and resolution 2396 once again reiterating the obligations in 2017.[247]

Security Council Resolution 2396 in particular, 'Calls on Member States to take appropriate action regarding suspected terrorists and their accompanying family members who entered their territories, including by considering appropriate prosecution, rehabilitation, and reintegration measures in compliance with domestic and international law.'[248] In September 2016, an addendum was added to the Hague-Marrakech memorandum focusing on returning foreign fighters. The Addendum also suggests that 'states should adopt a comprehensive approach which should be a mixture of preventive, security, criminal, and rehabilitative measures. It should address the repression of terrorist acts, the prevention of (further) radicalization and/or violence in the direct social environment of the returnee, and, ultimately, the reintegration of RFTFs into society.'[249] It is clear that the international community champions prosecution, rehabilitation and reintegration as the ultimate aims of any strategy for dealing with returning foreign terrorist fighters.

6.1.1 Elimination

Citizenship revocation as a policy includes no such aims. In fact, the very opposite may be true, with increased potential for re-radicalisation and further alienation resulting from the abandonment. Moreover, it may be quite surprising to comprehend that citizenship revocation is by no means the most extreme recourse taken by governments in respect to their terrorists or terror suspects abroad. At the same time as the UN was urging allegiance with

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247 Elena Pokalova, 'Dealing with the Challenge: Responses to Foreign Fighters and Foreign Fighter Returnees' in *Returning Islamist Foreign Fighters, Threats and Challenges to the West* Palgrave Macmillan (2000):106

248 S/RES/2396 (2017)

249 '*Addendum to The Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, with a focus on Returning FTFs'*, Global Counterterrorism Forum (GCTF), September 27, 2015,

international law, it has emerged that certain governments privately preferred a more sinister option - elimination. Though not stated as an official policy, some of the most powerful liberal democracies in the world - the US, the UK, Australia, and France - opted for a "shoot-to-kill" approach. Under the guise of the conflict, through targeted missions or air or drone strikes, governments sought to eliminate foreign terrorist fighters thus avoiding the hassle of addressing their return.[250]

Brett McGurk, US special envoy to the coalition against ISIS reportedly claimed, "Our mission is to make sure that any foreign fighter who is here, who joined ISIS from a foreign country and came into Syria, they will die here in Syria.".[251] Former UK Defence Secretary Gavin Williamson "I do not believe that any terrorist, whether they come from this country or any other, should ever be allowed back into this country,"[252] echoing his predecessor Michael Fallon's claims that, "If you are a British national in Iraq or Syria and if you have chosen to fight for [Isis]... you have made yourself a legitimate target and you run the risk every hour of every day of being on the wrong end of an RAF or a United States missile".[253] According to international humanitarian law, this legitimation would only apply whilst the armed conflict would have been ongoing, and only combatants would have been subject to this. With respect to the present post-conflict situation at hand containing varying degrees of combatant, it is apparent that elimination would no longer be legal - if it ever was. Citizenship revocation is just one step shy of this. By removing rights and capacity to travel, the now non-citizen suffers a political death.

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250 Pokalova, '*Dealing with the Challenge'* 123

251 Bill Chappell, "Red Cross Urges Fair and Lawful Treatment of Captured ISIS Fighters," *NPR*, October 26 2017 https://www.npr.org/sections/thetwo-way/2017/10/26/560211819/red-cross-urges-fair-and-lawful-treatment-of-captured-isis-fighters Accessed 25th January 2020

252 Alexandra Ma,"Britain's Defence Secretary Has Threatened to Kill Every Single Extremist Who Has Left the UK to Fight for ISIS," *Business Insider*, December 7, 2017 https://www.businessinsider.my/uk-defence-secretary-gavin-williamson-threat-to-foreign-fighters-britain-2017-12/ Accessed 25th January 2020

253 Kate McCann, "'The Only Way' of Dealing with British Islamic State Fighters Is to Kill Them in Almost Every Case, Minister Says," *Telegraph* (*online)* October 22, 2017 https://www.telegraph.co.uk/news/2017/10/22/way-dealing-british-islamic-state-fighters-kill-almost-every/ Accessed 25th January 2020

6.1.2 Prosecution Abroad

Still falling short of accepting responsibility, but aligning more with the United Nations perspective, one option that has been proffered by governments would be to prosecute IS affiliates abroad with two obvious options; Syria or Iraq. While prosecuting fighters in the place where they carried out the crimes seems more logical from an evidentiary point of view, there could be some practical and legal difficulties. Firstly, the vast amount of individuals held could lead to long delays and an extension of the present situation. Carrying this out in Syria holds its own problems, when we consider that the forces currently presiding over the detainees are not government forces. To empower the Syrian Democratic Forces would be a vast undertaking, not to mention it may be controversial without the consent of the Syrian regime. Amongst the turbulence and instability in the present state of Syria, it would also be unlikely that international standards regarding due process and procedural fairness would be met.[254]

This leaves the possibility of prosecution in Iraq - an option taken by some European governments. Certain individuals who have been captured by or transferred to Iraq have been tried and dealt with by the Iraqi forces, including the example of 11 French nationals in 2019.[255] Many of these trials, including the 11 Frenchmen, resulted in the death penalty being handed out. As previously mentioned, under the European Convention on Human Rights states are prohibited from allowing their nationals to be transferred somewhere they can be subject to the death penalty, leaving this to be an unenviable solution. Again the issues of due process come into play with reports that death sentences or sentences to life imprisonment have been handed out to numerous women after trials of only a few minutes,[256] and also allegations of fabricated evidence showing that prosecution in Iraq would generally not meet minimum requirements of due process and thus not be a viable option.[257]

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254 Dworkin, *"Beyond good and evil"*

255 Ibid

256 Martin Chulov, "'They deserve no mercy': Iraq deals briskly with accused 'women of Isis' *The Guardian (online)* 22nd May 2018 https://www.theguardian.com/world/2018/may/22/they-deserve-no-mercy-iraq-deals-briskly-with-accused-women-of-isis Accessed 26th January 2020

257 Dworkin, *"Beyond good and evil"*

To bypass these difficulties, another possibility that has been floated is the creation of special chambers within the Iraqi justice system specifically designed for the purpose of prosecuting foreign fighters. This could theoretically avoid the legal pitfall of the possibility of the death penalty, and furthermore certain standards of due process could be ensured and adhered to. Whilst theoretically this exists as a plausible option, it again perhaps underestimates the enormity of putting such a system into effect, again potentially encountering serious delays, a large financial burden and limited reach as well as facing difficulties in establishing jurisdiction, particularly when acts were not committed on Iraqi soil (bearing in mind much of the fighting took place in Syria). If states were able to sufficiently financially and practically support Iraq in this undertaking, it could play some part in their shouldering at least some of the responsibility and burden, yet there remains the question of what to do after the sentencing - for example where those found guilty would be imprisoned, and how this imprisonment would be funded. There would also remain a very large question mark over the tens of thousands of women and children in detention camps - are they to be tried in the same way as the active fighters? It is likely a more proportionate option should be chosen.

6.1.3 Repatriation

This then leaves the unpopular option of repatriation. Whilst again, the costs and logistical implications involved in such a large undertaking may be overwhelming, particularly for states with huge numbers of foreign terrorist fighters, the burden will be shared according to responsibility. There are some very clear advantages to this option. Firstly, the nationals being repatriated are sure to need the assistance of the state - the process could be simultaneously ensured to be done with respect to human rights obligations whilst also ensuring the subject remains firmly under the watchful eye of surveillance and security. In organising a trial at home, at least due process and procedural fairness can be enforced, ensuring the legitimacy of any convictions. A further potential advantage of repatriating and prosecuting or at least questioning returnees would be the insight they can provide into reasons for the phenomena and perhaps provide clues to how to prevent situations such as this in the future.

The strongest argument against repatriation is the government's fear that due to the rigorous standards of the courts at home, in particular in Europe, that there may not be enough evidentiary support in trials and prosecutions may fall through, leaving the now repatriated subject to walk free. It is of course an issue that may be considered - in the case of Shamima Begum, conflicting tales exist of her role within IS; she claims it was just to "make babies", while countering reports posit her as a member of the feared 'morality police' with tasks such as sewing suicide bombers into their vests.[258] Accounts are largely circumstantial and chasing up witnesses and victims may be difficult from abroad - should the former account be true of Begum, it would be a great injustice to allow her to walk free.

Yet ruling out elimination and citizenship revocation, if states wish to abide by international law, a domestic trial with limited evidence may be preferable to one in Syria or Iraq failing to meet appropriate standards. Besides, such predictions may be being overstated considering social media evidence, ISIS membership forms or fingerprints on weapons, evidence from intelligence sources and witnesses or victims may be obtainable, not to mention that in the case of Shamima Begum she is fact on record admitting to many things that could have been criminalised by the 2019 counter-terrorism legislation act (e.g. expressing support). For example, it has been reported that the recent average sentence in the UK for membership of a terrorist group has been seven years.[259] Even in the case where prosecution may not be possible, European governments retain extensive powers at their disposal for dealing with those even if they are not able to prosecute them, for example restricted movement, monitored activity, surveillance and house arrest.[260] If these individuals are threats to security, it would surely be preferable to know of their whereabouts, to be able to monitor and keep track of them rather than risk them being able to continue their extremism in practice somewhere

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258 Richard Hall and Lizzie Dearden, "Shamima Begum 'was member of feared Isis morality police' in Syria" *The Independent (online)* 14th April 2019 https://www.independent.co.uk/news/world/middle-east/shamima-begum-isis-syria-morality-police-suicide-belts-a8869016.html Accessed 26th January 2020

259 Dworkin, "*Beyond Good and Evil".*

260 Ibid

under the radar.

6.1.4 Rehabilitation

Which leads to the final and most important aspect for (prospective) returning foreign terrorist fighters. Presently in the camps and prisons exists a huge spectrum of different people from various backgrounds - from professed die-hard ring leaders, through to 'ISIS brides', through to children. While repatriation is the best option for fairly addressing each issue on a case-by-case basis, tailored rehabilitation can serve to be infinitely useful across the board. Regardless of what acts they may have committed, undoubtedly the trauma of engaging in or witnessing conflict, of loss, or the conditions in the camp would have a psychological effect on anyone. For women, there may have been coercion and sexual crimes, as well as familial loss - Begum herself found herself married at 15, and mourning three children before her 20th birthday. Further, in addressing the ideals and re-educating indoctrinated minds, rehabilitation could prove to be one of the most important weapons in the fight against the spread of dangerous and extreme values. Whilst costly, labour-intensive and time-extensive, countries, particularly in Europe, have been engaging in rehabilitation of members of extreme groups with a level of success for some time, often derived from action to deal with far-right extremism or former prisoners. In keeping with calls from the UN and the international community, it seems repatriation, prosecution (and failing that high-level surveillance) combined with rehabilitation is the most appropriate plan of action.

6.2 Examples of Best Practice

While most Western European states remain reluctant to take responsibility for their citizens (or former citizens), some states, such as Kosovo, Turkey, Russia and some Central Asian republics have managed to undertake a successful process of repatriation.[261] Though hesitancy is understandable, many European countries not only have the resources to follow

[261] Letta Taylor, "Western Europe must repatriate its ISIL fighters and families" *Al Jazeera (online)* 19th June 2019 https://www.aljazeera.com/indepth/opinion/western-europe-repatriate-isil-fighters-families-190619110248408.html Accessed 11th February 2020

suit, but also have effective strategies already in place for dealing with the issue of returning fighters. A study by the European Parliamentary Research Service of 6 EU member states' responses to returnees found that in general, the question was no longer one of 'criminalisation or reintegration,' but how the two ideas are related as part of 'comprehensive' responses. It also found a range of different approaches to the rehabilitation and reintegration of terrorism-related suspects and offenders.[262] Likely, fears of a public backlash play a part in the harsh response displayed in certain instances, yet should EU member states work together in an exchange of best practice it seems the adverse response could be mitigated.

6.2.1 The Aarhus Model

Perhaps the most known, one of the earliest rehabilitation programmes was started in Aarhus, Denmark in the late 2000s. With origins in a 2007 initiative intended for dealing with far-right extremism in the country, the so called Aarhus model was adapted to address the growing problem of foreign fighters, in particular radicalised Muslims.[263] Aside from Belgium, Denmark has produced more foreign fighters per capita than any other Western country since 2012 and was seeking an effective method to deal with the issue.[264] Applying a case by case approach to returnees and the radicalised, individuals are either prosecuted or rehabilitated, but the eventual goal would be the reintegration of all into society. Mayor of the city of Aarhus, Jacob Bundsgaard, stated, "We cannot afford not to include them back in our society and make sure that their path of radicalization is changed, so they can be an active part of our society."[265] The model adds the pragmatic angle of not only aiding individuals to turn away from radical beliefs, but also helps them rebuild their lives on the right course, standing starkly in contrast to the abandon and ignore approach being applied by many

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262 European Parliamentary Research Service, *"The return of foreign fighters to EU soil. Ex-post evaluation" (*May 2018) http://www.europarl.europa.eu/RegData/etudes/STUD/2018/621811/EPRS_STU(2018)621811_EN.pdf Accessed 11th February 2020

263 Pokalova, '*Dealing with the Challenge'* 131

264 David Crouch, "A way home for jihadis: Denmark's radical approach to Islamic extremism" *The Guardian (*online) 23rd February 2015 https://www.theguardian.com/world/2015/feb/23/home-jihadi-denmark-radical-islamic-extremism-aarhus-model-scandinavia Accessed 9th February 2020

265 Pokalova, '*Dealing with the Challenge'* 132

European countries to the current crisis.

The Aarhus model combines both an early prevention strategy and an exit strategy. The early prevention strategy aims to impede violent radicalization of young people who are potentially dangerous or security risks for the future before they pose an active threat. For returnees, an initial risk assessment is carried out and the most suitable course of action is determined, whether that be prosecution or rehabilitation.[266] Both tenets rely largely on the model's aim at creating trust and co-operation between authorities, police, national and local organisations and the social circles in which radicals operate.[267] The inclusive, multi-agency plan is designed to prevent and reduce the risk of criminal and terrorist activity, rather than to alienate, stigmatise and vilify groups of people. The inclusion of mentoring, and psychological counselling are key in encouraging radicalised individuals to think about critical life decisions and evaluate what they are doing. Family support networks are developed as well as ongoing dialogue with the local Muslim community in an attempt to weaken the resolve of the radical.[268]

The merits of the Aarhus model are apparent. The ground-up, holistic approach attempts to tackle the problem by bringing everything into the open and has also proven to be relatively successful, with at least 17 out of 20 returnees to Denmark between 2013 and 2015 being reintegrated through the program. Allan Aarslev of the police district where the model was pioneered claims, "We don't do this out of political conviction; we do it because we think it works".[269] Yet it is inarguably a 'soft' approach, and as evidenced previously, such approaches tend not to be popular with the public. However, the most appealing aspect of this model is that it is differentiated; whilst not going to the extremes of citizenship revocation as undesirable individuals are allowed to re-enter, those that warrant so should face

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266 Preben Bertelsen, "Danish Preventive Measures and De-radicalization Strategies: The Aarhus Model" in *Panaroma: Insights into Asian and European Affairs* (2015) https://psy.au.dk/fileadmin/Psykologi/Forskning/Preben_Bertelsen/Avisartikler_radikalisering/Panorama.pdf Accessed 9th February 2020

267 Crouch, "A Way Home for Jihadists".

268 Crouch, "*A Way home for jihadists".*

269 Pokalova, '*Dealing with the Challenge'* 132

prosecution and could be looking at lengthy sentences in accordance with domestic counter-terrorism laws. A final core aspect that has to be considered is that this programme works in line with Denmark's institutional culture and traditionally liberal social values. Programmes that work well should be adapted to such a culture, and within themselves differentiated for the needs of the social, political and cultural climate.

6.2.2 The United Kingdom

As in Denmark, the UK also outwardly prefers a case by case approach to foreign fighters. Most who have chosen to return have been interviewed by security services and undergone a risk assessment establishing whether prosecution is necessary. [270] There are two circumstances in which prosecution wouldn't be a suitable outcome: the first being that individuals are deemed no longer to be a risk to society and the second may be where they may be unlikely to successfully prosecute due to the complications of the legal system. Often in these cases the individuals are then placed into a deradicalisation programme. The UK 'Desistance and Disengagement Programme' (DDP) is an initiative focused on deradicalisation and rehabilitation. Originally intended for the rehabilitation of individuals convicted of terror-related offences and due to be released from prison, the project was expanded to work also with returning terrorist fighters. Like the Aarhus model, it is a multi-agency approach utilising government ministries, probation services and local community organisations incorporating tailored interventions, mentoring and psychological counselling and theological and ideological support.[271]

However, in comparison to the Aarhus model, the UK approach is far more top-down and government imposed rather than community-driven. The programme has been used in recent years to varying reports of success. It has also been accused of being an excuse to spy on Muslims, guilty of profiling minorities, and curtailing freedom of speech. While many offenders leave the process requiring no further action, there have been some high profile

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270 "Shamima Begum: How do countries deal with people returning from IS?" *BBC News - Reality Check* 15th February 2019 https://www.bbc.com/news/world-47252164 Accessed 11th February 2020

271 Pokalova, "*Dealing with the challenge"* 133

incidents with three of the UK's most recent terror attacks being conducted by people in such programs.[272] Much of the evidence suggests that a move to a softer, community based approach more in tune with the Aarhus model could return preferable outcomes. Whilst it is apparent that Aarhus cannot simply be transplanted into the UK and must be tailored to suit its cultural, societal and legal traditions, closer attention should be paid to interreligious and intercultural dialogue and cooperation between communities, using soft tactics and a bottom up approach.

In the case of Shamima Begum, while the hard tactic of citizenship deprivation may seem to appease many of the masses, it does little to tackle the root cause of the problem, and could serve only to further alienate the muslim community. Though flawed, the DDP initiative at least goes some way to try and counter the overall problem of terrorism, and in course may aid future responses and preparedness. Only an individualised assessment of her case carried out subsequent to her repatriation would be able to establish whether there are grounds for prosecution, or whether a rehabilitation program would be a more suitable option, though should that be the case, something more in line with the Aarhus model may be likely to yield better results. Nevertheless, considering the trajectory of the appeals process, this progressive response seems increasingly less likely to come to fruition, yet the continued rejection of responsibility by the UK government could prove to serve only to perpetuate the problems faced.

[272] Bill Bostock, “24 people have been killed by terrorists who went through government 'deradicalization' programs, showing why these efforts are crucially flawed” *Business Insider* 7th December 2019 https://www.businessinsider.com/deradicalization-terrorists-does-it-work-london-bridge-2019-12?IR=TAccessed 11th February 2020

Conclusion

The issue of citizenship revocation as a punishment is not only relevant from a human rights perspective, but it is also very timely and pertinent with respect to the ongoing crisis in Syria. There is no consensus amongst the international community in how to deal with their nationals detained abroad, yet the UK's resort to the revocation of citizenship, including cases involving women and children, is a particularly extreme approach. Accordingly, this thesis addresses the UK's policy of citizenship revocation and its legitimacy and justifiability under international law, establishing that while revoking citizenship may not be contrary to international law *per se*, the present stance and use in practice fails to meet many of the standards that should be expected of a lawful, democratic state. In addition to falling short of international standards, the present practice targets Muslims in particular, aided by, and perhaps feeding into, an anti-Islam narrative that has been woven into the post 9/11 security landscape.

In order to be legitimate, the right to a nationality cannot be deprived arbitrarily, statelessness cannot ensue and due process must be followed. The findings herein suggest that in many cases the UK fails to comply with standards of proportionality, reasonableness and fairness, strong indicators that an order may be arbitrary (a particular plausible claim when we consider that decisions are taken unilaterally and are not subject to initial judicial review). Furthermore, the British Immigration Act contains grey areas that could lead to former nationals being made de facto stateless by permitting deprivation orders ensuing in statelessness. Though this is reserved for cases where there are grounds to believe another citizenship can be obtained, no attention is paid to the practical obstacles to being able to do so. Similarly, whilst the right to an appeal is technically afforded to those who have their citizenship revoked, in practice, the secretive nature of the process as well as the restrictive time limits may violate the right to due process in many cases. Particularly in the case of those remaining in camps in Syria, access to a lawyer and/or court is severely restricted, and as the Special Immigration Appeals Commission operates largely secretively, the whole process can be undertaken without the concerned individual ever having known the evidence

or reasoning brought against them. Noting the disparity between what is practiced and what is preached, it seems that UK commitments to certain rights can diminish depending on circumstances, particularly in those relating to the security threat of terror.

Notwithstanding the skirting of international law, a more general observation that can be made is that citizenship revocation represents a shirking of responsibility for citizens, and an unjust offloading to another state. In deciding who shoulders the burden of a radicalised individual, it must be established which state bears the brunt of the responsibility for their socialisation. Every state should take responsibility for their own citizens regardless of their actions, taking steps to deal with the individual but also to identify and tackle the root cause of the problem. As citizenship revocation as a punishment is used almost exclusively for dealing with terrorist fighters and affiliates, governments must accept the role that they play in the global fight against terror by repatriating their citizens. In denial and avoidance, not only are states such as the UK complicit in the current Syrian crisis but also the ongoing security threat caused by extremist ideologies.

It must also be emphasised that while the correlation between the Islamic extremist threat in the 21st century and the proliferation of denationalisation policy is apparent, the importance that the media and the public play in shaping the government response cannot be underplayed. Time and time again attacks such as 9/11, the 7/7 bombings and most recently the threat from IS have been shown to cause something of a ‘rally round the flag’ effect in countries that feel attacked. In response to such tragedies, a prevalence is placed on national pride and unity often leading to the alienation and vilification of some groups, notably Muslims, in the media and in society. In positing the Muslim as the enemy, and targeting legislation accordingly, governments seek to appease the masses, highlighting a hard-line stance on terror and assuaging security fears. In such a divisive climate, the UK is able to proceed almost unchecked with deprivation orders that are at best, questionable and at worst, illegal. In essence, by playing on the public's fears and anti-Muslim sentiment, the UK position serves only to create further divisions, incensing the problem and adding fuel to the fire.

Therefore alternatives must be addressed. It is the duty of all responsible states to repatriate foreign terrorist fighters and affiliates, where an appropriate course of action can be decided on a case by case basis. In line with UN recommendations, the eventual goal should be rehabilitation and reintegration, with this thesis advocating a bottom-up community driven approach as per the Aarhus model. Whilst offering a stark contrast to the hard response preferred by governments such as the UK at present, soft approaches have been shown to be successful where implemented correctly. Governments must look beyond gratifying the public with grandiose symbolic statements and must look to tackle the problem long-term. Instead of making an example of Shamima Begum, the self-professed poster girl for what can happen if you betray your country, the UK should seek to understand how and why a 15 year old girl who was born and raised in Britain came to be radicalised in the first place. In refusing to re-entry to her country, the UK is denying itself the opportunity to ask the questions that need to be asked to help prevent similar situations in the future.

However, while the current political impasse drags on, it remains to be seen whether other countries will persevere with the slow drip of returnees or whether the world will follow in the UK's footsteps; depriving the citizenship of foreign fighters, women and, by proxy, children. Regardless, it is safe to say that the conclusions drawn in this thesis paint a bleak future, not only for the tens of thousands of people remaining in Syria but also for the prioritisation of human rights above domestic security needs and even the law. The recent ruling on the case of Shamima Begum found that though her human rights were being violated, the UK held no such responsibility to protect them. Those tarred with the terrorist brush are recast as non-citizens, and subsequently not worthy of human rights. There has to be a reframing of what is constituted by citizenship or we run the risk of facing a world where the capacity to remain in your home nation is contingent on your adherence to a certain code of conduct. For in a world where the international community as a whole plays a part in and must be held accountable for the virtues and shortcomings of humankind, perhaps it is the failure to take responsibility that is not conducive to the public good.

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