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RESEARCH ARTICLE

Guilty knowledge: A postcolonial inquiry into knowledge, suspicion, and responsibility in the fight against terrorism financing

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Abstract

This article studies practices of knowledge production during counterterrorism financing court cases in European courts. Developments in international law have contributed to novel regulations to criminalise and prosecute the funding of terrorism in advance of terrorist violence. In this study, we study how court cases have become important spaces for contesting and evaluating multiple knowledge claims on terrorist threat and suspicion by analysing case proceedings from both the Netherlands and the United Kingdom. Building on recent debates in International Relations and postcolonial theory, we make two contributions. First, building on insights from postcolonial literature on ‘abyssal thinking’, we illustrate how legal practices differentiate between different ways of knowing by dismissing certain experiences as ‘emotional’ or ‘subjective’ in contrast to the assumed objectivity of other knowledge claims. We argue that decisions on what counts as knowledge in a court setting are situated in a specific sociopolitical setting, whereby particular knowledge and life-worlds are recognised at the expense of others. Second, we empirically show how the novel criminal laws shifts the responsibility to know terrorist threat from the state to ordinary citizens. We illustrate how the court reinforces new security logics where the state can entertain doubt, uncertainty, and trust in their practices, while the citizens cannot.

Keywords: Postcolonial Studies; Terrorism Financing; Security Knowledge; Law; Science and Technology Studies

Introduction

On 31 January 2020, two parents appeared in front of a Dutch court in Rotterdam on charges of financing terrorism, after sending money to their daughter who travelled to Syria in 2013 to join her well-known Dutch foreign fighter husband. Shortly after her arrival in Syria, the daughter regretted this decision and told her parents that she wanted to return to the Netherlands. Her husband pressured her to stay with him, using their newborn child as leverage against her. The parents turned to government institutions, such as the police and the municipality, for assistance, but the government simply advised the daughter to return without her children. Desperate to support their daughter and grandchildren, the parents sent money to Syria with the hope that their daughter would find a way to escape. In the period between July 2014 and April 2017, they made multiple transactions accumulating to an amount of €4,500. During the case

they testify¹ that ‘the money that I have sent to my daughter was for support and emergencies. We sent money so she could return, but she never came back.’²

This case was not the first terrorism financing case where the defendants claimed to have transferred money to family members out of love and not with the purpose of supporting terrorists. An active terrorist intent is no longer required to prosecute or convict those who enter into funding arrangements with those suspected of terrorism, nor is an account of what the money was actually used for. Under the current legislation, which we explain later in this article, individuals are required to be suspicious about what the risks of transferring money are and actively find knowledge on whether the money might result in terrorist activities. Criminal intent in terrorism financing cases is therefore less dependent on what individuals actually want to do with the money they receive and more on whether the sender suspects the recipient to be involved in terrorist activities.³ As a result, courts across Europe have seen more ‘unusual suspects’ like parents as defendants in terrorism financing cases. In this article, we investigate how domestic courts, in relation to the international framework of counterterrorism financing, define a guilty mind and criminal intent. We particularly focus on cases where a clear terrorist ideology is absent as these cases present more complex and ambiguous legal questions for the court.

This leads to the central question: How do terrorism financing cases define, assess, validate, and contest intent around the question of defendants’ knowledge? Critical Security Studies in the International Relations (IR) discipline have long explored the changing relationship between security, law, and knowledge in the context of pre-emptive action to counter terrorism. A rich literature has examined how notions of future-oriented security logics based on uncertainty, suspicion, and risk have challenged law’s traditional reliance on past action and evidence.⁴ One key development in this respect is the expansion of criminal intent into the prosecution of counterterrorism through the identification and criminalisation of a range of ‘ancillary offences’, including counterterrorism financing.⁵ This has resulted in a fundamental change in the assessment of criminal intent. As shown in the case of ‘blacklisting’, criminal liability has come to be strongly connected to potential futures and a risk-based form of security governance rather than being subject to a thorough inquiry into terrorist affiliations or desires or terrorist intentions of a suspect.⁶ Similarly, terrorism financing cases demonstrate that legal culpability is not dependent on whether financial support actually results in terrorist violence or even whether the defendants share a terrorist ideology but follows from accepting that the money *might be* used for terrorist purposes.

As traditional evidence-based legal reasoning has been challenged by risk-based security, court cases have come to host struggles, negotiations and contestations as to what is (not) possible to know, and who can(not) be knowers in times of radical uncertainty.⁷ In this article, we are particularly guided by recent debates at the intersection of IR and Science-and-Technology Studies (STS) that inquire how knowledge is validated rather than accepting it as static or

¹All references to court proceedings are based on empirical observations during court sittings and will be referred to by their location and date. Court judgements will be cited according to their official references. The Dutch court system is anonymised and can only be referred to by their final judgements through ECLI numbers.

²Court field notes, Rotterdam, 31 January 2020.

³See for further recommendations also FATF (2016), Guidance on the criminalisation of terrorist financing (Recommendation 5), FATF, Paris.

⁴Claudia Aradau, ‘Assembling (non)knowledge: Security, law, and surveillance in a digital world’, *International Political Sociology*, 11:4 (2017), pp. 327–42; Gavin Sullivan, ‘Transnational legal assemblages and global security law: Topologies and temporalities of the list’, *Transnational Legal Theory*, 5:1 (2014), pp. 81–127; Marieke de Goede and Beatrice de Graaf, ‘Sentencing risk: Temporality and precaution in terrorism trials’, *International Political Sociology*, 7:3 (2013), pp. 313–31.

⁵de Goede and de Graaf, ‘Sentencing risk’.

⁶Sullivan, ‘Transnational legal assemblages and global security law’.

⁷Sheila Jasanoff, ‘Bhopal’s trial of knowledge and ignorance’, *Isis*, 98 (2007), pp. 344–50. See also Matthias Gross, and Linsey McGoey (eds), *Routledge International Handbook of Ignorance Studies* (London, UK: Routledge, 2015).

given.⁸ Knowledge as criminal intent should be unpacked to understand what counts as knowledge, where this knowledge is produced, what contributes to its credibility and who is burdened with the responsibility of obtaining it and how.⁹ Here, non-knowledge, and not just knowledge, become widely deployed in legal practices to substantiate, support, and dismiss truth claims.

Existing research bridging IR and STS has offered rich insights into entanglements of knowledge and non-knowledge in the governing of security through law. Our argument in this article is that there are forms of knowledge, which, though enacted in the courtroom, cannot be fitted in the knowledge/non-knowledge thinking. In the case under scrutiny here, the judgement suggested that the parents were ignorant, which the defendants strongly rejected. The parents argued instead that they acted upon their suspicion and knowledge to comply with the law. They invoked alternative ways of knowing, which we aim to unpack and analyse by relying on postcolonial/decolonial studies, in particular on Boaventura de Sousa Santos's ideas about modern law and modern knowledge as 'abyssal thinking'¹⁰ and these ideas' recent application to IR by Zeynep Gülşah Çapan.¹¹ Aside from the conceptual insights, postcolonial studies furthermore pushes us to empirically study these court cases not only as legal decisions on criminal intent, but as interventions in the intimate sphere and family relations. Postcolonial scholars have reminded us that for racial minorities and other marginalised communities, private and intimate relations are not shielded from state surveillance or intervention. Indeed, as Jasbir Puar¹² describes, in the case of Arab or South-Asian Muslims, queer Muslims or other racialised groups, their intimacy and family lives are not sheltered from surveillance, but rather are subject to monitoring, detention, and legal interventions. This article proposes that terrorism financing suspects are not ignorant, evil, or naïve, as often argued by the prosecution, but are knowledgeable subjects, whose knowledge and ways of knowing are deliberately dismissed. Therefore, our postcolonial framework presents not only a conceptual tool to study how knowledge is produced and assessed, but also highlights empirically how family relations function as a site for state intervention.

This article is structured as follows. In the following section, we elaborate on the legal framework in which these court cases take place. Through this elaboration, we illustrate how suspicion, criminal responsibility, and common knowledge are embedded in the legal wording of the terrorism financing offence. Subsequently, we discuss current academic debates on security, law, and knowledge and propose a closer engagement with insights with decolonial/postcolonial studies on the enactment of authoritative claims and subjects. We do so by relying on the notion of 'abyssal thinking'. This is followed by the empirical part of the article, which discusses multiple cases across Europe, particularly the UK and the Netherlands. This analysis is not meant to provide a comparative analysis of the cases. It rather illustrates the differential and uneven production of knowledge and subjects in the courtroom. In the conclusion, we reflect on how our approach contributes more broadly to the debates on knowledge at the intersection of law and pre-emptive security.

Legal definitions and contestations around terrorism financing

The legal background of terrorism financing court cases is the International Convention for the Suppression of the Financing of Terrorism, which entered into force in 2002 obliging ratifying

⁸Marieke de Goede, 'The chain of security', *Review of International Studies*, 44:1 (2018), pp. 30–1; Rocco Bellanova, Katja Lindskov Jacobsen, and Linda Monsees, 'Taking the trouble: Science, technology and security studies', *Critical Studies on Security*, 8:2 (2020), pp. 87–100.

⁹Aradau, 'Assembling (non)knowledge'.

¹⁰Boaventura de Sousa Santos, 'Beyond abyssal thinking: From global lines to ecologies of knowledges', *Review (Fernand Braudel Centre)*, 30:1 (2007), pp. 45–89.

¹¹Zeynep Gülşah Çapan, 'Beyond visible entanglements: Connected histories of the international', *International Studies Review*, 22 (2020), pp. 289–306; Zeynep Gülşah Çapan, 'Writing International Relations from the invisible side of the abyssal line', *Review of International Studies*, 43:4 (2017), pp. 602–11.

¹²Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Durham, NC: Duke University Press, 2018).

member states to criminalise and prevent the financing of terrorist organisations. The criminal definition of ‘intent’ in terrorism financing that is used in our example is an international effort, indicating practices of a global political and legal framework, and not merely domestic regulations. Countries who fail to adopt this broad regulatory framework into their penal code or successfully prosecute terrorism financing cases are monitored and assisted by the Financial Action Task Force (FATF) to comply with international standards. Therefore, despite the relative freedom of states to decide on their own counterterrorism legislation, the terrorism financing offence is quite comparable across European jurisdiction as a result of the FATF’s harmonising efforts. With regard to the act of funding, international guidelines prescribe that states should not limit the offence to any specific acts. Rather the law applies to any means of ‘providing or collecting funds or other assets, which explicitly includes economic resources, including oil and other natural resources, dividends and income accruing from assets, as well as any other assets which are not funds but which potentially may be used to obtain funds, goods or services.’¹³ Furthermore, criminal liability should not depend on whether the full funds were used for or intended for a terrorist act, but the offence also should apply in cases where only part of the money was used or intended for terrorist purposes. This is independent of the intention of the transaction as a whole, which can include a legitimate economic purpose.¹⁴

Considering the mental element of the offence, the FATF goes even further than the wording of the Convention. While the Convention speaks of intent as ‘provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part’,¹⁵ the FATF recommends that nation states define criminal intent in a more pre-emptive fashion. As a result, the Dutch penal code speaks of the sender of the money *knowing or accepting the reasonable chance* that the money could support terrorists.¹⁶ The UK terrorist act furthermore explicitly refers to *knowing or having a reasonable cause to suspect*. In both definitions, criminal intent is connected to chance, risk, suspicion rather than concrete knowledge, which is broader than the abstract wording of the international Convention.

The investigation of intent formed the main point of legal contestation in the Rotterdam case, but is similar to cases outside the Netherlands, for example the case of *R v. John Letts and Sally Lane*.¹⁷ The following recollection of a dialogue¹⁸ between the judge and the parents in the Rotterdam case offers a good illustration of how intent is interrogated and which difficulties arise from defining criminal intent:

Judge: I want to talk about the money. You said that you transferred money to your daughter, who travelled with her husband. You say you don’t have knowledge about him. But there is information about him and what he did in Syria. ... Did you not learn about this? In the newspaper, on the radio, on the news?

Father: I don’t watch the news, and I don’t read the papers. I wake up early in the morning to go to work and I return late at night.

Judge: And you, madam?

Mother: I am illiterate, and mentally I have been struggling with this.

¹³FATF (2016), Guidance on the criminalisation of terrorist financing, p. 3.

¹⁴Ibid.

¹⁵United Nations General Assembly, *International Convention for the Suppression of the Financing of Terrorism No. 38349*, Adopted by Resolution 54/109 (New York, 9 December 1999), available at: {<https://www.refworld.org/docid/3dda0b867.html>} accessed 21 April 2020.

¹⁶As defined in the Dutch penal code, Article 421Sr.

¹⁷‘Isis suspect Jack Letts’ parents found guilty of funding terrorism’, *The Guardian* (21 June 2019), available at: {<https://www.theguardian.com/uk-news/2019/jun/21/jack-letts-isis-suspect-parents-found-guilty-of-funding-terrorism-oxford-syria>} accessed 19 January 2021.

¹⁸Dialogue retrieved from court field notes, Rotterdam, 31 January 2020.

This dialogue not only shows the challenge of cross-examining parents about their knowledge but also illustrates how the construction of intent is intrinsically connected with the question of responsibility. In the so-called ‘War on Terror’, public sectors as education and healthcare provision have been attributed with the responsibility of monitoring ordinary citizens and detecting early signs of radicalisation.¹⁹ This knowledge is negotiated and produced by a myriad of legal actors, such as security and medical experts²⁰ or terrorism experts²¹ as subjects of knowledge and responsibility in legal practices. In addition to this debate, we show that ordinary citizens are not just to be known, and thus governed, by the state and its apparatuses. What we see is a shift of ‘the duty to know’²² – and not just suspect – to the individual level. Ordinary citizens are not only rendered suspicious but are increasingly held legally responsible for assessing the terrorist risk of their financial behaviour. The definition of criminal intent is intertwined with the construction of ordinary citizens as subjects of knowledge with the duty to act reasonably and responsibly in countering terrorism.

As the conversation above shows, legal practices generate controversies over possibilities of knowing and responsibility and attribute these to subjects in differential and asymmetric ways. To capture these, we call for a closer engagement with postcolonial/decolonial scholarship to enrich existing debates within critical security studies and sociolegal studies on knowledge production. Our contribution lies in that postcolonial/decolonial theory provides us with conceptual tools to study the affective sites of knowledge-making and examine family relations as targets of legal-security intervention.²³ As such, we speak to the long interest of IR scholarship to challenge the Eurocentric modes of approaching security and world politics.²⁴ In the following section, we elaborate on the relationship between (in)security, knowledge, and law before turning to our conceptual framework.

Knowledge, responsibility, and subjectivity in the courtroom

Terrorism financing cases illustrate the changing relationship between security and law in the context of pre-emptive action to counterterrorism.²⁵ With counterterrorism law’s increasing shift from a focus on the past towards future-oriented security, scholars have sought to move beyond IR’s traditional concentration on law’s formulation and judgements.²⁶ Our study particularly builds on the legal scholarship exploring how law functions as an epistemic practice,²⁷ whereby legal practices enact particular forms of (non-)knowledge and responsibility in the generation of truth claims.²⁸ This attention to everyday materials and practices is inspired by an

¹⁹Charlotte Heath-Kelly, ‘The geography of pre-criminal space: Epidemiological imaginations of radicalisation risk in the UK Prevent Strategy, 2007, 2017’, *Critical Studies on Terrorism*, 10:2 (2017), p. 303.

²⁰Sullivan, ‘Transnational legal assemblages and global security law’; Victor Toom, ‘Bodies of science and law: Forensic DNA profiling, biological bodies, and biopower’, *Journal of Law and Society*, 39:1 (2012), pp. 150–66.

²¹Lisa Stampnitzky, *Disciplining Terror: How Experts Invented ‘Terrorism’* (Cambridge, UK: Cambridge University Press, 2013).

²²Mariana Valverde, *Law’s Dream of a Common Knowledge* (Princeton, NJ: Princeton University Press, 2003), p. 21.

²³Sandra Harding, ‘Postcolonial and feminist philosophies of science and technology: Convergences and dissonances’, *Postcolonial Studies*, 12:4 (2009), pp. 401–21; Gloria Wekker, *White Innocence: Paradoxes of Colonialism and Race* (Durham, NC: Duke University Press, 2016).

²⁴Alexander Anievas, Nivi Manchanda, and Robbie Shilliam (eds), *Race and Racism in International Relations: Confronting the Global Line* (Abingdon, UK: Routledge, 2015); Kerem Nişancioğlu, ‘Racial sovereignty’, *European Journal of International Relations*, 26:S1 (2020), pp. 39–63; Karen Tucker, ‘Unraveling coloniality in International Relations: Knowledge, relationality, and strategies for engagement’, *International Political Sociology*, 12:3 (2018), pp. 215–32.

²⁵Tasniem Anwar, ‘Time will tell: Defining violence in terrorism court cases’, *Security Dialogue* (2021); Aradau, ‘Assembling (non)knowledge’; Sullivan, ‘Transnational legal assemblages and global security law’.

²⁶Ibid.

²⁷Marieke de Goede, ‘The chain of security’; Bruno Latour, *The Making of Law: An Ethnography of the Conseil d’État* (Cambridge, UK: Polity, 2010); Annelise Riles, *Collateral Knowledge: Legal Reasoning in the Global Financial Markets* (Chicago, IL: University of Chicago Press, 2011).

²⁸Aradau, ‘Assembling (non)knowledge’.

STS-approach to law. Such an approach is different from other sociolegal studies or Critical Legal Studies that focus more on legal text or jurisprudence. An STS approach to both IR and law is apt for legal inquiries moving beyond examining court judgements or legal texts, where the law appears static and stabilised, and in fact enables us to investigate the legal proceedings where multiple realities of law are negotiated. Especially when studying law, focusing on detailed and everyday knowledge-practices can make visible how legal institutions and doctrines are embedded in particular power relations and work towards the exclusion of particular subjectivities. Indeed, as Emilie Cloatre argues, combining STS and law is most useful if we acknowledge insights from interdisciplinary legal studies and postcolonial critique.²⁹

As such, we furthermore concur with existing research at the intersection of law, IR and STS that terrorism trials are not just material sites of knowledge production where legal facts on security are established.³⁰ They also invoke ignorance, which might come in the form of, for example, doubt, uncertainty, secrecy, omission, fallacy, and denial. Ignorance is deeply interwoven in the construction of legal decisions. However, rather than simply being the absence of knowledge, ignorance (or non-knowledge) is a 'positive, social enactment' with important political effects.³¹ The relationship between ignorance and knowledge is closely related to issues of power and law.³² For example, ascribing ignorance to a group can be an important tool of silencing the knowledge of certain groups or individuals or what Freire has called 'absolutizing of ignorance'.³³ Specific deployments of knowledge and ignorance render the very material objects of security mediation as the primary focus of controversies in the establishment of particular truth claims while dismissing others.³⁴ In other words, the assessment of knowledge and non-knowledge becomes crucial in the differential and uneven construction of subjects and subject positions along with the attribution of responsibilities through legal practices.³⁵

By formulating terrorist intent as 'having reasonable cause to suspect that the money might be used for terrorist purposes', court cases often evolve around the question of 'common knowledge on terrorism' or what a reasonable person in the same situation would have known. Yet, as Mariana Valverde argues, 'common knowledge is not necessarily common in the empirical sense' but can be better understood as imperative or 'the duty to know'.³⁶ This common knowledge becomes a burden, partly because it creates a legal accountability on ordinary citizens, and partly because it often imagines a universally held idea of common knowledge and human conduct that does not necessarily resonate with the situated knowledge of individual citizens. Paying attention to the study of common knowledge as a duty to know, we argue that it requires an examination of legal practices that enact knowledge to attune to the specific intersection of law and pre-emptive security.

This approach is important as in contemporary counterterrorism practices, ordinary citizens are allocated particular modes of pre-emptive (non-)knowledge and preemptive responsibility and situated differentially *vis-à-vis* other subjects within legal settings. Security controversies over state and institutional knowledge bring questions of responsibility to centre stage in legal practices.³⁷ Whether responsibility concerns public oversight over the extent of mass

²⁹Emilie Cloatre, 'Law and ANT (and its kin): Possibilities, challenges, and ways forward', *Journal of Law and Society*, 45:4 (2018), pp. 646–63.

³⁰de Goede, 'The chain of security'.

³¹Aradau, 'Assembling (non)knowledge', p. 330.

³²Dermot Feenan, 'Understanding disadvantage partly through an epistemology of ignorance', *Social & Legal Studies*, 16:4 (2007), pp. 509–31.

³³Freire quoted in Feenan, 'Understanding disadvantage', p. 510

³⁴Valentin Gros, Marieke de Goede, and Beste İşleyen, 'The Snowden Files made public: A material politics of contesting surveillance', *International Political Sociology*, 11:1 (2017), pp. 73–89.

³⁵Jasanoff, 'Bhopal's trial of knowledge and ignorance'.

³⁶Valverde, *Law's Dream of a Common Knowledge*, p. 21.

³⁷Jasanoff, 'Bhopal's trial of knowledge and ignorance'.

surveillance³⁸ or ‘the missed moment of preemptive intervention’ by security professionals,³⁹ the enactment of knowledge, speculation, and suspicion operates in the plural with the effect of the differential and uneven positioning of those involved, ranging from citizens, defendants, security professionals, and private companies.⁴⁰ Subjects of government tend to dismiss legal arguments and claims about knowledge and responsibility by reference to the very notions that foreground their everyday security interventions, such as uncertainty, speculation, and ‘conjecture’ and ‘reasonableness’.⁴¹

At the same time, ordinary citizens are also enacted as particular kinds of (non-)knowers who, in their everyday lives, are expected to act on reasonable suspicion and responsibility in the context of preemptive security. As such, our argument moves beyond a focus on ‘suspect communities’, whereby – particularly Muslim – citizens of European countries actively take part in their own policing⁴² or are considered a space of risk and suspicion where pre-emptive measures are needed,⁴³ to an investigation of how terrorism financing trials construct ordinary citizens through novel ways of assembling and configuring knowledge, suspicion, and responsibility. What we observe is the reframing of ‘the burden to know’⁴⁴ in ways that mark a ‘shift ... from government (state power on its own) to governance’.⁴⁵ Put differently, there is an individualisation of risk in relation to preemptive security.⁴⁶ Citizens are not just to be known, suspected, and intervened by security and legal professionals. Nor are they merely subjects whose demands and claims to knowledge are dismissed within legal controversies over public security.⁴⁷ Instead, legal practices of terrorism financing burden ordinary citizens with the responsibility to know and reason and pre-empt their present actions, while their claims to knowledge, suspicion, and truth are put to debate, contestation, and negotiation. This development resonates with the post-colonial literature stressing the importance of researching family lives and intimate relations as sites for colonial forms of interventions and policing.⁴⁸

We argue that knowledge claims by money senders are negotiated and debated through the contingent enactment and differential attribution of ‘credence’, which is ‘justified belief’, and ‘credulity’, which ‘stands for unwarranted belief’.⁴⁹ The terrorism financing court cases under scrutiny here demonstrate the enactment and dismissal of knowledge arguments and claims referring, for example, to interpersonal trust and parent-child relationships. The differential assembling of credence and credulity in court settings is essential in constructing what is reliable and admissible in legal argumentation. This is because credence entails notions of ‘trust’, ‘trustworthiness’, ‘firm conviction’, and ‘plausibility’,⁵⁰ whereas credulity – having a rather negative connotation – refers

³⁸Aradau, ‘Assembling (non)knowledge’.

³⁹Marieke de Goede, ‘Preemption contested: Suspect spaces and preventability in the July 7 Inquest’, *Political Geography*, 39 (2014), p. 49.

⁴⁰Jasanoff, ‘Bhopal’s trial of knowledge and ignorance’.

⁴¹Aradau, ‘Assembling (non)knowledge’, pp. 333–4.

⁴²Francesco Ragazzi, ‘Suspect community or suspect category? Counter-terrorism as “policed multiculturalism”’, *Journal of Ethnic and Migration Studies*, 42:5 (2016), pp. 724–41.

⁴³Heath-Kelly, ‘The geography of pre-criminal space’.

⁴⁴Valverde, *Law’s Dream of a Common Knowledge*, p. 21.

⁴⁵Jonathan Joseph, ‘The limits of governmentality: Social theory and the international’, *European Journal of International Relations*, 16:2 (2010), p. 227.

⁴⁶Claudia Aradau and Rens van Munster, ‘Insuring terrorism, assuring subjects, ensuring normality: The politics of risk after 9/11’, *Alternatives: Global, Local, Political*, 33:2 (2008), pp. 191–201.

⁴⁷Aradau, ‘Assembling (non)knowledge’.

⁴⁸Joe Turner, *Bordering Intimacy: Postcolonial Governance and the Policing of Family Life* (Manchester, UK: Manchester University Press, 2020).

⁴⁹Claudia Aradau and Jef Huysmans, ‘Assembling credibility: Knowledge, method and critique in times of “post-truth”’, *Security Dialogue*, 50:1 (2019), p. 51.

⁵⁰Oxford English Dictionary, ‘Credence’, available at: {<https://www.oed.com/view/Entry/44099?rskey=azLc3E&result=1&isAdvanced=false#eid>} accessed 20 January 2021.

to an individual's 'inclination to believe on weak and insufficient grounds'.⁵¹ The question however remains which knowledge claims are enacted as warranted and unwarranted and how distinctions are drawn between credence and credulity within legal practices. In the following section, we elaborate on our conceptual move to connect to debates in IR on (legal) knowledge and responsibility and pre-emptive suspicion to insights from postcolonial/decolonial scholarship on knowledge.

Beyond knowledge versus non-knowledge as abyssal thinking

A central concern of postcolonial/decolonial studies is the exploration of the interplay between knowledge-making and coloniality,⁵² which scholars have expanded to the study of the longer histories of counterterrorism and counterinsurgency.⁵³ Accordingly, colonialism is not just about the extraction of labour and resources and the destruction of livelihoods through genocide and related population displacement practices through repressive rule. 'Knowledge-making is a fundamental aspect of coloniality.'⁵⁴

IR research on (counter)terrorism emphasises the foundational role of colonialism/imperialism in past and contemporary knowledge production on particular geographies and populations. For example, counterinsurgency knowledge produced during the colonial period in the Global South has travelled to the postcolonial era to inform interventions in such geographies as Palestine⁵⁵ and Iraq.⁵⁶ In a critique of 'critical terrorism studies', Swati Parashar argues that knowledge-making underpinning the 'terrorism imaginary' is embedded in coloniality in two main ways. First, terrorism imaginaries prioritise the nation-state and its insecurities in making sense of violence in postcolonial contexts. The nation-state is taken as the single target of aspiration or resistance with the outcome of silencing other collective identities. Second, subsuming any violent resistance by citizens under the notion of the nation-state results in the dismissal of other hierarchical and suppressive types of rule based on caste and class, such as in the case of postcolonial India.⁵⁷

While these examples from the Global South have contributed to a better understanding of (counter)terrorism and postcolonial subjectivities, the Global North is not independent of or immune to these colonial logics. As such, our understanding of postcolonial theory concurs with Jorge Klor de Alva's argument that 'postcoloniality does not need to follow from an "actual" colonial condition.'⁵⁸ Put differently, postcoloniality is 'not so much subjectivity "after" the colonial experience as a subjectivity of oppositionality to imperializing/colonizing (read: subordinating/subjectivizing) discourses and practices.'⁵⁹ Such an understanding allows de Alva to examine

⁵¹Oxford English Dictionary, 'Credulity', available at: {<https://www.oed.com/view/Entry/44134?redirectedFrom=credulity#eid>} accessed 20 January 2021.

⁵²Walter Mignolo and Arturo Escobar, *Globalization and the De-Colonial Option* (London, UK: Routledge, 2010); Rosalba Icaza, 'Social struggles and the coloniality of gender', in Olivia U. Rutazibwa and Robbie Shilliam (eds), *Handbook of Postcolonial Studies* (Abingdon, UK: Routledge, 2018), pp. 58–71; Edward W. Said, *Orientalism* (London, UK: Penguin, 2003).

⁵³Paul Dixon, "'Hearts and minds"? British counter-insurgency from Malaya to Iraq', *Journal of Strategic Studies*, 32:3 (2009), pp. 353–81; Laleh Khalili, *Time in the Shadows: Confinement in Counterinsurgencies* (Stanford, CA: Stanford University Press, 2012).

⁵⁴Rahel Kunz and Archana Thapa, "'Telling a tale": Gender, knowledge and the subject in the Napel', in Rutazibwa and Shilliam (eds), *Handbook of Postcolonial Studies*, p. 403.

⁵⁵Khalili, *Time in the Shadows*.

⁵⁶Dixon, "'Hearts and minds"?.

⁵⁷Swati Parashar, 'Terrorism and the postcolonial state', in Rutazibwa and Shilliam (eds), *Handbook of Postcolonial Studies*, pp. 110–25.

⁵⁸Jorge Klor de Alva, 'The postcolonization of the (Latin) American experience: A reconsideration of "colonialism", "post-colonialism", and "Mestizaje"', in Gyan Prakash (ed.), *After Colonialism: Imperial Histories and Postcolonial Displacements* (Princeton, NJ: Princeton University Press, 1994), p. 245

⁵⁹*Ibid.*

the enduring imperial and colonial logics and practices of governing subaltern population groups such as US Latinos and Latin American hybrids. In a similar vein, both Britain⁶⁰ and the Netherlands⁶¹ serve as a ‘contemporary colonial space’,⁶² where domestic laws and government institutions reproduce the order and structures formed under colonial rule. This can be seen in asylum and migration law,⁶³ the social welfare state debates,⁶⁴ and penal codes.⁶⁵

Attempts at providing ‘counter-histories’ of knowledge production and cultures⁶⁶ emphasise ‘an absence/presence dichotomy that aims to make present what was absented from the story of the international.’⁶⁷ Here, the problematisation of knowledge is achieved by making visible what has been erased in dominant narratives of the past and present through an acknowledgment of the centrality of colonialism and imperialism and their afterlives in the fight against terrorism. These important contributions notwithstanding, our exploration of knowledge-making in the field of (counter)terrorism remains limited if counter-histories are considered through the prism of an absence/presence dichotomy.

To address this, we turn to Boaventura de Sousa Santos’s work on modern law and modern knowledge as ‘abyssal thinking’.⁶⁸ Santos developed the concept of abyssal thinking to highlight the enduring impact of colonialism in contemporary societies. In this respect Santos argues that ‘Modern Western thinking is an abyssal thinking’, which ‘consists of a system of visible and invisible distinctions, the invisible ones being the foundation of the visible ones.’⁶⁹ Abyssal thinking consists of ‘radical lines that divide social reality into two realms, the realms of “this side of the line” and the realm of “the other side of the line”.’⁷⁰ As a result, the invisible side; that is, “the other side of the abyssal line” vanishes as reality, becomes nonexistent, and is indeed produced as nonexistent.⁷¹ For Santos, the upshot of abyssal thinking is ‘the impossibility of the co-presence of the two sides of the line.’⁷² Modern law is abyssal thinking by way of making a visible distinction between the legal and the illegal, which together make up ‘the only two relevant forms of existing before the law.’⁷³ This visible distinction is separated from ‘other side of the line’ with an invisible line characterised by the ‘lawless, the a-legal, the nonlegal, and even the legal and nonlegal according to the nonofficially recognized law.’⁷⁴ The ‘universal distinction’ between the legal and the nonlegal radically erases what lies beyond the abyssal line such that the co-presence of the two sides become unthinkable. The colonial space, as Santos continues, is the invisible side rendered nonexistent.⁷⁵

Being the ‘the most accomplished manifestations of abyssal thinking’, modern law and modern knowledge are ‘mutually interdependent’.⁷⁶ In modern knowledge, abyssal thinking operates through the establishment of visible distinctions in what constitutes ‘real knowledge’.⁷⁷

⁶⁰Nadine El-Enany (*B*) *Ordering Britain: Law, Race and Empire* (Manchester, UK: Manchester University Press, 2020).

⁶¹Gloria Wekker, *White Innocence: Paradoxes of Colonialism and Race* (Durham, NC: Duke University Press, 2016).

⁶²El-Enany, (*B*) *Ordering Britain*, p. 18.

⁶³Lucy Mayblin and Joe Turner, *Migration Studies and Colonialism* (Cambridge, UK: Polity Press, 2021).

⁶⁴Gurminder Bhambra, ‘Relations of extraction, relations of redistribution: Empire, nation, and the construction of the British Welfare State’, *British Journal of Sociology* (2021).

⁶⁵Harry Blagg and Thalia Anthony, *Decolonising Criminology: Imagining Justice in a Postcolonial World* (New York, NY: Springer Nature, 2019).

⁶⁶Harding, ‘Postcolonial and feminist philosophies of science and technology’.

⁶⁷Çapan, ‘Beyond visible entanglements’.

⁶⁸Boaventura de Sousa Santos, ‘Beyond abyssal thinking’.

⁶⁹Santos, ‘Beyond abyssal thinking’, p. 45.

⁷⁰Ibid.

⁷¹Ibid.

⁷²Ibid.

⁷³Ibid., p. 48.

⁷⁴Ibid.

⁷⁵Ibid.

⁷⁶Ibid., p. 46.

⁷⁷Ibid., p. 47.

Accordingly, modern science enjoys ‘the monopoly of the universal distinction between true or false’⁷⁸ and is placed higher ‘to the detriment of two alternative bodies of knowledge: philosophy and theology’.⁷⁹ This visible distinction between modern science, on the one hand, and philosophy and theology, on the other hand, informs ‘modern epistemological disputes between scientific and nonscientific forms of truth’.⁸⁰ These disputes take place on the visible side of the line, where the visibility of such epistemological debates ‘is premised upon the invisibility of forms of knowledge that cannot be fitted into any of these ways of knowing’.⁸¹ On the other side of the abyssal line, there is ‘no acceptable’ or ‘real’ knowledge, but ‘beliefs, opinions, intuitive or subjective understandings’ that are ‘rendered incommensurable and incomprehensible’.⁸² The co-presence of this side of the line and the other side of the line is radically denied.⁸³

Çapan borrows the notion of abyssal thinking to challenge the dominant narrative that the Haitian Revolution was driven by similar ideas and developments happening in Europe around the same time. For Çapan, this common account is the visible side of abyssal thinking, which attributes the ‘real’ sources and ‘real’ knowledge for progress of world-significance to European revolutions. Çapan highlights how such abyssal thinking has pushed other references and knowledges that the Haitian revolution relied on beyond the visible line. This, for example, concerns Voodoo, which served as a highly influential political and ideological power for the revolting slaves as thinking subjects for organising. Yet, Voodoo has remained on the other side of the abyssal line because it could not be accommodated within ‘the accepted boundaries of “knowledge”’ assumed to have mobilised the revolutionaries in Haiti.⁸⁴

What insights can we draw from abyssal thinking for legal practices of terrorism financing? We deploy this conceptual framework to propose more depth to current debates on suspicion and preemptive security by illustrating how hierarchies of knowledge and subjectivities are created and perpetuated through legal practices. As we will show through the empirics, the matter of defining criminal intent is not a straightforward practice of bifurcating between knowledge and non-knowledge. Rather, it is a complex interplay of: (1) types of knowledge; (2) subjectivities; and (3) methods of knowing that create both hierarchies of knowledge and knowers. We argue that a combination of STS and postcolonial/decolonial approaches to IR is useful to fully grasp all three elements and to gain a deeper understanding how and when knowledge claims are accepted or not.

The burden to know: Constructing hierarchies of knowledge and objectivity in practice

In the following section we analyse empirical data on two court procedures charging parents with acts of terrorism financing after sending money to their children in Syria and Iraq. As explained in the theoretical part of the article, we propose two important forms of analysing hierarchies of knowledge. The first analytical proposal is to understand the differentiation of knowledge that is made by the court. We take these court cases as spaces where knowledge is highly unsettled and examine the multiple arguments around the guilty mind of terrorism financing. We examine this by empirically studying the arguments that are brought forward by the defendants during the court case and relating this to the ultimate court judgements. The issue of trust becomes a central

⁷⁸Ibid.

⁷⁹Ibid.

⁸⁰Ibid.

⁸¹Ibid.

⁸²Ibid.

⁸³Ibid.

⁸⁴Çapan, ‘Beyond visible entanglements’, p. 299. For a rich discussion on the Eurocentric account of emotions as ‘extra-rationalist’ despite their intertwinement with ‘rationalist’ modes of experiencing reality in some philosophical traditions, see Deepshikha Shahi, ‘Introducing Sufism to International Relations theory: A preliminary inquiry into epistemological, ontological, and methodological pathways’, *European Journal of International Relations*, 25:1 (2019), p. 267.

point of contestation against which the knowledge claims of the defendants are evaluated and dismissed by the court and placed onto the invisible side of the abyssal line.

The second analytical proposal is to reflect on hierarchies of knowledge as a ‘responsibility to know’. In this section we research who is burdened with the responsibility to know. We illustrate that the responsibility to know in pre-emptive security measures around terrorism financing have shifted towards the citizens as being the primary liable actors ‘to know’, while the government is allowed a sense of ignorance and uncertainty.

We build specifically upon observations from the Old Bailey, Central Criminal Court, London, in May to June 2019 during the procedures of a terrorism financing case, and its judgement on 21 June 2019. We furthermore include an analysis of the judgement of the United Kingdom Supreme Court (UKSC) on 11 July 2018 on a point of law in this case. For the Netherlands we focus on the court proceedings of the court case introduced in the beginning of the article that took place on 31 January 2020 in the court of Rotterdam. This empirical data is complemented by document analysis, media coverage, and informal conversations with legal professionals at the court hall.⁸⁵

Taking these cases from two jurisdictions, a reflection on the different legal systems is required. In the United Kingdom counterterrorism law finds its history in the Northern Ireland act 1973 and the Prevention of Terrorism act 1974, criminalising terrorist funding through a special counterterrorism strategy adopted in 1989. These measures were deemed insufficient, however, to deal with the CTF obligations post 9/11. This resulted a new counterterrorism financing legislation, adopted as special offences of the Terrorism Act 2000, Sections 15–18. The offenses include direct involvement such as fund-raising, donations and extortion, as well as indirect involvement. Indirect involvement is prohibited by section 17, which reads:

A person commits an offence if (1) he enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and (2) he knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

This formulation is quite similar to the Dutch definition of Article 421, and in accordance with FATF international standards. The main difference between the jurisdiction is therefore not in the formulation of the law, but in the legal traditions. The Netherlands has a civil law system, where the judges have an active investigative role during court sittings as they are both a fact-finding and sentencing body. The judges base their questions and interrogation on the information in the case file, including testimonies, reports of evidence, and expert knowledge, and use this as the basis for every court sitting. The UK has a common law system, where judges have a very different role as they are much more actively creating law. Furthermore, terrorism offences are triable by both judges and jury, while the Netherlands does not have jury trials. Lastly, the empirical material in this article from the UK court mainly consists of oral testimonies, which reflects the ‘phono-centric’ nature of the system. In our empirical material we illustrate both the particularities of each system, as well as the similarities of reasoning and understanding the law.

Uncommon knowledge: Trusts and tests as forms of knowing

In analysing the legal discussions during the court sittings, we can see that much discussion revolved around the definition of ‘having reasonable cause to suspect’ that the money sent by the parents might be used for terrorist purposes. The question of ‘reasonable degrees of belief

⁸⁵The data used in this article on the Old Bailey case was collected by Tasniem Anwar as PhD student and Marie Irmer as research assistant of project FOLLOW in the period between May and June 2019. Data was shared under strict protocols and according to the guidelines approved by the ethical committee of the Amsterdam Institute for Social Science Research.

in propositions' is connected with 'epistemological probability', which has gotten a stronger foothold in law since the seventeenth century,⁸⁶ including legal action in the area of pre-emptive security.⁸⁷ Our cases demonstrate that both the defendants and the court address questions of reason, belief, and probability in order to substantiate their respective knowledge claims and positions. This happens through the construction, contestation, and rejection of claims by mobilising notions of credence and credulity in different ways. Here, trust and trust formation become central objects of debate and contestation.

As an illustration, what follows is a systemic examination of proceedings of the *R v. John Letts and Sally Lane* case, where knowledge, trust, and reason have been invoked by the subjects of the courtroom in differential and hierarchical ways. The background of this case is the travelling of Jack Letts to Syria in 2014 to join one of the armed groups, most probably the Islamic State. While in Syria, he remained in contact with his parents through social media and telephone conversations, in which he told them that he was working as 'a sort of translator'. In September 2015, the parents transferred a sum of £223 to Lebanon on the instructions of their son. In December 2015 and January 2016, the parents attempted two other transactions that were intercepted by the police. In 2016 they were brought before the court on accusations of three counts of terrorism financing. Their defence rested on the argument that the parents did not fund terrorism but feared for the well-being of their son. Furthermore, they believed that they had transferred the money to someone who was not involved in terrorist activities or fighting.

During this case, a conflict on the correct interpretation of the law arose. The broad formulation of the criminal intent as 'having reasonable cause to suspect' resulted in a discussion whether someone actually entertained suspicion (subjective test) or whether a reasonable person in their place would have suspicion (objective test). The criminal case was delayed as the parents appealed to the UK Supreme Court on this point of law: namely the exact definition of 'having reasonable cause to suspect'. Historically, this formulation was understood as a subjective test: one actually had to entertain the suspicion that their actions might have criminal consequences.⁸⁸ If the prosecutor could not prove this, the law would rule in favour of the defendant. In the terrorism financing legislation, however, the Supreme Court ruled that it was an objective test: the question was not whether defendants themselves had suspicion about the terrorist purposes of the money, but whether a reasonable person in their place would have.⁸⁹ The Supreme Court judgement explains that historically the provision criminalising terrorism financing had a stricter interpretation of criminal intent, 'which required proof either of knowledge or of actual suspicion'.⁹⁰ In the wording of the Terrorism Act 2000 section 17, however, there is a change in the wording to 'knows or has reasonable cause to suspect'.⁹¹ With the legislator deliberately broadening the scope of criminal intent, the Supreme Court concludes that an objective test is the correct interpretation of the law. This judgement is a landmark case in terrorism financing legislation and follows the international legal and political developments discussed in the introduction of re-interpreting suspicion and citizens' responsibility to prevent and predict terrorist activities. It is after this Supreme Court judgement that the case moves back to appear before the Central Criminal Court (Old Bailey) in London in 2019.

We now continue to unpack the practices, discussions, and knowledge claims during the court proceedings of the case in May 2019 with a focus on the question how the defendant's knowledge claims were judged. During the court case, the defendants insisted that their decision to send money to Jack rested on justified belief that the transaction would not support terrorism. The

⁸⁶I. Hacking, *The Emergence of Probability* (New York, NY and London, UK: Cambridge University Press, 1975), p. 12.

⁸⁷Aradau, 'Assembling (non)knowledge'.

⁸⁸Well established in *Sweet v. Parsley* [1969] UKHL, 23 January 1969, especially in case the wording of the offence is ambiguous, the court should favour the accused, see for example *R v. Saik* [2006] UKHL 18; [2007] 1 AC 18.

⁸⁹*R v. Sally Lane and John Letts* [2018] UK Supreme Court, 11 July 2018.

⁹⁰*Ibid.*, para. 18.

⁹¹*Ibid.*, para. 19.

decision to send money was only made after Jack and his parents had discussed a plan for Jack to get out of IS territory, and the money was intended to support him in doing this. The defendants emphasised that in fact they acted on suspicion and it was only after there was a reasonable degree of belief in their son, they finalised the transaction. They said multiple times to Jack that they would hate sponsoring an organisation like IS, and that they wanted to send money only for his safety and well-being. At different points, they asked: 'how do we know that you left the group' and the son would answer, 'Mum, I told you I'm out of there.'⁹² Furthermore, the defendants and Jack had different conversations on how to send the money and how to get out of Syria and to pretend to be a Syrian refugee in Turkey. In other words, there are many references to concrete knowledge on the destination of the money, planning on how to send it, and how to get out of the territory.

The testimonies at court indicate that the mother took this issue very seriously, and suspicion was essential in constituting knowledge shaping the family's decisions. The mother testifies:

I was trying to provoke him to tell me the truth and when he answered, 'I'm actually not lying to you, guys. I really left the group', and when he swore on the name of Allah, I knew he'd passed my test.

The conversations show that the defendants indeed entertained suspicion, made their suspicion known and came to an agreement on what the money should be used for. They engaged on multiple occasions in 'testing' to make sure that their knowledge was correct and that it was truly their son with whom they were communicating and not someone else. During the interrogation by her barrister (L2), the mother (SL) elaborates on this:

L2: [reads out a question sent to Jack by John] 'How many seats are in my red van, Jack?'.
 You don't have a red van, correct?
 SL: No, we have a white van.
 L2: So that was again John sending a test question

What we observe is that for the parents, trust is essential with respect to the destination and use of the money as well as Jack's activities in Syria. The parents acted only after trust was established through various mechanisms described by the parents as 'tests'. Rather than treating it as extrinsic to reason, they consider trust intertwined with reason and credence. Statements like 'swearing on the name of Allah' and testing their son's knowledge on his life back in the UK were essential for the family to build trust in their son and to make sure that their decisions relied on warranted belief. Thus, from the account of the defendants, the threshold for criminal intent was not met, as they believed to have a guarantee that the money would not be used for terrorist purposes. In other words, the parents rejected the claims that they were ignorant as the Crown prosecution suggested, but always acted upon their suspicion and knowledge to comply with the law.

The judge, however, dismissed the parents' claims of trust as credulity by arguing that: 'On 1 September 2015, Mrs Lane asked Jack if he could guarantee that the people the money was going to had nothing to do with jihad. Jack said they did not, but you both knew that he might lie to you.'⁹³ As the quotation shows, for the judge, the parents' trust in Jack was an embodied one, reflecting too great a readiness to believe despite the probability that 'he might lie.' Thus, trust is disentangled from reason by being deemed as unwarranted belief and placed in juxtaposition to suspicion and rationality. The judge continues in his statement that 'in this context, they did lose sight of the realities' and explained that 'I do not think that you knew that the money would, in fact, be used for the purposes of terrorism and I am sure that you hoped very much that it

⁹²Fieldnotes, Central Criminal Court London, Court sitting *R v. Sally Lane and John Letts*, June 2019.

⁹³*Judgment R v. Sally Lane and John Letts*: Central Criminal Court London, 2019, p. 3.

would not be, but you did have your suspicions and you proceeded in spite of them.⁹⁴ This is despite the defendants' statements and presented evidence showing that suspicion has been part and parcel of the parents' calculations, communications, and decisions.

The Dutch court case introduced at the beginning shows similar methods used by the parents to 'test' the legitimacy of the purpose of the money and the intentions of their child. The public prosecutor during the case argued that the actual destination of the money is not relevant for culpability. Children and family life were an essential component of the Caliphate, according to the public prosecutor. Supporting their daughter's family qualifies therefore as supporting and contributing to IS's activities, especially as the daughters' husband was a famous fighter for IS. The public prosecutor during the case therefore suggests that it was likely that the money sent by the parents was used by the husband for terrorist activities, and that the defendants should have known or at least anticipated this.

We can analyse two important forms of defining and evaluating knowledge in the Dutch court case. Let us return to the conversation we quoted in the introduction. First, the judge reasons from a particular position of knowledge and understanding of common places where information can be found by posing the followings questions to the father: 'You say you don't have knowledge about him. But there is information about him and what he did in Syria. ... Did you not learn about this? In the newspaper, on the radio, on the news?'.⁹⁵ This is an interesting comment by the judge, as the communication between the defendants and the court operates through Moroccan translators as both parents are not able to speak Dutch. Assuming that they would be able to access the same information sources as the judges or other practitioners of the court, points to the universalist, Westernised, and ideal image of how citizens become knowledgeable. The defendants on the other hand point out that these sources are not part of their daily practice [Father: 'I don't watch the news, and I don't read the papers. I wake up early in the morning to go to work and I return late at night' and Mother: 'I am illiterate.']. Not considering their working-class position or reading/language abilities, the court verdict nevertheless reads that the media reported on the jihadist foreign fighters, including his daughter's family, and that the defendants 'generally could have known about this'.⁹⁶

Even if the parents knew through other sources and media outlets about what was generally going on in Syria, this does not mean that the defendants were naïve or ignorant actors in this process. The defence lawyer argues during the case that:

The clients did not have any intention to finance terrorism, they just wanted to support their daughter with medical supplies and personal expenses. They do not sympathise with the armed fighters. The clients testified that they were clear about the purpose of the money and that they would not have transferred if they had any suspicion of a terrorist purpose of the transaction. All the conversations between them and their daughter were about daily life and expenses. After receiving the money, she would make pictures of the items she bought and send updates to her parents. The messages indicate a feeling of embarrassment on the side of the daughter to ask for money. Even if the total amount seems high, the individual transactions consist of small donations. And their daughter confirmed the humanitarian purposes of the money by sending photos of the clothes and the medication.⁹⁷

⁹⁴Ibid., p. 2.

⁹⁵Court field notes, Rotterdam court, 31 January 2020.

⁹⁶The original text in the judgement reads: 'De verdachte, die vaker zegt te zijn benaderd door derden over deze media-berichten maar deze niet heeft willen lezen, heeft dit in elk geval in grote lijnen kunnen weten.' From judgement, Court of Rotterdam, 18 February 2020, ECLI:NL:RBROT:2020:1312, available at: {<http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBROT:2020:1312>}.

⁹⁷Court field notes, Rotterdam, 31 January 2020.

Similar to the UK case, we can conclude that the parents were not acting blindly or ignorantly to the requests of their children. In both cases, the parents had their particular ways of ensuring that the money would benefit the well-being of their children and not contribute to terrorist activities. From the testimonies in court, it becomes clear that the parents make their decision based on their knowledge and through methods of trust. This trust is built on a practice of testing their children through questions or through visual evidence of spending. Nevertheless, these knowledge claims are not considered as credible or objective enough in the eyes of the court as both convictions show.

The contestation of trust in these particular cases is situated within a broader discourse on the so-called 'war on terror'. The cases clearly illustrate an enactment of a 'universal suspicion' about Iraq and Syria. The rationale that *all* money sent to individuals who reside or have resided in IS-territory *inevitably* contributes to terrorist activities, is given preference over the situated and detailed accounts of the defendants. This generalising view on the Middle East enacts a dividing line between trust-based (subjective) and reason-based (objective) knowledge on the region. By drawing on the framework of abyssal thinking, we push the analysis in two ways. First, we argue that the categorisation of the defendants as ignorant and naïve, dismisses their detailed and situated knowledge practices at the expense of a securitised narrative on Syria and Iraq. It is not only a decision on what is legally relevant for the case, but a normative judgement on how the Middle East is made knowledgeable and what counts as 'common knowledge'. This view on terrorist threat in the Middle East has important implications beyond the courtroom, and validates a persistent understanding of suspicious populations and risky geographies. Furthermore, its consolidation as 'common knowledge' has implications for questions on legal responsibility as we will illustrate in the following section.

Second, the court not only differentiates between modes of knowing, but actively dismisses particular and emotional ways of obtaining knowledge because of the subjectivity of the defendants. In her study on Western terrorism financing discourse, Marieke de Goede⁹⁸ identifies how trust is problematised as being a deviant characteristic of *hawala* and is labelled as an element distinguishing the *hawala* form of financial exchanges from practices and principles of Western finance. However, as de Goede continues, trust is neither a deviant practice nor alien to Western finance, but has always been, together with faith and belief, the latter's constitutive elements.⁹⁹ If trust is an essential feature of Western finance with reason and rationality as its commonly acknowledged rules of governance, the bifurcation of knowledge into trust-based (subjective) and reason-based (objective) is disturbed. Indeed, as we illustrate in the following section, trust and embodied forms of knowledge are dismissed only in relation to the defendants' claims but are evaluated differently for other subjects of the courtroom.

The making of responsible citizens

In the previous section we illustrated how different claims of knowing and trusting are brought before the court. In this section we connect these insights to our conceptual framework of abyssal thinking and 'the duty to know', and examine how responsibility is attributed to court subjects in differential and uneven ways. We propose that there is an inversion of the relation between citizens and state authorities, where defendants are rendered as self-responsible subjects with the burden to know. This is despite the acknowledgement that public information provided to the defendants was confusing and far from straightforward. Meanwhile, our findings illustrate that public officials who were questioned during the trials resorted to the very forms of reasonings that the court dismissed as embodied knowledge practices in relation to defendants' claims.

⁹⁸ Marieke de Goede, 'Hawala discourses and the war on terrorist finance', *Environment and Planning D: Society and Space*, 21:5 (2003), pp. 513–32.

⁹⁹ *Ibid.*

In the Dutch case, it was mentioned on multiple occasions that the parents were in close contact with the government about their daughter, advising the parents to find ways to bring her back. The court asks about this relationship and reads from the case file:

Judge: Did you contact the municipality about this? Or a local police officer? The case file says that they were aware of the situation of your daughter. They indicated that they ‘did not really’ give permission to send money. They also did not say that it was illegal, because they didn’t know.

Mother: We did not know, and if we had known we wouldn’t have done it.

Judge: Yes, but shouldn’t you have known? After all, there are rules.¹⁰⁰

As the case file demonstrates, the municipality and the police were involved in the case at an early stage, especially because foreign fighters became a security issue for the Dutch government. Despite their involvement and advising role to the parents, they did not communicate a clear restriction or prohibition to send money. Conventionally, it is the local government and police who have the role and responsibility to act on suspicion and pre-emptive security knowledge. Yet, the burden to know as defined in counterterrorism financing legislation increasingly falls on individual citizens who cannot afford to remain in this state of ignorance about their legal responsibility even in cases where the state does not transmit a clear message. This is confirmed by the follow-up question of the judge, stressing that ‘there are rules’ and that ‘they should have known’, while not extending this responsibility to the institutions that citizens turn to for advice. Despite this remarkable moment in the proceedings, the issue is not mentioned again during the sitting or in the verdict. This shows a largely ignored, yet important question of constructing citizens as subjects with the duty to know, and understand, complicated security decisions around sending money as well as their legal responsibilities, while state actors are allowed to remain vague, ignorant, and unquestioned about their duty to know.

A similar issue can be found in the UK case, where this became a point of central contestation during the case. The background of the controversy concerns the several communication and exchanges between the family and the UK police. Since Jack went to Syria to join IS, the family and the police have been in close contact. In December 2015, a PREVENT officer was added to the team. The jury hears that a PREVENT officer is different from a police officer; they do not get full access to the intelligence and evidence on the case. Their primary role is to support and advise the family. To the family, however, this distinction was never clearly made. By December 2015, the defendants had been advised by different police institutions and experts not to send money. This advice was based on the intelligence and information on Jack being a member of a terrorist organisation.

As indicated above, the defendants were in conversation with Jack about his life being in danger and wanting to leave IS. Confirming that he would only use the money to leave Syria, the mother then contacted the police to ask again whether this would be a criminal offence. Due to the holidays, the senior police officer who is also the contact person of the family was not in the office. The PREVENT officer who was, as indicated with limited access to the data of the case and not really a member of the police team, confirmed that they could send money if it was aimed at getting Jack out. She advised them to keep track of all the evidence to show good will, but also emphasised that ‘no court in the land would convict a parent for trying to protect his child and get a child out of a dangerous situation.’¹⁰¹

Understanding this as a green light to transfer money, the defendants made arrangements to make the transaction. The senior officer of the case, however, visited the family a few days later

¹⁰⁰Court field notes, Rotterdam, 31 January 2020.

¹⁰¹Kelly-Ann Mills, ‘Dad of Jihadi Jack “would never forgive himself if son died and he did nothing”’, *The Mirror*, available at: {<https://www.mirror.co.uk/news/uk-news/dad-jihadi-jack-would-never-16252581>} accessed 21 January 2021.

(before the transaction was made) with a document. In court she stated that the advice given by the PREVENT officer was not inconsistent with the previous advice by the police, but that she wanted to prevent the parents ending up in court for sending money. For this reason, the officer felt the need to emphasise to the parents that there could be legal consequences after transferring money. This advice was collected in a document and given to the parents. In the document, the police write, 'We cannot prevent the sending of money, but when you do send money you might be liable for funding terror and become subject to investigation.'¹⁰²

During the court case, the officer was cross-examined by the barrister on the formulation of the text in this document. In the document it was listed that 'the police does not endorse sending money to Jack. We cannot confirm that prosecution will follow, but this might be possible. The defendants can ultimately make their own choice, but this would be without the approval of the police.'¹⁰³ During the cross-examination,¹⁰⁴ the barrister (DL) questions the formulation of this:

DL1: If we go back to the policy document – it says that the son is suspect to be a terrorist, and a supporter of extremist ideology. Parents should commit a criminal offense should they send money. Why did you not set this advice in the written document?

POL1: It was clear from my advice that investigation and prosecution might follow if money was sent. I thought it was very clear. I did not mention criminal offenses as such, but it was still very clear.

DL1: But you just said to them that the police does not endorse it, why not mention explicit that it would constitute a criminal offence.

POL1: It was pretty clear I believe.

The defendants argued that for them, the distinction between the PREVENT officer and the other members of the team was not clear, and they had interpreted the message of the officer as a correct interpretation of the law: money can be sent if evidence of good intention is kept. This multiple understanding is illustrated by the following part of cross-examination:¹⁰⁵

DL1: So, first they were given the wrong advice that they can send money and then second, you do not explicitly say what happens if they do send money.

POL1: I am aware of the confusing information. But we made it very clear on 29 December by contacting them on the telephone that it was not allowed to send money.

The Crown prosecution argues about this that the defendants received clear information, but they wilfully ignored the warnings of the police. In enacting the parents as wilfully ignorant, the court commences a controversy over responsibility. This controversy is interlinked with notions of knowledge and reason because it revolves around the question of the duty to know and act accordingly. This is evident in the above quotations from cross-examination, where the senior police officer insists that the advice to the parents was clear and that the latter wilfully ignored the advice by making the transaction. The parents are therefore responsible for the consequences of their action.

The police officer's statement is, however, strongly opposed by the barrister, who points out that the information provided by state officials was incomplete, uncertain, and misleading. By not making 'explicit that it (the transaction) would constitute a criminal offence', the police officer failed to inform and guide citizens in a proper and adequate manner on an important legal and security matter. The barrister identifies another failure of the state as regards to the

¹⁰²Court field notes, Central Criminal Court London, UK, 30 May 2019.

¹⁰³Ibid.

¹⁰⁴Ibid.

¹⁰⁵Ibid.

PREVENT officer's 'wrong advice that they (parents) can send the money'. Taken together, the barrister rejects the parents' responsibility to have been able to know about the consequences of their actions.

The court also maintained a focus on responsibility – though in a different manner. A closer examination of the arguments put forward by the Crown prosecutor reveals that responsibility is attributed to the subjects in ways that overturn the relation between citizens and state authorities. Despite acknowledging 'the confusing information' communicated to the parents by state officials, the police officer objects to the defendants' claims on public responsibility and enacts the parents as the main subjects with the burden to know. On the one hand, this conforms with a broader rationality of neoliberal government, whereby the governed are expected to assume self-responsibility in a continuously expanding realm of risks, rights, obligations, and moral questions.¹⁰⁶ On the other hand, UK security officials themselves resort to notions of uncertainty and probability to evade responsibility in the aftermath of a terrorist attack that is already carried out.¹⁰⁷ The same language of uncertainty and responsibility is now deployed to hold citizens responsible despite proof of confusing and incomplete information made available by law enforcement authorities.

Furthermore, and interestingly, state officials engaged embodied knowledge practices though dismissing that form of knowledge in relation to trust. The PREVENT officer's advice to the parents, which became a core element of the legal controversy over responsibility, is a good example. When asked by the parents whether sending money to get John out of Syria is a criminal offence, the PREVENT official implicitly endorses the money transfer by reference to concerns that any parent would have 'to protect his child and get a child out of a dangerous situation'. Similarly, when cross-examined by the barrister on her failure to provide the parents with clear advice and a correct interpretation of the law), the police officer's spoke from an embodied position of knowledge ('I *thought* it was clear', 'it was pretty clear I *believe*'). These are similar accounts of knowledge, which, in the case of the parents, are downplayed and even problematised as being extrinsic to objectivity, reason, and neutrality.

Conclusion

Recent debates in IR show many of the complexities that characterise the relationship between pre-emptive security and law.¹⁰⁸ As several scholars have argued,¹⁰⁹ these complexities manifest themselves mainly through proving criminal intent and what counts as knowledge in a pre-emptive setting, where violence might never materialise. In this article, we have broadened this debate by critically examining how the 'duty to know'¹¹⁰ as a result of this new formulation of criminal intent is assessed and evaluated in court cases. Through the combination of STS-insights and postcolonial/decolonial studies on knowledge production, our empirical analysis went beyond the bifurcation of (legal) knowledge and illustrated the ways in which the assessment of knowledge becomes an interplay between subjectivities (citizen or state), ways of knowing (embodied or rational) and what counts as 'common knowledge' (situated or securitised). Based on our analysis we draw two conclusions that further the debates in IR on pre-emptive security and responsibility.

First, our empirical analysis shows that trust and testing are fundamental knowledge practices enacted by the defendants to gain a better understanding of the situation and its possible consequences. The families deliberately carved out the conditions under which they sent money. The

¹⁰⁶Joseph, 'The limits of governmentality'.

¹⁰⁷de Goede, 'Preemption contested'.

¹⁰⁸de Goede, 'The chain of security'.

¹⁰⁹Sullivan, 'Transnational legal assemblages and global security law'; de Goede and de Graaf, 'Sentencing risk'; Aradau, 'Assembling (non)knowledge'.

¹¹⁰Valverde, *Law's Dream of a Common Knowledge*.

defendants in our cases were neither 'blinded' nor 'lost sight of reality' as the courts suggest, but were actively engaged in the reality of their children and the complicated terrorist context in which they had to navigate their decision-making. The analysis shows that it is a more complex interplay of constructing hierarchies in ways of knowing and knowledgeable subjectivities. Drawing on postcolonial/decolonial insights on knowledge,¹¹¹ we propose that the empirics illustrates a hierarchy of knowledgeable subjects despite similar methods of embodied ways of knowing as well as a dismissal of situated claims of knowledge that seem to be at odds with the more general securitised view on Syria and Iraq that is considered 'common knowledge'. Furthermore, our postcolonial approach pushes existing STS and sociolegal studies on knowledge-making by bringing into focus how new aspects of affective relations become intervened upon by the state apparatus and legal practices. Modern family is rooted in colonial history and constituted by European ideas about what a 'real' family is and how it functions. Such normative claims were incorporated into colonial modes of policing and managing intimacy, sexuality, and domesticity in extra-European geographies.¹¹² This has also permeated metropolitan discourses and practices of security, including in the field of counterterrorism with its notion of 'the troubling Muslim family as a site of radicalization.'¹¹³ What our empirical findings add to the academic scholarship is an analysis of how interpersonal trust and parent-child relationships are re-rendered as sites of affective politics validated through law. By mobilising notions of reason, belief, suspicion, and trust, terrorism financing trials (re)draw distinctions and hierarchies with regard to normal and abnormal families. The European idea of a good functioning family is tied to a particular type of knowledge-making guided by credence, whereas the deviant family is one that lets its judgements and interactions be determined by beliefs and subjective understandings.

Second, our empirical sections illustrate a problematic development in assuming 'common knowledge' as a responsibility to know for individual citizens. While the literature has addressed how pre-emptive security knowledge is fragmented and marked by uncertainty,¹¹⁴ we have shown that the counterterrorism financing regulation assumes the ability of ordinary citizens to calculate the possibility that their financial transactions might contribute to terrorist activities. Suspected communities are now expected to have certain, complete, and clear knowledge about terrorist threats and the possible legal consequences of their actions, while the state can entertain doubt, uncertainty, and trust in their security practices. In other words, there is not merely a hierarchy of knowledge (embodied vs rational), but furthermore a hierarchy of knowers (state vs citizens) and types of knowledge (securitised vs situated). While the knowledge or suspicion of official instances such as the police, the municipality, or even the state government remains largely unquestioned, citizens are punished with severe social and political consequences for their assumed (non-)knowledge.

One further reflection on the two cases that might inform further research concerns the positionality of the defendants. The positionality of the Dutch defendants as Muslim migrant parents from a working-class background illustrates the tension between their lifestyle and the assumption of the Dutch court regarding where they would turn to for reliable sources of knowledge. In the UK case, the positionality of the defendants is very different as they belong to a white, middle-class family. In a pre-trial hearing they were described as 'perfectly decent people', which is a phrase that has never been used to describe Muslim families standing trial for terrorist offences. Their positionality was unusual as one lawyer described: 'because the accused did not fit the template of the usual suspects – namely, brown-skinned Muslims – typically caught up with little

¹¹¹Harding, 'Postcolonial and feminist philosophies of science and technology'.

¹¹²Turner, *Bordering Intimacy*.

¹¹³Joe Turner, 'Internal colonisation: The intimate circulations of empire, race and liberal government', *European Journal of International Relations*, 24:4 (2018), p. 783.

¹¹⁴Louise Amoore, *The Politics of Possibility: Risk and Security beyond Probability* (Durham, NC: Duke University Press, 2013), p. 86; Aradau, 'Assembling (non)knowledge'; de Goede, 'The chain of security'.

public sympathy in the dragnet of draconian terrorism laws.¹¹⁵ Indeed, this tension is visible in the judgement of the case, where the good character of the parents and their distance from terrorist ideology are emphasised, while, nevertheless, their claims on being innocent are dismissed similar to the Muslim families that came before them. The similar dismissal of knowledge claims in both cases shows the complexity of subjectivities and knowledge assessment.¹¹⁶

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¹¹⁵Simon Hooper, 'The parents treated as terrorists for trying to save their son', *Middle East Eye* (14 February 2020), available at: {<https://www.middleeasteye.net/news/islamic-state-syria-saving-jack-letts-parents-terrorists-british-police>}.

¹¹⁶Ibid.; Marouf Hasian Jr, *A Postcolonial Critique of the Linde et al. v. Arab Bank, PLC 'Terrorism' Bank Cases* (Basingstoke, UK: Springer, 2016).