

LECTURE TO INSTITUTE OF ADVANCED LEGAL STUDIES



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Freedom of Speech and Counter-terrorism Legislation

Thank you for the invitation to speak to you. I should say from the outset that I am not 'legal,' let alone 'advanced legal'. I claim no more understanding of legal principles and practice than derive from a period as a Cabinet Minister and before that a longer period as a legislator. I learned to regard with great distrust the warning "beware of the legal risks, minister" from civil servants who were trying to stop me from pursuing policies they disliked.

Nor do I claim any particular knowledge of Islamic or other ideology deemed to be 'extremist'. I have meandered between five Christian denominations and have finished up with a semi-agnostic, semi-secular version of Christianity which is rather British. Whenever I do attend church however I am often struck by the fact that all the gentle, kind, well-meaning people around me subscribe to a liturgy and book of faith which isn't all about the Sermon on the Mount but describes approvingly the smiting, beating and grinding into dust of our enemies and is pretty competitive with the Koran when it comes to blood and guts.

My involvement in this subject area, so far removed from my comfort zone of economics, originates in my former responsibility for universities and colleges

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which are deemed to have an important role in the Prevent strategy. I took seriously the responsibility of Universities to promote freedom of speech and this led me to oppose and block attempts to impose prescriptive guidance limiting the freedom to speak of so-called 'extremists'. Under the Conservative government the proposals are being brought back and form an important part of the proposed counter-terrorism legislation.

And I have a more general interest in the subject of 'nonviolent extremism' having spent over half a century trying to understand and combat it from encountering racism and anti-semitism at home, to religious sectarianism in the West of Scotland to various forms of racial and anti-immigrant prejudice in politics and society at large. Having helped to create a racially mixed family of my own I have had to learn that my instincts to lock up, assassinate or silence people with extreme and hostile views are almost certainly counter-productive, however emotionally satisfying.

I want to narrow down my own contribution to the debate to a discussion of the freedom of speech issues in relation to counter-terrorism. There are of course wider issues over the role of legislation and bodies such as Liberty are developing a critique of the government's proposals. T

he ideas floated in the 2015 paper Counter-Extremism Strategy (Cm 9145) have already been widely criticised by, inter alia, my former Cabinet colleague from the Conservative side of the Coalition, Baroness Warsi, the Chief Constable of Manchester, the independent reviewer of terrorism legislation, David Anderson QC and the Muslim Council. Support has come from some Muslims who have themselves made the journey to and from extremist groups, as in the Quillam Foundation.

Where I am sure there is common ground however is in accepting that there have to be strong criminal sanctions for those carrying out, abetting or inciting terrorism or political violence more generally. My concern here is with the treatment of 'non-violent extremism'.

Is Non-violent Extremism a Threat?

A central premise of the counter-extremism strategy is that extreme ideology begets terrorism. Terrorism is a consequence, perhaps even just a symptom of, a deeper problem. The October 2015 strategy paper is commendably explicit about what it means by extremism, using the same definition as was

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originally used in the 2011 Prevent Strategy, but the very width of it begs numerous questions: “extremism is the vocal or active opposition to our fundamental values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs. We also regard calls for the death of members of our armed forces as extremist.”

A linked concept is radicalisation which is defined as “the process by which a person comes to support terrorism and extreme ideologies” . Again the key point is the causal chain from radicalisation, to extremism to terrorism.

A central part of government thinking is that theological intolerance provides the intellectual and emotional foundation for those on a journey to terrorism. A key target is Salafism which is a particularly austere form of Islam with doctrine which fits comfortably within the definition of extremism because of an uncompromising approach to other faiths, towards the role of women and cultural isolation. However leading UK Salafists have strongly opposed terrorism and, indeed, offered help to the authorities in countering the attraction of terrorism amongst young people. Some of their imams are quoted as justifying violent resistance to regimes they oppose overseas –as in Egypt- but are clear that those in the UK must respect UK law.

If the test is to be one of cultural values, it is far from clear that some of the criteria used-‘encouraging isolation’, ‘justifying violence’, ‘rejecting the democratic system’ or ‘harmful and illegal cultural practices’ , as in the rejection of ‘core human rights’ for women- are in any meaningful way predictors or precursors of terrorism.

There are religious groups in the UK who seek to opt out of the democratic process- Jehovah’s Witnesses, Christian Brethren- and their abstention is respected though isolated cases of Muslims organising vote boycotts is cited against them (the usual criticism is the opposite, that they vote too enthusiastically through extended family organisation). I am not sure if following Russell Brand on Twitter amounts to a religion but it certainly qualifies as rejecting the democratic system.

It is not only some Muslims who seek to create a system of law in parallel with British law; I have voted in parliament to create separate divorce law for orthodox Jews and separate financial law for Christians (as well as Muslims) who reject usury. The justification, as opposed to the incitement and practice, of violence is commonplace, not least in the three Abrahamic religions

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of which Islam is only one. And the same religions all have a patchy history of recognising the equality of the sexes. Having seen the film *Suffragette* this weekend I was reminded that not too long ago this country legally upheld values which we would now associate with the more anti-deluvian clerics in Saudi Arabia.

As for gender segregation, I became President of the Union at Cambridge shortly after women ceased to be excluded from the Union (as they still are in London club-land, though not for religious reasons). The government's tests also include 'promoting hatred' and 'illegal cultural practices'-like FGM. But these are already illegal as also is enforced gender segregation

We all have our own views on what constitutes 'fundamental values' and not all of them coincide with the government's definition. Gordon Brown famously made himself a little foolish with attempts to define 'British values' and his list is no better or worse than any other.

When it becomes dangerous is when these very subjective judgements are used as the basis for legal sanctions and for suggesting that there is a link to terrorism. A good test of whether legislation is necessary is the demonstration of evidence. There is little credible evidence to suggest an inevitable causal link between holding 'extreme' views and terrorism.

Freedom of Speech and its limits

The key aspect of counter-terrorist strategy as it applies to universities is the requirement to balance an obligation to promote freedom of speech –enshrined in law in legislation in 2005- with a new obligation to counter extremism, which may involve not just monitoring, but preventing, extremist speakers.

We should not be too purist about the freedom of speech. There have always been limits. The classic example of necessary restriction is for the individual who creates a stampede in a crowded cinema by creating a false alarm over a fire.

We have restrictions on speech where this involves incitement to violence and specifically terrorism; and also racial hatred-extended to religious hatred, over the objections of religious fundamentalists, mainly Christian, who wanted to retain the right to attack other religions. Until recently blasphemy was a criminal offence, but primarily to protect Christianity (recalling the frustration of

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Muslims at the failure to use the law to suppress Salman Rushdie's Satanic Verses).

A recent test of the limits to freedom of speech has been the freedom to cause offence. Those who paraded the slogan 'je suis Charlie' were arguing for that freedom. The use of satire and other irreverent humour involves pushing the boundaries of good taste and causing offence, deliberately. A generation ago, Christian sensitivities were deeply affronted by 'blasphemous' satire like the film "The Life Of Brian" but an increasingly secular society defended freedom of speech.

Most Muslims react to depictions of the Prophet, especially when done so insultingly, with the same anger as Christians once did to ridicule of Christ and some still do. For those who resort to violence however there are already criminal sanctions.

There is a lot of sanctimonious posturing about our toleration of offensive behaviour. Until legislative changes in 2014, the Charlie Hebdo cartoons would certainly have constituted an offence under the Public Order Act. It is still a criminal offence under section 5 to display objects which cause "harassment, distress or alarm" and to engage in behaviour which is "abusive" (before 2014 the prohibition included "insulting" behaviour). Britain is not France despite understandable attempts to identify with the victims of the attack in Paris. And many countries have outlawed offensive opinions which seem to justify anti-semitism, by criminalising Holocaust denial.

There is therefore a lot of inconsistency in the way freedom of speech is treated under the law. In practice a lot rests on pragmatic judgement as to whether it is better to allow offensive views to be aired and countered (or ignored) or to risk creating a mystique of martyrdom around those who are silenced.

The recent experience of racist groups like the BNP-avowedly non violent but threatening to minorities-is instructive. Griffin, the BNP leader, was allowed, with some misgiving, to appear on Question Time. He flopped and the prejudices he aired were discredited.

More generally, despite evidence of hate-crimes on a worrying level, racist political parties have not flourished and the combination of free speech with criminal action against incitement and violence has been broadly successful in containing them. The counter-terrorism paper quotes examples of racist

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behaviour and campaigning in order to show that the extremism strategy is not solely directed at Muslims but racist activities have either been illegal or ineffective and provide scant evidence to support the need for a new approach.

If a more restrictive approach was allowed this would appear to legitimise the 'no platform' strategy of the NUS. Students' ideas of extremism may however be different from the authorities earlier this year they tried to ban Nigel Farage from speaking at Cambridge on the basis that he is an 'extremist'. Only this week an attempt was made to bar Germaine Greer from speaking in Cardiff on the basis that she had "misogynist views towards trans people" having argued that surgery can't make men into women.

The conclusion I would draw is that it is highly problematic to introduce new duties, beyond the existing-considerable-legal constraints on freedom of speech. It seems highly likely that university authorities in particular will be risk averse and will seek to avoid the danger of legal action from the authorities in respect of extremist speakers.

They will then also have to demonstrate impartiality by banning non-Muslim speakers whose reputation is also controversial -ie extreme- for different reasons. Instead of intellectual challenge there will be a bland exchange of views which are inoffensive and politically correct. This will not stop terrorism or terrorist recruitment and may even make the problem worse by driving underground those who are regarded as extreme but are currently non-violent.

The Wider Agenda

I have highlighted only one aspect of a wider agenda. Universities are merely one set of institutions affected by the counter-extremism strategy and are in some respects protected by having distinct legislation protecting their mission and independence from the state. The legal provisions of the 2014 Counter-terrorism Act and its associated guidance already extends Prevent duties to many organisations: councils, prison governors, schools, nurseries, the NHS and the police.

Some of this borders on the comical; the idea that nurseries should be sniffing out subversive Toddlers for the Caliphate belongs to Monty Python rather than the real world. But the combination of the existing powers with those envisaged in the new counter-extremism legislation is anything but funny.

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There are two areas of concern in particular.

The first is that prevention and challenge can easily degenerate into surveillance or at the very least the fear of surveillance. If schools are required to report on 'extreme' attitudes by pupils or references to 'extreme' views expressed at home the obvious consequence is suspicion and reluctance to debate ideas.

I am told that this is already happening with fear among children that they may be put 'on a list'. There are similar fears of GP's having to break patient confidentiality. We do not know how real these fears are since we have yet to see enforcement powers invoked against those who do not meet their statutory obligations. Common sense suggests that anything which encourages secretive, suspicious behaviour is more likely to help terrorism than hinder it.

A related worry hangs over the proposed new power to impose Extremism Disruption Orders, ASBO-type restrictions on individuals – "facilitators and cult leaders" who are not caught by existing legislation on inciting violence and hatred. ASBO's of a more generic kind have a mixed history already.

The likely consequence of extending the range is, as David Anderson has put it, "you get into difficulties because you put all kinds of people under suspicion" and the result is likely to be counter productive by making people with "grotesque views.....appear more moderate and reasonable than the are".

Under the Coalition there were checks and balances to impede bad legislation. These no longer exist. ■