

TERRORISM AND TOLERANCE

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(| = slide)

PROLOGUE

1. It is an extraordinary honour to have been asked to give the Magna Carta Lecture, particularly in the first year of the Law School at Royal Holloway. I have nothing to add to the torrent of scholarship, some of it penned by judges, that accompanied last year's 800th anniversary of the Great Charter. But barristers who live and work in the Temple count as a neighbour someone who is my hero of that time: | William Marshal, the commoner who made his name and his fortune as a tournament champion on the European mainland before becoming Earl of Pembroke and the power behind five English kings, the most disastrous of them King John.
2. Marshal was a key figure at the time of Magna Carta. His latest biographer states that he "*may have encouraged continued discussion and moderation on both sides in the months that led up to Runnymede*".ⁱ Others have gone further, writing that his wisdom and experience made him the likely inspiration for the Charter.ⁱⁱ As a strong fighter and successful conciliator, he is a role model for any lawyer. If you haven't already made his acquaintance, pay a visit sometime to the Temple Church in central London where his stone effigy still lies, only slightly marked by the aerial bombardment of a more recent century.

CATHOLICISM IN 19TH CENTURY ENGLAND

3. Fast forward – not 800 but 600 years, to the end of the Napoleonic Wars, the start of a period when the history of this country was touched by a combination of phenomena familiar today: mass immigration, religious difference (though at that time between Christians of the

Catholic and Protestant persuasion), disputes about civil liberties, and terrorism.

4. The indigenous Roman Catholic population, already augmented by refugees from the French Revolution, was swelled by Irish labourers who came to build the canals, railways and ships of an industrialising Britain. This came against a background of gradually improving civil rights for Catholics, culminating in the Roman Catholic Relief Act 1829, which permitted Catholics to sit in Parliament and repealed the Test Acts that for more than 150 years had required persons filling civil and military offices to swear an oath declaring that they did not subscribe to the Catholic doctrine of transubstantiation. | Then in 1845 to 1847 came potato blight in Ireland, and in its wake starvation. Hundreds of thousands of Irish people came to England and Scotland in just a few years, massively increasing the size of a Catholic population that at the other end of the social scale was already experiencing intellectual revival as a consequence of the Oxford Movement and some high-profile conversions.
5. But the combination of immigration and emancipation was a threatening one to the majority population. A previous liberalising measure, the Papists Act 1778, which allowed loyal Catholics among other things to keep schools and join the army, triggered | the Gordon Riots of 1780. These saw a crowd of around 50,000 people marching on Parliament with banners proclaiming “No Popery”, and the destruction of Catholic churches, chapels and homes. Among the causes of the riots were fears, fomented by the Protestant Association, that armed Catholics could function as a fifth column in the wars then being fought with France and Spain.
6. And the majority population felt threatened, even at its moment of greatest confidence, by the resurgence of Catholicism in the mid-nineteenth century. When Pope Pius IX responded to the increased strength of English Catholicism by re-establishing the Catholic ecclesiastical hierarchy in 1850, Britain was at peace, and about to celebrate the zenith of its industrial power at the Great Exhibition of

1851. But the initiative was dubbed the “Papal Aggression” and met with furious hostility.

7. | Francis Close, a Protestant clergyman in Cheltenham, was concerned about a Catholic takeover: “*We give them civil and religious liberty usque ad nauseam, and yet they go on bit by bit ... until at length comes a scarlet cardinal to take possession of the land. This is Romish gratitude.*”ⁱⁱⁱ
8. Later in the century, anti-Catholic feeling – and its close companion, anti-Irish feeling – were further fuelled by what we would now call terrorist incidents, | notably the bombing at Clerkenwell prison that killed 12 people in 1867, and the Fenian Dynamite Campaign of 1881 to 1885, which saw bombs explode in army barracks, on the London Underground, at the offices of the Times newspaper and the headquarters of the Metropolitan Police, in Westminster Hall and in the chamber of the House of Commons.
9. Particularly sinister, as it seemed then, were the international connections of these bombers: a feature also of previous terrorist atrocities including | the Gunpowder Plot of 1605, some of whose ringleaders had been educated abroad and whose explosives expert, Guy Fawkes, had served as a foreign mercenary for the King of Spain. Some of the 19th century Fenian bombers had learned their trade in New York, at the Brooklyn Dynamite School, or from US periodicals, published under First Amendment freedoms, such as the boldly-named “*Ireland’s Liberator and Dynamite Monthly*”. That publication, in precisely the manner of modern propaganda manuals such as Al-Qaida’s *Inspire* and Da’esh’s *Dabiq*, contained articles on the manufacture of bombs but urged readers without access to such materials to act by any means available to them: the bullet, the knife, or the “*simple sulphur match*”.^{iv}
10. How did it feel to be an adherent of the minority faith? Some good evidence is provided by | John Henry Newman, a high-profile convert to Catholicism and the leader of the Oxford Movement. In a celebrated lecture given in 1851, he enquired:

“ ... why it is that, in this intelligent nation, and in this rational nineteenth century, we Catholics are so despised and hated by our own countrymen, with whom we have lived all our lives, that they are prompt to believe any story, however extravagant, that is told to our disadvantage ... I am not inquiring why they are not Catholics themselves, but why they are so angry with those who are.”

11. And this is what he concluded |:

“Catholics are treated with scorn and injustice simply because, although they have a good deal to say in their defence, they have never patiently been heard.

...

[N]o conceivable absurdities can surpass the absurdities which are firmly believed of Catholics by sensible, kind-hearted, well-intentioned Protestants. Such is the consequence of having looked at things all on one side, and shutting eyes to the other.

...

[The Catholic Church] is considered too absurd to be inquired into, and too corrupt to be defended, and too dangerous to be treated with equity and fair dealing. She is the victim of a prejudice which perpetuates itself, and gives birth to what it feeds on.”^v

TERRORISM, RELIGION AND IMMIGRATION

12. Of course history does not repeat itself: but it can sometimes put the present in perspective. It is hard to pick up a paper or visit a news site without being reminded that immigration, terrorism and a controversial religious minority – though now Muslims rather than Catholics, in Great Britain, at least – are prominent issues today. Indeed alone and in toxic combination, they sometimes seem to dominate the public discourse.

13. Only a fool would play down the seriousness of the risk from terrorism, or the fact that some of it is perpetrated in the name of Islam.

- a. Together with the insurrections and civil wars into which it often shades, it kills tens of thousands of people every year in Africa,

Asia and the Middle East. The great majority of them are Muslims killed by Muslims. But some are the victims of other religious extremists,^{vi} or of ethnic, separatist or nationalist conflicts in different parts of the world. And others – like the 30 British tourists gunned down on a Tunisian beach last year – are targeted by Islamists because they come from the West.

- b. Recent Islamist attacks in France, Denmark and Belgium have reminded us that terrorism is particularly shocking when it constitutes an ideological attack on values that society holds dear: we have seen people killed close to our shores in the past 18 months for satirising religion, for enjoying music, for discussing free speech or simply for being Jewish or happening to find themselves near the political heart of Europe. And in Orlando on Saturday night, we appear to have seen 49 people killed for their sexuality.
- c. | Of the same character was the slaughter by self-described “*cultural Christian*” Anders Breivik of 77 people in 2011, most of them associated with a Norwegian political party that in his view was assisting the Islamisation of Western Europe. A reminder that “do it yourself” terrorism can be as deadly as a meticulously coordinated assault; that it can be more difficult to detect; and that militant Islam has no monopoly on ideologies that dehumanise the other and so justify the killing of people who hold the wrong ideas.
- d. I heard for myself the fear and apprehension that infected Muslims in the West Midlands in 2013, | before police were able to pin the murder of Mohammed Saleem and a sequence of Friday mosque-bombings on the white supremacist, Pavlo Lapshyn.

14. Far-right extremism does not have the global reach or organisation of militant Islam, and does not kill nearly as many people. But no sensible observer of the current political scene in Europe or America would discount it as a potential threat. The danger of far-right terrorism lies not just in the direct threat it poses to life and property, but in its

capacity to operate symbiotically with the Islamist variety, each being used to support the grievance narrative of those who seek to persuade the other that the world is against them and they need to fight back.

15. | The scholar of terrorism Brian Jenkins said in 1975 that the aim of the terrorist was “*a lot of people watching, not a lot of people dead*”. If that is what militant Islam is trying to achieve in the West, it has been spectacularly successful. Since 9/11, terrorism has killed fewer than 60 people in Great Britain, only two of them in the past 10 years. Even in Spain and France, which have suffered the largest number of casualties in that period, mortality since 2001 has been in the low hundreds. In the United States, terrorist shootings, even after the terrible recent events in Orlando, constitute a small fraction of 1% of firearms-related homicides. But people are certainly watching – and they are afraid.
16. | Here is what former Senator Liebermann had to say in December of last year about the threat of radical Islamist terrorism to the United States: he rated it as “*the most significant threat*” that the American people faced, not only to their security but to their civilisation.
17. And he seems to have been speaking for his country. | Asked to list the most critical threats to the US over the next decade, Americans polled by Gallup this year put international terrorism first - ahead of Iranian nuclear weapons, the Syrian conflict, North Korea, global warming, China and Russia.
18. Nor, it would seem, are Europeans so different. | A recent Eurobarometer poll asked Europeans which were the two most important issues facing the EU at the moment. Immigration was the runaway leader. But terrorism came in second place, edging out the economic situation.
19. In achieving those spectacular results, the terrorists are assisted by media which have either forgotten that terrorism is “*propaganda of the deed*”, as the 19th century anarchists put it, or do not care that they are spreading propaganda of the word or indeed of the picture. | Here is one example, graphically combining images of medieval execution and

the injustices of Guantanamo. Demonstrating that while journalists are not usually terrorist sympathisers, the interests of the two groups can be very closely aligned.

20. Or look at the killing of Lee Rigby: one of 187 murders by knife or bladed instrument that year in England and Wales, but one whose aftermath made it notorious across the world. The murderers did not run away: one of them | ensured that he was filmed in the most gruesome pose possible; | faithfully reproduced of course on mass media; | used for propaganda purposes; | provoking fear and defiance – this taken at a march following the killing, | and religious hatred – from the same march; | and finally vicious polarisation. I'm not sure what the worst thing is about that slide – maybe the 105 likes.
21. Nor do the mass media content themselves with giving the terrorist publicity. They go along also with the terrorist's broader objective of sowing suspicion, encouraging division and sending integration into reverse.
22. This is hardly new. | Here is the Nazi newspaper *Der Stürmer*, perpetuating the racist prejudice of the Jew as scheming sexual aggressor. | Here, from the Second World War, is a cartoon characterising Japanese Americans as fifth columnists, lining up to collect their packages of explosive. | And in the same vile tradition, I would argue, is a cartoon published by the Daily Mail, shortly after the Paris attacks of last November. The image does a pretty effective job of conflating Islam, immigration, the terrorist threat – for one of them is carrying a gun – and, in case we were in any doubt about what to think of them, rats.
23. And I'm afraid politicians, following as so often the media lead, are themselves capable of perpetuating the damaging confusion between terrorism, immigration and Islam. One can think of many reasons why it is good for women in immigrant families to learn English: but must the issue be linked specifically with Muslims and with the fight against Da'esh? And for those using the issue of immigration to argue for Brexit, the stereotypes of the over-industrious Pole and the lazy Romanian have

their uses, but lack the popular resonance in the notion of the gun-toting, sexually aggressive Muslim, fresh from the Middle East, whose entry is supposedly – though incomprehensibly, at least to me – facilitated by our EU membership.

MUSLIMS IN BRITAIN

24. So remembering Newman's words about being a Catholic, how does it feel to be a Muslim in present-day Britain? My impressions on that score should be heavily discounted, because they are second or third-hand. But I do have the privilege of talking not just to British Muslim friends, colleagues and leaders but to other members of Britain's numerous and varied Muslim communities – a privilege because despite a job title that could almost have been designed to put them off, I find them unfailingly polite, generous and hospitable.

- a. They tell me, as they have told a number of surveys, that they feel overwhelmingly British, that they are happy to obey British law and that Britain is one of the best places in the world – perhaps even the best place in the world – to be a Muslim.
- b. They are relatively optimistic about the process of integration, evoking in my mind role models ranging from | the Siddiqui family, understated stars of Gogglebox, and | Nadiya Hussain, winner of the Great British Bake-Off to | the Mayor of London and | Mo Farah, the most decorated person in the history of British athletics. Only 20% of British Muslims polled last year for the Today Programme believed that "*western society can never be compatible with Islam*", as against 56% of the general population, readers perhaps of the popular press, who expressed similar views to YouGov at about the same time.^{vii} If it is true, as Channel 4 reported earlier this year, that 20% of Muslims had not been in a non-Muslim's house over the past year, it might have been pertinent to ask whether anyone invited them.
- c. British Muslims are bewildered by the incessant "them and us" headlines of the tabloid press; dispirited by the constant references to terrorism committed in the name of their religion but unconnected with what they see as any true version of it;

wary of Government policies which are seen as spying on them or discriminating against them; and alarmed by the hatred and abuse that are directed to Muslims, particularly, as the statistics show, in the aftermath of a major atrocity somewhere in the western world.

Perhaps they would agree that Islam, as Cardinal Newman said of the Catholic Church, *“is the victim of a prejudice which perpetuates itself, and gives birth to what it feeds on”*.

25. And many I suspect would agree with me that Trevor Phillips, former head of the Equalities and Human Rights Commission, was painting an exaggerated picture when he said in a Channel 4 programme earlier this year that British Muslims' centre of gravity is *“some distance away from the centre of gravity of everyone else's”*, that they *“basically do not want to participate in the way that other people do”*, and even that they constitute a *“nation within a nation”*. Such conclusions are, perhaps, the product of surveys that focus on areas most likely to show difference, and ignore the huge amount that we all have in common.

26. When I travel around the country I see inspiring examples of youth clubs and neighbourhoods putting integration in practice, and of schools and NGOs teaching the critical thinking skills that are so important if the false certainties of the fundamentalist are to be rejected or at least seen in perspective.

27. But there is bad as well as good in all sections of society; and it would not be honest to describe British Islam without reference to the fact that to varying degrees, a minority of its members are profoundly opposed to core values such as democracy, equal treatment, the rule of law, diversity, pluralism and tolerance. In extreme cases they may even be prepared to approve violence against that of which they disapprove.

28. The way in which some terrorists who claim the authority of Islam feed off religiously conservative and socially regressive attitudes was recently expressed by Lord Pannick QC as follows:

“The opponents of a liberal society are not interested in science and enlightenment. They know all the answers, or how to find

them. They deprecate any study which may challenge their religious beliefs. They believe that women should not be educated, should have no role in public life and must comply with a strict dress code. They advocate, and implement, the death penalty for homosexuals, adulterers, and anyone who leaves their religion, and anyone who publishes a cartoon or other depiction of their God. They cut the heads off aid workers whom they capture, and post horrific videos on the internet. They blow up ancient monuments because they despise any culture other than their own.”^{viii}

29. Polling suggests that overt support for terrorism is very low: but that disturbingly large minorities are prepared at least in theory to countenance a violent response to those who publish images of the prophet Muhammad, or to so-called apostates who convert from Islam.^{ix} Opinions of course are cheap, and rarely translate into deeds. But the fatwa against Salman Rushdie, the Charlie Hebdo killings, attitudes in Pakistan to Ahmadiyya Muslims and the hacking to death of secular bloggers in Bangladesh, each of which has echoed, faintly or otherwise, in Britain, are completely inimical to any notion of liberal values or universal human rights.

30. Yet shockingly, many of those “*opponents of a liberal society*” grew up in one. The great majority of terrorists convicted in Great Britain over the past 15 years have been bred here, including the London bombers of 2005. One of them, Shehzad Tanweer, worked in a fish and chip shop in his native Yorkshire, and played his usual game of cricket on the evening before he killed seven people, and himself, on a Circle Line train.

31. Mental illness, and social and economic exclusion, are relevant factors in some cases but by no means a sufficient explanation. There is a substantial minority of university students and graduates among British perpetrators of terrorist acts, not dissimilar to their representation in that age cohort generally. They include:

- a. the underpants bomber Umar Farouk Abdulmutallab, a graduate of University College London;

- b. Roshonara Choudhry, who stabbed the MP Stephen Timms shortly after dropping out of King’s College London; and
- c. Tarik Hassane, the Briton studying medicine at the University of Khartoum, who pleaded guilty earlier this year to plotting Da’esh-inspired drive-by shootings in London with Suhaib Majeed, a physics student who was convicted by a jury in April.

Abdulmutallab and Majeed were reported to have been, respectively, the President of the University College Islamic Society and the Chairman of the King’s College Islamic Society.

32. So British Muslims face Islamophobia: but they also have other problems.

- a. The vast majority, including those who could be described as religiously conservative, want nothing more than to look after their families and contribute to the life of the country where almost half of them now were born.
- b. But there comes a point where religious conservatism shades into socially regressive attitudes – in particular towards women and those who depart from rigid sexual norms, but also towards those of other faiths or of none.
- c. And those attitudes sometimes find coercive or violent expression – whether in terms of FGM, forced marriage, domestic violence, sexual abuse, so-called honour-based violence or terrorism.

None of these problems are unique to Muslims; some are cultural rather than religious in origin; and domestic violence and sexual abuse are extremely widespread. But the most acute of them, or at least the highest profile, is terrorism perpetrated in the name of Islam.

33. The Prime Minister last year described extremist ideology, by which he meant Islamist extremism, as the “*struggle of our generation*”, adding that we must pursue this struggle in the spirit with which we “*faced down Hitler*” and “*defeated Communism*”.^x Not everyone would go so

far as to characterise Islamist extremism an existential threat, even when it is manifested through sporadic acts of terrorism on western soil. Nor would it be right to characterise the transition from non-violent to violent extremism as any sort of automatic conveyor belt – though there are certainly many terrorists who have made that journey. But there can be no doubt that when behaviour is fuelled by extremist ideology, adverse consequences can follow both for community integration and for public safety. What should we do about it?

KNOWING WHAT TO TOLERATE

34. Central to this dilemma is the language of tolerance. Tolerance is not the most inspiring of virtues. It is practised, after all, as putting up with things, or with people, that we don't really like. But as expressed in the phrase live and let live, it is something we have traditionally been good at in this country. And it is a gateway virtue: a staging post to the higher objectives of integration and trust.

35. Too much tolerance can be as dangerous as too little. Some things need to be tolerated, and some things need not to be tolerated. The question is, which things fall into each category?

36. You will be relieved to hear that no comprehensive answer to that question will be given this evening. But I will suggest a couple of guiding principles, neither of which is always appreciated as widely as it should be. I call them *confidence* and *humility*.

Confidence

37. Confidence consists, first of all, in knowing what we stand for. As the nation state gives way to what Philip Bobbitt^{xi} has described as the market state – one whose purpose is not to nurture a national identity but simply to ensure an adequate life for those who at any given time find themselves within its boundaries – moral relativism takes over and bright lines become harder to draw. People resent newcomers who do not conform to their customs, but are unsure which of their values they are allowed to defend, and which must give way to the perceived demands of multiculturalism or human rights. Too often, the wrong answers are found. Perhaps the newcomer will be told that he must

fully assimilate to be accepted. Or, conversely, a blind eye may be turned to practices that ought to be firmly clamped down on.

Democratic values

38. The starting point, for me, is that this country stands for **democratic values**. Unusually, and in my view regrettably, the United Kingdom lacks a written constitution to spell them out. But the nub of the matter is that the UK is a democracy founded upon the rule of law.
39. Inherent in the rule of law, as classically defined by the great judge Lord Bingham, is adequate protection of internationally guaranteed fundamental human rights.^{xii} These include equality before the law; the right to fair trial by an independent and impartial tribunal; and strong but qualified rights to the freedom of thought, conscience and religion, freedom of speech and freedom of association. Every law, and every action of every public authority, must permit the exercise of those freedoms.
40. But vital as fundamental rights are, they can in important respects be qualified in the interests of democracy – which means, in this context, far more than simply the rule of the majority. As the European Court of Human Rights has often said, initially in cases argued by British lawyers, there can be no democratic society without “*pluralism, tolerance and broad-mindedness*”.^{xiii}
41. To see what this means in practice, take the freedom of thought, conscience and religion guaranteed by Article 9 of the European Convention. There is an absolute right to believe what you like, to change that belief, and to share your beliefs with like-minded people. But you may be prohibited from putting your beliefs into practice in a way that impinges on others, when it can be established that prohibition is necessary in a democratic society.
42. There are frequent reminders from the courts that theocracy is not compatible with democracy, and that to say “*It’s my religion*” is not enough to win a reprieve from the law of the land:

- a. Our own senior court, then known as the House of Lords, held in 2005 that the state could prohibit the use of corporal punishment in private schools, notwithstanding the beliefs of some Christian teachers and parents in its moral value.^{xiv}
- b. | The Court of Appeal, differing from the High Court, required my former client, Shambo the sacred Welsh bullock, to be slaughtered because his TB diagnosis made this necessary in the interests of public health, notwithstanding Shambo's religious significance to his Hindu owners. (When I commiserated with them on Shambo's death, they were able to console me: most probably, they told me, he had already been reincarnated.)
- c. And in 2014 the European Court went so far as to rule, by a majority, that the French Government was justified in banning the wearing of the niqab or full-face veil in public places, in the interests of what was described as "*the right of others*" – in other words, the non-niqabi people of France, "*to live in a space of socialisation which makes living together easier*".^{xv} Governments were not obliged to ban the niqab, of course: there are no plans for such a wide-ranging prohibition in the UK, and for myself I rather hope there never will be. But France was entitled to do so in the interests of maintaining a democracy in which people "*live together*".

43. An earlier and even more striking case concerned the dissolution by the Turkish Government of a political party whose poll ratings were such that it had (at the time of dissolution) what the European Court of Human Rights described as "*a real potential to seize political power*". It was dissolved because it had a policy of introducing shari'a law for Turkey's Muslims. The Court found no violation of the freedom of association, commenting that "*Shari'a is incompatible with the fundamental principles of democracy*", and that contracting states were entitled to oppose "*political movements based on religious fundamentalism*", in the light of their historical experience.

44. As the Court pronounced:

“No one must be authorised to rely on the Convention’s provisions in order to weaken or destroy the ideals and values of a democratic society.”^{xvi}

Or in the even pithier paraphrase of a United States Supreme Court opinion from 1949: “*Democracy is not a suicide pact*”.^{xvii}

45. Once again, you are not *obliged* to ban political parties that seek to use democracy in order to subvert its values. We survived the Cold War without banning the Communist Party: and a good thing too, since as another American judge once put it, “*the power of reason as applied through public discussion*” is preferable to “*silence coerced by law*”.^{xviii}

46. But these cases are a reminder that where democratic values are truly under threat, tolerance has its limits. Islam must be tolerated in the same way as other belief systems: but in return, as Matthew Wilkinson of the Cambridge Muslim College has written, it must adapt to being “*one legitimate faith among many legally equivalent faiths*”, with the Shari’a existing as “*a code of personal religious conduct rather than constituting the legal framework for the whole or even part of society*”.^{xix}

47. These cases are also a corrective to those who falsely claim that human rights tie our hands behind our backs by requiring us to tolerate the intolerant, however threatening. Rather than hamper the fight against terrorism and extremism, they underline its legitimacy: a point underlined by – on my count – six successive judgments of the European Court of Human Rights, since 2010, which have upheld different features of the powers used against terrorism in the UK.

Application of the law

48. There is a second aspect to confidence: being unafraid to apply the laws we have. For various reasons, many of them understandable, that has not always been the case.

49. In the 1990s and afterwards, strong traditions of individual liberty, combined with ignorance or complacency, led to the excessive tolerance of what frustrated French officials dubbed Londonistan: the freedom of men such as Abu Qatada, Omar Bakri Mohammed and Abu Hamza and their followers to come to Britain and incite murder, radicalise the young, finance violent jihad and even train people for it on British soil.

50. We should never discount the risk of racism or discrimination against Muslims by authorities, including police forces, that are overwhelmingly white and non-Muslim. But their behaviour may also be distorted by *fear of being accused of racism*. An independent report of 2014 into child sexual abuse and trafficking in Rotherham by men of Pakistani heritage reported councillors as saying that they had not drawn attention to what was going on, because to do so could be perceived as:

“‘giving oxygen’ to racist perspectives that might in turn attract extremist political groups and threaten community cohesion.”^{xx}

The consequence of this misplaced fear of encouraging racism may have been not only the prolongation of organised abuse that affected, at a conservative estimate, 1400 victims over 16 years, but the worsening of precisely the community cohesion that the councillors had been trying to protect.

51. In relation to similar long-term abuse in Rochdale, the MP Ann Cryer told the BBC that despite her requests, *“neither the police nor social services would touch those cases...I think it was they were afraid of being called racist.”*^{xxi} In 2015, the Greater Manchester Police apologised for their failure to investigate the allegations more thoroughly.

52. Police and other authorities naturally wish to keep up their contacts in local communities – contacts which they find useful in everything from managing community tensions to delivering the Prevent strategy. But this must not come at the expense of enforcing the law without fear or favour. The vulnerable people in any community may be precisely those for whom the *“community leaders”* do not speak, those described by Maajid Nawaz as *“minorities within minorities”*: the ex-Muslim, the woman who chooses not to dress as her family wishes, the sexually unorthodox, the Muslim who dares speak out about malpractice.

Humility

53. The balancing principle to confidence is humility: an acceptance that there are limits to what the state can or should do, and positive dangers in seeking to do too much.
54. In the 1850s, where we began this evening, there was no law against terrorism or incitement to religious hatred, only the most basic of protection against discrimination, no apparatus for state surveillance, no International Covenant or European Convention of Human Rights, no such thing as a cohesion, integration or counter-extremism strategy. The vast growth over the past 100 years in government, in legislation and in popular expectations of both, have furnished legal and policy levers whose existence could not have been dreamed of in those days. But that does not mean that all those levers are useful, or should be used. Humility allows us to see that some of them may not work, that some may make things worse; and that sometimes – as, happily, with the anti-Catholic prejudice that was so strong in England in the mid-19th century – problems recede not because anyone solves them but because of the passage of time and, very often, the intervention of new and more pressing problems.
55. The battle for hearts and minds is an area in which actions, if not correctly judged, are particularly liable to backfire. Once you seek to apply the law to conduct that poses no direct threat to the life, wellbeing or property of others, you begin to intrude into the way that people who would not normally be classed as criminals live their everyday lives. If you are not very careful, those people will perceive you as spying on them; picking on them; penalising activities that cause no harm to others; challenging the core tenets of their faith or their personal morality. And if things get to that point, you may actually be worsening the problem you are seeking to cure.
56. The difficulty here is not with the counter-terrorism laws, even though they feature a number of “*precursor crimes*” which can be committed before there is any attempt, conspiracy or incitement to commit an act of terrorism: these include encouragement of terrorism, direct or

indirect; disseminating terrorist materials; preparing acts of terrorism; and attending a training camp. Nor, even, is the problem with the Public Order Act 1984, whose most oppressive feature – the criminalisation of insulting words likely to cause alarm or distress, which resulted in the conviction of a street preacher whose only offence was to hold a placard pronouncing homosexuality to be evil^{xxii} – was repealed in 2014.

57. Rather, and counter-intuitively perhaps, controversy tends to attach to well-intentioned measures with a safeguarding purpose. I will mention three.

Use of the family courts

58. The first is a remarkable development of the past two years: the spate of cases in which child care authorities have sought to use the Family Division of the High Court to protect children at risk of radicalisation.

59. Most straightforward are the cases in which the court has agreed to a measure which will prevent children from going to Syria or being taken there: normally, making the child a ward of court and removing his or her passport.^{xxiii} In some cases, the court has gone further: preventing the whole family from travelling out, or ordering them to be brought back after they have left.^{xxiv} But in one case, the court concluded that the only way to protect a 16-year-old girl who had been intercepted prior to take-off was to remove her from her devious and highly radicalised parents into institutional care.^{xxv} Comparing the risk from their extremist beliefs to the risk of sexual abuse, the Court held:

“If it were a sexual risk that were here being contemplated, I do not believe that any professional would advocate such a placement for a moment. The violation contemplated here is not to the body but it is to the mind. It is every bit as insidious, and I do not say that lightly. It involves harm of similar magnitude and complexion.”

60. I don't dispute that analysis. But for the State to remove a child from its parents because it does not like the ideas that they are planting in the

child's mind is at least deserving of debate. As the Supreme Court Justice Baroness Hale said in a recent lecture (and I am grateful to her for pointing me to these cases), this is an important development, and one to be treated with great caution.^{xxvi}

Prevent

61. Humility is in order also when it comes to the Prevent strategy: the Government's programme to combat radicalisation in environments ranging from the nursery school to the prison. Prevent has already been reformed, in 2011 when its range was expanded from violent extremism to non-violent extremism, and in 2015 when a wide range of public authorities were placed under a statutory duty to "*have due regard to the need to prevent people from being drawn into terrorism*".^{xxvii}
62. One might have thought that safeguarding of this nature was an appropriate task for Government at least to attempt. But in my experience, Prevent now attracts more suspicion from Muslims than all the counter-terrorism laws put together. Particularly controversial is the application of the Prevent duty in schools, which if their evidence to me is to be believed, has caused risk-averse teachers to close down healthy discussion of terrorism in school and risk-averse parents, worried about what their child might say the next day, to do the same thing at home. Also subject to criticism has been the Prevent guidance to universities, which requires them carefully to consider whether views expressed by a visiting speaker "*constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups*", and if so, requires them to cancel the event unless they are "*entirely convinced*" that the risk can be "*fully mitigated*" by other means: a high hurdle indeed.
63. I do not review the operation of Prevent. I observe the suspicions that attend some of its aspects, but don't pass judgement on whether they are the product of poor implementation, whether they have been stirred up by people who are trying to promote grievance, or whether they are simply the product of insufficient engagement with those affected.

64. Some have argued that Prevent needs to be replaced, reformed or removed altogether from the counter-terrorism space and treated instead as simply one aspect of safeguarding, along with initiatives against gangs, substance abuse, sexual exploitation and so on. Whether that is the future or not, humility suggests that there should be more transparency around Prevent, more consultation with the communities to whom it applies, and – I would add – regular independent review of the sort that is already provided for the counter-terrorism laws.

Counter-Extremism Bill

65. Finally, I mention the long-promised Bill aimed at countering extremism. As initially trailed in the Queen's Speech before last, this Bill was to provide for a number of coercive measures by which "*extremist activity*" could be curtailed: banning orders for extremist organisations; extremist disruption orders to restrict the harmful activities of extremist individuals; and closure orders, to close down premises used to support extremism.

66. My concerns about this proposal were expressed in a report of last September, in the form of 15 questions that I suggested Parliament might want to ask about it. I was concerned by the breadth of the concept of extremism, and the effect of such a law on people who were not its targets. As I argued:

"If it becomes a function of the state to identify which individuals are engaged in, or exposed to, a broad range of extremist activity, it will become legitimate for the state to scrutinise (and the citizen to inform upon) the core exercise of democratic freedoms by large numbers of law-abiding people."

67. The Bill was promised again in last month's Queen's Speech, though with the welcome rider that there would be consultation on at least some aspects of it. We will see what comes of that. Only by tempering confidence with humility, I would suggest, do we stand a chance of winning the struggle to unite people of good will in rejecting the corrosive and dangerous elements on the extremes.

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- i Thomas Asbridge, “The Greatest Knight” (Simon and Schuster, 2015), p. 330.
- ii *Ibid.*, citing Sidney Painter, 1933.
- iii *Cheltenham Free Press*, 16 November 1850, quoted by D.G. Paz, “Popular Anti-Catholicism in Mid-Victorian England”, Stanford University Press, 1992, p. 100.
- iv Niall Whelehan, “The Dynamiters: Irish Nationalism and Political Violence in the Wider World, 1867-1900”, Cambridge University Press, 2012, p. 167.
- v John Henry Newman, “Lectures on the present position of Catholics in England”, London, 1851.
- vi For examples of recent Christian, Hindu and Jewish fundamentalist attacks see the 31 May 2016 report of the UN Special Rapporteur on the rights to freedom of assembly and association to the Human Rights Council: A/HRC/32/36, para 54.
- vii They answered yes to a question asking whether there was “*a fundamental clash between Islam and the values of British society*”.
- viii Hochelaga Lecture, Hong Kong, 12 April 2016.
- ix In a 2015 poll for the Today Programme, 24% of British Muslims thought that acts of violence against those who publish images of the prophet Mohammed could sometimes be justified, and 11% agreed that organisations which did so “*deserve to be attacked*”. A poll for Policy Exchange in 2007 found that nearly a third of 16-24 year old British Muslims believed that those converting to another religion should be executed.
- x Birmingham speech, 20 July 2015.
- xi Philip Bobbitt, *The Shield of Achilles: war, peace and the course of history* (2003).
- xii Lord Bingham, *The Rule of Law*, chapter 7.
- xiii E.g. *Handyside v UK* (1976), para 49; *Animal Defenders v UK* (2013), para 100.
- xiv *R (Williamson) v SoS for Education and Employment* [2005] UKHL 15; [2005] 2 AC 246.
- xv *SAS v France* (2014), para 122.
- xvi *Refah Partisi v Turkey* (2003), paras 99, 123-4.
- xvii In his dissenting opinion in *Terminiello v City of Chicago* 337 US 1, 37 (1949), Justice Jackson warned against treating the US Bill of Rights as a suicide pact.
- xviii Justice Brandeis in *Whitney v California* 274 US 357 (1927), pp 375-377.
- xix Matthew Wilkinson, *A Fresh Look at Islam in a Multi-faith World* (Routledge, 2015), p. 28.
- xx Alexis Jay, *Independent Inquiry into Child Sexual Exploitation in Rotherham*, 2014, 11.12.
- xxi Sara Yasmin Anwar, “Grooming Gangs: Tackle the Crime, not the Community”, Huffington Post UK, 16 November 2014.
- xxii Harry Hammond’s appeals to the Divisional Court and to the European Court of Human Rights were unsuccessful: *Hammond v DPP* [2004] EWHC 69 (Admin).
- xxiii Y [2015] EWHC 2098 (Fam) and 2099 (Fam); Z [2015] EWHC 2350; *London Borough of Tower Hamlets v M* [2015] EWHC 869 (Fam)
- xxiv *Re M (children)* [2015] EWHC 1433 (Fam); *Re X (children) and Y (children) No. 1* [2015] EWHC 2265 (Fam).
- xxv *London Borough of Tower Hamlets v B* [2015] EWHC 2491 (Fam).
- xxvi Brenda Hale, “Freedom of religion and freedom from religion”, Ecclesiastical Law Society 2016.
- xxvii Counter-Terrorism and Security Act 2015, s26(1).