

Countering extremism in Western democracies: Balancing pre-emption of attacks against winning hearts and minds

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Over the course of the past decade the scale and nature of the violent extremist threat to Western democracies has changed and grown in a way that has demanded a wide ranging rethink of counter terrorist strategies, laws and policies. Nowhere has this been more clearly evident than in the United Kingdom, where from a counter terrorist practitioner's perspective the challenge has been to strike the right balance between preserving public safety, gathering evidence to support criminal prosecutions, and winning the confidence of all communities, but particularly the Muslim communities. Recognising that such a balance exists, and devising strategies for maintaining it, have been the hallmarks of British counter terrorism in the first decade of 21st Century.

The United Kingdom suffered an enduring campaign of violence at the hands of Irish terrorist groups for more than 30 years. This was a long and bloody conflict, but despite the appalling atrocities that were committed during the course of the 'Troubles', the bloodshed was actually perpetrated within a fairly stable set of parameters. The weaponry that was used was conventional, in the sense that the bomb and the bullet were the weapons of choice, supplemented at times by the infliction of some economic damage as a result of deliberate and widespread bomb hoaxes against the transport infrastructure. The Irish campaign was essentially domestic and the level of casualties was modest, when compared to terrorist attacks elsewhere in recent years. This was partly because of the warnings that often preceded attacks, but also because the guiding political minds realised that in the long term, there would be no 'military' resolution, and that the maintenance of influence within a political process was vital to the attainment of their goals. The release of terrorist prisoners was a vital part of the Northern Ireland peace process, and there was a consistent determination on the part of the terrorists to avoid capture and imprisonment.

By contrast, the ambition of Islamist terrorists in the United Kingdom in the 21st century has been entirely different in nature and scale. The use of suicide as a means of delivering attacks has demanded not only new protective security measures, but also a new concept of operations to guide the investigation of active terrorist plots. The threat has global origins and a global reach, far in excess of anything encountered in Irish terrorist methodology. Far from being conventional or repetitive, we have seen innovation and unconventional means of delivering attacks. The intention of Algerian extremists to use ricin poison in London in 2003, although on a small scale, reminded us that we cannot be complacent about unconventional threats. Most importantly though, far from there being a need to restrict casualties in order to secure a place at the negotiating table, the Islamist threat has been marked by a clear determination to kill as many people as possible, and without warning.

Moreover, there has been no real sense of a negotiable political agenda to halt the violence.

This fundamental shift in operating strategy on the part of the terrorists has led to an equally significant and thoroughgoing change in approach on the part of UK counter terrorism. Throughout the Irish campaign, the official mantra was that terrorism was a crime and should be treated as such. The criminal law was the means by which terrorists would ultimately be judged and punished. At various times, measures which fell outside recognised judicial process, such as internment were tried but ultimately judged to be counter-productive and a failure. Even though the prevalence of jury intimidation led to the introduction of the juryless Diplock courts, the other essential elements of the criminal justice system were preserved. The presentation of legally admissible evidence of terrorist activity remained the primary objective of the counter terrorist forces both in Northern Ireland and the rest of the United Kingdom.

Criminal trials may have been the consistently visible means by which terrorists have been prevented from achieving their objectives, but at the same time there have been some fundamental changes in the conduct of counter terrorist investigation and interdiction. The biggest single shift has been the expansion in the amount of material gathered by the intelligence agencies and police that is introduced into the criminal courts as admissible evidence, rather than remaining hidden in intelligence files or protected from disclosure by the application of Public Interest Immunity. This change in emphasis is not something that came about overnight, or even in response to a particular event. It was developed over time in the light of experience and is symptomatic of a determination on the part of operational practitioners to react flexibly and positively to the new type of terrorist threat.

Most terrorist activity follows a series of sequential stages. To begin with, the terrorist will develop a rationale for his activity that identifies the basic grievance or cause, perhaps with an accompanying ideology, and then look to find a means of translating his outrage into practical effect. This usually means agreeing with others a course of conduct, followed by activities such as raising finance, gathering the materiel required for the attack, finding accommodation and transport, receiving training, recruiting others, carrying out reconnaissance of the intended target, gathering the weaponry and eventually launching the attack. It used to be the case that the police would normally look to intervene at or near the point of the intended attack, in order to gather the best and preferably unequivocal evidence of the terrorists' intentions. The preparatory activity would often have been observed by the intelligence agencies or those parts of the police specialising in intelligence gathering, but much of this knowledge would not make its way into Court. The protection of sources and methods of intelligence gathering was the prime consideration, and although these remain as key objectives, the need to gather evidence is now taken into account at every stage of an investigation.

Although the transition from the Irish to the Islamist threat has seen a change in terrorist methodology, the overriding objective of the counter terrorist effort has

been to maintain the criminal law as the primary means of defence. In order to do so, and to give counter terrorist practitioners the widest possible range of tactical options, there has to be a way of generating admissible evidence at every stage of observed terrorist planning. There are times when it is simply too dangerous to allow terrorists to remain undisrupted, and it is on these occasions, when there might be insufficient evidence to bring prosecutions, and suspects have to be released back into the community, that public confidence in the competence and integrity of the counter terrorist effort can suffer. That is why it has become so important for the intelligence agencies and the police to work ever more closely together, looking for ways to exploit every opportunity to gather information in a way that can be used to support criminal prosecutions.

I am in no doubt that the way in which MI5 and the police have found ways of working together with truly shared objectives has played a huge role not only in protecting the British public from terrorist attacks, but also in demonstrating to communities the legal and ethical basis of counter terrorism in the UK. Of course there have been many difficulties and challenges along the way, and there is still a long way to go in achieving that most elusive but vital goal of securing complete public trust in what is being done on their behalf to keep them safe. There can be little doubt that at the moment there is often a deficit in trust, and we need to understand why this has arisen, and what can be done to rebuild it.

I would suggest that there are four elements that we can usefully consider in trying to understand why trust has been so difficult to preserve and rebuild. First we need to understand what led to it diminishing. Then, in the context of counter terrorism I would suggest that we need to identify a supportive legal framework that can be easily understood by the public and is sufficiently transparent for them to be able to trust its processes. This in turn can help to enhance public understanding of the real nature of the threat we face, and what needs to be done to counter it. Finally, if we can achieve this level of understanding, there is the opportunity to generate a widespread rejection of extremist ideology, to marginalise extremists and diminish their influence within communities.

The Loss of Trust

In looking at the first of these elements, the loss of trust, I would suggest that a useful starting point might be to reflect on the events of early 2003. It was of course at this time that the controversy over the intelligence assessments that Iraq was in possession of WMD (weapons of mass destruction) burst into the open. Almost immediately there was a negative impact on the public perception of the impartiality of police counter terrorist activity. For instance, in February 2003, in response to specific intelligence, the police asked for military support at Heathrow Airport. This was met with deep scepticism in some quarters, and the allegation was made that the police were exaggerating the threat for political purposes; to help justify British foreign policy. This perception was in no way diminished when the US Secretary of State, Colin Powell, made an unexpected linkage at the United Nations between Iraq and the plot to use ricin poison in London that had been uncovered in London in January 2003.

All this generated an atmosphere in which pre-emptive arrests, usually carried out because the authorities could not guarantee to negate the threat posed by an individual or group other than by interdiction, became increasingly controversial. The disruption of an alleged plot to attack a Manchester United football match in 2004 was one example, and the operation in Forest Gate, East London, in 2006 was another. When intelligence is received, it is thoroughly investigated, but on occasions it is simply not possible to prove or disprove the threat. This leaves the choice of doing nothing and hoping the intelligence is wrong or out of date, or intervening through executive action. Given the change in the nature of the threat that I have described, to do nothing is rarely an option. When arrests are made and prosecutions do not follow, the police are often not able to expose to public scrutiny the intelligence that gave rise to the decision to take action. This is difficult enough when there is a reasonable degree of public confidence in counter terrorist activity, but when that confidence is fragile, it is all too easy to slide into a downward spiral of distrust.

This downward spiral is incredibly difficult to reverse, even when there is sufficient evidence to bring criminal charges based on firm evidence. In early 2004, a group of young British men were charged in connection with what became known as the 'Fertiliser Plot', and whose official designation was 'Operation Crevice.' At the time I would very much have liked to be able to reassure the public that the arrest of several young British Muslim men had not been undertaken lightly and that there was actually overwhelming evidence of terrorism. However, the desire to protect the right of the accused to a fair trial, with a jury uninfluenced by anything other than the evidence they hear in the courtroom, means that in the UK, from the moment judicial proceedings begin, there is very little that can be said publically about the weight or quality of the evidence that will eventually emerge in a criminal trial.

The so called *sub judice* rule is, in my view, long overdue for review. The largest terrorist trials have taken anything up to three years to reach their conclusions, and during that time the public are by and large left in ignorance as to the strength of the evidence, and why defendants have been arrested and charged. This has left the way open for extremists and other sceptics to fill the information vacuum and pursue their own agendas. Needless to say these accounts will often serve to undermine public confidence in the intelligence agencies and the police. In early 2007, Dr Mohammed Naseem, the Chairman of Birmingham Central Mosque reportedly denounced the arrest of suspects in connection with a plot to kidnap and behead a serving British serviceman by saying 'There is a political objective behind these arrests. This is something that has been magicked up.' The previous year, when the so called 'Airline Plotters' were arrested, several commentators very quickly went into print to question whether the plot was real, or was being exaggerated by the authorities. In both cases the defendants were eventually convicted, but the inability of the police and others to mount a robust defence of their actions, because of the *sub judice* rules, is unhelpful when there is a pressing need to win the confidence of communities.

It is obviously entirely right and proper that the actions of the authorities should be open to scrutiny in such cases, but it seems to me immensely patronising to say that there is a real risk of serious prejudice to the ability of a defendant to receive a fair trial, if potential jurors are simply exposed, along with the rest of the public, to information that in most other jurisdictions would be in the public domain immediately. In the case of the 2006 airline plot, because of the seriousness of the impact on the travelling public, and in full knowledge that it would be several years before the full evidence would be exposed in Court, I went further than ever before in giving details of the emerging evidence in a press conference at the time the defendants were charged. The series of trials flowing from those arrests took some 4 years to complete, and yet within a few days of the arrests, the *New York Times* published a very full and largely accurate account of the plot. In an age of global communication, one has to ask whether it is realistic or in the public interest for the British public to be denied an open account of a plot of such global significance. How can communities be expected to have confidence in the State's counter terrorist activities when they are not allowed to know, sometimes for many years, the basis on which alleged terrorists have been charged?

The Need for a Supportive Legal Framework

Opinion surveys have shown that, by and large, public confidence in the criminal trial process has held up. Indeed, a Gallup poll in early 2007 suggested that confidence in the judicial system among Muslim Londoners was at a higher level than for the population as a whole. However, if the criminal trial is to remain the preferred means of dealing with terrorism, then the law must adapt. This is not to say that the basic and well understood principles of due process need to change - far from it. It is perfectly possible to preserve the bedrocks of our criminal justice system, such as trial by jury and the presumption of innocence, while at the same time making changes that allow terrorism to be dealt with effectively. We simply need to accept, for instance, that not every aspect of modern terrorism can be dealt with by 'shoehorning' terrorist activity into existing laws.

Quite simply, the criminal law was not designed to deal with 21st century transnational ideologically driven mass murder. In 2003 we had the bizarre state of affairs where people who wanted to poison the British public with ricin, were charged with a 'Conspiracy to Cause a Public Nuisance.' A very similar thing happened the following year when terrorists who wanted to irradiate the public were charged with the same offence. The Government reacted to this, and the new offence of 'Acts Preparatory' to terrorism has already proved its worth. Similarly, it is now an offence to recruit people to go for terrorist training overseas. Obviously, there are some very real challenges when it comes to framing legislation to deal with 'thought' and 'speech' crimes, but the basic point is that adapting the criminal law to deal with modern threats does not necessarily involve abandoning basic principles that enjoy the confidence of the majority of the public. This has sometimes been lost in the public debate of these issues. For instance, when the subject of extended pre-charge detention was the subject of so much heated public and Parliamentary

debate, inaccurate claims that the proposals amounted to the abandonment of *habeus corpus* did little to enlighten the public.

By adapting to modern terrorist methodology, the criminal law can remain the pre-eminent weapon for attacking terrorism, and thereby minimise the need for measures that do not form part of recognised judicial process. For instance, the use of Control Orders in the UK has arisen because of the inability of the criminal law to deal with the threat posed by those people who have been made subject of them. They are not widely understood and are little loved by anyone, including counter terrorism practitioners. However, in the absence of any other credible means of protecting the public from some very dangerous individuals, they remain by default a part of the UK's protective armoury.

The Need to Improve Public Understanding

I have already referred to the difficulties that the *sub judice* provisions in the United Kingdom have put in the way of a fully informed public debate and understanding of the terrorist threat. However, the quality of the public debate, and therefore the understanding of the need for pre-emptive counter terrorist activity goes beyond being a purely legal issue.

The balance between individual liberties and collective security has fuelled a public discussion that has, unfortunately, become polarised and politicised. For many years the subject of counter terrorism attracted a degree of cross-party consensus. This seemed to break down in the autumn of 2005 when the proposal to enable the Courts to authorise the detention of terrorist suspects for up to 90 days before being charged or released was debated in Parliament. This has made it difficult for practising law enforcement or intelligence professionals to offer public opinions on these matters without being accused of having become politically partisan.

Linked to the debate about civil liberties has been the whole subject of the so-called 'surveillance society', with concerns being expressed about the amount of data that is held by the State on individuals, the security of that data and the use to which it is put. The use of CCTV and other technologies has also featured heavily, and groups such as Big Brother Watch have mounted vigorous campaigns, citing the preservation of traditional freedoms as the driving force behind their thinking. I would suggest that this debate has become unbalanced, and that the use of such technologies and data are a vital part of preserving public safety, and indeed individual liberties. What is often missed in argument is the fact that the proper use of technology enables investigations to be focussed at an early stage, and actually to minimise the intrusion into communities caused by police investigations. They have also helped to bring objectivity into the criminal trial process. Where once there was an almost ritual process of claim and counter-claim between prosecution and defence, with the jury being left to decide for themselves who to believe, technology has often provided unimpeachably objective evidence. This must be good for confidence in the trial process which, as we have seen, is such an important part of generating community confidence in pre-emptive counter terrorism.

The Rejection of Extremist Ideology

The title of this session suggests that there is an inevitable balance between the pre-emption of attacks and winning 'hearts and minds.' I do not believe this to be the case. Certainly the need to pre-empt attacks has led to some very real difficulties in maintaining the continuing confidence of Muslim communities. It has not been easy to demonstrate in a convincing fashion that counter terrorism has been conducted ethically, impartially and legally. However, there is no reason why, if we understand what has led to a diminution of trust, we cannot go some way to restoring it. We need to develop a legal framework that supports pre-emptive strategies while preserving the essential and widely understood aspects of our criminal justice system. This needs to be supported by an enhanced and preferably de-politicised public debate that will improve public understanding of what is being done on their behalf. These are all essential elements in leading us towards the ultimate objective which must be to give communities the confidence to be able to reject the extremist ideologies and ideologues who create an atmosphere of distrust in which violent extremism can flourish.