



APPG on the Rule of Law

Meeting Report: Non-Violent Extremism and the Rule of Law

14 July 2015, 14:30 – 16:00 Committee Room 15, House of Commons

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Format

14:30 – 14:35: The Rt Hon Dominic Grieve QC MP — welcome
14:35 – 14:40: Sir Jeffrey Jowell QC, Director, Bingham Centre

14:40 – 15:05: Four expert speakers (5 minutes each)

Professor Robert Gleave, Professor of Arabic Studies, Institute

for Arab and Islamic Studies, University of Exeter

Professor Anthony Glees, Professor of Politics and Director of the Centre for Security and Intelligence Studies, University of

Buckingham

Dr Gabrielle Guillemin, Senior Legal Officer, Article 19

Commander Richard Walton, Counter Terrorism Command,

Metropolitan Police Service

15:05 onwards: Questions and comment — MPs and Peers

Attendance

Host and Chair: The Rt Hon Dominic Grieve QC MP

MPs and Peers: Ms Joanna Cherry QC MP; The Rt Hon David Davis MP; The Lord Dubs; The Rt Hon Sir Edward Garnier; The Baroness Hamwee; The Lord Judd; The Lord Lester of Herne Hill QC; Lord Macdonald of River Glaven QC; Mr Jesse Norman MP; The Lord Pannick QC; Mr Andy Slaughter MP; Ms Emily Thornberry MP; The Rt Hon the Lord Woolf.

Others in attendance included: Mr David Anderson QC; Ms Yasmine Ahmed; Mr Stephen Grosz QC; Mr Anthony Longden; Mr Bob Satchwell; Ms Nicole Piche; Mr Alex Horne; Mr Murray Hunt; Ms Christina Dykes; Dr Lawrence McNamara; Ms Anna Brandenburger; Ms Kristin Hausler; Ms Melanie Smith; Ms Sarah Stevens; Ms Hannah Stuart; Mr Miloud Piovesan; Mr George Brewell; Ms Swee Leng Harris.

Meeting Aim

To provide MPs and Peers with an opportunity to discuss the rule of law issues that arise in relation to the government's proposals to introduce legislation which tackles non-violent extremism after hearing a range of expert views on the subject.

'Extremism' is defined in the Prevent Strategy to include "non-violent extremism" and to include: 'vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.'

Background

Proposed Counter-Extremism Measures

The proposed Extremism Bill was outlined in the Queen's speech. The government has announced that the Bill will include:

- <u>Banning Orders</u>: a new power for the Home Secretary to ban extremist groups;
- <u>Extremism Disruption Orders</u>: a new power for law enforcement to stop individuals engaging in extremist behaviour; and

¹ More details in Queen's Speech Background Briefing notes available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430149/QS lobby pack FINAL NEW 2.pdf>.

• <u>Closure Orders</u>: a new power for law enforcement and local authorities to close down premises used to support extremism.

Other relevant measures include government proposals relating to:

• <u>Broadcasting</u>: strengthening Ofcom's roles so that tough measures can be taken against channels that broadcast extremist content.

Related matters include:

- <u>Charities</u>: the proposed extension of the Charity Commission's power in the Charity Bill and the actions of the Charity Commission in 2014/15 in relation to funding of CAGE indicate the significance of regulation of charities in measures to combat non-violent extremism; and
- <u>Universities</u>: previously proposed measures to prevent extremist speakers in universities are also likely to be introduced in guidance under the Counter Terrorism and Security Act 2015.

Following the attack in Tunisia, Prime Minister Cameron told the House of Commons on 29 June 2015 that, 'We must take on the radical narrative that is poisoning young minds. ... We must confront this evil with everything we have. We must be stronger at standing up for our values, and we must be more intolerant of intolerance, taking on anyone whose views condone the extremist narrative or create the conditions for it to flourish.'2

In addition, there are media reports that 'Government sources [said] ministers would press ahead with Conservative manifesto plans for restrictions on extremist views on social media, as well as banning extremist but not violent organisations such as Hizb ut-Tahrir.'³

Prevent Strategy

The Prevent Strategy is part of the government's wider Counter Terrorism Strategy (CONTEST). CONTEST has four parts: Pursue, Prevent, Protect and Prepare. Prevent is focused on 'stopping people from becoming terrorists or supporting terrorism'.⁴

The Prevent Strategy was changed in 2011 so that it included non-violent extremism.⁵

Section 26 of the Counter-Terrorism and Security Act 2015 came into effect on 1 July 2015,⁶ and requires that certain bodies have 'due regard to the need to prevent people from being drawn into terrorism.'⁷ This is known as the 'Prevent duty', and

 $^{^{\}rm 2}$ House of Commons Debate, 29 June 2015, c 1175.

³ Patrick Wintour, and Emma Graham-Harrison, 'Tunisia attack: David Cameron pledges 'full spectrum' response to massacre' The Guardian (29 June 2015), available at http://www.theguardian.com/uk-news/2015/jun/29/tunisia-attack-david-cameron-pledges-full-spectrum-response-to-massacre; see also, Jack Doyle and Jason Groves, 'Cameron threatens RAF bombing raids against Islamic State in Syria: PM says response in wake of Tunisian beach massacre must involve 'military solutions' Daily Mail (30 June 2015), available at; Rachel Sylvester 'Cameron prepares to drain the terrorist swamp; Last week's attacks have spurred the prime minister to embark on an ideological struggle reminiscent of the Cold War' The Times (30 June 2015), p17.

⁴ HM Government, CONTEST: The United Kingdom's Strategy for Countering Terrorism (July 2011), available at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97994/contest-summary.pdf.

⁵ HM Government, Prevent Duty Guidance: for England and Wales (2015), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417943/ Prevent Duty Guidance England Wales.pdf>.

⁶ The Counter-Terrorism and Security Act 2015(Commencement No. 1) Regulations 2015, available athttp://www.legislation.gov.uk/uksi/2015/956/pdfs/uksi_20150956_en.pdf.

⁷ Section 26 of the Counter-Terrorism and Security Act 2015, available at http://www.legislation.gov.uk/ukpga/2015/6/pdfs/ukpga 20150006 en.pdf>.

the government issued guidance on the duty in March 2015.⁸ The duty applies to specified authorities in the sectors of local government, criminal justice, education and child care, health and social care, and police. The government's guidance on the Prevent duty sets out 'best practices' for each sector, and identifies general aspects of the duty as including expectations for those in leadership positions in authorities, working in partnership including with the police, staff capabilities such as understanding of extremism, and information sharing.

Opening Remarks—Professor Sir Jeffrey Jowell KCMG QC

The following section reflects the opening remarks by Sir Jeffrey.

Sir Jeffrey thanked Dominic Grieve for his leadership of the APPG on the Rule of Law, and for allowing Sir Jeffrey to address the meeting.

The Rule of Law

Sir Jeffrey described that the rule of law as not vague, rather it is a practical and universal concept. The rule of law aims to shift the arbitrary exercise of power to accountable decision-making. A commitment to the rule of law requires:

- no person being above the law;
- certain and accessible laws;
- laws equally enforced and without corruption; and
- where anyone can challenge the law or decisions made about their lives through a fair hearing before independent judges.

Rule of Law Principles Applied in this Context

Sir Jeffrey then turned to the proposed counter-terrorism measures, and identified significant rule of law issues that arise.

- Certainty, clarity and predictability of the law
 - O How are 'non-violent extremism' or 'British values' to be defined?
 - How are different values and democratic commitments such as the right to security of the person and freedom of speech to be balanced in this context?
- Equality before the law
 - Will the proposed measures apply equally to all parts of society in the UK, or is there a risk of a disproportionate and unjustified focus on Muslim communities?
- Law rather than discretion
 - Will decision-making on legal rights and liability under these measures be based on well-defined law, or be the subject of wide and arguably arbitrary discretion?
- Protection of fundamental human rights
 - Will the law continue to protect fundamental rights such as freedom of speech and non-discrimination in the context of the proposed measures?

^{8 &#}x27;Guidance: Prevent duty guidance', GOV.UK,

https://www.gov.uk/government/publications/prevent-duty-guidance last visited 10 July 2015.

Expert Speakers

The first three summaries were provided in writing by the speakers and have been supplemented using notes taken of their presentations at the meeting, the fourth is based on notes taken of the presentation at the meeting.

Professor Robert Gleave

"Non-violent extremism" has already proven a tricky term to define in terms of counter-terrorism (CT) research and CT policy. It looks set now to be defined in law, as the activities of groups and individuals who espouse "non-violent extremism" (NVE) will be subject to certain controls. Groups judged to be promoting NVE could face restrictions on speech, assembly and fund-raising. Alleged NVE organisations will face their premises being closed; NVE individuals from outside of the UK may be barred from entering the country, either to visit or as part of the normal immigration process. The definition of NVE currently being mooted draws on the definition of extremism put forward in the UK PREVENT strategy: 'vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.' NVE is promoting such views but without an accompanying call for violence.

It remains to be seen if this analytical category in the PREVENT strategy can successfully be made into a legal definition. Clear definition will be crucial if this law is to be implemented by police and other agencies without having worrying unintended consequences. Furthermore, the law enforcement agencies will need a detailed and precise knowledge of the ideas of suspected NVE groups in order to decide when and how to act. It may prove impossible to define NVE in law without having dangerous (perhaps unintended) consequences.

The target of the proposals appears to be groups and individuals which cannot be prosecuted or controlled with present legislation, but, in the view of those proposing the new law, need to be. Individuals whose actions currently fall just short of being illegal (as they do not glorify terrorism or incite violence) will immediately be suspected of hiding their promotion of violent extremism in NVE. This assumption of bad faith may lead to some evidential problems during the enforcement and legal process, but more importantly it appears that certain points of view (political and religious) that are currently legal will be criminalised and controlled. Members of suspected NVE groups will need to know precisely what are, and what are not illegal opinions to hold and express, in order to remain legal.

It also can be argued that current proposals are likely to fail to reduce any security threat. Counter-terrorism measures (including PREVENT) are currently viewed with great suspicion by many in the British Muslim communities. The vagueness of the category of NVE, and the perceived license it will give to law enforcement agencies, is already having an effect on community cooperation with CT strategy, and this community buy-in is essential for its success.

A possible effect of the legal control of supposed NVE in the current proposals will be to curtail the range of positions expressed in the British Muslim communities. The intellectual debate around religious and political issues within and between UK Muslim communities is vibrant, sophisticated and healthy. Maintaining this openness in which new positions are allowed to emerge is crucial to encouraging a mature culture of debate within the Muslim communities, and between the Muslim community and wider society. The current limits on that debate (the incitement to violence and the glorification of terrorism) would seem sufficient, and any further interference will, it is argued, be counterproductive.

If the proposed measures are passed into law, the public relations exercise that it will be necessary to conduct around such an Act must be managed well to ensure cooperation with Muslim communities. Some within those communities will view new police powers with suspicion, and this could lead to a breakdown in cooperation which will have the opposite effect to that intended. Previous, comparable public relations exercises have been badly managed and have not gained the full support of the British-Muslim communities. This cannot happen again.

Professor Anthony Glees

Not only is it right that the government introduce legislation to tackle non-violent extremism but this measure is long overdue.

The framing of the debate in terms of a distinction between non-violent and violent extremism has hidden the reality that it is essentially a debate about freedom of speech, thereby making it harder to work directly on drawing where the limits to free speech lie. Professor Glees believes in freedom of speech within the law, not in an unbounded concept of freedom of speech, and on this basis freedom of speech should only protect speech that does not offend the idea of democracy. When looked at in this way, it becomes clear that the law must and in fact does limit freedom of speech in order to protect it. One example of a way in which the law limits freedom of speech is the Security Services Act 1989.

The concept of representative democracy relies on the fact that citizens of a state can be mobilised by words spoken in support of political choices, groups or parties. It follows that the idea that some citizens can be mobilised or radicalised to support terrorism or violent extremism should not be questioned, either in terms of theory or recent history. Not every radical is a violent extremist or a terrorist but every violent extremist and terrorist has been a radical who has been radicalised. Non-violent extremism may not explicitly incite young people to violence but often presents a world view that implicitly leads to violence by prompting those who are mobilised to become violent (e.g. by arguing that democracy will prevent changes claimed to be necessary from being carried out or that democracy is itself anti-Islamic and must therefore be overthrown). It is for some young people no more than a temporary staging post en route to violent extremism and terrorism.

Given the existence of a small but significant and highly dangerous number of young British Muslims being recruited to terrorist groups, it is very important that, for as long as this threat exists, measures be taken by those in authority over young people, in particular school or university teachers, to prevent places of learning being used as sites for recruitment to extremism. This can be done both by forbidding extremists to visit campuses, in particular student Islamic societies, and by educating students to understand the basic tenets of liberal democracy and why violent extremism and terrorism undermine it.

It is clear that schools, universities and colleges are favoured sites for the mobilisation of young people in support of extreme and violent platforms. At the same time, universities, in particular, are, along with a free media and parliament itself, key institutions in upholding and sustaining liberal democracy. It is right to attend to them.

Is banning extremists from campuses illegal? No. We often hear that to do so would offend against 'academic freedom' and 'freedom of speech' (which even the Counter-Terrorism and Security Act 2015 and its Guidance notes imply are absolutes). But in Sect 43(1) of The Education (no 2) Act 1986, freedom of speech is clearly defined as 'freedom of speech within the law' (for members, students and employees of the institution, and for visiting speakers); it is not an unqualified freedom (nor could it be). In Sect 202(2)(a) of The Education Reform Act 1988, academic freedom is clearly stated to exist for 'academic staff' only, 'to question and test received wisdom and put forward new ideas...without putting themselves in jeopardy of losing their jobs...' it therefore does not apply in this case at all. As for Articles 5, 9, 10 and 11 of the ECHR, these make clear that the freedoms within them 'may be subject to such formalities, conditions, restrictions, or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of public disorder and crime...'. Sect 59 of The Serious Crime Act 2007 makes it clear that it is an offence to 'intentionally encourage' or 'assist' an offence (replacing the old law on incitement) and that the glorification of violence has been an offence since 2006.

Governments that fail to deliver security are rightly seen as incompetent and not deserving of public support. It is therefore necessary to act against those who threaten our national security. 'Free speech' is not a blanket or unqualified liberty to

incite young people, or anyone else, to commit acts of barbarism and violence. History shows that where democracies allowed democratic rights to undermine democracy, ultimately democracy itself gets overthrown.

Dr Gabrielle Guillemin

Under international human rights law, freedom of expression can only be limited where three conditions are met: the restriction must be in accordance with law, it must be necessary and it must be proportionate: see Article 10 of the European Convention on Human Rights ('ECHR') but also Article 19 of the International Covenant on Civil and Political Rights (ICCPR).

It is also worth noting that extensive consideration has been given to the restrictions that can be imposed on freedom of expression for the sake of national security. In particular, ARTICLE 19 has produced the Johannesburg Principles on National Security Freedom of Expression and Access to Information in 1996, which set out how expression that may threaten national security should be assessed as well as a non-exhaustive list of protected expression.

In addition, Article 20 (2) ICCPR provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence must be prohibited by law. In other words, it is legitimate to restrict speech where it incites to violence. Inciting violence is more than just expressing views that people disapprove of or find offensive as has been recognised by the European Court of Human Rights in Handyside (*Handyside v the United Kingdom*, judgment of 6 July 1976, para.56). It is speech that incites violence, encourages or solicits other people to engage in violence: see *Surek no. 1 v Turkey* (8 July 1999, GC; contrast *Gunduz v Turkey* (4 September 2003).

The Court's case law on hate speech shows that the context is very important in determining where the line is to be drawn. At the international level, the UN has developed the Rabat Plan of Action which provides the closest definition of what constitutes incitement in international law under Article 20 (2) ICCPR.

What is quite clear under international law is that people must be free to express ideas that other people regard as extreme. The very definition of 'extreme' raises a major problem of definition, because what one person considers extreme might be considered by someone else to be appropriate or even orthodox. There is no agreed definition of what constitutes extremism under international law.

More generally, in our view, the best way to combat bad ideas is through more speech not the threat of more criminal penalties. Therefore, when adopting measures to combat extremism or radicalisation, Parliament must be extremely careful to be clear about what it is seeking to prohibit and ensure that any legislation it enacts respects the principles of necessity, proportionality and the rule of law.

Commander Walton

The Commander opened by saying that he was passionate about the rule of law, and indeed about fighting terrorism under the rule of law. He spoke about his visits to countries where the rule of law was not strong and about how terrorism flourishes in such situations.

The Commander stressed that having had experience policing the full range of extremist groups, he fully appreciated the nature of the problem. He spoke about how he had been personally disgusted at the fact that certain extremists had celebrated the attacks in Tunisia, while the bodies of British victims were repatriated. Given the enormity of the threat faced, the Commander said that he was sympathetic to the Government's aims. However, he went on, he was not sure that the measures which have been proposed would be effective.

The Commander spoke of views and actions as sitting on a spectrum or continuum, and of how individuals and groups could move along this continuum over time, citing Plane Stupid as an example of a group who he had thought to be relatively harmless environmental campaigners who had crossed the line into criminality by

storming the runway at Heathrow (which had occurred the day before the meeting). That continuum is amorphous and ever changing and it would be difficult to formulate legislation to police the line.

The proposed measures he thought would be used sparingly by law enforcement.

The Commander warned of the unintended consequences of formulating legislation too broadly and about how this can in fact exacerbate the problem and play into the hands of extremists. It would be better to have targeted legislation aimed at combating specific groups and specific problems, rather than catch all provisions.

Key Points from the Discussion

The following points were raised in discussion amongst parliamentarians and the expert speakers at the meeting. The outline below paraphrases and summarises points made. The points should not be considered verbatim quotes.

British Values and Freedom of Expression

A number of parliamentarians commented on British values and freedom of expression, making the following points:

- British values are subjective, and the views of individuals differ on the definition and content of British values.
- There is incoherence in the definition of British values underpinning the proposed measures because freedom of expression is itself a British value.
 - The lack of respect for the British value of freedom of expression underlying the proposed counter-extremism measures would undermine efforts to cause others to respect British values.
- Freedom of speech should be upheld and the remedy for the issues of extremism is more speech, not less.
 - Rather than trying to restrict freedom of expression, the aim should be to engage with people and explain why things are considered 'extreme' or harmful to society by engaging in intelligent and open discussion.
 - o If this is a battle for hearts and minds, then we have to believe that rational, reasoned speech will prevail.

Inclusive Society and Engagement

The discussion touched on the subject of engagement with and inclusion of Muslim communities in UK society, and included the following points:

- In practice, what works to counter violent extremism is to convince Muslim communities that they belong in the UK and ensure that they do not feel alienated.
- Extremism operates best where there is ambivalence—alienated people can be attracted to extreme groups that claim to serve their interests.
- There is a need for engagement with Muslim communities, rather than using law to address the issue, and that community engagement is the province or responsibility of politicians.
- The new Prevent Duty encourages community engagement.

Existing Measures—Hate Speech

Some parliamentarians highlighted existing measures, particularly laws on hate speech, and their comments included the following points:

- There is a question as to whether the proposed measures are addressing an actual or perceived issue, and many things are already being addressed well
- The kinds of speech identified in the discussion would already constitute criminal speech, for example inciting hatred of women.
- Universities currently do not tolerate criminal speech. The proposed legislation would require universities to prevent lawful speech, not just criminal hate speech, but other speech such as that which disrespects other religions.
- Criminal speech is sometimes not prosecuted due to a lack of evidence to support the prosecution.

Responsible Exercise of Free Speech

There was some discussion of whether there is a requirement to act responsibly when exercising free speech, particularly in cases where it is known that one's exercise of free speech will cause immense offence and almost certainly result in violence, however concerns were noted that:

- Such a requirement could be a slippery slope.
- There had previously been blasphemy laws, and that it was not desirable to return to having such laws.

Concerns about the Proposed Measures

Various comments included concerns about the proposed measures including:

- That the proposed legislation was part of a trend towards vague and broadly drafted legislation.
- That the proposed measures would not in fact work.
- What is needed is a practical test for what sort of utterance would amount to a crime under the proposals.
- Note the example of a video that was offensive to many Muslims, which was available online. Efforts to ban the video and remove it from the internet had the opposite effect of encouraging the video to spread and increasing the number of views that the video received.
- That the proposed measures would create fear and a sense of alienation amongst Muslim communities, and that such alienation helps extremism.

Concluding Comments

Amongst the concluding comments by the panel:

- Dr Guillemin noted the issue of equality before the law as particularly acute for minority communities;
- Professor Glees argued that the UK can address extremism secretly through the secret service, or transparently under the law; and
- Professor Gleave made two cautionary observations:
 - o Sharia law is not a monolith, rather it is amorphous; and
 - O Proposals on non-violent extremism are based an idea of a conveyer belt from non-violent extremism towards violence, but this idea has not been proven.

Expert Speakers' Biographies

Professor Robert Gleave is Professor of Arabic Studies at the Institute for Arab and Islamic Studies, University of Exeter. His research and teaching specialisms are classical and contemporary Islamic ideas, with a particular focus on the justifications for violence within Islam-inspired movements. As an Economic and Social Research Council leadership fellow, directing the project "Islamic Reformulations: Belief, Governance and Violence", Professor Gleave has been convening a series of seminars examining the legal and social controls on religious and ideological commitment. These seminars have been examining the ethical, legal, social and political issues raised by the legislation regulating extremist views, particularly their potential effect on Muslim communities, with contributions from practitioners and academics sharing their experience and research conclusions.

Professor Anthony Glees MA MPhil DPhil (Oxford) is professor of Politics at the University of Buckingham and directs its Centre for Security and Intelligence Studies (BUCSIS). He has a specialist concern with intelligence-led security activity and with how democracies can lawfully protect themselves from violent extremism, subversion and terrorism. He has written and lectured at home and abroad on many aspects of these concerns, including security policy in respect of Islamism, on the threat from the extreme right and left, and from hostile states. He is the author of six books (four of which are single authored), numerous chapters in books and scholarly articles. He studied at St Catherine's College, Oxford where he was also a senior associate member of St Antony's College. His previous full-time appointments were at the Universities of Warwick and Brunel (where he was latterly professor of politics). He has been invited to give evidence to various Parliamentary inquiries, most recently on 'privacy and security' to Parliament's Intelligence and Security Committee in 2014.

Dr Gabrielle Guillemin is Senior Legal Officer at ARTICLE 19, an international free speech organisation based in London. Dr Guillemin covers all areas of ARTICLE 19's work, including the freedom of expression rights of marginalized groups, hate speech and incitement, the right to freedom of peaceful assembly, and access to information. She has been leading the organisation's work on internet policy issues since 2011. She is an independent expert attached to the Council of Europe committee on Cross-border flow of Internet traffic and Internet Freedoms. Prior to ARTICLE 19, Dr Guillemin worked as a registry lawyer at the European Court of Human Rights for four years. She was called to the Bar of England and Wales in 2006. She holds an LLB – Maitrise de droit français (1st Class) from Paris I Pantheon Sorbonne – King's College London and an MSc Human Rights (Distinction) from the London School of Economics.

Commander Richard Walton joined the Metropolitan Police Service in 1986 and has spent the majority of the past 28 years in the field of counter terrorism interspersed with periods in territorial policing and serious crime, where he held a number of senior positions. He began his career at Paddington Green before joining Special Branch in 1989. He then served for five years in a variety of specialist roles including domestic extremism, Irish and International terrorism, close protection and the Anti-Terrorist Branch during the Provisional IRA bombings of the early 1990s. Over this period he was commended twice for preventing terrorist acts in the UK. During the London underground bombings of 2005, he co-ordinated the police counter terrorism response in COBR, the government's crisis centre. He subsequently undertook a review that recommended the merging of Special Branch with the Anti-Terrorist Branch leading to the creation of the Counter Terrorism Command (SO15) in 2006. He was promoted to Commander of the Counter Terrorist Command in June 2011.