EXTREMISM AND THE LAW

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INTRODUCTION

1. I am a proud descendant of extremists. Farmers in Galloway during the Killing Time of the 1680s, the brothers Gilbert and John Milroy were from the theocratic strain of that Covenanter tradition, later described by Sir Walter Scott in *Old Mortality*, which sought both to practise and to impose on others its own austere and uncompromising religious beliefs.

2. The warlike intolerance of Gilbert and John was equalled, indeed surpassed, by that of the authorities whom they defied. The brothers refused in 1685 to take an oath of allegiance to the King, fled to the hills and after "*many remarkable escapes*" were run to ground. Their livestock was taken, and their wives were tortured with matches set alight between their fingers. John had his ears cut off and was then hanged, as his gravestone still angrily declares, "*without sentence of law*". My ancestor Gilbert, initially spared because he "*appeared a dying man*", was on his recovery banished to Jamaica with the status of slave, enduring a voyage of three months in which the prisoners were shackled in sixes, and 32 of them died.

3. His troubles did not end there. His master almost killed him with a sword when he refused to work on the Lord's Day. His subsequent promotion to overseer inflamed his African fellow-slaves, who first struck him on the head with a pole, leaving him "*a little paralytic*"; and then administered poison by which he was saved "*only by many timely applications of an antidote*".

4. But Gilbert's story ended peacefully, as a beneficiary of the limited tolerance afforded by the Glorious Revolution of 1688. He was pardoned by the new regime, returned home to his wife, and was described in 1710 as "*a very useful member of the Session of Kirkcowan*".[1] Any subsequent extremism in the family seems to have been of the non-violent variety: 150 years later, William Milroy of Ohio published a pamphlet in which he promoted conscientious objection in the American Civil War on the basis of a strict construction of the 1648 Solemn Declaration and Covenant.

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[1] The quotations are taken from Revd. Robert Wodrow and Revd. Robert Burns. The History of the Sufferings of the Church of Scotland from the Restoration to the Revolution. Glasgow: Blackie, Fullarton & Co. Volume IV, 1828.

5. Many of us must have similar stories in the family. Who would not be proud to be descended from a militant suffragette, from a participant in Dublin's Easter Rising or from a leading light in the banned African National Congress? And who could deny that extremists and enemies of the state, reviled as such during their lives, may subsequently be hailed as mould-breakers and visionaries?

6. But there are also extremists whom history condemns: and actions or beliefs which challenge the established order, even if they are eventually seen as beneficial, are only rarely welcomed by it at the time. EM Forster put it very well:

> "We are willing enough to praise freedom when she is safely tucked away in the past and cannot be a nuisance. In the present, amidst dangers whose outcome we cannot foresee, we get nervous about her, and admit censorship."

THE EMERGENCE OF COUNTER-EXTREMISM

7. Certainly, the concept of extremism is not held in much favour today. We might not know precisely what it is, but we are in no doubt that it is bad.

8. Lord Pannick encapsulated what many people mean by extremism – though he did not use the word – when, in a lecture given during the heyday of the so-called Islamic State, he spoke of one particular variety of it in the following terms:

> "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."

   And one need only read the manifesto of the terrorist recently arrested in New Zealand, ideologically jumbled but consistent in its violent racial and anti-Muslim hatred, to see that no faith or ideology has a monopoly on fanatical, bigoted and illiberal views, or the willingness to kill others in pursuit of them.

9. Before Brexit put a stop to policy development, countering extremism was becoming fashionable.

   a. The phrase "*domestic extremism*" had long been used by the police as a term to describe protest and violence motivated by home-grown politics or

ideology, usually of a far-right variety. Indeed the same term was used even for crimes – such as the killing of Jo Cox MP – which crossed the threshold for terrorism. As I tried to explain on the Today programme on Saturday – though I suspect well-adjusted people do not listen to the Today programme on Saturday – that terminology has now changed, and extreme right-wing terrorism is now referred to as such, and dealt with by MI5 in conjunction with the police.

b. The word extremism was also deployed in the Government's Prevent Strategy, first rolled out after the 2005 bomb attacks in London, to denote the twisted narrative that was used to justify terrorism committed in the name of Islam.

c. But the notion of extremism reached the heart of Whitehall in 2013. After the brutal murder of Private Lee Rigby on the streets of Woolwich, a small number of senior Cabinet Ministers including Theresa May and Chris Grayling, set up and served on an *Extremism Task Force* whose short report has been influential on much that has followed.

d. In 2015 was launched a *Counter-Extremism Strategy*, which remains the responsibility of the *Minister for Countering Extremism*, Baroness Williams of Trafford.

e. In both 2015 and 2016, *Counter-Extremism Bills* were announced in the Queen's Speech, though neither in the end was published. More on that later.

f. And in 2017, perhaps as an acknowledgment that Something Needed to be Done but that it was too difficult to work out exactly what, the Queen's Speech announced the formation of a *Counter-Extremism Commission* with the bold objective of, and I quote,

> "*stamping out* extremist ideology *in all its forms*, *both* across society *and* on the internet".

The Commission's task was later described, in more measured terms, as being to "*identify extremism and advise the government on new policies, laws and other actions that may be required to tackle it*."

10. I am delighted that Sara Khan, the Counter-Extremism Commissioner, is here tonight. The Commission is currently engaged on a far-reaching consultation and research exercise which will be completed later this year. I am also pleased to be a member of Sara's Advisory Board, in which capacity I will do my best to advise, from my limited

understanding of 17th century Scottish history, on the relative merits of stamping out, engagement, and live and let live – each, no doubt, having its place.

11. But the topic for tonight is what the *law* has had to say about extremism. My starting point will be the sticky question of definition. I then propose to look at the subject from three other angles: statute, domestic case-law and human rights.

DEFINITIONS

12. Extremism is not the same as terrorism. However in policy circles, the concept of extremism has never quite escaped the powerful gravitational field of the T-word – with consequences, as we shall see, that have had to be worked out in the courts.

13. With extremism as with Brexit, it may be easier to say how we do not define it than how we do. But let me touch on three approaches that have come from the judicial, the academic and the policy worlds.

Judicial definition

14. The judicial approach is in the 2016 judgment of Mr Justice Haddon-Cave (as he then was) in the libel case of *Shakeel Begg v BBC*.[2] The Claimant complained that Andrew Neil in his *Sunday Politics* programme had described him as an "*extremist speaker*"; the BBC pleaded justification – in other words, that the words spoken were substantially true – and succeeded in its defence.

15. The judgment is replete with useful learning on Islam, which the Judge described as a religion of peace. At its centre is a detailed analysis of ten speeches given by Mr Begg. The Court found that he was using a variety of rhetorical, historical and metaphorical devices to get an extremist message across. It accepted the evidence of the BBC's expert, Dr Matthew Wilkinson of the Cambridge Muslim College, that the cumulative effect of these speeches was consistent with a Salafist Islamist worldview, with positions on jihad that are violently extreme, and that these speeches "*would be regarded by the vast majority of the Muslim community as theologically extreme*". As the Judge put it, "*what is extreme is, by definition, something that is not moderate*"; and "*moderate Islam is, essentially, those ideas, doctrines and worldviews consensually agreed by .. Muslim scholars*".

Academic definition

16. Valuable as that judgment continues to be in cases relating to terrorism and Islamist beliefs, the context of the case did not require the Court to grapple with the various Government initiatives in the field of extremism, or to attempt a general definition

[2] *Shakeel Begg v BBC* [2016] EWHC (QB) 2688.

of the word. Such an attempt was made recently by the American scholar J.M. Berger, who came up with the following:

> "Extremism refers to the belief that an in-group's success or survival can never be separated from the need for hostile action against an out-group."[3]

17. For Berger, the root of extremism is in *collective* identity, and in the various harms that can result when society is fragmented, physically or ideologically, to the point where people think in terms of us and them. That still resonates, unfortunately, in Northern Ireland: and perhaps we will have to get used to it in England too, whether in segregated towns or polarised politics.

18. But Berger's definition is not without its difficulties:

    a. It defines extremism by hostility to others, without reference to the opinions or values of either group.

    b. It catches activity that few would think of as extremist: for example, the activity of urban gangs.

    c. And yet practices which many do think of as extreme – forced marriage, FGM – are not caught by the definition because, while they may represent the identity of an in-group, they are not directed at any out-group.

Policy definition

19. That takes us to what I have called the policy definition. Here, a little background is in order.

20. The Government's interest in the concept of extremism was initially inspired by a wish to identify and interrupt the process of radicalisation that can lead to jihadist terrorism in the name of Islam. That is not to say that radicalisation is always an ideological journey: people can and do graduate to terrorism by other routes: from violent crime, or through family and friendship networks. But because terrorist offending always has an ideological element – or it would not be terrorism – it is obviously useful to examine how a murderous ideology develops in practice.

21. The London tube and bus attacks of July 2005 were followed by a number of initiatives to prevent "violent extremism", foremost among them the original Prevent Strategy, which on its launch in 2006 was billed as "*a battle of ideas, challenging the ideological motivations that extremists believe justify the use of violence*." The engagements listed in the strategy launch document were exclusively with Muslims; and indeed funding under the initial iteration of Prevent was allocated across the country in proportion to the number of Muslims in a local authority area.

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[3] J.M. Berger, Extremism (MIT Press, 2018).

22. Extremism was viewed as an entry point to jihadist terrorism. As the Coalition Government stated when it revised the Prevent Strategy in June 2011:

> "Islamist extremists can purport to identify problems to which terrorist organisations then claim to have a solution. … Some people who have engaged in terrorist-related activity here have previously participated in extremist organisations."

Reference was made to the extremist groups Hizb ut-Tahrir and al-Muhajiroun – the latter already a proscribed group. The radicalisation pathway from such groups to full-blown terrorism is well established, with a quarter of all convicted Islamist terrorists in the UK having links with al-Muhajiroun, as against 10% for al-Qaida and 5% for ISIS. Experts are currently looking at whether an equivalent pathway exists from the Tommy Robinson far right to the neo-Nazi extreme right wing.

23. The 2011 revision also broke new ground by pointing out that white supremacist ideology has provided both inspiration and justification for people who have committed extreme right-wing terrorist acts. That point was driven home in the month after publication of the strategy, when Anders Breivik, who had variously identified himself as a Christian, an Odinist, a Fascist, a Nazi and – I'm afraid – a Knight Templar, killed 77 people in Norway. All the same influences, including that of "*the reborn Knights Templar*" – were claimed in the recent manifesto of Brenton Tarrant, currently in custody in New Zealand.

24. Because the Prevent programme is firmly anchored in CONTEST, the UK's four-pronged strategy for countering terrorism, extremism was at that stage of interest to the Government only to the extent that it helped draw people into terrorism.

25. But that pragmatic focus on extremism as a driver of terrorism was accompanied by a notably broad definition of the term. The policy definition of extremism is as follows:

> "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. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas."

The generality of the first sentence contrasts strikingly with the specificity of the second.

26. This definition underlies the Government's Counter-Extremism Strategy, as well as references to extremism in the Prevent programme. Though the Counter-Extremism Commission is rightly consulting on the question of definition, this one is currently the main game in town.

27. It has three particularly significant features:

    a. First, it is, as the Americans say, *viewpoint-neutral*: nothing in the definition limits it to a particular ideology or ideologies.

    b. Secondly, it seeks to characterise extremism as an *evil in its own right*, not just as the ideological fuel for terrorism.

    c. Thirdly, unlike the more neutral definition of JM Berger, it is unashamedly *values-based*: extremism is defined as activity contrary to democracy, the rule of law and human rights.

28. These points were emphasised by Theresa May when, as Home Secretary, she said in her introduction to the Counter-Extremism Strategy:

> "Where non-violent extremism goes unchallenged, the values that bind our society together fragment. Women's rights are eroded, intolerance and bigotry become normalised, minorities are targeted and communities become separated from the mainstream."

29. The counter-extremism strategy has not been an unqualified success. My former Special Adviser Professor Clive Walker has described it as "*a policy which lacks clear initial purpose or subsequent direction, progression, control and reflection*". These defects, he says, arise from "*inexact and contested meanings, objectives, and mechanisms which generate dynamics of suspicion as much as persuasion*".[4]

30. But the adequacy of the policy definition depends, as it seems to me, on what you want to use it for. Its imprecision makes it manifestly unsuitable as the basis for criminal or coercive sanctions. But its emphasis on democracy, the rule of law, freedom and tolerance provides principled guidance to assist schools, universities, prisons, OFSTED, OFCOM, the Charities Commission and all others who, as part of their work, have a civic responsibility to defend our foundational liberties and values – or, in the words of the European Court of Human Rights, "*that pluralism, tolerance and broad-mindedness without which there can be no democratic society*". It reminds the rest of us of the values which need to infuse the *counter-speech* which is the best response to bigotry.

STATUTE

31. I turn now to statute. The word "extremism" does not feature in the statute book, but the subject is nonetheless covered, because the law criminalises a range of harmful acts that could be said to be expressions of extremist views. For example:

[4] Clive Walker, "Counter-Terrorism and Counter-Extremism: the UK Policy Spirals [2018] Public Law 725-747.

a. We have a bristling armoury of counter-terrorism laws, many of them creating so-called precursor offences. Though these offences always have some link to terrorism, such links can be pretty indirect. Take for example:

    i. the offence of disseminating terrorist publications, created by the Terrorism Act 2006, or

    ii. the brand-new offence, created by the Counter-Terrorism and Border Security Act 2019, of expressing support for a proscribed organisation, recklessly as to whether others will be encouraged to support it.

b. We have laws against FGM and forced marriage.

c. We have the statutorily-backed Ofcom codes that regulate broadcasting.

d. We have the well-known offences under sections 4, 4A and 5 of the Public Order Act, which have been used for example to prosecute Remembrance Day poppy-burners and people with signs marked "Islam out of Britain".

e. And we have the laws against

    i. acts intended or likely to stir up *racial hatred*, and

    ii. acts intended to stir up *religious hatred* or *hatred on grounds of sexual orientation*: harder offences to prove than inciting racial hatred, because intention must be shown, and so must threat.

32. Such laws are always controversial, because they impinge upon expressive freedoms. As a result, they are carefully calibrated to the task in hand by Parliament, and by the interpretations of the courts. Both these points are illustrated by the prolonged debate over incitement to religious hatred – a debate in which organised religion, comedians and satirists played a vigorous part. The first, unsuccessful, attempt to criminalise incitement to religious hatred was made in 2001. Only at the third attempt, in 2006, was an offence created, and even that was substantially weakened as it went through the House of Lords.

33. The precise nature of the groups protected by such laws can also be debated: should there, to take a current example, be a specific offence of stirring up *trans hatred* – and if so, why not *gender hatred* in general, so as to catch the malign misogynistic Incel subculture which often spills over into violence. The German offence of *Volksverhetzung*, or incitement of the people, is expressed more broadly still, criminalising the incitement of hatred against any *segment of the population*, at least when it is calculated to disturb the public peace. On paper, if not necessarily in

practice, that offence comes close to operationalising the academic definition that I mentioned earlier, by criminalising certain types of action based on the belief of an in-group, *any* in-group, that hostile action is required against an out-group.

34. Three *other* possible approaches to legislating against extremism do not feature in our law.

35. The first such approach is to criminalise *viewpoint-specific speech*. Our law contains no trace for example of

    a. the laws against *holocaust denial* that exist in Austria and Belgium,

    b. the law against denial of *crimes against humanity* that exists in France, or

    c. the laws against approving or denying *Soviet crimes* that are found in Lithuania and Poland.

    There may be good historical reasons for such prohibitions: but laws in the United Kingdom expressly directed to *selected* present-day ideologies – as opposed to the underlying objectionable features of any such ideology – are surely something to be avoided if possible.

36. *Secondly*, we have no OFCOM-like regulation of *internet content*. Broadcasters demand that the internet-streamed material with which they increasingly share a screen should be subject to the same regulatory constraints as their broadcast material. Libertarians respond that individual speech, even if shared over the internet, is not the same as broadcast content and should be subject only to the ordinary law of the land. The Government prevaricates, but is said to be planning something. I am putting that one in the too-difficult box: it needs a Treasurer's Lecture of its own.

37. Nor, *thirdly*, do we have *coercive laws* directed towards extremist conduct *in general*. One example of such a law is the Russian Federal Law on Countering Extremist Activity, which contains no clear definition of extremism but rather what has been described as "*an extremely heterogeneous list of violent and non-violent activities considered to be extremist*". These activities include "*propaganda of exclusiveness, superiority or inferiority of an individual based on his social, racial, ethnic religious or linguistic identity, or his attitude to religion*". In a strange authoritarian twist, it is also extremist activity in Russia to publicly, falsely and knowingly accuse a public official of committing extremist activities.

38. We came close to introducing our own Counter-Extremism Bill a few years ago, as I mentioned. As one of those fortunate enough to have seen it – it was never published, despite being announced in the Queen's Speech – I counselled strongly

against its introduction. In fact I described it publicly as the most troubling document I had seen in several years reviewing the operation of the terrorism laws.

39. The Bill covered a range of "*extremist activity*", which on the basis of the version I saw, could have covered huge swathes of otherwise perfectly legitimate political and religious speech, including speech critical of the Government.

40. It was proposed to suppress such activity not by the application of tightly-defined criminal laws, requiring the prosecution to prove its case to the criminal standard, but by the use of discretionary *civil* orders – banning orders, extremist disruption orders and extremist premises orders – modelled on the highly intrusive control orders, now TPIMs, which are imposed only on the most dangerous of our unconvicted terrorists. Conviction for breach of those orders could have resulted in a prison sentence.

41. And it risked proving counter-productive, by *alienating* more people than it *inhibited*.

42. On that point, as I wrote at the time:

> "Of particular importance is the potential of the new law to affect those who are not its targets. … 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 exercise of core democratic freedoms by large numbers of law-abiding people. The benefits claimed for the new law – assuming that they can be clearly identified – will have to be weighed with the utmost care against those consequences, in terms of both inhibiting those freedoms and alienating those people."

43. This is not to say that statutory change should be ruled out. One could have an interesting discussion about expanding the scope of the hate speech offences to gender, or disability; or altering the conditions that need to be satisfied to make them out; or amending the grounds for proscription of organisations, as indeed I proposed, unsuccessfully, during the passage of the recent Counter-Terrorism and Border Security Bill. But the Counter-Extremism Bill would have clumsily overlaid all the fine distinctions on which Parliament, and the courts, have built into the law over the years. There can be no one-size-fits-all legislative solution to activities as various as violent racism, campaigning against gay rights, sectarian marching, and, in the manner of Jeremy Clarkson, calling someone a one-eyed Scottish idiot: all of which, so far as I could see, would have been caught by the Bill.

44. Nor is it any answer to say that the wide scope of the Bill would be rendered harmless by the discretionary good sense of those charged with its enforcement. The enforcement process would no doubt have been much fairer and more benign

than its equivalent under the Russian counter-extremism law. But it is only a few years since the Supreme Court warned in the case of *R v Gul* against Parliament delegating to others the power to decide whether an activity should be treated as unlawful. As it pointed out, that leaves citizens unclear whether their actions or projected actions will be judged to be objectionable, and risks undermining the rule of law.

CASE LAW

45. Two aspects of extremism have recently come up in the case law. I will say a word about each of those.

Prevent

46. The first relates to the Prevent Higher Education Guidance, which focusses on ensuring that students are not exposed to the undiluted message of extremist speakers. The Guidance provides that if views likely to be expressed

> "constitute extremist views that risk drawing people into terrorism", "the event should not be allowed to proceed except where [higher education institutions] are entirely convinced that such risk can be fully mitigated."

47. The Court of Appeal rejected a submission that the guidance was excessive in its scope, interpreting it as applicable only to all extremism falling within the policy definition, but only to those forms which carry a risk of drawing people into terrorism. The claimant, Mr Butt, did however succeed in a further argument: that the guidance insufficiently balanced the competing statutory obligations of universities to prevent people being drawn into terrorism and to ensure free speech. The Government was told to rewrite it.[5]

Family law

48. The second area of case law is altogether more substantial: the large number of cases in which the family courts, often in care proceedings but also in private law and wardship cases, have had to deal with concerns expressed by local authorities related to extremism, radicalisation and terrorism, and their impacts on Muslim children.

49. These cases might be considered reasonably straightforward when there is a clear risk of flight to territory controlled by a terrorist group. But in the words of a recent article by Fatima Ahdash, based on the study of 38 published cases (there are very many more unpublished decisions):

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5 *R (Butt) v Secretary of State for the Home Department* [2019] EWCA Civ 256.

> "the family courts have been increasingly preoccupied with investigating '*what materials the children have been exposed to at home*' and whether the parent in question '*supports the cause of the so-called Islamic State*', not to determine the likelihood of travel to Syria but to assess '*the welfare impact of the alleged beliefs and sympathies*' on the children. Therefore, in radicalisation cases where '*there is no likely flight risk'* to ISIS-held territory in Syria, the focus of the family courts is, in the words of Newton J, on .. '*whether and in what circumstances the religiously motivated views of parents are so harmful to their children that the State should intervene to protect the child*". [6]

50. Mr Justice Holman has drawn an analogy between these cases and cases of sexual risk. As he said:

> "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 a similar magnitude and complexion."[7]

51. Ahdash has argued that while the family courts have, in general, been appropriately cautious and restrained, these cases appear to have no real equivalent in the far-right context (or, so far as I am aware, in Northern Ireland): and that they reflect not only a desire to protect vulnerable children but a security landscape that is anxious about and that seeks to regulate Muslim cultural difference, Muslim cultural life and political or ideological expressions of Islam.

52. It is hard to disagree with Baroness Hale, who in a lecture on this line of cases to the Ecclesiastical Law Society predicted "*some lively debates to come*".

HUMAN RIGHTS

53. I shall spare you a detailed analysis of the case law of the European Court of Human Rights on the subject of extremism. But two themes can be shortly summarised.

54. First, the Court has shown itself wary of endorsing vague definitions of extremism. In *Ivaschenko v Russia*, decided last year, a border search conducted on a journalist was held to breach Article 8 given the vagueness of the definition of extremism under the Russian law. There was an echo of this in *Catt v UK*, decided in January of this year, in which the Court said that it had concerns about "*the loosely defined notion of 'domestic extremism'"* that is still used in public order policing.

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6 "The interaction between family law and counter-terrorism: a critical examination of the radicalisation cases in the family courts" (2018) 30 Child and Family Law Quarterly, 389-413.

7 *London Borough of Tower Hamlets v B* [2015] EWHC 2491 (Fam), [2016] 2 FLR 877.

55. Secondly, and more fundamentally, the Court has been firm – firmer than its detractors would credit – on the need to defend our democracies and our values. Take, for example, its judgment in another Russian case, *Kasymakhunov*, in which the applicants' objection to the banning of the organisation Hizb ut-Tahrir was dismissed. Though once very influential in this country, and notwithstanding the stated intention of both Tony Blair and David Cameron, Hizb-ut-Tahrir has never been banned here.

56. The Court noted not only certain anti-semitic and pro-violence statements by Hizb ut-Tahrir, but its proposals, having gained power, to establish a regime which rejects political freedoms and to introduce a plurality of legal systems and promote differences in treatment based on sex. Sharia law, which Hizb ut-Tahrir wished to establish, was described as

> "incompatible with the fundamental principles of democracy, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts."

57. Accordingly the Court applied the increasingly-used Article 17 of the Convention, declaring the application inadmissible on the basis that:

> "The applicants are essentially seeking to use Articles 9, 10, and 11 to provide a basis under the Convention for a right to engage in activities contrary to the text and spirit of the Convention. That right, if granted, would contribute to the destruction of the rights and freedoms set forth in the Convention."

Democracy, in other words – like the US Constitution – is not a suicide pact.

CONCLUSION

58. To conclude, I feel some sympathy for Sara Khan and the Counter-Extremism Commission: left with an issue that the Government has abandoned as too difficult, and expected to come up with a solution. I hope that as lawyers, some of us will feel inclined to lend a hand.

59. The desirability of effectively countering extremism is self-evident: but the task of doing so is complicated by difficulties of definition; by doubts as to the efficacy of action by public authorities; and by the impact and perceived impact on expressive and associative freedoms.

60. I would offer only two pieces of advice:

a. When it comes to recommending new offences or other coercive measures, work with the grain of what is already there: *just because extremism is a word does not mean that it is a useful legal concept*.

b. And over the whole range of counter-extremism activity, from counter-speech to the Charities Commission, embrace unapologetically a human rights culture which not only guarantees the freedoms of conscience, speech and assembly, but acknowledges that intolerance for these freedoms is unacceptable.

61. Having started this talk with my courageous (if perhaps a little narrow-minded) 17th century ancestors, I end by wondering what they would have made of this advice. Let me give myself the benefit of the doubt, and suggest that they might have seen the point.

62. The brothers suffered, after all, pretty much the complete set of human rights violations – from extra-judicial killing, in John's case, to arbitrary detention, torture, slavery, deprivation of property, violation of their physical integrity and denial of their freedoms of conscience, speech and assembly.

63. But remembering Gilbert's pardon, his return from Jamaica and his peaceful and devoted service thereafter to the Session of Kirkcowan, perhaps we may speculate that he found an accommodation: his own liberties, in exchange for not disturbing the liberties of others. That is the central bargain of the liberal enlightenment: a bargain that is just as vital in our own turbulent century. When faced with extremism in all its undefinable varieties, it is also a reliable guide to what we *must* tolerate, and what we must *not*.