

Three Aspects of United Kingdom Law and Policy on Right Wing Terrorism (speech given on 21 April 2021, Global Counterterrorism Forum)

1. There are three aspects of terrorism law and policy that I want to highlight in the context of what we in the UK refer to as Right Wing Terrorism. Each of these aspects can be regarded as successful; each of them reveals challenges.
2. In the UK landscape, terrorism is the legal X Factor that unlocks special policing powers and sources of intelligence, extends the range of criminal liability to cover speech offences, and preparatory acts, alters the release and post-release management of terrorist offenders, and opens up the possibility of executive measures such as banning terrorist groups and imposing forms of house arrest on unconvicted suspects. All of these, bar the last, have to date been applied to Right Wing terrorists.
3. At a level of policy and practice, terrorism changes the identity of the investigators, harnesses the skills of the intelligence community, ups the calibre of prosecutors, facilitates multi-agency preventive work and unearths pots of cash which are not available for other social ills. It was really after the 2017 attacks, one of which included the ideological murder of a Muslim worshipper, that the counter-terrorism machine properly embraced Right Wing Terrorism as a core threat.
4. The first aspect of UK terrorism law and policy I want to discuss is its threat-neutrality, or **threat agnosticism**. There is nothing in the UK definition of terrorism, or the individual offences that penalise acts of terrorist violence or precursor behaviour, that expressly, implicitly or de facto tilts the table towards any one source of threat. Importantly, there is no pull towards foreign as opposed to domestic causes. This is not surprising because permanent UK terrorism legislation grew from emergency laws to deal with Northern Ireland-related terrorism, a very domestic form of terrorism. This means Right Wing Terrorism is readily assimilable into UK law and practice.
5. It is fair to say that this threat-neutrality is successful. Not only has the legislation provided ready tools for countering RWT, but during the last half-decade or so, it has been possible to demonstrate that terror laws are not inherently biased against Muslims: the same legislation is used to pursue and convict Right Wing Terrorists as Islamist Terrorists. Statistics on arrests, convictions, prison populations and preventive referrals all bear this out.
6. The challenge is that threat-neutrality is question-begging and places pressure on the police and security services to justify why they are not treating other types of violent extremism as terrorism. If you consider the activity promoted on the fringes of Right Wing Terrorism, for example by violently misogynistic incels, the question arises whether it is being taken seriously enough if not given the terrorism treatment. It requires nerve on part of authorities to carry out accurate and honest threat assessments, a willingness to resist political pressure, to ensure

that online voices do not distort the scale of the threat, and I think more openness with the public about how choices are made when to treat something as terrorism or, conversely, hate crime. The terrorism response will never be a practical option for dealing with all social ills resulting from violence and hatred. Invoking the machinery of terrorism, with its high side intelligence systems, ‘need to know’ principles, and multi-agency concordats can act as a drag anchor to taking action on the ground. It may also be politically inconvenient to use the language of terrorism: in Northern Ireland much violence with an ideological colour is now addressed not as terrorism but as paramilitarism.

7. The second aspect of UK terrorism is the **width of its definition**. The violent advancement of any political religious ideological or racial cause will do. Although not quite as wide as the FBI's definition, which includes social causes, this definitional base is quite wide enough - indeed extraordinarily wide - as a gateway to laws conferring special powers and extending criminal liability. Terrorism does not depend upon any group dynamic. So as well as dealing with Right Wing Terrorist organisations such as National Action, terrorist powers are available for the pursuit and prosecution of atomised loners.
8. The width of the definition even allows some reach into the more confused corners of Right Wing Terrorist ideologies. I have already mentioned incels: the first successful terrorism prosecution for incel-related violence took place in Scotland last year. But police and officials do struggle with what they call mixed unstable unclear ideologies. My own view is that the search for doctrinal purity is not determinative, and many confused individuals will nonetheless advance a political, religious, racial or ideological cause through violence. I tend to agree with Professor Waldron of New York University that causes don't have to be very sophisticated and aren't necessarily coercive (“do this or I'll do that”). For all its jargon, Right Wing Terrorist ideology is often about preparing the ground for a final showdown, or in its adherents' terms, ‘taking the red pill’. That, in my view at least, can amount to an ideological cause.
9. The challenge here is the risk of overreach and legal uncertainty. To some extent that just reflects the contested nature of terrorism. But I am aware of unease amongst counter-terrorism practitioners about isolated increasingly young males, many of whom are or appear to be on the autistic spectrum, who develop a special interest in Right Wing Terrorism, for example a fascination in weapons, insignia and Nazi history. These individuals, who may of course pose a threat of violence (as of course many individuals do, without being terrorists), are quite some way from the national security threat presented by the IRA, AQ and IS. I confess to sharing that unease, especially when it comes to terrorist prosecutions based merely on the possession of material that is widely available on the internet. I also fear the influence of Columbine, which inspired 3 plots involving young men in the UK 2018 and 2019, only one of which also had clear Right Wing Terrorist markers; I suspect that the terrorism definition is wide enough to deal with most if not all mimetic shootings, but only time will tell.
10. The third and final aspect I want to discuss is the treatment of Right Wing Terrorist **groups**. The power belonging to the Home Secretary is certainly flexible enough to ban organizations whose impact is greater online than in the real world:

especially since unlawful glorification became a ground for proscription in 2006. But the power is tethered to organisations and does not extend to message boards like the “chans”, or to terrorist branding. Nor, however well organised they are, does it cover those disseminating the hateful but non-violent ideological building blocks of Right Wing Terrorism such as conspiracies about Muslim replacement of native populations, let alone the jokes, memes and manifestos that are part of the Right Wing Terrorist ecosystem.

11. Six years ago the UK government flirted with using civil measures to ban hateful groups promoting non-violent extremism, but ultimately, and I think rightly, concluded that this would be a step too far. That initiative was provoked by ideologies that appeared to be conducive to Islamist Terrorism: the same objections of unworkability and overreach would apply to ideologies that appear to be conducive to Right Wing Terrorism.
12. But even dealing with *violent* terrorist ideology, the UK power is beginning to encounter its own limits. The imminent proscription by the Home Secretary of the US group Atomwaffen, now operating under the name National Socialist Order, illustrates the point. The group exists, certainly, but the existence of the group is incidental to its real threat which is the violent impact of its online propaganda. So I conclude this presentation with a challenge. Once a decentralised and sufficiently unstructured means of coordinating the promotion of Right Wing Terrorist propaganda is found, and it may already have been found, the UK will need to ask the key question of whether the power to ban terrorist groups as currently defined is enough. Stopping the coordination of violent threatening individuals is one thing; addressing the online coordination of violent threatening ideas (whilst preserving free speech) is another.