



SPRING ADDRESS

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flaws in the liberal tradition

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This is an expanded version of the speech delivered by T. E. Utley on 2 April 1985 in the Goldsmiths' Hall, on the occasion of the Ross McWhirter Memorial Lecture. The Centre for Policy Studies – while emphasising that responsibility for his views and arguments rests with the author alone – is delighted to bring T. E. Utley's speech to the notice of a wider public.

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Born in 1921, T. E. Utley is Chief Assistant Editor of the Daily Telegraph and a specialist on Northern Irish affairs. His numerous publications on political and philosophical questions include 'Lessons of Ulster' (Dent, 1975).

## Terrorism and Tolerance

I HAVE NEVER UNTIL TONIGHT HAD AN OPPORTUNITY TO EXPRESS PUBLICLY MY ADMIRATION FOR MY OLD FRIEND ROSS McWHIRTER. He was killed by the IRA in 1975, and I was myself in hospital at the time. I had no opportunity to celebrate him, or to reflect on the significance of his death.

Ross McWhirter believed in the free society. He was a genuine liberal in the sense in which I shall use that word throughout this speech. He believed in a society which would depend for its existence and progress on spontaneous forces; he believed in a society in which all men had fundamental rights which the state existed to protect. He saw that society menaced by terrorism, and he established a fund to reward those who might report terrorist activities and thereby bring the evildoers to justice. For this he was rewarded by assassination, on his doorstep.

It therefore seems to me suitable tonight to consider this phenomenon of terrorism and to consider the response which the liberal society should make to it. The circumstances of Ross McWhirter's death bring me to my first point, the view widely held among liberals that terrorists are psychopaths, people of diminished responsibility, people who kill without thought of the consequences. This is not so. They are extremely calculating people; they choose their targets, and they choose them very well.

Ross McWhirter saw that it might be possible to defeat terrorism by offering material rewards to those who would report it. He was therefore designed to be killed. In the same way, Airey Neave was assassinated. He had applied himself to the consideration of terrorism in Northern Ireland. He had arrived, in my opinion, at a wholly correct conclusion about how the IRA could be defeated. He had worked it out in detail; he had equipped the Tory Opposition with a policy precisely designed to achieve that end. So he was killed as well. Thereby the IRA achieved a precise political object. It is an object which has paid off enormously; it changed the whole designed course of British policy. These are not the actions of maniacs, they are the actions



of extremely calculating people. It is impossible not to congratulate them on their success.

And yet this is not how they are commonly regarded. The thesis I wish to present to you tonight is that terrorists in general, and the IRA in particular, are devoted to deceiving us about their nature and to exploiting certain errors in the liberal tradition which are bound to operate to their advantage. The first of these errors I have already pointed out: it is the view that these people are maniacs, victims of diminished responsibility, who will not be dissuaded from their evil purposes by any sort of threat which might lead them to postpone or abandon what they propose to do. They are not of this character at all; they have precise objects which they will pursue remorselessly. They kill the right men.

There is another liberal idea which operates to their advantage: it is the idea that they are idealists, that somehow their ruthless conduct, being inspired by aspirations for the public good, however misguided, makes them morally superior to ordinary criminals. This is a very curious notion.

Surely, those who raise rebellion against the state and attack the whole of society are not to be regarded as superior to those who, yielding to the ordinary frailties of human nature, steal, show violence to their neighbours and defraud. It is a curious characteristic of our culture that crimes directed specifically against the whole existence of society are deemed to be in some way worthier than relatively petty offences directed against particular individuals. Why has this illusion come about?

I think partly because of a failure to understand the infinitely complex motives of terrorism. To begin with, there is a failure to understand the extent to which ordinary venal instincts assist the terrorist cause: it is just untrue that everybody who participates in terrorist crime is an incorruptible idealist. The whole system depends on bribery and the exploitation of human fear and human greed.

It is therefore an error to suppose that the motives of terrorist crime are necessarily different from the motives of ordinary crime. Very often they are not.

To be exact: the IRA in Ulster and in the South of Ireland is sustained by a large number of what might be politely described

as 'commercial activities'. It robs banks and post offices; it draws protection money from threatening to destroy commercial premises unless it receives a regular subscription; it deals in the sale of drugs; it maintains taxi firms which bring it money by the normal exercise of their functions and are also available for more purely military activities such as the hijacking of 'undesirable people'. It succeeds in bringing to itself a good deal of the money which has been generously spent by British governments in subsidising industry in Catholic areas like West Belfast.

Inevitably, those who are engaged in these variegated exercises have different motives. Some, no doubt, are 'fanatics', and therefore deemed, in the terms of the liberal tradition, to be 'pure of heart'. But it is very easy to see how this kind of 'purity' can degenerate into sheer commercial enterprise.

The same pattern is repeated on the other side, by various illegal Protestant para-military movements which mix themselves up in the business of getting money – by initiative accompanied by menace.

But even when terrorist crimes are not induced by ordinary criminal motives, are they necessarily superior? Fanaticism is an evil thing. It is the condition of mind in which a man obsessed with one goal in life assumes that all other goals have no validity and that those who pursue them have more or less deprived themselves of the status of human beings. One of the most repulsive aspects of Northern Irish terrorism is the levity, indeed the jocularity, with which murders are often committed. To suppose that this sort of thing is somehow morally superior to private violence and private crime is absurd. It is in fact far worse.

But, you may say, whatever the moral quality of terrorist crime, it will not respond to the normal deterrents to crime, the fear of punishment. There I think you are wrong. Venal terrorist crime will obviously respond to such deterrents; it is undertaken from greed, and it will be deterred by fear. Even 'idealistic' terrorist crime will in my opinion respond to deterrents; precisely because it is calculated, it will not be immune from calculation. Then, of course, there is the well known argument of martyrdom, the view that anyone killed or punished in any way for a terrorist offence will be categorised as a martyr and that his memory will



therefore rally thousands to the cause. Again, I do not believe it: in any case, a dead martyr is rather less dangerous than a living terrorist. But, apart from that the stark truth is that martyrs are not remembered. I have made the experiment of asking a number of Irish nationalists the name of the last IRA man (to do with Coventry bombings) who was hanged in England; they do not recall it. On this point, we are being constantly conned. The very name of Bobby Sands will soon be expunged from the Irish memory; others have died on hunger strike before, and they are equally forgotten. Contrary to popular belief, the Irish memory is very short, and so, I suppose, are the memories of other terrorists. The martyrdom syndrome is just one of the numerous ways in which the liberal mind is deluded.

There are, however, more profound ways in which the instincts and principles of liberalism are perverted to the use of terrorism, and it is to these that I now want to address your attention. We, as liberals (in the sense in which I have used the word throughout this speech), are devoted to certain principles of public conduct which we believe to be of universal validity. We believe in the 'rule of law', in the proposition that no man shall be punished unless he is shown, by due process of law, to have committed a crime. By 'due process of law', we mean an elaborate system of rules about evidence, and, in this country, we also mean the verdict of a jury properly instructed by a judge. This is the system to which we are devoted and which we wish to maintain at all costs.

We are, of course, in error in supposing that it is universally applicable. It presupposes various things – for instance, a society which on the whole is fundamentally obedient to the rule of law and concerned for its preservation, a society in which men are free to testify in the courts without fear of reprisals against them, a society in which juries are not subject to bribery or threat. These conditions do not generally exist, indeed, they have never existed save in a relatively few parts of the world. It is the object of terrorism to undermine them. This it achieves by threatening witnesses, threatening juries and, from time to time, killing judges and magistrates. By the resolute pursuit of these policies, it can create conditions in which the normal apparatus for the

enforcement of the rule of law is rendered useless. I shall speak only of Northern Ireland, because it is of this alone that I know.

What we have seen there is a campaign which can be very easily described. It has been made impossible to secure convictions for terrorist crime by the normal processes of law. This has been done primarily by the terrorising of witnesses and jurors. The authorities, therefore, have been driven to amend the system. My contention is that, step by step, they have been forced to adopt positions which are ever more difficult to defend on the basis of liberal principles.

Let me explain what I mean: we were faced in Ulster with a state of affairs which made all the normal processes of law difficult if not impossible to maintain in relation to terrorist crime. Our first response in August 1971 was to re-introduce the practice of detention without trial, to say, in effect, 'we know that there are certain people who are trying to destroy the state; we know who they are and where they are, but, by their own barbarous practices, they have made it impossible for us to convict them by the due processes of law. We shall therefore take them into custody, for as long as we think it to be necessary. We shall, in theory, make not a single slur upon their characters or accuse them of any crime'.

This is a clean way of dealing with terrorism. It leaves the whole judicial system intact, because it is extra-judicial in character. I shall not divert you at this moment by considering whether internment was the right policy in 1971, whether, in particular, it was properly applied; except I will say that the arguments which have been raised against it are not to me persuasive, and that I think that its role in security policy and the consequences which attended its use have been very grievously misrepresented. I am talking now about principles, not policies. I am saying simply that detention without trial, repugnant though it is to liberal sentiment, has much to commend it in that it does not involve modifying the judicial system to meet the demands of an emergency.

It is important that should understand that the practice of detention without trial is no innovation in the government of Ireland. It has gone on continually, not only in the North but also



in the South. The Irish Free State, after 1921, did not feel that it could do without it. In the course of the last IRA campaign – that between 1956 and 1963 – it was used both in the South and in the North with the most excellent results. Ireland is a place which cannot be governed tolerably by the normal institutions of liberal government. One of the great paradoxes and tragedies of what is going on at the moment is the clear and confessed belief of many responsible people in the South that the only answer to their difficulties is the re-introduction of detention. What prevents them from doing it? Not any extravagant devotion to the principles of liberalism (this is certainly not part of the Irish character); solely the conviction that, if they were to do it, the British would also do it in the North, and they would be seen as collaborating in a system which enabled the British to arrest Irishmen without trial. Not that this absurd reservation *did* prevent Mr Lynch from using internment in 1956.

But of course the practice of detention was bitterly attacked in a carefully orchestrated campaign. British governments felt sheepish about it, and tried to get rid of it as soon as possible; but they were still left with the question of how terrorism was to be dealt with in a community in which witnesses were terrified of testifying and jurors fearful of convicting. So we had to invent the Diplock Courts, getting rid of jurors and leaving the decision to judges. I am not saying that that was altogether a bad thing; Lord Denning has experience of jurors. Nevertheless, it was a retreat from the kind of judicial system which we have come to regard as part of our heritage. What is more, it did not cope with the question of witnesses; they were still terrified to speak the truth, so we had to proceed in practice by means of seeking to get confessions from the accused under close cross-examination by the police, though of course the validity of those confessions and the manner in which they had arisen had to be considered very scrupulously by the judges. The practice of close interrogation by the police and the existence of courts without juries made an even better target than internment for high-minded liberal criticism.

We have been driven accordingly to other expedients. One way of stopping terrorist crime is to know, by means of carefully garnered intelligence, where and when it is going to happen and

to be present in force to prevent it. This, however, is a dangerous practice: ambushing armed men in the very act of their crimes is always liable to lead to a shoot-out – and this of course raises the charge that the security forces have a policy of ‘shoot to kill’, that they have appointed themselves as executioners. That is still harder to defend on liberal principles than internment, trial without juries or close police interrogation.

Now another expedient has come into play. I speak of what is called the use of super-grasses. Much nonsense is talked on that subject. If a man comes to the police and confesses himself to be guilty of a serious crime, the police cannot ignore that confession. If he then says that he has information which could lead to the conviction of several other people for equally serious crimes and that, given some merciful accommodation, he will reveal that information, the prosecuting authorities have to consider whether, in the interests of public order, they will make such a deal. Let it be understood that they expose themselves to serious risks in striking such a bargain. To begin with, the bargain is not enforceable. If the prosecution drops a charge against such a man in the expectation of his collaboration and if, in the event, he declines to collaborate, the Crown cannot go back on its word, otherwise it will be open to the charge of having sought to bribe a witness.

It will of course be for the court to decide whether the evidence of a self-confessed criminal should be taken into account in determining the guilt of other accused people. Should such evidence be accepted without corroboration? Well, the law provides that the jury must be warned of the dangers of relying on it in the absence of corroboration, but in Northern Ireland in respect of terrorist crimes, we do not have juries, so it is the judge who has to counsel himself on the question of corroboration.

Now I believe that the judges in Ulster have carried out this almost incredibly onerous duty with the most exemplary scrupulousness; but the public impression cannot be good. The spectacle of people being convicted on the basis of evidence from wicked and cowardly people, and the value of that evidence being assessed by judges without the aid of juries, does not make a good liberal spectacle. So here we have another example of how



we are driven more and more, out of deference to our own liberal tradition, to occupy positions which are difficult to sustain on the basis of that tradition.

There are of course also plain misunderstandings of the liberal tradition which contribute to disarming us against terrorism. One such misunderstanding is the view that a free society should not depend for its survival on the use of extreme punishments such as the death penalty. In reality, there is nothing particularly liberal in that view. What determines the defensibility of a punishment is the need for it and in particular the extent to which it is capable of deterring. Where it is difficult to secure convictions for crimes (and part of the liberal tradition is to make it so difficult), the case for exceptionally severe punishments becomes stronger.

Then, of course, there is the hallowed liberal platitude that every kind of social evil has causes, and that the part of statesmanship is not to resist the evil but to remove its causes. In this reasoning, there is, it always seems to me, an error of timescale. It reminds me of that famous pre-war comic sketch (I think by Rob Wilton) in which a dour Yorkshireman in charge of the fire brigade is confronted by a hysterical lady who says that her house is ablaze and her children are in it. He goes off to find the relevant form to fill in, a form containing numerous questions about the age of the house and the probable causes of the conflagration. Then, at last, he says: 'What a silly I am! This is the form to be filled in after the fire has been put out!'

So it is with the deepset grievances which have contributed to the miseries of Ulster and other places rent by terrorism. The causes are there all right, but the fire must be put out first.

The truth is that our liberal principles and the institutions in which they are enshrined are of imperishable importance; but they do not themselves provide us with the key to how to defend them. On the contrary, they contain much which can be and is being exploited by our enemies. They do not provide universal prescriptions for the government of all societies at all times, and particularly for the government of societies which are exposed to terrorism. We should depart from these liberal principles and practices only in the face of an emergency and with the utmost

reluctance; but there are times when we do less harm to our integrity by departing from them in a clean and clearcut way than by trying to adapt them to conditions in which they cannot function.

You could well complain that I have given you no answer to what is conventionally described as 'the problem of terrorism.' This is, indeed, so. Once the battle against the whole existence of society in its currently established form has been started, questions of strategy and tactics arise. Armchair critics have little use in the discussion about what precisely ought to be done. That has to be decided day-by-day by people on the spot, who know what consequences would attend various courses of action.

For example, I do not think that there is any argument in principle against the use of the death penalty against terrorist crimes: those involving murder or – I would add – those involving simply the widespread destruction of property for the purpose of rendering normal social life impossible. Yet that does not mean that I would necessarily recommend the re-introduction of the death penalty tomorrow in Northern Ireland.

There are various obstacles to that. One of them has been (and probably still is) that the possibility of arresting criminals and bringing them to justice in the Protestant areas of that Province is much greater than it is in the Catholic areas. The Protestant para-militaries believe themselves to be engaged in a defensive exercise against an attempt to force them and the majority of the population into an unwilling union with the Irish Republic. They would be much upset to have Protestant murderers (for so they are) convicted and hanged, while Republican murderers escape the law. That is 'quite a problem'.

Equally, there is no doubt that the re-introduction of detention in Ulster tomorrow would cause serious difficulties. 'World opinion' (that ultimate resource of the liberal intelligentsia) would be outraged; there would be scenes on the streets. The very considerable advantages of taking this action would have to be measured against the immediate consequences of doing so.

In this respect, I think we miss innumerable opportunities. There are occasions (the Mountbatten assassination and the



almost simultaneous murder of several soldiers was one of them) when opinion in Northern Ireland – nationalist as well as unionist – is immensely disposed to strong action. There have been many times when we could have done anything that we wanted to do. The feeling lasts for about a week. The liberal conscience immediately asserts itself in Britain. Its language is familiar: 'We must not act hastily; we must not act under the influence of anger.' So we do not act at all; as a result, the opportunity is lost; something else soon happens (the accidental killing of a small child by a rubber bullet, for instance) which alters the whole temperature and wipes out the memory of the great atrocity.

My point is this: the methods by which one wages war against terrorism must be determined empirically. They must be left largely to those who are in charge of the operation. They cannot be laid down in abstract form and embodied in a series of invariable rules. All sorts of considerations have to be weighed against each other: one has to consider the reactions which will be provoked by particular moves, and the practical advantages which will arise from the moves themselves. There is a predisposition in the liberal tradition to assume that the reactions to any strong measures will cancel out the advantages of those measures. This is a grotesque fallacy; sometimes it will be so, sometimes it will not be so. Political judgement must settle the matter, but our liberal predilections too often paralyse political judgement.

There is, of course, one insuperable difficulty which lies at the heart of this discussion. I speak of the distinction between 'civil' and international war. In an international war, one knows one's enemy. He can be resisted without restraint or only with such restraints as are laid down in international conventions still observed. The case is quite different when we come to consider civil disturbance within a political community.

Here, the enemy is unknown. What is more he can lay claim to all the protections afforded by the law of the community in which he lives. Also any action taken against him is always subject to the danger that it will injure innocent people – the bystander caught in cross-fire, for instance. Terrorists are not at all unaware of the advantages which this peculiar status confers

upon them. Indeed, in Northern Ireland, the 'innocent bystander' is often placed in this vulnerable position by the terrorists in order to discourage action mounted against themselves. What, in those circumstances, must the liberal state do?

This abstract consideration becomes real in cases where soldiers are accused of having murdered terrorists by the use of excessive force. This concept of 'excessive force' impregnates our liberal thinking. As the law stands, a soldier, in shooting at a terrorist, must decide whether it is necessary to do so in order to prevent him from committing a serious breach of the law. The calculation is one of infinite complexity: the soldier must be assured not only that the terrorist would escape if he were not shot, but also that the gravity of the crime which the terrorist has in contemplation is so great that shooting him is justified. These complex equations have to be worked out within seconds or fractions of seconds; but, when the deed is done, it is replayed at length, considered at leisure by barristers and judges, and the soldier concerned faces no less a charge than that of murder.

I see no way of avoiding this dilemma. If soldiers gratuitously shoot to kill, when there is no need for them to do so, they should be punished; if they wantonly fail to address themselves to the question of whether their target is legitimate, they should also be punished; but there will be grey areas, and, in those areas, a liberal society which does not give the benefit of the doubt to those who are defending it will undoubtedly perish.

So it is also with the damage done to innocent people in the course of suppressing riots. The possibility of such damage is always present; the methods of suppressing such riots must be so designed as to reduce that damage to the minimum. But the possibility will never be eliminated altogether.

I would go even further: it is virtually inevitable that some soldiers, policemen, and civilians will, under the impact of continual terrorist attacks, sometimes exceed the limits of what is reasonable in self-defence and the defence of society. Much is being made of the crimes alleged to have been committed by members of the Ulster Defence Regiment, which is stigmatised as a 'sectarian force'. This brave, integral part of the UK army is,



indeed, almost entirely Protestant in composition. It is Ulster's 'Home Guard'. Why is it Protestant? For an answer, one need only look at the IRA's carefully calculated policy of shooting Catholics who join the UDR.

If some members of this force have erred, what is the state to do about them? Certainly punish them, as it does, though it gets absolutely no credit from its critics for doing so. But should it abolish the force altogether? The effects of doing so would be disastrous: the functions it performs could not be performed by anybody else, excluding the possibility of a vast expansion of the Royal Ulster Constabulary. But that also has the reputation of being a 'sectarian force', as a result of having been accorded precisely the same treatment by the IRA as it has meted out to the UDR.

The moral seems to me to be that liberal societies must be ruthlessly frank in describing the difficulties they have in contending with terrorism. They must freely accept the fact that innocent people will sometimes suffer from the response which they mount to terrorism; they must insist that this suffering is not deliberately inflicted by the authorities and that they do everything possible (as they most certainly do) to prevent it, and that the responsibility for it rests, therefore, not with government but with the terrorists themselves. They must freely admit that, in the course of anti-terrorist activity, crimes will be committed by individual members of the security forces, and they must prove to the world that they do everything possible to bring the perpetrators of such crimes to justice. But they must also point out that the reasoning which suggests that, if a minority of the security forces commit crimes, the case has been made for abolishing those forces, is an absurd delusion which terrorist propaganda is only too delighted to exploit.

Much more candour is required for the defence of what we do to suppress terrorism. The question should be aired publicly. It is impossible to defeat terrorism without modifying or abandoning temporarily some of the institutions and conventions of liberal government. The consequence of not defeating terrorism is the destruction of liberal government. The duty of the state to do nothing deliberately evil, and to depart no

further than necessity requires from the principles of a free society is accompanied by another duty – that of defending society itself and its individual members against terrorism.

Too often the fear of offending 'world opinion' and (more inexplicably) 'public opinion at home' induces the authorities to pretend that they are not departing at all from liberal conventions in the course of their fight against terrorism. Of course they *are* so departing, and must do so if they are not to surrender. Terrorist campaigns are precisely designed to make such departures essential if surrender is to be avoided.

What is really essential is that deviations from the liberal path should be kept to the necessary minimum and should be publicly and candidly defended (though sometimes a clean breach is better than an attempt to modify a liberal institution to the needs of an anti-terrorist campaign). But what is most important of all is that the objective of the exercise – the preservation of a free society – should never be forgotten or blurred. Indeed, sheer political will in the defence of that objective is one of the most formidable weapons against terrorism. Short-term political expedients, designed to give the impression that 'the causes of the trouble' are being removed can be lethal. Terrorists must not be allowed to dictate either the nature or the pace of reform; if reforms there are to be, they must proceed according to principle and in a manner deliberately calculated to avoid the impression that they have been extorted by force.

None of this attempts a detailed answer to terrorism in Ireland or elsewhere. It is, rather, humbly offered as a suggestion of the criteria which should govern the behaviour of liberal societies under terrorist attack.