

*Encouraging
terrorism in the UK
and USA: a third
way for limiting
free speech?*



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Overview of presentation

- *Significance of freedom of expression*
- *Encouragement of terrorism – s.1 of the Terrorism Act 2006*
- *Article 10 of the ECHR, freedom of expression, and proportionality*
- *1st Amendment, free speech, and strict scrutiny*
- *Encouraging terrorism in the UK and USA: a third way for limiting free speech?*

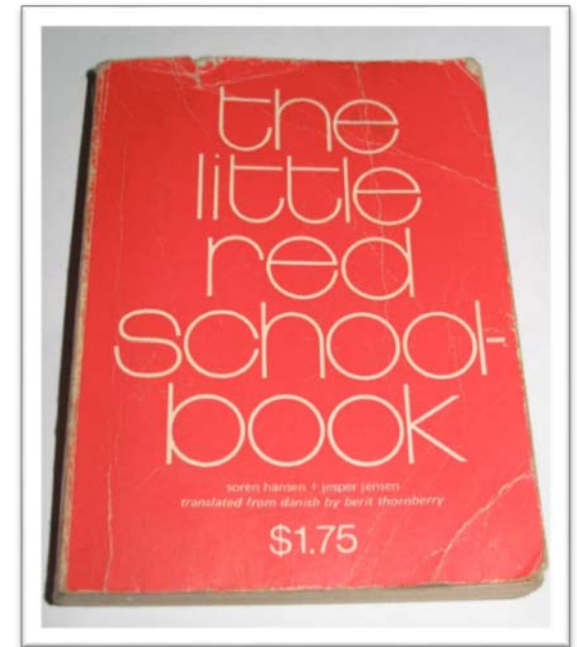


Significance of freedom of expression

The Court's supervisory functions oblige it to pay the utmost attention to the principles characterising a 'democratic society'.

Freedom of expression constitutes one of the essential foundations of such a society...

Why?



- *Handyside v United Kingdom* (1976) 1 EHRR 737

Significance of freedom of expression

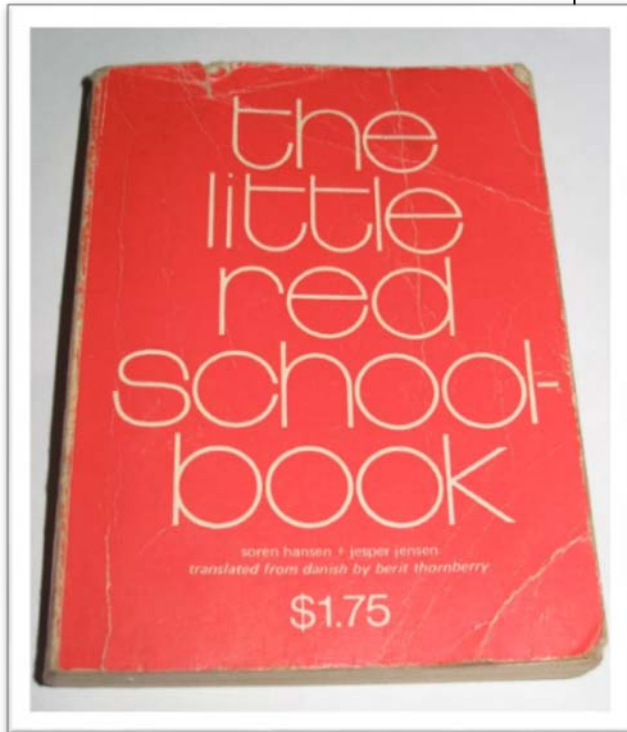
R (Animal Defenders International) v. Secretary of State for Culture, Media and Sport [2008] UKHL 15

‘The fundamental rationale of the democratic process is that if competing views, opinions and policies are publicly debated and exposed to public scrutiny the good will over time drive out the bad and the true prevail over the false.’

It must be assumed that, given time, the public will make a sound choice when, in the course of the democratic process, it has the right to choose.’

FCC v. Pacifica Foundation, 438 U.S. 726 (1978):
‘For it is a central tenet of the First Amendment that **the government must remain neutral in the marketplace of ideas.**’ (at pp.745-746).

Freedom of expression?



- Subject to Article 10(2) [of the ECHR], it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference,
- **but also to those that offend, shock or disturb the State or any sector of the population.**
- Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.

- *Handyside v United Kingdom* (1976) 1 EHRR 737

But the internet – a platform for terrorists?

- *propaganda*
- *indoctrination*
- *radicalisation*
- *recruitment*
- *training and*
- *fund raising*



The internet is transnational,
inexpensive, fast, instantaneous
and anonymous



Encouragement of Terrorism – s.1 of Terrorism Act 2006

Abu Hamza sentenced to life in prison on US terrorism conviction

Radical cleric given two consecutive life sentences with no possibility of release after conviction on charges related to kidnapping of 16 tourists in Yemen



▲ A courtroom sketch shows Abu Hamza, 56, in US district court in Manhattan on Friday. Photograph: Jane Rosenberg/Reuters

The radical cleric **Abu Hamza** was sentenced to life imprisonment with no possibility of release by a US federal court on Friday. He was given two consecutive life sentences and five to 15 years on nine other counts.

Encouragement of Terrorism

Section 1 of the Terrorism Act 2006 states:

(1) This section applies to a statement that ***is likely to be understood by some or all of the members of the public to whom it is published***

as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism.

Encouragement of Terrorism – s.1 of Terrorism Act 2006

Encouragement of Terrorism

1(2)(b) (i) intends members of the public to be directly or indirectly encouraged...

to commit, prepare or instigate acts of terrorism; or



1(2)(b) (ii) is reckless as to whether members of the public will be directly or indirectly encouraged...

to commit, prepare or instigate such acts or offences.

Encouragement of Terrorism – s.1 of Terrorism Act 2006

Anjem Choudary convicted of supporting Islamic State

Notorious hate preacher faces up to 10 years in prison after swearing allegiance to Isis, it can now be revealed



Encouragement of Terrorism

(1)(3) For the purposes of this section, ***the statements that are likely to be understood by members of the public as indirectly encouraging the commission or preparation of acts of terrorism include every statement which—***

Encouragement of Terrorism – s.1 of Terrorism Act 2006



***(a) glorifies the commission or preparation
(whether in the past, in the future or generally)
of such acts or offences; and***

Dissemination of Terrorist Publications

Dissemination of Terrorist Publications

Section 2 (1) of the Terrorism Act 2006 states:

- *'Intentionally' or 'recklessly'*
 - *'directly' or 'indirectly'*
- encouraging terrorism.*

'The Blackburn Resistance' terror suspects made park training video, court told

Terror suspects dubbed The Blackburn Resistance filmed themselves "le crawling" through a park in broad daylight wearing fatigues, a court heard today.

4:57PM GMT 23 Feb 2010

The film was al Qaida-style propaganda destined to be distributed abroad, a jury at Manchester Crown Court was told.

One of the duo apparently carried a rifle as he rustled through Corporation Park in Blackburn, Lancashire.

Abbas Iqbal, 24, was said to have filmed his brother Ilyas, 23 and Muhammed Ali Ahmad, 26, on the park training exercise.

All three are accused of being "intoxicated by the evil of terrorism" as they prepared to join or carry out violent jihad.

Terrorism in the
News » UK New

In Terrorism In 1



Dissemination of Terrorist Publications

UK security and counter-terrorism

Police warn sharing James Foley killing video is a crime

Met says passing on clip of Isis militant murdering US journalist on social media could lead to prosecution under anti-terror laws



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Banning us from watching this video of a criminal act is a step too far

There is a difference between individuals exercising their right not to view or share a video, and companies such as Twitter -- or indeed the police force -- denying people the right to view it

By Jodie Ginsberg / 21 August 2014



Index on Censorship magazine

Current issue: Spies, secrets and lies



In the latest issue of Index on Censorship magazine Spies, secrets and lies: How yesterday's and today's censors compare, we look at nations around the world, from South Korea to Argentina, and discuss if the worst excesses of censorship have passed or whether new techniques and technology make it even more difficult for the public to attain information.

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Encouragement of Terrorism and human rights

United Nations Human Rights Committee

26. The State party should consider amending that part of section 1 of the Terrorism Act 2006 dealing with “encouragement of terrorism”

so that its application does not lead to a disproportionate interference with freedom of expression.

United Nations Human Rights Committee,
Concluding Observations. 30th July 2008
(http://www.icj.org/IMG/CO_UK.pdf at p.7)



Freedom of expression, Art 10, and proportionality

Qualified rights such as Article 10 of the ECHR

Qualified rights require the court to:

- balance the state's infringement of the private right such as freedom of expression
with
- the public interest such as national security or the prevention of crime,
- **applying the principle of proportionality.**



That is, the infringement is no more than necessary to achieve the state's aim.

Proportionality insufficiently demanding as a test of review?

Conviction for performance-art protest at war memorial did not violate Article 10

March 19, 2018 Guest Blogger Freedom of Expression

By Ronan Ó Fathaigh and Dirk Voorhoof

The European Court's Fourth Section has held, by four to two, that a conviction of a protestor, including a suspended three-month sentence, for performing a performance-art protest at a war memorial, did not violate Article 10 of the European Convention on Human Rights. The judgment in *Sinkova v. Ukraine* prominently highlighted "inconsistency" with the Court's prior case-law on the principle that criminal penalties are likely to have a chilling effect on freedom of expression relating to topical issues."

Facts and domestic proceedings

The case concerns Anna Olegovna Sinkova, acting as a member of the St. Luke Brotherhood. In December 2010, Sinkova and other members of the group protested "against wasteful use of natural gas by the Ukrainian government due to poor living standards of veterans," and staged an art performance at the Eternal Flame at the Tomb of the Unknown Soldier. A member of the group also

News > UK > Crime

Man who taught girlfriend's pet pug dog to perform Nazi salutes fined £800

Case provoked concern from freedom of expression campaigners and comedians

Lizzie Dearden Home Affairs Correspondent | @lizziedearden | Monday 23 April 2018 11:46

f t e 9274 shares

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Mark Meehan leaves Airdrie Sheriff Court after being fined £800 for being grossly offensive

1st Amendment and influence on social media in UK

Twitter and YouTube would not remove Anjem Choudary's posts, court told

British authorities had no power to force social media giants to take down material, hate preacher's trial heard



May calls on social media giants to do more to tackle terrorism

Prime minister to ask shareholders to pressure firms such as Twitter and Facebook



Theresa May will use a speech to business leaders in Davos on Thursday to urge shareholders to pressure social media giants such as Twitter and Facebook to do more to tackle terrorism.

1st Amendment and permissibility of speech in the US

Ted Nugent under fire for 'anti-Semitic' Facebook post calling pro-gun control Jewish politicians 'Nazis in disguise'

- The rocker wrote a [Facebook](#) post on Monday calling out several Jewish-American politicians for their pro-gun control beliefs
- 'What sort of racist prejudiced (person) could possibly not know that Jews for guncontrol are nazis in disguise [sic],' he wrote
- The post had Jewish groups accusing Nugent of anti-Semitism, including some with the same second amendment beliefs as Nugent

So who is really behind gun control?

Jan. York City mayor Mike Bloomberg	Sen. Dianne Feinstein	Sen. Chuck Schumer	Sen. Frank Lautenberg
Nancy State trouble maker and #1 Israeli agent.	Globalist political agent	Love Russian Jew immigrants your tax money.	
Rahm Emmanuel Chicago mayor	Sen. Barbara Berkley	Sen. Richard Blumenthal	Sen. Carl Levin
Served in Israel's army during Gulf War.	Lied about serving in Viet Nam.		
Alan Dershowitz Harvard professor Legal gadfly	John Rosenthal, rich Jewish social activist.	Dan Gross Handgun control	Max Nacheman CeaseFirePA

Ted Nugent
Like This Page · 1 hr · 🗨

Know these punks. They hate freedom, they hate good over evil, they would deny us the basic human right to self defense & to KEEP & BEAR ARMS while many of them have tax paid hired ARMED security! Know them well. Tell every 1 you know how evil they are. Let us raise maximum hell to shut them down!

👍 Like · 💬 Comment · ➦ Share

1,261 people like this. Top Comments

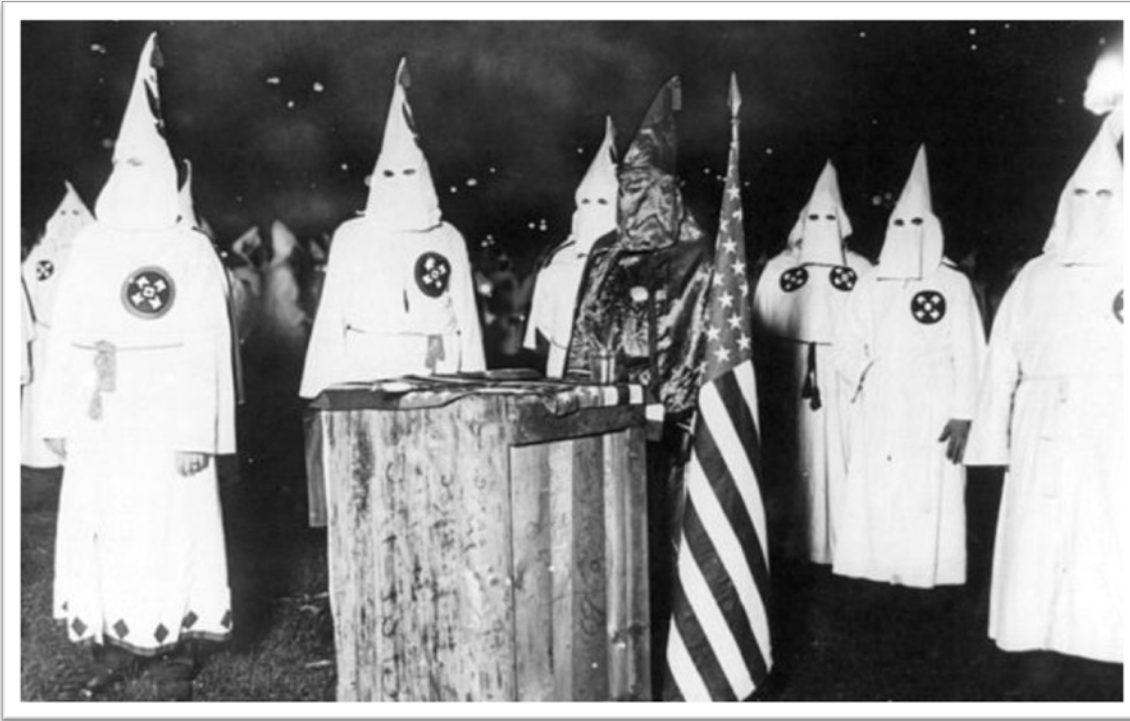
478 shares 262 comment

Alison Devlin I would remove the Israeli flags. Especially since most of them hate Israel and the Israeli people are all armed. Plus they are still our allies no matter how much Obama screws them over
Like · Reply · 🍌 178 · 1 hr
↳ 27 Replies · Just now

Haniel Adhar Markradon Last time I checked, everyone in Israel had a gun, including women, and it's their Muslim scum neighbors that don't allow their citizens to arm themselves to defend against tyranny.
Like · Reply · 🍌 36 · 1 hr
↳ 7 Replies · 11 mins

Rich Murray Ted, any Jew who knows their own history believes in firearms freedom. Israel is one of the most armed nations on earth. This is a valid
Write a comment...

1st Amendment and permissibility of speech in US – 'strict scrutiny'



***Brandenburg
v. Ohio,***
395 U.S. 444
(1969)

Advocacy of force or criminal activity does not receive First Amendment protections if (1) the advocacy is directed to inciting or producing imminent lawless action, and (2) is likely to incite or produce such action (at page 447)

1st Amendment and permissibility of speech in the US

***Virginia v.
Black,***
538 U.S. 343
(2003)



"True threats" encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals (at page 359)

Definitions of terrorism too wide? – eg s.1 of Terrorism Act 2000

UK security and counter-terrorism

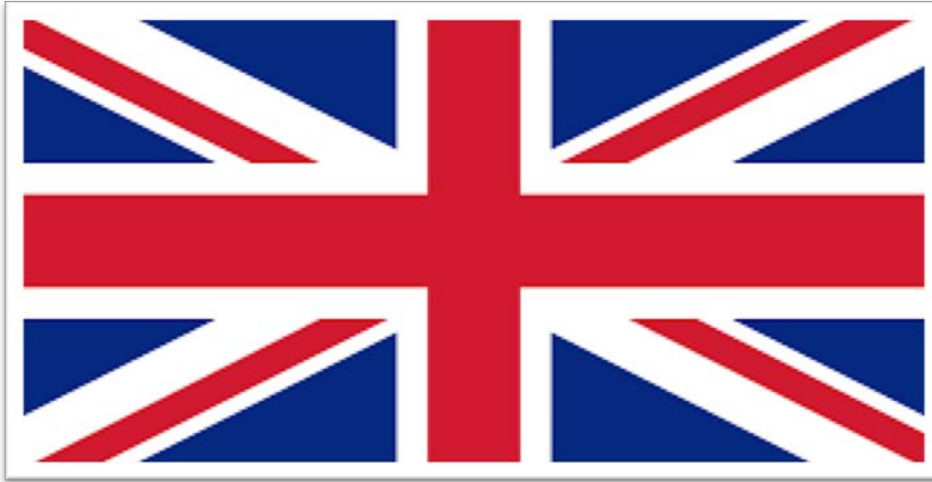
UK definition of terrorism 'could catch political journalists and bloggers'

Terror law watchdog says police and prosecutors have exceptional powers that must be confined to 'their proper purpose'



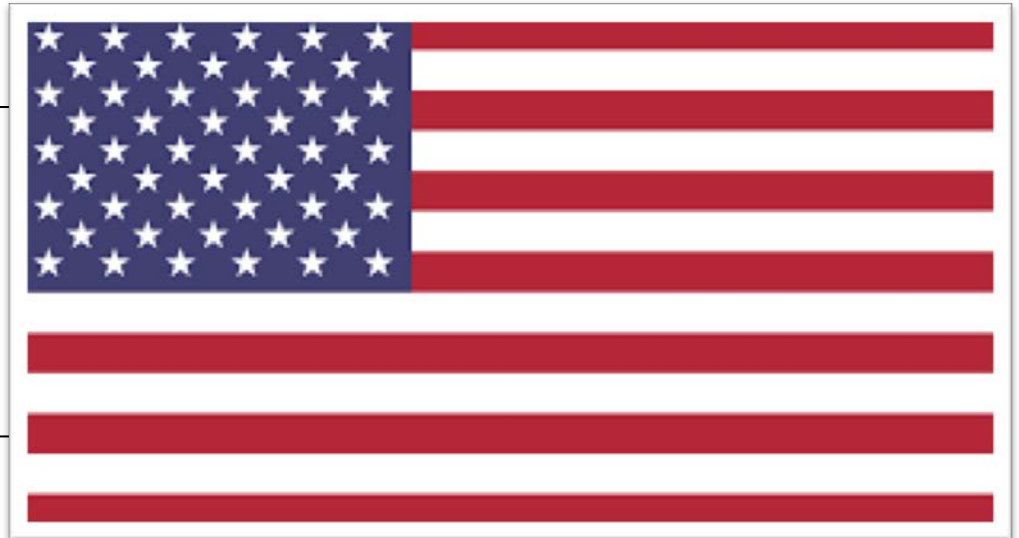
David Anderson QC, [The Terrorism Act in 2013: Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006](#). July 2014, pp. 25-33 and 74-91.

Limiting terror speech in UK and USA: neither one thing nor the other



Proportionality insufficiently demanding as a standard of review by the British courts?

Strict scrutiny too demanding as a standard of review by the American courts?



Limiting terror speech in UK and USA: neither one thing nor the other

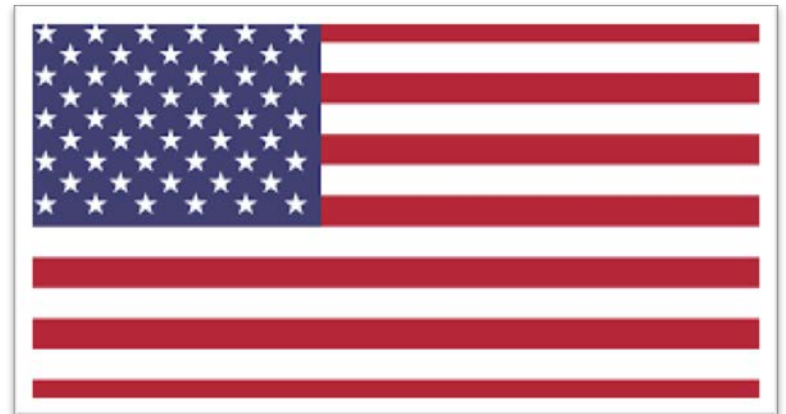


Section 1 of the Terrorism Act 2006:

- ‘*Intentionally*’ or ‘*recklessly*’
- ‘*directly*’ or ‘*indirectly*’
encouraging terrorism.

Brandenburg v. Ohio (1969):

*The advocacy is directed to inciting or producing **imminent lawless action**, and (2) is likely to incite or produce such action.’*



Public provocation to commit a terrorist offence

Council of Europe, Convention on the Prevention of Terrorism (Warsaw, 2005)

Article 5 – Public provocation to commit a terrorist offence

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

with the intent to incite the commission of a terrorist offence, where such conduct,

whether or not directly advocating terrorist offences,

causes a danger that one or more such offences may be committed.

Summary of presentation: conclusion

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Thanks for listening!



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