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by

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The Protection of Human Rights in the War on Terror

In the previous decade, because we have seen the end of a cold war and the bringing down of the Berlin wall, we have seen new democracies in Eastern Europe and in the former Soviet Union. We have seen new democracies in Latin America and in Africa and Indonesia, the joy of South Africa, all those great new beginnings. At the beginning of the 20th century it wasn't just my own grandmother who didn't have a vote, because of course women didn't, but my own grandfather didn't have a vote because he wasn't a property owner in Scotland. On the human rights front, we had also, as we reached the end of the 20th century, the decision of the House of Lords in the *Pinochet* case which established the principle that a former head of state could be extradited to another country for crimes against humanity. There had also been international tribunals created to try egregious offences against humanity in the aftermath of the horrifying events in Bosnia and Rwanda.

Human rights standards were beginning to operate as a set of principles against which all our systems would be tested, and with the spread of democracy, a real dialogue about the meaning of human rights became possible. One of the other things I have said was that human rights was where law became poetry. Because it was here that we could talk about the better part of ourselves as human beings.

Then the new century really started on 9/11 2001, when to use the words of the great Irish poet William Yeats "all changed, changed utterly". The phenomenon of terrorism was not new, either here or in the United Kingdom. Terrorism is one of the great challenges to the rule of law. In the face of such provocation the temptation to erode civil liberties is great, but this is precisely the impression that terrorists seek to stimulate and if great care is not taken, emergency measures to combat terrorism end up undermining the very freedoms we value, and they eat into the fabric of our societies.

I want to start by asserting the obvious. Law matters. Law and democracy are described as the twin pillars of our nations. But in fact law has to come first. As we saw in the aftermath of the disintegration of Yugoslavia, and more recently in Iraq, if there is a legal vacuum after a conflict, however brief, crime and mayhem will occupy that space. Law is the bedrock of a nation. It tells us who we are and what we value. It regulates our human relationships one to the other and our relationships as citizens with the state. Law is cultural and that is so often not understood. It comes out of deep wellsprings of history and experience within a country. For you, undoubtedly, it

came out of your struggle for independence, and I expect your civil war, the legacy of colonialism and the struggle for rights. In the United Kingdom it came out of a struggle to contain the power of the King - you have to go back that far - to contain the power of the aristocracy, the Barons and to contain the power of the state. Deep wounds have existed in both our countries around religion and the persecutions connected to that. Law depends on principles forged in the fires of human experience, which should not be abandoned when our democracy is being challenged. I firmly believe that there can be no black holes, no bits of our firmament where law's writs do not run and it is why, I am sure for all of us, the idea of Guantanamo Bay is such an affront. Law must be ever present.

In our modern world globalisation is providing many benefits, with access to goods and commodities from every corner of the globe. But the very developments that make global markets work: electronic transfer of money, telecommunications, the mobile phone, the internet, the web, e-mail, ease of travel, the softening of borders, deregulation, offshore banking, all equally facilitate markets in other commodities that perhaps we aren't so enthusiastic about, like drugs, arms, explosives, fissile materials, and people, the marketing and the trafficking in women and children and babies, as well as in human eggs and human organs. International crime and terrorism are the underbelly of globalization.

This new world has also brought increased levels of anxiety and all these are factors that we have to take account of as we look at our new situation. Examples are insecurity in work and flexible employment, which bring the risk of being sacked tomorrow, because cheaper labour is available in other parts of the world. Another change is the rolling back of the welfare state. Changed demographics means there are fewer young people in our nation to support the aged who are living much longer, and the question which we all ask ourselves as we are getting older is how well supported we will be. People have fears about pensions. There are greater gaps in all of our societies between rich and poor. There are also great concerns about new people in our midst. Some are fleeing from poverty, some are fleeing persecution. There are fears of crime, often inflamed by the media, and people express fear of the barbarian not just at the border but our own barbarians at the front gate. And in this uncertain frightening world it is very easy to seek out strong government and for government to read this as a license to authoritarianism.

I have spent most of my professional life giving voice to those with least voice within our legal system. My clients' experience and pain have been the best point of entry into understanding why civil liberties matter, and they do. As nations we have stopped telling the stories of how liberal democracy and the rule of law came into being and why the safeguards are democracies' life's blood. We, and I think it is happening in all of our societies in the developed democracies, we are forgetting the reason for civil liberties. A friend of mine is Michael Wagner, an American lawyer who is the Director of the Centre for Constitutional Rights in the United States. He and I often come together to talk about Guantanamo Bay and problems which are arising around the Patriot Act in the United States and erosions of civil liberties in the United Kingdom. What is interesting is that as we sit around dinner tables we often find ourselves telling very similar stories, when reminding audiences of the need to place a finger in the dyke to stop the flood of encroachments on liberty. Michael describes the way the Jewish people were blamed for the Black Death in medieval

Europe. A number of rabbis were rounded up and after torture they swore on the Torah that they had poisoned the wells in the major cities of Europe. They were all executed and of course we know now that the plague was caused by a bacillus of rats, transmitted by fleas. My Catholic story is about the great fire of London, when a rumour caught the public imagination that it was started by Catholics, who were suspected at the time of disloyalty to the King because of their over-riding loyalty to Rome. A young man was arrested, interrogated and after signing a confession, was hanged for having started the great fire of London, only for it to be discovered that he was out of the country when the fire began. Of course we know that it started in Pudding Lane and was probably not started deliberately at all by anyone. But that is what happens when there is a culture of fear, hostility and blame, when there is an urge to scapegoat. It is worth noting that one of our British citizens detained in Guantanamo Bay confessed to crimes in Afghanistan which in fact British Intelligence were able to confirm could not be right because they took place when he was in Tipton working in a video store.

The loss of collective memory is a feature of our contemporary world, intoxicated as it is with the ephemeral, the sound bite, the short term. We often know little of our history. I am frequently surprised that our young know nothing about, for example, the Irish miscarriages of justice; that in the United States, Michael Wagner tells me, the young know very little about Watergate. It's not surprising in many ways that that should be so, given the way in which our media now operates. In the United Kingdom it was always the Jewish community and the Irish community, immigrant communities, who understood why safeguards against the power of the state were so vital. Because invariably immigrants have, in their own personal histories within their families, direct experience of how liberty can be trammelled. It is one of the reasons why, for example, the United States was the great nation committed to civil liberties: because it was a nation of immigrants.

The rule of law means something more than rule by law. The Chinese will tell you: we pass law and the people must obey the law, therefore we too abide by the rule of law. But mature western democratic societies display their commitment to the rule of law in a number of different ways. In the area of crime this is done by having clearly defined laws, circumscribed police powers; we give people access to lawyers and in an open trial process there are rules of evidence, there are rights of appeal and there is an onerous burden of proof shouldered by the State. In international dialogue, we, the mature democratic nations, have urged adherence to such due process upon every nascent democracy. And human rights activists around the world, as I travel, as I lecture, have always pointed to us, the people in the mature democracies, whether it is the United States, whether it is Britain or Ireland or other countries in Europe, and said: "We want that to be the model for our governments". And I am afraid those things are not being said with the same passion anymore.

After the horrifying events of 9/11 when the people of the world grieved with the United States, George Bush declared a war on terrorism. And the language, although he is someone who is sometimes rather casual with the English language, the language was intentional because war allows for the suspension of normal laws including *habeas corpus* and in a way war can become your alibi in introducing what would be unacceptable in other times. What happened on 9/11 was a crime against humanity. But it was a crime, and the full power of the States and other states around

the world should have been invoked, it was right that they should have been invoked to bring those behind 9/11 to justice. They acted as they did, in declaring a war on terror, out of no position of moral authority. It was in these islands that the rule of law was invented, the common law that we share, and the idea of trial by jury. It was in these islands, in fact, that it was first conjured up that perhaps receiving evidence based on torture might not be a good thing, that it might not be reliable. Of course, a lot of the good stuff that we describe as being inherent in the rule of law was invented in order to deal with the very fact that here in these islands we also had invented an awful lot of the bad stuff that required that good stuff.

Our own use of war powers in Britain during the Second World War became a source of shame. In the United States similarly we saw the detention of people who were citizens. In that case it was citizens of Japanese extraction who were detained without any kind of due process after Pearl Harbour. In Britain, many people, indeed many people of Jewish extraction, people who lived in Britain and who had lived in Britain for years, but who came from middle Europe, were detained without trial. The famous case of *Liversidge v. Anderson* [1942] A.C. 206 involved a Jewish citizen originally called Jakob Perlzweig, who changed his name to Robert Liversidge to avoid anti-Semitism. He was a successful businessman and when the war broke out he joined the Royal Air Force and in fact volunteered and became an officer. But because he did not apply to join the services in his original name and it was discovered that he had had another name, and it was discovered that he used to import goods from Germany, because he had contacts in Germany from whence he had originally fled, he was imprisoned, with no trial, on administrative fiat. And when that case travelled through the courts, the judges all bowed to the argument that this was an unchallengeable executive action and that the law had no role. The one judge who stood out was Lord Atkin, who held that it was wrong to use executive fiat in this way, and that the suspension of *habeas corpus* was inconsistent with English law's traditions. He said in the famous phrase, which is still used, "that amidst the clash of arms, the laws are not silent".

Again in 1974 after the Birmingham bombing, my government created a strictly temporary measure. A "strictly temporary measure" was how it was described, of emergency terrorism legislation, and we introduced, you remember, internment without trial, and exclusion orders to exile people from mainland Britain, people who were Northern Irish. We removed trial by jury in Northern Ireland and we refused suspected persons access to lawyers prior to charge and, you will remember, because the case is famous, a case found against us in the European Court of Human Rights, where Ireland took a case against the United Kingdom in 1978. We were found guilty of using cruel and inhuman treatment in our interrogation of suspects: hoodings, beatings, stress positions, sensory deprivation. And I am afraid the story isn't very good even after we were found wanting by the European Court, as abusers of human rights that were fundamental. Our response was, well if we can't interrogate people in that way, then we should be allowed to draw negative inferences from their refusal to answer questions. And so we saw the erosion of the right to silence, the argument being made that it was only going to be done in cases involving terrorism. But basically in that period we ran a railroad through basic liberty protections. We extended the period for interrogation, as you are about to do here.

But the story in Britain is even worse. What you should realise about emergency powers is that our political masters find them such a boon that they cling to them like molluscs, no matter what the political complexion of the government, and this happened under Labour and Conservative governments, they always fall in love with emergency powers. The change in relation to the right of silence spread into the rest of the criminal justice system within six years. It started off being claimed that it would only be used in terrorist cases, that there would be an inference drawn from refusal to answer questions, or refusal to perhaps give evidence at trial. But now in all cases, even at the lowest level and even involving juveniles, the failure to answer questions when taken into a police station, even if advised by a lawyer to make no comment, can result in a jury being advised that they can draw inferences from that silence.

I also believe that the erosion of jury trial in the United Kingdom has its roots in our willingness to surrender the right to jury trial in Northern Ireland. Now, I accept that it was necessary as a temporary measure at that time because of the way in which the communities were so riven with distrust. But now the argument is made, at senior levels within our judiciary, that if they could manage perfectly well without juries in Northern Ireland why do we need them in England and Wales? And so what we are seeing are arguments that were made first of all in relation to sort of middle-ranking crime, and it had to be fought vigorously by the House of Lords, and now we are seeing jury trial being removed in serious crime. Now, I know this is an area which you have already explored here in your Special Criminal Courts, but I'm a great believer in the jury system, particularly as we are seeing erosions of democracy. I see that this as being one of the areas where we retain the engagement of our citizens in a very vital institution and I do think that having the values of the community brought into the criminal justice system is a vital thing in our societies.

What we learned from our experience of dealing with terrorism and particularly in dealing with terrorism in those years involving what came to be known as The Troubles, what we've learned is that changes and surrenders to civil liberties made there can often seep into the body legal as well as into the body politic. They change the way people act and behave and the perceptions people have of how the system might work and erosions of liberty cannot be vacuum sealed only to deal terrorism, only to deal with serious crime, only to deal with organised crime, because what happens is they eventually seep into the rest of the system.

I always say, when talking about civil liberties, that people are very happy to surrender the civil liberties of other people and they always think that it is going to be about *them* and what we always have to remind ourselves is that *them* ultimately is *us*. We unfortunately haven't learned from the experience that we had dealing with terrorism in Northern Ireland and in Britain around that same time. Much of the anti-terror legislation introduced in the '70s and '80s remained on the statute books and was still there by the time of 9/11. But we still rushed to create new legislation in the aftermath of what happened to the Twin Towers. There's something about politicians where they need somehow to have a show of activity in their armoury and they think that is the way to persuading people that they are doing something.

The concern I have is that the current wave of terrorism now taking place in the United Kingdom is projected as likely to last beyond my lifetime and this means that

any suspension of rights now could be permanent. Indeed when the issue of Guantanamo Bay came before the Supreme Court in the United States, Sandra Day O'Connor, one of the Justices in the Supreme Court, asked that very question. She said: "At what point, given the new challenges to our societies, when does indefinite detention in a place like Guantanamo Bay become perpetual detention?" And Breyer, the other judge who was particularly exercised about that bit, asked the question: "What are we talking about? A hundred years' war? Where you suspend fundamental rights, for how long? At what point I ask does detention become punishment?"

One of the fundamental things in our society has been that you do not punish without there being due process. What we learned from Ireland is that bad law is counter-productive. It often keeps alive and in some cases exacerbates the antagonisms which underpin political violence. If particular communities feel that they are subjected to special laws, a sense of injustice is inflamed and terrorism always has its roots in perceptions of injustice. You have heard it said over and over again, it is one of these things that politicians go on our television saying regularly, that it was internment that was one of the best recruiting measures that the IRA ever had. Well, certainly now the Iraq war is providing that function in relation to Islamic terrorism. What we also know, and you learned it here as we did too, is that a sense of injustice also creates the fertile soil that terrorism needs to survive even if some people are not going to participate ever in acts of terrorism themselves. It is about people knowing but never saying, people providing perhaps ancillary relief, accommodation, cover, low-level assistance and funds. We know that it also means that people who are otherwise law abiding don't express disapproval and that is what is currently happening in Britain in the Muslim community. People don't share the views of the terrorists but somehow or other they still sense that something unjust is happening to their communities.

That other cost that I was mentioning is that counter terrorists laws can give the police, and indeed the courts, special powers which can set up a poison that feeds into the bloodstream of the legal and political system. High levels of prejudice, combined with a cavalier attitude to the legal rules, led to serious miscarriages of justice in Irish cases in the 70s and 80s. But it was no accident that at the same time many other wrongful convictions took place, in the same period, involving the same police forces, and they were not all related to subversion or terrorism. There were the Bridgewater Three, there was the Stefan Kisko case, and I could give you a long list of the miscarriages of justice. Where they took place was in police forces which dealt with the bulk of the terrorism cases and it was because a culture was created that fostered a particular kind of policing. And in addition, practices were tolerated which started their life in dealing with terrorism cases and where people who should have know better turned a blind eye. Many who should have been vigilant within the legal profession, within the judiciary and the legislature, were not sufficiently vigilant. The climate around terrorism can silence many who are anxious not been seen as appeasers or sympathisers with those who are perpetrating outrages and even the media can be subverted. Everyone of course wants to be a patriot and we know that the patriots have the best songs and governments are fearful that in a culture of blame they will be accused of failure if another atrocity is perpetrated.

You can understand why governments so readily seek to create laws which they think somehow will inspire confidence. The response to the atrocities of 9/11 immediately introduced the wartime measure in the UK of detention without trial for non-citizens.

It wasn't quite Guantanamo Bay, but it was a complete disavowal of human rights. We only just in the year 2000 had seen the activation of the Human Rights Act that had been brought in with the Blair government and it was one of the most exciting things for me. I went into the House of Lords in 1997 having been the chair of Charter 88, which had argued for constitutional change, which had argued for a Human Rights Act, and here we were seeing it being suspended within a year of it being brought in to existence, into being. To do this they had to declare a public emergency threatening the life of the nation and that allowed us to derogate from the European Convention on Human Rights. No other country in Europe felt the need to do this and our derogation led ultimately to the famous Belmarsh detainee case, which went all the way to the House of Lords. On the 16th December, 2004 it was held that such detention without trial contravened human rights because it was unjustifiably discriminatory, directed as it was at non-citizens. It was creating a hierarchy of the value to be attached to certain human beings, and the whole point of human rights is they don't vest in you because you are a citizen, they vest in you because you are a human being. That notion in contemporary human rights law, post the Second World War, was to reach beyond the rights that are vested within us as citizens and to recognise rights vested in us by virtue of our common humanity. It is what we call the second wave of human rights and so it moves beyond the great constitutions and was saying: never again could we have the kind of things that had happened during the Second World War in Germany. It was rejecting registers of difference when it came to basic rights, so that even those alleged to have fomented terrorism had to be seen to have rights too.

The government could have ignored the judgment of the judges because in my country there is no power to strike down legislation. The judges in the Supreme Court, the highest court, the House of Lords Appellate Committee, do not have the power to strike down legislation. They make a declaration of incompatibility if they believe that a particular piece of legislation cannot be reconciled with the European Convention on Human Rights. Our Human Rights Act is not entrenched in the way that your Constitution is and does not have the status of a Bill of Rights. We retain the formal convention that the sovereignty of Parliament is sacrosanct. But in fact, I think that we are coming to see that the reality is that there is a body of principle or higher law with which Parliament should comply. So I think Parliament would be very cautious about ignoring a judgment in our highest court. The Government therefore respected the ruling, but it brought in sweeping powers to make control orders under the Prevention of Terrorism Act, 2005 and those control orders provide for the deprivation of liberty without charge or trial. The difference is that they apply to citizens and non-citizens alike. The control order imposed quite swingeing restrictions on fundamental freedoms, placing tight restrictions on movement, allowing people out of doors for a few hours a day with a tagging device in place, banning them from unauthorized access to friends and relatives, barring them from using telephones and computers. In many instances it really does amount to house arrest. They are executive orders made by the Home Secretary based on secret intelligence and they don't, they would argue, require derogation from the European Convention. They too can be renewed indefinitely so they are indeterminate.

One of the things that have happened is that the Royal Collage of Psychiatrists has petitioned Parliament to have in mind that indeterminate detention, without legal process, whether in this form or whether it was in the old form at Belmarsh (and

indeed it would apply in relation to Guantanamo Bay), that indeterminate detention without process is likely to cause significant mental deterioration in detainees. The lack of normal due legal process and the resulting sense of powerlessness, where people don't know what the evidence is and why they are there and whether it will ever stop, can cause severe mental health problems. The standard of proof for these control orders is reasonable grounds for suspicion of involvement in terrorism, so it is a very low burden of proof, it is below even what would be the standard of proof for, for example, bail. Indeed, it is below what it would be for arrest in certain circumstances, and the intelligence on which it is based is unavailable to the detainee's lawyer or to the detainee. The grounds for refusing bail in the UK have to be substantial grounds to fear breach of bail. So the standard of proof is much higher around bail than it is in relation to these control orders.

We counted 16 people who have been detained under them. There is no doubt in my mind that Britain's involvement in the Iraq invasion has created a forest fire of terrorist recruitment around the world and certainly amongst British born Muslims. I've just completed the case that was in the news over the last few weeks, were seven young men, British born, were on trial and five of them were convicted. (I'm happy to tell you that my client was acquitted as was Michael Mansfield's, so we say "See it's the olds pros who can still do the business, you know?" and that's what we say to all the young QCs.)

After the 7th July the Prime Minister made a very important statement and it really is one for all of us to take account of, because he was saying that the rules of the game had to change. I hate to hear criminal justice referred to as a game, but he was saying that in his view there is a need for there to be a rethink of the whole of our legal regime. The burden of proof he feels is too high in crime now. The burden of proof he feels is just too onerous on the state. He feels that jury trial is much too expensive and not appropriate for high levels of crime and also there are issues around the use of intelligence. So the first legislation, the first legislative effort after the 7th of July, was to try to introduce 90-day detention without charge. Again Parliament rejected it, and got it down to 28 days. Some people in the House of Lords from the Blairite group tried to reinstate 90 days detention but we managed to beat it back down again. At the moment it is standing at 28 days, but there are still arguments being made for wanting that to be reconsidered and to return it to the three month suggestion that was originally made by Downing Street.

The rationale made, which many people in the public found quiet reasonable, is that the police need more time to penetrate the hard drives of computers or e-mails or the sim-cards of accused persons or suspected persons; that they need time to translate documents found in the property of arrested suspected Jihadis in Arabic or maybe in other languages. There was nothing in law to prevent all that further investigation being done after charge. I always have to point this out because people kept saying, "but of course its quite right, why should it be that the police are inhibited in this way?" And I have to point out that it doesn't stop you carrying on investigating the case and adding more and more and more evidence, as any criminal lawyer can tell you, in the months before it comes to trial until the eventual cut-off point comes. But in fact there was a misperception in the public, who thought that somehow the police were prevented from continuing with investigations after the point of charging.

The real purpose of this lengthening of detention is basically about allowing for arrest and detention on really very little in the way of evidence, no real evidence. It is basically on feelings that the intelligence services have in their water, you know? Or rumour from an informant and we know how dangerous that can be. So what we're seeing is the elevation of intelligence to a new status. Intelligence is often no more than straws in the wind and it may give you a starting point for enquiry, but it shouldn't be seen as more, and in every Irish case that I ever did, it always started with intelligence. You know, where somebody, an informant in the community, would say, you know, "Jimmy Magillacuddy hasn't been seen for a couple of days and word is that something is going to be coming off over in London". So then policing would get into operation and surveillance and so forth and start the hard slog of gathering evidence. But this is a way of avoiding the hard slog. What we have to recognise is that these cases are labour intensive and they are resource demanding, and this new legal regime which is being created allows for bypassing of that professionalism in policing. And, if people can be locked up without the need for evidence, then why bother in going in search of it?

We also have to remember that most intelligence comes from informers. Sometimes they are willing informants but sometimes they are unwilling informants and particularly with the current terrorism, information often comes from people who may be illegal immigrants or people who are or have been granted leave to stay because they were seeking asylum. And therefore they are very vulnerable to the powers of the state, and so they may also have good reasons for lying or invention. We have also changed the law in Britain to create a new duty to inform, so that anyone who has any knowledge of anyone's involvement in terrorism will face charges if they don't go to the police. We are seeing wives and brothers and sisters and so on arrested and that in itself is setting up a real sense of hostility within the Muslim community.

We have seen a great extension of police powers to restrict lawful demonstrations around Parliament and Westminster and I won't go into all of that, but as much as this is happening around the creation of identity cards and so forth, people are willing to write a blank cheque for government if they think it is going to make them safe. And unfortunately not enough work has been done in showing the public where this might be going.

The thing that I wanted really to highlight tonight is that whole way in which we are seeing a shift in relation to torture. The development of universal human rights in the aftermath of the Holocaust was a great moment in history. The idea that law had been subverted for ethnic and social cleansing had shaking confidence in the rule of law because judges in Nazi Germany had sought to defend their conduct with the excuse that they were only administering the laws which have been passed democratically by an elected government and therefore they were doing their jobs properly. And there was that great moment with Eleanor Roosevelt sitting in her flat in Washington Square in New York with a whole range of people from around the world. You know, a Catholic from Brazil, a Stalinist Communist from the Soviet Union, a Confucian from China, a Canadian Liberal, the whole range, the Arab world was also represented, and they came together to create the Universal Declaration of Human Rights in 1948. Nobody came with clean hands, everybody had their own dark story, even the Americans in relation to racism and the terrible kind of apartheid that operated, and of course in Stalin's Russia there were purges still going on in camps.

So nobody could claim that they were outside it, but there was a vision of somehow a better world, that those individuals knew should be our aspirations as human beings. The idea was to create a template of legal principles against which all law could be tested and the Convention sought to recognise that people could be persecuted not just by the state but by their next door neighbours and that the state had a duty on behalf of all of us to prevent those kind of abuses by one part of a community of another.

At the core of the Human Rights Convention are the ideas of balance and proportionality. No right is absolute save one. Even the right to life allows for circumstances in which it is right to kill, to defend yourself. The one right, which is absolute in the end, is the right not to be tortured. The reason why there is an absolute prohibition on torture is not only because the process of abuse and humiliation and degradation involved in torture is so terrible and such a denial of humanity, but because of the brutalisation that such inhumanity does to the perpetrator too. That it is not just the egregious wrong done to the victim of torture but the way in which our humanity is diminished as perpetrators or those who remain silent when it is taking place.

What is changing our world is that we are seeing an erosion of that absolute prohibition on torture. We have seen it in the exposure of the conduct by the armed forces in Abu Ghraib, in Bagram, Guantanamo Bay. We have seen it in the use in extraordinary rendition for the covert transfer and secret detention of suspected terrorists and the collusion of many countries in the process, and in the deportation of suspects to countries where they face the real risk of torture. We have also seen it in the use, in fact in my own country, of information and intelligence that may have been exacted under torture.

As you know we of course condemn torture as other European countries like yourselves do and we have been active in seeking to eradicate it in the world and we insist that we do not ourselves torture people, we quickly forget what we did in Northern Ireland. We certainly are critical of anyone who instigates acts of torture and we insist that we don't send people against their will to be tortured. But the UK government in recent years sought to use evidence against suspects that may have been the product of torture and argued that that was something that they should be able to do. Again the case travelled all the way to the House of Lords, and the House of Lords judges ruled that torture evidence should be barred from the court. Our concern is that it is still being used for intelligence purposes, for the control orders which are the executive orders. One of the things which we have to be concerned about is the co-mingling of intelligence from many sources which allows the intelligence services to deny knowledge. There is also a practice that goes on of "don't ask, don't tell" which provides an alibi for the security services in making use of information that they have acquired.

In the ticking bomb scenario, which was recently presented by American law professors, people like Alan Dershowitz, they argue that judicially sanctioned torture should be allowed if a detainee has knowledge that would prevent an atrocity. It is a great subject for a law class, but the truth is that it is very rarely that it is ever likely to happen. From 1987 after the Landau Enquiry, Israel allowed for the authorization of moderate physical pressure while interrogating Palestinians suspects. Standing, hooding, white noise; sleep deprivation; deprivation of food and water. I have to tell

you it was learned from us, because we had used it in Northern Ireland. But what happened is that it became bureaucratized and it became the case where the judges automatically signed the warrant allowing for this, what was to be described as moderate physical pressure in interrogating suspects. So violent shakings were taking place, beatings, prolonged shacklings in contorted positions were all being used and in fact the statistics from human rights organisations inside Israel reported 85% of interrogations involved such conduct. There were 6,000 cases by the time the practice was declared unlawful by the Israeli Supreme Court. To its great credit, the judges in the Supreme Court of Israel led by Chief Justice Barak in fact said: "We cannot continue with this, it is an affront to our commitments to human rights". Despite the challenges that came from parts of the political firmament within Israel, he held the line on the rule of law in relation to torture.

In Britain now, we are seeking to deport people back to their own countries where they are at risk of torture, by creating memorandums of understanding with recipient countries on the basis that they agree they are not going to do the torturing. There are already people who have volunteered to return to places like Algeria who have disappeared into their prisons. One of our judges recently in the last few weeks decided not to accept as reliable one of these memorandums of understanding, so it will travel through the courts again to the House of Lords.

The business of rendition, of surrendering people to other places to avoid being responsible yourself for torture, is a disgrace, it is illegal under domestic and international law because of the denial of due process, and yet President Bush has admitted publicly on 6th September the existence of CIA secret detention and interrogation programmes. We also know because of the European Parliament report on rendition published in November of last year, that it deplored the United Kingdom government's cooperation with rendition by accommodating the refuelling of CIA operated aircraft at British airports.

So one of the things that we have to think about is the way in which we have seen that kind of erosion and the responsibility that we have to speak out. To remain quiet because we don't want to upset our friends in the United States or to upset, for your part, your friends in Britain, is I think to collude in one of the worst things happening currently in our world. No government activity should ever be beyond the law. That is what the rule of law is about. That is how it started its life, that the King was not above the law. No arm of the state should be beyond the law in whatever circumstances.

In dealing with terrorism the police and intelligence services may need additional powers. I don't for one minute suggest that they may not need additional powers and they should be subject to clear judicial oversight. Few would resist the creation of new laws, like the creation of an offence of going to training camps in Pakistan to train for terrorism. Few of us would resist the creation of new laws like an offence involving preparatory acts to terrorism. Few of us would deny the need for heightened security and surveillance in airports and in public buildings and so on, however inconvenient it may be. But what we do have to do is establish the extent to which a state confronted with terrorism can and should depart from normally legal safeguards without jeopardising the essence of the rule of law. And the only way to

counter international crime and terrorism is through working across borders, developing synergies and systems that can meet the new demands for collaboration.

I saw the problems because of the case that I have just done, for one of the witnesses was someone who had been interned in the United States by the FBI and who came and gave evidence in our trial. There were issues about receiving evidence from another jurisdiction, there were other issues around evidence coming from Canada, coming from Pakistan, how it is received into a different system and we have to find synergies for the reception of evidence in cases of this kind.

In the United Kingdom currently there are 80 cases of alleged Islamist terrorism waiting to be tried, that is 80 individuals waiting to be tried, and most of them allege conspiracy to cause explosions or the possession of articles for the purposes of terrorism or failure to inform the authorities about terrorist linked matters. The evidence is largely generated by technology, the bugging of houses and cars, the penetration of computers which produces evidence of clever e-mail systems. For example in the case that I have just done, none of the e-mails passed through the ether and therefore were subject to the kind of interception that the security services can use. What people would do is they would create a draft and leave their message in the draft box and everybody would have the password to get into the site and so the message was in the draft box and never sent through the ether. These mechanisms are used and it is difficult and the challenges to us are very real. We have been seeing the electronic hoarding and the sharing of Jihadist material of a highly inflammatory nature and so it is not just the evidence that is computer generated, the crimes themselves are often computer generated because boys are sitting alone in their bedrooms and becoming inducted and groomed for terrorism through the new electronic media without their parents having the slightest clue. The connections are international and the combining feature is usually the profound sense of hostility to western hegemony and dominance.

So what is it that we can do? The answer is that we have to proceed to trial, it is the best way of dealing with terrorism. We have to proceed to trial maintaining the highest standard possible and while we may accept that some actions involve incursions into our liberty to investigate or prevent acts of terrorism, as far as I am concerned there should be no change in our legal regime in terms of due process, there should be no removal of the rights to judicial review, nor should we be accepting the lowering of standards when seeking to establish guilt. Sometimes we have to draw back from steps which may seem very reasonable in the interest of security, because of what it will do to us, to our nation. And so it does sometimes mean having to release a person that we think might be guilty, because to do otherwise would be to destroy something of greater value.

Creating a world that is respectful of human rights, respectful of law, is a journey and it sometimes feels utopian, but our only hope in this uncertain world that I described at the beginning of this lecture, our only hope is to have a world governed by law and consent. So what is our role as citizens, as lawyers, as academics, as practitioners, as judges? Well, we too have to be the guardians of the law. If any people know about the law, it's lawyers, we know that law is the autobiography of a nation, we know that some of the chapters make better reading than others. Those of us who work within the law, who understand law's importance, have a duty. We who love the law have to

be its defenders and we must be the protectors of those who are vulnerable to abuse. We have to stand up and be counted when we see erosions of human rights and we have to protect the things that make our nations great. We also have to protect brave judges, judges who act with courage and defend the rule of law. And we have to raise the alarm call about the ways that liberty can so easily be eroded. If we abandon principle, the price is huge. That is the warning that I am making to all of us in all of our nations: that there will be great challenges in the years ahead, but law is at the base, it is the bedrock we have to hold true to it.

Thank you very much.