

SUFFOLK LAW SERVICE

BURY ST. EDMUNDS CATHEDRAL, 12 MARCH 2017

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Terrorism

1. Six years ago, I was tempted from the sheltered pastures of practice to review, on behalf of Parliament and the public, the operation of the terrorism laws. Whether patrolling South Armagh with police in body armour, questioning GCHQ about a hostage rescue in Afghanistan or speaking to detainees freshly returned from Syria, it was a rare privilege – one that now falls to Max Hill QC, well known in these parts, who is here today.
2. There were, of course, things to criticise. But my overriding impression is of pride and gratitude that at a time of severe threat we are protected so well. By preventing serious attacks without losing the consent of the communities that they serve, the police and intelligence agencies do not just keep us safe: they help preserve the cohesion which is what the terrorists really want to destroy.

Threats to democracy

3. Yet as we look at the broader landscape of political and public life, we see that things are not all that they might be. Well-functioning democracies are unusual, even today. They need to be secure from attack. But they also require – in the words of the European Court of Human Rights – tolerance, pluralism and broad-mindedness. They need decisions to be based on evidence, not prejudice. And they work better if we engage and participate with each other, in the manner of the jury room.
4. We are falling short, I would suggest, in a number of ways.
5. The language of public life has become debased. Afraid of speaking plainly, our leaders resort to bland euphemism. They obfuscate and mislead. Sometimes they even tell the “lie direct” – for which, if detected, they may have to pay a price. But we now see, as chief figurehead of the democratic world, a man who appears – so far at least – to place so little value on truth that he does not even trouble to conceal his frequent and obvious fabrications. This is serious, because it can feed only cynicism, and comfort only our enemies.

6. But there is more. We live increasingly in – choose your metaphor – tribes, bubbles or echo chambers. It's not just a question of where we choose to live or which news sources we select. We construct social media worlds of like-minded people on whom we rely not for challenge but for affirmation; pools into which we gaze, like Narcissus, and find that the reflection is just as lovely as we are.
7. And as a consequence, we become more attached to the views of our tribe, and less willing to engage in critical thought. If an inconvenient fact challenges the way we – or our group – sees the world, we may ignore it and look for others, more palatable. By sealing ourselves off in this way, we make it easy for those in politics or the media whose style is not to tell it as it is, but to manipulate the feelings of a tribe.
8. And finally, there is public indifference – the facilitator of undue secrecy, dishonesty, cronyism, and the arbitrary exercise of power.
9. Indifference is not an accusation that one could level at the Prophet Isaiah. I think he must have enjoyed composing those verses as much as Sophia Kendall enjoyed reading them. For him, those who describe evil as good, bitter as sweet, darkness as light deserve to be if not crushed in an earthquake, then carried off by foreign armies whose sandals are intact, whose arrows are sharp and who roar like lions. What a satisfying thought! Isaiah did not mince his words, and neither should we. If “post-truth” is to be an aberration, and not the new normal, we need to keep our ability to be outraged.

Lawyers

10. Faced with these internal threats to a well-functioning democracy, what can we, as lawyers, do about it?
11. For some people, of course, we are part of the problem. In the words of the tired old joke, it is 99% of lawyers that give the rest a bad name. Jesus attacked the scribes and the Pharisees for greed, vanity, hypocrisy, insistence on small things (those tithes on mint, dill and cumin), coupled with neglect for the greater concerns of justice and mercy. I hope Sue Hughes was not too much reminded, as she read that, of those who appeared before her when she sat on the bench. We lawyers try to be better than that – though I fear we don't always manage.

12. None of us here has the power to fix the problems of democracy. But we are part of the solution. We need to remind ourselves that the rule of law – and the practice of law – are an influence for stability and for good.
13. Think of those dry subjects that some of us studied at college, and reflect on what they are really for. Criminal law provides the order and security that we need to trust each other, and gives us the chance to enjoy our lives free of fear and bigotry. Public law constrains and channels power, ensuring that it is used only reasonably and after proper consideration. Tort and family law are mechanisms for seeking fairness, however difficult in practice that may be. Contract, like property law, is about enlarging the circle of trust: stretching our horizons beyond the things that we can physically defend, or the people that we already know. And fragile though it is, we can still see international law as a “gentle civilizer of nations”.
14. We are used to taking sides, in a case or a negotiation, but whichever side we are on, we are part of something bigger. Our legal system is the foundation for a world that is more than dog eat dog – one founded on equal justice under law.
15. And our working methods – though easily mocked for their slowness and their imperfections – are an antidote to the poison that afflicts democracy. The currency of the law is language, used with honesty and precision. Favouritism, lies told for advantage, views insulated from challenge, do not flourish in our courts. And at one thing in particular our profession excels: the testing of evidence to establish the truth.
16. Fifteen years ago the renowned South African judge Edwin Cameron came to England and said:

“[W]e rightly view our profession and its competences with diffidence. But the modest craft of rationality we practise as lawyers, with its modest panoply of instruments, honed in the mechanisms of adversarial scrutiny, seem sharp enough to pry open untruth and distortion, and strong enough to counter irrationality of the most egregious and threatening kinds.”
17. He had a notable example in mind: earlier that year, the South African Constitutional Court had quashed the Government’s refusal to provide anti-retroviral treatment – a refusal based on President Mbeki’s insistence that HIV did not exist or, if it did, that it was not the source of AIDS. Prejudice at the highest level was

trumped by the rigorous application of logic to evidence. And today more than 2 million people in South Africa are kept alive by anti-retroviral treatment – one of them, Edwin Cameron.

18. Of course, such things could not be done without fearless judges, independence bred into them through years of practising law, and drawing their strength not from what Justice Cardozo called “vague and unregulated benevolence” but from principle, built up through precedent. We join the High Sheriff in celebrating our judges, even as we wish that more would do the same.

19. And we have one final asset: our long tradition of collegiality, which helps us to escape the bubble of prosecution or defence, claimant or defendant, and see things from our opponent’s point of view. In Shakespeare’s *Taming of the Shrew*, the rival suitors were urged to:

“do as adversaries do in law,
Strive mightily, and eat and drink as friends.”

The ethos of the Elizabethan Inns of Court is still our custom. We affirm it today as we celebrate this wonderful Evensong together. May we serve the law, with as much humility as we can manage, and may we flourish.