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Counter-terrorist law in British universities: a review of the "prevent" debate

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***P.L. 84** How, consistent with democracy, human rights, the rule of law, and the preservation of cosmopolitan community cohesion and public confidence in laws and their enforcement, should the UK seek to stop people from becoming involved in terrorism? And what contribution, if any, should universities make? These issues have arisen in a particularly acute form as a result of the Coalition Government's [Counter-Terrorism and Security Act 2015](#) (CTSA) which, amongst other things, imposes a legal duty upon schools, universities, the NHS and other institutions to "have due regard to the need to prevent people from being drawn into terrorism" (the "Prevent duty"). This may include banning some activities, regulating others, and/or taking steps to identify those at risk and to refer them to appropriate agencies. While the [CTSA](#) has aroused great controversy in education at all levels, in this article we are exclusively concerned with the tertiary sector where some distinct issues arise. Broadly speaking three reactions can be distinguished here. First, university authorities, their employees, and their students appear, for the most part, to be fully and willingly complying with their legal, civic and professional obligations. For example, in its first annual report published in January 2017, the Higher Education and Funding Council for England (HEFCE)—responsible until its replacement in 2017 by the Office for Students for monitoring the Act's implementation in higher education in England—states that 84 per cent of a total of 321 providers are engaging appropriately with it and the remainder are actively seeking to do so.¹ Second, concern has been expressed about the efficacy of the Prevent duty, and its human rights compliance, particularly regarding "non-violent extremism".² Those who take this view typically call for these, and other, issues ***P.L. 85** to be addressed in the forthcoming official review of counter terrorist policy, inaugurated in November 2016,³ and rendered all the more poignant and urgent in the wake of the recent Manchester and London atrocities. Third, the vocal anti-Prevent movement—now numbering at least 45 separate organisations, including in the tertiary sector Educators Not Informants, the National Union of Students (NUS), and the University and College Union (UCU)—advocates a Prevent boycott pending its abolition, on the grounds that it constitutes a thinly-disguised form of spying upon and criminalising of Muslims, violates basic human rights, is counter-productive, and has a chilling effect on public debate.⁴

The thesis presented in this paper has several elements. First, we maintain that universities cannot be exempt from participating in counter-terrorism for two main reasons: this is a universal democratic obligation and the battle of ideas is a key arena in the struggle against the threat undeniably posed to the UK.⁵ Second, the Prevent strategy and the [CTSA](#) are not only attempts to formalise this contribution, but are also direct responses to palpable and urgent problems. Third, apart from legitimate concerns about the inclusion of "non-violent extremism" and the need for some other fine tuning, the legislation is appropriate and necessary in a state and society committed to countering terrorism in the context of democracy, human rights, the rule of law, and cosmopolitan community cohesion. Finally, while the campaign against the [CTSA](#) in the tertiary sector may be well-intentioned, it rests on myth, misconception, misinformation, and misrepresentation. There is no evidence that it has attracted any significant support and even the UCU itself seems quietly to have abandoned it.⁶

Research for this piece included the usual open source materials plus semi-structured interviews with staff responsible for Prevent compliance at three of the four universities we contacted (the University of Bristol, Royal Holloway and the University of East London (UEL)), hereafter the "Prevent Compliance Interviews". We are very grateful for their assistance.⁷ Dictated by the limited resources at our disposal, this is, of course, far from a representative sample. However, having read an earlier draft of this article, the Prevent officer at HEFCE **P.L. 86* confirmed that the broad characteristics of the approaches taken by these institutions are common across the sector.⁸ Emails requesting an interview with Justine Stephens, UCU head of campaigns, went unanswered as did those to critics of the UK's counter-terrorist laws PreventWatch and CAGE. Educators Not Informants told us that, as a "collective", no one was in a position to speak on its behalf.

In what follows the background to the [CTSA](#) will first be considered, then certain key features of the constitutional and legal context, the core characteristics of the legislation, how it has been implemented so far, followed by a critique of the campaign against the Prevent duty in the tertiary sector. Finally some general conclusions will be drawn.

Background to the Counter-Terrorism and Security Act 2015

In order to understand the [CTSA](#) we first need to have some sense of the challenge presented by Islamist, aka "jihadi" terrorism, the principal, but not the only, terrorist threat the UK currently faces.⁹ To begin with, it should be observed that this is a national manifestation of a global phenomenon inspired by a global ideal but not expressed in any global organisation as such.¹⁰ Those involved are typically motivated by the goal of establishing and extending, by whatever means necessary, the reach of an ultra-conservative Islamic caliphate, governed by a particularly cruel form of Sharia law which would, amongst other things, institutionalise torture and slavery.¹¹

Worldwide, this kind of terrorism has caused significantly more Muslim than non-Muslim casualties, and has also divided Muslims from each other much more than it has divided them from everyone else. For this reason alone—but there are many others—it is a mistake to regard the challenge it presents anywhere as a simple bilateral conflict between Muslims and non-Muslims. For example, global fatalities due to terrorism rose from 6,000 in 2005, the year of the London bombings, to 33,000 in 2014.¹² Over this period more fatalities occurred in Nigeria, Syria, Iraq, Afghanistan, and Pakistan than in the rest of the world combined. Four of these countries are overwhelmingly Muslim, and in the fifth, Nigeria, Muslims account for about 40 per cent of the population. Yet no country is entirely safe. In addition to the UK, high profile attacks have already occurred in places as diverse as Australia, Belgium, China, Egypt, France, Germany, India, Iran, Kenya, Spain, Russia, and the US.¹³

Among the many features of the phenomenon in Britain, the following are of particular importance. First, the UK has, so far, suffered comparatively few **P.L. 87* casualties from this kind of terrorism on its own territory. From 9/11 to mid-2017, including the recent Manchester and London attacks, an annual average of five people have died in terrorist incidents, significantly fewer than, for example, the annual average killed in road traffic accidents, about 2,500. But casualty figures do not tell the whole story. For one thing, it is said that since 2005, over 50 terrorist plots, most of them Islamist, have been thwarted.¹⁴ For another, unlike many other hazards, terrorism threatens public institutions, transport systems, the economy, the sense of safety in public places, and community relations. While jihadi terrorism may not genuinely pose an "existential threat" to the UK, it nevertheless presents a problem which neither government nor society can ignore.

Second, apart from the fact that such terrorists are overwhelmingly young, male, under 30, and Muslim, there is no "typical" Islamist terrorist, and no single route to becoming one either.¹⁵ A wide variety of experiences and backgrounds is represented by the 23,000 or so on the UK security services' radar as "subjects of interest", 3,000 of whom are suspected of jihadi activity and 500 deemed high priority.¹⁶ Some are privileged, privately and university educated, British-born, and from apparently well-integrated Muslim families.¹⁷ Others come from economically deprived and/or criminal backgrounds.¹⁸ Some were born abroad¹⁹ and some converted from other faiths or none.²⁰ Yet all have acquired a sense of personal, socio-political and/or religious injustice, real or imagined. This comes from various sources. "Self-radicalisation", and the careful targeting and grooming of susceptible young people by jihadi organisations through the internet, present considerable problems.²¹ A highly influential role is played by UK-based **P.L. 88* charismatic preachers.²² It is also well recognised, including by government, that there is no straightforward relationship between non-violent and violent "extremism" either.²³ Furthermore, many recruits are personally vulnerable in various ways, some experiencing conflicting identities, and/or undergoing an existential crisis including mental

illness, at the time of enlistment.²⁴ Others simply relish the prospect of being the ultimate rebel.²⁵

The [CTSA](#), the seventh piece of major UK counter-terrorist legislation since 2001, is part of an attempt by successive Labour, Coalition and Conservative governments to craft a coherent, multi-dimensional, part-legislative, part-administrative, response to 9/11 and its aftermath. Known as CONTEST,²⁶ this is organised round the four "Ps": pursue, protect, prepare and prevent. The *Prevent* strategy, by far the most controversial and the only one of relevance to this article, aims to stop people from becoming terrorists or from supporting terrorism in the first place.²⁷ Operating with a local co-ordinator across 46 priority areas, it seeks to counter terrorist ideology and to challenge those who promote it ("counter-radicalisation"), to support co-operative individuals who are particularly vulnerable to being drawn into terrorism ("de-radicalisation"), and to work with sectors and institutions where the risk of radicalisation in this sense is considered high. Over 2,790 institutions, including schools, universities and faith groups engage with it. In the course of 2015 this involved 50,000 people.²⁸

The immediate trigger for the [CTSA](#) was the dramatic appearance and rise of ISIL/"Islamic State" in Iraq and Syria from the summer of 2014 onwards. But a graphic illustration of the kind of problem it is intended to tackle predates this. Andrew (aka Isa) Ibrahim, the privileged, privately-educated son of a prominent Bristol consultant physician, converted to Islam in his teens. In 2008–09, while a student at City of Bristol College, he developed an interest in terrorism. A teacher, noticing his behaviour, the views he expressed, and burn marks on his hands, informed the college authorities. But this information was not passed on to law enforcement agencies. Not long afterwards, Ibrahim's own mosque tipped off the police. His flat was raided and he was found ready and equipped to carry out a suicide bombing in a Bristol city centre shopping centre which was only just averted.²⁹ Since his conviction and receipt of an indeterminate life sentence, Andrew **P.L. 89* Ibrahim has co-operated with Prevent including by producing a 20 minute DVD illustrating how quickly a vulnerable person can be drawn into terrorism and highlighting the importance of early intervention to stop it.³⁰

The risk of other Andrew Ibrahims has not diminished since the Syrian civil war began in 2011. On the contrary, it has almost certainly increased.³¹ It is also estimated that, over the past few years, over 850 people have gone to Syria or Iraq from the UK to fight or to support those fighting for ISIL,³² 11 of whom, most now either dead or missing presumed dead, were students at UK universities at the date of departure.³³ "Blow back", caused by returning battle-hardened emigres, may already be occurring.³⁴ For example, more than 20 plots, targeting countries such as Australia, Belgium, Canada, and France, are said to have been directed or provoked by extremist groups in Syria.³⁵ Commentators predict that this risk will increase now that Mosul and Raqqa have fallen to Iraqi, Kurdish and western forces.³⁶

The constitutional and legal context

Three highly relevant features of the constitutional and legal context are typically ignored by those who condemn the Prevent duty in British universities as a violation of human rights. The first concerns the procedural effects of the [Human Rights Act 1998](#) (the HRA), the second, the character and scope of relevant rights, particularly the right to freedom of expression provided by art.10 of the European Convention on Human Rights (ECHR) incorporated into UK law by the [HRA](#), and the third, other relevant statutory duties.

The [HRA](#) makes it very difficult for Acts of Parliament to be passed deliberately and manifestly in violation of the ECHR. It also provides remedies where concerns arise that more subtle violations may nevertheless have occurred. [Section 19](#) requires ministers responsible for presenting Bills to Parliament to make a written and published statement before the second reading, either to the effect that the **P.L. 90* proposed legislation is compatible with Convention rights ("a statement of compatibility")—such as was issued with respect to the [CTSA](#)³⁷—or that the government wishes the House to proceed even though such an assurance cannot be given. Extensive Whitehall machinery facilitates the in-depth analysis without which such a judgment could not professionally be made. Draft legislation is also routinely scrutinised for Convention compliance by the Joint Parliamentary Committee on Human Rights, by the Equality and Human Rights Commission, and by NGOs. Commentators agree that official pre-enactment elimination of possible Convention violations has been among the [HRA](#)'s most significant achievements.³⁸ Indeed, many of the more contentious features of the [Counter-Terrorism and Security Bill](#) were, in fact, amended in the legislative process.³⁹ [Section 3 HRA](#) creates an obligation for primary and secondary legislation to be read and given effect to by courts, "so far as it is possible to do so", in ways which renders it compatible with Convention

rights. But, if in any proceedings in the High Court or above, a provision of primary legislation remains incompatible with a Convention right, the court may issue a "declaration of incompatibility".⁴⁰ Where there are "compelling reasons" for doing so, [s.10](#) facilitates amendment by fast track remedial order made by a minister subject to subsequent parliamentary approval.

The second significant feature of the constitutional context concerns art.10 ECHR which provides a right to freedom of expression, the right most intimately connected with the Prevent duty. The European Court of Human Rights (ECtHR) has affirmed that freedom of expression is vital for the kind of views and opinions—including those which "offend, shock and disturb"—upon which a pluralistic, tolerant, broadminded, progressive and democratic society depends.⁴¹ States have both the negative obligation not to violate this right and also the positive obligation to ensure that it is adequately protected between private parties.⁴² Two core questions, relevant to the issues under discussion and constituting the flip sides of the same coin, arise: what kinds of expression are protected and what restrictions may legitimately be imposed under what circumstances?

Together these raise five main issues. First, certain forms of expression—such as those which are inherently hostile towards core Convention values,⁴³ those which seek to deny, belittle or defend the Holocaust (and possibly other clearly established crimes against humanity),⁴⁴ and those which incite violence or hatred—are excluded from the protection of art.10 in principle. Second, according to art.10(2), the exercise of the right to freedom of expression also "carries with it duties and responsibilities". The ECtHR has generally sought to tag these to the characteristics of the applicant. So, for example, journalists, NGOs and campaigning organisations have an obligation to act with due diligence in seeking to provide verifiably accurate **P.L. 91* and reliable information, and grounded opinion, in good faith according to their professional ethics.⁴⁵ Third, art.10(2) permits freedom of expression to be "subject to such formalities, conditions, restrictions or penalties as are", fourth, "prescribed by law" and, fifth, "necessary in a democratic society" in pursuit of one or more of the following "legitimate purposes":

"national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

This embodies two core tests: "legality (or prescribed by law)" and "democratic necessity".

The legality test, common to the core "civil liberties" found in arts 8 –11 ECHR, including the right to respect for private and family life and freedom of thought, conscience and religion, is satisfied if the national legal system sanctions the interference alleged, the relevant legal provision is accessible, it is sufficiently precise to enable the legal consequences of conduct to be reasonably foreseen, and national law provides adequate safeguards against arbitrary interference.⁴⁶ The elements most strongly emphasised in the freedom of expression context are foreseeability/clarity, and safeguards against arbitrary abuse.⁴⁷

Any restriction upon the right to freedom of expression which passes this test must also be necessary in a democratic society in proportionate pursuit of the pressing social need of securing one or more of the legitimate purposes found in art.10(2) narrowly construed.⁴⁸ States also have a "margin of appreciation" granting them some discretion in balancing the conflicting interests at stake. Subject to these considerations, the prohibition and criminalisation of the expression of certain views may be permitted, including in the interests of national security, public safety, and/or the prevention of disorder or crime. But the ECtHR is generally unsympathetic to blanket bans.⁴⁹ Moreover, in considering whether, in any given circumstances, the right to freedom of expression should prevail over any legitimate limitation, or vice versa, the court is not only concerned with the particular dispute before it, but also with the possible "chilling effect" upon freedom of expression generally if the restriction were to be upheld.⁵⁰ Therefore, taking all these factors into account, content, form, tone, context and consequences, including the applicant's status, the addressees, and the likely public impact, will typically be critical in determining whether any such restriction can be justified.⁵¹

The third feature of the wider legal context concerns other relevant statutory duties. Under [s.43\(1\)](#) and [\(2\) of the Education \(No.2\) Act 1986](#) higher education institutions are required to "take such steps as are reasonably practicable to ensure **P.L. 92* that freedom of speech within the law is secured for members, students and employees ... and for visiting speakers", including ensuring, so far as reasonably practicable, that the use of their premises is not denied to any individual or group on the basis of beliefs, views, policy or objectives. Under [s.202\(2\) of the Education Reform Act 1988](#)

university commissioners also have a duty

"to have regard to the need (a) to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges ... (b) to enable qualifying institutions to provide education, promote learning and engage in research efficiently and economically; and (c) to apply the principles of justice and fairness".

The [Equality Act 2010](#) also requires higher education providers not to discriminate unlawfully against, or to harass or victimise,⁵² students with "protected characteristics",⁵³ including, on grounds of race, ethnicity, nationality, religion or belief. In the exercise of their functions, public authorities, including universities, also share the wider public sector equality duty (PSED)

"to have due regard to the need to (a) eliminate discrimination, harassment, victimization and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it".⁵⁴

The Prevent duty in universities

Although it did not feature in the parliamentary debates, the [Counter-Terrorism and Security Bill 2014](#) was prompted by UN Security Council Resolution 2178 and exhibited the same two central concerns: combatting foreign terrorist fighters and countering violent extremism.⁵⁵ As the explanatory notes put it, the Bill had four main objectives: to "disrupt the ability of people to travel abroad to fight such as in Syria and Iraq", to "control their return to the UK", "to enhance operational capabilities to monitor and control the actions of those in the UK who pose a threat", and to "help combat the underlying ideology that supports terrorism".⁵⁶ The 53 provisions of, and eight schedules to, the [CTSA](#) cover a range of issues including the seizure of passports, temporary exclusion from the UK, terrorism prevention and investigation measures (TPIMs), aviation, shipping and rail security, plus other miscellaneous matters.⁵⁷ But the only element of relevance for our purposes is [Pt 5 ss.26 –41](#), which concern the Prevent duty. Supported by around **P.L. 93* 350 pages of other relevant documents,⁵⁸ this has two principal elements: the content of the duty and how it is to be discharged.

As to the former, [s.26](#) states: "A specified authority must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism." But in the context of further and higher education, [s.31\(2\)](#) complements this with two other duties, introduced as amendments to the Bill in the House of Lords: to have "particular regard" both to ensure freedom of speech and to "the importance of academic freedom", as required by [s.43\(1\) of the Education \(No.2\) Act 1986](#) and [s.202\(2\)\(a\) of the Education Reform Act 1988](#) respectively. The [CTSA](#) also gives the Secretary of State powers to issue both guidance, to which relevant authorities "must have regard" when carrying out their Prevent duty,⁵⁹ and directions enforceable by court order.⁶⁰ But these are also subject to the obligations to have "particular regard" to the duty to ensure freedom of speech and to the importance of academic freedom. The formal provision of the "particular regard" duties probably fulfils the legality test under art.10 ECHR discussed above. The guidelines also repeatedly emphasise the need for proportionality,⁶¹ fundamentally a question of judgment rather than objective determination depending principally upon context, content, and consequences.

The discharge of the Prevent duty has three specific elements. First, the [CTSA](#) requires appropriate institutions and procedures to be established by universities and at local authority level.⁶² Since this is supposed to be light touch and risk based, though "robust",⁶³ there is considerable discretion over the details.⁶⁴ Second, the discharge of the Prevent duty requires those vulnerable to being drawn into terrorism to be identified and, where appropriate, referred to local authority panels where further referral to a de-radicalisation programme might be considered.⁶⁵ The first step is a matter for a given university's own processes. All three of the universities surveyed in the Prevent compliance interviews regard Prevent compliance as an additional strand in their existing, routine welfare and pastoral support systems for vulnerable students, including, for example, those suffering from mental illness, homesickness, insomnia, or lack of motivation, and those at risk of becoming victims or perpetrators of non-terrorist crime.⁶⁶ The legislation and guidelines recognise that identifying vulnerability to being drawn into terrorism **P.L. 94* is far from an exact science. Although 22 indicators are identified,⁶⁷ the guidelines state that these are "not exhaustive" and that "vulnerability may manifest itself in other ways".⁶⁸ The fact that the reliability of the indicators has been called into question, suggests there

may be scope for improvement.⁶⁹ But this does not mean that the attempt to identify those at risk of being drawn into terrorism should be abandoned. Contrary to views expressed by critics of Prevent, the fact that nine of the indicators involve potential harm, also indicates that the mere endorsement of "non-violent extremism" (see below) without this danger is not sufficient for valid referral.⁷⁰

Records compiled by student support and welfare agencies are typically stored separately from those held by academic departments and are not included on students' transcripts or academic files. All three institutions in the Prevent compliance interviews were keen to emphasise that they are not interested in "spying" on students, another anti-Prevent myth, apparently recently supported by revelations that King's College London has formally warned that unauthorised use of college email facilities might result in subsequent monitoring and recording.⁷¹ However, since preventing the abuse of IT services for terrorist or other criminal purposes is a legitimate concern, it is unlikely that a court would find such a policy and practice in breach of the right to privacy, provided an adequate regulatory framework has been established and the principle of proportionality is observed.

Universities have no power to refer anyone directly to a de-radicalisation programme. Nor are there any legal sanctions under the [CTSA](#) or elsewhere for failures to act upon information or to make a formal Prevent referral, even when an act of terrorism is subsequently committed which might otherwise have been averted. The claim by the anti-Prevent movement that the [CTSA](#) creates a legal obligation on university staff to report students for expressing radical views is, therefore, yet another myth.⁷² The Prevent compliance interviews found that, where welfare teams have serious concerns about a student, they are, in the first instance, more likely to seek advice informally from their regular police liaison officer, a practice not unique to the Prevent context.

But, if the staff in a given students' welfare service think any concerns raised about a specific student may require it, they may make a formal referral to a chief police officer who may then refer to a local authority panel, but "only if there are reasonable grounds to believe the individual is vulnerable to being drawn into terrorism".⁷³ Acting in accordance with statutory guidance,⁷⁴ the panel—of which universities are partners but not members⁷⁵—then considers whether the person so **P.L. 95* referred should be offered support for the purpose of reducing this risk.⁷⁶ De-radicalisation under the Channel programme—an official multi-agency initiative which seeks to identify those vulnerable to being drawn into terrorism and to provide tailored support plans—is only one of several available options.⁷⁷ However, crucially, the person in question must consent to whatever support is recommended, a fact typically ignored by the anti-Prevent movement.⁷⁸ It is not an offence to decline to give consent, and where this occurs, the panel must then consider referral to health or social services.⁷⁹ The claim that the [CTSA](#) "criminalises" Muslims or anyone else is, therefore, yet another myth.⁸⁰ In fact, of the more than 8,000 people referred for possible de-radicalisation over the past four years—about 7,500 to Prevent in 2015–16 alone⁸¹—only 20 per cent ended up in a de-radicalisation programme. The remainder were considered for other kinds of support or none.⁸² No figures are yet available for the referral of students, via their universities. But anecdotal evidence suggests there have not yet been many. Any subsequent sharing of information between universities and other bodies is governed by existing data protection laws which do not easily facilitate "spying".⁸³

The third issue arising from the discharge of the Prevent duty concerns external speakers at, and activities on, university premises. The gender segregation of meetings, and the hosting of openly misogynist, homophobic and anti-Semitic Muslim speakers has been a well-documented trend in British universities in the recent past.⁸⁴ The Prevent guidelines require universities to carry out institutional assessments to determine the risk of students being drawn into terrorism including "not just violent extremism but also non-violent extremism, which can create an atmosphere conducive to terrorism and popularise views which terrorists exploit".⁸⁵ Where concerns arise that an event may create a risk that people could be drawn into terrorism, invitations to outside speakers may be revoked, and events either cancelled or allowed to proceed only upon condition, for example, that the views likely to be expressed are publicly challenged.⁸⁶ This is also subject to the balance between the "due regard" and "particular regard" duties.

In October 2015 the government published its *Counter-Extremism Strategy* which defines extremism as "the vocal or active opposition to our fundamental values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs".⁸⁷ Although the term "British **P.L. 96* values" is widely used,⁸⁸ the document also states that "our" includes allies and friendly nations.⁸⁹ The Queen's Speech on 18 May 2016 promised a Counter-Extremism and Safeguarding Bill with, according to press reports, the equivalent of anti-social behaviour orders for "extremists", Ofcom regulation for internet-streamed TV, and intervention in unregulated religious schools.⁹⁰ However, publication of the Bill has been delayed, not only by the difficulty of finding more

legally robust definitions than those found in the strategy document,⁹¹ but also by the raft of other more urgent priorities to which the Brexit vote of June 2016 has given rise. Indeed, it is now doubtful if it will ever see the light of day. The Queen's Speech on 21 June 2017 made no reference to it, promising instead, the establishment of a commission for countering extremism and reiterating the government's commitment to the counter-terrorist strategy review announced in November 2016. The three universities surveyed in the Prevent compliance interviews expressed a strong commitment to both freedom of speech and academic freedom, and recognised that higher education provides a unique opportunity for radical thinking and for ideas to be expressed, challenged and contested. HEFCE also found "no evidence of events being cancelled as a result of the ... (Prevent) ... duty" by any of the 321 providers.⁹²

It is difficult to dispute Blackburn and Walker's conclusion that the Prevent duties, in universities and more widely, "lack legal clarity ... (and) ... accountability", and that there are deficiencies in the programmes, not least Channel, regarding operating criteria, transparency, performance indicators, inter-relationships, outcomes and oversight.⁹³ However, these are not irremediable defects condemning the [CTSA](#) in the higher education sector in all respects. They could and should be included in the current review.

A critique of the campaign against the Prevent duty in universities

While concerns about the inclusion of non-violent extremism in the Prevent agenda have some substance, the [CTSA](#) has also been vehemently denounced by the anti-Prevent movement on the grounds that it constitutes a thinly-disguised form of spying and intelligence-gathering, driven by official Islamophobia and racism, which legitimises Islamophobia in society at large, criminalises harmless, law-abiding Muslim communities, violates the rights to privacy, freedom of expression and non-discrimination, and has a chilling effect on public debate. It has been alleged that, in the higher education context, it also seriously threatens academic freedom, stifles campus activism, requires staff to engage in racial ***P.L. 97** profiling, jeopardises safe and supportive learning environments, and helps "racist parties such as UKIP to flourish".⁹⁴

However, the campaign against the Prevent duty in universities suffers from several fatal defects. First, it is expressed almost entirely through sloganised denunciation rather than carefully reasoned argument. Second, it relies upon surprisingly confident predictions about how the duty *will* (not *may*) operate in practice, derived at best from anecdote rather than systematic evidence, made long before its full impact could have been discerned and discredited by subsequent developments. Third, it rests substantially upon myth, misunderstanding, misconception, and misinformation particularly, in addition to those already identified, about the prejudiced character of the legislation. There is no trace of Islamophobia or racism in the [CTSA](#) itself or in any of the supporting documents. The latter, for example, repeatedly stress the need for proportionality, that Prevent must not be used as a means for covert spying,⁹⁵ that in the Islamic context, the target is not Muslims as a whole but only a tiny dangerous minority, and that perspectives on the extreme right of the political spectrum are also included.⁹⁶ While concerns about far-right radicalisation currently account for almost a third of cases currently handled by Channel, and a quarter of Prevent referrals, the figure for the latter increased by 74 per cent from 323 in 2014–15 to 561 in 2015–16, at least partly, according to the police, as a result of the duty created by the [CTSA](#).⁹⁷ Violent and potentially violent right-wing extremism and anti-Semitism already present bigger problems for Prevent in Hampshire and the Isle of Wight than Islamist terrorism.⁹⁸ Between 2000 and 2014, 80 per cent of deaths caused by lone-wolf terrorists in the West were at the hands of right-wing extremists, nationalists, anti-government or other terrorists rather than jihadis, almost half of whom expressed extreme views or an intention to attack, including even divulging some details of their plans, in advance. Lone jihadis were, however, more than twice as likely to disclose such information to family or friends.⁹⁹ And, given the age demographic of the student population, those at the Islamist-inspired younger end of the terrorist spectrum are, therefore, much more likely than other kinds of potential terrorist to come to the attention of university staff.

Anti-Prevent campaigners are also very reluctant to accept that Muslims in Britain are as sharply divided by Islamist terrorism, and over how to tackle it, as Muslims worldwide. There is abundant evidence, for example, that opinion in the UK spans a wide spectrum, from a tiny minority actively involved in terrorism, to the vast majority of Muslims who not only deplore and repudiate it, but as the ***P.L. 98** Manchester and London attacks in May and June 2017 indicate, are also ready and willing to report suspicious activity on the part of other Muslims to the authorities.¹⁰⁰ Attitudes towards counter terrorist law and policy are also much more complex than the one-dimensional anti-Prevent campaign claims.¹⁰¹ Crucially, although there is plenty of evidence that some Muslims oppose

Prevent, there is no evidence that the majority do. Indeed, it is clear that most imams regard "de-radicalisation" as part of their routine pastoral duties and that many Muslims, including 372 mosques and other Islamic organisations, participate willingly and actively in Prevent.¹⁰² Many Muslims are also engaged in a fierce ideological battle with the dominant Salafist-Islamist movement, which provides one of the most vocal streams in the anti-Prevent narrative.¹⁰³ Indeed, the stridency and intolerance with which the Prevent duty in universities has typically been condemned—often coupled with denunciation as stooges and collaborators of those Muslims and others with a more positive and co-operative experience and perspective—also tends to drown out and silence more moderate and nuanced opinion, itself "chilling" the public debate and ironically producing precisely one of the effects of which the Prevent duty itself stands accused.¹⁰⁴

Fourth, the claim, typically made by human rights NGOs and others, that the [CTSA](#) and the Prevent duty inherently jeopardise and/or violate human rights is easy to make but much more difficult to substantiate and is by no means universally accepted in the human rights movement.¹⁰⁵ A recent report by the Open Society, the most substantial attempt to do so to date, warns that "the Prevent strategy suffers from multiple, mutually reinforcing structural flaws, the foreseeable consequence of which is a serious risk of human rights violations",¹⁰⁶ with a potentially counter-productive effect upon counter-terrorism. It concludes that the Prevent duty should be scrapped in the education and health sectors. This analysis is, however, itself deeply flawed at the methodological, empirical, and analytical levels, and also with respect to policy proposals. To begin with, the 17 case studies, and the survey data upon which it is based, fall far below the threshold of scientific reliability. Interviews are said to have been conducted with 87 people, including parents, academics, and university and government officials amongst others. But no information is provided about how they were recruited or what questions they were asked. Numerically, they constitute only a tiny sliver of the relevant landscape ***P.L. 99** and the only information about how they were selected is that this was the result of "outreach" in "multiple public outlets".¹⁰⁷

Furthermore, the representativeness of the case studies, only four of which concern universities, is highly suspect. Three concern the cancellation of, respectively, a conference organised by the Islamic Human Rights Centre at Birkbeck College, University of London, to have been held in December 2014, a debate about Islam to have been hosted by the University of Cambridge Islamic Society in February 2016, and a conference on racism and Islamophobia to have been held at the University of Huddersfield in July 2016. Since the first of these events was cancelled, ostensibly on safety grounds before the [CTSA](#) was even passed, it is difficult to see how "Prevent obligations" could be implicated as the report claims.¹⁰⁸ According to the author, the second event was cancelled by the organisers when, having revoked the invitation to one of the speakers following evidence-based concerns raised by the university, the other invited speakers withdrew.¹⁰⁹ As for the third, the report does not shrink from blaming the Prevent duty while also acknowledging that "not all of the facts relating to why" the event was cancelled by the organiser "are available".¹¹⁰

The fourth example, frequently also cited by others in the anti-Prevent movement, concerns Muslim student Mohammed Umar Farooq, questioned on 23 March 2015—just over a month after the [CTSA](#) received the Royal Assent but a full six months before it formally came into effect—by a security guard tipped off by other students who had engaged him in conversation about a book on terrorism he was reading in the University of Staffordshire library.¹¹¹ Following a formal complaint, the university conducted an inquiry, offered to mediate between the students concerned, and publicly apologised. Rather than a rights violation this episode could be interpreted more plausibly in three other ways. First, it could be regarded as lying on the borderline between a legitimate "interference with" and a "violation of" human rights, a distinction already considered. Second, even if the security guard's intervention amounted to a violation, a court would almost certainly accept the university's formal attempt at mediation, and its prompt public apology, as adequate redress. Third, it may also indicate teething problems with Prevent compliance, not least because, when it occurred, the guard is unlikely to have had the kind of training, since widely instituted in the tertiary sector, which should discourage such a reaction in these circumstances.

The Open Society document also fails properly to consider, or even to mention, the following: the difficulty of exempting universities and other institutions from the universal democratic public obligation to contribute to counter-terrorism; the constitutional and wider legal context and the immediate background to and justifications for the [CTSA](#); that the [CTSA](#) does not impose a statutory duty to report individuals at risk of being drawn into terrorism but rather an institutional duty to have "due regard" to the need to prevent people from being drawn into terrorism balanced against the "particular regard" duties (which it notes but ***P.L. 100** discounts)¹¹²; that the Prevent duty tends to be managed by universities' vulnerable students services and not their security staff; that participation in

de-radicalisation programmes is voluntary, that failures to comply have no legal consequences, and that referral does not in itself raise a human rights issue let alone disclose a violation; the distinction between the potential engagement of human rights, restrictions upon them and violations (which the report also notes but fails to appreciate)¹¹³; the crucial distinction between counter-terrorism and counter-extremism, a confusion which leads the author wrongly to assume that the [CTSA](#) permits referrals for the mere expression of unorthodox views where there is no risk of harm; that while confidential interactions between clients and professionals, including between students and staff at British universities, are legally protected, this does not cover those where a risk of harm is disclosed¹¹⁴; that information revealed in other public or semi-public university activities and contexts, including seminars, classes and lectures, is not legally protected by duties of confidentiality and not obviously by the right to privacy either; and merely because Muslims are more likely to be at the receiving end of the Prevent duty does not in itself constitute a violation of the right not to be discriminated against, since being a Muslim is a necessary though not a sufficient condition for participation in the primary terrorist threat the UK faces. Generally ignoring the significance of the principle of proportionality, the report also lists some international human rights norms and domestic human rights laws but fails to explain precisely how the [CTSA](#) poses a serious risk of their violation.¹¹⁵ Nor does it present any credible evidence that the [CTSA](#) is "eroding trust" in the institutions concerned as the title suggests, or that it is likely to do so. In fact the evidence of widespread compliance throughout the sector strongly suggests otherwise.

By contrast, rather than advocating boycott, abolition or revision of the Prevent duty, the UK's Equality and Human Rights Commission (EHRC) instead recommends responsible and properly managed positive engagement by universities. The EHRC notes that

"concerns have been raised that the Prevent duty is sometimes being implemented in ways which could: undermine the fundamental rights and freedoms of staff and students, stifle free speech and academic freedom, lead to discrimination and other conduct prohibited by the [Equality Act 2010](#), and stigmatise or alienate segments of staff and student populations".¹¹⁶

But, rather than condemning the duty as a violation of, or a significant threat to human rights, it reminds universities of their PSED, commends them for their strong commitment to it already, notes their positive engagement with Prevent, and encourages responsible, reflective, evidence-and-impact based (including by appropriate performance indicators), proportionate, fair, properly-recorded and properly-monitored management of all relevant obligations. It also recommends the framing of action plans following adequate consultation with all relevant parties, ***P.L. 101** capable of responding promptly and appropriately to complaints, delivered by fully-trained staff sensitive to all relevant issues, including the modification of existing arrangements where necessary.

Finally, concerns about the inclusion of non-violent extremism in the Prevent duty and its implications for guest speakers on campus were authoritatively addressed when, on 26 July 2017, the High Court rejected a claim, brought in judicial review proceedings by Dr Salman Butt, that the inclusion of his name in an official press release about tackling extremism in universities and colleges was unlawful and in breach of his human rights.¹¹⁷ Relying on information provided by the Home Office Extremism Analysis Unit (EAU), which had opposed the publication of any names, the press release referred to 70 events on university premises in 2014 featuring "hate speakers". However, as the result of an "oversight", six people including Dr Butt, were also identified as "expressing views contrary to British values" on campus. The claimant, a practising Muslim with a PhD in biochemistry, is editor in chief of *Islam21C*, a publicly available website which describes itself as "articulating Islam in the 21 Century". He is also an occasional speaker, chair, and panel participant at university student, particularly Islamic, society events. Dr Butt maintains that he rejects terrorism and denies he is an "extremist". He also claims to hold lawful "orthodox conservative religious views", shared by many others, and to support the core British values of "democracy, the rule of law, liberty and respect and tolerance of other faiths and beliefs". The judgment cites information, compiled by the EAU, that Dr Butt had, amongst other things, "equated homosexuality with paedophilia ... defended gender segregation", claimed "criticism of segregation and FGM is an attack on Islam ... celebrated the kidnapping of Israeli soldiers and referred to Israelis as 'pigs'".¹¹⁸ But the judge explicitly avoided expressing an opinion about these views. Dr Butt also alleged that the press release implied he was a "hate speaker" and that it had resulted, not only in a decrease in invitations to address tertiary sector audiences, but also in his own decision to decline those he received in order not to embarrass his prospective hosts. A claim for damages—for defamation, for breach of the right to respect for private life under art.8 ECHR, and for breach of the [Data Protection Act 1998](#)—was held to be beyond the scope of judicial review but may be pursued in separate proceedings.

Mr Justice Ouseley's thorough, robust, and at times strongly-worded 68-page judgment, uncompromisingly rejects each of the arguments relied upon by the claimant. He held that, properly construed, the *Prevent Duty Guidance* and *Higher Education Prevent Duty Guidance* ("the guidance") are not beyond the scope of the Prevent duty, as Dr Butt alleged, because, rather than equating "non-violent extremism" with "terrorism", they merely recognise that the former could potentially, though not invariably, be an element in the process of "being drawn into" the latter. Mr Justice Ouseley acknowledged that, while this distinction is not easy to draw, and there may be forms of non-violent extremism which do not risk drawing others into terrorism, this does not mean that the inclusion of non-violent extremism is beyond what the Prevent duty lawfully permits. Nor does **P.L. 102* the guidance fail to comply with the duty under [s. 31 CTSA](#) which requires, when the Prevent duty is exercised, that "particular regard" (a stronger obligation than "due regard") be paid to freedom of expression and to academic freedom. Rather than directing conduct, the guidance merely seeks to guide it and the legal duty under [s.29\(2\) CTSA](#) is to have "regard" to it, a weaker obligation than having "due regard", as in [s.26](#), or "particular regard", as in [s.31](#).

The judge also rejected the claim that the guidance violated Dr Butt's right to freedom of expression under art.10 ECHR on the grounds that he was not a victim of the alleged breach as the Convention requires. He had no legal right to express his views on university campuses and there was no evidence that any event at a university involving the claimant or anyone else had been cancelled in exercise of the Prevent duty. At best, therefore, Dr Butt's complaint concerned possible future, rather than actual, violations. Moreover, the Prevent duty could not be said to have had a "chilling effect" upon his freedom of expression because he remained free to express his views in numerous other ways. However, Mr Justice Ouseley also held that, even if Dr Butt had been a victim of an interference with his art.10 rights, the guidance fulfilled the ECHR "legality test" because, although it permitted discretion in how certain identifiable factors were taken into consideration and did not mandate any particular result, it was sufficiently accessible and its effects were reasonably foreseeable. Since it also pursued the legitimate aim of preventing people from being drawn into terrorism, and was proportionate, it therefore also complied with the ECHR "democratic necessity test". However, the judge expressly recognised that different circumstances might give rise to an art.10 violation. It was also held that, because the information collected by the EAU concerned views Dr Butt had expressed in public, and which he wished publicly to promote, there was no interference with his right to respect for his private life under art.8 ECHR. In any case, the legality and democratic necessity tests had also been fulfilled with respect to this provision for substantially the same reasons as for art.10. Finally, Mr Justice Ouseley also found, largely for the reasons supporting his rejection of the claimant's other arguments, that the activities of the EAU did not amount to surveillance under the [Regulation of Investigatory Powers Act 2000](#).

While the *Butt* case was not a particularly strong one and did not raise or ventilate all the controversial issues—there was, for example, no claim that the Prevent duty itself violates the ECHR and both sides accepted that there was no evidence that the guidance led to unlawful indirect discrimination against Muslims—the judgment, nevertheless, authoritatively addresses the allegations of the anti-Prevent movement concerning guest speakers on campus. It also confirms that "non-violent extremism" may lawfully and legitimately be taken into account when the Prevent duty is exercised, but only where it is deemed to contribute to the risk of people being drawn into terrorism. Some forms of "non-violent extremism" will, in other words, be implicated but others will not. While this distinction is not easy to draw, it is not for this or other reasons untenable.

The UCU, NUS and Educators Not Informants boycotts are also undermined by several further problems in addition to the many analytical difficulties discussed above. To begin with, they fail to offer a viable alternative to the Prevent duty in universities and it is not at all clear what participation in them requires nor how success or failure is to be measured. Would, for example, a refusal by an academic **P.L. 103* to warn university authorities about another Andrew Ibrahim, on the grounds that she regards herself as "an educator not an informant", be regarded as a campaign triumph even if he successfully became a suicide bomber? The legitimacy of the UCU's campaign has also been undermined by several additional problems. It was, for example, approved at the May 2015 Congress without members having been consulted in advance, in a closed session with the media excluded, and apparently on a vote so tight that a recount was required.¹¹⁹ Following legal advice that the boycott would be unlawful, the campaign was then devolved to branches with the UCU itself acknowledging that local boycotts would also constitute continuous industrial action which would be unlawful without ballots approving them.¹²⁰ The UCU has, moreover, failed to explain why a national boycott of national legislation, deemed worthy of being vigorously opposed, should be fragmented in such an ineffective, decentralised manner. Nor is it clear how many, if any, local boycotts have been

successfully launched. Some branches, for example the University of Bristol's, have both canvassed support for a boycott—neglecting to inform members that participation could expose them to legal action for breach of their employment contracts and declining to organise a ballot—while also simultaneously sitting on the University's Prevent Compliance Group.¹²¹ In spite of such inconsistencies it is, nevertheless, welcome that co-operation has prevailed over "resistance" in these, and probably in most other places.

Conclusion

We are now in a position to answer the questions raised at the outset. The answer to the first—how, consistent with democracy, human rights, the rule of law, and the preservation of cosmopolitan community cohesion and public confidence in laws and their enforcement, should the UK seek to prevent people, particularly vulnerable young people, from being drawn into terrorism?—lies in an appropriate response to a twin set of risks. First, Islamist, and other forms of terrorism, pose a threat to life, limb, property, public institutions, systems and community cohesion. Second, counter-terrorism potentially poses a risk to human rights, social integration and public confidence in the state. The challenge is effectively to manage all of these on several dimensions simultaneously: political, policing, criminal justice, social justice, ideological, cultural, educational, communal, and so on. This is not easy. But the key is to be found in effective communication with, and involvement of, all legitimate relevant parties, the appropriate gathering, management and use of information, intelligence and evidence, "up-stream" diversion before atrocities are committed, and active citizenship including constructive engagement and the effective discharge of the universal democratic responsibility to contribute to the prevention of all forms of crime. Focusing exclusively on only one set to the total exclusion of the other, as the anti-Prevent campaigns and many of the critiques of **P.L. 104* the [CTSA](#) do, offers a simplistic, one-dimensional and, at best, an unhelpful contribution to resolving what is a complex and multidimensional problem.

The answer to the second question—what contribution if any should universities make?—is that, for the reasons given, and with the exception of the counter-extremism agenda, this should largely be as required by the [CTSA](#); namely to provide institutions and processes which facilitate striking, in a professional and informed manner, the delicate balance between maintaining academic freedom and preventing it from being abused in a manner which threatens to damage and destroy, not just lives, but freedom itself. While, as Blackburn and Walker argue, there is scope for improvement in legal clarity, accountability, oversight, and performance indicators,¹²² in our view such gains, though welcome, would be marginal. More importantly, as these authors also maintain, far from being a violation of the rule of law, beginning "to address the legitimacy deficit by furnishing a statutory framework" hitherto conspicuously absent from Prevent, the [CTSA](#) constitutes "a welcome step towards legality".¹²³ While compliance with the Prevent duty in universities will also involve some modification to existing bureaucracies, it is too early to say how "light touch" or intrusive external supervision will be.

However, as already indicated, a much bigger question mark hangs over the inclusion of non-violent extremism in the counter-terrorism agenda. In spite of the "particular regard" and other freedom of expression related duties, and the fact that there is no evidence that any university events have yet been cancelled as a result of the [CTSA](#), this is mainly because of the formidable problems in determining how it can be appropriately distinguished from the legitimate expression of unpalatable, though not violence or hatred espousing, views of the kind Dr Butt, and others like him, are allegedly seeking to propagate. Indeed, the impact of the counter-extremism agenda upon its counter-terrorism cousin may well be counter-productive because the former is much more difficult to defend than the latter and because the Prevent debate is bedevilled by considerable confusion about the distinction between the two. In fact, in our view, the entire counter-extremism strategy could, and should, be abandoned in the impending review leaving the rest of the duty in universities intact.

However well intentioned, by actively discouraging university staff from being aware of, and reflecting upon, the things they see and hear as they discharge their professional duties, from sharing concerns with each other, and from referring these to institution-based welfare services where appropriate, the anti-Prevent campaign is based on a stack of myths and misconceptions, especially that the Act is racist and Islamophobic, it criminalises Muslims and facilitates spying upon students, and that university staff are legally required to report students for the expression of radical but harmless views which may result in further referral to a de-radicalisation programme. In the two years the [CTSA](#) has been in force in the tertiary sector, no credible evidence has yet been provided to substantiate any of the movement's confident, yet premature, predictions. However, although there is no evidence that

the UCU campaign has attracted any significant support, ***P.L. 105** including from its own members, it potentially risks reducing levels of vigilance upon which the successful prevention of atrocities of the kind witnessed in Manchester, London, Norway, Paris, Brussels and elsewhere may depend. Amongst other things, we hope the analysis presented here might contribute in some small way to reducing this prospect.

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3. *A. Travis, "Prevent strategy to be ramped up despite 'big brother' concerns", The Guardian, 11 November 2016.*
4. See Together Against Prevent, list of supporters: <http://togetheragainstoprevent.org/supporters/> [Accessed 12 October 2017]; *Scotland Against Criminalising Communities, "NUS votes to oppose Prevent" (24 April 2015)*, <http://www.sacc.org.uk/news/2015/nus-votes-oppose-prevent> [Accessed 12 October 2017]; *University and College Union, "The Prevent Duty: A guide for branches and members" (December 2015)*, https://www.ucu.org.uk/media/7370/The-prevent-duty-guidance-for-branches-Dec-15/pdf/ucu_preventdutyguidance_dec15.pdf [Accessed 12 October 2017]. While the text of the UCU’s motion condemning Prevent and boycotting the [CTSA](#), passed at the May 2015 Congress, no longer seems to be available on the Union’s website (<https://www.ucu.org.uk/campaigns> [Accessed 12 October 2017]), it can still be found in other places, for example, *Scotland Against Criminalising Communities, "Lecturers Union agrees to boycott Prevent" (28 May 2015)*, <http://www.sacc.org.uk/news/2015/lecturers-union-agrees-boycott-prevent> [Accessed 12 October 2017]. See also *S. Khan with T. McMahon, The Battle for British Islam: Reclaiming Muslim Identity from Extremism (London: Saqi, 2016), pp.75, 76, 87–117.*
5. For an account of the challenge posed to British universities by the combined forces of Salafism and Islamism see, e.g. *Khan, Battle for British Islam (2016), pp.51–86, 119–150.*
6. The motion passed at the May 2015 Congress is, for example, no longer available on its website, nor is there any reference to the boycott under "Campaigns", <https://www.ucu.org.uk/> [Accessed 12 October 2017].
7. We would also like to thank numerous colleagues for their encouragement and helpful comments on previous versions of the core ideas presented here. The usual disclaimers apply.
8. Email reply from prevent@hefce.ac.uk to authors, 29 September 2016. See also *HEFCE, Implementation of the Prevent duty in the higher education sector in England, paras 35–38, 46–49, 52–53, 56–60, 65–73, 76–77, 80–81.*
9. *HM Government, Counter-Extremism Strategy (TSO, 2015), Cm.9148, para.3*, <https://www.gov.uk/government/publications/counter-extremism-strategy> [Accessed 12 October 2017].
10. *P. Pillar, "Jihadi Terrorism: A Global Assessment of the Threat in the Post al-Qaeda Era" in R. Coolsaet (ed.), Jihadi Terrorism and the Radicalisation Challenge in Europe (Aldershot: Ashgate, 2008).*

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