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THE BRITISH MEDIA BAN: THE DIFFERENCE BETWEEN TERRORIST-RELATED SPEECH AND TERRORIST ACTS

BRETT V. KENNEY*

INTRODUCTION

As terrorist groups in England violently urge the unification of Ireland, English citizens and public officials continue to feel fear. Terrorism is perceived by British officials as a serious threat to life and to the public perception of security in Britain. England has reacted to that threat by pursuing a public policy designed to bring terrorist attacks to an end. But in controlling terrorist activity, public officials should not lose sight of what they are attempting to protect. While England claims to be a democracy, the methods it employs to deter terrorism cross the line from policies consistent with democratic values to restrictive measures, destructive of the freedom of speech. Although freedom of speech exists in Britain, the anti-terrorism policies there reveal the high level of control which the British Government may exercise to determine what speech is and is not free.

This article critically examines the status of free speech in modern Britain in light of current English policies to control terrorism and the media.¹ The first part of the article describes the scope and origins of these relevant policies. The second part sketches the constitutional framework which permitted these speech restrictions to be implemented. Part three argues that such policies are inconsistent with free speech values necessary to constitutional democracy. The final part of this article reviews factors which should be taken into account in devising alternative terrorist policies and suggests a starting point for the preservation of free speech in England.

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1. At all times in this article, "speech" refers to that communication which occurs from the mass media to the public. Accordingly "freedom of speech" and "freedom of the press" both entail this meaning of speech.

I. THE BRITISH POLICY

A. *A Media Moratorium*

Since the Autumn of 1988, the British Government has imposed restrictions upon what the British Broadcasting Corporation (BBC) and the Independent Broadcasting Authority (IBA) may publish with respect to terrorist activities in any television or radio program. This media ban is most succinctly conveyed in then Home Secretary, Douglas Hurd's own words:

1. . . . I hereby require the . . . [IBA and BBC] to refrain from broadcasting any matter which consists of or includes — any words spoken, whether in the course of an interview or discussion or otherwise, by a person who appears or is heard on the programme in which the matter is broadcast where —
 - (a) the person speaking the words represents or purports to represent an organisation specified in paragraph 2 below, or
 - (b) the words support or solicit support for such an organisation,
2. The organisations referred to in paragraph 1 above are —
 - (a) Any organisation which is for the time being a proscribed organisation for the purpose of the Prevention of Terrorism (Temporary Provisions) Act 1984 . . . and
 - (b) Sinn Fein, Republican Sinn Fein and the Ulster Defence Association

This order, given on October 19th, 1988, was constitutional² and legally binding upon IBA and BBC.³ The authority for this order upon BBC and IBA can be found in clause 13(4) of the License and Agreement between the Secretary of State and BBC,⁴ and in section 29(3) of the Broadcasting Act 1981,⁵

2. The word "constitutional" is used here in the sense that no fundamental restraint prevents the Home Secretary from exercising this power.

3. CONOR GEARTY, *FREEDOM UNDER THATCHER* 241 (1989). This order came as a surprise to many media experts, since news media organizations had a working system of internal control and had exhibited good faith in dealing with sensitive terrorist-related material. For example, IBA dropped a program which would have had a leader of the Sinn Fein movement as one of its guests. Apparently, the Home Secretary took no notice of this. *Id.* at 243.

4. HOME OFFICE, *BROADCASTING: COPY OF THE LICENSE AND AGREEMENT DATED THE 2ND DAY OF APRIL 1981 BETWEEN HER MAJESTY'S SECRETARY OF STATE FOR THE HOME DEPARTMENT AND THE BRITISH BROADCASTING CORPORATION*, 9 CMND. 8233 (1981), cited in Graham Zellick,

respectively. The most restrictive of these two documents is the Broadcasting Act which reads, in part, ". . . the Secretary of State may at any time by notice in writing require the Authority [the IBA] to refrain from broadcasting any matter or classes of matter specified in the notice; and it shall be the duty of the Authority to comply with this notice."⁶ Thus, the British Government possesses significant power to limit the content of news that is broadcast. The Broadcasting Act and BBC's license and agreement may be used by the British Government at any time to deny democracy the benefits of free speech.

It should be noted, however, that the actual scope of these restrictions is not as broad as it may seem. Coverage of terrorists and terrorist actions are not per se excluded. What may not be transmitted are the words of members of the proscribed groups. The IBA and BBC may still, and indeed do, transmit pictures of speaking terrorists with the identical words narrated in. In fact, this practice was expressly permitted by a letter from the Home Office to the two broadcasting companies. The letter provided that, "[t]he activities of terrorist organizations and statements of their apologists may still be reported . . . but such persons are prevented from making the statement themselves Publicity for their statements can be achieved, *inter alia*, by . . . dubbing . . . what they have said, using TV actors to impersonate their voices."⁷

The directive covers only television and radio broadcasts. The only terrorist organizations which are addressed are those involved in the North Ireland conflict. Thus, the BBC could broadcast an interview with a terrorist working in the Middle East and still avoid this directive. Likewise, a newspaper could print every word spoken by any terrorist.

One may ask, then, why something so seemingly benign as this media ban deserves serious discussion. There are two answers to this question. First, the media ban, though limited in application, is not benign at all, and as this article will show, it imposes excessive limitations upon what material may be broadcast. The Glasgow Media Group has reported that televised appearances by leaders of the Sinn Fein political group

Spies, Subversives, Terrorists and the British Government: Free Speech and Other Casualties, WM. & MARY L. REV. 773, 775-76.

5. Broadcasting Act 1981, ch. 68, § 29(3) [hereinafter Broadcasting Act].

6. Broadcasting Act, ch. 68, § 29(3).

7. Letter 17.1.3 from Home Office to House of Commons on Oct. 24, 1988. Writers have appropriately commented on the futility of this order. See, e.g., Zellick, *supra* note 4, at 780; GEARTY, *supra* note 3, at 250.

fell from ninety-three in the year previous to the media ban, to just thirty-four in the year after the ban.⁸ Secondly, the media ban is a manifestation of a deeper problem: the high level of governmental control over the media.

In reaction to the directive, a group of English reporters filed for judicial review.⁹ The English courts, because of their constitutional role,¹⁰ were restricted in this case to deciding only if Mr. Hurd had acted *ultra vires*. Yet, this never became an issue, since judicial review was never granted. The application passed through the Divisional Court, the Court of Appeal and the House of Lords without a single judge recommending judicial review.¹¹ Thus, the media ban stands, wholly constitutional, and fully enforceable.

The Home Secretary put this ban in place originally for one reason. On October 19, 1988, Mr. Hurd argued before the House of Commons that television appearances of "paramilitary organizations and their political wings" permitted the "terrorists themselves [to] draw support and sustenance from access to radio and television . . . from addressing their views more directly to the population at large than is possible through the press."¹² Over a period of a few weeks, however, other purposes for the ban were announced. For example, the ban would allegedly also reduce indirect threats of attack, and prevent "offensive" impacts upon the public at large.¹³ Mr. Hurd offered no specific instance where terrorists have used the media in these ways, or where these effects have developed out of terrorist coverage.

Mr. Hurd's speech at the House of Commons seems to illustrate the Government's own belief that this order would minimize the threat to civil liberties while maintaining an

8. See Glenn Frankel, *British Media Ban on Terrorists Still Controversial: Journalists, Rights Groups, Opposition Leaders Protest 2-Year-Old Home Office Measure*, WASH. POST, Oct. 21, 1990, at A31.

9. See Zellick, *supra* note 4, at 776.

10. The English Parliament is said to be sovereign. One of the implications of the Sovereignty of Parliament is that the English courts may not consider the validity or invalidity of an act passed by Parliament. The courts have been reserved the power to determine if government officials have acted within the limits of Parliament's laws (*ultra vires*).

11. See *R. v. Secretary of State for the Home Dep't*, 1 All E.R. 469 (1990); Zellick, *supra* note 4, at 776; *Brind v. Secretary of State for the Home Department*, 1 All E.R. 720 (1991) (in which Lord Ackner stated, ". . . there was clearly material which would justify a reasonable minister making the same decision [as Mr. Hurd].").

12. *Id.*

13. See Zellick, *supra* note 10, at 776-77.

important national security function.¹⁴ Neither Mr. Hurd's speech, nor the decision of the House of Lords in *Brind*, reveals any anxiety over the media ban's effects on freedoms of speech and of the press.

Now, it is true that liberties, including speech, must occasionally be restricted to permit democracy to flourish and, indeed, exist. Yet, how far can liberties be curtailed in a democracy?

One example of a U.S. case may shed some light on the above question. *Bridges v. California*¹⁵ concerned the publication of statements regarding pending trials in California state courts.¹⁶ In an articulate dissent, Justice Felix Frankfurter explained his reasons for letting the states impose limitations on the publication of certain types of material.

Much of Justice Frankfurter's opinion addressed the limits which democratic governments may place on speech. Although freedom of speech is a recognized constitutional right, "the recognition of a privilege does not mean that it is without conditions or exceptions," and, "[t]he social policy that will prevail in many situations may run foul in others of a different social policy, competing for supremacy."¹⁷ Justice Frankfurter noted that, "[f]ree speech is not so irrational a conception as to imply paralysis of the means for effective protection of all the freedoms secured by the Bill of Rights."¹⁸ Thus, although freedom of speech is the first right enumerated in the U.S. Constitution and is necessary in a democratic state, it must have its limits.¹⁹

Mrs. Thatcher's own words reveal the underlying spirit of Justice Frankfurter's dissent in *Bridges*. "We do sometimes have to sacrifice a little of the freedom we cherish in order to defend ourselves from those whose aim is to destroy that freedom altogether—and that is a decision we should not be afraid to

14. Mr. Hurd, in his speech, said, "The Government has decided that the time has come to deny this easy platform to those who use it [media] to propagate terrorism. . . . This is not a restriction on reporting. It is a restriction on direct appearances by those who use or support violence." 139 PARL. DEB., H.C. (6th ser.) 1073, 1079-80 (1988).

15. 314 U.S. 252 (1941).

16. *Id.* at 258-59.

17. *Id.* at 282.

18. *Id.*

19. See Edmond Cahn, *The Firstness of the First Amendment*, 65 YALE L.J. 464 (1956) (discussing the relative importance of the First Amendment to the democratic system).

take."²⁰ Yet, Mrs. Thatcher has used this "democracy preservation" argument to impose a policy which excessively censors information and reveals an excessive source of government control over speech.²¹

The true source of the media ban, and the true origin of the British Government's control over the media, lies in the power granted to that government under the Broadcasting Act 1981. To focus on the directive is to ignore the constitutional issues: why does the English Constitution grant such power to Parliament, and what is the limit of this power? The Broadcasting Act is not the type of law one would expect to exist in a democracy. The powers under this act are much broader than those expounded by Justice Frankfurter in *Bridges*.

B. *One Other Relevant Restriction on Terrorist Coverage*

To appreciate the role of freedom of speech and the position of the press in Great Britain, one other restraint upon terrorist coverage should be mentioned. Although the purposes of the following measures were not the direct control of media coverage of terrorism, the Prevention of Terrorism Act 1989 has the effect of stifling the press reporting terrorist events. Unlike the directives outlined above, the effect of this measure is indirect censorship.

Section 18 of the Prevention of Terrorism Act 1989 makes it a criminal offense to fail to contact an appropriate government official when a person has information known or believed by him or her to be of "material assistance" in preventing terrorist acts or in obtaining custody of terrorists.²²

20. See George Jones, *Thatcher Defends Curbs on Terrorists*, DAILY TELEGRAPH, Nov. 15, 1988, at 1; GEARTY, *supra* note 3, at 209.

21. One professor has commented that the media ban is a product more of national insecurity than national security. See Zellick, *supra* note 4, at 820.

22. The Prevention of Terrorism Act 1989 reads as follows:
Section 18: Information about acts of terrorism

(1) A person is guilty of an offence if he has information which he knows or believes might be of material assistance

(a) in preventing the commission by any other person of an act of terrorism connected with the affairs of Northern Ireland; or

(b) in securing the apprehension, prosecution or conviction of any other person for an offence involving the commission, preparation or instigation of such an act.

And fails without reasonable excuse to disclose that information as soon as a reasonably practicable. . . .

Prevention of Terrorism Act, 1989, ch. 4, § 18 (Eng.) [hereinafter Terrorism Act].

This control, unlike the media ban, does not discriminate among different types of media, nor does it distinguish media people from common citizens. Thus, a reporter from a newspaper is as potentially liable as one from a television company. Like the media ban, § 18 is effective only with regard to information collected on terrorists connected to the North Ireland conflict.²³

One way § 18 (formerly § 11) deters complete news coverage is through intimidation. The threat of being caught by this provision is widespread and costly enough so that the news media have heavily restricted the geographical and subject-matter areas into which they will research.²⁴ In fact, § 18 has caused the BBC and the IBA to develop internal controls, for fear of being caught by its provisions.²⁵

If internal controls spurred on by § 18 fail, the Government may resort to prosecution. However, this has never been necessary, since a simple and direct threat of prosecution "is so

23. *Id.* at § 1(a).

24. See CLIVE WALKER, *THE PREVENTION OF TERRORISM IN BRITISH LAW* 109 (1986), citing Christopher Dunkley, "A Deafening Silence" in *Campaign for Free Speech on Ireland*, in *CAMPAIGN FOR FREE SPEECH ON IRELAND, THE BRITISH MEDIA AND IRELAND: TRUTH THE FIRST CASUALTY* 76 (1979). There are some examples of intimidation listed in Gearty. In 1988, for example, both IBA and BBC obtained pictures of a West Belfast funeral in which two army corporals were killed. Both the broadcasters refused to hand the pictures over to the Royal Ulster Constabulary. However, after a letter threatening prosecution was sent to both networks, they handed the pictures over to the government. Although the Attorney General surely had his own justifications for his intimidating letter, the inhibiting effects of such actions on news coverage extend far beyond this one event. GEARTY, *supra* note 3, at 241.

25. For example, the BBC internal controls have been developed out of its License and Agreement with the Home Authority, which states that programs "... should not offend against good taste or decency or be likely to encourage or incite to crime or lead to disorder or be offensive to public feeling." WALKER, *supra* note 24, at 109. The BBC Television Programme Guidelines reveal the underlying checks on terrorist coverage:

Any plans for a programme item which explores and exposes the views of people who within the British Isles use or advocate violence or other criminal measures for the achievement of political ends must be referred to the [Home] Authority before any arrangements for filming or videotaping are made. A producer should therefore not plan to interview members of proscribed organisations. . . or . . . paramilitary organisations, without previous discussion with his company's top management. The management, if they think the item may be justified, will then consult the Authority.

BRITISH BROADCASTING COMPANY BROADCASTING GUIDELINES 11 (revised ed., June 1979), cited in WALKER, *supra* note 24, at 110.

great that there is little point ever in attempting anything in this field."²⁶

As a consequence of § 18, "[c]overage of Irish terrorism abounds with difficulties, so the temptation must be to steer clear of the subject altogether or at least to keep reports as simple and superficial as possible."²⁷ In effect, this statute, and its threatened use, provides the British Government opportunity to hide relevant and possibly government-damning information from the reading and viewing public; reporters could be readily deterred from investigating stories involving terrorism which also may contain information of government abuse. Accounts of terrorists and terrorism connected with North Ireland have been reduced by § 18.²⁸ Furthermore, if such a report is aired or printed, it may lack relevant clusters of facts, which could affect a reasonable person's judgment of government policy.

It is possible to infer some additional practical reasons for § 18's dramatic effect. A reporter with a reliable terrorist-related news source would rather release a self-tailored version of events than lose an informant. Reporters might forsake reporting in order to maintain a positive reputation among their informants. Eliminating § 18 could re-open ties between informants and correspondents. This increased flow of information could even possibly help the security force to stay more on top on terrorist activity. Some may object to this idea on the basis that § 18 helps prevent the news media from being manipulated by terrorists. Yet, that problem could be easily solved through internally controlled scrutiny, self-imposed by the media organizations themselves.

Reporters do not want to be bogged down or to be closely monitored by public officials or anyone else who would hinder their function. On June 20, 1980, the Attorney General wrote to the BBC in an effort to encourage future disclosures by reporters.²⁹ In his written response, the BBC chairman accepted the duty of journalists under § 18 (then § 11). Yet the chairman added his own fear that the Attorney General's letter, "[c]ould be read as meaning that the police should be informed, at every turn, of the letters, phone calls, or meetings with go betweens which are, I have no doubt, necessary if a

26. *Id.* at 110.

27. *Id.* at 112. "The BBC operated a policy of ignoring communal conflict in Northern Ireland altogether before 1965." *Id.* (citing Annan. Report ¶ 17.11-12 (1987)).

28. *Id.*

29. See GEARTY, *supra* note 3, at 241.

journalist is ever to acquire information from known or suspected terrorists."³⁰ Thus, as a matter of efficiency, § 18 compels reporters to avoid interactions with terrorists and drives news organizations to develop stringent internal controls.

C. *The Media's Dilemma: The Problem with Coverage of Terrorism*

The British Government realizes that any restriction of the press, even an indirect one, is a drastic measure. Indeed, Mr. Hurd refused to classify his consciously-crafted media ban as a "restriction on reporting." Yet, political statements and pure intentions may nevertheless give rise to effects which do restrict reporting and do threaten civil liberties.

The relationship between the media and terrorists has been described as "symbiotic;"³¹ the media offers terrorists the coverage they desire and terrorists offer media events of considerable public interest. One academic suggests that without media coverage, the goals and effects of terrorism would subside.³² In defense of British policy, Margaret Thatcher has said, "We must try to find ways to starve the terrorists . . . of the oxygen of publicity on which they depend."³³

Terrorists, like all other politically sophisticated advocates, plan their events specifically for media coverage, for their motive is to obtain some political advantage.³⁴ One terrorist is

30. WALKER, *supra* note 24, at 111-12. The chairman went on to say that this would halt reports of and about terrorists "abruptly." *Id.*

31. Lord Alun Arthur Gwynne Jones Chalfont, *Terrorism, Television, and Philosophical Doubt*, 9 TERRORISM 297, 301-05 (1987).

As CONOR CRUISE O'BRIEN remarked in his article on the extraordinary goings-on at the BBC, the television journalists and their compliant master may through their symbiosis with the terrorist be undermining that which is most valid among the principles they are trying to defend: the principle of the independence of broadcasting from government control. *Id.* at 297.

32. *See id.*; *see also* Ralph Dowling, *Victimage and Mortification: Terrorism and Its Coverage in the Media*, 12 TERRORISM 47 (1989) (arguing that terrorism would neither grow nor decline without media coverage); Katherine Graham, *Safeguarding Our Freedoms As We Cover Terrorist Acts*, WASH. POST, Apr. 20, 1986, at C1, C4. ("There is no compelling evidence that terrorist attacks would cease if the media stopped covering them. On the contrary, terrorism specialists I have consulted believe the terrorists would only increase the number, scope and intensity of their attacks if we tried to ignore them.").

33. *Thatcher Denounces Terrorists*, INDEPENDENT, Nov. 15, 1988, at A1, *cited in* GEARTY, *supra* note 3, at 209.

34. *See* CONOR GEARTY, TERROR 8 (1991). Terrorists can be distinguished from crooks because, "The crook merely wants to benefit from society, whereas the [terrorist] . . . wants to destroy it." *Id.* Professor Gearty has attempted to find common elements of labelled "terrorism" among

reported to have said to his companion, "[d]on't shoot now . . . we're not in prime time."³⁵ Both terrorists and politicians use the media as a forum to express their views. Both plan significant events so as to attract the highest level of media attention. Both rely heavily upon the coverage. Yet, a politician uses media as a tool in a peaceful struggle to realize his or her vision. A terrorist has a vision of a social order as well. But the terrorist is willing to murder innocent persons to make that vision a reality.

In the editor's office, the decision what to investigate and what to print is both a business decision and an ethical decision. As I will argue, despite occasional instances of improper coverage of terrorist events, the media should be generally free from governmental interference over what terrorist coverage should be permitted.

1. The Media's Freedom to Publish

The BBC and the IBA are very similar to newspapers in Britain in that both types of media are few and powerful. The BBC and the IBA are dominant in terms of the size of their audience.³⁶ This fact means that the control over the material broadcasted is in a few hands. The small number of those that actually control publication also implies that ethical self-restraint would be quite feasible in Britain, assuming those in control are willing to do so.

The media ban imposed by Mr. Hurd reveals an underlying government distrust of free reporting of terrorist events. Yet, the evidence shows that the press has been particularly responsible for such coverage. "Quite apart from the law, Northern Ireland has always been an extremely sensitive topic for the broadcasting authorities."³⁷ There have been many instances in which both the BBC and the IBA have withdrawn

western countries. Other common elements of what is labelled as terrorism are: deliberate actions, infliction of severe violence, arbitrary choice of victims, and involvement in a long-term struggle. *Id.*

35. Graham, *supra* note 32, at C4. Terrorists have also done the following to utilize the media as their tool: arrange press pools, grant exclusive interviews and give only selected information, hold press conferences in which hostages speak with press under captors' conditions, provide biased and edited videotapes to media, and schedule events around times that can be met by television deadlines.

36. See TWENTIETH CENTURY FUND TASK FORCE, A FREE AND RESPONSIVE PRESS 23-24 (1973).

37. GEARTY, *supra* note 3, at 242.

programs addressing the Northern Ireland conflict, for fear of the anxiety such programs would believably cause.³⁸

Additionally, the BBC and the IBA have set up independent internal controls to screen the content of broadcasts. Such machinery was in place long before the media ban was ever invoked.

In March of 1991, the Independent Television Commission, a British regulatory agency, issued a program code by which all stations must abide.³⁹ This code directly covers the publication of political statements including, presumably, terrorist coverage. Still, the IBA and the BBC have shown responsibility by setting up their own complaints committees. The BBC even publicizes its complaints.⁴⁰

Still, truly offending programs will inevitably slip though the voluntary controls which stations set for themselves. These exceptional publications should not be reacted to with such restrictive measures as the British Government has put in place.⁴¹ By taking away the press' responsibility to self-regulate, a government risks losing many of the benefits that a free press offers to society. Occasional mistakes will inevitably occur, but the positive results of self-regulation outweigh the probable negative results of blanket restrictions imposed by the British Government.

38. For example, pressure from the Home Office caused the BBC to drop "Real Lives," which contained a portrayal of one of Sinn Fein's leaders. In September, 1988, IBA chose not to air a program when it was found that Gerry Adams, the current leader of Sinn Fein, was scheduled as a guest. In October, 1988, the BBC self-edited a documentary which was feared to cause anxiety. *Id.* at 243.

39. Bureau of National Affairs, *New British Agency Issues Program Code for Broadcasters*, BNA INTERNATIONAL BUSINESS DAILY, March 19, 1991, at A1.

40. TWENTIETH CENTURY TASK FORCE, *supra* note 36, at 30.

41. As part three of this article will show, a generally free press offers unmatched benefits to democratic society. Assuming these benefits to exist, James Madison's words help one to understand the context within which such offending broadcasts occur.

Some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press. . . . It is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits.

Near v. Minnesota, 283 U.S. 697, 718 (1930) (citing Report on the Virginia Resolution, 4 Madison's Works 544).

II. CONSTITUTIONAL EXPLANATIONS FOR THE SPEECH RESTRICTIONS

To appreciate any effective solution to the problem of British control over terrorist coverage, one must first understand the constitutional environment which gave birth to the media ban.

A. *The British Constitution*

The British Constitution, unlike its American counterpart, is not a formally written document. In fact, scholars argue over what in fact composes the Constitution in Britain.⁴² The British Constitution is a conglomeration of statutory law, common law, formal practices,⁴³ and works of authority⁴⁴ which set out the structure and relative powers of state organs among each other and common citizens. Not every statute and common law decision is part of the Constitution; only those which directly involve the power and composition of state bodies and the relation between the state and the citizen are included.⁴⁵ Thus, for example, the British Control of Pollution Act 1974⁴⁶ would not be part of the British Constitution since it does not directly characterize the relation between the citizen and the state.⁴⁷

Conventions, or formal practices, are formed from slowly accepted practices. A convention is a rule "of constitutional behaviour which [is] . . . considered to be binding by and upon those who operate the Constitution, but which [is] . . . not enforced by the law courts."⁴⁸ Since a convention is not law, there is no legal penalty for failing to observe a convention.

42. See, e.g., NEAL JOHNSON, *IN SEARCH OF THE CONSTITUTION* (1972).

43. These formal practices are termed "conventions" and will be called conventions hereafter.

44. PHILIP NORTON, *THE CONSTITUTION IN FLUX* 4-9 (1982).

45. *Id.* at 3 (citing LESLIE WOLF-PHILLIPS, *CONSTITUTIONS OF MODERN STATES* xi (1968)).

46. Control of Pollution Act, 1974, ch. 40 (Eng.). "An act to make further provision with respect to waste disposal, water pollution, noise, atmospheric pollution and public health. . . ." *Id.*

47. One example of a statute which may be considered part of the Constitution is the Public Order Act of 1986 which limits citizens' rights to assemble and march. Public Order Act, 1986, ch. 64 (Eng.).

48. GEOFFREY MARSHALL & GRAEME MOODIE, *SOME PROBLEMS WITH THE CONSTITUTION* 26 (1917).

B. *Freedom of Speech and Freedom of the Press Under the British Constitution*

Looking back in time, very little explicit historical protection for freedom of expression can be found under the British Constitution.⁴⁹ The Bill of Rights of 1689 mentions a freedom of speech, but this was meant and has continued to be applied only to members of Parliament during their legislative session.⁵⁰ Unlike the United States, where rights are set out in the Constitution, “. . . the rights of Englishmen [and Englishwomen] usually turn out to be a merely residual liberty to act within the limits of what the law does not prohibit.”⁵¹ Parliament, in the name of national security, may prohibit any type of speech which it deems necessary.⁵²

C. *Separation of Powers Under the British Constitution*

1. Parliamentary Sovereignty

The English Legislature is virtually free to pass laws on whatever topic it wishes. Parliament is said to be “sovereign.” This means that Parliament has “the right to make or unmake any law whatever [and] . . . no person or body is recognized by the law of England as having a right to override or set aside the legislation of Parliament.”⁵³ Furthermore, Parliamentary Sovereignty encompasses the judiciary. “[T]here is no judicial body in the country by which the validity of an act of Parliament could be questioned.”⁵⁴ The only body to judge the rightness or wrongness of a speech restriction is Parliament itself. The courts of England are generally limited to the role of interpreting and explaining the laws of the land.⁵⁵ The courts possess

49. See ALBERT VENN DICEY, *THE LAW OF THE CONSTITUTION* 147 (1982). (“At no time has there in England been any proclamation of the right to liberty of thought or to freedom of speech.”).

50. See HENRY WILLIAM RAWLSON WADE, *CONSTITUTIONAL LAW* 6 (1955). (“That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.”)

51. COLIN TURPIN, *BRITISH GOVERNMENT AND THE CONSTITUTION* 92 (1985); see also PETER REDMOND, *CONSTITUTIONAL AND ADMINISTRATIVE LAW* 177 (1982) (“Freedom of speech, like other civil liberties is residual: it is subject to limitation by the law.”).

52. See TURPIN, *supra* note 51, at 92.

53. DICEY, *supra* note 49, at 39. This power extends to international treaties and conventions which claim to have effect in England (i.e., unless Parliament expressly chooses to adopt a document of international law, that law will not be binding in England).

54. *Ex parte Canon Selwyn*, 36 J.P. 54 (1872).

55. See TURPIN, *supra* note 51, at 41.

only the limited power to check any actions of public authorities to determine if they have acted *ultra vires* under a given statute. A British judge may not find a statute to be unconstitutional, as is possible in the United States courts. While the power to decide *ultra vires* questions allows the courts to limit the scope of Parliamentary acts to a certain degree, this is not a power which can ensure the protection of civil liberties. Parliament can pass any law it wishes, and such a law will not be vulnerable to judicial scrutiny.

Although the 650 members of the House of Commons are elected and, in this way, are kept in check somewhat by the voting public,⁵⁶ by and large, Parliament is completely sovereign. While this concentration of political power may seem excessive to those adapted to the United States system of checks and balances, it is still only the tail of the whale. It is only when the true source of power within Parliament is revealed that the actual vulnerability of civil liberties in England can be appreciated.

2. The Prime Minister

The Prime Minister, the head of the executive branch of British Government, is elected by the House of Commons.⁵⁷ By convention, candidates for Prime Minister must be members of the House of Commons, the elected body in Parliament.⁵⁸ The Prime Minister is a member of both the legislative and executive branches of government. This structure presents the Prime Minister with a theoretical conflict of interest. The same person possesses the rights and powers of a Member of Parliament and of the Prime Minister. The basic conflict of interest which arises in this situation is between the Prime Minister's power to control legislation and that same person's duty to represent British constituency.

56. DAVID CHARLES MILLER YARDLEY, *AN INTRODUCTION TO BRITISH CONSTITUTIONAL LAW* 15 (1989).

57. TURPIN, *supra* note 51, at 139. Formally, a Prime Minister must be appointed by the Monarch (i.e., the Queen or King of England). Yet this "appointment" is a rubber stamp. Candidates elected by the House of Commons fully expect the Sovereign's subsequent ratification, by convention. *Id.* at 115.

58. TURPIN, *supra* note 51, at 139. The House of Lords is composed of Peers who are either appointed by the Queen or achieve their post by birthright. YARDLEY, *supra* note 56, at 11-13. The last Prime Minister from the House of Lords was Lord Salisbury in 1902. See TURPIN, *supra* note 51, at 139.

Candidates running for Prime Minister are nearly always party leaders.⁵⁹ Since the House of Commons is composed of only two groups, majority and opposition, the elected Prime Minister generally has the support of the majority of the House. Although this election involves the entire House of Commons, the Prime Minister typically serves only the majority party.

Depending on the relationship between the Prime Minister and the dominant party, the British Constitution provides an enormous potential for Prime Ministerial control over legislation. This centralization of power becomes more extraordinary when one notes that the current majority party—the Conservative party—was elected by only 43.3% of the vote in 1987, and only 42.4% in 1983. Consequently, the Prime Minister may largely guide legislation without having the support of one-half of the voters.

Also, political parties in England have a tool to ensure support among their ranks in elections and in legislation. Through the Queen's rubber-stamp appointment, the Prime Minister chooses a party member to serve as Chief Whip. The Chief Whip has the power to issue 'whips' to Members of Parliament. Whips are essentially recommendations by the majority party (presently the Conservative party) to vote a certain way on a particular bill or resolution. Whips come in three sizes: one, two and three lines. A one line whip is a mere suggestion. Members of Parliament can generally ignore individual one line whips. Yet, a series of unheeded one line whips may make the party question a Member's loyalty. A two line whip is a somewhat stronger demand for conformity. A three line whip is much more compelling. Failure to adhere to a three line whip's suggestion may result in ouster from the party, and party antagonism—which could very well prevent reelection.

One might expect some constitutional limitation on the Prime Minister's powers. Yet, Prime Ministerial control over ministerial roles and the composition of cabinets and committees isolate the head of government from any real political check. The Prime Minister has absolute power to appoint and dismiss members of cabinet.⁶⁰ Even if cabinet members oppose the Prime Minister's policies, the convention of Collective Responsibility prevents any minister from publicly showing

59. *Id.*

60. Cabinet members may be removed by the Prime Minister for any reason, or no reason at all. See TURPIN, *supra* note 51, at 140; NORTON, *supra* note 44, at 44; GEARTY, *supra* note 3, at 256.

anything other than support for all Government policies.⁶¹ Since over 100 members of Parliament are also ministers, they must abide by this convention or relinquish their Government posts. Consequently, legislative duty often loses out to executive loyalty. Ministers who break the convention may be dismissed,⁶² although today this convention is enforced less often in this way.⁶³

There is one additional power of the Prime Minister which deserves mention. The Queen or King has the legal right to appoint Peers to the House of Lords. Yet a "cardinal convention" of the English Constitution is that the Monarch must act upon the advice of the Prime Minister.⁶⁴ The Prime Minister, thus, appoints members to the second House. This is especially significant, since a sub-group of the House of Lords is also the highest court in the land.⁶⁵

D. *The British Constitution and Pathological Periods*

Such a centralization of unchecked power poses a serious threat to liberty in a system where civil rights are assumed to be those rights which are not curtailed by the government. One would hope that excessive encroachment of civil liberties could be negated through plebiscites, since the House of Commons is voted in by the electorate. Ironically, though, a government may find public support for its liberty-inhibiting policies in times where its society believes a higher need is met by such measures. The control of terrorists may appear to be such a higher need. Professor Vincent Blasi of Columbia Law School has written of such periods, and has labeled them "pathological."⁶⁶

61. See TURPIN, *supra* note 51, at 146. That principle of Collective Responsibility is based on the perceived need to have "one face" of Government.

62. See, e.g., *id.* at 150. Often those who break this convention only receive public chastisement by officials.

63. NORTON, *supra* note 44, at 62-65.

64. TURPIN, *supra* note 51, at 76. This was reinforced by the Prime Minister in a letter to King George V in 1910. "[The Crown's Role] . . . is to act upon the advice of the ministers who for the time being possess the confidence of the House of Commons, whether that advice does or does not conform to the private and personal judgement of the Sovereign." (Mr. Asquith's Minute to King George V., December 1910, *quoted in* TURPIN, *supra* note 51, at 17.)

65. See YARDLEY, *supra* note 56, at 69. One becomes a Law Lord on this court through appointment under the Appellate Jurisdiction Act 1876. *Id.* at 12.

66. Vincent Blasi, *The Pathological Perspective and the First Amendment*, 85

According to Professor Blasi, a pathological period is one in which there is "a notable shift in attitudes regarding the tolerance of unorthodox ideas. What makes a period pathological is the existence of certain dynamics that radically increase the likelihood that people who hold unorthodox views will be punished for what they say or believe."⁶⁷ This description matches the intentions and effects of the media ban very well. Although most periods are not pathological, the threats to civil liberties are most viable when an exceptional shift of public or governmental opinion occurs. "In such periods the times seem so different, so out of joint, the threats from within or without seem so unprecedented, that the Constitution itself is perceived by many people as anachronistic, or at least rigidly, unrealistically formalistic."⁶⁸ While Professor Blasi was referring to the United States Constitution in this quote, pathological periods in Britain could more seriously affect the values securing civil liberties. This danger exists because civil liberties are essentially those which have not been legislated out by Parliament.⁶⁹ There is nothing solid and discrete to stand up to the winds of change. The potential for an extreme pathological reaction is also greater in the British government because of the control the Prime Minister may exercise in such periods.

III. WHY FREEDOM OF THE PRESS IS IMPORTANT AND NECESSARY FOR A DEMOCRACY

This section of the article critically examines the values which are professed to be protected under the freedom of the press in the United States. Such values are universal and are applicable to the United Kingdom as well.

COLUM. L. REV. 449 (1985). Although Professor Blasi's article specifically focuses on the American legal system, this article assumes his statements about pathological periods in general are applicable to the English system as well.

67. *Id.* Professor Blasi's focus here is on freedom of speech, and as such, is directly applicable to this article. *See id.* at 450.

68. *Id.* at 456.

69. DICEY, *supra* note 49, at 3-4. "The principle of Parliamentary sovereignty means neither more nor less than this, namely, that Parliament thus defined has, under English constitution, the right to make or unmake any law whatsoever; and further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament." *Id.*; *see also* YARDLEY, *supra* note 56, at 27; WADE, *supra* note 50, at 39; TURPIN, *supra* note 51, at 22.

A. *The Traditional Approaches*

There are two traditional justifications for freedom of speech: the Marketplace of Ideas theory and the Fourth Estate theory.

The United States Supreme Court case of *Near v. Minnesota*⁷⁰ involved a dispute between the state of Minnesota and a newspaper publisher. In its decision striking down a Minnesota statute, which sought to regulate the content of newspapers, the Supreme Court discussed the reasons for and values promoted by the press clause of the First Amendment. Quoting a letter sent by the Continental Congress to the Inhabitants of Quebec, Chief Justice Hughes' majority opinion drew upon both traditional justifications:

The last right we shall mention, regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated, into more honourable and just modes of conducting affairs.⁷¹

1. Marketplace of Ideas

The Marketplace of Ideas perspective is analogous to the free market theory of the economy. It is represented by the following section of the above quote, ". . . the advancement of truth, science, morality, and arts in general . . ." Free speech is seen to have a central role on the search for truth, the development of personality, and decisionmaking in democracies. It is assumed under this view that "all ideas, even the most implausible and the most extreme, contribute in one way or another to the search for truth."⁷²

Justice Brandeis sheds light on the rationale of this perspective in his concurring opinion in *Whitney v. California*.⁷³ Speaking of the beliefs of the framers of the U.S. Constitution, he observed that:

70. 283 U.S. 697 (1930).

71. *Id.* at 717 (quoting 1 JOURNAL OF THE CONTINENTAL CONGRESS 104, 108 (1904)).

72. Vincent Blasi, Book Review, 87 COLUM. L. REV. 357 (1987) (reviewing *The Tolerant Society* by Lee Bollinger).

73. 274 U.S. 357 (1927).

liberty [is] . . . an end and . . . a means. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech . . . discussion would be futile; that with [free speech] . . . discussion affords ordinarily adequate protection against the dissemination of noxious doctrine⁷⁴

Much of the regulated speech under the media ban possesses a social and ethical value for its audience. For example, under the ban, neither the voices of late Prime Minister Eamon de Valera nor that of Nobel Peace Prize Winner Sean McBride may be broadcast.⁷⁵ Similarly, the voice of Sinn Fein leader and Member of Parliament, Gerry Adams, may not be aired.⁷⁶ Often Mr. Adams' comments are left unreported.⁷⁷ Under the wording of the ban, Mr. Adams and Mr. McBride may be censored regardless of the content of their comments. In other words, even if Mr. Adams were speaking of non-terrorist matters, he would fall under the provisions of the ban.

Generally, terrorist-related speech may offer positive values to a democratic society under the marketplace approach. This article does not argue that all terrorist speech should be permitted, but rather that the media ban is an excessive manifestation of excessive government control over speech. As John Birt, Deputy Director General of the BBC has asserted, the media ban, "prevents broadcasters from capturing the full reality and texture of events and issues in Northern Ireland"⁷⁸

But the Marketplace theory alone provides an insufficient basis for an argument against the media ban and the Broadcasting Act 1981. For this theory may yield to a claimed need by government to impose blanket restrictions in the name of national security. The Marketplace theory may be construed by the British Government as applying only to the speech which the majority in Parliament (and, indeed, the Prime Minister) classifies as valuable.

2. The Fourth Estate Approach

The Fourth Estate model is reflected in the second half of the quote from the Continental Congress to the Inhabitants of

74. *Id.* at 375.

75. FRANKEL, *supra* note 8, at A31.

76. *Id.*

77. *Id.*

78. *Id.*

Quebec. "[The importance of a free press consists] in its diffusion of liberal sentiments on the administration of government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated into more honourable and just modes of conducting affairs."⁷⁹

This model has been called the Fourth Estate model, based on the name given to the Reporters' Gallery of Parliament, which strongly influenced the development of British Policy.⁸⁰ Today, "fourth estate" refers to the journalistic profession in general. Journalists are seen to perform a special function role vis-a-vis the government under this perspective.

Under the Fourth Estate approach, the press is seen as a medium to prevent abuses of power by government officials. By exposing corruption and inefficiency, journalists operate a check on government. Indeed, a number of American and English sources have confirmed this role of the press.⁸¹

This perspective on free speech is based on the premise that those in possession of the power to control speech will inevitably tend to abuse that power.⁸² This notion logically flows from the treatment of the press in England and Colonial America. Until 1694, all writing in England could only be published in accordance with a difficult licensing system.⁸³ The English court of Star Chamber issued a decree which prohibited unlicensed publications.⁸⁴

The British Crown knew that a free press was not just a neutral vehicle for the balanced discussion of diverse ideas. Instead, the free press meant organized, expert

79. *Near v. Minnesota*, 283 U.S. 697 (1930).

80. "Burke said there were three estates in Parliament; but in the Reporters' Gallery yonder, there sat a fourth estate more important far than they all. It is not a figure of speech or witty saying; it is a literal fact — very momentous to us in these times." Potter Stewart, *Or of the Press*, 26 HASTINGS L.J. 631, 634 (1975) (quoting Thomas Carlyle). The other three estates were the clergy, the commons and the nobility. See BLACK'S LAW DICTIONARY 591 (5th ed. 1978) (defining "Fourth Estate").

81. See Vincent Blasi, *The Checking Value in First Amendment Theory*, 1977 AM. B. FOUND. RESEARCH J. 521; Stewart, *supra* note 80, at 632; *Of Freedom of Speech: That the Same is Inseparable from Publick Liberty*, 1 CATO'S LETTERS: ESSAYS ON LIBERTY, CIVIL AND RELIGIOUS, AND OTHER IMPORTANT SUBJECTS 96-103 (1720) (essay number 15). There is case support for this perspective in the United States. See, e.g., *New York Times v. Sullivan*, 376 U.S. 254 (1964); *New York Times v. United States*, 403 U.S. 713 (1971); *Falwell v. Hustler Magazines, Inc.*, 483 U.S. 1018 (1987).

82. BLASI, *supra* note 72, at 394.

83. RONALD ROTUNDA, *CONSTITUTIONAL LAW* 831 (3rd ed. 1986).

84. *Id.* at 831.

scrutiny of government. . . . This formidable check on official power was what the British Crown had feared—and what American Founders decided to risk.⁸⁵

Professor Lee Bollinger has asserted that “[e]very government bears within its personality an atavistic longing to recapture the autocratic powers of its ancestors.”⁸⁶ This, according to Professor Bollinger, is based on a human impulse to be intolerant toward undesirable groups.⁸⁷ Professor Blasi apparently agrees with this conclusion: “[T]he aggressive impulse to be intolerant of others resides within all of us.”⁸⁸ Professor John Rawls has also noted this tendency in *A Theory of Justice*, where, discussing his notion of a just constitution as an end, he noted, “[i]n pursuing this end, the natural strength of free institutions must not be forgotten, nor should it be supposed that tendencies to depart from them go unchecked and always win out.”⁸⁹ The Thatcher government and the current British Government clearly and rightfully have been intolerant of terrorists. Yet, how does the Fourth Estate theory address the situation when such intolerance manifests itself in excessive government policies?

The Fourth Estate approach adopts a negative and pessimistic view of human nature.⁹⁰ Although the impulse to be intolerant of all disagreeable speech is predicated of everyone, theorists fear intolerance mostly by public officials. Thus, proponents of the Fourth Estate approach favor the preservation of a buffer zone of protected disagreeable speech, secured by black letter policies outlining what is and is not free expres-

85. STEWART, *supra* note 80, at 634.

86. BLASI, *supra* note 72, at 394.

87. *Id.* at 395. Although this “atavistic longing” may also result in intolerance by private members of society, first amendment protections only regulate the relationship between the citizen and the state. See *Central Hardware Co. v. NLRB*, 402 U.S. 539 (1972); see also 16-A C.J.S. *Constitutional Law* § 456 (1984).

88. *Id.*

89. JOHN RAWLS, *A THEORY OF JUSTICE* 219-20 (3rd ed. 1989) [hereinafter RAWLS].

90. Professor Bollinger has written that:

One might say that no more disparaging and despairing, view of the nature of the average person, of his and her natural tendency to be intolerant, is to be found than in the Libertarian literature on the subject of free speech. the impulse may ebb and flow, possibly affected in its movements by the moons of economics or of war, but it is ever-present and ever ineradicable, so deep is it etched into the human character.

BLASI, *supra* note 72, at 395.

sion.⁹¹ This model favors the protection of speech which, in a particular case, causes more social harm than good, so long as such speech does not directly cause an imminent and substantial threat to the state itself. Such a buffer zone would inevitably include much of the speech prohibited under Mr. Hurd's media ban. Under the Broadcasting Act, however, no safeguards exist to prevent the British government from extending the present ban to a blanket prohibition of all coverage of acts of violence for political ends.⁹² To protect situations such as this from occurring, proponents of the Fourth Estate approach would oppose both the media ban and the Broadcasting Act.

Yet, the Fourth Estate model does not explain just how a government may be checked when the overwhelming majority of citizens or public officials are, themselves, intolerant of certain speakers (i.e. a pathological period). The Fourth Estate approach relies upon the conflict between press sensibilities and governmental sentiment. But, in times of national anxiety, the press and the public may become less sensible, and less tolerant. In these times the potential for overreaching restrictions on speech is very high.

A working theory of the freedom of speech should draw on the positive value of speech in the Marketplace model and the protective role of speech in the Fourth Estate model.⁹³ Professor Bollinger has suggested that such an understanding should combine "the attractive idealism of the [Marketplace] model with the realistic view of the human character . . . of the [Fourth Estate Model.]"⁹⁴

B. *Tolerance*

Implied in both the Marketplace and Fourth Estate views is the concept of tolerance between members of society. Proponents of the Marketplace approach believe that the apparently useless speech of the present will yield a useful contribution to society in the future. One must allow and endure the immediate anxieties and consequences of speech, believing in the ultimate benefit to one's self and society in the future.

The Fourth Estate approach, as well, is grounded in tolerance. Tolerance, for supporters of extremist views, is encouraged because it is believed that the government requires

91. *Id.* at 394.

92. This is the definition of "terrorism" under the Prevention of Terrorism Act 1989. See Terrorism Act, *supra* note 22, at § 18.

93. BLASI, *supra* note 72, at 396.

94. *Id.*

a check on its own intolerance of such views. Thus, the earlier problem (how does the Fourth Estate model claim to be effective when government officials and the overwhelming majority wish to restrict speech by a minority?) can be asked in a different way: What factors inhibit voters' acquisition of that tolerance which is so necessary in a democracy? Furthermore, just how much tolerance should a self-proclaimed democracy nurture? The latter of these two questions will be taken up first.

C. *Tolerance and Justice*

This section examines the level of tolerance of speech which is necessary in a democratic society. Although the question is relevant to both the United States and Britain, it is especially important in Britain — where freedom of speech includes only those acts which have not been legislated out by Parliament. This question becomes yet more relevant when one considers the extreme amount of control the Prime Minister possesses.

In *A Theory of Justice*, Professor John Rawls formulates a conception of justice which expands upon the notion of social contract, developed by Kant, Rousseau, and Locke.⁹⁵ These earlier philosophers theorized that humankind once existed in a fictional "state of nature," without any stable conception of justice or fairness. Out of this state of nature, individuals chose government allegiances which satisfied their notions of justice. This choice was described by the philosophers as a social contract. Professor Rawls, however, replaces the "state of nature" fiction with one he devised called the "original position." Unlike his predecessors, Rawls uses "original position" to explain how principles of justice, not governmental allegiances, are to be chosen by a hypothetical group of individuals.⁹⁶ Rawls believes that in the original position, the most fundamental agreements made by such individuals are fair, since no divisions or identities exist to enable one to guide decisions toward his or her own cause. In other words, those choosing justice do so with a blank slate.

The concept of the original position may, at first, seem vulnerable to a prudent criticism. How can a situated person ever know how unsituated individuals will think or act? In other words, critics argue that the original position concept is a use-

95. RAWLS, *supra* note 89, at 11.

96. Rawls notes that "[t]he principles of justice are chosen behind a veil of ignorance. . . ." *Id.* at 96. This "veil" fiction is employed to ensure that fairness will prevail.

less fiction, because it offers no relationship between the hypothetical actors and real individuals. Yet, this criticism misses one of the strongest aims of Rawls' theory. Rawls does not use the original position concept directly to describe the situation in Britain, or anywhere else. The original position is offered in the hope of rationally "systemiz[ing] . . . judgments by revealing the principles according to which men's sense of justice appears to operate."⁹⁷ The focus here is on the logic of the principles which are used in the hypothetical. From such a derived logic, Rawls ultimately sets out the characteristics of the basic liberties of a constitutional democracy, including free speech.

Rawls lists general categories of basic liberties: political liberty, freedom of speech, freedom of assembly, liberty of conscience, freedom of thought, freedom to hold personal property and freedom from arbitrary arrest and seizure. A just constitution, Rawls believes, must incorporate each of these liberties.⁹⁸

Professor Rawls emphasizes that the framers of just constitutions must regard the basic liberties as different appendages of the same body. They are to be considered as a whole.⁹⁹ This requirement means that the worth of one liberty depends upon its articulation with other liberties. Professor Rawls provides an example:

[C]ertain rules of order are necessary for intelligent and profitable discussion, without the acceptance of reasonable procedures of inquiry and debate, freedom of speech loses its value. It is essential in this case to distinguish between rules of order and rules restricting the content of speech. While rules of order limit our freedom, since we cannot speak whenever we please, they are required to gain the benefits of this liberty.¹⁰⁰

Yet, specifically, what level of freedom of speech should ultimately be permitted? Professor Rawls answers this question as well. First, he asserts that a restriction on freedom of speech should occur only in a "constitutional crisis of the req-

97. DAVID LEWIS SCHAEFER, *JUSTICE OR TYRANNY—A CRITIQUE OF JOHN RAWLS' THEORY OF JUSTICE* 25 (1979).

98. *Id.* at 197-98.

99. RAWLS, *supra* note 89, at 209.

100. *Id.* at 203. This statement by Rawls well-articulates the statements made both by Justice Felix Frankfurter in *Bridges*, *supra* text accompanying note 15, and Prime Minister Thatcher, *supra* text accompanying note 20, as to what qualifications must be placed on basic free speech to ensure democracy.

uisite kind."¹⁰¹ Rawls defines such a crisis as one in which "free political institutions cannot effectively operate or take the required measures to protect themselves," and that without these measures, these institutions could not survive.¹⁰² Applying this test to the question of speech related freedoms yields the following conclusion for Professor Rawls. The speech of dissidents should be regulated only when the majority "sincerely and with reason believe that their own security and that of the institutions of liberty are in danger."¹⁰³ Professor Rawls believes that protecting the speech of dissidents should be done more with the goal of preserving the present tolerance-based system than with the specific intent of spreading greater liberty.¹⁰⁴ But most or all of the speech prohibited under the media ban does not realistically threaten the British democratic system. Mr. Hurd may defend his October, 1988, order with the claimed need to bring the practice of terrorism to a halt, but the nexus between terrorism and the prohibited speech is weak. Perhaps occasional terrorist-related statements actually threaten the British system, but it is hard to see how all of the prohibited speech could "sincerely" and reasonably be seen truly to threaten the British system of democracy.

Professor Rawls believes that the "inherent stability of a just constitution endows tolerant citizens with the confidence to limit the freedom of dissident sects only when the stability of such a system is reasonably and significantly threatened."¹⁰⁵ Professor Blasi appears to concur with Rawls on the importance of self-confidence in a tolerant democracy.¹⁰⁶ In fact, Professor Blasi asserts that pathological periods are the best times in which to develop such confidence—in the common citizen and within the legal system.¹⁰⁷ His fear is that periods of intolerance could lead to a softening of the freedom of speech.

101. John Rawls, *The Basic Liberties and Their Priority*, in 3 THE TANNER LECTURES ON HUMAN VALUES 69 (1982), cited in REX MARTIN, RAWLS AND RIGHTS 134 (1985).

102. *Id.*

103. RAWLS, *supra* note 89, at 220.

104. *Id.*

105. *Id.*

106. BLASI, *supra* note 66, at 463. "Self confidence may be the critical variable in the calculus of toleration." *Id.* Professor Blasi said this in the context of lauding the level of toleration of dissent in American History. He attributes this confidence, however, to factors other than those directly produced by the sentiments of tolerant individuals toward the stability of their constitution. Nevertheless, self confidence, however derived, is central to the development of tolerance, in Blasi's and Rawls' minds.

107. *Id.* at 449-50.

This does not mean that the substantive content of terrorist speech should not be considered by the British Government. The contribution of tolerance to a democratic system means that the point at which public officials regulate terrorist speech is when that speech threatens the existence of the system itself. In short, the media ban, and indeed the Broadcasting Act 1981 must regulate an extremely narrower definition of terrorist speech to abide by the tolerance requirements of democracy as envisioned by Professors Rawls and Blasi. The next part of this article will set out major factors which explain why the British Government feels a need to invoke a media ban of this scope.

IV. FACTORS PREVENTING THE BRITISH GOVERNMENT FROM ACQUIRING THE LEVEL OF TOLERANCE WHICH SHOULD EXIST IN A DEMOCRACY

There are primarily three factors which provide the basis for the British Government's curtailment of free press regarding terrorist speech: the bloody history of IRA terrorism, a weak history of civil liberties, and a high concentration of power in the Prime Minister.

The first factor is the terrorism itself, a reality which haunts the mind of every English citizen. The Irish Republican Army [IRA], the strongest and deadliest terrorist organization in Northern Ireland, grew out of the Sinn Fein Popular Rebellion of 1919-1921, which created the Irish Free State in 1922. The country subsequently became the independent Irish Republic in 1949.¹⁰⁸ Since the 1921 Rebellion, the IRA has remained intent upon the unification of Northern Ireland with the Irish Republic in the south.

In the years 1968 and 1969, public disturbance grew in the unionist state of Northern Ireland as a result of Catholic reactions to the prejudicial policies of the Protestant government. The unrest came to a climax in the rioting in Derry and Belfast, where seven persons died and over 1600 were injured.¹⁰⁹ The cost of damage in Belfast alone came to £8 million.¹¹⁰ The police presence in Northern Ireland at this time was composed of the B-Specials, a domestic Protestant police force, and the Royal Ulster Constabulary (RUC),¹¹¹ who increasingly alien-

108. GEARTY, *supra* note 34, at 112.

109. *Id.* at 117.

110. *Id.*

111. *Id.* at 116. The B-Specials' "recruits were drawn from loyalist paramilitary groups." *Id.*

ated Catholics by their excessive enforcement of unjust policies on Catholic communities. The riots growing out of this confrontation caused the British Prime Minister, Harold Wilson, to send troops to Northern Ireland.¹¹² Ironically, the Prime Minister's original intent was to protect Catholics from abuse by the B-Specials and the RUC.¹¹³ Yet the hostility of the U.K. troops toward Catholics actually made the situation worse. Subsequently, "[a] series of appallingly inept military operations (the deaths of unarmed Catholics during the suppression of civil disorder; house searches; disproportionate aggressiveness and hostility to local people) gave [the IRA] . . . [a] foothold in [the Catholic] community [which] they were never to relinquish"¹¹⁴

U.K. soldiers still patrol the streets of Northern Ireland. The deaths caused by the U.K./IRA conflict are disturbing. Over 2,700 people were killed between 1969 and 1990.¹¹⁵ Of these, over one-third were members of loyalist security forces, over one-half were citizens, and the remainder came from various paramilitary groups.¹¹⁶

The IRA has countered the U.K. presence in Northern Ireland with attacks in Britain. The bombing of London's Victoria Station, on February 18, 1991, is the latest major example. As a result of such events, the British Government ordered the media ban of 1988 and passed the Prevention of Terrorism Act 1989 (which includes § 18).

The anxiety, and indeed terror, caused by the "troubles" are important factors to take into consideration in determining the justification for the media ban. "[T]he IRA of the 1980s [and apparently the 1990s] remains a lean and professional outfit willing to fight a long war and willing to exploit the political process whenever it suits them."¹¹⁷ The English Government knows this and is willing to go very far to bring an end to the IRA.

The second most important factor explaining why the British Government possesses the power to implement the ban on terrorist-related speech is the role which civil liberties occupy under the present constitution. Free speech embodies only those expressions which have not been legislated out by Parlia-

112. *Id.* at 117.

113. *Id.*

114. *Id.* at 118.

115. *Id.*

116. *Id.*

117. GEARTY, *supra* note 3, at 210.

ment.¹¹⁸ The definition of acceptable speech may change from year to year and one Parliamentary session to the next.

Professor Blasi argues that “[o]nly relatively stable principles are likely to be viewed as worthy of a certain respect simply on account of their capacity to endure.”¹¹⁹ He adds that “unless the appeal to constitutionalism evokes genuine sentiments of long-term commitment or aspiration, officials and citizens cannot be expected to forego their preferences of the moment in deference to the claims of the constitutional regime.”¹²⁰ The stability and endurance of the United States freedom of speech First Amendment rights compared to the fluidity of the English counterpart affirm this conclusion. The absence of a written guarantee of freedom of speech and the historical background that allowed for that absence are significant factors contributing to the British governments’ unlimited power to restrict the freedom of the press.

The third factor which may be said to prevent tolerance in Great Britain is the imbalance of power within Britain’s constitutional structure. Prime Ministerial and Party control extends so far that Britain often reflects its monarchical past. The combined effect of a high concentration of power vested in the Prime Minister together with the lack of judicial review beyond *ultra vires* considerations allows the government broad power to legislate as it pleases.

Consequently, any effort to reform the constitutional structure of Britain to one less susceptible to intolerance must contend with these three factors.

V. REALISTIC SOLUTIONS

Now, honey, we’ve been over this a million times—and there’s what’s right and there’s what’s right, and never the ’twain shall meet.¹²¹

As the above quote suggests, idealistic solutions often do not coincide with political realities. It would be unrealistic to suggest the British government should suddenly covenant to reduce its own political power and bite the bullet of tolerance. Still, each day of the media ban can be seen to represent a day of government-driven intolerance. This article does not argue that terrorist coverage should receive unlimited protection under the freedom of speech. It does argue, however, that the

118. See *supra* text accompanying notes 49-52.

119. Blasi, *supra* note 66, at 454.

120. *Id.* at 453.

121. RAISING ARIZONA (Twentieth-Century Fox 1984).

present control over what is and is not free speech is one in which the government has too much say. Additionally, each unpursued interview with members of the proscribed organizations reaffirms the subordinate relationship of the press to the British Government. Some type of change must be made. The remainder of this article will consider one popular proposal, and offer an alternative one.

A. *The Importance of Writtenness*

Any solution to the vulnerable state of freedom of speech in Britain should ultimately result in a written document. The importance of "writtenness" was considered by the U.S. Supreme Court in *Marbury v. Madison*.¹²² "The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written. To what purpose are powers limited and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained?"¹²³ Later in its opinion, the Court answered this question.

Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law [passed in violation of that constitution].

This doctrine would subvert the very foundation of all written constitutions . . . [And] [t]hat it . . . reduces to nothing what we have deemed the greatest improvement on political institutions, a written constitution, would of itself be sufficient in America, where written constitutions have been viewed with so much reverence. . . .¹²⁴

The characteristic which underlies the *Marbury* Court's faith in writtenness is stability. It is true that interpretations of a single phrase may vary from one reader to the next. Yet, it is also true that the words written are static in that they can only be changed through constitutional amendment. This characteristic, the *Marbury* court felt, provided a higher level of stability than unwritten constitutional provisions.

In the next section, I will summarize a popular proposal for a written Bill of Rights in Great Britain. After a description of this proposal, I will argue that, despite its written quality,

122. 5 U.S. (1 Cranch) 137 (1803).

123. *Id.* at 176.

124. *Id.*

this alternative lacks an important factor which must accompany its writtenness.

B. *A Bill of Rights: The European Convention on Human Rights*

The popular proposal regarding the expansion of freedom of speech rights in Britain stems from one of the hottest topics in British politics today is the proposed adoption of the European Convention on Human Rights (ECHR). The ECHR, although a workable system to ensure the protection of international human rights, would not protect civil liberties enough as a domestic Bill of Rights in Great Britain.

The ECHR contains a conglomeration of human rights and freedoms. Yet it is more than a mere litany of written rights. Over one-half of the articles in the ECHR are devoted to the creation and maintenance of an international commission and court of human rights. The function of the commission is to hear complaints, "to attempt to clarify the facts of the case and to express and justify its legal evaluation of the facts."¹²⁵

The United Kingdom is a signatory to the ECHR.¹²⁶ Yet, under the convention of Parliamentary Sovereignty, no treaty signed by the British Government is binding within that country unless it is subsequently ratified by Parliament.¹²⁷ Thus far, the ECHR has not been ratified by Parliament. As such, the ECHR carries little legal force in Britain.¹²⁸

125. FREDE CASTBERG, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 8 (1974).

126. *Id.* at 3.

127. Treaties which add to or alter existing law must be incorporated into British law by Parliament to be binding. See *The Parlement Belge*, 4 P.D. 129 (1879), cited in WADE, *supra* note 50, at 213.

128. See *R. v. Chief Immigration Officer*, All E.R. 843 (1976) where Lord Denning asserts, "I would dispute altogether that the European Convention on Human Rights is part of our law. Treaties and Declarations do not become part of our law until they are made law by Parliament." *Id.* at 847. Britain is not alone in refusing to make the ECHR directly applicable. Other states which have signed, yet not fully adopted the ECHR are: Denmark, Finland, Iceland, Ireland, Norway and Sweden. Yet all these countries have established a written bill of rights in some form. See Peter Cumper, *A Path to a Bill of Rights*, 141 *NEW L.J.* 100 (1991). Still, British courts may refer to the ECHR and decisions of the European Court either when British case law is vague, or is in line with such references. *Attorney Gen'l v. BBC*, (1981) A.C. 303, 352. *But see* Vienna Convention on the Law of Treaties, May 23, 1969, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331, § 18 (stating that states are obliged not to take any steps which would defeat the purpose of any international treaty after signature, or any other expression of willingness to bound by a treaty's provisions).

If adopted by Parliament, the ECHR would essentially become a British Bill of Rights. It is a written set of rights and freedoms which seeks to secure basic liberties. Yet, adoption of the ECHR would mean much more in Britain. For, if Parliament were to pass an act incorporating the ECHR, it would simultaneously be submitting to the ultimate jurisdiction of the European Court. The constitutional implications of this change are tremendous. Parliament, which is supreme under the convention of Parliamentary Sovereignty, would be forsaking much of its status as the sole determinant of things legal and illegal in Britain. This would entail an especially dramatic shift of power when one considers that Article 25 of the ECHR provides for the right of individuals to petition the European Court.¹²⁹

Yet suppose that Parliament would forsake its own power, adopt the ECHR, and submit to the jurisdiction of the European Court. Would this situation protect and maximize free speech? The answer to this question tends to be no, as the following discussion will show.

Article 10 of the ECHR describes a freedom of expression. The text of Article 10 states that:

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of 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 of rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.¹³⁰

129. European Convention for the Protection of Human Rights and Fundamental Freedoms, November 4, 1950, 213 U.N.T.S. 221, art. 25.

130. *Id.*

The first section of the Article provides the basic positive right, while the second section carves out eleven broad exceptions, which the European Court calls "legitimate aims."

1. The Purpose Served by the Media Ban

The British Government could claim that at least four of these eleven exceptions apply to the media ban: national security, prevention of disorder, prevention of crime and protection of morals. The protection of rights of others also might be used to argue that terrorist speech infringes Article 8 of the ECHR which "says that everyone has the right to respect for his private and family life."¹³¹

In *Gay News v. United Kingdom*,¹³² the European Commission considered a publication which was found to violate the blasphemous libel laws of Great Britain.¹³³ The Government proposed three aims satisfied by blasphemous libel laws: prevention of disorder, protection of morals and protection of the rights of others.¹³⁴ The Commission determined that since this case was originally brought by a private individual, only the third of these aims should be considered. The Commission found the aim to be valid, based only on the fact that the same aims of the blasphemous libel law were submitted in the domestic courts.¹³⁵ What is and is not a legitimate aim in the European Court is largely guided by the domestic law of the Member State. The European Court of Human Rights could easily find the British media ban to fit under one of the legitimate aims mentioned above.

Additionally, government discretion is broad under Article 10(2). Vague terms such as national security, prevention of disorder and protection of morals are vulnerable to a number of questionable verifications of a Member State's legitimate aim. Perhaps the most flexible exception is the protection of morals. This aim could contravene all three theories of freedom of speech described in this article.¹³⁶ The vagueness of the protection of morals exception provides a broad option for

131. CASTBERG, *supra* note 125, at 183.

132. 5 Eur. H.R. Rep. 123 (1982).

133. The text in dispute was a poem called "The Love that Dares to Speak its Name," [which allegedly described] acts of sodomy and fellatio with the body of Christ immediately after His death and ascribed to Him during His Lifetime promiscuous homosexual practices with the apostles and other men." *Id.* at 124.

134. *Id.* at 129.

135. *Id.* at 130.

136. See *supra* text accompanying note 70-94.

government censorship under the fourth estate theory, its conduciveness to many interpretations allows a subjective assessment of morality over truth under the marketplace theory, and its flammability in reaction to heated public sentiment erodes the democratic appeal of free speech under the tolerance theory.¹³⁷

2. Necessary in a Democratic Society

In addition to the above requirements, any restriction on speech must be shown to be necessary in a democratic society.

The basic test used by the European Court to determine whether such a restriction is necessary in a democratic society is the presence of a "pressing social need."¹³⁸ In *Arrowsmith v. United Kingdom*,¹³⁹ a British citizen was arrested for handing out leaflets to British soldiers that asked those soldiers to resign if they were posted in Northern Ireland. The applicant argued that the "pressing social need" test was equivalent to the United States' "clear and present danger" standard. The European Court partially rejected this contention, saying "[t]he notion 'necessary' implies a 'pressing social need' which may include the clear and present danger test and must be assessed in the light of the circumstances of each case."¹⁴⁰

Indeed, in *Arrowsmith* the Commission looked more at the "light of the circumstances" than at any other factors. In fact, the situation in Northern Ireland was used by the British Government as a justification for the necessity of prosecuting the applicant.

As regards the decision to prosecute the applicant, the Commission notes that the Director of Public Prosecutions took into account when deciding to consent to prosecution, the difficult situation in Northern Ireland

137. In *Muller v. Switzerland*, 13 Eur. H.R. Rep. 212, 228-29 (1988), the European Court noted that:

it is not possible to find in the legal and social orders of the Contracting States a uniform European conception of morals. The view taken of the requirements of morals varies from time to time and from place to place. Especially in our era, characterized as it is by a far-reaching evolution of opinions on the subject. By reason of their direct and continuous contact with the vital forces of their countries, state authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements. . . .

Id.

138. *Handyside v. United Kingdom*, 1 Eur. H.R. Rep. 734, 737 (1976).

139. 5 Eur. H.R. Rep. 228 (1978).

140. *Id.* at 233.

and the possible effect of the campaign, which the applicant supported by distributing the leaflets, if this campaign was not stopped.¹⁴¹

Assuming "necessary in a democracy" means necessary to protect the public from the anxiety of terrorist coverage, a serious problem arises with regard to the Commission's opinion. The European Court is free to weigh the facts of the case against its own vision of what speech should and should not be permitted in a democratic society. This runs against the values of a written Bill of Rights as envisioned by the *Marbury* court. There, the Supreme Court emphasized the primacy and stability which are endemic to written constitutions. But the words "pressing social need" do not provide a strong enough standard for a domestic Bill of Rights. On the contrary, the facts in *Arrowsmith* took precedence over any stable standard which could apply. The Commission did not even go so far as to explain why the *Arrowsmith* decision involved a pressing social need.

Under the "necessary in a democratic society" standard, the Commission and the European Court have also determined that acts and decisions by Member States deserve a special consideration. In *Handyside v. United Kingdom*, the publication at issue was called "The Little Red Schoolbook."¹⁴² The applicant was convicted for violating the Obscene Publications Acts 1959 and 1964. On petition, the European Court explained its consideration of the relevant acts and lower decision.

By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the necessity of a 'restriction' or 'penalty' intended to meet them. . . .

Consequently, Article 10(2) leaves to the Contracting States a margin of appreciation. This margin is given both to the domestic legislator ('prescribed by law') and to the bodies, judicial amongst others, that are called upon to interpret and apply the laws in force.¹⁴³

This means that if an applicant petitions the European Court for an alleged violation of the ECHR, the Member State begins that adjudication not on par with the applicant, but with

141. *Id.*

142. 1 Eur. H.R. Rep. 740 (1976).

143. *Id.* at 753-54.

a marginal advantage. For a government with few guarantees of central liberties, such as Great Britain, this margin of authority places citizens at a disadvantage even at the beginning of courtroom proceedings. This is quite an inappropriate standard for a domestic Bill of Rights.¹⁴⁴

Under the ECHR, a state without written, honored rights of its own, and machinery to enforce those rights, could get away with numerous restrictions on free speech, especially in light of a running conflict such as the one in Northern Ireland. Adoption of the ECHR would not solve the British problem of centralized control over what is and is not protected speech.

This article does not argue that the United Kingdom should not adopt the ECHR. To make this claim would miss the force of the argument thus far. This article only asserts that adoption, alone, will not provide Great Britain with the Bill of Rights it should have. The argument of the paper has been an effort to urge the reader to conclude that the need for change is one which lies within Great Britain itself. The remainder of this paper proposes a starting point for the citizens and officials of Great Britain.

VI. PROPOSAL AND CONCLUSION

Proposal: That the British Government should cease the current ban on the broadcasting of terrorist-related events, amend the Broadcasting Act 1981 and the BBC's License and Agreement to remove provisions permitting unhampered government censorship, more clearly define the scope of § 18 of the Prevention of Terrorism Act 1989, and begin to work toward the creation of a written, socially appreciated freedom of speech.

This proposal is fairly straightforward. Its aim is to remove the current restrictions on terrorist coverage and generally prepare Great Britain for the task of creating its own Bill of Rights.

144. Still, this "government must know best" approach is limited. "The domestic margin of appreciation . . . goes hand in hand with a European Supervision." *Id.* The European Court makes the final determination over domestic acts and decisions. But this only means the margin of appreciation is not unlimited. The actual extent of this deference, though, may be inferred from the *Handyside* case. In considering the facts of that case, the European Court said it must decide, ". . . whether the reasons given by the National Authorities to justify the actual measures of 'interference' they take are relevant and sufficient under Article 10(2)." *Id.* As long as domestic acts are relevant and sufficient, the European Court will concur in the state act or decision.

First, the British Government should bring an end to the media ban. This could be accomplished either by repealing the Broadcasting Act 1981, or by a repealing order made by the Home Secretary. In doing this, government officials should not worry about a sudden flood of irresponsible terrorist coverage. The internal controls of both the BBC and the IBA would still be in place. Additionally, this move by government would signal a higher level of trust in the editor's office of the broadcasting companies, and as such, could encourage the television media to draft a voluntary code of ethics.

Secondly, Parliament should repeal the Broadcasting Act 1981 to prevent future measures, similar to the present ban. Public officials and voters undoubtedly feel more intolerant of terrorist coverage when terrorist attacks are often and severe than when they are rare and benign. It is true that the convention of Parliamentary Sovereignty would permit Parliament to reenact the Broadcasting Act in the future. But a repeal of the Broadcasting Act would be a symbolic act as well as a legal act. It would signal to the broadcasters the Government's faith in their capacity to responsibly report the news. It would signal to voters the Government's faith in their ability to objectively weigh the facts presented in terrorist coverage. It would signal to terrorists the Government's faith in the ability of the British democratic system to deal with the terroristic campaign of violence. Finally, such an act would symbolize to all the existence of a positive right of free speech in Great Britain.

Thirdly, Parliament should more clearly define the acts which fall under the rubric of § 18 of the Prevention of Terrorism Act 1989. In doing so, Parliament should keep an eye pointed toward the effect of this definition on the ability of journalist to cover terrorist acts. This will be a tricky job, since Parliament would still want to limit the strength of terrorists groups as much as possible. A voluntary code of ethics made by the broadcasters might soothe some of the fears that Parliament might has about the ability of terrorists to achieve their ends through outside contacts. Yet, as with all rules of order, this code would occasionally be broken. The true answer lies in redefining the scope of § 18 in such a way as both to protect against the growth of terrorist groups and to permit journalists to predict which coverage will, and will not fall under the scope of § 18.

Finally, Parliament should begin the task of developing a written, socially appreciated freedom of speech. In doing so, Parliament should consider those constitutional norms which exemplify their vision of free speech under a democratic soci-

ety. This undertaking should be done keeping a long-term perspective in mind. The terrorist activity, which began in 1969, should be seen as only a temporary crisis, and should not be central in the development of written speech rights.

In conclusion, Great Britain possesses the means to ensure the level of free speech which democratic society requires. What Parliament lacks is a belief that free speech carries with it the seeds of tolerance. Parliament's short-term fears of terrorism are currently preventing it from fully realizing a long-term vision of free speech, and the benefits of that free speech to British society. The proposals suggested in this article could do much to bring an end to a relatively limited problem: Britain's short-term perspective on televised coverage of terrorist acts. Yet what must specifically be done to develop a written, socially appreciated freedom of speech in Great Britain is a tremendously broader issue, and is a subject for future articles.

