



TERRORISM AND GLOBAL JUSTICE SERIES

AMOS N. GUIORA

Freedom From
Religion

Rights and National Security



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FREEDOM FROM RELIGION

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RIGHTS AND NATIONAL SECURITY

Amos N. Guiora

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To the Rev. Dr. John C. Lentz, Jr. A truer friend one could not hope for. His sage advice, extraordinary humor, and honest criticism made this book possible.

To Anne Frank. Her diary, written in an age of unimaginable horror, represents the honesty and hope of young people everywhere.

To Sandra Samuel, an Indian nanny who—in the face of immediate death by religious extremists bent on killing innocent men, women, and children—saved a young boy, thereby representing the best of the human spirit.

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PREFACE

“That as religion, or the duty which we owe to our divine and omnipotent Creator, and the manner of discharging it, can be governed only by reason and conviction, not by force or violence; and therefore that *all men should enjoy the fullest toleration in the exercise of religion*, according to the dictates of conscience, unpunished and unrestrained by the Magistrates, unless, **under color of religion, any man disturb the peace, the happiness, or safety of society, or of individuals.** And that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other.”

Virginia Declaration of Rights—
a forerunner to the Declaration of Independence,
George Mason’s version of Article XVI

I am not a religious person, so how do I allow myself the privilege, perhaps arrogance, of writing a book about religion? That is, how can someone not steeped in the intricacies of any particular faith write a book about religion, much less about the *limits* of religion, entitling it “Freedom from Religion”? To this significant question I offer the following response: while I am not an expert on religion, my entire professional career has been spent trying to understand the role of religion as the primary motivator for one of the greatest threats facing civil society today—terrorism.

I have been asked on countless occasions why I chose to write this book; my answer is unequivocal. As the only child of two Holocaust survivors, I well understand the price of passivity.

The essential assumption of this book is that religion is central to the human existence. While not always understandable, the reality is best summed up as “it is what it is.” Whether religion holds society together or comforts people in times of personal stress or eases fears associated with death, it is an undeniable reality in the lives of hundreds of millions of people worldwide.

While defining religion is no mean task, the thesis explored in this book does not address all aspects of religion. Rather, the focus is on *religious extremism*—the greatest danger faced by the liberal state today. What limits, if any, are placed on religious extremism is the essence of our focus. The question of whether limits need be placed on religious practice is premised on a belief that domestic public order and national security require addressing this issue, candidly and truthfully.

The emphasis of this inquiry is not theological in orientation. Rather it is focused on national security and public order. Perhaps in a different age the questions would address various political regimes and movements, ranging from the far right to the far left. But, that is not the case, for the main danger to contemporary liberal, democratic society no longer comes from secular extremism, but from religious extremism. The fundamental premise of this book is to ask *how* a liberal society protects itself against religious extremism, and proposing concrete recommendations for implementing protective measures.

During the course of my twenty-year career in the Judge Advocate General's Corps of the Israel Defense Forces, I was significantly involved in the legal and policy aspects of operational counterterrorism. Commensurate with that professional experience, I developed a deep understanding and respect for the absolute requirement to balance legitimate, individual civil rights with equally legitimate national security considerations.

In the context of the contemporary era of terrorism, there is no choice *but* to discuss religion and its practice. A primary motivation for numerous terrorist organizations world-wide (whether region-specific or global) is religion. Understanding religion as a motivator is essential to understanding terrorism, and therefore counter-terrorism.

That reality—terror in the name of God—is *the* reality of our current milieu. It may well be the reality for our children and grandchildren. Precisely because of that, we must have a mature, frank and candid discussion regarding religion. That discussion is not, under any circumstances, America-centric; quite the opposite is true. Societies worldwide are under attack in the name of God.

I have decided that in order to make my case as compelling and convincing as possible I must look “the tiger in the eye.” Otherwise, I will be joining a long list of authors who have shied away from directly addressing the extraordinary danger religious extremism poses to society.

Writing a book about religion, or more accurately, about limiting religion, is a journey into unfamiliar territory for a secularist. It has only been possible to do so because people from all walks of life have come forward and agreed to share their opinions, perspectives, scholarship, and beliefs with me. As I repeatedly told colleagues and friends, I was literally overwhelmed with how many people were willing to meet

with me. In the five countries under study I have communicated with hundreds of people, who freely gave of their time, talent, experience and wisdom.

To all, I am most grateful for educating me in the intricacies of your faith, religion, and field of expertise. You were generous, candid and critical; you have my unending respect, thanks and gratitude. That said, I would be remiss were I not to acknowledge in particular the friendship, forthrightness and wonderful collegiality of Prof. Leslie Francis, Prof. Terry Kogan, Prof. David Little, Prof. Scott Matheson, the Honorable Judge Michael McConnell, Dean Martha Minow, and Prof. Tom Zwart.

My designation as a Fulbright Senior Specialist at the University of Utrecht was instrumental in facilitating my understanding of the Netherlands as it afforded me the opportunity to engage with Dutch colleagues and officials.

While all mistakes are mine, I have been the beneficiary of an extraordinary team of research assistants. The hours and energy invested by RuthAnne Frost, Brady Stuart and Artemis Vamianakis—all class of '09, SJ Quinney College of Law, the University of Utah—have truly humbled me. These recent graduates have, collectively and individually, challenged and argued with me every step of the way. Without a doubt, both the reader and I are the better for their commitment to this project. I can but stand and applaud. The reader will note that the appendix carries their names—this is not by chance, as they approached me and asked if they could write it. I immediately said 'yes', as did Oxford University Press. RuthAnne, Brady and Artemis deserve the recognition and credit.

My Dean and good friend, Hiram Chodosh, has been an extraordinary supporter of this project—both in terms of generously making resources available and by providing the moral support so necessary for a project of this nature. I am, as always, most grateful to Hiram for creating a unique research and writing environment at the SJ Quinney College of Law. My colleagues and I are the beneficiaries of his tremendous efforts.

Kevin Pendergast, my editor at OUP, has been involved in the book every step of the way as he graciously agreed to read and comment on the draft of each chapter. His comments have been forthright, candid and spot-on. For that, I am most grateful.

I also send a warm word of thanks to my friends at the Starbucks in Sugarhouse, Salt Lake City, for their constant encouragement and interest.

Finally, to the reader—this book is not an ‘easy read’; nor is it intended to be. I can but hope you will find it thought-provoking and view it for what it is intended to be—a clarion call for action.

CHAPTER ONE

IGNORING THE STORM

December 17, 2008 – December 20, 2008

London, England

“The multitudes remained plunged in ignorance of the simplest economic facts, and their leaders, seeking their votes, did not dare to undeceive them. The newspapers, after their fashion, reflected and emphasized the prevailing opinions.”

– Winston Churchill, *The Gathering Storm*

In December 2008, I met with politicians, security officials, and academics in the United Kingdom to get a British perspective on what I consider to be the greatest threat to civil society that this generation will face—religious extremism. It was an experience that profoundly impacted the fundamental thesis of this book.

When I first conceived of writing a book about the threat of religious extremism, I planned to examine and analyze legal and policy issues relevant to the five countries: the United States, the United Kingdom, the Netherlands, Turkey, and Israel. The book’s chapters would be formed around a specific topic—the limits of freedom of speech, separation of church and state, the free exercise of religion—and the five countries would hopefully provide context and insight about religious extremism in the modern age. While I expected to concentrate most heavily on the United States and Israel—the two countries in which I live and have citizenship—I thought that complete chapters on individual countries would be unnecessary for my purposes. It was only after visiting the UK that I decided to change this plan.

The day of my arrival, the banner headline in every major newspaper throughout the UK was that those responsible for the 2007 Glasgow International Airport terrorist attacks had been convicted of their crimes. On that day, my loquacious cab driver shared his worldview with me, ultimately concluding, “Why can’t Muslims just be like us?” I had no doubt that his sentiments were not unique among the British populace.

As I made my way to a meeting with a senior security official in London—who, after greeting me graciously, began our conversation with the words,

“Professor Guiora, it is the government’s position that Islam is a religion of peace”—the Home Affairs Minister of the Netherlands reported an increase in the number of Islamic extremists in the Netherlands. This juxtaposition of opinions from across the North Sea would highlight the difference between the United Kingdom and the other four countries examined in this book.

While a cab driver in London felt comfortable expressing somewhat prejudiced sentiments in front of a stranger, the majority of British lawmakers and academics with whom I met expressed extraordinary caution in addressing religious extremism. I began my trip to the UK under the impression that the British experience in Northern Ireland—referred to as “The Troubles”—would leave Britons less prone to political correctness. I ended the trip with the troubling impression that British lawmakers were deliberately ignoring a serious problem confronting not only their own country, but democracies around the globe.

Twenty-eight percent of British Muslims believe that British authorities “go over the top in trying not to offend Muslims.”¹ It is not hard to see where such an opinion comes from. After the July 7, 2005 subway bombings, Scotland Yard Deputy Assistant Commissioner Brian Paddick declared, “‘Islamic’ and ‘terrorist’ are two words that do not go together.”² While Paddick’s obvious intent was to prevent public outrage against innocent Muslims, the fact is, his statement was flatly wrong. Of course not all Muslims living in the UK are terrorists—it would take a truly obtuse individual to leap to that conclusion—but the undeniable fact is that all the recent terrorist attacks in the United Kingdom, as distinct from Northern Ireland, have been committed by British Muslims. Is it so difficult to acknowledge an evident truth?

For one reason or another, the British government is not willing to acknowledge the reality of religious extremism in its country, and is often willing to go to great lengths to paint the problem in a different light. For example, one member of the Labour Party with whom I spoke insisted that the root cause of radicalization was not religion, but socio-economic status. Facts suggest a different story. As has been previously

1 *British Muslims poll: Key Points*, BBC ONLINE, January 29, 2007, available at http://news.bbc.co.uk/2/hi/uk_news/6309983.stm

2 Steve Doughty, *Threat of up to Two Million Muslim Terrorists, Warns Community Leader*, September 11, 2006, available at <http://www.dailymail.co.uk/news/article-404525/Threat-million-Muslim-terrorists-warns-community-leader.html>

documented, the 19 hijackers involved in 9/11 came from middle- to upper-class backgrounds.³ Most of them were highly educated. Similarly, the most recent terror attacks in Great Britain (three completed, one thwarted) have been carried out by British citizens from middle- and upper-class backgrounds. These facts belie socioeconomic arguments, leaving religion to explain the actions of these few extremists.

The attitude of an unwillingness to lay blame is similarly reflected in the British media. During the November 2008 terrorist attacks in Mumbai, the BBC and other UK media insisted on referring to the terrorist responsible for killing 101 people as “gunmen.” One report even added the adjective “youthful” to gunmen, as if their age excused their behavior.

I shared my puzzlement over this phenomenon with a British academic whose response was helpful. “Looking the tiger in the eye,” as I had put it, “would necessitate an acknowledgment that the tiger even exists.” This, apparently, is presently unacceptable to the British government.

Some of the individuals I spoke to went even further, claiming that the true danger to the United Kingdom was not the threat posed by religious extremists, but the potential harm to British society that would result were the government to emphasize the Islamic nature of religious terrorism. Contemporary British society is extraordinarily multicultural. London alone boasts a population that speaks over 300 different languages and 50 non-indigenous communities, each with a population of more than 10,000.⁴

The majority of recent British terrorists were of Pakistani origin, Islamic by birth; others were converts to Islam.⁵ Whether new converts or Islamic by birth, the reality is, frankly, indisputable. Furthermore, British Prime Minister Gordon Brown has suggested that three quarters of the gravest terror plots under investigation in the United Kingdom

3 For a greater discussion of the 9/11 hijackers, see Terry McDermott’s book, *Perfect Soldiers*.

4 Available at <http://www.guardian.co.uk/uk/2005/jan/21/britishidentity1>.

5 Including Nicky Reilly, who is considered the first “one person” suicide bomber cell who was injured when the bomb he had prepared exploded. Reilly (Saeed Alim) was a recent convert to Islam, <http://www.timesonline.co.uk/tol/news/uk/crime/article3985830.ece>

had links to Pakistan.⁶ If the plots had links to Pakistan, then it is a safe bet they also had links to extremists in the Pakistani community in the United Kingdom.

Stating the truth is not an indictment of all Muslims. Avoiding the truth reflects an institutionalized resistance to acknowledging the elephant in the room. However, the British government's desire to avoid references to theories espoused in books such as *Londonistan*⁷ and *While Europe Slept*⁸ is obvious.

This hesitation is no doubt impacted by Britain's imperial past. The sense of historic guilt over being a former colonial power was on the tip of numerous tongues during conversations in London. Even those willing to acknowledge the dangers inherent in extremist religion proposed that the appropriate response would not involve government agencies. While British law enforcement advocates the power to act proactively, the government's emphasis continues to be on prevention⁹ via community outreach. It was suggested time and time again that change in the Islamic community must come from within, moderates engaging extremists.

Ultimately, the logic behind this proposal is extremely problematic. Regardless of whether British politicians are willing to acknowledge the threat of extremist religions, it is frankly unclear what role extremist imams¹⁰ play in the radicalization of Muslims in England. Many British policymakers and academics believe that extreme Muslims in the United

6 Available at <http://www.timesonline.co.uk/tol/news/uk/article5339975.ece>, last visited December 20, 2008

7 *Londonistan: How Britain is Creating a Terror State Within* by Melanie Phillips, a best-seller published in 2006, argues that weak policing, cultural relativism, and "victim culture" in London contribute to an ideal breeding ground for Islamic terrorists.

8 *While Europe Slept: How Radical Islam is Destroying the West from Within* by Bruce Bawer argues that Europe's cities are plagued with "radical Islam," which has provoked honor killings, political assassinations, the Madrid subway bombing, and the massacre of school children at Beslan. Bawer argues that radical Islamism is an equal threat to Nazism.

9 Prevention is one of the four "P's" of England's counter-radicalization policy, along with protection, preparation and pursuit. See <http://security.homeoffice.gov.uk/counter-terrorism-strategy/about-the-strategy/>

10 See Trial of Abu Hamza al-Masri, <http://news.bbc.co.uk/1/hi/uk/4690224.stm>, last visited December 21, 2008.

Kingdom are engaged in self-radicalization, rather than acting on religious incitement articulated by imams. While other governments understand with whom they are dealing—Fundamentalist Latter Day Saints Church leaders in the United States, rabbis in the West Bank, imams in the Netherlands—the British government is facing a more grassroots movement. During much of my visit, I was constantly reminded that Islam is not a hierarchal religion—“There is no Pope” was a recurring refrain.

This makes any limits on religious freedoms that might be applicable in the Israeli, Dutch, Turkish, or American paradigms difficult to apply in a British context. I came to the UK with the basic belief that when individuals with religious authority speak, they should be held to a higher standard of responsibility for their words. After all, religious extremism is largely cleric dependent. The impetus for religious extremism based action is dependent on an extremist interpretation of scripture or faith, as defined by an authority figure.

In the United Kingdom model, we are presented with uncertainty as to who is responsible from an authority perspective, which consequently leads to ambiguity regarding whose religious speech and conduct should potentially be limited. To that end, the difficulties expressed by experts regarding possible limitations are apparently warranted. If religious extremists in the UK are indeed self-radicalized, then security officials, policy analysts, and, ultimately, government leaders are hard-pressed to determine whose religious speech or conduct should be limited.

First-generation immigrants to the UK came from South Asia, North Africa, and English-speaking Caribbean nations. While these immigrants were expected to perform largely menial tasks, their intention was to stay in Britain and provide their children with a brighter future. To that end, they sought to provide their children with British educational opportunities in the hope that they would become “British.” In sending their children to university, first generation immigrants did not expect that many would become radicalized. That is, rather than further integrating and assimilating into British society, many second- and third-generation immigrants have chosen to turn inwards to their communities and become newly religious at the expense of their parents’ dream.

While the British government suggests that moderates will win an ideological fight, certain questions remain. Why would the extremists listen to the moderates? Why would the moderates ever volunteer for

such a job? I do not mean to demean the idea of community outreach, and think it has an important role to play in any state's strategy regarding extreme groups. I mean to merely point out that a government's actions cannot be limited to delegating the responsibility of protecting society from extremism to society itself. After all, why else do we have a government, if not to protect us from internal and external threats alike?

This book ultimately proposes actions that governments could and should take in responding to religious extremism. When I presented some of the ideas that will be described in greater detail in subsequent chapters—broadening the definition of incitement, for example—they were rejected outright by my British audience. While these theories have not been met with universal acclaim—some American colleagues expressed concern with certain premises and disagreed with my conclusions—the level of political correctness in my British meetings was qualitatively different. In one meeting, an extremely thoughtful academic literally refused to use the phrase “religious extremism,” except to suggest that I ought not to use the term.

The political realities in the UK prevent the adoption of what I recommend in this book—re-articulation of free speech and free exercise limitations. Elsewhere in this book, I am critical both of Israeli law enforcement officials and the judicial community for insufficiently responding to the clear threat posed by Jewish extremist settlers in the West Bank. In the same vein, I suggest that American authorities should have acted more forcefully, and sooner, to protect underage girls from harm in their FLDS communities.

While these criticisms may also apply to the United Kingdom, the overwhelming impression is of a society in a state of denial regarding the threat of religious extremism. This prevents potential remedies from even being considered. In this sense, the discussion regarding religious extremism in England is less legal, more policy.

Accordingly, the London of December 2008 is an appropriate place to begin this discussion, for the United Kingdom represents the greatest danger of all—ignoring reality. There must be a major philosophical change in how religious extremism is addressed by all policymakers, not just British ones. The United Kingdom is our baseline. On December 18, 2008—the day after I arrived in Great Britain, one day after every major daily newspaper was emblazoned with headlines of convicted terrorists—all the newspapers in London ‘moved on’ to a new event.

Religious extremism presents an extraordinary threat to democracies today. As such, we cannot afford to ‘move on’ until we have soberly discussed concrete recommendations for how governments and societies are to confront this reality while respecting the individual liberties of people of faith and protecting public order and security.