

The Real Consensus Extension Beyond 28 Days: Unnecessary and Counter-productive

Legal Opinion

“Government concessions on the detention of terrorist suspects set out only "low and easily satisfiable hurdles" before the home secretary can detain suspects for up to 42 days.... the decision to trigger 42 days "could be lawful even if there is no 'grave exceptional terrorist threat' ".

David Pannick QC¹

“Turning directly to the 42-day detention provision in the Bill, I suggest that a solid case for extending the 28-day limit on pre-charge detention has not been established. Fundamental civil rights should not be whittled away by alarmist speculations. If the Government's reasoning were to prevail, one wonders what repressive policies would be truly beyond the pale... But there is a second and wholly separate reason why the 42-day provision in the Bill deserves to be rejected by this House. The so-called protections in the Bill are illusory and constitutionally illiterate. While the Bill makes provision for judicial oversight it is meaningless, because before a person is charged there is no evidence for a court to test. More importantly, the supposed parliamentary oversight is non-existent because Parliament cannot in our system examine individual cases... Surely, objectively considered, the Bill can be seen to be an attempt to lead the public to think that it is a serious attempt to improve security. It is nothing of the kind. It is also a wholly unworkable piece of legislation, which must in practice be a dead letter.”

Lord Steyn, former Lord Justice of Appeal²

“I like very many other people have not been convinced by the case for increasing the period. ... I would prefer, myself, to allow them to be charged and if, after they are charged, so that they know what they are facing, they are still subject to questioning - albeit in custody.”

Lord Woolf, former Lord Chief Justice³

“Happily, we have reached all-party consensus on intercept evidence as a result of the efforts of the committee of privy counsellors under Sir John Chilcot... If we have reached

¹ Guardian.co.uk "Human rights lawyer casts doubt on 42-day safeguards", 7 June 2008. Available at: <http://www.guardian.co.uk/politics/2008/jun/07/terrorism.civilliberties>

² Speaking at 2nd Reading of the Counter-Terrorism Bill in the House of Lords (08/07/08)

³ Speaking on BBC Radio 4's Today Programme, 23 November 2007

all-party consensus on intercept evidence, we have certainly not reached it on 42 days. Indeed, we have not reached even one-party consensus, since the Minister's own party is split on the subject. A bare majority of nine votes in the House of Commons is not consensus, and this House has not yet spoken as I hope and believe it will... There is therefore no consensus in Parliament; nor is there any consensus in the country."

Lord Lloyd, former Lord Justice of Appeal⁴

"While I accept that there have been a limited number of cases in Scotland which were investigated in terms of the Terrorism Act 2000, I am not aware of any case where an extension of the period beyond 28 days would have been required. I therefore share the view of the DPP Sir Ken MacDonald and the former Attorney General, Lord Goldsmith, that the requirement for an extension to the current 28 days is not supported by prosecution experience to date".

Lord Advocate, Ms Elish Angiolini QC⁵

Cross Party Consensus

"Gordon Brown's case for holding terrorism suspects without charge for 42 days is bogus and little more than scaremongering. Mr Brown's security measures were more likely to encourage terrorist recruitment than defeat the extremist threat to Britain."

Sir John Major, Former Conservative Prime Minister⁶

"Test it this way: you cannot keep somebody for as long as it takes. You can keep them only so long as there is a reasonable suspicion that they have committed an offence and you have a reasonable prospect of getting the evidence if you keep them a little longer. After 28 days, how likely is that? In my judgment, having looked at it, it is not likely at all. Therefore I cannot support the proposal. Detention without charge for a long period would undermine the fundamental freedoms on which this country is based, of which this country should be proud, and of which—yes, I will say it—my party ought to be proud. I for one will not undermine them by voting for this proposal."

Lord Goldsmith, Former Attorney General⁷

"Over the past few weeks, I have been consulting various groups from my community, and my fear is that the proposal in the Counter-Terrorism Bill for 42 days' pre-charge detention will play into the hands of extremist groups and individuals and increase anti-Muslim feelings. It will be counterproductive as it will lead to damaged community relations and will further alienate the people we are aiming to integrate into our society. It is unjust and violates people's rights. It will inevitably undermine the UK's moral authority around the world"

Lord Ahmed⁸

"If someone has been in custody for 28 days and there is not even a reasonable suspicion—this is the point made by the noble Lord, Lord Thomas—it seems extremely odd that there could be a basis for detaining him. If the Government had in mind a

⁴ Speaking at 2nd Reading of the Counter-Terrorism Bill in the House of Lords (08/07/08)

⁵ In a letter to Mr Alistair Carmichael MP

⁶ Times on line on 6 June 2008 "42-day law will help terrorists, says Sir John Major". Available at: <http://www.timesonline.co.uk/tol/news/politics/article4076321.ece>

⁷ Speaking at 2nd Reading of the Counter-Terrorism Bill in the House of Lords (08/07/08)

⁸ Speaking at 2nd Reading of the Counter-Terrorism Bill in the House of Lords (08/07/08)

situation in which the state was overwhelmed by multiple plots and the life of the nation was threatened, the debate could be about whether the Civil Contingencies Act was sufficient... The basis for the extension simply is not there. I shall oppose the extension to 42 days root and branch”

Lord Falconer, Former Lord Chancellor⁹

“[The 42 day proposals] establish a number of constitutionally damaging precedents, in particular the lack of clarity about the definition of the threat facing the country, the existence of redacted report procedures, the introduction of “independent” legal advice in the way proposed, the procedures in relation to certain Select Committee Chairs, the confusion about the role of judicial review and of Parliament in relation to the Home Secretary’s actions... I have decided to vote for the Government’s position today despite these very serious doubts which are shared by a significant number of other colleagues who will also support the Government today. I am sure that these concerns will continue to be a feature of public debate as the Lords considers the Bill and when the Bill returns to the Commons”

Former Home Secretary, Charles Clarke¹⁰

“In the discussions which have been held in private between the Opposition parties and the Government and the debates which have been held in public on the floor of the House, no new evidence has been presented or marshalled to suggest that a material change in the law is necessary.”

Nick Clegg, Liberal Democrat Leader¹¹

“We oppose the [42 days] proposal in its entirety. Many in this House will have watched with grave concern the passage of this proposal through another place. It brings to the fore the challenge of balancing the rights of the individual and the needs of efficient justice with the duty of the state to protect its citizens. We will be judged on how we strike this balance... Security measures should not have as their sole focus a reduction in the threat, essential as this is. If security is to be sustainable over the long term, security measures must also facilitate and protect a united society based on shared liberal values and the mutual trust of a free, responsible citizenry”

Baroness Neville-Jones¹², Shadow Minister for Security

“Nobody supports it. The police don’t support it, they don’t want it and don’t think it’s necessary. The security services don’t support it, don’t want it and don’t think it’s necessary. This is not about protecting us from terrorism. Actually our capacity to bring prosecutions on terrorism to book effectively is now higher than any other crime – it’s about 70%. This is completely unnecessary, it is a piece of raw, extremely unpleasant and very unwise politics.”

Lord Ashdown, former Liberal Democrat Leader¹³

⁹Speaking at 2nd Reading of the Counter-Terrorism Bill in the House of Lords (08/0708)

¹⁰ In a letter to Home Secretary, Jacqui Smith (11/06/08)

¹¹Then Liberal Democrat Shadow Home Secretary giving evidence to the Commons Home Affairs Committee, 13 November 2007

¹² Speaking at 2nd Reading of the Counter-Terrorism Bill in the House of Lords (08/07/08)

¹³ Speaking on BBC Question Time, 01 May 2008

“Terrorism is a terrible thing—which is why, when the Government come forward with proposals to combat terrorism, we in the House need to give them careful consideration. That is also why, as far as possible, we need to try to achieve consensus and to put to one side party political considerations, especially those that might tend towards short-term electoral advantage... We want to try to protect the public, but we want to win the battle against terrorism. That battle will be won by sticking to our principles of a liberal, free, pluralist democracy, in which the rule of law is always put uppermost and in which the state and its apparatus avoid creating martyrs, particularly martyrs out of the innocent, which is without doubt the single most corrosive phenomenon for undermining the legitimacy of everything that we do in the House.”

Dominic Grieve, Shadow Home Secretary¹⁴

“I hope that the Government will not proceed with their proposal to extend detention without charge beyond 28 days. Surely it would be better to develop a consensus in the face of the terrorist threat and to develop policies that were likely to thwart terrorist outrages while denying any propaganda advantage to the terrorists. I say that as Member for Holborn and St. Pancras, which is where two of the four 7 July outrages took place, and which was also the location of one of the attempted outrages on 21 July, so I yield to no one in my opposition to terrorism and my loathing of terrorists. However, I also want to protect our ancient liberties, because they are at the heart of our open democracy and because, by sticking to our civil liberties, we give the lie to the terrorists’ claims that we are no better than they are.”

Frank Dobson MP¹⁵

“One lesson of the IRA experience is that excessively repressive responses are counterproductive, and the Government’s attempt to justify seeking new powers of administrative detention is wholly unconvincing. They narrowly escaped defeat in the other place with the aid of nine DUP Members, persuaded by some Faustian bargain to swallow their doubts...The Home Secretary’s argument [in favour of 42 days] would not be likely to convince either our courts or the European Court that the 42-day extension would be compatible with the fundamental right to liberty in Article 5 of the convention. Nothing that has been said or written by Ministers explains why 42 days has been chosen, except that it is thrice 14 days.”

Lord Lester of Herne Hill¹⁶

“No one disputes that it is the duty of the Government to ensure the safety of all their citizens. However, we should bear in mind three factors. First, there is no such thing as total security...Secondly, the Government alone do not have the capacity to provide security for all their citizens. Thirdly, active citizen participation is essential if we are to tackle terrorism and the factors that give rise to it. We must never forget that community participation is conditional on how the community views government action in relation to the protection of civil liberties. These are the essential values that we hold as a democratic nation and for which we have fought for decades. They are not something that we should surrender lightly. Unfortunately, the Counter-Terrorism Bill is one step in that direction.”

Lord Dholakia,¹⁷ Liberal Democrat Spokesperson for Communities

¹⁴ Speaking at 2nd Reading of the Counter-terrorism Bill in the House of Commons (01/04/08)

¹⁵ Speaking at 2nd Reading of the Counter-terrorism Bill in the House of Commons (01/04/08)

¹⁶ Speaking at 2nd Reading of the Counter-Terrorism Bill in the House of Lords (08/07/08)

“There is a balance between personal freedom and the protection of society as a whole. When you change that balance against civil liberties, you have to have a very good reason for doing so..... I think this is a political calculation, it’s a pretty misguided political calculation since the other parties and my party have proposed using intercept in court, the post-charge questioning of suspects – which has now been accepted by the Government – and a proper border police force.

William Hague, Shadow Foreign Secretary¹⁸

“The issue of how long we incarcerate those on whom we have insufficient evidence to charge with any crime has become one of the defining debates of the last decade in this country. Notably, this week marks the anniversary of the signing of Magna Carta. For almost 800 years, we have built on the right of habeas corpus, founded in that ancient document: the fundamental freedom from arbitrary detention by the state. The liberty of the person is in our blood, part of our history, part of our way of life; Conservatives, Labour, Liberal Democrats, Democratic Unionists—all parties. Liberty is the common strand that binds us together, and we have shed blood to protect it, both abroad and at home. Today the Government ask us to sacrifice some of that liberty. The Home Secretary offers a Faustian bargain: to trade a fundamental liberty for a little extra security. Yet, as the debate has gone on, the case for 42 days has first crumbled and then collapsed”

David Davis, Former Shadow Home Secretary¹⁹

“On the issue of all-party consensus, there is already substantial consensus that we should not proceed beyond the present 28 days. That consensus embraces both Houses of Parliament, the Home Affairs Committee, the Joint Committee on Human Rights and many bodies outside.”

Dr Vincent Cable, Liberal Democrat Treasury Spokesman²⁰

“I will vote against the Government because any time any Government seek to diminish the freedoms that are the cornerstone of our system, it is our duty collectively and individually to hold that Government to account and to subject them to the most rigorous scrutiny...When what they are seeking to do interferes with the liberty of the citizen, that duty is even more important than it normally is”

Sir Menzies Campbell, Former Liberal Democrat Leader²¹

“On the one hand to say this is a new chapter of British liberty, but he wants even longer to bang people up without charge or a trial. Totally muddled, totally incoherent. We have always said unless they can produce new evidence about why we should go further than 28 days we don’t see the justification.”

David Cameron, Conservative Leader²²

¹⁷ Speaking at 2nd Reading of the Counter-Terrorism Bill in the House of Lords (08/07/08)

¹⁸ Speaking on BBC Question Time, 01 May 2008

¹⁹ Speaking during the Report Stage debate on the Counter-Terrorism Bill in the House of Commons (11/06/08)

²⁰ Then Acting Leader of the Liberal Democrats during a House of Commons Debate on the Prime Minister’s Statement on National Security, 4 November 2007

²¹ Speaking at Report Stage of the Counter-Terrorism Bill in the House of Commons (11/06/08)

²² Leader of the Conservative Party speaking on Sunday Live on 28 October 2007

"The Government has admitted there is no evidence that more time is needed. As the UK already holds terrorist suspects far longer than any comparative country I cannot see any justification for a longer period of detention. I also fear any move to extend might prove divisive and undermine relationships between Londoners. I certainly would not wish anyone with information for the police to hesitate as a consequence of knowing that an innocent person might be detained for long periods.

Boris Johnson, Mayor of London²³

"I do not believe that a convincing case has been made for an extension of detention without charge for terrorist suspects, particularly as there has to date been no instance where the existing period of 28 days detention has been fully used. I am fully aware of the nature and extent of the terrorist threat facing London and other UK cities but I feel this particular proposal could worsen that threat by undermining the community support that is essential for effective, intelligence-led anti-terrorist policing."

Ken Livingstone, former Mayor of London²⁴

"I accept that there has not been a circumstance in which it has been necessary up to this point to go beyond 28 days, and I think everybody has been very open about that."

Jacqui Smith, Home Secretary²⁵

"I want to have absolute evidence that we actually need longer than 28 days...I want to be totally convinced because I am not going to go and push for something that actually affects the liberty of the individual unless there is a real necessity for it... I still need to be fully convinced that we absolutely need more than 28 days and I also need to be convinced what is the best way of doing that".

Admiral Lord West of Spithead, Gordon Brown's Advisor on Security²⁶

"Even the most stupid of us would like to see a bit of evidence."

The late, Gwyneth Dunwoody MP²⁷

"There's no evidence that more than 28 days is needed by police and the security services. All the key people are all quite satisfied with 28 days and that's where we should stick."

Peter Kilfoyle MP²⁸

"There is nobody in the House—not one person—who does not feel horror at the loss of life or the pain and mutilation suffered by the victims of terrorism. But two wrongs do not make a right, least of all if what we do is ineffective, unnecessary or even counter-productive... I have no sympathy whatever for terrorists. However, to put the issue in real terms, not on paper, I want hon. Members to imagine what it feels like for someone

²³ In a letter to Shami Chakrabarti, Director of Liberty, 27 November 2007

²⁴ In a letter to Shami Chakrabarti, Director of Liberty, 30 November 2007

²⁵ The Home Secretary giving evidence to the Home Affairs select Committee on 22 October 2007

²⁶ The Government's Security Minister on BBC 4's Today Programme as reported in The Telegraph, Wednesday 14

November 2007 <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/11/14/nterror314.xml>

²⁷ Quoted in *The Independent* – 'Labour Revolts Against Brown', 27 December 2007 -

<http://www.independent.co.uk/news/uk/politics/labour-revolts-against-brown-766856.html>

²⁸ Ibid

who is innocent under the proposed regime. They are taken from their bed in the early hours of the morning, which is what normally happens. They are locked in a cell for six weeks—1,000 hours—and they do not know why: not what they are accused of, not what the suspicions are, not what the evidence is. They do not know what is happening to their job. They do not know what is happening to their reputation. They do not know what is happening to their wife or their neighbours. They do not know what is happening to their children, who sometimes face the harsh cruelty of other children. They do not know that for six weeks—1,000 hours. No money on this earth will compensate for that. What we have is the worst of all worlds: a symbolic assault on liberty that is unnecessary, a change in the law that is counter-productive and a procedure that is unworkable. We do not defend our liberties by sacrificing our liberties. We must reject the Government's proposals"

Diane Abbott MP²⁹

"Arrest opens up to the police the chance of seizing incriminating material, such as mobile phones, computers, and even perhaps suspect substances. The suspect can be interrogated both about the facts revealed by surveillance and his explanations for the material seized. If he is detained in custody, by the common law of this country, not to mention Article 5 of the European Convention, he is entitled to know the reason for his detention promptly. When he is properly charged, he knows where he stands. He is entitled to be brought before a judge promptly and to have the lawfulness of his detention determined. But when he is not charged, which is the proposal in the Bill, he is in limbo. He is detained without even a reasonable suspicion based on admissible evidence of his involvement in terrorist activity."

Lord Thomas of Gresford³⁰, Liberal Democrat Shadow Attorney General and Spokesperson for Justice

"Given the experience of Northern Ireland—and, indeed, the experience of the Irish community in Britain—this House needs to be very vigilant when it comes to counter-terrorism legislation. The House cannot be like the Bourbons, who "learned nothing, forgot nothing". The fact remains that counter-terrorism legislation alienated lawful people; law-abiding and decent communities were made to feel like suspect communities and were fundamentally alienated. That meant that good people could not do good, following Edmund Burke's maxim that bad counter-terrorism law actually creates a situation where good people cannot do good."

Mark Durkan, Leader SDLP³¹

"In my time the number of days has gone from three to seven and 14 to 28 and I think that's quite enough."

Chris Mullin MP³²

"The Government's position seems to me absolutely illogical. It's not more time that is needed, it is more efficiency."

Glenda Jackson MP³³

²⁹ Speaking at Report Stage of the Counter-Terrorism Bill in the House of Commons (11/06/08)

³⁰ Speaking at 2nd Reading of the Counter-Terrorism Bill in the House of Lords (08/07/08)

³¹ In his speech at 2nd Reading of the Counter-terrorism Bill in the House of Commons (01/04/08)

³² See Footnote 27

"It is already possible for someone to be held for four weeks without their knowing what they are charged with or being able to prepare any defence. To extend that to six weeks—a 50 per cent. increase—is deeply intrusive into hard-won civil liberties. Anyone present could, as a result of mistaken identity—there are many such cases on record—be held for six weeks in such a way. Any innocent citizen going about their normal life could be subject to a police and security services mistake"

Chris Huhne, Liberal Democrat Shadow Home Secretary³⁴

"[being detained for 42 days without charge] would not only eat like acid into the individual soul, but provide justification for others within the community to feel the same levels of resentment and seek a similar kind of retribution. They would feel justified in doing that... We have heard many good speeches today—a couple of mediocre ones, but most have been quite brilliant. The one that stands out in my mind as providing something that we should try to hang on to was the contribution of my hon. Friend the Member for Foyle (Mark Durkan). Why? He reminded me of the famous words of Nye Bevan, when he said:

"Why look into the crystal ball, when you can read the book?"

My hon. Friend the Member for Foyle opened the book for us tonight. We cannot go on ignoring history. Will we never learn? We have to open our eyes, open our ears and use the bit of grey matter that God, thank heavens, gave us and make sure that we do not make the same mistakes of the past."

Frank Cook MP³⁵

"We are eroding the liberties we hold so dear and that is what the terrorists want and we must resist that at all costs."

Fabian Hamilton MP³⁶

"[The proposals are] crap...This could be part of a catalogue of self inflicted wounds by the Government."

Alan Simpson MP³⁷

"There are certain issues that you don't back down on. Gordon might try an issue the loyalty line, but on the question of 42 day you are not going to convince people like me. it is a bigger issue than the party."

David Hamilton MP³⁸

"We must remember that each and every one of us has a right to freedom, and yet the Government are prepared to weaken it—a task that is far easier against the background of terrorist and violent threats. Everyone knows that Government policies—whichever Government they might be—tend to be created in the tabloid press, and it is difficult to have a meaningful discussion on security and penal policy without sinking deeply into the quagmire of superficial politics. There has been enough talk about balancing the

³³ Ibid

³⁴ In his speech at 2nd Reading of the Counter-terrorism Bill in the House of Commons (01/04/08)

³⁵ In his speech at 2nd Reading of the Counter-terrorism Bill in the House of Commons (01/04/08)

³⁶ See Footnote 27. Fabian Hamilton eventually voted with the Government at Report Stage on the 42 day proposal

³⁷ See Footnote 27

³⁸ Reported in the Scotsman (27/05/08). David Hamilton eventually voted with the Government at Report Stage on the 42 day proposal

freedom of the individual with the security of society. Of course that is important and it must be central to our debate. However, many people believe that the scales have tipped far too heavily towards the state's interests, at the expense of guaranteed rights that we have recognised for a century and more—rights and freedoms that meant that we stood out as an example of a civilised system that provided for the interests of the individual, alongside the interests of the society or state”

Elfynd Llwyd, Leader of Plaid Cymru³⁹

“We have been targeted in Scotland. We have felt the icy touch on our shoulders of those who would destroy our way of life and maim and kill indiscriminately for their warped and perverted agenda...I know the seriousness with which my colleagues in the Scottish Government take such issues. Their first priority is ensuring the safety of Scottish citizens. However, they also have obligations and responsibilities for ensuring Scottish civil liberties. They are responsible for making sure that nothing compromises or threatens the good community relations that we have in Scotland. We will therefore not allow any half-cocked proposals or half-baked suggestions such as the extension to 42 days to threaten that. We have seen no evidence that anything beyond 28 days is required. We agree with all the campaign groups, Opposition parties and the new voices that contribute to the overwhelming chorus that says that nothing beyond 28 days is required”

Peter Wishart, SNP Spokesperson for Justice⁴⁰

“The Bill risks conflating the roles of Parliament and the judiciary, which would be quite inappropriate. It is ill-advised to create a decision-making process that requires Parliament and the judiciary to ask and answer similar questions within a short space of time—or at all. Far from being a system of checks and balances, this is a recipe for confusion that places on Parliament tasks that it cannot effectively fulfil and arguably risks undermining the rights of fair trial for the individuals concerned.”

Parliamentary Constitution Committee⁴¹

“I voted for 90 days, because at that time I saw no other option. I have since changed my position, because the Government have not made their case for new powers, we have experience of the 28-day maximum, the safeguards are not adequate, alternatives are available and I do not believe that the proposals will make us safer. In fact, they risk alienation and division in our society...Each erosion of the normal process is, in itself, a result for the terrorist, who would undermine our freedoms and way of life. We run the risk of doing his work for him”

Andrew Dismore MP, Chairman of the Joint Committee on Human Rights⁴²

“[I]t seems to the Committee that, on one of the Government's most important proposals, to extend the period of pre-charge detention beyond 28 days, there is a clear national consensus that the case for further change has not been made by the Government ... In the Committee's view a truly consensual approach should lead the Government to accept that it has failed to build the necessary national consensus for this very significant interference with the right to liberty and withdraw the proposal, to proceed with it as

³⁹ Speaking at Report Stage of the Counter-Terrorism Bill in the House of Commons (11/06/08)

⁴⁰ Speaking at 2nd Reading of the Counter-terrorism Bill in the House of Commons (01/04/08)

⁴¹ 10th Report of Session 2007-08: “Counter-Terrorism Bill: The role of Ministers, Parliament and the Judiciary”, 5th August 2008, para 39

⁴² Speaking at Report Stage of the Counter-Terrorism Bill in the House of Commons (11/06/08)

detailed by the Home Office calls into question the Government's commitment to a consensual approach and raises questions of compatibility with human rights."

Parliamentary Joint Committee on Human Rights⁴³

"Neither the police nor the Government have made a convincing case for the need to extend the 28-day limit on pre-charge detention. We consider that there should be clearer evidence of need before civil liberties are further eroded, not least because without such evidence it would be difficult to persuade the communities principally affected that the new powers would be used only to facilitate evidence gathering and not as a form of internment."

Parliamentary Home Affairs Select Committee⁴⁴

Police & Intelligence Services

"In deciding what I believe on these matters, I have weighed up the balance between the right to life—the most important civil liberty—the fact that there is no such thing as complete security and the importance of our hard-won civil liberties. Therefore, on a matter of principle, I cannot support the proposal in the Bill for pre-charge detention of 42 days... I do not see on a practical basis or on a principled one that these proposals are in any way workable for the reasons already mentioned and because of the need for the suspect to be given the right to a fair trial."

Baroness Mannigham-Buller, ex-Director General of MI5⁴⁵

"While al-Qaeda seeks to encourage the Muslim majority to accept and even support violence, we must encourage the same majority to reject violence and the extremist minorities. That is why the 42-day proposal may well be counterproductive and a propaganda gift to the extremists, who will group it with Guantanamo Bay, extraordinary rendition and alleged tortures to seek to influence the majority of good, traditional Muslims—and, in particular, young men—to acquiesce in violence or, at worst, to participate in those violent acts. The 42-day proposal, even with the checks and balances that others have spoken about, undermines our moral authority to win the battle for hearts and minds that the Prime Minister has acknowledged is central to the long-term success in countering terrorism. All the wasted time and energy expended on the debate about extending detention without charge is a debilitating, divisive and counterproductive distraction from our real task, which is to put in place a meaningful strategy and legislation to deal with the long-term struggle against extremists and their propensity for terrorist acts throughout the world."

Lord Condon, former Commissioner of the Metropolitan Police⁴⁶

"Some of Britain's most senior police officers have broken ranks with their colleagues to denounce the government plans for detaining terrorism suspects for 42 days without charge. Officers who spoke to the Guardian accept their opposition is the minority view at the upper echelons of the service, but they believe the public has been given the misleading impression that all senior officers agree with the government's plans"

⁴³ Second Report of 2007/08, "Counter-Terrorism Policy and Human Rights: 42 Days", 14 December 2007, Summary

⁴⁴ First Report of 2007/08, "The Government's Counter-Terrorism Proposals", 13 December 2007, para 70

⁴⁵ In her Maiden Speech at 2nd Reading of the Counter-Terrorism Bill in the House of Lords (08/07/08)

⁴⁶ Speaking at Second Reading of the Counter-Terrorism Bill in the House of Lords (08/07/08)

The Guardian, "Senior police officers attack 42-days plan"⁴⁷

"It would be wrong to think that there is a uniform professional view within the police service. I, and I know other chief officers, do not see the necessity of 42 days; we can see the desirability, but at this stage I do not see the professional necessity. The issue now, unfortunately, has become very toxic and political, and we are moving away from a rational debate, because of the politics that now envelop this subject, not least of all, the role and position of the government and prime minister and all the other dimensions we read about in the press. I stand by what I said, and continue to have doubts about the investigative need and concerns about the impact on hearts and minds in our work with communities."

**Rob Beckley, Senior member ACPO⁴⁸
and ACPO lead on communities and counter-terrorism (2002-2007)**

"When you start to unpick the hardnose investigative benefits of 42 days, it does not add up."

Unnamed Police Officer⁴⁹

"I hold *moral* reservations about the damaging effect of incarcerating people for up to six weeks without charge, who are then found to be innocent."

Unnamed Police Officer⁵⁰

"Detaining people without sufficient evidence could lead to 'speculative arrests where detectives then have to build the evidence, which can lead to 'noble cause corruption', where officers exaggerate, exclude or invent evidence in order to prove a suspect's guilt."

Unnamed Police Officer⁵¹

"Among some officers who support the proposals there is "bemusement" that the government chose to put the issue back on the agenda: The police service was not overtly asking for this, because it was such a damaging episode last time for the police's reputation over 90 days when we seemed to have been dragged into politics."

Unnamed Police Officer⁵²

"A number of media reports have appeared in the last few days on the supposed position that MI5 takes in respect of pre-charge detention time limits. I would like to make the Services position on this issue clear. Since the Security Service is neither a prosecuting authority nor responsible for criminal investigations, we are not, and never have been the appropriate body to advise the Government on pre-charge detention time limits."

**Statement by Jonathan Evans, Director
General of the Security Service⁵³**

⁴⁷ Article available at: <http://www.guardian.co.uk/politics/2008/jun/09/terrorism.police>

⁴⁸ Senior member of the Association of Chief Police Officers (Acpo), speaking at a Muslim Safety Forum conference in May 2008. Available at: <http://www.guardian.co.uk/politics/2008/jun/09/terrorism.police>

⁴⁹ Police officer in an interview to the Guardian. Available at:

<http://www.guardian.co.uk/politics/2008/jun/09/terrorism.police>

⁵⁰ Ibid

⁵¹ Ibid

⁵² Ibid

⁵³ Statement made on 09/06/08. A full copy of the statement is available at <http://www.mi5.gov.uk/output/Page644.html>

“There are many tools for fighting criminal terrorists, and many of the chief constables I speak to privately agree that they do not need the power to hold terror suspects for 42 days before charging them with an offence... Let us listen to the police officers on the frontlines who say they don't need pre-charge detention powers for six weeks and would like to forge stronger relationships with minority communities. Have we not learned from the failed internment policy in Northern Ireland that miscarriages of justice - real and imagined - are the best way to recruit new terrorist supporters? If we are to be tough on terror, we must be smarter about terrorism.”

Lord Dear, former Chief Constable of West Midlands Police and Her Majesty's Inspector of Constabulary⁵⁴

“For our part, as prosecutors, we do not perceive any need for the period of 28 days to be increased...Various scenarios have been put up, and anything is possible, but the question is whether it is remotely likely”

Sir Ken MacDonald, Director of Public Prosecutions⁵⁵

“We have no evidence to support that we need beyond 28 days. We certainly have not needed it in any case up until now.”

Sue Hemming, Head of Counter-Terrorism, Crown Prosecution Service⁵⁶

“We do not have a case that has required us to go beyond 28 days”

Sir Ian Blair, Met Chief Constable⁵⁷

International Support

"I am concerned by the British Government's suggestion to allow terrorism suspects to be detained for 42 days without charge. This would be way out of line with equivalent detention limits elsewhere in Europe. We need to be more restrictive with such measures. Keeping people detained for such long periods before prosecution is excessive and will prove counter-productive. I would urge Members of the Parliament to carefully review the Government's proposal."

Thomas Hammarberg Council of Europe Human Rights Commissioner⁵⁸

“Martin Scheinin [the UN Special Rapporteur on human rights while countering terrorism] is concerned that the adoption of the Counter-terrorism Bill in the United Kingdom could set a negative precedent for upholding rights in the context of countering-terrorism”

Press Release from the UN Office of the High Commissioner for Human Rights⁵⁹

⁵⁴ Monday 31 March 2008 comment piece, *The Guardian* – available at

<http://www.guardian.co.uk/commentisfree/2008/mar/31/uksecurity.terrorism>

⁵⁵ Evidence to the Counter-Terrorism Bill Committee, Report of Proceedings, 22 April 2008

⁵⁶ Evidence to the Joint Committee on Human Rights, Wednesday 5 December 2007

⁵⁷ The Commissioner of the Metropolitan Police giving evidence to the Home Affairs Select Committee, 9 October 2007

⁵⁸ “Brown told detention is excessive and out of step with Europe” *Guardian* 02/06/08

⁵⁹ The full press release can be accessed at:

<http://www.unhcr.ch/hurricane/hurricane.nsf/view01/B29EDB9F1B38BB0DC1257464003873C6?opendocument>

“The Committee notes with concern that, in order to combat terrorist activities, the [UK] is considering the adoption of further legislative measures which may have potentially far-reaching effects on the rights guaranteed in the Covenant. In particular, while it is disturbed by the extension of the maximum period of detention without charge of terrorist suspects under the Terrorism Act 2006 from 14 days to 28 days, it is even more disturbed by the proposed extension of this maximum period of detention under the counter-terrorism bill from 28 days to 42 days. Recalling the withdrawal of the notification of the State party’s derogation from article 9 of 18 December 2001 on 15 March 2005, the Committee notes that article 9 is therefore now fully applicable again in the State party. (arts. 9 and 14) **The State party should ensure that any terrorist suspect arrested should be promptly informed of any charge against him or her and tried within a reasonable time or released.**”

UN Human Rights Committee⁶⁰

“The best way to combat terrorism is by maintaining and strengthening the freedoms that terrorism seeks to destroy. The protection of those freedoms will not be advanced by increasing the period in which terrorism suspects can be held without charge.”

Archbishop Desmond Tutu, Nobel Peace Prize Winner⁶¹

“There is a dangerous precedent to the UK government’s attempt to increase the period for which terror suspects may be detained without charge. I am reminded of the course of events in apartheid South Africa which started with house arrest without charge, continued with 90 day detention without charge, then 180 days detention without charge, and finally, under the so-called Terrorism Act, indefinite detention without charge. I support your campaign.”

Helen Suzman, anti-apartheid activist and South African politician⁶²

“Terrorism has threatened the lives of hundreds and thousands of people of all races and religions. It must be challenged so that the values of freedom, dignity and democracy can be preserved. At the same time, governments must avoid the temptation to undermine human rights norms to overpower forces that do ultimately want human rights eroded. Detention without charges for a fairly long period of time seriously exposes people to abuse. Britain has a proud history of promoting democratic norms and upholding human rights. It takes the lead in advancing the cause of human rights. A measure that sees a reverse trend will send a negative signal to the international community. The worry is that while Britain may make amends, they would have left a poor precedent for dictators to follow on the pretext of fighting terrorism. This downward trend will be detrimental to the rights of individuals and surely Britain would not want to be a part of it. In addition, reports from law enforcement confirm that exceptionally long periods of remand do not improve the quality of investigation but does increase the chances of abuse, victimisation and unfair practices.”

**Asma Jahangir, Chairperson,
Human Rights Commission of Pakistan⁶³**

⁶⁰ Concluding Observations of the UN Human Rights Committee, International Covenant on Civil & Political Rights, 93^d Session, Geneva, 7-25 July 2008

⁶¹ Public Statement of Solidarity for Liberty’s *Charge or Release* campaign

⁶² Public Statement of Solidarity for Liberty’s *Charge or Release* campaign

⁶³ Public Statement of Solidarity for Liberty’s *Charge or Release* campaign

“The International Campaign for Human Rights in Iran joins our colleagues in Liberty in opposing the effort to increase the period during which terror suspects can be detained without charge the United Kingdom. We oppose the proposal on principle as an unjustified encroachment on basic civil liberties, and also on practical grounds. No evidence exists that such practices strengthen the campaign against terrorism; on the other hand, the change would represent a retreat from human rights and bring the UK closer to the kind of repressive society many terrorists seek to impose.”

International Campaign for Human Rights in Iran⁶⁴

“In my country, Burma, many people are detained for months or even years without a chance to appear in court. I do not want to see that happen in Britain.”

Htein Lin, artist and former political prisoner, Burma⁶⁵

“The Bush administration's national security policies have needlessly trampled on civil liberties and undermined American credibility and prestige on the world stage. The American Civil Liberties Union is fighting to ensure our nation returns to the rule of law, including closing Guantanamo Bay and bringing prisoners to the United States to be charged and tried, or transferring them to countries where they will not be tortured. Our efforts would not be helped by our friends across the Atlantic developing their own brand of injustice – detention without charge for over a month.”

Anthony Romero, Executive Director, American Civil Liberties Union (ACLU)⁶⁶

“It is most disturbing, indeed shocking, to learn of the plans to extend detention without charge to a level that should be completely intolerable in any free society, and will surely be welcomed as a model by brutal and repressive governments everywhere. I see no way to improve on the words of Winston Churchill, at a time when the very survival of Britain was under severe threat: ‘The power of the executive to cast a man into prison without formulating any charge known to the law, and particularly to deny him the judgment of his peers, is in the highest degree odious, and the foundation of all totalitarian government whether Nazi or Communist.’”

Noam Chomsky, Emeritus Professor of Linguistics at MIT and political activist⁶⁷

Institutions and Public Figures

“We have certainly made advances in policing, intelligence and law enforcement. But the recent parliamentary vote extending detention without charge to 42 days was a clumsy own goal. I was talking to a retired senior policeman the other day. He had been at the forefront of the fight against the IRA, and studied the conflict (with a PhD to prove it). I asked him: why 42 days? He hadn't the faintest idea. I asked an audience of accountants last week - a packed hall with some 300 present - and not a single person knew why. Does anybody know? Could it be that Gordon Brown chopped Tony Blair's failed 90 days in half, then lopped off a further three days to disguise the wheeze? Prosecutors, policemen, the security services and special forces soldiers - those on the frontline - have no idea of the reasoning, let alone evidence, behind 42

⁶⁴ Public Statement of Solidarity for Liberty's *Charge or Release* campaign

⁶⁵ Public Statement of Solidarity for Liberty's *Charge or Release* campaign

⁶⁶ Public Statement of Solidarity for Liberty's *Charge or Release* campaign

⁶⁷ Public Statement of Solidarity for Liberty's *Charge or Release* campaign

days. So much for clarity of mission. Let's hope the House of Lords makes a stand when it debates the matter next week."

Tim Collins, former colonel in the British Army⁶⁸

"As the body charged with the promotion of human rights, we agree with ministers that the right to life is paramount, but that does not give us the liberty to take actions that unnecessarily violate other human rights ... Should the proposed measures be carried, the commission will immediately move to test its legality by launching a judicial review"

Trevor Phillips, Chairman of the Equality & Human Rights Commission⁶⁹

"I have not seen anything that convinces me that longer than 28 days is needed to stop people such as...Mohammed Sidique Khan...detonating his bombs in the future...it's fundamentally important to us as a country that we do not hold people without them knowing what they're being charged with and why... I understand that terrorism cases are complex, but I also understand that busting international drug rings is a complex matter which may involve caches of evidence on computer, people speaking different languages that need translators, huge resources...people scattered across the globe, and these people are held for four days before being charged, but I have not seen any evidence that convinces me that terrorism is so very different...that it requires an entirely different constitutional approach."

Rachel North, Survivor of 7/7 Bombs in London⁷⁰

"That this Synod, mindful both of the Christian teaching that enforcement of law should be just in process and outcome, and of the challenge that the advent of suicide attacks poses for the general public and for those who bear responsibility for protecting the public from terrorism:

emphasise the importance of society maintaining a careful balance between the liberty of the individual and the needs of national security;

express grave concern that an extension to the current 28-day maximum period for detention without charge of terrorist suspects would, in the absence of the most compelling arguments, disturb the balance unacceptably;

while welcoming the release of most UK prisoners from Guantanamo Bay, deplore the continued holding of prisoners there without charge or due process and encourage Her Majesty's Government to continue to use all available means to press the United States administration to close the Guantanamo Bay facility and restore the full application of the rule of law; and affirm the desirability of an early review by the Government of the restrictions and other obligations that may be imposed on individuals under the Prevention of Terrorism Act 2005 and the use of undisclosed material in control order proceedings"

**General Synod of the Church of England,
passed by 235 votes in favour to 2 against⁷¹**

"Many of us in the church stand with other of the Government's critics in asserting clearly that these proposals are both unnecessary and unprincipled and offer us the prospect of innocent people being held for well over a month on the basis of police suspicion rather than hard evidence and without a formal accusation of any criminal offence...The

⁶⁸ "Repressive law turns terrorists into martyrs" *Daily Telegraph* 03/07/08

⁶⁹ "Rights Body threatens to bring legal challenge on 42 day detention" *Guardian* 10/06/08

⁷⁰ Survivor of the 7/7 terrorist attack giving evidence to the Home Affairs Select Committee, 13 November 2007

⁷¹ General Synod, February 2008 Group of Sessions, 14 February 2008

Christian faith has no privileged insight that shortcuts the hard work of analysis and moral struggle on this issue, but the keen Christian awareness of the fallen and compromised nature of human beings serves as a perennial warning that measures taken to counter horrific evil must contain checks and balances, given the temptation, even to those whose intentions are laudable, to betray their own principles. Such checks and balances are at the heart of our moral identity as a nation. We ignore or erode them at our peril.”

The Lord Bishop of Leicester⁷²

“Detention without charge is constitutionally repulsive...These measures can never prevent another 9/11, 7/7, Spanish train or Bali disco bomb. If anything they will simply fuel the flames of resentment”.

Bob Geldof⁷³

“Habeas corpus, which safeguards people from arbitrary detention by the state, is the bedrock of British justice. A convincing case that it should be eroded has not been made by the Government. The case that it should remain has been made for nearly 800 years.”

Open letter from Vivienne Westwood, Colin Firth, Iain Banks, Patrick Stewart, Ken Loach, Nick Broomfield, A C Grayling, Lord Ahmed, Kate Allen and 7 others⁷⁴

“[W]e today call upon the prime minister to abandon plans to extend pre-charge detention of terrorist suspects to up to 42 days, from the current limit of 28 days. It has become clear, as this debate has proceeded, that there is no consensus on the case for an extension of detention powers. Rather, it has resulted in a broad consensus among independent and expert opinion outside government that no convincing case has been made. We feel that the home office is underestimating the damage this legislation could have: to our struggle against home-grown terrorism; to preserving individual liberty; and to the reputations of the United Kingdom and the Labour Party as forces that seek to protect and advance human rights.”

Open letter from John le Carré, Philip Pullman, Baroness Helena Kennedy QC, Timothy Garton Ash, Professor Quentin Skinner, Hari Kunzru, Ed Hussein and 31 others⁷⁵

“I think it’s a dreadful thing to be doing. I think it undermines all of the arguments about human rights, about democracy and about civil liberties and we are trying to persuade people not to become terrorists – young people who might be tempted – because we support these values. But at the same time we are demolishing these values and it seems to me that it’s absolute ammunition for terrorism itself and it’s a great shame.”

Polly Toynbee, Journalist⁷⁶

⁷² Speaking at 2nd Reading of the Counter-Terrorism Bill in the House of Lords (08/07/08)

⁷³ Addressing a group of students at Hull’s Guildhall, 04/07/08

⁷⁴ 31 March 2008 letter – available at http://www.amnesty.org.uk/news_details.asp?NewsID=17706

⁷⁵ Open Letter – 15 March 2008 – available at

http://commentisfree.guardian.co.uk/open_letter/2008/03/a_threat_to_our_freedoms.html

⁷⁶ Speaking on BBC Question Time, 01 May 2008

Public Response/Polling

An ICM poll found that:

- 60% of those polled thought that those suspected of a terrorist offence should be held without charge for no more than 28 weeks
- Of those that thought that 42 days was justified, 35% changed their minds when told that six weeks in custody is equivalent to the prison sentence which someone might serve if found guilty of an offence such as burglary or assault

ICM poll commissioned by the Joseph Rowntree Reform Trust⁷⁷

The Home Office consultation on extending pre-charge detention found that:
The majority of respondents opposed legislating to extend pre-charge detention
The majority of respondents supported Liberty's alternative – using existing powers in the Civil Contingencies Act in a genuine emergency

Home Office Consultation Response⁷⁸

A YouGov poll of the public found that:

- Only 13% agreed that the time limit for holding suspects without charge should be raised to 42 days with the police barred from conducting post-charge questioning
- 70% favoured retaining the current 28 day limit with provision for post-charge questioning if fresh evidence emerge on related offences
- 54% thought that the Government's motivation for extending pre-charge to detention was to 'look tough on terror'

YouGov Poll on behalf of Liberty⁷⁹

A Compass survey of 800 Labour members and supporters found that:

- 40% favour the current 28 day limit and a further 45% want a return to the pre-2005 limit of 14 days. Only 9% support Government plans for 42 day detention
- 60% do not believe that the Government's proposed 'safeguards' make the proposals more acceptable
- 76% would support the use of intercept evidence in court and 69% would support post-charge questioning – two alternatives that Liberty has suggested instead of extending pre-charge detention
- 52% think that the current Counter-Terrorism Bill will *increase* the chances of a further terrorist attack in the UK. Only 9% said they thought the Bill would make an attack less likely.

Compass Poll⁸⁰

All but one national newspaper has had a leader opposing the 42 day detention proposal. For more information on "What the Paper's Say" see: <http://www.liberty->

⁷⁷ Conducted in July 2008 – press release available at <http://www.jrrt.org.uk/Documents/DETAIN%20TERROR%20SUSPECTS%20NO%20MORE%20THAN%20FOUR%20WEEKS%20Press%20Release.pdf>

⁷⁸ Home Office - *Summary of Responses to the Counter-Terrorism Bill Consultation*, December 2007 - available at <http://security.homeoffice.gov.uk/news-publications/publication-search/consultation-responses/summary-of-responses?view=Binary>

⁷⁹ Conducted in March 2008

⁸⁰ February 2008 Poll – see www.compassonline.org.uk/article.asp?n=1333 for full details

human-rights.org.uk/issues/2-terrorism/extension-of-pre-charge-detention/what-the-papers-say.shtml