When I strayed from the rich and sheltered pastures of European law into the post of Independent Reviewer of Terrorism Legislation, the notion that I might ever have anything useful to say about responding to terrorism would have seemed ridiculous.

For a start, I was not used to expressing a public view about anything at all. Like other members of the Bar I was in the habit of acting on instructions, making submissions, relying on precedents— at all costs, avoiding the newbie error of publicly saying “I think”. Being asked for my opinion on everything from how people are radicalised to whether Edward Snowden was a hero or a villain was going to take me well out of my comfort zone.

And anyway, my ignorance was profound. My only exposure to terrorism laws was through representing Sheikh Kadi, considered by the British Government to be a former associate of Osama bin Laden, in his attempts to have the freeze on his assets annulled by the European Court of Justice. To be fair, the connection did not seem to worry either the Home Secretary or the three men she sent to my Chambers, under the pretence of seeking legal advice, to offer me the job of Independent Reviewer.

Impressions
Five years on, I seem to have acquired not so much a cool framework for analysis as a kaleidoscopic series of impressions. Here are just a few:

- Drinking instant coffee and discussing the Middle East with Abu Qatada in the house provided by the Home Office for his family—strangely enough in Stanmore, London’s most Jewish district.
- Donning body armour to patrol South Armagh with police officers for whom terrorism remains an imminent and personal threat, but who are proud that progress allows them to do their jobs in armoured vehicles rather than helicopters.
Terrorism
The general idea must surely be to bear down hard on the few thousand people who are suspected of engaging in terrorism-related activity on this island and in Northern Ireland, without alienating the millions of their peaceful and law-abiding co-religionists who wish their fellow-citizens no harm.

Bearing down hard

Bearing down hard requires strong laws, strongly enforced. These we now have. Ten or 12 years ago, successive Home Secretaries questioned whether we had the offences we needed, whether the jury system could cope with terrorism trials, and whether we might be better going over to the French investigating magistrate system.

But answers were provided in the shape of precursor offences such as preparing acts of terrorism, some of them with extra-territorial effect, and the specialised Counter-Terrorism Division of the CPS which now prosecutes terrorism offences with a high degree of success, measurable partly in the number of guilty pleas.

Avoiding alienation

Strong laws will not do the job if their application alienates the population – including, in particular, the Muslim population of this island.

There are thugs, gangsters and enforcers in Muslim communities as there are in many others. Cultural sensitivities should never excuse serious criminal conduct – whether it takes the form of domestic violence, grooming for sex or calls for the physical punishment of blasphemers or apostates.

But there is much to be heartened by. Around 95% of British Muslims feel loyalty to Britain, according to a poll last year for the Today Programme. 94% say that if someone they knew from the Muslim community was planning an act of violence, they would inform the police. I doubt that if non-Muslims were asked the same questions, the percentages would be any higher. And the well-publicised barbarities of Da’esh have prompted a marked increase in the willingness of concerned parents and neighbours to come forward, including to the police.

Good community relations – the current expression of Sir Robert Peel’s principle of policing by consent – are the key here. They need to be accompanied by greater minority recruitment to the police. A Brussels resident was reported to have said about captured fugitive
Salah Abdeslam, who hid out in the city for several months after the last Paris attacks: “Everyone in the neighbourhood knew”. We must hope that those words never become a reality in the UK.

International human rights standards have been a further positive. Landmark decisions in Strasbourg have resulted in the end of the pointless, but much resented, suspicionless stop and search under s 44 of the Terrorism Act, and ensured that in the most sensitive cases at least, the subject of closed material proceedings is given the gist of the allegations against him.

More cases are outstanding, for example on port controls and data collection. Some of our laws continue to be characterised by overbroad discretions which – as one serving High Commissioner put it to me – mean that a licence should really be required for their export. But six successive reasoned decisions in Strasbourg between 2010 and 2016, each of them upholding a controversial element of our counter-terrorism armoury, indicate that the balance may not be in too bad a place for now.

Linked to terrorism is extremism. Having led the world in programmes to combat violent extremism, the government has now set its sights on the non-violent kind. Here, I would suggest, considerable caution is in order. The promised Counter-Extremism Bill has not yet materialised: but it is a comfort, at least to me, to know that our domestic courts and their international counterparts stand ready to defend the rights to freedom of expression, freedom of conscience, freedom from discrimination and private life against any measures that cannot be demonstrated to be both necessary and proportionate.

Europe
Since I have grown used to expressing opinions, let me express one more. The result of the forthcoming referendum may prove to have been accurately predicted more than 30 years ago by Luigi Barzini, the Italian journalist, who said that when one asks a Briton, ‘Are you European?’, the answer is always, “Yes”, but after a long thoughtful pause in which all other continents are mentally evoked and regretfully discarded”.

Our experience of terrorism, from the Fenian outrages of the 19th century, through decolonisation, to the Troubles and the Islamist plotters of the past 15 years, is the most extensive in Europe. Perhaps that is nothing to be proud of – but it has enabled us to exert significant and productive leadership in Europe on a range of terrorism-related issues. This illustrates the principle that when we really put our minds to it, we can make of the European Union not something irritating that others do to us, but a vehicle for the export of our values and our expertise to the rest of the continent and beyond.

As we all embark on Barzini’s long thoughtful pause, perhaps that is something to reflect upon.

This article is based on a speech to the British Institute of International and Comparative Law

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