

The United Kingdom's Anti-Terrorism Laws: Lessons for Australia

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The agenda set by the foregoing title is daunting. To describe and analyse the immense catalogue of United Kingdom anti-terrorism laws is alone a monumental task. The further possibility that the United Kingdom should act as role model would seem implausible to anyone familiar with the doleful tales of miscarriages of justice and summary shootings which have emanated from their implementation. Nevertheless, the Australian Commonwealth government has occasionally found inspiration for anti-terror laws from the United Kingdom, and so some respectful pointers for another jurisdiction will be mentioned as a subsidiary task.

Are United Kingdom anti-terror laws necessary?

The question may be answered descriptively and prescriptively. A descriptive answer is that there exists a high degree of factual reliance on anti-terror laws by successive United Kingdom governments and parliaments. Unlike many jurisdictions where no serious attention was accorded to terrorism until the shock of 9/11, the United Kingdom has regularly experienced and legally responded to terrorism during three centuries or more. The legal results first reflect the experiences of terrorism in colonial conflicts of the bygone British Empire. Further legal impact was achieved by the sporadic campaigns of Irish Republicans, as well as their Loyalist opponents, both in Ireland and sometimes in mainland Britain. Finally, there has emerged since the 1970s a growing attentiveness to the mounting spectre of international terrorism.

Just before 9/11, the *Terrorism Act 2000* marked an important new phase in the legal framework. That Act launched a more unified and permanent regime in recognition that it is wistful or unrealistic, in the light of this history, to depict terrorism laws as 'temporary provisions', a lesson which other juris-

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Conclusion

Terrorism legislation will continue both to proliferate and to generate controversies along the foregoing binaries. However, its impact will remain peripheral. The official estimates of active terrorists within the United Kingdom record a rising trend between March 2005 and November 2006.³⁶ Whether even more have been deterred, prevented or captured though anti-terrorism laws is hard to judge, save that in 2006, for example, 65 persons were charged under the terrorism legislation, 185 were arrested and around 17 were subject to control orders.³⁷ About 30,000 were stopped and searched.³⁸ More important factors than special legislation comprise normal police powers and criminal offences, and regular techniques of investigation and securitisation. These must operate alongside cooperation and vigilance on the part of the public who provide much of society's policing capability. Given this dependence of democracies on the mobilisation of the masses, both at political and practical levels, care must be taken to avoid alienating the public by counter-terrorism measures which appear disproportionate or senseless.

So, perhaps the greatest challenge is to maintain the trust and support of the public through adherence to the precepts of constitutionalism. The need to do so may be broadly appreciated. But even after three centuries of grappling with the problem of terrorism, the attainment of these precepts can still be blown off course in the face of the distress and emotion of the terrorist spectacular. To defeat terrorism is necessary if our democratic and humane values are to be preserved. Anti-terrorism laws are necessary, but the lessons of history show that laws can work for good or for ill.

Notes

- 1 See Northern Ireland Office, *Replacement Arrangements for the Diplock Courts System* (2006).
- 2 For details, see Lord Carlile, *Reviews of Pt IV of the Anti-terrorism, Crime and Security Act 2001* (2003, 2004, 2005).
- 3 See Privy Counsellor Review Committee, UK Parliament, *Anti-Terrorism, Crime and Security Act 2001 Review* (HC100, 2003) para 193.
- 4 Home Office, *Counter Terrorism Powers* (2004) Pt I paras 8, 34, Pt II para 31.
- 5 Lord Carlile, *First Report of the Independent Reviewer pursuant to Section 14(3) of the Prevention of Terrorism Act 2005* (2006) para 43.
- 6 See Clive Walker, 'Keeping control of terrorists without losing control of constitutionalism' (2007) 59 *Stanford Law Review* 1395.
- 7 Richard Ford, 'Terror Controls Full of Holes, Says Reid', *The Times*, 25 January 2007, 2.
- 8 Rosemary Bennett and Richard Ford, 'Row over tougher rules on preachers of hate', *The Times*, 6 August 2005, 1.
- 9 For a transcript of excerpts, see *London bomber: Text in full* (2005) *BBC News* <http://news.bbc.co.uk/2/hi/uk_news/4206800.stm> at 15 August 2007.
- 10 See Clive Walker, 'The treatment of foreign terror suspects' (2007) 70 *Modern Law Review* 427.
- 11 United Kingdom, *Parliamentary Debates*, House of Commons, 2 November 2005, vol 438 col 844, 2 (Bob Marshall-Andrews).

- 12 See *New counter-terrorism proposals announced* (2007) Home Office <<http://www.homeoffice.gov.uk/documents/ct-discussion-document.pdf>> at 15 August 2007.
- 13 See especially UN Security Resolution 1373 of 28 September 2001.
- 14 See Home Office, *Countering International Terrorism* (2006) paras 5-9.
- 15 See Lucia Zedner, 'Securing Liberty in the Face of Terror: Reflections from Criminal Justice' (2005) 32 *Journal of Law & Society* 507.
- 16 See Michael Humphrey, *The Politics of Atrocity and Reconciliation* (2002).
- 17 See Richard Ericson and Kevin Haggerty, *Policing the Risk Society* (1997).
- 18 *A v Secretary of State for the Home Department* [2005] 2 AC 68.
- 19 See further Clive Walker, 'Prisoners of "War All the Time"' [2005] *European Human Rights Law Review* 50.
- 20 *Re MB* [2006] EWHC 1000 (Admin), [103]; reversed by the Court of Appeal: [2006] EWCA Civ 1140.
- 21 See *Prevention of Terrorism Act 2005* s 8; *Secretary of State for the Home Department v E* [2007] 3 WLR 1.
- 22 *Report of the Commission to consider Legal Procedures to Deal with Terrorist Activities in Northern Ireland* (1972).
- 23 Duncan Campbell, 'Attack on America' *The Guardian*, 14 September 2001, 5.
- 24 Neil Rose, 'Goldsmith calls for US to close down Guantanamo and back the rule of law' (2006) 103 *Law Society's Gazette* 6.
- 25 See Home Affairs Committee, UK Parliament, *Counter-Terrorism and Community Relations in the aftermath of the London bombings* (HC 165-I, 2005).
- 26 Limited suggestions for reform were made by Lord Carlile, *The Definition of Terrorism* (2007). See further Clive Walker, 'The Legal Definition of "Terrorism" in United Kingdom Law and Beyond' [2007] *Public Law* 331.
- 27 *A v Secretary of State for the Home Department* [2005] 2 AC 68, 132 (Lord Hoffman).
- 28 See further UK Department for Constitutional Affairs, *Review of the Implementation of the Human Rights Act 1998* (2006).
- 29 See Chapter 14 of this book for discussion of these musings.
- 30 See Clive Walker, 'The treatment of foreign terror suspects' (2007) 70 *Modern Law Review* 427; UK Intelligence and Security Committee, *Rendition* (2007).
- 31 *Al-Skeini v Secretary of State for Defence* [2007] 3 WLR 33.
- 32 Home Office, above n 14, para 5.
- 33 Her Majesty's Inspectorate of Constabulary, *Closing the Gap* (2005).
- 34 See *R v Secretary of State for the Home Department; ex p Ruddock* [1987] 1 WLR 1482.
- 35 Committee of Privy Counsellors, UK Parliament, *Review of Intelligence on Weapons of Mass Destruction* (HC 898, 2004) ch 4.
- 36 Compare John Stevens, 'Forget human rights ... kick out the fanatics' *News of the World*, 6 March 2005, 13 and Dame Eliza Manningham-Buller, 'The al-Qaeda challenge' *The Times*, 10 November 2006, 1.
- 37 Lord Carlile, *Report on other Operation of the Terrorism Act 2000 in 2006* (2007).
- 38 UK Metropolitan Police Authority, *Report of the MPA Scrutiny on MPS Stop and Search Practice* (2004).