

**BLACKSTONE'S GUIDE TO THE ANTI-TERRORISM
LEGISLATION
SECOND EDITION 2009
CLIVE WALKER
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BOOK REVIEW BY SALLY RAMAGE®

Oxford University Press has again produced an excellent law book.

Clive Walker

The author, Clive Walker, says:

‘The predominance of terrorism as a generator of legal initiative and controversy is so palpable that justification for a second edition of this book hardly requires elaboration. The principle rationale resides in the major legislative and judicial developments since February 2002 (the date of the previous manuscript). As for legislative changes, only the Terrorism Act 2000 and the Anti-Terrorism, Crime and Security Act 2001 then existed. A substantial body of extra legislation has now accrued: the Prevention of Terrorism Act 2005; the Terrorism Act 2006; the Terrorism (Northern Ireland) Act 2006; the Justice and Security (Northern Ireland) Act 2007; and the Counter-Terrorism Act 2008. Prolonged and, at times, bitter parliamentary debates lie in the background to these new Acts. In addition to this legislation, important judicial case law has emerged. As well as legal materials, many official reports have appeared, from the Home Office Parliamentary committees, and independent sources. Academic commentators have also grown markedly more prolific. A prime purpose of this book is to explain the foregoing key legislative texts in detail, in context, and in combination. In keeping with the format of the Blackstone series, the bulk of the source legislation is also reproduced. Equally important is the enhanced and original analysis, which integrates considerations of policy and principle, while also exploring statistical data. The commentaries so produced will be reflective of several themes. The first, evident from the potted history already related, is one of growing profusion, scope and complexity. Aside from sheer bulk, there are equally noticeable transformations in context. One concerns the moving focus from Irish terrorism to international terrorism. Ever since the paramilitary ceasefires of 1996 and then the ‘Good Friday’ Agreement of 1998, there has been a winding down of paramilitary violence in Northern Ireland, though splinter movements remain dangerous. Conversely, the dread endangered by Al-Qaida and affiliated combinations have driven most subsequent legal and policy

initiatives since the attacks on September 11, 2001. Whether called international terrorism, Islamist terrorism, or jihadist terrorism, this variant has placed terrorism at the centre-stage of British policy making and administration. A further change concerns the nature of threat. Jihadist terrorism is perceived as involving indiscriminate, substantial, and suicidal attacks on civilian targets. Consequently, policy goals have shifted further towards anticipatory responses. While criminal prosecution remains a desired goal, criminal justice has likewise been increasingly moulded towards early intervention. This trend finds its ultimate expression in the persistence of Executive measures which can respond to risk in ways which the due process of criminal justice will not countenance. The legislature and judiciary must ensure accountability and respect for constitutionalism in these troubled times. Parliament has certainly expended growing attention to terrorism policy and legislation and has occasionally imposed limits, such as by rejecting forty-two or ninety days' detention. Other notable contributions have been made by select committees, especially the Home Affairs Committee and the Joint Committee on Human Rights. The judicial role has also become more prominent. The Human Rights Act 1998 has engendered less judicial deference and a more forthright platform for intervention in security matters. A further marked trend is that the UK jurisdiction has become less distinct for its extensive legislative response to terrorism which has a continuum for over two and a half centuries. Under the influence of the United Nations,¹ almost all jurisdictions have passed some comparable laws...'

Content

The ten chapters to this book are titled: (1) Background and introductory issues; (2) Extremist organisations² and extremist speech; (3) Terrorist funding and property; (4) Terrorist investigations; (5) Counter-terrorist powers³; (6) Criminal offences and the processing of offenders; (7) Executive Control Orders; (8) Dangerous substances and acute vulnerabilities; (9) Northern Ireland Special Measures; and (10) Other matters and conclusions. There are also the relevant statutes as

¹ United Nations Security Council Resolution 1267 (1999), 15 October 1999, and Resolution 1333 (2000), 19 December.

² An interesting situation was found in Case T-315/01 *Kadi v Council and Commission* [2005] ECR II-3649 Case T-306/01 *Yusuf and Al Barakaat International Foundation v Council and Commission* [2005] ECR II-3533, in which the applicants included in the lists drawn by the UN Sanctions Committee and, consequently, in the lists incorporated in implementing Community Regulations.

³ See House of Commons Home Affairs Committee, "Terrorism Detention Powers," Fourth Report of Session 2005-06, Volume I, July 3, 2006, <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/910/910i.pdf> (accessed 11-9-09).

appendices and the usual tables at the front of the book. The publishers have also included a very useful and detailed contents list.

I shall concentrate on just a few topics in order to give the reader a sense of the importance and strength of this criminal law book.

Criticism of the terrorism statutes

As criminal law statutes go, I am personally dissatisfied at the disparate and piecemeal way in which the government has been tampering with, adjusting and amending criminal law legislation, and I am especially perturbed at the abundant use of Regulations without democratic parliamentary debate.

Although he has done a fine job of excellently explaining these laws, I think that Dr. Walker is much too kind in his opinion of the terrorism statutes' usefulness, usability and comprehensiveness.

Even as late as 2007, the government was amending the Terrorism Act 2000, as in the Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007, which came into force on 26 December 2007 to implement Chapter 3 of the Third Money Laundering Directive.

Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007

Schedule 1 of these Regulations amended the Terrorism Act 2000 and introduced three new defences to the terrorist financing offences in sections 15 to 18 of the Terrorism Act 2000.

The defence is available where a person makes a disclosure to the Serious Organised Crime Agency (SOCA) before entering into an arrangement or becomes involved in a transaction and acts with SOCA's consent. The defence is available where a person makes a disclosure to SOCA after entering into an arrangement or becoming involved in a transaction, provided there is a reasonable excuse for not making a disclosure beforehand. The defence is available where a person has a reasonable excuse for not making a disclosure. This new Regulation created a new tipping off offence for the regulated sector in relation to known or suspected terrorist financing and set out certain exceptions to it under which information can be disclosed by a person in the regulated sector without committing an offence. Schedule 2 of the Regulations amended the Proceeds of Crime Act ('POCA') 2002, including by repealing the tipping off offence in section 333 of the POCA and replacing it with a new tipping off offence covering the regulated sector in relation to known or suspected money laundering. These same new exceptions are as those in the Terrorism Act 2000.

London's 7th July 2005 Terror Bombs

On July 7, 2005, three bombs exploded virtually simultaneously on three London underground trains, while a fourth bomb exploded on a London bus an hour later. Fifty-six people, including the four bombers, were killed, while over 700 were injured. As an act of international terrorism,⁴ the 7 July multiple bombings in London demonstrate the emergence of new trends which have begun to manifest themselves elsewhere, most notably, it appears, in Australia and the USA. The first trend is that of the self recruited group, composed of nationals of the target country, who draw inspiration from, but may not necessarily be under the direct operational control of, Al Qaeda. Such modern suicide terrorism is aimed at causing devastating physical damage, through which it inflicts profound fear and anxiety. Its goal is to produce a negative psychological effect on an entire population rather than just the victims of the actual attack. Another modern trend in terrorism is that of minimal cost terrorism. In all, it is estimated that the 7 July London bomb components cost no more than a few hundred pounds. Even if the cost of travel to Pakistan, which two of the bombers undertook, is factored in, the overall costs still total no more than a few thousand pounds. Such sums were easily affordable by the terrorists themselves without resorting to outside funding, either from Al Qaeda or its offshoots, or the use of criminal enterprise which has been a characteristic of other recent terrorist plots.

Scuppering the financial remit of the terrorism statutes

This scuppering the intricate, expensive and interfering legislation that government has brought in regarding financing of terrorism, arguably wasting hundreds of millions of pounds of computer equipment, personnel and time in auditing everybody money inside and outside this country, notwithstanding the report by Joshua Prober for the Washington Institute who attempted to show by estimations that infrastructure costs, training, renting, accommodation, maintaining communication networks, purchasing electronic equipment etc need funds. Prober quotes US Treasury Department Under Secretary for Terrorism and Financial Crime, Stuart Levy, who had noted in August 2004 that:

'The cost of financing terrorist activity cannot be measured by the cost of a primitive destructive act. The maintenance of those terrorist networks, like Al Qaeda which threaten our national security, is expensive... Groups like Al Qaeda must spend money for many purposes - to recruit, train, travel, plan operations, and bribe corrupt officials for example.'

⁴ Since the bombings in Madrid and London, the European stage seems to be a highly valuable Jihad target. But it is important not to give in to panic.

Stuart Levy had observed that all terrorist acts leave a money trail which leads back to the originators. He argued that stemming the flow of funds can delay or prevent attacks even when the cost of the explosives remains relatively low. This is an important point, and one which is vigorously and enthusiastically pursued in the UK at the dismay and disruption and breach of privacy of this government's citizens and allegedly also being aggressively pursued by the UN and many governments, but as the two London attacks and the US and Australian plots have suggested, the self recruiting nature of these newer, younger terrorists emphasises this emerging trend where there are few if any on-costs, as their connection to Al Qaeda is limited solely to ideology.

2004 United Nations Report on the low cost of terrorist bombs

A UN report published in August 2004, quantified the cost of some major terrorist attacks. It suggested that the Madrid train bombings in March 2004 cost only \$10,000; the Istanbul truck bomb attacks in November 2003 cost \$40,000; the Marriot Hotel bombing in Jakarta in August 2003 cost \$30,000; the USS Cole attack in October 2000 cost \$10,000, which reinforces the point that terrorism has become a cheap form of warfare and one we are likely to see more of now that Al Qaeda's funding role has been diminished, and as local groups enact the ideology.

Counter-Terrorism Act 2008

Acknowledging that the UK government has an obligation to protect everyone living in the UK from terrorist violence, some argue, however, that counter-terrorism measures as in the Counter-Terrorism Act 2008 violate international human rights⁵ and undermine fundamental values, are wrong in principle and counterproductive in practice. The 2008 Act creates problematic notification requirements for those convicted of a terrorism or terrorism-related offence. Anyone sentenced to five years or more for a terrorism offence or a terrorism-related offence would be subject to these notification requirements for the rest of their lives. Any breach would be punishable by up to five years in prison. The requirements could be imposed on persons convicted outside the UK, without any regard to whether the conviction was the result of a fair trial according to international standards.

⁵ It is well established in international human rights law that any interference with the fundamental right to liberty must be shown to be strictly necessary and proportionate. The government has failed to provide any evidence that the 28-day limit prevented the police from bringing charges at all or forced them to bring lesser charges.

Control Orders

The most controversial of all these anti-terrorism legislations of the United Kingdom can be said to be the Prevention of Terrorism Act 2005 and its control orders,⁶ which, it has turned out, is a seriously flawed alternative to the disastrous policy of indefinite detention under the Anti-Terrorism Crime and Security Act 2001, a policy ruled by the House of Lords Judicial Committee as being contrary to human rights law. Clive Walker puts it more gently. He said (at page 308):

'For its part, the 2005 Act fosters the abhorrent process of allowing the executive to sit in judgment over individual freedoms'.

Extremist Organisations and extremist Speech

Endorsing Clive Walker's Chapter 2 and affirming his wise choice in including this topic, is the fact of an October 2000 internet posting on the Al-Farouk jihadist forum⁷ by Ahmad al-Wathiq bi-Llah, the 'Deputy General Amir' of the Global Islamic Media Front (GIMF). The announcement referred to the "Al Qaeda University of Jihad Studies" and the accompanying statement explained that "Al Qaeda is an organisation, a state and a university; this is a fact which cannot be denied." The announcement continued with a note that "Since the events of the USS Cole and Manhattan, hundreds of Muslims from all corners of the world have joined this global jihadist university, studying all the sciences, rules and methods of jihad."⁸ This is an example of extremist speech.⁹

Internet information

In October 2005, UK police arrested Waseem Mughal¹⁰, and charged him, along with two others, with terrorism offences. Mughal was found with a DVD in his bedroom called "Martyrdom Operations Vest" which had information useful to the preparation of an act of terrorism. Another charge refers to a piece of paper allegedly found in his bedroom, with

⁶ Chapter 7, pages 211 to 242.

⁷ See www.al-farouk.com

⁸ See Tharp, P.A. "The laws of war as a potential legal regime for the control of terrorist activities," [S.l. : s.n.], 1978, 10 p.

See Baxter, R.R., and "A Sceptical Look at the Concept of Terrorism", in : Akron Law Review, 7 (1974), no. 3, pp. 380-387.

See also Oeter, S. "Terrorism and "wars of national liberation" from a law of war perspective: traditional patterns and recent trends", in : , 49 (1989), pp. 445-486

⁹ See the article, *Online 'University' for Jihad*, Terrorism Focus, The Jamestown Foundation, Washington DC, Vol II, Issue 19, 17 October 2005.

¹⁰ Attorney General's References (Nos.85, 86 & 87 of 2007) sub nom R v Tsousli , Mughal and Al-Daour [2007] EWCA Crim 3300, CA (Crim Div) (Latham LJ , Gage LJ, and Tugendhat J.

information about a recipe for rocket propellant, and guidance on causing an explosion.¹¹ The three men were sentenced to a total of 24 years' Imprisonment after they were convicted of using the internet to incite murder.

In all, this is an excellent book on UK anti-terrorism law. It is in fact, compared to all other anti-terrorism law books in the UK, the most comprehensive and most analysed of all the books published.

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¹¹ Crown Prosecution Service, "Three men admit using internet to incite terrorism in first British case" 05/07/2007, at http://www.cps.gov.uk/news/press_releases/137_07/, accessed on 10th September 2009. Three men who pleaded guilty to inciting murder for terrorist purposes under the Terrorism Act 2000 are the first in England and Wales to do so. Younes Tsouli, Waseem Mughal and Tariq Al-Daour admitted inciting another person to commit an act of terrorism wholly or partly outside the United Kingdom which would, if committed in England and Wales, constitute murder.