Enemies of the State:

Proscription Powers and Their Use in the U.K.

Tim Legrand and Lee Jarvis

This is the submitted, pre-print version of a paper subsequently accepted for publication and forthcoming in *British Politics*. The accepted version of the paper can be found online here: http://www.palgrave-journals.com/bp/journal/vaop/ncurrent/full/bp20148a.html

DOI: 10.1057/bp.2014.8

Enemies of the State:

Proscription Powers and Their Use in the U.K.

Abstract

This article assesses the use of proscription powers as a tool for countering terrorism, using the United Kingdom as a case study. The article begins with a brief overview of the UK's current proscription regime. It then situates this in historical context, noting the significant recent increase in proscribed groups and the predominance of 'Islamist' organisations therein. The article then critiques proscription on four principle grounds. First, the challenges of identifying and designating proscribed groups. Second, the considerable domestic and trans-national politicking that surrounds proscription decisions. Third, the normative importance of protecting scope for political resistance and freedoms of expression and organisation. And, fourth, the questionable efficacy of proscription as a counter-terrorism tool. The article concludes by arguing that proscription's place in contemporary security politics should be heavily safeguarded against the politicization and imbalance between the executive and legislature that characterises the deployment of the legislation in the UK today.

Key words: Proscription, Counter-terrorism, Anti-terrorism, Terrorism, United Kingdom

Terrorism and violent extremism have been central to the UK's security agenda of the early twenty-first century. With 9/11 widely understood as a harbinger of sustained confrontation with a new type of threat marked by, 'an intent, a purpose and a scope beyond anything we had encountered before', (Blair 2010), successive administrations have repeatedly affirmed the need for an uncompromising, multifaceted response to unconventional violences. In the international arena, this response has included the offering of significant military resources to major operations in Iraq and Afghanistan under the guise of the 'war on terrorism'. Domestically, the UK has radically restructured its counterterrorism framework around a new CONTEST Strategy

introduced in 2003 to cohere policy in this arena. Moreover, despite the prior existence of quite significant anti-terrorism legislation, these developments have also been accompanied by a concerted push for enhanced powers to interdict violent extremist activity at earlier stages of preparation (Macdonald, 2012; McCulloch and Pickering, 2009), making use of a broader range of offences (Saul, 2005), and more expansive definitions of terrorism (Fenwick 2002).

These developments in the UK's domestic counter-terrorism architecture have attracted considerable academic and political critique. Within the former, this has included sustained reflection on the metaphorical liberty/security 'balance' (e.g. Waldron 2003; Neocleous 2007), a growing interest in the politics of exceptionalism (e.g. Neal 2010), arguments around the inadequate and inconsistent nature of these mechanisms (Hewitt 2008, 120), and (more recently) efforts to engage directly with citizens' own experiences of anti-terrorism initiatives (e.g. Jarvis & Lister 2013). In the case of the latter, powers of stop-and-search, the (now adjusted) control orders regime, and extended detention without trial have all been subject to quite considerable legal and political scrutiny at various points throughout the past thirteen years.

This article seeks to engage with an equally significant, yet far less explored, component of the UK's counter-terrorism regime than those noted above: the power to proscribe terrorist organisations. Proscription powers render illegal the existence of specific, designated groups within a particular territory as well as the membership of, or support for, those groups. In the Home Office's framing, the consequence of such a designation is that, 'an organisation is outlawed in the UK and that it is illegal for it to operate here'. Moreover, it is 'a criminal offence to belong to, support, or display support for a proscribed organisation' (Home Office, 2013a). As this suggests, the power of proscription is something of an extraordinary measure. At a stroke, and with scant Parliamentary oversight, the Home Secretary is able to criminalise members and associates of organisations deemed terrorist. Described as 'a heavy power', by Lord Bassam (2001) and 'at best a fairly blunt instrument' by the former Independent Reviewer of Terrorism

Legislation Lord Carlile (2009, p.16), proscription enjoys broad and importantly bipartisan support across UK parliamentarians. As then Home Secretary, Charles Clarke, argued before a House of Commons Standing Committee during the introduction of the Terrorism Bill in 2000:

> First, it has been, and remains, a powerful deterrent to people to engage in terrorist activity. Secondly, related offences are a way of tackling some of the lower-level support for terrorist organisations [...] Thirdly, proscription acts as a powerful signal of rejection by Government – and indeed by society as a whole – of organisations' claims to legitimacy […] It is important for society to state that certain activities are simply […] beyond the pale; […] The legislation is a powerful symbol of that censure and is important (Standing Committee D, 20th January 2000).[1]

Successive New Labour and Coalition administrations have been consistent in their support for proscription powers. Announcing the banning of Al-Muhajiroun - also known as Islam4UK and previously proscribed as al-Ghurabaa and The Saved Sect - in January 2010, Home Secretary Alan Johnson stated that, 'Proscription is a tough but necessary power to tackle terrorism and is not a course we take lightly'.[2] A year later, his successor Theresa May echoed Johnson's words when proscribing the 'Pakistan Taliban' under the name Tehrik-e Taliban Pakistan (TTP): 'Proscription is a tough but necessary power to tackle terrorism and is not a course of action we take lightly'[3]. May returned to the importance of proscription more recently still, arguing for a potential expansion of these powers following the killing of British soldier Lee Rigby in Woolwich:

> We do need to look at the powers. We do need to look at the laws. We do need to look, for example, at the question of whether perhaps we need to have banning orders to ban organisations that don't meet the threshold for proscription (May, 26th May 2013).

This article engages with the formulation, application and justification of proscription powers within the UK. We begin with a brief overview of their remit and discursive rationalisation as

formulated by successive British executives. A second section then locates these powers historically. Here we point here to the increasing resort to proscription in recent years, and the preponderance of 'Islamist' organisations as its target. In the article's third section we identify four major problems with the present proscription regime. First, the pragmatic challenges of identifying and designating terrorist organisations. Second, the inescapable role of domestic and trans-national politicking around proscription decisions. Third, proscription's dubious fit with core liberal democratic principles including of parliamentary scrutiny, political resistance, and freedoms of expression and organisation. And, fourth, the questionable efficacy of proscription as a counter-terrorism tool.

Proscription and deproscription in the UK

Under Section 3(5) of the Terrorism Act 2000 (hereafter TA 2000), the UK Home Secretary may order the proscription of an organisation if it, 'commits or participates in acts of terrorism, prepares for, promotes or encourages terrorism or is otherwise concerned in terrorism'. S.121 of the TA 2000 defines 'organisation' as, 'any association or combination of persons', and the definition of 'terrorism' is given in Part I of the TA 2000, as amended by the Terrorism Act 2006 (TA 2006) and the Counter-Terrorism Act 2008:

> the use or threat of action where- (a) the action falls within subsection (2), (b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and (c) the use or threat is made for the purpose of advancing a political, religious, racial, or ideological cause.

Section 21 of the TA 2006 - written in the aftermath of the '7/7' attacks - extended the basis on which proscription may occur to include those organisations which, 'unlawfully glorify the commission or preparation of acts of terrorism'. Moreover, in deciding whether to proscribe an

organisation, the Home Secretary has discretion to draw upon secret and/or open-source intelligence with regard to the following: (i) 'The nature and scale of the organisation's activities; (ii) The specific threat that it poses to the UK; (iii) The specific threat that it poses to British nationals overseas; (iv) The extent of the organisation's presence in the UK; (v) The need to support international partners in fight against terrorism.'[4]

For a proscription order to come into force it must be laid before both Houses of Parliament, which may debate but not amend the order. Proscription orders must be approved in full through the affirmative procedure by both Houses.[5] If an order is affirmed, the organisation is added to Schedule 2 of the TA 2000, which lists all proscribed organisations. Where the Secretary of State believes an organisation listed on Schedule 2 has begun to operate under an alternative name, Section 22 of the Terrorism Act 2006 empowers her to add those additional names to the existing proscription order. Notably, while the initial order to proscribe an organisation must be voted affirmatively by Parliament, any orders specifying alternative names are only subject to the negative procedure.[6] And, in practice, Parliament rarely moves to block Statutory Instruments (SIs) or amendments thereto: the last occasion the House of Commons opposed a draft SI was in 1978; the House of Lords in 2012, and before that on two occasions in 2007 and 2000.

Under the TA 2000, the proscription of an organisation makes it a criminal offence to either belong to, or invite support for, the banned organisation, and triggers a range of further offences:

> It is also a criminal offence to arrange a meeting to support a proscribed organisation; or to wear clothing or carry articles in public which arouse reasonable suspicion that an individual is a member or supporter of a proscribed organisation.[7]

Importantly, the Secretary of State is under no obligation to lay orders on a case-by-case basis. This means that proscription orders for multiple organisations can be presented at once to Parliament for approval or disapproval in full. No orders have been resisted to date.[8]

Where organisations believe they have been unfairly or inappropriately proscribed, the TA 2000 provides a mechanism to apply to the Home Secretary for deproscription. The Home Secretary has discretion to allow or refuse the application, although resort to a further appeal to the Proscribed Organisations Appeal Commission (POAC) exists if refused. The TA 2000, Section 5(3) sets out POAC's powers:

> The Commission shall allow an appeal against a refusal [by the Secretary of State] to deproscribe an organisation or to provide for a name to cease to be treated as a name for an organisation if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review.

The 'principles applicable' are 'points concerning those rights under the European Convention on Human Rights which are "Convention rights" under the 1998 [Human Rights] Act' (TA 2000 Explanatory notes). To date, the only organisation to successfully apply for deproscription in the UK is the People's Mojahadeen Organisation of Iran (PMOI).

A brief history of outlawry in the United Kingdom

The UK's current proscription regime is unusual insofar as it draws its core legal principles from a long history of domestic political insurgency rather than the perceived requirements of a new 'post-9/11' security environment alone. Laws suppressing or prohibiting political dissidents have been levelled at a range of targets by the British establishment - both monarchy and Parliament - including the anti-monarchy Yorkists of the 15th Century, trade unionism in the 19th Century and Oswald Mosely's British Union of Fascists in the early 20th Century. The suppression of dissent is,

and has always been, by government fiat. For example, the 1746 Act of Proscription (AoP 1746), which forbade individuals in Scotland from owning weapons or wearing kilts, was part of a broader strategy to stamp out a Jacobite rebellion in the Scottish Highlands, demonstrating the government's recognition of, and intention to win, that war of ideas. Indeed, the 1746 AoP introduced a legal duty on 'masters or teachers' to show their allegiance to the monarchy and government 'to prevent the rising generation being educated in disaffected or rebellious principles'.[9]

Today's proscription laws have been most heavily influenced by legislation created to counter political violence in Northern Ireland. As early as 1922, the Government had adopted the power to outlaw membership of, or support for, 'unlawful organisations' named in the Civil Authorities (Special Powers) Act (Northern Ireland). Much later, in 1973 at the heart of 'the troubles', the 'Diplock Report' recommended suspending the right to trial before a jury and empowering the Home Secretary to outlaw organisations involved in terrorism. The resulting Northern Ireland (Emergency Provisions) Act 1973 (EPA: reenacted 1976, 1984, 1989) applied solely to Northern Ireland and was closely followed by the Prevention of Terrorism (Temporary Provisions) Act 1974 (PTA: reenacted 1978, 1991, 1996) which applied separately to Great Britain.

These temporary anti-terrorism laws were the subject of extensive consideration by Lord Lloyd in The Inquiry Into Legislation Against Terrorism 1996. The scope of this Inquiry was to review anti-terrorism legislation and make recommendations to the government on the need for a permanent, consolidated anti-terror statute. The resulting TA 2000 removed the territorial distinction between Great Britain and Northern Ireland and, importantly, was applicable to all forms of international and domestic terrorism. In recommending retention of the proscription provisions of the PTA and EPA, Lord Lloyd stipulated their rationale thus:

> First, it will furnish a conclusive presumption that an organisation which is for the time being proscribed is a terrorist organisation. This will facilitate the burden of proof in terrorist cases. Secondly, proscription will be the starting point for the creation of a number of fundraising and other offences, especially fundraising for terrorism overseas (1996, 6.12).

In the consultation paper that foreshadowed the Terrorism Bill, later to become the TA 2000, the government made clear its intention to use proscription as a mechanism for challenging an organisation's fundraising capacity and, crucially, its claims to legitimacy:

> Whilst the measures may not in themselves have closed down terrorist organisations, a knock on effect has been to deny the proscribed groups legitimate publicity and with it lawful ways of soliciting support and raising funds...perhaps more importantly the provisions have signalled forcefully the Government's, and society's, rejection of these organisations' claims to legitimacy (Home Office, 1998, 4.7)

These two aims of proscription are supplemented by a third, associated most with Margaret Thatcher's government; that is, 'to deprive terrorist organisations of the "oxygen of publicity"' (Home Office and Northern Ireland Office, 2000): a principle that led to the much-derided ban on the broadcast of the voices of those connected to terrorist organisations in Northern Ireland between 1988 and 1994. Together, these aims constitute the three core public policy objectives seated in the proscription provisions of the TA 2000: (i) the facilitation of law enforcement and prosecution; (ii) the symbolic demonstration of the incompatibility of a particular organisation's ideas with established UK values; and, (iii) suffocation of the organisations' rhetoric through denial of 'the oxygen of publicity'.

Proscription today

Although powers of proscription have been deployed by the UK government in one form or another for centuries, the introduction of the TA 2000 saw a discernible acceleration in their usage.

This Act continued the proscription of 14 organisations connected to Northern Ireland under the PTA 1989 and EPA 1996[10] and, since 2001, has allowed for the addition of a further 49 'international terrorist organisations', 37 of which are Islamist in makeup.[11] These organisations have been added via eleven proscription orders; five of which were for the simultaneous approval/disapproval of multiple organisations. In the first order after the TA 2000 came into force, a list of 21 organisations was presented to Parliament.[12] Subsequent orders contained the following: the 2002 order, 4 organisations; the 2005 order, 15 organisations; the 2006 order, 4 organisations; the 2007 order, 2 organisations; 2008(i), 1 organisation (the removal of 'Mujaheddin e Khalq' from Schedule 2); 2008(ii), 1 organisation; 2010, 1 organisation; 2011, 1 organisation; 2012(i), 1 organisation; 2012(ii), 1 organisation and 2013, 2 organisations. At the time of writing, 14 domestic and 51 international organisations are currently proscribed.

Proscription: A Critique

Despite the repeated use of proscription as a counter-terrorism tool in the UK and beyond in recent years, only limited scholarly attention has been afforded to the mechanisms, outcomes and significance of these powers. Of the published academic literature, Australian legal scholarship has been most active (especially, Douglas, 2008; Hocking 2003, Hogg, 2008; Goldsmith 2007; Lynch, McGarrity et al. 2009; McCulloch and Pickering, 2009; Tham, 2004). Surprisingly, aside from work on the normalisation of emergency powers (Flyghed 2005; Blackbourn 2008), and the creation of 'precursor crimes' (Macdonald 2012), the sociology, public administration, and political science literatures have been relatively muted (although see Walker 2006), especially compared to the volume of critical reflection on related developments, such as powers of detention and offences relating to the glorification of terrorism (Barendt, 2005).

In this section, we offer our own analysis of the UK's proscription regime and its implementation, focusing on four primary concerns. First, the challenges associated with

designating terrorist organisations. Second, the ubiquity of political interests, considerations and manoeuvrings in proscription decisions. Third, normative tensions between this regime and established principles of liberal democracy. And, fourth, questions of efficacy. As noted in the article's introduction, we find the current regime wanting in each of these areas.

Issues of Designation

A first problem associated with the designation of terrorist organisations is the assumption of coherence and boundedness that the act of naming an organisation conveys. Whatever one's view of the 'new terrorism' thesis - and the claim therein that the late twentieth century witnessed a radical transformation in the structure of terrorist organisations (see Burnett & Whyte 2005; Spencer 2006) - groups today labelled 'terrorist' often lack anything approaching the institutional stability connoted by their designation. Goldsmith (2007), for example, argues that jihadist groups are constituted via 'shared values, common socialisation, effective bonds and modern communication technologies' rather than formal organizational structures. Hogg (2008, p.304) notes similarly that the major terrorist threat today emerges from 'local, self-starter individuals and groupings' acquiring, 'motivation, training technical knowledge and support' from new communications media. As a result, attempts to define a 'terrorist organisation' - as in the Australian Crown's recent court case[13]- may fail to capture the 'fluid and elusive forms of organisational activity' of international terrorism. 'Organisation' thus operates mainly as a symbol 'to provide illusory comfort by imposing a familiar shape on a formless threat' (Hogg, 2008, p.304).

There is, perhaps, no better example of this issue than al-Qaeda which was discussed as a coherent organisation within US intelligence discourse many years before it existed as such (Gerges 2011, 29). As Jason Burke (2003, 9) persuasively argues, investigators were, "…very

keen to find a group, led by an identifiable figure, and give it a name", long before al-Qaeda existed in any concrete sense. This was, not least, due to the constraints of existing conspiracy laws which had been constructed to deal with criminal organisations possessing a boundedness of this sort (Burke 2003, 11). Thus, although the phrase 'al Qaeda' had been in use by radical Islamist groups before the late 1990s (Gerges 2011, 43; Burke 2003), its status as a moniker for a distinct militant organisation was applied almost entirely exogenously until approximately five years before the 11 September 2001 attacks.

A second issue of designation is the frequency with which organisations designated 'terrorist' either change their operating name, or employ a variety of names in the conduct of their activities (Pedahzur *et al* 2002, 143). A useful example is the May 19th Communist Organization which was active in the US during the 1980s:

> On January 28, 1983, the group used the name "Revolutionary Fighting Group" to claim credit for damage in the bombing of the federal building on Staten Island, New York. In three subsequent bombings in 1983, they used the name "armed Resistance unit" when they sent communiqués to the media. The National War college, the Washington Navy Yard, and the U.S. Capital Building were all bombing victims of the armed Resistance unit. In 1984, they again changed their name, this time to the "Red Guerrilla Resistance." Three more targets were hit that year: the Israeli aircraft Industries Building in New York city, the Washington Navy Yard Officers' club, and the South African consulate in New York were all bombed before the spree ended…It was not until their indictment in 1988 that the public learned that all three groups were actually one and the same (Smith and Damphousse 2009, 476-477).

To move to the present, Aum Shinrikyo has five alternative names listed by the US State Department: A.I.C. Comprehensive Research Institute; A.I.C. Sogo Kenkyusho; Aleph; Aum Supreme Truth; the Iraq-based group, Ansar Al-Islam, has thirteen (US Department of State 2012). And, similar issues emerge, of course, in the UK, with the present Schedule 2 of proscribed organisations neatly illustrating this point:

> The Government laid Orders, in January 2010 and November 2011, which provide that Al Muhajiroun, Islam4UK, Call to Submission, Islamic Path, London School of Sharia and Muslims Against Crusades should be treated as alternative names for the organisation which is already proscribed under the names Al Ghurabaa and The Saved Sect (Home Office, 2013b, 2).

Third, terrorist groups tend not to enjoy a lengthy existence: indeed, one recent analysis found that only 53 of 100 groups survived beyond one month, with nationalist, leftist and religious groups averaging a lifespan of 35-38 months (Vittori 2009). One reason for this short shelf-life is the tendency of terrorist groups to splinter or factionalise from within. The Continuity IRA and The Real IRA, for example, represent only two of the most prominent splinter groups within Irish republicanism: splitting from the Provisional IRA in 1986 and 1997 respectively (Horgan and Morrison 2011). In the Palestinian-Israeli conflict factionalism has been a similarly perennial feature such that, "…the Popular Front for the Liberation of Palestine (PFLP), Democratic Front for the Liberation of Palestine (DFLP), and the Popular Front for the Liberation of Palestine-General Command (PFLP-GC) split with the PLO over the Israeli-Palestinian peace process (Cronin 2009, 67-68). This possibility of disintegration again renders proscription a far more challenging prospect that requires the identification and naming of successor organisations by Home Secretaries or their international equivalents.

Fourth, even in those cases where a terrorist organisation might be discernible as such, there are additional challenges associated with the identification of individual members. Part of the issue here is the fluid structure of (some) contemporary groups, in which 'membership' has become increasingly diffuse (Hoffman 1997, 2). In the most decentred of organisations today, membership can effectively consist of little more than identification from afar (Jarvis 2012).[14] As Lia (2008, n.p.) remarks of al-Qaeda: "membership…is open to virtually everyone…As long as one is willing to accept its extremist ideology, anyone can, in principle, become an al-Qaida

member". Another factor, however, is the transitory commitment of individuals belonging to violent organisations. As Smith and Damphousse (2009, 477) note:

> some group members affiliate with several groups over time, which makes it difficult to identify a stable membership base within a terrorist group from which to trace the group's life course. Within the extreme right, a good example is the Order. While maintaining some affiliation with the Covenant, Sword, and Arm of the Lord (CSA), many members drifted from the CSA to the newly formed Order. Additional Order members emerged from the Aryan Nations and some participants in the Order (particularly those indicted for seditious conspiracy in the aftermath of the Order's demise) maintained primary membership in the CSA and Aryan Nations and only loosely affiliated themselves with the Order.

In short, proscription regimes require political executives to successfully narrate the existence of an identifiable and coherent 'organisation' committed to a discernible, and illegitimate, political motive. Yet, as the above indicates, it is far from apparent that this can meaningfully be accomplished. Extremist groups elude authorities and evade designation by assuming different guises, splitting, reforming or allying with other causes. Indeed, even where an 'organisation' can be distinguished for the purposes of proscription, proving and prosecuting membership remains a sizeable challenge. In this sense, there is a widening gulf between the government's proscription apparatus, which requires the possession of 'fixed' identities by designated organisations, and the reality of porous, rapidly evolving, multiplying and fragmenting political movements.

Political Issues

A second set of concerns surrounding proscription decisions concerns the ubiquity of political interests within their construction and implementation. In the first instance, internal political considerations and discourses are central to the identification and outlawing of organisations deemed 'terrorist' by the state. As the EU Anti-Terror Coordinator suggested of the PKK's

proscription, "The reasons are political. You say that it is a criminal organization, not a political organization. That is the message" (Van de Kerckhove 2009, cited in Casier 2010). Yet, as he continued, the political value of this designation was instrumental as much as symbolic: "The list can be a means to leverage, to pressure Turkey to respect its minorities and human rights" (ibid). Although we might not be surprised to see politics intrude upon proscription regimes, it is important to bear in mind that the taking of such decisions exceeds assessments of empirical realities alone.

Second, where internal political considerations impact heavily upon proscription decisions, so too do external, international, relationships. In the lead-up to the 2003 conflict in Iraq, for example, the US State Department acquiesced to Moscow's request that three Chechen groups be designated terrorist organisations amidst fears of a Russian Security Council veto on the former issue. Similarly, the People's Mujahedin of Iran (PMOI) was proscribed by the US and EU as a bridge-building attempt to reach out to President Khatami following his election (Muller 2008, 125). Ongoing demands from interested states such as the US, UK and Israel that the EU blacklist Hezbollah offer yet another example. The risk here, in short, is that proscription regimes effectively become pawns in broader foreign policy games: employed and adjusted for purposes other than preventing terrorism. And, as Mark Muller (2008, 125) points out, there is a real danger of this temptation toward instrumentality generating hostility by those caught up in these manoeuvrings:

> That is why many legal commentators have argued that whether a group is on or off a proscription list has more to do with geo politics and diplomatic relations between states than with genuine threats to a particular country's national security and the strict application of law in relation to terrorism. The UN stricture to member states to co-operate in countering terrorism in practice has become intertwined with a whole set of other foreign, military and strategic objectives that govern relations between states. The temptation to offset any strict application of the law relating to fighting counter terrorism in favour of achieving other desirable

> foreign policy goals is huge. This temptation fundamentally affects the integrity of counter terror legislation and creates real resentment and further resistance within dissident groups who are caught by measures taken on broader policy grounds.

A third issue concerns the differential levels of political influence possessed by groups at risk of proscription. The designation of the LTTE as a terrorist organization by various Western states, for example, met with considerable opposition from the global Tamil diaspora, which, "lobbied hard in support of the LTTE, especially in the lead-up to the US and UK bans, even going as far as mounting a legal challenge in the USA" (Nadarajah and Sriskandarajah 2005, 97). On the converse, the Nigerian diaspora has campaigned with similar gusto in the US and beyond to have Boko Haram listed as a Foreign Terrorist Organisation.[15] In some instances, sustained lobbying by listed organisations has led to their successful removal from lists of proscribed groups. Following a campaign that included reported payment of over $1.5 million to Washington lobby firms, the Iranian-based Mujahedeen-e-Khalq (MEK), for example, was in 2012 deproscribed in the US (McGreal 2012).[16] This experience contrasts markedly with that of groups that would likely appeal their proscription but lack the financial or political resources to do so. The International Sikh Youth Federation (ISYF), for instance, is currently proscribed in the United Kingdom. Although critical of this designation, the ISYF has made representations to the Independent Reviewer of Terrorist Legislation to the effect that they are unwilling to undertake an appeal because of the 'slow, secretive and costly' process. There is, then, a genuine concern that 'terrorist organisation laws politicise the criminal law in pursuit of foreign policy ends' (Sentas 2010, 160; also Hocking 2003, Hogg 2008, Gross 2011). For organisations subjected to efforts at proscription, 'successfully ascribing or resisting the label of terrorism emerges as the most important ideational objective in the international arena' (Nadarajah and Sriskandarajah 2005, 94).

Where the above examples are all marked by the intrusion of politics into proscription decisions, a fourth concern, paradoxically, relates to the absence thereof. Specifically, this relates

to the lack of consultation, due process, and parliamentary oversight in a regime predicated upon a presumption in favour of the Executive's proposals. In the UK, unless sufficient opposition is mobilised in Parliament, the proscriptions sought by the Home Secretary are approved: as has been the case on each occasion thus far. Thus, when 21 proscribed organisations were laid before Parliament in March 2001 in a 'take it or leave it' list (Muller, 2008, p.125), Lord Archer protested that Parliament could not, "oppose the inclusion of any one organisation without opposing the entire order".[17] This subjugation of Parliament's scrutiny drew considerable further criticism from Lord McNally (2001), who voiced concern that the sweeping powers afforded the executive by the TA 2000 had been deployed cynically:

> those who dealt with the original [Terrorism] Bill did not envisage that secondary powers would be used to hoover up, as it were, 21 organisations in a single instrument. By any standard of natural justice, that does not make sense. It means that the good, the bad and the ugly are put together. […] I believe that in approaching the matter in this way the Home Office has discredited the procedure from the outset.[18]

As this suggests, the scrutiny afforded by Parliament is diminished by a process that presents a spectrum of political organisations (domestic and international) for MPs to rubberstamp or reject *en masse*. The process is constructed to grant one individual the power to make a proscription order, without any external oversight or validation except the POAC's ability to request the Home Secretary review a decision after the fact. Each order, moreover, is put before Parliament without any evidence to justify or substantiate the Home Secretary's claims that an organisation is concerned in terrorism. For some, such as Lord Marsh, the good faith of decision-makers here may be sufficient to justify this sidestepping of scrutiny and oversight:

> We know the people involved in the production of this list in this place. In addition to the noble Lord. Lord Bassam, they include Jack Straw, Robin Cook, the noble Baroness, Lady Scotland, the police, the security

> services, various intelligence agencies and, inevitably, the lawyers. Why should they all conspire to construct this extraordinary facade, which they knew would be highly controversial?[19]

There is, however, considerable reason for caution in presuming elected representatives either above reproach or guardians of the national interest. As John Anderson (1948, 7) argued over sixty years ago, in relation to those agitating for the banning of the Communist Party in Australia: "To forbid by law the propagation of a particular political view is to treat the people at large as incapable of determining for themselves the merits of different positions, and to permit a privileged section to decide what positions are to be ruled out without public discussion."

Normative Issues

Moving now to normative issues associated with proscription, we argue that these powers suffer in the first instance from an inability to differentiate between groups engaged in violence. The challenge of safeguarding a legitimate right to self-determination is a familiar one within the crafting of terrorism legislation (McSherry 2004, 358), despite the right to resist oppressive or alien rule constituting a well-recognised norm in the international system. As a UN High Panel 2004 report stated explicitly, "…people under foreign occupation have a right to resistance and a definition of terrorism should not override this right" (cited in Richmond and Franks 2005, 33-34). Yet, the expansiveness and ambiguity of many statutory definitions of terrorism mean that proscription powers are frequently incapable of making any such distinction (Cram 2006, 344). This, in turn, may have deleterious impacts on efforts at peace-building (Gross 2011), conflict resolution (Haspeslagh 2013) and resistance struggles (Muller 2008). This lack of nuance poses ramifications for the fundamentals of democracy, too, not least where three organisations designated terrorist by the US have achieved electoral success: Hezbollah in Lebanon, Hamas in Palestine and Unified Communist Party of Nepal (Gross, 2010). In short, while the right to rebel

might be desirable at times, even via violence, movements attempting to invoke principles such as self-determination are now, "routinely criminalised through proscription" (Muller, 2008, p.120).

A second concern here relates to the transgression of domestic common law norms, and the fear that proscription legislation criminalises individuals for who they are, rather than what they have done. McSherry's (2004) critique of proscription in Australia, for example, argues that an important premise behind the rule of law is that governments should punish criminal conduct, not criminal types (McSherry 2004). In the scrutiny of the Terrorism Bill, the UK MP Simon Hughes expressed similar apprehension:

> I hope that the amendments will give us the chance to address the principled argument that it is actions that should give rise to criminal offences, not indications of support for political organisations or involvement in them. To include being involved in something or expressing support for something takes the criminal law much further than is traditional. The criminal law normally requires both intention and action (Simon Hughes, Standing Committee D, 20th January 2000).

The concern here is that proscription creates a crime from an individual's 'status' - i.e. as a member of a proscribed organisation - rather than an act, or *actus reas*: 'the outer physical, behavioural, objective ingredient of crime' (Husak 1991, see also Bronitt 2003). Following Francis Allen (1996), McSherry (2004) claims that the punishment of individuals for membership of proscribed organisations breaches the long-standing principle in common law of *nulla poena*, which stipulates that people should be punished for what they have done, rather than who or what they are.

To summarise, there exist very real concerns over the way proscription laws transgress long-established rights to self-determination as well as domestic legal protections. Security concerns have frequently been used to legitimate such developments, with proscription laws no exception here. Yet, the circumvention or erosion of Parliamentary scrutiny explored above -

including via the laying of orders containing multiple organisations for wholesale approval in the UK - renders the detection and mitigation of proscription abuses far more difficult to challenge. If proscription is a 'heavy power', it should be afforded greater Parliamentary oversight, not less. While a potential counter-position exists around the Home Secretary's privileged access to intelligence, the widespread argument that proscription is also used (in part) to signal society's disapproval of an organisation and its ideas limits the force of this type of argument. As Lord McNally (2001) put it:

> I am not content to allow Ministers simply to pat us on the head, give us a knowing look to the effect that they are in receipt of secret information which, if only we could see it, would make our toes curl and, therefore, we should nod through every piece of new legislation that they want[20].

If an organisation's platform constitutes a serious transgression of democratic norms, it should be tackled by the UK's peak democratic body in public debate. Parliament does not need access to secret briefings to decide on the harm of public proclamations and thus should be empowered to debate and amend proscribing orders.

Efficacy

It might be possible - depending on one's political commitments - to dismiss all of the above concerns were there sufficient evidence that proscription worked as a counter-terrorism strategy. One might, for example, approach the lack of parliamentary safeguards as a necessary precaution subsumable to concerns of national security. Alternatively, the problems of identifying and labelling organisations might be viewed either as incidental to the broader task of prevention, or as resolvable via a deliberate and strategic essentialism that involved acting *as if* terrorist organisations exist as such. The difficulty, however, is that evidence-based assessments of the

effectiveness of proscription are, in the first instance, scarce. And, in the second instance, generally sceptical of the value proscription poses.

In the context of Northern Ireland, for example, Walker argues that proscription powers were of 'marginal utility' in reducing political violence (2000, 15). Despite its proscription, the IRA managed to maintain widespread publicity of, and support for, its cause. Others go further and advance convincing arguments that proscription regimes actually enhance the legitimacy and profile of terrorist organisations. Nadarajah & Sriskandarajah (2005, 97), for instance, suggest that 'proscriptions may even have consolidated the resolve of the Tamil diaspora organisations to support the Tamil nationalist project and the LTTE'. Mary Baber, in a House of Commons Library research paper, likewise argues that groups waging violent campaigns often seek to provoke government into the use of heavy-handed measures and 'hope the use of these measures will alienate the general public and possibly lead to greater public sympathy for the bombers' cause' (1999, 11). This perspective was expressed by former IRA commander Jim McVeigh who claimed that the UK government's internment policy in Northern Ireland was 'among the best recruiting tools the IRA ever had'. (cited in Blackbourn 2008, 69). Proscription is a similarly publicizing measure which may work to enhance the profile of 'crackpot groups' who 'would be delighted with the publicity if a Secretary of State were foolish enough to dignify them with proscription in the first place' (Walker 2000, p.15).

As noted above, these concerns do not, as yet, draw on any significant body of empirical evidence, hence the assumptions of causality therein might be approached with caution. They do, however, serve as an important warning to policy officials in the UK Home Office and beyond who, in the absence of evidence to the contrary, continue to outlaw organisations on the understanding that proscription contributes to a reduction in terrorist activity. If the opposite is in fact true, then the sacrifice of political safeguards and social freedoms for the sake of security is even more questionable. For, as the UK's current reviewer of terrorist legislation recently argued,

"the utility of proscription must always be balanced against the freedoms of speech and association".

Conclusion

As argued in the introduction, the level of academic interest in contemporary practices of proscription corresponds rather poorly to their importance, and to the attention afforded other counter-terrorism powers. This article has attempted to address this neglect in three primary ways. First, by offering a detailed account of the UK's contemporary proscription regime and its machinations. Second, by situating this regime historically through exploration of its evolution from efforts to outlaw earlier enemies of the state. And, third, by presenting a sustained critical analysis of these powers. As the above section argues, proscription powers: Rely upon - and reproduce - questionable assumptions about the possibility of identifying and designating terrorist organisations; Emerge within, and are subject to, considerable internal and external politicking that raises serious concerns over their neutrality and consistency; Challenge and undermine fundamental principles of liberal democracy enshrined within longstanding freedoms of expression and association; and, Are of dubious efficacy as a technique for countering terrorism. In short, not only do proscription regimes have potential to be employed capriciously and politically for ends other than countering terrorism. But, in addition, such powers also undermine long-established democratic principles, given that organisations, and members thereof, can be designated criminal without due process or defence. In the words of Lord Tomlinson:

> A presumption of guilt seems to be assumed without available evidence being tested prior to the chance to prove innocence. That is extremely difficult when no one has stated explicitly what one is alleged to have done so that one can proceed to absolve oneself[21].

Indeed, that a proscribed organisation or its members is criminalised before it has a chance to protest innocence before the POAC or the Home Secretary (requiring considerable resources, which may, in any case, be frozen) appears to turn the criminal justice process on its head by delivering, in the words of Lewis Carrolls's Queen of Hearts, 'Sentence first - Verdict afterwards'.

Given these concerns, two options present themselves. The first is to argue that proscription regimes should be abandoned in their entirety, at least in the UK. So severe and damaging are their political and other failings that their complete discarding is the only justifiable course of action. However attractive this might seem, such an eventuality seems unlikely for several reasons. First, the longevity of these powers sketched above is indicative of their entrenchment, if not institutionalisation, within the UK. The record of political executives sacrificing (any) powers in areas of security or 'high' politics is not cause for much optimism: consolidation and accumulation remain far more common dynamics. Given the instrumental - as well as symbolic - utility of proscription for foreign and diplomatic relations, we might not expect it to be jettisoned any time soon. Second, beyond a small number of organisations such as Campaign Against Criminalising Communities (CAMPACC), and parochial campaigns such as those mentioned above, there exists very limited public or civil society clamour for the elimination of these powers. Publics, in the post-9/11 era, have generally acquiesced to reductions on liberties when articulated around security needs. And, what anger at perceived abuses of power there has been has focused, in the main, on military interventions, detentions without trial, and abuses of prisoners by coalition troops and/or military contractors. In other words, beside structural resistances to policy change in this area, there exists a distinct lack of agency agitating for the overthrow of proscription.

A second response to the above problems is to explore ways of amending proscription regimes and their place within contemporary democracies. A reformulated approach, in our view, should safeguard legitimate forms of political dissent and grievances, and militate against the

outlawing of groups on politicised grounds. Although limited by space, we conclude our discussion by offering the following policy amendments as a means of addressing the concerns detailed above. Although cognisant of the legislative challenges in adapting the TA 2000, we suggest that there is an opportunity to debate more nuanced, proportionate approaches for challenging the ideas and actions of organisations on the fringes of mainstream political discourse. A reformulated approach might only require minor legislative and procedural amendments to deliver some much-needed check on the executive's use of the current proscription laws. We suggest, for example, that the primacy of Parliamentary oversight can be strengthened by only allowing proscription orders to be tabled on a case-by-case basis. This would allow Parliament to debate and vote on the proposed proscription of individual groups, rather than several at once. Further, procedural fairness might be accorded to organisations under consideration by giving notice of impending government action to proscribe. This would provide organisations the opportunity to raise objections to the proscription before it occurs, and not once the proscription has occurred and the organisation's assets are frozen. Finally, we suggest there is scope for lower order powers to be considered. These might include the use of sanctions, rather than outright proscription, which might enable the government to target individuals associated with an organisation rather than criminalise the organisation as a whole. These represent small but potentially powerful changes to legislation that, as we have argued, has increasingly been used to proscribe organisations by the fiat of the Home Secretary and without effective checks and balances. Given that the UK's proscription laws are unlikely to be radically overhauled in the near future – especially given the current Home Secretary's view that these laws should be widened – it is all the more important that consideration is given to installing safeguards on proscription legislation that restore Parliament's effective scrutiny of the executive and guards against arbitrary proscription of organisations.

WORD COUNT: 7600

Bibliography

Act of Proscription 1746. Available at: http://www.electricscotland.com/history/other/proscription_1747.htm

Allen, F. A. (1996). The Habits of Legality: Criminal Justice and the Rule of Law. New York: Oxford University Press.

Alonso, R. (2007). The IRA and Armed Struggle. New York: Routledge.

Anderson, D. (2012). The Terrorism Acts in 2011: Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006. London: The Stationery Office.

Anderson, J. (1948). The Politics of Proscription. The Australian Quarterly, 20, 2, 7-15.

Baber, M. (1999). The Terrorism Bill. London: House of Commons Library.

Barendt, E. (2005). Threats to Freedom of Speech in the United Kingdom. UNSWLJ, 28, 895.

Blackbourn, J. (2008). Counter-Terrorism and Civil Liberties: The United Kingdom Experience, 1968-2008. JIJIS, 8, 63.

Blair, T. (2010). A Journey: My Political Life. London: Hutchinson.

Bronitt, S. (2003). Australia's Legal Response to Terrorism: Neither Novel nor Extraordinary?'. Paper presented at the Castan Centre For Human Rights Law Conference, Melbourne.

Burke, J. (2003). Al-Qaeda: Casting a Shadow of Terror. IB Tauris & Company Limited.

Burnett, J., & Whyte, D. (2003). Embedded Expertise and the New Terrorism. The Guardian.

Carroll, L. (1865). Alice's Adventures in Wonderland. New York: MacMillan.

Casier, M. (2010). Designated Terrorists: The Kurdistan Workers' Party and Its Struggle to (Re) Gain Political Legitimacy. Mediterranean Politics, 15, 3, 393-413.

Clarke, C. (2000). Evidence to Standing Committee D. House of Commons Hansard, 20th January 2000: Retrieved from http://www.publications.parliament.uk/pa/cm199900/cmstand/d/st000120/am/00120s06.htm.

Counter-Terrorism Act 2008. London: The Stationery Office.

Cram, I. (2006). Regulating the Media: Some Neglected Freedom of Expression Issues in the United Kingdom's Counter-Terrorism Strategy. Terrorism and Political Violence, 18, 2, 335-355.

Crelinsten, R. (2009). Counterterrorism. Cambridge: Polity.

Cronin, A. K. (2009). How Terrorism Ends: Understanding the Decline and Demise of Terrorist Campaigns. Princeton, N.J: Princeton University Press.

Douglas, R. N. (2008). Proscribing Terrorist Organisations: Legislation and Practice in Five English-Speaking Democracies. 32 Criminal Law Journal 90, 90-99.

Fenwick, H. (2002). Responding to 11 September: Detention without Trial under the Anti–Terrorism, Crime and Security Act 2001. The Political Quarterly, 73(s1), 80-104.

Flyghed, J. (2005). Crime‐Control in the Post‐Wall Era: The Menace of Security. Journal of Scandinavian Studies in Criminology and Crime Prevention, 6, 2, 165-182.

Gerges, F. A. (2011). The Rise and Fall of Al-Qaeda. New York: Oxford University Press.

Goldsmith, A. (2007). Preparation for Terrorism: Catastrophic Risk and Precautionary Criminal Law. In A.

Lynch, E. MacDonald & G. Williams (Eds.), Law and Liberty and the War on Terror. Sydney: Federation Press. 59-74.

Gross, J. (2010). Talking with Terrorists: Terrorist Groups and the Challenge of Legitimization. Journal of Public and International Affairs, 21, 93-114.

Gross, J. (2011). Proscription Problems: The Practical Implications of Terrorist Lists on Diplomacy and Peacebuilding in Nepal. Praxis, 26, 38-59.

Haspeslagh, S. (2013). "Listing Terrorists": The Impact of Proscription on Third-Party Efforts to Engage Armed Groups in Peace Processes–a Practitioner's Perspective. Critical Studies on Terrorism, 1-20.

Hewitt, S. (2008). The British War on Terror: Terrorism and Counter-Terrorism on the Home Front since 9/11. New York: Continuum.

Hocking, J. (2003). Counter‐Terrorism and the Criminalisation of Politics: Australia's New Security Powers of Detention, Proscription and Control. Australian Journal of Politics & History, 49, 3, 355-371.

Hoffman, B. (1997). The Confluence of International and Domestic Trends in Terrorism. Terrorism and Political Violence, 9, 2, 1-15.

Hogg, R. (2008). Executive Proscription of Terrorist Organisations in Australia: Exploring the Shifting Border between Crime and Politics. In M. Gani and P. Mathew (Eds.), Fresh Perspectives on the 'War on Terror'. Canberra: ANU E Press. 297-323.

Home Office. (1998). Legislation against Terrorism: A Consultation Paper. London: The Stationary Office.

Home Office. (2001). The Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2001 No. 1261. London: The Stationery Office.

Home Office. (2005). Explanatory Memorandum to the Terrorism Act (Proscribed Organisations) (Amendment) Order 2005 No.2892. London: The Stationery Office.

Home Office. (2011). Explanatory Memorandum to the Terrorism Act 2000 (Proscribed Organisations) (Amendment Order) 2011 No.1771. London: The Stationery Office.

Home Office. (2012). Explanatory Memorandum to the Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No.2) Order 2012. London: The Stationery Office.

Home Office. (2013a). Explanatory Memorandum to the Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2013 No.1746. London: The Stationery Office.

Home Office. (2013b). Proscribed Terrorist Organisations. London: HM Government. Retrieved from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224213/2012-07-19-List_of_Proscribed_organisations.pdf.

Home Office and Northern Ireland Office. (2000). Supplementary Memorandum by the Home Office and Northern Ireland Office, in Delegated Powers and Deregulation - Twelfth Report. Select Committee on Delegated Powers and Deregulation. House of Lords: Hansard. Retrieved from http://www.publications.parliament.uk/pa/ld199900/ldselect/lddereg/57/5701.htm.

Horgan, J., & Morrison, J. F. (2011). Here to Stay? The Rising Threat of Violent Dissident Republicanism in Northern Ireland. Terrorism and Political Violence, 23, 4, 642-669.

Hughes, S. (2000). Standing Committee D. 20th January, 2nd Sitting. House of Commons: Hansard. Retrieved from http://www.publications.parliament.uk/pa/cm199900/cmstand/d/st000120/am/00120s06.htm.

Husak, D. N. (1991). The Orthodox Model of the Criminal Offense. Criminal Justice Ethics, 10, 1, 20-23.

Jarvis, L. (2012). Al Qaeda: A Diminishing Threat. In R. Jackson & S. J. Sinclair (Eds.), Contemporary Debates on Terrorism. London: Routledge. 97-103.

Jarvis, L., & Lister, M. (2012). Disconnected Citizenship? The Impacts of Anti‐Terrorism Policy on

Citizenship in the UK. Political Studies (Early view).

Lia, B. (2010). Al-Qaida's Appeal: Understanding Its Unique Selling Points. Perspectives on Terrorism, 2, 8. 3-10.

Lord Archer. (2001). Debates, 27th March 2001, Column 148. House of Lords: Hansard.

Lord Bassam. (2000). Debates, 6th April 2000, Column 1431. House of Lords: Hansard.

Lord Carlille of Berriew QC. (2010). Report on the Operation in 2009 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006. London: The Stationery Office.

Lord Lloyd of Berwick, the Rt Hon. (1996). The Inquiry into Legislation against Terrorism. London: The Stationery Office.

Lord Marsh. (2001). Debates 27th March 2001 Column 172. House of Lords: Hansard.

Lord McNally, the Rt. Hon. (2001). Debates 27th March 2001 Column 152-3. House of Lords: Hansard.

Lord Tomlinson. (2001). Debates 27th March, Vol.624, Column 173. House of Lords: Hansard.

Lynch, A., McGarrity, N., & Williams, G. (2009). Proscription of Terrorist Organisations in Australia, The. Fed. L. Rev., 37, 1.

Macdonald, S. (2012). Understanding Anti-Terrorism Policy: Values, Rationales and Principles. Sydney L. Rev., 34, 317-395.

May, T. (2011). Quoted in 'Britain moves to ban Pakistani Taliban under terror law statement'. Reuters, January 18th 2011. Retrieved from http://uk.reuters.com/article/2011/01/18/us-britain-taliban-idUKTRE70H2CV20110118

May, T. (2013). Interview. The Andrew Marr Show, presented by Nick Robinson. London: BBC, May 26th 2013. Retrieved from: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/226052013.pdf

McCulloch, J., & Pickering, S. (2009). Pre-Crime and Counter-Terrorism Imagining Future Crime in the 'War on Terror'. British Journal of Criminology, 49, 5, 628-645.

McGreal, C. (2012). MEK decision: multimillion dollar campaign led to removal from terrorist list, The Guardian, 21st September, 2012. Retrieved from http://www.guardian.co.uk/world/2012/sep/21/iran-mek-group-removed-us-terrorism-list

McSherry, B. (2004). Terrorism offences in the criminal code: broadening the boundaries of Australian criminal laws. UNSWLJ, 27, 354.

Mouffe, C. (2005). On the Political. New York: Routledge.

Muller, M. (2008). Terrorism, Proscription and the Right to Resist in the Age of Conflict. Denning LJ, 20, 111.

Nadarajah, S., & Sriskandarajah, D. (2005). Liberation Struggle or Terrorism? The Politics of Naming the Ltte. Third World Quarterly, 26, 1, 87-100.

Neal, A. W. (2009). Exceptionalism and the Politics of Counter-Terrorism: Liberty, Security and the War on Terror. New York: Routledge.

Neocleous, M. (2007). Security, Liberty and the Myth of Balance: Towards a Critique of Security Politics. Contemporary Political Theory, 6, 2, 131-149.

NSW Supreme Court (2007). R v Ul-Haque NSWSC 1251. New South Wales: NSWSC.

Pedahzur, A., Eubank, W., & Weinberg, L. (2002). The War on Terrorism and the Decline of Terrorist Group Formation: A Research Note. Terrorism and Political Violence, 14, 3, 141-147.

Richmond, O., & Franks, J. (2005). Human Security and the War on Terror. In Dodds, F., & Pippard, T. (Eds.) Human and environmental security: an agenda for change. Sterling, VA: Earthscan.

Saul, B. (2005). Attempts to Define 'Terrorism' in International Law. Netherlands International Law

Review, 52, 01, 57-83.

Sentas, V. (2010). Terrorist Organisation Offences and the LTTE: R v Vinayagamoorthy. Current Issues Crim. Just., 22, 159.

Smith, B. L., & Damphousse, K. R. (2009). Patterns of Precursor Behaviors in the Life Span of a Us Environmental Terrorist Group. Criminology & Public Policy, 8(3), 475-496.

Spencer, A. (2006). Questioning the Concept of 'New Terrorism'. Peace, Conflict and Development, 1-33.

Terrorism Act 2000. London: The Stationery Office.

Terrorism Act 2006. London: The Stationery Office.

Terrorism Bill (Bill 10 1999-2000). House of Commons: Hansard.

Tham, J.-C. (2004). Possible Constitutional Objections to the Powers to Ban Terrorist Organisations. UNSWLJ, 27, 482.

US Department of State. (2012). Country Reports on Terrorism 2012. Retrieved from http://www.state.gov/j/ct/rls/crt/2012/209989.htm.

Vittori, J. (2009). All Struggles Must End: The Longevity of Terrorist Groups. Contemporary Security Policy, 30, 3, 444-466.

Waldron, J. (2003). Security and Liberty: The Image of Balance. Journal of Political Philosophy, 11, 2, 191-210.

Walker, C. (2000). Briefing on the Terrorism Act 2000. Terrorism and Political Violence, 12, 2, 1-36.

Walker, C. (2006). Clamping Down on Terrorism in the United Kingdom. Journal of International Criminal Justice, 4, 5, 1137-1151.

---

[1] Charles Clarke. 20th January 2000. Accessed at: http://www.publications.parliament.uk/pa/cm199900/cmstand/d/st000120/am/00120s06.htm

[2] Alan Johnson, 12th January 2010. Accessed at: http://news.bbc.co.uk/2/hi/8453560.stm

[3] Theresa May, 18th January 2011. Accessed at: http://uk.reuters.com/article/2011/01/18/us-britain-taliban-idUKTRE70H2CV20110118

[4] Explanatory Memorandum To The Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No.2) Order 2012, s.7.2.

[5] Under this procedure, both Houses of Parliament must expressly approve proposed amendments to statutory instruments. They are not, however, able to change any element of proposed amendments.

[6] Under the affirmative procedure, proscription orders require a majority of votes to pass. Under the negative procedure, the order is made unless either House proposes and passes a motion disapproving the order.

[7] Explanatory Memorandum to the Terrorism Act 2000 (Proscribed Organisations) (Amendment Order) 2011, No.1771.

[8] See below for examples of the simultaneous proscription of multiple organisations.

[9] Taken from: http://www.electricscotland.com/history/other/proscription_1747.htm Accessed May 21st 2013.

[10] These are: Continuity Army Council, Cumann na mBan, Fianna na hEireann, Irish National Liberation Army, Irish People's Liberation Organisation, Irish Republican Army, Loyalist Volunteer Force, Orange Volunteers, Red Hand Commando, Red Hand Defenders, Saor Eire, Ulster Defence Association, Ulster Freedom Fighters, and Ulster Volunteer Force. Taken from: Home Office, Proscribed Terrorist Organisations, 12th July 2013. Accessible at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224213/2012-07-19-List_of_Proscribed_organisations.pdf

[11] Of these, two are proscribed for glorification of terrorism (under powers contained in the 2006 TA).

[12] The following organisations were listed in The Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2001 No. 1261: Al-Qa'ida, Egyptian Islamic Jihad, Al-Gama'at al-Islamiya, Armed Islamic Group (Groupe Islamique Armée) (GIA), Salafist Group for Call and Combat (Groupe Salafiste pour la Prédication et le Combat (GSPC), Babbar Khalsa, International Sikh Youth Federation, Harakat Mujahideen, Jaish e Mohammed, Liberation Tigers of Tamil Eelam (LTTE), Hizballah External Security Organisation, Hamas-Izz al-Din al-Qassem Brigades, Palestinian Islamic Jihad—Shaqaqi, Abu Nidal Organisation, Islamic Army of Aden, Mujaheddin e Khalq, Kurdistan Workers' Party (Partiya Karkeren Kurdistan) (PKK), Revolutionary Peoples' Liberation Party—Front (Devrimci Halk Kurtulus Partisi-Cephesi) (DHKP-C), Basque Homeland and Liberty (Euskadi ta Askatasuna) (ETA), 17 November Revolutionary Organisation (N17).

[13] In R v Ul-Haque (unreported, NSW Supreme Court, Australia. February 2006).

[14] The Madrid train bombings of 2004 by individuals inspired by al-Qaeda is one such example.

[15] Boko Haram was formally banned in the UK in July 2013.

[16] The UK and EU had removed the group from their lists in 2008 and 2009 respectively.

[17] House of Lords Debates 27th March 2001, Column 148.

[18] House of Lords Debates, 27th March 2001, Column 152.

[19] House of Lords Debates, 27th March 2001, Column 172.

[20] House of Lords Debates, 27th March 2001, column 152

[21] HL Debates, 27th March 2001, column 173