

Research impact: making a difference

Aligning anti-terrorism laws with criminal law and human rights

LSE Professor Conor Gearty led efforts to balance human rights with national security in shaping the revised UK counter-terrorism legislation

What was the problem?

In the wake of 9/11 and the 7th July 2005 bombings in London, many questions were raised about how to deal with people suspected of terrorism offences and in particular how to balance national security concerns with the delivery of justice.

Should the principles of criminal justice extend to such individuals? Should they, for instance, be made aware of, and be allowed to respond to, all charges against them? Should their guilt have to be proved beyond a reasonable doubt?

Or should the law treat them as presumed enemies of the state, with lesser human rights than ordinary citizens? Should anti-terrorism activities aimed at protecting the safety and security of the citizenry be viewed as a 'lesser evil' than the potential violation of any specific individual's human rights?

What did we do?

Between 2005 and 2008, LSE Professor Conor Gearty led the Human Rights and Terrorism project funded by the Economic and Social Research Council. Throughout this period, Gearty was Director of LSE's Centre for the Study of Human Rights as well as Professor of Human rights law in the Law Department.

The central objective of the project was to develop an innovative, inclusive and just approach to the drafting of UK counter-terrorism legislation. It invited the involvement of lawyers, politicians, civil servants, members of the security forces and experts in foreign affairs and engaged them in efforts to strike an appropriate balance between respect for human rights and the interests of national security.

The issues were captured in discussion papers produced by Professor Gearty and debated at a series of six closed seminars with invited decision-makers. The first five seminars focused on the relation between government and one of the professional communities involved (the legal profession, media, judiciary, civil society and politicians), while the sixth seminar focused on the part played by the Human Rights Act 1998. The seminars were followed by a conference at which Professor Gearty debated the issues with Sir Lawrence Friedman, then Professor of War Studies at Kings College London.

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Attendees of the seminars and the conference included a former Home Secretary, the current Senior Security Adviser at Number 10 Downing Street, a high-ranking security adviser to the Prime Minister and others drawn from the legal profession, academia and the civil service.

Gearty summarised the discussions in *Human Rights, Civil Society and the Challenge of Terrorism* (2008) and wrote a précis for *Prospect* magazine. These were circulated to the media and to selected members of parliament, who were then debating the Counter-Terrorism Bill that passed into law in 2008.

What happened?

Gearty's research and project activities helped to shape the substance of anti-terrorism law in the United Kingdom. Their primary impact was to align the Counter-Terrorism Act 2008 with the traditional human-rights-oriented model of criminal law, ensuring fair treatment for anyone charged under the Act.

The research that emerged from the Human Rights and Terrorism project took as its central premise the proposition that counter-terrorist activities such as interrogation and detention procedures and the gathering of intercept evidence should be governed by the rules of criminal procedure, just as they would be in a non-terrorism context.

This proposition was further tested and strengthened at the seminars, resulting in a number of specific recommendations for legal reform, many of which found their way into the 2008 Act.

The project's influence is particularly evident in provisions of the Act dealing with post-charge questioning, the recording of interviews, the prosecution and punishment of terrorism offences and new terrorism offences subject to trial under ordinary law. Further reform is anticipated in terms of the law relating to intercept evidence.

Gearty's seminars "were more balanced than was typical at the time, allowing the perspective of government officials and ministers to be represented without losing any independence or critical rigour". Their effect was to ensure that government thinking on terrorism was "less insular, and to inform and improve government decision making — including having an impact on the content of the Counter-Terrorism Act 2008, which was being formulated while the seminars were in progress ... "

-- **Matt Cavanagh, then Special Adviser on Security to the Prime Minister and a seminar participant**

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Without Gearty's research, and without the discussions stimulated and issues raised in the seminars and debate, counter-terrorism laws in the UK were unlikely to have incorporated the same procedural principles of criminal law now enshrined in the Counter-Terrorism Act 2008. If a weakening of the burden of proof and procedural principles had been allowed, as it had been elsewhere, the civil and human rights of defendants in cases of alleged terrorism would have been severely diminished.

Conor Gearty is Professor of Human Rights Law in the LSE Law Department. He has published widely on terrorism, civil liberties and human rights. Conor is also a barrister and was a founder member of Matrix chambers from where he continues to practise. He has been a frequent adviser to judges, practitioners and public authorities on the implications of the UK Human Rights Act, and has frequently lectured at home and abroad on the topic of human rights. He has appeared in human rights cases in the House of Lords, the Court of Appeal and the High Court. He has also been a visiting professor at Boston University, the University of Richmond and the University of New South Wales.

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