

<b>Institution: London School of Economics and Political Science</b>
<b>Unit of Assessment: 20 Law</b>
<b>Title of case study: Aligning anti-terrorism legislation with human rights</b>
<p><b>1. Summary of the impact</b> (indicative maximum 100 words)</p> <p>The research impact elaborated in this case study was facilitated through the Human Rights and Terrorism project, which was led by Conor Gearty between 2005 and 2008. Through a series of seminars on accommodating the demands of human rights alongside the interests of national security, the Human Rights and Terrorism project engaged with policy makers and those concerned with criminal justice and anti-terrorist measures. Research produced by Gearty in connection with the seminars shaped parts of the Counter-Terrorism Act 2008 so as to integrate it within the traditional criminal law model.</p>
<p><b>2. Underpinning research</b> (indicative maximum 500 words)</p> <p>All of the underpinning research has been published since 2002, when Gearty joined LSE. From 2002 until 2009 Gearty was Director of LSE's Centre for the Study of Human Rights as well as professor of human rights law in the LSE's Law Department (he continues to serve in the latter post).</p> <p>The main research insight which Gearty's scholarship has brought to public attention, and which underpinned the Human Rights and Terrorism project, is the necessity of integrating counter-terrorism law with the traditional criminal law model. One of Gearty's core claims is that this model – because it demands that those accused of terrorism be subject to principles of natural justice (e.g., being made aware of, and allowed to respond to, all charges made against them) and to a burden of proof beyond reasonable doubt – ensures that defendants in terrorism cases are treated as subjects with basic human rights and are not presumed to be enemies of the state. This core claim underpins Gearty's critique of those who argue for an emergency-based approach to terrorism (Gearty 2008a), and has led him to reject the argument that aggressive anti-terrorist actions by Western powers are a "lesser evil" that should be tolerated. His views are clearly expressed in his commissioned article for <i>Government and Opposition's</i> special issue on terrorism (Gearty 2007a). A more policy-oriented formulation of the argument can be found in Gearty 2007b, there is a chapter explaining the theoretical underpinnings of the position in Gearty 2007c, and the argument features in Gearty's 2013 evidence to the Joint Committee on Draft Detention of Terrorist Suspects (section 5 source 3).</p> <p>The ESRC-funded Human Rights and Terrorism project has co-opted lawyers, prosecutors, politicians, civil servants, members of the security forces, and experts in foreign affairs in its effort to formulate an appropriate balance between respect for human rights and the interests of national security. The project was led by Gearty and ran from 2005 to 2008. It took the form of six closed seminars for decision-makers (Gearty produced a discussion paper for each seminar), followed by a similarly restricted conference at which Gearty debated with Professor Sir Lawrence Friedman on the issues arising from the seminars. The seminars and the debate are summarized in a report (Gearty,2008b), along with an adapted précis (Gearty 2007d) in <i>Prospect</i> magazine.</p> <p>A central objective of the Human Rights and Terrorism project was to develop fresh ways of approaching and drafting terrorism legislation (section 5, source 6). As is explained in section 4, Gearty's research emanating from the project impacted specifically on the content of the Counter-Terrorism Act 2008 (and is likely to have post-REF 2014 impact on the drafting of other procedural rules relating to counter-terrorism).</p>
<p><b>3. References to the research</b> (indicative maximum of six references)</p> <p>(2007a) C. Gearty, 'Terrorism and Human Rights' 42 <i>Government and Opposition</i> 340-362 at <a href="http://www.conorgearty.co.uk/pdfs/GovernmentandOpposition2007.pdf">http://www.conorgearty.co.uk/pdfs/GovernmentandOpposition2007.pdf</a> (evidence of at least 2*</p>

quality: national and international scholarly reliance on the research at e.g. (2010) 43 *Comparative Political Studs* 551; (2010) *Int. J. Human Rights* 542; (2007) 7 *Defence Studs* 317). <http://eprints.lse.ac.uk/4464/>

(2007b) C. Gearty, 'Reconfiguring Security' 15 *Renewal* 105-109. <http://eprints.lse.ac.uk/51367/>

(2007c) C. Gearty *Civil Liberties* (Oxford: OUP, 2007) (reviews at e.g. (2009) 6 *EHRLR* 809; [2009] *Pub. Law* 179; *Global Policy*, 23 May 2013 (at [www.globalpolicyjournal.com](http://www.globalpolicyjournal.com)); *Times Higher*, 13 June 2013 (at [www.timeshighereducation.co.uk/books/](http://www.timeshighereducation.co.uk/books/))). <http://eprints.lse.ac.uk/4546/>

(2007d) C. Gearty, 'The Dilemmas of Terror' [October 2007] *Prospect* 34-38. <http://eprints.lse.ac.uk/51372/>

(2008a) C. Gearty, 'The Superpatriotic Fervour of the Moment' 28 (1) *Oxford Journal of Legal Studies* 183-200. DOI number: 10.1093/ojls/gqn002

(2008b) C. Gearty, *Human Rights, civil society and the challenge of terrorism* (LSE & ESRC: LSE Centre For Human Rights, 2008) (available at <http://www.lse.ac.uk/humanRights/documents/projects/ESRCReportFinal.pdf>). <http://eprints.lse.ac.uk/51374/>

*Evidence of quality.* Peer-reviewed publications and citations as noted above.

#### 4. Details of the impact (indicative maximum 750 words)

Gearty's research impacted on the content of the Counter-Terrorism Act 2008 so as to integrate it within the traditional (i.e., human rights-oriented) model of the criminal law. The research has shaped the substance of anti-terrorism law and been of especial benefit to those citizens whose fair treatment within the criminal justice system has depended upon parliament enacting counter-terrorism legislation which takes proper account of human rights norms.

The research which Gearty has produced in connection with the Human Rights and Terrorism project (beginning with 2007a) is premised on the proposition that counter-terrorist activities – e.g. interrogation and detention procedures and the gathering of intercept evidence – should, no less than alleged terrorist activities, be governed by the rules of criminal procedure. In 2008, he used the ESRC funding awarded to the project in order to organize the seminar series outlined in section 2. Once the series was completed, he produced a report (2008b) setting out his and other participants' arguments for counter-terrorism legislation based on criminal law norms. Gearty's writing of the report coincided with parliament debating the Counter-Terrorism Bill (afterwards Act) 2008. At this point, he sent 2008b – along with 2007d (setting out the arguments in summarized form) – to various members of parliament, the press and the media.

The project has had a direct impact on the content of the Counter-Terrorism Act (section 5, source 4). The recommendations for legal reform which emerged from the seminars are reflected in those parts of the Act which make the criminal process central to counter-terrorist strategies – in particular at ss 22 (post-charge questioning), 25 (recording of interviews), 26 (issue and revision of code of practice), Part 3 ('Prosecution and Punishment of Terrorist Offences'), and ss 76, 77 (new terrorist offences triable under ordinary law). Gearty provides details (at 2008b: 28-30) of the "many features" of the counter-terrorism legislation which were first recommended at the seminars. He also notes that a likely downstream effect of the research is further reform of the law relating to intercept evidence:

"The terrorism laws are now unrecognisable from the slim, temporary emergency measure introduced by Home Secretary Roy Jenkins in November 1974.... The government has now decided to proceed with further investigations into the viability of [intercept evidence in criminal prosecution for terrorism and terrorism-related offences] ... as long as certain basic safeguards can be effectively implemented.... [T]he criminal law orientation of counter-terrorism law would be given a further boost by the change." (Gearty 2008b: 28-30)

That the project, and Gearty's research in particular, impacted on the thinking of those responsible for ensuring that parliament introduced new counter-terrorism legislation is attested to by some of the relevant actors (section 5, source 5). The Human Rights and Terrorism project seminars and debate were attended by a former Home Secretary, the then senior security adviser at No. 10 Downing Street, a high-ranking security adviser to the then Prime Minister, and others drawn from law, academia and the civil service. Evidence of how the seminars influenced the thinking of senior government officials can be found in feedback provided by participants. One participant, the then Director of Public Prosecutions, Lord Macdonald, writes:

“working with Professor Gearty, attending one of his seminars in the national security series and reading the report that he produced ... helped me both to frame and to justify the perspective that I took as a senior law officer on these matters. This was all the more important to me because of the difficult security situation that we faced as prosecutors during my time in office.” (Section 5, source 2.)

Similarly, Matt Cavanagh, the then Prime Minister's special adviser on security and a seminar attendee, writes that “[f]rom 2003 to 2010 I worked as a special adviser to a number of ministers – David Blunkett as Home Secretary, Des Browne as Defence Secretary, and Gordon Brown.... [Gearty's seminars] ... were more balanced than was typical of the time, allowing the perspective of government officials and ministers to be represented without losing any independence or critical rigour.... The 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.... [T]he emphasis on using the criminal process for terrorist suspects wherever possible, which is evident in that Act, reflected the influence of the seminar series in general and Gearty's own work in particular”. (Section 5, source 1.)

*Why the impact matters.* But for Gearty's research having had the impact demonstrated in this study, criminal law procedural principles are unlikely to have been incorporated into the Counter-Terrorism Act 2008 in the way that they now are, and so defendants in cases of alleged terrorism, not being tried according to the criminal law burden of proof, would be less well protected.

#### 5. Sources to corroborate the impact (indicative maximum of 10 references)

All Sources listed below can also be seen at: <https://apps.lse.ac.uk/impact/case-study/view/41>

1. Associate Director, Institute of Public Policy Research, testimonial. This source is confidential.
2. Former Director of Public Prosecutions, testimonial. This source is confidential.
3. Evidence (from Gearty) to the Joint Committee on Draft Detention of Terrorist Suspects (Temporary Extension) Bills, 23 June 2011. <https://apps.lse.ac.uk/impact/download/file/1402>
4. Counter-Terrorism Act 2008, ss 22, 25, 26, Part 3, and ss 76, 77.
5. HC Deb 19 November 2001 vol 375 col 69 (MP for Dudley North) (“I am sure it would help the House if the Minister, or the Home Secretary, could reiterate that it is Government policy that the Bill's provisions will be a last resort—in other words, that if foreign international terrorists can be prosecuted here ... they will be.... I should also say that, at first blush, I am attracted to Professor Gearty's proposal ... for an annual report on detentions, by an independent commissioner”).
6. “Liberty and Security”, Cambridge Centre for Public Law and Law Without Borders event, Cambridge University, May 2013, at <http://sms.cam.ac.uk/media/1218384>