

<b>Institution: Keele University</b>
<b>Unit of Assessment: C21 Politics and International Studies</b>
<b>Title of case study: International Human Rights: hate speech, minority rights, racial discrimination and indigenous peoples</b>
<p><b>1. Summary of the impact</b></p> <p>Patrick Thornberry's research on human rights, particularly regarding international standards on racial (including caste) discrimination, minority rights, rights of indigenous peoples, and hate speech, has (1) influenced the development of legal principle through advice on policy and participation in the authorship of international standards, particularly those of the United Nations; (2) influenced the development of national legislation and practice including legislation in the UK; (3) facilitated the human rights work of international and national non-governmental organisations (NGOs) working to defend the rights of minority, indigenous and caste communities.</p>
<p><b>2. Underpinning research</b></p> <p><b>Dates:</b> Professor Patrick Thornberry was employed at Keele University from 1990-2010 (when he became Emeritus Professor). He has carried out research on minority rights throughout his career. The principal insights and findings from research between 1993 and 2010 are in the following areas:</p> <p>(a) On <b>minority rights</b>: Thornberry demonstrated that their expression had been largely subsumed under international standards on discrimination, which, while functioning as starting points for protection of cultural, religious and linguistic identity, lacked appropriate indicators for the expression of identities. He suggested that lacunae were particularly evident in minority education and language, on recognition of the status and membership of minorities, and on the participation of minorities in decisions affecting them, and analysed key principles and instruments to move the discourse forward (references 1 &amp; 5). This accounted for the relationship between specific principles and general international law, and apparatuses for the implementation of rights. His approach aimed to facilitate understanding the status and role of minority rights in the corpus of international standards on human rights.</p> <p>(b) On <b>racial discrimination</b>: his research concentrated on exploring the concept and grounds of discrimination, the aims and objectives of international standards, affirmative action, the work of the Committee on the Elimination of Racial Discrimination (CERD), and the integration of discrimination standards with those on minorities and indigenous peoples (references 4 &amp; 6). Research findings clustered around the relationship between anti-discrimination and equality standards and the norms embodying freedoms, including cultural and speech freedoms, the lack of attention to the rights of particularly vulnerable groups, including caste groups, and dilemmas over collective rights in contexts animated by individualist paradigms.</p> <p>(c) On <b>indigenous peoples</b>: Thornberry researched extensively into the place of indigenous peoples in the history of international law, understandings of 'indigeness', the applicability of general and specific norms to advance their interests, self-determination, and standards on lands, territories and defence of indigenous cultures (references 2 &amp; 4). The research highlights the stresses under which indigenous peoples endeavour to survive and defend their cultures. These necessitate urgent action to adopt and implement existing standards of human rights as well as broadening of paradigms to accommodate indigenous world-views.</p> <p>(d) On <b>hate speech</b>, his research has focused on moves to proscribe 'defamation of religions', in light of events such as those following publication of 'The Satanic Verses', and the 'Danish cartoons'. He concluded that proscribing 'incitement to hatred' fitted into networks of human rights standards less equivocally than proscribing 'defamation of religions', but that it was not always easy to distinguish attacks on believers from attacks on doctrine. He cautioned that readings of freedom of expression should recognise that the boundaries of speech acceptability vary among nations and cultures and that international standards should take this into account (reference 6).</p>

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In practice there is overlap and convergence between the above four areas, as is evidenced in Thornberry's published research.

**3. References to the research**

1. Thornberry, P. (1995) 'The Rights of Minorities', in D. Harris and S. Joseph (eds.), *The International Covenant on Civil and Political Rights and United Kingdom Law*. Oxford University Press, Oxford, pp.597-627.
2. Thornberry, P. (2002) *Indigenous Peoples and Human Rights*. Manchester University Press, Manchester, 484 pp.
3. Thornberry, P. (2005) 'Combating Racial Discrimination: A CERD Perspective', *Human Rights Law Review*, 5, pp.239-69. DOI: 10.1093/hrlr/ngi015
4. Thornberry, P. (2005) 'The Convention on the Elimination of Racial Discrimination, Indigenous Peoples and Descent-based Discrimination', in J. Castellino and N. Walsh (eds.), *International Law and Indigenous Peoples*. The Hague: Martinus Nijhoff, pp.17-52.
5. Thornberry, P. and de Varennes, F. (2005) 'Two chapters on education rights, and one on language rights' in M. Weller (ed.), *The Rights of Minorities: A commentary on the European Framework Convention for the Protection of National Minorities*. Oxford University Press, Oxford, pp. 365-428.
6. Thornberry, P. (2010) 'Forms of Hate Speech and the Convention on the Elimination of All Forms of Racial Discrimination', *Religion and Human Rights*, 5, pp. 97-117. DOI: 10.1163/187103210X528138

**Evidence of quality:** (3) and (6) were subject to the journals' anonymous peer review systems. (2) was favourably reviewed, inter alia in: *British Yearbook of International Law* (2003) 74 (1): 457-458 and the *Journal of Ethnic and Migration Studies* 2004.

**4. Details of the impact**

Patrick Thornberry's research has had significant impact on the development of international and national human rights law, and the work of non-governmental organizations (NGOs). This is bound up with the public positions he has occupied since the 1990s, which in turn, has also informed his research. Thus, the insights of his research in the 1980s and 1990s led to the Chairmanship of the NGO Minority Rights Group International (1999-2002), followed by membership (2001-2014) of UN CERD (the monitoring body of the International Convention on the Elimination of Racial Discrimination - ICERD). This was on the nomination of the UK government and confirmed by votes of the States parties to the Convention, most recently in 2010 when Professor Thornberry received 144 votes. He served as rapporteur (independent expert) for six years up to 2008 (with responsibility to prepare the annual report of CERD to the UN General Assembly); country rapporteur for 21 reporting States (9 States since 2008); chairman of the Early Warning and Urgent Action Group (2008-2010); and follow-up rapporteur on State party periodic reports (from 2012), in which he was responsible for monitoring progress made by States parties in implementing the recommendations of the Committee. Membership of CERD has been coterminous with additional UN advisory engagements and work with regional bodies such as the Council of Europe, and with NGOs and civil society groups.

Professor Thornberry was the first rapporteur of the UN Forum on **Minorities** (2008), initiating the discussion and preparing the initial draft of the Forum's Recommendations on Minority Education, which will influence governments worldwide. This stemmed from a request from the then UN Independent Expert on Minorities, specifically on account of Thornberry's research on minority rights in the field of education (see Thornberry, 2005, above); this work is clearly reflected in the

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Recommendations of the Forum. The former President of the Council of Europe Advisory Committee on National Minorities (2006-10) comments: 'no other academic I know has had such a positive influence at the UN on minority issues as Professor Patrick Thornberry.' In addition, in his capacity as a former Chair of Minority Rights Group (MRG), Professor Thornberry has maintained a relationship with the Group. A spokesperson, writing on behalf of MRG, notes: 'Patrick's research has most certainly had an influence on our work here at MRG. His books are standard texts for us in our promotion of minority and indigenous rights worldwide. Arguments at MRG on finer points of minority rights law can be definitively settled by reference to Thornberry.'

Professor Thornberry was primary or shared rapporteur/author of several General Recommendations (GRs) on **racial discrimination**. These include GR 29 on discrimination on the grounds of caste or descent (2002), GR 32 on special measures/affirmative action (2009), and GR 34 on discrimination against persons of African Descent (2011); the latter were informed by research developed from his publications in 2005. Regarding Thornberry's work on the Committee for the Elimination of Racial Discrimination, a senior representative says: 'While the work of CERD is a collective one, contributions made by individual experts are highly important to the overall results of the work of the Committee. In this regard, Professor Thornberry has effectively contributed to the jurisprudence of CERD by using his academic research, particularly on minorities and racial discrimination'. She highlights in particular his 'crucial role in preparing initial drafts of General Recommendations'. These provide guidance to the governments of the 176 States parties to the convention and influence the work of civil society in those countries. 'He was the key member of CERD involved in producing the Committee's ground-breaking recommendations on caste or descent GR 29, 2002' (spokesperson for Minority Rights Group). This remains 'a major influence on UN and governmental approaches' (President of the Council of Europe Advisory Committee on National Minorities). GR 29 has been extensively employed by Dalit and Buraku groups in advocacy strategies (for example the Dalit Solidarity Network's 2011 report recommending implementation of GR 29 in the UK) and has also influenced legislative changes in the UK, where caste discrimination has recently been recognised as a form of racial discrimination.

Thornberry's earlier work in developing the *UN Declaration on the Rights of Indigenous Peoples* 'where he was the leading intellectual thinker' (President of the Council of Europe, Advisory Committee on National Minorities, 2006-10) led to further research on **indigenous** education rights (reference 5, section 3) which informed the UN Expert Mechanism on Indigenous Rights and its 'Advice' to governments in 2009. Its impact has extended to indigenous NGOs. For example, his research was cited in a recent (2012) submission to CERD in support of the Sami people's claim that self-identification principles were leading to the dilution of Sami identity in Finland: CERD agreed with the submission and changed its advice to the government. Sami organisations incorporated this advice into their lobbying of the Finnish government in order to defend their rights to land and culture.

On **hate speech**, Professor Thornberry's research has contributed to moving UN efforts on from 'defamation of religions' to addressing 'incitement to hatred'. In 2011, following the publication of his article in Religion and Human Rights (reference 6 in section 3), CERD appointed him as co-rapporteur for the discussion on racist hate speech, which took place in 2012. The text of a general recommendation was presented to CERD in 2013 and was adopted as GR 35 on 'combating racist hate speech'. Initial reaction suggests that the recommendation is being treated as a ground-breaking development and it is cited by a senior representative of the Rule of Law and Democracy section, UN OHCHR, as one of 'numerous occasions [in which] Patrick Thornberry has been able to bring findings from his own research into the work of CERD and by so doing influenced its work positively.'

## 5. Sources to corroborate the impact

### Corroborators:

Chief of the Rule of Law and Democracy section (former UN CERD Secretary) UN Office of the High Commissioner for Human Rights (impact of Thornberry's research on UN hate speech)

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recommendation).

Secretary of UN CERD (on contribution of research to work on CERD).

Former UN Independent Expert on Minorities (impact of research on minorities and education to UN Forum on Minorities)

Director, Minority Rights Group International (use of research by MRG)

Independent human rights consultant, President of the Council of Europe Advisory Committee on National Minorities (2006-10) and former Director of Minority Rights Group (impact of research on minorities on UN and Council of Europe)

**United Nations documents (available on request or from <http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx>):**

GR on Persons of African Descent:  
UN Document A/63/18, para. 554

On moving from 'defamation of religions' to addressing 'incitement to hatred':  
UN Document A/HRC/10/31/Add.3 (2009) 'Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights' – Report on Expert Seminar (Geneva, 2008) on "Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence".

For the UN Expert Mechanism on Indigenous Rights and its 'Advice' to governments in 2009:  
UN document A/HRC/12/33 'The UN Expert Mechanism Advice No. 1 on the right of indigenous peoples to education, annexed to the Study on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education

For the 2012 discussion on racist hate speech:  
UN document A/67/18, p. 87, para. 62.

For General Recommendation 35 on Combating Racist Hate Speech:  
<http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx> (General Comments)

**Other sources:**

For the UN Forum on Minorities 2008:  
<http://www.ohchr.org/EN/HRBodies/HRC/Minority/Pages/ForumIndex.aspx>

On the Dalit Solidarity Network's recommendation to implement GR 29 in the UK: Dalit Solidarity Network (2011) *Caste Based Discrimination in the United Kingdom*

On the UK ban on caste discrimination: *International Dalit Solidarity Network News*, 'Britain Bans Caste Discrimination', 24<sup>th</sup> April 2013: <http://idsn.org/news-resources/idsn-news/read/article/britain-bans-caste-discrimination/128/>

For the Sami self-identification case:  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FFIN%2FCO%2F20-22&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FFIN%2FCO%2F20-22&Lang=en) (Sami Council\_ alongside 'Finland' The concluding observations of the Committee (CERD/C/FIN/CO/20-22, para. 12).