

Concurrent Session

Managing campus security and the rule of law in an era of terrorism: How do state and federal homeland security laws, common law principles, and political rhetoric about the threat of terrorism redefine our approach to campus security in the fifth year following 9-11? How are universities in the UK responding to recent events in London?

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CAMPUS SECURITY AND THE RULE OF LAW

Introduction

1. Acts of terrorism, or as I prefer to call it, politically-inspired mass murder, are not new in the UK. As discussed in the opening plenary session of the 26th Annual National Conference (2005), the UK experienced domestic terrorism on a large scale over the last three decades of the 20th century. Until quite recently the terrorist threat was almost completely based on the conflict in Northern Ireland where murder and other serious crimes were committed on a regular basis by criminal gangs with political associations, largely funded by international criminal activity. As with the instruments used to carry out the atrocities in the US, the July 2005 criminality targeted public transport and was the UK's first experience of suicide bombers, who, unlike their US comparators, were citizens of the country in which they perpetrated their crimes. Universities as institutions have not generally been threatened by the supporters or apologists for that brand of criminality, or those supporting the mass murderers of 9/11. Universities, colleges and their staffs, indeed anyone with a remote connection to animal experimentation, are however subject to threats from other kinds of criminals protesting in an illegal way about the use of animals for research and threatening murder and other serious crimes.
2. Terrorism has a wide statutory definition, covering all manner of serious criminal acts which threaten public safety within the UK or abroad. As defined

in the latest legislation, it is action, within the UK or abroad, which involves serious violence against a person, serious damage to property, endangers another person's life, creates a serious risk to the health and safety of the public (including non-UK public) or a section of the public, or is designed seriously to interfere with or seriously to disrupt an electronic system, where the use or threat is designed to influence the government (any government) or to intimidate the public or a section of the public, and is for the purpose of advancing a political, religious or ideological cause.

3. The current law tries to deal with 'terrorism' as widely defined, using the Terrorism Act 2000, the Anti-Terrorism, Crime & Security Act 2001 and the Prevention of Terrorism Act 2005. This will be strengthened by the Terrorism Bill 2005, a cross-party measure which not only follows the murders of 7 July 2005, which were carried out by UK citizens, but also deals with the 'constitutional' objections to earlier provisions by introducing new powers. The Prevention of Terrorism Act 2005 repealed sections of the 2001 Act dealing with detention without trial of suspected international terrorists, following an adverse ruling by the House of Lords, superseding this power with two types of 'control orders' (derogating and non-derogating from the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms). There is much debate as to how these measures can be made effective in the light of the Labour Government's legislative stress since 1997 on individual human rights. All in all many lessons may be learned from the experiences in Northern Ireland on how to maintain the balance between security, proper investigation of offences and the human rights of the suspects.
4. The powers granted to the executive by the legislation are wide-ranging, including powers to make regulations for preservation of peace and order, stopping vehicles (five sections are devoted to controls on car parking), in some instances taking possession of land and buildings, closing roads, etc. There is also power to stop and search suspected terrorists (as long as the searching officers are of the same sex as the suspect), etc. Some recent instances of exercise of anti-terrorist powers by public authorities have

illustrated the 'black and white' approach which has apparently ridiculous results: for example the case of a woman arrested under anti-terrorist law for walking home on a cycle path near a harbour. Cycling was permitted but not walking. Much more serious was the shooting dead by police of an apparently innocent man in the heightened tension following the July 2005 attacks.

Freedom of expression as the cornerstone of university security

5. Principally the arguments about 'terrorism' as it affects institutions of higher education are about freedom of expression. This is the cornerstone of all university academic activity and thus of the security of the environment in which it takes place. The new Bill, which has been fiercely debated, originally proposed criminal offences of 'encouragement' and 'glorification' of terrorism. Thus, for example, it would be an offence punishable by up to five years' imprisonment to glorify, exalt or celebrate the terrorism of 9/11 or 7 July 2005. The final text is not available at time of writing but should be by the time of the Conference presentation. The UK has no constitution, but freedom of expression is protected under the European Convention on Human Rights and thus under the Human Rights Act 1998 which incorporated the Convention into domestic law. Academic expression of the kind under challenge in the US on 'patriotic' grounds could not be challenged lawfully in the UK since higher education laws provide protection for academics who express controversial or unpopular opinions or challenge received wisdom 'within the law' and for visiting speakers. What is 'within the law' in this legislation requires some examination, since all manner of statutes dating from the still-valid Treason Act 1351 to the present day impose some restrictions, for example inciting treason, treason felony, inciting racial hatred, inciting unlawful discrimination, blasphemy, misuse of drugs, paedophilia, mutiny and disaffection, etc and of course the offences created by the new anti-terrorist laws.. In recent years some academic staff have been dismissed or resigned for expressing views which incite racial hatred, i.e. discussion of racial issues which are biased, unprofessional or not in keeping with the academic standards of the institution.

6. Traditionally, universities have been open to free debate among students, on the basis that free and academic discussion of problems is the best way to solve them. Some concern has been expressed about racial and political intolerance on the one hand, and allowing institutions to be used as 'recruiting grounds' by radicals on the other. A report published by Universities UK (representing the heads of all UK universities) in November 2005 (written before the events of July 2005) provided some guidance on dealing with these issues on campus. It sets out the broad legal context in which universities will decide in future how to respond to protests, expression of extreme political views and complaints about intolerance or religious or ethnic hate crimes. Universities have of course always been used as recruiting grounds by fundamentalist religious groups which advocate supremacy of one group over another but in general terms authorities have tolerated at least the mainstream groups. Now according to the Secretary of State for Education and Skills it is the duty of universities and their staff to report any 'unacceptable' behaviour or suspicions about criminal acts to the police and probably in the light of events nobody would seriously challenge that approach.

Physical Security

7. Physical security of universities is concerned with keeping out people who have any form of malicious intent, be it to attack students in residences, to gate-crash events, to steal or to acquire dangerous chemicals, pathogens or radioactive substances, to liberate experimental animals, to physically or virtually invade computer systems, or simply to cause a nuisance. Some of these actions, as explained above, may be committing a terrorist offence. Various laws impose conditions on licensing bars, licensing animal experiments, controlling the storage and use of dangerous materials, others deal with trespassers, thieves, those committing criminal damage, those interfering with computer systems and so on. The police or other public authorities are responsible for enforcing most of them, although occasionally an institution may have to take action in the civil courts to enjoin trespassers, animal rights activists, harassers, etc. Generally speaking, security officers have no powers beyond those of the ordinary citizen except where, for

example, a residential licence to occupy a building grants the university or its agents powers of entry or a student agrees on enrolment to produce student ID on request (there is currently no obligation on UK citizens to carry any form of ID when in the UK although this is likely to change).

8. Response to terrorism generally, as broadly defined, and particularly since the events of July 2005, has essentially been to raise public awareness. According to recent press reports, security spending, in its widest sense, by universities and colleges is at an all time high, with increases in security budgets reported of up to 25% between 2004 and 2005. Naturally, many institutions will not state publicly what they have done to increase preventative measures, such as improving computer security, locks, 'swipe' or chip cards, and increased use of CCTV. To give some examples, University College London disclosed security spending in 2005 of £3m (approximately USD 5.1m) and Imperial College £5.5m (approximately USD 9.4m). Video surveillance is commonplace throughout the UK and detected the perpetrators of the July 2005 mass murders when tapes were examined after the event. It is now possible using digital cameras (not just the omni-present speed cameras) to track vehicles automatically on many major and some minor roads with direct links to the national police, vehicle registration and insurance databases. Coupled with the ability to track the location of mobile (cell) phone calls, and ATM withdrawals, physical screening of packages, and CCTV surveillance in many high streets, shopping malls, petrol (gas) filling stations, car parks, all railway stations, airports, ports and increasingly schools and universities, the UK probably has reasonably effective physical deterrence against crime in public places, although many of the CCTV systems are old and in need of replacement. Video-surveillance inside banks, offices, public buildings, individual shops and businesses is the norm. Many private houses are also equipped with video cameras.
9. We should perhaps not take too seriously the statement of the London School of Economics that its response had been to send its 38 security staff on a half-day 'course' with the police at a cost of £25 (USD 42) each and to encourage more staff to 'wear yellow jackets' to guide staff and students to safe locations

in the event of an incident. On the other hand, the statement implicitly accepts that whatever physical measures an institution might take short of introducing airport-style body and bag searches, in practice a determined bomber would get through.

Conclusion

10. The UK has already introduced many commonly-accepted practices aimed at deterring and preventing crime, and at its detection and successful prosecution, although the effectiveness of some is debatable and the measures taken cannot guarantee protection against committed criminals. As occupiers of buildings which are traditionally open to the public, universities and colleges have to exercise the same general common-sense surveillance as art galleries, public libraries and other non-specifically targeted areas. Public transport is in a different category. Arguably the best way that universities and colleges can help to reduce the threat of terrorism is through their traditional routes of free discussion and expression and being sensible about reporting suspicious activities to the agencies best equipped to deal with them.

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