Anti-terrorism and police powers: should we be concerned?

Abie Longstaff and **John Graham** consider the challenge for the police of balancing engagement and enforcement with concerns over the use of anti-terrorism powers for wider purposes.

Whilst the events of 9/11 prompted a number of extensions to police powers, it is important to note that many of these powers were already in place. In the 1990's, public political interest in crime grew sharply following the tragic murder of Jamie Bulger. The event shocked the nation and politicians responded with a raft of new measures aimed at cracking down on violence and assuaging public fears. Some of the current anti-terrorism legislation and associated increases in police powers have their origins in this sudden change in the political climate. However, it has been suggested that many of the new legislative measures represent "opportunistic changes that would not have been sustained outside a period of crisis" (Walker 2006). In practice it is difficult to establish the extent to which the recent changes to policing powers are attributable to the bombings rather than as a consequence of a pre-existing trend towards a greater emphasis on security, risk aversion and more punitive forms of social control (Hitchens, 2004).

After 9/11, the Terrorism Act 2000 came into force in February 2001 to replace temporary anti-terrorism legislation to deal with the troubles in Northern Ireland. Three further Acts of Parliament were introduced between 2001 and 2006 – the Terrorism Act 2000, the Anti-Terrorism, Crime and Security Act 2001, the Prevention of Terrorism Act 2005 and the Terrorism Act 2006. These built on and broadened what were already no longer temporary or emergency powers, and created a range of new offences, such as encouraging and preparing for terrorism and glorifying terrorist acts. These new offences have been the subject of considerable criticism, particularly concerning the threat they pose to freedom of speech and the victimisation of people "for their views or even their stupid curiosity" (Walker, 2006) and some are already being contested in the courts. Whilst the government persistently maintains that these new powers are essential to protect our national security, others express concern, in particular, over the new stop and search powers, the extension of detention without charge and the rapid growth of police surveillance. These are considered further below.

The threat from al-Qaeda is clearly very different from the threat posed by the IRA. Al Qaeda has been described as more of an idea than an organisation and what became alarmingly clear following the London bombings in 2005 was that three of the suicide bombers were terrorists from Pakistani families in the North of England; unlike the IRA, the threat was internal, not external. The prevention of 'home grown' radicalisation therefore forms a major strand of the government's counter terrorism strategy, CONTEST (Prevent, Pursue, Protect and Prepare).

The PREVENT strand deals with community engagement and aims to foster relationships in day-to-day policing with ethnic, particularly Muslim, communities in the hope that this will help to protect those vulnerable to extremism as well as provide useful counter terrorism intelligence. In practice, in their duty to enforce the law, this presents the police with the very difficult challenge of balancing these dual functions of enforcement and engagement. This is nowhere more apparent than in their use of the new powers to stop and search, which no longer includes the safeguard of 'reasonable suspicion'.

Section 60 of the Criminal Justice and Public Order Act 1994 provided a precedent for stops and searches without reasonable suspicion. However, Section 44 of the Terrorism Act 2000 allows the designation of a specific area inside which anyone can be stopped and searched without reasonable suspicion. Neither the legislation nor the accompanying Codes of Practice provide clear guidance as to whom to select for a Section 44 stop stating officers may take account of ethnic origin but should take care not to discriminate. This has placed pressure on the individual police officer to make and defend a professional judgement on someone's looks, gait, manner or clothing (Andy Hayman, former head of UK counter-terrorism, "that is so flaky, you know, even I feel embarrassed saying that. But that is the truth as to what they do"). Others have commented that the new measures effectively constitute racial profiling (Kundnani, 2006).

Between 2001/2 and 2002/3 searches on persons of Asian ethnicity rose by 302 per cent compared to 118 per cent for white people. Whilst the increase in the use of stop and search in Asian communities might be considered understandable, only half of this ethnic group are in fact Muslim and of these only a tiny proportion might be potentially involved in terrorist activity (Moeckli, 2007). The increase in stop and searches for whites is less understandable and supports the argument that new powers tend to be used beyond the purposes for which they were originally intended. Stop

and search was originally meant as a police tool to confirm or allay genuine and well-founded suspicions without having to use the power of arrest and, critics have argued, ought to be exercised merely where there is reasonable belief of an offence committed or about to be committed.

The requirement to record and monitor stop and searches, whilst important for intelligence gathering and ensuring that powers are exercised fairly, places a considerable burden on police time – estimated at no less than 5 million hours, or the equivalent of 2500-3500 officers (Flanagan, 2008). The sheer number of stop and searches - the Metropolitan Police Service reports 22,672 Section 44 stops in 2005-6 alone - recently led the Home Secretary, Jacqui Smith, to pledge an increase in police resources for counter-terrorism, including 400 additional officers over the next three years. And this despite the fact that only 27 of these stops (1 in every 840) led to arrests in connection with terrorism. Whilst stop and search can be a powerful tool for gathering data and intelligence, when used disproportionately it can alienate and cause resentment in communities, raising the level of distrust of the police and creating tension, as the police themselves have admitted (in evidence to the Parliamentary Home Affairs Committee in July 2004.)

The contentious issue of detention without charge also has its roots pre 9/11. In the wake of the London bombings, when police officers claimed to have spent a vast number of hours gathering forensic intelligence, the government attempted but failed to extend the maximum period of pre-charge detention from 14 to 90 days, but only managed to secure an increase to 28 days. In June 2008 the House of Commons voted in favour of pre-charge detention for 42 days in terrorism cases. The UK already has the longest period of detention without charge in the western world and there are now also real concerns (Murray, 2005) that a further extension would cause disproportionate resentment in the very communities PREVENT is seeking to engage.

Similarly, much of the expansion of CCTV pre-dated the Trade Centre and London Underground bombings. In 1993, after the Jamie Bulger case, the ensuing climate of fear provided fertile ground for the expansion of CCTV. Government funding and public interest in CCTV grew exponentially and in the last decade alone, an estimated £500 million has been spent on CCTV. There are now 4 million CCTV cameras in the UK, more than in any other country in the world, and CCTV footage of the London bombers can only have strengthened the case for further expansion. However the Information Commissioner's Office has raised serious concerns about CCTV fostering a climate of suspicion and undermining trust, which can only undermine attempts to improve relationships between the Muslim community and the police to prevent radical extremism.

It should not be forgotten that one of the principle aims of terrorist organisations is, through instilling fear, to disrupt and undermine a nation's social and political infrastructure. It is often argued that if the response of government over-emphasises repressive measures at the expense of civil liberties, it only helps terrorists to succeed. Getting the balance between preserving civil liberties and protecting the public is not easy and it is this fine balance that faces policing today. Care must be taken to ensure that legislation introduced in response to the very real threat of terrorism does not lead, over time, to largely imperceptible but potentially irreversible changes in the freedoms taken for granted in advanced democracies, the so called 'normalization of the exceptional' (Moran, 2007). Recent reports in the press, which allege that local councils are using surveillance to monitor petty activity, such as dog fouling illustrate how such powers can be abused. With many more challenges ahead such as the admissibility of intercept evidence and protecting the public from the threat of terrorism during the Olympics, it is important not to lose sight of the need to protect the very rights terrorists seek to undermine. ∎

Abie Longstaff is a non-practising barrister and Research and Policy Analyst at the Police Foundation. **John Graham** is Director of the Police Foundation.

References

Walker, C. (2006), 'Clamping down on terrorism in the United Kingdom', *Journal of International Criminal Justice*, 4.

Hitchens, P. (2004), *The Abolition of Liberty: The Decline of Order and Justice in England*, London: Atlantic Books.

Moeckli, D. (2007), 'Stop and search under the Terrorism Act 2000: a comment on R (Gillan) v Commissioner of Police for the Metropolis', *Modern Law Review* 70(4), pp. 659 – 670.

Flanagan, Sir R. (2008), *'The Independent Review of Policing.'*

Hayman, A. (2007), *Counter-terrorism: the London debate*. London: Metropolitan Police Authority Report, February 2007.

Kundnani, A. (2006), *Racial profiling and anti-terror stop and search*. London: Institute of Race Relations.

Murray, J. (2005), 'Policing terrorism: a threat to community policing or just a shift in priorities?', *Police Practice and Research*, 6(4), pp. 347–361.

Surveillance Studies Network (2006), *A report on the surveillance society: a report for the Information Commissioner*, London: Information Commissioners Office. See further: Taylor, N. (2003), 'State surveillance and the right to privacy'. *Surveillance & Society* 1(1), pp. 66-85.

Moran, J. (2007), 'Generating more heat than light? debates on civil liberties in the UK'. *Policing*, 1(1), pp. 80-93.