# The proscription or listing of terrorist organisations:

# Understanding, assessment, and international comparisons

## *Special Issue Introduction*

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*This article serves as an introduction to this Special Issue on the banning or proscription of terrorist organisations around the world. It begins by arguing for greater attention to proscription powers because of their contemporary ubiquity, considerable historical lineage, implications for political life, and ambiguous effectiveness. Following an overview of the Issue's questions and ambitions, the article discusses five themes: key moments of continuity and change within proscription regimes around the world; the significance of domestic political and legal contexts and institutions; the value of this power in countering terrorism and beyond; a range of prominent criticisms of proscription, including around civil liberties; and the significance of language and other symbolic practices in the justification and extension of proscription powers. We conclude by sketching the arguments and contributions of the subsequent articles in this Issue.*

**Keywords** proscription, banning, listing, terrorist organisations, terrorism

### Introduction

The dramatic increase of academic interest in counter-terrorism powers in the period since 11 September 2001, in particular, has been much discussed and well documented.[i] Journals such as this one have been at the forefront of debate on the use, effectiveness and consequences of measures as disparate as counter-radicalisation initiatives,[ii] drone strikes,[iii] extraordinary rendition,[iv] detention without trial[v] sustained military campaigns, legal instruments, and beyond. Yet, while numerous attempts have been made to explore the effectiveness, compatibility and legitimacy of such tools,[vi] the power of proscription or the (black)listing of terrorist organisations – the focus of this Special Issue – remains curiously neglected, having attracted comparatively little scholarly attention to date. This Issue presents an attempt to

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address this lacuna, and to offer the first sustained analysis of the workings and consequences of diverse proscription regimes around the world.

As the articles collected in this Special Issue demonstrate, there are at least four reasons why we might find ourselves surprised at the lack of scholarly attention afforded to proscription. First, this is a power that is employed extremely widely – although, as we shall see, inconsistently – across the globe. Most states in the international system, and a number of international governmental organisations (IGOs), maintain lists of banned terrorist groups. In the United States, for instance, the Secretary of State designates a list of Foreign Terrorist Organizations (FTOs); a list which contains 61 organizations at the time of writing this introduction.[vii] In the United Kingdom, it is the Home Secretary who has the power to proscribe an organisation believed to be concerned in terrorism (with Parliament's consent). 71 organizations are on this list at the time.[viii] At the inter-state level, meanwhile the European Union, established its own "list of persons, groups and entities involved in terrorist acts and subject to restrictive measures" [ix] following the events of 11 September 2001. This list currently hosts 13 persons, and 31 groups and entities. [x] This similarity of instruments, yet diversity of outcomes, raises important strategic and political questions to which the articles in this Issue are addressed in relation to these lists and others maintained by, *inter alia*, Australia, Canada, Spain, Turkey, and Sri Lanka.

A second reason we might be surprised by this neglect relates to this power's considerable historical lineage. As this Issue demonstrates, efforts to ban identified terrorist groups are by no means limited to post-9/11 counter-terrorism paradigms. Indeed, the outlawing of organisations deemed threatening to national security or order may be traced back several hundred years across multiple conflicts and insurgencies. These include in relation to pre-Christendom Rome, Britain's anti-monarchy Yorkists[xi] and struggles with Irish Republicanism, ETA in Spain, as well as – more recently – Western state actions against groups such as Al Qaida, Boko Haram and Islamic State. Several of the articles in this Issue stress the importance of situating contemporary proscription regimes within specific national circumstances which pre-date the so-called 'war on terror', making the power an important case for exploring the boundaries and evolution of counter-terrorism frameworks that remain too often read through a presentist lens.

Third, the proscription of terrorist organizations has significant implications for political life – and therefore the lives of citizens – within and beyond liberal democratic states. Most obviously, legislating against activities such as the membership of, support for, or glorification of specific groups risks intruding upon liberal democratic freedoms, including in relation to expression, association, and speech. [xii] Such questions are not unique to proscription; [xiii] indeed, metaphorical framings of counter-terrorism as requiring some form of balance between liberty and security remain pervasive despite academic criticism.[xiv] These questions are, however, particularly acute in this context given that proscription typically serves a *preventive* purpose – at times in combination with other ambitions – which is directed toward crimes as yet uncommitted.[xv]

Finally, powers of proscription also, we suggest, merit greater consideration given that their relevance and effectiveness in the struggle against terrorism has arguably yet to be demonstrated. Already, scholars[xvi] have raised concerns that the outcomes of counter-terrorism policies and programmes are too rarely, if at all, evaluated by governments, although others have suggested that it is possible to do precisely this. [xvii] And, there are good reasons to question the effectiveness of

proscription specifically in attenuating terrorist violence. As several contributors to this Issue observe, the banning or sanctioning terrorist groups is often a symbolic rather than directly instrumental decision: one that may have policy ends some distance from counter-terrorism aspirations. These supplementary ambitions may be important, or desirable, or they may not. But they do raise additional questions for policy and political evaluation in this context. Indeed, what might be even more striking here is that practitioners, too, are often reticent about the functional value of proscription, as attested by the former U.S. Director of National Intelligence, James R. Clapper who was interviewed for this Issue:

> For whatever reason it seemed as though our listing a group had an impact. People noticed and the rest of the world cared, but as far as impact on us in intelligence; it really didn't have any.[xviii]

**Proscription in global perspective: questions and themes**

Broadly understood, powers of proscription refer to a series of legal instruments which permit a government or other authoritative actor to prohibit the presence of, or support for, an identified organisation within its jurisdiction. The act of proscribing an organisation in this way, it is often claimed by supporters of such powers, signals society's disavowal of a group's ideas and actions, at the same time as it suppresses a group's ability to promote or undertake violent extremist activities. Suppression typically entails the creation and implementation of a range of criminal offences, including criminalising membership of specified groups, prohibiting visible manifestations of support for listed groups – such as the wearing of uniforms or the display of symbols, and criminalising attempts to solicit or provide financial support for such groups (amongst other offences).

Beyond these specific offences – which vary from jurisdiction to jurisdiction as we shall see in the articles that follow – proscription also serves a crucial broader purpose. That is, the designation of terrorist groups undergirds vast aspects of the Western world's counter-terrorism frameworks. The formal designation of an organisation as terrorist, for instance, is a typical pre-requisite to the confiscation or freezing of that group's assets; or the prevention of its members from soliciting support; or bans on an organisation running for political office, travelling across national borders or using certain forms of transport. Moreover, the listing of organisations as terrorist is also key to the lack of significant domestic political criticism that follows potentially controversial counter-terrorism actions, such as extra-judicial killings overseas.[xix] Proscription, in short, is a fulcrum of states' counter-terrorism capabilities and ambitions.

Yet, because different states adopt their own idiosyncratic approaches to defining, enacting and applying proscription regimes, the global edifice of 'banned organisations' is replete with tensions, incongruences, unintended consequences, perverse outcomes, and questionable effectiveness. In the first instance, as noted above, there is considerable variance globally around who is, and who is not, considered to be 'terrorist'. This is the case even amongst formally allied countries with considerable records of cooperation around counter-terrorism, intelligence, and beyond. Where the total number of groups on the US list of Foreign Terrorist Organizations currently stands at 61;[xx] the UK has designated[xxi] 71 international terrorist organisations, and 14 further organisations in Northern Ireland under previous legislation. These figures compare with the 53 'listed terrorist entities' in Canada;[xxii] and the 24 listed terrorist organizations in Australia.[xxiii] Indeed, only 16

groups are proscribed across all four of these countries. For critics, global counter-money laundering initiatives have been stymied precisely by a failure to adequately agree *between* states which groups do, and do not, fall within national and/or international proscription provisions.[xxiv] Perhaps of greater concern, however, is growing disquiet that some forms of proscription may be counter-productive, galvanising support for violent extremist groups in some states.

In this Issue we offer the first systematic attempt to compare, contrast and evaluate the construction and consequences of proscription regimes from a range of significant case studies around the world. Taken collectively, the articles in this Issue pull attention to five key themes. First, are a series of important historical questions around the emergence, continuation and transformation of proscription powers, both globally and in relation to specific regimes. What strategic challenges or political contexts have given rise to the introduction and extension of these powers to new organizations, and – conversely – what explains instances of reluctance to proscribe ostensibly worthy candidates? Second, are pressing political questions around the impact of proscription upon seemingly established political settlements within liberal democratic states, in particular. Here, we delve into the power's potential for intrusion upon freedoms of speech and association, as well as the ability of citizens to engage in dissent and various forms of oppositional or symbolic political action. Third, this Issue attempts to evaluate the legal situation of national proscription regimes and their relationship with international counter-terrorism initiatives, and, indeed, international law. Fourth are broadly sociological considerations of the ways in which diasporas and minority communities are affected by proscription mechanisms. These include the implications for communities who might be linked to overseas struggles against oppressive regimes, and, domestically, the ways in which proscription might contribute to stigmatisation and the creation of 'suspect communities'.[xxv] Finally, the Issue also provides analysis of the effectiveness of proscription decisions in achieving their intended ambitions of diminishing or disrupting violent extremist activities and ideas.

As the above themes suggests, this discussion will be of interest to a wide, and interdisciplinary, audience. The articles collected herein offer a variety of methodological, theoretical and disciplinary contributions, spanning literatures found within Political Science, International Relations, Public Policy, Law, History, and Criminology. In addition, reflecting the unbounded, global implications of domestic proscription laws, this issue is very obviously international in its outlook. The articles that follow focus on the specific proscription regimes of Australia, Canada, the European Union, Spain, Sri Lanka, Turkey, the U.S. and U.K. – at times in comparison with other countries. What is more, these are regimes that intersect with or impinge on some of the most pressing conflicts or struggles taking place around the world today, including those in Syria, Iraq, Afghanistan and Northern Ireland. Yet, although an unbounded 'war on terror' is implied by the contemporary deployment of these powers, we shall see that many of these regimes emanate as much, if not more, from the insurgencies and separatist movements of the 20th century.

**Continuities and change in proscription regimes**

The proscriptions of antiquity and the middle ages serve to remind us that outlawing or banishing enemies of the state is a longstanding privilege of sovereignty.[xxvi] Today's proscription regimes might be considered crude, though no less severe, reflections of these historic antecedents. Despite clear differences – including of legitimate authority and military technologies – there are parallels between older

declarations of outlawry, authorising the killing an outlawed man without judicial oversight or criminal penalty,[xxvii] and contemporary targeted killings of terror suspects by U.S. or U.K. drone strikes over the Middle East or South Asia. In each we see identified individuals being excluded from a particular community and the protections it offers, whether geographical, normative, or both.

Notwithstanding such historical continuities, our contributors to this issue draw particular attention to the influence of 20th century conflicts on today's proscription regimes. Amongst these cases, the UK stands apart in the breadth of its experience of conflict with insurgency or liberation movements in its overseas colonial territories. In her exposition of the wavering fortunes of Kurdish separatist movements, for instance, Victoria Sentas situates the 'origins of proscription as a mode of warfare against anti-colonial struggles', especially those of post-war British (and French) rule, but also in recent conflicts in Sri Lanka and Northern Ireland.[xxviii] Indeed, Clive Walker observes how the U.K.'s prevailing domestic proscription regime emerged within the mires of urban conflict in Northern Ireland. Here Walker emphasises how the logics of U.K. counterterrorism policy in that region have long sought 'to stem extreme ideologies by criminalising direct and indirect incitements of terrorism', especially during Margaret Thatcher's tenure as Prime Minister, with her notorious attempt to deprive extremists of 'the oxygen of publicity'.[xxix] Yet, presaging the violences associated with religious extremism in the new millennium, it was a more recent comprehensive review of the UK's counterterrorism powers by Lord Lloyd in 1996 that recognised the growing threat of international terrorism and recommended the consolidation of the U.K.'s counterterrorism legislation, resulting in the articulation of its current proscription framework in the Terrorism Act 2000.[xxx]

An important point of comparison to the U.K. – given the longevity of its own struggle with separatism – is the Spanish proscription regime which has also been profoundly shaped by its immediate past. Angela Bourne's contribution in this issue sets out a tension here between the era of dictatorship and Spanish experiences of contemporary separatist movements, emphasising Spain's instinct to pursue a strategy of tolerance throughout the 1980s and 1990s. Faced with a complex assortment of (violent and non-violent) opposition within the Basque region, and mindful of Spain's recent history of state oppression, political elites in that period elected to pursue a strategy of political integration over the exclusion of violent separatist movements. The reflex for tolerance was, Bourne explains, a product of Spain's transition from dictatorship to democracy and a concomitant suspicion of excessive state powers. This changed, however, in the late 1990s with a judicial decision to broaden the conception of 'terrorist organisation' to include groups affiliated to terrorist organisations such as political parties, trade unions, and workers' organisations. The post-2001 counter-terrorism injunctions of the EU and international community, then, operated as a *post-hoc* 'external legitimation of illegalisation processes',[xxxi] which were already well underway on the Iberian Peninsula.

Across the Atlantic, Canada's (more limited) exposure to domestic political disjuncture proved similarly – if surprisingly – influential in the construction of its own proscription regime. An outbreak of Quebecois separatism prompted the Canadian government in 1970 to pass the *War Measures Act*, which declared the *Front de Liberation du Quebec* to be an unlawful association and criminalised its membership. The Act led to the imprisonment of hundreds of non-violent Quebec separatist sympathisers becoming, thereafter, a 'moving force' in Canada's constitutional bill of rights.[xxxii] This common experience contrasts, of course, with Australia which had no meaningful encounter with sustained violent separatism in the

twentieth century. This lack of equivalent threats to national security, however, did not prevent Australia devising and employing its own regime of exclusion. As McGarrity and Williams demonstrate in their contribution, proscription powers were prominently, and controversially, deployed to ban the Industrial Workers of the World organization in 1913, and – subsequently – the Communist Party in 1950.[xxxiii] Indeed, the latter organisation challenged, unsuccessfully, their ban in a high court challenge in 1950.[xxxiv] Nonetheless, it is telling that during the hearing one of the judges, Justive Kitto, expressed his misgivings over the proscription power: 'You cannot have punishment that is preventive. You can't remove his tongue to stop him speaking against you. That is wide open to a totalitarian state.'[xxxv]

As with so much of relevance to global counter-terrorism efforts, the attacks of 9/11 marked an immediate and pronounced transformation in the status of proscription worldwide.[xxxvi] In Security Council Resolution 1373, *United Nations Suppression of Terrorism Regulations*, the United Nations enjoined members states to institute mechanisms to quell the financing of and support for terrorism.[xxxvii] The legislative response was immediate. The Australian government passed both The Charter of the United Nations (Anti-Terrorism Measures) Regulations 2001[xxxviii] and The Security Legislation Amendment (Terrorism) Act 2002[xxxix], Canada responded with the Anti-Terrorism Act 2001[xl], and the United States passed its own Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act 2001 (USA PATRIOT Act).[xli] The United Kingdom – having very recently revised and consolidated its own counter-terrorism powers under the considerable Terrorism Act 2000[xlii] – bolstered these powers further with the Anti-Terrorism, Crime and Security Act 2001.[xliii]

Despite the persistence of concerns about hasty legislating in the field of counter-terrorism,[xliv] it notable that the outcomes of this wave of law-making have remained largely intact throughout the intervening years.[xlv] In many instances, proscription powers have been *broadened* rather than rolled back, in order to capture a wider array of offences – including, for instance, the glorification or advocating of terrorism. This appetite for banning, indeed, appears to show few signs of abating, as the Australian Attorney-General recently suggested:

> I think there is an argument that the threshold for proscribing organisations as terrorist organisations is too high at the moment, which is why I've instructed the preparation of amendments to the Commonwealth Criminal Code, to lower the threshold at which organisations can be listed as terrorist organisations.[xlvi]

**Diversity and interplay of proscription regimes**

Another theme brought into focus by contributors to this Issue is the diversity of political and legal settings that structure proscription regimes and their complex transnational interactions. Here the authors demonstrate the bewildering array of laws that work toward the exclusion, sanctioning or criminalisation of specific groups and – at times – individuals. The terminology of blacklisting, listing, proscription, designation, outlawing, banning orders, and more, are commonplace in the rubric of proscription. These are reflective of the often opaque and ambiguous processes and powers that constitute these regimes. In part, this is a product of the idiosyncrasies of national legal philosophies and traditions, but it also reflects the diversity of political interests, definitions of terrorism, and norms pertaining to exclusion, across the case studies collected here.

For example, McGarrity and Williams' article introduces readers to Australia's parallel 'executive' and 'judicial' pathways to proscription.[xlvii] The former relies upon the executive's near unilateral designation of particular groups as terrorist. The latter, in contrast, relies upon a jury's determination that a particular organisation meets the relevant criteria for being considered a terrorist organisation. Canada shares these two pathways to listing terrorist entities:[xlviii] identification as such by the executive, on the one hand, and assessment as meeting the definition of terrorism by a court, on the other, typically in the context of a prosecution. Unlike the Australian regime, however, Canada does not formally criminalise membership of an organisation, only specified activities undertaken in contribution to a listed group's illegal conduct. In contrast to Australia, and other examples such as the UK, put otherwise, it is terrorist *acts* in the Canadian system that are criminalised, not membership of terrorist *groups*.

Turning to the U.S., there is a remarkable array of legal instruments available to sanction designated, or even suspected, terrorist groups. Amongst these, the Foreign Terrorist Organisation list is the most prominent – and the subject of extended reflection by James Clapper in the interview published here.[xlix] In addition to this, however, there is also the 'Terrorist Exclusion List',[l] the 'Specially Designated Terrorists' (SDTs) list; the 'Specially Designated Global Terrorists' (SDGT) list[li]; and, the state-sponsors of terrorism list.[lii] Indeed, given this broad collection of instruments, it is surprising that one additional list – the Specially Designated Narcotics Traffickers[liii] – has been employed by the U.S. to target Kurdish negotiators under the *US Foreign Narcotics Kingpin Designation Act* ('Kingpin Act').[liv]

Crucially, these diverse regimes are not unconnected to one another; they frequently intersect in context of ongoing struggles of armed groups beyond the domestic jurisdiction. In her examination of efforts to outlaw Kurdish separatism, for instance, Sentas underlines the cementing power of overlapping and intersecting proscription regimes, arguing: 'The particular operations and effects of proscription are organised through transnational cooperation and the complex interaction of other diverse listing regimes'[lv]. Nadarajah, discussing responses to ongoing conflict in Sri Lanka, extends this view, arguing that proscription regimes are cohered by common western 'liberal peace logics' representing 'a disciplinary modality of transnational security governance' aimed at the production of a global liberal order.[lvi]

**Consequences of proscription**

In pursuit of domestic and global security, proscription is deployed to effect a range of direct and indirect sanctions and penalties. It is not, however, a device of great precision. And so it is understood to produce outcomes that might be described as unintended or, at least, unanticipated; not least for individuals, political organisations and ethnic diasporas which might become snared in proscription sanctions. This also, of course, has broader implications for national security, international organisations, and fundamental liberal freedoms.

For individuals connected to designated entities, the consequences can be severe. By refusing the temptation to criminalise membership of terrorist organisations, Canada adopts a relatively cautious approach, relying upon the criminalisation of any conduct undertaken by individuals in association with a 'listed entity' pursuant to terrorism[lvii]. Other states, however, are less restrained. Thus, where both the Australian and U.K. proscription regimes contain 'status' offences relating to membership – criminalising individuals for who they are, rather than what they have

done – Australia's powers grant prosecutors considerable latitude, specifying 'informal' members as well those who have 'taken steps to become a member'. This prompts McGarrity and Williams to wonder, "Is, for example, an individual who merely attends a meeting of an organisation or subscribes to a magazine of an organisation to be regarded as a member…?".[lviii] Australia's powers go even further than this, however, with a second status offence of 'association', which criminalises knowingly associating with a member of a proscribed terrorist organisation on two or more occasions with the intention of supporting the organisation.[lix] Status offences of this sort attract much criticism for the latitude they provide to the state's apparatuses. In Turkey, for example, membership offences have been used as a means of suppressing domestic dissent and support for Kurdish separatism in which Kurds are, as Sentas argues in this issue, 'routinely' prosecuted for crimes connected to the PKK or membership of the PKK on often spurious evidence. As she notes, the period of 2009 and 2013 alone saw nearly 40,000 such prosecutions.[lx]

This diversity of offences within global proscription regimes is matched by the considerable variation that exists in the extent of sanctions that are applied to proscribed or listed organisations. At one end of the scale, Canada does not ban organisations *per se*, or membership thereof, and since the October Crisis of 1970, Canada has taken pains to avoid such a 'negative model' of proscription.[lxi] In other regimes, such as those maintained by the United Kingdom, Australia and the United States, the designation of a group as a terrorist organisation entails that property can be frozen, and providing financial or other services to a group is criminalized. Proscription regimes also give rise to a range of indirect consequences, some of which are unintended or, at least, unacknowledged. Amongst our contributors here, for example, it is noted that proscription regimes can aggravate attempts at peace and reconciliation[lxii] and 'codify antagonistic relations between states and sections of their societies'.[lxiii]

Although these implications are significant, the persistence – indeed, often extension – of proscription as a counter-terrorism tool may be taken as testament to the continuing view of state representatives that this constitutes an effective mechanism for resolving terrorist violence or for satisficing other interests. Commonly, we see governments make weak and strong causal claims of proscription; the 'weak' causal effect of its symbolism for communicating the government and society's disavowal or stigmatisation of designated groups,[lxiv] and the 'strong' causal reasoning that holds that proscription's financial and criminal sanction significantly reduces a group's capacity to commit terrorist acts.[lxv]

The U.K. is illustrative of these claims. In his article on the U.K's longstanding use of proscription, both at home and in its colonies abroad, Walker identifies five prominent policy claims. First, proscription 'caters for … the state's concerns about paramilitarism'. Second, proscription serves a pre-emptive function in that it works to address underlying terrorist "structures and capabilities rather than awaiting the harms from an attack and applying a *post hoc* response to tangible actions." Third, this is a power which fits with the criminalisation of terrorism and serves as a convenient means to prosecute would-be terrorists, "but which in reality extends the ambit of the offence of conspiracy since no other specific crime need be contemplated".[lxvi] Fourth, proscription has also been argued to serve a symbolic function, expressing the state's disavowal of a group's politics and/or its methods. Finally, citing Lord Bassam, Walker also notes that proscription is often justified by the British government as providing an important contribution to 'our responsibility to support other members of the international community in the global fight against

terrorism'. This emphasis on the symbolic aspects of proscription is picked up by James Clapper in the interview which brings this Issue to a close. In it, Clapper affirms the value of the FTO list in terms of its 'important symbolism, both domestically and internationally, to listing terrorist groups'. Though doubtful in general of the 'substantive' utility of FTO listing, Clapper suggests that the sanctions of FTO listing gain traction where groups exhibit 'nation-state characteristics'.

This set of reasons underlines the multiple aims that are served by proscription. Depending on the context, proscription can be simultaneously instrumental, political and symbolic. It can seek to communicate a government's political stance on a conflict; it can bolster global efforts to vanquish common threats; it can trigger policing powers targeting a specific group and its supporters; and it can augment a government's diplomatic relationship with other states. Against this array of policing and political benefits conferred by proscription, it is unsurprising that these powers are privileged and protected by governments worldwide.

**Problems of proscription**

Although proscription may have – as we have seen – considerable utility for governments in their confrontation with terrorism, these powers have also long provoked discomfort amongst commentators and even legislators themselves. In the British context, for example, parliamentary debate around the addition of new organisations to the proscribed list has seen this power described as 'severe' and 'heavy'; with fears expressed including the power's risk of transgressing liberal democratic rights and freedoms, as well as its potential to be counter-productive in producing or aggravating the very types of violence and organisation it is intended to diminish.[lxvii] Our contributors in this Issue engage with concerns such as these, depicting a range of knotty legal, legislative and causal problems.

McGarrity & Williams' survey of the machinations of Australian proscription regime identifies many prominent juridical objections to proscription. Though the considerable latitude for proscription afforded to the Attorney-General via 'executive' proscription is preferable, in their view, to a judicial determination of what is, or is not, a terrorist organisation, they insist that executive proscription remains problematic: it denies the affected group or individual natural justice, and provides few meaningful avenues for review of the proscription decision-making, not least for the group concerned. They further highlight the frailties of having two processes via which proscription can proceed, commenting on how the first – the definition of terrorist organisation – is 'exceptionally broad', and the second – targeting groups concerned in the 'advocacy' of terrorism – is framed with such ambiguity as to entail a 'threat to the freedom of expression'. As they highlight, this brings about considerable risk of executive abuse of these powers in the absence of meaningful checks and balances from elsewhere in the political system. Association offences, they further suggest, contribute to perceptions that Muslim communities are unfairly targeted within contemporary counter-terrorism initiatives. This may have significant additional consequences for national security, for, as they note: "Home-grown terrorism is far more likely to emerge from a divided society in which people feel marginalised and disempowered on the basis of their race or religious beliefs".

Adding to these concerns, Forcese and Roach point to a similar lack of due process within the Canadian system of listed groups and their members. As they point out, there is no notice given, or opportunity to challenge faulty intelligence, accorded to groups before they are listed under this regime. In addition, the lowered substantive standard for listing terrorist organisations leaves the process susceptible to the

problem of 'false positives'. The consequence of such mistakes is not just to cause direct harm to innocent individuals or groups, which may be egregious in itself, but also to fuel extremist narratives around Western islamophobia, with counter-terrorism set as 'indiscriminately aimed at Muslims rather than violence'.[lxviii] Adding to such issues is Marieke de Goede's analysis of the processes and consequences of EU blacklisting measures, which she contends are frequently based on superficial source material, and proceed via an elusive process of decision-making. In consequence, she finds, blacklisting entails breaches of human rights.[lxix]

This is some of the cross-section of the concerns with proscription put forward by the contributions within this issue. Across the case studies explored, authors voice often-shared concerns that proscription decision-making is heavily politicised, deleterious to fundamental liberties or rights, and characterised by a generous and, in many cases, unilateral remit accorded to the executive. Input into specific proscription decisions, moreover, is frequently predicated on untested, unchallenged and superficial evidence with only scant legislative scrutiny. Likewise, judicial oversight has tended to be narrowed in law and, in any case, only triggered in the unlikely event that members of a proscribed organisation have sufficient legal resources and access to the courts of the appropriate jurisdiction.

**Language and Symbolism**

The above discussion emphasises some of the major political and ethical challenges raised by proscription, especially in the context of liberal democratic states. Yet, as we have already seen, the banning of specific organisations is frequently a lengthy and complex process involving multiple actors and agendas that extends beyond decision-making by executive fiat. Angela Bourne's article in this Issue, for instance, focuses on the Spanish experience and encourages us to see proscription as an example of securitization: a process by which the threat posed by terrorism – in this case *Euskadi ta Askatasuna* (ETA) – is amplified, or even produced. Drawing on recent 'sociological' approaches to securitization,[lxx] Bourne investigates how the Spanish courts in the late 1990s pursued a much broader understanding of ETA as a 'complex structure' of multiple parts than had previously been the case, and how this framing was subsequently picked up and augmented in the Spanish mainstream media's efforts to emphasised the threat of ETA and associated groups to the democratic community.

Bourne's article encourages us to take seriously the importance of language and other symbolic practices for counter-terrorism mechanisms such as proscription. Proscription – like any other security measure – has to be explained and justified to various audiences, if it is to appear as a legitimate, necessary and/or proportionate reaction to a particular threat. Crucial within this process – and the focus of Marieke de Goede's contribution to this Issue – are arguments or claims made about temporality: about time. De Goede's article draws on a small but growing literature on temporality and counter-terrorism. Authors such as Noon[lxxi] and Angstrom[lxxii] have highlighted the importance of historical metaphors and analogies – from the Crusades to Pearl Harbor – in the framing of the contemporary war on terror, while Jarvis[lxxiii] and Fisher[lxxiv] explore the discursive work that is done by arguments about specific pasts, presents, and futures in this context. Other work, drawing on sociological and related literatures around risk, emphasises the importance of (constructed) future scenarios for specific counter-terrorism policies and initiatives.[lxxv] De Goede's contribution in this Issue is to demonstrate the significance of arguments around (i) 'violent futures' and (ii) the ostensibly temporary nature of blacklisting practices, for

two recent proscription cases that came before the European General Court (formerly the European Court of Justice). As she summarises, "As security measure, proscription brings the potential, catastrophic, future into the present and renders possible a present sanction in advance of terrorist violence".[lxxvi]

These articles serve to link this special issue – and the issue of proscription – to contemporary debates on the symbolic, performative, ritualistic and discursive aspects of counter-terrorism practices. In so doing, they demonstrate the purchase of recent theoretical advances within fields such as critical security studies for the analysis of proscription, and speak to contemporary literatures associated with critical terrorism studies, understood in its broadest sense. These articles complement the legal, policy, and normative analysis contained elsewhere in this issue, by asking, in effect, 'what needs to be in place for the proscription or listing of specific organisations'? Their emphasis on lawmakers and the criminal justice system, moreover, speaks to recent debate within this journal and beyond[lxxvii] on the role of 'security professionals' beyond political executives in counter-terrorism decision-making.

**In this Special Issue**

The Special Issue begins with Nicola McGarrity and George Williams' analysis of the Australian proscription regime. Their article begins with an introduction to the legislation underpinning this regime – which incorporates two different pathways to the identification of a terrorist organisation – and a discussion of some of the deficiencies thereof. These include problems associated with the designation of terrorist organisations, and the circumscribed space that exists for the review and contestation of specific listing decisions. McGarrity and Williams then turn to the use of Australian proscription powers in practice, noting that 23 organisations were listed under Division 102 by March 2017, with all but one of which self-identifying as Islamic. This leads into an analysis of the various proscription offences and prosecutions provided for within the Australian regime, with a particular focus on cases involving accusations of membership, funding, and providing support or resources for terrorist organisations.

The second article in this issue, by Craig Forcese and Kent Roach, turns to the Canadian experience of terrorist group listing. As with McGarrity and Williams, Forcese and Roach are keen to situate contemporary powers historically. In this case, however, subsequent challenges to the 1970 listing of the Front de Liberation du Quebec stand as a cautionary note discouraging the banning of organisations. Forcese and Roach's article highlights a potential disconnect in the Canadian example between a power which is 'potent in principle, but….rarely deployed in practice',[lxxviii] although in so doing, they note the scope that exists for the greater use of this going forward. The article concludes by highlighting a number of criticisms that resonate with the Australian case, including around issues of due process, problems of false positives, and concerns around delisting and the intrusion of political considerations upon banning decisions.

Clive Walker's contribution calls particular attention to the role of de-proscription in counterterrorism frameworks. Drawing predominantly on cases relating to the conflict around Northern Ireland, Walker puts forward a potentially counter-intuitive argument for *de*proscription as a fundamental, but overlooked, element of counterterrorism policy. He commences by unpicking the effectiveness and fairness of UK proscription laws, arguing that neither are reflected well in current deproscription processes. There are, therefore, in Walker's view several compelling

grounds to revamp current deproscription powers. These include: to maintain the lawfulness of proscription; to assist conflict resolution; and to facilitate restorative justice approaches. Deproscription reform, Walker concludes, requires strengthened oversight by the executive, legislature and judiciary if it is to function as an effective component of counter-terrorism.

Suthaharan Nadarajah's article critiques the means-end instrumentalism of proscription's advocates. Rather, he argues, proscription powers are more appropriately understood as constitutive of the west's vision of a global liberal peace. Approaching the conflict in Sri Lanka as the embodiment of that vision, with market democracy set against 'a violent ethno-nationalist separatist threat', Nadarajah considers the oscillations in security postures taken by western states towards the LTTE and the Tamil diaspora between 1983 and 2009. Here he finds that proscription in this context is 'inseparable from and conditioned by the everyday calculations inherent to wider western efforts towards global stability'. The banning of Tamil groups in western states, he continues, is therefore a product of transformations in how liberalism and illiberalism are understood and operationalised in security policy.

Victoria Sentas' contribution reframes proscription as a mode of post-colonial counterinsurgency. Her article considers the globalised proscription of the Kurdistan Workers' Party (PKK) and its attendant effects on the broader Kurdish population. Her argument unpacks the historical logics and practices of counterinsurgency and draws parallels to prevailing international proscriptions, highlighting how both depict state/non-state conflicts as a struggle for the consent of the population.

Angela K. Bourne's article takes a different approach to the issue of proscription in Spain, one which draws upon securitization theory. In it, she explores the Spanish state's widening of the targets of listing in the late 1990s from the Basque nationalist *Euskadi ta Askatasuna* (ETA) to a much a broader collection of associated groups including political parties, trade unions and women's organisations. Her analysis begins by exploring court rulings against organisations and parties linked to ETA, before exploring the public resonance of this concerted attempt at securitization via quantitative and qualitative analysis of the major Spanish daily newspaper, *El Pais*. Doing so, reveals considerable similarity in the increased judicial and media appetite to frame ETA as a 'complex structure' with multiple parts posing a significant threat to the Spanish democratic community.

Marieke de Goede's article offers an analysis of two recent criminal trials relating to proscription within the European Union. The first of these concerns the (de-)listing of Mr. Kadi before the European Court of Justice that took place in a series of cases between 2001 and 2013. The second concerns the placing of the LTTE on the European Union blacklist in 2006. These cases, she argues, demonstrate the importance of assumptions and arguments about temporalities – including temporary presents, and future intentions – as much as considerations relating to due process and the human rights of those charged with terrorism-related offences.

The Special Issue comes to a close with a focus upon the United States' experience of proscription. Here we attempt to complement the small, but growing, academic literature on this particular case study[lxxix] via a prolonged and anotated discussion with James Clapper, the former U.S. Director of National Intelligence. This interview explores the issue of proscription from the perspective of those who are charged with very real responsibilities regarding national security. In it, Clapper reflects on the function of the Foreign Terrorist Organization (FTO) list within the broader context of U.S. counterterrorism initiatives. He argues that the FTO List was, throughout his tenure, shaped by the latent political and diplomatic concerns of the

U.S. government and was thus more 'symbolic' than 'substantive'. Elaborating this perspective, Clapper speaks to many of the themes raised by earlier articles in the Issue, including the foreign policy drivers of FTO listing, the implications of the FTO list for peace negotiations, questions around the cohesion of terrorist groups, and the effectiveness of FTO listings.

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**Notes**

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[xxi] As at the 24th October 2017. The UK's list of proscribed terrorist organisations is accessible here: www.gov.uk/government/uploads/system/uploads/attachment_data/file/648405/Proscription_website.pdf. See also, Walker, Clive, this issue.

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[xxiii] As at 24th October 2017. Australia's Listed Terrorist Organisations is accessible here: www.nationalsecurity.gov.au/Listedterroristorganisations. See also McGarrity, Nicola and George Williams, this issue.

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[xxxi] Bourne, this issue, p.12.
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[xxxiii] McGarrity and Williams, this issue, p.1.
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[xlv] McGarrity and Williams, this issue, p.2.
[xlvi] Interview with Chris Smith, (2017) Available online at: www.attorneygeneral.gov.au/transcripts/Pages/2017/SecondQuarter/Interview-with-Chris-Smith-2GB.aspx
[xlvii] McGarrity and Williams, this issue, pp.3-4.
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[liv] Sentas, this issue, p.14.
[lv] Sentas, this issue, p.3.
[lvi] Nadarajah, this issue.
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[lxi] Forcese and Roach, this issue, p.12.
[lxii] Sentas, this issue, p.18.
[lxiii] Nadarajah, this issue, p.15.
[lxiv] The aims of signalling and stigmatising are explicitly expressed by the U.S. State Department: See 'Foreign Terrorist Organizations'. Available at https://www.state.gov/j/ct/rls/other/des/123085.htm
[lxv] The impact of financial sanctions on the operational effectiveness of a designation terrorist organisation is cited commonly in State Department press releases announcing a designation. See, for example, the designation of Hizbul Mujahideen: www.state.gov/r/pa/prs/ps/2017/08/273468.htm.
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