

# End of the line for treason?

Geoffrey Bindman believes the Treason Act is an anomaly & of little relevance to life today

The former Home Secretary Sajid Javid announced in a speech on 20 May: 'We have to ensure that we have the necessary powers to meet current and evolving threats to the UK, both domestically and overseas'. 'Officials,' he continued, 'would examine treason laws to see whether the legislation could be updated to include British nationals who operate on behalf of a hostile nation'. This was evidently inspired by recent cases of young people travelling to Syria and Iraq to join ISIS, including that of Shamima Begum (pictured) who did so at the age of 15 and now seeks to return home to Britain.

## Treasonous origins

The real choice is between updating the law of treason and abolishing it altogether. It is an anomaly, and of little relevance to life today. The Treason Act remains in substance the Statute of Treasons of 1351. In its current form it still identifies treason as 'compassing the death of the King, Queen, or their eldest son; violating the Queen, or the King's eldest daughter unmarried, or his eldest son's wife; levying war; adhering to the King's enemies, killing the chancellor, treasurer, or judges in the execution of their duty.' Treason was punishable by death until the Crime and Disorder Act 1998. The penalty now is life imprisonment. It has been dormant since the prosecution of William Joyce, mocked as 'Lord Haw-Haw', who broadcast anti-British propaganda from Nazi Germany during the Second World War. He was hanged for treason in 1945.

The origins of treason are closely entwined with the now obsolete form of monarchical government which prevailed until the accession of William and Mary in 1689. The Bill of Rights in that year marked a critical stage in the process of replacing the absolute rule of an individual monarch by parliamentary democracy. The law of treason survived because many believed the traditional allegiance of citizens to their monarch had been transferred to a new entity: the nation state. Clearly the ability to prosecute for treason was a useful weapon in the armoury of governments threatened with opposition from its own citizens. In 1794, in response to a campaign supporting the aims, if not the violence, of the French Revolution, the government of William Pitt launched prosecutions for treason against its leaders, among them Thomas Hardy, John Horne Tooke and John Thelwall (see 'Plus ça change', 165 *NLJ* 7642, p22). Essentially, this



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was an attempt by government to criminalise political opposition. It failed because of the advocacy of the great lawyer Thomas Erskine and the courage of the jury, which acquitted the defendants without hesitation. Since that time, the right to freedom of expression has become better established and subsequent British governments have rarely used prosecutions for treason to suppress non-violent dissent.

## Time for change?

In 1977, the Law Commission carried out a detailed review. It recommended repeal of the Treason Act and the replacement of treason by two new offences. One of these sought to penalise conduct likely to help an enemy. This was only to apply in time of war and to British subjects or to aliens voluntarily in the UK. The other, of more general application, was to penalise any attempt to overthrow the constitutional government of the UK by force at any time. These recommendations were not implemented.

In 2010, the Law Commission looked at the question again. They pointed out that this area of law 'was shaped by political and social conditions that have ceased to be of contemporary relevance. Offences which once served a useful purpose no longer do so, in part because new offences have been developed which are far better suited for tackling the problems which currently afflict society'. Today, we need offences which address contemporary threats such as civil unrest and, especially, terrorism. We have those. Conventional wars between nation states are less of a current problem. If one should occur, the first of the offences recommended by the Law Commission in 1977 would seem appropriate, to exist only during such a war. And the second offence recommended in 1977—attempting by force to overthrow the government—might be worth having on the statute book to be used in an extreme situation.

How then should our law respond to

those British citizens who travel abroad to join terrorist organisations such as ISIS? Membership of ISIS, and many other terrorist organisations, is an offence under the Terrorism Act 2000, and anyone involved in terrorism is likely to have committed several other offences as well. Apart possibly from the availability of a more severe penalty, it is hard to see how prosecuting for treason would add to the deterrent or punitive effect of the other available laws.

## Loyalty & betrayal

Yet there are voices supporting Javid's move to 'update' treason. Policy Exchange, a thinktank founded by a group of Conservative MPs including Michael Gove, published a detailed examination of the law under the title 'Aiding the Enemy: how and why to restore the law of treason', with a foreword by Lord Judge, the former Lord Chief Justice. The report favours a restored law of treason 'recognising the distinctive wrong of choosing to betray one's country'. 'The law,' it asserts, 'should affirm and make salient to all members of the community the continuing importance of the duty of non-betrayal'. It refers to Australia, Canada, and New Zealand where the law of treason has been updated. 'Members of the community' means UK citizens.

The words 'loyalty', 'allegiance' and 'betrayal'—indeed the word 'treason' itself—carry an emotive charge which disguises the fact that the crimes in question are equally culpable whoever commits them. Anti-terrorism legislation recognises this. The appeal to nationalistic mythology by exaggerating British exceptionalism is a disturbing feature of the Policy Exchange report. Lord Judge in his foreword seems to disagree with its authors. While accepting that a public debate on the issue is needed, he sums up the matter concisely: 'My own view is that if existing laws relating to terrorism and other offences do indeed adequately cover the gravity of criminal conduct which in Australia, New Zealand and Canada is now regarded as treason, we do not need the Treason Act 1351 at all and it should formally be repealed, not just left lingering on.' This is the preferable outcome. **NLJ**

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