

Impact case study (REF3b)

<p>Institution: University of Central Lancashire (UCLAN)</p>
<p>Unit of Assessment: 20 - Law</p>
<p>Title of case study: Criminal Law, Complicity and Homicide</p>
<p>1. Summary of the impact (indicative maximum 100 words) This research has made a sustained and continuing impact on the development and application of the substantive criminal law, including <i>mens rea</i> and general defences, and especially in the areas of complicity and homicide, in terms of</p> <ul style="list-style-type: none"> i) development of the law by the appellate courts; ii) application of the law by practitioners; and iii) government policy as to the reform of the law of murder and complicity.
<p>2. Underpinning research (indicative maximum 500 words) Richard Taylor has been researching and writing about substantive criminal law for most of his career. Since the start of the qualifying period in 1993 to date, he has been employed as a Professor at the submitting institution. Throughout that period he has been responsible for the key relevant sections of the annual edition of Blackstone’s Criminal Practice (BCP), which has involved him in analysing, commenting on and attempting to make sense of a wide variety of new developments in case law and legislation, including as recent examples the Corporate Manslaughter and Corporate Homicide Act 2007 and the Coroners and Justice Act 2009. Chapters of BCP written by Taylor have been regularly cited, quoted and adopted by appellate courts in developing and modifying existing legal principles.</p> <p>Taylor was also joint author of a number of well received books on criminal justice legislation within the period (there were also two prior to 1993) including the CJPO 1994, the CPIA 1996, the CDA 1998 and the CJA 2003. These books involved detailed research into the background and context of the legislation, as well as the Parliamentary debates; they also presented critical and evaluative comment and analysis which was amongst the first resources available to those having to come to grips with the legislation. This practical and doctrinal work has been complemented by more theoretical work in the field of homicide and complicity, on which Taylor has published a number of articles which have had influence on the development of law and policy.</p> <p>The impact achieved is the result of a combination of the different types of output referred to above: to the most significant of these, references are given in the next section. But it will be appreciated that the process is a complex one, which Taylor has already reflected upon in his prize winning conference paper, <i>Complicity, Legal Scholarship and the Law of Unintended Consequences</i>, delivered at the 2008 SLS conference on the Impact of Legal Scholarship (published version listed in REF2). This paper aims to analyse both the purposive and the serendipitous aspects of the relationship between legal scholarship and “impact”, and to suggest approaches which scholars (or indeed anyone interested in law reform or in the coherent application or development of the law) may wish to consider adopting in the light of the analysis presented. This article also clearly demonstrates the link between Taylor’s theoretical research outputs, e.g. in the <i>Criminal Law Review</i>, and the outputs in Blackstone which are more commonly used by practitioners.</p> <p>The key research insights or findings relate to, <i>inter alia</i>,</p> <ul style="list-style-type: none"> • the correct approach to the thorny logical issues concerning jury unanimity in homicide verdicts; • questions as to the ability to convict an accessory when the principal offender may have a personal defence; • questions as to when or whether an accessory to murder can be convicted of manslaughter (rather than acquitted altogether) when he contemplates the principal’s act but not his murderous intent; • questions about the meaning of intention to encourage or assist in accessory liability

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- generally; and
- questions about the coherence of the Law Commission's proposals for murder, and the cogency or otherwise of the Law Commission's proposals for reform of the law of complicity, both generally and in relation to murder, and whether they would be feasible in the absence of reform of the law of homicide more generally.

3. References to the research (indicative maximum of six references)

- Blackstone's Criminal Practice, annual edition (in particular his Chapters A2 (*Mens Rea*), A3 (Defences) and A4 (Complicity- NB A4 was A5 until 2011) and B1 (Homicide)
- Blackstone's Guide to the Crime and Disorder Act 1998 Leng, Taylor and Wasik, Blackstone Press 2008
- Blackstone's Guide to the Criminal Justice Act 2003, Taylor, Leng and Wasik, OUP 2004
- Jury Unanimity in Homicide 2001 Crim LR 283 -300
- The Nature of Partial Defences and the Coherence of (Second Degree) Murder 2007 Crim LR 345 -359
- Procuring, Causation, Innocent Agency and the Law Commission 2008 Crim LR 32 -49 (listed in REF 2)

As indicators of quality, the publications i) and ii) were submitted to the 2001 RAE where the submission gained overall 4 out of 5. The current general editors of item i) are Professor David Ormerod, (the current Law Commissioner for Criminal Law) and Sir Anthony Hooper (until recently a Lord Justice of Appeal). Item iii), as with previous Blackstone's Guides, has been repeatedly cited in journal articles in the Criminal Law Review and elsewhere, and was favourably reviewed at 2005 International Journal of Evidence and Proof 148-153 by Professor Paul Roberts, who opened his review as follows:

"Many readers will already be familiar with Blackstones Guides to new legislation, now published by OUP, but retaining the old Blackstone Press imprint. Criminal practitioners and law lecturers alike have over the course of almost two decades been greatly assisted in finding their way around recently enacted legislation by these concise and astute commentaries, which typically appear on the bookshelves with improbable speed and yet maintain an impressive standard of informational content and critical analysis.... [I]n the overlapping fields of criminal law, criminal procedure, and criminal justice, Richard Taylor, Martin Wasik and Roger Leng are the anchormen of the series. In attempting to make sense of the labyrinthine text of the Criminal Justice Act 2003 they have taken on their sternest challenge to date..."

The review ultimately concludes that the book is "a major contribution to an excellent series".

The articles in Criminal Law Review are published in a journal highly regarded not only for the academic rigour of the articles published but also for its impact on practitioners and policy makers. Output v) in 2007 was clearly taken very seriously by Professor Jeremy Horder, the Law Commissioner primarily responsible for the Homicide Report on which the output was commenting, as he devoted five pages of his 2012 book to engaging with its arguments in a detailed but mercifully balanced way. (Homicide and the Politics of Law Reform (OUP) Ch 3, Section V. "Taylor's Criticisms of the Final Recommendations", pp. 101 – 106)

4. Details of the impact (indicative maximum 750 words)**Influence on the courts and on practitioners.**

Blackstone's Criminal Practice (BCP) is available in all Crown Courts, and is widely used and referred to by practitioners and judges both in everyday practice and in trial courts and in appellate courts creating new law. A Westlaw search in March 2011 produced over 100 cases where Blackstone was cited in reported cases since 1993, 29 of these being in the period since 2008.

The most relevant recent evidence of this impact is in *R v Gnango* [2011] UKSC 59 (a Supreme Court decision on a complex complicity and murder problem), where Blackstone was referred to on two separate points and (Taylor's) Chapter A2.11 designation of transferred malice as being

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better expressed as transferred mens rea, referred to approvingly. This is not put forward as a particularly significant doctrinal issue in itself but as an example of the way in which BCP is taken seriously right up to the very highest levels.

A further, more pervasive, example is found in the comprehensive 2010 Revision of the Judicial Studies Board Crown Court Benchbook, which consistently refers to the relevant parts of Blackstone at the end of each section (a large number of these references being to Taylor's material) so that Judges are constantly being referred to BCP for further analysis where needed to cater for the particular aspects of the case before them. In the summer of 2010 (Taylor's) Chapter B1 on Homicide covering the changes to partial defences to murder brought about by the Coroners and Justice Act 2009 was distributed to judges authorised to try murder at a judicial college serious crime course, in preparation for the implementation of the Act as from October 2010. (See *Asmelash* [2013] EWCA Crim 157 for a recent example of BCP being cited, in this case by Lord Judge CJ in interpreting the new partial defence to murder of loss of control).

This ongoing process of impact on substantial doctrinal issues is also evidenced through highly significant appellate decisions which have effectively created new law, and which continue to have impact albeit some of the decisions themselves were prior to 2008. Such cases are exemplified by *Millward* 1994 Crim LR 527 (see REF2 output 2 for more on development of this principle); *Gilmour* 2000 2 Cr App R 407 (at p. 414) ; and *Bryce* [2004] 2 Cr App R 592 (paras 49, 62, 63 and 70). In each of these, the Court of Appeal adopted very substantial passages from Taylor's work in Blackstone, in creating principles to deal with contentious issues in complicity which are still live today, for example

- a) where or when an accessory can be liable even though the principal is acquitted (ongoing impact illustrated by the fact that it is referred to in a leading text also frequently cited in appellate courts, Smith and Hogan, as "the rule in *Millward*");
- b) where or when an accessory can or should be liable for manslaughter where the principal is liable for murder despite divergent *mens rea*; (*Gilmour*)
- c) the meaning of intention to encourage or assist in accessory liability generally. (*Bryce*)

See, in relation to b), the case of *Carpenter* 2012 Crim LR 296 for a recent example of the application of the principle first expounded in *Gilmour* and further debated by Taylor and Prof Sir John Smith in 2001 Crim LR at 333-335 and in the commentary to *R v Day* at p984. (See also footnote 300 at page 225 of Smith & Hogan's 13th ed 2011.)

Taylor's work, not just in BCP, continues to be relied upon and cited in practice and in appellate courts post 2008, as is shown not only by *Gnango* above but also by cases such as *R v T* 2009 1 AC 1310 HL relating to the abolition of *doli incapax*, where counsel in the House of Lords referred at p1320 both to "Blackstone's Criminal Practice 2009, para A3.39" and also at page 1325 to one of Taylor's chapters in "Leng Taylor and Wasik, Blackstone's Guide to the Crime and Disorder Act 1998 (1998), pp 55, 60, 61".

Impact on the Murder and Complicity Law Reform Agenda.

This impact is ultimately evidenced within the period in the Ministry of Justice Consultation Process in 2008 – 2009, leading up to the Coroners and Justice Act 2009, which was the culmination of the Murder Review Project referred to the Law Commission by the Government in 2005. Taylor has been involved in this process throughout in a number of ways, as a result in particular of his articles on homicide and complicity, (outputs iv), v) and vi) in part 3 above). Output iv) had already been the main basis of the contents of Appendix H of the Law Commission's CP on Homicide in the first stages of the Review in 2005 (see para H3 for express acknowledgement). Outputs v) and vi) were critiques of the Law Commission Reports on Murder and Complicity respectively, critiques which led to constructive email and other discussions with the then Law Commissioner for Criminal Law (Professor Jeremy Horder) and subsequently to invitations from the MoJ to participate in and contribute to the stakeholder workshops in 2008 dealing with complicity and homicide which

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influenced the final content of the 2009 Act.

Taylor was sole academic participant in the first by-invitation stakeholder workshop on complicity and murder prior to the issue of the MoJ's Consultation Paper in 2008; and along with three other academics (Professors David Ormerod, Ian Dennis and John Spencer) he participated in a further stakeholder workshop to consider the published proposals, the other invitees including representatives of the judiciary, CPS, CCRC, MoJ, Law Commission and other agencies and stakeholders. The discussions at the workshops persuaded the MoJ that, given the government's decision not to progress for the time being with the reforms to the law of murder, an attempt to reform the law of complicity as applied to murder (in isolation from reforms to the more general law of complicity) would create more problems than it would solve. The substantial section in Professor Horder's 2012 book referred to at the end of section 3 of this case study is further evidence of the impact of Taylor's work on the thinking of law reform bodies.

A more recent example of ongoing impact is to be found in the acknowledgement of Taylor's assistance (alongside that of ten other named individuals) at para 1.42 of the Law Commission Consultation Paper No 213, June 2013, Hate Crime: The case for extending the existing offences. (Taylor first wrote about the existing offences when they were first introduced in one of the chapters he was responsible for in Blackstone's Guide to the CDA 1998 –output ii) in section 3 above.)

5. Sources to corroborate the impact (indicative maximum of 10 references)

Documents originally published on Ministry of Justice Website now available at <http://webarchive.nationalarchives.gov.uk/20100505212400/http://www.justice.gov.uk/consultations/docs/murder-manslaughter-infanticide-consultation.pdf> (Ministry of Justice, Murder, Manslaughter and Infanticide: Proposals for Reform of the Law (MoJ CP 19, 2008) (See Annex G)) and <http://webarchive.nationalarchives.gov.uk/20100505212400/http://www.justice.gov.uk/consultations/docs/murder-review-response.pdf> (Ministry of Justice, Murder, Manslaughter and Infanticide: Proposals for Reform of the Law. Summary of Responses and Government Position (MoJ CP (R) 19, 2009) (See Annex B and C)

Law Commission Consultation Paper No 213 (2013) Hate Crime; The case for extending the existing offences, para 1.42

Law Commission Consultation Paper No 177; (2005) A New Homicide Act for England And Wales, para H3 et seq

Crown Court Benchbook
http://www.judiciary.gov.uk/Resources/JCO/Documents/Training/benchbook_criminal_2010.pdf

R v T [2009] 1 AC 1310 HL

Gnango [2011] UKSC 59

Smith & Hogan 13th ed 2011, (ed Ormerod, OUP) Ch 8 n4 referring to the "rule in *Millward* (1994)", and on other aspects of the current law of complicity influenced by Taylor see Ch 8 nn 300, 308 and 313 and text at n149 et seq.

CONTACT 1: HH Judge Peter Rook, a Senior Circuit Judge, Central Criminal Court.

CONTACT 2: Chiara MacCall, Murder Review Team, Criminal Law Policy Unit (subsequently Criminal Law And Legal Policy Unit), Ministry of Justice.