

Institution: University of Central Lancashire		
Unit of Assessment: UoA 18 Law		
Title of case study: <u><i>Development, application and reform of the Criminal Law (including Hate Crime)</i></u>		
Period when the underpinning research was undertaken: 01/01/2000 to 31/08/16 and then 01/09/18 – 31/08/20		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Richard Taylor	Role(s) (e.g. job title): Professor of English Law	Period(s) employed by submitting HEI: 01/01/2000 to 31/08/2016, then 01/09/2018 - 31/08/20
Period when the claimed impact occurred: August 2013 to August 2020		
Is this case study continued from a case study submitted in 2014? No		
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>This research has had a sustained and continuing impact on the development and application of the substantive criminal law. This includes <i>mens rea</i> and defences, complicity, homicide and hate crime. This has been achieved by the development of the criminal law by the appellate courts, for example in homicide law and general principles, including general defences such as self-defence and insanity. In these areas it also impacts the application of the criminal law by practitioners and the Law Commission's recommendations for reform, specifically in the area of hate crime.</p>		
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Taylor has been researching and writing about substantive criminal law for most of his career. From 2000 to August 2020 Taylor has been employed as a Professor at the University of Central Lancashire, except for a period of 24 months between 2016-2018, during which period he was emeritus and not employed at any other university or law school. Throughout the whole period (and since the book's first edition in 1991) he has been responsible for the key relevant sections of the annual edition of <i>Blackstone's Criminal Practice (Blackstone)</i>, including the latest 2021 edition [1]. The research was done whilst at the University of Central Lancashire and the latest edition was published in October 2020 just after Taylor's retirement. The research has involved Taylor analysing, commenting on, and attempting to clarify and interpret a wide variety of new developments in case law and legislation.</p> <p>Chapters of Blackstone written by Taylor have been regularly cited, quoted and adopted by the appellate courts in developing and modifying existing legal principles. His writings have also influenced the Law Commission's recommendations, particularly in relation to Hate Crime.</p> <p><i>Blackstone's</i> importance is reflected by the decision by the Judicial Library Committee in July 2016, following a survey of all Resident Judges, to provide <i>Blackstone's Criminal Practice</i> in every Crown Courtroom in England and Wales. Taylor's work in <i>Blackstone</i> is also underpinned by a number of significant articles which have had an influence on the development of the law and its interpretation.</p> <p>The impact achieved is the result of a combination of different types of outputs [1, 5]. The research and revision process is a complex one. The relationship between academic articles and practitioner works was examined in Taylor's prize-winning conference paper, 'Complicity, Legal Scholarship and the Law of Unintended Consequences' published in <i>Legal Studies</i> in 2009 [2]. This paper analysed both the purposive and the serendipitous aspects of the relationship between legal scholarship and impact. The paper also clearly demonstrated the links between Taylor's more theoretical research outputs, for example in the <i>Criminal Law Review</i> and the outputs in <i>Blackstone</i>, which are more commonly used by practitioners. This theoretical approach is best exemplified by his <i>Criminal Law Review</i> articles on the jury unanimity issue [3], on the proposals for reform of murder [4] and on manslaughter [6].</p>		

Taylor's key research insights include: developing the correct approach to the thorny logical issues concerning jury unanimity in homicide verdicts [3]; addressing the question of how, or to what extent, the new householder defence controversially introduced by the Crime and Courts Act 2013, has actually made any effective change to the objective test as to how much force is permissible in self-defence [1]; dealing with the question of whether the defence of insanity is available in relation to crimes of strict liability or applicable in the magistrates' courts [1]; and finally, whether the reform of hate crime is best served by extension of the list of substantive aggravated offences or, whether use of enhanced sentencing provisions and other solutions would be better options for law reform [5].

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

1. Blackstone's Criminal Practice, annual edition, OUP (latest edition 2021, published October 2020) (in particular Taylor's Chapters A2 (Mens Rea pp19 -36), A3 (Defences pp.37 -73) A4 (Complicity pp.74-89) and B1 (Homicide pp.203 - 262)
2. Taylor, R. 'Complicity, Legal Scholarship and the Law of Unintended Consequences', (2009) *Legal Studies* Vol. 29. Pp.1-18
3. Taylor, R. 'Jury Unanimity in Homicide' (2001) *Criminal Law Review* pp.283 -300
4. Taylor, R. 'The Nature of Partial Defences and the Coherence of (Second Degree) Murder' (2007) *Criminal Law Review* pp.345 -359.
5. Taylor, R. 'The role of aggravated offences in combating hate crime, 15 years after the CDA 1998 – time for a change?' (2014) *Contemporary Issues in Law* Vol 13. pp.76-92.
6. Taylor, R. 'The Contours of Involuntary Manslaughter' (2019) *Criminal Law Review* pp.205-212

All outputs can be supplied by the HEI on request

As indicators of quality: the current general editors of [1] are Professor David Ormerod, the Law Commissioner for Criminal Law 2010 -2019 and David Perry QC.

The articles in *Criminal Law Review* are published in a highly regarded journal that is both academically rigorous and is known for having impact on practitioners and policy makers.

[3] underpins a section of Blackstone recently approved and adopted in the Northern Ireland Court of Appeal (*McClenaghan*, below).

In 2007 [4] was clearly taken very seriously by Professor Jeremy Horder, the Law Commissioner primarily responsible for the Homicide Report on which the output was commenting. He devoted five pages of his 2012 book to engaging with its arguments in a detailed and balanced way. Horder, J. *Homicide and the Politics of Law Reform* (OUP, 2012), Ch. 3. Section V, "Taylor's Criticisms of the Final Recommendations", pp.101–106).

Research article [5] was specifically referenced six times in the Law Commission Report on Hate Crime (2014), together with numerous other positive references to Taylor's comments. Research article [6] is the most recent example of the detailed analysis of criminal law which is used to inform and underpin Taylor's work in *Blackstone*.

4. Details of the impact (indicative maximum 750 words)

Influence on the courts and on practitioners

Blackstone's Criminal Practice (Blackstone) is available in all Crown Courts. It is widely used in everyday practice and referred to by practitioners and judges both in trial courts and in appellate courts. Its use by practitioners and judges creates new laws both in the UK and overseas. It is also cited at the end of each section of the Judicial College's Crown Court Compendium. In the latest edition (July 2020) approximately 20% of these references refer to Taylor's material. Judges are thus constantly being referred to *Blackstone* for further analysis to cater for the particular aspects of the case before them.

Substantial passages from Taylors' work in *Blackstone*, dealing with new or contentious issues, have had a significant impact on doctrinal issues, as evidenced through the decisions of the appellate courts.

a) In *R(Collins)* [2016] QB 862 the Divisional Court (Sir Brian Leveson P) at para 34 rejected as inaccurate a comment in *Archbold* about the new 'householder' defence and preferred *Blackstone* A3.63 (written by Taylor) which **"makes the position clear" [A]** and which was expressly quoted as follows:

"The new provision merely affects the interpretation of 'unreasonable in the circumstances' so that force is not by law automatically unreasonable in householder cases simply because it is disproportionate provided it is not grossly disproportionate." [A].

This interpretation approved in *R(Collins)* was then itself upheld by a five-member Court of Appeal in the subsequent case of *Ray* [2017] EWCA Crim 1391. The complex new provisions on the use of force by householders had also previously been the subject of an article by Taylor for the Law School's practitioner newsletter entitled 'Self-defence for householders – or how to be reasonably disproportionate', November 2013. The passage in *Blackstone* approved in *R(Collins)* reflected the conclusions of this article.

b) In *Loake v CPS* [2018] QB 998, the defence had explicitly relied on *Blackstone* para A3.23 et seq and in particular A3.32 [B] for the proposition that the insanity defence could apply to the offence of harassment, even if no *mens rea* was required. The trial judge did not accept this proposition but on appeal the Divisional court allowed the appeal, disapproved of the way the matter was dealt with in *Archbold* and applied the law as stated in *Blackstone*. The judge quoted with approval substantial passages from Taylor's material in *Blackstone* (paras 45,46 and 54) of the judgement, referring approvingly to the criticism in *Blackstone* of the earlier decision in *DPP v H*, which case, it was decided, should not be followed.

c) In *McClenaghan* [2016] NICA 51, the Northern Ireland Court of Appeal quoted approvingly at para 49 a substantial passage in *Blackstone* B1.35 [C] concerning the position where a jury is split between two different bases for convicting of manslaughter, one being unlawful act and the other being gross negligence. They concluded that on the subsequent retrial of the case, the approach argued for in *Blackstone* should be followed. This citation is particularly significant as it referenced Taylor's passage in *Blackstone*. This passage was directly based on Taylor's 2001 *Criminal Law Review* article on Jury Unanimity in Homicide [3] in which he deals with unanimity issues in considerable detail on both a theoretical as well as practical basis.

The international impact of Blackstone

There are many other examples of Taylor's work in *Blackstone* being cited with approval in courts both in the UK and further afield. For example, in *Charles v R* 2017 5 LRC 120 at para 16 there is a substantial discussion by the Court of Appeal of the Eastern Caribbean Supreme Court of *Blackstone* para 4.23 'Liability of Accessory where there is no Principal' [D]. Similarly in *Johnson* (2017) 91 WIR 23 in the Bahamas Court of Appeal at para 95 [E] there is a quotation from *Blackstone* Ch A4 on the question of the relevance of knowledge of weapons in complicity cases, following the restatement of the law in the UK Supreme Court in *R v Jogee*. The case of *Ward* [2018] NICA 40 provides another example from the Northern Ireland Court of Appeal. It refers at para 27, in relation to the defence of intoxication, to an **"important distinction...highlighted in Blackstone 2018 para A3.21" [F]**. *Blackstone* is also frequently cited in the Hong Kong courts, an example relating to Taylor's chapter being *Ahmad Gulzar* [2016] HKCU 3235 where a substantial paragraph from *Blackstone* 2016 A4.28 is quoted at para 22 [G].

Returning to English courts, in *Godir* [2018] EWCA Crim 2294 the Court of Appeal at para 16 referred to *Blackstone* A2.6 and A2.14 and adopted the expression given there of the

meaning of 'knowledge' [H]. Also, Lord Justice Gross in *Varley* 2019 EWCA Crim 1074 para 99 quoting BCP A4.18 for the proposition that the principal in innocent agency must not lack **“some characteristic essential for liability as a principal”** [I]. The pervasive influence of *Blackstone* and Taylor's chapters in it can be best summed up in the comment of Lord Chief Justice Thomas, in *Adebelajo* [2014] EWCA Crim 2779 at para 25 where he referred to the definition of murder **“in the current leading textbook on crime, namely *Blackstone Criminal Practice 2015 para B1.1*”** [J] (one of Taylor's chapters). The October 2020 Supreme Court case of *R (Highbury Poultry Farm Produce) v CPS* [2020] UKSC 39 at para 36, provides the latest example of Taylor's contributions to *Blackstone* (in this case para A2.22 on strict liability) continuing to be cited at the very highest level [K].

Impact on the Law Commission's Report on Hate Crime (May 2014) (Law Com No 348) (Cm 8865)

As part of a cross departmental government initiative on hate crime, in 2013 the Ministry of Justice asked the Law Commission to look at the question of extending the existing offences under the Crime and Disorder Act 1998 and the Public Order Act 1986. Taylor made detailed written comments to the Law Commission in response to the 2013 Consultation Paper and wrote an article published in 2014 which the Commission referred to repeatedly in their May 2014 Report [L].

Taylor recommended that the current aggravated offences should not be extended and that there were better ways of tackling the problem, for example, by an enhanced sentencing regime. These were highly influential in the Law Commission's preferred recommendation that there should be a wider review of the area which is now underway, rather than an extension of the existing offences, which was the initial terms of reference given to them by the government. His comments on the inherent difficulties relating to the aggravated offences and the undesirability of extending them are referred to in the Law Commission Report on 15 separate occasions. Many of these are substantial points in the text, rather than in the footnotes. They also include six separate references to his 2014 article examining these problems in detail [5]. See the Law Commission Report *inter alia* at Ch1 para 1.79, Ch 2 n. 132, Ch 3 paras 3.25, 3.88, Ch 4 paras 4.152 with n155, 4.162 with n169, paras 4.169 and 170, ch 5 n40, 42 and 45 and ch 7 para 7.81.

Examples of Taylor's research contribution are provided by the following extracts from the Report [L]:

'4.152 Professor Taylor suggested that practitioner and sentencing guidance on the enhanced sentencing system could usefully reinforce the fact that the sentencing tribunal must be satisfied to the criminal standard of proof that hostility was present. He also pointed to case law (155) requiring that adequate notice be given to defendants in any case where hostility allegations are to be made in support of sentence enhancement, for example, at an adjourned hearing'.

'155 See Chapter 2 above, paras 2.70 and 2.89. See also Prof Taylor's article "The role of aggravated offences in combating hate crime, 15 years after the CDA 1998 – time for a change?" (2014) 13 Contemporary Issues in Law 76'.

'4.162 Professor Taylor also expressed unwillingness to see the complexities of the current aggravated offences extended to further characteristics. He has written elsewhere (169) that there are "legal difficulties inherent in the legislation" as a result of the alternative limbs of aggravation. He has argued that extension would be "inappropriate and counterproductive and would only exacerbate existing difficulties..." The Law Society also noted the risk that extended aggravated offences might be ineffective because of these inherent complexities.'

‘169 “The role of aggravated offences in combating hate crime, 15 years after the CDA 1998 – time for a change?” (2014) 13 Contemporary Issues in Law 76. We discuss this further in Chapter 5 below, from para 5.44.’

‘4.169 The Senior Judiciary and Professor Taylor were concerned that these already complex offences were made even more complex through the interaction with enhanced sentencing under section 145. There was confusion in the case law and guidance about whether the aggravated offences and the sentencing regime are entirely “mutually exclusive”. For the Senior Judiciary, this raised a “serious practical issue” which risked “the whole purpose of extending the aggravated offences [being] defeated”.’

‘4.170 Professor Taylor suggested that, in view of these complexities, it would be preferable to repeal the aggravated offences and focus on improving the enhanced sentencing system.’

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

- A. *R(Collins)* [2016] QB 862 at para 34.
- B. *Loake v CPS* [2018] QB 998 at paras 45-46.
- C. *McClenaghan* [2016] NICA 51 at para 49.
- D. *Charles v R* (2017) 5 LRC 120 at para 16.
- E. *Johnson* (2017) 91 WIR 23 at para 95.
- F. *Ward* [2018] NICA 40 at para 27.
- G. *Ahmad Gulzar* [2016] HKCU 3235 at para 22.
- H. *Godir* [2018] EWCA Crim 2294 at para 16.
- I. *Varley* [2019] EWCA Crim 1074 para 99.
- J. *Adebelajo* [2014] EWCA Crim 2779 at para 25.
- K. *R (Highbury Poultry Farm Produce) v CPS* [2020] UKSC 39 at para 36.
- L. Law Commission’s Report on Hate Crime (May 2014) (Law Com No 348) (Cm 8865) (see Ch1 para 1.79, Ch 2 n. 132, Ch 3 paras 3.25, 3.88, Ch 4 paras 4.152 with n155, 4.162 with n169, paras 4.169 and 170, ch 5 n40, 42 and 45 and ch 7 para 7.81.