

The Nightmare and the Noble Dream: the "War" on Terrorism and Human Rights.

It is plain to me, that the "War" on Terror has had significant negative effects on human rights in Australia. These effects are the result of excessively increasing the powers of police and federal agencies, restricting civil liberties through legislation, allowing prolonged detention by security agencies, reversing the onus of proof and encouraging racial and religious profiling. In the pursuit of national security, traditional civil liberties and human rights principles have been compromised, placing some of the fundamental values and assumptions of our democratic system under strain.

As the esteemed UN Secretary-General Kofi Annan said, "Human rights law makes ample provision for strong counter-terrorist action, even in the most exceptional circumstances. But compromising human rights cannot serve the struggle against terrorism. On the contrary, it facilitates achievement of the terrorist's objective - by ceding to him the moral high ground, and provoking tension, hatred and mistrust of government among precisely those parts of the population where he is more likely to find recruits."

I think it reasonable that the UN Charter makes allowances for war by allowing the restrictions of certain human rights in a time of special emergency if due notice is given. However, the Australian government's infringements of human rights have gone far beyond these restrictions. The Attorney-General, Phillip Ruddock, went so far as to openly acknowledge that the Australian government's actions have affected the range of human rights available to the Australian people, with his statement "The unavoidable fact is that any tightening of security will involve some diminution of rights." This approach is entirely consistent with the Government's reluctance to intervene in the detention of David Hicks and Mamdouh Habib during their detention at Camp X-Ray, without charge and without access to lawyers.

I found to my distress, that while seeking to protect Australia, parliament has been giving the courts, ASIO and the police force increased powers with little consideration of the consequences for human rights. I was astonished to discover that powers given to the Australian Security Intelligence Organisation (ASIO), permit the detention of non-suspects for up to seven days. I am concerned that there is a growing dominance of the interests of "national security" over the rights of the individual. The ASIO Act re-balances the powers of the executive and judiciary, with a dramatic expansion of executive power.

In my opinion, the Australian Federal Government is keen to take a leaf out of the British Government's book, insofar as essentially borrowing anti-terrorist legislation. However, the key difference between the implementation in both countries is that Australia does not have a Bill of Rights to protect the individual from human rights abuses.

I am particularly alarmed by the chilling example of the *Law And Justice Legislation Amendment (Video Link Evidence And Other Measures) Bill 2005*. This effectively reverses the onus of burden of proof for video evidence in the court-room, and could in theory allow the use of video evidence obtained overseas through duress and torture. To prevent the showing of this video evidence, defendants would have to prove that the evidence "would have a substantial adverse effect" on their right to a fair hearing - a much higher standard than the prosecution has to meet when it aims to block the defendant from using the same kind of material.

To me personally, the greatest and most worrying example of these new forms of legislation comes in The "*Anti-Terrorism Bill (No. 2) 2005*". It introduces two powers unique to Australia in times other

than those of declared war - control orders and preventative detention. Both of these powers are able to force imprisonment or the severe restriction of a person's liberty *at a time when that person faces no criminal charge*. I have found that the bill would also prevent meaningful review of any control or detention orders served. As such, the person being infringed upon would be unable to gain access to the information detailing why they are subject to this order. "Freedom from arbitrary arrest and detention" is one of the fundamental rights contained in the *International Covenant on Civil and Political Rights*, Article 9. It is also a fundamental concept on which the system of Western Liberal Democracy is based.

An amendment to *Item 11, Australian Criminal Code* has created new offences and widens the definition of "a terrorist organisation" without proper safeguards to prevent its misuse. This has the potential to criminalize a range of political activity, such as civil disobedience, public protest and industrial action. In September 2005, the Federal Government proposed that the listing of "terrorist organisations" be removed from the United Nations Security Council jurisdiction and left to ministerial discretion. This would allow arbitrary changes without any public consultation or notification, something that I believe to be unjust.

In the War on Terror, presumption of guilt of all prisoners and detainees has become a common feature. The reason internees should not get their Geneva Convention right to a hearing to determine if they are enemy combatants or terrorists is that they are terrorists and therefore not entitled to Geneva Convention rights, or so the argument goes. I see this as a blatantly fallacious circular argument. Being suspected or detained is no indicator of guilt, and as a result the need for a fair and open trial becomes even greater. During the Gulf War, two-thirds of those initially detained were released after their hearings. The concepts of guilt by association and collective guilt which are being put into practice are not reconcilable with a free and democratic society.

I think that racial and religious profiling is one of the most divisive and controversial counter-terrorist strategies, and is dangerous in its ineffectiveness. In the words of Cole and Dempsey : "Studies of policing have shown that it is far more effective to work with communities than against them. Where a community trusts law enforcement, people are more likely to obey the law, and more likely to cooperate with the police in identifying and bringing to justice wrongdoers in their midst".

In my opinion, racial profiling also has what could be a dangerous practical flaw - when only certain groups of people are regarded as suspicious, it means that authorities have a greater chance of ignoring those dangerous persons who take care to avoid falling into this category. With every apprehension of a suspected terrorist via racial profiling, there is a far deeper failure contained within the stigmatization and marginalization of a large sector of society. Even if it succeeds, I find it obvious that racism and negative societal effects are the legacy created.

It is plain to me that the "War" on Terror is conducted using the pretext of a permanent emergency. The continuous nature of the emergency means that low level threat is a normal state of affairs and thus the "special emergency" is nonexistent. I believe that it is now an universalised notion of a threat that drives our lawmaking. In this way, any justification for extreme measures is moved away from the present, and placed in a shadowy fearful future. Any argument against the threat of the unknown is nigh on impossible, and more and more courses of action become permitted in the name of security. In my opinion, this diversionary tactic has been used to ensure that new legislation passes quickly and painlessly through Parliament, without scrutiny from us, the public or the Opposition.

I believe that those of us who disbelieve the government are not paranoid, but rather are prudent realists. As with any human organisation, the government makes mistakes in its actions. It is by nature inefficient, error-prone and unwilling to admit its mistakes, as displayed in ASIO's Hilton Hotel debacle. It has been essentially fighting fire with fire, a development that has serious implications for the human rights and the rule of law. The expanded detention powers of ASIO is a perfect example of a challenge to the rule of law coming directly from the actions of the state itself. While proponents of the

restrictions in the name of national security argue that if you have done nothing wrong you have nothing to fear, some situations are not quite so clear cut. An idealistic student donating money to a Palestinian humanitarian group could, for example be charged with financing terrorist acts, if unknown to him, the group had that week been designated as a terrorist organisation.

In summary, I believe that the “War” on Terror has had grave consequences on the Commonwealth of Australia, as fundamental human rights have been breached by the Federal Government's legislative, executive and judicial response to the threat of terrorism. It is plain that significant violation of human rights has occurred in the name of national security and that in its actions, the Government has compromised the fundamental concepts of Western liberal democracy, the rule of law, due process and the presumption of innocence.

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