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**The Politics of Fear: Counter-Terrorism and
Australian Democracy**

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Working Paper (WP) 27/2006

19/10/2006



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Summary: In the years since 9/11 several waves of legislative reform have led to a progressive hardening of the Australian state's capacity to intrude into the lives of ordinary citizens and to detain and prosecute individuals suspected of terrorist-related activity without regard to the due processes of law that characterised Australian democracy for more than one hundred years. However, reinforcing fears of civil libertarians, social democrats and members of Australia's ethnically diverse community is a parallel discourse promoted by the Howard government that equates terrorism almost exclusively with Islam. The result has been an unequal erosion of democracy whereby the social costs generated by a hardening of the power of the state fall disproportionately upon certain ethnic and religious groups. As such, the Howard government's approach to counter-terrorism has not only diminished Australian democracy, but it is also undermining a long tradition of multiculturalism and forcing Muslim communities into a defensive posture that threatens to isolate them from their fellow Australians and complicate future counter-terrorism efforts.

Introduction

Australia's approach to counter-terrorism has evolved in several waves, each following high-profile terrorist attacks overseas. This pattern of an incremental hardening of the state's coercive powers is important, because it underscores the reactive character of the Howard government's approach to counter-terrorism. Lacking a long-term terrorism management strategy, Australian counter-terrorism policies have been piecemeal with each tranche of legislative changes introduced in the confusing post-attack atmospheres that followed 9/11, the Bali bombings, the Madrid attacks and most recently the attacks in July 2005 against the London public transport system.

There is not the space here to document in detail the complex nature of these reforms, suffice to point out that most have focused on enhancing the counter-terrorism powers of the domestic intelligence agency, the Australian Secret Intelligence Organisation (ASIO), and those of the Australian Federal Police (AFP).¹ Until 9/11, neither of these agencies had any significant experience in dealing with terrorism, although as a part of its obligations in the lead up to the 2000 Sydney Olympic games ASIO acquired substantially more experience than the AFP. Even so, it is these two agencies that have benefited most from the legislative reforms, with each benefiting from a total increase in intelligence spending of more than A\$8 billion as well as from an extensive array of new investigative as well as arrest and detention powers which have been criticised by civil rights groups and the legal profession as constituting an assault on fundamental principles of human rights.²

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¹ For a chronological summary of Australia's domestic counter terrorism legislation see, Parliament of Australia Library 'Terrorism Chronology' at <http://www.aph.gov.au/library/intguide/law/terrorism.htm>

² Jenny Hocking, 'Counter-Terrorism and the Criminalisation of Politics: Australia's New Security Powers of Detention, Proscription and Control', *Australian Journal of Politics and History*, vol. 49, nr 3, p. 355-371.

In particular, the disproportionate use of these enhanced powers of surveillance and interrogation against Australia's relatively small Muslim population (approximately 400,000 people out of a total national population of around 20 million) has begun to undermine Australia's otherwise harmonious experience as a multicultural society.

Background

For most of its two-century long history as a predominantly European society, Australia enjoyed a political environment remarkably free of terrorist violence. A small number of isolated incidents notwithstanding, the most significant act of terrorism in Australia between 1788 (the date at which white settlement commenced) and 2001 was a bomb attack outside Sydney's Hilton hotel in 1978 that killed two civilians and a police officer. Although the perpetrators of the attack have never been found, speculation continues to centre on groups with grievances against the Indian government, whose Prime Minister Morarji Desai was at that time staying at the hotel along with other leaders of Asia-Pacific Commonwealth nations.³

The Hilton bombing aside, for the overwhelming portion of their history white Australians considered terrorism to be a phenomenon that happened elsewhere; a result of anti-colonial or revolutionary struggles in the developing world or of lingering internecine ethnic and religious rivalries in old Europe. On coming to Australia migrants from these troubled parts of the world were assumed to have left their anger and hostilities at the border. The popular perception was that a combination of isolation from the world's trouble spots and an avuncular mass culture worked to inure Australia from the types of extremism that fostered terrorism. This is not to say that Australians did not fear the outside world; lurking beneath the veneer of Australian popular culture there has long been a deep sense of discomfort and strategic vulnerability fostered by the enormous distance that separated the southern continent from its cultural and political roots in the northern Atlantic.⁴ Indeed, one of the profound consequences for Australian society and democracy since the events of 9/11 is the extent to which the events of that day, in which 22 Australian were killed, brought back to the surface of Australian politics this subterranean fear.

Even so, out of this milieu have come some positive reforms that have better equipped the Australian intelligence and security agencies to deal with the terrorist threat both at home and overseas. Especially promising has been the initiative shown by the Howard government in establishing the National Counter Terrorism Committee, a federal body which brings together senior officers from those policy departments with a mandate for national and state security (notably the Department of Prime Minister and Cabinet and the respective state-level departments of Premier and Cabinet) as well as senior officers from Australian intelligence agencies as well as the Federal and state police forces. The result has been the first truly national steering committee, whereby members from across jurisdictions come together to discuss a wide variety of counter-terrorism issues in a manner that reduces the risk of different agencies acting at cross purposes. The NCTC plays a critical role in smoothing intelligence and information flows between different levels of the national and state bureaucracies and by so doing it is helping to forge a culture of policy coordination and consensus that has streamlined the nation's approach to counter-terrorism. Indeed, it is the new spirit of cooperation forged within the NCTC which has contributed to the successful development of joint counter-terrorism task forces comprised of federal and state police working along side officers from the Australian intelligence community in joint operations that have successfully detected and interrupted several potential terrorist strikes within major Australian cities. Similarly, under the auspices of the NCTC Australian police and emergency services have exercised with

³ See Russell Hogg, 'The Hilton Bombing Case' *Legal Service Bulletin*, vol. 15, nr 6, 1990, p. 49-50.

⁴ Anthony Burke, *In Fear of Security: Australia's Invasion Anxiety*, Pluto Press Australia, Annandale, 2001.

elements of the Australian armed forces in simulated terrorist strikes in Australia's urban centres. This whole-of-government approach to counter-terrorism planning is unique in Australian political history.

However, a deep contradiction belies the positive momentum generated by the NCTC. This contradiction lies not so much within the NCTC, but within the approach taken towards counter-terrorism by the Committee's political masters in the form of the Howard government. Underpinning this contradiction lie two politically driven (but analytically questionable) assumptions considered axiomatic by the Howard government. The first is that securing society from terrorist attack requires a diminution in political and civil liberties. The second is that the contemporary terrorist threat is overwhelmingly a civilisational one that can be reduced to the simple decision of some Muslims to submit to the extremist teachings of their religious leaders. Taken together, these assumptions have seen a hardening of the Australian state's ability to intrude into the lives of its citizens but also to target these powers against only a minority of the population in the form of Muslim Australians. Unless held in check, the policies inspired by these assumptions risk diluting the effectiveness of the NCTC by fostering a social milieu that is increasingly receptive to extremist ideologies. If this occurs, the risk posed by terrorist violence within Australia is likely to grow to a level that will overwhelm the capacity of positive initiatives, such as the NCTC, to generate new and innovative approaches to combating the threat.

Terrorism and Australian Government Responses

An important first step before undertaking any evaluation of the utility of counter-terrorism policies is to assess the context within which the measures have been taken. In other words, without an understanding of the extent and nature of the threat posed it is difficult to arrive at any normative judgements about the efficacy and necessity of the measures introduced by Canberra. In the paragraphs that follow I offer a brief chronological survey of recent terrorism-related events, both outside and within Australia, and comment on how these specific incidents have shaped both the wider political atmosphere and the nature of the counter-terrorism policies introduced by the Howard government.

Not surprisingly, it was the events of 9/11 that elevated counter-terrorism from a peripheral issue of little political significance to the top rung of Canberra's policy priorities. Since that time, the Australian government has introduced more than 50 separate pieces of Commonwealth legislation dealing entirely or in part with terrorism-related matters. During this same period, the legally autonomous governments of Australia's five states and its two self-governing territories have introduced over 40 separate pieces of similar legislation, most of which are designed to harmonise federal and state counter-terrorism laws. Looked at across the broad sweep of Australian political history, the five years since 2001 constitute a period of extraordinary legislative energy. Prior to this burst of political energy, the last piece of legislation to touch (albeit remotely) on terrorism-related matters was the Air Navigation Act passed by the federal parliament in 1991.

The absence of any counter-terrorism related activity within the federal or state parliaments in the latter part of the last century is not surprising for a country that has had negligible direct experience with terrorist violence. Less explicable was the failure of Australian policy makers and academics to read the 1998 attacks against the US embassies in Kenya and Tanzania and the 2000 attack against the USS Cole as early indicators of an emerging trend towards a new form of globally active terrorist violence. In 1998 and 2000 the prevailing view in Australian policy circles was that these attacks were symptomatic of the types of largely uncoordinated attacks against the US that had occurred sporadically since Hezbollah's strikes against US diplomatic and military compounds in Beirut in the early 1980s. As in many other parts of the world, there was little appreciation within Australia of the symbolic significance of these attacks as marking

the beginning of a larger phenomenon that would soon play out on the continental United States, South-East Asia and then manifest itself within Australian society.

The effect of 9/11 on Howard was especially acute by dint of the fact that he was in Washington on a state visit on the day the attacks occurred. This was clearly evident in his demeanour and reflected at the policy level when Canberra invoked, for the first time in almost 50 years, the Australia, New Zealand, United States (ANZUS) defence alliance and committed Australia to standing alongside the US in eliminating the threat that had manifested itself on 9/11. This was followed in the weeks following by some hastily drafted amendments to existing laws and new legislative initiatives designed to enhance the government's ability to contribute to wider international counter-terrorism efforts and ensure that similar attacks could not occur at home. These initiatives were eventually embodied in several pieces of legislation that were introduced to parliament in early 2002: the *Security Legislation Amendment (Terrorism) Act 2002*, the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002*, the *Suppression of the Financing of Terrorism Act 2002*, the *Border Security legislation Amendment Act 2002*, the *Criminal Code Amendment (Anti-hoax and Other Measures) Act 2002* and the *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002*.

However, within this legislative package it was the first two Bills, the *Security Legislation Amendment (Terrorism) Bill* and the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill* that provided the fulcrum upon which Australia's counter-terrorism efforts were to rest. It was also these two Bills that inspired widespread allegations that the government was using terrorism as an excuse to roll back core elements of Australia's democracy.

The *Security Legislation Amendment (Terrorism) Bill* ('Terrorism Bill') created a range of new offences that held out the possibility of life imprisonment for crimes related to the planning or engaging in a terrorist act. Separate penalties were introduced for new offences such as being involved with a designated terrorist organisation and for receiving funds from, or providing funds to, a designated terrorist organisation. Although the government eventually passed this Bill, it only did so after the opposition Labor Party combined with a number of independents and minor parties to demand key changes. In its original format, the Terrorism Bill moved to criminalise any activities that were performed 'with the intention of advancing a political, religious or ideological cause' and that in the process might have caused unspecified harm or damage. As pointed out by one of Australia's most noted constitutional scholars, 'this could have subjected Australians – including farmers, unionists, students, environmentalists and even Internet protestors who were engaged in minor unlawful civil protest– to life imprisonment'.⁵ As initially proposed the Bill would have also granted the federal Attorney General –in the Australian system a government minister and Member of Parliament– near absolute authority to proscribe an individual or organisation as 'terrorist'. However, as passed by the parliament in its amended form the Terrorism Bill contains a much more rigorous definition of terrorism which will avoid misdemeanours perpetrated in the course of civil protest from being classified as terrorism. Also, the power to proscribe organisations has been granted mainly to the Australian courts.

However, it was the second legislative package that generated most concern. The *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill* ('ASIO Bill') was designed to provide a legal basis for a substantial expansion in the powers of Australia's domestic intelligence agency (ASIO) to use its mandate to intrude more fully than ever before into the lives of ordinary Australians. As originally drafted the

⁵ George Williams, 'Australian Values and the War against Terrorism', *University of New South Wales Law Journal*, vol. 26, nr 1, 2003, p. 194-5.

Bill would have granted federal authorities the right to detain, interrogate and even strip-search adults and children suspected of having knowingly or unknowingly associated with individuals suspected (but not proved) to have engaged in activities that might be connected to terrorism or which might have enabled them to 'substantially assist' federal agents to collect intelligence in relation to investigations into a possible terrorist offence.

The Bill also proposed removing the right to refuse to answer a question in order to avoid self-incrimination or, in the cases of journalists or scholars, to protect possible sources of information –no matter how benign these might be–. Refusal to answer a question under these circumstances would have carried a maximum penalty of five years imprisonment. Yet more onerous provisions were contained in the proposal to allow the possibility of indefinite detention without charge or trial by allowing ASIO to detain suspects for 48 hours but to then apply for unlimited 48-hour extensions. At the same time, ASIO would have also had the right to deny suspects any access to a lawyer or to even to advise a family member or employer that they had been detained during the first 48 hours of their detention. As noted by one observer, 'the ASIO Bill would not have been out of place in former dictatorships such as General Pinochet's Chile'.⁶

Against a background of this type of criticism the ASIO Bill failed to pass through the Australian Senate where the combined vote of the opposition Labor Party and minor parties was sufficient to send the Bill for closer vetting by parliamentary committees. It was one of these, the Parliamentary Joint Committee on ASIO, the Australian Secret Intelligence Service and Defence Signals Directorate, which delivered perhaps the most damning verdict when in delivering the report to the parliament the Chairman of the Committee commented that as drafted the ASIO Bill would 'undermine key legal rights and erode the civil liberties that make Australia a leading democracy'.⁷ The Committee then referred the Bill to the Senate Legal and Constitutional Legislation Committee which although it refused to adjudicate the Joint Parliamentary Committee's Report, did raise questions as to the constitutionality of core elements of the Bill's provisions, particularly as they related to the proposed powers of detention of non-suspects, and the use of magistrates to issue warrants for questioning.

One of the most significant aspects of this judgement by the Joint Parliamentary Committee was its unanimity –which indicated disquiet with the authoritarian aspects of the Bill even within the government's own ranks–. As a result, Howard and his then Attorney General Daryl Williams agreed to amend key provisions of the Bill to remove some of its more draconian overtones. The amended version of the ASIO Bill finally passed the Senate in a heavily amended form almost 15 months after first being introduced into parliament by the Howard government and after initiating one of the bitterest parliamentary debates in recent Australian political history, with both supporters and opponents of the Bill at different stages charging each other of being complicit in any act of terrorism that might have occurred within Australia while the Bill was under consideration.

In its final form the Bill created an amended Act of parliament that authorises ASIO to detain and question individuals suspected of being knowingly or unknowingly involved in terrorism-related activity only if those people are 16 years of age and over. Detention can only occur after the issue of a warrant by a judge. Any person detained under these provisions can be held for one week but questioned for a total of no more than 24 hours during this period. Also, questioning of the suspect under these conditions requires the presence of a retired judge. If no charges are brought against the person after this period

⁶ *Ibid*, p. 196.

⁷ Commonwealth of Australia, *House of Representatives Hansard*, 5 June 2002, p. 2846 (Hon. David Jull, Chairman of Joint Parliamentary Committee on ASIO, ASIS and DSD).

they must be released from custody although the Act also holds out the possibility of further detention if new evidence against that person is found and a fresh warrant obtained. Individuals detained by ASIO under the amended version of the Act have the right to a lawyer; however, if ASIO officers deem the lawyer concerned to be a security risk access can be denied and the detainee forced to choose another. All interviews conducted under the auspices of the ASIO Act must be video-taped and can be scrutinised by the Inspector General of Intelligence, an ostensibly independent officer deemed responsible for monitoring and assessing the behaviour of Australia's intelligence community. Perhaps most importantly, the Act also contained a sunset clause that provided for these new powers to be voided in three years unless renewed by a fresh Act of parliament.

Political heat generated during the final months of debate over the ASIO Bill had been sustained in part by the tragic events in Bali on the evening of 12 October 2002. In fact, even though 9/11 had a profound impact on Australian thinking about terrorism, it was the attacks in Bali in 2002 that have arguably had the most dramatic effect. For more than a generation Bali has loomed in the Australian consciousness as emblematic of our emerging engagement with Asia. The Indonesian island has attracted millions of Australians, especially young people drawn by Bali's surf beaches, the warmth of its people and the opportunity to step into an 'Asian culture' just a few hours by plane from the unmistakably Western metropolises of Australia's major cities. Bali had become deeply embedded in Australian popular culture and the Balinese people occupied a special place in a national psyche that has not always been as open to or accepting of non-European cultures.

It was therefore not surprising that the suicide attacks against two crowded nightclubs on the evening of 12 October 2002 in which more than 200 people, including 88 Australians, were killed had a profound psychological impact on ordinary Australians and on their policy makers. Although the 9/11 attacks had raised the spectre among Australians of a new type of terrorism, the tragedy of Bali brought the phenomenon closer to home. Against this background, the government moved to introduce a second wave of legal reforms designed to strengthen the counter-terrorism powers of the state. The sense of urgency surrounding these initiatives was fed in part by revelations that the alleged spiritual leader of the group responsible for the Bali attacks, the Indonesian cleric Abu Bakar Ba'asyir, had previously made a number of visits to Australia where he had preached and held meetings with various Indonesian communities in major Australian cities. This was followed by a series of high profile and clumsy raids on Australians of Indonesian heritage in Sydney and Perth. It was only in Melbourne, where the state police refused to allow federal authorities to coordinate the raids, that the operations were conducted with any degree of cultural and community sensitivity.

The different ways in which the post-Bali raids were conducted in different capital cities underscored a subtle but important distinction within Australia. In terms of counter terrorism policing, with one or two notable exceptions it has been the state authorities that have historically displayed a more nuanced approach to dealing with the cultural sensitivities of different communities within the context of counter-terrorism. This is particularly so in the case of Australia's second-largest and most ethnically diverse state of Victoria, where the authorities have worked hard to ensure that the gung-ho approach to counter-terrorism employed by their federal counterparts does not inadvertently undermine a long tradition of multicultural harmony. From the outset the Victorian government evinced an awareness of the potential for the social anxieties unleashed by terrorism to increase social tensions and thereby play into the hands of those who advocate civilisational conflict. Hence, in the wake of the Bali attacks it worked hard to develop a strategy to assuage the fears of the general public and to inhibit a potentially dangerous slide into public vigilantism against Muslim Australians. Playing a key role in

this regard was the state police force, which working with their bureaucratic counterparts developed a sophisticated array of initiatives designed to quarantine community dynamics from the potentially destructive emotional forces unleashed by the Bali attacks. The importance of such initiatives in terms of keeping in check intramural tensions should not be under-estimated. As Meyers has observed in his assessment of the immediate response of the Bush administration to the 9/11 attacks,

'[L]ike a virus, terrorism launched into "the system" can wreak extensive havoc without further inputs... Osama bin Laden recognized political laws of gravity. Seize unintended consequences of action, use "their" technology and transport system to bring down a pair of mighty buildings; count on the subsequent American reaction to accomplish the rest. He predicted that the act would create ripples in the larger context of American political culture, and thus produce crises both economic and political.'⁸

In other words, several state governments realised early on the capacity for the terrorist attacks in Bali to exacerbate social tensions that had already been aroused by 9/11. Left unchecked these tensions risked doing the terrorists' work for them by generating suspicions and hostility towards Muslim community members, opening social schisms and creating an unhealthy sense of distance between different ethnic and religious groups and mainstream society. The emergence of divisions of this sort was seen as having the potential to feed feelings of alienation and victimisation among Muslims and thereby create an environment in which extremists could more easily secrete themselves.

Unfortunately, a similar farsightedness was noticeably absent from both the federal government and a handful of state governments, especially that of New South Wales where the state leader Bob Carr's approach to counter-terrorism quickly assumed combative cultural undertones. As mentioned above, the Howard government responded to the Bali attacks with a fresh wave of legal reforms but also by embracing a counter-terrorism discourse that was increasingly civilisational in character wherein Muslims in general and Islam as a religion were targeted as a source of danger.

In terms of legislation, Howard responded to the Bali attacks by introducing further amendments to the ASIO Act so that the amount of time that non-suspects could be questioned was increased from 24 to 48 hours in cases where an interpreter was needed. Additional measures created a new criminal offence, punishable by five years imprisonment, wherein anybody detained for questioning on terrorism-related matters was prohibited for two years from disclosing any information about the circumstances of their detention, and the nature of the questioning, if by so doing they might shed light on the operational details of the case involved.

Somewhat predictably, the attacks in Madrid on 11 March 2003 reignited the debate in Australia and initiated another wave of reforms was introduced by the Howard government. In this instance the government found a more supine public and opposition as the determination of both groups to resist unreasonable derogations of civil liberties in the name of public safety seemed to be eroding in the face of the sustained nature of terrorist violence in other parts of the world.

Among the new legislation brought to parliament in the wake of the Madrid attacks the most important included the *Anti-Terrorism Bill 2005 (No.2)*, introduced in June 2004, which amended the *Criminal Code Act 1995* to create a new offence relating to association with a terrorist organisation and the *Administrative Decisions (Judicial*

⁸ Peter Alexander Meyer, 'Terrorism and the Assault on Politics', in Craig Calhoun, Paul Price and Ashley Timmer (eds.), *Understanding September 11*, Social Science Research Council and The New Press, New York, 2002, p. 267.

Review) Act 1977 which rendered decisions of the Attorney-General made on security grounds exempt from the review under the terms of the original legislation. Another important legislative initiative introduced in late 2004 was the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) (No. 2) Bill 2004* which amended the criminal code to introduce the new crimes of using a telecommunications service to make a hoax threat (a crime which carried a maximum penalty of 10 years imprisonment) or using a service in such a way that 'reasonable people would regard as menacing, harassing or offensive' (maximum penalty of three years imprisonment). Importantly, under the legislation the state does not have to prove intent in that all that is required for a conviction is for the prosecution to demonstrate an intention to harass, menace or be offensive or that the victim felt harassed, menaced or offended.

Taken together, these pieces of legislation continued to give legal authority to the government's view that the resilience of terrorist groups around the world was partly due to their ability to exploit the freedoms inherent to an open democracy. More importantly, every high-profile terrorist attack initiated fresh legislative changes designed to either close off or limit access to specific freedoms, or alternatively to enhance the state's capacity to act punitively against suspect activity without having to submit its decisions to judicial review or public debate.

However, it was the attacks in London on 7 July 2005 that had an especially profound impact on Australian democratic traditions. As with Bali, the UK has long occupied an important part in popular Australian culture. This is mainly because of the British heritage of many Australians, but also because of the presence in London of tens of thousands of young and expatriate Australians. Hence, although there was only one Australian casualty in the 7/7 bombings, the impact of that day on Australian society was profound and prompted the Prime Minister to initiate a review of Australia's counter-terrorism initiatives up until that stage. The outcome of this review included yet more proposals to confer upon the state powers hitherto unprecedented in Australia's democratic history.

Among the most contentious of these new initiatives was preventive detention and house arrest, both of which were contained in the *Anti-Terrorism Bill (2005)* passed by the parliament in December 2005. Not since the Second World War had the Australian state had such powers at its disposal. Under the terms of the Bill an individual can be held without charge for up to 48 hours if there is intelligence to suggest they might be involved in a terrorist act or if they possess any item (or 'thing') that might be connected with the preparation of a terrorist attack; in the latter sense this can include anything as innocuous as a train or bus timetable or a street directory.⁹ The Act also empowered the government to apply for control orders to allow an individual to be placed under house arrest, a status that can be renewed indefinitely through twelve-monthly applications for extended detention. The Bill also allows the state to apply for orders to force a suspect individual to wear tracking devices, prohibit them from using a telephone or using the Internet, and even to stop them from working.

However, it was new sedition laws that generated the most heated debate. Under the terms of the most recent revision to the *Anti-Terrorism Act* there now exist several offences, including the provision of 'assistance of any kind' to the enemy, a concept of such definitional ambiguity that a whole range of possible activities are now vulnerable to prosecution and which carry a maximum term of imprisonment of seven years (up from three years). Moreover, associated with these possible offences the *Anti-Terrorism Act* also creates a reduced burden of proof in that the onus is on the accused to rebut the

⁹ Darryl Melham, 'Anti-Terrorism Measures call for More Opposition', *Australian Financial Review*, 31 October 2005, p. 63.

charges against them, a defence that is simultaneously limited by virtue of a small number of 'good faith' exceptions.

A second consequence of these post-London amendments is an expanded test for proscribing an 'unlawful association', an initiative that Australian human rights lawyers claim constitutes a serious curtailment of the right to free association. The amendments confer upon the Attorney General the right to ban any organisation that demonstrates 'seditious intention', a concept once again clouded in definitional uncertainty in that such an intention does not require the advocacy of force or violence but can be constituted by any action deemed by the state as 'serious'. In such an instance 'good faith' has been eliminated altogether as a defence. This has the potential to be applied against any publisher or journalist who reports the views of a proscribed organisation in which case the accused is denied any defence. In its review of this legislation the Law Council of Australia noted that,

'The restrictions on communication under the new sedition laws are disconnected from the real issue of the threat of terrorist acts and are unwarranted and unnecessary. Measures which have the effect of curtailing free speech are highly unlikely to reduce the occurrence of a terrorist incident... Based on such human rights considerations, the Law Council considers that the new sedition laws inappropriately broaden previous laws on sedition to the extent of unnecessarily interfering with freedom of speech and expression. The Law Council believes that such changes imperil freedom of speech and expression and are unnecessary.'¹⁰

Spreading the Problem?

After almost five years of legislative hyperactivity and the extraordinary array of powers that this energy has conferred on Australia's police and intelligence services, it is reasonable to ask whether or not the diminution in civil rights has translated into a more secure Australia.

Defenders of the government's approach argue that these new powers have been critical in enabling the authorities to identify and bring to justice a number of individuals planning to carry out terrorist attacks, mainly in Australia's two largest cities of Melbourne and Sydney. However, it is worth bearing in mind that, domestically speaking, the risk of home-grown terrorist attacks in Australia has developed only recently, especially since 2003. The discovery of several plots by Australian citizens to carry out such attacks suggests that Australia, like other parts of the Western world, is not immune from the spread of what Burke has called 'al-Qaedaism', 'a radical internationalist ideology - sustained by anti-Western, anti-Zionist, and anti-Semitic rhetoric- [which] has adherents among many individuals and groups, few of whom are currently linked in any substantial way to bin Laden or those around him'.¹¹

Several recent examples can serve to highlight the nature of this phenomenon as it is currently evolving in Australia. The first concerns a 36-year-old Pakistani-born architect, Faheem Khalid Lodi, who in August 2006 was sentenced by the New South Wales Supreme Court to 20 years imprisonment for plotting to blow up a major national electricity grid. After working backwards through Lodi's life in Australia, investigators determined that his drift towards extremism began soon after an arranged marriage in 1999. Indeed, in his own testimony Lodi claimed that around that time he felt he needed more structure to the manner in which he practiced his religion, which up until that stage

¹⁰ Law Council of Australia, *Review of Sedition Laws*, The Law Council of Australia, Braddon ACT, 19 July 2006, p. 8.

¹¹ Jason Burke, 'Al Qaeda', *Foreign Policy*, nr 142, May-June 2004, p. 18.

he described as 'laissez-faire'.¹² He began attending a mosque more regularly both in Sydney but also on his semi-regular trips back to Pakistan to visit his family. However, around 2002-03 Lodhi appears to have become involved with the Lashkar-e-Taiba in Pakistan, with Australian prosecutors alleging that he had worked as a facilitator whose task was to assist people wishing to attend the group's training camps.

On his return to Australia in 2003 Lodhi developed a convoluted but clumsy array of false names and addresses for cell-phones, purchased maps of the electricity grid and attempted to download satellite imagery of Australian military facilities. He also began making inquiries with chemical companies regarding materials that could be used in the construction of bombs. Prosecutors also tendered into evidence two items seized from Lodhi's possession: a 15-page hand-written Urdu language manual on the making of explosive devices and a CD-ROM which was described as a 'virtual library' of jihadist information justifying violence and suicide bombings.

However, it was Lodhi's association with the suspected terrorist Willie Brigitte, currently in detention in France, which especially worried the authorities. Lodhi had met Brigitte at Sydney airport when the former is alleged to have travelled from France to plan terrorist attacks in Australia. One of France's leading terrorism prosecutors, Jean-Louis Bruguiere, revealed that Brigitte was also working with Lashkar-e-Taiba which he claimed was planning 'a large-scale terrorist action in Australia', possibly with the assistance of a Chechen explosives expert.¹³ Given that this group has rarely acted outside of the Indian-controlled portion of Kashmir, straying in fact only so far as New Delhi where it was involved in the 2004 attacks on the Indian parliament, the claim was met with incredulity in some Australian counter-terrorism circles. An alternative claim, that the plot was part of a wider al-Qaeda-linked agenda, has not been verified.

The exact nature of Lodhi's relationship with Brigitte and the purpose of the latter's visit to Australia remain a mystery, but because Lodhi was convicted under the terms of the new terrorism provisions of the *Commonwealth Crimes Act* new legislation outlined above, his existence in prison will be substantially different from that of ordinary prisoners. Lodhi will spend between 22-23 hours a day locked in his cell where he will be monitored constantly by CCTV. He will be moved to a new cell every two weeks and his cell searched daily. He must eat alone and all visits from family members will be conducted within earshot of prison guards and will be recorded on videotape.

Perhaps the most ominous signs of the extent of the possible spread of jihadist ideology within Australia emerged from a series of high-profile raids conducted in the eastern states in late 2005. After a lengthy investigation (code-named 'Operation Pendennis') lasting more than a year, more than 500 officers from a joint task-force made up of federal and state police as well as ASIO officers arrested a total of 17 men on suspicion of planning and preparing to carry out attacks in Melbourne and Sydney. Subsequent investigations soon expanded the numbers arrested to 22.

At the time of writing most of those charged have been committed to stand trial in the Victoria or New South Wales Supreme Courts, but with proceedings still to commence little is known about the men detained. Based on the little that has been reported it seems the group appears to have coalesced around an Algerian-born Islamist cleric, Abdul Nacer Benbrika, who at one stage exhorted one of his acolytes to emulate in Australia the attacks that occurred in Madrid on 11 March 2004.¹⁴ With one or two exceptions most of

¹² Leonie Lamont, 'Mystery Path from Architect to Terrorist', *The Sydney Morning Herald*, 24 August 2006, p. 1.

¹³ Marian Wilkinson, 'The Man who Met Brigitte', *The Sydney Morning Herald*, 20 June 2006, p. 14.

¹⁴ Natasha Robinson, 'Accused Cleric Hoped to "Kill 1000"', *The Australian*, 25 July 2006, p. 1.

those arrested were Australian-born Muslims of Lebanese heritage or alternatively young men who had been born in Lebanon and who had migrated to Australia as children. One of the exceptions to this group was a young Australian-born man of Anglo-Celtic heritage, Shane Kent, who converted to Islam and along with several other Australian-born Islamic converts, including others detained under Operation Pendennis and others charged in separate investigations, spent time training at the al-Faruq camp in Afghanistan.

A Dangerous Dynamic

More recently, another individual to attract attention, and the first person to be subjected to the controversial control orders introduced in early 2006, was Jack Thomas. Another convert to Islam, Thomas (whom Australia's tabloid media have anointed as 'Jihad Jack') was arrested in Pakistan in 2002 and interrogated by the Pakistani authorities before Australian Federal Police officers were allowed their own interviews. On the basis of these interviews Thomas admitted that in 2001 he trained at the al-Faruq camp in Afghanistan after which he received money (approximately A\$5,000 or €3,000) from al-Qaeda sources, the only crime for which he was eventually found guilty by the Victoria Supreme Court. However, even more interesting to the authorities is Thomas's relationship with his Indonesian-born wife, Maryati Idris, a personal friend of the wife of Abu Bakar Ba'asyir, the spiritual leader of Jemaah Islamiyah and whom Thomas married after a courtship that lasted only 24 hours. As well documented by the International Crisis Group, arranged in-group marriages have been a common tool used by Jemaah Islamiyah to consolidate its network through ties of family and kinship.¹⁵ Even so, the author of this ICG report, Sidney Jones, claims that there is no evidence that either Thomas or his wife had any connections to the upper echelons of Jemaah Islamiyah.¹⁶ Extradited back to Australia, Thomas was charged and committed to stand trial in the Supreme Court of his home state of Victoria. However, the matter did not end there. Thomas petitioned the Victoria Court of Appeal to review the verdict, and in August 2006 it ruled the conviction invalid on the basis that the evidence presented by the Federal Police in the case to convict Thomas had been obtained illegally by dint of the Federal Police officers in Pakistan denying Thomas his request for a lawyer to be present at his interrogation.

The Court of Appeal's decision, which upheld the principle that due legal process needed to be followed in all terrorist prosecutions, drew sharp criticism from the government and whipped the tabloid media into a frenzy. The Court was labelled by various figures as irresponsible while others implied that the background of the Chief Justice of the Court of Appeal as a high profile civil liberties advocate had jaundiced his judgement and that he should excuse himself from all similar trials in the future. Meanwhile, Thomas himself, never more than a peripheral actor in Afghanistan and a man with apparent delusions of grandeur, was cast as posing an immediate threat to Australian society. One widely-read media commentator was converted almost instantaneously into an expert in psychological profiling when he claimed that Thomas shared worrying psychopathological similarities with the London bombers.¹⁷

Several days later, while enjoying his new-found freedom with his wife and young children at a beach resort, Thomas was served with a Control Order that confined him to his house during all but daylight hours and denied him a number of other basic civil liberties. One of the more bizarre restrictions included a prohibition on Thomas making contact with Osama bin Laden and a number of other designated terrorists.

¹⁵ International Crisis Group, *Jemaah Islamiyah in South East Asia: Damaged but Still Dangerous*, ICG Asia Report, nr 63, Jakarta/Brussels, 2003, p. 28.

¹⁶ Mark Forbes, 'Thomas Denies Bashir Link', *The (Melbourne) Age*, 31 August 2006, p. 2.

¹⁷ Greg Sheridan, 'All the Characteristics of the London Bombers', *The Australian*, 30 August 2006, p. 1

The decision of the government to seek a Control Order against Thomas carried the unmistakable scent of political opportunism and vindictiveness, the latter charge receiving special attention in light of revelations that at least two other Australians had trained at the al-Faruq camp with Thomas but both remain at liberty.¹⁸ On his return to Australia Thomas had actively sought media attention, in fact he revelled in it, and he would have been an easy target for Australia's well-equipped intelligence services had they had any suspicions that he might again become involved with terrorist groups. Coupled with the farcical prohibition on contacting terrorists such as bin Laden, the move led many Muslim groups to view the Control Order as vindictive and designed to send a message to them that the government would and could subvert their own rights under law. Adding to this general perception were comments by the Prime Minister made during the heat of the public debate wherein he singled out Muslim Australians as a community that refused to integrate with mainstream Australian society.¹⁹

This was not the first time that Howard had publicly questioned Australian Muslims' loyalty to the country or their ability to integrate. Indeed, such attacks have become a leitmotif of his political style since 9/11. However, rather than dismissing the Prime Minister's comments as political rhetoric, it is possible to view these comments, along with similar statements by other senior government ministers and the mainstream media, as contributing to the emergence of a discursive environment marked by a widening schism between Muslim and non-Muslim Australians. Within this environment, in which Muslim Australians have been deliberately portrayed as objects of distrust and fear, there is emerging a bifurcated democratic space in which non-Muslim Australians are spared the abrogations of civil liberties carried by the new counter-terrorism laws which fall instead almost exclusively on Muslims. It was several hundred mainly Afghani and Middle Eastern asylum seekers who had arrived in Australian waters throughout the weeks immediately preceding and after 9/11 who provided the first targets for the Howard government's demonisation strategy. Despite claims from the then head of ASIO that none of the asylum seekers were considered terrorists, senior government ministers persisted in claiming the contrary –that some of the bedraggled and exhausted Muslim souls might have been deadly international terrorists–.²⁰ Especially distasteful for many Australians were subsequent revelations that the Prime Minister had deliberately misled them into believing that some of the asylum seekers had risked the lives of their children by throwing them into the ocean in an attempt to blackmail the authorities into allowing them entry into Australia.²¹ Public fears and revulsion caused by these claims created a political mood ripe for Howard to exploit to his own advantage, which he did through the introduction of laws requiring the mandatory detention of the asylum seekers in off-shore holding facilities. Almost all of those Muslim asylum seekers the Prime Minister charged with being potential terrorists and child killers have had their claims for refugee status verified and have now been resettled, and yet Howard continues to stand by his remarks.

The simplistic idea that the threat of terrorism is rooted in religion, and not in the capacity for different forms of cultural, political and social alienation to foster a particular interpretation of religion, is encoded quite clearly into the rhetoric of the Australian government and is also reflected in the assumptions that have informed its policies. For Howard, like Bush, terrorism springs from the human capacity for jealousy and evil. It is a metaphysical phenomenon rather than a form of human agency rooted in real human experience. This oversimplified analysis is also articulated clearly in the Australian government's White Paper, which explains terrorist behaviour in the following terms,

¹⁸ Ian Munro, "Terror Trainees" Walk Free', *The (Melbourne) Age*, 31 August 2006, p. 1.

¹⁹ Richard Kerbaj, 'PM Tells Muslims to Learn English', *The Australian*, 1 September 2006, p. 1.

²⁰ William Maley, 'Asylum Seekers in Australia's International Relations', *Australian Journal of International Affairs*, vol. 57, nr 1, 2003, p. 187-202; Don McMaster, 'Asylum Seekers and the Insecurity of a Nation', *Australian Journal of International Affairs*, vol. 56, nr 2, 2002, p. 279-290.

²¹ See David Marr and Marian Wilkinson, *Dark Victory*, Allen and Unwin, St Leonards, 2003.

'[t]hey [the terrorists] feel threatened by our values and the place we take in the world. Our international alliances and our robust foreign policy are opportunistically invoked in the name of their 'war'. Our conspicuous example of economic and social prosperity is deemed a threat to their cause. We hear our values and social fabric attacked.'²²

In this way, the combination of a discourse of fear and a harder-edged state risks creating a social environment wherein Muslim Australians are marginalised from mainstream society and where, as a result, they begin to replicate the defensive patterns of social formation that we have seen in some parts of Western Europe. Until recently Australia has avoided the religious and cultural separation that often occurs in other Western countries, and it is perhaps for this reason that the extremisms that have taken root in areas of London, Leeds, Paris or Marseilles have been almost non-existent in Australia. That this is now changing and such extremisms are taking root is not simply a result of the inevitable spread of these ideologies to the far Southern Hemisphere, it is happening also because the Howard government's approach to counter-terrorism has inadvertently helped to ready the ground.

Conclusion

Indeed, the Howard government's success in presenting itself as having much better credentials for combating the threat of terrorism has been a defining feature of counter-terrorism debates within Australia since 9/11 –a five-year interregnum during which the Howard government has been successfully returned to office at two elections–. Through a combination of the power of incumbency and a deft manipulation of media reporting and public fear, Howard has secured a virtual monopoly on the issue of counter-terrorism. He has skilfully crafted a political environment in which opposition to his initiatives on counter-terrorism is cast as irresponsible and even unpatriotic. He has been especially successful in manipulating the public's sense of a 'crisis' through the selective release of intelligence data and carefully crafted public comments that are designed to feed or assuage public fears, depending on the agenda he wishes to run at the time, and to invite media speculation in ways that steer public discussion towards his own preferred policy options.

In this environment, the opposition Labor Party and the smaller groupings (the latter represented mainly in the upper house of Australia's bicameral parliament) have been reluctant to criticise key aspects of the government's counter-terrorism policies out of a concern that the public will see such criticism as under-estimating the threat, being 'soft' on terrorists or as being prepared to jeopardise Australia's security in attempt to appease the cultural sensitivities of ethnic minorities. The net result has been a generally poor standard of public debate on the efficacy of the government's counter-terrorism initiatives and on the extent to which they might compromise key principles of Australian democracy.

Especially dangerous is the capacity for Australia's new counter-terrorism regime, applied in a social atmosphere marked by a broad-based fear of Islam as a religion and of Muslim Australians in particular, to undermine the health of Australia's diverse multicultural society. The importance of multiculturalism as a weapon in Australia's counter-terrorism arsenal is under-appreciated by the federal government. Amidst much of the hysteria surrounding events in New York, Bali, Madrid and London, Australians have lost sight of the fact that it has not been the Australian police and intelligence services alone that have foiled home-grown terrorist plots: in almost every successful operation the starting point has been information volunteered to the authorities by Muslim Australians acting as would

²² Australian Government, *Transnational Terrorism: The Threat to Australia*, Commonwealth of Australia, Canberra, 2004, p. xi.

any other good citizen. As a reward for their civic-mindedness Australian Muslims have been vilified and targeted by the increasingly heavy hand of government. The warning signs are clear: Canberra's poorly calibrated approach to counter-terrorism risks generating the very type of social pathologies that it seeks to avoid.