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Governance and Evidence Based Policy under a National Security Framework

Marcus Wigan
Oxford Systematics

Professor Emeritus Napier University Edinburgh
Professorial Fellow in Civil Engineering and Partner GAMUT University of Melbourne Australia
Visiting Professor: Imperial College London

Oxsys@optusnet.com.au



Oxford
Systematics



Directions

- Evidence based policy – what is it?
- Why does it matter?
- Relationships with power asymmetries
- Policy based evidence
- Contestability
- Trust
- Links to Governance models
- Broader links and trends to address





Evidence based policy

- **Analytical and data supported cases are no essential for policy interventions**
- **These may still only be simply a hurdle requirement for access ...**
- **All systems can be undermined- the UK issue is now**
 - **policy based evidence**
 - **limited scope of briefs and alternatives**
 - **raw editing out of unwelcome conclusions**
 - **makes contestability a major priority for the community**
- **Adding contestability to 'evidence based' policy causes a major chill at top levels of UK civil service**





Harding (2008) UK experiences

“Experience with evidence-based policymaking in Britain raises doubts about such claims. The British experience led to the term “policy-based evidence”, to describe the end result where government agencies filtered out information that was inconsistent with government policy”.

Unfortunately this is well matched to the Eddington East West Melbourne Connection Study (\$20bn of infrastructure investment with a CBR < 1.0.. Due to the careful constrained locationally and in task definition ... even Eddington complained afterwards about this... a few weeks ago





Governance and security

- **Intrinsic tensions between disclosure and operations**
- **Lack of transparency undermines credibility**
- **AntiTerror laws have tested this strongly (haneef etc0**
- **The principles of common law and of intelligence are in basic conflict**
- **The severity of information and contestability is worryng**
- **US has constitutional contestability(now realised in the Supreme Court ruling over Guatanamo bay hearings)**
- **Australia doesn't... gaps in constitution plus recent cases**





First part leads us to...

- **The social impacts of governance and transparency are considerably wider than that implied by the more extreme cases, but, once security is an issue..**
- **The necessary inverse links between transparency and professionalism that necessarily in this area are also applicable to a much wider range of situations than the publicly promoted extreme ones**
- **These relationships are heavily constrained by the information management aspects of security and thus are increasingly circumscribed while penalties rise and this test community trust when failures occur**





Imbalances in community perception

- **Commercial bodies have exploited the Privacy Act to obfuscate access to even ones own information**
- **Close parallels to government behaviours with Fol**
- **The migration of such attitudes is enabled in part by ‘antiterror’ extremism and Acts**
- **Governance of Privacy itself is deficient (see UK too)**





Once the stakes reach National Security

- 1) The evidence base is not available for review
- 2) The process itself is not transparent
- 3) The external accountability is unclear or absent; and
- 4) The power imbalances are so large and the risks may be commensurately substantial





Conflict of perspective who is accountable?

When intelligence operations are undertaken the goals are to establish a probability of a serious event, and to take pre-emptive action before it occurs. The criminal sanctions that would then apply are not easily handled when the subject of public adversarial legal resolution with strict rules of evidence and disclosure.





How can we have good governance when

- **The process bears only a passing procedural resemblance to the conventional public processes of law. The offences are in the main based solely on circumstantial evidence: i.e. indications of a likely situation.**
- **Usually no crime has yet been committed, although a range of events have now been criminalized in support of the prospective security mechanisms.**
- **Under the Anti-Terror laws now in effect in Australia access to the evidence on which offences are deemed to have occurred (or asserted would probably occur) is strictly quarantined, and asymmetrically available to the two parties.**





Shifting standards of acceptability

- **The extreme example of National Security and Anti-Terrorist Acts, is part of a broader social movement which is steadily limiting contestability, and thus reducing the credibility of evidence based policy over a broader front, as the standards both of transparency for criminalisation of behaviour (or prospective expectations of behaviours) and the ability to contest such situation have both shifted substantially.**
- **This shift in government and commercial measures to constrain and control social behaviour and strengthen powers (including covert surveillance) appears to be spreading into the civil domain, as the dulled public sensitivity shift induced by the Anti-Terror laws becomes more established.**





Trade power related piggybacking

- A novel form of ‘function creep’ – let us call it ‘creeping corrosion of civil society’ - is the intellectual property regime imported as a result of the recent US Australia Free Trade Agreement. The Digital Copyright Millennium Act (DCMA)
- Importing the DCMA required criminalisation of intellectual property violation, thus extending the reach of criminal law to almost every person in the country for what are unambiguously civil offences at that level. The massive resources of the IP holders (in most cases very large commercial bodies in the entertainment industry) are thus arrayed against individuals with the threat of a criminal record (now an almost irremovable block on future prospects of an individual)...





ACTA as commercial piggyback ..

- **ACTA (Anti-Counterfeiting Trade Agreement)** (Department of Foreign Affairs and Trade, 2007). Once a leak (WikiLeaks, 2007a) of what was being negotiated secretly appeared, the response was very strong.
- **The lack of contestability of this matter is becoming of widespread public concern as much due to the secrecy and lack of transparency (WikiLeaks, 2007b) that it has been progressed. The more extreme comments made about ACTA are balanced to some extent by the cool briefing on the relevant Australian Government website.**
- **Nevertheless it invokes criminal sanctions on trivial deemed offences- on the back of the Au-Us FTA**





Trust is strained by poor governance..

‘At the heart of good .. democracy is a bond of trust between the community and the people who represent them – a bond which depends greatly on the conduct of those people. The public have a right to expect the highest standards of behaviour from their representatives and those responsible for the delivery of .. public services’.

Uk Standards Board





Conclusions

- **Some adjustments to the balances between information power and contestability are needed**
- **The governance processes are undermined by legal powers such as those in the AntiTerro laws**
- **The AntiTerror approaches in law and publicity have infected trade negotiations**
- **Criminal sanctions, secrecy and intelligence style actions are now creeping into 'normal' negotiations between counties**
- **Even the facts of such negotiation is being kept away from any scrutiny**
- **A common factor is an extension of the interests and commercial powers of US entertainment industries**

