

# Australia and the 'War against Terrorism': Terrorism, National Security and Human Rights

Mark Rix

Graduate School of Business University of Wollongong

- Considers whether in the 'war against terrorism' national security is eroded or strengthened by weakening or removing the human rights of citizens, residents and others
- Begins with the view that national security is founded upon the protection of the security and liberty of the individual from criminal and violent acts, including terrorist attacks
- Governments are therefore compelled to use the machinery of the state to protect the individual and the nation from such attacks
- However, the paper is based on another, equally important, assumption
- This is that the defence of national security requires individuals to be protected from the arbitrary exercise of state power
- And, that this is so even in situations where the state claims to be protecting national security *and* the security and liberty of the individual

## Australia and the 'War against Terrorism': Terrorism, National Security and Human Rights

- The paper investigates whether Australia requires a new conception of national security
  - To better equip it to meet the challenges it faces in the age of terror than the conventional conception
- In the conventional view, a major challenge faced by the Government is to balance its responsibility to protect the community from terrorist attack
  - With its equally important responsibility to respect individual human rights and uphold the rule of law
- According to this view, sometimes the defence of national security requires human rights and the rule of law to be relegated to a much lower priority
  - It thus has a strong tendency to relegate the security and liberty of the person to a secondary consideration after state security
- Instead, the paper argues that a new conception of national security is required which embeds human rights and the rule of law in national security
- On this view, the protection of human rights and the rule of law *is* effectively the defence of national security

## Australia and the 'War against Terrorism': Terrorism, National Security and Human Rights

- The paper focuses on two of the most important and far-reaching pieces of anti-terrorism legislation, the ASIO Act (2003) and the Anti-Terrorism Act (No. 2) 2005
  - and the exceptional measures included in them
- The exceptional measures include removal of the right to remain silent, reversal of the onus of proof, and the detention in secret of non-suspects merely for questioning and intelligence-gathering purposes
- The two Acts also place tight restrictions on the disclosure of information about cases in which persons are held in custody by the security agencies
  - Thus making it extremely difficult for independent legal representatives to exercise the right of habeas corpus on behalf of detained persons
  - And from mounting media and advocacy campaigns around these cases
- The Government maintains that the exceptional measures provide ASIO and the Australian Federal Police with the necessary means to protect Australia from terrorist attacks

## Australia and the 'War against Terrorism': Terrorism, National Security and Human Rights

- It is almost impossible to gauge whether Australia's anti-terrorism legislation has been effective in protecting the country from terrorist attack
- This is because of the secrecy surrounding the issues of whether Australia currently faces a terrorist threat and, if so, the nature and imminence of that threat
- In view of this secrecy, little can be said about any terrorist threat that Australia may face in the future
- It is thus impossible to say whether the legislation is actually required to protect Australia's national security from the threat of terrorism
- This is more than unsettling in light of the claim by Prime Minister Howard that the war on terror will "go for years" or President Bush that it will be of "uncertain duration"
- This means that the exceptional measures will also either go for years or be of uncertain duration

## Australia and the 'War against Terrorism': Terrorism, National Security and Human Rights

- Australia's anti-terrorism legislation which does not respect the rule of law and the human and other rights it protects cannot claim to be able to offer an effective defence of the individual or the nation
  - Against threats and attacks by terrorists who have nothing but contempt for these rights and the rule of law
- The absence of a Bill or Charter of Rights has left Australians highly vulnerable to arbitrary and excessive state power
- Not only is such an instrument urgently required
  - So also but even more fundamentally is a new conception of national security that will help to ensure that the country's national security is fully protected in the age of terror
- A conception which includes the security and liberty of the person from terrorist attack *and* from state repression as two of its indivisible and absolutely equal aspects would go a long way to providing such protection