

# LAWYERING, DISSENT AND THE SURVEILLANCE STATE

At a time when 'conservative' government is the well-spring of radical change, the role of lawyers in standing up for a just society includes, perhaps counter-intuitively, the need to defend the status quo. 'Establishment' values such as the rule of law, the right to privacy, and the presumption of innocence are being legislated away in the name of the 'war on terror', or subject to serious infringement by the development and deployment of surveillance technology in a variety of settings.

The role of lawyers in educating and persuading the public about the significance of democratic values, and what is being put at risk through measures such as the federal government's anti-terrorism legislation, is especially important where there is limited parliamentary oversight of the changes put forward and muted challenge by the federal opposition. Ironically, it is opposition within the ranks of government, led by rebel backbenchers such as Petrou Georgiou and Malcolm Turnbull, self-consciously drawing on 'liberal' values, which has resulted in limited changes to the government's program.

The anti-terrorism legislation confers significant tracking and surveillance powers on security and police agencies such as ASIO and the AFP, as described by Annie Pettitt and Vicki Sentas in their brief. Importantly, the grant of these powers is accompanied by very limited accountability mechanisms, judicial or otherwise. This absence of transparency and accountability on the part of such agencies is deeply concerning. It was ASIO agents who, in the weeks after 11 September 2001, twice raided the home of a 'terror suspect'. The warrant, however, had an incorrect address. The wronged individual sued the Commonwealth, which recently settled the case for an undisclosed amount. This case was widely reported. It is the sort of case we might never find out about under the secrecy provisions of the anti-terrorism legislation.

The lack of accountability and transparency in the exercise of powers granted under the anti-terrorism legislation follows a well-established pattern. For some years now the federal Government has been attempting to reduce judicial oversight of immigration decisions. This has reflected and reinforced a culture of secretive decision-making, under successive Immigration Ministers, which has allowed Australian citizens to be deported, while senior public officials overseeing this systemic breakdown in due process have emerged unscathed in alternative, high level government sinecure.

It should not be surprising that in the present climate, employing the rhetoric of the need to protect our borders against 'undesirable' persons and as a counter-terrorist measure, the Prime Minister and Queensland Premier have floated the idea of introducing a national identity card, reviving memories of the ill-fated 'Australia Card' proposal of the late 1980s. Such a proposal is currently making its way through the UK Parliament. As Keith Ewing suggests in his brief on the UK development, the introduction of a national identity card represents a further 'prize' in the 'war on civil liberties', creating the risk of misuse of a national identity database, and the potential for use as a means of control and harassment.

Apart from the ruthless exploitation of favourable political circumstance, hard won rights from a previous era, perhaps taken for granted, are also increasingly threatened by advances in surveillance technology. Developments in overt and covert internet, email, audio and video tracking and surveillance are occurring so rapidly that regulation is struggling to keep pace. Commonwealth telecommunications legislation in this area has been found to be 'complicated, confusing and dysfunctional', with inadequate controls on access to stored communications. State legislation provides few controls on surveillance of workers by employers, raising important concerns, addressed in a recent report by the Victorian Law Reform Commission, about threats to the autonomy and dignity of workers, and the lack of transparency and accountability in how these surveillance powers are utilised. And surveillance does not stop at the office door or factory floor. As Robert Chalmers points out in his article, surveillance by companies gathering information on our buying and recreation practices is highly sophisticated, used to make better consumer citizens of us all. Information collected in corporate databases creates the risk of serious privacy breaches, as well as the possibility of identity theft.

In the face of these challenges to civil liberties and democratic values, whether politically or technologically opportunistic, can we at least exercise a 'right to protest' to raise a dissenting chorus of voices? Daniel McGlone argues that the right to protest is a fragile one, if it exists at all, and may be seriously compromised by measures such as the federal government's anti-terrorism legislation.

If important rights are increasingly being compromised by government, can we rely on a degree of social responsibility being exercised by those institutions, apart from government, wielding significant power in the community? In relation to corporations, the evidence from two of the articles in this issue is not encouraging. Therese Wilson charts the legal impediments to corporations engaging in any conduct, community-orientated or otherwise, which does not also improve returns for shareholders. In response to this article, it could be asked why a corporation would exercise restraint in matters of privacy and surveillance, whether as an employer or retailer, if this compromises the bottom line. Rob White provides a case example of a large, well-resourced corporation manipulating the legal system to stifle the dissenting voices of a number of individual environmentalists, protesters and Green MPs challenging the corporation's wood chipping activities.

How can lawyers meet the challenges of the surveillance state briefly surveyed here? To end on an optimistic note, we have included interviews with two Queensland lawyers who, in different ways and at different times, have used their legal expertise to advance issues of civil liberties and social justice.

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