GlobalResearch
Center for Research on Globalization

Detained for Terror: Proposed Indefinite Detention Laws in Australia

By Dr. Binoy Kampmark
Global Research, August 08, 2016

Region: Oceania
Theme: Law and Justice, Police State & Civil Rights, Terrorism

The reactive dimension of global politics – at least at the level of many states – is a broader statement about how far things have rotted. Nothing is more reactive than a State's response to terrorism, actual or perceived. The pure evidentiary dimension is neglected in favour of procedural fluff and unmeasurable contingencies. The box-ticking bureaucrat takes precedence over the judicial officer.

The Turnbull government has come down rather heavily in its response to a spate of attacks in France and Germany, deciding that it is time that something be done in the face of this supposed global madness. The prime minister Malcolm Turnbull decided to press the issue in a letter to state leaders urging for the creation of a national regime to indefinitely detain terrorists even after the point of serving their sentence.

Civil liberties lawyer Greg Barnes has made the point that such assessments are fundamentally specious. They lack coherence, dimension and remain presumptuous. The chances, therefore, of a person locked up for years on terrorist charges then engaging in acts of murderous mayhem on leaving, did not compute.

The point is an ominous one for at least 13 prisoners convicted over what has been said to be Australia's largest terrorism plot in New South Wales and Victoria. After concluding their sentences, the individuals involved in the Pendennis network, led by Melbourne cleric Abdul Benbrika, would have little guarantee of release.

Buttering in the face of such extralegal nonsense is always deemed necessary. The Commonwealth Attorney-General George Brandis explained over the weekend that, "All of the attorneys, as the first law officers of our respective jurisdictions, understand the gravity of the threat that terrorism poses to Australia and its people."[1]

What Brandis fails to mention is that such officers also owe it to the legal profession, its servants and the citizens of a country, to reassuringly ensure that liberties are not unduly tarnished, let alone entirely abandoned, as is being suggested by these measures. The insolence of office, one so gleefully embraced, comes to mind.

With that merry insolence, the views of such officers are indifferent to habeas corpus, and the notion that a person who does time has (and here is a novelty), actually discharged the burdens placed upon him for such offences. Terrorism is simply being rendered, rather nonsensically, exceptional, an offence that demands special treatment.

If detention were to be infinite, the hierarchy of punishment would have to be abandoned in favour of an arbitrary notion of convict and permanently incarcerate if you can. This would

effectively eliminate the notion of sentencing as having any value bringing, instead, the fictional notion of a hypothetical terrorist attack to the fray.

Instead of expressing outrage at the heavy-handed, not to mention clumsy approach of the Commonwealth government, the NSW Attorney-General Gabrielle Upton, congratulated Turnbull "on this initiative. The stakes are high for NSW: make no mistake. We have more people in our prisons than any other state that would be subject to these laws."[2] All the more reason, one would have thought, for not endorsing such regulations.

Upton's shoddy reasoning pivots on mere words: "terrorism" qualifies for blanket imprisonment and detention. Terrorism posed such a risk to the community it meant that no one could be "complacent".

The situation becomes even more peculiar given the observations by such individuals a Greg Moriarty, national counter-terrorism coordinator and evidently self-proclaimed amateur penologist. All agencies in the business of "national counter-terrorism" were "committed to preventing people from becoming terrorists; to disrupting and diverting people who are heading down a path towards violent extremism; and to rehabilitating people who are convicted for terrorism offences."

But for all such noble ventures, there would always be those eggs that would stay rotten, where it was "not possible, or where there are significant areas of doubt". This mealy-mouthed assertion is a neat illustration about executive paranoia, enabling people to be detained at the pleasure of the sovereign.

In Australia's legal soil, noxious precedents flower that enable the Attorney-Generals at all levels of government to push for an agenda hostile to the detainee. In mental health administration, there are those permanently kept away from trial (and hence a genuine testing of their cases) for reasons of psychic disturbance.

The High Court has also done its bit to add to the regulatory framework of indefinite detention by arguing that stateless individuals can be indefinitely kept at the discretion of the State, a sort of administrative purgatory where risk from the detainee might manifest. The case of Ahmed Al-Kateb remains something of a nightmare in that regard, an outcome premised on the shallow notion that non-judicial detention is entirely permissible provided it be for the purposes of removal.[3]

There was just one problem for Al-Kateb: his argument that any detention could not be lawful if it has ceased to have a valid basis for removal from Australia was dismissed with more than a bit of contempt.

There are also those deemed genuine refugees under the United Nations Refugee Convention who are not permitted out of Australia's brutal detention regime because they have been assessed, courtesy of the domestic espionage network ASIO, as a security risk. All that, despite having no formal charges level. The proposed change by Turnbull, to that end, remains dangerously, and lamentably consistent with enlarged and unaccountable executive power.

Dr. Binoy Kampmark was a Commonwealth Scholar at Selwyn College, Cambridge. He lectures at RMIT University, Melbourne. Email: bkampmark@gmail.com

Notes

[1] http://www.abc.net.au/pm/content/2016/s4514207.htm?site=darwin
[2] http://www.abc.net.au/pm/content/2016/s4514207.htm?site=darwin
[3] http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2004/37.html?stem=0&synonyms=-0&query=al-kateb

---

Articles by: Dr. Binoy Kampmark