

Militarising Civilian Life: Australia, Policing and Terrorism

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It is far from unusual in recent times: a spate of terrorist activity, followed by police seemingly agog, then the call for cavalry, usually in the form of military forces to guard vital installations and furnish the public with a reassuring presence. Unfortunately, such moves tend to take place long after the horse has bolted, an ineffectual measure in terms of combating terrorism but pernicious in terms of dealing with distinctions policing.

Australia's Turnbull government has promised new powers under a national security review conducted last year that will grant the Australian army powers to kill terror suspects on sight. This is not all: the actual militarisation of Australian police personnel is set to take place with specialists from the ADF embedded in various teams. Training from elite SAS personnel is also slated to take place.

These measures are far from reassuring, suggesting that the military aspect of policing has been given not just a jolt but a terrific heave ho. The Prime Minister, showing he is far from mellowing in his role on the subject of defusing fear, insists on the authoritarian prerogative of streamlining and trimming the interaction between military and policing functions. Cut the strings, the heavy bound red tape, and the world will be a safe place.



Australian PM Malcolm Turnbull

According to **Malcolm Turnbull**,

“The overhaul will make it easier for Defence to work together with federal, state and territory police in the event of a terrorist incident. State and territory police forces remain the best first response to terrorist incidents immediately after an attack starts.”[1]

Distinctions between the policing element of a state, and its military, are worth having. One,

working within the boundaries of the law, targets and prevents crime; the other, focuses on the defence of the realm. These points are far from being the same thing. But the terrorist genie, floating about with menace, has been used to render these points theoretical, which is more than just a crying shame.

In another conspicuous area, military and defence functions have been obliterated to cope with refugee and asylum seeker arrivals by boat. Civilian functions more akin to traditional policing and processing have become the purview of the military, a move that was significantly advanced during the years of the Howard government. The signalling shot there was the deployment in August 2001 of the SAS against the Norwegian vessel, the MV Tampa. Its apotheosis is Operation Sovereign Borders.

Theories on how the Australian military interact with policing functions are far from sophisticated. There is, for instance, no equivalent Posse Comitatus Act, an 1878 US initiative passed by a Democratic-led Congress after troops were deployed two years prior ostensibly to maintain order at various polling places in southern states.

The Democrats were convinced that the measure was designed to fix the election for Republican Rutherford B. Hayes and pushed for provisions that would limit the role of the US military in terms of operating in civilian spaces, or to “execute the laws”.

This did not mean, of course, that the PCA would not be assailed with grubby hands indifferent to civil liberties. **President Bill Clinton** did his very best with the Anti-Terrorism and Effective Death Act of 1996, part of an omnibus of crime statutes that effectively pulled the carpet of law enforcement from under the GOP law-and-order hawks.

While Clinton did not get his wish initially (the final version did not contain an abolition of Posse Comitatus in terms of working with police), the writing was left to dry on the wall. The sheer power and pseudo-military aspects of much in current US policing has arguably rendered neat distinctions redundant.

The Australian constitution does provide for the following:

“The Commonwealth shall protect every state against invasion and, on the application of the Executive Government of the State, against domestic violence.”

Once declared by the Governor-General, “Permanent Forces” may be called out, with “Emergency Forces and Reserve Forces” sought in the event that numbers are insufficient.

In the past, Australia’s military has become the fall-back option for authorities, called upon as a grand clearing house to supply substitute civilian functions. At points, the authorities in Canberra have been cautious to blend military matters with civilian disputes.

In 1997, the National Farmers Federation urged **Prime Minister John Howard** to use troops to forcibly “reform” the waterfront and keep the docks running during a strike.

“I don’t contemplate,” came Howard’s response, “the use of the military in civilian disputes. I’ve never advocated the use of troops.”[2]

The NFF's request was perhaps understandable, given that a Labor prime minister, **Bob Hawke**, had used military personnel and material to replace lost manpower during the famed wage dispute of Australian pilots in 1989.

What is being contemplated in these new measures by Turnbull is the deployment of lethal measures and military control over civilian spaces. The ADF, as with other military arms, can provide heavy lifting in the event of natural disaster, emergencies and the like, but deploying it as a de facto police force is setting a vicious cat amongst the pigeons.

Conflating police and military functions is not only an insidious overreach, but blurs assumptions about justice and law enforcement. As a US federal court put it,

“Military personnel must be trained to operate under circumstances where the protection of constitutional freedoms cannot receive the consideration needed in order to assure their preservation.”[3]

Even in the absence of a Posse Comitatus provision in Australia, the tendency to throw the book of evidence and prosecution out and favour summary rough handling, even execution in such cases, is genuine. In this sense, the Australian government risks pushing its domestic arena further down the pathway of a militarisation with grave consequences.

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Notes

[1] <http://www.news.com.au/national/australian-army-to-take-terror-attack-lead-not-local-police-under-malcolm-turnbull-overhaul/news-story/6d4301a99b44a4d004db0a43a5e4f9ea>

[2] http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9798/98rp08#APPENDIXF

[3] <https://www.cato.org/publications/commentary/what-posse-comitatus>

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