

Hate Speech, Sedition and the War on Terror

*Simon Bronitt**

Reviving sedition and the War on Terror: a new hate speech crime?

In Australia, the ‘first wave’ of law reform after the 9/11 terrorist attacks in 2001 was focused on the core offences dealing with terrorist acts and proscribing terrorist organisations (Bronitt and McSherry 2005: ch 15). In the wake of the subsequent Madrid and London bombings, attention shifted to monitoring and disrupting the activities of local ‘suspect’ communities.¹ Reforms enacted in late 2005 were aimed at the perceived root causes of terrorism, creating new powers to impose control orders and preventative detention.² The package of counter-terrorism measures also contained provisions dealing with those organisations and individuals who advocate terrorist acts. The definition of a proscribed terrorist organisation was broadened to include an organisation which ‘advocates’ the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).³ At the same time, the offence of sedition, which criminalises individuals who urge

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1 For an earlier study of the impact of anti-terrorism laws on these communities, see Hillyard (1993).

2 The Anti-Terrorism Bill (No 2) 2005 (Cth) was introduced into the House of the Representatives on 3 November 2005.

3 *Criminal Code* s 102.1(2). Under *Criminal Code* s 102.1(1A), an organisation ‘advocates’ the doing of a terrorist act if:

- (a) the organisation directly or indirectly counsels or urges the doing of a terrorist act; or
- (b) the organisation directly or indirectly provides instruction on the doing of a terrorist act; or
- (c) the organisation directly praises the doing of a terrorist act ...

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racist violence against minority groups (a point explored in other chapters in this collection). However, enacting exceptional measures, such as sedition offences, is unlikely to counter these trends, or serve as an effective instrument of either counter-terrorism or anti-discrimination law and policy.

References

- ABC Television, 3 November 2005, 'Government Introduces Anti-Terrorism Legislation', *The 7.30 Report* <<http://www.abc.net.au/7.30/content/2005/s1497388.htm>>.
- ABC Television, 13 March 2006, 'Riot and Revenge', *Four Corners* <<http://www.abc.net.au/4corners/content/2006/s1590953.htm>>.
- (ALRC) Australian Law Reform Commission, 2006, *Fighting Words: A Review of Sedition Laws in Australia*, Report No 104.
- Anand, S, 1997, 'Expressions of Racial Hatred and Criminal Law: Proposals for Reform' 40 *Criminal Law Quarterly* 215.
- Ashworth, A, 2006, *Principles of Criminal Law*, 5th edn, Oxford University Press, Oxford.
- Bottomley, S, and Bronitt, S, 2006, *Law in Context*, 3rd edn, Federation Press, Sydney.
- Bronitt, S, and McSherry, B, 2001, *Principles of Criminal Law*, Law Book Company, Sydney.
- Bronitt, S, and McSherry, B, 2005, *Principles of Criminal Law*, 2nd edn, Law Book Company, Sydney.
- Bronitt, S, and Stellios, J, 'Sedition, Security and Human Rights: "Unbalanced" Law Reform in the War on Terror' (2006) 30(3) *Melbourne University Law Review* 923.
- Campbell, E, and Whitmore, H, 1973, *Freedom in Australia*, revised edn, Sydney University Press, Sydney.
- Centre for Multicultural and Community Development, 2006, *Responding to Cronulla: Rethinking Multiculturalism*, University of the Sunshine Coast and Multi-Faith Centre, Griffith University, <<http://www.usc.edu.au/NR/rdonlyres/F22784F0-05D0-45E1-B984-B75A7F1D2467/0/CronullaSymposiumProceedingsFinal.pdf>>.
- Cunneen C, Fraser, D, and Tomsen, S (eds), 1997, *Faces of Hate – Hate Crime in Australia*, Federation Press, Sydney.
- Douglas, R, 2004, 'The Ambiguity of Sedition: The Trials of William Fardon Burns' 9 *Australian Journal of Legal History* 227.
- Flahvin, A, 1995, 'Can Legislation Prohibiting Hate Speech be Justified in Light of Free Speech Principles' 18 *University of New South Wales Law Journal* 327.
- Gani, M, 2005, 'Codifying the Criminal Law: Implications for Interpretation' 29 *Criminal Law Journal* 264.
- Gibbs, H, Watson, R, and Menzies, A, 1988, *Review of Commonwealth Criminal Law: Offences Relating to the Security and Defence of the Commonwealth*, Discussion Paper No 8.

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- Gibbs, H, Watson, R, and Menzies, A, 1991, *Review of Commonwealth Criminal Law: Fifth Interim Report*, Commonwealth Attorney-General's Department, Canberra.
- Gibson, J, and O'Malley, N, 19 January 2007, 'Jews Attacked in Sheik's Video Nasty', *Sydney Morning Herald* (Sydney), 1.
- Goode, MR, 2002, 'Constructing Criminal Law Reform and the Model Criminal Code' 26 *Criminal Law Journal* 152.
- Gordon, P, 1994, 'Racist Harassment and Violence', in Stanko, E (ed), *Perspectives on Violence*, Quartet Books, London.
- Head, M, 1979, 'Sedition – Is the Star Chamber Dead?' 3 *Criminal Law Journal* 89.
- Hillyard, P, 1993, *Suspect Community: People's Experiences of the Prevention of Terrorism Acts in Britain*, Pluto Press, London.
- (HREOC) Human Rights and Equal Opportunity Commission, 1991, *Racist Violence: Report of the National Inquiry into Racist Violence*.
- (HREOC) Human Rights and Equal Opportunity Commission, 2004, *Isma – Listen: National Consultations on Eliminating Prejudice against Arab and Muslim Australians*.
- McNamara, L, and Solomon, T, 1996, 'The Commonwealth Racial Hatred Act 1995: Achievement or Disappointment?' 18 *Adelaide Law Review* 259.
- McNamara, L, 2002, *Regulating Racism: Racial Vilification Laws in Australia*, Sydney Institute of Criminology, Sydney.
- Maher, LW, 1992, 'The Use and Abuse of Sedition' 14 *Sydney Law Review* 287.
- Maher, LW, 1994, 'Dissent, Disloyalty and Disaffection: Australia's Last Cold War Sedition Case' 16 *Adelaide Law Review* 1.
- Meagher, D, 2004a, 'So Far So Good?: A Critical Evaluation of Racial Vilification Laws in Australia' 32 *Federal Law Review* 225.
- Meagher, D, 2004b, 'What Is "Political Communication"? The Rationale and Scope of the Implied Freedom of Political Communication' 28 *Melbourne University Law Review* 438.
- Meagher, D, 2006, 'So Far No Good: The Regulatory Failure of Criminal Racial Vilification Laws in Australia' 17(3) *Public Law Review* 209.
- Sadurski, W, 1994, 'Racial Vilification, Psychic Harm and Affirmative Action', in Campbell, T, and Sadurski, W (eds), *Freedom of Communication*, Dartmouth, Aldershot.
- Stephen, Sir JF, 1887, *A Digest of the Criminal Law (Crimes and Punishments)* 4th edn.
- Walters, M, 2005, 'Hate Crimes in Australia: Introducing Punishment Enhancers' 29 *Criminal Law Journal* 201.
- White, B, 1997, 'The Case for Criminal and Civil Sanctions in Queensland's Racial Vilification Legislation' 13 *Queensland University of Technology Law Journal* 235.
- Wolpe, B, 24 November 2005, 'Democracy Endangered if War on Terrorism Gags the Press', *Sydney Morning Herald* (Sydney), 15.
- Woods, GD, 2002, *A History of Criminal Law in New South Wales*, Federation Press, Sydney.
- Zanghellini, A, 2003, 'Jurisprudential Foundations for Anti-Vilification Laws: The Relevance of Speech Act and Foucauldian Theory' 27 *Melbourne University Law Review* 458.