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Editorial

This issue of *Script and Print* contains papers from a mixture of sources, some stretching back to the September 2003 BSANZ conference in Canberra ("Government and Publishing"). Future issues will contain more papers from the Canberra conference as well as from more recent conferences, such as the October 2004 conference in Melbourne ("Hunters and Gatherers: Building Collections of Books") and the October 2006 conference in Adelaide ("Leaving Impressions—Planting Ideas.") Each issue will also contain, as here, new essays, notes and reviews as well as opinion pieces; we can only hope that future issues rarely require obituaries.

Long-term members of the Society will recall that opinion pieces were an entertaining feature in the early issues of the *BSANZ Bulletin*. I was prompted to commission the piece in this issue by Prof. George Williams and Edwina MacDonald when a member of our editorial team became tangentially involved in a controversy concerning the availability of two Islamic books. As Curator of Special Collections at Melbourne University, a collection that contains these books, Pam Pryde rapidly discovered the danger facing librarians and academics as a result of the open-ended drafting of the 2005 sedition laws. In future issues, I hope to present essays on such subjects as the impact of new technologies on bibliographical research and on the changing theoretical models for understanding the various subjects embraced by the BSANZ. I also hope to revisit the subject of an opinion piece by Prof. Wallace Kirsop published in issue no. 2 (March 1971) of the *BSANZ Bulletin*: the "Future of Bibliographical Research and Teaching in Australia and New Zealand."

Readers seeking information on forthcoming opinion pieces, articles, notes and reviews, or details concerning those involved in producing this journal, should visit the editor's blog (http://scriptandprint.blogspot.com/).

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Academic Freedom and the "War on Terror"

George Williams & Edwina MacDonald

Australia's response to the "war on terror" is threatening academic freedom. Researchers run the risk of committing an offence and being gaoled, or being brought in for questioning by ASIO. While the risk of gaol is low, the lack of clarity in the law combined with its severe impact is leading to self-censorship.

Academic freedom is essential to the work of Australian universities. Their role in educating students and advancing human knowledge depends upon academics and students working and learning in an environment in which they can freely exchange ideas, challenge conventional wisdom and debate controversial issues.

While academic freedom is often stated in documents like in university collective agreements and codes of conduct, it has no generally accepted definition in Australia. At its minimum core, the freedom refers to a level of non-interference with an academic's teaching, researching and publishing activities. Beyond this, the freedom cannot be readily defined from existing practice, nor can the responsibilities and limitations that attach to it.

The protection of academic freedom

In some countries academic freedom is protected by legislation or even in a national constitution. For example, the New Zealand *Education Act 1989* and the *Constitution of the Republic of South Africa 1996* provide protections for academic freedom. By contrast, Australia does not protect academic freedom in its Constitution or by statute, nor does it have a national bill of rights from which it might be implied.

The protection of academic freedom in Australia is limited. Collective agreements provide the main protection, but this is vulnerable. Such agreements are subject to change in federal industrial law, are renegotiated every few years, vary from university to university (with many not referring to the freedom at all) and not all academics are subject to them. While there is the possibility of implying protection for academic freedom into employment contracts, this has yet to be tested and even if it did occur the level of academic freedom so implied may be minimal. Furthermore, any of these possibilities can be overridden by federal law. Such a law could displace the employment arrangements of a university or even any future recognition of academic freedom under State law.

Even though it has limited legal protection, academic freedom is still recognised in other ways. The current state of the law means that the freedom is mostly a set of conventions or assumptions for those who work in the university sector. As a result, academic freedom can be fragile and easy to breach. Its maintenance will often depend on the vigilance of those who work in universities and on the goodwill of those who have the power to undermine it.

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The terror laws

Prior to the 11 September 2001 attacks on the USA, Australia had little history of enacting laws aimed at terrorism, with only the Northern Territory having such a law. In the five years since the Commonwealth has made 37 new laws that directly deal with terrorism (an average of one new law every seven weeks).

The threat to academic freedom posed by the new terror laws is twofold. First, as a matter of law academics could during their research or teaching commit an offence and be gaoled, or brought in for questioning by ASIO. Secondly, while the legal risk of gaol is low, the lack of clarity in the scope of the law combined with its potentially severe impact can lead to self-censorship.

In the wake of the 7 July 2005 London bombings, the Federal Parliament enacted new sedition laws. The new offences include where a person urges "another person to overthrow by force or violence" the Constitution, a state, territory or Commonwealth government, or the authority of the Commonwealth government.

The law provides a defence for a person who acts in "good faith" in specified circumstances—pointing out errors in legislation, for example, or urging someone to attempt lawfully to bring about a change to a law, or publishing a report or commentary on a matter of public interest. The defence is limited and does not expressly include many forms of communication like artistic speech or academic or scientific discussion.

In cases where sedition laws do not apply, the government has been able to ban books on security grounds. In July 2006, the Classification Review Board banned, or "refused classification," for two Islamic books, Abdullah Yusuf Azzam's *Defence of the Muslim Lands* (1979) and *Join the Caravan* (1987), that encourage suicide bombing and call for Muslims to engage in acts of violence in Bosnia, Afghanistan and elsewhere. The Attorney-General referred these books, along with six others and one film, to the Board after the Classification Board gave them an unrestricted classification and both the Australian Federal Police and the Commonwealth Director of Public Prosecutions ruled that they did not constitute sedition. The Board did not place any restrictions on the other books and classified the film as PG (parental guidance recommended) with consumer advice of "mild themes."

The Classification Review Board can ban books where they "promote, incite or instruct in matters of crime or violence." The enforcement of classified materials is carried out at a state and territory level. In New South Wales, for example, a person who sells a book that has been refused classification or who leaves such a book in a public place, such as a library, can be punished by up to two years in gaol. Banned publications are also prohibited from being imported into Australia without the Attorney-General's (or his or her delegate's) permission.

The banning of the two Islamic books has already impacted on academic research. In late September 2006, the University of Melbourne library withdrew access to these books, which were bought in 2005 for a university course on jihad, so as not to fall foul of the censorship laws. The University has written to federal Attorney-

General Philip Ruddock seeking assurance that limited access to the books for research and educational purposes is acceptable.

Attorney-General Philip Ruddock has indicated that he will consider whether academics may access banned material for research on a "limited" and "structured" basis. However, such a proposal misunderstands how good research takes place. If researchers are required to jump through hoops to obtain an array of permissions, they will be deterred from undertaking research into the controversial area at all.

By limiting academics' access to books on terrorism, the government is also limiting their ability to understand and criticise the ideas expressed in them. It is likely that we will see an extension of these laws. The Attorney-General has announced that the censorship laws are being reviewed by the State, Territory and Commonwealth censorship ministers to determine whether they deal adequately with the threat of terrorism.

Other sections of the Criminal Code make it an offence to possess a thing, or collect or make a document that is "connected with preparation for, the engagement of a person in, or assistance in a terrorist act." The defendant must have known or been reckless as to the connection, but the offence is committed even if the document is not connected to a specific terrorist act.

The effect of such open-ended drafting is to expose to liability an academic who, for example, downloads for research purposes from the internet a document providing instructions on bomb construction. Because there is a substantial risk that other people may be using that information to plan some sort of terrorist activity, the person may be liable even though his or her reason for obtaining the document is innocent.

The requirement that the academic collects the document with the intention of using it to assist in preparation of a terrorist act is a defence only if the academic can raise a reasonable possibility that, in collecting the document, he or she did not intend to facilitate or assist in the doing of a terrorist act. The prosecution must refute this beyond a reasonable doubt, but the defendant must argue his or her innocence first.

Even if academics do not commit an offence in carrying out their research or teaching, they can still be taken into custody and questioned by ASIO. It is not necessary that the academic is suspected of any wrongdoing, only that there are reasonable grounds for believing the warrant will "substantially assist the collection of intelligence in relation to a terrorism offence" and that "relying on other methods of collecting that intelligence would be ineffective."

Under a questioning warrant, ASIO can ask a person questions for up to 24 hours in eight-hour blocks and require him or her to provide records or things that are relevant to intelligence in relation to a terrorism offence. A person must not refuse to answer the questions put to him or her, or give answers that are "false or misleading." In either case, the penalty is imprisonment for up to five years.

An academic who is researching terrorist organisations or even just alienation in parts of the Australian community may interview people associated with such

organisations. ASIO may be interested in such interviews but unable to obtain such a candid interview themselves. It is possible that they would use a questioning warrant to bring an academic in for questioning and obtain copies of their research and interviews.

This possibility is not remote. The Australian Federal Police has already used its separate powers to interview a terrorism studies student. In 2005, a Monash University student was questioned by the police after purchasing and borrowing books on Palestinian suicide bombings, a subject he was researching for his course on terrorism. Following this, the academic teaching the course, Dr David Wright-Neville, said he would warn his students that they were probably being monitored.

An academic can also be detained for up to a week under ASIO's powers if the Attorney-General is satisfied that if they are not immediately taken into custody they may destroy something they may be asked to produce. If an academic is to be questioned about their research, detention could occur where it is thought an academic might destroy their notes to protect an interviewee to whom the academic had promised anonymity.

It would be surprising to see academics charged with terrorism offences. Attorney-General Philip Ruddock has said he does not expect that "genuine" academics would break the law. However, this is not clear from the legislation and there is no guarantee of how this or future governments will apply the law.

Regardless of whether academics actually commit terrorism offences, the risk can lead to self-censorship. Such laws inevitably have a "chilling" effect on what academics say and the research they undertake. Academics are less likely to use robust critical speech about the "war on terror" or may even shy away from undertaking terrorism research in the first place. When people do not have free on-the-spot legal advice, they may not act for fear of the consequences.

Academics play an important role in ensuring that Australians are protected from terrorism. However, if academics do not have access to relevant books, cannot conduct interviews and fear that they may have to hand over their research to intelligence agencies, they may become reluctant or even unable to undertake research in the field.

Surveillance, policing and controlling finances alone will not beat terrorism. If we are to win the "war on terror," it is essential that we understand the motivations and rationales behind it. In order to understand the mindset of a suicide bomber or a home-grown terrorist, it is vital that academics are able to interview potential terrorists and have access to the books they read.

The Attorney-General has indicated he is happy to meet with academics and talk to them about their projects. But the role and obligations of academics should be clear on the face of the law. Where relevant, there should be an express exemption for their work. Even this is not sufficient. There needs to be education about how the law applies to academics. It is difficult enough for legal academics to understand the hundreds of pages of terrorism laws, let alone academics in other disciplines.

It is reasonable that academics should be required to report information and answer questions that may prevent a terrorist attack. On the other hand, they should be able to pursue research into the ideology and causes of terrorism and the motivation and psychology of terrorists without the threat of interference from government or the fear of committing a terrorism offence.

Conclusion

Australian academics face the likelihood that academic freedom will continue to be whittled away over time as the existing threats continue and new threats emerge. Advocacy will have some success in minimising the loss of the freedom, but over time the freedom will be lessened. This highlights the need for a broader strategy.

To protect academic freedom over the longer term we must realise it is part of larger debates about other important values in Australian public life. These include the independence of the public service and its capacity to provide government with fearless and frank advice and the ability of non government organisations (and even charities) to engage in public advocacy and not lose their funding as a result. Attacks on these values are possible in part because Australia does not take seriously enough the need to protect some of our most important democratic rights. Even freedom of speech has no secure protection in Australian law and instead depends upon the goodwill and good sense of the government of the day. When such goodwill is in short supply, or during a climate of popular fear, freedom of speech can be curtailed and with it a number of other important principles like academic freedom. If we do not take freedom of speech seriously, it is hard to argue for the maintenance of something like academic freedom.

The best way forward is not only to oppose specific threats to academic freedom but to support with a coalition of like interests broader reform to our system of government and to the legal rules. That reform should include the better protection of democratic freedoms through a national charter of human rights. Although such a law has been enacted in the ACT (*Human Rights Act 2004*) and Victoria (*Charter of Human Rights and Responsibilities Act 2006*), Australia remains the only democratic nation without a national law of this kind.

Experience elsewhere shows that a Charter could give real protection to human rights like freedom of speech and could have a powerful impact in shaping public debate. While no such law provides the whole answer, and is not a substitute for ongoing political or industrial action, it would be a valuable tool in preventing the further erosion of academic freedom in Australia.

Professor George Williams and Edwina MacDonald are based at the Gilbert + Tobin Centre of Public Law, University of New South Wales. *Some parts of this opinion piece were delivered at the 2006 National Tertiary Education Industry Union National Council Meeting.*