



Assessing the Social Contract Equilibrium in a Post 9/11 World:

An Australian Perspective

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This thesis is presented in fulfillment of the degree of Bachelor of Arts
(Honours) in Security, Terrorism & Counter-Terrorism

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DECLARATION

I declare that this thesis is my own account of my research.

ROBYN COOPER

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ABSTRACT

Ever since al Qaeda attacked America on 11 September 2001, terrorism has been recognised as a global threat. This, coupled with a United States alliance in ventures such as the Iraq and Afghanistan wars, has elevated the threat faced by Australia, both domestically and abroad.

As a result of this increased threat and driven by a directive issued by the United Nations Security Council, Australia introduced a wide range of anti-terrorism legislation. The purpose of these new laws was to detect, prevent, investigate and prosecute those involved in terrorist activity. However, these new laws had the potential to greatly erode individual rights and freedoms, factors that are considered to be the hallmark of a liberal democracy.

Arguing that Australia adheres to a Lockean version of the social contract, this thesis is based on the premise that the main function of a government is to provide a safe environment so that an individual is free to live their life with no more interference than is necessary. In return, the individual must abide by that country's rules and regulations.

A decade has elapsed since the events of 9/11 and it is now an appropriate moment in time to assess the current status of Australia's social contract. The key issue is whether the Government's security measures unjustifiably overrides the balance needed to uphold the individual civil rights and liberties of the Australian people.

Taking into account a range of different perspectives, including parliamentary debates, public perceptions and judicial comments, it is put forth that the Government is achieving the right balance in the quest to provide protection against terrorism whilst at the same time preserving fundamental civil rights.

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INTRODUCTION

The aftershocks of al Qaeda's attack on the United States (US) on 11 September 2001 reverberated around the world in a cataclysmic manner. A horrified global audience sat with their eyes glued to television or computer screens, watching the drama unfold as instantaneous and graphic footage of the chaos and destruction was beamed across the earth, courtesy of world media outlets.

In the aftermath of the event it became increasingly apparent that there was an aura of change in the atmosphere. The world had witnessed something of such a sinister magnitude that there could be no return to life as it was before. Confidence had been shattered.

A relatively inferior enemy had attacked the almighty America on US home soil, seemingly with a degree of ease. As a consequence the message was clear; if it was possible for the undisputed superpower of the time to be a victim of such an act and in such a manner, then it was possible that the same could occur to anyone, particularly American allies.

As a response to the 9/11 attacks and with recommendations from the United Nations (UN), individual countries set about instigating tough legislation and implementing stricter security controls to address the increased transnational threat. Australia was one of these countries.

However, these enhanced security measures came with a trade off and the price of increased protective measures was not cheap. A certain degree of personal freedom and civil liberties, the hallmark of a truly liberal democracy, were reduced in favour of the increased protection being offered by the Australian Government.

These freedoms consist of the right to perform certain actions free from government interference. This includes freedom of speech, freedom of association and expression, freedom to practice religion, freedom of movement, the right to privacy,

the right to a fair trial, freedom from arbitrary detention and arrest, and the right to non-discrimination (Australian Human Rights Commission [AHRC], 2008, Waldron, 2003:195). Subsequently, when the new security measures were implemented a number of these rights were affected and the fine balance of the social contract equilibrium shifted¹.

The world currently finds itself at the tenth anniversary of the 9/11 attacks, which is an appropriate juncture to take a hindsight approach and review the ramifications of the security measures embarked upon during the last decade. Specifically, this thesis will explore if the Australian Government is upholding its end of the social contract by analysing if, and how, the undertaken security measures have impacted upon the rights and liberties of the Australian community.

It is anticipated that this evaluation will result in one of three outcomes. Firstly, the evidence may suggest that the level of security is too onerous when measured against the perceived threat, which would indicate a government that yields excessive intrusive powers to the detriment of its citizen's rights. The second outcome is a direct antithesis of the first, and could reveal that the current security provisions are seen as deficient and unable to adequately protect Australia and its people; a sign that the Government is failing in its role to uphold its side of the social contract.

Finally, the most desirable outcome would be to find that the current perceived threat level is proportionately representative of the current security measures and that there are adequate safeguards in place to protect against infringements of civil rights and liberties. This would lead to a fair supposition that an even balance has been struck.

To reach a definitive outcome, this thesis will be segregated into three main areas. It is important to note that the first two chapters will be of a technical nature, the purposes of which are to provide background information necessary to make an informed evaluation of the current social contract status.

¹ The social contract refers to the understanding that a government will provide protection to an individual in exchange for the individual abiding by its laws (Goodwin, 2007:373-374). This will be discussed in greater detail in Chapter 3.

Chapter One will identify what changes were made to the Australian security environment following 9/11. It will highlight variations made to existing legislation, outline the provisions of the introduced terrorism-related laws, and identify extra powers given to law enforcement agencies. In doing so it will explore the different ways the changes could potentially impact upon rights that are protected under international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR), which Australia has ratified (AHRC, 2008, UN General Assembly, 1966).

Chapter Two will delve deeper and touch more on the social implications of the changing security environment. It will explore how and why the changes identified in Chapter One were brought in and the reasoning behind them. In particular, it will examine how the changes were introduced and expedited through Parliament as well as outlining the public justification as to how they would make Australia more secure.

The third chapter will evaluate what impact, if any, has occurred on the social contract. It will do so by exploring the consequences and ramifications that the introduced measures have had on Australian democracy and how they have affected the Australian way of life since 9/11. This will be achieved by providing an understanding of what the social contract entails, which will assist in evaluating if the executive branch is upholding its obligation to ensure individual protection and freedoms.

It will then explore the current security environment, focusing on viewpoints of the judiciary in terrorist cases, issues of community marginalisation, whether the perceived terrorist threat has diminished or grown over the last decade and Parliament's current position pertaining to anti-terrorism legislation.

An overall analysis of the findings will then be conducted to assess the current balance of Australia's social contract.