

Rule of law at the mercy of politics

Stephen Shirrefs

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THE events of the past week concerning the case of Dr Mohamed Haneef have highlighted the existing threat to our liberties and the rule of law.

The legislation that permitted Haneef to be held for days without charge and to be extensively interrogated was claimed to be a necessary tool in the fight against terrorism for which conventional policing and legal processes were inadequate.

These laws that cast aside long-held rights were enacted in haste and without proper debate.

What seems to have been forgotten is the capacity for such measures to become instruments of oppression and injustice. The case of Haneef is stark evidence of this.

The image of a barefoot and shackled person purported to be Haneef crouching in the rear of a prison van (below) should resonate with each of us.

It came at the end of a week of detention and questioning for which no transparency or accountability appears to have existed.

The secrecy of the process inevitably led to speculation about what if any evidence existed against Haneef. This circus was played out in the media, with parties on both sides selectively leaking information.

Conventionally the arrest, detention and questioning of a person occurs when there is reasonable evidence to suspect that the person has committed an offence. This is the justification that permits the state to deprive persons of their liberty. At the conclusion of that process they are either charged or released.

The terrorist laws fundamentally alter that process by permitting a person to be detained while the investigation is being conducted.

This can be achieved through the provision of secret information to a magistrate, which cannot be reviewed. Such a process runs the risk of promoting the charging of the person out of a sense of justification rather than the existence of sufficient evidence.

When these laws were first mooted the Criminal Bar Association, along with a majority of interest groups, strongly opposed their introduction. Unfortunately, the politics of the day meant that the Federal Government was convinced that the so-called war on terror required an instant and extreme response. The same was said of Australia's participation in Iraq.

Equally concerning has been the conduct of Attorney-General Philip Ruddock. Last week he published an article in response to calls for the introduction of an independent and transparent procedure for the selection of High Court judges.

In it he called for a move away from the appointment of activist judges in favour of a judiciary that respected the rule of law.

Yet the following day, with the ink barely dry on the page, he suggested that the presumption against bail for terror suspects in the absence of exceptional circumstances should be reviewed.

This comment followed the decision by a Queensland magistrate to grant bail to Haneef and by Justice Bernard Bongiorno to bail two terror suspects in Melbourne. As the country's first law officer it is Ruddock's duty to support the judiciary and the rule of law.

If, as he seems to be suggesting, both the magistrate and Justice Bongiorno fell into error, then it is the function of the Commonwealth Director of Public Prosecutions in the proper exercise of his independent role to consider each matter. In so doing he should not be required to deal with the exertion of political pressure from the Attorney-General.

Ruddock's attack on the judiciary was the height of hypocrisy and his call for a strengthening of the bail laws in terrorism cases represents yet another example of the presumption of innocence being reduced to a hollow utterance. Similarly, his public attack on Haneef's counsel, Stephen Keim, SC, for releasing the full transcript of his client's interview revealed an Attorney-General more concerned with political point-scoring than the integrity of the court process.

Laws that have long protected our liberties should not be discarded lightly. If modification is required it should occur only after proper and reasoned debate and only then to the minimum extent necessary.

Laws that trample established rights and for which transparency and accountability is lacking will inevitably result in the political spectacle that has harmed us in the past week.

The case of Mohamed Haneef has shown that a significant threat to our way of life and the rule of law can be caused by measures born out of political expediency rather than reasoned judgement.

Collectively we need to ensure that rights acquired over centuries of struggle are not easily given away.

Once lost it will take a struggle of similar magnitude to regain them.

Stephen Shirrefs, SC, is chairman of the Criminal Bar Association of Victoria.