

# Australia's new sedition laws and the case of Brian Cooper

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Australia's last sedition case, in 1960-61, sheds light on why the Howard government has inserted revamped sedition laws into its "anti-terrorism" legislation. The largely unknown case illustrates the wide scope for sedition prosecutions to be used to victimise, intimidate and jail political dissidents.

On December 1, 1960, Brian Cooper, a 24-year-old former junior officer in the Australian colonial administration of Papua New Guinea, was dramatically arrested in Sydney and flown back to the colony to stand trial for sedition. "EXTRADITED", screamed the Sydney *Sun* on its front page, in six-centimetre capitals.

Cooper was charged with "exciting disaffection against the government" for remarks he made during a series of informal lunchtime meetings in Madang—where he had been working in September 1960—encouraging local people to demand independence.

Cooper was eventually convicted after the Australian Security Intelligence Organisation (ASIO) framed him up and the prime minister Robert Menzies personally ordered the prosecution. He was found guilty without a jury and by a judge who wrongly allowed ASIO evidence of his alleged "communist" and "atheist" views.

Cooper first came under ASIO surveillance in 1958, shortly before he left to take up a post in Port Moresby as a cooperatives officer with the Department of Territories. A state police Special Branch detective observed the young man listening to talks by Communist Party members at Melbourne's Yarra Bank, a traditional forum for dissenting political speakers.

During this period, the Menzies government was facing political crisis on several fronts. In New Guinea itself, discontent was growing with the racial

discrimination, segregated schools, political censorship and denial of basic democratic rights that characterised Australia's colonial rule. By early 1961, the disaffection sparked a mutiny by native soldiers in Port Moresby, who assaulted their officers after six soldiers were jailed for leading demands for higher pay. Eventually, 79 soldiers were imprisoned, while riots broke out in Port Moresby, Madang, Lae and Bulolo.

During 1960, a controversy also erupted in Australia because the government, acting on ASIO's "security" advice, refused a permit to a distinguished British anthropologist, Professor Max Gluckman, to enter New Guinea to visit research projects. Gluckman had publicly opposed the apartheid regime in South Africa.

Amid newspaper editorials condemning this action, Menzies sought to counter-attack by raising a red-baiting scare campaign—just as he had done throughout the 1950s. In September 1960, he declared that the nation was "facing one of the crucial periods of history" because "the Communists are conducting a campaign of propaganda".

In November 1960, Treasurer Harold Holt delivered a horror budget, imposing a severe credit squeeze that soon sent unemployment soaring to 110,000—a figure not seen since the Great Depression of the 1930s. Menzies knew his government faced defeat, with elections due the following year.

In late November 1960, Cooper was arrested, even though he had quit his job a month earlier to return to Australia. A secret ASIO document, since declassified, noted, "the action in this case has been taken on the directions of the Prime Minister".

In January 1961, when Cooper landed in Port Moresby for his trial, a large police contingent awaited his arrival at the airport. Media publicity ensured that the courtroom was full of spectators. The Crown

prosecutor opened by telling the territorial Chief Justice, Alan Mann, that Cooper had demonstrated “prior motivation” to commit a criminal act.

A former co-worker testified that Cooper had been “addicted to listening to Radio Peking” and often expressed communist views. ASIO’s regional director said Cooper had a history as a communist sympathiser. Despite strong objections, Justice Mann permitted the Crown prosecutor to question Cooper about his political and religious beliefs.

Ten local men were called to testify that Cooper had made the most fantastic suggestions to small lunchtime gatherings, exhorting them to tie up police officers, grab rifles, steal beer and rum, “expel all the white people” and seek help from “the Russians and the Chinese”.

In his evidence, Cooper said his words had been taken out of context. He had opposed violence and instead advocated the formation of mass organisations, including trade unions and political parties, to convince the government that they were ready for self-government.

The judge conceded that the words attributed to Cooper were highly improbable. “I cannot believe that the accused really expected to see an immediate armed uprising of natives in the Madang area.” Yet, the judge concluded that this only made Cooper’s utterances all the more sinister, because his real purpose had been to encourage a political movement. “[H]is intention was to start a movement which would be likely to extend along the Northern coast of New Guinea, and which would cause the utmost embarrassment to the Administration at a time when international attention was critically focused on the situation of primitive people in this and other areas.”

When Cooper appealed, the Australian High Court ruled that much of the evidence was not only “obviously irrelevant and clearly inadmissible”; it should never have been tendered or entertained. Its only purpose was to “create prejudice in the mind of the tribunal”.

Nevertheless, the five judges reached the perverse conclusion that Chief Justice Mann’s consideration of the wrongly admitted evidence had worked “curiously” in Cooper’s favour because Mann supposedly imposed a “remarkably light penalty” of four months’ imprisonment.

The show trial was able to proceed because both the Labor Party, of which Cooper was a member, and the Communist Party, refused to assist or defend the young man. After his release from jail, he campaigned for self-government for Papua and New Guinea, speaking at public meetings and writing for various magazines, but remained politically isolated. In April 1965 he tragically committed suicide.

The High Court’s dismissal of Cooper’s appeal was the third such decision in just over a decade. In 1948 and 1949, the court upheld the Chifley Labor government’s jailing of two leaders of the Communist Party, Gilbert Burns and Lance Sharkey, who made statements refusing to support Australia militarily in response to hypothetical questions about a war against the Soviet Union. The High Court ruled that the prosecution need not prove that the accused subjectively intended to “excite disaffection”.

Over the past year, Australian attorney-general Philip Ruddock has rejected calls by two reports—from a Senate committee and the Australian Law Reform Commission—to limit the sedition provisions in the Anti-Terrorism Act 2005 by requiring proof of intention to cause disaffection or violence. He has also brushed aside recommendations to curtail new clauses outlawing “urging conduct” that “assists” an “organisation or country engaged in armed hostilities” against the Australian military.

The new laws, inserted into the legislation last December, allow for the criminalization of basic expressions of political opposition, including supporting resistance to Australian military interventions, such as those in Afghanistan, Iraq and the Asia-Pacific region.



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