

Origins of the Royal Commission on Intelligence and Security

CJ Coventry
LLB BA

A thesis submitted in fulfilment of the requirements for the degree of
Master of Arts (Research)

School of Humanities and Social Sciences
UNSW Canberra at ADFA

2018

Table of Contents

Acknowledgements	iii
Introduction & Methodology	1
Part I: ASIO before Whitlam	9
Chapter One: The creation of ASIO	9
Chapter Two: Bipartisan anti-communism	23
Chapter Three: ASIO's anti-radicalism, 1950-1972	44
Part II: Perspectives on the Royal Commission	73
Chapter Four: Scholarly perspectives on the Royal Commission	73
Chapter Five: Contemporary perspectives on ASIO and an inquiry	90
Part III: The decision to reform	118
Chapter Six: Labor and terrorism	118
Chapter Seven: The decision and announcement	154
Part IV: The Royal Commission	170
Chapter Eight: Findings and recommendations	170
Conclusion	188
Bibliography	193

Acknowledgements & Dedication

I dedicate this thesis to Rebecca and our burgeoning menagerie.

Most prominently of all I wish to thank Rebecca Coventry who has been integral to the writing of this thesis. Together we seek knowledge, not assumption, challenge, not complacency.

For their help in entering academia I thank Yunari Heinz, Anne-Marie Elijah, Paul Babie, the ANU Careers advisors, Clinton Fernandes and Nick Xenophon.

While writing this thesis I received help from a number of people. I acknowledge the help of Lindy Edwards, Toni Erskine, Clinton Fernandes, Ned Dobos, Ruhul Sarkar, Laura Poole-Warren, Kylie Madden, Julia Lines, Craig Stockings, Deane-Peter Baker, John Connor, the Research Student Unit and the Higher Degree Committee.

To the exceptional, patient and generous staff at the National Archives of Australia, the National Library of Australia, Hansard, the State Library of Victoria, the Deakin University Library, Academy Library at UNSW, the University of Canberra Library, Gould's Book Arcade in Sydney, the Book Fossicker in Clunes, Book Heaven in Castlemaine, the Thursday book stall at the Australian National University, V/Line, and Australia Post, I thank you all for your exceptional services.

For helping me develop the thesis in its early stages, I thank Frank Bongiorno, Clinton Fernandes, Renata and Maciej Henneberg, Skye Kakoschke-Moore, Rex Patrick, Jeremy Roberts, Alexandra Roginski, Sean Scalmer, Nick Xenophon and the Making History class of 2015 at ANU.

Thanks must also go to my wider family – Alex, Barb, Brendon, Charlie, Chris, Eloise, and George – for their friendship, encouragement, belief and support.

For their contribution to my historical education, I acknowledge Gemma Betros, Frank Bongiorno, Tom Buchanan, Peter Burton, Clinton Fernandes, Megan Kelly, André Lambelet, David Lemmings, Don Longo, Martin McKinnon, John Minns, Sharon Mosler, Sara Perley, Kalman A. Robertson, Alexandra Roginski, Amin Saikal, William Tow, Claire Walker, Peter Williams & William Woods.

Lastly, I wish to thank UNSW and the National Tertiary Education Union.

Introduction

On 21 August 1974 the Australian Government under Prime Minister Gough Whitlam (1972-1975) announced a royal commission into the intelligence and security apparatus of the Australian Government. The Royal Commission on Intelligence and Security ('the Royal Commission') would begin a long process of reform resulting in the Australian intelligence community that operates in the present time. The government's terms of reference were broad but directed at producing practical outcomes that ensured the continuance of a domestic intelligence agency. The commissioner, Justice Robert Marsden Hope of the New South Wales Court of Appeal, delivered eight reports between 1975 and 1977. While exploring the origins of the Royal Commission this thesis will focus on one organisation in particular, the Australian Security Intelligence Organisation (ASIO).

The Whitlam Government wanted to depoliticise ASIO and increase the efficacy of the intelligence apparatus more generally. Soon after it came to office in December 1972 the government had become embroiled in controversy over its relationship with ASIO. This was not surprising given Labor had been in opposition since 1949, in part the result of the Coalition's access to ASIO during the 1950s and 1960s. However, this distrust of the organisation tended toward conspiracy by the 1970s even amongst senior figures within Labor who supported its primary objective. As a result, the first months of the new government quickly unearthed significant tensions between government and agency, exposing the relationship to public gaze. Until the 1974 election the government discreetly went about reforming ASIO. The Royal Commission became Labor policy in September 1973 and formed part of its election policy platform taken to the 1974 election. By that stage the ASIO issue had become a minor one politically.

However, within weeks of the Whitlam Government returning to office this issue gained prominence after ASIO documents discrediting the new Deputy Prime Minister, Jim Cairns, were made public. The government thus moved swiftly to erect the Royal Commission, capitalising on the moment.

It has often been stated and implied that Labor under Whitlam was radical, inspired by socialism and a threat to the establishment and the political and economic *status quo*.¹ It is submitted that this popular perspective is inaccurate, especially since Whitlam had denounced socialism and tried to shift Labor's image towards the so-called 'centre'.² With regard to intelligence and security, the radicalism of the Whitlam government did not extend to ASIO. It did not wish to abolish the organisation but merely improve its efficacy at the dawn of a new age, one of global terrorism. This was so before the 1972 election and became even clearer in early 1973. In September 1972 Australia was exposed to political violence in Sydney not long after the violence of the Summer Olympics in Munich. Labor saw this occurrence as evidence of ASIO's ideological partiality toward conservatism. While the election campaign of 1972 was preoccupied with other issues one of the first acts of the new government was to support the United States of America in its attempts to address global terrorism.

In order to understand the significance of the Whitlam Government's actions it is necessary to know the historical context in which the decision to establish the Royal Commission was made. This thesis will show that the government's decision was at odds with Labor's experience of ASIO shortly after its creation. However, the decision to reform – not abolish – ASIO was not at odds with the party's history as an

¹ e.g. Cth, Parliamentary Debates, House of Representatives, vol. 17, 21 October 2014, 11517-11550.; Cth, Parliamentary Debates, Australian Senate vol. 14, 27 October 2014, 7757-7829.

² David Kemp, "A Leader and a Philosophy" in *Labor to Power: Australia's 1972 election*, edited by Henry Mayer (Sydney: Angus & Robertson, 1973), 48, 53.

establishment party or ‘party of government’. ASIO was created by the Chifley Labor Government (1945-1949) in 1949 because of the pressure placed on it by two foreign powers, the United States and the United Kingdom. It was clear that the Australian Government’s processes were compromised by another foreign power, the Soviet Union. The United States at that time was on the cusp of realising the seriousness of the post-war conflict which became known as the Cold War. The government, as a recipient of United States intelligence and secrets, was at the mercy of its foreign friend. On the issue of communism Labor was less animated than the Coalition, but it perceived a threat nonetheless and engaged in numerous efforts to undermine the Communist Party of Australia. Labor’s opposition to numerous attempts by Coalition governments to outlaw the Communist Party was predominantly based on pragmatic considerations, not philosophical differences. When Labor finally abandoned its extreme anti-communism in the 1950s its political enemies within and without the Parliament pounced. Although the split of 1955 was largely the fault of a willful leader it did not occur in a vacuum. The combined actions and omissions of the second Menzies Government (1949-1966), many politically active Catholics, and ASIO certainly facilitated a mutual benefit.

Within months of ASIO’s creation senior officers came to see the organisation as not just the defender of the Commonwealth but the defender of democracy and capitalism too. This was understandable given the depth of understanding commonly possessed on these ideas even amongst the most privileged members of society. There was a fine line to be drawn between defending the Australian Government and defending philosophical ideas. If one objective ever came into conflict with the other a choice would have had to be made. ASIO escaped this dilemma by perceiving the institutions of government and democracy-capitalism as one. Of course, ASIO was actually created to defend the Commonwealth of Australia; the institutions of government. It will be demonstrated

that this confused world view made the organisation partisan as the Coalition shared its central belief; anti-communism. It will also be shown that ASIO inherited this confused view from the domestic intelligence organisations that preceded it. Despite this history the Whitlam Government and – to a lesser extent – Labor sought to reform ASIO. The Royal Commission did not consider this history in an exhaustive or even comprehensive way, despite its terms of reference, although decades later Hope stated that the organisation he had found was ideologically partisan.

By the time Hope made his recommendations the Whitlam Government had been dismissed from office and the Fraser Government (1975-1983) had come to power. The Whitlam Government undertook many changes of ASIO but the Royal Commission was used by the Fraser Government to continue the reform process. Labor was therefore successful in its depoliticising ASIO and bringing about the beginnings of a lasting bipartisan consensus. Given the significance of the Royal Commission to Australian society today, some forty years later, it is important that its origins be considered.

At the outset it is important to note that logic, in the absence of evidence, can often mislead people. In order to obtain greater understanding and accuracy it is important that scholarship is driven by empirical research.³ This thesis is conscious of the damage conspiracy, ideology, and partisan fanaticism have rendered to what was a significant moment in Australian history. The fact that the Royal Commission came into being so close to one of the most contentious moments of Australian constitution history – the Whitlam dismissal of 1975 – only exacerbates the damage caused by these three influences. This thesis is an attempt to offer a version of the origins of the Royal Commission that is based on a reasonable interpretation of the evidence consulted.

³ Noam Chomsky, *On moral relativism and Michel Foucault*, December 5, 2015, https://www.youtube.com/watch?v=i63_kAw3WmE

Methodology

This thesis began as an undergraduate research essay in 2015. Since that time it has changed considerably with respect to its breadth, focus, and argument. This chapter will briefly set out the methodology employed in conducting the research and writing of this thesis. It will also discuss the limitations of the work and the sources consulted.

In order to address the question of the origins of the Royal Commission, the author has worked backwards from the *fourth report* to trace major influences on the Whitlam Government. The thesis is divided into four parts: Methodology and secondary source overview, the history of ASIO before Hope, the decision to reform, and reforming ASIO. The first two parts of the thesis provide context necessary to understand the importance of the last two parts. Primary source research efforts have predominately focused on the third part of the thesis, which discusses the immediate origins of the Royal Commission. Primary sources, as well as some secondary sources, are quoted at length in order to avoid distortion of the evidence. If the author were to describe the evidence without quotation there would be an acute risk that the intended meaning of the original author would be compromised. Of course, quotations cannot be over used as this work would become a compilation instead of a thesis. Quotations are therefore used when the meaning of a passage cannot fairly be summarised or described without it being undermined. The use of extensive quotations is consistent with various scholars in the humanities who present evidence with coincidental discussion based on that evidence.⁴

⁴ e.g. Edward Said, *Orientalism* (New York: Penguin, 2003).; Jim George, *Discourses of Global Politics: A critical (re)introduction to International Relations* (Boulder: Rienner, 1994); Peter Paret ed., *Makers of Modern Strategy: From Machiavelli to the nuclear age* (Princeton: Princeton University Press, 1986); Noam Chomsky, *Deterring Democracy* (New York: Hill and Wang, 1992); David Horner, *The Spy Catchers*, vol. 1 of *The Official History of ASIO*, ed. David Horner (Sydney: Allen & Unwin: 2014).

The *Official History of ASIO* provides scholars with a wealth of primary source material. The present thesis utilises this extensive research. However, it must be noted that the author interprets some of this evidence differently from the authors. This thesis also consults many major contemporary Australian newspapers, especially since they provide a useful timeline of events – a day-by-day political journal– that can be used to chart how issues developed and rhetoric morphed, as well as the information being exchanged. Unlike online newspapers, where content and headings are routinely ‘updated’, there is no risk content on microfilm has been similarly treated. Therefore, there is a greater capacity for holding “historical amnesia” or “doublethink” to account.⁵ By combing contemporary newspapers one can go a considerable way in understanding the *zeitgeist* of the time. Reflected in a newspaper’s pages are the topics that occupied political discussion of the day, as well as advertisements, photographs and satirical cartoons, all of which give a sense of time and place that are lost in solitary articles or official documents. This thesis has drawn on the latest edition of the *Companion to the Australian Media* to gain greater insight into the internal workings of these newspapers in the 1970s. Where it has been hard to ascertain the political persuasions of a newspaper or periodical, the author has elected to let the opinion speak for itself.

The limitations associated with this thesis can predominately be attributed to time and word count restrictions. A more complete work would include consideration of the time since Hope handed down his reports in order to ascertain the extent of bipartisan agreement that was reached between Labor and Coalition parties. There is substantial scholarship about ASIO as it existed from the 1980s onwards that has not been comprehensively consulted. As such the significance of the Royal Commission is assumed, not established. This thesis does not touch on Hope’s later contributions,

⁵ Noam Chomsky, *Power Systems* (London: Penguin Books, 2013), 97; George Orwell, *Nineteen Eighty-Four* (London: Penguin Books, 2011), 39-40.

namely the Protective Security Review and the Royal Commission into Australia's Security and Intelligence Agencies. There is also an extensive debate on the compatibility of intelligence agencies and democracy, which was deliberately excluded given its breadth. Similarly, discussion on the legitimacy of political violence, power systems, the rule of law, and the executive are not touched on. For example, there is a strong argument that the definitions of global or international terrorism and domestic terrorism pertain to whatever violence certain states do not sanction.⁶ Indeed, if political violence were genuinely seen as being illegitimate there could never be a just war fought in pursuit of Australia's national interest. Finally, the thesis could have considered contemporary perspectives beyond those mentioned by the press, especially with respect to the labour movement and within the parties of government and minor parties as well. It is submitted that the inclusion of such perspectives would improve our understanding of the level of dissent surrounding ASIO but ultimately detract from more important elements of the argument. These limitations were factored into the decision to adopt a narrower scope focusing on the origins of the Royal Commission. It should also be noted that the Royal Commission's *fourth report* is inconsistent and unclear in parts. To avoid this the author has attempted to narrow the interpretation so that specific statements constrain general ones.

With regard to the choice between 'public service' or 'bureaucracy', the latter will be used without invoking the negative connotations it now attracts. Etymologically, 'public service' implies subservience to citizenry and is therefore propagandistic. Conversely, 'bureaucracy' is more objective; 'bureau' evokes the imagery of a writing desk while the suffix '-cracy' means 'power' or 'rule'. Lastly, the terms 'royal commission',

⁶ Noam Chomsky, *Failed States: The abuse of power and the assault on democracy* (Sydney: Allen & Unwin, 2006), 35-36, 109; Antiterrorism Act of 1990, 18 U.S.C. s 2331 (1990).

‘judicial inquiry’ and ‘inquiry’ have subtle differences in meaning.⁷ This thesis assumes ‘royal commission’ and ‘judicial inquiry’ have the same meaning, as the distinction is often overlooked in primary sources. The term ‘Coalition’ is used to describe the conservative parties of government, especially the Liberal Party of Australia. It was decided that reference to the parties that preceded the Liberal Party was needlessly confusing, especially since – as Robert Menzies political career demonstrates – the parties were closely related.

⁷ “Royal Commissions and Public Inquiries,” *University of Melbourne*, accessed December 9, 2017, http://unimelb.libguides.com/royal_commissions.

PART ONE

I. The Creation of ASIO

In order to understand why the Royal Commission came into existence one must have an understanding of the history of ASIO. It is only with this context that we can appreciate not only the significance of the decision made by the Whitlam Government but also the effort it made to preserve the organisation. In light of the following discussion it will become clear that the Whitlam Government's decision to reform and entrench ASIO is at odds with a long history of partisanship between domestic intelligence agencies and the Coalition and the detriment that Labor suffered at the hands of this partisanship. However, it will also be clear that this decision was not only seen through pragmatic eyes but a firm belief within Labor in the legitimacy of domestic intelligence work and anti-communism. To this end, this part of the thesis will explore the history of ASIO from its creation until the appointment of the Whitlam Government. This chapter will explore the reasons why ASIO was created in 1949 from the first domestic intelligence agencies to the importance of the Australian-American relationship to the government. It was the Chifley Labor Government (1945-1949) that was responsible for creating ASIO in 1949. Although it was reluctant to do so, it valued Australia's relationships with the United States and United Kingdom and did not want to jeopardise intelligence flows. However, despite Labor softening its anti-communism in 1951, the relationship between ASIO and Labor became fraught with difficulty. Under the Menzies Government (1949-1966), a relationship of convenience arose between government and agency because of a shared anti-communism. ASIO's anti-radical obsession can be traced back to earlier domestic intelligence organisations in Australia. ASIO emerged from this environment with close connections to military intelligence.

Pre-ASIO domestic intelligence organisations (1916-1949)

When ASIO emerged in 1949 it was the first time that one dominant domestic intelligence organisation took root. Until that time the Australian intelligence community was comparatively unsettled and prone to infighting. Throughout this time the dominant concern of these agencies was the threat of subversion, particularly that posed by radicals. While the *Official History* discusses these earlier organisations at length it fails to discuss the true nature of these organisations and the continuity with ASIO.

From 1916 Australia's domestic intelligence agency was the Special Intelligence Bureau (SIB), which was a "branch of the Imperial Counter Espionage Bureau".⁸ During the First World War the SIB had been involved – along with Military intelligence – in the government's pursuit of radicals.⁹ However, the Hughes Government (1916-1923) – after a protestor's egg made contact with the prime minister – became conscious of the lack of enforcement behind the executive's intelligence apparatus.¹⁰ So, in 1917 the Commonwealth Police was established.¹¹ By 1919, SIB had been placed within the Attorney-General's Department and had become known as the Investigation Branch. This Branch ultimately became the Commonwealth Investigation Branch and Security Section (CIB).¹² Through it all Major Harold Jones – a former head of military intelligence – functioned in the upper levels of these organisations before becoming its director in 1919. Jones – much like the future director of ASIO, Brigadier Charles Spry, in later decades – held his directorship for a long period of time until his

⁸ David Horner, *The Spy Catchers*, vol. 1 of *The Official History of ASIO* (Sydney: Allen & Unwin: 2014), 14; Raymond Evans, *The Red Flag Riots; A study in intolerance* (Brisbane: University of Queensland Press, 1988), 23.

⁹ Evans, *The Red Flag*, 23.

¹⁰ *Ibid.*, 24.

¹¹ *Ibid.*

¹² Horner, *The Spy Catchers*, 16; Jacqueline Templeton, "Jones, Harold Edward (1878-1965)," *Australian Dictionary of Biography*, vol. 9, <http://adb.anu.edu.au/biography/jones-harold-edward-6873>.

retirement in 1944.¹³ In 1947 CIB was turned into the Commonwealth Investigation Service (CIS).¹⁴ The legal ambits of these early organisations were not clearly defined and their jurisdictions often overlapped. During the Second World War CIB's role of ensuring "internal security" of Australia was superseded by the Commonwealth Security Service (CSS), although up until his retirement Jones continued to resist CIB cooperation with this new organisation.¹⁵ CSS was disbanded after the war – against the wishes of the United Kingdom's Military Intelligence Section 5 (MI5) – and its powers restored to CIB.¹⁶ Beyond these intelligence agencies there was a military intelligence agency that existed under a number of titles. The Australian Intelligence Corps operated until 1914 before being replaced by MO3.¹⁷ In 1916 the corps became the Directorate of Military Intelligence.¹⁸ Part of its operations during the First World War included monitoring "the hot bed of disloyalty" being displayed towards the government's war effort.¹⁹ This extended to hostility towards commerce, as one agent observed of a trades hall meeting: All are united in the desire to sweep away the moneyed class.²⁰ Fatefully, in the 1940s Military Intelligence "expanded its activities" so as to monitor "subversion and possible espionage in the general community".²¹

These pre-ASIO intelligence organisations were influenced by the political persuasions of the officials within them and the governments that administered them. The first volume of the *Official History* addresses this period of time at length. Horner cites the work of historian Jacqueline Templeton who was commissioned to write the seventh

¹³ Horner, *The Spy Catchers*, 14, 16, 601.

¹⁴ *Ibid.*, 42.

¹⁵ Templeton, "Jones."; Horner, *The Spy Catchers*, 20.

¹⁶ Horner, *The Spy Catchers*, 27, 37.

¹⁷ *National Archives of Australia*, s.v. "Directorate of Military Intelligence," accessed 30 January 2018, https://recordsearch.naa.gov.au/SearchNRRetrieve/Interface/DetailsReports/AgencyDetail.aspx?reg_no=C A%203275.

¹⁸ *Ibid.*

¹⁹ Evans, *The Red Flag*, 22.

²⁰ *Ibid.*

²¹ Templeton, "Jones."; Horner, *The Spy Catchers*, 17.

report of the Royal Commission, *Australian Intelligence/Security Services 1900-1950*.

Quoting her work he writes:

The historian consultant... found little to suggest that the CIB was an effective counterespionage organisation, and claimed that Military Intelligence ‘ultimately gained the ascendancy in the counter-espionage field’. She concluded that ‘Australia entered World War II ill-equipped for security and intelligence work’.²²

Templeton’s conclusions seemingly fashion an appropriate context from which ASIO could emerge triumphant; a stabilising force after years of organisational turmoil. However, what Horner fails to disclose about Templeton’s work is the revelation that the pre-ASIO intelligence community that was suffering from political partiality. Templeton reveals that CIB were sympathetic to Benito Mussolini’s fascist government in Italy; actively supporting their propagandistic publications in Australia, as well as the complete suppression of opposition – socialist, anarchist, communist – publications.²³ For example, Jones approved the publication of a propagandistic Italian newspaper that he described as “subversive” after the government had declared war with Nazi Germany and sought economic sanctions on Italy, but before the Pact of Steel and declaration of war with the Italian Empire in 1940.²⁴ In the case of Nazi Germany Templeton wrote that of the records she could find, it was evident that Nazi newspapers were approved for publication up to and possibly past the declaration of war on 3 September 1939.²⁵ This contributed to the pre-war entrenchment of axis intelligence in Australia. As Hope later noted, the Committee of Review into Civil Staffing and Wartime Activities reported in 1945:

²² Horner, *The Spy Catchers*, 18.

²³ Jacqueline Templeton, *Australian Intelligence/Security Services 1900-1950*, vol. 7 of *Royal Commission on Intelligence and Security (1976-1977)*. NAA: A8908 7A-7B, Canberra, 118-122.

²⁴ Templeton, *Australian Intelligence*, 120; Cth, Parliamentary Debates, House of Representatives, vol. 44, 1935, 1206-1212.

²⁵ Templeton, *Australian Intelligence*, 118-119.

There were in peacetime a not inconsiderable body of enemy espionage agents, German, Japanese and Italian, in this country.²⁶

Of course, once the threat of Nazis and Italian fascists was taken seriously the was widespread internment of immigrants.²⁷ CIB's commitment to open political discourse – and therefore democracy – in Australia must be seriously questioned, not just its ineffectual operations.

The government of the day had the power to direct each agency as to their focus. Templeton argues that fascist sympathy extended to the governments of that period; “[i]t is evident... that advice of the CIB tended at times to be accepted or rejected according to the predilections of the government of the day”.²⁸ Horner does not draw this conclusion although he provides ample evidence of it. According to the *Official History* “[t]he most pressing security concern in the first months of the war was the activities of the [Communist Party]”.²⁹ This was so because of the Party's anti-war stance, even though it only had some 4000 members in 1939.³⁰ Horner also infers that it was the conservative Bruce Government (1923-1929) and its Attorney-General John Latham – later one of the longest serving chief justices of the High Court of Australia – who had effectively shifted CIB's focus to “the communist threat”.³¹ While Horner does not explore this he does argue that in 1939 Attorney-General Billy Hughes directed “every effort” of CIB towards understanding the “activities of the Communist Party”.³² Horner also identifies evidence that the Curtin Government (1941-1945) and its attorney-general, Doc Evatt, had used CSS during the war for political purposes.³³ One

²⁶ Robert Hope, *Fourth Report [re ASIO]*, vol. 4. of *Royal Commission on Intelligence and Security* (1976-1977). NAA: A8908 4A, Canberra, 21.

²⁷ Stuart Macintyre, *The Reds* (Sydney: Allen & Unwin, 1998), 403.

²⁸ Templeton, *Australian Intelligence*, 123.

²⁹ Horner, *The Spy Catchers*, 19.

³⁰ *Ibid.*, 19, 40.

³¹ *Ibid.*, 17.

³² *Ibid.*, 19.

³³ *Ibid.*, 28.

notable omission by Horner is Attorney-General Robert Menzies, who would become a pivotal figure in ASIO's early history as Prime Minister. During the Lyons Government (1932-1939) Menzies replaced Latham in the position and served four years from October 1934 until March 1939, when Billy Hughes replaced him.³⁴ Menzies, as attorney-general, appears to have been influential in the development of a communist obsession within the intelligence apparatus.³⁵ Part of his motivation was a fear of an alliance between Labor and the Communist Party along the same lines as that envisaged in the United Kingdom by international communist Georgi Dimitrov, in 1935.³⁶

There was also significant interagency competition in the pre-ASIO intelligence community. Horner believes military intelligence expanded its operations to civilian intelligence work due to CIB having a "relatively small staff" and CIS being deliberately underfunded to discourage its expansion.³⁷ But, again, there is a broader story that Templeton reveals; it was largely the ill-defined roles of both organisations that led to "compet[ition]", as well as CIB being deliberately "forced out of the picture" by military intelligence.³⁸ That is, there was an interagency 'turf war' in which military intelligence was victorious. While it is possible the interagency conflict began under Menzies as attorney-general or arose from desires within Australia's defence establishment, military intelligence was not the victor until it was under the directorship of Spry. In this regard ASIO's future director-general knowingly defied the Chifley Government and the chiefs of the armed service, as well as the advice of the Secretary of the Department of Defence.³⁹ Evatt had made plain to the Parliament and the public

³⁴ "List of Attorneys-General," Attorney-General's Department, accessed 12 April 2017, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Browse_by_Topic/law/attorneysgeneral.

³⁵ Robert H. Smith, "Haunting relations between the feds and ASIO," *National Review*, 3 May 1973, 864.

³⁶ Smith, "Haunting relations.," Macintyre, *The Reds*, 249.

³⁷ Horner, *The Spy Catchers*, 49.

³⁸ Horner, *The Spy Catchers*, 17, 49.; Templeton, *Australian Intelligence*, 116-117.

³⁹ Horner, *The Spy Catchers*, 38, 47.; Smith, "Haunting relations."

that the government did not wish to have anything more than a minor domestic intelligence organisation in peacetime.⁴⁰ Instead of using Templeton's description set out above Horner uses her less controversial description that military intelligence "gained ascendancy" in the interagency conflict, which supposedly originated in the defence establishment.⁴¹ The way Horner uses Templeton's work weakens its potency. In reality military intelligence under Spry competed with CIB and thus defied the government, as Spry believed "that intelligence was too important to be left to amateurs".⁴² It should also be noted that Horner reveals Spry's leadership of military intelligence 20 pages after his quotation of Templeton's work on the interagency conflict. Thus, the reader's ability to draw an important fact – that Spry was an integral player in the pre-ASIO intelligence community – is diminished. Similarly, he reveals that "two [other] key officers [from military intelligence]... later became senior officers of ASIO" 29 pages after the Templeton quotations.⁴³ Again, this diminishes the links ASIO had with its institutional forbears. The narrative that the *Official History* constructs for Spry is that of the inspired democratic saviour instead of self-righteous crusader. This was not the first time Spry was "clearly biased" and fixated on a mission; he had "what is almost a burning zeal to lift the status of the Army as a whole".⁴⁴ It should be noted that despite their ideological bias, the early intelligence organisations were not incapable of identifying threats posed to the Australian Government from violent reactionary, anti-radical groups (see below).

⁴⁰ Horner, *The Spy Catchers*, 37-38.

⁴¹ *Ibid.*, 18.

⁴² *Ibid.*, 45.

⁴³ *Ibid.*, 47.

⁴⁴ *Ibid.*, 47-49.

ASIO's inception (1944-1949)

According to the Royal Commission, ASIO came into being because the United States and United Kingdom demanded the Chifley Government improve the secrecy of the Australian Government.⁴⁵ It is often accepted that the end of the Second World War saw a resurgent threat to Australia and its 'way of life' in the form of communism. As the American-aligned states – including Australia – began to perceive the Soviet Union as the dominant enemy once more, there emerged a cold war which plunged these societies into fear. Of course the Cold War and associated fear were in part genuine and in part manufactured. It was in the build-up to the Cold War that ASIO was created. The *Official History* attributes the ultimate and direct cause of ASIO's inception to the discovery of Soviet infiltration of the Australian Government during the war.⁴⁶ This caused a breakdown of trust in which the governments of the United States and United Kingdom saw the Australian Government as inept at securing information it had received from them.⁴⁷ The *Official History* also states other causes of ASIO's formation: combating wartime Japanese espionage, distrust of Australia in the eyes of foreign intelligence agencies, the determination of military intelligence, the ineptitude of the pre-ASIO intelligence apparatus, the heads of the Department of Defence and the Attorney-General's Department, advice from MI5, Soviet espionage, as well as the Chifley Government's efforts to counter negative perceptions in an election year.⁴⁸

After the Second World War had ended, the United States – predominantly through the United Kingdom – exerted considerable pressure on the Australian Government to increase the security of its processes. At that time Australia was receiving classified information from the United States. Intelligence code breakers in the United States

⁴⁵ Hope, *Fourth Report*, 22.

⁴⁶ Horner, *The Spy Catchers*, 53, 561.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, 1-3, 13, 30-32, 45, 48-49, 52-54, 98, 104-105.

decrypted some 200 Soviet cables, in part and in full, which indicated information was leaking from the Australian Government somehow, demonstrating a probable spy ring operating in Canberra.⁴⁹ The reason Australia received such classified information is uncertain. The *Official History* argues that Australia's involvement with the Anglo-American intelligence exchange arose because of the continent's access to the Asian region.⁵⁰ Yet, the Department of Defence argued at the time that Australia was the recipient of "largely one-way traffic" with respect to intelligence information; a generous scheme in which the country was lucky to be involved.⁵¹ Either way, the United States saw Australian practises as open to exploitation by enemy states. The result was that the Australian Government was pressured by foreign allies to conform to their demands or jeopardise its supposedly advantageous position. The intelligence agencies of the United States and United Kingdom appear to have no evidence that these leaks were acted upon by the Soviet Union, nor evidence of leaks occurring after the war ended; a faith in the science of likelihoods is not evidence.⁵² These intelligence agencies withheld information and deliberately misinformed officials, including Chifley, despite urging the government to adopt tighter security measures.⁵³ Meanwhile, the Chifley Government steadily adopted United Kingdom policy (approved by the United States) on domestic security, including the formation of a new domestic intelligence agency, ASIO, as well as foreign affairs towards the Soviet Union.⁵⁴

The pressures placed on the Chifley Government, within and without the executive, by foreign intelligence agencies had a demonstrable effect on policy formulation. One such pressure source included the restriction of access to foreign intelligence. As early as

⁴⁹ Horner, *The Spy Catchers*, 55.

⁵⁰ *Ibid.*, 54.

⁵¹ *Ibid.*, 77.

⁵² *Ibid.*, 56, 60.

⁵³ *Ibid.*, 59, 61, 65, 72, 75.

⁵⁴ *Ibid.*, 63, 67-68, 70.

January 1948 – despite no evidence of post-war Soviet spying in Australia – British officials knew of a decision by the United States army to withhold all evidence it had been sending to Australian counterparts.⁵⁵ As the year progressed the isolation expanded to other American agencies and, eventually, the United Kingdom started restricting information flows in response to United States pressure.⁵⁶ This clearly placed pressure on Australian officials. In September 1948, MI5 Deputy Chief Roger Hollis reported that Prime Minister Chifley

blew up and stated that while he was prepared to deal with the security situation as he saw it, he would not tolerate US censure any longer...⁵⁷

In a letter to British Prime Minister Clement Atlee, Chifley pointed to the hypocrisy of the “Great Powers”, all of which continued to suffer from leaks and other security breaches.⁵⁸ Regardless, the Australian Government continued to be bullied into compliance with the desires of foreign governments, which were actively trying to circumvent elected representatives of the Australian people.⁵⁹ While Chifley was not opposed to creating ASIO or increasing governmental secrecy, he was at least prepared to test the veracity of claims spawning from the Venona project and identify the security hypocrisy.⁶⁰ This was obviously seen as an extravagance. Meanwhile, Hollis reported that the United States officials held

a general distrust of Labour politicians, a particular distrust of Australian Labour politicians, and an outstanding distrust of Dr. Evatt and Burton...⁶¹

A second form of pressure came in the physical presence of senior MI5 officials from the United Kingdom. This presence included that of Director-General Percy Sillitoe and

⁵⁵ Horner, *The Spy Catchers*, 66.

⁵⁶ *Ibid.*, 75-76, 90-91.

⁵⁷ The National Archives, KV 4/451.

⁵⁸ Horner, *The Spy Catchers*, 85.

⁵⁹ The National Archives, KV 4/451, 44, 85.

⁶⁰ Horner, *The Spy Catchers*, 97, 137.

⁶¹ The National Archives, KV 4/451, 43.

future Director-General Roger Hollis. These officials used the *de facto* authority of the Mother Country to gain direct access to Australian decision makers, whereby they manipulated and cajoled less savvy operators.⁶² This is tied in with a third source of pressure, namely that of social norms that positioned British opinion highly and also resented that “Australia’s names stinks in the security world”.⁶³ Sir Frederick Shedden, the long-serving Secretary of the Department of Defence from 1937 to 1956, was crucial as an advisor to Chifley and was identified by the head of MI5 as valuing his personal standing with the British bureaucracy.⁶⁴ Only he and Chifley knew of Venona having originated from intercepted cables.⁶⁵ At the same time, other bureaucrats less sympathetic to the United Kingdom were kept out of the decision making process by more patriotic Australians. The Secretary of the Department of External Affairs from 1947 to 1950, John Burton, repeatedly asked Shedden for more details pertaining to the investigation for leaks in his department, but was “ignored”.⁶⁶ Such internal squabbles were deemed by British officials as “Australian matter[s]” more appropriately dealt with by locals.⁶⁷ This was so even though MI5 officials partly created such divisions.⁶⁸ Another favourite of the British was the Solicitor-General, Sir Kenneth Bailey, who, upon returning from the United Kingdom, was convinced of the need for ASIO.⁶⁹ The “final impetus” to establish ASIO came when Hollis visited Australia in January 1949 and conveyed his unfavourable comparison between British and Australian security to Bailey.⁷⁰ Both Shedden and Bailey were, as Horner argues, key to the development of ASIO.⁷¹

⁶² Horner, *The Spy Catchers*, chps. 3-4.

⁶³ The National Archives, KV 4/451, 90.

⁶⁴ Horner, *The Spy Catchers*, 59.

⁶⁵ *Ibid.*, 74.

⁶⁶ *Ibid.*, 63.

⁶⁷ The National Archives, KV 4/451, 28.

⁶⁸ Horner, *The Spy Catchers*, 72; The National Archives, KV 4/451, 73.

⁶⁹ Horner, *The Spy Catchers*, 76.

⁷⁰ *Ibid.*, 91.

⁷¹ *Ibid.*, 73, 98.

Meanwhile, Chifley complained to Atlee that in the absence of more details it was unclear that the leak even came from the department.⁷² Horner notes that the reliability of the Australian Government was declining in the eyes of foreign counterparts “in some cases due to rumour and innuendo” or “wildly extravagant reports”.⁷³ But he does not draw the conclusion that Australia’s sovereignty was being jeopardised by the United States and United Kingdom. In late 1948, the government attempted to use a treaty negotiation – presumably over the Fulbright programme – to bargain for access to top-secret information, but the United States ambassador, Myron Cowen, refused and outright demanded that a domestic intelligence agency be created.⁷⁴ In the words of MI5, Chifley and Evatt were getting “a practical demonstration of the disadvantages of bad security in the loss of U.S. and British intelligence”.⁷⁵

In September 1948 Chifley decided to establish ASIO “along the lines of M15”, making the decision public in March 1949.⁷⁶ A month later, the Soviet Union changed its cipher – after leaks from the United States and United Kingdom – and the project could not produce intelligible intelligence.⁷⁷ Once ASIO was erected its director-general, Justice Geoffrey Reed, sought to “assert his right of direct access to [Chifley] and to see Dr. Evatt as little as possible”, according to the private discussions of the British High Commission at that time.⁷⁸ Hollis had foreshadowed this in a passage quoted by Horner:

...[Selecting Reed] has some advantages, particularly in this political cesspool of a country. He is a South Australian and a liberal and therefore will not be regarded as Evatt’s man or a government stooge... He is merely on leave from the High [Supreme] Court, and can therefore return when he likes and is not

⁷² Horner, *The Spy Catchers*, 63.

⁷³ *Ibid.*, 64, 79-80.

⁷⁴ The National Archives, KV 4/451, 73-74.

⁷⁵ *Ibid.*, 91.

⁷⁶ Horner, *The Spy Catchers*, 77-78, 81, 84, 92, 94.

⁷⁷ *Ibid.*, 87.

⁷⁸ The National Archives, KV 4/451, 28.

dependent on his Secret Service job; he can thus resist attempts at Ministerial interference, and I gathered from our conversation with him he intends to do so.⁷⁹

The same communiqué, although not included by Horner, provides insights into the mindset of one of ASIO's creators:

Meanwhile the staffing of the new Service continues slowly. I was interested to see in the draft resolution of the Brisbane District of the Australian Communist Party they stated that "a huge security force has been established to spy on and disrupt the working class movement". I only wish it were true.⁸⁰

This demonstrates the underlying motivation that runs through much of the anti-communism covered by this thesis; the fear of working class political mobilisation. It also reflects the somewhat ironic distrust senior intelligence figures held for the system of government they sought to defend. The United States originally promised to restore intelligence flows to Australia once ASIO was created, but this proved to be insincere as it took many years to resume.⁸¹ In hindsight this fact alone undermines the logic that the Australia Government needed the intelligence flow for its survival, even though it was wanted so desperately.

ASIO's legal confines

From ASIO's creation until 1956 the legal documents on which the organisation operated was an executive charter issued by the governor-general. The first charter, issued in March 1949, was "based almost verbatim" on the United Kingdom's equivalent order for MI5.⁸² Crown Solicitor Fred Whitlam, father of the future prime

⁷⁹ Horner, *The Spy Catchers*, 93.

⁸⁰ The National Archives, KV 4/451, 28.

⁸¹ Horner, *The Spy Catchers*, 80, 87, 91, 94, 99, 123, 136-138.

⁸² *Ibid.*, 96.

minister, drafted the terms upon which the Director-General could operate ASIO.⁸³ The salient provisions were:

5. Its task is the defence of the Commonwealth from external and internal dangers arising from attempts at espionage and sabotage, or from actions of persons and organisations, whether directed from within or without the country, which may be judged to be subversive of the security of the Commonwealth.

6. ... It is essential that the Security Service should be kept absolutely free from any political bias or influence, and nothing should be done that might lend colour to any suggestion that it is concerned with the interests of any particular section of the community...

8. You and your staff will maintain the well established convention whereby Ministers do not concern themselves with the detailed information which may be obtained by the Security Service...⁸⁴

From these terms it is clear there was no scope for political frolicking on the part of ASIO, nor any scope for meddling in ideological and political debates in Australia. The organisation was to be concerned with the commonwealth's security, even if the political system approved radical changes. However, ASIO's senior officials quickly adopted a different interpretation. In creating ASIO, the Chifley Government "would provide a rod for Evatt's own back in future years", according to the *Oxford History of Australia*.⁸⁵

⁸³ Horner, *The Spy Catchers*, 96; Hocking, *Terror Laws*, 25.

⁸⁴ Hocking, *Terror Laws*, 250-251; Horner, *The Spy Catchers*, 97.

⁸⁵ Geoffrey Bolton, *The Middle Way 1942-1995*, vol. 5 of *The Oxford History of Australia* (Melbourne: Oxford University Press, 1996), 69.

II. Bipartisan anti-communism

...in this country, where the workers rule, and where they have had the Government under their control for years, and where they have means of passing any law they please, and where they can, and do, control – through their socialistic enterprises – great amounts of capital, ‘going slow’ and ‘sabotage’ are grave economic and social crimes, and treason itself against the State.

*Billy Hughes, National Labor prime minister, 1916.*⁸⁶

In these restless times when subversive doctrines are being preached, and the loyalty of the community and the stability of our institutions are being undermined, the widest power to deal with unlawful associations is essential in the interests of society.

*Stanley Bruce, former Coalition prime minister, 1932.*⁸⁷

... the doctrine of communism is not gaining ground in this country; but even if it were, then the way to combat it is to meet argument with argument.

*James Scullin, former Labor prime minister, 1932.*⁸⁸

... never is liberty more easily lost than when we think we are defending it... We are going to fight communism in the open.

*Ben Chifley, Labor prime minister, 1948.*⁸⁹

As we have seen, anti-communism was part of the justification for ASIO’s creation but the demands of the United States and United Kingdom were pivotal. In this chapter we will see that anti-communism was policy for the parties of government in the 1920s until the 1950s. In the next chapter we will see that communism was ASIO’s predominant concern in the 1950s until the time of the Royal Commission in the 1970s. The obsession with communism in Australia was twofold. First, it arose in part because of the Communist Party of Australia’s allegiance with the Soviet Union. Second, it arose in part because the parties of government feared the working class would put its faith in a radical movement and upturn the *status quo*. It will be demonstrated that, despite rhetorical differences, the major parties typically agreed that outlawing communists was a legitimate course of action from the 1920s until the 1951 referendum. This chapter shows that the Communist Party had generally been autonomous in the 1920s, subservient to the Soviet Union in the 1930s, and, after the

⁸⁶ Cth, Parliamentary Debates, House of Representatives, vol. 51, 18 December 1916, 10102.

⁸⁷ Cth, Parliamentary Debates, House of Representatives, vol. 20, 20 May 1932, 1142.

⁸⁸ Cth, Parliamentary Debates, House of Representatives, vol. 21, 23 May 1932, 1164.

⁸⁹ George Winterton, “The Significance of the *Communist Party Case*,” vol. 18 (1992): 636.

Second World War, a voluntary servant. It will also show that the Communist Party and communists were different groups. Labor's acceptance – at times, embrace – of anti-communism goes some way to de-mystify the Whitlam Government's decision, two decades later, to secure ASIO's existence within the apparatus of the executive. In essence, Labor continued to be a reformist party that adopted many of the same fundamentals as the Coalition. While Labor's national constitution refers to "democratic socialism" to this day, there is little in Labor's history to indicate that this was adhered to, much like "full employment", "world peace", and "an independent Australian position in world affairs".⁹⁰ This chapter establishes that Labor was anti-communist, even if it was not the instigator of legal reform in this respect.

A brief history of the Communist Party, 1920-1949

The history of the Communist Party from its foundation until the creation of ASIO reveals an internal contest between those who wanted Australian communism to succeed and those who wanted to serve the interests of the Soviet Union.⁹¹ In its first decade, the 1920s, the party operated autonomously and with a similar degree of democracy amongst members as the major parties do in the present time. In its second decade the party leadership adhered to Soviet policy rigidly, while in its third decade the party had greater autonomy as the interest of the Soviet Union in world revolution waned. Crucially, the subservience of the Communist Party to the Soviet Union was not the dominant concern of the parties of government at first. Successive governments had sought to outlaw the Communist Party as early as 1926. The dominant issue of concern in the major parties was initially the radicalism of communism and its threat to the *status quo*.

⁹⁰ Australian Labor Party National Constitution, 2015, ss 4, 5(i), (u); e.g. Tim Battin, *Abandoning Keynes: Australia's capital mistake* (London: MacMillan Press, 1997).

⁹¹ Macintyre, *The Reds*, 1-2.

The Communist Party origins

Although the Communist Party was not the first communist party in Australia – the other having been created in 1919 – it was the dominant communist party from early in its existence.⁹² The historian Alistair Davidson argues the origins of the party can best be understood by Labor’s “non-socialist” tradition.⁹³ To generalise, Labor has a history of being eager to abandon its non-existent socialist past.⁹⁴ From its inception the party had practised a pragmatic reformist agenda of ‘labourism’, not socialism; an important distinction with important consequences for the working class and capital.⁹⁵ Various scholars have argued that Labor’s history is decidedly more dynamic.⁹⁶ However, the party in government and opposition has not been socialist, even if they had the support of workers at the electorate, had socialists in its flock, and occasionally held socialistic policies. It was none other than Vladimir Lenin who asked in 1913,

[w]hat a peculiar capitalist country is this in which Labor predominates in the *upper* house and recently predominated in lower, and yet the capitalist system has not been exposed to any danger?⁹⁷

L. G. Churchward grounded this absence of socialism in the predominance of the middle class in Labor’s leadership:

Although a considerable measure of class consciousness was a prerequisite for the establishment of the Labor Parties, the general objective of these parties was

⁹² Alastair Davidson, *The Communist Party of Australia: a short history* (Stanford: Hoover Institution Press, 1969), 9.

⁹³ *Ibid.*, 5.

⁹⁴ L. G. Churchward, “Introduction,” in *The Australian Labor Movement 1850-1907*, eds. R. N. Ebbels and L. G. Churchwood (Melbourne: Lansdowne Press, 1965), 25-26.

⁹⁵ Macintyre, *The Reds*, 33, 45, 78; Terence Irving & Sean Scalmer, “Labour intellectuals in Australia: Modes, traditions, generations, transformations,” *Review of Social History* 50(1) (2005): 12-14.

⁹⁶ Peter Beilharz, *Transforming Labor: Labour tradition and the Labor decade in Australia* (Cambridge University Press, 1994), 49-51, 62; Nick Dyrenfurt & Frank Bongiorno, *A Little History of the Australian Labor Party* (Sydney: UNSW Press, 2011) 53-54, 103, 109, 135; Graham Maddox & Tim Battin, “Australian Labor and the Socialist Tradition,” *Australian Journal of Political Science* 26(2) (1991): 184-185, 187-188, 190-191.

⁹⁷ Vladimir Lenin in R. N. Ebbels, *The Australian Labor Movement 1850-1907*, 243; Cf. Macintyre, *The Reds*, 29-30.

social reform, not socialism... The restrained character of Labor's objectives irked the socialist minority within the party... union leaders and labor politicians were drawn from the upper crust of skilled labor, from the "labor aristocracy"... they shared the same middle class outlook as the non-Labor parliamentarians.⁹⁸

This view is consistent with contemporary communists.⁹⁹ From its very beginning Labor's links to unions, although essential to its electoral success, did not result in working class control of the party.¹⁰⁰ Labor's policies were always "intended to be acceptable... by people of divergent political opinions" as opposed to socialists.¹⁰¹ As early as 1920, Labor was dominated by its "federal parliamentary wing", which had contained the influence of trade unions as well as the state branches.¹⁰² This is why the trade unions were unsuccessful in getting Labor support in 1921 for the non-hierarchical, union-centred, anarchist model of democracy.¹⁰³ At the 1921 Federal Conference there were moves to allow communists into Labor and radical delegates were successful in seeking changes to the party constitution, including the insertion of the word 'socialisation'.¹⁰⁴ But within four years the communists were ejected from Labor.¹⁰⁵ The socialisation objective was also effectively qualified "out of existence".¹⁰⁶ The first Labor government after this change, the Scullin Government (1929-1932), demonstrated perfectly how little this constitutional change meant in practise; a

⁹⁸ Churchward, "Introduction," 29, 34.

⁹⁹ Macintyre, *The Reds*, 30-32.

¹⁰⁰ *Ibid.*, 46.

¹⁰¹ Gordon Greenwood, *Australia: A social and political history* (Sydney: Angus & Robertson, 1955), 161, 169-171, 178, 203; B. K. de Garis, "1890-1900" in *A New History of Australia*, ed. F. K. Crowley (Melbourne: William Heinemann, 1974), 235, 244; Graham Freudenberg, *A Certain Grandeur* (Melbourne: Viking, 2009), 78-79.

¹⁰² Davidson, *The Communist Party*, 4; Macintyre, *The Reds*, 30-32.

¹⁰³ *Ibid.*, 13.

¹⁰⁴ Davidson, *The Communist Party*, 13, 16, 29-30; Churchward, "Introduction," 25-26; Beilharz, *Transforming Labor*, 57.

¹⁰⁵ Macintyre, *The Reds*, 110.

¹⁰⁶ Beilharz, *Transforming Labor*, 58; Dyrenfurt and Bongiorno, *A Little History of the Australian Labor Party*, 69.

depression era government that abdicated policymaking to the banks, which saw their salvation in austerity.¹⁰⁷

The Communist Party came into existence in 1920 because of the perceived need amongst various socialists in Australia for a party that challenged Labor's electoral and intellectual dominance over working class voters.¹⁰⁸ This, however,

was not merely the product of disillusionment with Labor reformism. Its economic basis was the intensification of the monopoly trend in Australian industry in these years... the increasing exploitation of labour and a marked decline in real wages.¹⁰⁹

The revolution of March which birthed local, organic political councils (soviets) gave way to the Bolshevik *coup d'état* in October.¹¹⁰ Regardless, these events inspired radicals throughout the world and proved to be as influential as the French Revolution.¹¹¹ While Davidson argues that this decision was made with "the prime motivation" being the success of Lenin in Russia, he explains that its members were concerned with creating a communist society in Australia as opposed to replicating Bolshevism.¹¹² According to Stuart Macintyre, the party owes its existence to a disparate group of radicals – including feminists – forced together, to compromise their rigid adherence to doctrine, as a result of the uncompromising efforts by government to eradicate radicalism in general.¹¹³ This version of the party's creation is contrary to the simplistic view offered in the *Official History of ASIO*: "the Communist Party... [was] formed in Sydney in October 1920 by a group of socialists inspired by reports of the

¹⁰⁷ Greenwood, *Australia: A social and political history*, 348-350; Macintyre, *The Reds*, 184-185; Beilharz, *Transforming Labor*, 56; Dyrenfurt & Frank Bongiorno, *A Little History of the Australian Labor Party*, 79.

¹⁰⁸ Davidson, *The Communist Party*, 5; Irving and Scalmer, "Labour intellectuals in Australia," 18, 22-23

¹⁰⁹ Churchward, "Introduction," 35.

¹¹⁰ Macintyre, *The Reds*, 15, 39.

¹¹¹ *Ibid.*, 16.

¹¹² Davidson, *The Communist Party*, 6-7, 10, 12, 175; Churchward, "Introduction," 35.

¹¹³ Macintyre, *The Reds*, 14-16.

Russian Revolution”.¹¹⁴ (Although Horner offers no citation, this sentence can be traced to a 2003 edit of a Wikipedia article).¹¹⁵

The new Communist Party in Australia was distinct from the Russian Communist Party because of its democratic model. From 1920 until 1930 the Party was generally democratic in its internal operations, with local branches – comprised of local members – formulating policies through debate, while members were allowed to criticise leaders.¹¹⁶ The transition toward subservience was foreshadowed when the Industrial Workers of the World (‘the Wobblies’) were outcompeted by the Communist International (Comintern) for influence over the party’s leadership.¹¹⁷ The Comintern was an organisation setup by the Soviet State – soon to become the Soviet Union – in 1919 and, until Joseph Stalin consolidated power, operated on democratic principles.¹¹⁸ The Communist Party became the official organ of the Comintern in 1922 upon its unification with the pre-existing socialist party.¹¹⁹ The years of autonomy continued although the leadership increasingly chose to follow Soviet direction and adopted an uncompromising, positive view of the Soviet Union.¹²⁰ Beginning in 1927, but in earnest from 1930, the autonomy of the Communist Party was contained and quashed when the leadership of the party was replaced by one compliant with Comintern directions.¹²¹ At the time of the Great Depression the party was “small, isolated” and ineffectual.¹²² In the 1930s Davidson argues the party’s leadership became “over-

¹¹⁴ David Horner, *The Spy Catchers*, vol. 1 of *The Official History of ASIO* (Sydney: Allen & Unwin: 2014), 17.

¹¹⁵ *Wikipedia*, s.v. “Communist Party of Australia,” by Adam Carr, modified September 19, 2003, accessed February 22, 2018, https://en.wikipedia.org/w/index.php?title=Communist_Party_of_Australia&oldid=1450371.

¹¹⁶ Davidson, *The Communist Party*, 13-15.

¹¹⁷ *Ibid.*, 14.

¹¹⁸ Douglas Jordan, “Conflict in the Unions: The Communist Party of Australia, Politics and the Trade Union Movement, 1949-1960,” (PhD thesis, Victoria University, 2011), 5; Macintyre, *The Reds*, 40.

¹¹⁹ Macintyre, *The Reds*, 75-76, 132-133.

¹²⁰ Jordan, “Conflict in the Unions,” 24; Macintyre, *The Reds*, 55, 76-77, 100-101, 107, 121.

¹²¹ Jordan, “Conflict in the Unions,” 53, 64, 177; Macintyre, *The Reds*, 240-241.

¹²² Jordan, “Conflict in the Unions,” 38-39.

zealous in their commitment to Marxist-Leninism” and its subservience to the Comintern greatly weakened its appeal to the working class.¹²³ By 1935 the Comintern was “little more than a tool of Soviet foreign policy” and had abandoned its original aim of global revolution.¹²⁴ So it was the Communist Party became less about communism and more about securing the influence of a foreign master.

Unpopular puppet or working class saviour?

After the Soviet takeover the Communist Party began pursuing a new purpose; to gain greater influence. Since the party was not likely to improve its electoral fortunes it began seeking influence covertly, especially in trade unions.¹²⁵ By using front groups the party influenced far more people than it could in an open and honest way.¹²⁶ During this time its policies also shifted into line with those of the Soviet Union. For example, the party advocated appeasement in 1939 when the Soviet Union signed the Molotov-Ribbentrop Pact with Nazi Germany, but then advocated war when the Pact was betrayed in 1941.¹²⁷ The relationship the Communist Party had with the Comintern proved to be a significant burden to its efforts to capture working class voters and Labor members.¹²⁸ This is clearly evident when we consider that during the Nazi invasion of the Soviet Union, when communications broke down between agent and master, membership swelled with new communists who re-introduced internal debate.¹²⁹ The party’s union influence peaked in 1945 at an estimated 270,000 people during the war, possibly as high as “nearly 40 per cent of unionists” and “a majority of 90... delegates”

¹²³ Davidson, *The Communist Party*, 7463.

¹²⁴ *Ibid.*, 74.

¹²⁵ *Ibid.*, 12, 26-27, 55.

¹²⁶ *Ibid.*, 60-61.

¹²⁷ Davidson, *The Communist Party*, 78-79, 81-82; Macintyre, *The Reds*, 290-292, 386-387.

¹²⁸ Davidson, *The Communist Party*, 72.

¹²⁹ *Ibid.*, 83-84, 93.

in the Australian Council of Trade Unions.¹³⁰ For the sake of context, Australia's population in the early 1940s comprised around seven million people.¹³¹ Party membership surged from around 4500 in 1940 to around 23,000 by late 1944, in part because the Communist Party began trying to work within the union movement instead of in opposition to it.¹³² The *Official History* attributes this rise in support during wartime to the Soviet Union's decision to join the allied war effort and the party's successful attempts to change perceptions that it was a puppet.¹³³ Nevertheless, this presence in the union movement would soon begin to ebb; communists retained leadership of a number of unions for some time.¹³⁴ In 1943 the Comintern was dissolved, meaning the party would lack the official leadership and direction it had before the war.¹³⁵ Once communications were restored the leadership adopted a new master – the Communist International Bureau (the 'Cominform') – rigidly following its publications.¹³⁶ This voluntary subservience was contrary to communist parties in other countries, which tended to embrace self-determinism.¹³⁷ Other scholars have doubted whether this was voluntary in nature.¹³⁸ In 1945 the membership declined to some 16,000, reaching a mere 5000 in 1948.¹³⁹ Davidson argues that once more subservience to international leadership undermined the party's popularity amongst freethinking communists.¹⁴⁰ Jordan attributes this to the spread of anti-communism through

¹³⁰ Davidson, *The Communist Party*, 92, 126; Rick Brown, "The Split: Looking back" in *Arguing the Cold War*, eds. Peter Love & Paul Strangio (Melbourne: Red Rag Publications, 2001), 77.

¹³¹ Australian Bureau of Statistics, "Year Book Australia, 2012: Population size and growth," accessed May 12, 2017, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1301.0~2012~Main%20Features~Population%20size%20and%20growth~47>.

¹³² Horner, *The Spy Catchers*, 40; Davidson, *The Communist Party*, 82-83; Macintyre, *The Reds*, 330, 336, 347, 351.

¹³³ Horner, *The Spy Catchers*, 40-41.

¹³⁴ Brown, "The Split: Looking back", 79.

¹³⁵ Jordan, "Conflict in the Unions," 6; Macintyre, *The Reds*, 407.

¹³⁶ Jordan, "Conflict in the Unions," 74; Davidson, *The Communist Party*, 99, 101-102, 179; Horner, *The Spy Catchers*, 44.

¹³⁷ Davidson, *The Communist Party*, 180.

¹³⁸ Blaxland, *The Protest Years*, 118.

¹³⁹ Davidson, *The Communist Party*, 120.

¹⁴⁰ *Ibid.*, 106, 115-116, 130, 143.

society.¹⁴¹ In turn various anti-communist groups, especially within the Catholic community, began to out compete the Communists for union influence.¹⁴² Labor set up official Industrial Groups from 1945 to “directly represent the party in trade unions” so as to undermine Communist Party influence.¹⁴³ At the same time the party, whose leadership wanted greater union activism in politics, alienated communist unionists and never experienced the kind of control over the unions they desired.¹⁴⁴ Even so, pursuing power in the trade union movement proved to be the Communist Party’s undoing, according to Davidson.¹⁴⁵ That is because control or partial control of these organisations did not (and would not) translate into political power of the kind needed to remove capitalism.¹⁴⁶

Outlawing communists and communism

Broadly speaking, there was a bipartisan embrace of anti-communism that arose out of a belief that the ideology was a threat to the political and economic *status quo*. The parties of government employed different rhetoric on the topic, yet often found common ground with respect to policy. Certainly, Labor agreed that something needed to be done to remove the threat, but the contention rested in whether banning communism was a legitimate course of action. Despite this, Labor more often than not agreed that a ban was worthy of implementation, although it was never whole-heartedly embraced. Tellingly, the dispute within the Communist Party on its allegiances to the Soviet Union appears to have been of no concern to either party; such details do not appear to have influenced policy. This suggests that its allegiance with the Soviet Union was assumed

¹⁴¹ Jordan, “Conflict in the Unions,” 55, 76, 117.

¹⁴² Davidson, *The Communist Party*, 130-131, 138; W. J. Hudson, “1951-72” in *A New History of Australia*, edited by F. K. Crowley (Melbourne: William Heinemann, 1974), 508.

¹⁴³ Jordan, “Conflict in the Unions,” 54.

¹⁴⁴ *Ibid.*, 60, 64, 74-75.

¹⁴⁵ Davidson, *The Communist Party*, 183.

¹⁴⁶ *Ibid.*, 183.

to be constant. In all, there were nine attempts to outlaw the party. Of the five major occasions a ban of the Communist Party arose – 1926, 1932, 1940, 1950, and 1951 – Labor, in spirit, supported all but two efforts. As already shown, Soviet Union control of the Communist Party was present in 1932 and 1940. According to jurist Sam Ricketson there were possibly other more subtle attempts made in 1920, 1925 and 1934 – in addition to those undertaken in the 1940s – dealing with foreigners in Australia or criminal processions of specific individuals, but these will not be discussed here.¹⁴⁷

The Wobblies: 1916-1919

The syndicalist Wobblies had influence over the first two years of the Communist Party's existence. However, the contest between the establishment and socialists already existed in Australia well before 1920. The IWW in Australia grew rapidly in the early twentieth century with its "militant direct-actionist" approach to politics.¹⁴⁸ In 1916, Prime Minister Billy Hughes left Labor – along with many other Labor politicians – to join the conservative benches. Soon after, the reformed Hughes Government succeeded in passing the *Unlawful Associations Act of 1916* which banned the IWW because the it had attracted significant support in the working class and had undermined the government's efforts to introduce conscription.¹⁴⁹ Hughes explained that the IWW ambition to cause a general strike – the dreaded tool of unionists – was the government's prime motivation for the ban; it was "an open declaration of war" comparable to other war crimes.¹⁵⁰ The Act contained a preamble explaining the IWW had "been concerned in advocating and inciting to the commission of [various] crimes

¹⁴⁷ S. Ricketson, "Liberal Law in a Repressive Age: Communism and the law 1920-1950," *Monash University Law Review*, vol. 3 (1976): 103, 105, 109.

¹⁴⁸ Churchward, "Introduction," 35; Macintyre, *The Reds*, 46.

¹⁴⁹ Davidson, *The Communist Party*, 8; Raymond Evans, *The Red Flag Riots: A study in intolerance* (Brisbane: University of Queensland Press, 1988), 13; Macintyre, *The Reds*, 46-47.

¹⁵⁰ Cth, Parliamentary Debates, House of Representatives, vol. 51, 18 December 1916, 10098.

and offences”.¹⁵¹ It was clearly a judgement beyond the power of the legislature. The Act also outlawed “[a]ny association which, by its constitution or propaganda, advocates or encourages... the taking or endangering of human life, or the destruction or injury of property”.¹⁵² The Act’s sunset clause rendered it inoperative six months after the war ended.¹⁵³ Despite sharing IWW’s anti-conscription belief, Labor supported the government’s coordinated “police surveillance” of the “evil” movement.¹⁵⁴ However, the Federal Labor leader, Frank Tudor, opposed the bill on grounds of legal pragmatism; existing laws dealt with the situation while proposed inchoate offences “will not cure the disease that is now present in the body politic”.¹⁵⁵ Conversely, the trade union movement was opposed to political suppression and was subsequently targeted by military intelligence.¹⁵⁶ Under the legislative regime Australia’s “official suppression of radicalism and dissent... matched – and to some degree surpassed – the American” regime.¹⁵⁷ Influential members of the commonwealth and state governments, and the business community emulated the United States government’s promotion of “vigilantism” amongst return veterans leagues in order to incite further suppression.¹⁵⁸ These groups were organised by the executive, particularly through SIB, military intelligence and state police forces.¹⁵⁹ One senior military intelligence office explained the policy rationale as follows:

‘Direct Action’ is an American product... If a town was smeared with filth in America, someone would dangle from the arm of the nearest lamp-

¹⁵¹ *Unlawful Associations Act 1916* (Cth), preamble.

¹⁵² *Unlawful Associations Act 1916* (Cth), preamble, s 3(a)-(b).

¹⁵³ *Ibid.*, s 2.

¹⁵⁴ Evans, *The Red Flag*, 33; Macintyre, *The Reds*, 46.

¹⁵⁵ Cth, Parliamentary Debates, House of Representatives, vol. 51, 18 December 1916, 10107.

¹⁵⁶ Evans, *The Red Flag*, 37, 40.

¹⁵⁷ *Ibid.*, 43-44.

¹⁵⁸ Evans, *The Red Flag*, 44-48, 53-54, 57, 60, 62; Nick Fischer, “The American Protective League and the Australian Protective League – Two responses to the threat of communism, c. 1917-1920,” *American Communist History*, vol. 10, no. 2 (2011): 133, 142, (cf.) 144-145.

¹⁵⁹ Evans, *The Red Flag*, 47, 53-54; Fischer, “The American Protective League,” 137.

post...[P]atrols would be formed to see that property is not destroyed. There is nothing illegal in assisting the police to maintain order...¹⁶⁰

Under the state's eye, loyalist forces amassed large numbers of supporters, stockpiled armaments, and engaged in violent demonstrations against persons and property.¹⁶¹ The state's intelligence agencies spread misinformation to sympathetic newspapers, co-operated with conservative party staff, and ran agents within IWW; one agent ironically chaired Trades Hall meetings in Brisbane.¹⁶² The historian Raymond Evans argues that the executive's lack of knowledge on matters of ideology is displayed in this period of Australian history:

By combining the often-competing interests of 'labour extremists', anarchists, pacifists and Quakers, Irish Roman Catholics and German 'enemy agents' into a co-ordinated disloyal assault... the official view was inspired more by a war-enhanced sense of paranoia than any objective assessment of socio-political and ideological realities.¹⁶³

While it is accepted that there was generally a deficiency of such knowledge, evidenced in particular by officers of the executive, the prime minister was certainly aware that the government's attack on the IWW was an attack on syndicalism.¹⁶⁴

1926

The first major attempt to outlaw the Communist Party occurred in 1926 when the Bruce Coalition Government (1923-1929) – claiming an historic electoral mandate with significant working class support – succeeded in passing amendments to the *Crimes Act* which granted the government power to declare groups “unlawful associations” if they

¹⁶⁰ Evans, *The Red Flag*, 63, 72.

¹⁶¹ *Ibid.*, 54, 56, 63, 71, 75.

¹⁶² *Ibid.*, 66-67, 71.

¹⁶³ *Ibid.*, 25.

¹⁶⁴ Cth, Parliamentary Debates, House of Representatives, vol. 51, 18 December 1916, 10100.

advocated “the overthrow of the Constitution of the Commonwealth by revolution or sabotage”.¹⁶⁵ The law also applied if a group advocated the “destruction or injury of property”, including that “used in trade or commerce”, and “[a]ny person who by speech or writing advocates or encourages” the same behaviour. When interpreted broadly the Act allowed for the destruction of “[a]ny book” by the state that expressed banned opinions.¹⁶⁶ It gave the government the power to restrict a “serious industrial disturbance prejudicing or threatening trade or commerce with other countries or among the States”.¹⁶⁷ These legislative changes were draconian, but the Bruce Government had won office on “law and order” issues in a time of heightened “industrial unrest”.¹⁶⁸ Labor did not vote for the 1926 amendments, but many of its MPs and Senators abstained including its leader, Mathew Charleton, who had offered Labor’s support to the provisions outlawing seditious groups.¹⁶⁹ Charleton had encouraged the government to apply these proposed provisions to the Australian fascist movement as well, demonstrating the breadth of Labor’s interest in political suppression.¹⁷⁰ Earlier in the 1920s Labor had learned to trust communists in its membership, especially those that held membership with both parties. By 1923 a majority within the Labor membership saw through the infiltration and sought to jettison communists, succeeding in doing so the next year.¹⁷¹ Labor’s leadership also sought to send a clear message to the working class at that time: communism was not the answer to their problems.¹⁷² In 1929, the Bruce Government was defeated by Labor because it was seen as having been

¹⁶⁵ *Crimes Act 1926* (Cth), s 17; Peter Love, “Australia’s Cold War” in *Arguing the Cold War*, eds. Peter Love & Paul Strangio (Melbourne: Red Rag Publications, 2001); Dyrenfurt & Bongiorno, *A Little History of the Australian Labor Party*, 70.

¹⁶⁶ *Crimes Act 1926* (Cth) s 17; cf. Cth, Parliamentary Debates, House of Representatives Hansard, vol. 4, 28 January 1926, 457-458, 466; cf. Cth, Parliamentary Debates, House of Representatives, vol. 20, 20 May 1932, 1141.

¹⁶⁷ *Crimes Act 1926* (Cth) s 17.

¹⁶⁸ Gabrielle Appleby, “The Gavan Duffy Court,” in *The High Court, the Constitution and Australian Politics*, eds. Rosalind Dixon and George Williams (Melbourne: Cambridge University Press, 2015), 154.

¹⁶⁹ Cth, Parliamentary Debates, House of Representatives, vol. 6, 10 February 1926, 827-831; Cth, Parliamentary Debates, House of Representatives, vol. 8, 24 February 1926, 1104.

¹⁷⁰ Cth, Parliamentary Debates, House of Representatives, vol. 6, 10 February 1926, 827-831.

¹⁷¹ Davidson, *The Communist Party*, 30-31; Macintyre, *The Reds*, 110.

¹⁷² Davidson, *The Communist Party*, 32.

excessively generous to employers in their war against the unions.¹⁷³ The shirt-lived Scullin Government maintained CIB efforts to suppress communist activity.¹⁷⁴

1932

In 1932 the Lyons Coalition Government (1932-1939) successfully amended the *Crimes Act* to “strengthen” the 1926 changes so as to shift the power to declare associations unlawful to the courts.¹⁷⁵ The amendments also expanded the scope of the ban by making it an offence to permit a meeting of an unlawful association in any venue or broadcast any subversive content.¹⁷⁶ Most importantly, it took away the right to vote or stand in elections of any member of an unlawful association so long as there was a corresponding law in the relevant state.¹⁷⁷ According to jurist Gabrielle Appleby, the Lyons Government was concerned with the prospect of working class revolt as a result of the Great Depression.¹⁷⁸ Labor did not support these amendments because the 1926 amendments already provided sufficient power – although they felt this should only apply to people not groups – and the traditional onus of proof was being reversed.¹⁷⁹ As in 1926, Labor had again chosen a nuanced position, presumably to avoid the appearance of supporting the struggle of communists. In 1932, communist Francis Devanny was declared unlawful under the updated provisions and imprisoned.¹⁸⁰ He appealed to the High Court in *Devanny’s* case which found in his favour.¹⁸¹ McKnight argues the events of 1932 instilled in the Communist Party and Comintern a desire for

¹⁷³ Macintyre, *The Reds*, 158.

¹⁷⁴ *Ibid.*, 208.

¹⁷⁵ Cth, Parliamentary Debates, House of Representatives, vol. 20, 20 May 1932, 1140-1141; *Crimes Act 1932* (Cth) ss 3-4.

¹⁷⁶ *Crimes Act 1932* (Cth) ss 7.

¹⁷⁷ *Crimes Act 1932* (Cth) s 7; *Commonwealth of Australia Constitution Act 1900* (Imp), s. 41.

¹⁷⁸ Appleby, “The Gavan Duffy Court,” 154.

¹⁷⁹ Cth, Parliamentary Debates, House of Representatives, vol. 21, 23 May 1932, 1165, 1168; Cth, Parliamentary Debates, House of Representatives, vol. 20, 20 May 1932, 1141.

¹⁸⁰ Appleby, “The Gavan Duffy Court,” 154-155.

¹⁸¹ *R v Hush; ex parte Devanny* (1932) 48 CLR 487; Appleby, “The Gavan Duffy Court,” 154-155.

an “underground” organisation to protect the movement from future attacks.¹⁸² As weH will see, this secrecy was in turn used as evidence against the Communist Party, especially in the late 1940s and early 1950s. However, Labor was proactive in its anti-communism. In the early nineteen thirties Labor adopted a strict policy towards the Communist Party and its efforts to infiltrate civil society; “Each time the [Communist Party] planted root in Australian society... [Labor] tried to dig it up”.¹⁸³ The Lyons Government ultimately failed to ban the Communist Party, despite it succeeding in changing the *Crimes Act*.¹⁸⁴

1940 (and 1940s)

In 1940 the first Menzies Government (1939-1941) decided to issue an executive order banning subversive associations that spread “unlawful doctrines” in the early years of the Second World War.¹⁸⁵ Such an order was made at the request of Military Intelligence.¹⁸⁶ This was done because the Communist Party was against the war effort.¹⁸⁷ The government, through regulations permitted by the *National Security Act* of 1939, decreed:

Any body corporate or unincorporate, the existence of which the Govenor-General... declares to be in his opinion, prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, is hereby declared to be unlawful.¹⁸⁸

In effect, anyone or any group could be declared illegal at any time if the Executive so desired. This time, “[u]nlawful doctrines” were those that “were advocated by a body

¹⁸² McKnight, *Espionage and the Roots*, 144-145.

¹⁸³ Davidson, *The Communist Party*, 64.

¹⁸⁴ Winterton, “The Significance,” 630-631.

¹⁸⁵ *Regulations Under the National Security Act 1939* (Cth), Statutory Rules 1940, no. 109, 2; Macintyre, *The Reds*, 393.

¹⁸⁶ Macintyre, *The Reds*, 394-395.

¹⁸⁷ Horner, *The Spy Catchers*, 19.

¹⁸⁸ *Regulations Under the National Security Act 1939* (Cth), Statutory Rules 1940, no. 109, r 3.

which has been declared to be unlawful” or any that “are prejudicial to the defence of the Commonwealth or the efficient prosecution of the war”.¹⁸⁹ The regulations gave any police officer above the rank of sergeant the discretionary power to enter premises to search and seize any material and use whatever force needed to achieve this.¹⁹⁰ In possibly the biggest police operation in Australia to that date, the police raided “party’s offices and the homes of all known members” removing “truckloads of documents”, including a copy of Shakespeare.¹⁹¹ In Western Australia, a future senior figure in ASIO, Ron “Black Snake” Richards, saw over a dozen communists imprisoned.¹⁹² Ultimately, the government succeeded in having well over 50 communists imprisoned.¹⁹³ A minority of wartime internments were people who displayed signs of radicalism, be it communist party membership or even union membership, but were kept in the same camps as fascists, which had disastrous consequences.¹⁹⁴ Labor did not campaign against the government on these regulations even though the government had reversed the onus of proof for declared persons.¹⁹⁵ However, after Operation Barbarossa – the invasion of the Soviet Union by Nazi Germany – commenced in June 1941, this regulation was unenforced as the Communist Party began supporting the war effort.¹⁹⁶ The Curtin Labor Government (1941-1945) rescinded the order two months after it came to power in October of 1941 when internal disquiet subsided after the Communist Party committed to fulfilling certain conditions.¹⁹⁷ The High Court declared the 1940 regulations invalid in 1943.¹⁹⁸ Now in Opposition, Menzies realised he had made an error of judgement, saying government should only “out-argue, not out-law,

¹⁸⁹ *Regulations Under the National Security Act.*, r 2.

¹⁹⁰ *Ibid.*, r 5(2).

¹⁹¹ Macintyre, *The Reds*, 396-397.

¹⁹² *Ibid.*, 399.

¹⁹³ *Ibid.*, 401.

¹⁹⁴ *Ibid.*, 403-404.

¹⁹⁵ Davidson, *The Communist Party*, 79-80; *Regulations Under the National Security Act 1939* (Cth), Statutory Rules 1940, no. 109, rr 8(2), 9(2).

¹⁹⁶ Winterton, “The Significance,” 633.

¹⁹⁷ *Ibid.*, 632.

¹⁹⁸ *Adelaide Company of Jehovah’s Witnesses Inc. v Commonwealth* (1943) 67 CLR 116.

communism”.¹⁹⁹ Menzies acknowledged in 1951 that the ban had triggered a 400 per cent increase in Communist Party membership within two years, as well as massively increasing readership of its newspapers and pamphlets.²⁰⁰ As shown above, the *Official History* reached a different conclusion to Menzies and argues that Labor had not realised by 1948 the electoral peril it faced at the hands of the communists:

[T]he Government was coming to realise that it was in a fight with the Communist Party, but it was not yet willing to employ measures that might infringe civil liberties.²⁰¹

The problem is that membership, as demonstrated above, receded dramatically from 1945. And the Communist Party received a miniscule percentage of the vote for the lower house at the 1946 election, running only in Western Australia, South Australia and Queensland.²⁰² A more accurate account of the threat posed to Labor is that posed by the Coalition in its imminent anti-communist crusade. As for Labor’s unwillingness to engage in a fight, Davidson argues that the Chifley Government used its time in office to “obliquely... crush” communism through various legislative amendments and successful prosecutions under sedition laws.²⁰³ Certainly, if one accepts that Labor had not already advocated the infringement of civil liberties – contrary to primary and secondary source evidence – it would soon become willing to meet the Coalition’s ferocity.

¹⁹⁹ Ricketson, “Liberal Law,” 111; Winterton, “The Significance,” 634; Davidson, *The Communist Party*, 106-107, 110, 136.

²⁰⁰ Winterton, “The Significance,” 633.

²⁰¹ Horner, *The Spy Catchers*, 44.

²⁰² Australian Politics and Elections Database, s.v. “House of Representatives (results by state/territory), 28 September 1948,” <http://elections.uwa.edu.au/electionsearch.lasso?ID=3>.

²⁰³ Davidson, *The Communist Party*, 107-109.

1950 and 1951

The second Menzies Government came to office in 1949 with a policy to ban the Communist Party, which was soon put before Parliament in the form of the *Communist Party of Australia Dissolution Bill of 1950*. Under the proposed law, it would be illegal to

support or advocate the objectives, policies, teachings, principles or practises of communism, as expounded by Marx and Lenin.²⁰⁴

This proposed ban, impressive in its expanse, attracted the far-off disapproval of the *New York Times* and the *Times* of London.²⁰⁵ Even the mentor of B. A. Santamaria (who is discussed below), the anti-communist Archbishop of Melbourne, Dr. Daniel Mannix, believed the government had overreached in its efforts to contain the communist threat.²⁰⁶ The jurist George Winterton suggests the change of policy in the Liberal Party, from not advocating a ban to advocating one, could have arisen from a combination of Country Party insistence, political opportunism, and genuine Cold War fear.²⁰⁷ Menzies biographer, A. W. Martin, argues that genuine fear of communism resulted in a build-up of internal pressure within the Liberal Party.²⁰⁸ While Menzies is said to have opposed abolition this time, once the policy shift was made he became a “fanatic[al]” believer; the communist threat was so immense he abandoned “even... the British system of justice”.²⁰⁹ The Labor Opposition wanted communism to be perused through existing (draconian) legislation, then unsuccessfully negotiated for the law to grant judicial review of declared associations – as Menzies had originally proposed –

²⁰⁴ Winterton, “The Significance,” 640.

²⁰⁵ *Ibid.*, 643.

²⁰⁶ *Ibid.*, 644.

²⁰⁷ *Ibid.*, 634.

²⁰⁸ A. W. Martin, *Robert Menzies; a life*. Vol. 2 (Melbourne: Melbourne University Press, 1999), 81-82, 142.

²⁰⁹ *Ibid.*, 81-82, 142, 169, 171.

and the burden of proof restored.²¹⁰ After a considerable delay, Labor used its majority in the Senate to allow the bill to pass, as anti-communists within Labor connected to Santamaria's Movement (see below) wanted a ban.²¹¹ In the end, Labor voted with the government even though the unions opposed it.²¹² Evatt boldly told colleagues the Act would be struck down by the High Court.²¹³ His views proved to be accurate, in no small part because of his subsequent actions.

Evatt, without informing Chifley, agreed to represent "the communist controlled Waterside Workers Federation" in its High Court challenge of the new law.²¹⁴ Like his brother Clive 17 years earlier in *Devanny's* case, he represented declared communists before the High Court and won.²¹⁵ The High Court handed down its decision in *Australian Communist Party v. Commonwealth* after nine months of deliberation. The bench decided six to one that the Act was invalid, although it found unanimously that the Constitution provided the "Commonwealth [with the] legislative power to protect itself from subversion".²¹⁶ Winterton warns that the "civil liberty aspects" of High Court's judgement "should not be overstated", as the judgement was fundamentally about the judiciary restoring its peacetime constitutional powers.²¹⁷ Appleby similarly argues that on the issue of banning communism the High Court charted a course whereby it avoided the contentious political questions – in particular the rights of political minorities – to focus on preserving the power of the judiciary.²¹⁸ The Menzies Government was not finished. The government decided to hold a referendum on

²¹⁰ Winterton, "The Significance," 639-640; Martin, *Robert Menzies*, 185.

²¹¹ Winterton, "The Significance," 642.

²¹² Davidson, *The Communist Party*, 138.

²¹³ Winterton, "The Significance," 642, 646-647.; cf. Davidson, *The Communist Party*, 111.

²¹⁴ Winterton, "The Significance," 648-649.

²¹⁵ Appleby, "The Gavan Duffy Court," 155.

²¹⁶ (1951) 83 CLR 1.; Winterton, "The Significance," 649.

²¹⁷ Winterton, "The Significance," 657-658.; Haig Patapan, *Judging Democracy: The new politics of the High Court of Australia* (Cambridge: Cambridge University Press, 2000), 4; Leslie Zines, *The High Court and the Constitution* (Sydney: Federation Press, 2008), 164-165.

²¹⁸ Appleby, "The Gavan Duffy Court," 143, 153-154.; cf. Ricketson, "Liberal Law," 109-110.

constitutional changes that would ensure the legality of the legislation if it passed Parliament second time. Initial opinion polls showed 73 to 80 per cent support for the changes.²¹⁹ The hard-fought referendum was lost by 50.56% to 49.44%, three states against to three states in favour.²²⁰

The *bona fides* of anti-communism

It is easy to dismiss the anti-communism of the Coalition and Labor, as well as the Australian electorate more generally, as a product of Cold War fear-turned-hysteria. As we will see in the next chapter, the Cold War did not emerge suddenly. It took time before the United States government was fully aware of the propagandistic potential of a capitalist versus communist battle. Anti-communism existed for many years prior to the Cold War. For example, outlawing communist parties was not an action unique to Australian politics; in 1935 only 22 of 67 Comintern controlled parties around the world were legal, with Nazi Germany being a particularly anti-communist state.²²¹ There was a genuine fear of communism because if it gained a foothold in the working class, the political and economic *status quo* could have been uprooted. This explains why the efforts to ban the Communist Party and suppress other radical groups were partly designed to safeguard commercial interests, as legislation expressly provided for. The problem with the hysteria argument – that the Coalition, Labor, the electorate and ASIO from 1949 were consumed by extreme fear and mass panic – is that it was at odds with

²¹⁹ Jenny Hocking “Robert Menzies’ ‘Fundamental Authoritarianism’: the 1951 referendum” in *Arguing the Cold War*, eds. Peter Love & Paul Strangio (Melbourne: Red Rag Publications, 2001), 56; Malcolm Fraser and Margaret Simons, *Malcolm Fraser: The political memoirs* (Melbourne: Miegunyah Press, 2010), 92; Martin, *Robert Menzies*, 150; Dyrenfurt & Frank Bongiorno, *A Little History of the Australian Labor Party*, 110.

²²⁰ Parliamentary Handbook of the Commonwealth of Australia, “Part 5 – Referendums and Plebiscites,” vol. 44, 2014, 393, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22handbook%2Fnewhandbook%2F2014-10-31%2F0000%22>

²²¹ Davidson, *The Communist Party*, 94; David McKnight, *Espionage and the Roots of the Cold War: the conspiratorial heritage* (Hoboken: Taylor and Francis, 2012), 146.

the actual threat posed by communists in Australia after the war.²²² As Blaxland explains:

[A]though the [Communist Party]'s activities were legal, ASIO did not adequately recognise this... [The party]'s work consisted almost entirely of legal political activities, including industrial struggle to improve working conditions, safety standards, social services and Aboriginal land rights, which ultimately focused on introducing socialism through democratic means.²²³

The same has been argued by historian Phillip Deery with regard to membership.²²⁴ In the history of Australia the Communist Party only secured one member in any Australian parliament; Fred Patterson, who served two terms in Queensland Parliament from 1944 until 1949.²²⁵ However, there is another explanation for the extent of anti-communism in the major parties from the 1920s until the 1950s; it served their political interests. There was an electoral advantage to be yielded by the Coalition by stoking fears in the electorate. Conversely, Labor feared that it would lose substantial votes from its traditional pool of support, from anti-communist Catholics and the working class.²²⁶ The next chapter will demonstrate that Labor's shift away from anti-communism under the leadership of Evatt was detrimental in this regard. Although the damage sustained by Labor was largely self-inflicted, the Menzies Government and ASIO maximised the pressure within Labor; their role cannot reasonably be dismissed as simple naiveté.

²²² Blaxland, *The Protest Years*, 117, 463.

²²³ *Ibid.*, 118-119.

²²⁴ Philip Deery, "Decoding the Cold War: Vernona, Espionage and 'the communist threat'" in *Arguing the Cold War*, eds. Peter Love & Paul Strangio (Melbourne: Red Rag Publications, 2001), 115.

²²⁵ Diana Menghetti, "Paterson, Frederick Woolnough (Fred (1897-1977))," in *Australian Dictionary of Biography*, accessed 7 February 2018, <http://adb.anu.edu.au/biography/paterson-frederick-woolnough-fred-11349>.

²²⁶ Horner, *The Spy Catchers*, 44.

III. ASIO's anti-radicalism

History and not only ancient history, shows that in countries where democratic institutions have been unconstitutionally superseded, it has been done not seldom by those holding the executive power... [T]he power to legislate for the protection of an existing form of government ought not to be based on a conception... to assist those holding power to resist or suppress obstruction or opposition or attempts to displace them or the form of government they defend.

Owen Dixon, *Justice of the High Court, 1951*.²²⁷

The numerous attempts by the executive— acting through the legislature — to outlaw the Communist Party and the ideology of communism were undemocratic. As we have seen, the parties of government shared an anti-communism in which this kind of action was seen as legitimate. This chapter will discuss ASIO and its operations from the 1950s until the early 1970s in order to demonstrate how the organisation's anti-communism (and, eventually, anti-radicalism) negatively affected Labor. It will be shown that ASIO shared the same anti-communism as the Menzies Government and its Coalition successors. From this shared view arose a relationship of convenience from which both derived mutual benefit; the organisation continued to pursue its self-righteous interpretation of its mission, while the government netted political gains.²²⁸ It is important to consider the extent to which the government and ASIO sought to ensure institutional propriety given the actual or foreseeable benefit derived. Without this consideration a scholar is condemned to overlook the probable in pursuit of the absolute; a standard of proof not even practised at common law.²²⁹ Particular caution must be exercised here as conspiracy has been a major feature of scholarly discourse with respect to the Petrov affair.²³⁰ Below it will be argued that despite being alert to this history — especially since many of its senior ministers had lived it — the Whitlam

²²⁷ Winterton, "The Significance of the *Communist Party Case*," 657.

²²⁸ McKnight, "Partisan Improprieties," 707.

²²⁹ Robert Manne, *The Petrov Affair: Politics and espionage* (Sydney: Pergamon Press, 1987), 54.

²³⁰ e.g. Russell Ward, *Australia Since the Coming of Man* (Sydney: Macmillan Company, 1987), 200-201; Davidson, *The Communist Party*, 113; Jenny Hocking, *His Time*, vol. 2 of *Gough Whitlam* (Melbourne: Miegunyah Press, 2014), 67.

Government embarked on a course that would entrench ASIO, albeit a reformed version.

Protectors of the ‘Commonwealth’?

The *Official History* states that ASIO was “unlike the police” in that it “had no executive function” because its officers “could not apprehend and arrest people”.²³¹ However, ASIO could wield *de facto* power through its dealings with the civil liberties of citizens, its use of intimidation tactics, and its influence over policy making. ASIO’s officers could infringe the “civil liberties” of Australians and did so if they perceived it necessary to solve a dispute “in the Commonwealth’s favour”.²³² We are also told that the organisation solved “moral dilemmas” spurning from prospective civil liberties breaches in the interests of the “Commonwealth”, even if it was against the interests of citizens “despite any ambiguity as to the veracity of the evidence”.²³³ ASIO’s senior officers could have interpreted ‘Commonwealth’ more broadly to mean the Australian nation as a whole.²³⁴ This would have been untenable because a government agency would have had a legal obligation to challenge the Australian Government to defend the Australian citizenry if a conflict arose. But, rightly under the system of government, ASIO was first the protector of the institutions of government, not the people.²³⁵ In practise, the executive was the primary beneficiary since it is in charge of policy formulation and implementation with respect to general welfare.²³⁶ The problem is that ASIO did not constrain its activities to the protection of government processes. Instead, it also came to see itself as the protector of the politics of government. In this way the

²³¹ David Horner, *The Spy Catchers*, vol. 1 of *The Official History of ASIO* (Sydney: Allen & Unwin: 2014), 5.

²³² *Ibid.*

²³³ *Ibid.*

²³⁴ “Why we are called the ‘Commonwealth of Australia’?” Constitution Education Fund Australia, accessed 17 June 2017, <http://www.cefa.org.au/ccf/why-are-we-called-‘commonwealth-australia’>.

²³⁵ Blaxland, *The Protest Years*, 457.

²³⁶ *Commonwealth of Australia Constitution Act 1900* (Imp), s 61.

organisation could interfere in politics without believing it was compromising its central purpose; the defence of the Commonwealth.²³⁷

The role of Cold War politics

The climate of anti-communism after the Second World War was linked to the beginnings of what the author George Orwell originally called the “Cold War”.²³⁸ In Australia, anti-communist sentiment was widespread by the late 1940s – to the extent that Labor agreed with the Coalition – with a growing fear that the communist peoples of Asia threatened the country’s existence.²³⁹ But, as the 1951 referendum demonstrated, the people were split on the question of whether a ban was appropriate. The escalation in tensions between the United States and the Soviet Union after the war drew in other states, including Australia. The discovery in Australia of a Soviet intelligence network that had successfully penetrated the United States, United Kingdom and Australia “was critical to the early development and direction of the Cold War”.²⁴⁰ The *Official History* argues that to understand “the early history of ASIO” one needs to understand “the political and social climate of the early Cold War period”.²⁴¹ Evidence cannot give way to conspiracy:

[T]he Cold War... security threats of the time are now popularly dismissed as either fringe and harmless or overblown in the imagination of a conspiratorial element of the Australian body politic. Such a perspective is ahistorical and not based on a dispassionate consideration of the evidence.²⁴²

²³⁷ *Australian Security Intelligence Organisation Act of 1956* (Cth), s 2; Hocking, *Terror Laws*, 25-26.

²³⁸ Melvyn P. Leffler, “Origins” in vol. 1 of *The Cambridge History of the Cold War*, eds. Melvyn P. Leffler and Odd Arne Westad (Cambridge: Cambridge University Press, 2010), 3, 5.

²³⁹ Peter Love, “Australia’s Cold War” in *Arguing the Cold War*, eds. Peter Love & Paul Strangio (Melbourne: Red Rag Publications, 2001), 15-16; Philip Deery, “Decoding the Cold War: Vernona, Espionage and ‘the communist threat’” in *Arguing the Cold War*, eds. Peter Love & Paul Strangio (Melbourne: Red Rag Publications, 2001), 108.

²⁴⁰ Deery, “Decoding the Cold War,” 109-111.

²⁴¹ Horner, *The Spy Catchers*, 2.

²⁴² Blaxland, *The Protest Years*, 462.

According to the *Cambridge History of the Cold War* the Cold War began as a European geopolitical crisis before it became an ideological contest between communism and capitalism.²⁴³ To be clear, the ideological contest was not inherent to the geopolitical conflict.

As the following discussion demonstrates the Truman Administration (1945-1953) was aware of the political potency of an ideological contest and consciously decided to shift away from the reality of the threat in Europe. In January 1950, at the direction of President Harry Truman, the secretaries of state and defence were asked to consider the foreign policy objectives of the United States holistically in light of Soviet nuclear capabilities.²⁴⁴ In April 1950, the National Security Council gave Truman a report, *NSC-68*, which quickly became “official doctrine”.²⁴⁵ The report did three things. Firstly, it argued for a more ambitious pursuit of a US-led world order:

[T]he absence of order among nations is becoming less and less tolerable. This fact imposes on us, in our own interests, the responsibility of world leadership. Our overall policy at the present time may be described as one designed to foster a world environment in which the American system can survive and flourish... to create and now develop the Inter-American system... [Containment of the USSR] is in effect a policy of calculated and gradual coercion.²⁴⁶

Secondly, it made plain that while the Soviet Union was a threat it was not a serious match for the economic, technological and military potential of the United States at that

²⁴³ Leffler and Westad, *The Cambridge History*, 4.

²⁴⁴ National Security Council, *United States Objectives and Programs for National Security*, report 68 (Washington: NSC, 1950), 3; Lawrence Freedman, “The First Two Generations of Nuclear Strategists” in *Makers of Modern Strategy: From Machiavelli to the nuclear age*, edited by Peter Paret (Princeton: Princeton University Press, 1986), 737-738.

²⁴⁵ David C. Engerman, “Ideology and the Origins of the Cold War, 1917-1962” in vol. 1 of *The Cambridge History of the Cold War*, eds. Melvyn P. Leffler and Odd Arne Westad (Cambridge: Cambridge University Press, 2010), 39; Melvyn P. Leffler, “The Emergence of an American Grand Strategy, 1945-1995,” in vol. 1 of *The Cambridge History of the Cold War*, eds. Melvyn P. Leffler and Odd Arne Westad (Cambridge: Cambridge University Press, 2010), 84.

²⁴⁶ National Security Council, *United States Objectives*, 9, 21-22.

time, even though the latter was far from full potential.²⁴⁷ Thirdly, it argued that the United States should propagandise the ideological contest:

The full power which resides within the American people will be evoked only through traditional democratic process: This process requires... sufficient information regarding the basic political, economy and military elements of the present situation... [I]t will then be possible for the American people and the American Government to arrive at a consensus... The initiative in this process lies with the Government... The democratic way is harder than the authoritarian way because, in seeking to protect and fulfil the individual, it demands of him understanding... in the increasingly complex... world. It demands that he exercise discrimination: that while pursuing through free inquiry the search for truth he knows when he should commit an act of faith; that he distinguish between the necessity for tolerance and the necessity for just suppression.²⁴⁸

The United States government would convey its perspective of the situation to the populace, but emotion and censorship would ensure consensus. Of particular importance to Australia was the proposal by the council that the United States should undertake a “strengthening of the British position” to ensure “the stability of the Commonwealth [which] is not to be impaired and if it is to be a focus of resistance to Communist expansion in South and South-East Asia”.²⁴⁹ The political advantages to the Cold War were not lost on the Coalition.²⁵⁰ It was only in the 1980s the United States consciously broadened the objective to focus on asserting American values on the “popular culture[s]” of its allies in order to “promote US interests”; that is,

²⁴⁷ National Security Council, *United States Objectives*, 16-17, 27-29, 32.

²⁴⁸ *Ibid.*, 23.

²⁴⁹ *Ibid.*, 31.

²⁵⁰ John Murphy, *Harvest of Fear: A history of Australia's Vietnam War* (Sydney: Allen & Unwin, 1993), 40.

“consumerism”.²⁵¹ Menzies claimed that the Soviet Union had “made perfect the technique of ‘Cold War’”.²⁵² As we have seen, the United States understood that Soviet power had peaked and that a propaganda war within its sphere of influence would ensure its global dominance. It is also worth noting that Australia was to a degree pushed into the Cold War; Australian involvement in the Korean War was secretly negotiated between the United Kingdom and United States, and contrary to the express wishes of Menzies.²⁵³

The election of 1949

The 1949 election came down to an anti-communist party in Labor against a communist-annihilationist party in the Coalition.²⁵⁴ This difference enabled the Coalition to effectively argue that Labor was ideologically incapable of dealing with communism in Australia.²⁵⁵ As part of its policy platform Labor advocated preserving free speech “no matter how repugnant” and, at the same time, a “campaign of destroying the influence of the Communist Party wherever such exists throughout Australia”.²⁵⁶ The Coalition – apparently against Menzies wishes – shifted position in 1948 to again advocate abolition:

... the time has gone... for treating communism as a legitimate political philosophy... If elected... [t]he Communist Party will be declared subversive and unlawful and dissolved... Subject to appeal, the Attorney-General will... follow the party into any new form and attach illegality... No person now a

²⁵¹ Jessica C. E. Gienow-Hecht, “Culture and the Cold War in Europe” in vol. 1 of *The Cambridge History of the Cold War*, eds. Melvyn P. Leffler and Odd Arne Westad (Cambridge: Cambridge University Press, 2010), 418-419.

²⁵² Martin, *Robert Menzies*, 143.

²⁵³ *Ibid.*, 156-159, 162-163.

²⁵⁴ Winterton, “The Significance,” 637-638.

²⁵⁵ Martin, *Robert Menzies*, 126.

²⁵⁶ *Ibid.*, 636.

member... [will] be eligible for any office in a registered industrial organisation.²⁵⁷

With the aid of that new dark arts from the United States – Public Relations, a concept developed by the propagandist Edward Bernays – the Coalition received 51 per cent of the two-party preferred popular vote to the Labor Party’s 49 per cent.²⁵⁸ Tellingly, the Communist Party received a mere 2.1% of all votes cast for the Senate.²⁵⁹ The Coalition won office in a landslide in terms of the number of lower house seats won, but it did so by acquiring most of the 49 new seats that had been added at the election for constitutional reasons.²⁶⁰ Horner offers a different view:

Australians, who had lived through the Second World War when the threat of invasion seemed frighteningly real, were determined to confront and defeat what they perceived as a new and equally dangerous threat... They knew that... Australia’s war effort was disrupted repeatedly by striking unionists labelled as ‘extremists’ or ‘communists’ by non-Labor leaders... [T]he Cold War climate, with belligerent rhetoric emanating from Moscow, Peking and Washington, and fears of outbreak of another world war, needs to be taken into account...²⁶¹

Anti-communist sentiment obviously resinated with most Australians. Indeed, the bank nationalisation plans of the Chifley Government had been defeated by an unprecedented campaign army of bank employees and a “lurid ‘scare’ campaign” by the Coalition, which succeeded in framing the debate as a contest between demonic socialism and

²⁵⁷ Winterton, “The Significance,” 635; Martin, *Robert Menzies*, 81-82.

²⁵⁸ “House of Representatives – Two party preferred results 1949-present,” Australian Electoral Commission, accessed 21 August 2017, http://www.aec.gov.au/Elections/Australian_Electoral_History/House_of_Representative_1949_Present.htm; Martin, *Robert Menzies*, 75.

²⁵⁹ “House of Representatives – Two party preferred results 1949-present.”

²⁶⁰ *Commonwealth of Australia Constitution Act 1900* (Imp), section 24(i); “Federal Election Results 1949-1998,” Parliamentary Library, accessed 2 October 2017,

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp9899/99RP08; Antony Green, tweet message to author, March 29, 2017; Martin, *Robert Menzies*, 124.

²⁶¹ Horner, *The Spy Catchers*, 2-3, 4.

capitalist democracy.²⁶² But the 1949 election result does not indicate the kind of consensus and homogeneity of fear described by Horner. The Cold War experience in Australia “was a more pallid version of that in America” even though the Communist Party of Australia had greater influence than the Communist Party USA.²⁶³ However, it was the incoming government that soon allowed nuclear weapons testing in Australia – which had disastrous consequences for indigenous and servicemen – and even explored the construction of nuclear weapons at ANU; the white tower of the physics department can to this day be seen from the Senate-wing offices of Parliament.²⁶⁴

ASIO’s direction under the Menzies Government

Under the stewardship of the second Menzies Government, ASIO came to see its role as the protector of the politics of government as well as the protector of the institutions of government.²⁶⁵ As the *Official History* describes, “ASIO’s officers saw themselves as front-line warriors (even if they did not use that term) in a war against a twofold enemy – the Soviet Union and the CPA [Communist Party]”.²⁶⁶ This was in addition to the organisation “responding to a strong direction from the [Menzies] Government” in this respect.²⁶⁷ There arose between the agency and the government a mutual reason in fighting communists at home. After all, “ASIO’s political masters... were very pleased to receive” its reports and the Coalition parties in opposition had “used the [Communist Party’s] alleged influence” within the union movement “as a stick to beat the Labor

²⁶² Martin, *Robert Menzies*, 83, 115-116, 122-123; A. L. May, *The Battle for the Banks* (Sydney: Sydney University Press, 1968), 18-40, 10, 120, 123.

²⁶³ Murphy, *Harvest of Fear*, 53-54.

²⁶⁴ Lowe and Joel, *Remembering the Cold War*, 44-45; Kalman A. Robertson in conversation with the author, 2014).

²⁶⁵ Frank Cain, “Australian Intelligence Organisations and the Law: A Brief History,” *UNSW Law Journal* 27, no. 2 (2004), <http://www.austlii.edu.au/au/journals/UNSWLJ/2004/23.html>.

²⁶⁶ Horner, *The Spy Catchers*, 3.

²⁶⁷ *Ibid.*, 3.

Government”.²⁶⁸ It must be reiterated that the *Official History* states that ASIO was acting on the direction of the Menzies Government:

ASIO was actually directed to do so by the Government, but critics claimed that ASIO supported the conservative side of politics. The question of ASIO’s alleged bias will need to be addressed.²⁶⁹

But the same work also states that the organisation agreed with the directions being issued. Hence,

[a]s far as ASIO officers were concerned, all communists and ‘fellow travellers’ were tarred with the same brush and were legitimate surveillance targets.²⁷⁰

If ASIO was being directed to anti-communism by the government, it nonetheless believed that such directions were the right one. In the absence of evidence demonstrating conscious collusion, the next line of enquiry becomes the extent to which the government and ASIO sought to ensure the organisation’s proper function. In essence, the question is, what would a reasonable government have done knowing ASIO’s actions could benefit it politically?

Within six months of winning the 1949 election Menzies installed the former head of Military Intelligence, Charles Spry, as the new head of ASIO operating under a new executive charter.²⁷¹ This contained much of the previous charter with only minor alterations; new provision was made for “maximum co-operation” with all security organisations of Australia, including state police special branches.²⁷² By installing Spry as director-general, ASIO became militant in its pursuit of communism and securing

²⁶⁸ Horner, *The Spy Catchers*, 7, 41.

²⁶⁹ *Ibid.*, 3-4.

²⁷⁰ *Ibid.*, 4.

²⁷¹ Jenny Hocking, *Terror Laws: ASIO, Counter Terrorism and the Threat to Democracy* (Sydney: UNSW Press, 2004), 25-26, 254.

²⁷² *Ibid.*, 254.

Australia's alliances.²⁷³ In military intelligence Spry had worked diligently with MI5, "promis[ing] monthly reports on Communist[s]".²⁷⁴ As Horner describes, "[h]e ran the organisation more on military lines", unlike his predecessor, and recruited "many more... [f]ormer military officers", and maintained the "use [of]... military rank[]" within the organisation.²⁷⁵ He also "established military-like procedures and organisations structures and ruled his staff both autocratically and paternally"; he had "what [was] almost a burning zeal to lift the status of the Army as a whole".²⁷⁶ It is evident from these depictions of Spry that he was not inclined towards moderation or objectivity. This helps to explain why anti-communism drove ASIO. It also helps to explain why anti-communism became anti-radicalism more generally.²⁷⁷

The Labor split of 1955

The detriment suffered by Labor at the hands of the Menzies Government and ASIO is clearly demonstrated by the events of 1954 and 1955, in which Labor lost a significant body of supporters to the anti-communist party that eventually became the Democratic Labor Party (DLP). Once the "legislative means" to eradicate the Communist Party "did not prove possible", dashing the "hope[s]" of the Menzies Government, ASIO became the primary weapon in the government's continued campaign.²⁷⁸ The organisation accepted this role willingly, despite Spry possessing concerns as to the organisation's lack of legislative foundation, which would be corrected in 1956.²⁷⁹ As we have seen, the *bona fides* of anti-communists needs to be questioned given the post-war collapse in support and power, as well as the attack on all communists regardless of the legality of

²⁷³ Blaxland, *The Protest Years*, 458, 461.

²⁷⁴ The National Archives, KV 4/451, 88, 119.

²⁷⁵ Horner, *The Spy Catchers*, 175.

²⁷⁶ *Ibid.*, 48, 561.

²⁷⁷ Cain, "Australian Intelligence Organisations."

²⁷⁸ Horner, *The Spy Catchers*, 3; Jenny Hocking "Robert Menzies' 'Fundamental Authoritarianism': the 1951 referendum" in *Arguing the Cold War*, eds. Peter Love & Paul Strangio (Melbourne: Red Rag Publications, 2001), 49.

²⁷⁹ Horner, *The Spy Catchers*, 6.

their actions or the sincerity of their beliefs. The Labor split of 1955 had early origins but for the purposes of this thesis the immediate causes will be discussed. A scholar does not have to stray far from the evidence presented by the *Official History* to see that ASIO and the Menzies Government appeared then, as now, to have consciously elicited a mutual benefit from the defection of Vladimir Petrov. To argue (or imply) that two intelligent and experienced people such as Menzies and Spry did not perceive the image of impropriety or the potential of a mutual benefit is to vest them with an innocence bordering on incompetence.²⁸⁰ It is submitted that both were aware of the gain but did very little to prevent its delivery.

The Petrov affair

On 10 February 1954, Spry revealed to Menzies that a senior member of the Soviet diplomatic mission in Australia was now “more likely” to defect than previously indicated.²⁸¹ By mid-February it was known to ASIO that Petrov had to defect by early April at the latest.²⁸² Negotiations as to the details of the defection were discussed at length over March.²⁸³ On 3 April Petrov defected.²⁸⁴ Spry advised Menzies to call for a royal commission on 4 April, which he claimed decades later only produced “lukewarm interest” from the latter although he “required little convincing”.²⁸⁵ On 13 April Menzies announced the defection and the creation of the Royal Commission on Espionage, and the appointment of three sympathetic judges as commissioners, to Parliament; he waited for Evatt to be away from Canberra.²⁸⁶ On 19 April Petrov’s wife defected triggering an outpour of positivity for the government in the press and

²⁸⁰ Manne, *The Petrov Affair*, 49.

²⁸¹ *Ibid.*, 335-336

²⁸² *Ibid.*, 52.

²⁸³ *Ibid.*, 58.

²⁸⁴ Horner, *The Spy Catchers*, 340.

²⁸⁵ Horner, *The Spy Catchers*, 340-341; Manne, *The Petrov Affair*, 70.

²⁸⁶ Horner, *The Spy Catchers*, 343; Manne, *The Petrov Affair*, 73; Bolton, *The Middle Way*, 141; Peter Edwards, *A Nation at War: Australian politics, society and diplomacy during the Vietnam War 1965-1975* (Sydney: Allen & Unwin, 1997), 27-28.

internationally.²⁸⁷ Ten days later on 23 April the writs were issued for an election on 29 May.²⁸⁸ Contrary to Cabinet’s deliberations on February 12, the *Official History*, A. W. Martin and Robert Manne, this was not when elections were “due to be held” nor was it “the last possible day” because the absolute deadline for issuing the writs was 22 June, meaning the election could occur sometime in July.²⁸⁹ Due to the 1953 half-Senate election, which was held a year before, the 1954 election only involved the lower house.²⁹⁰ Menzies’ 1970 claim that “the whole matter was coincidence” cannot be accepted.²⁹¹ Indeed, onlookers could see the political advantage to be netted. The British High Commissioner at the time informed his government, “on any balanced view” the Petrov affair would damage Evatt.²⁹² Brendan Bracken, a British cabinet minister and Churchill confidant, thought it a “gift” of “quite a number of votes”.²⁹³ The Australian press also noted the advantages for the government.²⁹⁴ Petrov had revealed connections between Soviet spies and the office of the then Labor leader; a fact known by the press during the election.²⁹⁵ Similarly, MI5 believed Menzies felt compelled to act so as to prevent a Soviet-infiltrated Labor government.²⁹⁶ Meanwhile, ASIO created a specific section to “support[] the royal commission” given its close connection to the evidence.²⁹⁷ In hindsight, it can be seen that the Petrov affair galvanised Australian anti-

²⁸⁷ Manne, *The Petrov Affair*, 90.

²⁸⁸ Australian Electoral Commission, “Election Dates (1901 to Present) – House of Representatives,” http://www.aec.gov.au/Elections/Australian_Electoral_History/hor_dates.htm

²⁸⁹ Australian Electoral Commission, “Election Dates (1901 to Present)”;

Antony Green, tweet message to the author, March 24, 2018; Horner, *The Spy Catchers*, 343; *Commonwealth of Australia Constitution Act 1900* (Imp), s 28; Martin, *Robert Menzies*, 252.

²⁹⁰ Parliamentary Library, “Federal election results 1901-2014,” 17 July 2014, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/FedElect.

²⁹¹ Australian Broadcasting Corporation, “Soviet Diplomats in Canberra Defect,” <http://www.abc.net.au/archives/80days/stories/2012/01/19/3411302.htm>.

²⁹² Horner, *The Spy Catchers*, 344.

²⁹³ Martin, *Robert Menzies*, 257.

²⁹⁴ John Murphy, *Evatt: A life* (Sydney: NewSouth Publishing, 2016), 308.

²⁹⁵ Manne, *The Petrov Affair*, 73; Murphy, *Evatt*, 308.

²⁹⁶ Horner, *The Spy Catchers*, 342.

²⁹⁷ *Ibid.*, 357.

communism, which would far outlive actual communist power and influence.²⁹⁸ But it was a muted anti-communism as a result of Evatt's efforts to ward off the government's ban.²⁹⁹

1954 election – Petrov Commission – 1955 election

In the early days of the campaign senior ministers and party elders used Petrov against Labor.³⁰⁰ But Menzies quickly instructed every Coalition candidate not to mention Petrov.³⁰¹ Menzies did not utilise the information Petrov had revealed about the Soviet connections of Evatt's staff during the campaign.³⁰² However, the Coalition "played the Communist issue very hard", according to Manne.³⁰³ From 1951 Coalition propaganda had attempted to cast Evatt as a "Communist champion".³⁰⁴ Evatt had to assure the electorate that Labor had been more effective than the Coalition at imprisoning communists when in office.³⁰⁵ The first Petrov Commission hearing began twelve days before the election.³⁰⁶ The election saw Labor win an historic 50 per cent the primary vote but not gain enough seats to form government.³⁰⁷ However, Adam Carr argues that had Labor contested safe-Coalition seats it would have probably lost on primary and

²⁹⁸ David Lowe & Tony Joel, *Remembering the Cold War: Global context and natural stories* (Oxford: Routledge, 2013), 165; Edwards, *A Nation at War*, 6.

²⁹⁹ Maddox & Tim Battin, "Australian Labor," 189.

³⁰⁰ Museum of Australian Democracy at Old Parliament House, "Australian Federal Election Speeches: 1954, Robert Menzies," <https://electionspeeches.moadoph.gov.au/speeches/1954-robert-menzies>; Manne, *The Petrov Affair*, 101-103; Murphy, *Evatt*, 310.

³⁰¹ Australian Broadcasting Corporation, "Soviet Diplomats in Canberra Defect.," Manne, *The Petrov Affair*, 102-103.

³⁰² W. J. Hudson, "1951-72" in *A New History of Australia* (Melbourne: William Heinemann, 1974), 510.

³⁰³ Manne, *The Petrov Affair*, 103.

³⁰⁴ Murphy, *Evatt*, 337.

³⁰⁵ *Ibid.*, 104.

³⁰⁶ Museum of Australian Democracy at Old Parliament House, "Australian Federal Election Speeches: 1954, Robert Menzies.,"

³⁰⁷ Australian Electoral Commission, "Election Dates (1901 to Present) – House of Representatives.," "Federal Election Results 1901-2010," Parliamentary Library, accessed 21 August 2017, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1112/12rp06.

secondary votes.³⁰⁸ Manne argues that Menzies waited until April 1954 in order to capitalise on the emerging economic recovery and the royal visit, as opinion polling from late 1951 until December 1953 indicated a major swing against the Coalition.³⁰⁹ By 1954 Labor was losing support because of its internal conflict.³¹⁰ The fortunes of the Menzies Government were certainly not diminished by the Petrov affair.³¹¹ It has also been argued – by Gough Whitlam no less – that the inflationary policies of Labor had proved unpopular in the campaign and under Coalition attack.³¹²

After the election the Petrov Commission progressed and Evatt's credibility was gradually diminished in the eyes of the public and Catholic community, largely due to his polemical self-defence and defence of his accused staff, as well as his unsubstantiated attacks on the government, his open correspondence with the Soviet Union, his attacks on the Industrial Groups and his previous support for the Petrov Commission.³¹³ Evatt's attacks on ASIO rendered damage to its reputation and would have only stood to bolster its partisan actions.³¹⁴ Indeed, Spry expressed a wish to sue Evatt for defamation but Menzies helped dissuade him.³¹⁵ Spry also told Menzies that his rebuttal of Evatt in Parliament gave him "considerable satisfaction".³¹⁶ At the same time it is understandable that Evatt would embark on such rhetoric given the political stakes. An interim report was handed down to counter Evatt's accusations in October 1954.³¹⁷ The final report was released on 14 September 1955, confirming the existence

³⁰⁸ Adam Carr, "Australian Legislative Elections of 29 May 1954," <http://psephos.adam-carr.net/countries/a/australia/1954/1954reps1.txt>.

³⁰⁹ Manne, *The Petrov Affair*, 94-95, 97, 110-111; Murphy, *Evatt*, 297.

³¹⁰ Murphy, *Evatt*, 308, 323.

³¹¹ Manne, *The Petrov Affair*, 111.

³¹² Bolton, *The Middle Way*, 140-141; Cf. Martin, *Robert Menzies*, 260.

³¹³ Horner, *The Spy Catchers*, 359-367, 373; Davidson, *The Communist Party*, 112; Hudson, "1951-72," 511.

³¹⁴ Manne, *The Petrov Affair*, 172; Horner, *The Spy Catchers*, 6.

³¹⁵ Horner, *The Spy Catchers*, 365.

³¹⁶ *Ibid.*

³¹⁷ *Ibid.*

of a Soviet “spy ring in Australia”, seemingly connected to Evatt’s office.³¹⁸ It is clear that Petrov offered the Australian Government genuine information and confirmed the veracity of the post-war Soviet intercepts, even if those intercepts contained no more than raw (unreliable) intelligence.³¹⁹ But it cannot be overlooked that the security problems with Evatt staff had been known about for years prior, at least since mid-1948 when he was attorney-general.³²⁰ As for Petrov’s information, the *Official History* argues that it demonstrated “ASIO [had] overestimated the capacity and efficacy of the Russians’ intelligence operations in Australia”.³²¹ As for the royal commission that followed, Hope confirmed its findings with respect to Soviet spying in Australia were correct and that such spies “operat[ed] in Australia up to the time of Petrov’s defection”.³²² By mid-1955 the Labor split had occurred, in large part because of Evatt’s poor understanding of the party dynamics and his barrister-like self-reliance.³²³ On 19 October, the day of the last parliamentary debate on the findings of the Petrov Commission, Menzies requested an election from the Governor-General. Martin argues – despite perceiving Menzies innocence in 1954 – that this demonstrates Menzies was a “master tactician”.³²⁴ On 7 November 1955, after Evatt’s disastrous October performances in Parliament and Menzies damning rebuttal, the writs for another election were issued.³²⁵ Menzies delivered the news in Parliament to correspond with prime time radio, “misleading” the public about Evatt’s communist affiliations.³²⁶ The

³¹⁸ Horner, *The Spy Catchers*, 371; National Archives of Australia, “The Royal Commission on Espionage, 1954-55 – Fact sheet 130,” <http://www.naa.gov.au/collection/fact-sheets/fs130.aspx>.

³¹⁹ Deery, “Decoding the Cold War,” 114.

³²⁰ The National Archives, KV 4/451, 92.

³²¹ Horner, *The Spy Catchers*, 348.

³²² Hope, *Fourth Report [re ASIO]*, 20.

³²³ Bill Hayden, *An Autobiography* (Sydney: Angus & Robertson, 1996), 82-83; Davidson, *The Communist Party*, 140; John Cotter, “The National Civic Council’s Role in Australia’s Cold War: An insider’s vignettes” in *Arguing the Cold War*, eds. Peter Love & Paul Strangio (Melbourne: Red Rag Publications, 2001), 73; Horner, *The Spy Catchers*, 376; Paul Ormonde, *The Movement* (Melbourne: Nelson, 1972), 60-61; Murphy, *Evatt*, 341; Dyrenfurt & Frank Bongiorno, *A Little History of the Australian Labor Party*, 107.

³²⁴ Martin, *Robert Menzies*, 309.

³²⁵ Australian Electoral Commission, “Election Dates (1901 to Present) – House of Representatives.”; Horner, *The Spy Catchers*, 365-366.

³²⁶ Martin, *Robert Menzies*, 311.

beginnings of the DLP influence were felt with a sizable Coalition victory.³²⁷ It should be noted that the Communist Party received 3.64 per cent in the Senate; its electoral high water mark.³²⁸

Conspiracy, opportunism, or naiveté?

According to Spry, Evatt's idea that Menzies "manipulate the timing" of the defection "to assist him in the forthcoming election" is "the height of absurdity".³²⁹ But this defence was a straw man for it does not address the very real possibility that Menzies – undoubtedly one of the greatest political operators of the twentieth century – capitalised on the favourable circumstances. The *Official History* explains Spry's actions as having arisen from his "concern[] about the survival of his Organisation" because it was under "attack from the alternative government".³³⁰

On the evidence it cannot be justifiably claimed that Menzies and Spry colluded nor that Menzies orchestrated the defection. But a reasonable interpretation of these events would point to an acceptance, at the very least, on the part of Menzies and Spry of the mutual benefit both clearly stood to receive. There was a solid chance that the events of April would deliver the Coalition an electoral victory, especially given the potency of communism and the Soviet Union in the electorate; something stressed by the *Official History*. It would not have been unreasonable or reckless to delay the announcement of the Petrov Commission until after the election, nor offer the Opposition a chance to partake in the announcement and the selection of commissioners. It could have also

³²⁷ "Federal Election Results 1901-2010," Parliamentary Library; Adam Carr, "Australian Legislative Election of 10 December 1955," <http://psephos.adam-carr.net/countries/a/australia/1955/1955reps1.txt>; Edwards, *A Nation at War*, 5.

³²⁸ Australian Politics and Elections Database, s.v. "Senate (national results) – 1955", <http://elections.uwa.edu.au/listelections.lasso>.

³²⁹ Horner, *The Spy Catchers*, 336; Manne, *The Petrov Affair*, 90.

³³⁰ Horner, *The Spy Catchers*, 336.

been contemplated that a royal commission was not needed, especially since ASIO was supposed to operate away from public scrutiny. Similarly, time was not of the essence, as the election would have been delayed by two months, enough time for Menzies to negotiate a solution with Evatt. Of course, Evatt and Labor posed a risk in that information could have spread to the Soviets. But parliamentary democracy cannot be suspended. Further, it is hard to see what advantage the Soviets would gain by learning through Labor what Menzies would say to Parliament.

Instead, Menzies allowed the image of the Petrov affair and the Royal Commission to speak for itself, thus avoiding damaging accusations, while the Coalition pointed to Labor's anti-communist deficiencies. For its role, ASIO would ensure the Royal Commission served as its mouthpiece with the near certainty that Labor would be damaged enough to keep it from office and, therefore, undermining it and its mission. But Petrov brought more benefits than either could have envisaged, as Evatt's predictable loss of composure gave Menzies in 1955 the landslide, historic election victory he had sought. All the while, agency and government did nothing to counter the image of impropriety – which only fuelled the gains given Evatt was their opponent – nor mitigate the undue advantage the situation actually presented. In April 1954, the benefit stood to include a Coalition victory, a weakened Labor Party and ASIO's continued anti-communist crusade.

Reactionary forces: The Movement

The communist fear resulted in a number of reactionary groups over the decades. In the early 1930s the fascist New Guard Movement had some 55,000 members.³³¹ A

³³¹ Keith Amos, *The New Guard Movement, 1931-1935* (Melbourne: Melbourne University Press, 1976), 38, 77.

founding member and masked leader of this group was the then Chief Commissioner of Victoria Police, Major-General Thomas Blamey.³³² In the 1940s, a new group called the Association – under Blamey again – formed a civilian militia designed to combat a potential communist uprising; some 130,000 people were members.³³³ Blamey was replaced as leader by another notable wartime figure, Lieutenant General Leslie Morshead.³³⁴ Both groups attracted the attention of the then intelligence agencies.³³⁵ However, it does not appear that ASIO was concerned about one particularly influential group, the Catholic Social Studies Movement (‘the Movement’), believing it to be consumed by conspiracy.³³⁶ Equally, the Movement thought ASIO ineffectual against the “Coalition of the Left”.³³⁷ The Movement was created in the 1940s and served as a “semi-clandestine” organisation which engaged in many of the same practises as the Communist Party but to greater effect.³³⁸ According to Paul Ormonde, it aimed to purge the Catholic community, the church hierarchy, and Australian society at large of the twin evils of communism and socialism.³³⁹ This was so even though it correctly perceived a wane in Communist Party support in the late 1940s.³⁴⁰ Over the next decade the Movement, especially through the Industrial Groups, undertook what Santamaria described as the “cleansing” of trade unions of communists by systematically recruiting faithful workers in order to place pressure on Labor to adopt stronger anti-communist measures.³⁴¹ Evatt at first tried to work with Santamaria’s, but eventually decided to oppose the Movement and in so doing provide context for the departure of a number of

³³² Macintyre, *The Reds*, 215; Amos, *The New Guard Movement*, 14.

³³³ Horner, *The Spy Catchers*, 51-52.

³³⁴ See John Hetherington, *Blamey, Controversial Soldier: A biography of Field Marshal Sir Thomas Blamey* (Canberra: Australian War Memorial, 1973).

³³⁵ Horner, *The Spy Catchers*,

³³⁶ Blaxland, *The Protest Years*, 116.

³³⁷ *Ibid.*

³³⁸ Ormonde, *The Movement*, 53.; Davidson, *The Communist Party*, 126-127, 129; Love, “Australia’s Cold War,” 13.

³³⁹ Ormonde, *The Movement*, xiv, 1-2, 13, 25, 29-30, 34-35, 69, 123, 146, 163; Dyrenfurt & Frank Bongiorno, *A Little History of the Australian Labor Party*, 105.

³⁴⁰ Ormonde, *The Movement*, 4.

³⁴¹ Ormonde, *The Movement*, 35-39, 56, 61, 64; Murphy, *Evatt*, 300-301.

Labor MPs.³⁴² After the Labor split, a new “*de facto* Catholic” political party emerged, the DLP, which drew votes away from Labor until 1974, especially in the Senate.³⁴³ ASIO’s lack of interest or concern in the Movement is striking, especially considering its penchant for communist-like subterfuge, clandestine interference in unions as well as a major political party, and the strong connection (at least initially) it had with the Vatican pseudo-state.³⁴⁴ It is important to remember that ASIO believed the Communist Party was not founded on a serious view of the world. It is evident the organisation took a lenient approach to clandestine groups that were undermining its more important targets.

ASIO in the 1960s and early 1970s

At the time of the 1958 election Spry perceived Labor as “acting in a way that could have threatened national security”.³⁴⁵ But, Horner assures us, Spry “could have done much more damage to the ALP and showed considerable restraint in not doing so”.³⁴⁶ In the lead up to the election Spry and Menzies – as well as MI5’s Roger Hollis – pondered what actions would be required to preserve the Petrov papers if the Evatt’s Labor Party were to win an election.³⁴⁷ Menzies unilaterally gave the papers to the United States and United Kingdom.³⁴⁸ In the 1960s ASIO continued to remain focused on the Communist Party even as it continued to dwindle in significance, seemingly believing it capable of resurgence.³⁴⁹ This included university campuses because they did not “enjoy immunity”, especially since some organisations had not ruled out

³⁴² Murphy, *Evatt*, 302; Dyrenfurt & Frank Bongiorno, *A Little History of the Australian Labor Party*, 111.

³⁴³ “Federal Election Results 1901-2010,” Parliamentary Library; Ormonde, *The Movement*, 103.

³⁴⁴ See Geoffrey Robertson, *The Case of the Pope* (London: Penguin, 2010).

³⁴⁵ Horner, *The Spy Catchers*, 471.

³⁴⁶ *Ibid.*

³⁴⁷ *Ibid.*, 470-471.

³⁴⁸ *Ibid.*, 471.

³⁴⁹ Blaxland, *The Protest Years*, 78-79, 118.

violence as an option *per se*.³⁵⁰ While the Communist Party was the “largest...extreme party”, the *Official History* argues there were “other equally if not more subversive groups” ASIO overlooked.³⁵¹ For example, claims by the Yugoslavian government that there was an emergent terrorism threat posed to it from the Croatian community in Australia were thought “exaggerated” by ASIO.³⁵² It is also important to appreciate the shift that had started in the Cold War by this time. From 1960, the *Cambridge History* estimates that there were more instances of “torture, assassination and other atrocities” that occurred as a result of decisions made by the United States government compared to decisions of the Soviet government.³⁵³ That is, once Stalinism faded the United States became the lead perpetrator of human rights violations during the Cold War. Nevertheless, the anti-communism of ASIO and the Australian Government expanded in scope during the 1960s.

The Vietnam War

The suppression of critical – often radical – opinion undertaken over the preceding decades enabled propagandistic messages about Vietnamese communism to thrive.³⁵⁴ By the 1960s and early 1970s when the anti-war movement was at its peak, mission creep saw ASIO shift focus towards the Vietnam War Moratorium.³⁵⁵ The Moratorium also became a convergence point for many other socio-political grievances that had accumulated since the war.³⁵⁶ The connection between dissidents and communist subversives was the threat of foreign communism spreading from Asia, as well as a

³⁵⁰ Blaxland, *The Protest Years*, 110.

³⁵¹ *Ibid.*, 118, 123.

³⁵² *Ibid.*, 120, 123, 128, 150.

³⁵³ Chomsky and Barsamian, *Power Systems*, 145.

³⁵⁴ Murphy, *Harvest of Fear*, xix.

³⁵⁵ Blaxland, *The Protest Years*, 185-186; Cain, “Australian Intelligence Organisations.”; Murphy, *Harvest of Fear*, 140, 245.

³⁵⁶ Bolton, *The Middle Way*, 189.

suspicion that the Moratorium was organised by the Communist Party.³⁵⁷ Like communists, anti-war protestors were seen as subversives bent on attacking the Commonwealth and, therefore, democracy.³⁵⁸ ASIO's transition to the Moratorium movement was also political, according to McKnight:

Politically, [ASIO's practise of providing advice] allowed the government to reduce the protest activity to communist-inspired campaigns and, in a more partisan way, to criticize the Labor Party and leading Labor figures who participated in the protests.³⁵⁹

Once more ASIO's operations breached the divide between defence of the Commonwealth and protection of the Coalition government.³⁶⁰ The contempt felt toward the Moratorium was mutually felt within government, with Attorney-General Billy Snedden infamously accusing protestors of "pack-raping democracy".³⁶¹ In terms of ASIO's operations, the line between supporting the government and supporting the political party in office continued to be blurred in the 1960s. Attorney-General Tom Hughes – father-in-law to former Prime Minister Malcolm Turnbull – was informed by ASIO before a May 1970 march "that 68 Labor MPs had sponsored the proposed demonstration" and that "members of the Communist Party... held official positions in the organizing committees" of the movement.³⁶² As a result Hughes "authorized ASIO to provide information" to the Coalition – which it subsequently did – on the moratorium movement.³⁶³ ASIO had also informed the same attorney-general that a "university student" was "considering taking legal action... and was going to seek

³⁵⁷ Blaxland, *The Protest Years*, 159, 162, 166, 168, 183.

³⁵⁸ Horner, *The Spy Catchers*, 19.

³⁵⁹ David McKnight, "Partisan Improprieties: Ministerial Control and Australia's Security Agencies, 1962-1972," *Intelligence and National Security* 23, no. 2 (2008): 712.

³⁶⁰ Blaxland, *The Protest Years*, 160-161, 167-169.

³⁶¹ Evan Whitton, "Australia Catches Up with Jim Cairns," *National Times*, 10 June 1974, 32.; Mungo MacCallum, "Taking demos out of democracy," *The Monthly*, 2016, <https://www.themonthly.com.au/blog/mungo-maccallum/2016/13/2016/1481593431/taking-demos-out-democracy>.

³⁶² McKnight, "Partisan Improprieties," 715.

³⁶³ *Ibid.*, 716.

advice from an opposition MP”.³⁶⁴ The *Official History* argues ASIO “failed to draw... distinction” between the threat of communism and the emergence of “the protest movement”.³⁶⁵ Once more, it explains that “[ASIO] was not an independent actor, and was not working without government sanction”.³⁶⁶ Given the anti-communism driving ASIO its independence would have surely produced the same result.

It is important to note that Labor was not radical in the 1960s. In a similar way to its anti-communism of earlier decades, Labor’s position on the Vietnam War was a generally supportive one. Labor reacted to the anti-war movement as it grew in popularity, with many of its senior members becoming involved by the early 1970s. But during this time the party did not adopt an anti-war policy, *per se*.³⁶⁷ The announcement by the Menzies Government in May 1962 that “military advisors” would join United States “advisors” being deployed by the Kennedy Administration (1961-1963) was met with “passive” acceptance by Labor, as the leadership – especially deputy leader Gough Whitlam – wanted to avoid “accusation of anti-Americanism”.³⁶⁸ Official historian of the war, Peter Edwards, argues the government was “secretive and arrogant” when it agreed in 1965 to send two battalions to Vietnam.³⁶⁹ Again, the concern of communism was paramount to policymakers.³⁷⁰ At the 1966 election Labor opposed the war because of the reintroduction of conscription and suffered as a result at the election, although it did so with heavy qualification.³⁷¹ Under Whitlam as opposition leader, from 1967 until the election of 1972, the party effectively supported the war through its ambiguity,

³⁶⁴ McKnight, “Partisan Improprieties,” 716.

³⁶⁵ Blaxland, *The Protest Years*, 185-186.

³⁶⁶ *Ibid.*, 186.

³⁶⁷ Rick Kuhn, “Australia and the Vietnam War: Analyses, Actions and Attitudes,” *Agora* 44, no. 2 (2009): 30-31; Alan Ward, “The Second Vietnam Moratorium: Reflections of a Melbourne Participant,” *Meanjin Quarterly* 29, no. 4 (1970): 502.

³⁶⁸ Paul Strangio, *Keeper of the Faith: a biography of Jim Cairns* (Melbourne: Melbourne University Press, 2002), 143, 145-146.

³⁶⁹ Edwards, *A Nation at War*, 1.

³⁷⁰ *Ibid.*, 22-23.

³⁷¹ Strangio, *Keeper of the Faith*, 161, 163; Edwards, *A Nation at War*, 33.

although the party membership insisted on withdrawal if peace talks were agreed to by the United States.³⁷² Labor's ambiguity meant the Moratorium "revitalised" the party's supporters and sympathisers.³⁷³ This kind of nuance-cum-obfuscation was not uncommon during the war. For example, the *New York Times* opposed the manner in which the war was waged, not the underlying sentiment.³⁷⁴ By the 1972 election the McMahon Government had "completed Australia's military withdrawal from South Vietnam", leaving only an "advisory team" to be withdrawn by the Whitlam Government.³⁷⁵

Ministerial interference

At the time of ASIO's creation, the Chifley Government intended that the organisation operate without ministerial interference in terms of its operations and raw intelligence collection. Attorney-General Evatt explained to Parliament:

To all intents and purposes the Director-General of Security is free from ministerial direction. That arrangement is essential in order to maintain minimum internal security...³⁷⁶

But during the 1960s ministerial interference in ASIO's operations was established practise, despite passive-aggressive resistance from senior officers.³⁷⁷ According to McKnight, "all Attorneys General" between 1962 and 1972 had access to ASIO's raw intelligence, a practise undertaken especially "when the government was under political pressure".³⁷⁸ He believes that a "prime factor" in tensions between Labor and ASIO arose out of the perceived "hypocrisy" of the organisation's official position – not to

³⁷² Strangio, *Keeper of the Faith*, 165, 167; Laurie Oakes, *Whitlam PM: a biography* (Sydney: Angus & Robertson, 1973), 146-147; Murphy, *Harvest of Fear*, 207-208.

³⁷³ McKnight, "Partisan Improprieties," 716.

³⁷⁴ See Edward S. Herman and Noam Chomsky, *Manufacturing Consent: The political economy of the mass media* (New York: Pantheon Books, 2002); Cf. Edwards, *A Nation at War*, 36-39.

³⁷⁵ Ian Hancock, Media Guide of 1973 Cabinet Records, 2003, NAA, 12.

³⁷⁶ Cth, Parliamentary Debates, Senate, 27 March 1973, vol. 13, 560.

³⁷⁷ Blaxland, *The Protest Years*, 180.

³⁷⁸ McKnight, "Partisan Improprieties," 715.

make public comment – and the unofficial position, handing information to “government members”.³⁷⁹ He explains that “almost all” of this conduct was “at the request of the government”, especially through attorneys-general.³⁸⁰ There was also a “long-standing practice” of providing “backbench MPs” with “public information... not based on covert intelligence sources”.³⁸¹ Even if backbenchers are in the same party as the members of the government, they remain political figures outside the executive. ASIO’s complicity in this practise is not to say it was unaware of a possible perception of impropriety. This is evident in the detailed accounts of meetings between directors-general and prime ministers and attorneys-general kept by ASIO between 1954 and 1976.³⁸² McKnight describes this log as “an insurance policy against future accusations of misconduct”.³⁸³ One could equally see it as evidence that ASIO knew it was engaged in misconduct but wanted to have sufficient evidence to establish its contemporaneous discomfort. McKnight argues the 1956 Act undermined the autonomy of ASIO by blurring the extent to which the attorney-general and prime minister were entitled to direct the organisation through its director-general.³⁸⁴

McKnight continues this argument in relation to a minute written by Spry in 1966 after a meeting with Prime Minister Harold Holt:

I then went on to explain... that in my view statements regarding security should be reduced to a minimum and there would be some merit in the future that where I was asked for security information by a Minister and I considered it had political ramifications, I could say to the source of the enquiry that I felt this

³⁷⁹ McKnight, “Partisan Improprieties,” 712, 714-715.

³⁸⁰ *Ibid.*, 712.

³⁸¹ *Ibid.*, 714-715.

³⁸² *Ibid.*, 708-709.

³⁸³ *Ibid.*

³⁸⁴ *Ibid.*, 709.

should be discussed with the Prime Minister before statements were made upon it.

Spry was not revolting against the undue influence of an oppressive minister. Indeed, he was merely offering the chance of a later suggestion to the Prime Minister about his possible involvement; he was not guaranteeing such action, nor was he suggesting access to the information would be refused in any way. It took Spry until 1968 to ask Prime Minister John Gorton for permission to provide the Leader of the Opposition, Arthur Calwell, with regular briefings.³⁸⁵ This suggestion was “rebuffed” by Calwell.³⁸⁶

ASIO in the last years of the Coalition’s long time in office had become a political research unit of a kind. McKnight argues the McMahon Government (1971-1972) was the worst for interference:

In this period the extent to which a minister could direct the security agency to provide security information for partisan purposes was taken to its furthest limit.³⁸⁷

A 1971 ASIO minute, recording the first meeting between the new attorney-general, Ivor Greenwood, and Director-General Peter Barbour, reveals a subservience on the part of ASIO, and obfuscation. It was recorded that Barbour informed Greenwood, “the preparation of material for the purpose of informing the public was not strictly part of the functions of ASIO”. While Greenwood “agreed... he pointed out that it was a function of ASIO to advise Ministers and that Ministers could perform the exposure”.

McKnight explains:

Greenwood’s response to Barbour’s warning neatly highlighted the mechanism which had been used for years by the government to release politically useful material collected by the security service.³⁸⁸

³⁸⁵ McKnight, “Partisan Improprieties,” 718.

³⁸⁶ *Ibid.*

³⁸⁷ *Ibid.*, 716.

This kind of conduct lends insight into what the director-general was thinking, but it does not establish innocence. On the contrary, it demonstrates that he knew the minister was acting inappropriately but proceeded to comply regardless. Despite being alert to the political nature of the request, ASIO immediately supplied Greenwood with “a stream of reports... including raw intelligence”.³⁸⁹ The organisation did attempt resistance in “two instances in 1970” when Barbour “resisted requests to provide information which was clearly partisan”.³⁹⁰ But “such resistance was patchy”.³⁹¹ Two attorneys-general over this time conveyed a desire to avoid the appearance of partisanship on the part of ASIO, yet continued the practise at an elevated rate.³⁹² In 1971, Barbour claimed to have said to Greenwood that he found it “scarcely surprising” that Labor was divided on whether to abolish ASIO because it “had no opportunity to be informed of ASIO’s work”.³⁹³ Given the amount of political information shared to Coalition governments this can hardly have been the case. It is also contrary to established practise in the United Kingdom, where the opposition is informed of MI5’s work, which has arguably led to greater bipartisan support for it over a longer period of time.³⁹⁴

The *Official History* argues the government had an appropriate “arm’s-length management” of ASIO – a “studied indifference” – because its “political masters did not want to know anything about... methods of obtaining the information”.³⁹⁵ However, it does not overlook the presence of political influence in the pre-ASIO organisations:

³⁸⁸ McKnight, “Partisan Improprieties,” 716-717.

³⁸⁹ *Ibid.*, 717-718.

³⁹⁰ *Ibid.*, 718-719.

³⁹¹ *Ibid.*, 719.

³⁹² *Ibid.*, 716, 719.

³⁹³ *Ibid.*, 720.

³⁹⁴ *Ibid.*, 720.

³⁹⁵ Horner, *The Spy Catchers*, 7; Blaxland, *The Protest Years*, 457.

The unfortunate and long-lasting effect of [the Hughes Government (1915-1923)] approach was that some politicians believed they were justified in using intelligence organisations to attack their political opponents. And perhaps even more damaging, the belief arose among those concerned about civil liberties that the SIB and its successors [including ASIO] had been established primarily to conduct political surveillance. This belief was to persist in some quarters for almost a century...³⁹⁶

McKnight offers a more balanced conclusion:

In effect ASIO was pressing for and occasionally exercising a degree of professional autonomy which allowed them to judge what was a security matter and to whom they should give advice regardless of the minister's wishes.³⁹⁷

The argument is somewhat inconsistent, as ASIO could not have been pressing for autonomy and only offering patchy resistance. On McKnight's evidence it seems more accurate to argue that the organisation possessed deference to the government, stemming from a shared worldview. If ASIO was unable to avoid embroiling itself in the political machinations of government, its policy to "resolve... doubts in the Commonwealth's favour" must have compounded the problem.³⁹⁸ Moreover, the Royal Commission on Intelligence and Security found that ministerial interference was a problem in the management of ASIO, as chapter nine demonstrates.

Labor's internal quarrel

The Labor Party membership was divided on the issue of whether to abolish ASIO if the party succeeded at the next election. An abolition motion, lodged by Bob Gould,

³⁹⁶ Horner, *The Spy Catchers*, 15-16.

³⁹⁷ McKnight, "Partisan Improperities," 720.

³⁹⁸ Horner, *The Spy Catchers*, 4.

was defeated at the 1971 Labor Conference by only one vote.³⁹⁹ The chairman, Lionel Murphy, was responsible for casting the deciding vote because of a tie, arguing that ASIO “filled a necessary function and needed simply to be made accountable”.⁴⁰⁰ Although this failed, another policy succeeded: the establishment of an administrative appeals tribunal to oversee organisations within the intelligence and security apparatus and the ministerial oversight of ASIO.⁴⁰¹ As chairman of Labor’s Legal and Constitutional Committee, Murphy played an integral role in drafting the recommendations that became part of the party platform.⁴⁰² As late as 1973 the Victorian Branch of the Labor Party – under the stewardship of future foreign minister Gareth Evans – narrowly defeated an abolition motion.⁴⁰³ A future Cabinet minister Clyde Cameron launched a “major attack” on “Government secrecy”, according to the *Australian*, less than a month before the 1972 election in a speech made to the Institute of Personnel Management.⁴⁰⁴ Cameron declared, “[t]he survival of democracy does not require the adoption of some of the evils of the police state”.⁴⁰⁵ In order to remedy ASIO’s transgressions, he said “a Labor Government will establish an administrative court of appeals... to lay down regulations governing the conduct of members of ASIO and other security organisations and to hear, determine and report to Parliament on the breach of any such regulations”.⁴⁰⁶ One of Whitlam’s key advisors, Jim Spigelman – future Chief Justice of the NSW Supreme Court – published a book in 1972 arguing strongly for greater transparency and accountability in government.⁴⁰⁷ When Gough

³⁹⁹ Hocking, *Terror Laws*, 40; Blaxland, *The Protest Years*, 320; McKnight, *Australia’s Spies*, 265.

⁴⁰⁰ David Solomon, “Control of ASIO to be tightened,” *Canberra Times*, 7 December 1972, 1, 14; McKnight, *Australia’s Spies*, 265.

⁴⁰¹ Solomon, “Control of ASIO to be tightened.”; Blaxland, *The Protest Years*, 320.

⁴⁰² David Solomon, “Senator Murphy marshals his arguments,” *Canberra Times*, 27 March 1973, 2.; Blaxland, *The Protest Years*, 320.

⁴⁰³ Barry Donovan, “Amalgamate All Security Forces, Says State ALP,” *Herald Sun*, 3 December 1973, 3.

⁴⁰⁴ *Australian*, “‘Secret’ papers passed to MPs,” 18 September 1972, 2.; Clyde R. Cameron, *Open government: to what degree?* (Melbourne: Victorian Fabian Society, 1972).

⁴⁰⁵ *Australian*, “‘Secret’ papers passed to MPs,” 18 September 1972, 2.

⁴⁰⁶ *Canberra Times*, “‘False reports’ by ASIO attacked,” 18 September 1972, 1.

⁴⁰⁷ James Spigelman. *Secrecy: political censorship in Australia* (Sydney: Angus & Robertson, 1972).

Whitlam came to office on 2 December 1972 – the first Labor government since 1949 – ASIO was trepidatious.⁴⁰⁸

⁴⁰⁸ Blaxland, *The Protest Years*, 156, 158, 186, 347, 381.

PART TWO

IV. Scholarly Perspectives on the Royal Commission

The focus of research by scholars has been the significance of the Royal Commission. On this scholars agree; Hope's first inquiry was important. But there is disagreement on the extent to which it improved ASIO and the Australian intelligence community more generally. It is also clear that until now no work has been done that specifically focuses on the reason the Royal Commission came to be. This chapter will consider how scholars have viewed the Royal Commission in the years since Hope handed down his findings and recommendations. Particular focus will be paid to a select group of scholars who have made notable contributions to this discourse. As such, David McKnight, the *Official History of ASIO*, and Jenny Hocking will be discussed in turn, after which less significant works will be discussed together.

McKnight's contribution

Associate Professor David McKnight's 1994 work, *Australian Spies and Their Secrets*, is one of the most comprehensive accounts of the origins of the Royal Commission. McKnight charts the history of ASIO from its inception. According to McKnight's account, the Royal Commission arose as a result of the government's long-term mismanagement of the issue of reforming ASIO and the short-term trigger of the Cairns dossier in 1974. After the controversy of the Murphy raid – involving Attorney-General Lionel Murphy – in March 1973 had dimmed by the following August, Whitlam announced that he was “considering the appointment of a judge to inquire into ASIO”.⁴⁰⁹ Eight months later the Whitlam Government was re-elected with an inquiry

⁴⁰⁹ David McKnight, *Australian Spies and Their Secrets* (Sydney: Allan & Unwin, 1994), 284.

into ASIO as part of its policy platform.⁴¹⁰ But, as this thesis shows, it was not until nine months had passed that the re-elected government decided to act. A leaked ASIO document on Deputy Prime Minister Jim Cairns was published by the *Bulletin*, attracting widespread concern.⁴¹¹ As a result, this “directly led” to the Royal Commission being established.⁴¹² It will be shown that this general timeframe of the inquiry’s origins is accurate.

While McKnight does not discuss the origins of the Royal Commission in detail, it is evident that he believes the inquiry marked a significant moment in ASIO’s history. For him, Hope “was drawn into the world view and mystique of security intelligence” and ultimately failed to bring about fundamental reform of the organisation.⁴¹³

The great failing of Hope and his small staff was that they treated ASIO as if it was some sort of hallowed institution so delicate that any public cross-examination or even rap on the knuckles would damage or destroy it... Hope’s main problem was that he lacked intellectual boldness and failed to tackle fundamentals... He also took a conscious decision to muffle his public criticisms and translate them into a bureaucratic code, though in secret his reports were more scathing... The prime failing of the Hope Inquiry was its promotion of the traditional notion of subversion in a new guise, the concept of ‘active measures’... a term largely drawn from the CIA.⁴¹⁴

The failure of Hope, according to McKnight, in part arose because the inquiry itself was secretive but also because of ideological factors:

[T]he best and most effective antidote to what was essentially propaganda was the sunlight of openness, democracy and free debate both within the public and

⁴¹⁰ McKnight, *Australian Spies*, 291.

⁴¹¹ *Ibid.*, 286-287.

⁴¹² *Ibid.*, 291.

⁴¹³ *Ibid.*, 295.

⁴¹⁴ *Ibid.*, 295-296.

within policy making bodies. But this was inimical to intelligence organisations whose self-interest and ideology coincided in a prescription which involved surveillance, stronger security agencies and suspicion of those with different views... Hope constantly stressed the great care and judgment needed by ASIO in investigating and surveilling subversion. But in reality subversion was a will o'the wisp, defined according to the political prejudices and culture of a security agency at any given time.⁴¹⁵

What McKnight is arguing is that the inquiry conducted by Hope did not conduct itself according to democratic ideals; a fundamental flaw. It could therefore not identify the inherently undemocratic nature of ASIO as well as its purpose, maintaining the organisation's delusion. But he sees the Royal Commission as having been significant to the reform process:

Hope helped reform ASIO in spite of being captured by the intelligence mystique... The results of the Hope Inquiry, especially when viewed with critical hindsight are deceptive. Even though he offered a new lease of life for ASIO the very fact that the inquiry was undertaken at all meant ASIO had ultimately to be formally accountable to governments and to the people not just to the secretive establishment within Australian and overseas security circles.⁴¹⁶

One of the most important arguments in McKnight's 1994 is that ASIO was heavily involved with the CIA. Indeed, he argues the organisation's very existence is owed to Australia's foreign policy subservience:

[ASIO] persists as part of annual tithe which Australians pay to be members of a Western defence alliance, primarily with the United States. Its creation in 1949

⁴¹⁵ McKnight, *Australian Spies*, 297-298.

⁴¹⁶ *Ibid.*, 299.

was the price demanded by Britain and the US for continuing access to defence-related rocket technology.⁴¹⁷

This conclusion is not inconsistent with the argument made by the *Official History*. He also criticises the obsequious nature of Hope's report on ASIO in that it "reads as a kind of bureaucratic code in which all sorts of errors, excesses and incompetence are hinted at but never spelt out".⁴¹⁸

In subsequent work McKnight moderates his position on the significance and contribution of Hope's first "far-reaching" inquiry, as well as his view of ASIO more generally.⁴¹⁹ According to him, "[p]artisan activity by the security agency was largely attributable to strong ministerial control rather than agency autonomy" even though "the agency also developed its own political agenda".⁴²⁰ He attributed this conclusion to his own "extensive archival research" but also the Royal Commission's report:⁴²¹

"One of the overall aims of the inquiry... was to prescribe the correct balance in the relationship between a security agency and a government".⁴²²

McKnight argues that neither the "political control" over ASIO nor the degree of its "autonomy" were clearly defined at the time the Royal Commission was setup.⁴²³ But "Hope clearly recognized the agency was not out of control [quotations removed]", rather there was too much political interference on the part of the government who had been issuing "directives".⁴²⁴ For McKnight, "[m]ost scholars interpreted Hope's recommendations as merely boosting the powers of the agency and thus exacerbating the problem" whereas other scholars "insisted that ministerial control must be

⁴¹⁷ McKnight, *Australian Spies*, 300.

⁴¹⁸ *Ibid.*, 298.

⁴¹⁹ David McKnight, "Partisan Improprieties: Ministerial Control and Australia's Security Agencies, 1962-1972," *Intelligence and National Security* 23, no. 2 (2008): 708.

⁴²⁰ *Ibid.*, 708-709.

⁴²¹ *Ibid.*, 721.

⁴²² *Ibid.*, 709.

⁴²³ *Ibid.*, 709.

⁴²⁴ *Ibid.*, 710, 721.

strengthened, unaware that it had played a large role in the politicization of ASIO”.⁴²⁵ That is, he sees the debate as divided between scholars who think the Royal Commission rightly resulted in greater legal autonomy of ASIO and scholars who think it should have recommended greater oversight by increasing the powers of the Attorney-General. However, he only cites one scholar, journalist David Marr, to substantiate this ‘debate’. Nevertheless, his argument is persuasive because the *Australian Security and Intelligence Organisation Act 1979* – passed in response to the *fourth report* – culminated in a second royal commission finding that “the balance had swung too far in favour of [ASIO’s] autonomy”.⁴²⁶

According to McKnight, the central issue in ASIO’s pre-Royal Commission history was the difficulties with democratic oversight within the Westminster system.⁴²⁷ In Australia, the executive wields considerable influence in the legislature. This is so because the governing party must command the confidence of a majority of the members of the lower house.⁴²⁸ As such, a majority government can exercise greater influence in order to diminish the role of the legislature in matters of ministerial responsibility and parliamentary oversight. McKnight sees ASIO’s “undoubted partisan behaviour [as]... largely stemmed from close ‘democratic’ control by ministers who sought to take advantage of the power and secrecy of the security agency”.⁴²⁹ Conversely, he argues that oversight of intelligence agencies in the United States is easier to achieve because of the clearer separation between the executive and legislature in their system.⁴³⁰ McKnight allows for “a great many shared assumptions between

⁴²⁵ McKnight, “Partisan Improprieties,” 721721.

⁴²⁶ *Ibid.*, 722.

⁴²⁷ *Ibid.*, 708.

⁴²⁸ *Ibid.*

⁴²⁹ *Ibid.*, 721.

⁴³⁰ *Ibid.*, 708.

ASIO and its ministerial heads”.⁴³¹ Yet, he rejects the notion of an ideological marriage of convenience:

[T]he instances of (rather ineffectual) resistance by senior ASIO figures to blatantly political requests indicates that the problem ultimately lay in untrammelled political control. If anything the problem was too much ‘accountability to ministers’.

When the interests of agency and government converged, there was cooperation; when the interests diverged, there was passive-aggressive resistance. He also dismisses the 1971 attempts within Labor to make the abolition of ASIO policy as “ignorance”.⁴³²

Official History of ASIO

The *Official History* has significantly improved the primary source evidence available to scholars studying and researching ASIO’s early history. The *Official History* is divided into three volumes, with the first and second volumes being of particular relevance to this thesis. Volume one, *The Spy Catchers*, is written by Emeritus Professor David Horner and covers the history of ASIO until 1963. Volume two, *The Protest Years*, is written by Professor John Blaxland and covers the history of ASIO from 1963 until 1975. Volume three, *The Secret Cold War*, is written by Blaxland and Doctor Rhys Crawley and covers ASIO’s history from 1975 until 1989. The entire work is edited by Horner.

The Whitlam Government’s time in office is seen as being a significant period in the history of ASIO, with the emergence of the Royal Commission as its climax. Blaxland introduces the inquiry at the end of volume two: “ASIO knew that its outcome would

⁴³¹ McKnight, “Partisan Improperities,” 721.

⁴³² *Ibid.*, 720.

have a fundamental effect on its structure, operations and perhaps even existence”.⁴³³ If those within the organisation felt it posed an existential threat they were surely paranoid, as such feeling was at odds with the rhetoric of the Whitlam Government and Labor:

Despite the high drama, ASIO’s fate was never really under threat, but the careers of several senior ASIO officers clearly were.⁴³⁴

Blaxland believes that “Whitlam and Murphy” had “settled into the job” by 1974 and “rightly saw that ASIO’s *raison d’être* remained valid”.⁴³⁵ There is recognition that the Whitlam Government was neither anti-ASIO nor opposed to domestic intelligence gathering:

The Whitlam Government departed from the foreign policy and intelligence script of its predecessors. Yet while many policies were challenged and several overturned, there remained a number of significant continuities; this included an enduring recognition of the important role ASIO had to play as an instrument of state.⁴³⁶

In 1975, “ASIO would stand at the cusp of a period of significant reform”.⁴³⁷ But the Royal Commission was not alone in driving ASIO reform; the organisation itself had already “foreshadowed recommendations” made by the Royal Commission.⁴³⁸ And the Whitlam Government was also instrumental:

ASIO... had its foundations shaken to the core by the Whitlam Government and particularly... Murphy. The Whitlam Government came to office with a strong agenda for reform... [T]he organisation was slowly becoming more centrally

⁴³³ John Blaxland, *The Protest Years*, vol. 2 of *The Official History of ASIO*, edited by David Horner (Sydney: Allen & Unwin, 2015), 6, 377, 436.

⁴³⁴ *Ibid.*, 376.

⁴³⁵ *Ibid.*, 8, 347, 349-350.

⁴³⁶ *Ibid.*, 457.

⁴³⁷ *Ibid.*, 465.

⁴³⁸ *Ibid.*, 361, 464-465.

positioned as part of the Australian federal government bureaucracy, being accepted by both sides of politics.⁴³⁹

As we will see the attorney-general - and, later, Hope and Whitlam – similarly believed that reform on ASIO had advanced considerably by the time the Royal Commission handed down its reports.

As considerable weight is placed on the independence of the work by ASIO, the Australian Government, and the official historians, it is prudent to consider the degree of independence in which was written. With the approval of the first Rudd Government (2007-2010) the work was commissioned in 2008 by Director-General of Security Paul O’Sullivan “to coincide with” the declassification of parts of the Royal Commission’s reports.⁴⁴⁰ According to O’Sullivan and the public call for tender, the prospective history would be written by “suitably qualified individuals or organisations who will be able to write a balanced, independent history using information sourced from ASIO’s archives”.⁴⁴¹ The resulting contract between ASIO and the Australian National University (ANU) – after it won the tender process within two days – remains classified, although a cost of \$1,757,981 was declared.⁴⁴² Horner attests to the independence of the project at the beginning of the *Spy Catchers* where he describes how this was ensured: the project had “full and unfettered access to ASIO’s records”, operated at ANU in order “to keep some academic distance from [the organisation]”, and insisted on “not accept[ing] any direction from ASIO as to how [the research team]

⁴³⁹ Blaxland, *The Protest Years*, 462, 464-465.

⁴⁴⁰ Paul O’Sullivan, “Director-General’s Speech for the Release of Records of the Hope Royal Commission on Intelligence and Security,” (speech, public address, Canberra, May 27, 2008).

⁴⁴¹ George Brandis, “Launch of The Spy Catchers: the Official History of ASIO 1949-1963,” (speech, book launch, Canberra, October 7, 2014).; AusTender, Preparation of History of ASIO (1949-1978) Manuscript/s, 60103807 (ASIO 091/08), 28 May 2008.

⁴⁴² Harold Callaghan, “Operation Official History,” *Quadrant*, 22 May 2016, https://quadrant.org.au/magazine/2016/04/operation-official-history/#_ftnref2.

would tell the story”.⁴⁴³ In fact, Horner went as far to reject the idea that an official history could be biased: “an official history of an organisation is not the organisation’s view of its history and its assessment of its own achievements”.⁴⁴⁴ This thesis accepts that the work is independent of ASIO, but it is clear that the work is written from a sympathetic worldview. It is also demonstrable that it was written with the present day organisation in mind, as we are assured that “ASIO’s officers were, and are, normal, dedicated Australians”.⁴⁴⁵ Horner explains that the research team, tasked with distilling conclusions from ASIO’s archives, did not focus on “issues [that] seemed less important when viewed from within ASIO” even if they were “widely publicised” at the time.⁴⁴⁶ This presents a problem in that he also promises to counter “half-truths” perpetuated and perpetuating.⁴⁴⁷ As we will see in chapter nine, Hope found that ASIO had often been distracted from its central objective. Similarly, some secondary sources are overlooked despite Horner’s commitment “to engage with the view and arguments about ASIO that have appeared in books and articles over the past three decades”.⁴⁴⁸ Most notably, he overlooks Professor Jenny Hocking’s *Terror Laws*.⁴⁴⁹ It should also be considered that the *Official History* is already influencing political and historical discourse. This was demonstrated by George Brandis, former attorney-general, in 2014 when he lauded ASIO’s late director-general Charles Spry: “a very great Australian... who did more than almost any other official in the service of the Commonwealth to protect our democratic institutions”.⁴⁵⁰

⁴⁴³ David Horner, *The Spy Catchers*, vol. 1 of *The Official History of ASIO* (Sydney: Allen & Unwin: 2014), xiv.

⁴⁴⁴ *Ibid.*, xii-xiv.

⁴⁴⁵ *Ibid.*, xiii.

⁴⁴⁶ *Ibid.*, xv.

⁴⁴⁷ *Ibid.*, 1.

⁴⁴⁸ *Ibid.*, xv.

⁴⁴⁹ *Ibid.*, 591, 593.

⁴⁵⁰ Brandis, “Launch of The Spy Catchers.”

Hocking's *Terror Laws*

Another scholar of significance to the history of the Royal Commission is Professor Jenny Hocking, who has considerable research experience on the history of the Whitlam Government. Her most notable contribution to the history of ASIO was her 2004 work *Terror Laws* which discusses the progression of Australia's domestic intelligence and security apparatus on the issue of terrorism since the 1970s. The Royal Commission, from its origins to its findings, does not form the focus of her work.

From Hocking's perspective the inquiry arose quickly but was "not unexpected" given the Whitlam Government's pre-election commitment to launch a judicial inquiry.⁴⁵¹ Initially, the government wanted to call some kind of inquiry into ASIO when it came to office, but circumstances changed. The change in circumstances occurred because of the March 1973 Murphy raid on ASIO offices.⁴⁵² She explains:

[T]he security sector, which had for years operated free of any ministerial guidance, saw in Murphy's actions, and in the words of the former head of CIA counter-espionage James Jesus Angleton, an attempt 'to destroy the delicate mechanism of internal security'. The melodramatic imagery of the 'raid', as it became immediately labeled (Murphy always preferred to call it a 'ministerial visit'), provided an instant diversion from the issues precipitating the seizure of files...⁴⁵³

Hocking clearly perceives the Attorney-General's actions as falling within his ministerial duties. But Hope took a different view on both the extent of ministerial

⁴⁵¹ Jenny Hocking, *Terror Laws: ASIO, Counter Terrorism and the Threat to Democracy* (Sydney: UNSW Press, 2004), 44-45.

⁴⁵² *Ibid.*, 43.

⁴⁵³ *Ibid.*, 43.

oversight of ASIO and the legitimacy of Murphy's raid.⁴⁵⁴ For her the change in political circumstances prevented an inquiry at that time:

It was a measure of the political unacceptability of Murphy's ministerial visit that no inquiry into these issues occurred at that time – though the impact of the event was so significant that the later establishment of the Royal Commission... can be seen as a delayed response to it.⁴⁵⁵

As we shall see, the raid had been a disastrous gamble.

The immediate trigger for the Royal Commission was the publication of a leaked ASIO document. The document in question was a profile on Deputy Prime Minister Jim Cairns undertaken by an ASIO officer. She states that it became public in June 1974 and immediately became

an invaluable insight into ASIO's attitude towards... popular dissent (in particular the relationship between protest and terrorism), its perception of the nature of liberal democracy, and its corresponding conception of activities and ideologies which presented a threat to the viability of a democracy.⁴⁵⁶

Unlike the Attorney-General's raid on ASIO offices in March of the previous year, this document gave the government a political advantage. It was, as Hocking writes, "[a] more acceptable premise on which to base the inquiry's eventual establishment".⁴⁵⁷ She explains:

The Royal Commission on Intelligence and Security was set up in August 1974 at a time of some turbulence in government and security relations. This turbulence underscored the expectation that the Royal Commission would suggest radical changes in the operations and accountability of Australia's

⁴⁵⁴ Hocking, *Terror Laws*, 46, 53.

⁴⁵⁵ *Ibid.*, 43.

⁴⁵⁶ *Ibid.*

⁴⁵⁷ *Ibid.*

security services, and possibly even the abolition of some. Speculation that the commission would result in at least a major administrative reorganisation was strengthened by the announcement that Mr Justice Hope... would head it. Hope was considered ‘an acknowledged small l-liberal’, ‘a champion of civil liberties’... The prospect of the inquiry being highly critical of the security services was further bolstered by continuing revelations of the widespread abuses overseas by security services...”⁴⁵⁸

This thesis will argue that “radical change” was not expected by the press, the United States, or the Whitlam Government.

With regards to the Royal Commission more generally, Hocking is critical. One of her main concerns is that Hope admits to having overlooked ASIO’s past conduct. This was despite a clear intention by the Whitlam Government, through the terms of reference, for Hope to consider such conduct. Hope explained in the *fourth report* that ASIO’s records were shambolic and that he believed his “task is to make recommendations for the future rather than to seek to track down the truth or otherwise of past errors”.⁴⁵⁹ Hocking shows that Hope’s view was in direct conflict with the inquiry’s terms of reference.⁴⁶⁰ She does not accept the resource constraints placed on the Royal Commission as a legitimate excuse. Hope also had a moral obligation to resolve ASIO’s history on behalf of the organisation’s alleged victims, as well as an obligation to the public more generally to come to terms with the organisation and its role in Australia’s democracy.⁴⁶¹ Another major concern of Hocking’s are the “sweeping exemptions from ministerial control” Hope recommended.⁴⁶² She shares Murphy’s belief that greater ministerial control of ASIO was necessary under the principle of responsible

⁴⁵⁸ Hocking, *Terror Laws*, 45.

⁴⁵⁹ *Ibid.*, 47.

⁴⁶⁰ *Ibid.*, 47-48.

⁴⁶¹ *Ibid.*

⁴⁶² *Ibid.*, 52.

government in the Westminster system.⁴⁶³ Conversely, she appears to believe that Hope was advocating legal positivism because he allowed legislation to determine the extent of ministerial control.⁴⁶⁴ To that end, Hope recommended that the *ASIO Act* be amended to make the director-general's extensive discretionary powers clearer.⁴⁶⁵ Hocking also believes that the Royal Commission was limited by the circumstances in which it operated:

The report of 1974 Hope Royal Commission has had a significant influence on the operations of Australia's security services. Although there have been many criticisms of its findings and recommendations, the fact that this Royal Commission was the first major inquiry into these organisations, coupled with the clandestine character of much of their activities, meant that there was little other information available with which to construct alternatives.⁴⁶⁶

She believes that it began a process of "legitimizing... past transgressions and ensuring their continuation"; what had once been ASIO's "depart[ure] from 'legality'" was to become "a *post hoc* justification for criminal activity by... the state".⁴⁶⁷ While the 1970s and 1980s brought "unprecedented inquiry and public scrutiny, resulting in great changes in ASIO's functions and operations", the end result was "the promotion of" the malleable crime of "terrorism as the major contemporary basis for domestic security operations".⁴⁶⁸ For the sake of completeness, it should be noted when it comes to the commentary on the Royal Commission, *Terror Laws* takes vast sections of text from a

⁴⁶³ Hocking, *Terror Laws*, 52.

⁴⁶⁴ *Ibid.*

⁴⁶⁵ *Ibid.*

⁴⁶⁶ *Ibid.*, 54.

⁴⁶⁷ Jenny Hocking, "Charting Political Space: Surveillance and the Rule of Law." *Social Justice* 21, no. 4 (1994): 72.

⁴⁶⁸ Jenny Hocking, "ASIO and the Security State: A Reply to Frank Cain," *Labour History* 60, (1991): 126.; Hocking, "Charting Political Space," 78.

1984 article Hocking wrote as a postgraduate student without expanding on its research (and without acknowledgement).⁴⁶⁹

Other scholarly perspectives

There have been a number of other scholars who have made contributions towards the scholarship on the Royal Commission. Again, the focus of research has been on the impact of Hope's findings and recommendations. Almost all scholars have perceived the Royal Commission as a turning point in Australia's democracy, whereby the intelligence apparatus transformed from its semi-legal existence into a legitimate manifestation of executive power in a representative democracy.

Professor Mark Finnane sees the Royal Commission as having begun a "process of reform" the legitimised the intelligence apparatus after a decade of heightened contention.⁴⁷⁰ This was achieved by the Parliament introducing greater oversight into the executive's activities with regards to intelligence work.⁴⁷¹ He argues that Labor has been the driving force of reform in the area of intelligence because it erected the two Hope royal commissions.⁴⁷² For this, he identifies a trend through Australian history. Starting at federation in 1901, political discourse on the "safety of Australia" has always been divided between the secrecy necessary for intelligence gathering against the need for public accountability and scrutiny.⁴⁷³ He concludes that Australians in the age of terror should seek solace in a greater degree of "balance" between "national security priorities [and] defending inherited liberties" in political rhetoric, as compared to the

⁴⁶⁹ Hocking, *Terror Laws*, 43-47, 272-273; cf. Jenny Hocking, "Subversion Dissent: Where ASIO Draws the Line," *Australian Left Review* 3, (1984): 38-41.

⁴⁷⁰ Mark Finnane, "The Public Rhetoric of Policing in Times of War and Violence: Countering Apocalyptic Visions." *Crime, Law and Social Change* 50 (2008): 19

⁴⁷¹ *Ibid.*

⁴⁷² *Ibid.*, 20.

⁴⁷³ *Ibid.*, 10, 18.

United States.⁴⁷⁴ But, he wrote that his research did not seek to determine what “impact” the Royal Commission had on “the operations and accountability of ASIO”.⁴⁷⁵ Nevertheless, he clearly believes Hope strengthened oversight functions for the benefit of future generations.

Former intelligence officers Warren Reed and Christopher J. Ward see the Royal Commission as having failed to ignite the kind of reforms it recommended. This failure is attributed to the secrecy of the Royal Commission’s findings and recommendations, as well as the director-general at that time, Justice Edward Woodward.⁴⁷⁶ Reed and Ward argue that the Royal Commission, however, began the “transformation of [ASIO] into a 20th-century intelligence service, far removed from the quasi-military structure” which had characterised the organisation until that time.⁴⁷⁷ Yet, the Royal Commission’s significance to the present day organisation is minimal given

the great changes that have occurred in the global community since the Hope Royal Commission took place. The rise of China and its impact on Australia are possibly the major challenge... and the continuing threat of Islamic fundamentalism...⁴⁷⁸

The authors also argue that the systemic problems of “[m]ateship, cronyism and the political wish to avoid embarrassment” continued to diminish ASIO’s counter-intelligence effectiveness in 2008.⁴⁷⁹ Hope was constrained because his terms of reference stopped him from establishing whether ASIO had been compromised by

⁴⁷⁴ Finnane, “The Public Rhetoric of Policing,” 22.

⁴⁷⁵ *Ibid.*, 20.

⁴⁷⁶ Warren Reed and Christopher J. Ward, “Australian Intelligence: Confronting the past for a safer future,” *National Observer* 77 (2008), 35-38.

⁴⁷⁷ *Ibid.*, 35.

⁴⁷⁸ *Ibid.*, 32.

⁴⁷⁹ *Ibid.*, 32, 40-41.

Soviet intelligence, as United States and United Kingdom counterparts believed (see chapter nine).⁴⁸⁰ To these ex-officers the Royal Commission had a powerful effect:

Stripped of its veneer, the 1977 Hope Report must surely rate as one of the most damning documents in the history of intelligence... Seen from our point of view as former intelligence officers (one in ASIO) who served during the period of the Royal Commission, the Hope report contains both an accurate and painful summation of conditions then evident in the organisation...⁴⁸¹

The authors are inaccurate on the origins of the Royal Commission. They erroneously claim that it arose after the Murphy raid and after Director-General Peter Barbour was removed.⁴⁸² The authors express concern at the “unwarranted criticism” ASIO received in the past, including the media’s response to the 2008 declassification.⁴⁸³

Another former ASIO agent, Bill Calcutt, believes the two Hope royal commissions lifted the “cloak of absolute secrecy” by attracting public interest to ASIO.⁴⁸⁴ Part of what it revealed to the public was the nature of intelligence work as being based not in facts but interpretation and inference; a distinction he argues has once again been blurred during the War on Terror.⁴⁸⁵ Doctoral candidate Andrew D. Brunatti believes the most significant impact of the royal commissions was the apportionment of managerial “responsibility” within Australia’s intelligence community.⁴⁸⁶ He argues they “helped formulate and cement a community focus that was increasingly accepted by the principal actors” so that, instead of the apparatus being comprised of competing

⁴⁸⁰ Reed and Ward, “Australian Intelligence,” 33, 38.

⁴⁸¹ *Ibid.*, 35.

⁴⁸² *Ibid.*, 34.

⁴⁸³ *Ibid.*, 31.

⁴⁸⁴ Bill Calcutt, “The Role of Intelligence in Shaping Public Perceptions of Terrorism,” *Journal of Policing, Intelligence and Counter-Terrorism* 3, no. 1, (2008): 32.

⁴⁸⁵ *Ibid.*, 33-34.

⁴⁸⁶ Andrew D. Brunatti, “The Architecture of Community: Intelligence Community Management in Australia, Canada and New Zealand.” *Public Policy and Administration* 28, no. 2, (2012): 122.

agencies, it was reformed to ensure cooperation and cohesiveness.⁴⁸⁷ Thus, the Australian intelligence community was born in the 1970s and 1980s, as a ‘community’ had not existed before. A negative view of Hope’s work is held by jurist Ben Saul to the extent that the Royal Commission impacted on refugees. He believes the Royal Commission had ramifications for refugees coming to Australia in more recent decades because Hope argued that administrative appeals could be made after adverse assessments of a person are made by ASIO. However, this right of appeal would not extend to those without citizenship or permanent residence, even though terrorists can be ‘home grown’.⁴⁸⁸ As we shall see, this was Whitlam Government policy before it was Hope’s. According to Garry Woodward, the Royal Commission arose out of the “probably inevitable frictions between the government and ASIO” after the 1972 election.⁴⁸⁹ He frames the decision in the context of Australia’s foreign policy:

Australia was now contributing to the international community not as a servant but as a respected and interesting partner. This is a significant role for a small country which must live by its wits and pursue its national interests through persuasion .⁴⁹⁰

Further to this, the new government’s approach to its own intelligence community

in turn sharpened prejudices against Whitlam and his colleagues harboured at the Nixon-Kissinger levels and below in Washington.⁴⁹¹

This thesis will demonstrate that the United States saw the Royal Commission, at least, much more positively than the Murphy raids.

⁴⁸⁷ Brunatti, “The Architecture of Community,” 123-124.

⁴⁸⁸ Ben Saul, “Dark Justice: Australia’s indefinite detention of refugees on security grounds under international human rights law,” *Melbourne Journal of International Law* 13 (2012): 694.

⁴⁸⁹ Garry Woodward, “Enigmatic Variations: The development of national intelligence assessment in Australia,” *Intelligence and National Security* 16, no. 2, (2001): 13-14.

⁴⁹⁰ *Ibid.*, 13.

⁴⁹¹ *Ibid.*, 14.

V: Contemporary perspectives on ASIO and an inquiry

This chapter will briefly discuss public discourse from the time in order to understand the immediate context in which the decision to launch the Royal Commission was made. To achieve this the thesis will predominantly focus on broadsheet newspapers for four reasons. Firstly, the major journalistic commentary in this period was provided by through medium. Secondly, notable television and radio interviews from the time were widely discussed in their pages. Accessing archived television and radio interviews would have also consumed considerable time. Thirdly, tabloid newspapers did not cover ASIO or intelligence issues and, when they did, often did so with hefty cliché. The National Library's collection of press clippings about intelligence from the time, although incomplete, contains very few tabloid articles to warrant arduous research of microfilm collections. Fourthly, as discussed below, less than a third of the populace knew of ASIO.

Age old debates, especially the legitimacy of government power to interfere in democracy, can be read into the commentary although most commentators appear to have been only aware of the partisan political ramifications. Importantly, what press coverage shows from 1974 was that contemporary commentators distrusted ASIO and believed that an inquiry of some kind was needed to determine necessary reform. All of the newspaper editorials that commented on the situation desired reform, while some commentators questioned the need for a domestic intelligence agency at all. On balance, editorials and opinion writers were sympathetic of the Whitlam Government's position. This public consensus gave the government an opportunity to implement the policy it formulated before the 1974 election. Many journalistic commentators and opinion writers believed that the government was aware of "the danger of having an intelligence

service that identifie[d] its future as rosier under an alternative Government”.⁴⁹² A distinction must be drawn between criticism of ASIO’s efficacy and criticism of domestic intelligence gathering in general. Most criticism of ASIO pertained to the organisation’s efficacy. Few editorials, journalists and other commentators went so far as to question whether domestic intelligence gathering was a legitimate practice within a representative democracy. This is not surprising when we consider how entrenched our institutions of government are. ASIO’s obsession with radicalism does not appear to have enlivened much concern either. This is in contrast to the organisation’s partisanship, which animated many commentators. In 1974 Australia’s press was predominately controlled by business whose financial interests and shareholders would not have been served by the expression of outrage about ASIO’s suppression of socialism and communism.⁴⁹³ The commentary was also driven by politically engaged persons, as over two-thirds of the populace knew of ASIO; an opinion poll taken months after the highly publicised Murphy raids indicated this.⁴⁹⁴

For the purpose of this chapter it is important to know of two events, which will be discussed more completely later. In March 1973, Attorney-General Lionel Murphy launched a raid – as it quickly became known – of ASIO’s Canberra office and its headquarters in Melbourne. Murphy wanted to acquire information he believed had been kept from him deliberately; an action he saw as in violation of his rights as minister overseeing ASIO. In June 1974 a leaked ASIO document discussing Deputy

⁴⁹² Maximilian Walsh, “The Affair of the ‘Faceless Seventy’,” *Sun-Herald*, 26 August 1973, 17, 44; Russell Schneider, “Spies in Our Midst: Who’s Watching the Watchers?,” *The Australian*, 25 June 1974, 9; Niki Savva, “A new spy mystery: what is MO9?” *Australian*, 24 June 1974, 1; Clancy, “Behind MO9,” *National Times*, 1 July 1974, 5; Brian Toohey, “Just what is MO9? McMahon blows the whistle on spies,” *Australian Financial Review*, 24 June 1974, 3, 8; George Negus, “Labor’s New Dilemma Over ASIO,” *Australian Financial Review*, 12 July 1974, 16; Allan Barnes, “Whiltam gets two birds with one stone,” *Age*, 17 February 1973, 15; Fred Brenchley, “Bring out your dead – ASIO thinks they are a security risk,” *National Times*, 5 March 1973, 9.

⁴⁹³ Cf. Herman and Chomsky, *Manufacturing Consent*.

⁴⁹⁴ *Australian*, “Secret service really secret,” 26 May 1973, 4.

Prime Minister Jim Carins was published in the *Bulletin*. As a result, the government announced that an inquiry into ASIO would be launched.

The *Australian*

News Corporation, as it is now known, founded the *Australian* in 1964 as a “thinking” person’s newspaper concerned with individualism and “the nation’s welfare”.⁴⁹⁵ At this time it was seen as an advocate for “the progressive cause” and attracted Australia’s “knowledge class”.⁴⁹⁶ The editorial had endorsed Labor at the 1972 election and praised the Whitlam Government for its economic stewardship shortly after the 1974 election.⁴⁹⁷ However, the *Australian* began pursuing the electoral defeat of the government in 1975.⁴⁹⁸ The editorial gave a scathing critique of ASIO stating that evidence of the organisation’s “virtues” must have been limited to its classified material, given so “few... [were] on public display”.⁴⁹⁹ The paper believed that ASIO arose in 1949 out of a need to establish credibility with the United States and the United Kingdom by “target[ing]... Australian citizens who opposed [them], or who were in any other way openly antagonistic to our friends in Washington”.⁵⁰⁰ But ASIO’s actions “at the height of the Cold War” were justified and reform of this “primary objective” was essential.⁵⁰¹ It is also noted that the organisation had remained fixated with the communist threat: “[t]imes changed, but ASIO did not.” The paper called for a “new” apparatus as “no security institution which is seen to be a joke can be called either efficient or secure”.⁵⁰² ASIO had not adapted with changing times.⁵⁰³ It is clear that the

⁴⁹⁵ Nicolas Rothwell, “Australian” in *A Companion to the Australian Media*, ed. Bridget Griffin-Foley (Melbourne: Australian Scholarly Publishing, 2014), 36-37.

⁴⁹⁶ Ibid.

⁴⁹⁷ Ibid.

⁴⁹⁸ Rothwell, “Australian,” 37.; Margaret van Heekeren, “Daily Telegraph” in *A Companion to the Australian Media*, ed. Bridget Griffin-Foley (Melbourne: Australian Scholarly Publishing, 2014), 130.

⁴⁹⁹ *Australian*, “Cairns’ File Emphasises the Flaws in ASIO,” 21 June 1974, 18.

⁵⁰⁰ Ibid.

⁵⁰¹ Ibid.

⁵⁰² Ibid.

Australian was written with an understanding of realpolitik; democracy was necessarily subject to the demands of more powerful foreign states and the government had acted legitimately.

While its concern was for ASIO's deficiencies there was also a belief that democracy should be allowed to expand:

Part of its function must be to suggest new and modern guidelines for the conduct of a security organisation in a world which is no longer polarised between Stalin and the West; where citizens can no longer be held to be un-Australian for opposing Establishment views; and in which our notion of Australian democracy is as much at danger from right extremism as it is from left extremism... The future of Australian democracy depends more on the preservation of free speech than it does on the surveillance of those who use it. That is the principle, carelessly overlooked by the old ASIO, which must guide the new one.⁵⁰⁴

Thus, a new line should be drawn between legitimate and illegitimate exchange of political views. As with many commentators, the editorial saw an inquiry of some kind as integral to reform; a position it had held since the Murphy raid when it had compared ASIO to the Gehlen.⁵⁰⁵

According to journalist Russell Schneider in the *Australian*, the pre-election promise to hold an inquiry into Australia's intelligence apparatus had bipartisan support at the time

⁵⁰³ *Australian*, "Cairns' File Emphasises the Flaws in ASIO."

⁵⁰⁴ *Ibid.*

⁵⁰⁵ *Australian*, "Inquiry on ASIO must come now," 19 March 1973, page unknown; The Gehlen was the post-war intelligence agency of West Germany – setup by the United States – that was known for its reliance on ex-Gestapo officers: Klaus Wiegrefe, "Intelligence Agency's Murky Past: The Nazi Criminals Who Became German Spooks," *Spiegel Online International*, 16 February 2011, <http://www.spiegel.de/international/germany/intelligence-agency-s-murky-past-the-nazi-criminals-who-became-german-spooks-a-745640.html>.

of the *Bulletin* leak: “[t]he general feeling among both Liberal and Labor backbenchers was that ASIO’s professional standing must come under scrutiny if its other assessments were based on the same source material as that on Dr Cairns.”⁵⁰⁶ He speculated that “some members of the Government” would press for “a more defined statement of the duties and obligations of the intelligence sleuths”.⁵⁰⁷ The cross partisan appeal was not isolated to the backbench. The former Coalition Prime Minister Billy McMahon was quoted as lending support for an inquiry into ASIO, anticipating that “a Royal Commission of some sort” was possible.⁵⁰⁸ In the same interview McMahon denied knowing ASIO had investigated political figures during his brief time in office and also “complained of the lack of information he received from [the organisation]” more generally.⁵⁰⁹ These comments were made on 23 June after the *Bulletin* published another leaked document in which ASIO described the McMahon Government (1970-1971) as having abandoned liberalism in favour of “a crude form of pragmatism”.⁵¹⁰ The “radical... liberal” Labor senator, James McClelland, stated that “ASIO for years regarded itself as an agency whose principal duty was to protect Australia from a Labor Government”.⁵¹¹ The *Australian*’s coverage of the Select Committee on Civil Rights of Migrants in late 1973 is particularly enlightening. One extensive article of September 1973 quotes the Vice-President of the Council for Civil Liberties, Ken Buckley, at length:

[ASIO’s] members are recruited from a Right thinking – capital R for Right – Old Boy network. It’s time Australians were given the right to know more about a body virtually accountable only to itself... [T]here obviously is a case for an

⁵⁰⁶ Russell Schneider, “The Laugh’s on ASIO Over Cairns Files,” *Australian*, 20 June 1974, 1.

⁵⁰⁷ Schneider, “Spies in our midst.”

⁵⁰⁸ Savva, “A new spy mystery.”

⁵⁰⁹ *Ibid.*

⁵¹⁰ *Bulletin*, “The file on the right,” 29 June 1974, 12; Savva, “A New Spy Mystery.”; Note: the *Bulletin* often began distributing its magazines up to a week before they were officially published.

⁵¹¹ D. B. Waterson, *The Biographical Dictionary of the Australian Senate* (Sydney: University of New South Wales Press, 2010), <http://biography.senate.gov.au/index.php/mcclelland-james-robert/>; Schneider, “The Laugh’s on ASIO.”

organisation to cope with threats like Black September, militant terrorists and espionage... Instead [ASIO] has been preoccupied with the political opinions of ordinary Australians.⁵¹²

Buckley, who had worked in British wartime intelligence, was an influential left-wing economist and unionists who was involved in establishing the National Tertiary Education Union (NTEU).⁵¹³ The Council for Civil Liberties used the occasion to call for ASIO's disbandment, presumably in favour of the creation of a new organisation focused on political violence.⁵¹⁴

The *Australian* also reported voices against an inquiry. Opposition Leader Bill Snedden indicated his approval of ASIO's conduct in gathering information on politicians, defending the practise because "[t]here would be records of political events kept by ASIO and there would have been political events in which I figured during my career in Parliament".⁵¹⁵ He made no distinction between a commentary on "political events" and dossiers on individual politicians.⁵¹⁶ However, the same paper reported Snedden's opinion in 1973 as having been markedly different; he believed ASIO had become a Labor's political police.⁵¹⁷ Another paper quoted Snedden calling for an inquiry into ASIO.⁵¹⁸ His later view was shared by a colleague, Ivor Greenwood, who had been attorney-general under the McMahon Government and, briefly, under the Fraser Government (1975-1983). He told the *Australian*: "I don't think that ASIO would have been doing its duty not to have examined closely the activities of Dr Cairns and the

⁵¹² *Australian*, "End the secret 'menace' of ASIO, committee urged," 6 September 1973, 9

⁵¹³ Tony Stephens, "Radical economist and thinker championed civil liberties," *Sydney Morning Herald*, 21 July 2006, <http://www.smh.com.au/news/obituaries/radical-economist-and-thinker-championed-civil-liberties/2006/07/20/1153166516473.html>.

⁵¹⁴ *Australian*, "End the secret 'menace'."

⁵¹⁵ Russell Schneider, "Order to Destroy ASIO Files on MPs Likely," *Australian*, 21 June 1974, 1

⁵¹⁶ *Ibid.*

⁵¹⁷ *Australian*, "End the secret 'menace'."

⁵¹⁸ *Canberra Times*, "'Raid' on ASIO: Inquiry call on alleged complaint," 6 August 1973, 3.

groups around him during those moratorium days”.⁵¹⁹ Greenwood’s past is notable for his decision to defy the Menzies Government (1949-1966) in order to defend the rights of a colleague accused of being a communist sympathiser, as well as his opposition to homosexual criminalisation.⁵²⁰ Blaxland notes this contradiction and explains that Greenwood had “an interest in civil liberties but an uncompromising approach to law and order”; the same inconsistent view held by former Deputy Leader of the Liberal Party Neil Brown.⁵²¹

The opinion pages reveal a dispute between journalist and economist Gregory Clark and notable Australian National University professor, Hedley Bull, over the presence of “ex-intelligence types” within the university’s Department of International Relations.⁵²² Clark also asserted that a recent death of a colleague had been linked to intelligence work. Bull rejected these claims:

I... can state categorically that I know of no attempt by ASIO or any other intelligence organisation either to secure or to prevent appointments in this department... The person to whom Mr Clark refers is undoubtedly Dr J. E. Brimmell, a senior research fellow... who was killed in a car accident while on fieldwork in Thailand in February 1968... Mr Clark’s statement illustrates the same tendency that has been displayed in the recently published ASIO files, to base smears and innuendoes on mere surmise and idle gossip.⁵²³

⁵¹⁹ Schneider, “The Laugh’s on ASIO.”

⁵²⁰ Drew Cottle, “Ivor Greenwood,” in *The Biographical Dictionary of the Australian Senate*, vol. 3 (Sydney University of New South Wales Press, 2010), accessed 12 July 2015, <http://biography.senate.gov.au/index.php/greenwood-ivor-john/>.

⁵²¹ Blaxland, *The Protest Years*, 60; N. A. Brown, “Greenwood, Ivor John (1926-1976),” in *Australian Dictionary of Biography*, vol. 14 (Melbourne: Melbourne University Press, 1996), <http://adb.anu.edu.au/biography/greenwood-ivor-john-10361>; Andrew Bolt, “Neil Brown was once the Liberals’ deputy leader: Now he cannot vote Liberal while Turnbull leads,” *Herald Sun*, 8 July 2016, <http://www.heraldsun.com.au/blogs/andrew-bolt/neil-brown-was-once-the-liberals-deputy-leader-now-he-cannot-vote-liberal-while-turnbull-leads/news-story/728dd250a4471fead5ce9ebedebecef3>.

⁵²² *Australian*, “ASIO and academic appointments,” 18 July 1974, 8.

⁵²³ *Ibid.*

This dispute shows how ASIO had become a pariah of sorts by the middle of 1974, with reputable scholars – Bull was certainly no radical – and institutions determined to fend off accusations of familiarity with the organisation.

Other perspectives contained within the pages of the *Australian* reveal broader angst about Australia's security situation. Former Director of Military Intelligence Brigadier John Gordon Hooton, who had recently resigned from the army, shared his dire views on Australia's defence preparedness with the Constitutional Association of Australia, saying the country faced the greatest threat to its survival since the Kokoda campaign:

[t]he dangers of having an intelligence system in which the professional military voice is minimal and well-meaning diplomats, assessing the success of their own efforts, have the principal influence are clear.⁵²⁴

In his opinion

...a considerable range of threats could occur – including not only attempted invasion and occupation, but also economic domination, unreasonable demands for production and trade, incursion into land territories and exploitation of territorial waters.⁵²⁵

Hooton said that his resignation from the Army in early 1974 was over the Whitlam Government's neutering of the intelligence apparatus and his resulting "ex-communication".⁵²⁶ He said that this frustration towards the government was widespread because a "24 percent increase in resignations from all Army ranks in the first three months of [1974]" occurred as a direct result.⁵²⁷ The former Director, appointed by Minister for the Army Malcolm Fraser in March 1967, had an impressive

⁵²⁴ *Australian*, "Australia's Defence Position 'Dangerous'," 25 June 1974, 2; Cf. M. Varang, "The Unnecessary War: Civilians v the Army," *National Times*, 24 June 1974, 44-45.

⁵²⁵ *Australian*, "Australia's Defence Position 'Dangerous'."

⁵²⁶ *Australian*, "Australia's Defence Position."; *Sydney Morning Herald*, "Defence Policy 'Dangerous'," 27 May 1974, 2.

⁵²⁷ *Australian*, "Australia's Defence Position."

career in the military, including time as an attaché in Washington and the award of CBE.⁵²⁸ There is a question as to Hooton's state of mind at the time. In later years it was revealed that he had resigned in order to care for his family, all members of which suffered from the sudden onset of a degenerative illness.⁵²⁹ This raises the possibility that his inflammatory opinions were distorted by the pressures in his personal life. However, Hooton had a history of controversial outbursts dating to the "early 1960s".⁵³⁰

The National Times

The *National Times* was more radical in its assessment of ASIO and the kind of inquiry that should review it because "[s]ecret services are by nature and by definition conspiratorial".⁵³¹ An editorial argued "[t]here should be no need for the inquiry to be carried out completely behind closed doors" and that the Whitlam Government should resist "pressure" from foreign allies when considering what to do with the organisation.⁵³² Instead of an inquiry focusing on the *Bulletin* leak, it was "[m]uch more important" for it to establish "exactly what the objectives of our secret services are and how well the services are supervised".⁵³³ The questions the paper wanted addressed, given the threat ASIO posed to democracy, were broad:

An inquiry into the secret services has to begin at the very beginning: What do we need in the way of such services? What objectives should they pursue? How should they be supervised? How can ministers be best kept informed of the nature of the agencies' secret work? How captive are our services to US and

⁵²⁸ Malcolm Fraser, "New Army Intelligence Director", press release, March, 28 1967; Jim Forbes, "New Commanding Officer for the Artillery Unit," press release, date unknown; Paul Hasluck, "Attendance of Australian Officers at the United States Armed Forces Staff College," press release, April 10, 1964; Bob Katter Sr., "Vietnam awards", press release, July 3, 1972.

⁵²⁹ Rosalie Higson, "Officer had Model Military Career," *Sydney Morning Herald*, 22 February 2013, <http://www.smh.com.au/comment/obituaries/officer-had-model-military-career-20130221-2eu1d.html>.

⁵³⁰ Higson, "Officer had Model Military Career."

⁵³¹ *National Times*, "Off With Their Cloaks."

⁵³² *Ibid.*

⁵³³ *Ibid.*

British counterpart agencies? How much influence do the intelligence services have on foreign and domestic policy?⁵³⁴

These kinds of questions were much more expansive than those ultimately posed by the government in the terms of reference. Obviously, such questions could not have been addressed without a well-resourced royal commission, especially one with commissioners that knew “a considerable amount about our foreign relations, have a healthy respect for the need for democratic institutions and an approach which is not sympathetic to the old boys network and the basic belief that everything a government does must be kept secret”.⁵³⁵ As to the selection of royal commissioners, “expert assistance” was needed instead of “a judge without specialised help”.⁵³⁶ As we will see, the Royal Commission was under resourced and the royal commissioner was a judge without specialised knowledge but with a civil liberties background.

The *National Times* also conveyed academic opinion on ASIO. Political scientist Don Aitkin – who later became Vice-Chancellor of the University of Canberra – “bet... that security organisations... attract into their employ people whose psychological bent is strongly inclined towards order”.⁵³⁷ He said ASIO as a self-fulfilling prophecy because its mere existence necessitated an enemy that would be its *raison d'être*.⁵³⁸ For him, ASIO could not function if it were apolitical; its focus was the preservation of “order” in its war against radical “change” and was therefore already political.⁵³⁹ In a letter to the editor the political scientist and Marxist economist Bruce McFarlane – who became the Professor of Politics at the University of Adelaide – argued the “Petrov-McCarthyite wave” had pressured a generation of left wing academics into timidity: “it is well to

⁵³⁴ *National Times*, “Off With Their Cloaks.”

⁵³⁵ *Ibid.*

⁵³⁶ *Ibid.*

⁵³⁷ Don Aitkin, “We Don’t Need ASIO – It is Unlikely We Ever Did,” *National Times*, 8 July 1974, 14-15.

⁵³⁸ *Ibid.*

⁵³⁹ *Ibid.*

remember the atmosphere of those days”.⁵⁴⁰ Another article by the chairperson of the Committee for the Abolition of Political Police, Joan Coxsedg, argued that Murphy’s softening towards ASIO – as evidenced in the Government’s rhetoric after the *Bulletin* leak and in the terms of reference for the Royal Commission – was the result of departmental capture; where a minister becomes a mere spokesperson for the bureaucracy).⁵⁴¹

In the months after the Murphy raid journalists Fred Brenchley questioned the reformist image of the Whitlam Government on the issue of ASIO and the intelligence apparatus:

The Labor Government, while outspokenly reformist in many directions, has been strangely reticent about Australia’s intelligence network, and particularly the role of intelligence in diplomacy. For a party which has pictured itself as harassed by ASIO for years... this is indeed curious.⁵⁴²

According to Brenchley “considerable speculation” existed on how the apparatus would be reformed, either the creation of “a single bureaucratic monolith” intelligence agency or “a pluralistic intelligence network”.⁵⁴³ His colleague, Andrew Clark, pushed for a bolder policy of “open government”, even though he accepted it could result in more confusion and public frustration at the executive’s intelligence gathering activities.⁵⁴⁴

The head of the Department of Government and Public Administration at the University of Sydney, Professor Henry Mayer, known for his radical tendencies, offered a pragmatic view of ASIO’s legitimacy:

⁵⁴⁰ Bruce McFarlane, “Fall-out from the Petrov Affair,” *National Times*, 3 June 1974, 2.; Nick Harvey, et al. *A History of the Faculty of Arts at the University of Adelaide 1876-2012* (Adelaide: University of Adelaide Press, 2012), 54-55.; Philip Arestis and Malcolm Sawyer, “Bruce McFarlane” in *A Biographical Dictionary of Dissenting Economists*, second edition (Cheltenham: Edward Elgar, 2000), 383-384.

⁵⁴¹ Joan Coxsedg, “The Right Still Controls ASIO,” *National Times*, 26 August 1974, 2.

⁵⁴² Fred Brenchley, “Who’s who in our hierarchy of spooks,” *National Times*, 6 August 1973, 18.

⁵⁴³ Brenchley, “Who’s who in our hierarchy of spooks.”

⁵⁴⁴ Andrew Clark, “Foreign Policy – a Tricky Step on a Road to Open Government,” *National Times*, 10 June 1974, 12.

Just what is the point of having a special and fairly expensive body concerned, it is said, with “security”... [Given the threat of] nuclear war, the very notion of clinging on to secrets has long been absurd... [T]here is less and less agreement on what it is that our society stands for, what are its dominant and prevailing values... [T]here is also less and less certainty in knowing what sort of attitudes and actions in fact subvert a society or a system... To them it merely subverts marginal things and helps to maintain basic things in the present system... [If ASIO was politically objective its employees] would be brilliant and genuine social scientists with a knowledge of society and its laws.⁵⁴⁵

Mayer’s views do not preclude a reformed intelligence organisation from existing, especially one that draws its employees from a broader range of perspectives.

At the time of the Murphy raid, Robert Mayne reported on ASIO material leaked to the paper. It would have almost certainly been the same material published by the *Bulletin* that caused an outrage in June 1974:

[The files] show an organisation which appears to see a monolithic left-wing conspiracy ready and waiting to take over Australia, aided by a large battalion of stooges, fifth columnists and others awaiting the call. One paper in particular seem to sum up the ASIO philosophy...

“The Australian free enterprise system is a number one target for destruction in the ideologies and programs of action being promoted by both the ‘Old Left’ – the mass movements of protest and dissent, the radical and revolutionary student and other youth organisations, and the ‘Socialist Left’ in the ALP... However

⁵⁴⁵ Henry Mayer, “ASIO keeps our James Bonds busy, so don’t knock it,” *National Times*, 17 December 1973, 687; Murray Goot and K. S. Inglis, “Mayer, Henry (1919–1991),” in *Australian Dictionary of Biography* (Canberra: Australian National University, 2014), <http://adb.anu.edu.au/biography/mayer-henry-17251/text29033>.

many ‘New Left’ groups, with or without the support of the ‘Old Left’ action via mass demonstrations of a militant nature:

- (a) Those who see direct action as part of the democratic parliamentary process...
- (b) Those who seek direct action as a long-term means to revolution via the training of revolutionaries or as a way of creating revolutionary situations in society...
- (c) Those who use direct action as a means from generating politically motivated acts of violence...

In the long run, the revolutionaries’ programs are designed to create an ‘anti-establishment public’ which will operate as ‘extra-parliamentary opposition.’

Naturally, the free enterprise system, at all levels is a prime target...⁵⁴⁶

Obviously, ASIO’s demonstrable distain for the exchange of radical opinion is inconsistent with its supposed goal of defending democracy.

547

There are striking similarities in content and identical wording to the documents published 14 months later by the *Bulletin* to much controversy. These documents are discussed below. Presently, it is worth noting that no controversy seems to have arisen from the *National Times* publication in 1973, especially since it emerged so soon after the Murphy raids. It could be that the focus on the documents which detailed ASIO’s anti-radicalism – as opposed to the 1974 publication which focused on documents discussing mainstream political parties and luminaries – was not seen as noteworthy. Yet, the actual significance of the publication of April 1973 was much greater than that of June 1974. ASIO was first and foremost concerned with maintaining the economic *status quo* at the expense – quite consciously – of democracy. Conversely, the latter was

⁵⁴⁶ Robert Mayne, “How ASIO sees the world – and Australia,” *National Times*, 2 April 1973, 6-7.

⁵⁴⁷ Mayne, “How ASIO sees the world.”.

more sensational to a social clique preoccupied with the cut and thrust of daily politics. Indeed, many of the politicians, like Cairns, are no longer widely known whereas political suppression on behalf of economic interests is of a timeless import. Journalist Max Suich saw the leak of April 1973 as evidence of ASIO's anti-democratic tendencies:

Such an organisation [with the ability to stage a "counter propaganda operation"] is completely beyond the bounds of justifiable action by ASIO (though disturbingly if it had the director General's permission it was not outside its legal rights). In carrying out this operation, ASIO demonstrated its inability to discern the difference between violent words and violent actions and failed to recognise the legitimate rights of a citizen in a democratic country to hold extreme political views... When does ASIO feel that its role is to mount counter operations against the views of political organisations? ASIO agents have boasted in the past that their organisation has played a part in breaking up the National Socialist movement in Australia.⁵⁴⁸

A brief comparison can be drawn here with the United States at the same time. When documentary evidence emerged that demonstrated the Federal Bureau of Investigation (FBI) had engaged in a widespread campaign (called COINTELPRO) of political suppression of radicals – even involving the deaths of black activists – press coverage was very muted.⁵⁴⁹ At the same time the Watergate scandal – in which one party of government attempted to stifle another at an election – consumed press attention, resulted in an historic resignation of a US president, and captured public imagination for

⁵⁴⁸ Max Suich, "ASIO, ASIS, JIO: inquiry needed into our three intelligence organisations", *National Times*, 2 April 1973, 6-7.

⁵⁴⁹ United States Senate, *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities* (the Church Committee) (Washington: National Archives and Records Administration, 1976), 222-223.; Nelson Blackstock, *COINTELPRO: The FBI's secret war on political freedom* (New York: Pathfinder, 1988), 30, 210-213. Blackstock, COINTELPRO, 12-13, 50, 54-55.

decades.⁵⁵⁰ The informant, Deep Throat, who instigated the Watergate revelation was the Deputy Director of the FBI.⁵⁵¹ The extent to which ASIO and the FBI engaged in similar anti-radicalism is beyond the scope of this thesis. But there was a disparity of press coverage between the two publications that raises questions about the extent to which the press was committed to democracy in the 1970s.

The Australian Financial Review

The *Australian Financial Review* was started in 1951 under John Fairfax & Sons as an “adjunct” to the *Sydney Morning Herald* dedicated to financial news.⁵⁵² By 1974 it had become an effective advocate for economic neoliberal reform; the interests of capital.⁵⁵³ An editorial of this paper was concerned with the balance between organisational oversight and the risk of politicising the organisation:

Fundamentally, there is an almost irreconcilable conflict between the necessity for ensuring proper accountability for secret security services in a democratic society while at the same time providing safeguards against their excessive politicisation – the very real danger that they could become simply the stand-over or investigative arm of the party in power.⁵⁵⁴

Clearly, the paper implied that ASIO had come close – presumably under the previous government – to becoming such a partisan tool.⁵⁵⁵ The most important passage in the editorial goes to a broader question: “whether such organisations are needed at all in the context of present-day Australian society” given ASIO’s origins as a mechanism used to

⁵⁵⁰ Blackstock, *COINTELPRO*, 12-13, 50, 54-55.

⁵⁵¹ John D. O’Connor, “I’m the guy they called Deep Throat,” *Vanity Fair*, 17 October 2006, <https://www.vanityfair.com/news/politics/2005/07/deepthroat200507>.

⁵⁵² Gerard Noonan, “Australian Financial Review” in *A Companion to the Australian Media*, ed. Bridget Griffin-Foley (Melbourne: Australian Scholarly Publishing, 2014), 54.

⁵⁵³ *Ibid.*, 55.

⁵⁵⁴ *Australian Financial Review*, “Too Soon to Carve Up ASIO,” 13 March 1974, 2.

⁵⁵⁵ *Ibid.*

“convince” the United States and United Kingdom of the government’s ability to keep secrets secure during the fight with communism.⁵⁵⁶ However,

it seems obvious that there are vast areas of national security which would be much better looked after by the police than they are by self-perpetuating secret empires.⁵⁵⁷

The paper demonstrated a willingness to accept a more nuanced solution to what it saw as the ideological and political contamination of ASIO. The suggestion that the police should be vested with greater responsibility for national security matters overlooked the highly questionable conduct of state police special branches, as revealed by the Inquiry into the Records held by the Special Branch of South Australian Police conducted by Justice Michael White in 1978.⁵⁵⁸

The *Financial Review* also derided the culture of opportunism and retribution within the intelligence apparatus, as well as its employees who had been drawn from “the ranks of university drop-outs... the old boy net-work of the public school system and the ranks of the military”.⁵⁵⁹ This recruitment pool was “hardly fertile ground for the men ASIO needs”.⁵⁶⁰ The paper was not opposed to ASIO’s existence:

There is a very good case for having an internal security organisation in Australia. However, the latest exposure of the work of the Australian Security and Intelligence organisation in “The Bulletin” suggest that the institution we now have is dangerously off-beam in identifying its role... [The earlier Cairns leak] managed to convey the impression that the internal security organisation we now have is preoccupied with undergraduate right-wing obsessions. The fact

⁵⁵⁶ *Australian Financial Review*, “Too Soon to Carve Up ASIO.”

⁵⁵⁷ *Ibid.*

⁵⁵⁸ Hocking, *Terror Laws*, 54-58.

⁵⁵⁹ *Australian Financial Review*, “Too Soon to Carve Up ASIO.”; *Australian Financial Review*, “ASIO Confuses Politics with Security,” 21 June 1974, 2.

⁵⁶⁰ *Ibid.*

that the former Attorney-General, Senator Ivor Greenwood, considers such activities as the Cairns dossier on the part of ASIO to be entirely justified on the basis that its character obliges it to engage in matters covering the expression “subversion” is indicative of the partisan cloak that organisation has elected to wear... [ASIO’s] first and most mundane role should be involved in preserving and policing the integrity of the bureaucracy... [There is a] need for any internal security organisation to be open to as much public scrutiny as possible. Power does corrupt. Power exercised in secret is a much more corrupting influence.⁵⁶¹

It is the inefficacy of the organisation that inspires the *Financial Review*’s lack of faith in ASIO. According to the paper, the world had advanced beyond ideological conflicts towards pragmatic considerations; “industrial espionage,” “economic security” and “resource security” were the real threats to national security and the proper focus of domestic intelligence efforts.⁵⁶² Declaring a post-ideological age conceals an underlying philosophy, consciously or no. The paper saw ASIO’s threat to democracy emanating from the organisation’s privileged position in the shadows, away from public scrutiny. The editorial offered the following advice on the terms of reference:

The electorate’s right to know must be balanced carefully against the slogan security is ever ready to invoke, that of national security.⁵⁶³

The scepticism expressed here is telling; even proponents of an intelligence and security apparatus thought the phrase ‘national security’ had been over-utilised by government. Whereas the paper had seen greater ministerial oversight as the solution to the ASIO problem in a 1972 editorial, an inquiry was needed in 1974 to find the solution.⁵⁶⁴

⁵⁶¹ *Australian Financial Review*, “ASIO Confuses Politics.”

⁵⁶² *Ibid.*.

⁵⁶³ *Ibid.*

⁵⁶⁴ *Australian Financial Review*, “The right to know – the cloak and dagger casualty,” 3 November 1972, 2, 3, 5.

The reports from the *Australian Financial Review* by Brian Toohey suggest that an inquiry was seen by those within the bureaucracy as a mechanism that could deal with ASIO's political bias:

Some government officials say the standard of work displayed by... ASIO, in the recently revealed report on Dr Cairns has focused new attention on the need to examine the ideological pre-conceptions behind the operations of the overseas network.⁵⁶⁵

It was evidently believed by some within the bureaucracy that ideological bias contaminated more than ASIO. Another *Financial Review* journalist, George Negus, who had been Murphy's press officer at the time of the raid, considered the Whitlam Government's commitment to its own policies. Aside from its pre-election commitment in 1974 to hold a judicial inquiry into ASIO, there had been a commitment before the 1972 election

to make an annual report to Parliament on the working of (a) ASIO and any infringement of the regulations and action taken in regard to such infringements and (b) the Telephonic Communications (Interceptions) Act.⁵⁶⁶

By the time of the article's publication, "[w]ell into the second year of Labor Government", no annual report had been tabled in Parliament.⁵⁶⁷ However, neither Murphy nor Whitlam were willing to comment on their progress.⁵⁶⁸ The paper also discussed the preference of the "Defence establishment" for an intelligence agency distinct from ASIO, which was now seen as having succumbed to the radicalism of the Whitlam Government.⁵⁶⁹

\

⁵⁶⁵ Toohey, "Just what is MO9?"

⁵⁶⁶ George Negus, "Labor's New Dilemma Over ASIO", *Australian Financial Review*, 12 July 1974, 16.

⁵⁶⁷ Ibid.

⁵⁶⁸ Ibid.

⁵⁶⁹ *Australian Financial Review*, "Too Soon to Carve Up ASIO."

The National Review

The *Nation Review* emerged in 1972 from a merger between the anti-Vietnam war paper *Review* and an independent paper, *Nation*.⁵⁷⁰ Thus, an “irreverent larrikinism” was born and the paper became known by its adopted mascot, a cartoon ferret.⁵⁷¹ An editorial of the *Nation Review* shortly after the Murphy raid in early 1973 saw an inquiry into ASIO as the first step of a reform process:

Whether this body can be reformed from above and contained by formal changes in the regulations is a matter for doubt. The first step would be to set up a special committee into its past activities, made up of experienced lawyers, to give the committee full access to the records, and to have it write a white paper as a submission to Parliament.⁵⁷²

That is, once the history of ASIO’s formidable years was settled the reform process could begin. However, as we will see, Hope declined to investigate ASIO’s history even though he was directed to do so by the terms of reference. In June 1974 the *Nation Review* had shifted positions and seemed confident in ASIO’s pending demise at the hands of a “judicial inquiry”:

The last phase of ASIO’s brief and inglorious 25 year career is not about to begin... Over the past 18 months the monster has been assaulted from the left, betrayed by the right, exposed by its own mania for secrecy and deserted by an incredulous public. It now lies washed up and stinking on the beach of Australian political history, an evolutionary curio which was unable to adapt itself to the demands of modern democratic politics... The main reason, however, why ASIO failed to win public support is not because the director-general was unable to make public statements... nor because it became a captive

⁵⁷⁰ David Olds, “Herald Sun” in *A Companion to the Australian Media*, ed. Bridget Griffin-Foley (Melbourne: Australian Scholarly Publishing, 2014), 289-290.

⁵⁷¹ *Ibid.*

⁵⁷² G. J. M., “I Spy Reform,” *Nation Review*, 23 March 1973, 696.

of right-wing political forces... but simply because it was an anti-democratic secret bureaucracy with too much power, too much money and no public accountability.⁵⁷³

The antiquated organisation was no longer capable of being reformed because it was inherently compromised by its conflict with democracy. The editorial also argued that the organisation was rife with “factionalism” between “ex-military communist chasers” and less influential “DLP orientated men and the liberal arts graduate type[s]” aligned with Barbour.⁵⁷⁴ It is hard to reconcile the paper’s belief that ASIO was a “fiefdom beholden only to its director-general” when it was also divided by such factionalism.⁵⁷⁵ Nevertheless, this paper proffered a unique perspective on ASIO by calling for its disbandment.

The journalist Mungo MacCallum, memorably described by Whitlam as the “tall, bearded descendant of lunatic aristocrats,” pointed to Coalition hypocrisy in his *National Review* commentary at the time of the Murphy raid.⁵⁷⁶

The most ironical thing about it all is that the same groups who spend so much of their time saying that the Labor party is subject to outside control by non-elected men, and this is a bad thing, are now advancing the grotesque proposition that the elected representatives of the people should not have access to information collected by the paid servants of the people.

In an article beneath MacCallum’s was a similar charge of hypocrisy, this time regarding ASIO’s budget.⁵⁷⁷ Interestingly, the correspondent alleges Spry was “travelling from his home in Mont Albert... to Kensington road” in early 1973, despite

⁵⁷³ *Nation Review*, “ASIO just won’t be the same,” 28 June 1974, 1202.

⁵⁷⁴ *Ibid.*

⁵⁷⁵ *Ibid.*

⁵⁷⁶ ABC, “Mungo MacCallum’s death ‘greatly exaggerated’ on social media,” 9 September 2014, <http://www.abc.net.au/news/2014-09-08/mungo-maccallum's-death-'greatly-exaggerated'-on-social-media/5728234>; Mungo MacCallum, “Barbour shop blues,” *National Review*, 23 March 1973, 697.

⁵⁷⁷ MacCallum, “Barbour shop blues.”

his having left the organisation in 1970.⁵⁷⁸ The location in question “overlooking Como park” was ASIO’s “phone tapping headquarters for Melbourne”.⁵⁷⁹ Also in the newspaper was an article by research student Robert H. Smith, who saw hysteria on the question of ASIO’s history:

For some strange reason Australians... tend to feel that they have as nefarious a security service as some of the “banana republics” of the world. In general, our political climate has been singularly unexciting and we should be grateful that we have had no endemic political rivalries which have necessitated secret police methods being utilised. Australians do not really fear the midnight knock...⁵⁸⁰

Smith’s democratic relativism does not appear to have been a popular perception, especially after the events of the Murphy raid.

The Sydney Morning Herald

At the time of the leak the former prime minister, McMahon, gave a series of interviews offering his perspective on ASIO. The conservative-leaning *Sydney Morning Herald* devoted generous column inches to his views:

My general idea is that every democratic country must have an intelligence service of the highest quality and with enough people of real ability to be able to do the jobs that are vitally important to the security and the defence of the country. I do not believe that the various agencies should be centralised into one organisation.... I don’t want the intelligence agencies weakened. I want them strengthened and their independence sustained... In the case of a democratic community like ours the role ought to be passive and not active intelligence. To

⁵⁷⁸ MacCallum, “Barbour shop blues.”

⁵⁷⁹ Horner, *The Spy Catchers*, .

⁵⁸⁰ Smith, *Haunting Relations*, National Review

the best of my knowledge this has been the attitude of Australian Governments since 1949... [That is] it shouldn't get involved in any Bay of Pigs escapades.⁵⁸¹ His view would later prove to be not dissimilar to that of Hope. McMahon was also questioned about his support for an inquiry into ASIO and the intelligence apparatus, to which he answered:

I felt from the time I was Prime Minister that there should be an overall look at the total intelligence service operation in order to ensure that they are living in contemporary times and that they are able and willing to adjust their activities to meet the contemporary needs of the country... I became increasingly disturbed about... some aspects of the operations of the services... I wanted an inquiry... But I felt at the time that conditions, that the position was so sensitive that I could very easily create more difficulties than would be solved.⁵⁸²

The idea that ASIO should be reviewed in order to ensure its appropriate function also became policy in subsequent decades. As to who should head the inquiry and the terms of reference:

It is my strong view that it would be preferable to choose a person with a knowledge of the workings of the Government in so far as its defence, security, intelligence, police operations and other kinds – police and subversive operations – are concerned.⁵⁸³

In this last regard McMahon's view did not prevail. It is possible that this confessional interview was an attempt to rewrite history in an effort to pre-empt a negative finding by the prospective inquiry.⁵⁸⁴ But, more importantly, it demonstrates the beginnings of the bi-partisan consensus on ASIO, at least in public.

⁵⁸¹ *Sydney Morning Herald*, "Warning on intelligence service," 27 June 1974, 12.

⁵⁸² *Ibid.*

⁵⁸³ *Ibid.*

⁵⁸⁴ I acknowledge Nick Xenophon for this argument (in conversation with the author, 2015).

Hooton's opinions appeared in the columns of the *Sydney Morning Herald* a month earlier than in the *Australian*. He was reported to have warned the public, "[c]urrent policies must be disregarded if Australians are to live with a feeling of freedom".⁵⁸⁵ The rhetoric of the former Director of military intelligence was offered from a privileged position within society; an opinion with implied access to information beyond the security clearance of almost every person reading his comments. It is reasonable to assume that his assessment was grounded in the knowledge he had acquired whilst working at the highest levels of the intelligence apparatus. Hooton's remarks demonstrate the power imbalance that existed at the time between someone in his privileged position and the vast majority of people who can only trust his interpretations. In hindsight it is clear his opinions were hyperbolic.

The Canberra Times

The *Canberra Times* started in 1926 as a national newspaper in time for the transition of Parliament to Australia's new capital.⁵⁸⁶ In 1964 John Fairfax & Sons acquired the paper in order to challenge the new national, but Canberra-based, *Australian*.⁵⁸⁷ Its efforts to become less of a "subs-paper" – one predominately dependent on external agencies for news – were still not achieved by 1974.⁵⁸⁸ With respect to ASIO, the editorial of the *Canberra Times* was defensive:

The death knell of [ASIO] was sounded when the Attorney-General... paid his celebrated visits... Now the Prime Minister has administered what looks like the *coup de grace* to ASIO... It is unusual for a Prime Minister to attack a public servant [Barbour] in a public forum. It is clear, in light of the chain of events

⁵⁸⁵ *Sydney Morning Herald*, "Defence Policy 'Dangerous'"; Note: There are no closing quotation marks on the National Library of Australia microfilm copy of this article.

⁵⁸⁶ Jack Waterford, "Canberra Times" in *A Companion to the Australian Media*, ed. Bridget Griffin-Foley (Melbourne: Australian Scholarly Publishing, 2014), 81.

⁵⁸⁷ *Ibid.*, 82.

⁵⁸⁸ Waterford, "Canberra Times," 82.

that begun in March, that ASIO has been mortally disabled... The practical conclusion is that ASIO has to be reconstructed...⁵⁸⁹

Despite perceiving the ASIO problem as having arisen since the 1972 election, the editorial arrives at a similar position to those of other newspapers in that salvation was seen in a reformed organisation that would be answerable to Parliament. The *Canberra Times* also called for an “independent judicial inquiry” to investigate “how and why an important element of Australia’s national security apparatus has been so grievously damaged”.⁵⁹⁰ Earlier, at the time of the Murphy raid the paper thought that ASIO or a replacement organisation could not survive the Whitlam Government.⁵⁹¹ Echoes of the paper’s support for ASIO and its past conduct can also be seen in an editorial which praised “the good sense” of former Director of Military Intelligence Hooton in his efforts to alert people to the continuing importance of the Cold War.⁵⁹²

It was reported in the *Canberra Times* that the Democratic Labor Party believed Murphy was “opposed to ASIO gathering information on the activities of the extreme left”.⁵⁹³ Like Hooton and Varang in other papers, a former intelligence officer, lieutenant colonel Noel Truman, was reported by the *Canberra Times* to have told ABC Radio that the judicial inquiry should consider the impact of adverse security checks on people who could not defend themselves against allegations made by ASIO.⁵⁹⁴ After Whitlam released the titles of the leaked ASIO documents, the paper explored ASIO’s internal assessment of the Ustaša (then spelt Ustasha) threat in July 1972:

Elements in Australia appear determined to promote a fascist conspiracy theory wherein the wartime Ustasha organisation in Yugoslavia was the dominant force

⁵⁸⁹ *Canberra Times*, “A Disabled ASIO.”

⁵⁹⁰ *Ibid.*

⁵⁹¹ *Canberra Times*, “An incredible performance,” 19 March 1973, 2.

⁵⁹² *Sydney Morning Herald*, “Podsnappery,” 28 May 1974, 6.

⁵⁹³ *Canberra Times*, “ACT judge may head inquiry,” 10 September 1973, 3.

⁵⁹⁴ *Canberra Times*, “Concern over A.S.I.O. leaks,” 27 June 1974, 7.

in the Croatia nationalist movement... As a result of its investigations, ASIO was unable to gather sufficient evidence to prosecute any person connected with any significant act of violence against Yugoslav establishments or in the Yugoslav community in Australia... Anti-communism was an accidental by-product of recent events and was not common to all Croatian nationalists...

“Similarly the nazi-influenced Ustasha element within the nationalist organisation tends to be over-emphasised by some observers... [N]ationalists now emphasised that their objective was a democratic, independent Croatian state. Nazi doctrine prevalent from 1941 to 1945 had no intrinsic connection with Croatian nationalism.”

Croatian organisations in Australia and other countries were not a cohesive body and were apt to be riven by internal factionalism. In the majority of cases both the organisations and individuals disavowed violence...⁵⁹⁵

Viewed from the present time, where ‘lone-wolf’ terrorist attacks are a major concern of government, ASIO appears far more concerned with ideological struggles as opposed to the actual threat of political violence. It is also interesting to note that this article does not mention Murphy, a key proponent of the ‘fascist conspiracy theory’ at this time, as we will see.

An anonymous correspondent to the *Canberra Times* on 25 June 1974 argued that ASIO leaked the document in conjunction with McMahon’s disclosure – of a further secret organisation known as “MO9” – in order to provoke the government into instigating its inquiry.⁵⁹⁶ The *Official History* does not offer evidence of this. But it is conceivable that ASIO’s senior officers wanted to mitigate damage to its reputation by controlling the story before someone else leaked it. McMahon himself is unlikely to

⁵⁹⁵ *Canberra Times*, “Croatian-activities document.”

⁵⁹⁶ *Canberra Times*, “Mr McMahon sets of a minor furore”, 25 June 1974, 2.

have leaked the ASIO documents given one of them offered an uncomplimentary view of his brief time in office. Greenwood speculated that Whitlam had been responsible for leaking the Cairns document, presumably done to force an inquiry.⁵⁹⁷ Yet, the *National Times* probably possessed these documents as early as April 1973 rendering these speculations unfounded.

Other commentary

Melbourne's afternoon *Herald* (now *Herald Sun*), which started in 1840, was the main newspaper of the Herald and Weekly Times.⁵⁹⁸ It was this paper that reported on the fateful story of the Khemlani loans affair in 1975 which destabilised the Whitlam Government.⁵⁹⁹ Activist Joan Coxsedge – perceiving widespread support for the continuance of intelligence organisations – opined that even an independent agency staffed by bureaucrats would be unable to purge itself of class bias.⁶⁰⁰ Further, she argued that the police could deal with political violence and that secret organisations had no place outside a totalitarian regime. Coxsedge later became the first Labor woman elected to the Victorian Legislative Council in 1979.⁶⁰¹ Greenwood was interviewed by the *Herald's* John Hamilton in June 1974.⁶⁰² He denied any involvement with the leaks to the *Bulletin* and stated he had “never seen” the one assessing Cairns, though he acknowledged having read at least one of the documents on Whitlam's list of titles when he was attorney-general.⁶⁰³ Greenwood wanted to know why phone-tapping

⁵⁹⁷ John Hamilton, “I'm not the leak, says Greenwood,” *Herald* (Melbourne), 27 June 1974, 2.

⁵⁹⁸ David Dunstan, “Herald Sun” in *A Companion to the Australian Media*, ed. Bridget Griffin-Foley (Melbourne: Australian Scholarly Publishing, 2014), 205.

⁵⁹⁹ *Ibid.*

⁶⁰⁰ Joan Coxsedge, “But do we know what we're looking for?” *Herald* (Melbourne), 27 June 1974, 4.

⁶⁰¹ Victorian Parliament, <https://www.parliament.vic.gov.au/archive/women.html>.

⁶⁰² Hamilton, “I'm not the leak.”

⁶⁰³ *Ibid.*

warrants had dropped from the 50-60 per month he estimated he signed in office to 19 in March of 1973.⁶⁰⁴ As to ASIO and an inquiry more generally he said:

Where is the line between political dissent and subversion?... The quality of the work ASIO did when I was Attorney-General showed a very sound and conscious appreciation of the rights of the individual and the necessity to steer a line between dissent and political subversion [*sic*]... [T]he most effective guard [in a democracy] is the law and you must restrain the activities of these people within lawful bounds... You must have an efficient security service...⁶⁰⁵

He also pointed to ASIO's lack of policing powers as evidence of this: [ASIO] merely gathers "a mass of scrappy information, rumors, tips and so on and sift[s] them out".⁶⁰⁶

An unnamed "ex-intelligence agent" told the *Daily Telegraph* that ASIO had become a "secret political police" as a result of the Coalition's long period of office.⁶⁰⁷ In the opinion of journalist John Burney ASIO demonstrated its willingness to enter into a symbiotic relationship with the Coalition during the Petrov Affair.⁶⁰⁸ He prophesied that the Royal Commission on Intelligence and Security would result in "the end of the line for the old boy in the raincoat and the porkpie hat".⁶⁰⁹

Most commentators were in agreement that the Australian Government needed a domestic intelligence agency in some form. However, it is evident that some commentators, especially academics, were divergent on whether Australia should have a domestic intelligence agency. Conversely, newspaper editorials were in consensus, believing that an inquiry was needed to rectify an intelligence agency that was necessary to Australia's security. What this demonstrates is that the Whitlam

⁶⁰⁴ Hamilton, "I'm not the leak."

⁶⁰⁵ Ibid.

⁶⁰⁶ Ibid.

⁶⁰⁷ John Burney, "Cairns' ASIO file 'tip of iceberg'," *Daily Telegraph*, 21 June 1974, 8-9.

⁶⁰⁸ Burney, "Cairns' ASIO file 'tip of iceberg'."

⁶⁰⁹ Ibid.

Government's decision to erect the Royal Commission in 1974 commanded high levels of support within the press, possibly reflecting wider support in the business community given the ownership of newspapers generally. It also demonstrates that there was a strong belief that ASIO had acted inappropriately in a parliamentary democracy such as Australia's.

PART THREE

VI. Labor and terrorism

As we have seen, ASIO was created by Labor. This part of the thesis will demonstrate that in the build-up to the 1972 election Labor's position on ASIO was unambiguous; the organisation was essential to Australia's national security in a time of global terror. It will also be demonstrated that Labor in government moved to secure ASIO by reforming the organisation so as to improve its efficiency. The architect of this process was the attorney-general, Lionel Murphy, who made plain the government's belief that domestic intelligence gathering and combating political violence, directed to person or property, was a legitimate practise. The Royal Commission was integral to this. It should be noted that existing secondary source scholarship already addresses the views held within Labor to ASIO from the 1940s to 1970s, as well as the views of non-Labor victims of ASIO.⁶¹⁰

Part of the legend of the Whitlam Government comes from the election campaign of 1972 and the tremendous atmosphere surrounding the seemingly inevitable demise of long running Coalition rule.⁶¹¹ However, one of its first acts in office stands apart from this progressive atmosphere. The Whitlam Government quickly moved to support efforts by the United States to counter global terrorism. The United States was motivated by the terrorist attack that occurred at the Munich Summer Olympics of September, 1972, which provoked the wrath of its ally, Israel. Australia also experienced terrorist attacks in the same month at the hands of Croatian fascists

⁶¹⁰ Geoffrey J. Wilson, "The ASIO-Murphy "Affair" 1973: Attitudes of the Federal Parliamentary Labor Party toward the Australian Security and Intelligence Organisation, 1949-1974." Hons. diss., Australian National University, 1974; Meredith Burgmann, ed. *Dirty Secrets: Our ASIO files*. Sydney: NewSouth, 2014.

⁶¹¹ Beilharz, *Transforming Labor*, 81-82; Dyrenfurt & Frank Bongiorno, *A Little History of the Australian Labor Party*, 128-129.

targeting Yugoslavians. Within three days of taking office in December 1972 the new government co-sponsored a United States led effort in the United Nations General Assembly to coordinate a response. But these efforts largely failed.

In subsequent months the Whitlam Government turned its attention to a visit from the communist prime minister of Yugoslavia and the threat posed to him by certain Croatian terrorist groups in Australia. The government's distrust of ASIO came to the fore, culminating in the attorney-general's raid of the organisation's offices in the belief that information was being concealed. By the attorney-general setting out on a frolic of his own he discovered that ASIO was not engaged in conspiracy. A further political miscalculation enabled the press to capture part of the event, damaging the fledgling government. By setting out a chronology in detail it is clear that the government decided that instead of acknowledging the miscalculation, it was prudent to maintain an air of competence. The result was a cognitive dissonance of sorts in which the government was at once "a timorous foe, and a suspicious friend" to ASIO.⁶¹² The attorney-general's indiscretion rendered the reform of the intelligence community both politically untouchable and urgent.

The terror of September

Acts of violence committed in aid of political objectives are not an uncommon feature of twentieth century politics. In September 1972 the fear of global terrorism motivated a short-lived response in the US-aligned countries, foreshadowing the importance this issue would attract in later decades. The Munich massacre of 5 September motivated the United States government to pursue the threat posed by terrorism. In Australia the 16

⁶¹² Alexander Pope, "Epistle to Dr. Arbuthnot" in *Essay on Man & Other Poems* (New York: Dover Publications, 1994), 92.

September Croatian terrorist attack in Sydney greatly energised Labor in its political debate with the McMahon Government in the months leading to an election.

The Munich massacre and the United States

In this terrorist attack the pro-Palestine Black September Organisation held a group of Israeli athletes and coaching staff at the Munich Summer Olympics hostage. In total, 17 people died in part because the West German government was caught unprepared, despite having been forewarned.⁶¹³ On 6 September Israeli representatives met with the Secretary of State to discuss how the United States would respond to terrorism.⁶¹⁴ The Israeli representatives were assured that a strong policy stance would materialise which included pressure on European governments to more “effective[ly]” pursue “Arab organisations linked to terrorist organisations”.⁶¹⁵ President Richard Nixon wanted to “deal[] with the worldwide problem of terrorism” and facilitate the “collection of intelligence worldwide”.⁶¹⁶ He made it clear that the United States government would seek to obliterate terrorists because

[t]he use of terror is indefensible. It eliminates in one stroke those safeguards of civilisation which mankind has painstakingly erected over the centuries... It threatens the very principles upon which nations are founded... [U]pon what foundations can we hope to establish international comity?⁶¹⁷

⁶¹³ Das Spiegel, “Officials ignored warnings of terrorist attack,” 23 July 2012, <http://www.spiegel.de/international/germany/officials-ignored-warnings-of-munich-olympics-massacre-a-845867.html>.

⁶¹⁴ Department of States (US), “Telegram 164170 From the Department of State to Embassy in Israel,” in *Documents on Global Issues*, vol. E-1 of *Foreign Relations of the United States*, 8 September 1972, <https://history.state.gov/historicaldocuments/frus1969-76ve01/d98>.

⁶¹⁵ Department of States (US), “Telegram 164170.”

⁶¹⁶ Richard Nixon, *Memorandum establishing a Cabinet Committee to Combat Terrorism*, eds. Gerhard Peters and John T. Woolley, The American History Project, 25 September 1972, <http://www.presidency.ucsb.edu/ws/?pid=3596>. <http://www.presidency.ucsb.edu/ws/?pid=3596>.

⁶¹⁷ Richard Nixon, *Statement about action to combat terrorism*, eds. Gerhard Peters and John T. Woolley, The American History Project, 27 September 1972, <http://www.presidency.ucsb.edu/ws/?pid=3602>.

Terrorism threatened the stability upon which economic growth rested. Nixon also feared it could result in direct attacks on American corporations abroad.⁶¹⁸ From now on the United States would not negotiate with terrorists.⁶¹⁹ While this response seems strong, the commitment wavered in the face of the Non-Aligned Movement; states neither aligned nor against the United States or Soviet Union. Nevertheless, the issue of terrorism continued to attract the concern of the United States and its allies for at least a year after the events of Munich.⁶²⁰

Croatian terrorism in Sydney

One and a half weeks after the Munich massacre two bomb attacks occurred in Sydney at the instigation of Croatian nationalists. These anti-communist, pro-fascist groups were targeting Yugoslavians in Australia. The attack injured 16 people with no fatalities. At the time it was believed the Croatian Revolutionary Brotherhood may have been operating in Australia, a view officially put to the Australian Government by the Yugoslavian government in communiqués of 1972 and 1973.⁶²¹ When Parliament resumed Labor sought to suspend standing orders so that it could debate the issue of terrorism and the manner in which the McMahon Government had addressed it. Around this time there had also been a terrorist attack in Yugoslavia which involved six Australian citizens.⁶²² Conceivably, the issue was of importance to Labor at that time because it served two functions: Labor could appear stronger on national security than

⁶¹⁸ Henry A. Kissinger, "Terrorist attacks on US companies", in *Documents on Global Issues*, vol. E-1 of *Foreign Relations of the United States*, 29 September 1972, <https://2001-2009.state.gov/r/pa/ho/frus/nixon/e1/45551.htm>.

⁶¹⁹ Cf. Stephen Collinson, "Nixon's own 9/11: When terrorism came of age," *CNN*, 29 July 2015, <http://edition.cnn.com/2015/07/27/politics/terrorism-1970s-richard-nixon/index.html>.

⁶²⁰ Department of State, "ICAO extraordinary assembly/diplomatic conference on air law, Rome, AUG. 28 Sept. 21, 1973," 22 August 1973, *Wikileaks*; United Nations mission, "SC meeting on Beirut raid," 17 April 1973, *Wikileaks*; United Nations mission, "Aggression committee," 23 April 1973, *Wikileaks*; United Nations mission, "Terrorism committee and convention on protection of diplomats," 9 May 1973, *Wikileaks*; United Nations mission, "OMITES approach. French rep stressed need to begin work with the definition of-" 24 July 1973, *Wikileaks*.

⁶²¹ Maximilian Walsh, "Murphy and ASIO," *Australian Financial Review*, 29 March 1973, 1, 14.

⁶²² Walsh, "Murphy and ASIO," 1, 14.

the Coalition while at the same time laying the ground work for the reform of ASIO. Labor, under Whitlam, believed that a domestic intelligence agency was needed but that it had to be efficient, especially on the issue of terrorism and the rise in domestic terror attacks.⁶²³ By 1972 ASIO had begun to take the issue of terrorism, particularly in the Croatian community, more seriously.⁶²⁴

ASIO in Whitlam's first months

Labor's policy platform in 1972 barely mentioned the political violence of September. Indeed, it was said by Whitlam that while Australia faced terrorism "for the first time in our history" it was "mercifully still only a shadow".⁶²⁵ With respect to ASIO, Labor promised to introduce an administrative appeals tribunal to oversee cases where people were adversely affected by negative security reports by ASIO.⁶²⁶ It also provided for an annual report on ASIO to be tabled in Parliament as well as for the organisation to be brought under ministerial control.⁶²⁷ The *Canberra Times* reported that Murphy's stated intention was to implement Labor's administrative appeals tribunal within a week of his tenure as attorney-general.⁶²⁸

On 2 December 1972 Labor was elected to office for the first time in some 23 years, officially taking office from 5 December. As the archivist and historian Ian Hancock wrote,

⁶²³ Blaxland, *The Protest Years*, 136, 144, 146.

⁶²⁴ *Ibid.*, 147.

⁶²⁵ Gough Whitlam, "It's Time for Leadership," (speech, pre-election policy, Sydney, November 13, 1972).

⁶²⁶ Bruce Juddery, "How reliable is the information in the secret files?" *Canberra Times*, 30 March 1973, 2.

⁶²⁷ David Solomon, "Senator Murphy marshals his arguments," *Canberra Times*, 27 March 1973, 2.

⁶²⁸ David Solomon, "Control of ASIO to be tightened," *Canberra Times*, 7 December 1972, 1, 14.

[n]ever before in Australian history, and never since, has a government been so prepared for comprehensive and fundamental reform, so determined to implement it, and so bent on doing it without delay.⁶²⁹

Whitlam and Murphy's first dealings with ASIO demonstrated that the government would continue the practise of interference in the organisation's operations. Whitlam informed Director-General of Security Peter Barbour that ASIO was "not to be too concerned with Communist activity in trade unions" as the government would "handle communists in the unions through the unions themselves".⁶³⁰ Murphy ordered ASIO to stop all telecommunications intercepts orders after reviewing those in effect.⁶³¹ Almost immediately after the election the new government's relations with ASIO were questioned in the press. On 22 December 1972 an editorial in the *Sydney Morning Herald* questioned Whitlam's refusal to have his personal staff checked by ASIO, especially since ASIO itself was not an issue during the campaign; although this was later denied by the Prime Minister.⁶³² By January the *Melbourne Observer* was reporting a "shakeup" within ASIO being undertaken by the new government as part of retaliatory measures, although no details were provided.⁶³³ However, the *Official History* demonstrates that a deal was reached between Whitlam and Barbour in which staff would be vetted in exchange for ASIO's support of a new appeals tribunal.⁶³⁴ In early February the government overturned a decision made by ASIO before the election to not grant a visa to a Polish businessmen who had lived in the United Kingdom for a decade previously.⁶³⁵ This was seen by some in the press as "a clear sign" that Labor would not be beholden to ASIO.⁶³⁶ The new prime minister was also reported to have

⁶²⁹ Ian Hancock, *Media Guide of 1973 Cabinet Records*, 2003, NAA, 9.

⁶³⁰ Blaxland, *The Protest Years*, 320-321.

⁶³¹ Hocking, *His Time*, 67; Blaxland, *The Protest Years*, 324.

⁶³² *Sydney Morning Herald*, "Security clearance," 22 December 1972, 6.; Cth, *Parliamentary Debates*, Senate, vol. 10, 6 March 1973, 192.

⁶³³ *Melbourne Observer*, "Labor takes revenge: Spies get shakeup," 14 January 1973, 5.

⁶³⁴ Blaxland, *The Protest Years*, 322.

⁶³⁵ James V. Ramsden, "Public rebuff for ASIO," *Australian Financial Review*, 5 February 1974, 1, 6.

⁶³⁶ Barney Murray, "Taking ASIO's cloak away," *Australian*, 10 February 1973, 14.

requested information from ASIO on “the operations of Australia’s military, security and intelligence services”, after having received very little information as Opposition leader.⁶³⁷ Indeed, Barbour’s visits to Canberra to meet with the Attorney-General became commonplace almost immediately after Labor took office.⁶³⁸

Answering the hue and cry

The United States attempted to address the issue of global terrorism through the United Nations with the help of its allies, including Australia. Although terrorism would not assume the importance it did to policymakers from the 1980s, the events of late 1972 are instructive.⁶³⁹ The Whitlam Government wasted no time in answering the hue and cry of the United States.

Seeking solutions through allies

Israel did not want the United States to pursue terrorism through the United Nations, believing in part that this would boost the organisation’s prestige and result in defeat at the hands of Arab member states.⁶⁴⁰ The United States nonetheless pursued a multilateral response in December, primarily wanting to erect a committee to report on ways to combat rising terrorism. The draft resolution was however withdrawn before it could be defeated in the General Assembly.⁶⁴¹ Three days after taking office the Whitlam Government co-sponsored a draft resolution “proposing [the] drafting of a convention on measures to prevent international terrorism and establishment of an ad

⁶³⁷ Allan Barnes, “Whitlam gets two birds with one stone,” *Age*, 17 February 1973, 15.

⁶³⁸ Mungo MacCallum, “Barbour shop blues,” *National Review*, 23 March 1973, 697.

⁶³⁹ Michael Isikoff, “Terror watch: Nixon and Dixon,” *Newsweek*, 22 March 2005, <http://www.newsweek.com/terror-watch-nixon-and-dixon-114707>.

⁶⁴⁰ Department of State (US), “Telegram 164170.”

⁶⁴¹ United Nations, Index *Proceedings of the General Assembly*, 1972, 73-74.; Cth, Parliamentary Debates, Senate, vol. 10, 6 March 1973, 145.

hoc [committee]”.⁶⁴² As before, the draft resolution was not put to a vote because of lack of support.⁶⁴³ Notably, this second draft resolution was also co-sponsored by Austria, Belgium, Canada, Costa Rica, Guatemala, Honduras, Iran, Italy, Japan, Luxembourg, New Zealand, Nicaragua, and the United Kingdom; all of which were allied with the United States at that time.⁶⁴⁴ However, these draft resolutions failed to win the support of countries in the non-aligned movement, including Yugoslavia, whose interests the Whitlam Government would soon seek to protect.

On 18 December the General Assembly passed a resolution which substantially undermined the attempts of the United States to lead the multilateral efforts against global terrorism. The resolution:

1. *Expresses deep concern* over increasing acts of violence which endanger or take innocent human lives or jeopardize fundamental freedoms...
2. *Reaffirms* the inalienable right to self-determination and independence of all peoples under colonial and racist régimes and other forms of alien domination and upholds the legitimacy of their struggle...
3. *Condemns* the continuation of repressive and terrorist acts by colonial, racist and alien régimes in denying peoples their legitimate right to self-determination and independence and other human rights and fundamental freedoms...⁶⁴⁵

Australia, along with Canada and the United Kingdom, voted against this resolution because “it did not underline the urgency and seriousness of terrorism throughout the world”.⁶⁴⁶ This was despite the understanding – as expressed by soon-to-be Foreign

⁶⁴² United Nations, Index *Proceedings of the General Assembly*, 1972, 73-44.

⁶⁴³ Ibid.

⁶⁴⁴ For Austria, see: Department of State (US), “Treaties in Force”, <https://www.state.gov/documents/organization/24227.pdf>;

⁶⁴⁵ United Nations General Assembly, 2114th plenary meeting, resolution 3034, 18 December 1972.

⁶⁴⁶ Cth, Parliamentary Debates, Senate, vol. 10, 6 March 1973, 145.

Minister Don Willesee – that the America-led efforts “might impede genuine revolutionary movements throughout the world”.⁶⁴⁷ The government’s support of the draft resolutions stand in stark contrast to later scholarship which supports the conclusion reached by the Opposition in 1973: that the Whitlam Government wanted to align itself with the Third World at the expense of the alliance with the United States and United Kingdom.⁶⁴⁸ Indeed, the government was not entirely in line with these allies and had caused the former significant angst.⁶⁴⁹ But it needs to be considered whether the angst from the Nixon Administration in the United States was proportionate to the actual disobedience committed. Whitlam later implied that his government had aligned with the Third World, as “it was important that Australia should vote [in the General Assembly] the right way” on “colour issues and colonial issues” in the government’s first days.⁶⁵⁰ To Labor, unsanctioned political violence was terrorism; it was illegitimate.

Australia’s independence from the Unites States

The Whitlam Government’s conflicts with the Nixon Administration and the CIA caused tremendous angst in both countries, especially in 1975.⁶⁵¹ Hocking argues that Whitlam brought an end to the “supine bilateral relationship”.⁶⁵² However the bilateral relationship between the governments of the United States and Australia was not

⁶⁴⁷ Cth, Parliamentary Debates, Senate, vol. 10, 6 March 1973, 145.

⁶⁴⁸ Cth, Parliamentary Debates, Senate, vol. 10, 8 March 1973, 318; Andrea Benvenuti and David Martin Jones, “Engaging Southeast Asia? Labor’s regional mythology and Australia’s military withdrawal from Singapore and Malaysia, 1972-1973,” *Journal of Cold War Studies* 12, no. 4 (2010): 42.

⁶⁴⁹ General Assembly resolution 2993(XXVII), *The strengthening of international security*, A/8909 (15 December 1972), http://www.keepeek.com/Digital-Asset-Management/oecd/united-nations/yearbook-of-the-united-nations-1972_98c53290-en#page62.

⁶⁵⁰ *The Whitlam Years* (Melbourne: Australian Broadcasting Corporation, 1984), YouTube, <https://www.youtube.com/watch?v=iRLCHGDSZP4>.

⁶⁵¹ James Curran, *Unholy Fury: Whitlam and Nixon at war* (Melbourne University Press: Melbourne, 2015), 222-224, 306-309, 312; Max Suich, “Whitlam death revives doubts of US role in his sacking” *Financial Review*, 30 November 2014, <http://www.afr.com/news/politics/national/whitlam-death-revives-doubts-of-us-role-in-his-sacking-20141030-11erze>; Blaxland, *The Protest Years*, 446-447.

⁶⁵² Hocking, *His Time*, 3.

fundamentally jeopardised, nor did it become an exercise in morality. As Blaxland explains:

An 11 January 1973 assessment by the Americans made clear that Australia's basic alliance with the United States did not appear in jeopardy, notwithstanding that Whitlam's avant-garde domestic policies and assertive independent foreign policy would introduce 'complications...[']'.⁶⁵³

The relationship continued to provide considerable benefits to the Whitlam Government, especially in terms of intelligence work.⁶⁵⁴ For example, it gained access to the Earth station at Pine Gap – a significant US-controlled facility used for intercepting satellite communications – which it used to acquire commercial intelligence during bilateral trade negotiations with Australia's major trading partner, Japan.⁶⁵⁵ In later years, commercial intelligence from the facility became of significant value, sometimes almost exclusively, to business.⁶⁵⁶ The Whitlam Government's action on terrorism and its steadfast support of US-led efforts to bring about multilateral action earned it public praise from the United States.⁶⁵⁷ Journalist Laurie Oakes observed in 1973 that Whitlam had an established history of supporting maintenance of the bilateral relationship.⁶⁵⁸ In fact, Whitlam had said, "[o]ne does not forego an alliance until one has a better arrangement... We badly need the American alliance".⁶⁵⁹ The *Oxford History of Australia* argues that Whitlam never lost sight of the importance of the ANZUS alliance.⁶⁶⁰ Perhaps most telling of all, when the Fraser Government assumed office in December 1975, the relationship immediately became cordial, further

⁶⁵³ Blaxland, *The Protest Years*, 322.

⁶⁵⁴ *Ibid.*, 458.

⁶⁵⁵ Hope, Robert. Interview with John Farquharson. *Robert Marsden Hope Interviewed by John Farquharson*. National Library of Australia. February 10, July 10, 1998, Oral History Project. <http://www.nla.gov.au/amad/nla.oh-vn1791129?searchTerm=robert+hope>; W. J. Hudson, "1951-72" in *A New History of Australia*, edited by F. K. Crowley (Melbourne: William Heinemann, 1974), 529.

⁶⁵⁶ *Ibid.*

⁶⁵⁷ Embassy of the United States in Canberra, "N/a," 24 May 1974, *Wikileaks*.

⁶⁵⁸ Laurie Oakes, *Whitlam PM: a biography* (Sydney: Angus & Robertson, 1973), 114.

⁶⁵⁹ *Ibid.*, 114.

⁶⁶⁰ Bolton, *The Middle Way*, 226.

demonstrating the superficial depth of the aforementioned angst.⁶⁶¹ Contrast this with the many years it took even the Menzies Government to re-establish intelligence ties with the United States.

Government rhetoric is instructive with respect to the bilateral relationship in early 1973. Minister for Defence and Deputy Prime Minister Lance Barnard told Parliament on 28 February that – without undermining the exchange of “classified information” – the government would “consider whether the national interest and independence are jeopardised by the continuance of the agreements” with the United States; they would be “making a fresh start”.⁶⁶² More specifically, the Australian Government wanted “to know what was being done” in the facilities and have access to “all data” collected.⁶⁶³ As we have seen, the United States saw its intelligence sharing as a major feature of its foreign policy. Willesee, reaffirming this position in the Senate, said:

The policy of [Labor] in respect of United States institutions in Australia has as its basis that each must be justified on the basis of an assessment of Australian national interests... [The ANZUS] alliance is of benefit to Australia... in the long term eventuality of some possible attack on Australia.⁶⁶⁴

The Assistant Minister for Defence, Reg Bishop, was clearer still:

Our leaders should be able to say: All right, you have a base on Australia’s coast which could become a very important and vital base in any sort of offensive operation. Therefore we want to know about it. We want to be involved...⁶⁶⁵

What the Whitlam Government was reiterating in public was that it wanted to shift policy away from passive acceptance of United States operations in Australia towards active participation in those same operations. Labor was not unaware, either, of the

⁶⁶¹ Blaxland, *The Protest Years*, 450-451.

⁶⁶² Cth, Parliamentary Debates, House of Representatives, vol. 10, 28 February 1973, 68.

⁶⁶³ Ibid., 69.

⁶⁶⁴ Cth, Parliamentary Debates, Senate, vol. 10, 8 March 1973, 302-303.

⁶⁶⁵ Ibid., 308-309.

economic importance of maintaining security ties with the United States. A backbencher, Tony Mulvihill, put it so:

I do not think that any Australian should take a jingoistic attitude but Australia has never had to grovel for any economic favours from the United States...⁶⁶⁶

Whitlam's advisor in office, biographer and eulogiser, Graham Freudenberg, describes the episode in Australian history:

I could imagine no greater compliment could be paid to the Whitlam Government than that we were also distinguished enough to be on Nixon's hate list... Fundamentally, there were no basic changes made by the Whitlam Government in our relations with the United States. Except, we were determined to assert our independence as an ally.⁶⁶⁷

These words are hardly radical. Instead, they indicate a government that wanted more responsibility in the relationship with the United States, not less. The United States would not allow this to occur without extracting a higher price.

Terrorism and ASIO

By March 1973 the issues of global terrorism and ASIO reform converged. The scheduled arrival of the Yugoslavian prime minister, Džemal Bijedić, at 20 March, ignited a chain of events that would result in one of the defining moments of the Whitlam Government; the Murphy raids. Labor had pursued the issue of terrorism before the election, but the link with ASIO's reform was yet to be set out in detail. The organisation had in no small way contributed to the party's wilderness decades; it was to them a question of political necessity that ASIO be depoliticised. When Attorney-General Lionel Murphy sensed a connection between ASIO and the threat of terrorism

⁶⁶⁶ Cth, Parliamentary Debates, Senate, vol. 10, 8 March 1973, 315.

⁶⁶⁷ *The Whitlam Years*.

posed to Bijedić he reacted in haste. Most importantly of all, his subsequent speech to the Senate makes plain the Whitlam Government's desire to use ASIO and the Commonwealth Police in much the same way its predecessors had.

The Murphy raids

With the pending visit of the Yugoslavian prime minister it was now the Opposition's turn to pressure the government on the terrorist threat.⁶⁶⁸ Murphy committed in Parliament on 1 March to make a statement about Croatian terrorists in Australia in the near future.⁶⁶⁹ In response to questioning he told Parliament:

If persons wish to come to Australia and to live among us they ought to leave these quarrels behind them. The Australian public ought not be subjected to terrible outrages such as were suffered in Sydney when bombs were used and innocent Australian citizens were injured. They ought not to suffer from quarrels which have nothing to do with them.⁶⁷⁰

Terrorism in Australia, at this time, was the encroachment of other peoples' problems into the domestic sphere. In the Senate, Murphy was asked to confirm the veracity of comments made by President Josip Tito of Yugoslavia:

We would have no trouble with Croats in Yugoslavia if they were not stirred up and helped by terrorists from Australia, but we will fix them. We have already sent agents of our secret police to hunt them down... We will send more agents to Australia. We will crush these people. We will destroy them root and branch.⁶⁷¹

Murphy appeared to be unaware of these comments:

⁶⁶⁸ Cth, Parliamentary Debates, Senate, vol. 10, 6 March 1973, 143.; Cth, Parliamentary Debates, Senate, vol. 10, 8 March 1973, 257-258, 261.

⁶⁶⁹ Cth, Parliamentary Debates, Senate, vol. 9, 1 March 1973, 88; *Canberra Times*, "ASIO head in talks with Murphy," 26 March 1973, 1.

⁶⁷⁰ Cth, Parliamentary Debates, Senate, vol. 10, 7 March 1973, 206.

⁶⁷¹ *Ibid.*, 203-204.

There may be information in the files of the Attorney-General's Department or of some other organisation... I will look into those matters... I think it would be clear that Australia would not permit illegal activities on behalf of any power in Australia and would not accept the continued presence in Australia of any agents for a foreign power who were conducting unlawful activities here.⁶⁷²

Murphy would soon go fishing for information. The "other organisation" alluded to by Murphy was almost certainly ASIO.⁶⁷³ Asked on 14 March by the Opposition if Murphy's personal "interest in human rights" provoked concern of Bijedić record, he pleaded ignorance, having no "special knowledge".⁶⁷⁴

Parliament rose on 15 March to return on the 27th. At midnight on the 16th Attorney-General Murphy launched what quickly became known as a raid of ASIO's Canberra office because he believed the organisation to be withholding information in violation of his authority as minister.⁶⁷⁵ He was accompanied by his advisor, Kerry Milte, a Melbourne barrister and former Commonwealth Police official who had direct knowledge of what was known by the bureaucracy about the Croatian fascists, including the catholic Ustaša.⁶⁷⁶ While inspecting files in ASIO's Canberra office, Murphy discovered an interdepartmental minute from a meeting of 2 March which comprised officials from ASIO as well as the departments of Foreign Affairs, Attorney-General's, and Immigration.⁶⁷⁷ The minute was reported to have revealed an intention not to advise the Whitlam Government beyond the information contained in the official response

⁶⁷² Cth, Parliamentary Debates, Senate, vol. 10, 7 March 1973, 206.

⁶⁷³ Cth, Parliamentary Debates, Senate, vol. 10, 8 March 1973, 260-261.

⁶⁷⁴ Cth, Parliamentary Debates, Senate, vol. 10, 14 March 1973, 411.

⁶⁷⁵ Mike Steketee, "Murphy Acts to Curtail ASIO Power," *Australian*, 9 May 1974, 2; Hocking, *Terror Laws*, 42.

⁶⁷⁶ John Burney, "Cairns' ASIO file 'tip of iceberg'," *Daily Telegraph*, 21 June 1974, 8-9; Blaxland, *The Protest Years*, 150, 330; MacCallum, "Barbour shop blues."

⁶⁷⁷ Walsh, "Murphy and ASIO," 1, 14; Cth, Parliamentary Debates, Senate, vol. 14, 3 April 1973, 956.

given to the Yugoslavian government.⁶⁷⁸ This would eventually be proven to have been an inaccurate interpretation. Outraged, Murphy sought to fly to Melbourne at dawn on 16 March in order to inspect files at ASIO's headquarters, but was delayed due to complications getting a flight.⁶⁷⁹ In the meantime Commonwealth Police officers reportedly searched "houses around Canberra at 3:00am", including the home of Franjo Till, an "invalid pensioner".⁶⁸⁰ Till alleged he recognised the interpreter as a member of the Yugoslavian secret service known to the Croatian-Australian community.⁶⁸¹ The government subsequently denied the truth of these specific reports, although Murphy acknowledged that non-Commonwealth property had been searched.⁶⁸² Thus ensued the following order of events: Barbour was informed of Murphy's intentions at 5:20am and arrived at the Melbourne headquarters at 6:45am, 27 Commonwealth Police officers in plain clothes arrived "with orders to seal all file containers" at 7:40am in order to "preserve and ascertain certain information", finally, Murphy arrived at 9:45am and instructed three officers with "special acquaintance with matters of Croatian terrorism" to assist him.⁶⁸³ It was initially reported that ASIO's switchboard had been disabled or interfered with, however the government later denied these reports as well.⁶⁸⁴ Various files were inspected by Murphy and his staff – without the police – until 12:40pm, when the inspecting party left. The party replaced original documents but took "Photostat" copies with them.⁶⁸⁵ No warrants were obtained for the searches because it was

⁶⁷⁸ Walsh, "Murphy and ASIO."; David Solomon, "Senator Greenwood prepares his defence," *Canberra Times*, 3 April 1973, 2.; Cf. *Australian*, "Murphy raid damaging, ASIO chief told PM," 15 August 1973, 1.

⁶⁷⁹ Walsh, "Murphy and ASIO."

⁶⁸⁰ MacCallum, "Barbour shop blues."; Cth, Parliamentary Debates, Senate, vol. 13, 27 March 1973, 558.

⁶⁸¹ Ibid.

⁶⁸² Cth, Parliamentary Debates, Senate, vol. 13, 27 March 1973, 558.

⁶⁸³ Robert Murray, "Barbour fields Senate queries on ASIO raid," *Australian Financial Review*, 9 August 1973, 6.; Hancock, "Media guide," 10.

⁶⁸⁴ Cth, Parliamentary Debates, Senate, vol. 34, 22 August 1973, 93.

⁶⁸⁵ MacCallum, "Barbour shop blues."; Murray, "Barbour fields Senate queries."; Cth, Parliamentary Debates, Senate, vol. 34, 22 August 1973, 94.

Commonwealth property.⁶⁸⁶ Most importantly, Murphy failed to locate evidence of a conspiracy.

The attorney-general left behind him a trail of negative press to which the new government was as yet unaccustomed, tarnishing its positive image in the press and public.⁶⁸⁷ Murphy blamed his press officer, George Negus, for having alerted the press.⁶⁸⁸ Murphy was roundly criticised for his “highhanded” response.⁶⁸⁹ As one journalist put it, he was “exposed as a political grandstander” who had given ASIO “a tactical advantage in its relations with the Labor Government”.⁶⁹⁰ Another journalist perceived an “attack [on] the very fabric of democratic representative government”.⁶⁹¹ Writing in the *National Review*, Mungo MacCallum mixed pseudo-psychology with recent political memory in his critique:

There has always been an authoritarian streak in [Murphy]... [He] has an unfortunate habit of seeing any criticism of what he is doing as some sort of campaign against him... The confrontation [with ASIO] came, as it was almost bound to, over the question of whether or not there is an organised Ustasha movement in Australia. This has been a bugbear of Murphy’s for some time... The whole thing seemed to become something of an obsession with Murphy...⁶⁹²

Robert Mayne in the *National Times* saw Murphy’s failure to “pin anything serious on ASIO” as having given significant political ground to the organisation.⁶⁹³ The *Canberra Times* editorial was concerned for ASIO’s international reputation having been raided

⁶⁸⁶ Cth, Parliamentary Debates, Senate, vol. 34, 22 August 1973, 94.

⁶⁸⁷ Walsh, “Murphy and ASIO.”; Mungo MacCallum, “After the Honeymoon” in *Whitlam and Frost* (London: Sundial Publications, 1974), 116.

⁶⁸⁸ Hocking, *His Time*, 66.

⁶⁸⁹ John Burney, “Cairns’ ASIO file ‘tip of iceberg’,” *Daily Telegraph*, 21 June 1974, 8-9.

⁶⁹⁰ Walsh, “Murphy and ASIO.”

⁶⁹¹ Solomon, “Senator Greenwood prepares.”

⁶⁹² MacCallum, “Barbour shop blues.”

⁶⁹³ Robert Mayne, “How ASIO sees the world – and Australia,” *National Times*, 2 April 1973, 6-7.

by police under the direction of a “frustrated minister”.⁶⁹⁴ If the press coverage was accurate Murphy’s political incompetence had undermined the government’s agenda. But according to McKnight, “[a]t great political cost, he had discovered that ASIO was simply incompetent”.⁶⁹⁵ In turn “Labor had become a security threat” from the perspective of some senior ASIO, who began leaking information to the Coalition.⁶⁹⁶ The wave of terrorist fear was by no means isolated to Murphy and his staff at this stage however; the prime minister’s office was “bulletproofed” as a precaution.⁶⁹⁷ The raid also alerted the United States to seriousness of the Yugoslavian government’s claim that it was possible for terrorists to gain entry to the United States through their Australian citizenship.⁶⁹⁸ These concerns would occupy the Department of State for months.⁶⁹⁹

Official visit

Five days after the raids, the Yugoslavian prime minister arrived in Australia for his official visit “amid a barrage of death threats and newspaper hysteria”.⁷⁰⁰ Press reporters were searched and apparently encouraged “not to move suddenly” so as to avoid attracting unwanted attention from the protective detail.⁷⁰¹ That day, Barbour met Whitlam at the Lodge to discuss the raids.⁷⁰² The details of this conversation were not made public at this point and Whitlam publicly declared “no complaint” had been made by ASIO.⁷⁰³ A planned visit to Port Kembla steelworks was cancelled because of the

⁶⁹⁴ *Canberra Times*, “An incredible performance,” 19 March 1973, 2.

⁶⁹⁵ McKnight, *Australian Spies and Their Secrets*, 270.

⁶⁹⁶ *Ibid.*, 273.

⁶⁹⁷ MacCallum, “Barbour shop blues.”

⁶⁹⁸ Embassy of the United States in Canberra, “Australian effort to combat Yugoslav émigré terrorism,” 16 March 1973, *Wikileaks*.

⁶⁹⁹ Department of State, “Information on Croatian extremists in Australia and elsewhere confidential,” 18 May 1973, *Wikileaks*.

⁷⁰⁰ *Canberra Times*, “Murphy talks to head of ASIO,” 23 March 1973, 1.; MacCallum, “Barbour shop blues.”

⁷⁰¹ MacCallum, “Barbour shop blues.”

⁷⁰² *Australian*, “Murphy raid damaging, ASIO chief told PM,” 15 August 1973, 1.; *Canberra Times*, “‘Raid’ on ASIO: Inquiry call on alleged complaint,” 6 August 1973, 3.

⁷⁰³ *Australian*, “Murphy raid damaging.”

threat posed by Croatian employees.⁷⁰⁴ Murphy's "pregnant wife", Ingrid, went "into hiding" because of threats levelled at her husband.⁷⁰⁵ In a speech to his guests Whitlam was reported to have said:

I have nothing but contempt for those who, often knowingly, have allowed it to grow and to grow. It is... unfortunate that a minority of ['Yugoslavian'] migrants, enjoying the rights we offer for the free expression of views, have sought to aggravate old suspicions and hatreds, by importing the methods of terrorism into this country... My Government is determined to stamp out this terrorism.⁷⁰⁶

He was clearly speaking of previous Coalition governments, unafraid of exposing a foreign dignitary to domestic politics. In a choice between offending a Yugoslavian official and alienating Croatian migrants, the sensitivities of his dinner guest were more important. He was reported by another newspaper to have said at the same function:

It has taken regrettably long for the Commonwealth police force and ASIO to adjust themselves from such momentous activities as the pursuit of draft dodgers and Vietnam demonstrators to the new situation where we ought to provide our interest in terrorist activities in our midst.⁷⁰⁷

The prime minister's apparent attack on organisations within the Australian Government indicates the extent of hostility. When Bijedić left Australia on 22 March Murphy heaped praise on the Commonwealth Police commissioner for orchestrating their successful protection; ASIO did not receive mention.⁷⁰⁸

⁷⁰⁴ *Canberra Times*, "Reorganisation of security 'possible'," 22 March 1973, 1.; MacCallum, "Barbour shop blues."

⁷⁰⁵ *Canberra Times*, "Reorganisation of security."

⁷⁰⁶ *Ibid.*

⁷⁰⁷ Alan Ramsey, "Alarming document prompted ASIO raid," *Australian*, 29 March 1973, 1-2.

⁷⁰⁸ *Canberra Times*, "Murphy talks to head."

The government seeks to clarify

On the day of the raids Murphy issued a press release offering an explanation for his decision:

I was accompanied by Commonwealth Police Officers involved in investigations of Croatian Terrorist activities in this country. I inspected certain files. Measures have been taken for the safety of the forthcoming visit by the Yugoslav Prime Minister... I have directed maximum co-operation between law enforcement and security bodies. The most stringent security measures are necessary... because of the existence in our midst of Croatian revolutionary terrorist organisations. These were tolerated by the previous Government which even denied their existence... The Government is determined to stamp out terrorism.⁷⁰⁹

The former Coalition attorney-general, Ivor Greenwood, was quick to reveal that he believed ASIO had similarly kept information about Croatian terrorism from him. The difference, he claimed, was that he had “not [been] prepared to break the law to get it”.⁷¹⁰

It seems ASIO was concerned about the alienation of Croatians in Australia more generally. After a meeting between Murphy and Barbour on 25 March, a press release stressed:

Senator Murphy is eager to dispel suggestions that police investigations are directed at other than a very small number of hard core extremists.⁷¹¹

⁷⁰⁹ Lionel Murphy, “Visits to A.S.I.O. Headquarters in Canberra and to the National Headquarters in Melbourne,” press release, March 16, 1973.

⁷¹⁰ Australian, “Inquiry on ASIO must come now,” 19 March 1973, page unknown.

⁷¹¹ Canberra Times, “ASIO head in talks with Murphy,” 26 March 1973, 1.; Lionel Murphy, “Meeting with Director-General of the Australian Security Intelligence Organisation,” press release, March 25, 1973.

This was stating what Murphy had said previously.⁷¹² The press release also made clear the government's dependence on ASIO for monitoring alleged terrorists.⁷¹³ It was reported that Cabinet had argued over the extent of information about terrorists that Murphy should disclose publicly, with Whitlam predominantly concerned with protecting the identities of alleged terrorists and Murphy concerned with sufficiently establishing the threat in the public's imagination.⁷¹⁴ The government also sought to solidify the legal position of the attorney-general with respect to ASIO. Governor-General Paul Hasluck signed an administrative order on 26 March which placed ASIO "under the responsibility of the Attorney-General, for administrative purposes".⁷¹⁵

On 27 March the Senate returned and the Opposition quickly utilised its influence to move a suspension of standing orders so as to bring forward the attorney-general's much anticipated statement on Croatian terrorism, which he planned to deliver later that day. His long speech was rich with insight and, as such, is quoted at length here:

I have never accepted the proposition that we must get used to political terrorism, involving bombings, murder, intimidation and that democratic governments are powerless to suppress such activities... There was a curious defeatism and lack of initiative in successive Liberal governments' reaction to these outrages...

Following receipt of this aide-memoire [from Yugoslavia], the Commonwealth and State police conducted a series of raids in Melbourne and Sydney during the month of August and a great deal of material was seized. It is to be assumed that the first law officer of Australia, the Attorney-General, would be kept informed by the police of the results of their investigations...

⁷¹² Cth, Parliamentary Debates, Senate, vol. 10, 8 March 1973, 262.

⁷¹³ Murphy, "Meeting with Director-General."

⁷¹⁴ David Solomon, "Senator Greenwood prepares his defence," *Canberra Times*, 3 April 1973, 2.

⁷¹⁵ Solomon, "Senator Murphy marshals.," Sydney Morning Herald, "Chifley set up security organisation," 17 March 1973, 44.

On taking over the office of Attorney-General, I considered it my duty to find out for myself whether this was true and to inform the Senate and the people of Australia of the facts. The impending visit to this country of the Prime Minister of Yugoslavia gave special urgency to this investigation since, if the true picture was different from that painted by the previous Government, the present Government was entitled to entertain grave fears for the safety of our distinguished guest and would be duty bound to take adequate precautions for his safety. I am now in a position to state categorically that the Liberal Attorney-General's oft-repeated assertion that there is no credible evidence of the existence in Australia of organised Croatian extremism cannot be sustained. The contrary is true and was true at the time he made such statements...

This long-anticipated speech, which was delivered after one of the defining moments of the Whitlam Government's history, raised a logical inconsistency; if the previous government was responsible for concealing terrorist activity then ASIO could have seized the opportunity to raise its evidence with the new government. But Murphy's raids of ASIO indicated that he believed the organisation was complicit in the cover-up. He was now attempting to align the government with ASIO against the previous government:

These documents [I am seeking to table in the Senate] come from the files of the Attorney-General's Department, the Commonwealth Police and the Australian Security Intelligence Organisation...

The Commonwealth Police... conclusion was as follows:

... In the light of intelligence gathered by this Force over the past nine months, the allegations of its continued existence by the Yugoslav Government must be taken seriously...

[T]he conclusion reached by the Commonwealth Police and conveyed to the Attorney-General's Department as early as 17th August 1972, was...

It... does contain a core of almost irrebuttable fact.

In addition, the Director-General of ASIO on 7th September 1972 stated in reference to the aide-memoire in a letter to the Attorney-General's Department...

Overall the Aide Memoire and enclosures contain sufficient accurate material to suggest that it would be ill-advised to dismiss the allegations as either exaggeration or fabrication until such time as the results of current inquiries are known.

ASIO never retreated from that stand and subsequently agreed with me that the aide-memoire contained a core of irrebuttable truth...⁷¹⁶

Murphy's concern was predominantly for the manner in which previous attorneys-general dealt with Croatian terrorism; the actual existence of a terrorist organisation was secondary. Country Party senator Tom Drake-Brockman correctly pointed out to Murphy that Greenwood's possession of irrebuttable information undermined Murphy's basis for raiding ASIO in search of more information.⁷¹⁷

Murphy mentioned a number of examples in his speech which shed light on the kind of policy response that the Whitlam Government envisaged:

A rather surprising beneficiary of the former Attorney-General's benevolence is one Zdenko Marincic... He first attracted police attention on 29th November 1970 when he removed a Yugoslav flag from the balcony of the Southern Cross Hotel in Melbourne during Yugoslav National Day celebrations and burned it. For this offence he was convicted on 9th February 1972 and fined... [H]e returned to Australia on 24th May 1972 and was immediately arrested and

⁷¹⁶ Cth, Parliamentary Debates, Senate, vol. 13, 27 March 1973, 529-534.

⁷¹⁷ Ibid., 559.

charged the next day with having a firearm in his possession... He was convicted and sentenced to 9 months imprisonment... He was also in possession of a booklet in the Serbo-Croatian language containing instruction on sabotage and of the names and addresses of [3 fighters named in the aide memoire]... Surely it is a reasonable inference that Marincic went to Germany to join the Bosnian incursion or at least to help equip it... the Department of Immigration recommended Marincic's deportation [because]...

Such action... will have a salutary effect upon those Croatians who use Australia as a base for pursuit of their ideals and will also provide the Yugoslav authorities with a positive indication that Australia neither supports nor condones extremism.

I venture to suggest that they are sentiments with which the overwhelming majority of Australians would agree...

In a long and carefully argued submission to the Minister for Immigration... Senator Greenwood [wrote of Marincic's suggested deportation]...

this is a matter of balancing the likely harm to Australia against the consequences of deportation. It is relevant in each case to note the country to which a person will be deported. I have indicated the traditional and accepted rule – applicable not only in the past in this country but also in the USA and the UK – that deportation or extradition does not take place where a person is likely to be dealt with for his political opinions by the country to which he is sent. I believe that this outweighs all other considerations in this case.

...Marincic is still among us. However misguided one might consider an Attorney-General who placed the interests of an obvious terrorist ahead of the

interests of the Australian people, there might be some who would be impressed by the countervailing libertarian considerations on which his submission is apparently based. There is, however, a fatal flaw in this argument... The chief law officer of Australia must have been familiar with the decision of the High Court in the case of *Znaty v The Minister of State for Immigration*... [in which] Counsel briefed by the Attorney-General submitted that the law was and had been since 1903 that the Government is not bound to send the deportee back to the place from which he came and the Court approved that submission...⁷¹⁸

Murphy believed that if the law provided for deportation of convicted persons, then Greenwood was obliged to exercise the power. Yet, it does not follow that Greenwood's concern for someone convicted of non-violent crimes – who had presumably served his time by this stage – was fundamentally flawed or that Marincic was worthy of deportation. With regard to ASIO, Blaxland argues that Greenwood was “strictly” accurate to believe that terrorism directed at a state other than Australia was not within the legal purview of ASIO at that time.⁷¹⁹ However, it was also plausible to argue that the terrorist groups were degrading Australian security by the early 1970s.⁷²⁰ Murphy continued to hint at government policy:

On 4th July 1972 the Attorney-General's Department put a submission to [Greenwood] that he should recommend that [Jure] Maric's application for a passport be refused. The officer of the Department who made this recommendation pointed out that ASIO's latest report and the most recent Commonwealth Police report on Maric indicated that he was deeply involved in Croatian nationalist activities and was prepared to support acts of violence against Yugoslavia and that, if this occurred, it would be an embarrassment to

⁷¹⁸ Cth, Parliamentary Debates, Senate, vol. 13, 27 March 1973, 534-535.

⁷¹⁹ Blaxland, *The Protest Years*, 148.

⁷²⁰ *Ibid.*, 152, 155.

Australia's relations with Yugoslavia. Senator Greenwood rejected this advice...

[He has] prove[n] to have been the active protector of terrorists!...

The Whitlam Government wanted an inchoate offense for alleged terrorists. This speech also demonstrates that the government had faith in ASIO and the Commonwealth Police; again, throwing the purpose of the Murphy raids into question. Murphy then went on to imply that the Whitlam Government supported the approach to terrorism – as opposed to the practise – of the Menzies Government.

The tone of the last Government's attitude towards Croatian terrorism was set as long ago as 27th August 1964 by Sir Robert Menzies...

It is understandable that some Yugoslav migrants of Croatian origin should continue to hope for the establishment of an independent Croatia and within a democracy like Australia they have a right to advocate their views so long as they do so by legitimate means.

That is a reasonable position but I leave it to honourable senators to judge whether the 'means' I have disclosed today are 'legitimate'. The long list of unsolved crimes of violence tells an eloquent story of the indifference of governments of 23 years duration to the 'means' used by Croatian extremists...

To be sure, there were sporadic cries of alarm from individual Ministers...

Sir Garfield Barwick, then Minister for External Affairs... wrote...

In essence, the problem is one of 'keeping an eye' on immigrant extremists, while operating within the framework of existing law and practice. We should not abandon our democratic principles of free speech, belief and association but I would hope that migrants are left with no misunderstanding of the activities which might reasonably give rise to objections by the present governments of their countries of origin. With this end in mind, I should like to suggest that the Australian

Security Intelligence Organisation should maintain some supervision over migrant groups (making no attempt to disguise its surveillance)...

The story which I have unfolded today and the documents which I have tabled show how little heed was paid to the warnings of... Sir Garfield Barwick...⁷²¹

The attorney-general made no effort to rebut the idea that ASIO should be used to intimidate citizens, as it had done to communists. Like Menzies and Barwick before him, Murphy envisaged a democracy in which the government discerned the means by which views could be legitimately exchanged. He continued:

...[T]he attitude of Attorney-General [Tom] Hughes and his successors was one which ASIO described to me as that of 'indifference' to the problem of Croatian terrorism. In the view of ASIO the organisation was not given proper ministerial directives in regard to Croatian terrorism... What I have said about Croatian terrorism applies to all terrorism. The present Government's policy will be to deport aliens associated with terrorist organisations who have been convicted of crimes of violence, and become liable to deportation... All proper procedures and safeguards of civil liberties will be observed... The new policy is to cut out the cancer of terrorism from our body politic....

Important changes will also be made in our police and security arrangements. Pending the full report on the operations of ASIO and its relations with the executive government which I intend to present to Parliament during this session, the Director-General of ASIO will operate mainly from Canberra. This will ensure closer liaison with the Australian Government and the Commonwealth Police in combating terrorism. In the past there has been inadequate co-operation between ASIO and the Commonwealth Police in areas where their operations overlapped...

⁷²¹ Cth, Parliamentary Debates, Senate, vol. 13, 27 March 1973, 535-536.

I intend to recommend to Cabinet that legislation be introduced for new or strengthened Federal criminal laws to deal with... committing an act of violence against a foreign guest... against diplomatic or consular personnel or premises or against persons or premises engaged in or used for overseas or interstate trade and commerce; acts of violence or threats of violence against Australian Ministers or officials... acts or threats of violence or extortion by aliens; inciting in Australia acts of violence against a person or property in a foreign state with which Australia has friendly relations or to collect money or to train persons in the use of weapons, explosives or poisons in Australia for this purpose... The Commonwealth Police will be strengthened, especially in its criminal investigation unit...⁷²²

The Whitlam Government did not intend to be weak on terrorism nor violent crime more broadly. But the definition of ‘violent crime’ went beyond crimes committed to persons; property damage was also included. Standing out amongst this list of desired law reforms is that pertaining to acts of violence against persons engaged in commerce. Demonstrably, the Whitlam Government perceived the business community as worthy of special protection from acts of political violence, not dissimilar to President Nixon as has already been discussed.

The attorney-general provided the Senate with no explanation as to why ASIO was raided. It was as if the government had forgotten that one of its senior ministers had at the time harboured deep suspicions of ASIO:

I am advised that terrorists came to Canberra last week with the intention of killing the Yugoslav Prime Minister. The Commissioner of Commonwealth Police... advised me that, frustrated in that ambition by security precautions, the

⁷²² Cth, Parliamentary Debates, Senate, vol. 13, 27 March 1973, 536-537.

terrorists might make an alternative attempt on the life of the Australian Prime Minister... or other Ministers of the Government... I make no apology for any steps which I took last week to ensure that the intentions of violent terrorists were thwarted... Toleration of terrorism in this country is over.⁷²³

All at once the government wanted to achieve three goals: establish the existence of the threat of terrorism in Australia, demonstrate a need for reform resulting in an efficient intelligence and security apparatus, and discredit the Coalition as protectors of violent fascists.

Murphy's speech clearly shows posterity the extent to which the parties of government agreed on the limits of state power. The speech was not a "report to be made to Parliament about ASIO", as described by the *Official History*, but a statement on terrorism and a political attack on the previous government.⁷²⁴ This was the conclusion reached by the United States, which had followed parliamentary debates and press coverage closely.⁷²⁵ The reform of ASIO would improve its efficacy to protect the state, commerce and foreign powers from acts of political violence. All acts of political violence – presumably exempting those of the state – were morally illegitimate. The inefficacy of the security and intelligence services arose because of the fervent anti-communism held by the Coalition, which was so strong it gave the appearance of support for Croatian fascism. If this were so – and the case is compelling – the question is, why did Murphy not raid the offices of the Coalition? Such an act would make as much sense as targeting ASIO; perhaps more sense given the Whitlam Government claims to have had faith in the organisation. Of course, this would have created more legal and political, let alone philosophical, problems for him. Murphy over-reacted on

⁷²³ Cth, Parliamentary Debates, Senate, vol. 13, 27 March 1973, 538.

⁷²⁴ Blaxland, *The Protest Years*, 339; McKnight, *Australia's Spies*, 274.

⁷²⁵ Embassy of the United States in Canberra, "Second day of parliamentary debate on Yugoslav terrorism," 29 March 1973, Wikileaks.

16 March but he proved to the government that ASIO was not engaged in some grand conspiracy against it, as opposed to it being biased.

Political fallout

The Opposition immediately identified the absence of discussion of the raids as evidence of a cover-up. The debate quickly focused on the damage rendered to ASIO: “Why did [Murphy] destroy the Australian Security Intelligence Organisation?”⁷²⁶ Meanwhile, Greenwood defended himself by offering more details about his history of deportations, attempting to establish his concern for political persecution.⁷²⁷ When asked by the Opposition if he had made arrests of alleged terrorists, Murphy merely stated an intention to enforce the law where “appropriate”.⁷²⁸ Whitlam and Murphy informed Parliament that ASIO, through Barbour, had not lodged a complaint about the actions of the senior minister.⁷²⁹ This would soon spark another controversy, as we will see. Within the intelligence community nerves seem to have frayed. In April, unnamed “[m]embers” were reported to be suspicious of a routine departmental inquiry on efficiency, speculating that it was in fact a Trojan horse; a “major review” of the intelligence and security apparatus about to start.⁷³⁰ Obviously this did not prove to be prescient.

The Whitlam Government attempted to deflect negative attention from its minister. According to Whitlam, the minute seized by Murphy did not reveal that the bureaucracy was concealing information from the government but rather planned to advise the

⁷²⁶ Cth, Parliamentary Debates, Senate, vol. 13, 27 March 1973, 547.

⁷²⁷ *Ibid.*, 549.

⁷²⁸ *Ibid.*, 554.

⁷²⁹ Cth, Parliamentary Debates, Senate, vol. 14, 3 April 1973, 739.

⁷³⁰ Frank Cranston, “Review of secret services tipped,” *Canberra Times*, 5 April 1973, 1.

Attorney-General to mislead the Parliament.⁷³¹ He attacked the bureaucracy in Parliament for what he called their “unpardonable... conspiracy” to keep information from elected representatives.⁷³² At a press conference following his appearance in Parliament, Whitlam told journalists that Murphy’s statement meant “[n]o one... would doubt there was organised activities that former Australian Governments did not put accurately to the Yugoslav Government”.⁷³³ In Parliament the next day the prime minister continued to confuse the issue – this was probably unintentional – by suggesting the minute may have inaccurately recorded the meeting.⁷³⁴ Conversely, Murphy instructed his colleagues that the bureaucracy acted to ensure his speech to the Senate maintained “consistency with the actions or statements of previous governments”.⁷³⁵ Murphy made it clear that this action was “inconsistent with the democratic process” and “if that is allowed to persist, the real rulers of this country will [be]... those who stay while elected governments come and go”.⁷³⁶ He informed the Senate that the document in question could not be tabled for reasons of national security and that he had explained to Cabinet why his raids were undertaken in “the national interest”.⁷³⁷ Indeed, the security and intelligence agencies had been providing daily reports to the attorney-general about the increasingly volatile circumstances in which the Yugoslavian official would arrive.⁷³⁸ The raid occurred because Murphy “was dissatisfied with the amount of information” from ASIO.⁷³⁹ At the end of the debate the House of Representatives voted to affirm the legitimacy of Murphy’s raid, while the Senate expressed support for a judicial inquiry.⁷⁴⁰

⁷³¹ Cth, Parliamentary Debates, House of Representatives, vol. 14, 3 April 1973, 956.

⁷³² David Solomon, “Inquiry into departmental ‘conspiracy’,” *Canberra Times*, 4 April 1973, 1, 18.

⁷³³ *Ibid.*

⁷³⁴ Cth, Parliamentary Debates, House of Representatives, vol. 14, 4 April 1973, 1039.

⁷³⁵ Cth, Parliamentary Debates, Senate, vol. 14, 3 April 1973, 740-741.

⁷³⁶ *Ibid.*, 740.

⁷³⁷ *Ibid.*, 740.

⁷³⁸ *Ibid.*, 741-742.

⁷³⁹ *Ibid.*, 746.

⁷⁴⁰ Embassy of the United States, “GOA indignation over executive of three naturalized Australia citizens by Yugoslavia,” 16 April 1973, *Wikileaks*.

In late March and early April the government was making decisions on a number of related issues. Minister for Immigration Al Grassby told *Federal File* that the government would deport Croatian terrorists.⁷⁴¹ According to journalist David Solomon this option was rigidly opposed by Labor backbenchers.⁷⁴² There was also the question of whether the Executive should possess the power to declare organisations unlawful under the *Crimes Act*, as had been done previously with the Communist Party.⁷⁴³

In April the Yugoslavian government executed three Australian citizens for terrorist offences, which was condemned by Whitlam.⁷⁴⁴ The committee became known for its lack of interest in its supposed purpose: to determine if Croatian migrants in Australia – approximately 130,000 people – were being subjected to human rights violations.⁷⁴⁵ On the first day of hearings the committee heard evidence from Leslie Shaw, spokesperson for the National Croatian Civil Rights Committee. Shaw said the actions of Murphy – who had tabled the names of “many hundreds” of Croatians living in Australia when he gave his speech – had left them exposed to the recriminations of the Yugoslavian government.⁷⁴⁶ In August, the committee heard evidence from Barbour who had been granted permission to appear by Murphy at the suggestion of an Opposition senator in March.⁷⁴⁷ It is plausible that the government was threatening junior ASIO employees with redundancy if they spoke with the committee.⁷⁴⁸ Robert Murray in the *Australian Financial Review* described the gallery as having “a mini-Watergate atmosphere”.⁷⁴⁹

⁷⁴¹ *Canberra Times*, “ASIO head in talks with Murphy,” 26 March 1973, 1.

⁷⁴² Solomon, “Senator Greenwood prepares.”

⁷⁴³ Solomon, “Senator Greenwood prepares.”

⁷⁴⁴ Embassy of the United States, “GOA indignation over executive.”; Embassy of the United States in Canberra, “Yugoslav executions of Australian nationals,” 14 May 1973, *Wikileaks*.

⁷⁴⁵ Maximilian Walsh, “Judge to inquire into secret services,” *Australian Financial Review*, 4 September 1973, 1, 24; *Age*, “Murphy ‘hid information’,” 20 July 1973, 5.

⁷⁴⁶ *Age*, “Murphy ‘hid information’: ASIO man told me, witness tells probe,” 20 July 1973, 5.

⁷⁴⁷ Cth, Parliamentary Debates, Senate, vol. 13, 27 March 1973, 559.

⁷⁴⁸ Cth, Parliamentary Debates, Senate, vol. 34, 22 August 1973, 37.

⁷⁴⁹ Murray, “Barbour fields Senate queries.”

Barbour told the committee – with the requirements of truthfulness such hearings attract to this day – that the organisation’s “standing with [‘foreign intelligence agencies’] remained high” despite the raid and that ASIO “was still continuing to get information”.⁷⁵⁰ While the *Official History* does not mention Barbour’s claim it nonetheless establishes that the United States and United Kingdom were concerned for ASIO’s integrity under Murphy’s oversight, that information was withheld, and that ASIO was aware of this at the time.⁷⁵¹ Further still, the damage was significant in that it attracted President Nixon’s attention.⁷⁵² Barbour also advised the committee that he did not consider Murphy’s raid beyond his powers as attorney-general.⁷⁵³ When asked about his meeting with Whitlam after the raids he declined to comment.⁷⁵⁴

Within hours Barbour’s calm testimony would be drowned by more controversy, this time on ASIO’s complaint about the raid. The programme *Federal File* revealed the existence of an ASIO telex message distributed on 28 March which contradicted the government – and ASIO’s – claim that no complaint had been made to Whitlam by Barbour.⁷⁵⁵ A week later, a copy of the telex was published showing Barbour had told ASIO staff that he had informed the prime minister that the raids were “unprecedented, extraordinary and gravely damaging to ASIO and the national security interest”.⁷⁵⁶ The telex described these words as a “[c]omplaint”.⁷⁵⁷ In the end the press settled on the idea that the government and ASIO were engaged in a cover-up.

⁷⁵⁰ Murray, “Barbour fields Senate queries.”; J. R. Odgers, Harry Evans and Rosemary Laing, *Odgers’ Australian Senate Practice*, thirteenth ed. (Canberra: National Library of Australia, 2012), 552, 555-556.

⁷⁵¹ Blaxland, *The Protest Years*, 342-345; Embassy of the United States in Canberra, “Appointment of Senator Lionel Murphy to High Court of Australia,” 10 February 1975, *Wikileaks*.

⁷⁵² Blaxland, *The Protest Years*, 345.

⁷⁵³ Murray, “Barbour fields Senate queries.”

⁷⁵⁴ Australian, “Murphy raid damaging, ASIO chief told PM,” 15 August 1973, 1.

⁷⁵⁵ *Canberra Times*, “‘Raid’ on ASIO: Inquiry call on alleged complaint,” 6 August 1973, 3.; *Canberra Times*, “ASIO head ‘did not complain’,” 20 August 1973, 3.; Blaxland, *The Protest Years*, 346.

⁷⁵⁶ *Australian*, “Murphy raid damaging, ASIO chief told PM,” 15 August 1973, 1

⁷⁵⁷ Cth, *Parliamentary Debates, Senate*, vol. 34, 22 August 1973, 43.

The fact that ASIO had lied to elected representatives about the existence of a complaint dislodged its perception of innocence, which gave the government more confidence on the issue. At first it was reported that the government would impose new restrictions on the use of photocopiers in “sensitive security areas” to prevent leaks to the press.⁷⁵⁸ Whitlam then revealed on the programme *Frost Over Australia* that he was “inclined” to place the entire intelligence and security apparatus under the control of the prime minister’s office at some future date.⁷⁵⁹ He coyly told David Frost, “[l]et us see how they behave in the meantime”.⁷⁶⁰ During the interview Whitlam reiterated what he had told Parliament that no complaint had been made by Barbour about Murphy’s raids.⁷⁶¹ Of Barbour and ASIO, Whitlam’s criticism was muted:

I take a man as I find him, and I have no complaints about him. I have some misgivings about a security organisation which lets out telexes to one’s political opponents. It does not seem to be very secure security.⁷⁶²

The prime minister told Frost that “[t]he greatest mistake the Government has made has been to take the police into ASIO headquarters”, not the raid itself.⁷⁶³ This is contrary to the claims of other scholars that state that Murphy thought the raid itself was bad politics.⁷⁶⁴ Murphy had not consulted him prior to the raids, contrary to correct practise, and that he would have wanted more information to justify the minister’s actions had he been asked prior.⁷⁶⁵ An article in the *Sun-Herald* stated that Murphy, as attorney-

⁷⁵⁸ *Canberra Times*, “Information leaks: Tight measures to be enforced,” 17 August 1973, 8.

⁷⁵⁹ Paul Kelly, “Whitlam may take over ASIO role from Murphy,” *Australian*, 20 August 1973, 1.; Rick Feneley, “ASIO files: That looks suspicious, doesn’t it?” *Sydney Morning Herald*, 4 January 2014, <http://www.smh.com.au/national/ASIO-files-that-looks-suspicious-doesnt-it-20140103-309ic.html>.

⁷⁶⁰ Kelly, “Whitlam may take over ASIO.”

⁷⁶¹ *Canberra Times*, “ASIO head ‘did not complain’,” 20 August 1973, 3.

⁷⁶² *Ibid.*

⁷⁶³ Gough Whitlam and David Frost, *Whitlam and Frost* (London: Sundial Publications, 1974), 147; *Canberra Times*, “A Disabled ASIO,” 21 August 1973, 2.; *Canberra Times*, “ASIO head ‘did not complain.’”

⁷⁶⁴ Blaxland, *The Protest Years*, 346; Hocking, *Terror Laws*, 43; McKnight, *Australia’s Spies*, 275; Hayden, *An Autobiography*, 243.

⁷⁶⁵ Whitlam and Frost, *Whitlam and Frost*, 148; *Canberra Times*, “ASIO head ‘did not complain.’”

general, may have been permitted to raid ASIO because of a provision in Barbour's contract that provided for his suspension if the minister suspected his "misconduct".⁷⁶⁶

Despite the raid the distrust of ASIO and air of conspiracy continued to swirl. In April 1973, Dr. John Burton – a former Secretary of the Department of External Affairs from 1947 to 1950 who had been influential within Labor and the formation of ASIO – began publicly commenting on the circumstances surrounding ASIO's inception.⁷⁶⁷ Burton stated that a secret military intelligence cabal – he called them the 'gnomes of Melbourne' – operated without the knowledge of the Chifley Government.⁷⁶⁸ The group had blocked a report from Burton to Attorney-General Doc Evatt that argued against the need for a domestic intelligence organisation.⁷⁶⁹ He told a reporter:

I think security organisations are divisive. They set people against people.

People are suspicious and therefore people respond in ways that they normally wouldn't respond... The security of a country depends on its own internal integration, integrity. No foreign agent can possibly interfere with the security of a country provided its citizens are themselves sharing certain consensually held values...⁷⁷⁰

In 1985 (originally published in 1974), Nicholas Whitlam, the Prime Minister's son, later co-authored a book detailing Burton's claims.⁷⁷¹ Although the *Official History* makes no reference of the cabal, it reveals that Burton had been reported by MI5's Hollis to have lobbied Chifley for ASIO's creation.⁷⁷² Nevertheless, Burton's claims

⁷⁶⁶ Maximilian Walsh, "The Affair of the 'Faceless Seventy'," *Sun-Herald*, 26 August 1973, 17, 44.

⁷⁶⁷ *Australian Financial Review*, "The right to know – the cloak and dagger casualty," 3 November 1972, 5.; Solomon, "Senator Greenwood prepares.".; Oakes, *Whitlam PM*, 89.

⁷⁶⁸ John Highfield and John Burton, "When Gnomes Reared their Heads," *National Review*, 6 April 1973, 159.

⁷⁶⁹ *Canberra Times*, "Report opposing ASIO 'stopped'," 1 April 1973, 3.

⁷⁷⁰ *Nation Review*, "When gnomes reared their heads," 6 April 1973,

⁷⁷¹ Nicholas Whitlam & John Stubbs, *Nest of Traitors: The Petrov affair* (Brisbane: University of Queensland Press, 1985), 13-19, 20, 47.

⁷⁷² David Horner, *The Spy Catchers*, vol. 1 of *The Official History of ASIO* (Sydney: Allen & Unwin: 2014), 76.

resonated with the press. In August, it was reported that a civilian organisation – like the ‘gnomes’ – had been setup before the 1972 election in order to counter “left-wing subversion” under the imminent Whitlam Government.⁷⁷³ Murphy, in the Senate, acknowledged the continued existence of the so-called “Minuteman” group and said he had directed ASIO to report pertinent information to him.⁷⁷⁴ The *National Times* reported that this reactionary organisation was heightening calls within Labor for an intelligence review.⁷⁷⁵ Murphy informed the Senate that ASIO had disclosed to him its involvement in “some sort of para-intelligence organisation”, set up before the 1972 election, designed to protect national security in anticipation of ASIO’s disbandment by “a socialist Labor Government”.⁷⁷⁶ Despite the political potency of this claim, Whitlam refused to elaborate when questioned by press gallery journalists:

Answer: I think ASIO has made some improvements but I am considering the general situation of the Australian Government’s intelligence services. As you realise, it is not the practice to go into any details on these matters...

Question: ... You said that the existence of this private force in Melbourne disturbs you-

Answer: I won’t say any more on it. I don’t answer questions on security matters-⁷⁷⁷

Reform impasse

The Whitlam Government would not seize the reform initiative and a long impasse on the ASIO question would result. The question would not be addressed until the Royal

⁷⁷³ Fred Brenchley, “Murphy calls for ASIO watch on the ‘secret 70’”, *National Times*, 27 August 1973, 16.

⁷⁷⁴ *Ibid.*

⁷⁷⁵ *Ibid.*

⁷⁷⁶ Walsh, “The Affair of the ‘Faceless Seventy.’”

⁷⁷⁷ Gough Whitlam, “Cabinet announcements,” (speech, press conference, August 28, 1973).

Commission was called on 21 August 1974. As we will see in the next chapter, at this time the politics had shifted decidedly in the government's favour. Within the Labor Party anti-ASIO zeal had ebbed. The 1973 national Labor Conference saw renewed moves to disband ASIO, but there was no vote put to members because the proposal did not advance beyond the Legal and Constitutional Committee.⁷⁷⁸ The idea of an inquiry was reported to be popular within the government and within the Opposition.⁷⁷⁹ It would be some time before reforms into domestic security would start to be made in earnest. For example, it was not until June 1974 that Murphy ordered ASIO to relocate its headquarters to Canberra, a move later supported by Hope.⁷⁸⁰ However, there were some reforms with respect to security. In May 1973, the Commonwealth Police were introduced to airports to screen passengers after a union dispute involving airline workers resulted in the Department of Civil Aviation taking control of airport security.⁷⁸¹

⁷⁷⁸ David Solomon, "ALP conference: Move to abolish ASIO rejected," *Canberra Times*, 12 July 1973, 7.

⁷⁷⁹ e.g. *Canberra Times*, "Inquiry into alleged leaks," 12 January 1974, 1, 8.; *Canberra Times*, "'Raid' on ASIO: Inquiry call on alleged complaint," 6 August 1973, 3.

⁷⁸⁰ *National Review*, "ASIO just won't be the same," 28 June 1974, 1202.

⁷⁸¹ Frank Cranston, "Security work opposed," *Canberra Times*, 10 May 1973, 8.

VII. The decision and announcement

After the 1974 election the Whitlam Government decided to implement its commitment to launch a judicial inquiry into Australia's intelligence apparatus. As we have seen, Labor believed that domestic intelligence gathering by the Executive was necessary and that the presence of global terrorism in Australia demonstrated this. This chapter will discuss the immediate reasons why the Royal Commission on Intelligence and Security was launched. There is much confusion in secondary sources as well as in the journalistic coverage of the time as to how an inquiry of this magnitude became government policy. Whitlam first raised the policy in public in September 1973. Labor took the policy to the 1974 election on 8 May as part of its policy platform. However, it was not until late June 1974, with the publication of leaked ASIO documents, that the policy was acted on. The contents of this leaked series had almost certainly been reported on as early as April 1973 but had not drawn the same condemnation from the media. The leaked documents brought to attention the blurred line between ASIO as institutional protector and ASIO as political participant. However, the Whitlam Government remained calm and determined in its aspiration to reform the organisation.

It is clear the Whitlam Government did not want an inquiry that would recommend the abolition of ASIO or domestic intelligence agencies more generally. While Labor had not clearly articulated what it wanted from a reformed ASIO as such, the Murphy raid and its pursuit of Croatian terrorism had demonstrated that it did not intend to diminish the organisation. In fact, reform had begun in anticipation of an official inquiry.

Press speculation

The idea of an inquiry into the intelligence apparatus had many proponents by the time it was established on 21 August 1974. The government was reported to have launched a number of *ad hoc* internal inquiries into specific matters, such as the interdepartmental minute which inspired Murphy's raids in March 1973.⁷⁸² But the judicial inquiry had more uncertain origins predominately because contemporary press reports were confused. The *Canberra Times* cited a pre-1972 election inquiry promise in an article of June 1974.⁷⁸³ The *National Times* also stated that the Whitlam Government had been considering instituting an inquiry since 1972.⁷⁸⁴ Certainly, an early call for an inquiry came from the editorial of the *Australian* on 19 March 1973. The *Sydney Morning Herald* of 26 August 1973 also speculated that it was "fairly evident" an overhaul of sorts was brewing.⁷⁸⁵ An article in the *Australian Financial Review* of 4 September 1973 revealed that the Whitlam Government would hold an inquiry after the Senate Committee on Civil Rights of Migrants reported in order to avoid allegations that such a move was designed to distract the press from the negative headlines they were drafting.⁷⁸⁶ A week later the *Canberra Times* wrote that "an inquiry into [ASIO]" was imminent.⁷⁸⁷ In March 1974 *National Review* published a telex copy of a top secret communiqué from the Secretary of the Attorney-General's Department to Barbour citing "the Prime Minister's Terms of Reference dated 12 September 1973".⁷⁸⁸ The communiqué, entitled *Working Party for the Judicial Enquiry on Intelligence*, gave Barbour specific instructions on the inquiry.⁷⁸⁹ However, the *National Review* believed

⁷⁸² David Solomon, "Inquiry into departmental 'conspiracy'," *Canberra Times*, 4 April 1973, 1, 18.

⁷⁸³ *Australian*, "Inquiry on ASIO must come now," 19 March 1973, page unknown.

⁷⁸⁴ *Canberra Times*, "Mr McMahon sets of a minor furore", 25 June 1974, 2.; *National Times*, "Off With Their Cloaks," 24 June 1974, 28.

⁷⁸⁵ Maximilian Walsh, "The Affair of the 'Faceless Seventy'," *Sun-Herald*, 26 August 1973, 17, 44.

⁷⁸⁶ Maximilian Walsh, "Judge to inquire into secret services," *Australian Financial Review*, 4 September 1973, 1, 24.

⁷⁸⁷ *Canberra Times*, "ACT Judge May Head Inquiry," 10 September 1973, 3.

⁷⁸⁸ *National Review*, "Govt. move to round up stray spooks," 1 March 1974, 614.

⁷⁸⁹ *Ibid.*

it to be a hoax of uncertain design. Instead, Whitlam would immediately begin preparing for a judicial inquiry – “probably” overseen by Justice Robert Hope – with the intention of “rationalis[ing] the system”.⁷⁹⁰ The 21 June 1974 edition of the *Australian Financial Review* revealed that Murphy had promised to table some kind of internal review of ASIO in early 1973 but he had failed to do so.⁷⁹¹ The *Daily Telegraph* on 21 June 1974 reported that Whitlam had asked Justice Robert Hope to head a judicial inquiry into ASIO.⁷⁹² In reality, the government probably wanted to establish that it wanted to launch an inquiry as early as the Murphy raids. However, official documents provide a clearer picture.

At the time of the Murphy raids it was reported that Murphy had already been conducting an internal inquiry:

Senator Murphy’s review of the activities of ASIO is being carried out without any public debate of the organisation’s activities or objectives. This review is largely in the hands of Mr Peter Barbour, the Director General of ASIO and Mr C. Harders, the permanent head of the Attorney General’s Department. Changes which will emerge appear likely to be ad hoc administrative moves which will bring ASIO into line with the ALP platform. The three major changes anticipated will be the introduction of an administrative court to allow appeals against ASIO influence on administrative decisions (ie Public Service Board decisions based on security checks); the placing of ASIO under firm ministerial control; and the presentation of an annual report by the Attorney-General on ASIO’s activities and its use of telephone taps.⁷⁹³

⁷⁹⁰ *National Review*, “Govt. move to round up stray spooks.”

⁷⁹¹ *Australian Financial Review*, “ASIO Confuses Politics with Security,” 21 June 1974, 2.

⁷⁹² John Burney, “Cairns’ ASIO file ‘tip of iceberg’,” *Daily Telegraph*, 21 June 1974, 8-9.

⁷⁹³ Max Suich, “ASIO, ASIS, JIO: inquiry needed into our three intelligence organisations”, *National Times*, 2 April 1973, 6-7.

Hope would later establish that many of his recommendations matched those of this early inquiry and had in fact already been implemented before the government's dismissal of November 1975.

The uncertainty of the exact origins of the Royal Commission continues to proliferate in secondary sources. Blaxland places the origins of the inquiry as an idea sometime around early 1973 when Barbour had originally "suggested that Whitlam might like to have some form of independent inspection... of ASIO, perhaps by someone of high public standing".⁷⁹⁴ However, Hocking suggests the first time Whitlam raised the option of an inquiry was a "1974 pre-election policy speech", as the Murphy raids precluded such action at an earlier time.⁷⁹⁵ In a later work Hocking states that "Whitlam was finally persuaded to hold an inquiry" in June 1974.⁷⁹⁶ Whitlam recollected in 1985 that he had been "looking for an opportunity to hold a judicial inquiry into the security services" since March 1974.⁷⁹⁷ McKnight correctly identifies that Whitlam's press conference of September 1973 as the first public acknowledgement that an inquiry was about to become policy.⁷⁹⁸

Policy announcement

The prime minister held a press conference on 11 September 1973 at which he addressed the issue of an inquiry into Australia's intelligence apparatus. He revealed that a closed door judicial inquiry was "very likely" but refused to comment on the

⁷⁹⁴ Blaxland, *The Protest Years*, 322, 369; Russell Schneider, "Security Inquiry Will Have Some Public Sessions," *Australian*, 25 June 1974, 2.

⁷⁹⁵ Hocking, *Terror Laws*, 45; Walsh, "Judge to Inquire," 1, 24.

⁷⁹⁶ Hocking, Jenny. *His Time*. Vol. 2 of *Gough Whitlam* (Melbourne: Miegunyah Press, 2014), 162.

⁷⁹⁷ Gough Whitlam, *The Whitlam Government: 1972-1975* (Melbourne: Penguin: 1985), 166, 171.

⁷⁹⁸ McKnight, *Australian Spies and Their Secrets*, 284.

reasons for erected such an inquiry.⁷⁹⁹ In his major election policy speech before the May 1974 federal election, Whitlam revealed more details about the policy:

The Government will appoint a judicial inquiry into the structure of the Australian security services and into methods of reviewing decisions adversely affecting citizens or migrants.⁸⁰⁰

This sentence appeared toward the end of his speech between sections on “Aborigines” and the arts.⁸⁰¹ Around the same time the *Australian* reported that Murphy had made public a departmental policy document, part of which detailed his new “direct ministerial control” and capacity to “issue[] directives to [ASIO] on its methods of operation”.⁸⁰² As journalist Mike Steketee noted, even this policy document only mentioned ASIO on “the last page of the report”.⁸⁰³ Understandably, the Whitlam Government treated ASIO delicately in public. The United States Department of State identified this press conference to be of “particular interest”, because the “somewhat contentious issue [of ASIO] within Labor” was being dealt with by Whitlam:

Seems clear he has no intention of abolishing... as socialist left in ALP has long advocated, but instead proposes to let the socialist left air its objections to Australian intelligence services, without committing to much more than that. He will eventually be able to say that he has had a careful inquiry... and might make some organizational or personnel changes.⁸⁰⁴

The United States observers saw the inquiry as an elegant political solution in an otherwise predetermined process.

⁷⁹⁹ Gough Whitlam, “Prime Minister’s press conference,” (speech, press conference, Canberra, September 11, 1973).

⁸⁰⁰ Gough Whitlam, “Election Speech,” (speech, election policy, Sydney, April 29, 1974).

⁸⁰¹ Whitlam, “Election Speech.”

⁸⁰² Mike Steketee, “Murphy acts to curtail ASIO power,” *Australian*, 9 May 1974, 2.

⁸⁰³ Steketee, “Murphy acts to curtail.”

⁸⁰⁴ Department of States, “Prime Minister Whitlam’s press conference of 11 Sept- Visits to China and Japan, investigation of ASIO, Australian concern with Mid-east oil,” 13 September 1973, *Wikileaks*.

ASIO in the 1974 election

As predicted by the United States embassy, the Whitlam Government decided to call an early, double-dissolution election.⁸⁰⁵ The major political parties more generally avoided discussion of ASIO during the 1974 election campaign, despite the intense debate that had arisen the previous year. Political advertisements during the election campaign demonstrate how little attention was paid to the issue of reforming Australia's intelligence apparatus. Advertisements against the Whitlam Government were predominantly concerned with purportedly out of control inflation.⁸⁰⁶ Similarly, advertisements supporting the government focused on economic policies.⁸⁰⁷ An exception to this focus was an advertisement placed by then Liberal Premier of New South Wales, Sir Robert Askin.⁸⁰⁸ Buried at the back of the *Sydney Morning Herald* on the day of the election the advertisement lists the “[r]aids on ASIO” and “[r]aids on private homes” as evidence of the government's incompetence and undemocratic tendencies.⁸⁰⁹ Askin's fear of Labor extended to economic policy. His two-part op-ed in the *Sydney Morning Herald* of 16 May demonstrates the depths of his distrust:

⁸⁰⁵ Embassy of the United States in Canberra, “Yugoslav executions of Australian nationals,” 14 May 1973, *Wikileaks*; Department of States, “November 19, 1973 EA press summary,” 19 November 1973, *Wikileaks*.

⁸⁰⁶ J. J. Carlton, “Urgent! Education,” political advertisement in *Sydney Morning Herald* (authorised by J. J. Carlton, Ash St, Sydney), 16 May 1974, 9; Liberal Party of Australia, “Who is Whitlam Fooling? Inflation is Up!” political advertisement in *Sydney Morning Herald* (authorised by B.G. Hartcher, Canberra), 18 May 1974, 20; Doug Anthony, “It's Your Choice. Here are the Simple Facts,” political advertisement in *Sydney Morning Herald* (authorised by D. J. Anthony, Parliament House, Canberra), 17 May 1974, 20; Doug Anthony, “Integrity?” political advertisement in *Sydney Morning Herald* (authorised by D. J. Anthony, Parliament House, Canberra), 17 May 1974, 24; Carlton, J.J. “Your Complete Liberal How-to-Vote Guide,” political advertisement in *Sydney Morning Herald* (authorised by J. J. Carlton, Ash Street, Sydney), 18 May 1974, 10.

⁸⁰⁷ David Combe, “Only Whitlam Will Reduce Home Interest Rates by 3%,” political advertisement in *National Times* (authorised by David Combe, Ainslie Ave, Canberra), 13 May 1974, 35; New South Wales Teachers' Federation, “Education: Stop or Go?” political advertisement in *Sydney Morning Herald* (authorised by J. R. Williams, Sussex St, Sydney), 16 May 1974, 2; H. Levier, “Can Snedden Beat Inflation?” political advertisement in *Sydney Morning Herald* (authorised by H. Levier), 16 May 1974, 5; David Combe, “Vote Australian Labor Party,” political advertisement in *Sydney Morning Herald* (authorised by David Combe, Ainslie Ave, Canberra), 17 May 1974, 23; Seamen's Union of Australia, “The Calamitous Coalition: A Farce in Three Acts,” political advertisement in *Sydney Morning Herald* (authorised by E.P. Kingswood, Sydney), 17 May 1974, 17.

⁸⁰⁸ Robert Askin, “Can You Trust Them?” political advertisement in *Sydney Morning Herald* (authorised by Sir Robert Askin, Parliament House, Sydney), 18 May 1974, 24.

⁸⁰⁹ *Ibid.*

The primary objective of the ALP... is the socialization of industry, production, distribution and exchange... Indeed there is hardly any limit to State authority not covered by the Whitlam Government, not merely for its own sake, although the appetite for power feeds upon itself, but as a preliminary to the establishment of the “socialist dream”.⁸¹⁰

As we have already seen, this was not the first time someone had perceived a link between how ASIO is managed and the threat to commerce posed by Labor. Eleven days after the election of 18 May the government was reelected with a reduced majority in the House of Representatives.⁸¹¹ The ambitious Cairns soon achieved an elevation to the position of deputy prime minister.⁸¹² A politician in a similar vein to Tony Benn, Cairns long represented the so-called left of the party. But his ascension provoked a suspicious response when an ASIO document discussing him was published in the conservative magazine, the *Bulletin*.

The Cairns dossier

In June 1974, the *Bulletin* magazine began releasing a series of leaked ASIO documents which brought the reform of ASIO to a head. By way of background, the *Bulletin* was a weekly magazine which started in 1880.⁸¹³ By 1974 it was owned by Australian Consolidated Press and had become the last written news medium owned by Frank Packer, grandfather of James Packer, who used it as a conduit for his political views until his death in May 1974.⁸¹⁴ When Frank’s son, Kerry, inherited control of the

⁸¹⁰ Robert Askin, “Australia’s Most Important Election,” *Sydney Morning Herald*, 16 May 1974, 6.

⁸¹¹ *Sydney Morning Herald*, “Majority of Five,” 4 June 1974, 6.

⁸¹² *National Times*, “Australia Catches Up with Jim Cairns,” 10 June 1974, 32-35.

⁸¹³ Christopher Lee, “Bulletin,” in *A Companion to the Australian Media*, ed. Bridget Griffin-Foley (Melbourne: Australian Scholarly Publishing, 2014), 76.

⁸¹⁴ Lee, “Bulletin,” 77.

magazine its special role continued.⁸¹⁵ Known for its controversy, the publication of leaked ASIO documents in mid-1974 barely stands out in its long history. The series of documents, almost entirely concerned with “left-wing organisations”, was reported to have been circulating in the Canberra press gallery for “about three weeks” before one emerged in the *Bulletin* on 19 June.⁸¹⁶ The document in question – ostensibly a summary or “read-in” designed for consumption by ASIO officers – focused on Cairns during his leadership of the Vietnam War Moratorium movement.⁸¹⁷ The officer who authored it saw Cairns and his politics in extreme terms:

Dr Cairns is concerned to promote a populist-type theory – a theory close to the participatory democracy advocated by various new left spokesmen both inside and outside the organised Labor movement. The concept of the will of the people and its formation by extra-parliamentary means including civil disturbance, and [his] claim that young people are showing their dissatisfaction with the parliamentary system of government through movements of protest and dissent... all these reflect the populist idea of direct participation in running affairs; of direct relationships between people and leadership; and so of the supremacy of the will of the people operating in the community at large... Overall, the kind of socialism envisaged by Dr Cairns bears a striking resemblance to that promoted by the Communist Party of Australia in its Statement of Aims as promulgated by its 22nd Congress (March, 1970)... [Cairns’ actions] could lead, via civil, industrial and political unrest to the growth of elitism in every sphere, to the manipulation of people by demagogues, to the fascist cult of the personality, to the worship of force, and to the

⁸¹⁵ Gideon Haigh, “Packed it in: the demise of the ‘Bulletin’,” *Monthly*, March 2008, <https://www.themonthly.com.au/issue/2008/march/1268869044/gideon-haigh/packed-it>.

⁸¹⁶ *Canberra Times*, “ASIO Report on Cairns to be Investigated,” 21 June 1974, 3.; Jenny Hocking, *His Time*, vol. 2 of *Gough Whitlam* (Melbourne: Miegunyah Press, 2014), 161.; *Canberra Times*, “PM issues a list of ASIO files,” 3 July 1974, 3.

⁸¹⁷ Peter Samuel, “Cairns: ASIO’s startling dossier,” *Bulletin*, 22 June 1974, 8-9.; Hocking, *Terror Laws*, 43-45.; John Burney, “Cairns’ ASIO file ‘tip of iceberg’,” *Daily Telegraph*, 21 June 1974, 8-9.

destruction of the democratic parliamentary system of government and its replacement by a form of collectivism.⁸¹⁸

In this document one can clearly identify ASIO's confusion on subversion. Simple advocacy of democratic alternatives to parliamentary democracy attracted ASIO's attention and distrust. ASIO was also seen to be monitoring non-violent political figures. The Director-General of ASIO had assured Murphy in March 1973 – who in turn assured Parliament – that there were no files on politicians kept by the organisation.⁸¹⁹ It has since become well established that ASIO had kept records on a vast array of politically active people, including Cairns, who was monitored for decades despite his apparent support of domestic intelligence gathering in the past.⁸²⁰

The *Bulletin's* commentary on the document indicated its scepticism of the conclusions reached in 1971, especially since Cairns had willingly morphed into “a moderate in the ALP” after becoming a minister “admir[ed]” by “a large number... in the commercial world”.⁸²¹ The argument that Cairns had undergone a de-radicalisation of sorts was advanced by the man himself around the same time in what the United States Ambassador, Marshall Green, called in private a “very impressive” speech.⁸²² The magazine continued:

The most sensational aspect of the paper is that it will confirm in the minds of many government members and supporters the long-standing and deep-seated

⁸¹⁸ Samuel, “Cairns: ASIO's startling dossier.”

⁸¹⁹ Cth, Parliamentary Debates, Senate, vol. 14, 3 April 1973, 742.

⁸²⁰ Paul Strangio, *Keeper of the Faith: a biography of Jim Cairns* (Melbourne: Melbourne University Press, 2002), 86-87; Meredith Burgmann, ed., *Dirty Secrets: Our ASIO files* (Sydney: NewSouth, 2014); Blaxland, *The Protest Years*, 124, 126.

⁸²¹ Samuel, “Cairns: ASIO's startling dossier.”; Beilharz, *Transforming Labor*, 102.

⁸²² *Australian*, “Dr. Cairns' Press Conference: Challenge of Inflation,” 21 June 1974, 8; Embassy of the United States in Canberra, “Deputy Prime Minister Cairns addresses National Press Club June 20,” 21 June 1974, *Wikileaks*.

hostility and antagonism of the security service toward the Whitlam Government.⁸²³

On this point the magazine lacked prescience. Not only did the leaked document confirm existing perceptions of ASIO by those wary of it, the document revealed the extraordinary extent of dissent in Australian society towards the organisation. As chapter three demonstrated the press was broadly aligned in favour of disrupting the *status quo*. As already noted, the *National Times* in April 1973 published passages from a file of leaked ASIO documents, one of which was almost certainly published by the *Bulletin*.⁸²⁴ No journalist or politician appears to have registered this fact in June 1974.

While the *National Review* and *Canberra Times* identified “hand-written corrections” on the Cairns document as evidence of it being a draft, newspapers across the country instantly appreciated its political significance.⁸²⁵ The publication of the leaked document-excerpts resulted in assurances from the government that its pre-election policy commitment to undertake an inquiry into the intelligence apparatus would be instigated as “quickly as possible”.⁸²⁶ The *Australian* reported that “[a] Government inquiry ha[d] been ordered into how the document was released, why it was kept, and which other MPs [were] the subject of security dossiers”.⁸²⁷ Within a few days the same journalist was reporting that the government would launch a broader inquiry before the end of July.⁸²⁸ According to the Prime Minister’s spokesperson, at issue was ASIO’s misuse of public funds for compiling sub-standard commentary and for investigating

⁸²³ Samuel, “Cairns: ASIO’s startling dossier.”

⁸²⁴ Robert Mayne, “How ASIO sees the world – and Australia,” *National Times*, 2 April 1973, 6-7.

⁸²⁵ *National Review*, “ASIO just won’t be the same,” 28 June 1974, 1202.; *Canberra Times*, “Mr McMahon sets of a minor furore”, 25 June 1974, 2.; Schneider, “The Laugh’s on ASIO Over Cairns Files.”; Schneider, “Order to Destroy ASIO Files.”; *Canberra Times*, “ASIO Report.”; Burney, “Cairns’ ASIO file.”

⁸²⁶ Schneider, “Order to Destroy.”; Hocking, *Terror Laws*, 43-45.; *Bulletin*, “Bulletin Hastens ASIO Probe,” 29 June 1974, 13.

⁸²⁷ Schneider, “Order to Destroy.”

⁸²⁸ Schneider, “Security Inquiry.”

ministers of the crown.⁸²⁹ But Whitlam's response was to "play[] down" the leak, stressing that "the documents contained no confidential information".⁸³⁰ At a wide-ranging press conference on 20 June at the National Press Club, Cairns answered questions about ASIO:

Q: Do you believe there is a role for ASIO in Australia at the moment, and does that role include the provision of dossiers on Federal MPs?

A: I suppose the answer to the first is yes and the answer to the second is probably no... [I] am impressed by the statement in *The Bulletin* that the people who wrote them are not any longer with ASIO. I sometimes wonder if they ever were...

Q: Are you concerned that both ASIO and Senator Greenwood thought that you were concerned with the destruction of the parliamentary system?

A: I would probably conclude from what I know that most of those who have been concerned with that have at least been retired... [W]hat I was doing in 1970 and 1971 was trying to find a way peacefully for the very large number of people who were opposed to the Vietnam war to express their views democratically...

Q: Does your election to Deputy Prime Minister entitle you to be told fully about the role of U.S. bases in Australia...?

A: ... I am not sure what my present position entitles me to in respect of that, but you can be sure about this: I am not going to rush around to have a look at the files on ASIO...⁸³¹

Cairns was attempting to calm the situation and, at the expense of Murphy, assuage what fears there were of another raid on ASIO or other recriminations. With regard to

⁸²⁹ *Canberra Times*, "ASIO report on Cairns to be investigated," 21 June 1974, 3.

⁸³⁰ Blaxland, *The Protest Years*, 374.

⁸³¹ *Australian*, "Dr. Cairns' Press Conference."

the officer responsible for the documents no longer being employed by ASIO Whitlam would soon contradict him, as we will see. Cairns was also reported to have said:

It is not too much to say that the era of McCarthyism established in Sir Robert Menzies' time, which for so long disfigured Australian life, may have ended.⁸³²

He was in line with the government's belief that past transgressions arose from an abuse of power, not a systemic flaw. However, he was more ambitious in what the prospective inquiry would recommend: "[Th]e important thing [was] to have [ASIO] answerable to the people so it is answerable to Parliament".⁸³³

Whitlam recollected in his 1985 memoir, the *Whitlam Government, 1972-1975*, that "[w]idespread demand for an inquiry came to a head in June 1974" because of the Cairns document.⁸³⁴ He intimated that this was politically motivated as the Liberal Party member and editor of the *Bulletin*, Peter Coleman, had received the ASIO documents years earlier.⁸³⁵ It is important to note that Coleman, who was a NSW Leader of the Opposition for a brief period in the late 1970s, had been editor of the *Bulletin* from 1964 until 1967.⁸³⁶ At the time of the leak Coleman was editing a competitor magazine, *Quadrant*.⁸³⁷ Whitlam further recalled that he pre-empted the publication of further leaked documents by holding "a press conference on 2 July 1974", which gave "[e]verybody [the impression] that ASIO had acted in a wholly unwarranted fashion and outside its functions in supplying the media with material about individual citizens".⁸³⁸

⁸³² *Australian*, "Dr. Cairns' Press Conference."

⁸³³ *Australian*, "Cairns Says ASIO is Still Needed," 24 June 1974, 2.

⁸³⁴ Whitlam, *The Whitlam Government*, 171.

⁸³⁵ *Ibid.*, 171.

⁸³⁶ "Biography for Coleman, William Peter," Parliament of Australia, accessed 3 July 2016, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;page=0;query=William%20Peter%20Coleman;rec=0;resCount=Default>.

⁸³⁷ *Ibid.*

⁸³⁸ Whitlam, *The Whitlam Government*, 171.

He somewhat hyperbolically claimed that he “forthwith spragged the series” of leaked documents by releasing the titles and dates of those in the possession of the *Bulletin*.⁸³⁹

At the press conference Whitlam had waited until a journalist raised the ASIO issue toward its close and only went as far as to indicate that an inquiry announcement was imminent and that the terms of reference would be made public.⁸⁴⁰ When asked about the perceptions of “the security service or the Government” after the leak and whether the leak would “be... looked at by the Royal Commission”, he prevaricated by merely stating that the titles of the documents would be made available to “[a]nybody who wants to know” as they were not “confidential”.⁸⁴¹ He also explained that each was genuinely produced by the organisation and only contained information that

could have been got from any bookstore, and the dates, the facts, the quotations were available in newspapers and magazines which were freely available in Australia. There is nothing in these documents which ASIO has sought or received in the course of its statutory duties.⁸⁴²

Clearly, Whitlam did not wish to play the role of dogged ASIO defender. It was also revealed that the documents were compiled over a 10-year period and had been written by the same officer who was still employed by the organisation.⁸⁴³ Indeed, this employee was revealed to have been the same “senior officer” referred to by Murphy in December 1973 that had attempted to setup *Analysis* magazine with the assistant editor of the *Sun-Herald*, Robert Mayne, and Peter Coleman.⁸⁴⁴ Director-General Barbour – who had overseen the practise of compiling summaries of political events – “informed”

⁸³⁹ Whitlam, *The Whitlam Government*, 171; Gough Whitlam, “Prime Minister’s Press Conference, (speech, press conference, July 2, 1974).

⁸⁴⁰ Whitlam, “Prime Minister’s Press Conference,” July.

⁸⁴¹ *Ibid.*

⁸⁴² Whitlam, “Prime Minister’s Press Conference,” July; Russell Schneider, “ASIO reports revealed by Prime Minister,” *Australian*, 3 July 1974, 3.

⁸⁴³ Whitlam, “Prime Minister’s Press Conference,” July; Schneider, “ASIO reports revealed.”

⁸⁴⁴ Whitlam, “Prime Minister’s Press Conference,” July.

the government that his organisation ceased allowing these documents to go to journalists and that it had stopped compiling them sometime before the 1972 election.⁸⁴⁵ Whitlam, quoting Murphy about another leak, said that “[t]he supply of material about individual citizens to be used in the media... was wholly unwarranted and outside the functions of ASIO”.⁸⁴⁶ Whitlam also criticised ASIO for the “gross waste of public funds” its wild practises necessitated.⁸⁴⁷ The overall impression given by Whitlam and his ministers was that ASIO had misbehaved in the past but had now been brought into line through a combination of self-correction on Barbour’s part and responsible management by a Labor government. Even the ‘radical’ Cairns agreed.⁸⁴⁸ As an article in the *Australian* identified:

The concern within the Government is not so much based on the number of security organisations as the grey areas of their control and responsibility.⁸⁴⁹

ASIO as a concept was not the problem, as Whitlam affirmed in his 1985 memoir.⁸⁵⁰

An inquiry is born

Within two months of the leaked document scandal involving the Deputy Prime Minister the inquiry was established. At 2pm on 21 August 1974 Governor-General John Kerr, acting on the advice of the Federal Executive Council and under the *Royal Commissions Act of 1902* (Cth), commissioned “Mr. Justice Robert Marsden Hope to conduct an inquiry into the intelligence and security services of the Australian Government”.⁸⁵¹ A press release from the Prime Minister’s office followed which

⁸⁴⁵ Whitlam, “Prime Minister’s Press Conference,” July.

⁸⁴⁶ Ibid.

⁸⁴⁷ Schneider, “Order to Destroy.”

⁸⁴⁸ *Canberra Times*, “ASIO Report.”; *Australian*, “Dr. Cairns’ Press Conference.”

⁸⁴⁹ Schneider, “Spies in Our Midst.”

⁸⁵⁰ Whitlam, *The Whitlam Government*, 172.

⁸⁵¹ John Kerr, Executive Council order no. 59, 21 August 1974; *Royal Commission Act 1902* (Cth), s 1A (1912).

revealed that Hope's inquiry would look into ASIO's history as well as concerns as to civil liberties. It explained that

the appointment of a Judge with qualifications as eminent as those of Mr. Justice Hope guaranteed that the inquiry would be well conducted, comprehensive and responsible and at the same time would reassure those countries and organisation with which Australia has connections in the security field.⁸⁵²

In short, Labor was not vesting Hope with the power to undermine the United States and Commonwealth relationships. The "essential part of [Hope's] terms of reference" according to Whitlam was:

In the light of past experience, and having regard to the security of Australia as a nation, the rights and responsibilities of individual persons and future as well as present needs, to make recommendations on the intelligence and security services which the nation *should have available* to it and on the way in which the relevant organisations can most efficiently and effectively serve the interest of the Australian people and Government...⁸⁵³ [emphasis added].

This was not ill-tempered policy or radicalism. Nor was it unexpected, especially by an observant ASIO. The Whitlam Government wished to discover ways in which a de-politicised domestic intelligence agency should be structured and how that organisation should operate. ASIO would be reformed to conform with the interests of the people and the government, without compromising existing foreign relationships. On practical grounds, the Royal Commission would build on the reforms already undertaken by Murphy and made public in a departmental report of 9 May 1974 highlighting the directions he had given ASIO addressing matters of legality, procedural integrity and political impartiality.⁸⁵⁴ On the question of democracy, Labor had decided not to

⁸⁵² Gough Whitlam, "Royal Commission into the Intelligence and Security Services of the Australian Government," press release, August 21, 1974.

⁸⁵³ Whitlam, *The Whitlam Government*, 172; Whitlam, "Royal Commission."

⁸⁵⁴ Steketee, "Murphy Acts."

disband ASIO before the 1972 election and the terms of reference did not instruct Hope to consider such a possibility. This is contrary to the narrative of uncertainty and fear put by the *Official History*.

In part, the selection of Hope as commissioner by the Whitlam Government ensured the Royal Commission would not be radical. Hope was a former member of the Liberal Party and had a legal positivism when it came to legislation. As a member of the judiciary he instilled a sense of impartiality. A similar argument had been made of the appointment of Geoffrey Reed as ASIO's first director-general: "To hide behind the judiciary... is excellent".⁸⁵⁵ Hope had proved his mettle as head commissioner in the National Estate Committee of Inquiry, which provided the government with a "valuable report" on environmental conservation and heritage in April 1974.⁸⁵⁶ In July 1974, Hope was appointed a member of the Australian Council for the Arts.⁸⁵⁷ While he approached the intelligence and security apparatus as a novice, it helped the government that Hope was described in the press as a civil libertarian.⁸⁵⁸ His appointment was also bipartisan, as the Premier of NSW, Robert Askin granted permission for Hope to be "available to undertake this important inquiry".⁸⁵⁹

⁸⁵⁵ Horner, *The Spy Catchers*, 84.

⁸⁵⁶ Whitlam, *The Whitlam Government*, 171, 529, 548-549; Hope, interview with John Farquharson; Gough Whitlam, press release, 25 April 1974; Tom Uren, "More grants for National Estate projects," press release, April 30, 1974; Tom Uren, "Speech in the House of Representatives," press release, September 19, 1974.; Tom Uren, "Holiday message," press release, December 26, 1974; Gough Whitlam, "the National Estate report," press release, April 25, 1974.

⁸⁵⁷ Gough Whitlam, "New members of the Australian Council for the Arts and its boards," press release, Canberra, July 1, 1974.

⁸⁵⁸ Whitlam, "Royal Commission."; *National Times*, "An Imposing Task for Mr Justice Hope," 26 August 1974, 38.; Hocking, *Terror Laws*, 45.

⁸⁵⁹ Whitlam, "Royal Commission."

PART FOUR

VIII. Findings and recommendations

“The collection of security intelligence should begin with the slightest practicable intrusion into civil liberties... [But] its seriousness may justify greater intrusion.”

Justice Robert Hope, Royal Commission on Intelligence and Security, 1977.

Justice Robert Hope would hand down most of his reports after the 1975 constitutional crisis; the Whitlam Government had been dismissed from office by the governor-general in 1975 and dismissed by the electorate at the subsequent election.⁸⁶⁰ His *fourth report*, dealing with ASIO, was partially tabled in Parliament by the Fraser Government on 25 October 1977.⁸⁶¹ This chapter will discuss the findings and recommendations of the Royal Commission as well as touch on the reform process that it began. With respect to ASIO its primary recommendation would be for a new legislative basis for the organisation that clearly demarcated the extent of the ministerial oversight permitted and the degree of operational freedom it could exercise. The Royal Commission began a process of reform that consciously depoliticised ASIO, brought it into line with the established practises of the bureaucracy, and refocused it on tangible threats posed to the state. However, the selection of royal commissioner and the terms of reference prevented the Royal Commission from reaching radical conclusions, especially the disbandment of ASIO. The Royal Commission found that domestic intelligence gathering by the executive was a legitimate and necessary use of power within Australia’s parliamentary democracy.

⁸⁶⁰ Peter Edwards, “When Gough didn’t ‘crash through or crash’,” *Australian Strategic Policy Institute*, 7 November 2014, <https://www.aspistrategist.org.au/when-gough-didnt-crash-through-or-crash/>; Blaxland, *The Protest Years*, 456.

⁸⁶¹ Cth, Parliamentary Debates, House of Representatives, vol. 43, 25 October 1977, 2333; Embassy of the United States in Canberra, “PM’s statement on Hope Commission report,” 27 October 1977, *Wikileaks*.

The ASIO that Hope envisaged was a politically benign entity – with access to “quite large sums” – which would accumulate information in order to produce dispassionate reports and advice for consumption by the executive.⁸⁶² For this reason, Hope maintained the substantial trust placed in the office of director-general of security to self-regulate under the Act.⁸⁶³ He also found that ASIO to have “the confidence of all the major political parties”.⁸⁶⁴ At the outset of the *fourth report* he stated that the “essential part of my terms of reference” with respect to ASIO was the same section that Whitlam had identified as being the most important section (see above, p. 169), which went to the kind of intelligence service “the national should have available to it”.⁸⁶⁵ According to his interpretation of the terms of reference he was to focus on the intelligence and security apparatus of the future, not the past. For ASIO he envisaged a future in which it was accorded proper respect by the Australian people:

An organisation truly fulfilling [“the defence of the realm”]... is entitled to the confidence and respect of the nation. It is only in performing such a role that ASIO will be able to attain a standing comparable with that of the various defence services. My recommendations will be directed to this end.⁸⁶⁶

This imported a broader meaning than the terms of reference, which only directed the commissioner to consider how ASIO served the interests of the people and the commonwealth. More generally, Hope interpreted the terms of reference in a way that gave it both narrow and broad meaning. On one hand, his consideration of legitimacy was a broader interpretation of the terms of reference as the government had already directed the commissioner that an intelligence apparatus was needed. On the other hand,

⁸⁶² Hope, *Fourth Report [re ASIO]*, 119, 193-194; Cth, Parliamentary Debates, House of Representatives, vol. 43, 25 October 1977, 2336.

⁸⁶³ Hope, *Fourth Report [re ASIO]*, 117, 179.

⁸⁶⁴ *Ibid.*, 130.

⁸⁶⁵ *Ibid.*, 3.

⁸⁶⁶ *Ibid.*, 15.

Hope interpreted the terms of reference narrowly because he decided not to consider ASIO's past conduct.

The legitimacy of ASIO

Hope decided to "make an overall review of ASIO" that went from its existential legitimacy to its operations.⁸⁶⁷ Overall, Hope established that ASIO was legitimate because it satisfied legal, philosophical and practical considerations. Each will be discussed in turn despite a degree of overlap in his reasoning.

Legal legitimacy

Hope predominantly saw ASIO's legitimacy through the eyes of a legal positivist; the answer to the question of legitimacy lay in constitutional law. Hope found that between 1949 and 1956 ASIO had effectively operated on "a statement of principles of activity [rather] than a document of incorporation or of authority".⁸⁶⁸ From 1956, ASIO was clearly legitimate because it existed as a result of a valid Act of Parliament. Constitutionally, Hope argued that the Act was valid under section 51 (vi), the defence power, but that sections 51 (xix, xxvii, xxix, xxxix), 52 (i-ii), and 61, or a combination of these, would also suffice.⁸⁶⁹ For Hope, the law was the basis for the practice:

The first and fundamental principle is that ASIO must operate within the terms of its statute, and be concerned only with matters which are relevant to security... ASIO should not intrude upon the rights and freedoms or upon the privacy of persons except to the extent that the requirements of the nation's security, in the circumstances of the particular case, justify *and* the law allows...

[T]he manner in which, and the extent to which, ASIO takes its investigations

⁸⁶⁷ Hope, *Fourth Report [re ASIO]*, 3.

⁸⁶⁸ *Ibid.*, 2.

⁸⁶⁹ *Ibid.*, 12-14, 35.

should be directly related to the importance or seriousness of the security issue.⁸⁷⁰ (Original emphasis).

Since ASIO was permitted to exist by valid legislation other considerations – philosophical and practical – were in effect secondary. As such, definition of ‘security’ – pivotal to much of Hope’s discussion on ASIO’s correct function – is entirely determined by the Parliament and actioned by the executive, but subject to the High Court’s interpretation of the Constitution of Australia.⁸⁷¹

Philosophical legitimacy

Hope premised his discussion on the legitimacy of ASIO on the assumption that the Constitution and the institutions of government ensured that Australia was a liberal democracy. He began

by considering whether Australia needs a security service such as ASIO was created to provide. That leads to a consideration of what is, or should be, the proper place of a domestic security service in a liberal democracy like Australia.⁸⁷²

In order to address his stated consideration he adopted the following test:

“[I]n the final analysis, public safety and individual liberty sustain each other”... There are limitations upon what a security organization should do in a democratic society. Aims, even of security, do not justify all means. What has to be kept secure is not simply a physical entity; the society which exists within Australia is one with standards and principles which secure rights and freedoms as well as obligations... In time of actual or threatened danger, the exercise of some rights and freedoms may have to be restricted in order that the society on

⁸⁷⁰ Hope, *Fourth Report [re ASIO]*, 71-73.

⁸⁷¹ *Ibid.*, 137.

⁸⁷² *Ibid.*, 3.

which they depend be preserved at all... In time of peace, with no imminent danger, little if any restriction is justified... At all times the object must be to achieve a balance between the interests of the person and the interests of the State.⁸⁷³

These comments indicate a clear intention by Hope to preserve democracy and democratic rights, but also to preserve the state. It was by no means a comprehensive discussion; he did not establish why the state was the legitimate provider of security. However, he appears to have understood that national security involved political decisions.⁸⁷⁴ He believed that a “bipartisan approach to security matters” should arise organically as it “is literally concerned with security... with the survival of this country and, indeed, this globe”.⁸⁷⁵

Hope found that “ASIO [was] an organ of the executive government” that formed a legitimate part of the “official family of government” and the “defence system”; it could “no doubt... be used to defend the Commonwealth of Australia against an armed revolution or uprising”.⁸⁷⁶ Indeed, ASIO was “[a]n integral part of government”.⁸⁷⁷ ASIO defended parliamentary democracy from the “many ways in which a country can be weakened and the overthrow of its government planned and organized by clandestine activity of a wholly or substantially domestic origin”.⁸⁷⁸ However, Hope argued that this should not extend to non-violent “undermining” of the Commonwealth:

“Overthrowing the government” does not... refer to the ousting by constitutional methods of the political party in power for the time being but the overthrow by unconstitutional methods of the established constitutional government or system

⁸⁷³ Hope, *Fourth Report [re ASIO]*, 70, 75.

⁸⁷⁴ *Ibid.*, 161.

⁸⁷⁵ *Ibid.*, 219.

⁸⁷⁶ *Ibid.*, 4, 15, 119, 160.

⁸⁷⁷ *Ibid.*, 239.

⁸⁷⁸ *Ibid.*, 16.

of government... Intrusion by ASIO into these areas would *prime facie* infringe basic democratic rights... [T]he nature of our political climate, the importance of our political and civil rights and liberties, as well as the importance... for ASIO to keep a position of proper balance, lead me to the conclusion that to the extent that guidelines are necessary and can be satisfactorily formulated, they should be prescribed by legislation... [Although] an organisation rejecting Parliamentary democracy may not be subversive, but it may be appropriate for ASIO to keep a watch of it if... It is not sufficient to await the commission of a crime against the nation's security, and only then to take action to identify and take proceedings against the offenders.⁸⁷⁹

A citizen could advocate overthrowing the government (under ASIO's watchful eye) but not advocate an unconstitutional overthrow of the system of government.⁸⁸⁰ This distinction was important given ASIO's past confusion between protection of an institution and protection of its politics. Hope also found that a citizen could hold an ideological belief which permitted subversion, as he perceived a difference between "an intention" and "a mere contemplation".⁸⁸¹

With respect to the business community and unionism, Hope recommended that ASIO constrain its activities to vetting employees who would have "access to classified matter"; it was "not [to] function as an employment agency or to promote or to ensure industrial peace *per se*".⁸⁸² As with democratic rights more generally the right to protest or otherwise engage in industrial action must be balanced by security considerations and intelligence information.⁸⁸³ He also recommended that information should not be

⁸⁷⁹ Hope, *Fourth Report [re ASIO]*, 35-38, 40, 53.

⁸⁸⁰ *Ibid.*, 42, 48-49.

⁸⁸¹ *Ibid.*, 44-45

⁸⁸² *Ibid.*, 121.

⁸⁸³ *Ibid.*, 122, 126-127.

disseminated to a business, but to the relevant part of the executive dealing with that business.⁸⁸⁴

Practical legitimacy

In applying his “perceptive realism” Hope believed that Australia needed a domestic intelligence agency for practical reasons.⁸⁸⁵ Based on his own research he rejected the idea that

Australia is too remote and too unimportant to attract much attention from foreign intelligence services, that it is inconceivable that Australians should be traitors to their country...⁸⁸⁶ It may be equally important or more important for an unfriendly power clandestinely to influence or subvert the policies of another power, to feed in with false information... to weaken it or confuse its people... [S]light twists may be given to true facts; every device may be used to deceive and mislead... It is presumably a logical extension of war-time propaganda and it can be extremely effective in achieving its intended purpose...⁸⁸⁷

This was a low threshold for what constituted propaganda. He also considered important that “most significant foreign powers have intelligence services that operate outside their territories”.⁸⁸⁸ This was deemed particularly important because in the mid-1970s the number of foreign intelligence officers was “much larger than in the 1940s and 1950s”.⁸⁸⁹ As evidence of Australia’s susceptibility, he pointed to the publication of leaked information:

Perhaps the not inconsiderable amount of classified material leaked to the press in recent times throws some light on the Commonwealth’s need for protection.

⁸⁸⁴ Hope, *Fourth Report [re ASIO]*, 121.

⁸⁸⁵ Cth, Parliamentary Debates, House of Representatives, vol. 43, 25 October 1977, 2340.

⁸⁸⁶ Hope, *Fourth Report [re ASIO]*, 20.

⁸⁸⁷ *Ibid.*, 28, 32,

⁸⁸⁸ *Ibid.*, 23.

⁸⁸⁹ *Ibid.*, 24.

If journalists can obtain this amount of material... [so can a] highly professional and technically equipped team of intelligence officers, applying themselves full time to the task...⁸⁹⁰

As for the specific need of a domestic intelligence agency, Hope stated

if all subversion were domestic subversion, there might be some weight in the submission that responsibility... could be better placed with the various police forces... [T]he reasons that support the creation of any separate security organization... include the desirability that such an organisation should be concerned with intelligence and should have no or minimal executive powers, and... [be] a highly specialized and professional body.⁸⁹¹

It must also utilise its “entitle[ment] to consider and assess any information which it receives or obtains which is relevant to its function”, quite unlike an adversarial court.⁸⁹²

Hope recommended that ASIO’s “principal function” should be to protect the Commonwealth against espionage, active measures (general covert attempts to influence foreign policy), subversion, and sabotage, as well as politically motivated terrorism and violent political activity more generally.⁸⁹³ The latter two threats were included even though “they may not always involve an ‘attack’ on Australia”.⁸⁹⁴ Hope recommended a narrow definition focused on acts of political violence perpetrated in Australia for “foreign political purposes”, especially given the “prejudicial effects” such activity could render to “Australia’s [foreign] relations”.⁸⁹⁵

⁸⁹⁰ Hope, *Fourth Report [re ASIO]*, 23-24, 27.

⁸⁹¹ *Ibid.*, 54-55, 214.

⁸⁹² *Ibid.*, 75-76, 78, 137-138.

⁸⁹³ *Ibid.*, 16-18, 33, 59.

⁸⁹⁴ *Ibid.*, 18.

⁸⁹⁵ *Ibid.*, 60-65. Cf.

<https://www.ag.gov.au/nationalsecurity/counterterrorismlaw/pages/australiascounterterrorismlaws.aspx>

As with the creation of ASIO in 1949, the reform process that began in 1974 had recourse to the internal affairs of the United States and United Kingdom; the other “liberal democracies”. To justify this practise of consulting “senior security intelligence officials overseas”, he argued:

They gave me the benefit of their knowledge and experience in the context of much larger security services than ASIO... I am indebted to these officials for their assistance. Their advice has often supported me in conclusions I have otherwise reached in regard to ASIO.⁸⁹⁶

Hope’s report cites a number of foreign officials, including United States Vice-President Nelson Rockefeller and Attorney-General Edward Levi, as well as the United Kingdom’s Lord Denning, amongst others.⁸⁹⁷ This recourse to foreign allies indicates that Hope saw Australian liberal democracy as being cast from the same mould as that of the United States and United Kingdom. In this way, Hope was acting not dissimilarly to previous Australian governments, including the Whitlam Government. However,

Some of the activities allegedly performed by the CIA against governments, parties, organizations and persons thought to be inimical to the interests of the US are examples of this type of action. It can be assumed that the actions of the KGB and of the intelligence services of other communist countries at least equal and probably exceed in all respects the activities attributed to the CIA.⁸⁹⁸

As we have already seen, the *Cambridge History of the Cold War* contradicts Hope’s assumption about the United States.

⁸⁹⁶ Hope, *Fourth Report [re ASIO]*, 7-8.

⁸⁹⁷ *Ibid.*, 14-15, 40, 119.

⁸⁹⁸ Hope, *Fourth Report [re ASIO]*, 33.

ASIO's past conduct

Hope narrowed the terms of reference with respect to ASIO's past conduct, firmly focusing on the future:

I found ASIO's files in such disorder that, in the time that has been available to me, I have been quite unable to establish the truth or otherwise of many of the particulars of matter alleged in evidence, or raised with ASIO as the result of other inquiries. I have taken the view, however, that my task is to make recommendations for the future rather than to seek to track down the truth or otherwise of past errors or alleged past errors.⁸⁹⁹

Hope could have requested more resources in order to satisfy the terms of reference, but it was clear that he did not believe this was necessary. The allowed Fraser to subsequently inform Parliament, “[f]or the first time... people can read carefully assessments of an independent judicial authority who has had full access to all the information and the time and resources to thoroughly analyse them”.⁹⁰⁰ He also informed the state premiers that it had been an “exhaustive inquiry”.⁹⁰¹ As a senior member of the judiciary Hope would have understood the importance of establishing fact in order to apportion blame and provide justice. In the executive arm, royal commissions are often erected in order to establish fact and make recommendations as to reform; the clear intention of the Whitlam Government. This failure is compounded by the existence of the seventh report of the Royal Commission, which dealt with the history of pre-ASIO organisations.

⁸⁹⁹ Hope, *Fourth Report [re ASIO]*, 7; McKnight, “Partisan Improprieties,” 710; Hocking, *Terror Laws*, 47.

⁹⁰⁰ Cth, Parliamentary Debates, House of Representatives, vol. 43, 25 October 1977, 2334.

⁹⁰¹ Letter from Malcolm Fraser to Don Dunstan, 25 January 1978,

http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/HPR10026650/upload_binary/HPR10026650.pdf;fileType=application%2Fpdf#search=%22royal%20commission%20on%20intelligence%20and%20security%201970s%201978%22

Despite the lack of attention paid to ASIO's past conduct, Hope indicated that he had seen evidence of impropriety. For example, he stated that "at times" the organisation had "depart[ed]" from the democratic principles that necessitated balance between freedom and restriction of rights.⁹⁰² However, he noted, "it is somewhat difficult now to determine the precise weight of particular matters of justification, for it is not possible to place one's self in the precise context in which the departure occurred".⁹⁰³ As for ASIO's records of citizens, he found that ASIO was entitled to keep records on anyone and that they were not "akin to... a police or criminal record".⁹⁰⁴ In fact, he found that "[a] very large number of ASIO's files established that persons [were] not security risks".⁹⁰⁵ Although Hope found that ASIO's judgement had been impaired by the poor maintenance of its records he also found that information had routinely not been "disseminat[ed]... on the basis of need rather than mere curiosity" or even not at all.⁹⁰⁶ Any information collected by the organisation must only be "disseminat[ed]... on the basis of need rather than mere curiosity".⁹⁰⁷ Hope found ASIO's selection of employees was inhibiting its function:

I must report that I saw little evidence in ASIO that the qualities of mind and expertise needed were recognized, or available in any large measure.⁹⁰⁸

This deficiency hindered the organisation's primary function. Part of this problem was one of deficient education. For example, Hope started that

ASIO should be the place where the study of Marxism, in all its forms and manifestations [sic], is a high academic discipline.⁹⁰⁹

⁹⁰² Hope, *Fourth Report [re ASIO]*, 70.

⁹⁰³ *Ibid.*, 71.

⁹⁰⁴ *Ibid.*, 105.

⁹⁰⁵ *Ibid.*, 105.

⁹⁰⁶ *Ibid.*, 102-103, 108, 118, 191.

⁹⁰⁷ *Ibid.*, 105.

⁹⁰⁸ *Ibid.*, 111.

⁹⁰⁹ *Ibid.*, 112.

ASIO also had a “tendency to think of anyone they chose to call ‘left-wing’ as subversive” and employ people inept for intelligence work.⁹¹⁰ Hope found that ASIO had engaged in the dissemination of information to the public and that such “propaganda activity” was outside of the proper functions of organisation.⁹¹¹ For this reason, the Special Projects Section of ASIO – responsible for disseminating counter-propaganda – was “improper in the extreme”.⁹¹² Hope seems to have implied that ASIO had not always complied with the requirement that it act “absolutely free from any political bias or influence”.⁹¹³ Hope found that “it is most important that ASIO should not be, and should not appear to be, a political tool” and “should not [develop]... close relationships” with politically active groups.⁹¹⁴

Oversight

Hope centred the oversight of ASIO firmly with the executive. His primary reason for this was the “necessity of secrecy in ASIO’s operations”, which displaced the “normal checks and balances” of a parliamentary democracy.⁹¹⁵ Another reason was that the executive was the institution with “responsibility... [for] acting on any information or advice [from] ASIO”.⁹¹⁶ He recommended that Australia follow Canada – instead of Sweden and the Netherlands – by not extending express parliamentary oversight over domestic intelligence.⁹¹⁷ ASIO was “in a general way” responsible “to Parliament” through the attorney-general and prime minister, but they can elect “not to comment”.⁹¹⁸ It would also be responsible through a secret report to government which would also be

⁹¹⁰ Hope, *Fourth Report [re ASIO]*, 131, 148.

⁹¹¹ *Ibid.*, 128-129

⁹¹² *Ibid.*, 131.

⁹¹³ *Ibid.*, 223.

⁹¹⁴ *Ibid.*, 100-102, 161.

⁹¹⁵ *Ibid.*, 161.

⁹¹⁶ *Ibid.*, 162.

⁹¹⁷ *Ibid.*, 217.

⁹¹⁸ *Ibid.*, 166, 173, 177, 219.

seen by the leader of the opposition.⁹¹⁹ Hope also recommended against the practice of requiring “an annual report [by ASIO] to Parliament”, doubting its “real value”.⁹²⁰ Despite this lack of parliamentary oversight ASIO had a “duty to investigate” suspect members of Parliament.⁹²¹

The minister responsible for ASIO was clearly the attorney-general; an practice accepted since the 1956 legislation.⁹²² According to Hope the minister had “a wide supervisory power and responsibility” over ASIO.⁹²³ He found that the *Act of 1956* had precluded ministerial directions pertaining to ASIO’s operational matters, which the director-general decided.⁹²⁴ Commenting on the Murphy raids, Hope found that the minister was “entitled to enter and to inspect any premises of ASIO, and to take with him such persons as he might think necessary”.⁹²⁵ However, the consent of the director-general was essential as they had a “right and indeed a duty... to resist” any attempts at interference.⁹²⁶ But at the time of the raids it was universally accepted that ASIO was subject to complete “ministerial direction and control”.⁹²⁷ More generally, Hope recommended that ASIO should be directed by the Prime Minister on “general policy directions and guidance”, as had occurred between Menzies and Spry.⁹²⁸

While it was legal under the *Act* for ASIO to disseminate relevant security information to the attorney-general, it was “improper” for the minister to request information from the organisation for the purpose of handing it on to backbench MPs.⁹²⁹ ASIO’s

⁹¹⁹ Hope, *Fourth Report [re ASIO]*, 220.

⁹²⁰ *Ibid.*, 220.

⁹²¹ *Ibid.*, 221.

⁹²² *Ibid.*, 165.

⁹²³ *Ibid.*, 218.

⁹²⁴ *Ibid.*, 170.

⁹²⁵ *Ibid.*, 177.

⁹²⁶ *Ibid.*, 178.

⁹²⁷ *Ibid.*, 178.

⁹²⁸ *Ibid.*, 182, 218.

⁹²⁹ *Ibid.*, 116.

operational matters should not be available to “outsider[s]”, nor any “government departments, specifically including the Attorney-General’s Department... in any sustained or regular way”.⁹³⁰ That is, the government should receive ASIO’s analysis of raw information without receiving the raw information itself or knowing how it was obtained, unless legislation otherwise permitted, as with telecommunications interceptions.⁹³¹ With respect to terrorism, this rule was important, as only a specialised domestic intelligence agency was appropriate to handle the exchange of information within a global network of intelligence agencies.⁹³² Importantly, Hope recommended that ASIO only give information to the attorney-general if it is “in the interests of security”.⁹³³

Hope found that ASIO’s operational capacity was also compromised by mismanagement borne from a lack of “attention” being given by management to a “definition of goals, financial affairs, staffing and recruitment, communication and records procedures”.⁹³⁴ As such he consulted bureaucrats and former cabinet ministers, as well as “some hundreds of past and present ASIO members”.⁹³⁵ Initially, he was met with reluctance on the part of senior ASIO officers, however directors-general after Barbour had ensured the organisation approached the Royal Commission in good faith.⁹³⁶ Operational reviews of ASIO are now carried out regularly; the latest such review was in 2017.⁹³⁷ Hope’s desire to see an avenue of administrative appeal – envisaged by the Whitlam Government – was accepted by the Fraser Government.⁹³⁸

⁹³⁰ Hope, *Fourth Report [re ASIO]*, 8.

⁹³¹ *Ibid.*, 8, 175.

⁹³² *Ibid.*, 59-60.

⁹³³ *Ibid.*, 129.

⁹³⁴ *Ibid.*, 5.

⁹³⁵ *Ibid.*, 5-6.

⁹³⁶ *Ibid.*, 6.

⁹³⁷ Gabrielle Chan, “Dutton’s new home affairs ministry backed by senior civil servant,” *Guardian*, 19 July 2017, <https://www.theguardian.com/australia-news/2017/jul/19/duttons-new-home-affairs-ministry-backed-by-senior-civil-servant>.

⁹³⁸ Cth, Parliamentary Debates, House of Representatives, vol. 43, 25 October 1977, 2337-2338.

Top-secret suspicions

The Royal Commission also made a *Supplement to the fourth report* which disclosed various concerns of the “highest sensitivity”. One of Hope’s suspicions was that ASIO “may be, or may have been, penetrated by a hostile intelligence service”.⁹³⁹ Although the veracity of this claim was not tested by Hope, he identified a number of “indicators”.⁹⁴⁰ These included various ASIO officers, “sudden and inexplicable conclusions” to certain counter-intelligence programmes, the highly unusual absence of an internal review procedure, the general inefficacy on counter-intelligence, public leaks, and possible collusion between ASIO and Commonwealth Police with respect to the Murphy raid.⁹⁴¹ Warren Reed and Christopher J. Ward argue that Hope wanted to investigate allegations made by United States and United Kingdom counterpart agencies that ASIO had been comprised by Soviet intelligence from its inception in 1949.⁹⁴² Given the redacted words of this report it is hard to establish this claim. Hope alluded to the belief within the United States and allied intelligence community that “the climate of disclosures over the last 2-3 years, about western intelligence services may be part of a ‘grand design’”.⁹⁴³ Given the timing, it is possible the conspiracy was based on the FBI’s Cointelpro activities, referred to earlier.

The Hope Interviews

In 1998 the National Library of Australia’s Oral History Project conducted interviews with Hope. The subject approached the interview quite candidly, as evidenced by Hope’s admission that he had twice allowed himself to be pressured by President Athol

⁹³⁹ Robert Hope, *Supplement to the fourth report*, NAA: A8908, 4D, 4.

⁹⁴⁰ *Ibid.*, 4.

⁹⁴¹ *Ibid.*, 6-7.

⁹⁴² Warren Reed and Christopher J. Ward, “Australian Intelligence: Confronting the past for a safer future,” *National Observer* 77 (2008), 33.

⁹⁴³ Hope, *Supplement to the fourth report*, 18.

Moffitt of the NSW Court of Appeal into making judgements he would have otherwise not made.⁹⁴⁴ This wide-ranging conversation reveals additional detail which frequently contradicted the Royal Commission. Contrary to the *fourth report*, the Royal Commission undertook considerable efforts to consider the history of ASIO.⁹⁴⁵ For example, Hope said that the Royal Commission did “everything... to find out” whether the Soviet infiltration of ASIO was true. He also discovered that ASIO and the intelligence apparatus had been dominated by an “old boys” network where social class dictated your reliability.⁹⁴⁶ The organisation was also politically biased; it was “well and truly in Cold War mode... anybody who was slightly pink” was watched, “the whole system was substantially directed to the left wing of politics”.⁹⁴⁷ In fact, “anything slightly unorthodox” and “any kind of activism” was considered subversive by ASIO.⁹⁴⁸ The organisation’s network was broad, drawing on a large number of “well-known and respected” people who willingly informed on colleagues.⁹⁴⁹ On one occasion, ASIO had handed over personal information to the government to aid its blackmail of an moratorium leader.⁹⁵⁰ With respect to his overseas fact-finding missions, he had seen that the abuse of domestic intelligence agencies by incumbents was widespread practice among the Western states.⁹⁵¹ What he learnt of the FBI was “a bit upsetting”.⁹⁵² He was also concerned about the director-general of MI5, Michael Hanley, who had told him that he constrained criticism from the United Kingdom government by offering information on unruly backbenchers.⁹⁵³ Hope believed the Royal Commission was limited by a widespread reluctance within the Australian and Western intelligence

⁹⁴⁴ Hope, interview with John Farquharson.

⁹⁴⁵ Ibid.

⁹⁴⁶ Ibid.

⁹⁴⁷ Ibid.

⁹⁴⁸ Ibid.

⁹⁴⁹ Ibid.

⁹⁵⁰ Ibid.

⁹⁵¹ Ibid.

⁹⁵² Ibid.

⁹⁵³ Ibid.

community to provide him with complete information.⁹⁵⁴ ASIO's archives and records system were found to have been deliberately designed to shield the organisation from external (and internal) scrutiny. This version of Hope's report was more inline with the one recollected by Malcolm Fraser decades later.⁹⁵⁵

Overall, Hope said that that part of the problem with reforming ASIO was that a "tremendous number of... [employees] by the 1970s had been there since the 1950s", meaning established norms took along time to shift even after the Royal Commission.⁹⁵⁶ But the bipartisanship on ASIO that emerged was not surprising, as he found no Labor or Coalition politician opposed to ASIO and "all where in favour" of its continued existence⁹⁵⁷ Governor-General Kerr was deliberately excluded from briefings on Australia's intelligence facilities because he "talks too much".⁹⁵⁸ Hope attempted to rectify this but Kerr was not interested.⁹⁵⁹ Hope also said that believed Murphy had been instrumental in having him selected as commissioner and that Whitlam had opposed it out of possible contempt for Murphy.⁹⁶⁰ The *Official History* claims that "one of [Hope's] first steps" as commissioner was to "to see if ASIO held a file on him".⁹⁶¹ This is consistent with Murphy's own attempts to locate his own file.⁹⁶² But Hope explained in 1998 that he did not request his file out a sense of propriety and that Murphy had voluntarily requested it from ASIO, causing him to joke that Murphy had "disappointed" him when he learned that no such file existed.⁹⁶³

⁹⁵⁴ Hope, interview with John Farquharson.

⁹⁵⁵ Malcolm Fraser & Margaret Simons, *Malcolm Fraser: The political memoirs* (Melbourne: Miegunyah Press, 2010), 91.

⁹⁵⁶ Hope, interview with John Farquharson.

⁹⁵⁷ Ibid.

⁹⁵⁸ Ibid.

⁹⁵⁹ Ibid.

⁹⁶⁰ Ibid.

⁹⁶¹ Blaxland, *The Protest Years*, 376.

⁹⁶² McKnight, *Australia's Spies and their Secrets*, 277.

⁹⁶³ Hope, interview with John Farquharson.

As for Hope personally, he saw himself as a black letter jurist with respect to legislation.⁹⁶⁴ He revealed that he had attempted to join the Communist Party in the late 1930s but had failed for reasons of administrative incompetence.⁹⁶⁵ In the 1960s he joined the Liberal Party as part of a deal that ensured his elevation to the role of President of the NSW Council of Civil Liberties.⁹⁶⁶ But within weeks, the Liberal government had elevated him to the bench of the NSW Supreme Court; Hope implied this was political as well.⁹⁶⁷ Hope said he had “a great row” with the Council of Civil Liberties during the Royal Commission, as they believed the minister should determine what constituted a security matter.⁹⁶⁸ Years later he agreed with the council’s position.⁹⁶⁹ Similarly, Hope later believed that Parliament was right to establish the Joint Committee on ASIO in 1988.⁹⁷⁰ These concessions went a considerable way to undermining the Royal Commission’s findings and recommendations, raising the possibility that the *fourth report* was more political than it seemed.

⁹⁶⁴ Hope, interview with John Farquharson.

⁹⁶⁵ Ibid.

⁹⁶⁶ Ibid.

⁹⁶⁷ Ibid.

⁹⁶⁸ Ibid.

⁹⁶⁹ Ibid.

⁹⁷⁰ Ibid.

Conclusion

The Royal Commission on Intelligence and Security was established by the Whitlam Government in order to depoliticise ASIO and refocus the intelligence and security apparatus on genuine threats to the commonwealth. Although it took time to develop it was clear by September 1973 that the government would launch a judicial inquiry. However, Labor did not pose a threat to ASIO from at least the 1971 party conference, at which it was decided that the organisation would be reformed and not abolished. Much of the reform of ASIO had already been undertaken by the Whitlam Government by the time Hope finished handing down reports in October 1977.

Labor's position on ASIO from 1971 solidified when the Whitlam Government came to office. However, Labor's acceptance of ASIO as essential should not have been or continue to be surprising. Labor's long history of mostly passive support of the criminalisation of communism, its pursuit of communists in its membership as well as the labour movement, indicates something fundamental in its ideology. Namely, Labor was not a radical party but one that accepted the political and economic *status quo*. However, the idea of Labor as a once great socialist party proliferates through the decades, in part because of poor understanding about ideology, the narrow confines of the Australian political landscape, the rhetoric of Whitlam after the dismissal, and the change in Australia's economic fortunes in the early 1970s, with Australia's position as the *Financial Times*' "healthiest economy on earth" being rapidly undone.⁹⁷¹

Labor's history with ASIO might have produced a different result; a party determined to seek its revenge on an organisation that had meddled in politics and, so many thought,

⁹⁷¹ Bolton, *The Middle Way*, 177-178, 217-218.

possibly worse. The Menzies Government and succeeding Coalition governments misused ASIO and by the late 1960s and early 1970s had rendered the organisation a kind of political research unit. By the time the Whitlam Government took office in 1972 the organisation was ineffectual on national security. In the 1950s ASIO had shared anti-communism with the Menzies Government. Both saw communism as a threat to the security of the commonwealth and the economic *status quo*. The difference may be that the Menzies Government was not genuinely concerned to the extent that it stated but identified a political opportunity. Indeed, the Truman Administration was aware of this same advantage, as was Labor who tried to outcompete the Coalition in 1954. Conversely, the anti-communist fervour of ASIO and its director-general, Charles Spry, is hard to doubt. There is the distinct possibility that Menzies read this situation and exploited it for political gains, as he was a politician and a remarkably successful one at that.

The mutual benefit that arose from this shared anti-communism was clear. Under a Menzies Government ASIO would be permitted to carry out its anti-communist agenda without fear of many limitations being placed upon it. This agenda obviously had special meaning to the organisation based in its genuine desire to protect the *status quo*. Meanwhile, the government could continue to increase its chances of political success. Crucially, neither agency nor government acted to mitigate the benefit they derived so as to return both parties to a position of little or no benefit. To argue otherwise is to accept that political parties can use the instruments of the state to entrench their positions in office; much like gerrymandering. With regard to the Petrov affair and the 1954 election, the conduct of ASIO and the Menzies Government indicates that there was a desire to benefit from the circumstances but also a conscious recognition of the risk involved in being seen to capitalise on them. Had Spry and Menzies orchestrated

the Petrov defection – an unjustifiable argument – it would have made more sense to allow enough time for a royal commission to destroy Labor’s credibility or that of a first-term Labor government. By the mid-1960s the relationship of convenience between ASIO and the Coalition had become established practise. ASIO’s anti-communism had become much wider in scope to include radicals in general. Naturally, the Coalition in office would aid this expanded mission. It was also evident that ASIO feared what a Labor government might render to it.

Despite its flaws, the Royal Commission seems to have improved ASIO by refocusing it on actual threats to the commonwealth, not political parties. Hope’s key recommendations went to the issue of clarity. He believed that the minister and director-general needed to have certainty as to the correct processes. Most importantly of all, the process must allow the director-general to determine what constituted a security matter. This did not fully eventuate. As we have seen, Hope was well aware of the deficiencies of ASIO, especially its partisanship. Hope also changed his mind later believing that the Parliament was right to begin overseeing ASIO in the 1980s. But by not considering history and avoiding serious philosophical debate within the Royal Commission itself, serious questions remain on the legitimacy of domestic intelligence gathering. In the end, it was politics that bent to the will of the system because it was the emergence of bipartisanship that meant the conflicts of the 1950s and 1960s would not arise in later decades.

This thesis touches on many underlying debates. Although these have not been discussed at any great length – since there is much work on this subject – it is worth reflecting, briefly, on where the thesis falls in them. Firstly, there is obviously a fine line between domestic intelligence gathering that prepares government for various

eventualities that may result in harm being rendered to citizens and governmental interference in the democratic exchange. What the history of RCIS shows is that governments are far more likely to see the line fall well inside the territory of the latter. Conceivably, a non-violent democratic movement could use the entrenched processes to bring about revolution of the kind that would displace the interests of those who benefit from the *status quo*. It is understandable that a compulsion toward self-preservation within the existing system, like the reactionary ASIO of old, could re-emerge.

Secondly, this thesis demonstrates that the Whitlam Government brought about the salvation of ASIO and domestic intelligence gathering in Australia. Had Labor come to power with an clandestine intention to rid Australia of such activities, it could have done so. This goes to the history of the government in general and raises the question, was it the radical, idealistic government of collective imagination? There is also a broader question about the extent of democracy in Australia given the history of suppression of radical opinion, regardless of the valuable these opinions have. It is perhaps instructive that despite leading an armed fascist movement, Blamey became Australia's only Field Marshall and Morshead became President of the Bank of New South Wales (now Westpac).

Thirdly, Intelligence and security have become second nature to Australians and anyone else in the US 'hub and spokes' system. To argue for the abolition of ASIO in the present time is unpalatable; for good reason. The neoliberal phenomenon of globalisation means that targets of terrorism are, as Nixon feared, ubiquitous. Any citizen or corporation or NGO located overseas can be seen as an extension of a targeted

government; all it takes is a careless comment by a public official.⁹⁷² It is often overlooked that governments have a clear role in provoking terrorism, including within in society, though many may wish to believe this threat comes purely from the mental illness, barbarity and jealousy of others. In 2010, the former director general of MI5, Eliza Manningham-Buller, told the Chilcot Inquiry that she had warned the Blair Government (1997-2007) that involvement in the Iraq War would result in higher levels of home-grown terrorism.⁹⁷³ She was of course vindicated. It must be said that ASIO has done well so far to keep the Australian Government and citizenry from the kind of harm exhibited overseas.

⁹⁷² e.g. James Orbinski, *An Imperfect Offering: Dispatches from the medical frontline* (Melbourne: Text Publishing, 2008), 384.

⁹⁷³ Eliza Manningham-Buller, British Inquiry into Iraq War (Chilcot Inquiry), *C-Span*, 20 July 2010, <https://www.c-span.org/video/?294915-1/iraq-inquiry-commission-baroness-eliza-manninghambuller-testimony>.; Andy McSmith, "Former MI5 chief demolishes Blair's defence of the Iraq war," *Independent*, 20 July 2010, <http://www.independent.co.uk/news/uk/politics/former-mi5-chief-demolishes-blairs-defence-of-the-iraq-war-2031289.html>

Bibliography

Primary sources

Archival sources

Australian Broadcasting Corporation
Australian Parliamentary Debates
Dag Hammarskjöld Library (UN)
Office of the Historian, Department of State (US)
National Archives of Australia
National Archives and Records Administration (US)
National Library of Australia
The American Presidency Project (US)
The National Archives (UK)

Journalistic sources

The Age
The Australia
The Australian Financial Review
The Bulletin
The Canberra Times
The Guardian
The Herald Sun
The Monthly
The National Review
The National Times
The New York Times (US)
The Sun-Herald
The Sydney Morning Herald
The Times (UK)
Wikileaks

Legislation and case law

Adelaide Company of Jehovah's Witnesses Inc. v Commonwealth (1943) 67 CLR 116
Australian Communist Party v Commonwealth (1951) 83 CLR 1
Australian Security Intelligence Organisation Act 1956 (Cth)
Commonwealth of Australia Constitution Act 1900 (Imp)
Crimes Act 1926 (Cth)
Crimes Act 1932 (Cth)
R v Hush; ex parte Devanny (1932) 48 CLR 487
Regulations Under the National Security Act 1939 (Cth), Stat. Rules 1940, no. 109
Royal Commissions Act 1902 (Cth)
Unlawful Associations Act 1916 (Cth)

Official documents

- AusTender, Preparation of History of ASIO (1949-1978) Manuscript/s, 60103807 (ASIO 091/08), 28 May 2008, <https://www.tenders.gov.au/?event=public.advert.showClosed&AdvertUUID=23F87DC9-DBE1-02A3-C2A47823432D361D>.
- Brandis, George. "Launch of The Spy Catchers: the Official History of ASIO 1949-1963." Speech, book launch, Canberra, October 7, 2014. <http://www.attorneygeneral.gov.au/Speeches/Pages/2014/FourthQuarter2014/7October2014-LaunchOfTheSpyCatchersTheOfficialHistoryOfASIO1949-1963.aspx>
- Department of States (US), "Telegram 164170 From the Department of State to Embassy in Israel," in *Documents on Global Issues*, vol. E-1 of *Foreign Relations of the United States*, 8 September 1972, <https://history.state.gov/historicaldocuments/frus1969-76ve01/d98>.
- Hope, Robert. *Fourth Report [re ASIO]*, vol. 4. of *Royal Commission on Intelligence and Security* (1976-1977). NAA: A8908 4A, Canberra.
- Kissinger, Henry A. "Terrorist attacks on US companies", in *Documents on Global Issues*, vol. E-1 of *Foreign Relations of the United States*, 29 September 1972, <https://2001-2009.state.gov/r/pa/ho/frus/nixon/e1/45551.htm>.
- Murphy, Lionel. "Visits to A.S.I.O. Headquarters in Canberra and to the National Headquarters in Melbourne." Press release, March 16, 1973.
- Murphy, Lionel. "Meeting with Director-General of the Australian Security Intelligence Organisation." Press release, March 25, 1973.
- National Security Council, *United States Objectives and Programs for National Security*. Report 68. Washington: NSC, 1950.
- National Security Council, *United States Objectives and Programs for National Security*, report 68. Washington: NSC, 1950.
- Nixon, Richard. *Memorandum establishing a Cabinet Committee to Combat Terrorism*, eds. Gerhard Peters and John T. Woolley, The American History Project, 25 September 1972, <http://www.presidency.ucsb.edu/ws/?pid=3596>. <http://www.presidency.ucsb.edu/ws/?pid=3596>.
- Nixon, Richard. *Statement about action to combat terrorism*, eds. Gerhard Peters and John T. Woolley, The American History Project, 27 September 1972, <http://www.presidency.ucsb.edu/ws/?pid=3602>.
- O'Sullivan, Paul. "Director-General's Speech for the Release of Records of the Hope Royal Commission on Intelligence and Security." Speech, public address, Canberra, May 27, 2008. <http://www.ASIO.gov.au/Publications/Speeches-and-Statements/Archive/2008/DG-speech-for-Royal-Commission.html>.
- Uren, Tom. "Holiday message," (press release, Sydney, December 26, 1974).

- Uren, Tom. "More grants for National Estate projects." Press release, April 30, 1974.
- Uren, Tom. "Speech in the House of Representatives." Press release, September 19, 1974.
- Whitlam, Gough. "Cabinet announcements." Speech, press conference, August 28, 1973.
- Whitlam, Gough. "Election Speech." Speech, election policy, Sydney, April 29, 1974. <http://electionspeeches.moadoph.gov.au/speeches/1974-gough-whitlam>.
- Whitlam, Gough. "It's Time for Leadership." Speech, election policy, Sydney, November 13, 1972. http://whitlamdismissal.com/downloads/72-11-13_whitlam-policy-speech_moad.pdf.
- Whitlam, Gough. "New members of the Australian Council for the Arts and its boards." Press release, July 1, 1974.
- Whitlam, Gough. "Prime Minister's Press Conference." Speech, press conference, July 2, 1974. <http://pmtranscripts.dpmc.gov.au/sites/default/files/original/00003315.pdf>.
- Whitlam, Gough. "Prime Minister's Press Conference." Speech, press conference, October 22, 1974. http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/HPR10030851/upload_binary/HPR10030851.pdf;fileType=application%2Fpdf#search=%22justice%20hope%201970s%201974%201970s%2010%22.
- Whitlam, Gough. "Royal Commission into the Intelligence and Security Services of the Australian Government." Press release, Canberra, August 21, 1974. http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/HPR10030782/upload_binary/HPR10030782.pdf;fileType=application/pdf#search=%22security%20intelligence%201970s%201974%22.
- Whitlam, Gough. "The National Estate report." Press release, April 25, 1974.

Memoirs and opinion

- Cameron, Clyde R. *Open government: to what degree?* Melbourne: Victorian Fabian Society, 1972.
- Gavin, Steve. Interview with Barry York, *Interview with Steve Gavin*, Museum of Australian Democracy at Old Parliament House, July 12, 2012, Oral Histories. <https://oralhistories.moadoph.gov.au/steve-gavin>
- Hayden, Bill. *An Autobiography*. Sydney: Angus & Robertson, 1996.
- Fraser, Malcolm and Simons, Margaret. *Malcolm Fraser: The political memoirs*. Melbourne: Miegunyah Press, 2010.
- Freudenberg, Graham. *A Certain Grandeur*. Melbourne: Viking, 2009.

- Hope, Robert. Interview with John Farquharson. *Robert Marsden Hope Interviewed by John Farquharson*. National Library of Australia. February 10, July 10, 1998, Oral History Project. <http://www.nla.gov.au/amad/nla.oh-vn1791129?searchTerm=robert+hope>.
- Spigelman, James. *Secrecy: political censorship in Australia*. Angus & Robertson: Sydney, 1972.
- Ward, Alan. "The Second Vietnam Moratorium: Reflections of a Melbourne Participant," *Meanjin Quarterly* 29(4) (1970): 501-502.
- Whitlam, Gough and Frost, David. *Whitlam and Frost*. London: Sundial Publications, 1974.
- Whitlam, Gough. *The Whitlam Government: 1972-1975*. Penguin: Melbourne, 1985.

Secondary sources

Books and journal articles

- Alston, Richard. "National Security Controls on Information and Communication in Australia." *Government Information Quarterly* 4, no. 1 (1987): 29-41.
- Amos, Keith. *The New Guard Movement, 1931-1935*. Melbourne: Melbourne University Press, 1976.
- Appleby, Gabrielle. "The Gavan Duffy Court," in *The High Court, the Constitution and Australian Politics*, edited by Rosalind Dixon and George Williams. Melbourne: Cambridge University Press, 2015.
- Battin, Tim. *Abandoning Keynes: Australia's capital mistake*. London: MacMillan Press, 1997.
- Beilharz, Peter. *Transforming Labor: Labour tradition and the Labor decade in Australia*. Cambridge: Cambridge University Press, 1994.
- Benvenuti, Andrea & Jones, David Martin. "Engaging Southeast Asia? Labor's regional mythology and Australia's military withdrawal from Singapore and Malaysia, 1972-1973." *Journal of Cold War Studies* 12, no. 4 (2010).
- Blackstock, Nelson. *COINTELPRO: The FBI's secret war on political freedom*. New York: Pathfinder, 1988.
- Blaxland, John. *The Protest Years*. Edited by David Horner. Vol. 2 of *The Official History of ASIO*, edited by David Horner. Sydney: Allen & Unwin, 2015.
- Bolton, Geoffrey. *The Middle Way 1942-1995*, vol. 5 of *The Oxford History of Australia*. Melbourne: Oxford University Press, 1996.

- Brunatti, Andrew D. "The Architecture of Community: Intelligence Community Management in Australia, Canada and New Zealand." *Public Policy and Administration* 28, no. 2 (2012): 119-143.
- Burgmann, Meredith ed. *Dirty Secrets: Our ASIO files*. Sydney: NewSouth, 2014.
- Calcutt, Bill. "The Role of Intelligence in Shaping Public Perceptions of Terrorism," *Journal of Policing, Intelligence and Counter-Terrorism* 3, no. 1 (2008).
- Chomsky, Noam. *Failed States: The abuse of power and the assault on democracy*. Sydney: Allen & Unwin, 2006.
- Chomsky, Noam & Barsamian, David. *Power Systems*. London: Penguin Books, 2013.
- Crowley, F. K. *A New History of Australia*. Melbourne: William Heinemann, 1974.
- Curran, James. *Unholy Fury: Whitlam and Nixon at war*. Melbourne University Press: Melbourne, 2015.
- Davidson, Alastair. *The Communist Party of Australia: a short history*. Stanford: Hoover Institution Press, 1969.
- Dyrenfurth, Nick & Bongiorno, Frank. *A Little History of the Australian Labor Party*. Sydney: UNSW Press, 2011.
- Edwards, Peter. *A Nation at War: Australian politics, society and diplomacy during the Vietnam War 1965-1975*. Sydney: Allen & Unwin, 1997.
- Ebbels, R. N. *The Australian Labor Movement 1850-1907*. Melbourne: Lansdowne Press, 1965.
- Evans, Raymond. *The Red Flag Riots; A study in intolerance*. Brisbane: University of Queensland Press, 1988.
- Finnane, Mark. "The Public Rhetoric of Policing in Times of War and Violence: Countering Apocalyptic Visions." *Crime, Law and Social Change* 50 (2008): 7-24.
- Freedman, Lawrence. "The First Two Generations of Nuclear Strategists" in *Makers of Modern Strategy: From Machiavelli to the nuclear age*, edited by Peter Paret. Princeton: Princeton University Press, 1986.
- Greenwood, Gordon. *Australia: A social and political history*. Sydney: Angus & Robertson, 1955.
- Griffin-Foley, Bridget, ed., *A Companion to the Australian Media*. Melbourne: Australian Scholarly Publishing, 2014.
- Harvey, Nick, et al. *A History of the Faculty of Arts at the University of Adelaide 1876-2012*. Adelaide: University of Adelaide Press, 2012.

- Herman, Edward S. and Chomsky, Noam. *Manufacturing Consent: The political economy of the mass media*. New York: Pantheon Books, 2002.
- Hetherington, John. *Blamey, Controversial Soldier: A biography of Field Marshal Sir Thomas Blamey*. Canberra: Australian War Memorial, 1973.
- Hocking, Jenny. "ASIO and the Security State: A Reply to Frank Cain," *Labour History* 60 (1991): 125-128.
- Hocking, Jenny. "Charting Political Space: Surveillance and the Rule of Law." *Social Justice* 21, no. 4 (1994): 66-82.
- Hocking, Jenny. *His Time*. Vol. 2 of *Gough Whitlam*. Melbourne: Miegunyah Press, 2014.
- Hocking, Jenny. "Subversions Dissent: Where ASIO Draws the Line," *Australian Left Review* 3 (1984): 38-45.
- Hocking, Jenny. *Terror Laws: ASIO, Counter Terrorism and the Threat to Democracy*. Sydney: UNSW Press, 2004.
- Horner, David. *The Spy Catchers*. Vol. 1 of *The Official History of ASIO*. Sydney: Allen & Unwin: 2014.
- Irving, Terence & Scalmer, Sean. "Labour intellectuals in Australia: Modes, traditions, generations, transformations," *Review of Social History* 50(1) (2005): 1-26.
- Kemp, David. "A Leader and a Philosophy" in *Labor to Power: Australia's 1972 election*, edited by Henry Mayer. Sydney: Angus & Robertson, 1973.
- Kuhn, Rick. "Australia and the Vietnam War: Analyses, Actions and Attitudes," *Agora* 44, no. 2 (2009): 28-34.
- Leffler, Melvyn P. and Westad, Odd Arne. Vol. 1 of *The Cambridge History of the Cold War*, Cambridge: Cambridge University Press, 2010.
- Love, Peter & Strangio, Paul eds. *Arguing the Cold War*. Melbourne: Red Rag Publications, 2001.
- Lowe, David & Joel, Tony. *Remembering the Cold War: Global contest and national stories*. Oxford: Routledge, 2013.
- Macintyre, Stuart. *The Reds*. Sydney: Allen & Unwin, 1998.
- Manne, Robert. *The Petrov Affair: Politics and espionage*. Sydney: Pergamon Press, 1987.
- Martin, A. W. *Robert Menzies; a life*. Vol. 2, Melbourne: Melbourne University Press, 1999.
- May, A. L. *The Battle for the Banks*. Sydney: Sydney University Press, 1968.

- McCulloch, Jude & Tham, Joo-Cheong. "Secret State, Transparent Subject: The Australian Security Intelligence Organisation in the Age of Terror" *The Australian and New Zealand Journal of Criminology* 38. no. 3 (2005): 400-415.
- McKnight, David. *Australian Spies and Their Secrets*. Sydney: Allan & Unwin, 1994.
- McKnight, David. *Espionage and the Roots of the Cold War: the conspiratorial heritage*. Hoboken: Taylor and Francis, 2012.
- McKnight, David. "Partisan Improprieties: Ministerial Control and Australia's Security Agencies, 1962-1972." *Intelligence and National Security* 23, no. 2 (2008): 707-725.
- Murphy, John. *Evatt; A life*. Sydney: NewSouth Publishing, 2016.
- Murphy, John. *Harvest of Fear: A history of Australia's Vietnam War*. Sydney: Allen & Unwin, 1993.
- Oakes, Laurie. *Whitlam PM: a biography*. Sydney: Angus & Robertson, 1973.
- Odgers, J. R., Evans, Harry & Laing, Rosemary. *Odgers' Australian Senate Practice*, thirteenth ed. National Library of Australia, Canberra, 2012.
- Orbinski, James. *An Imperfect Offering: Dispatches from the medical frontline*. Melbourne: Text Publishing, 2008.
- Ormonde, Paul. *The Movement*. Melbourne: Nelson, 1972.
- Orwell, George. *Nineteen Eighty-Four*. London: Penguin Books, 2011.
- Patapan, Haig. *Judging Democracy: The new politics of the High Court of Australia*. Cambridge: Cambridge University Press, 2000.
- Ricketson, S. "Liberal Law in a Repressive Age: Communism and the law 1920-1950," *Monash University Law Review* 3 (1976): 101-133.
- Saul, Ben. "Dark Justice: Australia's indefinite detention of refugees on security grounds under international human rights law," *Melbourne Journal of International Law* 13 (2012): 685-731.
- Strangio, Paul. *Keeper of the Faith: a biography of Jim Cairns*. Melbourne: Melbourne University Press, 2002.
- Templeton, Jacqueline. *Australian Intelligence/Security Services 1900-1950*. Vol. 7 of *Royal Commission on Intelligence and Security*. 1977. NAA: A8908 7A-7B. Canberra.
- Tham, Joo-Cheong. "ASIO and the Rule of Law." *Alternative Law Journal* 27, no. 5 (2002): 216-219.
- Turnbull, Malcolm. *The Spy Catcher Trial*. William Heinemann Australia, Melbourne, 1988.

- Ward, Alan. "The Second Vietnam Moratorium: Reflections of a Melbourne Participant," *Meanjin Quarterly* 29, no. 4 (1970).
- Ward, Russell. *Australia Since the Coming of Man*. Sydney: Macmillan Company, 1987.
- Winterton, George. "The Significance of the *Communist Party Case*." *Melbourne University Law Review* 18 (1992): 630-658.
- Whitlam, Nicholas & Stubbs, John. *Nest of Traitors: The Petrov affair*. Brisbane: University of Queensland Press, 1985.
- Woodward, Garry. "Enigmatic Variations: The Development of National Intelligence Assessment in Australia." *Intelligence and National Security* 16, no. 2 (2001): 1-22.
- Zines, Leslie. *The High Court and the Constitution*. Sydney: Federation Press, 2008.

Electronic and digital sources

- Blaxland, John and Crawley, Rhys. "Intelligence Oversight and Accountability: Who Watches the Watchers?" *The Conversation*, 11 December 2013, <http://theconversation.com/intelligence-oversight-and-accountability-who-watches-the-watchers-21112>.
- Brown, N. A. "Greenwood, Ivor John (1926-1976)," in *Australian Dictionary of Biography*. Vol. 14. Melbourne: Melbourne University Press, 1996. <http://adb.anu.edu.au/biography/greenwood-ivor-john-10361>
- Cain, Frank. "Australian Intelligence Organisations and the Law: A Brief History," *UNSW Law Journal* 27, no. 2 (2004): <http://www.austlii.edu.au/au/journals/UNSWLJ/2004/23.html>.
- Callaghan, Harold. "Operation Official History," *Quadrant*, 22 May 2016, https://quadrant.org.au/magazine/2016/04/operation-official-history/#_ftnref2
- Cottle, Drew. *The Biographical Dictionary of the Australian Senate*. Vol. 3. Sydney: University of New South Wales Press, 2010. Accessed <http://biography.senate.gov.au/index.php/greenwood-ivor-john/>.
- Collinson, Stephen. "Nixon's own 9/11: When terrorism came of age," *CNN*, 29 July 2015, <http://edition.cnn.com/2015/07/27/politics/terrorism-1970s-richard-nixon/index.html>.
- Das Spiegel, "Officials ignored warnings of terrorist attack," 23 July 2012, <http://www.spiegel.de/international/germany/officials-ignored-warnings-of-munich-olympics-massacre-a-845867.html>.

- “Federal Election Results 1901-2010,” Parliamentary Library, accessed 21 August 2017,
https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1112/12rp06.
- “Federal Election Results 1949-1998,” Parliamentary Library, accessed 2 October 2017,
http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp9899/99RP08
- “Field Marshal Sir Thomas Albert Blamey,” Australian War Memorial, accessed 16 July 2017, <https://www.awm.gov.au/people/P10676218/>.
- Goot, Murray and Inglis, K. S. “Mayer, Henry (1919–1991),” in *Australian Dictionary of Biography* Canberra: Australian National University, 2014,
<http://adb.anu.edu.au/biography/mayer-henry-17251/text29033>.
- Haigh, Gideon. “Packed it in: the demise of the ‘Bulletin’,” *Monthly*, March 2008,
<https://www.themonthly.com.au/issue/2008/march/1268869044/gideon-haigh/packed-it>.
- “House of Representatives – Two party preferred results 1949-present,” Australian Electoral Commission, accessed 21 August 2017,
http://www.aec.gov.au/Elections/Australian_Electoral_History/House_of_Representative_1949_Present.htm.
- Isikoff, Michael. “Terror watch: Nixon and Dixon,” *Newsweek*, 22 March 2005,
<http://www.newsweek.com/terror-watch-nixon-and-dixon-114707>.
- “List of Attorneys-General,” Attorney-General’s Department, accessed 12 April 2017,
http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Browse_by_Topic/law/attorneysgeneral.
- Menghetti, Diana. “Paterson, Frederick Woolnough (Fred (1897-1977)),” in *Australian Dictionary of Biography*, accessed 7 February 2018,
<http://adb.anu.edu.au/biography/paterson-frederick-woolnough-fred-11349>.
- National Archives of Australia*, s.v. “Directorate of Military Intelligence,” accessed 30 January 2018,
https://recordsearch.naa.gov.au/SearchNRRetrieve/Interface/DetailsReports/AgencyDetail.aspx?reg_no=CA%203275.
- “Royal Commissions and Public Inquiries,” *University of Melbourne*, accessed December 9, 2017, http://unimelb.libguides.com/royal_commissions.
- Templeton, Jacqueline. “Jones, Harold Edward (1878-1965),” *Australian Dictionary of Biography*, vol. 9,
<http://adb.anu.edu.au/biography/jones-harold-edward-6873>
- The Whitlam Years*. Produced by Toni Steinbrecher. Melbourne: Australian Broadcasting Corporation, 1984. YouTube,
<https://www.youtube.com/watch?v=iRLCHGDSZP4>.

Waterson, D. B. *The Biographical Dictionary of the Australian Senate*, vol. 3. Sydney: University of New South Wales Press, 2010.
<http://biography.senate.gov.au/index.php/mcclelland-james-robert/>.

Wiegrefe, Klaus. "Intelligence Agency's Murky Past: The Nazi Criminals Who Became German Spooks," *Spiegel Online International*, 16 February 2011, <http://www.spiegel.de/international/germany/intelligence-agency-s-murky-past-the-nazi-criminals-who-became-german-spooks-a-745640.html>.

Unpublished sources

Jordan, Douglas. "Conflict in the Unions: The Communist Party of Australia, Politics and the Trade Union Movement, 1949-1960." PhD thesis, Victoria University, 2011.

Wilson, Geoffrey J. "The ASIO-Murphy "Affair" 1973: Attitudes of the Federal Parliamentary Labor Party Toward the Australian Security and Intelligence Organisation, 1949-1974." Hons. diss., Australian National University, 1974.