

When the government prosecutes whistleblowers, it is sending a message

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Ebony Bennett – *The Canberra Times* -11 July 2020

We are in the midst of a public health and economic crisis, and the federal government is regularly making momentous and life-altering decisions, including exerting the authority of the state to limit (sometimes with good reason) basic civil liberties. Just when our need for integrity and accountability is at its greatest, our system of checks and balances is at its weakest.

Under the Coalition government, whistleblowers being prosecuted for daring to expose secrets and practices which damage or embarrass the government and its agencies. Worse still, the lawyers of whistleblowers are being prosecuted and, in perhaps the most worrying signs of the decay of public accountability, Australia's fourth estate - the free press on whom we can normally rely to expose all sorts of wrongdoing without fear or favour - is being prosecuted and the funding to our public broadcaster systematically gutted.

Governments are always concerned with protecting their reputations, but something is seriously rotten when they use the power and authority of the state to prosecute whistleblowers, lawyers and journalists who have exposed wrongdoing.

At the same time as the Prime Minister is offering a citizenship pathway to some people from Hong Kong in response to China's draconian new laws intended to silence pro-democracy protesters, whistleblower Richard Boyle faces life in jail for revealing that the Australian Tax Office was improperly seizing funds from the bank accounts of taxpayers.

Obviously, Australia is not an authoritarian state and we have a democratic government, as the recent Eden-Monaro byelection shows. Nevertheless, in recent years the Coalition government has made anti-democratic decisions that are cause for real concern.

If the government keeps giving a pass to wrongdoing while prosecuting those who expose it, it risks establishing a rot that will eat at the heart of our democracy.

First is the Australian government's prosecution of Witness K for revealing that Australia illegally spied on the cabinet of East Timor during sensitive negotiations over oil and gas interests. The ASIS spies and the former Howard government ministers who were ultimately responsible for this illegal behaviour remain free and untroubled by the justice system. But the unprecedented decision to prosecute Witness K's lawyer, Bernard Collaery - a former attorney-general of the ACT - is a particularly egregious overreach. Parts of the trial are being held in secret, away from public scrutiny.

So, if life in prison is the potential punishment for revealing improper behaviour at the ATO, and secret trials are held not for the illegal wiretapping of foreign governments but for revealing such behaviour, what happens if you reveal alleged war crimes committed by Australian troops?

Former Army Major David McBride currently faces life in prison for revealing that Australian troops in Afghanistan allegedly committed war crimes, including the unlawful killing of unarmed civilians.

The government is sending a clear and strong message to all potential whistleblowers: be silent. Be quiet, Australians. If Australian Defence Force personnel witness horrific behaviour, the correct thing to do is ignore it. For lawyers, the message is that it's too risky to represent whistleblowers. For journalists, it's that you could go to jail for doing your job, just for publishing stories that are clearly in the public interest.

Since the Australian Federal Police raided the ABC's offices in Sydney, Attorney-General Christian Porter will make the ultimate decision as to whether charges are laid against ABC journalist Dan Oakes. His crime? Reporting on the leaked information about Australian troops allegedly committing war crimes. Let that sink in for a minute.

There's not much reason to hope that Porter will do the right thing. His failure to immediately rule out prosecuting Oakes sends a direct and threatening message to every journalist in Australia, as did the raids on the homes and offices of several other journalists who published leaked information - the bread and butter of journalism.

What lies in store for Dan Oakes and Australian journalists if this trend is not arrested?

The Australian media was already in crisis. A reported 157 newsrooms have closed temporarily or for good since early 2019. You would think in this media climate, public broadcasting would get a funding boost. Yet successive Coalition governments have cut ABC funding to the bone, even as its reporting literally saved lives in the recent bushfires.

At best, the Morrison government does not take accountability seriously. At worst it undermines and avoids scrutiny and transparency. It's been two years since the government promised a Commonwealth Integrity Commission, flawed though it was, and Parliament is yet to see the draft legislation. Pursuing secret trials, prosecuting whistleblowers, their lawyers and journalists, and gutting funding for Australia's public broadcaster - taken collectively, these actions weaken Australia's democratic institutions and existing systems of accountability.

"One bad apple" is a term often used to downplay the notion of collective responsibility - but the full saying is that one bad apple spoils the barrel. If the government keeps giving a pass to wrongdoing while prosecuting those who expose it, it risks establishing a rot that will eat at the heart of our democracy.

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