

Senator George Brandis, the Rule of Law and Populism in Australia

By [Dr. Binoy Kampmark](#)

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Nothing stimulates frankness like an imminent departure from politics. From the deceptions, dissimulations and general obtuseness offered by the political craft, a person appointed to a diplomatic position can be reassured to lie in a different way. Mendacity is less taxing and always more civil, away from the dirt and dust of political tussling. Views can be expressed with more sophistication and, even occasionally, candour.

Senator George Brandis, Australia's conservative Attorney-General, was one such creature. A political beast given to punching holes in the law, he has been given a chance to pursue the Sylvan fields in London as Australian High Commissioner. He will be suitable for this station, a period of easy living in London lubricated by the Australian tax payer. As an ideological hard knocker in the Liberal Party, he has earned his stripes.

His valedictory speech to fellow parliamentarians should have created more waves than it did. Australian journalists and commentators tend to nod off on such occasions. A man without glamour, a product of the law, will never stir the heart. But his words were worth noting on several levels.

Brandis has witnessed, during his tenure, a greater centralisation of security matters in the form of a Home Affairs ministry overseen by **Peter Dutton**, a ruffian immune to the finer points of jurisprudence. In his farewell speech, thinly veiled swipes were taken against various figures of his own side of politics, notably those to the Right. Interestingly enough, Brandis was leaving as a self-described moderate, a champion of some holy middle ground.

Brandis noted what should be a common place assumption: that the attorney-general's duty is to defend the rule of law, even "from political colleagues who fail to understand it, or are impatient of the limitations it may impose on upon executive power". The senator had not "disguised" his "concern at attacks upon the institutions of the law – the courts and those who practice them. To attack those institutions is to attack the rule of law itself."

His own awkward positioning as defender of the law and doyen of propriety doesn't survive closer scrutiny. He cites "several robust occasions" where he supposedly took issue with recalcitrant colleagues. One such occasion was the stance taken on stripping those convicted of terrorism charges of sole Australian citizenship. That decision would lie with the Immigration minister, a certain Dutton.

Despite backing the authoritarian suggestion, then **Prime Minister Tony Abbott** met resistance from cabinet colleagues. Brandis is reputed to have said at one meeting concerning the draconian proposal that, as attorney-general, it was his "job to stand for the

rule of law". But in all fairness, he was hardly a voice in the wilderness, keeping company with a host of other colleagues from foreign affairs to communications [who voiced similar concerns](#).

It was under Brandis that a security regime suspicious of journalists and loathing of whistleblowers took further root. Definitions on espionage were adjusted to supposedly keep pace with modern technology, and legislation effectively providing immunity for the commission of crimes by Australia's intelligence services was passed despite Brandis expressly [ruling out torture](#) as a policy.

The National Security Amendment Act (No 1) 2014 jolted media professionals from their complacent slumber. The [Media, Entertainment and Arts Alliance](#) duly issued a statement claiming that the legislation "overturns the public's right to know. It persecutes and prosecutes whistleblowers and journalists who are dealing with whistleblowers. It imposes ludicrous penalties of up to 10 years jail on journalists. It imposes outrageous surveillance on journalists and the computer networks of their media employers".

The words of MEAA federal secretary [Christopher Warren](#) furnish us a corrective to Brandis as defender and stalwart of rights.

"At a time when the parliament should be defending and promoting freedoms in our society it has instead chosen to strip them away."

A figure suspicious of the activities of the Fourth Estate can hardly be counted as a friend of the rule of law.

For all his claimed loyalties to a profession he has supposedly cherished, to legal principles that he might have defended with zeal, Brandis' achievements must be regarded as more modest. In certain instances, he did genuine harm to the patchwork of Australian liberties and protections, all vulnerable to the dictates of parliament.

Educating Prime Minister Abbott about such fanciful notions as the rule of law would have been challenging, but less acceptable is the normalised state of security Australia finds itself. Instead of halting it, the senator propelled it. Courting the reassurances of the police state, in other words, proved to be a recurring feature of the Brandis era, notably under Abbott and Turnbull. In some exceptional instances, it pays to keep the law away from lawyers.

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