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**A war about meaning: a case study of the legitimation and contestation of the
Australian anti-terror laws**

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Abstract:

Following the September 11 attacks on the USA, the Howard government introduced extensive amendments to the criminal act within Australia, known commonly as the 'anti-terror laws'. Despite its controversial nature, the Australian mainstream media has been criticised for its ineffective contestation of the legislation; effectively becoming 'seduced' by the government's discourses around post-September 11 insecurity. This article provides an examination of the representation of these legislative responses to terrorism by Australian governmental authorities and mainstream newspaper media. Analysis of mainstream media reportage will illustrate that competing editorial practices of various mainstream newspapers diluted the possibility of effective contestation of the more controversial aspects of the laws. More broadly this article will illustrate that discourses around the media's traditional role as the 'fourth estate' often does not account for the various internal and external influences and constraints placed upon journalistic practice. Utilising debate between Jurgen Habermas and Michel Foucault about the conditions for political liberation, this article critically discusses the discursive processes of confirmation and contestation available to competing cultural actors within the public sphere.

Introduction:

Much western media analysis after September 11, 2001 heralded the beginning of a new ‘age of insecurity’. This was reflected in headlines across global, Westernised media from *The Times of London’s* prediction that it was ‘The day that changed the modern world’, to *Le Parisien’s* grim suggestion of its implication: ‘The world is afraid’ (See Ludlow, 2001: p. 2). The monstrous symbolism of the terrorist attack, the dramatic aesthetic of its mode of destruction and more importantly, the ubiquitous possibility of its reoccurrence were also reflected in the Australian government’s responses to post-September 11 insecurity. Following the events of September 11, 2001, the Australian government suggested the need to table a legislative response to the threat of terrorism (Faulkner, 2003). Until 2001, Australia had no collective national laws regarding terrorism (Hancock, 2002). Acts of terrorism fell under existing criminal law offences such as ‘conspiracy’ or ‘mass murder’. In July 2002, the Australian Government introduced six pieces of legislation comprising new judicial and police powers against potential terrorists, including new ‘association’ offences allowing law enforcement agencies to arrest individuals before actually engaging in terrorist activity; power to question suspects for longer time without familial or legal support and the prevention of disclosure of information in terrorism related criminal proceedings [1]. Legitimation of these responses espoused the impossibility of ever ‘going back’ to the pre-September 11 obliviousness of the threat lurking in every unattended bag, every lone photographer, and especially, every Muslim convert.

While the intended scope of the ‘anti-terror laws’ created controversy, mainstream Australian journalism has been criticised by academics (and others) for what is seen as largely ineffective contestation of the government’s actions. Tebbutt (2009) makes the important point that the ‘seductiveness’ of terror as a news story has led to irresponsible reporting. Others, like Staines (See 2007) have suggested that laws infringing on civil rights went through parliament, seemingly unchallenged by outside voices. Often underlying these challenges is the supposition that mainstream media are—or should be—a somewhat unified agent of political contestation and change. This supposition stems from discourses around journalistic practice maintaining a critical ‘watchdog’ role over government actions on behalf of society. This is also a discourse through which mainstream journalists claim their

professional status and social authority to represent meaning and societal governance on behalf of the public. However, historical situations such as the introduction of the anti-terror laws, paint a much more complex and contingent picture of journalistic representation and contestation of government action.

This article will argue that competitive mainstream editorial practices diluted the possibility of effective contestation of the laws. While legitimating strategies effectively positioned government representation of anti-terror laws, competition between differing organisations created difficulties in contesting the Australian government's discourse. This suggests that a mainstream media organisation's ability to maintain or contest the dominance of a particular discourse is constrained by the limits imposed both by their own practices as institution, and the legitimacy they seek to maintain through their practice as an institution. Mainstream institutions such as newspapers are constrained by their actual participation, through representation, of normative processes of governance, as well as the internal and external influences on their practice as a journalistic medium. Their apparent failure to realise the 'watchdog' role is as much contingent on particular legal, economic, cultural and social influences on journalistic practice and production, as it is a failure of an ideal ethical role of representative governance.

The article examines the representation of legislative responses to terrorism through a discursive analysis of Australian government communication and mainstream Victorian newspaper reportage from 2002-2003. The methodological approach utilises materials gathered primarily through reportage in two Australian mainstream metropolitan newspapers, *The Age* and *The Australian* [2]. The analysis of government communication is also taken from a wider analysis and will include only media interviews [3]. The analysis focussed on several aspects of the power relations between media and government: firstly, the critical examination of the government's discourse within news reportage, secondly, agreement upon government representations of insecurity within media reportage, and lastly, the role that engagement with media criticism and other cultural actors had in contributing to any change in the government's discourse. I utilised Jurgen Habermas' analysis of 'legitimation crises' and Foucauldian analyses of governmental power to provide the

theoretical framework for the complex negotiations of influences on media institutions that impacted on representation in newspapers.

Governmental authority and the use of legitimation:

The process of creating legislation is conceptualised via “agreement” entered into by the citizenry and the state (Heath, 2006). It provides citizens with actionable rights where laws are broken and provides legitimacy to the administrative power of the state to act on their behalf (Heath, 2006). While it is commonly accepted that in a democracy the will of popular sovereignty is required to change or create a law; this is not always the reality. Passing an unpopular law does not necessarily revoke the legitimacy of government authority. Laws are often passed without any real sense of public agreement, and even when there is clear public opposition. Changes to legislation are often promoted not on their particular qualities, but through strategies of legitimation that underpin government discourse. Legitimation can thus be seen as an ‘argument’ for the justification of particular actions. However, the presence, and the need for, a justification for action positions these actions as subject to contestation. Young (2005) has argued that legitimation has a “bi-modal” character. It implies acceptance of a justificatory argument, but the very presence of justification suggests that this acceptance is somewhat unstable. If inconsistencies in legitimating arguments develop, dissenting discourses may gain greater representative power within the public sphere. These struggles translate into representations that evolve, shift or live alongside each other in a contradictory relation.

While it has been criticised, Jurgen Habermas also provided a broad conceptual framework to define legitimation in his text *Legitimation Crisis* (1975). His analysis is useful for conceptualising governmental reliance on discursive ‘arguments’ for the legitimacy of social structures that ensure the ‘status quo’ of political and economic power. As long as political systems require justification of power, other forms of meaning in the cultural sphere could potentially threaten legitimation. ‘Crises’ occur through public contestation because: “the procurement of legitimation is self-defeating as soon as the mode of procurement is seen through” (Habermas, 1975: 69). Habermas (1975: p. 72) suggests questioning of

governmental legitimacy can lead to citizens' losing faith in public institutions, or waning productivity (in Heath, 1996: 14).

Legitimizing strategies informed government introduction of anti-terror legislation by referring to the 'logic' of legislative action and the 'need' for governmental authority to enact them. Legitimation referred to the logic of government action via two approaches; firstly, by referring meaning back to a contextual threat—namely terrorism—to promote the immediate need for action. The ubiquitous and enigmatic nature of terrorist threats propelled understanding of the need for legislative responses because it suggests governmental preparedness for the unexpected. The second approach propels representations of government action as the only response that is able to counter-act the threat. Governments claim the power firstly, to define terrorism as a crime and secondly, define the actions to respond to 'terrorism' within the language of the law. This reinforces both the pertinence of government action in an age of insecurity, but also their power to implement the laws as part of their management of the nation.

At a 2003 meeting of the Council of Australian Governments (COAG) the Federal government agreed that it would not create the amendments without the approval of the majority of states and territories (Colman, 2004). Thus the government announced that it would introduce further amendments to the September 2005 COAG meeting. In the lead up to the COAG meeting, strategies of legitimation underpinned government communication to justify more stringent legislation. For example, Prime Minister John Howard continually suggested the threat of terrorism warranted the need for much stricter laws:

If we weren't living in a terrorist environment none of us would be here; they're not the sort of things that any of us, whether we are Liberal or Labor, would be proposing in an environment where we didn't face this shadowy, elusive and lethal enemy (Howard, 2005a).

This reference effectively suggested that any opposition to the laws could be seen as politicking to the detriment of the Australian citizenry. The Prime Minister could suggest that the laws were 'above politics' because of the logical need for the government to protect

Australians. In this respect, justification of the laws did not centre on explanation of the laws themselves, but instead suggested that post-September 11 insecurity created the need for new laws. This was also evident in Howard's continual 'warning' that Australians 'learn the lesson' of the London bombings in recognising the need and logic of anti-terror laws in Australia (See Howard, 2005). The success of these legitimating strategies was evident in the results of the COAG meeting. Even Premiers who had been directly opposed to aspects of the anti-terror laws gave their support. They argued that although the laws were unsavoury, the circumstances of the post-September 11 environment required extra juridical reach (Premiers back, 2005). The 'weight' of the signification of post-September 11 terrorist threats was such that no authority would risk recording their opposition to the laws in the wake of a terrorist attack on Australia.

While the above example may illustrate the dominance of government representations in the public sphere, I wish to temper this assertion by suggesting institutions such as governments are also subject to internal and external influences on their practice. Representations within discourse do not go unmediated into the public sphere, but interact instead with other representations and cultural actors. As Lewis (2006) suggests, meaning making is a much more slippery, active and subjective process; it does not necessarily incorporate consensus to be legitimate. Habermas' conception of social structures in *Legitimation Crisis* and subsequent insistence on public consensus can risk reifying the practices of governmental power. Habermas' theorisation illustrates that political change can only occur as a response to governmental power, not in spite of it.

My understanding of the interplay of power relations between government, media and various publics to represent meaning is based on multiple contingent influences and complications. My conception of legitimation thus prioritises a broadly post-structuralist perspective which suggests there can be dominant players in the representation of meaning, but there is no consistency around who these dominant players are, or which meanings are enduring. Habermas (in Bernstein, 2006: p. 82) has criticised this perspective, claiming that it is politically and ethically vacuous to illustrate the instability of meaning without a political goal. His approach has in turn been criticised—especially by Jacques Derrida—for excluding difference, disagreement and otherness (in Borradori, 2003: p. 3). Derrida argued that

“language can never be so transparent or unproblematic” as to ensure “rational discourse” (in Thomassen, 2006: p. 7). More recently however, some theorists (See Hanssen, 2004; Bernstein 2006; Thomassen, 2006) have suggested the debate between critical theory and post-structuralism may have obscured some of the possible theoretical connections between the two. This is not to claim some theoretical pathway through which the crucial differences between structuralism and post-structuralism can be reconciled. Instead, it is to suggest a framework through which concern with processes of representing meaning can be foregrounded as a major concern from both perspectives.

In this respect Habermas’ debate with Foucault is useful for the purposes of this article because Foucault did present a somewhat programmatic analysis of power between individuals, collectives and the state (See Foucault in Burchell, 1991). Habermas suggests that Foucault’s agonistic historiography is a history of force, propelled by antagonistic battles among adversaries with no conclusions (in Hanssen, 2004: p. 293). He traced post-structuralism back to Nietzsche’s radical rejection of the Enlightenment in favour of a “decentered aesthetic subject who would shun the imposition of values on the basis of sheer power or force” (in Hanssen, 2004: p. 291). This, Habermas argued, was simply a philosophical language game that did disservice to the utility of philosophy to public consciousness and political liberation. Thus when Habermas argued that Derrida and Foucault exhausted all possibilities in their philosophies of subjectivity, he means the possibilities for political usefulness. However, Rorty argues (2006: p. 62) that Foucault might be considered a post-structuralist who seriously engages ideas of political liberation, especially in his work on governmentality. Hanssen (2004: p. 293) suggests that much of the criticism levelled at Foucault’s historiography relates to the fact that his work has been read as a comprehensive social theory. It is not evident that his work was presented as an all-inclusive application to society as Habermas’ theory was. Rather, Foucault saw his work as an understanding of history preoccupied with points of resistance to different types of power. Similarly to Habermas, Foucault saw traditional critical theory as totalising and negative. Foucault argued that the rationalisation of culture should not be analysed as a universal, social phenomenon, but as culture-specific and micro-economic (in Hanssen, 2004: p. 300). Perhaps the differences between Foucault and Habermas were in the intellectual and methodological approach to securing social justice and liberation. For

Habermas, this meant public consensus in fighting for 'ideal' situations of communication. For Foucault, it was a mixture of critique and recognition of plurality of meaning that would ensure individual liberation. In consideration of the debate between Habermas and Foucault, the following analysis illustrates both individual and 'unified' battles over the representation of the anti-terror laws. I have prioritised internal and external influences on the way in which legitimisation or contestation of the laws could be strategically presented, according to different power relations.

Media Reportage of the anti-terror laws:

Discourses about the Fourth Estate suggest the power of the media to advocate for, and protect democratic principles through its freedom to report on political and social issues. This refers to their role as a 'protectorate' of free speech (See Saul, 2005: p. 15). The discourse of the mass media as a watchdog on behalf of the public sphere also suggests the social authority of the media to represent meaning. However, the ability of the media to 'push for change' does not often threaten structures of government. This is because the media are constrained their definition of their cultural power within the realms of social and political governance shared by institutions like government. Just as governmental discourse is limited by particular institutional restraints, media reportage is simultaneously limited by maintaining a particular social 'status quo'; its role as the 'fourth estate'.

Notions of the Fourth Estate can obscure the reality of news-making as a commercial enterprise limited by revenue, resources and public relations. These constraints are usually enforced by editorial political and economic interests, leading to an everyday focus on the institutional structures that serve to underline their authority in the public sphere. This often allows governmental authorities to frame debate on certain political issues. Furthermore, this reliance can also prove to be a limitation in terms of governmental control of information released. Given the deadline constraints of contemporary newspapers, reliance on governmental sources of information often leaves little time for in-depth or sustained analysis of complex information. The cultivation of 'expert' or insider opinion also takes time beyond newspapers' deadlines and thus, media organisations are often forced to analyse

material according to the paradigms set by governmental authorities, or to release criticism after governmental authorities are given an opportunity to communicate their particular discourses.

Given editorial subjectivities and constraints, news media production cannot always fulfil its idealistic role as a force for political change. However this is not always problematic; journalistic reliance on 'reflecting' the influence of different cultural actors as 'source' of information allows flexibility to change their representation of meaning. While government actors are often forced to toe a discursive line to appear united or decisive, media outlets are afforded much more dynamism to maintain a representation favourable to the media outlet. Therefore, the media's power often comes from the challenge it poses to the government's power to represent meaning in certain ways, rather than its actual ability to act. It is a linguistic battleground where the media is able to most effectively challenge governmental structures, in particular, their ability to maintain a dominant discourse. At the intersection of governmental discourse, media reportage and alternate discourse in the public sphere, power relations between cultural actors continually serve to mediate dominant meanings. The authority to represent meaning is 'fought over' in the public sphere, which in turn sets the terms for future action. Thus, losing the credibility of a certain discourse is often damaging to claims of dominance over meaning. It is here that the media is able to compel changes in governmental discourse and less explicitly, political action.

Nonetheless, the media must also battle other discursive actors to maintain dominance of their representation of meaning in the public sphere. A Foucauldian perspective suggests that competing discourses often exist in tandem, contributing to change as they battle for hegemony over the meaning of particular representations. Cultural actors can be just as competitive as they are consensual in attempting to maintain a representation of meaning in the public sphere. In fact, the inclusion of different relationships within culture allows often quite contradictory meanings to exist together with no need for consensus. This includes the possibilities of antagonistic relations between newspapers themselves in forwarding contestation and confirmation of governmental discourse. We see this competition illustrated in newspaper responses to the anti-terror laws. Elements of contestation and

confirmation of governmental discourse occurred as a conscious editorial recognition of the commercial and political advantages of a particular 'stance' about the laws. This meant that the role of journalistic production was subsumed by reflecting particular editorial subjectivities, rather than the pursuit of any political potential.

These elements of confirmation and contestation could be traced through two Australian mainstream newspapers: *The Australian* and *The Age*. While both newspapers are considered 'serious' broadsheet organisations, the politically opposed responses to the introduction of the anti-terror laws illustrate divergent processes representing the federal government's discourse. A determined editorial decision of either confirmation or contestation the laws is illustrated in the tone of reportage. For example, *The Age* attempted to re-position representation of the laws as a means of procuring political power, rather than the actions of protecting the nation. Reportage implied blatant distrust of the Federal government and the Prime Minister through descriptions of their secretive and manipulative actions. This is a discursive strategy utilised to contest government discourse because, as Habermas suggests, governmental forms of legitimation are redundant as soon as they are seen as the procurement of political power. This is evident in reportage of the outcomes of the COAG meeting, where reportage implied suspicion of the bipartisan approach to the laws. *The Age's* article 'Are we really safer now?' suggested the government forced the Opposition's hand on the anti-terror laws: 'The Federal government's command of formidable security information, combined with all leaders' wishes to make sure no one can ever accuse them later of not doing enough, guaranteed a tough line all round' (Grattan, 2005).

The Age instead re-defined government legitimation of legislative responses to insecurity, suggesting: 'Politicians, not terrorists or trade unions, are the biggest threat to Australian democracy today' (Davidson, 2005: p. 17). This re-negotiation of the representation of the anti-terror laws as 'political ploy' is important because it attempts to diffuse government's hegemony the understanding of the legislation. *The Age's* re-definition also challenged legitimation of the laws by suggesting they did not protect Australians against a terrorist attack. For example, an *Age* editorial suggested: 'There is a real danger that ordinary Australians will feel less safe, made constantly aware of the fact that authorities believe the terrorist threat has grown, without being given any concrete evidence to support this view'

(‘Another bad’, 2005: p. 14). *The Age’s* editorial argument is clear: the anti-terror laws are simply part of the procurement of political power, to the detriment of the citizens they are meant to protect.

In stark editorial contrast however, *The Australian* was supportive of the anti-terror laws. In a tone reminiscent of government discourse, *The Australian* suggested the need for a ‘new response’ to a ‘new threat’. This is reflected in an editorial, which mimicked John Howard’s suggestion that: ‘Circumstances since 9/11 have been anything but normal... we must take whatever measures are necessary to minimise the chances of waking to an even greater horror than on that morning four years ago’ (Four years after, 2005: p. 9). In the lead up to the COAG meeting, the ‘reminder’ of the London bombings was analysed as evidence of the ubiquitous terrorist threat to Australia. The anti-terror laws ‘build on what London has taught us about the modus operandi of home grown Islamist terror cells in multicultural Western nations’ (Four years after, 2005: p. 9). This statement echoes the Prime Minister’s justification of the laws; in mimicking his responses, the newspaper signals its confirmation of the government’s discourse.

In illustrating this confirmation of the laws, *The Australian’s* audience is also positioned to admire Howard’s ‘dogged determination, commitment to achievable policy goals, a realistic political approach and a sense of the inner rhythms of the electoral term and judgement of the Australian people’ (Shanahan, 2005: p. 14). For example, the article ‘Fighting fires with faith and reason’, outlined the hurdles that Prime Minister Howard overcame to implement the anti-terror and IR laws (Shanahan, 2005: p. 14). The article uses militaristic allusions to suggest that Howard had been gallantly “taking hits” for his government to make sure the reforms were carried. This sense of admiration for the Prime Minister is also suggested in reportage of the COAG meeting where the newspaper suggested that the way Howard negotiated the anti-terror law proposals with the state premiers was fair.

This difference in representation manifested in competitiveness between the newspapers in attempting to situate understanding of the laws. *The Australian* was much more overt in this competitiveness, condemning media that did not share its political views. For example, an editorial suggested *The Age* and *ABC* journalists were creating ‘hysteria’ about the laws:

... [these] obsessive Howard haters have so lost sight of what the new draft legislation is all about that they will suggest...[that] the risk to Australians is from state and federal governments. Wrong. In reality, Australia faces the risk that terrorists, who believe Australia is an enemy of Islam, will kill as many of us as they can (Editorial, 2005: p. 15).

This statement's abrasiveness is revealing both in its adherence to government discourse about a 'terrorist other', as well as the frameworks of legitimation situating understanding the laws. Relating this competitiveness to Foucault's conception of power, I wish to suggest that critique could be exercised individually and collectively; both practices still have actionable consequences for the representation of meaning. The newspapers' responses illustrate that even oppositional discourses still share a decisive will towards notions of democratic freedom.

The competitiveness between cultural actors is evidenced by each newspaper's reaction to the circumstances surrounding the final acceptance of the anti-terror laws in Parliament. On November 2, 2005, John Howard announced he had received information from security agencies about an 'imminent' risk of a terrorist attack on Australian soil. He called an emergency sitting of Parliament to change the wording of existing anti-terror legislation, to allow security authorities to arrest suspects without proof of a specific terrorist act. Essentially, the amendment changed the wording of the legislation from needing proof of 'a' terrorist attack to 'the' terrorist attack. This meant that the onus of proof on security authorities in making arrests was less restrictive.

The sense of government manipulation was again a defining feature of *The Age's* criticism of the need for the amendment. Several subsequent reports in the days after the announcement suggested firstly, that potential terrorists would have been tipped off by the Prime Minister's announcement, and secondly, that the raid had been planned for months and an 'emergency announcement' had been timed (Dodd, 2005: p. 4). However, when police finally raided properties in Melbourne and Sydney and arrested 17 men, *The Australian* saw the opportunity to confirm government discourses about insecurity. In a series entitled 'Terror hits home'

information about actual terrorist acts committed by the individuals arrested was subsumed by *The Australian's* reportage about the 'imminent' terrorist attack. The editorial on the day of the arrests triumphantly announced 'that the price of life and liberty is eternal vigilance was made crystal clear by the raids and subsequent arrests of nine men in Melbourne and eight in Sydney yesterday' (Domestic dangers, 2005). The sense of the ubiquitous and 'irrational' threat of the terrorist other is thus seen as the justification for the actions taken by the government. This is evident in the editorial's warning that: 'We must face the possibility that some young Australians have turned against us all. And there is nothing we can do to assuage their irrational anger' (Domestic dangers, 2005). This sense of imminent threat is also suggested in the newspaper's news reportage, with journalists reporting that: 'A massive terrorist attack on Australian soil has been narrowly averted' (Leys et al, 2005). This was reported as fact despite the allegation of a 'terrorist attack' had yet to go to trial.

The newspaper also continued its attack on media reportage that criticised the government. The newspaper went so far as to re-publish an article from another media source, *Crikey*, suggesting 'News [Limited] is simply miles ahead of Fairfax in reporting national security issues' (The doubting Thomas, 2005: p. 17). In this way the newspaper provides proof to its readers that its discourse is the most pertinent in the public sphere. In competing with other 'voices' in the public sphere, this method of suggesting a hierarchy of importance in opinion is one way a commercial media organisation can maintain a dominant discourse in the public sphere. By acting for their individual editorial interests, *The Age* and *The Australian's* reportage fragmented their political role; their reportage either sensationalised or politicised for the benefit of their readership needs. Nonetheless, news media can effectively mobilise a contestation of governmental action; either by representing 'unified' public reaction or a sense of 'watchdog' reportage. The flexibility of the 'reflective outsider' to contest representations of meaning illuminates the news media's political potential.

Negotiation of governmental discourse in Australian newspapers

Despite initial competition, newspaper representation did eventually unite to contest the introduction of sedition provisions within anti-terror legislation. The Attorney General Philip Ruddock introduced the sedition provisions to update to defunct 1914 treason laws.

The sedition provisions amended the wording of the legislation to create five new offences in the Anti-Terrorism Act that carried a seven-year jail term (Sedition Law, 2007). These offences included: urging interference in Parliamentary elections, urging violence within the community [5], urging the overthrow of the Constitution or government, urging a person to assist an enemy, and urging a person to assist an enemy engaged in armed hostilities against the Australian Defence Force (Sedition Law, 2007). Though he did not identify a specific threat, Ruddock suggested that the laws were meant to deal with extreme Islamic preaching to potential 'home-grown' terrorists (Ruddock, 2005).

While frameworks of legitimation were successful in situating understanding of the anti-terror laws, the sedition laws proved to be more conducive to competitive relations between the media and governmental authorities. In fact, opposition to the sedition laws was the one shared concern between Australian mainstream newspapers, regardless of particular political subjectivities. Even reportage in traditionally politically conservative newspapers such as *The Australian* was vehemently opposed to the sedition laws. This unified contestation of the sedition laws thus created opportunities for newspaper reportage to subject the government's anti-terror discourse to more intensive negotiation. Within this battle over representation of the laws, government communication of legitimation competed against media suggestions of their role as the 'Fourth Estate'.

In forwarding contestation of sedition laws, the media represented itself as a protected and important public 'watchdog'. Newspapers based their criticism on the danger that the laws posed to a liberal press, using appeals to Australian public interest to support their arguments. For example, *The Age* claimed journalists would not be able to report on court trials of terror suspects if the information was deemed sensitive to national security. The newspaper reported that the provisions gave 'no automatic protection or qualified privilege for journalists who report the views of terrorists or even those who sympathise with them' (Dodd, 2005: p. 4). Even though the government argued that these provisions were not actually part of the sedition laws, these points were often used in reportage as a suggestion of an overall governmental ploy to curb free speech. *The Age* framed their reportage to suggest that all Australians would feel the consequences of the laws because they 'undermine our presumptions of individual freedom' (Dodd, 2005: p. 4).

The Australian also took up these notions of the liberal press acting for the greater good, presented within an editorial ‘scare campaign’ about the sedition provisions. *The Australian’s* rejection of the sedition laws was a stark editorial change to the usual political confirmation of government discourse. Where the newspaper had supported the implementation of the anti-terror laws, the sedition provisions were criticised because they infringed on the power of the media. Nonetheless, the newspaper represented this contestation as a battle on behalf of the public sphere. For example, in presenting criticism of the sedition laws, *The Australian’s* front-page feature claimed that the sedition laws also meant that: ‘Voters have turned on the Coalition and John Howard, denting his campaign to sell the government’s industrial relations revolution and tougher anti-terror laws’ (Lewis, 2005: p. 1). In doing so, the newspaper suggests their contestation as part of wider public anger, confirming its place as a political watchdog in the public sphere.

In a similar way to the government’s discourse, this strategy situates the media’s actions within a broader framework of national interest. The media’s claim to authority in the public sphere is situated against government discourse in battles over the representation of meaning. In drawing the battle lines for the representation of the sedition laws, *The Australian* actually wrote itself into the news. It reported: ‘John Hartigan, executive chairman of News Limited made it clear that the nation’s biggest newspaper company would target the proposed anti-terror laws as a part of a new campaign in the battle for freedom of speech’ (Merritt, 2005: p. 23). A month later, the newspaper made good on this threat by printing a ‘nightmare scenario’ involving a man persecuted by ASIO as an alleged terrorist (Day, 2005: 18). The ‘nightmare’ unfolds as the newspaper finds it is unable to report on the story because of sedition provisions in the anti-terror laws. The hypothetical editor laments:

We can’t say the kid was arrested; we can’t say he was held without charge for 14 days; we can’t say he was tortured; we can’t say Sam’s [the journalist’s] notes were seized. We can’t say anything. If we do, I’m going to jail for seven years (Day, 2005: p. 18).

The conclusion to this ‘nightmare’ is most revealing in its contestation of government discourse. Having given up on the terrorist story, the editor asks what other stories are

available. The news editor replies: ‘There’s this single mum sacked because she couldn’t work on Boxing Day. It’s part of the new industrial relations laws. They exempted Christmas Day but still gave bosses the right to sack people on the spot any other day’ (Day, 2005: p. 18). This story is given the go-ahead by the editor, who suggests that there are enough of these sorts of stories “to keep us going until the next election” (Day, 2005: p. 18). This is obviously the newspaper’s ‘last laugh’, but more broadly, it suggests the cultural authority of their mode of representation in the public sphere. The inference is obvious; on the discursive battle ground, this is a warning to the government of the newspaper’s dominance of the public sphere and ability to damage government discourse.

Having recognised media scrutiny of the sedition laws, government and media discourse competed to represent the ‘truth’ about the laws. These relations of power played out in ways that consequently negotiated how the sedition provisions were represented. For example, Philip Ruddock embarked on a media campaign to ‘correct’ the media’s representation of the laws (See Ruddock, 2005). Capitalising on his power in the media as a ‘credible source’, Ruddock published several editorial features in mainstream newspapers, suggesting that dissenting voices in the media were presenting ‘misinformation and scare-mongering’ (Ruddock, 2005). Ruddock went also physically pursued dissenting voices in the media, calling the John Laws radio talkback program to personally respond to a previous guest’s criticism of the sedition laws (Ruddock, 2005a). In doing so, Ruddock attempted to steer media representation of the sedition laws along familiar lines of legitimation suggesting that the laws were a ‘matter that the Australian community wants to see addressed’ (Uncertainty and doubt, 2005).

Nonetheless, the consequences of this discursive competitiveness were seen in the subsequent application of the sedition provisions. Though the anti-terror laws were passed, the Federal government was forced into amending the wording of the sedition provisions. Contestation of the provisions also spurred Parliament to force the government to allow the Australian Law Reform Commission to investigate the sedition laws [6]. Interestingly, despite the contestation mounted by media discourse about the sedition laws, their approval in Parliament and investigation by the Review Committee remained relatively under-reported. This lack of interest from the news media seemingly allowed Attorney General

Philip Ruddock to re-present the Committee's findings in public communication. Ruddock dismissed the Committee's suggestion to repeal the crime of association saying that the government had given 'detailed consideration to all the recommendations, but we do not believe there is any justification for removing the association offence' (A Human Rights, 2006). In this respect, the discontinuation of discursive processes of contestation allowed government discourse to maintain unopposed the legitimacy of its actions in response to post-September 11 insecurity.

This article has shown discursive battles between governmental and media discourses leads to some negotiation of the representation of meaning. But mainstream news production is also influenced by various internal and external influences. The case study has attempted to illustrate the myriad influences and contingencies are placed upon the media's ability to fulfil an ideal-ethical role of watchdog journalistic production. Nonetheless, it was not meant to provide an apology for the sensationalist or irresponsible journalism that has been produced by mainstream media outlets seduced by the 'selling power' of terrorism. Rather, at a deeper level, I wish to illustrate the particularity and subjectivity of mainstream news reportage and the heterogenous effects it has on power relations with other cultural actors, specifically government. This might hopefully provide a useful framework for others to debate the ever-changing specificities of the relationship between mainstream news media and government, without reproducing idealistic generalisations of both their roles.

Endnotes:

1. More specifically, the acts include: the *Anti-terrorism Act 2004*. This Act gives ASIO the power to arrest and question terrorist suspects for longer time. The Act also strengthened the *Crimes (Foreign Incursions and Recruitment) Act 1978* for training with armed forces overseas in relation to providing training to or receiving training from terrorist organisations. It also made provisions to those obtaining money from terrorist organisation in the *Proceeds of Crime Act 2002*. The package of six legislative amendments included:

- The *Anti-terrorism Act (No. 2) 2004*. This Act created new ‘association’ offences that allowed law enforcement agencies to arrest individuals before actually engaging in terrorist activity. These offences specifically targeted the perceived support of terrorism.
- The *Anti-terrorism Act (No. 3) 2004*. This Act prevents terror suspects from leaving Australia. It also amends the forensic procedure provisions in the *Crimes Act 1914* to facilitate effective disaster victim identification in the event of a terrorist attack within Australia.
- The *National Security Information (Criminal Proceedings) Act 2004*. This Act prevents the disclosure of information in terrorism related criminal proceedings. Where a court finds that sensitive security-related information should not be disclosed it enables a court to use documents and information in a summarised or edited form. The Act also requires legal representatives to obtain a security clearance.
- The *Surveillance Devices Act 2004*. This Act allows a broader range of surveillance devices to be used for a wider range of offences in relation to terrorism. It also enables senior law enforcement officers (rather than a judge) to authorise the use of surveillance devices in emergency circumstances.
- The *Criminal Code Amendment (Terrorist Organisations) Act 2004*. This Act enables a group or organisation to be listed as a terrorist organisation under Australian law without first being identified as such by the UN Security Council.

Among the more controversial of these proposed were: the use of preventative detention for terror suspects, sedition offences with seven year jail terms, the use of control orders to restrict travel and work, broader jurisdiction for police to use shoot-to-kill rules, and the ability for security authorities to restrict access to information to the public, legal representatives and the accused in terrorism trials

2. The analysis in this article is taken from a much larger analysis comprised of one national newspaper *The Australian*, two major newspapers in Melbourne, *The Age* and *The Herald Sun* and two major newspapers in Sydney, *The Sydney Morning Herald* and *The Daily Telegraph*. The sample of articles chosen for analysis from the five newspapers was organised through use of the *Factiva* database. The sample of articles was chosen according to a limit-search conducted on the period for which the case study was deemed to be a ‘news event’. I judged a news event as the time period for which the case study topic received five or more articles per day within a *Factiva* limit-search. The date-limit is set at every year after 2001 until 2008, and the word-limit is the name of the case study, ‘Anti-terror law/legislation’. The search was then narrowed to only include news reports and opinion editorial in the sample. The analysis used in this article was shortened due to word limit restrictions.

3. The materials used to complete the wider analysis of the governmental discourse included: press releases, advertising initiatives and website material specific to the content of the case study. These materials were collected through use of limit searches on what I deemed key governmental websites, particularly, the Prime Minister’s Media database, as well as the websites of other governmental authorities, the Australian Parliamentary Library and the websites for specific governmental campaigns. The limit searches were conducted in the same way as conducted on *Factiva*. A date-limit search of one year was conducted on government media databases with the text-limit being the name of the case study. The materials were limited to press releases, speeches and interviews, so the sample contained materials mostly likely utilised by the mainstream media.

4. The introduction of the anti-terror laws in Australia did not allow much public debate. Instead the Federal government capitalised on its parliamentary power in the Senate in the final sitting days before the 2004 Federal election to force another three acts in the Anti-terror bill through Parliament. Amongst other changes, the legislation introduced non-parole periods for terrorism suspects, the implementation

of 'special prisons' for terrorists who posed a security concern, and allowing ASIO to demand a suspect surrender their passport (Farr, 2004). The Coalition had eleven days of sitting time to propose the amendments, but chose to raise the changes along with legislation implementing a Free Trade Agreement with the US and a ban on gay marriages. This effectively cut debate time in the senate, which forced the vote on the proposed laws (Farr, 2004). After 42 hours of discussion on Free Trade Agreements with the US, Labor voted with the Coalition to toughen the criminal code.

5. This offence in the sedition laws included (a) the person urges a group or groups (whether distinguished by race, religion, nationality or political opinion) to use force or violence against another group or other groups, and (b) the use of the force or violence would threaten the peace, order and good government of the Commonwealth (Australian Seditious Laws, 2007).
6. The ALRC subsequently suggested that the laws needed to provide a clear line between legitimate dissent and those who urged violence against the state or fellow citizens (Ross, 2006). In particular, the committee recommended that the crime of associating with a terrorist group be repealed. It described the offence as transgressing rights to familial, religious and legal freedom of association, suggesting that: 'the interference with human rights is disproportionate to anything that could be achieved by way of protection of the community' (A Human Rights, 2006).

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