Rat in the Ranks
David Hicks and the Representations of Justice and Threat in the ‘War on Terror’
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Abstract: In December 2001, the Australian ‘Taliban fighter’ David Hicks was captured by the Northern Alliance in Afghanistan. Hicks was subsequently transferred to Guantanamo Bay by the US military, where he has remained for five years awaiting a military commission trial that has been roundly condemned for its partisan approach to justice. David Hicks’ imprisonment as an alleged ‘terrorist’ saw him branded by both government officials and the media as a ‘rat in the ranks’: a traitor to Australia’s role in the Coalition of the Willing and the embodiment of Australian’s ‘new’ insecurity about the threat in ‘our own backyards’. Indeed, governmental response to Hicks’ imprisonment has focussed on themes of ‘otherness’, where the allegations of Hicks’ terrorist actions have served as legitimation for the apparent circumvention of his legal and civil rights. Nonetheless, subsequent media reportage has become increasingly ambivalent towards both US and Australian approaches to justice, allowing more discursive space for dissenting viewpoints in the public arena. By analysing various representations of Hicks by Australian governmental authorities and newspaper media, this paper examines the discourse of the ‘terrorist threat’ in an age of insecurity and how this discourse manipulates traditional understandings of citizenship and justice.

Keywords: David Hicks, War on Terror, Governmental Communication, Media

Introduction

With the remains of the twin towers still smouldering in the background of global media reports and the American public left reeling, the September 11 attacks seemingly left no space for President George Bush to contemplate anything other than retaliation (George Bush, 2001). A month later, the uncompromising ‘war on terror’ began, with US troops storming Afghanistan and Bush declaring there would be no distinction made between those who committed terrorist acts and those who supported them (George Bush, 2001). Bush established his stance in the international community, warning that in both the political and the discursive sense, “you were either with us, or you were with the terrorists” (The President, 2004). Since the beginning of the ‘war on terror’, Australia has been very much ‘with’ the USA. While the perception of imminent external threat has been an enduring feature of Australian perceptions of political insecurity (See Burke, 2001), the post-September 11 age has seen Australian governmental discourse become particularly preoccupied with finding ways to identify potential terrorists before they ‘strike’ and bringing them to justice. The seemingly ubiquitous nature of this new threat was confirmed in late 2001 with reports of yet another danger to Australian security: the ‘home grown’ terrorist.

On December 14, 2001, Attorney General Daryl Williams and Defence Minister Robert Hill released a joint press statement confirming that 26-year old South Australian David Hicks had been captured by Northern Alliance troops in Afghanistan. Hicks was released to US custody where he was taken aboard a naval ship for a three week interrogation, though Hicks claims he was subjected to physical and sexual abuse (Four Corners, 2005). He was subsequently transferred to the Guantanamo Bay detention facility in Cuba in mid-January, 2001 and imprisoned without charge until 2004, despite being deemed eligible for trial a year prior. Hicks was formally charged in June 2004 with ‘conspiracy to commit war crimes’, ‘attempted murder by an underprivileged belligerent’ and ‘aiding the enemy’ (The charges, 2005). The conspiracy charge more specifically alleged that Hicks conspired with members of Al Qaeda to murder and attack civilians, destroy property and terrorism. At an appearance before the military commission on August 25, 2004, Hicks pleaded not guilty to all charges (The charges, 2005). Hicks remains the only Australian at Guantanamo Bay, though his lawyers and family have vigorously campaigned against his imprisonment and trial via the controversial US military commission.

This paper will report on the main findings of research conducted into the representation of David Hicks within specific Australian governmental and newspaper discourse over six years, from his capture and detention at Guantanamo Bay, to his subsequent referral to trial by military commission. In a
discourse analysis of specific governmental and media communication, two interconnected themes have emerged in representing David Hicks in the context of a ‘post-September 11 terrorist threat’. The first represented Hicks through themes of ‘Otherness’, where allegations of his terrorist acts were juxtaposed against the actions of the ‘ideal’ Australian citizen. This discourse of otherness thus allowed traditionally inclusive ideas of citizenship to become exclusionary and contingent; based on the continual adherence to a particular political and cultural ideologies. Nonetheless, while governmental authorities maintained this discourse of ‘Otherness’ and contingent citizenship as a consistent public response to Hicks’ imprisonment, his representation by the Australian newspaper media underwent significant change from the time of his initial capture and transfer to Guantanamo Bay. By the time he was deemed eligible for a military trial, newspaper editorial tone seemed to vary from concern with issues of his treatment in detention, to stinging indictment of the Australian and US methods in bringing Hicks to ‘justice’. In a truly Foucauldian sense, within media and government power relations, newspapers have also worked as a conduit for power-plays between a multitude of ‘voices’, from non-governmental authorities, to political and social organisations, who have fought for the right to impart differing ‘truths’ about Hicks representation as a terrorist.

The ‘Terrorist Other’ and the Insecure Citizen

Post-colonial theorist Edward Said suggested that the representation of minorities as ‘other’ continued long after decolonisation and is still very much a part of contemporary political discourse. The popularity of the ‘clash of civilisations’ thesis in the post-September 11 age is a lasting reminder of this ‘othering’ process, and is illustrated in Said’s Orientalism, which explores the ways in which Western representations have manufactured the Middle East and Islam as ‘Other’ within institutions and texts. Said argues that simplistic binary oppositions between the ‘superior West’ and the ‘inferior Orient’ have often been applied as a “discourse of knowledge” within literary and administrative texts, used to “prove the truth” of the Orient’s inferiority in a post-colonial era (Said, 1995: 35). These representations of ‘knowledge’ about the Middle East and Islam are based upon commonly held assumptions about the ‘Oriental’ as a mythic place of exoticism, moral laxity and primitive degeneracy (McLeod, 2000:21). The usual outcome of these representations is that the ‘Oriental Other’ is seen as the concurrently degenerate product of this primitivism, consistently represented with characteristics such as cowardliness, untrustworthiness, violence and lack of moral sense (Said, 1995: 39). At its worst, Orientalism makes assumptions about race, with negative stereotypes presented as an in-depth understanding of what kind of person ‘the Other’ was likely to be, despite individual qualities or failings (McLeod, 2000:45). Thus, Orientalism acts as an institutional structure where opinions about the Other circulate as objective knowledge or wholly reliable truth. The purpose in propagating these stereotypes is fundamentally legitimating: its discourse is part of a far-reaching system of representations that structure a relationship based on political domination (McLeod, 2000:43).

Said was influenced in his conception of a “discourse of knowledge”, by Foucault’s analysis of themes of power and the subject, where knowledge is not a form of “pure speculation”, but both a product of power relations and an integral aspect of sustaining those relations (See Foucault, 1972). Foucault argued that power underlies all social relations from the institutional to the intersubjective as a positive and ‘enabling force’ (McNay, 1994: 3). Therefore Foucault suggests that relations of power can only occur where there is the potential for resistance and change. Whereas Said was criticised for not going far enough to suggest the possibilities for Orientalist discourse’s ambivalence, Foucault’s power/knowledge conceptions allow for historical, political or geographical factors to appropriate discourse. To this end, Foucault suggested that the Other is not always a marginal figure; rather, its construction as such is always central to the maintenance of any hegemonic system of norms (McNay, 1994: 5). Applying the Foucauldian approach, one would suggest that hegemonic notions of citizenship are inherently exclusionary: citizenship is based on the notion of belonging to something where ‘others’ do not, as well as the benefits and protections that sense of identity may bring. Within governmental discourse, citizenship is seen as a legal and social contract between citizens and government, where mutually observed rights and responsibilities are observed in order to form a consensus of society (Lentini, 2005: 2). However, in the post-September 11 age, the obligations of citizenship have taken on an increased importance in public debate. Within governmental discourse, adherence to their responsibilities are being held as ‘contingent’ on a citizens’ practice of true ‘Australianness’ not only politically, but also in their social and cultural lives.

Within an era of insecurity, terrorists have been ‘individualised’ in terms of their activities and citizenship; they do not belong to nations, they belong to an ideology, with their collective identity only formed by their illegitimacy. Thus, when terrorists are described within discourse, it is to
illustrate how different they are to ‘true citizens’. Further, traditional politics of identity have been appropriated to situate the actions of terrorists hidden amongst ‘true’ citizens. Therefore when Hicks was captured in Afghanistan as a Muslim convert, he entered a realm of subjection despite his ‘national identity’. Once named as a ‘terrorist traitor’, Hicks’ subversion of Australian citizenship supplanted his place in the national hierarchy. While the fact of Hicks’ ‘Australianness’ in terms of his citizenship and appearance seemed to rupture traditional understandings of the terrorist as a ‘Middle Eastern Muslim’, Hicks’ representation fulfilled the role of the post-September 11 threat, requiring the terrorist ‘other’ to seem omnipresent and capable of defying traditional understandings of what a terrorist might be. It could also be argued that the fact of Hicks’ nationality is also an important justification for his imprisonment; the first military trial involving a blonde, blue-eyed Australian being the best illustration of the US government’s argument that the ‘war on terror’ is not an attack on the Middle East or its culture. Thus arguments about citizenship in an age of insecurity appear to be more complex than issues of racial or cultural discrimination. If Hicks demonstrates a key development in this discourse, it is to suggest that a government can set the limitations and protections of citizens according to their evaluation of an individual’s adherence to Australian values. Moreover, a government can merely cite an association with an abstract notion of terrorism and be justified in subjugating the protections citizenship affords. Terrorism becomes so imbued with the weight of its signification that the mere suggestion of a terrorist threat becomes the justification for the circumvention of the traditional legal and ethical rights of citizens.

The Rat in the Ranks: Response to David Hicks’ Capture

As the crime of an individual ‘other’, terrorism is afforded an individualistic justice according to how strong the accused’s link to terrorism is believed to be. While the first governmental press statement announcing Hicks’ arrest and transfer to US custody reveals nothing of the circumstances of Hicks’ arrest, it nonetheless contextualised the event by suggesting that “If Mr Hicks has committed a crime against Australian law, the Australian government will do whatever is necessary to bring him to justice” (Australian National, 2001). The repetition of this sentence in another media statement three days later is somewhat suggestive of the course that governmental discourse on David Hicks would take; the idea of “bringing him to justice” suggestive of the actions authorities would apply to fugitives of the law (David Hicks transferred, 2001). While the allegations against Hicks were still under security embargo, in the days after his capture, governmental discourse was nonetheless steadfastly resolute in its suggestion that David Hicks was accused of being associated with terrorists, and the link itself was enough to warrant his detention until he was brought to an appropriate form of ‘justice’. To this end, the Attorney General ‘reminded’ the public of the wider implications of the allegations against Hicks: “Mr Hicks was with the Taliban forces, [and] he had previously undergone extensive training with Al Qaeda, the organisation responsible for the terrible events of September 11th” (Transcript C, 2002).

Initial newspaper reportage seemed to reflect governmental assumptions about the circumstances of Hicks’ capture, representing Hicks as a subversive character whose conversion to Islam and “terrorist training” was part of an overall failing of his personality and abandonment of his Australian citizenship. A Victorian newspaper, the Herald Sun carries especially sensationalist reportage, repeatedly using the term “traitor” to admonish Hicks, who had already been deemed guilty of ‘terrorism’. On the first day of reportage of Hicks’ capture, the Herald Sun was headlined “Traitor” (Herald Sun, 2001:1). Above the headline, which took up approximately one-fifth of the total page space, the newspaper signalled the theme of its reportage with the words, “Rat in the Ranks” (Herald Sun, 2001:1). The phrase “Rat in the Ranks” was placed in the masthead of the next five pages of the Herald Sun’s reportage on Hicks’ capture and continued over the next two days (See Herald Sun, 2001:pgs 1-7). Further, two-page running headlines were placed underneath this theme, such as “Aussie who turned to terror” (Herald Sun, 2001:2-3) and “Dad…I fight for the Taliban” (Dunn, 2001: 4). Reporter Mark Dunn led the Herald Sun’s investigation into Hicks’ capture, repeatedly using the phrase “terrorist fighter” or “Taliban traitor” (See 2001: 13) to describe Hicks, suggesting that he “chose to betray his country [and] train with terrorist group al Qaeda and fight for the Taliban” (2001: 13). Hicks, thus situated as a traitor to the Australian ideal is “irrational, depraved, fallen, different” (Said, 1995: 40) and in this process defines the Australian self against its Other. To this end, reportage was focussed on his character and ‘state of mind’ as a Muslim convert, where the fact of his conversion to Islam was tantamount to his ‘conversion’ to terrorism. Indeed, Hicks’ rebellious teenage years make appealing fodder for Herald Sun journalists trying to explain a ‘deviant’ interest in Islam and the ‘otherness’ of Hicks’ character. For example, the newspaper reported that in his late teens Hicks took up martial arts with a friend (Tormented child,
The reader is left to come to their own conclusion with the statement that his teacher, Mr Nguyen said an undisciplined Hicks left Tae Kwon Do school after eight months, “before learning the importance of loyalty to country, family and religion” (Tormented child, 2002:4). In the report “A Boy’s dark side”, 15-year old Hicks is described as a “freak with a passion for drugs and Satanism” alleging he smoked cannabis and scratched “satanic symbols” into his arm with a compass (Heggen, 2001:2). Whichever of the journalist’s assertions are true, they are reliant on those who claim to have ‘known’ Hicks, rather than Hicks himself. The report is based on an interview with a classmate from Hicks’ high school, who said that he knew Hicks ten years ago, but was “never really close” to Hicks, nor did he see him “outside of school” (2001:2). Nonetheless, this report is justified by “psychological experts”, who have never met Hicks, but still “paint a chilling portrait of Hicks as a lonely young man seduced by religious fanaticism…They said fundamentalist militants had lured an alienated man into Osama bin Laden’s terror network” (Heggen, 2001: 2).

Thus, the Herald Sun, seemingly reporting as a conduit for Australian society, was able to suggest “Australians have no doubt that, on the facts revealed so far, Adelaide man David Hicks has betrayed his country” (Editorial, 2001:20). As Mark Dunn suggested, Hicks was a traitor to Australian military and political commitment to the Coalition of the Willing as “an unlikely veteran [who] surrendered alongside his al Qaeda warriors [while] a short distance away, 150 Australian troops were fighting in the war against terrorism” (Dunn, 2001:3). This sentiment was supported by a letter to the editor the next day which urged the Herald Sun to “stop calling this Hicks fellow an Aussie…this man has renounced his Australian citizenship by taking up an alien cause” (McWhirter, 2001:28). The writer juxtaposed Hicks’ actions against descriptions of true ‘Aussies’ like “the players we support at the Davis cup”, or “the Digger who fought to keep this country free” (McWhirter, 2001:28). A betrayal, especially of soldiers, who Benedict Anderson describes as symbolic of “the greatest examples of successful patriotism” was tantamount to attacking Australia (Anderson, 1991: 10). Thus, the Herald Sun, on the first day of reportage and before Hicks had been formally charged with a crime, published several articles that called for Hicks to be given the death penalty. In the article, “Death penalty calls came from around Melbourne” (Frenkel et al, 2001:7), a prominent Victorian QC David Galbally was quoted as saying that Hicks’ capture highlighted a ‘new’ issue of security that warranted new penalties: “I think that in the situation now, what we have is a group that have virtually declared war against western civilisation…I think that you need to have the death penalty as the ultimate penalty” (Herald Sun, 2001:7). On the same day a somewhat macabre survey was published as a ‘treason debate’ asking whether “Taliban fighter David Hicks should be put to death?” (Survey, 2001:15). Not surprisingly, of over 2272 calls received, almost 2000 respondents said “yes” (Survey, 2001:15).

Voices and Questions: Hicks’ Imprisonment at Guantanamo Bay

The overwhelming negativity of initial newspaper editorial seemed to strengthen the sense of apathy in governmental response towards Hicks’ circumstances. When Australian authorities were informed of Hicks imminent removal to the Guantanamo Bay detention facility, their public response repeatedly suggested that responsibility for Hicks was now a “matter for the Americans” (See Coorey, 2004: 12). While governmental authorities argued that Hicks could not be charged in Australia because his actions were not illegal under Australian law at the time, underlying this response was that Hicks’ actions had revoked his recognition as an Australian citizen and this alone was legitimation for his incarceration. Thus, when John Howard was asked whether Hicks was receiving his “proper civil rights”, his response suggested Hicks’ ‘unAustralian’ link with terrorist groups implied that he could no longer be assured of governmental assistance or sympathy to his plight: “He knowingly joined the Taliban and al Qaeda. I don’t have any sympathy for any Australian who’s done that” (Transcript H, 2005). Measurement of initial talkback attitudes towards Hicks seemed to reflect this indifference: while another Australian imprisoned overseas, Schapelle Corby, prompted 1294 callers, Hicks barely provoked 100 calls (Kissane, 2005).

Develotte and Rechinewski (2005) suggest that the maintenance of this ‘structure of attitude’ occurs in the media through ‘synchronicity’ (co-occurring headlines and editorial tone within a newspaper) and ‘diachronicity’ (this repetition over time); both “training” the reader to expect and thus impose certain interpretations of texts. However, this conception suggests that there is no room for change in either newspaper editorial or reader opinion. While themes of otherness are undeniably powerful emotive appeals within discourses of terrorist threats, their adherence to somewhat simplistic binary divisions have limitations. Where governmental discourse is seemingly rigid given the need to present a ‘united’ and ‘decisive’ public demeanour, the relationship of the media to political issues is allowed greater flexibility, especially as the number of parties that have a stake in certain representations fight to have
their voice heard in the public domain. By the time Hicks was transferred to Guantanamo Bay, more information about the facilities and treatment of detainees at Guantanamo Bay had become available, and non-governmental public experts and social groups were increasingly defending Hicks and his actions. Accordingly, the tone of newspaper coverage seemed to become more nuanced, with editorial tone seeming to vary from concern with Hicks' treatment at Guantanamo Bay, to stinging indictment of the US and Australian methods of bringing Hicks to 'justice'. This more ambivalent response to Hicks' incarceration is suggestive of the complexity of the relationship between media and governmental discourses in representing discourses of insecurity. As Lewis (2002: 115) suggests, the multiplicity of perspectives inherent in the discursive power relations amongst institutions necessarily creates space for the 'language wars' that develop when the varying discourses of the variety of public and private institutions and organisations engage in social discussion of historical moments. Whereas Said's methodology seems to insist on an internal consistency of Orientalist thought and production, disallowing ambivalence in Orientalist discourse, in his formulation of governmentality, Foucault broadened the category of power to show it as an objectivising and subjectivising force. That is, power does not operate in a unidirectional fashion, inscribing effects upon people. Instead, it is conceived as an agonistic struggle between individuals and institutions. Thus power is also a positive force, where the heterogeneity of discourses suggests the relatively autonomous nature of social action, thus creating spaces for social change (McNay, 1994: 3).

These changes are not only instituted through the power struggles between institutions, but also the "micro" power relations between individuals, both intrasubjectively and with institutions (Foucault, 1972: 63). Where David Hicks could not speak for himself to counter his label as a traitor, his father Terry Hicks proved to be a media-friendly spokesperson for his son, given his predisposition to 'quotable comments', his characterisation as the 'average Aussie bloke' and his willingness to engage in media events and publicity. Indeed within three years, Terry Hicks' fight to gain positive recognition for his son saw him fly to Guantanamo Bay to visit his son; take part in a filmed documentary where he travelled to Pakistan and Afghanistan to re-trace his son's route through the countries; stage a mock imprisonment in New York to draw attention to the treatment of detainees at Guantanamo; lead a parade celebrating the anniversary of the Eureka Stockade rebellion, and participate in countless media interviews and public speaking events. At a time when there was little public sympathy for David Hicks, his US-appointed lawyer Michael Mori was another non-governmental authority who appealed to the Australian media as someone inherently quoteworthy, with an 'inside' on the US government. Mori's public response counter-argued governmental discourse, suggesting that Hicks went to Afghanistan to educate himself and support the legal government against an insurgency from the Northern Alliance before the September 11 attacks. According to Mori, Hicks was simply caught on the wrong side of history (Playing defence, 2004). Mori also played on notions of citizenship to humanise Hicks and reaffirm his identity as an 'Aussie': "He is not a terrorist evil guy. He's a five foot three inch Aussie who seemed to me like every other Aussie I have ever met and not a danger to anybody. He misses his family. He misses his kids. He misses Australia" (Shiel, 2004:12)

Thus, where Hicks was initially portrayed in the media as betraying his obligations as an Australian citizen, an increase in dissenting viewpoints in later media coverage suggested that in fact, the Australian government could be accused of not fulfilling their duties towards an Australian citizen. What we see with the events of David Hicks' incarceration and the way they have been publicly represented and responded to by media reportage, is that as 'heterogeneous material elements' (See Foucault, 1972) their impact on what appears to be a stable discourse—post-September 11 insecurity—becomes more complex as its inherent discursive themes become open to change and dissent. Indeed, increased public outspokenness by Hicks' supporters, as well as increasing criticism about the treatment of Guanatanamo detainees, including a damning report from the International Red Cross, was reflected in a more multifaceted sense of reportage in the Australian media. The Age newspaper's editorial in coverage of Hicks' transfer to Guanatanamo seemed especially focussed on the legal and ethical ramifications of his detention: "For the US to waver from civilised standards of justice and the treatment of prisoners would set a poor example to the countries it is trying to win to the side of democracy and the rule of law" (Editorial, 2002:10). However, this sentiment was counter-balanced with a front page article in the same newspaper less than two weeks later headlined "He's a cocky guy and he talks about killing Americans", sourced from an interview with a security officer at Camp X-Ray who describes Hicks as a "hothead" (Alcorn, 2002:1). As Foucault suggests, it is quite possible for the objects of discourse to be contradictory (Foucault, 1970: 28). Foucault emphasizes that discourses operate in an unstable environment of change and transformation (In Young, 403). A discourse rarely possesses a set of
concepts that form a logical totality or coherent whole and its concepts, moreover are not static, but instead remain fragmented, dispersed and incomplete (Young, 404).

To this end, the Herald Sun described a Guantanamo detainee with an “Arabic face, covered with a thickening dark beard, [that] is blank. His eyes, narrowed to slits, are dead…Watching the captured Islamic fanatic from just a few metres away it looks as though his spirit has been crushed by Camp X-Ray” (Johnston, 2002:8). The journalist’s contradictory discursive swap between Orientalist imagery and criticism of the US detention centre is another example of the complexity of power relations that define knowledge within certain discourse. Thus, the journalist reports that in Camp X-Ray “morale among the detainees was as high as it has ever been”, however, “many of the detainees were ignoring the call to prayer, part of a growing campaign by detainees to irritate their guards by refusing to comply with camp routines” (Johnston, 2002:8). It seems that the multitude of previous representations of Guantanamo Bay, the journalists’ use of governmental public relations, as well their own observations, with all the subjectivity and imagination this allows, created a multifaceted representation of Guantanamo Bay and its inhabitants.

Terrorism and Appropriate Justice: Hicks’ trial by Military Commission

By August 2005, David Hicks had spent his 30th birthday and four years imprisoned at Guantanamo Bay. However, Attorney General Phillip Ruddock announced that the Department of Foreign Affairs and Trade (DFAT) had not requested regular consular or familial access to Hicks after his transfer to Guantanamo Bay (Interview about David, 2004). In defence of this transgression of Hicks’ national rights, Ruddock suggested that Hicks’ actions as an alleged ‘terrorist’—and the insecurity this creates—was enough to justify the appropriation of Hicks’ civilian rights: “When you see the thousands of lives that are lost through people who train with terrorist organisations who take civilian lives—both in New York and Bali—governments are entitled; in fact, I would say obliged to use every reasonable effort on their part to find out what these people are intending to do” (Australian authorities, 2002). This was especially resonant within themes of ‘appropriate justice’ for ‘terrorists’, where Ruddock suggested that the Coalition of the Willing were fighting a war against people who ‘play dirty’ and this illegitimacy demands the appropriation of civilian legal rights to bring them to justice: “this is something worse than war because the people you are combating don’t believe in the rules of engagement. They don’t believe in the Geneva Convention” (Interview about David, 2004). Thus, in a truly Foucauldian sense, this discourse would be reflected in the institutional events of the military commissions. That is, the way of thinking about ‘terrorists’ within discursive themes of Otherness seemed to justify the material effects of facing a trial conducted by the military without civil protections. A terrorist had eschewed the traditional notions of nation and citizenship and therefore appropriate justice did not include those protections.

In an age of ‘new’ responses to ‘new threats’, appropriate justice practised in the post-September 11 age suggests that the mere threat of terror is an indictable crime. Thus before Hicks had even been charged with a crime, the US government had determined that he would be eligible for trial by a military commission. President Bush had described the detainees at Guantanamo Bay as “killers, [who] don’t share the same values as we share” (Bush, 2002). His Secretary of Defence, Donald Rumsfeld would go on to describe the detainees as “among the most dangerous, best-trained, vicious killers on the face of the Earth” (Astill, 2004). Given that these were the men who were authorised to ultimately decide whether Hicks would be found guilty of terrorism in the military commission process, descriptions of these “free and fair” trials would take on an obvious undertone of finding justice for those already believed to be guilty. While the military commission trial procedures require the presumption of innocence and proof of guilt beyond reasonable doubt, evidentiary rules “take into account the unique battlefield environment” (Lasry, 2004). Hearsay evidence and information gathered from interrogation of other detainees, even those who could no longer be called to be cross examined was deemed worthy of use within the commissions (Department of Defense, 2004). Further, evidence from witnesses could also be used even if they refused to be sworn in or affirm their testimony. In using this evidence, there is no voir dire (preliminary examination of jurors or witnesses) into the voluntariness of any testimony or alleged confessions (Lasry, 2004). Citing national security concerns, this evidence could be given in a closed court, thus disallowing the presence of the accused while evidence was given about them. The commission can even order against providing some evidence to the accused. In the event that Hicks is convicted, the Commission instructions provide that Hicks could be found guilty of two separate charges with the same evidence, but the two charges would be separately convicted and punished (Military Commission Instruction No. 7, 2002). Finally, an acquittal does not necessarily lead to a release. The Commission instructions suggest that...
even when a detainee is found not guilty, if they are deemed a national security risk, the US is entitled to continue their detention at Guantanamo Bay (Lasry, 2004).

It was this apparent lack of civilian legal protections that provoked unprecedented scrutiny of the military commission process, and by extension, the US and Australian administration of justice. This is seen most prominently in the fundamental change of tone in Australian editorial to incorporate a much more critical and investigative news agenda. Where governmental discourse was previously setting the news agenda about David Hicks, governmental authorities were increasingly forced to use the media as a means of combating negative editorial and the critical voices of differing social groups and experts. The year was punctuated with embarrassing investigative news stories including leaked emails from US prosecutors claiming that juries at the military commission would be stacked to deliver guilty verdicts, prisoner abuse claims would be ignored and evidence against those charged was marginal at best (in Dunn, 2005:10). The two prosecutors subsequently left the tribunal, one suggesting in an email: “Surely they don’t expect that this fairly half-arsed effort is all that we have been able to put together after all this time?” (Ruddock brushes aside, 2005). Governmental discourse was forced to respond to the negative media reportage that emanated from the story, seeing a significant role reversal in the way that public understanding of Hicks was maintained. The Pentagon suggested that the emails were the result of “misunderstandings and personality clashes” (Dunn, 2005:10), and in Australia, the Attorney General Philip Ruddock dismissed the emails suggesting that “these complaints, as they were made well before the military commission process was put in place…must be seen as historic, rather than current” (Ruddock brushes aside, 2005). Later in the week however, newspapers continued to refuse these explanations, reporting that a third prosecutor had transferred out of the military commissions after the first resignations because she thought that the process was unjust (Grattan, 2005:2).

It can be seen that the struggle between media and government institutions (as well as other public organisations) is formed primarily around a struggle to present their particular representation as the most pertinent to understanding the ‘truth’ of an event or form of knowledge. This seeming ‘evolution’ in media and governmental discourse is seen here as an example of Foucault’s multifaceted understanding of discourse and its relationship to power relations amongst institutions. Competing systems of power generate varying types of knowledge and ways of understanding, which in turn produce material effects for public agents and institutions attempting to reinforce their own power formations (Foucault in McNay, 1994: 63). As Foucault suggests: “power produces knowledge…power and knowledge directly imply one another…there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations” (Foucault, 1995: 27). Post-September 11 insecurity, as a ‘discursive event’, has been mediated by complex relationships of power between governmental communications, media reportage and public institutions. While material circumstance and political practice can be represented through text and the use of language, textual representation is not simply a matter of language mediating reality. Foucault’s analyses thus suggest that discourse is not a “disembodied imaginative representation prior to any interaction with the real”, but instead knowledge acting in and on the material world with the ability to change and evolve. The ‘language wars’ that develop when different groups fight for the right to present their version of ‘truth’ allows a multiplicity that can destabilize even the most repeated and self-referencing of cultural discourses (Lewis, 2002: 439).

Thus, Hicks’ initial representation as a ‘traitor’ was used to great effect by both governmental authorities and the media, however the discursive interstices caused by the range of complex interactions between individuals and information has allowed a heterogeneity of effects. To this end, while recent media monitors’ research suggested that American authorities keeping Hicks out of the public eye had muted sympathy for him, the subsequent ambivalence of media reportage was also echoed in public sentiment (Kissane, 2005). Although Hicks was an initially unpopular subject, by the end of 2005 his bid for a fair trial had increased his popularity to 157 calls, with 80 per cent being positive. In comparison, traditional media darling Schapelle Corby’s popularity had decreased by almost 1000 calls (Kissane, 2005).

A Conclusion? Hicks in 2005 and Beyond

In publicly responding to David Hicks’ capture and transfer to Guantanamo Bay, governmental discourse continually suggested that his alleged actions were not just a subversion of his character, but the rights and responsibilities of his Australian citizenship. Ironically, in 2005 it seemed that Hicks would gain his freedom by officially revoking his Australian citizenship. By successfully applying for British citizenship, Hicks’ lawyers hoped that the Blair government would successfully petition for his release as they did for nine other British citizens.
Their success, however, remains dependent on an appeal from the British government. Nonetheless, by 2005, it seemed that the entire military commission process had been thrown into disarray by contending lawsuits and international condemnation. Despite attempts by the US government to rush through the military commission processes, several detainees successfully thwarted their trials with appeals to prove the Military Commission’s legality (See Dunn, 2005: 13). The ongoing legal petition of Salim Ahmed Hamdan, reportedly Osama bin Laden’s personal driver, was filed against the US administration alleging that his detention was unlawful under Habeas Corpus: a judicial mandate ordering that it be determined whether or not a person is imprisoned lawfully (Lasry, 2005). Hamdan is arguing that President Bush did not have the war powers to create the commissions and that they violate international law (Hicks’ lawyers’ win, 2005). If Hamdan wins his case, Hicks and other accused might never have to face the military commissions (Hicks’ lawyers’ win, 2005).

In suggesting the inspiration for his texts, Foucault once said: “the greatest problem of our time is the inability to think difference: we are afraid to conceive of the other in our own thoughts” (1996, xxiv). Indeed politics of exclusion have been an enduring feature of post-September 11 Australian national identity and thus, themes of otherness have been central in governmental discourse attempting to circumvent the rights of those deemed ‘enemies’ to the political cause of the Coalition of the Willing. Nonetheless, it is somewhat reassuring to note that the outcomes of this research have shown that governmental discourse does not have the last say in attempting to legitimate the erosion of traditional legal rights. The multitude of political voices fighting for the right to maintain the dominant meaning of a particular discourse has contributed to the inherent heterogeneity of insecurity as a political discourse and this can only benefit the reinstatement of David Hicks’ legal rights as an Australian citizen. After all, the acquisition of justice for the person accused and the victim of wrongdoing depends on both their individual freedoms. If it is truly the security of democracy that governmental discourse purports to protect in the post-September 11 age, it is precisely David Hicks’ rights as an Australian citizen and accused terrorist that must be most faithfully protected to ‘prove the truth’ of Western democracy.

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