

# *Semiotics, Constructivism and Seditio*

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## *Abstract*

This paper seeks to assess the sedition reforms through the lens of semiotic and constructivist theory. It argues that traditional legal analyses ensure a myopic view of the reforms and occlude their full effect. The analysis proposed acknowledges the text as a communication of wider sociopolitical meanings. To approach the reforms as such allows an appreciation of the subtle messages of Australian identity and government authority being communicated and opens the debate beyond the specialised and exclusive context of the law. It further counters the force of the liberal grand narrative which is deployed to sublimate this incursion into liberal freedoms as a necessary democratic anomaly.

## *1. Introduction*

Terrorism has been identified by the Australian Government as a key security threat of the 21<sup>st</sup> century. It is presented as a particularly insidious danger for its global reach and potential to emerge within and without the nation state. The range of legislative reforms introduced in response to the series of high profile terrorist attacks since 2001 have sparked much criticism and apprehension. Civil liberties appear to have been disproportionately eroded in response to a force which seeks to create that very democratic disturbance.<sup>1</sup>

In part 2 of this paper, I briefly outline the new legislation. Part 3 draws together those insights put forward by commentators and academics in relation to the sedition reforms. I will situate this analysis within a traditionally positivist view of the law as a distinct field. The arguments in this framework centre on the technical deficiencies in the legislation and its unbalanced severity in light of competing civil libertarian principles. The tone of commentary to date reveals an overall incredulity at the Australian Government's bold move to introduce sedition legislation and a general conviction that the Australian Government has been mistaken and short-sighted as to the drafting and consequences of the legislation.

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1 See Gareth Griffith, 'Sedition Incitement and Vilification: Issues in the Current Debate' (Briefing Paper No 1/06, NSW Parliamentary Library Research Service, 2006) at 1.

In part 4, I explore a broader theoretical framework which interprets the sedition reforms according to a contextualised interpretation of law.<sup>2</sup> I propose that the sedition legislation can be read in light of semiotic theory, as a text which is intended not only to act within the legal space but to interface with and create cultural meanings.<sup>3</sup> A postmodern and constructivist interpretation of the legislation takes it beyond the technicalities of its legal meaning and acknowledges its presence as a social marker of identity and authority. Ambiguities in drafting, and the decision to embrace the term 'sedition' can be understood as deliberate constructivist tools cementing public respect for the authority of the Australian Government and delimiting unacceptable 'otherness'. It is only in this light that the reforms can be appreciated as a highly powerful and 'successful' communication to the public. In the destabilising context of globalisation, nation states continue to construct identity, reinforcing powerful concepts that emphasise unity and deny anomaly. By stepping back from a legalistic interpretation of the legislation<sup>4</sup> and engaging with the text in a fluid, deconstructed framework, the 'routines of denial' that serve to close debate and reinforce the image of the pure meta-narrative can be exposed.<sup>5</sup>

## 2. *The Legislation*

Schedule 7 of the *Anti-Terrorism Act (No. 2) 2005* (Cth) (hereafter *Anti-Terrorism Act*) locates five new offences under section 80.2 of the Criminal Code Schedule to the *Criminal Code Act 1995* (Cth) (hereafter *Criminal Code*):

1. urging another to overthrow by force or violence the Constitution or Government;
2. urging another to interfere by force or violence in parliamentary elections;
3. urging a group or groups to use force or violence against another group or groups where that would threaten the peace, order and good government of the Commonwealth;
4. urging another to assist an organisation or country that is at war with the Commonwealth; and
5. urging another to assist those engaged in armed hostilities with the Australian Defence Force.<sup>6</sup>

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2 See Margaret Davies, *Delimiting the Law: 'Postmodernism' and the Politics of Law* (1996).

3 See for example Willem Witteveen, 'Significant, Symbolic and Symphonic Laws: Communication Through Legislation' in Hanneke van Schooten (ed), *Semiotics and Legislation: Jurisprudential, Institutional and Sociological Perspectives* (1999) 27.

4 Alexander Fitch, *To What Extent Has the Discourse of "Terrorism" Served to Criminalise Marginalised Communities? The Case of Turkish-Kurds in Britain* (2005) Statewatch at 10 <<http://www.statewatch.org/terrorlists/FitchAlexander.pdf>> accessed 22 August 2006.

5 Ian Duncanson, 'Out of the Enlightenment's Shadow: The Rule of Law in the Politics of Knowledge' (1994) 12 *Law in Context* (1) 20.

### 3. *Legal Analyses: Poor Drafting and Incorrect Consequences*

There is a strong sense in legal analyses that the new legislation is unnecessary and therefore unsuccessful due to existing seditious and other offences:

If there is some demonstrable gap in the existing criminal law, the Commonwealth and State governments have neglected to identify or rectify it. It makes no sense at all to erect the convoluted edifice of criminal liability embodied in Schedule 7 to cure such a deficiency.<sup>7</sup>

The reformulation of sedition covers a wider scope than that in the now repealed section 24A – 24F of the *Crimes Act* 1914 (Cth) (hereafter *Crimes Act*).<sup>8</sup> This broad scope is characterised as an accident of ambiguous drafting,<sup>9</sup> particularly as it eliminates the element of seditious intent from the offence.<sup>10</sup> This is compounded by the vesting of discretion in the Attorney-General over sedition procedure.<sup>11</sup> The Australian Government has been at pains to reassure the public that it will not be used to limit free speech but commentators have noted that the legislation should have been drafted to make this clear.<sup>12</sup>

Despite the problems with sedition, parliament passed the law anyway. It was a particularly poor example of law-making and indeed one of the worst in the history of the federal parliament. It is hard to think of another example in which a law targeting something as fundamental as political speech has been enacted as quickly with as many people from all sides of politics recognising that it needed to be amended even as it was being enacted.<sup>13</sup>

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- 6 For a useful summary see Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Inquiry into the Provisions of the Anti-Terrorism Bill (No 2) 2005* (2005) (hereafter *Senate Inquiry*) at [5.5] to [5.7]; Australian Law Reform Commission, *Fighting Words: A Review of Sedition Laws in Australia*, Report No 104 (2006) at [4.7 –4.11]; Andrew Nette, ‘A Short History of Sedition Laws in Australia’ (2006) 48 *Australian Universities Review* (2) 18 at 18.
- 7 Laurence Maher, “‘Modernising’ the Crime of Sedition?” (2006) 90 *Labour History* 201 at [34]. See also Tamara Winikoff, ‘Shafting the Voltaire Principle’ [2005] *National Association of the Visual Arts (NAVA) Quarterly* (December) 2 at 3.
- 8 Maher, above n7 at [1].
- 9 Jenny Hocking, ‘Political Communication, Freedom of Expression and Democracy’, Submission to the Senate Legal and Constitutional Legislation Committee, Parliament of Australia, *Inquiry into the Provisions of the Anti-Terrorism Bill (No 2) 2005* (2005) <[http://www.aph.gov.au/Senate/committee/legcon\\_ctte/terrorism/submissions/sub264.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/terrorism/submissions/sub264.pdf) > accessed 14 August 2006.
- 10 See for example Spencer Zifcak, ‘Anti-Terrorism Legislation and the Protection of Human Rights’ (2006) 18 *Legal Date* (1)1 at 3.
- 11 Hocking, above n9.
- 12 Agnes Chong & Waleed Kadous, ‘Freedom for Security: Necessary Evil or Faustian Pact?’ (2005) 28 *University of New South Wales Law Journal* (3) 887 at 892; George Williams, ‘Fragile Freedom’ *The Age* (8 July 2006) at 7.
- 13 George Williams, *The Law: At Last, Sedition May be Consigned to History* (2006) Australian Policy Online at [3] <[http://www.apo.org.au/webboard/results.chtml?filename\\_num=80505](http://www.apo.org.au/webboard/results.chtml?filename_num=80505)> accessed 14 August 2006.

The archaic term ‘sedition’ makes an appearance in the heading to Division 80 and section 80.2 of the *Criminal Code* even though it incorrectly describes the content of the offences.<sup>14</sup>

This is a public order offence aimed at punishing and deterring violence between different groups in the Australian community and bears little relationship with historical conceptions of ‘sedition’.<sup>15</sup>

From a legal point of view, despite the lack of connection between the term and the offence, words in headings of statutes influence the interpretation of a section.<sup>16</sup> Further, it is an historically charged and misleading term which invokes uncertainty and the chilling effect of self censorship.<sup>17</sup> This chilling effect is considered an erroneous outcome, or a miscommunication of the actual legal effect of the legislation. Hocking argues that ‘[t]he Bill ought simply to say what its framers claim it says’.<sup>18</sup>

There are strong concerns that the ‘proposed offences will have a significant impact on freedom of speech in Australia’, particularly as no evidence of seditious intention is relevant to establishing the offence.<sup>19</sup> This would directly affect robust political debate which is incompatible with the implied freedom of political speech, international human rights standards and democratic ideals more generally.<sup>20</sup> There are fears that this misguided modernisation has the potential to legitimise the increased (and improper) use of speech restriction.<sup>21</sup>

#### 4. *Semiotics and Constructivism*

In this section, I wish to borrow from the semiotic tradition to demonstrate that a more meaningful understanding of the sedition legislation can be gained if it is approached as a semiotic system, that is, a ‘system of signs and interpretation’.<sup>22</sup> This perspective encourages an analysis of broader social meanings of the sedition legislation and the way in which the public absorbs what is being transmitted.<sup>23</sup>

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14 Australian Law Reform Commission, *Review of Sedition Laws*, Discussion Paper No 71 (2006) at [2.21]–[2.22] (hereafter *ALRC Discussion Paper*); Australian Law Reform Commission, *Fighting Words: A Review of Sedition Laws in Australia*, Report No 104 (2006) at [2.68] (hereafter *ALRC Report*). See also *Sedition Law in Australia* (2006) Arts Law Centre of Australia Online <<http://www.artslaw.com.au/LegalInformation/Sedition/default.asp>> accessed 18 August 2006.

15 *ALRC Report*, above n14 at [2.69].

16 *Acts Interpretation Act 1901* (Cth) s 13(1); *ALRC Report*, above n14 at [2.66].

17 Williams, above n12; Maher, above n7 at [11].

18 Hocking, above n9.

19 Chong & Kadous, above n12 at 892. See also Winikoff, above n7 at 2; Alison Aprhys, ‘The Silent Summer’ [2006] *Eureka Street* (Jan-Feb) 12 at 13; *ALRC Report*, above n14 at [7.5].

20 Chong & Kadous, above n12 at 892; *ALRC Discussion Paper*, above n14 at [5.22]; *ALRC Report*, above n14 at [7.5].

21 Deborah Doctor, *Sedition and the Arts* (2006) Arts Law Centre of Australia Online <<http://www.artslaw.com.au/ArtLaw/Archive/06SeditionAndTheArts.asp>> accessed 10 April 2007; Ben Saul, ‘Watching What You Say’ *The Age* (19 Oct 2005) at 15; Laurence Maher, ‘The Use and Abuse of Sedition’ (1992) 14 *Sydney Law Review* 287 at 288.

My argument is influenced by an interesting analysis of the reforms in the Australian Law Reform Commission's (hereafter ALRC) review of the sedition legislation. The ALRC's overall conclusion was that the reform is probably better than what had previously existed from a technical as well as a civil libertarian point of view.<sup>24</sup> It appears the ALRC's main concern is the need to remove 'sedition' nomenclature from the legislation.<sup>25</sup>

It would be unfortunate... if continued use of the term 'sedition' were to cast a shadow over the new pattern of offences. The term 'sedition' is much too closely associated in the public mind with its origins and history as a crime rooted in criticising — or 'exciting disaffection' against — the established authority.<sup>26</sup>

The ALRC briefly goes beyond a legal argument and concludes that the term chosen has consequences that go 'more to the broad social understanding of the law than to its technical construction'.<sup>27</sup>

The creation of law through legislation is typically excluded from legal theory as it is traditionally deemed to belong to the realm of politics rather than neutral legalism.<sup>28</sup> This reflects the broader separation of law and politics into distinct spheres. Constructivist scholars argue that this is a division sustained to disenfranchise public access to understandings of regulation and to conceal the confluence of politics, culture and law.<sup>29</sup> To study the full effect of the sedition reform, I argue, requires an inquiry into the sociopolitical signs of the text.<sup>30</sup>

#### **A. The Constructed Threat**

My view of the setting of the legislation is influenced by postmodern and constructivist critiques which propose that entities are driven to present themselves as a distinct whole, in opposition to some 'other'.<sup>31</sup> In the present case, two binary oppositions are being constructed. The first is a construction of the Australian Government as focus of loyalty, as against the globalised force of terrorism.<sup>32</sup> The second is a collective Australian identity as against the potentially terrorism-causing 'other'.

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22 Anne Wagner, Tracey Summerfield & Farid Samir Benavides Vanegas (eds), *Contemporary Issues of the Semiotics of Law* (2005) at 2; Hanneke Van Schooten, 'Preface' in Hanneke van Schooten (ed), *Semiotics and Legislation: Jurisprudential, Institutional and Sociological Perspectives* (1999) 1 at 1.

23 John Griffiths, 'Legal Knowledge and the Social Working of Law: The Case of Euthanasia' in Hanneke van Schooten (ed), *Semiotics and Legislation: Jurisprudential, Institutional and Sociological Perspectives* (1999) 81 at 81.

24 *ALRC Discussion Paper*, above n14 at [2.11]; *ALRC Report*, above n14 at [2.50].

25 *ALRC Discussion Paper*, above n14 at [2.21].

26 *Id* at [2.28]; *ALRC Report*, above n14 at [2.72].

27 *ALRC Discussion Paper*, above n14 at [2.26]; *ALRC Report*, above n14 at [2.71].

28 Luc Wintgens, 'Legisprudence as a New Theory of Legislation' (2006) 19 *Ratio Juris* (1) 1 at 1.

29 *Ibid*. See also Duncanson, above n5.

30 Brian Bix, *Law, Language, and Legal Determinacy* (1993) at 3.

31 Bert van Roermund, *Law, Narrative and Reality: An Essay in Intercepting Politics* (1997) at 53.

Modern discourse has characterised terrorism as a novel and determinate threat.<sup>33</sup> In reality, terrorism is slippery and contextual, a floating signifier upon which the Australian Government can inscribe ideological ‘fixity and moral consensus’.<sup>34</sup> This unity can be deconstructed. First, due to suppression of security information, conflicting views on the susceptibility of Australia to attack cannot be resolved and a lingering sense of threat is sustained.<sup>35</sup> The present ‘Medium’ level of alert assesses that a ‘terrorist attack could occur’ in Australia, but this is amorphous and has remained unchanged since 2001.<sup>36</sup>

Second, there is the construction of a relationship between terrorist violence and mere speech. The causal leap between words and action is assumed and left largely unexplained.<sup>37</sup> Third, the perception that the law is the appropriate forum to deal with the threat is an oversimplification of a problem that is not exclusive to the legal domain. Finally, the existing offences of sedition, incitement and treason rebut the presumption that existing laws are inadequate to equip the Australian legal system to deal with terrorism.<sup>38</sup>

Ultimately, the irrationality and ambiguity of this loose construction makes the threat more ‘unknown’ and leaves the public susceptible to counter-constructions based on identity. As the sedition legislation displaces existing law, it fulfils a reiterative role as boundary marker or filter which functions to reassert the acceptable limits of inclusion<sup>39</sup> and to reinforce a stable identity and value system.<sup>40</sup>

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32 See Daniel Heradstveit & David Pugh, ‘The Rhetoric of Hegemony: How the Extended Definition of Terrorism Redefines International Relations’ (Paper delivered at the International Conference on ‘Rethinking Modernity: Globalisation, Modernization, Islam’, Norwegian Institute of International Affairs (NUPI) No 649 - 2003).

33 William Casebeer & James Russell, ‘Storytelling and Terrorism: Towards a Comprehensive “Counter-Narrative Strategy”’ (2005) 4 (3) *Strategic Insights* at [5] <<http://www.ccc.nps.navy.mil/si/2005/Mar/casebeerMar05.asp>> accessed 1 September 2006.

34 See Fitch, above n4 at 7, citing Alex Schmid, *Political Terrorism: A Research Guide to Concepts, Taboo, the Follies, Fables and Faces of Terrorism* (1996). See also Susan Tiefenbrun, ‘A Semiotic Approach to a Legal Definition of Terrorism’ (2003) 9 *ILSA Journal of International and Comparative Law* 357; Douglas Kellner, ‘Baudrillard, Globalization and Terrorism: Some Comments on Recent Adventures of the Image and Spectacle on the Occasion of Baudrillard’s 75<sup>th</sup> Birthday’ (2005) 2 *International Journal of Baudrillard Studies* 1: <[http://www.ubishops.ca/baudrillardstudies/vol2\\_1/kellner.htm#\\_edn3](http://www.ubishops.ca/baudrillardstudies/vol2_1/kellner.htm#_edn3)> accessed 1 September 2006.

35 See George Williams, ‘Strategies to Protect Academic Freedom’ (2006) 48 *Australian Universities Review* (2) 15 at 15.

36 Ibid; Ben Saul, ‘Preventive Detention and Terrorism in Australia’ (Paper presented at the International Society for the Reform of Criminal Law Conference, Brisbane, 3 Jul 2006).

37 Maher, above n21 at 291.

38 Doctor, above n21.

39 George Schöpflin, *The Construction of Identity* (2001) at 6: <[http://www.nt.tuwien.ac.at/nthft/temp/oefg/text/wiss\\_tag/Beitrag\\_Schoepflin.pdf](http://www.nt.tuwien.ac.at/nthft/temp/oefg/text/wiss_tag/Beitrag_Schoepflin.pdf)> accessed 20 August 2006.

40 Fitch, above n4 at 11.

## **B. The Communication of Identity**

### *(i) Sovereign*

The sedition legislation invokes markers of authority as ‘rallying points for ideology... against which to define the Other’.<sup>41</sup> The markers include the Constitution, the Government and lawful authority of the Government.<sup>42</sup> These ‘ideological monikers’ operate beyond the legislation, that is, they interact with binary oppositions constructed in the socio-political sphere, of terror/anti-terror, patriotic/seditious, outlaw/sovereign.<sup>43</sup> Viewed in this light, the legislation does not simply operate within criminal law but acts in a broader context to re-inscribe and legitimate the national source of authority and to help contrast its globalised opposite.<sup>44</sup>

This intersects with Roermund’s exploration of democracy as a ‘fatherless society’, meaning one without an all-powerful sovereign. Roermund argues that democratic societies continue to construct lines of authority to fill this vacancy so that authority still appears to emanate from a single source, the post-sovereign vanishing point.<sup>45</sup> Watts argues that Australia suffers a ‘dissociative identity disorder’ since its sources of sovereignty are unclear, being both a monarch and popular sovereignty – as a result, Australia has a particular interest in reinforcing a space for authority.<sup>46</sup> The elimination of ‘Her Majesty’ from the sedition legislation passed without much stir, yet it can be seen as an attempt to converge authority on a more unified source.

The word ‘sedition’ has its origins in a 19<sup>th</sup> century deferential view of government.<sup>47</sup> Even with the arrival of contradictory democratic influences, the use of sedition continued to suppress what was at different points in time the most salient threat to liberal democratic values.<sup>48</sup> Bell argues that the power of old symbols in law often dissipates as they become infused with modern overtones.<sup>49</sup> I would argue that in this case, the offence of ‘sedition’ carries all the baggage of its pre-democratic associations.<sup>50</sup> It is a form of political and social control to ‘root out perceived disloyalty and to enforce uniformity of thought’.<sup>51</sup> While sections 24A–24D of the *Crimes Act* featured ‘seditious intention,’ ‘seditious words’ and ‘seditious enterprises’ it is the term ‘sedition’ that appears in the headings of

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41 Oliver Watts, ‘Burning Effigies: Treason and Sedition in Visual Culture’ (Paper presented at PASSAGES: Law Aesthetics, Politics, Melbourne, 13–14 July 2006) at 1: <<http://www.law.unimelb.edu.au/cmcl>> (20 Aug 2006) at 1.

42 Id at 3–4, 11.

43 Id at 1, 3–4, 11.

44 Id at 4, 11.

45 Roermund, above n31 at 168–69.

46 Watts, above n41 at 7–8.

47 Maher, above n21 at 291.

48 Id at 291, 295.

49 John Bell, ‘Statutes, Text and Operative Enactments’ in Hanneke van Schooten (ed), *Semiotics and Legislation: Jurisprudential, Institutional and Sociological Perspectives* (1999) at 76, 78.

50 Australian Government Attorney-General’s Department, *Submission SED 31*, 12 April 2006, Submission to *Senate Inquiry*.

51 Clemens Work, ‘Sedition Laws Continue to Stir Debate, Fear’ [2006] 94(5) *The Quill* 69.

Division 80 and section 80.2 of the *Criminal Code*. From a semantic perspective, it is notable that in its nominal form, ‘sedition’ sets a more striking tone – it is the offence itself, not an auxiliary of the conduct. Instead of diffusing the effect of the historical implications of sedition, the nominalisation and prominent positioning in the headings see the offence anchored in its problematic history.<sup>52</sup>

(ii) *Community Identity*

In its rejection of meta-narratives, postmodernism holds that community and culture are a constructed and privileged set of norms.<sup>53</sup> The Australian Government has been keen to seize the opportunity of the terrorist threat to reinforce Australian identity. Terrorism is constructed by the Australian Government as a manifestation of how all the advantages of mobility and technology can become a destabilising force, to which the Australian nationhood is a refuge. The injustices of recent terrorist attacks or ‘event strikes’,<sup>54</sup> have spurred the community as a whole to adopt the role of symbolic victim with ‘moral superiority and inviolability’ against the ‘other’.<sup>55</sup> Sedition legislation is a prime vehicle to focus questions of allegiance and loyalty towards the interior and appeal to the symbolic criteria of political, social and individual behaviour.<sup>56</sup> Hence, sedition plays an important placebo role as a refuge for collective identity to combat the threat of the unknown.<sup>57</sup> Despite the outcry, it is a self imposed cocoon that provides comfort and stability in a time of crisis.

The outlines of Australian identity communicated through the legislation are discretionary and difficult for the public to locate. In response, the Australian people are likely to inscribe a constricted outline on themselves to avoid becoming the ‘other’ through criminalisation, making it likely that the sedition legislation will achieve greater levels of homogeneity than would be politically possible if such restrictions were explicit.<sup>58</sup> This process eliminates ranges of choice of meaning, creating a monology that screens out what is alien and contrary to common sense.<sup>59</sup> The chilling effect is no accident of poor drafting.

The policy is to ‘chill’ comments where they consist of urging the use of force or violence against our democratic and generally tolerant society in Australia.<sup>60</sup>

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52 *ALRC Report*, above n14 at [2.56].

53 Laurence Maher, ‘Free Speech and its Postmodern Adversaries’ (2001) 8 *Murdoch University Electronic Journal of Law* (2) at [12]–[13] <<http://www.murdoch.edu.au/elaw/issues/v8n2/maher82.html>> accessed 10 Aug 2006.

54 Kellner, above n34.

55 Schöpflin, above n39 at 3.

56 Ayse Ceyhan, *Terrorisme, Immigration et Patriotisme: Les Identites sous Surveillance* (2004) <[http://www.ciaonet.org/olj/cc/44\\_cc\\_win01/cea01.pdf](http://www.ciaonet.org/olj/cc/44_cc_win01/cea01.pdf)> accessed 10 August 2006.

57 Schöpflin, above n39 at 1–2.

58 See for example this excerpt from the website of the Victorian Peace Network: ‘What are seditious acts and statements? under construction ... more soon’. *What the Sedition Laws Mean* (2006) <<http://www.vicpeace.org/sedition/>> accessed 22 August 2006.

59 Schöpflin, above n39 at 4, 8.

## 5. *Conclusion: Absorbing the Exception*

Why is it that what is so obvious to me fails to stir the wider community? How come the community has not jumped up to condemn a government which had the temerity to saddle us with laws which so seriously threaten our liberties?<sup>61</sup>

Even with the release of the *ALRC Report*, the outcry is waning – despite its complete antithesis to liberal democratic identity, sedition has become an important element in the discourse aimed at cementing ideas of ‘otherness’ and ‘Australianness’.

Ian Duncanson makes a compelling argument for the ‘exceptionalisation’ phenomenon in the process of social identity construction.<sup>62</sup> As a result of the incompleteness of knowledge, individuals are innately driven to create patterns of the world based on predictions. This encourages what Duncanson identifies as the suspension of doubt and ‘routines of denial’ as a means by which individuals sustain faith in the grand narrative of liberal democracy. Events, laws and practices such as the sedition legislation, which do not conform to this ‘internally structured unity,’<sup>63</sup> are minimised and subsumed as necessary anomalies.<sup>64</sup>

Selective memory lends governments the confidence to respond to crises with subtle ideological infractions that span the social/political/legal matrix. Infractions are constructed as being located in the law which is reinforced as a space distinct from other more accessible spheres such as the social and the political.<sup>65</sup> This produces legitimacy through exclusion as the general member of the public rarely feels equipped to challenge the authority of the law — the liberal narrative holds out that only those with expertise may access the true intention and purpose behind the law.<sup>66</sup>

It is an important step to begin to view the reform as an aspect of a wider social interplay which acts in the construction of threats, identities and discourses.<sup>67</sup> The sedition legislation speaks to every member of Australian society on a broader socio-cultural level and needs to be confidently and critically engaged with in that sense if it is to be successfully analysed and countered. As long as the legislation is defined as a pure matter of law, the liberal narrative is likely to quarantine this exceptionality and smooth out internal contradictions.<sup>68</sup>

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60 Submission 290a to *Senate Inquiry*, above n6; See also Mike Head, *Australian Government Insists on Sedition Clauses in New Terrorism Legislation* (2005) World Socialist Web Site <<http://www.wsws.org/articles/2005/dec2005/terr-d02.shtml>> accessed 15 August 2006.

61 Elizabeth Evatt, ‘Seditious Intent’ (Speech delivered at the Seditious Intent Short Film Collection Launch, NSW Parliament House, 24 May 2006) at 4.

62 Duncanson, above n5.

63 Roermund, above n31 at 155.

64 Duncanson, above n5 at 22.

65 See Roger Douglas, ‘The Ambiguity of Sedition: The Trials of William Fardon Burns’ (2005) 9 *Australian Journal of Legal History* 227.

66 Duncanson, above n5 at 34.

67 Peter Burgess, *Law and Cultural Identity* (1997) ARENA Centre for European Studies Working Papers WP 97/14 at 7–8 <[http://www.arena.uio.no/publications/working-papers1997/papers/wp97\\_14.htm](http://www.arena.uio.no/publications/working-papers1997/papers/wp97_14.htm)> accessed 15 August 2006.

68 Duncanson, above n5 at 28; Fitch, above n4 at 29.

