

# *The Tactical Payment Scheme: Configurations of Life and Death in the Context of War*

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## *Abstract*

In 2009, the Australian Parliament passed legislation introducing the ‘Tactical Payment Scheme’. In its most serious application, this Scheme authorises Australian soldiers to provide cash payments to the families of those who are killed or injured as a result of Australian military operations overseas. The introduction of this Scheme, therefore, raises many questions about the significance and implications of civilian injury in wartime. This article analyses parliamentary and print media reactions to the Scheme, in order to document and critique how such difficult questions were socially and politically negotiated. It finds that the Scheme was generally framed as a positive initiative — an enlightened recognition of non-Western values and an effective tactic in the broader ‘War on Terror’. This article, however, draws attention to the culturally discriminatory images and identities that underpin these rationales for the Scheme, which serve to distance the Australian Government and people from both the nature of the Scheme and the suffering that it seeks to address.

## **Introduction**

In World War I only 5 percent of all casualties were civilian; in World War II that number was 50 percent; and in conflicts through the 1990s, civilians constituted up to 90 percent or more of those killed. (Chesterman 2001:2)

In June 2009, the Australian Parliament passed legislation formalising a process that is now known as the ‘Tactical Payment Scheme’. This Scheme affords Australian soldiers who are serving abroad the discretion to provide immediate monetary compensation for losses, injuries or other damage that occur in the context of Australian military operations. In its most serious application, the Scheme, therefore, enables Australian soldiers to provide cash payments to the families of those who have been killed or injured as a result of the actions of the Australian military overseas. While the Scheme has general application, its recent

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introduction was sparked by the ongoing operations of the Australian military in Afghanistan initiated as part of the 'War on Terror'.

The Tactical Payment Scheme constitutes an important and recent means of negotiating the significance of civilian death and injury in the context of war. The Scheme is a way of acknowledging and responding to the human suffering that occurs during Australian military operations. As such, the passage of the Scheme into legislation constituted an opportunity to consider many difficult questions about the significance of human suffering caused by war, raised by the need for such a compensation scheme. Does the introduction of the Scheme symbolise the normalisation and commodification of civilian death and injury in the context of war? What does the need for such a scheme demonstrate about the legitimacy of war, in general, and the War on Terror, in particular? Should the Scheme be received as an enlightened development, a progressive attempt to address the damage caused by armed conflict, or as a limit point, a sign of the inherently harmful and, hence, problematic nature of war?

This article seeks to engage with these questions by exploring how the Tactical Payment Scheme has been socially and politically received. It examines the political speeches and newspaper articles that accompanied the enactment of the Scheme, to analyse if and how these difficult questions were taken up, grappled with and negotiated. In critically evaluating these political and media understandings of the Scheme, this article's purpose is not to impugn the value of a scheme that offers some form of recompense for human suffering in the context of war, but instead to reflect on how the significance of the need for and introduction of such a compensation regime is negotiated in Australian public discourse. To this end, the article charts (and interrogates) how both the Scheme and the broader issue of civilian suffering in war were framed in the print media and political discourse surrounding the legislation of Scheme. Political speeches and newspaper articles are chosen as reference points due to their dual nature, as both reflective and constitutive of public opinion. They are analysed as powerful societal representations — representations that both draw upon and influence dominant public attitudes (see Hall et al 1978; Fowler 1991; Wykes 2001). These portrayals of the Scheme are used as textual 'windows' onto the way in which the human consequences of war are currently being thought about in Australia (see Wykes 2001).

This article demonstrates that the Scheme is generally framed as a positive initiative, with only a few partial reservations noted in the political and media discussions of it. More specifically, the Scheme is supported on two primary grounds: first, it is advocated as a progressive recognition of Afghani cultural norms regarding compensation and, second, it is praised as an important tactical initiative, a means of winning over Afghani 'hearts and minds' in the broader War on Terror. This article argues, however, that both these justifications for the Scheme are based on a problematic distinction between a benevolent, liberal Western self and a backwards, potentially terroristic Afghani, or non-Western, other. This distinction is significant as it serves to distance Australians from the causes and experience of Afghani suffering, enabling such suffering to be depicted as an unfortunate yet inevitable side effect of protecting Western rights and values in today's war, the War on Terror (see, more generally, Butler 2009:31). Accordingly, in the print media and political discourse, there is no substantive discussion of the significance or implications of civilian injury in armed conflict. Rather, the human suffering that accompanies war is placed outside the terms of debate; it precedes political and media discussions of the Tactical Payment Scheme as a prerequisite fact, a state of affairs that is marked as beyond control and, accordingly, controversy. In this way, political and print media debates about the Tactical

Payment Scheme function to normalise civilian death and injury in times of war. In the context of war in general and the War on Terror in particular, civilian harm is produced as an unchangeable (or inevitable) ‘reality’ of war.

Ultimately, the aim of this article is two-fold: first, to draw criminological attention to the existence of the Tactical Payment Scheme; and, second, to problematise the normalisation of civilian death and injury that characterises contemporary political and media responses to it. This article seeks to document the discursive ‘mechanics’ of such normalisation (see, in another context, Spivak 1988:294) in order to critique and, thus, move beyond them. It calls attention to the discursive structures that justify the human suffering of some for the benefit of others as a means of re-presenting them as constructed and, thus, contestable structures of thought (as opposed to rational and realistic understandings of the world). In doing so, this article highlights the continuities between political and print media understandings of the Tactical Payment Scheme and ascendant modes of thinking about terrorism and counterterrorism that predominate in this ‘time of terror’ (Hudson 2009:703). As such, it seeks to complement broader criminological critiques of the discourses and practices of the contemporary War on Terror (see, eg Mythen and Walklate 2006; Hogg forthcoming; Hudson 2009), as well as contribute to recent criminological work that seeks to problematise war in general (by framing it as state crime) (see, eg, Kramer and Michalowski 2005; Ruggiero 2007).

Structurally, the article begins with a description of the Tactical Payment Scheme, before turning to analyse print media and political depictions of it. The third section reflects more specifically on the way in which the significance of civilian casualties is — or, more accurately, is not — taken up in the parliamentary and print media debates about the Scheme.

## Law and War: Legislating with respect to civilian death and injury

The Tactical Payment Scheme was introduced in June 2009 as an amendment to the *Defence Act 1903* (Cth).<sup>1</sup> Under the Tactical Payment Scheme, the Minister for Defence, or their delegate, can authorise payments to a person that is a non-Australian citizen if they have suffered ‘loss, damage or injury’ that is related to the actions of the Australian Defence Force abroad.<sup>2</sup> In effect, the Scheme enables Australian soldiers to provide a cash payment to a person that is injured, has a family member who is killed or suffers property damage in the context of the overseas operations of the Australian military. The Scheme is discretionary — payments can be made if deemed to be ‘appropriate’, and are voluntary, in the sense that they are not legally mandated (*Defence Act 1903* (Cth) s 123H). The maximum payment under the Scheme is set at A\$2,500 for the most serious damage, although, in practice, the amounts disbursed have been much less (Baldwin 2009:4003). In the 2009–10 financial year, 125 payments were made under this Scheme, which only amounted to a total of A\$36,933.00 (Department of Defence 2010).

It is consistently highlighted in the parliamentary debates and documents accompanying the establishment of the Scheme that the practice of compensating for civilian loss and injury in armed conflict is neither new nor unique to Australia (see, eg, Snowdon 2009:3031; Pyburne 2009:7). First, in Australia, before the introduction of the Tactical

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<sup>1</sup> See *Defence Legislation Amendment Act (No 1) 2009* (Cth) sch 1. The Scheme only officially came into effect on 1 July 2009.

<sup>2</sup> See *Defence Act 1903* (Cth) s 123H (and s 123J, which sets out potential delegates under the Scheme).

Payment Scheme, such payments were occasionally made under the ‘act of grace’ provisions contained in s 33 of the *Financial Management and Accountability Act 1997* (Cth). Under the ‘act of grace’ provisions, the Finance Minister has the discretion to permit government agencies to make monetary payments to individuals, even though such payments are not legally required by any piece of legislation or court finding. The ‘act of grace’ provisions are, thus, a general provision enabling the Minister to authorise payments — relating to various areas of government — that are deemed to be legitimate or desirable, even though there is no formal procedure for their approval or legal basis for their disbursement. The Bills Digest accompanying the Tactical Payment Scheme emphasises that there is a lack of clarity regarding the nature and amount of payments relating to civilian loss and injury that were previously made under the ‘act of grace’ provisions (Pyburne 2009:8).<sup>3</sup> As such, the Tactical Payment Scheme, is framed as an initiative that will address the shortcomings of the ‘act of grace’ process, which is described as ‘secretive’ (Pyburne 2009:8), ‘cumbersome’, ‘ad hoc and inconsistent’ (Perrett 2009:4013; see also Combet 2009a:5994–5; MacBean 2009). It is in this sense that the Tactical Payment Scheme is presented as a mere formalisation and refinement of an already established practice (see, eg, Bishop 2009:3692–3; Australian Associated Press 2009).

Second, it is also emphasised in the parliamentary debates and accompanying materials that the Tactical Payment Scheme accords with international — or, at least, American — practice (see, eg, Kelly 2009:5990; Johnston 2009:3694; Pyburne 2009). The United States (US) has developed various schemes to enable the provision of compensation to civilians affected by American military operations.<sup>4</sup> Under the Federal *Foreign Claims Act* civilians can initiate actions for compensation regarding losses occasioned by the non-combat actions of American forces (United States Government Accountability Office 2007). Meanwhile, in relation to providing monetary reparation for damage caused by the combat related behaviour of the American military, two discretionary forms of payment have been disbursed, known as ‘solatia’ and ‘condolence’ payments. These payments are similar in the sense that they are discretionary, disconnected from any form of legal liability, and authorised and measured with respect to the cultural norms of the country in which the US military is stationed (United States Government Accountability Office 2007; Witt 2008). However, these forms of payment differ in their specificities, such as with respect to the source of the funds that are used to make the payments (see United States Government Accountability Office 2007). The United States Government Accountability Office (2007:1) estimates that it has dispensed around US\$30.9 million in such payments in Iraq and Afghanistan between 2003–06. It is these ‘solatia’ and ‘condolence’ payment arrangements to which the Tactical Payment Scheme bears most resemblance (Pyburne 2009:3).

The American and Australian compensation schemes have been implemented in a context of high civilian casualties in the ongoing Wars on Terror in Iraq and Afghanistan. Although there have been debates about the cause and extent of civilian death and injury resulting from these wars (see Kahl 2007; Costs of War 2011; Hogg forthcoming), there are nevertheless clear indications of their extensive harm. A series of studies recently published by Brown University shows that even a ‘conservative’ accounting reveals that

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<sup>3</sup> That is, it is known that three disbursements totalling A\$81,483.00 were made in the 2007–08 financial year and that 14 payments amounting to A\$199,559.00 were made in 2006–07, but it is not known whether these disbursements were made in relation to civilian damage occasioned by the Australian military overseas (Pyburne 2009:8).

<sup>4</sup> For the purposes of this article, the following description sets out the three main schemes that exist, but see US Government Accountability Office (2007) for more details regarding other payments and schemes that exist.

12,500 civilians in Afghanistan and 126,000 civilians in Iraq have been directly killed during the wars (Crawford 2011a:2; 2011b:1). As such, the Australian and American compensation schemes are seen to be a means by which these nations can ‘win the hearts and minds of civilians’ in light of the detrimental impact of the wars in Iraq and Afghanistan (Witt 2008:1456; Joseph 2007:223; see also below). Accordingly, whilst both schemes, in some form, predate the current wars, their application in Iraq and Afghanistan a few years after the commencement of the War on Terror was also accompanied by other measures designed to ensure more ‘positive’ engagement between external forces and local civilians (CIVIC 2010:2; Joseph 2007).

Notably, these compensation schemes provide victims with more than is required by international humanitarian law. That is, there is no international law requiring external military forces to compensate civilians for loss and injury that occurs in the context of their operations (Tracy 2007). To the contrary, civilian death and injury is both anticipated and not prohibited by relevant international legal provisions. The laws of war do provide some protection to civilians, by requiring that military forces distinguish between military subjects and objects and civilian subjects and objects and refrain from intentionally targeting the latter (Kalshoven and Zegveld 2011). However, they still permit military attacks that (‘unintentionally’) harm civilians and civilian objects, as long as the attack in question is directed at a ‘military target’ and is proportionate to the military goals sought to be achieved (Kahl 2007:10). Thus, as commentators have noted, it is possible for military action to cause civilian death and injury and, yet, remain legal (Hogg forthcoming; Kahl 2007; Ronen 2009).

The Bill proposing the Tactical Payment Scheme was discussed in both the upper and lower houses of the Australian Parliament before being passed. This article analyses transcripts of the 16 speeches made during these deliberations,<sup>5</sup> along with the Explanatory Memorandum (2009) that elaborates on each section of the legislation, the Bills Digest (Pyburne 2009) contextualising the Scheme and the Press Release by the Minister for Defence Personnel, Materiel and Science following the granting of Royal Assent to the legislation containing the Scheme. These parliamentary texts are detailed and critiqued in conjunction with the print media articles that concerned the proposal and eventual establishment of the Scheme.<sup>6</sup> The newspaper articles concerning the Scheme were few, relatively brief and often notably similar to each other in both language and ideas, suggesting that many of the articles drew on a base text or common information source. Meanwhile, the parliamentary and media texts concerning the Scheme are also striking in their homogeneity. The newspaper articles draw generously on the statements of politicians and representatives of the Department of Defence and the Australia Defence Association, meaning that these figures are positioned as ‘primary definers’ (see Hall et al 1978:57–60) whose views are privileged in the media, thus becoming the truth of the matter. The next section examines in more detail the content of these media and political representations.

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<sup>5</sup> 13 of which were made in the House of Representatives, 3 in the Senate (see <<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2FR4090%22;querytype=;rec=0>>).

<sup>6</sup> Ultimately, this article only analyses eight, relatively brief, newspaper articles which were published around the time that the Scheme was introduced. These articles, however, were at least from a range of newspapers (see References below).

## **Making sense of the Tactical Payment Scheme: Images of the West and its other**

At the time of its enactment, the Tactical Payment Scheme was widely received in the Parliament and print media as a positive and progressive initiative. As the Bill proposing the Scheme passed through the two houses of Parliament, politicians from various backgrounds all expressed their wholehearted support for the initiative; whilst the print media did not stray far from this official line. Indeed, in a context where civilians do increasingly suffer in the course of armed conflict and in which such suffering is — at times — permitted by law, programs such as the Tactical Payment Scheme can be conceived as humanitarian gestures (see Joseph 2007). Although monetary compensation, in any setting, fails to fully account for interpersonal loss, injury and suffering, it nevertheless represents some form of amends for harm experienced. It is in this sense that many public and academic commentators present compensation schemes for civilian harm as moral and ethical initiatives (see CIVIC 2010; Making Amends Campaign 2011; Ronen 2009). CIVIC (the Campaign for Innocent Victims in Conflict) (2010) emphasise the fact that such schemes are seen as valuable by both their civilian recipients and the soldiers responsible for administering them.

This section, however, draws attention to the problematic imagery that underpins parliamentary and public discussion and endorsement of the Tactical Payment Scheme. Turning to critically examine the two main ways in which this Scheme was framed and legitimated in parliamentary and public discourse, it demonstrates how both these renderings of the Scheme are problematically premised on a hierarchical and discriminatory opposition between an Australian self and an Afghani other. The resonance of this opposition is traceable to broader societal discourses that are currently prominent in this time of terror and counterterror (see also Hogg forthcoming), but it functions to distance the Australian Government and public from: first, the nature of the Tactical Payment Scheme; and, second, the suffering it seeks to address.

### ***Cultural others in the War on Terror***

First and foremost, in the parliamentary and media texts, the Scheme is portrayed as a respectful and enlightened recognition of the cultural values, or ‘cultural niceties and sensitivities’ (Jensen 2009:5994), which exist in certain countries. On a general level, the legislation is portrayed as a product of ‘lessons learnt’ (Snowdon 2009:3031) in Australian military operations in East Timor, Iraq and Afghanistan, which are described as places where ‘financial compensation for collateral damage ... is often a common expectation of local cultures’ (Explanatory Memorandum 2009:2). On a more specific level, however, given the immediate anticipated use of the Scheme in Afghanistan, the expectation of financial compensation for death and injury is also depicted as a particular characteristic of Afghani culture. As a representative of the Australian Defence Association explains in one radio interview, ‘the bottom line is that in most Afghan ethnic cultures there is the concept of honour payments’ (James in Bourke 2009). Such claims are also echoed at numerous points in the print media and parliamentary debates, with one notoriously controversial Liberal politician provocatively proclaiming that he supports ‘this administrative measure that accommodates an aspect of Middle East culture where, if you shoot someone, you pay them for it. That is part of their culture’ (Tuckey 2009:4014; see also MacBean 2009). In such statements and explanations, the Tactical Payment Scheme is, therefore, justified as a culturally appropriate means of responding to personal loss and injury in certain countries in the world (Kelly 2009:5990–1; Johnston 2009:3694).

In highlighting this aspect of the media and parliamentary debates, the aim is not to contest the claim that compensation for personal and property damage might be an expectation of particular, and specifically Afghani, cultures, or to frame compensation itself as something inherently unethical or problematic (see CIVIC 2010:2). Compensation for death and injury is a prevalent and supported feature in many societies across the world, including, as one Labor parliamentarian notes, in Australia (Neumann 2009:4007). In Australia, various compensation regimes exist, from schemes addressing traffic accidents to crime victims to employees harmed at work: 'it is common in Australian law for people to receive payments where they suffer injury, illness or damage ... [t]he concept of a no-liability payment is not at all foreign to Australian law' (Neumann 2009:4007). Although these compensation schemes are not able to be equated, compensation — in general — whether in the context of military operations or in relation to crime at the domestic level, is predominantly understood as a just and important recognition of suffering endured (see, eg, Chappell 1972 and Tracy 2007:16–17 respectively).

Thus, rather than problematising the notion of compensation, per se, the concern regarding claims about a non-Western or Afghani 'culture of compensation' (Sullivan 2009:4021) relates to the *way* in which the concept of 'culture' is being invoked and deployed in the print media and parliamentary texts. That is, allusions to 'culture' and 'Afghani culture' in the political and media debates are employed to establish a distinction between an Australian self, on one hand, and an Afghani other, on the other hand. Both the media and parliamentary texts are replete with references to 'our Defence Force' (Robert 2009:5989) and 'our rights and our liberties' (Neumann 2009:4007) — terms that are employed in contrast to 'these people' (Perrett 2009:4013), their culture and their 'destiny' (Baldwin 2009:4004). Within the context of this distinction, Afghani culture and communities are presented as fundamentally different to Australian culture and society. It is in this vein, for example, that newspaper reports quoted a representative of the Australian Defence Association who purported to explain the nature of the payments to be made under the Scheme, which are 'in Afghan terms honour payments', but can be understood 'in Australian terms [as] compensation payments' (MacBean 2009). In making the effort to translate the nature of these payments to the Australian community, he marks Afghani culture and its attendant concepts as foreign or unfamiliar to Australian society.

Moreover, in the political and media representations of the Scheme, Afghani culture is not only portrayed as *different*, it is also portrayed as *inferior* to Australian culture. As Said demonstrated in *Orientalism* (1978), Western discourses about the East, or non-West, are based on both difference and hierarchy. Within such discourses, non-Western countries are presented as both different and 'inferior' to their Western counterparts (Said 1978:40–2). Similarly, in the parliamentary debates about the Scheme, not only is the provision of compensation for death and injury portrayed as a 'cultural' practice, it is depicted as a 'questionable practice' (Tuckey 2009:4014). It causes one parliamentarian to muse that '[i]nterestingly, in a place like Afghanistan, losing an animal may, in fact, be more devastating than losing a relative. Camels can have a higher value than a human in some of these places' (Lindsay 2009:4011). Despite the existence of similar compensation regimes in Australia that also quantify, however unsatisfactorily and incompletely, injury and death in monetary terms, Afghani expectations of compensation are framed differently, as a sign of the backwards and uncivilised nature of Afghani culture.

In this sense, Australian parliamentary and media debates about the Tactical Payment Scheme utilise similar imagery to that which was employed to legitimate the Coalition

invasion of Afghanistan in 2001. Cloud (2004:286–7) has charted, for example, the way in which Afghani people and their culture were presented as ‘backward’, ‘pre-modern’ and ‘barbaric’ in Western representations and justifications for the invasion of Afghanistan (see also Kapur 2002). In a contrast with Western democratic values and liberties, Afghanistan and its leaders were depicted as barbaric and uncivilised; while, in distinction to the rights supposedly enjoyed by Western women, Afghani social systems were represented as backward and undeveloped (see Cloud 2004). It is in this vein that the then US President justified his country’s invasion of Afghanistan on the basis that in Afghanistan:

Women are not allowed to attend school. You can be jailed for owning a television. Religion can be practiced only as their leaders dictate. A man can be jailed in Afghanistan if his beard is not long enough. (Bush 2001:1141)

From such descriptions, an image emerges of a backwards country, which is characterised by repressive rules. Yet, not only are the laws that guide Afghani society repressive, they are also presented without any context and, therefore, appear nonsensical (‘A man can be jailed in Afghanistan if his beard is not long enough?’) and cannot be justified with any reference to cultural relativity or diversity. They appear both barbaric and illogical (see also Cloud 2004).

Thus, the images of Afghani otherness used to justify the Tactical Payment Scheme are not new or unfamiliar. To the contrary, these images are firmly embedded in and reinforced by broader, Western ways of understanding that have consolidated in the wake of the 11 September 2001 (‘September 11’) terrorist attacks in the US. As Jackson (2005a; 2005b) has charted, there is now a dominant discourse concerning terrorism and counterterrorism, which — importantly — is premised on a guiding division between a Western (be it American, Australian, British or Canadian) self and its non-Western, Muslim other. Within this discourse, the September 11 attacks are understood to represent a new unique form of terrorism and to have heralded the beginning of a contemporary era defined by the threat of Islamic terrorism directed towards the West. The September 11 attacks, and terrorism in general, are portrayed as an existential threat to Western liberal democratic societies; a challenge to the values, ideals and lifestyles that are said to characterise these communities. As with the discussions of the Tactical Payment Scheme, this way of understanding is premised on a distinction between a Western self and a Muslim other, which is not only oppositional, but hierarchical and discriminatory. Jackson (2005a:8–13) demonstrates how the West is associated with values such as goodness, civilisation and liberty, whilst the non-West is allied with attributes such as evilness, barbarity and terrorism. Of course, many have claimed that this imagery of an ideological battle between the West and non-West simply serves to cover over the real purpose of the physical battles that have been waged in the name of counterterrorism, namely, to assert and consolidate American and Western geopolitical and economic dominance in non-Western parts of the world, rather than simply fight terrorism (see, regarding the Iraq War, Kramer and Michalowski 2005; Roy 2004; Welch 2008). This imagery, however, remains dominant in Western countries such as Australia, informing recent debates such as those regarding the Tactical Payment Scheme (see also Hogg forthcoming).

The importance, however, of highlighting these images of Afghani otherness in this article is not only to underscore and critique their discriminatory nature, it is also to draw attention to their (problematic) effects. First and crucially, this distinction between Afghani and Australian culture and values serves to sidestep any inquiry into the legitimacy or desirability of the Tactical Payment Scheme as a means of addressing the impact of Australian military forces overseas. Potential questions about why such a scheme is needed



and what its introduction might reveal about Australia military involvement in and public support for the War on Terror are swept aside. Rather, the Scheme is framed as a reflection of Afghani culture and this mode of responding to harm is marked as ‘theirs’ and not ‘ours’,<sup>7</sup> whilst the Australian Government’s willingness to provide compensation is framed as simply an expression of a ‘[r]espect for, and recognition of’ (Banham 2009) these strange cultural values.

Second, this distinction between a Western self and an Afghan other functions to distance the Australian Government and public from the Afghani people and their suffering (see also Hogg forthcoming:13). Disrupting dominant measures of the worth of life in Australia (such as the notions that compensation can never fully redress human loss and the privileging of human over other animal life), depictions of Afghani attitudes to life, death and loss could be interpreted to suggest that life is not valued and mourned in Afghanistan in the same way as it is in Australia. This message may be implicit (rather than overt), but it accords with other mainstream discourses, which also function to naturalise Afghani suffering and downplay its significance. That is, Hogg (forthcoming) demonstrates the way in which the suffering endured by non-Western populations as part of the War on Terror is often denied through representational techniques that portray violence as normal in certain parts of the world. Countries like Afghanistan are imagined through mainstream discourses as inherently violent places, where suffering and injustice constitute the rule instead of the exception (Hogg forthcoming:12–15). Such depictions not only obscure the global and external conditions that shape quality of life and the existence of conflict in a particular country, but also naturalise — rather than problematise — interpersonal pain and suffering in such locations (Hogg forthcoming:14). The loss and injury experienced in countries like Afghanistan is downplayed as not exceptional, but expected in ‘such places in the world’.

From the depiction of Afghanistan as a de-historicised and de-politicised site of violence, it is only a small rhetorical step to locate responsibility for civilian death and injury in the War on Terror at the local level. In the parliamentary speeches and media articles it is underscored that the payments, the compensation, offered under the Scheme do not flow from any sense of Australian liability or responsibility for the death and injury at issue. Congruent with the immunity agreements that protect coalition forces from local prosecution in both Iraq and Afghanistan, the actions to be compensated under the Tactical Payment Scheme are disconnected from any legal culpability. Governmental sources repeatedly describe the payments as ‘no-liability’ payments (see, eg, Champion 2009:4017; Combet 2009b; Explanatory Memorandum 2009:2). Further, the newspaper articles quote a Defence spokesperson who clarifies that the payments are ‘not an admission of guilt’ (McPhedran 2009a:14). Rather, they are a means by which the Australian military can ‘acknowledge wrong’ (Robert 2009:5989) in circumstances where ‘[t]he Government is not legally liable for any losses but accepts some moral commitment to compensate’ (McPhedran 2009a:14). The ‘wrongs’ capable of being ‘acknowledged’ through the Scheme are, thus, not necessarily ‘wrongs’ deemed to be the fault of Australian soldiers.

Instead, especially in the media reports, responsibility for the deaths occurring in the context of Australian operations in Afghanistan is located at a local level. That is, there is a strong implication that the Afghani people are responsible for the deaths to be compensated under the Tactical Payment Scheme. Blame for civilian deaths, for example, is often attributed to the Taliban and other forces fighting against Coalition troops, through explanations that ‘[i]nsurgent fighters often use civilians as human shields’

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<sup>7</sup> This point references the title of Eqbal Ahmad’s (2001) essay: ‘Terrorism: Theirs and Ours’.

(McPhedran 2009a:14; see, more generally, Hogg forthcoming). Meanwhile, certain people's deaths are actually attributed to their own behaviour, through suggestions that it was actually the actions of the injured local people that 'led' to them being targeted. In this vein, one article emphasises that '[l]ocal people also have been shot for failing to stop at checkpoints or for driving aggressively near Australian-escorted high-speed convoys' (McPhedran 2009a:14). Another article notes that the Scheme is designed to provide compensation to 'civilians who inadvertently get caught up in ADF battles or exercises' (Banham 2009). The implication in both these 'explanations' is that Australian soldiers cannot be held responsible for the civilian damage caused in the context of their operations in Afghanistan, as it was either orchestrated by their adversaries or a result of people placing themselves in dangerous situations (more generally, see Hogg forthcoming; Wheeler 2002).

This locating of responsibility for civilian harm with the Afghani and terroristic other is crucial to the complementary, yet contrasting, image of an Australian self that is also constructed through the print media and political responses to the Tactical Payment Scheme. That is, rather than being independent and self-referential, these images of Afghani otherness are interdependent and relational. Just as notions of 'self' and 'other' have been shown to be relative and mutually constitutive (see Hall 1992), portrayals of Afghani others in the parliamentary and print media texts are central to the imagination and construction of an Australian or Western self (see also Jackson 2005a and 2005b). As Said (1978) elucidated, images of the non-Western other are not just images of difference, but particular images of difference, constructed to provide the Western self with a sense of identity — with both self and other produced on Western terms. In this context, portrayals of Afghani difference can be reappraised as socially, culturally and political informed images of difference.

Thus, in contrast to a barbaric, sometimes terroristic and always foreign Afghan other emerges an image of a benevolent, culturally sensitive Australian self. Divorced from any sense of responsibility or culpability for the civilian injury that is the subject of the Scheme, the willingness of the Australian Government to offer compensation for such injury is portrayed as an act of benevolence or charity. In the print media, headlines proclaim that Australian '[t]roops to give Afghan victims cash' (MacBean 2009; see also Banham 2009), as though the payments were a donation or gift. Any suggestion that these payments might relate to some form of culpability of liability on behalf of Australian soldiers is downplayed through statements emphasising the invaluable and difficult role that such soldiers perform. One parliamentarian explains that '[i]t is important to understand that defence, in combat operations, is operating in an ambiguous environment' (Robert 2009:5989). The notion that Australia, as a nation, or its soldiers may bear some responsibility for the deaths and injuries compensated under the Scheme is omitted from appropriate discussion and debate, leaving the payments under the Scheme to be framed as a matter of 'common decency' (Champion 2009:4017).

As such, rather than being interpreted as a sign of culpability and guilt with respect to death and injury, the Scheme is portrayed as a sign of the inherent virtue of Australia and its people. The payments are described as another way for Australians, and their governments, to act as 'good Samaritans' who will do 'the right and honourable thing' in the face of human suffering (Neumann 2009:4008; see also Champion 2009:4017). The Scheme itself is presented as an indication of Australia's cosmopolitan and humanitarian values, another way in which Australia and Australians can 'care for our fellow human beings who inhabit this planet' (Neumann 2009:4008; see also Perrett 2009:4013). Moreover, it is framed as an

initiative that it is important for Australia to undertake on the basis of its superior global status, its position as a 'First World' nation that boasts a superior quality of life to that enjoyed in other, 'Third World' places. One parliamentarian, thus, describes the necessity of the Scheme as a response to the fact that '[p]articularly in Third World countries, damage to property or injury where there is not a compensation scheme and not the medical treatment and help that we in a First World country think it appropriate is devastating' (Neumann 2009:4007). He figures a need for external monetary compensation, which is elsewhere framed as a need that Australia can fill given that 'the payment costs are small — particularly from our perspective' (Champion 2009:4017; see also McBean 2009).

In line with more general narratives concerning humanitarian intervention (see Orford 2003), Australia is figured as the Western hero able to respond to the suffering endured by others elsewhere. Moreover, as Orford (2003:85) has shown in her work regarding humanitarian intervention more broadly, central to this image of Australian heroism is the disavowal that Australia may have any implication in the suffering to which it benevolently responds. Australia responds to civilian death and injury in war because of its 'honour' and decency, rather than its culpability and liability. In contrast to its Afghani other (which is the location of poverty, violence and terrorism), Australia — as a nation — is imagined through the parliamentary and media texts as representing wealth, benevolence and humanitarianism. Such understandings of the Scheme downplay the potentially imperial, or neo-colonial, nature of Western military interventions undertaken in the name of either humanitarianism or counterterrorism (or, indeed, in the case of the Iraq War, under the rubric of both) (see Kramer and Michalowski 2005). Problematically, this structuring distinction between a Western self and its Afghan other also characterises the second rationale for the Scheme.

### *Tactics of payment*

As well as being portrayed as a culturally appropriate measure, the Tactical Payment Scheme is also depicted in the parliamentary and print media texts as an important 'tactic' in the War on Terror. The name of the Scheme is, thus, significant — it is indeed a compensation scheme embedded in military strategy. More specifically, it is a tactic designed to ensure the safety of Australian troops and contribute towards their efforts to win the War on Terror. As one parliamentarian succinctly explains: '[r]espect for and recognition of such customs is vital for building relationships with these local communities, which in turn enhances the safety and security of our deployed ADF [Australian Defence Force] personnel' (Snowdon 2009:3031; see also, eg, Banham 2009; Carr 2009:3593; Explanatory Memorandum 2009:2). Accordingly, payments under the Scheme are placed in a causal chain, whereby financial compensation will lead to good relationships between Afghani communities and Australian soldiers, which will then ensure the latter's safety (see, in particular, Champion 2009:4017; McPhedran 2009a:14). Moreover, the establishment of such good relationships is also portrayed as a vital component in winning the War on Terror. As another politician unequivocally asserts: the 'only way to win this war on terrorism is to win the hearts and minds of the people of Afghanistan' (Baldwin 2009:4003), marking the War on Terror as a distinct type of battle and the Tactical Payment Scheme as a key strategy for ensuring victory in it (see also, eg, Jensen 2009:5994; Sullivan 2009:4021). It is in this sense that Witt (2008:1456) describes the similar American compensation schemes as 'among the latest non-lethal weapons systems in the American military'.

Interestingly, this self-focused and self-referential approach to the Tactical Payment Scheme also characterises the only area of substantive debate regarding it. In light of the

unanimous support for the Scheme as a concept, the only source of real contention related to the financial impact of the Scheme and the need for there to be stringent reporting requirements regarding any payments made under it. Whilst some of this contention reportedly stems from a concern of ‘human rights lawyers’ about the capacity of the Scheme to ‘silence victims’ and discourage them from taking legal action (see Banham 2009; MacBean 2009), in general, the debate is centred more upon the monetary implications of the Scheme for Australian citizens. As such, a central focus of the few newspaper articles on the introduction of the Scheme is its cost. There are claims that ‘[t]axpayers have paid out more than \$350,000 in “honour payments” to families of locals’ (McPhedran 2009b) and that ‘some payments ... have been as high as \$30,000’ (McPhedran 2009a:14). Meanwhile, the Opposition parliamentarians raise questions about how the Government will report on how much was spent under the Scheme, for what purposes and with what justification (Baldwin 2009:4004; Lindsay 2009:4011–12; Oakeshott 2009:4020). As an Opposition member explains, such questions are important ‘because this is taxpayers’ money’ and, thus, there is a need ‘to make sure it’s counted back through the parliament’ (MacBean 2009).<sup>8</sup> The only area of debate about the Scheme does not, therefore, centre upon the responsibility of the Australian Government and its soldiers for the existence of the deaths to be compensated, but instead upon the responsibility of the Australian Government to be accountable to its constituents for such compensatory payments.

As with the first rationale for the Scheme (discussed above), these self-focused claims about the benefits (Australian troop safety through winning Afghani ‘hearts and minds’) and costs (the financial burden on Australian citizens) of the Tactical Payment Scheme still rely on the notion of a non-Australian other. However, instead of constructing a relation between an Australian self and its other, these latter claims function to downplay any sense that such an obligatory relation exists. Premised — to borrow Ignatieff’s (1998:108) words from another context — on ‘some deeply ingrained feeling that “their” security and “ours” are indeed divisible’, the print media articles and political opposition seek to question the appropriateness of using Australian funds to compensate non-Australian citizens. Meanwhile, the Government — at least implicitly — responds to such challenges by reaffirming the Australian self-interest in making such disbursements (as a means of ensuring the safety and success of the Australian military). It also explicitly reacts to and neutralises such challenges by emphasising the minimal financial impact of the Scheme (which is said to only formalise the payments already being made under the ‘act of grace’ provisions) and promising a rigorous approach to accounting and reporting with respect to it (see Combet 2009a:5995; Johnston 2009:3694). It is only within the context of an oppositional relation between an Australian self and a non-Australian, or non-Western, other that these claims and counterclaims gain their power.

### ‘Collateral’ damage

Within this discursive context, it is perhaps unsurprising that in the parliamentary and print media debates there is little discussion of, and reflection on, the existence and significance of the deaths that will be compensated under the Scheme. When it is addressed, the topic of civilian casualties is dealt with briefly and decisively. Civilian death and injury is marked as an unfortunate, yet inevitable ‘reality’ of war. It is in this vein that one parliamentarian

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<sup>8</sup> Notably, even following the enactment and operation of the Scheme, there was still critical attention directed towards the way in which payments will be reported under it (namely, as a bottom-line total-budget figure, rather than being reported individually) (see Toohey 2010).

explains that '[o]ne of the simple lessons in life, which goes back to time immemorial in engaging with the enemy, is that there will often be collateral damage to assets, to individuals and to livestock' (Baldwin 2009:4002) — framing such loss and injury as a basic historical fact about the nature of war, which is unchangeable and indisputable (Bishop 2009:3693). Civilian casualties in wartime are normalised, in the sense that they are presented as beyond interrogation, discussion and debate. A similar sentiment is expressed by another parliamentarian who asserts that 'we know that, while every effort is made to avoid it, tragically civilians do sometimes unfortunately suffer harm and death ... That is one of the tragic costs of war and armed conflicts' (Perrett 2009:4012–13). Through his statement, civilian casualties are again portrayed as a factual reality that can be acknowledged without being endorsed. It is this understanding of civilian loss and injury as an undesirable side effect of armed conflict that is also conveyed through the military term 'collateral damage', which is used to describe the damage that is marked as 'secondary' to the central purpose of war.<sup>9</sup>

Roy (2001:111) characterises this mode of thinking about civilian death and injury as the 'algebra of Infinite Justice'. Invoking the first proposed name for the American operations involved in the War on Terror ('Operation Infinite Justice'), Roy uses this term to vividly portray the cost/benefit analysis that is utilised in contemporary justifications of the human impact of war. It is according to the 'algebra of Infinite Justice' that certain people's lives can become framed as an undesirable, yet not excessive, 'cost' in a greater war. To illustrate her point, she describes an example in 1996 when:

Madeleine Albright, then the U.S. Ambassador to the United Nations, was asked on national television what she felt about the fact that five hundred thousand Iraqi children had died as a result of U.S.-led economic sanctions. She replied that it was "a very hard choice," but that all things considered, "we think the price is worth it" (Roy 2001:111).<sup>10</sup>

Through this example, Roy highlights the corporeal equations used to justify civilian death and injury in relation to the legitimacy or desirability of the stated overall purpose of a particular war or invasion. Problematically, it is this same algebra that can be traced through the above statements of Australian parliamentarians who frame civilian injury as 'one of the tragic costs of war and armed conflicts'.

Importantly, though, what Roy's use of the term also highlights is the cultural politics that inflect such mathematical calculations, which — in practice — justify the 'sacrifice' of the lives of *certain people* as a means of securing the rights, liberties and interests of *others*. Indeed such 'trade-offs' have only proliferated and consolidated in this contemporary time of counterterrorism, in which a range of new initiatives — ranging from regulatory reform to new criminal offences to military invasions — have been launched with the aim of preventing and punishing terrorist acts (see Luban 2005:243). In the face of extensive academic and public criticism of the impact of such initiatives on human rights, Freeman (2005) and Luban (2005) insightfully emphasise that it is misleading to assume that these new measures affect *all people's* rights, interests and liberties in the same way. To the contrary, they contend, recent initiatives overwhelmingly impact on some (read non-Western) peoples, societies and countries in the name of protecting the interests and

<sup>9</sup> This sense is also conveyed through references in the parliamentary debates to civilian injuries as 'unfortunate happenings' (Neumann 2009:4006), 'unintended consequences' (Lindsay 2009:4010) and 'unintended damage' (Champion 2009:4016).

<sup>10</sup> Although this particular example relates to economic penalties, rather than military action, Roy (2001) also invokes this mathematical notion to critique military initiatives as well.

values of (Western) others (Freeman 2005; Luban 2005). It is the assumption of the acceptability of such 'distributive' inequity (see Bronitt 2008:68) that also marks the Australian parliamentary texts, in which *Afghani* death and injury is produced as an unfortunate, but ultimately acceptable, 'cost' of pursuing *Australian* and Western goals in the War on Terror; in one parliamentarian's speech, Afghani suffering is framed as an 'unintended' outcome of '[o]ur men and women in Afghanistan and other places ... fighting to protect *our* rights and *our* liberties' (Neumann 2009:4007, emphasis added).

Thus, the terms of the parliamentary and media debates are demonstrative of the claim that, in this time of counterterror, not all lives and deaths are valued and appreciated equally. Rather, as Butler (2004; 2009) has argued, due to the dominance of broader discourses that divide the world into two opposing halves (good Western selves versus evil Muslim terrorist others), not all people are understood (from a Western perspective) to live a valuable life and, thus, die a grievable death. Instead, there is a currently a 'differential allocation of grievability' according to which the lives of only some can be 'heard, read, seen, felt, and known' (Butler 2004:xiv, xx respectively). The lives, for example, of the victims of terrorist acts and of the Western soldiers fighting the War on Terror are more easily appreciable and 'apprehendable' in dominant public Western discourse, than the lives of those Afghani and Iraqi people lost in this war (see Butler 2004:32; see also Butler 2009:3–4 for a broader discussion of apprehendable life). It is within this broader context — in which not all rights, lives and deaths are accorded equal protection and value — that the Tactical Payment Scheme can be debated without any substantive discussion of the significance of the lives and losses it seeks to compensate. It is within this broader context that Afghani lives can be perfunctorily excused as an unavoidable outcome of a war pursued to protect Western liberal ideals and rights from further material and symbolic attack.

As such, it is the self/other distinction that I have charted throughout this article that is essential to achieving this erasure, or at least neglect, of Afghani and other civilian suffering in the parliamentary and print media representations. This distinction operates to sustain affective barriers, which make it difficult to 'feel', 'see' and 'know' about the death and injury experienced by civilian populations in the course of the War on Terror (see also Hogg forthcoming). As discussed earlier, it is through this distinction that Afghani people, in particular, are marked as always already suffering people (potentially, therefore, almost already dead), making it harder to appreciate their lives as lives and deaths as fully grievable deaths. Imagined through a prism of self and other, the Afghani others figured in the parliamentary and print media texts become too strange, too foreign, too *barbaric* to mourn in a comprehensive way.

## **Rethinking War: Reflections on the passage of the Tactical Payment Scheme**

It is perhaps due to its historical precedents and broader context that the Tactical Payment Scheme generated little political and media controversy. That is, the introduction of the Tactical Payment Scheme could be regarded as a simple formalisation and bureaucratisation of an already established, internationally prevalent practice, which does not require extensive interrogation (see Bishop 2009:3692–3). Alternatively, due to the broader normalisation of civilian casualties through the laws of war, the development of the Scheme could be regarded as simply a practical response to such expected suffering. Yet, on the other hand, the passage of this Scheme into legislation could have also been seized as an

opportunity to reflect on the significance of civilian death and injury in war and the Australian implication in such death and injury in the current War on Terror. In considering the introduction of a Scheme that seeks to compensate civilians for the suffering they experience due to Australian (and other) military operations, questions regarding the implications of such suffering for the justifiability of war could have been raised and explored. To the contrary, however, the very occurrence and significance of civilian death was largely placed outside the terms of discussion.

In order to understand how the Tactical Payment Scheme was debated and eventually introduced with no substantive reflection on the ethical and other significance of the suffering it seeks to compensate, it is necessary to appreciate both the rhetoric through which the Scheme was received and the broader discursive context in which it was enacted. First, as shown, the Scheme itself was understood through the frame of a fundamental and discriminatory distinction between an Australian (or Western) self and its Afghani (or non-Western) other. It is through such a division that the Scheme could be viewed as a sign of Australian cultural sensitivity and benevolence, and justified with respect to Australian self-interest. It is also in line with such a distinction that Afghani and other civilian death is downplayed as an undesirable, but inevitable cost incurred to achieve the 'legitimate' Western aims of the War on Terror. Second, though, the availability and resonance of these ways of understandings is a function of the broader social, political and cultural context in which the Scheme was introduced — namely, where a Western self is consistently imagined in a hierarchical and oppositional relation to a Muslim, potentially terroristic other.

However, these framings of the Scheme — and the unequal identity positions that underpin them — are neither natural, logical nor inevitable. Rather, as Zehfuss (2007) argues more generally regarding the rhetoric of 'us' versus 'them' in the War on Terror, such identities are actually produced *through* representation and interpersonal relations. They are socially, culturally, politically and historically ascendant constructions that can be critiqued and rejected on the basis of their discriminatory nature and harmful effects and implications. Indeed, at both the national and the global level, there has been resistance and opposition to both the War on Terror in general and the imagery and justifications used to legitimate this war and the civilian harm it has occasioned. This article seeks to contribute to this critique by unsettling existing dominant modes of thinking in order to reopen social, political and academic discussion of both the Tactical Payment Scheme and the broader issue of civilian casualties that it seeks to address. It seeks to provide the conceptual space in which questions that have not yet been taken up in any substantive sense can be either raised or revisited. Questions about the justifiability and legitimacy of war, given its extreme human consequences; questions about the significance of the perceived contemporary need for a compensation scheme designed to address and redress the large number of civilian casualties in the War on Terror; questions about the broader legal, ethical and political implications of the occurrence of such deaths and injuries; and questions about whether the Tactical Payment Scheme is the only way of addressing them, to name a few.

## Legislation

*Defence Act 1903* (Cth)

*Defence Legislation Amendment Act (No 1) 2009* (Cth)

*Financial Management and Accountability Act 1997* (Cth)

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