

Guantánamo Bay detainee railroaded into guilty plea

# The issues of principle in the case of David Hicks

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The media and political reaction in Australia to last month's guilty plea by David Hicks in a US military commission at Guantánamo Bay to a cooked-up charge of "material support for a terrorist group" is a graphic demonstration of the extent to which the most elementary legal and democratic rights are being undermined.

Throughout Hicks' detention the substantive legal issue has been the right of any accused, no matter what the alleged crime, to due process. That right now has little or no support in ruling circles.

An editorial in Murdoch's *Australian* described Hicks as a "confessed terror trainee". The *Sydney Morning Herald* stated: "David Hicks is guilty; he has said so." Its Fairfax media stable mate, the *Australian Financial Review*, said Hicks is "guilty" because he made admissions "under oath before the military tribunal".

Prime Minister John Howard said the verdict vindicated what his government had said—that Hicks was a dangerous terrorist. "The bottom line will always be that he pleaded guilty to knowingly assisting a terrorist organisation," Howard told reporters.

Labor Party leader Kevin Rudd agreed: "We are no defenders of Mr Hicks, we are no defenders of what he has done or what he is alleged to have done." Rudd said a Labor government would honour the US military sentence imposed on Hicks and keep him in an Australian jail for his full nine-month term.

These statements demonstrate that there is no line that the media and political elite will not cross in the indefinite "war on terror" proclaimed by the Bush administration and its allies.

It is obvious to everyone that Hicks was railroaded into pleading guilty and renouncing his legal rights to challenge his unlawful detention and abuse at the hands of the US military over the past five and a half years. Unless he pled guilty and accepted another nine months in jail, he faced many more years in an isolation cell at Guantánamo.

Howard falsely claimed that the plea bargain was negotiated between the military prosecutors and Hicks's lawyers.

In fact, in a further example of the lawlessness of the whole procedure, the guilty plea was actually arranged directly with the handpicked head of the Convening Authority for US military commissions, Susan Crawford, a long-time Republican Party official closely associated with US Vice President Dick Cheney. Not even the prosecutors were told of the deal until after the

military commission's hearing commenced.

The week-long hearing was a sham, conducted only to rubberstamp the backroom pact. Farcically, the military prosecutors continued to brand Hicks as the deadly face of the "enemy", even after being informed that a nine-month sentence would be unveiled at the end of the "trial".

It was a political "fix", concocted by the Howard government with the Bush administration, to try to legitimise the discredited military commissions, protect the Bush administration from law suits and rescue Howard from the mounting outcry in Australia over Hicks's fate. Hicks will not be released until after the Australian elections scheduled later this year, and is forbidden to divulge anything to the media for a year, in violation of his political rights.

One of Australia's leading criminal lawyers, Robert Richter, QC, wrote in the *Melbourne Age*: "The charade that took place at Guantánamo Bay would have done Stalin's show trials proud. First there was indefinite detention without charge. Then there was the torture, however the Bush lawyers, including his Attorney-General, might choose to describe it. Then there was the extorted confession of guilt."

As in Stalin's Moscow Trials of the 1930s, the accused was coerced into making a public confession, convicted on that evidence alone, and forced to make a humiliating public "apology". Hicks is also likely to "disappear" from public view, with the Howard government preparing to clamp a "control order"—a form of house arrest—on him, with Labor's support.

Richter concluded that Howard and his ministers had committed grave crimes under the Australian Criminal Code 1995, divisions 104 (harming Australians overseas) and 268D (denying a fair trial to a person protected by the Geneva Conventions), punishable by up to 10 years' imprisonment.

From start to finish, the incarceration, torture and military "trial" of David Hicks was an illegal affront, conducted solely on the executive orders of the US President, as the commander-in-chief of the US military.

Basic legal principles and protections against totalitarian rule were overturned—including the centuries-old habeas corpus rule against being imprisoned without a court order, prohibitions against the use of torture and other forms of physical and mental coercion, and the Geneva Conventions on war crimes and the

rights of prisoners of war.

Hicks was initially captured by Northern Alliance warlord elements in Afghanistan in November 2001, soon after the US invasion of that country—itsself an act of military aggression to overturn the Taliban government. At the time, it was not a crime under US, Australian or international law to train with the Taliban or Al Qaeda. Nevertheless, he was sold to the US military for a \$1,000 bounty, beaten and tortured, and taken to Guantánamo Bay, where he was further abused and kept in solitary confinement.

Bush and his legal adviser (now Attorney General) Alberto Gonzales asserted that the president had the unilateral power to disregard the Geneva Conventions and brand prisoners as “enemy combatants”, who could be held indefinitely without trial. Likewise, Bush and defence secretary Donald Rumsfeld approved coercive methods of interrogation at Guantánamo Bay and other US-controlled facilities (such as Baghdad’s Abu Ghraib prison) that clearly breached US and international law, including the UN Convention Against Torture.

For the next five years, the Bush administration proceeded with the full backing of Howard and his key ministers, notably Foreign Minister Alexander Downer and Attorney-General Philip Ruddock, who repeatedly denounced Hicks, and fellow Australian detainee, Mamdouh Habib, as evil terrorists who were the “worst of the worst”. Howard stated openly that Hicks could not be repatriated to stand trial in Australia, precisely because he had committed no crime under Australian law.

It was not until June 2004 that ludicrous, trumped-up charges were laid against Hicks, including “conspiracy” and attempted murder, none of which are war crimes recognised by international law. Two years later, in June 2006, those charges had to be abandoned when the US Supreme Court ruled that the Bush administration’s military commissions were illegal because their establishment, rules and procedures flouted the US Constitution and international law. Yet, Hicks was dragged before a virtually identical “kangaroo court” after the US Democrats joined hands with the Bush administration to resurrect the military commissions via legislation.

Hicks was charged with a new, retrospective offence—providing material support for a terrorist organisation. The Military Commissions Act 2006 defined the offence in the most sweeping terms, in order to make it almost impossible to beat. Even giving a glass of water to Osama bin Laden would breach the statute, Joshua Dratel, Hicks’s US civilian lawyer, told the Australian Broadcasting Corporation’s “Four Corners” program.

Facing the almost certain prospect of being convicted and languishing for years in Guantánamo Bay in order to challenge the process in the US courts, Hicks was bullied into signing a thoroughly unconstitutional document, in which he not only pled guilty.

He was forced to pledge to not communicate for one year with the media “in any way,” including “indirect communication” by family members or “any other third party”. This clause violates the basic right to freedom of expression, as well as the free speech provisions of the US constitution, and the implied right of political communication in the Australian constitution.

Hicks also waived all rights to appeal or challenge his

conviction, including on constitutional grounds, and agreed that the US government had the right to capture him again as an “unlawful enemy combatant” if it thought he had engaged in proscribed conduct.

Hicks declared that he had “never been illegally treated” by any US personnel and accepted that “this agreement puts to rest any claims of mistreatment by the United States”. Yet, in 2005 Hicks set out his treatment in detail in an affidavit for an English court, as part of an application to overturn the Blair government’s anti-democratic rejection of his right, based on family ties, to British citizenship.

He said that in Afghanistan he was slapped, kicked, punched and spat on, could hear other detainees screaming in pain, saw the marks of their beatings and had a shotgun trained on him during interrogation. At Guantánamo, he experienced a range of techniques approved by the Pentagon, such as temperature extremes, sleep deprivation and loud noises. He also saw a detainee set upon by dogs, another’s face slammed into the concrete until he was unconscious, and was shown a photo of Mamdouh Habib, looking like a corpse, his face black and blue.

By March 2003, he “felt that I had to ensure that whatever I did pleased the interrogators to keep from being physically abused, placed in isolation and remaining at Guantánamo for the rest of my life.” At that time he signed a long and incriminating statement for US officials.

None of these violations would have been possible without the essential assistance given to the Bush administration by the Australian Labor Party, during the past five years, in echoing every unsubstantiated accusation against Hicks.

Confronted by growing popular opposition to Hicks’s plight over the past 12 months, Labor, like Howard’s government, called on Washington to expedite the military commissions process so that the issue could be taken off the political agenda. No less than the current government, Labor is fully committed to the US alliance and the underlying agenda of militarism.

In the wake of Hicks’s plea bargain, Labor leader Rudd specifically endorsed the government’s power to impose a controversial control order on Hicks, while another Labor figure, South Australian Premier Mike Rann, demanded to know what “supervision” the federal government would impose on the “dangerous terrorist”.

In his *Age* article, Robert Richter expressed the wide concerns in the legal profession, as well as the disgust felt by broad layers of ordinary people, about the extent to which the traditional principles of the legal system have been trashed to serve the interests of the Bush administration and its allies.

But the reactions of the editorial writers and politicians, both government and Labor, indicate that the lawlessness emanating from the White House is far from confined to the ruling circles of the United States.



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