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THE LONELINESS CRISIS



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Lindsay Tanner

The Australian Labor Party is reviewing its policies and ideas as it revives in opposition. Among the Labor young "Turks" who have contributed newly released books is Lindsay Tanner, Shadow Minister for Finance. In *Open Australia* (Pluto Press) Lindsay Tanner calls for a radical overhaul of past and present Labor thinking. Lindsay Tanner spoke for The Sydney Institute on Tuesday 4 May 1999.

THE LONELINESS

CRISIS

Lindsay Tanner

Contemporary Australian society seems overwhelmed by social problems. At a time of apparent economic prosperity, community anxiety about family breakdown, drug abuse, gambling, youth suicide, violence and home invasion continues to mount. Widespread ambivalence about the benefits of economic change is reflected in a rising tide of community concern about negative social consequences.

These social problems broadly reflect steadily increasing loneliness, alienation and social exclusion. Although these things are difficult to quantify, there can be little doubt that since the late 1960s our society has seen the collapse or erosion of many of the social structures around which people built relationships, personal worth and belonging.

The decline of rigid family and social structures and enormous advances in transport and communications have been tremendously liberating. Yet greater freedom for all has been accompanied by greater isolation and loneliness for many.

Older people are more readily abandoned to a lonely existence by more physically and emotionally remote families. Young people lacking the key attributes of physical appearance, personal wealth and social appeal are more easily excluded from social participation. Retrenched middle-aged workers are cut loose from their primary source of personal identity and self-esteem, with little hope of regaining it. Many individuals carry the appalling label "loser", the modern social equivalent of leper.

A recent letter I received from a middle-aged single mother from Glen Waverley very poignantly expressed the devastating effects of social exclusion. She talked of the social devaluation she has experienced in a middle class suburban community as a result of leaving her abusive husband and struggling to care for several children, some with significant disabilities, on her own.

There is a loneliness crisis out there. More and more people are excluded, alienated and despairing. The proliferation of gambling, drug abuse, suicide and family breakdown reflects this surge in social dislo-

cation. We are living in an increasingly alienated community. The fact that the sections of my book *Open Australia*, which deal with these issues, were highlighted by tabloid newspapers and largely ignored by the quality media indicates the nature and extent of the problem. Loneliness and alienation may not be big issues in the top end of town, but they are in the general community.

A recent study found that 10 per cent of elderly Australians see another person on average less than twice a week. The physical dispersion of friends and family coupled with high transport costs and physical mobility problems ensures that many people live lonely, isolated lives.¹

Different forms of isolation are experienced by many young people. In amongst the commentary about media culture and gun control arising from the recent Denver school massacre were some telling observations about the psychological background to the tragedy. "We thought of them as losers and dorks," said one classmate of Dylan Klebold and Eric Harris. "He really felt unloved. He was lonely," said another about Klebold.² Although the explanations behind this tragedy are complex, loneliness and social exclusion clearly played a significant role.

The origins of this crisis lie in the extraordinarily powerful forces of individualism generated by technological and economic change and magnified by the associated social revolution of the 1960s. Virtually all of the social and economic structures around which people built their lives have either disintegrated or changed beyond recognition. Neighbourhood is anonymous, marriage is temporary, gender roles have disappeared, hard work is not appreciated, and behaving properly and decently no longer matters. Or at least this is how it seems.

The two collective belief systems which have enabled people to organise their lives around certain principles and assumptions, religion and socialism, are in serious decline. The previously dominant role of tradition is receding rapidly, with concomitant loss of predictability and certainty for many people.

This erosion of individual identity and self-worth is occurring in the workplace as well as outside it. In his new book *The Corrosion of Character*, Richard Sennett provides telling illustrations of the personal disorientation emerging from the new world of work.³ He contrasts the emotional stability of Enrico, an elderly janitor, with the social turmoil and family tensions of his highly paid consultant son, Rico. He highlights the change in a Boston bakery, where a traditional work environment of clearly defined roles and heavy work has been superseded by an antiseptic environment of transient, non-committal workers lacking occupational identity and self-respect. Sennett even shows how the pervasive fashion for teamwork in the workplace contributes to personal disorientation without generating greater individual empowerment.⁴

The wave of economic restructuring which swept through our economy in the 1980s and 1990s is clearly central to these changes in the workplace and society. Enthusiastic advocates of economic change often fail to acknowledge that this transformation is undermining the non-market family and community structures which underpin the market economy.

The free market system depends upon an elaborate network of community relationships and social trust in order to function properly. A system based on contractual relations requires a certain level of social predictability and long-term stability. Rampant individualism and the culture of instant gratification, and the social problems they engender, threaten to undermine capitalism almost as much as they have undermined socialism. It may be difficult to prove this point statistically, but it is nonetheless valid. As one recent commentator on globalisation remarked: "It is easy to prove that uncompetitive practices are inefficient, while the chain of consequences that runs from social stability to economic growth is far more complex."⁵

Human beings are driven partly by the need for recognition. Our need for material well-being is supplemented by a very powerful need to be loved, respected, admired and valued. Obviously the precise nature of this need for recognition varies enormously from one person to another, but it is nonetheless a very powerful factor in human behaviour.

Our society is experiencing growing inequality of recognition which in many ways resembles increasing inequality in wealth and income. In the prevailing culture of individualism, the innate worth of an individual is devalued, and largely superseded by external characteristics such as physical appearance, education and personal wealth. A cult of success has engulfed our community discourse, with intense competition permeating almost all forms of human activity. Those who are losers suffer social devaluation which can lead quickly into alienation and loneliness, and the many social pathologies which social exclusion tends to breed.

The rise of cosmetic surgery, eating disorders, and celebrity magazines all reflect this trend. Anthony Giddens argues that individuals in western societies now create their own identities.⁶ A much smaller proportion of the individual's identity is socially predetermined, and hence he or she is far more reliant on the vagaries of the "recognition market place". Adopting Sennett's phrase the creation of identity is now dominated by "the association of the flexible and the fluid with the superficial".⁷

Growing loneliness and alienation translates into a variety of social and economic problems. Recently the Royal Australian College of Physicians called for action to address rising inequality, which they identified as a key contributor to serious health problems. They

referred to the negative health consequences of social exclusion and workplace change.⁶ At a recent conference on ageing Professor Hal Kendig of Sydney University argued that loneliness and isolation amongst older people leads to poorer health outcomes.⁹

In a fascinating recent article in the *Guardian Weekly*, Mari Marcel-Thekaekara described a visit to Europe by members of an extremely poor indigenous people from Tamil Nadu in southern India. The contrasting nature of poverty in Glasgow's infamous Easterhouse estate was evident.

"Suddenly we were hit by the reality of the poverty in Glasgow. Most of the men in Easterhouse hadn't had a job in 20 years. They were dispirited, depressed, often alcoholic. Their self-esteem had gone. Emotionally and mentally they were far worse off than the poor where we worked in India, even though the physical trappings of poverty were less stark".¹⁰

Some commentators now argue that social exclusion is as serious a problem as material poverty.¹¹ Clearly there are some very practical reasons why governments should treat the problems of loneliness and alienation seriously.

The origins of these problems lie in the extraordinary wave of social change which swept through Western societies in the 1960s and 1970s. Driven by powerful forces of technological change such as television and the pill, this surge of change was profoundly individualistic in nature. Most of the major causes which characterised the youth revolt of this era, such as sexual freedom, anti-conscription, feminism and gay liberation, were driven primarily by powerful notions of individual rights. The prevailing material affluence of the period contributed to the emergence of a new ethos of personal consumption and experimentation.¹²

Unfortunately since that time our society has experienced a substantial increase in family breakdown, drug abuse, youth suicide and other serious social problems. These phenomena were not caused by the 1960s revolution, but are consequences of the same social and economic forces which produced that revolution.

British researchers Michael Schluter and David Lee argue that the entire social dynamics of Western societies have changed radically since this time. They contend that human relationships are now much more governed by choice and much less by obligation than in previous times. In the new "mega-community" of human existence, individuals are more anonymous within their immediate surroundings and less constrained by ties of social obligation. Relationships are more conditional, and much less determined by traditional social structures.¹³

As a result, individuals are more able to avoid the bonds of inherently unequal relationships, where they give more and receive less. They can move away from socially dependent grandparents, or distance

themselves from unpopular and unattractive class-mates. Under what Professor Bruce Singh of the Melbourne University Department of Psychology calls "the dogma of freedom", individualism and the predominance of choice over obligation are eroding community structures of social inclusion.¹⁴

It is time to rethink our approach to relationships and social inclusion. As Schluter observes, "On the left, the commitment to freedom of choice in personal lifestyle and individual rights has led into a political cul-de-sac."¹⁵ This does not imply turning back the clock, or reimposing the social constraints of the past. Nostalgia for a world that has passed is no foundation for good policy. Liberation from the conformism and social oppression of the past has been a very positive development for our society. We have to deal with the associated negative changes without reversing the advances we have made.

Until the 1960s, the "guiding story" of our society was material progress.¹⁶ In the wake of the 1960s revolution, personal development and individual freedom have emerged as a new guiding story. These powerful impulses have now all but exhausted themselves. Simplistic concepts of liberation no longer provide the answers to contemporary social problems. Our most pressing problems are a reflection of insufficient order and stability rather than the absence of rights and freedoms. A new guiding story is required.

Our new social objective should be ensuring that all individuals have a capacity to participate in our society. This offers a philosophical foundation for social institutions which counteract the dominance of individualism. Society has an obligation to ensure that all its members are able to belong. Ensuring a capacity to participate extends beyond the fulfilment of basic material needs, and entails a mutual obligation to contribute to the community in some way.

Society has an obligation to ensure that individuals are not unduly deprived of a viable social context by the unfettered operation of free markets. This transcends mere equality of opportunity, but does not extend to ensuring equality of outcomes. Governments must play a role in counteracting growing loneliness and alienation by ensuring that all citizens have access to the means of social inclusion.

Our society is interwoven with countless organisations which build and sustain community and which provide individuals with a capacity to participate. Some are government bodies, some are government-funded, and some are entirely independent of government. They include community health centres, neighbourhood houses, sporting clubs, playgroups and residents associations. Because the left tends to focus on the role of the state, and the right on the role of the individual, the importance of these organisations is widely undervalued.

Conservative governments around the country are gradually dismantling or undermining many of these community organisations and

thus exacerbating problems of social exclusion and alienation. The federal government has virtually destroyed Skillshare and similar community organisations which played a critical role in ensuring greater inclusion within the labour market. The Victorian Government has dismantled tenants associations on Melbourne's public housing estates. The focus of community involvement, participation and belonging which the tenants associations delivered has been destroyed.

The most recent example of this headlong rush to atomisation is the attempt to impose voluntary student unionism on Australia's campuses. As a result of the Howard Government's obsession with a highly artificial notion of freedom of association, many vitally important nodes of participation will be destroyed.

When I arrived at Melbourne University as a 17-year-old from the country, I knew virtually no-one, and had been on campus only once before. My ability to integrate into the campus community, participate in collective activity and develop a sense of identity and belonging was provided by the student union. Through running and funding countless clubs, activities and structures, student unions provide nodes of participation which enable individuals to meet like-minded people, make friends, and be involved in activities outside their formal academic activities. No matter how bizarre some of these things may be, they all perform the same function: providing individuals with somewhere to belong.

In this case, freedom of association simply means less association. It means a diminished capacity to participate and ultimately more social exclusion and loneliness. For those who do not turn up to their first year at university in the company of fifteen friends from their year 12 class, the social consequences are likely to be considerable.

Building a new community framework to counter alienation, social exclusion and loneliness should start with a renewed commitment to such organisations. Their intrinsic value is far greater than the sum total of the services they provide. This does not require heavy-handed intervention by government, but in some cases little more than greater awareness of the real value of some things governments already do. The Home and Community Care program plays a vital role in alleviating isolation and loneliness among many elderly people, yet its ostensible rationale is the direct provision of particular services.

Greater assistance to community organisations which provide people with a place to participate and belong should be a priority for government. The emerging University of the Third Age movement provides such a focus for older people with limited assistance from government. It is time we rediscovered compassion, and recognised that dollars are not necessarily the primary currency of social inclusion and belonging.

In an era of dramatic change and profound insecurity, a new role for government is required. Sustaining the bonds of community and relationships has not been a major focus of government in western societies. The new society that is evolving demands a different role for government, one which includes strengthening community and social relationships in the face of endless encroachment by markets and technology and the intense individualism they tend to foster.

Endnotes

- 1 Quoted in Hannon, K: "The Lonely Years" *Adelaide Advertiser* April 23, 1999.
- 2 Cash, W: "America's Aliens", *Sunday Age* April 25, 1999.
- 3 Sennett, R: *The Corrosion of Character: The Personal Consequences of Work in the New Capitalism* (W.W. Norton & Co., New York, 1998) pp.16-27, 68-75
- 4 *ibid.* p. 112.
- 5 Luttwak, E: *Turbo-Capitalism* (Weidenfeld & Nicolson, London, 1998) p.30
- 6 Giddens, A: *Beyond Left and Right* (Polity Press, Cambridge, 1994) p.126.
- 7 Sennett, *op. cit.*, p.75
- 8 Long, S: "College of Physicians warns Howard on Health", *Financial Review*, April 8, 1999.
- 9 Quoted in Hannon, *op.cit.*
- 10 Marcel-Thekaekara, M: "Penniless but by no means poor", *Guardian Weekly*, March 21, 1999.
- 11 See for example Mulgan, G: *Connexity: How to live in a Connected World* (Chatto & Windus, London, 1997) p.5; Giddens, A: *Beyond Left and Right* (Polity Press, Cambridge, 1994) p.90.
- 12 Mackay, H: *Generations: Baby Boomers, Their Parents and Their Children* (Macmillan, Sydney, 1997) pp. 116-118.
- 13 Schluter, M and Lee, D: *The R Factor* (Hodder & Stoughton, London, 1993).
- 14 Quoted in Miller, C: "Why Boys Need to Learn to be Dads", *The Age*, June 13, 1998.
- 15 Schluter, M: "Making Relationships a Priority for Public Policy", in Baker, N(ed.): *Building a Relational Society* (Arena, Aldershot, 1996) p.12.
- 16 An observation of Hugh Mackay quoted in Eckersley, R: "Perspective on Progress: Is Life Getting Better?" (CSIRO Resource Futures Program, Working Paper Series 97/27, Canberra 1997) p.44.

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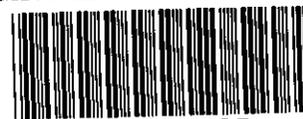


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Margaret Beazley

How are judgments made? Is the appeal system overused? Can the plaintive be assured justice is always done? Justice Margaret Beazley, a judge of the Court of Appeal in the Supreme Court of NSW explored these questions among others in her address to The Sydney Institute on 11 May 1999.

JUDGMENT MAKING

The Hon Justice Margaret Beazley

Judgment writing is the public face of judicial accountability – and in its own way should be the quintessential art of the judge. Being an art form, however, does not bring with it any artistic licence. Judgment making is a rigorous process of fact finding and application of legal principle.

However, like art, the outer parameters are not set or static. There is an elasticity in the process at different stages. The fact that there is an elasticity means, inevitably, that different results will be obtained depending upon who is the judge.

Not everyone necessarily thinks this is the case. There are some who hold the view that the law is immutable, in the sense that the principles are predetermined and, when properly applied, lead to a consistent, understandable and transparent result, whosoever might be the judgment maker. This viewpoint would have it that the personal views of the judge transcend the judgment making process.¹

It is this issue that I wish to explore tonight. In doing so, I do not propose to enter the territory of judges as law makers, which is now well traversed country². Rather, I propose to focus on the question of how judges resolve new or difficult or contentious social issues within existing legal parameters.

As judges have commenced to examine their own processes in recent years, probably in response to sometimes stringent and sometimes sensationalist media criticism, more attention has been given to the subject of judgment writing than hitherto was the case. There have, of course, always been the great writings on the topic³. However, at judicial conferences in recent years, papers have been delivered on the writing of judgments which tend to focus on the technical aspects of judgment delivery – should they be written, should they be given orally at the end of the trial (a process which still bears the Latin tag the extempore judgment), should they be short, should they be long, should they quote slabs of other cases and the like.

Except for media criticism, little exposition has been given to the question: "Can judgments be infected – and the outcomes thereby affected – by the personal views of the judge?" (I will call this the central question for the purposes of tonight's address.)

As bearers of judicial office, we would be doing a disservice to ourselves and the function which our oath of office dictates if we ignored the very real existence of that question. For my own part, I think we would also be doing a disservice to our office if we did not accept the reality that our personal experiences, as much as our legal training, has some effect on the decision making process. Not all minds, however, would agree with me.

The central question was not addressed in a paper given on judgment writing at the 1993 judge's conference, except unwittingly and subsilencio – in a statement which I believe illustrates my point. The speaker, an eminent retired judge, raised the topic of the use of literary flourishes in judgments. He referred to leading jurists who thought such flourishes added to the result, and those firmly against embellishment, including Sir Owen Dixon often described as the leading Australian jurist of this century who considered judgment writing was far too serious a matter to showcase one's literary knowledge.

The speaker thought that literary allusion, used appropriately, could be of great assistance to the reasoning process. He cited two examples, one English, one Australian. I'll limit myself to the Australian example. He said:

[The trial judge] made clear his views in a case of alleged sexual assault, which occurred in the course of a seduction, by citing a couple of lines from Byron: "A little still she strove and much repented, and whispering, 'I will ne'er consent,' consented."

In some forums, I could there rest my case without posing the rhetorical question, "What were that judge's views towards the complainant in sexual assault cases?" But let me go a little further. There are of course many cases where the individual views of the judge are entirely irrelevant to the outcome of the case. Lord Devlin in England assessed that to be so in 90 per cent of the cases. That I think is a little high... But there certainly is a significant proportion of cases which do not involve even the subliminal application of personal views.

There is another category of case where a judge may have a personal sense that a litigant has not been served well by the legal system (a phrase which I use compendiously to include the phase of legal representation as well as the judicial system proper), but, for legal reasons cannot provide redress. In those circumstances, a judge not only should, but must, ignore the personal view. And despite the issue to which I propose to move in a moment, that is not a particularly difficult thing to do. It is part of the osmotic process we go through in our development as lawyers in an adversarial system. However, judges should never shy away from the fact that they do have personal views,

and that there are some cases where those views may well be central to the manner in which a particular case is determined. Once that is accepted, the importance of intellectually rigorous and honest judgment writing becomes both obvious and necessary.

The point I think is demonstrated in a case which gained a degree of legal notoriety for reasons to which I will come shortly. The case is *CES v Superclinics (Australia) Pty Ltd* (1995) 38 NSWLR 47. This case has had a fascination for me for a number of reasons. First, from an early time in my legal career, I was fascinated with the evolution of a case from the trial stage to the High Court and with the extraordinary abstraction process which occurs between the initial trial stage and final appellate stage.

My fascination with this process commenced in earnest when I was junior counsel in a damages case involving a young man who had become a paraplegic as a result of injuries received in a car accident. The trial was heard in Townsville. The young man was in court in his wheelchair whilst his case was heard. The full details of his daily life were combed through – his hygiene needs, his entertainment needs, his care needs. It was a very human story. In the High Court that case is authority for the proposition that a court should use the three per cent actuarial tables in the calculation of future economic loss. A far cry from the struggle to get the young man up the court steps in his wheel chair.

The second reason *CES v Superclinics* has fascination for me is because of the very diverse rationales which underlay the determinations of each of the appellate judges. Ever since my days of doing administrative law, I have been curious as to the source of judges' formulation of public policy. I have the same fascination as to social policy. Hand in hand with that fascination, I often ask myself the question: How does a judge become informed about social or policy issues which are relevant to the issues in a case, and which may influence the outcome?

Whilst I was interested in the *CES* case as a significant case coming out of my own court, my fascination with the question of how judgment making really evolves has caused me to look at *CES* from the view point of the role of the amicus in proceedings⁴. Amicus applications have a strong history in the United States and Canada in cases involving social issues, and have been a means of informing the court of viewpoints which are not raised by the parties but which are relevant to the proceedings. In the United States, for example, it is not unknown to have up to 50 amici briefs on either side of the argument.

The role of the amicus has had a subdued history in Australia, with only a handful of reported cases dealing with the issue and even a smaller number of cases where the application was granted. Those cases have ranged over issues as broad as Aboriginal sacred sites

(*Borpho v Tickner*) where an amicus was not permitted; to the question whether a patient had a right of access to her own medical records (*Breen v Williams*) where the application was refused; to duck hunting (*Levy v Victoria*) where the application was allowed. In *Levy*, the appellant had entered a duck hunting area to protest against duck hunting and was charged with three summary offences. (The case elicited applications to intervene from the Attorneys-General for the Commonwealth, and every state except Tasmania; from John Fairfax Publications Pty Ltd; Nationwide News Pty Ltd; the Herald and Weekly Times Ltd; and the Seven Network Ltd; the Media, Entertainment and Arts Alliance. In addition, the Australian Press Council was granted leave to appear as amicus. I mention this merely to illustrate the type of case which grabs the Australian legal imagination!)

The opposing viewpoints as to whether there is a role for the amicus in the Australian legal scenery can be found in the judgments of Hutley JA in *Corporate Affairs Commission v Bradley* and Kirby P in *Breen v Williams*.

In *Corporate Affairs Commission v Bradley*, Hutley JA considered the amicus to be no more than an intermeddler – and thus a notion inimical to the whole concept of adversarial litigation. In *Breen v Williams* Kirby P said that the court should not turn a blind eye to the assistance which could be given by an amicus on matters of general principle in test cases. He considered that to do so would be to “evidence... the procedural formalism and rigidity which limits the utility of courts to modern dispute resolution”.

CES was a case where an amicus application was granted. But let me start at the beginning.

CES v Superclinics

The plaintiff sought damages arising from the loss of opportunity to terminate a pregnancy. After repeated failures by the medical practitioners she consulted at Superclinics to diagnose her pregnancy. On one occasion she was wrongly informed that a blood test was negative. If she was pregnant, she had wanted the pregnancy terminated. Four months after her first consultation with Superclinics, and during the course of a routine checkup with her general practitioner, the GP observed obvious external signs of pregnancy. It was by then too late for a safe termination procedure. The plaintiff's baby was healthy and the plaintiff had no wish to abandon her child. However, she claimed that through the negligence of Superclinics, she was burdened with the costs of bringing up her child, which she otherwise would not have had. She sought recovery of those costs in her damages claim.

The trial judge determined that any proposed termination would have been unlawful under the *Crimes Act*². In accordance with the principle which underlay that viewpoint, he determined that the plaintiff was not entitled to damages.

The New South Wales Court of Appeal (Priestley JA and Meagher JA - by majority, Kirby ACJ dissenting) also refused her claim for the cost of bringing up the child. The Court of Appeal approached the case on the basis that the proposed termination was not or may not have been unlawful.

During the course of the appeal process in the High Court, the Australian Health Care Association and the Australian Episcopal Conference (that is the Australian Catholic Bishops) sought leave to appear *amicus curiae*. I will refer to these entities by the loose description, the Catholic Church. The purpose of the application was to seek to persuade the High Court to overrule the decisions in *Davidson* and *Wald*. Those decisions in brief terms accepted that for the purposes of the criminal law there were circumstances in which the procurement of a termination was not unlawful - e.g. where the mother's physical and mental health was in jeopardy. The correctness of those decisions had not, to that point, been in issue at any stage of the proceedings.

The factual base to the *amicus* application lay in the Catholic Church's role as a major health care provider in Australia whose services were available to all women regardless of religious affiliation. However, it was explained to the Court that because of their underpinning religious base, Catholic hospitals in Australia do not counsel terminations of pregnancy, nor do they carry out abortions, nor do they refer women to institutions where such terminations are carried out. The Church submitted to the High Court that to engage in any of those activities would be to violate the most basic beliefs of Catholics on human life, human dignity and the equality of persons. They contended that if the law in Australia recognised the existence of a cause of action arising out of the lost opportunity to provide an abortion, the law would imply the existence of a positive duty to advise every pregnant woman about the possibility of an abortion. The consequence for Catholic hospitals would be that they may not be able to continue providing for the care of pregnant women.

The extent of the impact this could have on the provision of health care in Australia should not be underestimated. The Catholic Health Care Association operates 57 hospitals, 20 of them public hospitals. The Church's application should also be viewed against the background that 72,000 terminations are performed in Australia annually, compared to 250,000 live births. The annual health care cost of terminations is in the order of \$10 million.

The Catholic Church contended that this case was an appropriate case for it to appear as *amicus* because there were two matters that

would not form part of the cases of the other parties – (1) the unlawfulness of abortion and, (2) the likely impact of the proposed claim for damages on a large part of the health care economy in Australia⁶.

Without giving reasons, and by a statutory majority, the Catholic Church was given leave to intervene⁷. The absence of reasons is regrettable, given the precedent value the grant of leave in this case is likely to have.

The reaction to the success of the application was various and vigorous. Following the grant of leave to the Catholic Church, the Abortion Providers' Federation of Australasia sought, and was granted, leave to appear *amicus curiae*. The Women's Electoral Lobby next applied to the High Court to be *amicus curiae* on the basis that the evidence was that the law does not impact on the number of abortions carried out, only on the way women experience abortion. WEL noted that there was no one in the case representing the interests of women. Counsel for WEL said that in the mid-1990s, it is not acceptable to have people deciding, in secret, on matters that affect women's lives without women being represented⁸. Other interest groups intimated they would consider making an application to appear as *amicus*.

The success of the Catholic Church's application also brought about a flurry of public comment. Much of the debate questioned the real agenda behind the application, many critics claiming that it was an attempt by the Church to have its view on abortion declared to be the law of the country on this issue. Jo Wainer⁹ commented that the success of the Catholic Church's application "radically transformed the case from one of medical negligence to *the* test case on abortion." A similar view was expressed by a senior cleric who stated that the application: "...brought the whole abortion debate to a head and this particular case becomes secondary to the whole question."¹⁰

That comment was prophetic, the case being settled shortly after the *amici* applications were granted. Whilst there were mutterings that the settlement was based on "commercial considerations" it was widely reported that CES did not wish to have the woman's case hijacked by interest groups.

There were calls for what was termed the "abortion debate" to be returned to its proper forum – the parliament. Senator Harradine approached the government to have the rebate for abortions removed from the Medicare schedule. Senator Newman said she would not support any such move, saying, "Low income women should not have to suffer coat hanger abortions or bleed to death in back streets."

It is interesting at this point to pause and reconsider the "interest" which was being sought to be propounded by the *amici*. From the viewpoint of the Catholic Church, it was the interests of the "unborn child". The debate on the other side was that it was the interests of the "woman"¹¹. But what were the issues which underlay those polarised

positions? From the Catholic Church's viewpoint, it lay claim to an amicus interest by bringing forward its secular activities underpinned by its religious philosophies. From the women's groups viewpoint, the matter raised gender issues.

As the substantive case was never argued in the High Court it is necessary to turn to the Court of Appeal judgments to explore the question whether the amici briefs might have influenced the judicial decision making at that or an earlier stage.

Before going to those judgments, I should state that my judicial colleagues not only meticulously, but intellectually honestly, obeyed the stricture that they give reasons for their decision and did so by fully exposing their thought processes which led to their respective determinations. You may or may not agree with their viewpoint. That is not the point of this paper. The point is that the viewpoint was there for all to see. Kirby ACJ was acutely aware of the sensitivity of the issue, noting that¹²:

... termination of pregnancy is a subject which... has a tendency, in some cases, to divide the attitudes of women (who must, in practice, bear most of the consequences) and of men (who number most of the judges enforcing the law).

He further noted that the question of whether abortion should be legal if the physical or mental health of the mother was jeopardised was: [a] question... [upon which] theologians, philosophers and citizens will differ.

However, he considered that law should not: sanction without civil redress serious acts and defaults which have resulted in very substantial losses to the appellant. This cannot be, and is not, the law.

His Honour also considered the public policy considerations which might be said to bar a claim for damages for an unwanted child (assuming that a cause of action in negligence had been made out). His Honour's judgment reflects not only wide case law research but use of extra judicial writings to inform his approach. He said:

Sentiments which permit a judge to proclaim that a conscious decision or expressed desire not to have a child is an "unnatural rejection of womanhood and motherhood" are out of harmony with the modern Australian society in which the Australian common law must operate... Damages cases are not about love. They are principally about recoverable costs.

Priestley JA's approach was equally interesting, but commenced from a different base line. Kirby ACJ commenced his consideration from the point of there having been a negligent act and then considering the consequences which thereby flowed. Priestley JA looked to legal principles which governed the recovery of damages and then approached the matter from a viewpoint of choice – but choice at a different point of time to that considered in the dissertations of "pro-choice" proponents. "Choice" for the proponent's lawful abortion is

choice at a time shortly after conception. The "choice" considered by his Honour cut in at a later point of time – shortly after birth – namely a choice to have the baby adopted out. Because CES had that choice and exercised it against adopting out, her "damages" were not caused by the negligence of doctors.

Priestley JA is sometimes attacked for proposing a view that mothers who miss the chance of having a termination should adopt out. I doubt that is a fair reading of his judgment. Rather, it is apparent that his Honour engaged in an available reasoning process which led inexorably to that conclusion. Put another way, his Honour was not proposing or requiring adoption. Rather, he saw it as a choice available to CES – as it certainly was. However, legal principle and the policy it embodied did not, from his viewpoint, concern itself with the personal effect the choice might have had on the individual, only with its legal consequence. He said:

Since... keeping the child... was something which she chose to do, any expense of rearing the child thereafter was not relevantly caused by the breach of duty, but by the plaintiff's own choice, and no defendant is legally responsible for it.

Priestley JA's view, on one interpretation, avoided the moral judgment and looks at the matter purely from the viewpoint of causation in law. It is interesting to note, however, that when this view was put to the High Court on the amicus application, Gaudron J considered the view to be outrageous. (See transcript of proceedings, 11 September 1996, p64, where her Honour said that "would be about the cruelest and most inhumane submission" she had heard made.)

Meagher JA had difficulty in accepting that any one could complain of having a healthy child. That of course was not the mother's complaint. Her complaint was that, through the negligent conduct of the clinic, she was required to go through an unwanted pregnancy – with all the physical, emotional and subsequent financial implications which that entailed. Meagher JA's approach to the case was predicated on the view that:

[the] law has always proceeded on the premise that human life is sacred. That is so despite an occasional acknowledgment that existence is a "vale of tears"¹³.

Subject to Priestley JA's views, the cases where a claim of this nature has been rejected have focussed on the "joy" which a child brings to a parent's life. *McKay v Essex Area Health Authority*¹⁴, is another interesting example. There the plaintiff sued the health authorities for their negligence in permitting him to be born. Griffiths CJ concluded in that case: "such a claim seems utterly offensive; there should be rejoicing that the hospital's mistake bestowed the gift of life upon the child". Meagher JA finally resorted to John 16:21: "A woman when she is in travail hath sorrow, because her hour has come: but as soon as she is delivered of the child she remembereth no more the anguish, for

joy that a man is born into the world"¹⁵. Adele Horin challenged such a viewpoint. She pointed out that:

... [the matter] has ended in the High Court. People uneasy about the damages aspect should consider whether doctors should be treated differently in this matter because their negligence results in a baby. Women should not have to bear all the financial as well as the psychological consequences of doctors' basic mistakes just because some male judges may believe that every "natural" woman wants a baby, ready or not¹⁶.

I should also point out that notwithstanding the authority which both Priestley and Meagher JA found to support their respective viewpoints, CES's claim was not without precedent. Damages have been awarded in England and in two Queensland cases for failed vasectomies¹⁷.

Although the judges in the Court of Appeal each fulfilled his judicial obligation to give reasons, the overall "washup" in *CES* is unsatisfactory. Whilst there is a majority decision in the Court of Appeal, there are two different reasoning processes by which the result was reached and a third reasoning process in Kirby ACJ's dissent. That does not provide much precedent value (upon which our common law system operates) should the issue come up again.

The full extent to which the High Court was going to permit amici applications in the case was not determined. Nor is there any basis to judge what influence the amici interests might have had on the outcome. Some speculation is possible. If the Catholic Church's viewpoint was accepted, then there would have been a radical change in the law and the practice as to abortion in this country. If its view was not accepted, the result is debatable. If the pro-choice interests prevailed, the precise outcome in the case would be difficult to predict. The plaintiff may still have lost her claim for damages, for example based on policy grounds. Alternatively, a view may have prevailed that abortion is a health issue and its availability a question of the provision of health services and that the normal damages consequences of negligent acts in the provision of the health service should follow. There undoubtedly would have been many more arguments and refinements of these points put to the Court for its consideration. As I have said, they may have influenced the decision making process or of course, the High Court may not have been influenced at all by the amici viewpoints pro-pounded.

However, the question for tonight is whether the information provided by the amici would have had any impact on the underlying rationale of the decision making process. I don't have an answer except to express a personal belief that the more one is exposed to differing points of view, the more one should be in a position to come to a decision which is socially relevant notwithstanding that the decision making process must remain framed within and constrained by legal principle.

However, cases like *CES* do throw up the difficulty for judges in determining matters which involve social and, for some, moral issues.

There is another tension which has to be recognised. That is between being properly informed and allowing private litigation to be hijacked by public interest lobbyists. That is a tension which has not yet been resolved – but if court composition and trend means anything – private litigation will prevail.

The great concern we should have, however, is that where cases do involve important social questions that judges make decisions based upon properly researched data, and not only on their personal views, which could be based upon views formed as narrowly as from the daily press (but not, I should add, *The Daily Telegraph!*) or as widely as they have time to read and research.

Endnotes

- 1 See Gertz on "I Know It When I See It" (1996) 105 *Yale Law Journal* 1023 at 1025; referred to by McHugh J in "The Judicial Method" (1999) 73 *ALJ* 37.
- 2 See e.g. Dixon, "Concerning Legal Method: Jestings Pilate and other Papers and Addresses" (LBC Melbourne 1965).
- 3 An amicus curiae or "friend of the court" is a person who, with the court's permission, may advise the court on a point of law or on a matter of practice (and questionably on a question of fact) by drawing the court's attention to some relevant aspect of the case which might not be argued by the parties or which might otherwise be overlooked. An amicus curiae (as opposed to an intervener) has no personal interest in the case as a party and traditionally does not advocate a point of view in support of one party or another. The court may hear an amicus curiae if it considers it in the interests of justice to do so.
- 4 An amicus curiae or "friend of the court" is a person who, with the court's permission, may advise the court on a point of law or on a matter of practice (and questionably on a question of fact) by drawing the court's attention to some relevant aspect of the case which might not be argued by the parties to the litigation, or which might otherwise be overlooked. An amicus (as opposed to an intervener) has no personal interest in the case.
- 5 Sections 82 and 83 are directed respectively to a woman or another person who takes steps to procure a miscarriage. The penalty is 10 years penal servitude.
- 6 This submission presumably related to the policy foundations which are emphasised as underpinning actions based on breach of a duty of care, at least in new or evolving cases. See *Hill v Van Erp* (1997) 188 *CLR* 159.
- 7 One of the more interesting exchanges between counsel and the bench occurred between Gummow J and senior counsel for *CES* in opposing the application:
Gummow J : If this question of illegality was not pleaded and if somehow one does not worry about that, was it ever framed in any form in writing?
Mr Callaway : Never framed?
Gummow J : Yes?
Mr Callaway : No, it was not framed.
Gummow J : It has just become sort of moot debate.
Mr Callaway : It was picked up like a scrum half, your Honour..."
- 8 "Courting the Law" *The Age* 23 September 1996, p A9.
- 9 Jo Wainer "Abortion before the High Court" (1997) 8 *Australian Feminist Law Journal* 133 at 137.

- 10 Nicholas Rothwell "Abortion on Retrial" *The Weekend Australian* 14-15 September 1996 p21.
- 11 There is anecdotal evidence that there is a perception that abortion is illegal in Australia. This has had a number of effects: lack of proper medical training in abortion techniques, an inhibition on the part of women in the seeking of information and an inadequacy of readily available medical and other information. This was considered to be of particular detriment in remote areas and amongst people with limited financial resources.
- 12 38 NSWLR at 70.
- 13 38 NSWLR at 86. See also *Udale v Bloomsbury Area Health Authority* [1983] 2 All ER 522 at 531 per Jupp J. Jupp J's approach was described as "positively anachronistic" by Pratt J in *Dahl v Purnell* (1992) Qld Lawyer Reps 33 at 35. Meagher JA was not moved by this description stating that Pratt J's disapproval "hardly dents" the authority of *Udale*: 38 NSWLR at 87.
- 14 [1982] QB 1166.
- 15 38 NSWLR at 87.
- 16 Adele Horin "When a birth is far from a blessing" *Sydney Morning Herald* 2 September 1996, p25.
- 17 *Thake v Maurice* [1986] QB 644; *Dahl v Purnell* (1992) 15 Qld Lawyer Reps 33.

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Susan Ryan

In *Catching The Waves* (HarperCollins) Susan Ryan, former Labor Senator and Cabinet Minister, reveals what a life in politics involves. In writing her life story, Susan Ryan came to see it as a series of waves with quite a few dumpers. In her address to The Sydney Institute on 18 May 1999, Susan Ryan assessed the role of the Cabinet minister using performance expectations for any CEO to measure the experience of ministers of the Hawke years.

ROLLERS AND

DUMPERS – LIFE AS A CABINET MINISTER

Susan Ryan

At the big end of town it is not unusual for a senior executive to get a promotion and as a result wake up to find himself in charge of a five billion dollar national operation, responsible for several thousand employees, for achieving the operation's mission, for its strategy, which will be global as well as local, and for all failures. From now on, his hand-picked management team will report to him frequently on progress in carrying out the strategy he has laid down. Our CEO will report to his Board quarterly, or perhaps monthly. The Board will assess his performance against agreed objectives and decide his remuneration, which will amount annually to not much less than a million dollars together with other benefits.

Before he achieved this appointment, the CEO would have spent many years in training and preparation, been a senior manager in a variety of areas in this company or others of similar scale and complexity, undertaken high level professional development and probably gained an MBA from a business school with an international reputation. He will be focussed – that is, most of his waking hours will be dedicated to specific business objectives.

In the nation's capital, Canberra, after every federal election, around about 20 individuals find themselves with new responsibilities similar to our CEO. They have become Cabinet Ministers and are now individually responsible for the spending of several billion dollars every year and for thousands of employees. Collectively, as the Cabinet, they raise and spend many more billions. To some extent their responsibilities resemble our CEOs. They have a mission and a strategy; but these happen to include determining the regulatory, fiscal and economic environment in which all businesses in the nation operate. These days they can hire or fire their chief operating officer, their departmental head, but it is hard for them to get any more closely involved than that in the management structure.

And they have additional duties: they are responsible for the security and well-being of all citizens, whether employed, dependent on the

public purse, young, old, healthy or ill. They spend hours of most days and nights, not only carrying out the strategic plans but tied up in parliament, legislating. Out of parliament, they spend some time on the big tasks, but that focus is continually interrupted by local functions, party meetings and industry dinners, where few business representatives will have a real discussion with them. It's a big job. Bigger than our CEOs?

They are assessed differently, and more frequently. Their fellow Cabinet Ministers and the Prime Minister conduct a running daily, or even hourly, assessment of them. The media conduct their own performance review, not yearly, but daily if they are so minded, using their own performance indicators. Their competitors, the Opposition, can attack them publicly in any terms every day that parliament sits, without fear of defamation. And every two or three years, every citizen on the electoral role will pass judgment.

There are other differences, apart from the remuneration package. When our CEO has an awkward company issue to manage, a plant closure or a massive accident, he will in most cases send his corporate communications expert to explain matters on TV. A Cabinet Minister who does not front up herself will not survive long. Even if she does, if the message is unpopular, she may not survive anyway.

It is worth thinking about the duty statement of a Cabinet Minister. The Cabinet of the newly elected Hawke Labor Government was sworn in in March 1983. The favourable publicity, which it was our good fortune to experience at the time, claimed that we were the best educated, most talented Cabinet ever. We included a number of Rhodes Scholars, and an unprecedented number of post graduate degree holders as well as the highest proportion to date of graduates. As well as our leader, several ministers were trained economists. But what about practical experience, parallel to our CEOs' years in management and tailored business education. A few had been Whitlam ministers. All of us had been "shadow ministers", that is had the responsibility of developing policies with the party and business and interest groups and, as well it was hoped, synergistic vote-winning electoral strategies. We had met regularly, as an executive, to determine overall policy and political directions. We had attempted to cost the implementation of the measures we proposed, but without access to the Commonwealth Treasury these were rough and ready estimates.

Conscious of the management shortcomings of the Whitlam administration, we had formed a "Transition to Government" working group of several shadow ministers with bureaucratic experts like Peter Wilenski and Michael Costello, and tried to establish an efficient and effective approach to structures and human and financial resources. We worked especially hard on a functional relationship between ministers'

offices and ministers' departments, and between the Prime Minister's office and other ministers' offices.

But in many important respects, our preparation for the specific tasks, compared with that of our CEO, was sketchy. Take my own case. After a few years teaching, tutoring and research, all part-time combined with child rearing, I had had about three years full-time work experience with some management and financial responsibilities before entering parliament. I then spent seven years in opposition as Senator for the ACT, with a personal staff of three and all office expenses and infrastructure looked after by a government department. That was the formal position.

Informally I had "managed", to some purposes at least, several hundred members of my branch of the Labor Party, a raft of controversial policy issues for which I carried out my own research and developed my own communications strategies, and a number of eclectic and difficult groups of people who constituted the various committees and decision making bodies with which any political movement or community organisation is littered. I had learned to deal with local and national media, and acquired a hands-on knowledge of how laws are made, and how federal budgets are structured, presented and scrutinised by the parliament.

Then I was sworn in as Cabinet Minister with the portfolio of Education and Youth Affairs, involving responsibility for about five billion dollars expenditure annually and about 6000 employees. I had an additional formal role – Minister Assisting the Prime Minister on the Status of Women – which meant the day-to-day responsibility for ensuring the delivery of a vast array of legislative, policy and program initiatives which, pre-election, we had promised Australian women. As Labor had just attracted for the first time ever, more than 50 per cent of women's votes, a result crucial to our victory, this was no light undertaking. I was also to monitor every Cabinet submission for its effects on women, a tall order and one not designed to endear me to my Cabinet colleagues. I discovered very quickly, on my own account, as well as from the reaction of others, that one thing all ministers hate is another minister poking her nose into their submissions.

The education portfolio at that time included the entire Commonwealth department and its State offices, and three statutory bodies – the Commonwealth Tertiary Education Commission (all universities, colleges and TAFE), the Schools Commission (federal funding for all schools in Australia, public and private, and some preschool), and the ACT Schools Authority, responsible for all schools in my electorate. The Youth Affairs task was to find a solution for record high levels of youth unemployment, and for other burgeoning problems like homelessness.

These days the education portfolio has two ministers but has slimmed down. The Tertiary and Schools Commissions no longer exist, and the ACT Schools Authority has long since been handed over to the ACT Government. The problems of our youth have their own minister, or ministers.

My address to you tonight is titled, *Rollers and Dumpers*, and I think any Cabinet Minister speaking frankly would admit to experiencing both. I suspect I had more stormy times than many, partly because of my gender and my feminist policy aims, which despite our official statements and rhetoric, were not shared wholeheartedly by all my colleagues.

But the dynamics of any Cabinet are volatile. Think of it. The stakes are high. About as high as stakes can get. The selection and promotion processes to get there are as tough, if not tougher, than any route to the top of the corporate ladder. Many ministers, not only myself, go in with "it's now or never" as a mindset. On shifting from opposition to Cabinet, the dynamics of the executive team change: in opposition, especially during an election campaign, team work and solidarity are essential for victory. Once the glittering prizes of Cabinet posts are there for the taking, however, the team shatters into a bunch of vicious competitors. The competition, first to get into Cabinet, and then for a particular portfolio, is more like the pursuit of the ball at a Rugby League match than a meeting for the admission of new members to a gentlemen's club. Once you're there at the table in possession of your portfolio, the internal rivalries deepen, however unified the public front may appear. This is fundamentally because of the first given of Cabinet life: the quantity of public dollars available to be spent always falls seriously short of the sum of ministers' spending proposals.

This is the case even now, when federal budget surpluses have become the fashion. But I went into Cabinet when large budget deficits were common and my first go at helping to put the budget together came straight after a change of government, an event which seems always to expose a much bigger deficit than anyone had expected. In the environment of a blow-out deficit, ministerial rivalries are further exacerbated. The other given of Cabinet dynamics is this: all ministers are not equal. There are good Cabinet Ministers: these include, apart from the Prime Minister who only has a little department and is for this reason alone very good, the Treasurer (because he raises all the revenue) the Resources Minister (associated as he is with wealth creation), the Communications Minister (because Telstra makes so much money) and the Finance Minister (especially good because he slashes and burns other ministers' spending proposals). Then there are the bad Ministers, the spending Ministers, of whom the worst are Social Security and Education. They spend the most, but never seem, in the electorate's eyes, to spend enough. Education is worse even than social security, because the electorate likes aged pensioners better than students. Before

the Medicare levy, Health was nearly as bad, but becoming a serious revenue raiser through the levy improved Health's Cabinet standing, as did the fact that the electorate actually understood what the levy was for. The other big spending department, Defence, had a kind of invisible wall of protection around it and was not required to contribute to savings targets or fund new programs by abolishing old ones. If we had, we would not have had our new submarines.

So, I was in charge of one of the biggest spending departments, but the one for which, in the eyes of my colleagues, we got the smallest electoral bang for the buck. The states get all the benefit for our hard work in education, they would complain bitterly and with some truth. Their complaints were not mollified at all by the fact that most of the states, including the two biggest, were governed at the time, by our own political party. Solidarity goes only so far, and I rarely saw it embracing Federal/State co-operation.

My other enduring handicap in the Cabinet wrestling matches was that education was suffering from a serious image problem, of biting the hand that fed it. The dramatic increases in funds for all education at all levels and in all sectors during the Whitlam administration did not appear to have produced appropriate gratitude at the ballot box.

I have just outlined the less than propitious environment in which I had to try to achieve the political and personal goal of making sure that our education system had the highest standards, was accessible to all, relevant to the current and future needs of industry, strengthened our social democracy, cost us less than before and won votes. You will not be surprised to hear that, in the pursuit of these various and sometimes conflicting aims, I caught a couple of big rollers to the shore but copped more dumpers.

I'll start with the roller. One of my first public performances as Minister was taking part in Prime Minister Hawke's economic summit, a bold and novel exercise which brought together for the first time the Cabinet, captains of industry, the unions and the welfare sector; in public, on TV.

After consulting my portfolio head, Dr Peter Wilenski, and clearing the proposal with Cabinet, I decided to use this opportunity to announce a brave target. I told the assembled power elites a stark fact: of all OECD countries, Australia had one of the lowest participation rates for the final two years of high school. In 1983, only one-third of our school students completed Year 12. This was an extraordinary and very damaging circumstance. Students were leaving before Year 12, not as they did in the 1950s to go into secure properly paid jobs in offices or factories or to take up apprenticeships, but to go on the dole. Middle class as well as working class students were throwing away their opportunities in this way. Other serious problems with drugs and homelessness were growing fast among the drop outs. Meanwhile

employers were requiring higher and higher education qualifications and their businesses were being held back by a gross shortfall in skilled employees.

Many factors contributed to this national disaster, a crucial one being the education system itself. Questions of school organisation, curriculum and relationships with employers had hardly been updated since my own schooldays.

To the assembled power elites at the economic summit I announced that our government intended to have two-thirds of students completing Year 12 by the end of our first period in government.

My target these days sounds unremarkable. Surely it would not have provoked Cabinet battles. It did. First, because it involved significant new and ongoing funding, two things always resisted on principle by the Minister for Finance and the Expenditure Review Committee. The funds were for new and relevant curriculum, for upgrading teachers' skills, and I finally got an agreement to pay educational allowances, means tested, to Year 11 and 12 students at a lower rate than the dole that they could get without means testing if they dropped out. I argued that this transfer from welfare to education would increase social equity, improve opportunities for individuals, help industry and save public money.

It sounded pretty good. But such is the competitive nature of Cabinet, my serious opponents included not only the money ministers, but ministers from the Left faction, speaking for the welfare sector who saw my proposals as paternalistic, (governments should not attempt to influence young peoples' decisions), and discriminatory in that students would receive less than the dole. The program was subjected to Commonwealth guidelines (something State ministers hate) and the program's success would require them to employ more teachers. This latter outcome meant, however, that teacher unions were on side, a rare experience for me, but one which ensured that the powerful Senator Peter Walsh, a fierce critic of teacher unions, was even more determined to block the program.

I had to contend with these fiery dynamics not only for our first budget, but every subsequent one. I called the program "Participation and Equity". PEP. By 1987 we achieved our target of two-thirds finishing school, and by the 1990s close to 90 per cent were completing high school. It was the right thing to do for a whole generation of young people, for the economy, and, for the government, a great wave to ride.

Now for the dumper. One of Gough Whitlam's most popular reforms was the abolition of tuition fees for university from 1974. It is easy to see why this move was well received and its beneficial consequences can easily be measured. Allied with the development of colleges of advanced education, usually situated to reflect population growth, and new universities in outer suburbs and regional centres,

over the next decade the new policy resulted in more Australians than ever before, and many more from lower socio-economic groups, accessing higher education.

Mature aged women who had joined the workforce at 15 and established families were particularly noticeable beneficiaries of the no-fees policy. By 1983, however, enrolments in university were slacking off as a part of the general disaffection with formal education. Higher level skills shortages were serious. It was no time, I thought, to put new obstacles in the way of aspirations to higher education.

Contrary to urban mythology the abolition of tuition fees had not been an act of insane generosity. Nor had there been a golden age when most students paid the cost of their degrees. In 1973, about 60 per cent of undergraduates received significant public assistance with fees, mainly through State education department teacher scholarships. The States paid the universities for the places and the Federal government reimbursed the States. When tuition fees went, States, no longer having an urgent need for graduate teachers, abolished the scholarships and the Commonwealth was spared this cost. Of course, in the following years, costs grew along with student numbers.

Very early in the term of our first government, economic rationalism was accepted along with its requirement that, as much as possible, expenditure should be transferred from the public to the private sector, from the collective tax payer to the individual. Despite my resistance to it, the view that education was a private rather than a public good prevailed. The Cabinet, with the full support of the Prime Minister, and the relentless efforts of the Finance Minister, decided that university tuition fees would be re-introduced. Not convinced that either the time or the new policy was right, I opposed this move and thus got myself totally offside with the power brokers in Cabinet, with the bureaucracy and with the national press gallery. I knew I was putting my own position in danger. Negotiations with the Expenditure Review Committee became extended brawls, where every kind of persuasion, abuse, and trade-off was offered. I won the battle in 1985, lost it with the introduction of the \$250 administration charge in 1986 and lost the war after the 1987 election when I was moved from the portfolio and demoted. Fees came in by way of the HECS, the deferred payment scheme.

This was my big dumper. Could I have avoided it? Obviously yes, by diving under it, giving in and coming out the other side unscathed. But there are other, more important, questions. Are our universities, their teaching and research, better under the new policy? Is it more equitable, does it provide more opportunities for individuals and disadvantaged groups? Is our intellectual infrastructure stronger, our social policy more effective? These are the questions that should have been explored before the policy change. They are questions for others to answer now.



Photo - David Karonidis

David Flint

Professor David Flint is Chairman of the Australian Broadcasting Authority and is playing an increasingly important role in the regulation of the broadcasting industry - including the administration of the cross media ownership rules. David Flint spoke for The Sydney Institute on Tuesday 25 May 1999.

SORRY SEEMS TO

BE THE HARDEST WORD – THE RESPONSIBILITY OF THE MEDIA

David Flint

Jeffrey Barnard, the English journalist, used to entertain us in his “Law Life” column in *The Spectator*. Even when he died, he still managed to entertain us. He even wrote his own obituary. This was published in the *Daily Telegraph*, London (8 September 1998). In it we find a description of his early life:

His drinking began to escalate to such an extent that he was unable to hold down the most ordinary job and he was consequently advised to take up... journalism.

Chapter 7 of the *Gospel according to the Apostle St Matthew* begins:
Judge not, that ye be not judged.

For with what judgement ye judge, ye shall be judged: and with what measure ye mete, it shall be measured to you again

And why holdest thou the mote that is in thy brother's eye, but considereth not the beam that is in thine own eye.

This chapter is generally considered to be a condemnation of judgementalism and hypocrisy – sometimes it is even believed to be an attack on lawyers! But I ask you to look at the final verse in the chapter where you see who really were in the Apostle's sights:

And it came to pass when Jesus had ended these sayings the people were astonished at his doctrine: For he taught them as *one* having authority, and not as the scribes.

And not as the Scribes.

So you see this chapter on one interpretation is most specifically directed at... the scribes. In today's parlance, journalists and the editors. As the media takes up a greater and greater role, as some of its practitioners become more celebrated, richer than ever before, there is an increasing crisis of confidence in the media.

Attitudinal research has confirmed this again and again. Those in any other industry or profession would be beside themselves trying to find ways of reversing this trend. There would be constant calls – to use that word which lulls the listener into thinking all is solved – there would be constant calls to “address” this “issue”. In fact there would

be a whole industry of well paid consultants out there "addressing" the "issue"!

But what do our media practitioners do? (You will notice I am talking of media at large. My comments thus apply to both broadcasting and print media.) They either shrug their shoulders or they thumb their noses. One former editor called these surveys "silly". Silly? From a media which thrives on the almost daily revelation of some new and shocking attitudinal survey?

Something indeed is wrong. And it is not only here. Earlier this year, a conference on this very issue was held in London chaired by Lord Nolan. (*The Media and Public Confidence Conference, Financial Times*, 4 February 1999). Those there came mainly from the British media. Or should I say a minority of the British media. They were those who were concerned about the media losing touch with a changing world. Tonight I want to talk about that crisis of confidence. I shall ask five questions:

- Is it the result of the media proprietor's interference, or must the media practitioners, the journalists and editors, accept the principal responsibility for this?
- Do the practitioners and teachers appreciate the true role of the media?
- What is that role?
- What is the media's principal duty?
- Does the media fulfil that duty?
- What impact does opinionated journalism have on fulfilling that duty?

The Proprietors or the journalists?

Now there are those who think that the sins of the media can be cured or at least controlled by regulating the owners. Some even think that sin will be prevented by regulating the owners. Hitherto much of our attention has been drawn to the media moguls. They stride the world like giant colossi. They are the chosen few against whom media laws are directed and almost daily, somewhere, in the world, new laws are proposed. But I suspect that in actual fact, media empires are today something like universities. They are "organised anarchies". Giving authority and direction to academicians, journalists or editors, is I suppose, akin to attempting to herd cats.

Certainly proprietors, especially in the past, have had a considerable influence on the way their properties operate. They probably still have an influence, but their power has receded. Magnus Linklater says that staff at the *London Daily Herald* used to say of their proprietor, Julius Elias:

We have no party creed or bias
We want a peerage for Elias.

Which, Linklater points out, he got.

Now Lord Beaverbrook was quite open about media influence. He told the Royal Commission in 1947, "I own my newspapers for propaganda." Northcliff was almost as open. But as Gordon Greenslade says, they ran strange campaigns. Beaverbrook thought Britain ought to retain the empire... just as she was losing it. And Northcliffe thought people ought to eat more white bread... just as it was becoming much more difficult to market. Today it is more the media practitioners who seem to be in charge. (I shall give you my reasons later).

Recently, I had the salutary experience of defending a small impoverished international association of press councils which had the temerity to ask two questions. First was it possible to draft guidelines on media ethics which could be of universal application? Second, could some sort of mechanism be established by and with the support of the media to handle media complaints across frontiers? Would it be feasible and viable? The Association was instantly *hansonised*. Now what does "hansonise" mean? It refers to the practice in the media of making a mountain out of a tiny molehill. Giving it status and notoriety, well beyond its wildest dreams. I thought perhaps we should do a video in which we said, "Men and women of the world, if you are seeing this, we have been assassinated". But I know Mr Singleton or some other clever advertising *artiste* would do what he did to Pauline Hanson. An advertisement would show a talking head chicken saying, "Men and women of the world. If you are watching this, I have been turned into a Kentucky Fried Chicken." This experience is little different to that which usually greets those who dare to suggest that the media has a responsibility. Those who doubt this should go back to the events which led up to the establishment of our Press Council.

If I may return to the crisis in confidence. If you find such a crisis, you quite often find the institution has somehow, somewhere, lost its way. It is ignoring or has forgotten, its true role in society.

Media practitioners understanding of their role

When I left the Press Council, one of our editors thanked me, and privately told me that he had learned a lot from me about the role of the press. I don't think this was flattery. I remember when I became a member of the press council, I had sought to clarify in my mind precisely what that role was. The extraordinary thing is that this comment indicates that many of our media practitioners do not themselves fully comprehend what their true role is, or rather ought to be. This vacuum must surely be traced back to weaknesses in the education and training of journalists and editors. There is a debate as to whether they should be educated in university media schools. Many are not, and in the past none were. These were trained on the job.

They learned good habits and skills, but being practical, this rarely touched on their *raison de'etre*. To an extent this is part of our tradition, the tradition of the Anglo-Saxon countries. This is to eschew the theoretical and endorse the practical. But surely those who are trained in the university media courses, the many BA (Communication) degrees, surely they would have studied the fundamental issues about the reason for press freedom.

Now Keith Windschuttle in *Quadrant* (March 1998) says there are the three characteristics of journalism. First, a commitment to reporting the truth about what occurs in the world. Journalists go out into society, make observations about what is done and what is said, and report them as accurately as they can. He says they have to provide evidence to verify and corroborate their claims and they have to attribute their sources. Journalism, he concludes, upholds a realist view of the world and an empirical methodology.

Second, the principal ethical obligations of journalists are to their readers, their listeners and their viewers. Not to please their employers or advertisers, nor to serve the state or *support some other cause* (my emphasis), but in order to inform their audiences. The measure of journalists' success is their relationship with their audience.

Third, journalists should be committed to good writing. This means their meaning should be clear and their grammar precise. In our society it is journalists and subeditors who are the frontline standard bearers for good English expression. In practice, these three characteristics are usually taken so much for granted that they form an implicit background rather than the overtly stated principles of journalism education." But then he makes a surprising observation. This is that in most of the media and cultural theory that is taught within Australian communications and media degrees "none of these principles are upheld". In fact, he says they are specifically denied, either by argument or by example, by the dominant intellectual field that has reigned in media theory for at least 15 years.

If Keith Windschuttle is correct this is extraordinary. As he describes these theories, they seem to have resulted from some distillation of Marxism. This reminds me of the bush recipe for cooking a galah. You boil it in water, throwing a boot in. You wait until the boot is soft. Then you throw away the galah. And you eat the boot. Magda Zubanski on the TV series *Big Girl's Blouse*, satirises exquisitely just what these media and cultural stories are all about. This is in the final round of the Women Philosophers' Fencing Competition at the Gay Olympics. The winner is the fencer who takes offence more times at a perfectly innocent remark. The announcer says that in this round the Australian champion, Sue, will be trying to improve on her personal best by taking offence six times at a perfectly innocent remark. While they fence, the challenger asks, "Did you have a nice day?" to which

the champion responds: "‘Day’ is a patriarchal structure in time. ‘Nice’ is a concept of behavioural conformity used to treat women as an underclass. ‘Did’ implies I need to be doing something in order to make a worthwhile contribution to society. ‘You’ is a phallogentric division between ‘self’ and ‘other’. ‘Have’ is a capitalistic consumeristic linguistic structure thus reflecting the dominant paradigm of ownership and economic violence perpetrated against women and ethnic minorities, and ‘A’ is a singular indefinite article which perpetrates bourgeois notions of individuality." The announcer screams "Gold! Gold for Australia!"

I can, however, think of one practical use for deconstruction. It should be taught in law schools. It would help defamation lawyers to come up with even more improbable imputations from innocent statements than they already do now. The philosopher Roger Scruton argues that deconstruction is close to a religious experience. The crucial terms are liturgical. They owe their effect to repetition.

Strangely, considering the influence of French authors, these theories have had more influence in Australian, American and British universities, than in French universities. The proponents of such studies have an extraordinary influence. This comes from the use of repetition, and their reaction to criticism. According to Roger Scruton, to scorn or question the structuralist milieu risks anathema: "The normal response to those who advocate deconstruction to those who question it is not to reply with argument, but to roll the questioner out of court. The critic... is not one of us..." (Roger Scruton, *An Intelligent Person's Guide to Modern Culture*, London 1988, p 124.)

These studies are used as a weapon against perceived hegemonic and authoritarian structures of our traditional culture. It is here that those theories punch above their weight. Fortunately in the universities, most other teachers and researchers just get on with their work. So those journalists and editors who come from these academia programs have a considerable exposure to these studies. In itself nothing unusual. But from my visits to, and talks to the students they seem to know little of classical learning as to the role of the media in our society.

What is that role?

In brief this comes from our belief in democracy and freedom of speech – at least political speech – which allows the citizen to be informed, and the need for full and free information in our market economies. It also comes from a belief in the market place of ideas. That the market place itself weeds out the erroneous ideas.

Milton wrote:

Through all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood

grapple; who ever knew Truth put to the worse, in a free and open encounter?

Areopagitica (1644) p35

And Mr Justice Douglas expressed the same view:

When ideas compete in the market place for acceptance, full and free discussion exposes the false and they gain few adherents.

(*Dennis v US* 341 US 494 [1957], per Douglas J:584)

The English and Americans made a special contribution to democracy in the discovery of the principle that good government should not be totally dependent on finding and training good governors. Rather we should expect that those in public office may abuse power. Lord Acton's dictum puts this principle succinctly: "Power tends to corrupt, and absolute power corrupts absolutely". Central to liberal democracy is the concept of checks and balances on power. The courts must be independent of government control. Another and a most important check and balance on power is the press, print and electronic. The role of the press depends on freedom of expression. To perform its role it has become an essential institution in our democracy, but one which is not part of the state.

Thomas Carlyle expressed this eloquently when he wrote: "Burke said there were three estates in parliament; but in the Reporters' Gallery yonder, there saw a fourth estate more important far than them all. It is not a figure of speech or witty saying; it is a literal fact - very momentous to us in these times." The Americans went further. They decided to give constitutional recognition to this institution, the Fourth Estate. The First Amendment not only proscribes Congress from making laws abridging freedom of speech, it also proscribes laws abridging freedom of the press.

In a democratic society there is and will always be the inevitable tension and conflict between the press and government. This is part and parcel of a democratic state. It was the Americans that gave this conflict and tension not only political but also constitutional force. The majestic terms of the First Amendment of their Constitution state "Congress shall make no law... abridging the freedom of speech, or of the press..."

There can be no better description of the role of the press in scrutinising government (whatever the formal constitution and indeed all matters of public interest) than Justice Black's in that landmark decision, the *Pentagon Papers Case*. It will be recalled that the Supreme Court of the United States had there refused to enjoin the publication by the *New York Times* and *Washington Post* of the reasons for US involvement in Vietnam:

In the First Amendment the founding fathers gave the press the protection it must have to fulfil its essential role in our democracy.

The press was to serve the government, not the governors. The government's power to censor the press was abolished so that the press would remain forever free to ensure the government. The

press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government.

New York Times v US 403 us 713 at 826 (1971)

New free speech and freedom of the media cannot be absolute. As an American judge put it, no man can be allowed to shout "Fire" in a crowded theatre without good reason. There may be restrictions on this freedom where this is necessary in a democratic society. Outside of those laws the print media enjoys a wide freedom and is self regulated. Less so the electronic media, which is still a scarce resource, and where in Australia co-regulation now prevails.

Let me pause at this point to note two divergences between the United States and Australia. First, armed with a Bill of Rights, the US Supreme Court (in denial of the fact that the document is the product of non-conformist protestant thought) has legislated a humanist liberalism into the Constitution. And second, Australia is, broadly speaking, a social democracy where the government, the Australianised Crown, founded and led the development of the country. Where the essence of authority is encapsulated in the phrase "peace, order and good government" in contrast to the American belief in "life, liberty and the pursuit of happiness". It is no coincidence Australia, ordained very early in the piece, a remarkable dualist structure in broadcasting. Eschewing the commercialism of the United States, and the government controlled radio of most of continental Europe, the system of commercial broadcasting was widened, diversified and enriched by BBC style public broadcasting. To which community radio was added later. Note that this was also the Canadian and New Zealand approach. It was no coincidence that the three were at the time dominions with a social democratic ethos whether government was more to the left or more to the right.

One which was to be followed more recently by many countries, especially in Europe. With little or no attribution to our model.

As I have said, in the area not regulated by law, the media enjoys a generous freedom. And great power. To which there are corresponding duties. For the media must never forget that society and the media have made a bargain, a compact. In return for your freedom, you have duties.

The first duty of the media

The first duty of the press was described eloquently and succinctly by *The Times* a century and a half ago. (Just as we were beginning to assume the mantle of self-government.) *The Times* was replying to Lord Palmerston: "The first duty of the press is to obtain the earliest and most correct intelligence of the time, and instantly, by disclosing them, to make them the common property of the nation." To obtain the

earliest and most correct intelligence of the time, and instantly, by disclosing them, to make them the common property of the nation.

There in a nutshell, in its express words and its implications we see the fundamental role of the media. The “most correct intelligence” means a commitment to the truth. Now that is fundamental. And from it flows the theme of this evening’s talk “Sorry seems to be the hardest word”. Why should the media say sorry? Saying sorry is implicit in the first duty – obtaining the earliest and most correct intelligence. If it is wrong, correct it. Promptly. And where those who read the error, heard the error or saw the error are most likely to receive it.

In the last few months the ABA has called on broadcasters to do precisely this. These were not aberrations on the part of the ABA. We have decided as a general policy that more often than not the best remedy for a breach of the code of practice is immediate action. In this way, errors can be corrected in the market place of ideas. And we will certainly take this into account when we are reviewing complaints which incidentally only come to us after the complainant has been unable to find satisfaction with the broadcaster.

How does a journalist know that the story he or she has is the most correct intelligence? I remember on the Press Council when we had a complaint about a story concerning a deceased politician. The story put up a case that he was corrupt. A public member pointed out he had never been found guilty of corruption. But neither had Stalin, nor Hitler.

Being correct, being truthful does not mean the media can only publish truths actually found by a court. (And a court can be wrong.) Nor does being correct mean being satisfied according to the standard required in criminal law, that is proof beyond reasonable doubt. Is it something akin perhaps to the standard of proof in the civil law – proof on the balance of probabilities. And truth becomes more difficult to establish from a distance. For example, we are indebted to none other than the *New York Times* for finally explaining why Sir John Kerr sacked Mr Whitlam, which was revealed in an obituary for art dealer Max Hutchinson, who brokered the Blue Poles sale to the Australian National Gallery 25 years ago.

The expenditure (to buy Blue Poles) required a vote by the Australian Parliament, and when it was approved, a storm of protest intensified by articles and editorials in the Australian newspapers brought down the government of Prime Minister Gough Whitlam. (“Stay in Touch”, *Sydney Morning Herald* 30 April 1999, *The Australian* 20 May 1999.)

The test in American libel law is useful in telling us the standard of truth. This is that the journalist did not know that what was being published was untrue. Or that he was reckless and indifferent as to the truth. Now the “most correct intelligence” would *normally* then exclude rumour and unconfirmed reports. I don’t think it’s enough to label

them as such and then publish them. But doing that is better than nothing. There would have to be some strong public interest consideration in publishing rumours. At this point let us recall the celebrated warning. The *public interest* is not the same as something *interesting to the public*. The appalling headline in a British newspaper "x says he is not gay" offends this. For two reasons. First he is denying a rumour. Second the rumour relates to his private life.

So the first duty is about making the most correct intelligence the common property of the nation. In other words the intelligence has to be something which may *properly and ethically* become the common property of the nation. One of the basic human rights, defined in numerous international and national institutions is this right to privacy, a right to be let alone. Private matters should not properly and ethically become the common property of the nation unless there is a compelling public interest.

Even public figures have a right to privacy. Private facts can only become the common property of the nation when they relate to their public office. This principle is summed up, vulgarly, in this observation: "I don't care if a public official goes home and sleeps with a sheep, unless he's on the agricultural committee dealing with sheep subsidies." (Andrew Lack, CBS News in L.J. Sabato, *Feeding Frenzy*, Free Press, New York, 1991 p. 216.)

There is a view, expressed by former Director of the Communications Law Centre, that there is one class of public figure which has no right to privacy. Members of the Royal Family. In fairness I think he was describing a practice, rather than prescribing an ethical rule. But the ethical rule is in fact absolutely clear. *Everyone* has a right to privacy. A private fact should not become the common property of the nation unless it falls into that class of private facts in which there is a legitimate public interest.

When the engagement of Prince Edward was announced, one of our broadsheets almost ignored it. Which was its right. But the other media found the story newsworthy. A few days later that broadsheet published, or rather republished, a story based mainly on rumour and unconfirmed reports. I have read less venomous stories about serial killers. You would not have read such an unpleasant piece about two young people getting married but for one simple fact. It was about a member of the Royal Family. Later we read stories about the alleged overdraft of another member of the Royal Family. That she was a spendthrift. The elderly Queen mother. Pull her down because she is far too popular! Didn't she once say in the war, when she was advised to send the children to Canada, "They won't go without me. And I won't go without the King and he won't go." And then when the palace was bombed "Now we can look at the East End in the face." Fearing

perhaps the Queen Victoria precedent – your popularity seems to go up with your age – she had to be pulled down.

Well if her alleged overdraft is public property, why don't we read about the overdrafts of editors and journalists. Aren't they public figures? Perhaps they don't see the beam in their own eyes. How would an editor like to see a story of his son or his daughter's engagement dripping in vitriol based on rumour and innuendo. Or of the editor's 90 year old grandmother's financial affairs.

But let us go back to *The Times* dictum that the first duty relates is to obtain the "most correct intelligence of the time". And saying sorry if you get it wrong.

The ABA is charged with seeing that there are in place for the commercial and community sectors, codes of practice which reflect *community standards*. In assessing *community standards*, do we assume the continuation of the broadly defined community standards which flow from what was (and may well still be) clearly a society dominated by a Christian Judiac ethic. And if society, or a significant part of it, is moving away into humanism, do we assume a new ethic applies? Or that the religious ethic mirrors a natural law truth? Professor Peter Singer disparages ethical codes based on religious standards:

We have an historic chance to shape something better, an ethic that does not have to be propped up by transparent fictions no-one can really believe, an ethic that is more compassionate and more responsive to what people decide for themselves, an ethic that avoids prolonging life when to do so is obviously pointless.
(*Rethinking Life and Death.*)

But that led Professor Singer to the conclusion that the humane killing of disabled babies was morally acceptable – a conclusion I am confident most of us would say is morally erroneous. (*Sydney Morning Herald*, 8 May 1999.) I suspect that the humanists among us endorse the fundamental aspects of the ethical standards we have inherited. I am confident that expectations I glean from this first duty of the press, and the corollary of saying sorry, still conforms to community standards. The question remains. Do our editors and our journalists suffer from having no coherent school of thought either in the university or in the profession which studies, debates and disseminates the proposition that the media enjoys its freedom and power only because of a corresponding duty to society?

If our practitioners do not understand and accept this, and most importantly, if they are not constantly guided by this fact, there could be an increasing crisis of confidence in the media. Because the public, with its usual good sense, will suspect that the media is not keeping its side of the bargain.

Is the media doing its duty?

At the London Conference Sir Robin Day describing himself as a "humble seeker of the truth" lamented the passing of a "golden age" of journalism. He was immediately challenged by a *Daily Mail* reporter, Ann Leslie. She said: "I started my career at the grubbiest end of Grub Street, though you might think I am still there, in Manchester. I came down from Oxford with a degree in Anglo-Saxon poetry and my first job was to doorstep a dwarf in a snowstorm in Oldham who alleged he had been at school with Cary Grant. This was over 35 years ago, at the time when this would be a golden age and free of trivia." She pointed out that her particular speciality now tended to be foreign reporting. She recalled that if she looked back at the way wars were reported, it would always start off, "As I flew into war-torn Wonga Wongaland, the fuzzy wuzzy..." Recalling some very famous war correspondent who had died recently, she referred to one of his pieces which began, "Sorry about that, I was interrupted and a dead African has just fallen into my soup". What is happening now she says is that there is more space for people to give more of their personal views about a war.

Opinionated journalism

One of the first papers at the conference was by Mick Hume, Editor of *LM Magazine* (Living Marxism). The people from LM seemed to me to be very sensible. Mick Hume identified three heretical practices which involve a deviation from obtaining the most correct intelligence. "Victim" journalism, "personal" journalism and "confessional" journalism.

Firstly, *victim journalism*. He described this as the attempt to reduce not only trivial stories, but even many very important stories, to a rather "cheap kind of melodrama" of what is now called human interest stories. This will have a continual focus on victims and their feelings. Or which often focus on the feeling of self-styled victims, those who identify themselves as such. Victim journalism is not just the preserve of Jerry Springer or of *The Sun*, he says. It is at the heart of mainstream British media where the first question a journalist seems to ask on arriving at a newsworthy situation today is, "How do you feel?" rather than "What's happened?". Those who are most concerned with what happened and why are left to wait until the feelings of all those involved, and particularly anybody who can claim to be a victim of the circumstances, have been sifted through first. For example if you are dealing with the question of BSE on TV, rather than having a boring discussion of the science and what really causes BSE and what can be done about it, the journalist follows a family looking after a teenage CJD victim for a week. Or rather than have another boring documentary about the Northern Ireland and the peace process, have a week in the life of Mo Mowlam, who is of course not only a woman, but a can-

cer victim herself and therefore perfectly packaged for this kind of treatment. I think that is the kind of practical illustration of what we are talking about in terms of victim journalism.

The second related trend Hume identifies is the rise of *personal journalism*. Where the reporter ceases to be an observer but becomes increasingly a participant in the story covered. They become part of the story. Hume: "I am not only reporting what those involved feel, but I am telling you what I feel, my feelings as a journalist become an important part of the story, and I would say to many of these rather self-important correspondents I do not really care what you feel about the situation. I am interested in what you know about it and what light you can throw for me on what is taking place there".

The third tendency is confessional journalism or the undermining of the line between the private and the public. Not only are the newspapers full of columnists, but they are columnists many of whom feel it is their job to burden us with the most banal details of their lives and their feelings. For Hume this is far more mawkish than that. A school of biographical writing seems to emerge, where rather than writing about what you have done in the world, you write about what the world has done to you. It is your feelings and the traumas that you have gone through that becomes the stuff that everybody else is supposed to read over breakfast. It seems to Hume that confessional journalism is removing, or at least undermining, of the line between public and private.

This is part of a tendency to elevate emotionalism over analysis. When feelings and facts are so mixed in this way. Not only are journalistic standards lowered but there is a lowering of levels of tolerance in the media. And this, Hume says, means a slide into something that has been called "emotional correctness". This is where the journalist is not only telling the world what he feels but is telling people what they should feel as well. There is a very coercive element to this. The public is told there is only one correct way to feel about any situation. There was the headline "Speak to us Ma'm" which cleverly deflected attention away from the media's involvement in Diana's problems to the Queen's alleged coldness. Hume says it was most brazen in the coverage of the build-up to Princess Diana's funeral with banner style, three inch headlines in the *Daily Mirror*, "BE SILENT ALL BRITAIN", "you know, on your knees, whether you like it or not". There seems, he says, to be this rather sanctimonious instruction in some quarters of the media today that there are *things that cannot be said* and it is their job to say and to stop them being said. There are *questions which cannot be asked. Those that express offensive opinions must be censured and punished*. Asked what can be done he eschews a return to some "golden age". His concern is to encourage a new school of critical journalism, which is prepared to question everything anew, which will not worry too much about upsetting public opinion, or offending the consensus of the day;

journalists who see their job as being to challenge popular assumptions, rather than simply connect with what they assume to be the popular emotions of the People. He wants journalists in which the emphasis is on the importance of facts and ideas rather than feelings and emotions. Hume: "I would simply ask those journalists to take a different tack and those who feel this desperate need in the media to connect today, since when did it become part of our job as journalists to be loved or to be thought of as warm and emotional human beings, you know, just to be liked by the public? When did that become part of our job? My opinion has always been that to be a journalist doing a job properly, you have to be making some enemies, and not just ex-Tory MPs and England football manager."

Are these tendencies present in Australia? Is there an "emotional correctness" here?

According to Professor Henningham there is a dominant ideological trend among media practitioners. Professor Henningham's 1996 survey (J Henningham, "How Political Correctness Shapes the Media", *The Independent Monthly*, February 1996) tells us that on a wide range of social issues journalists are (measured in percentages) significantly more liberal than the general public. In industrial relations they are more likely to support unions than employers (84:47); are more supportive of Mabo (78:44), multiculturalism (85:78) and republicanism (78 to 49).

But when it comes to economic issues they seem somewhat drier than the general public. For example, free enterprise (92:86) and business profits (91:90). But a certain schizophrenia emerges. They are more in favour of socialism (34:29)!

Does this matter? It once did not. Why? Because editors kept a tight rein. Especially in the separation of fact and opinion. Only editors had opinions, at least openly. And editors and journalists were clearly different ranks. So Emerson once said: "Democracy is a government of bullies tempered by editors." But can we truly say today, that journalists are with Robin Day - humble seekers of the truth?

Well. Are there examples of Mick Hume's deviations in Australia? Do the views, the opinions, in Professor Henningham's survey intrude into the fulfilments of the first duty of the press? Yes, at times. Of course not all the time. They intrude in three ways. In determining what is newsworthy, and in distinguishing fact from opinion. And whether an orthodoxy is emerging in the opinions journalists and editors think right thinking people should hold. These three phenomena come from the grater autonomy and standing which journalists enjoy today. Exacerbated by the use, the almost universal use of:

- Bylines,
- The journalist's photograph with the byline,
- The interview by a journalist with another journalist,

- The journalist shown against the backdrop of some serious institution – the White House, the Palace of Westminster, to give gravitas and authority to what is after all just another opinion.

There is today not only a greater likelihood of subjectivity. There is a strong incentive to give an opinion. In fact these not too subtle devices have not only encouraged, they have entrenched opinionated journalism as the dominant method of informing the public. Does this matter? If journalists tend to think along surprisingly similar lines, at times significantly different from the public, and the journalism is mostly opinionated, should it be any surprise that the public is losing confidence in the media?

Let me give some examples of how subjective and opinionated news can become.

In the final months of the Whitlam Government, when all the media turned against him, Bill Hayden observed that even if E G Whitlam walked across Lake Burley Griffin, the newspaper headlines the next day would say, "GOUGH CAN'T SWIM". Mr Whitlam's relations with the media only seriously declined in the last year of his government. He is no longer a target and has taken his rightful place as a, if not the, national treasure.

Today there are other targets. Foremost among these is the current Prime Minister, who must be the most media vilified Prime Minister in living memory. And when the journalist wants to be subtle, R G Menzies is always a convenient surrogate for John Howard. We now almost always see or read of Menzies through the use of two and only two glimpses. One is the poem "I saw her but passing by..." The other shows Sir Robert in the uniform of Warden of the Cinque Ports. As if those two vignettes could possibly summarise the life and times of Robert Gordon Menzies. They are used to create a caricature of the man. How many times did we see and have reported the fact that John Howard stumbled while leaving a podium in the 1996 election. Why is he the only Prime Minister where reference to his size (average or close to average, rather than small) is a fact regurgitated ad infinitum. Yet when the New Zealand Prime Minister quipped "It's not over till the fat lady sings!" a wave of furious condemnation swept through the nation. Every time a journalist refers to the Prime Minister's height he goes down one notch in credibility. (Strangely journalists remain fascinated by Mr Keating who thinks so little of Australian journalism that he says, "It consists of fourth rate minds feeding third rate newspapers – still spewing out bile": *Weekend Australian* 25-26 April 1998.

It was fascinating to watch last year's Andrew Olle Lecture. The audience, mainly the media, was so happy at the beginning, so generous in its applause. Gradually this warmth turned into a certain *froideur*. The applause became, well, polite. The smiles disappeared. Especially when John Alexander referred to a trend he found disturbing: "The

media as participant". He noted one journalist's question about Pauline Hanson's progress – "What are we doing about these people?" To quote John Alexander: "We?" ... "These people?"

There are many examples of the media as participants, driving the news to fit preconceived opinions. Of course I am not saying *all* reporting does this. But the following were significant stories. For example some reporting of the process leading up to the Kyoto environmental summit would have left you with the belief that we were about to be isolated as an international parish. We were not. The reporting of the finances in the Department of Aboriginal Affairs some years ago would have left the suggestion that this was a "no-go" area where the usual rigour of the press did not apply. You could have thought the same about "Women's business".

Last summer one of our broadsheets must have actually persuaded itself it already knew the result of this year's referendum. Over several days it headed its news pages on this with the large banner "Towards the Republic". Towards the republic? Is this news? Did the same paper lead its news pages in 1951 with this heading: "Towards the dissolution of the Communist Party". Or in 1967: "Towards the end of the Nexus between the Senate and the House of Representatives". Just as well they did not. Both referendums were lost!

In obtaining the most correct intelligence, journalists must be objective. The penalty that flows from not being objective is a loss of credibility with the public. The same fate can befall whole newspapers and journals, programs and stations. And the public, fairly or unfairly, more and more loses confidence in the media as a whole.

Is it time for the media to keep subjective comment to editorials and a selection of the best opinion programs and columns? Perhaps we could return to newspaper pages with fewer bylines, and radio and television without the degree of mediation by the commentator, with fewer interviews of journalists by journalists.

Apart from letting prejudice determine newsworthiness, and intermingling fact and opinion there is also a danger that a new orthodoxy is stifling the media. Mick Hume warned of a new "emotional correctness" where the media tells you not only what it feels, but how you should feel too. I am no conspiracy theorist but there does seem to be a great degree of "conscious parallelism". Editors and journalists are entitled to their views. But why do they hold some truths to be "self-evident" when no one ever thought about them a few years ago.

One example is free trade. Now most of the elite (dare I say, most of *us*) are not persuaded this is the correct path. I suspect there is a good body of opinion among the general public who just do not agree. Some months ago I chaired a seminar on trade. Paul Kelly was the keynote speaker. He said something which I think shocked many in the audience. He said there was one person in the media who from an

intellectual, well researched position was strongly opposed to free trade. And whose programs were compulsory listening. That was Alan Jones. Now if you say you listened to Alan Jones in some circles you will be greeted with at least polite silence and, more likely, outraged disapproval.

Another subject is the debate on the Constitution. With all the beating up of the issue for years, change to a republic still remains a very low order issue to the Australian public. Another example of the wide discrepancy of opinion between the public and the journalists?

Incidentally, just as I have my own views on free trade, the constitutional debate is a subject on which I have to admit I have an interest. Recently I attended a debate on this where I argued the "No" case robustly. (It was a debate). The editor of the *Dubbo Liberal*, Mr Richard Lawson, did not like it (although I suspect the majority of the 1100 or so people present did.) *The Dubbo Liberal* thundered about me:

His speech was mischievous, misleading and insulting. And he should have known better. Professor Flint is a former chairman of the Australian Press Council, the organisation which monitors the performance of the printed media. During his time with the council, Professor Flint was responsible for upholding certain standards by which newspapers and magazines operate including issues of fair and balanced reporting.

Yesterday it was incumbent on Professor Flint, given his academic training and background, to provide the conference delegates with a well-reasoned argument, based on fact, to support a constitutional monarchy. Instead his argument was based on a number of misconceptions and even more myth about a republic.

In an immodest moment I was reminded of the provincial, I think Australian, newspaper at the turn of the century, which began its editorial - "WE HAVE PREVIOUSLY WARNED THE CZAR." No doubt in the Kremlin the Czar trembled.

Conclusion

So was there ever a golden age? There certainly was. In terms of public confidence in the media. They might have agreed with the editorials, and the radio commentators. Our fathers and mothers weren't gullible fools. Just because we have more gadgets and more paper qualifications doesn't mean we are endowed with greater wisdom. Our fathers and mothers, and our grandparents voted against conscription when that was right. And then they agreed with Curtin that they had to change. They put Curtin in, and Menzies out. And then they put him in. Each time when it seemed right. Both then and in retrospect. They voted against banning the Communist Party. But they wouldn't let Chifley nationalise the banks. And when they disagreed with the editorials, they accepted that the editorial was the editor's place to put the paper's views. They still had confidence in the media.

Today, if trends are any indication, that level of confidence is in danger of evaporating. What is truly extraordinary is that media practitioners seem indifferent to this trend. And the problem won't be solved by proliferating the means of delivery.

The media's role is part of a bargain, a compact with society. It's in return for its power, for its responsibility. That needs to be understood, contemplated and pondered. In the university and in the profession. And applied. Saying sorry is a first step. The simple fact the media has to face is that the public thinks that the bargain, the compact is not being kept. In brief, the public believes they are being let down.

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Photo - David Karonidis

Barry O'Farrell

The task of rebuilding the NSW Liberals following their defeat at the 1999 State election will not be an easy one. Barry O'Farrell, newly elected Deputy Leader of the party, once worked for John Howard and has been around politics for 20 years. Prior to winning the seat of Northcott for the Liberals, Barry O'Farrell was State Director of the NSW Liberal Party. He spoke for The Sydney Institute on Tuesday 1 June 1999.

REBUILDING THE

NSW LIBERALS

Barry O'Farrell

The 27 March election result was devastating for the Liberal Party.

You cannot suffer a swing and loss of seats like that without there being both a political and personal cost. Valued colleagues and friends lose seats and livelihoods. Party members, having worked hard, are left unrewarded, demoralised and depressed.

Those of us who remain in the diminished parliamentary party face what appears to be an insurmountable task to regroup, rebuild and resurrect our political fortune. Having fallen over the electoral precipice we now find ourselves at the bottom looking skywards.

In times of crisis some of us find comfort in books.

It might also be argued that one of the best features of Opposition is the time it provides to read and rethink one's personal and political philosophy. It may be the only benefit. Often in trying move forward, it is best to start by looking back. As a sometime student of history, following the election I decided to revisit the past to try learn any lessons it held for the rebuilding task in front of the NSW Liberals.

I reviewed the writings of Robert Menzies. I also revisited books by people like Allan Martin and Gerard Henderson about Menzies. I took comfort from what I read.

Menzies' ejection from the prime ministership and the United Australia Party's subsequent rejection at the 1943 election seemed to me to be more than equal to the experience my colleagues and I had just been through. In that election, only 12 UAP candidates were returned to a Federal Parliament of 75 MHRs.

The NSW UAP – which returned just four federal members – was in, what one commentator, described as “...an extreme case of extremis...”. It polled just 16 per cent of the Statewide vote. Despite the result, it used that rout to start a reform process which culminated in the formation of Menzies' new Liberal Party and six years later returned 16 members to his first government.

In all of this I found some hope for the task ahead: an affirmation that a preparedness to work hard, to distill the lessons of defeat and to

reform ourselves, could see the NSW Liberals again take centre stage in Australia's premier State.

In Menzies' *The Measure of the Years* he wrote:

When you find yourself in Opposition and have recovered from the natural shock which accompanies the process, the first task is a positive one: to reconstruct; to find out what went wrong; to work out a programme of action; to initiate a new phase in political history.

I want to explore this positive task for the NSW Liberal Party.

What went wrong

Even though two months have elapsed since our disastrous loss, in some senses it is still too early to definitively state what went wrong. However, there are a few broad observations which should be made.

The result clearly demonstrated the Liberal Party had failed to use the preceding four years to good effect.

In moving from Government to Opposition, there are three key tasks for a party to perform:

- to review why it lost support;
- to reconnect to its constituencies; and
- to reassess and redefine its philosophy and policies.

In the last parliament the State Liberal Party failed in all three. For my part I apologise to our supporters for this failure.

At no stage did we sit down and attempt to work out why the Fahey Government lost. We did not apply the intellectual rigour of identifying what we did wrong when last in office in an effort to both learn from the mistakes and to seek to reposition ourselves with those who were adversely affected by such decisions.

As Bob Carr proved in December, and throughout Labor's election campaign, public confession and apologising for mistakes is good for the political soul – especially with an increasingly cynical electorate. While individually local members and shadow ministers set out to reconnect to constituencies and the Liberal Party's traditional base, this work remained on an individual basis and lacked the strategic approach which modern politics demands. In some cases, we concentrated on the wrong constituencies. We set out to woo groups with traditional ties to Labor at the expense of those in the middle or on the right. Yet we expressed surprise and disappointment when, despite our best efforts to buy their support, these Labor-aligned groups came out and backed the Carr Government during the campaign.

When Robin Askin ended 24 years of Labor rule in 1965 he demonstrated that building coalitions brings political reward. But, in achieving his victory, Askin successfully targeted groups representing the burgeoning middle classes and those who aspired to them – the very people for whom the Liberal Party was originally created.

But it probably was not surprising that we took a few wrong roads and ended up lost when we travelled with a defective compass. We never took our bearings – or redefined true north – after the 1995 loss. We never sought to recommit to traditional Liberal values and beliefs nor tried to update their presentation to suit the demands of the 1990s.

In part, this work was delayed by a belief that the Carr Government's paper thin margin would evaporate and we would regain office before 1999. Such a view persisted until Carr increased his majority in the May 1996 by-elections. Up to then, rumours about the health of a particular Labor MP and our chance of capturing his seat were eagerly regaled. (He survived, retired and we failed to win his seat in March.)

The early years of the last parliament should have been used to rectify something we had failed to do in office – especially our second term – that is sell Liberal beliefs and ideals and a Liberal vision for the state.

By mid term we should have been out in the community explaining how these principles applied in particular policy areas so that, by the time the campaign commenced, people had a strong impression of what a Liberal government would do if elected. The 27 March has amply demonstrated what happens when this work is not done. Despite the fact we had some very good policies, nobody – or not enough people – knew about them. Whether electricity privatisation, education or drugs, the policies were released so late we gave ourselves an impossible task of trying to communicate them in the midst of an election campaign. It's a lesson which must be learned in future.

Finally, the election also demonstrated that the State Liberal Party had failed to land its punches and weaken the Carr Government. Our failure was accurately captured by my colleague John Brogden when he told the *Herald* after the campaign:

Frankly, an Opposition that fails to crucify a government when 4 million people can't drink the water in Sydney doesn't deserve to be elected. [3 April 1999]

Despite individual efforts of a number of key shadow ministers like Andrew Tink, Stephen O'Doherty, Jillian Skinner and Patricia Forsythe, our public critique of the Carr Government again lacked strategic direction. Instead of being used as a vehicle to highlight the Liberal-based solutions we could offer if elected, it was too easily characterised by our opponents as the type of whingeing, negative, carping criticism an electorate hates. Years earlier Menzies had warned of the consequences:

If the Opposition has not created positive policies and secured positive support, the public attitude may become "A plague on both your houses". And, if this cynicism becomes too deep-seated, there may be strange and unpredictable electoral consequences. [*The Measure of the Years*].

We witnessed both "strange and unpredictable" consequences in rural and regional results on 27 March. The need for an Opposition to both oppose and propose is a view I strongly hold and something which should not be forgotten this term.

Reconstruct

Menzies' second positive task for an Opposition was to "reconstruct" and, like Menzies five decades ago, I believe reform is needed at all levels of my party.

This should not be taken as an attempt to off-load blame for the March debacle; I firmly believe that responsibility rests squarely on the shoulders of the parliamentary party. Nevertheless wider reform is required if we are to be a properly functioning political machine in 2003.

My reform "wish list" comprises five points:

- greater professionalism at head office;
- introduction of fulltime key seat co-ordinators;
- earlier candidate selection coupled with performance monitoring;
- an urgent need to grow membership; and
- a greater involvement of membership in policy making.

I will ignore the issue which always attracts most attention within the State Liberal Party – our oversized State Executive. Suffice to say that I know of no other organisation with a governing body of 43 and firmly believe that a 50 per cent reduction, in line with Victoria's reform in the early 1980s, would significantly improve its operation.

Head office

The Liberal Party does not value its head office. Despite Menzies' keen adoption of Labor's federal structure with professional staff operating in Federal and State offices, 50 years on the NSW Liberal Party has forgotten that these people are as crucial to victory or defeat as MPs and candidates.

In NSW, being Liberal Party State Director is a precarious position. Over the last term of parliament there were four people in the job. This decade six people have occupied the role – while in Victoria and federally there have been two and three respectively. Such a turnover is characteristic of a troubled organisation.

Until we instill some permanency in this top organisational job, the Liberal Party will continue to flounder. Neither the parliamentary party nor the extra parliamentary party can win office on their own. An effective State Director – and a properly resourced, professional secretariat – bringing both wings together is vital for success. But we will only get a skilled and efficient staff if we invest in them. If the NSW

Liberal Party continues to take a Kleenex approach to our professional staff we will be condemned to repeat the mistakes of past campaigns.

If we fail to build a career structure for our employees and if the term "staffer" remains a term of derision in some Liberal quarters we simply won't attract – or keep – the quality professional advisers necessary for modern campaigning. I welcome Remo Nogarotto's determination to stay. Andrew Robb used John Hewson's terrible loss in 1993 to help ensure John Howard's stunning victory of 1996. Remo knows the party expects similar from him.

Local campaign officers

To have a chance of winning in 2003, I believe Nogarotto has to take something else from Robb. After the 1993 Federal election, the NSW Liberal Party held only eight out of 50 seats. To help try to overcome this chronic imbalance, and in recognition of the need to campaign over the full term of a parliament, Robb installed four fulltime campaign officers across eight NSW key seats. All were won at the subsequent election.

In 1999, the State Liberal Party finds itself in a similar position. The same approach is needed today. For its first 40 years, field officers were an integral feature of the NSW Liberal Party. At its peak, 44 were employed on the ground across Federal and State electorates. Today we have none.

To ensure we are effectively placed to win at the next election we must have fulltime campaign officers in the field. Professionals who work within a strategic framework on the ground in areas like St George, Ryde, Sutherland, the Central Coast, Western Sydney, the Hunter and parts of rural NSW – ensuring the mechanics of modern campaigning are operating smoothly and providing support to candidates and campaign teams.

If we are serious about regaining key seats in 2003 we cannot simply leave the task to part-time candidates, volunteer local campaign teams and a head office devoid of the ability to get messages directly through to the front lines of State politics. We can no longer remain one of the few political parties without fulltime agents in the field.

Candidate selection

These campaign officers would also help with another vital task: the selection of candidates for the 2003 election. Historically the Liberal Party has left candidate selection to late in a parliamentary term – often in the hope that the "messiah" candidate for a key marginal seat will turn up. Unfortunately the Liberal Party has had as much success as the rest of society with latter day messiahs.

Following its 1991 loss, the NSW Labor Party immediately re-endorsed candidates in the key marginal seats. For example, John

Watkins in Gladesville, was able to use the next four years to raise his profile within the community he went on to win in 1995 – an experience which no doubt also served him well in March. At the 1999 election a number of good Liberal Party MPs and candidates were defeated; swept away in the tidal wave of Labor support. The talents of people like Peter Blackmore, Marie Ficarra and Brett Thomas should not be lost to the party. Instead they should be encouraged and given an opportunity to remain active in those electorates they contested in March.

To achieve this the Liberal Party should move to early selection of candidates in key seats. The candidate identification process should begin almost immediately. Selections should be advertised and we should aim to start earlier than ever before to recapture those pivotal marginal seats lost in March.

Hand in hand with early selection must be a determination to subject candidates to on-going review to ensure they are working effectively. We need to be professional so that, if candidates are deemed to be under performing, they should firstly be counselled to try and lift performance and if all else fails State Executive should be prepared to remove them.

The NSW Liberal Party adopted this approach with Federal candidates in the lead up to the 1996 election. Despite some pain at the time, the party benefitted from its decisions. In this day and age, when politics is a capital intensive business, prudent management should be exercised. Shareholders funds must not be allowed to be frittered away on poorly managed investments.

Membership

But you cannot expect to win seats if your membership is small and weak. You cannot expect to select quality candidates if your local organisation is factionalised. You won't win seats if your branch members are not tapped into their local communities. Each of these was a problem in at least three key seats in which the Liberal Party heavily invested in during the last campaign. No one in their right mind would invest in a business that did not exhibit sound fundamentals and I believe the party has to be equally hard nosed and professional and ask whether we should continue to invest in seats where such problems persist. The State Liberal Party should urgently embark upon a long-term Statewide membership drive with particular focus on marginal seats. It should seek to remove incentives for factions, candidates and MPs to keep local memberships low and controllable. For instance, boosting head office numbers if a sitting MP failed to maintain a set percentage of membership would quickly spur most to build our local organisations.

Similarly, reviewing the rights of branches to refuse to accept members should be on the agenda. When factions are allowed to stop prominent church workers joining the party – as occurred in one part of Sydney last term – reform of this veto is urgently required. The congregation of the NSW Liberal Party's "broad church" has grown narrow. We need to attract new members to ensure we are representative of the communities we seek to represent. We must again become a party where many feel free to worship.

Policy making

But you cannot hope to build or retain members in an organisation where an impression is given that all wisdom resides at the top. The lesson for Liberal MPs after 27 March is that we need to engage our party membership as much as our wider communities. None of us are elected as individuals. We all wear the Liberal tag. We would have little or no chance of effecting the changes we aspire to if it were not for the Liberal Party. Yet many of us are guilty of having paid only lip service to the party's membership.

Historically within the Liberal Party there has been separation between the two wings of the party. Unlike Labor we do not bind ourselves to policy determined by the wider membership; unlike Labor we rarely have to defend our positions at party conferences.

The 1999 election defeat has left many in the wider Liberal Party organisation wondering if that should change. I am on the side of those who believe it should. To help build a bigger membership in communities in which there are various pressures upon the spare time of individuals and families, I think we must offer members more.

The party's annual State Convention should be used as the vehicle for policy directions to be established. Party members should be given an opportunity to have a say in the development of the framework upon which the parliamentary party will construct the policy detail to be taken to an election. Such an approach would have a number of benefits including:

- to help hone the most of basic of skill of any MP – that of successfully selling a message;
- to develop a true policy partnership between both the parliamentary and organisation wings;
- to allow greater access to the skills, talents and expertise which exist across the party's membership; and
- to better equip party members with information on policy and directions which can be used in support of our cause in the wider community.

Work out a program for action

While I strongly argue these reforms are necessary, they are probably not as important as Menzies' third task in opposition – the need to work out a program for action. The biggest single task ahead of the NSW Liberal Party is to redefine itself for the electorate. To dust off our principles, polish them until they gleam and then set out to sell them to the electorate. I have already said that last term we sometimes got lost because of a lack of direction. To be fair, the State Liberal compass had given inaccurate readings for years.

Nick Greiner swept to power in 1988 on a decidedly reformist, middle class agenda. Like John Howard nearly ten years later, he accurately pitched his message in readily understood terms to the centre ground of politics. Yet while Greiner was strong on reform he was weak on the business of politics – and no successful government can afford to get its politics wrong.

The Liberal's near loss in 1991 – and Greiner's departure a year later – signalled the end of principle-based policy making and its replacement by a type of desperate political pragmatism. The Liberal Party virtually stopped reforming as seemingly all effort was directed at retaining office. In the end, while John Fahey remained personally popular, it was clear the electorate had no idea of what his Liberal Government stood for or where it was heading.

Many have argued that a Fahey Government which had been defeated – even if early – fighting for policies and programs clearly based on Liberal values and beliefs would have left a better legacy on which to build last term. Absent that legacy or any attempt to critique our term in government, we failed dismally in this year's election.

The current NSW Liberal Party has these two models to consider as we set about to work out our program for action. We have a further model to our south in Victoria and I argue that, despite recent differences, we should seek from the Victorian Premier and his party their views on the rebuilding task we have in front of us. Australia's most successful current Liberal should not be ignored.

The Liberal Party was established as a centrist party and for me that is where it must stay. We were formed to represent those who fell in the middle of the political spectrum – those between big business and unions who were without a political voice.

We aimed to include all in the community who believed in individual worth and self-fulfilment; those who, while seeking reward for effort, were also committed to self-sacrifice and responsibility in the interests of the wider community; people who wanted to be empowered to make choices about the way they lived their lives; and those who believed that private enterprise, and not government, generate the conditions for long term prosperity. If we remain true to this, our traditional base, we can

successfully lay the foundations for the construction task ahead of the NSW Liberal Party.

In instance the small business sector – one which every Liberal leader seeks to embrace. Following the election, Bob Carr sought to pitch to small business operators, opining that Labor had to reform to provide a home for these new supporters.

If Bob Carr believes small business voted for him at the last election he is misreading his victory as badly as Paul Keating did in 1993. Small business voted against the Liberal Party. It joined Labor only in as much as it was protesting at how poorly the Liberal Party performed.

It took just one month for it to be clear why small business could never find a home within Labor. Revelations about the Carr Government's proposed new industrial reforms which give greater preference to unionists and more control to union officials are anathema to small business operators and represent the real obstacle to these people finding a home within Labor. It is an agenda which is directly at odds with Liberal beliefs.

A concerted effort to renew our links with small business, to take on board their concerns, to recognise the pressures they face, to formulate policies based upon Liberal beliefs about the limits of government, reward for effort and choice can and will win this sector back to the Liberal fold. It is a path we must follow with many sections of the community who were let down by us in March.

In addition to being a centrist party, when successful the Liberal Party has also been an "organic" party – adhering to a set of core beliefs but also capable of adapting those beliefs to the changing nature and challenges of society. In his time, Menzies' Liberal Party was a modern party; he wrote of his determination for it to be "a progressive party, willing to make experiments". Similarly Greiner's was a modern government; as is Kennett's. Each, in their own way, were relevant to their communities and the issues confronting their citizens.

Relevance is a key issue we must face. When formed all those years ago, the Liberal Party was a genuinely community based organisation. It was made up – at local, State and Federal levels – of people who were tapped into their local communities, business and professional organisations and other groups. As a result we kept abreast of prevailing community sentiments and the party was able, if necessary, to adjust its settings accordingly.

In this term of parliament, the State Liberal Party needs to again adopt this successful path. While maintaining a strong belief in core principles we need to recapture our links with the community and to ensure that we are perceived as relevant and modern. In part rebuilding our membership will help with this task. But to succeed, the party will also have to engage the community more than we have done of late.

In the past, movements such as the National Trust and Australian Conservation Foundation – grassroots, community-based organisations – were established with the active support and participation of Liberals. We should again ensure that Liberals are at the cutting edge of the community.

We have to work to overcome the perception that, as Liberal MPs, we somehow stand apart from communities or that we are so narrowly economically based that other areas – often more important to many in the community – are of no interest. By engaging the community, we not only stay abreast of issues of relevance, but we increase our ability to sell our Liberal beliefs and message in the community and so benefit our rebuilding task.

A large part of this engagement must be directed to the area of ideas. Ideas are an important part of Opposition; a good Opposition should be hungrily seeking to refresh itself in its task to regain office. This type of intellectual endeavour was championed by Menzies. Admitting it was not – nor ever would be – easy, he described Opposition as “a splendid opportunity for a revival of spirit and a replenishment of the mind”. One of the State Liberal Party’s great failings has been its inability, not just to win the battle of ideas in the wider community, but to be seen to be part of the debate. Few Liberals, Federal or State, contribute to the vibrant intellectual life of Sydney and NSW.

This term we need to participate – if only to search out ideas and concepts to help us regroup and rebuild. Sydney’s intelligentsia can provide an antidote to the myriad of paid advisers who support the Carr Government.

We need to ensure that our members – parliamentary and organisational – feel free to present and debate ideas, both within the party and on the wider public platform. My suggested reform to policy making, would both encourage this attitude and start to signal the importance of ideas and policies within the NSW Liberal Party.

Finally, were it possible, I would also adopt from Federal Labor its successful *Labor Essays* approach of publishing ideas, concepts and policies throughout a term of Opposition. I believe the written word is important and, for a political party, I believe it can form the foundation for ongoing intellectual activity.

If we undertake this type of program for action we will be well placed – probably immediately after the Olympics – to set about selling to NSW a Liberal vision for the future of the state.

A new phase in political history

My colleagues and I have no illusions about the job ahead of us in this term of parliament – if we did, any remaining doubts were dispelled by the recent Herald poll. This term will require a concerted effort by

every member of the Liberal Party if we are to be in a position to win in 2003.

And victory in 2003 must remain our goal. The volatile political climate seen across Australia – and evident here in NSW – over the past decade, means the main obstacle to a Liberal victory in 2003 comes from within: those who argue the March result will need to two terms to reverse. Such mindsets tend to be self-fulfilling. Ridding ourselves of those thoughts and simply getting on with the hard work at hand will prove a far more fulfilling role and will hasten an end to our time in Opposition.

I have tried to lay out some of the things I believe the NSW Liberal Party must do if we are to recover from our defeat of two months ago. As time goes by, other tasks will be added to the list. But the central point I have wanted to affirm should not change. To rebuild and win the Liberal Party must:

- stay true to our traditional core beliefs;
- be prepared to look back in moving forward;
- make ourselves relevant again to our communities;
- be open to ideas and actively engage in the intellectual debate;
- and above all, be prepared to define and sell a Liberal vision for the State.

Let me finish with a quote:

We are going through a period of political adversity. It will be the best thing that ever happened to us. We shall fight back, we shall think back, get long views, summon our courage and stir our imagination. In that case we shall win.

Not the words of a 1999 State Liberal; but another quote from Bob Menzies. It is as relevant a piece of advice today as it was in 1944. If we heed it we can win.



Andrew Robb



Kerry Jones

Photo - David Karandis

An Australian Republic – whither, whether, wither? was the topic debated by Kerry Jones, Executive Director of Australians for Constitutional Monarchy and Andrew Robb, Convenor, Conservatives for an Australian Head of State on Tuesday 8 June 1999 at The Sydney Institute. The debate was attended by a capacity crowd and both speakers drew strong support from different sections of the audience attesting to a tight finish for the November referendum.

DON'T RISK

DIVISION AND RADICAL CHANGE ...

VOTE YES

Andrew Robb

Tonight I want to support the case for a Yes vote in November for an Australian as head of state by responding to three arguments which dominate the monarchists' contribution to this debate, namely:

- The monarchists argue that the No case is about fighting "the people who want to change the way we have lived for almost 100 years";
- The monarchists argue that the model for an Australian head of state agreed at the Constitutional Convention holds "enormous risks to the stability of our nation"; and
- The monarchists argue that this is all a waste of time and money because "we already have an Australian as head of state - the Governor-General".

As well, I would like to explore the real risks of staying with the status quo, the real risks associated with voting No in November.

Evolution or revolution?

So, just what is meant by preserving "the way we have lived for almost 100 years"? The fact is much has had to change over this 100 years in order to preserve and build on the things we value, such as our independence. Australia has evolved, our Constitution and its interpretation has evolved, the conventions surrounding our Constitution have evolved and changed.

The Constitution is not immune from the events that go on around it. On the contrary, the Constitution has been moulded - for good or ill - by World Wars, good times, depression and social upheaval. The position of the states has waxed and waned according to their economic circumstances, and those of the Commonwealth. The High Court constantly influences the meaning of the Constitution every time it interprets it. Judicial activism has been extensive, some would say far too extensive.

In other words, regardless of whether this referendum is won or lost, the interpretation of the Constitution will continue to develop and

change over time, as it has done for nearly 100 years. This development can go as far as, for example, the total reversal of previous interpretation, as in Mabo (1992), when more than a century of legal precedent was overturned.

The monarchists would do well to remember the words of Giuseppe de Lampedusa's *The Leopard*: "If we want things to stay as they are, things will have to change". Nothing in this is frightening. If a Constitution is a living organism, then like all living things, it will change in response to its changing environment. Our challenge is to manage change in a manner that is safe, predictable, cautious and effective, rather than avoiding it for as long as possible, and risking, ultimately, massive overreaction. No doubt any change, no matter how limited or calculated will involve some unknowns, but it is important not to exaggerate the risk of the unknown, or allow mischievous scare mongering to confuse the debate.

Our Constitution is not as brittle as some would have us believe. In fact it is a very robust document. In any event, it is the values and commonsense of the Australian people that dictate the sensible application of our Constitution, and the stability of our society. A monarch, a Governor General, a Prime Minister or an Opposition leader would act outside what is acceptable to the Australian people at their peril.

The reserve powers and the conventions that apply to the Queen and the Governor General now will be exactly the same reserve powers and conventions that will apply to the new Australian head of state.

Yet, much is being made by the opponents of change about what might occur in the event of a repeat of the 1975 "blocking of supply" crisis which led to the sacking of the Whitlam Government. In pointing out several imponderables under an Australian head of state, these opponents of change conveniently fail to acknowledge that carrying on with the present constitutional arrangements would present the same sort of imponderables if the 1975 circumstances were revisited.

The fact is under either head of state regime we would again have a Constitutional crisis if the Senate blocked supply. Again, despite the conventions and powers being the same we would still rely to a great extent on the character and integrity of the individuals involved, and the guiding influence of the values and commonsense of the Australian people.

The risks of a Yes vote?

This brings me to the monarchists' claim that a Yes vote carries enormous risks for our stability as a nation.

The monarchists are fond of arguing that an informed, factual debate will prove their claim, and have criticised their opponents by asserting that "not wanting an informed vote is a quite common tactic. And used far too frequently".

I couldn't agree more with the need for an informed debate. The Yes vote will only be carried if the debate is dominated by the presentation of facts and not by exaggeration, hyperbole, diversions and vilification. I can only hope that the monarchists' stated preference for an informed debate still holds now that the Bill spelling out the referendum question has been tabled, and the facts about the consequences of voting Yes can now be better assessed. In this regard the recent comments by the Minister responsible for introducing the referendum Bills into the Parliament are of great importance, because as the responsible Minister his statement must represent the position of the Howard Government.

Of course, the Minister is Attorney General, Daryl Williams, the first law officer of the Commonwealth. Before entering Parliament Daryl Williams was one of Australia's most senior and respected QC's. In his capacity as Attorney-General, Daryl Williams has given an assessment of what this legislation will and won't do to the day to day workings of our system of national government if the YES vote, to allow Australia to have an Australian as head of state, is successful. Mr Williams' assessment was given in an address to the Local Constitutional Convention Forum on 29 April 1999. The comments were not made in support of either position. They were simply a factual assessment of the impact of the Bill if legislated. The Attorney General's comments could not be clearer:

The Republic Bill may appear to contain a substantial body of amendments and it might be assumed that, if enacted, the Bill would have significant consequences for the day-to-day workings of our system of national government. However, that assumption would be wrong.

The substitution of a President for the Governor-General and the Queen, and the removal of monarchical references scattered through the Constitution, would not have significant consequences for the day to day workings of parliament or government.

The Republic Bill would *not* have the same practical consequences as previous constitutional amendments that have been accompanied by much less fanfare. The Bill would not give the Commonwealth any new powers.

The Bill would not give the Commonwealth any new powers such as were given in 1916 in relation to State debts, and in 1946 in relation to a range of social services. It would not give new rights to vote, such as were given to residents of the Commonwealth territories in 1977. Indeed, it is important to be quite clear about what the Bill would not do. It would not alter the day to day operation of the Commonwealth Parliament. It would not alter the current federal balance between the Commonwealth and the States. It would not give the president powers different to those of the Governor-General.

It would not create an office of President that is more grand or expensive than the office of the Governor-General. Contrary to

some rather colourful predictions, it would not authorise the construction of a presidential palace.

It would not alter the Australian flag or the national anthem. It would not mark a break with our tradition of stable, parliamentary democracy.

In fact it is not unreasonable to suggest that the Bill is of less practical significance than the Australian Acts passed in 1985 by the Commonwealth and United Kingdom Parliaments at the request of all the States – and passed in the absence of a referendum. Already, those Acts have terminated the power of the United Kingdom Parliament to legislate for Australia. Those Acts have confirmed the capacity of the states to enact laws overriding Imperial laws of the British Parliament, or having extra-territorial operation. They have also abolished appeals to the Privy Council.

It should be clear that the Republic Bill would not greatly change the basic governmental arrangements that have served Australia so well. Nor would it graft another country's republic model onto those arrangements.

It would change some titles, but not the basic operation of our system of national government.

The object of the Bill is simply to give Australia an Australian head of state who can fit into our current arrangements in place of the Queen and her representative in Australia, the Governor-General.

These statements by John Howard's Attorney General are powerful statements, not given lightly by a man who is known for the rigour of his understanding of the law. These factual assessments by the government shake the foundations of the NO case and can't be dismissed by name calling or slogans.

These assessments of the model on which people will be asked to vote on 6 November confirm that Australians are being asked to consider a proposal which is a small evolutionary step in terms of the working of our Constitution. However, while the change itself is small, it is of great symbolic significance for Australia.

In this vein the monarchists argue that if the change to an Australian as head of state is only about symbols then why bother. I argue that we should support this change precisely because it is symbolic.

One thing I have learned during nearly 20 years in and around politics is that symbols are of great importance. Mark Taylor became a symbol of the sporting ethos we aspire to; Christopher Skase became a symbol of the need to curb the approaches of the reckless, greedy 1980s; the Port Arthur massacre became a brutal symbol of the need to do something about violence; for our young people Anzac Day has become a symbol of the importance of our history and the respect we owe those who have fought for us. I have also found in my new career of commerce it is symbols, or brands, that dominate. So, symbols do matter.

And similarly, an Australian as our head of state would matter – it would provide a powerful symbol of 100 years of steady evolution to

what we are today, an independent nation, which has long been responsible for its own destiny. What's more, at the start of our next 100 years of nationhood, an Australian as head of state would be an enduring symbol of unity. Invariably, stable, peaceful, confident countries have such a symbol of unity in their head of state; a person of distinction and quality, a person who can engender a great spirit of unity, pride and purpose. For most of the last 99 years the British monarch was that cultural anchor for our community. But not anymore. As a country we have grown away from the monarchy. We have moved on, and so too, might I add, has Britain and the monarchy itself. This situation has left, for many Australians, a serious vacuum.

Today that symbol of unity could only be provided by an Australian.

The power of the British monarch to appoint and therefore dismiss our Governor General may usually be exercised only on the advice of the Prime Minister of Australia. But the fact that the power exists sends a powerful message to every Australian that we are not competent to manage our own affairs. Our current head of state symbolises and institutionalises a perception of Australian dependence. While Americans have been inculcated with the message that any American boy or girl could grow up to be head of state, the message for Australians is that none of us can.

The Governor General as head of state

Which brings me to the Governor General.

The monarchists assert that not only is change highly undesirable but it is also unnecessary because we already have an Australian as head of state, the Governor General. In fact, we are told we have two heads of state – a symbolic head of state in the Queen and a constitutional head of state in the Governor General, who is an Australian.

Yet, the Queen appoints the Governor General under Section 2 of the Constitution. The power of appointment carries with it the power to dismiss the Governor General. For a head of state of one country to be subject to dismissal by the head of state of another country makes it impossible to accept the proposition that the Governor General is the Constitutional head of state.

Again, Australia's Attorney General in his previously mentioned speech concluded, "The Governor General currently exercises the powers of a head of state, but is not our head of state. The President, exercising the same powers, would be our head of state." As a country we may well choose to make no change, but along the way let's not pretend that we already have an Australian as head of state.

The risk of voting NO

If people do choose to make no change to our head of state, they should do so knowing that there are major risks in voting No, risks that should not be swept under the carpet.

For instance, voting No in November:

- Runs the great risk of proving highly divisive; failure to make the change in November would see people being subjected to a sour and bitter debate for years to come.
- Runs the great risk of creating dissension and ill-will towards whoever takes over as monarch after Queen Elizabeth.
- Runs the great risk of finding a Prime Minister in charge, at a future referendum, who has an agenda for constitutional change which is much, much wider than John Howard's, and
- Runs the great risk of seeing a radical model for a republic gaining support at some future referendum, leading to a directly elected President, and a corresponding dramatic change to the way in which we are governed.

As confirmation of this risk it is a matter of public record that various members of the No committee support a No vote now so that they can push for radical change at some future opportunity. Ironically, voting Yes in November is the way to minimise both the extent of division and the extent of Constitutional reform over the next 50 years. **A Yes vote is the low risk vote** at the coming referendum. It could also be viewed as the moderate course between the extremes of conservative monarchism and radical republicanism.

In this regard, our British heritage is one of evolution rather than revolution - of gradual, responsive reform. In following this model into a moderate republicanism, we are being true to that heritage, not betraying it. Here, the role of the monarchists deserves acknowledgment.

In many ways the monarchists have already done their job of protecting the Constitution. By their concerted efforts in the years leading up to last year's Constitutional Convention, and throughout the Convention itself, the monarchists can take much of the credit for the Convention agreeing to a very conservative model for change - a model which will deliver an Australian as head of state but at the same time will not tamper with our very successful system of government.

It is a fact that some of those people who support a republic would prefer a much wider agenda for Constitutional change. For example, the proponents of a directly elected head of state have a very *radical* agenda. If they had their way our system of government would be turned on its head. The role of the monarchists in staring down the proponents of radical change must not be underestimated. They have done their fellow Australians a great service.

Conclusion

In reality, as Australia's Attorney General has pointed out, what is proposed is a small, yet very symbolic step. We should seize the opportunity while we have a model for an Australian head of state which involves no hidden agenda, no wider change. We should seize the opportunity while we have in Queen Elizabeth, a sensible, highly respected person who would preside over the change with grace and commonsense.

To me it seems ridiculous that we are agonising over whether our head of state should be one of us, or the ruler of another country.

The issue will not go away. We have the opportunity now to resolve it in the best possible way. Let's do it – and move on.

THE NOVEMBER

1999 REFERENDUM: WHERE TO FROM HERE?

Kerry Jones

On 6 November of this year, just 20 weeks away, Australians will face the most important vote held in the history of our nation. The title of tonight's debate *An Australian Republic: Whither, whether or wither?* provokes us to consider how we as individuals will vote as well as how the general voting population of Australia are likely to vote on referendum day. What is likely to affect their voting decision in the short weeks left till voting day? For those of us who are passionately striving for a No vote, what are the messages we need to receive as well as send?

It is very clear from consistent polling over the last few years that the thought of a republic has never captured grassroots Australia as a priority issue. Clemenger reports do not rank the republic in the top 40 issues that Australians want time and money spent on. From this perspective key public names associated with the Australian Republican Movement such as Malcolm Turnbull, Neville Wran, Tom Keneally and Janet Holmes à Court have in my mind justifiably earned the stigma of elitist multimillionaires personally determined to get their type of republic almost at any cost.

I believe that the Australian Republican Movement (ARM) is not a grassroots organisation. I believe it will totally rely on the infrastructures and machines of the ALP backed by the ACTU for the mechanisms of their campaign such as the distribution of their material and the manning of polling booths. Undue prominence has been given to the small number of political coalition representatives who support the ARM republic including Andrew Robb. At this stage up to 80 per cent of grassroots coalition supporters across Australia are likely to support the No Case. We also believe as much as 40 per cent of ALP voters are likely to be our secret weapon and vote No.

I hope to demonstrate to you tonight that the strength of our Vote No arguments will resoundingly overwhelm anything the ALP/ARM forces will throw at us.

Prominent public analysts such as Hugh Mackay (*The Mackay Report 1998 The Year in Review*) tell us Australians today have a pent up desire "for a more optimistic, more celebratory view of Australia. Australians are yearning for a stronger, clearer, more positive sense of themselves. Their complaint about lacklustre leadership is in its essence a complaint about the lack of inspirational rhetoric and the capacity of our political leaders to encourage us to think more positively about the future". This is at a time we have poured out in our hundreds of thousands to celebrate ANZAC Day, an event we would now proudly seem to hold as defining our own Australian sense of identity both in a globally and specifically Asian Pacific shifting contemporary world. Yet Hugh Mackay goes on to tell us that the republican pulse is barely detectable as a part of our desires for celebration towards the new millennium.

From my personal perspective the resurgence of patriotism for Australia is due to our growing recognition of our nation as the best system of government in the world. A nation who on 1 January 2001 will want to celebrate the unity, stability and prosperity that continues to see people from all over the world want to make Australia their home. The backbone or heartbeat of this wonderful nation is our working Australian constitutional arrangements that the Yes Case republicans seem so desperate to change.

Malcolm Turnbull's republicans have now had a decade to capture grassroots Australian fervour. They have failed dismally despite the massive support given to them under the Keating federal government and the fuelling of their debate by a supportive media.

Perhaps it is for this sort of reason Hugh Mackay concludes his 1998 report predicting a probable defeat of the referendum question. He suggests three main forces range against it. Firstly the Monarchists and those who are opposed to any change to the present constitutional arrangements. Secondly, those in the apathetic middle – neither republicans nor monarchists – who vaguely believe "if it 'ain't broke don't fix it", and thirdly those who are ardently pro-republican, but will settle for nothing less than the popular election of a president.

Rather than wooing this third group, in its arrogance the ARM seems to prefer to either ignore them or passionately argue against them as seen in the recent *7.30 Report* debate between Malcolm Turnbull and Ted Mack. Ted Mack and Clem Jones have joined with the federal government No Case Committee which I chair. They bring with them popularly elected presidential supporters such as Victorian Phil Cleary and nationally are entitled the "Real Republicans". They are saddened by the loss of their colleague Paddy O'Brien as one of the leaders of their stance at the constitutional convention.

Yes, supporters of the Yes referendum case have even alienated republicans across Australia. The ARM's behaviour at the

Constitutional convention was appalling. They wheeled and dealed and when they couldn't get their own way bulldozed their model through. Despite having publicly been elected on a platform that the ARM would consider all options of republics they ignored or bullied those republicans who advocated a popularly elected president, the McGarvie model, or indeed anyone who held a different view to their own! Despite the delegates to the constitutional convention being dominated by republicans, the ARM failed to get a majority of support for their model in the final vote losing it 79-73. A result surely justified by the fundamental weaknesses in the final way they put their model together.

Since the convention, prominent Australian republicans, such as Sir Anthony Mason, Professor George Winterton, Professor Greg Craven, Professor Cheryl Saunders, Professor Linda Kirk, as well as leading anti-republicans, such as Sir Harry Gibbs, have continued to point out the flaws in the ARM proposal. For example, the *UNSW Law Journal Forum*, Vol. 4 No.2 June 1998, is witness to many of the aforementioned republicans attacking the bipartisan model. George Winterton says "the model is flawed", Cheryl Saunders states that it is "unworkable" and Greg Craven, from the Yes Case Committee, admits that it is "a weak model with serious deficiencies". South Australian academic Linda Kirk, an Australian Republican Movement delegate to the Constitutional Convention, "wants an alternative dismissal procedure".

Recent minor skirmishes in the debate have highlighted the Yes Case may well become desperate in their dogmatic pursuit of their own particular republic. In an interview with Doug Aiton of *The Sunday Age*, Malcolm Turnbull was asked "Do you get anywhere with talking to John Howard?". Turnbull's response: "No, not really. There was an interview with him in *The Financial Review* on 15 October last year. He said that if we become a republic, no damage would be done. So he's satisfied it will do us no good or harm". Malcolm Turnbull repeated similar comments recently in a debate on the Howard Satler Perth based radio program.

In fact what the Prime Minister said in a speech correctly quoted by Michelle Grattan (*The Australian Financial Review*, 15 October 1999) was that "I'm of the view that whatever the outcome of that referendum... the fabric of the Australian community is not going to be, in any way, damaged or hurt by the process". The process of the referendum not damaging the Australian community is very different from no damage being done through our becoming a republic. Mr Turnbull, in his anxiety to become the father of the Australian Republic, appears to even be prepared to misquote the Prime Minister.

Recently, Yes Case republican and Attorney General, Daryl Williams suggested we would automatically continue to be a member of the Commonwealth should the November republic referendum be

passed. The ARM quickly supported the Attorney with their own press release despite being challenged by our own National Convenor Professor David Flint. Professor Flint has since received a letter from the Commonwealth Secretary-General stating that "on being notified of the change by the government concerned and in the light of an express wish to continue Commonwealth membership, I would then contact all other Commonwealth countries seeking their concurrence for the change. In the case of South Africa in 1961 and Fiji in 1987, however, this established practice provided an opportunity for Commonwealth governments to effectively exclude those countries from continuing membership...". Clearly if one of the other 53 governments were opposed to Australia's readmittance to the Commonwealth the Attorney-General's advice would be deemed wrong.

The Yes Case model in no way measures up to the safeguards of our current constitutional arrangements. However, with up to 60 per cent of the Australian people not yet focussed on the republican issue, what will the Yes Case Republicans try to do to cover up the deficiencies and weaknesses in their model? Fuelled by an Australian media largely dedicated to the Yes cause, they will try themselves to set the agenda and the key areas which set the perimeters for the battle.

We know that the question on polling day will focus on the republican model at hand with the question on the ballot paper likely to be: "A proposed law: to alter the constitution to establish the Commonwealth as a republic with a president chosen by a 2/3 majority of members of the Commonwealth parliament. Do you approve of this proposed alteration?"

Andrew Robb entitled a recent speech to the National Press Club "An Australian Head of State... a small yet symbolic step". Such a title avoids focussing on the ballot paper republican question, the model that would see the federal politicians vote for the president. It attempts to divert the focus to the nebulous term "head of state". Whilst we in the "No Case" will focus on the deficiencies of the republican model on offer and the fact it gives the people of Australia no say in their vote for the President, the "Yes Case" will avoid their own republic. Expect television ads featuring babies and delightful little blonde girls claiming that only through their republic can these young Australians become "head of state".

Yet the term head of state is not mentioned in our current Australian constitution. Indeed as Professor David Flint has argued the head of state term is spurious and used to avoid debating the question that is being asked in the referendum. Any Australian child can grow up to be our Australian Prime Minister, our Australian Governor-General, a State Premier or Governor. Through any of these positions he or she can represent Australia when travelling abroad or within Australia.

The second battleground which we will both fight for will be whether the change will be simple or complex. Take a note again of Andrew Robb's speech heading: "A small yet symbolic step". Yet, if rewriting a republican constitution is as simple as Andrew Robb will try to convince you, why the raging legal debate involving Australia's most eminent constitutional lawyers and historians? Why did Tom Keneally say on Channel Nine's *Nightline*, 18 January this year, "It's going to make the biggest structural change to our constitution (... since federation)". Why did the Democrat Senator and ARM patron Andrew Murray state that "the proposal puts no break on the power of the Prime Minister (who becomes the absolute executive power)". (ABC AM Radio TWT 11 March 1999).

Once again the Australian Attorney-General entered the debate claiming in *The Courier Mail*, Thursday 29 April 1999, that "a republic will not make any difference to the way the nation is governed" imposing his personal view on an area of the battlefield which will be hotly disputed by both the Yes and No cases. What will the undecided make of our public leaders wrangling over such intrinsic details? I would suggest that not only will they be confused, but also they will lose even more respect for the political leaders on all sides of politics.

Perhaps it is Kim Beazley who could be regarded as the most luke warm Yes Case republican of them all. You will recall him saying in November last year that he "would be terribly depressed if this became a debate about the minutiae of the election of the president and the president's power" (*The Australian*, Thursday 11 November 1999, page 16). Interestingly Kim Beazley has been most anxious throughout the most recent GST debate to concentrate on every detail of the proposed tax reform minutiae, some would say excruciatingly focussing on details such as cooked, uncooked or in between chicken meat!

The third area for battle will see us argue as to who is the most Australian. I have already referred to our current yearning to promote our own Australian sense of identity. Anti-republicans will claim we are already the best in the world, in sport, in trade, in living standards, in the arts. The republicans will equally try to lampoon the Australian identity ground. Sometimes they will do this through ridiculous arguments such as Janet Holmes à Court's continual public proclamations that this is a "... passionate issue. It is not about how others see us. It is about how we see ourselves." Of course this area of the debate becomes much more insidious when it develops racial overtones. Who will forget one of the great untruths of former Prime Minister Paul Keating (launching the national education Program on Citizenship and the Constitution, Melbourne 15 June 1994) "learning about the Constitution apprises people that we have got a constitution which was designed by the British Foreign Office to look over the Australian Government's shoulder". Of course the draft Australian constitution

was in fact adapted from the constitutions of the USA, Canada and Switzerland as well as incorporating much of the British system of responsible parliamentary government.

On this issue, Mr Peter Coleman, former editor of *The Bulletin* and *Quadrant*, wrote an interesting review in *The Australian* in April this year of Audrey Oldman's book *The Great Republic of the Southern Seas: Republicans in Nineteenth Century Australia*. Coleman points out that while she writes as a republican, whatever her intentions, her real theme as a conscientious scholar, is not the progress of republicanism in Australia, but its repeated failure. The instance given of Charles Duffy, the Irish journalist who was charged with treason in Dublin, but who became Premier of Victoria, at a banquet in Melbourne in 1856. He declared, "This is not Ireland, but Australia, where no nationality need stand on the defensive and where there is fair play for all". Coleman concludes that people such as Duffy wanted a republic for Ireland, but enjoyed and defended the democracy of Australia. Even the republican Helen Irving in her recent book on federation, *To Constitute a Nation*, rightly says that in Australia "it is now more or less accepted that a person will simultaneously and authentically have more than one cultural identity."

My own view as an Australian is that we incorporate into our personality and our daily lives all the heritages which come from our ancestry, but to argue this in the context of republicanism is a regressive step. National identity or one side of the debate being more Australian than the other should not be part of the debate over the next six months no matter how hard ARM journalist Mark Day tries to promote this view to sell his new book *Pulse of the Nation*.

The next major area where we will fight for ground and votes is what is being dubbed as "the last chance argument". The Yes Case republicans will tell us this is the last chance for a republic in our lifetime. The Prime Minister John Howard recently pointed out, "it is also clear that if this referendum is defeated there is nothing to stop the emergence of pressure from the Australian community for a referendum on the issue at some time in the future. It is a matter for the Australian people." (*The Age*, 6 March 1999.)

In fact, any Australian who applies the argument of common sense would know that the real problem for us anti-republicans if we lose the referendum is that of irreversibility. There is no way we can get rid of the republic if it doesn't work. The Crown in our constitution is a gift through our heritage and history: a gift that if the links are severed can never be re-tied. In addition a president who has been elected by any means would never give assent to a Bill abolishing or downgrading his or her office.

I presume it is for this sort of reason that the Australian people, right through referendums, have been wary of constitutional change,

approving only eight out of 44 national referendums. The final area where we are likely to fight for ground and vote will be the hidden agenda; how many more symbols would the republicans change as part of their new identity push; the most potent and controversial being our Australian flag.

Thank you for the opportunity to address you tonight. After all, I am sure you agree we already have in Australia, the best system of government in the world, tried and proven for nearly 100 years. The republic model on offer has never been tested anywhere in the world, a fact we should all consider on voting day.

The republicans simply haven't given us enough answers to the many problems and questions under their model. They are saying buy the new car and hand over your cheque, but we won't give you a warranty and we'll fix up all the mechanical problems later. What if the two-third majority for a President is not achieved? What if we had a situation akin to the Clinton-Lewinsky scandal? What if the Prime Minister is not content to be confined to "any short list" prepared by the committee and chooses a candidate not mentioned in the short list? What if the President voted in by the 2/3 majority dies (a) before being sworn in or (b) immediately after being sworn in? What if the Prime Minister or the President is dismissed by the other? Can the High Court be called upon to determine the legality of the dismissal?

What if the Prime Minister dismisses the President? Will the acting President be able to dismiss the Prime Minister in the period before the new President is appointed? Why has the Senate been taken out of the dismissal process ensuring the smaller states are disadvantaged, and indeed may get no say? What of the States that don't want to become republics and threaten secession?

It is up to all of us to pressure the "Yes Case republicans" to provide answers and solutions to the fundamental flaws in their model. Otherwise we should all vote NO. Even if you might be republican at heart, how could you, in all consciousness, leave the legacy to future generations of Australians of a republic that does not measure up to our current constitutional arrangements?



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Mary Crock



Mark O'Connor

Photo - David Karonidis

Australia's policy for dealing with border refugees and boat people is detention and probable deportation. Many have been detained for years. Mark O'Connor, academic, poet and author of *This Tired Brown Land* and Mary Crock, academic, author and refugee lawyer have differing reactions to the government's refugee policy. For Mary Crock it is a matter of human rights; for Mark O'Connor it is a question of population control for environmental sustainability. Their cases were discussed at The Sydney Institute on Tuesday 15 June 1999.

SUSTAINING

MIGRATION: IMMIGRATION, POPULATION POLICY AND GLOBAL QUESTIONS FOR AUSTRALIA

Mary Crock

It is a truth (almost) universally acknowledged that nation states have a sovereign right to determine who enters onto or remains within their territory. Although I do not wish to challenge this proposition as a matter of principle, in this paper I will explore some of the practical aspects of the immigration debate that seems to be such a perennial feature of political discourse in Australia. It will be my argument that the forces of globalisation make the concept of zero immigration and complete immigration control a practical impossibility. My personal view is that our moral obligations as a wealthy nation also speak against a closed door policy. With barely two hundred years of white occupation of this land as the foundation of our sovereignty, there is some force in the view that what we cannot learn to share we do not deserve to keep.

If, as I will posit, zero immigration is neither a practical possibility nor a worthy objective, the real debate should focus not on immigration, but rather, on population distribution and the distribution and use of resources. It is at this point that I suspect the two speakers tonight will find our common ground. Australia has never developed a serious population policy. As a lawyer, I want to devote the second part of my address to the legal and constitutional issues that will be relevant if the country were to look seriously at policies governing *transmigration* or the movement of populations within the country and (coerced) regional migration.

Constraints on exclusionary policies: family, employment and the refugee phenomenon

In his book *This Tired Brown Land*, Mark O'Connor makes the obvious point that immigration policy is affected by the vagaries of domestic politics. From the government's perspective, these political pressures have a human (electoral) dimension that can militate either for or against the migrant intake. Without engaging in the detail of this debate, there is a rather simple explanation for why governments have

persevered with such constancy in promoting their immigration programs. Cutting off immigration in this day and age is like trying to erect a human tariff wall. It is antithetical to concepts of an open, modern democracy built on respect for human rights and the Rule of Law. It would constitute economic suicide at a time when all the trends are towards globalised business, the breaking down of trade barriers and the free movement of both capital and personnel.

The reality and the rhetoric of immigration

Forty years ago the newsreel images of immigration showed us passenger liners full of waving men, women and children dressed in sensible coats and shoes, streaming down the gang planks and onto the shores of their new country. Australia gained a reputation in those years for taking in more migrants and refugees per capita of existing population than any other Western country. Today, immigration in Australia is quite a different matter. The number taken in each year as permanent residents is modest both in real terms and on a per capita basis. In 1998-99, the planned intake of permanent settlers was 68,000, comprised of 31,400 in the "Family" categories; 35,000 in the skilled classes; 1,600 "special eligibility"; and 12,000 for the refugee and humanitarian program. According to the statistics provided through the Immigration Department's Home Page, the actual number of non-citizens who came into the country on humanitarian visas was between 2,000 and 3,000 short of the planned intake in both 1997 and 1998. Indeed the whole program seems to have been undersubscribed. With the number of people departing Australia permanently, the "net" immigration figure for the last financial year appears to have been closer to 50,000.

What of the "other" migrants: those who come to or remain in the country without authority? Australia's privilege as a country is not confined to its resources and the relative strength of its economy. As an island continent that shares no land borders with any other country, it has the luxury of a very effective natural barrier to unplanned immigration. In spite of the sensational headlines every time a boat carrying illegal migrants beaches itself on our coastline, Australia's experience of illegal migration (voluntary or otherwise) has been modest indeed. The concentration of the population; well controlled points of entry; and the universal requirement that non-citizens hold a visa to enter the country combine to make our immigration control system the envy of the Western world. The population of unlawful non-citizens within Australia is estimated at around 50,000. Again, these are small figures both in world terms and as a proportion of Australia's population.

Although we can and do control who enters and remains in Australia, it is quite another thing to envisage a situation where that control is exercised so as to halt all movement of people into or out of

the country. No-one seems to argue for a stop to the admission of tourists, temporary workers or fee-paying foreign students. In 1997-98, the combined intake in these categories approximated 3.5 million individuals.¹ If we are to talk meaningfully about sustainable development and human impact on our environment, it is well to recall that "immigration" includes the admission of non-citizens for temporary purposes as well as the admission of permanent residents.² The following sections explore the domestic and international factors that militate for the continuance of a permanent migrant intake in each of the three main categories – family, skilled and humanitarian. With the proportionate rise in the numbers visaed for temporary purposes, realistic debate about immigration should include consideration of the merits and demerits of favouring temporary entrants over permanent migrants.

Family migration

In the case of family migration, there can be no doubt that migrants in Australia have organised effectively to create lobby groups that oppose attempts to block the reunification of families. The Labor government was elected in 1983 on the back of its environmental policies and on its promise to place a greater emphasis on family when setting its immigration targets. The present government has felt the fury of the migrant lobby in recent times with its attempts to drastically reduce the number of migrant parents visaed as permanent residents. The human impact of separated families makes for powerful domestic politics.

However, there is also an international aspect to the debate about family or chain migration, described by some as "chains that bind" Australia.³ The right to marry and found a family is regarded as one of the most fundamental of internationally recognised human rights. It is enshrined in Art 16(1) of the Universal Declaration of Human Rights (UDHR). Sub-paragraph (3) reads: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the state." These provisions are repeated in Art 23 of the International Covenant of Civil and Political Rights (ICCPR), with special provisions made for the protection of children who form part of many family units.⁴

As a country that prides itself as a democracy built on the Rule of Law and on the respect of the human rights of its citizens, it is almost inconceivable that Australia could purport to halt all family migration. As I have acknowledged in another context, countries that do not permit their nationals to sponsor foreigners as immediate family members are rare indeed.⁵ The principles of international law I have outlined underpin many aspects of Australia's domestic migration program. Even with the present emphasis on business and skilled migration, family migrants remain the biggest component in the program. The

1998-9 planning levels allocate 30,500 of the 68,000 places in the non-humanitarian program to family migrants.⁶ The family categories are given priority treatment at several levels. First, unlike migrants in the economic visa groupings, the closest family members⁷ are chosen almost exclusively on the basis of relationship with the (sponsoring) Australian citizen or permanent resident acting as sponsor. Although subject to health and character requirements, as well as certain "re-entry" criteria,⁸ for "preferential family" these conditions can be waived in exceptional circumstances. More importantly, spouses and dependent children are not subject to the "capping" provisions that enable the Minister to predetermine the number of visas that are to be issued each year.⁹ In some circumstances, non-citizens who meet the definition of close or preferential family can gain residence even if they are in Australia unlawfully.¹⁰

International human rights are not like the type of legal rights that enable parties to a contract to go to court to enforce as binding the terms of an agreement. In the case of family rights, the principles enshrined in the UDHR, the ICCPR and the CROC establish standards against which Australia is judged in international fora. One might label this the international juris-political aspect of family migration. Back in Australia, the Courts have helped to give substance to the issue by using international human rights norms as tools for the interpretation of Australia's domestic migration laws in relation to family migration. There have been a number of high profile cases in which the Federal Court and the High Court have acknowledged the significance of the international laws affecting families. In *Teoh v Minister for Immigration and Ethnic Affairs*¹¹ the High Court held that even where the terms of an international instrument have not been translated into our domestic laws through legislation, Australia's signature and ratification will act as a statement to the world that the country intends to comply with the terms of the instrument. In procedural terms this will mean that an applicant will have a "legitimate expectation" to a hearing whenever a decision is envisaged that may not be in compliance with Australia's international legal obligations. *Teoh* is the quite famous case involving the unlawful non-citizen father of seven Australian citizen children.¹² The allegation made was that the decision maker did not make the interests of the children "a primary consideration" in accordance with Art 3 of the CROC.¹³ International law has also been accepted by the courts as a legitimate tool for interpreting both the Australian Common Law¹⁴ and Australian Statute law. In *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* Deane J said:¹⁵

We accept the proposition that the courts should, in a case of ambiguity, favour a construction of a Commonwealth statute which accords with the obligations of Australia under an international treaty.

Skilled migration

In the case of migrants admitted into Australia in one of the many economic categories, there are a multiplicity of factors that prevent the government from adopting a closed door policy. Skilled migration is nominally an area where a sovereign country has more discretion over who it admits and on what terms. As O'Connor notes, the most effective lobbyists in this area are the economists and the industry bosses. Business and skilled migration is heavily promoted by the government because of the immediate fiscal and employment gains delivered by those visas each year.¹⁶ It is difficult to envisage the present government agreeing to cut back on the business and investment-linked aspects of the intake program.

Where there has been most dramatic change over the last decade, however, is in the admission of temporary or contract workers. Under the Keating labor government, the mechanisms for admitting workers were simplified considerably, creating a system that allows for the speedy processing of visa applications on either a one-off or group basis where a worker is needed to perform tasks identified as a "key activity" in a business.¹⁷ The present regime stands in stark contrast to Australia's earliest migration laws that were characterised in equal measure by their racism and their protection of local industry through measures designed to block the admission of contract labour. The change underscores the very obvious links between the free movement of people (and capital) and the globalisation of business. If Australia is to take seriously its undertakings to reduce tariffs and promote free trade in accordance with the latest GATT round of negotiations, it cannot afford to close its doors to the business personnel and workers who are the human face of increasingly globalised business.

In 1998, the government issued 251,454 visas to temporary workers, permitting stays ranging from a few days to four years. In the debates about immigration, this phenomenon is not often noted. These temporary entrants are also migrants; and they are responsible for displacing many more local workers than are the "permanent" migrants. Temporary workers also consume. Without security and commitment to the country, transient workers may indeed have a harsher impact on the environment than their permanent resident counterparts. In addition to the temporary workers, one must add the foreign students (108,827 in 1997-98) and working holiday makers (57,000 in 1997-98) and 3 million tourists and short-stay visitors.¹⁸

Refugee and humanitarian cases

The most conflicted area of the immigration intake is the refugee and humanitarian component. This includes both refugees brought in from overseas – an aspect of the program that enjoys very high public support – and what is known as "on-shore" refugee processing. This

second aspect of the intake is the source of much public angst as the claimants (by definition) come to Australia uninvited and seek protection in reliance on rights established not by the Australian Parliament but by norms of international law. Discomfort with the phenomenon of mobile asylum seekers is apparent in the rhetoric used by the government and the media. Emphasis is placed on the unlawful status of unauthorised arrivals and on the speed with which they will be returned to their countries of origin. Banner headlines scream "Invaded" and "What a racket: Tourists rot system to win residence, Medicare for \$30".¹⁹ Little mention is made of the often lacrimal conditions endured by those who pay their money in the hope of finding a new life in Australia.

The government's response to the current wave of unlawful boat arrivals has been to announce a further toughening of the penalties that will attach to persons found guilty of "people trafficking" – the ship captains and organisers responsible for transporting the would-be migrants to Australia. Although it provokes an extraordinarily negative response from the public, there are a number of reasons why Australians will have to learn to live with illegal migration and mobile refugees. Susan George²⁰ argues that uncontrolled migration is a natural consequence of the divide that has opened up between the affluent first world and the debt-ridden third world. Although associated most strongly with the south-north movement of populations in the Americas, Australia cannot hope to escape the phenomenon. In our case, the pressure is from the North and Australia stands out as a haven from economic privation; oppressive politics and abuse of basic human rights. Australia's commitment to an international Rule of Law is the prime reason why asylum seekers cannot be simply turned around upon arrival in the country. Australia has signed and ratified a number of international conventions, pursuant to which we have undertaken not to return or refole a non-citizen to a place where she or he may face persecution, torture or other gross abuse of their human rights.²¹

The complexity of refugee politics is born of two things. First, there can be little doubt that people around the world have become more alive to the refugee "route" as a way of migrating to another country. This awareness is an inevitable by-product of the formalisation and judicialisation of refugee determination procedures in refugee receiving countries. As traditional avenues for unskilled and even family migration have been closed off by countries keen to improve the economic focus of their migrant intake (if any), people have turned to the refugee determination processes as a mechanism for gaining time within a country where they wish to settle. Australia has been part of this phenomenon as much as countries like England, Canada and the United States of America.

The problem in Australia as in these other countries is that the line between refugee and rorter is rarely clear cut. Many who fail to gain recognition as refugees have left their country with a genuine fear for their lives. It is not the obvious imposters who become impaled on the bristling defences set up allegedly to protect the integrity of the refugee determination systems. In Australia, the injustice of labelling all failed refugee claimants as abusive is all the greater for the fact that there is no longer any humanitarian mechanism for gaining protection in this country outside of the refugee determination system.²²

As an erstwhile migration practitioner and academic, I have witnessed first hand the development of refugee jurisprudence in Australia. What is interesting is that practitioners no longer work only in domestic fora. Where appeal processes within Australia fail, there is a new and growing tendency to bring cases into the international domain through appeals to the UN Human Rights Committee or through complaints to the Committee Against Torture in Geneva. Within these fora, Australia's record in refugee cases is not good. The true globalisation of human rights protection, however, is not just apparent in the international fora available to litigants. It is seen most markedly in the campaigns that have been run on behalf of individuals perceived to be both meriting protection and at risk.

The defence of refugee claimants in Australia has become something of an industry. Just as significantly, the community of activists and the tools they use are becoming increasingly international in nature. In the European context, this is not novel. The institution of a European Court of Human Rights has long been a part of the legal tapestry in that part of the world. In Australia, however, there is no regional transnational human rights body. Australian law has been somewhat isolated from international legal fora since the abolition of appeals to the Privy Council in 1986. There is now a considerable body of international law regulating the rights and entitlements of asylum seekers and other "forced" migrants. The internationalisation of refugee law is apparent in the commonalities between the domestic refugee determination procedures established in Australia and in other "Western" refugee receiving countries. In recent years, refugee advocates in this country have not confined their campaigns to litigation in the Federal Court and High Court of Australia. They have begun to take advantage of Australia's signature of optional protocols to the International Covenant of Civil and Political Rights (ICCPR) and the Convention Against Torture and other Cruel or Degrading Treatment or Punishment (the Torture Convention). Complaints have been made to the UN Human Rights Committee and to the UN Committee Against Torture in a number of instances, with successful outcomes for the complainants in each of the cases finalised to date.

The first major national campaign in defence of on-shore refugee claimants in recent times was that surrounding the Cambodian asylum seekers who came to Australia between 1989 and 1992 and who spent up to four years in detention before a political resolution was made of their cases.²³ The Cambodian saga was internationalised when a complaint was made to the UN Human Rights Committee pursuant to the mechanism set up under the First Optional Protocol to the ICCPR. The complaint made on behalf of the Cambodian detainee, Mr A, was the second concerning Australia to be made to the Committee.²⁴ Where the Cambodian asylum seekers were largely unsuccessful before the High Court,²⁵ in *A v Australia*, the complainant's claims were upheld by the 18 member Human Rights Committee. The result embarrassed the Australian government even if it did not produce a substantive response.²⁶

Before leaving the refugees, there is one final point worth making about the inevitability of asylum seeker litigation and advocacy. If technology has helped refugee claimants to travel more easily, it has also assisted those individuals who have devoted their lives to the defence of these most vulnerable of "migrants". The globalisation of communication methods has allowed the international tools to be used to immediate effect. The Internet provides immediate access to a greater range of information than at any other time in our history. Electronic mail – in particular broadcast e-mail lists – facsimile machines and the telephone link academics and practitioners around the world. Causes can be taken up at a moment's notice. Submissions can be generated and sent instantaneously. For individuals working in what are typically underfunded and poorly-resourced operations, the changes over the last decade have been truly revolutionary. Activists are no longer lonely, although many continue to be wrought by the pressures of their advocacy. Disparate groups are using technology to organise and to coordinate defensive action. Again, the tools they adopt range across law and politics in both the domestic and international spheres.

The more recent case of the Somali goldsmith, SE, is an interesting example in point. SE is a man whose case was the subject of the first Australian A1 (worldwide) Amnesty International alert since 1989. Representations were made directly from the headquarters of Amnesty International in London. In Perth, Western Australia, the man narrowly escaped removal when the Transport Workers Union refused to refuel his plane and various individuals (mustered by phone and e-mail from Melbourne) picketed the airport. The international drama was also played out in Geneva, with an urgent complaint made to the UN Committee Against Torture. The Minister undertook not to remove SE when he received a direct request from this committee. The case may be marked for scrutiny also by the special rapporteurs against torture and extra-judicial executions. These are separate bodies established

under the auspices of the United Nations. SE's complaint to the Committee against Torture was upheld on 14 May 1999.²⁷ The Minister's ultimate response was to allow SE to make a fresh refugee claim.

Legal issues concerning transmigration and regional migration schemes²⁸

The essence of my argument is that in a modern democracy such as Australia it is simply not possible to achieve total immigration control. Whatever the legal construct and whatever the policies governing immigration, the movement of people in and out of Australia is a reality that cannot be avoided. We can play at the edges with raising and lowering the number of people given permanent visas. But the pressures of business and labour transfers; tourism; the desire to attract foreign students; and the inevitable refugees will all combine to take up any slack. It is my personal view that the interests of community and societal cohesion favour the acceptance of migrants (as all non-citizen admissions must be categorised) on a permanent rather than temporary basis.

Where I agree with Mark O'Connor and with the Honourable Barry Jones before him is in the call for a population policy for Australia. The inevitability of migration requires us to think not in terms of exclusion but of distribution and land use. Australia's biggest environmental problem is not its poor land: rather it is in the concentration of its population in a narrow coastal band, predominantly along the eastern seaboard of the country. Even along this coastal fringe, the population is highly focussed in the major city centres. The trend in recent years has been for more and more people to move away from the bush and into the major urban centres. The few country centres are struggling to survive as we see more and more public services being cut in the name of economic rationalism.

Where I see the need for policy and law reform is in the revival of regional areas. Rather than immigration, it is my view that our focus should be on transmigration and on landcare. We should be exploring ways in which Australia's population can be distributed across this fragile land more evenly and more gently. This is an issue that is as old as white settlement in Australia and that has been neglected for as long. The famous early advocate for migrants' rights, Caroline Chisholm, complained in as early as 1847 that the city areas were soaking up new migrant labourers, leading to urban congestion and depriving the country of much needed human resources.²⁹

The powers of the Federal government to compel people to live in certain areas are constrained by both international law and by the Australian Constitution. Freedom of movement and residence *within* the borders of a State is protected as a right by Art 13(1) of the

UDHR, as is the right of any person to leave any country and to return to their own country (Art 13(2)).³⁰ The Australian Constitution contains an effective guarantee of freedom of movement in s 92 which provides that "customs, trade commerce and intercourse" between the states shall be "absolutely free". The significance of this provision is that it operates as a limitation on other express powers in the Constitution.³¹ There is some authority to support the view that the provision would render unconstitutional "legislation directed to the prevention of inter-state migration".³²

On the other side of the ledger is the line of recent cases that stress the unfettered nature of the Federal Parliament's power to legislate with respect to "aliens",³³ and the long standing acceptance that the "immigration power"³⁴ permits both the regulation of entry into Australia and the imposition of conditions on a non-citizen's stay.³⁵ Visa conditions can prevent legal (if not factual) "absorption" into the Australian community.³⁶ Again, there is some authority to suggest that visa conditions can extend to the entry and stay of permanent residents.³⁷ The High Court has upheld legislation aimed at revoking a non-citizen's permission to remain where this had been granted formerly.³⁸ These cases suggest that there may well be scope for placing regional residential conditions on the issue of extended temporary visas to non-citizens.

The way forward: coercion or incentive schemes?

Before Federation, the colonies toyed briefly with the importation of "guest workers", in the form of labourers from the Pacific Islands. These people were indentured to their employers and were prohibited under pain of deportation from leaving their place of employment. In spite of the barely disguised racism of Australia's earliest migration laws, it is interesting that the new Commonwealth government made a deliberate decision not to follow the American lead by building the new nation on the backs of imported labour, coloured or otherwise. From 1905 it was almost as difficult to bring in contract workers as it was to gain admission to the country as a coloured person.³⁹ In recent years the growth in the intake of temporary workers has been quite remarkable. The trend began under the Labor administration and has continued under the Coalition government.⁴⁰ What we have not seen is a sustained program to force temporary workers into regional areas as a means of fostering regional development. On the contrary, Departmental documents stress that it is not government policy to restrict in any way the free movement of people.⁴¹

Although a constitutional possibility, the political viability of a coercive regime for regional migration is doubtful – not in the least because of the hostility that such policies would provoke in regional areas where the local populations have had little exposure to migrants.

The present government, like the former labor administration, has taken the view that regional migration should be a co-operative exercise involving partnerships between existing businesses and aspiring migrants. In my view the correct approach for government is to provide encouragement in the form of incentives – even in the form of affirmative discrimination – rather than simple coercive measures.

The recognition of the need to revitalise the “bush” has seen the government promote programs encouraging migrants to settle in remoter areas. These have operated in one form or other since 1989 as incentive schemes for migrants who may not qualify to migrate in city areas. For example, the Regional Sponsored Migration Scheme has operated since 1995 to permit regional employers to nominate non-citizens for permanent entry where they have been unable to find suitable workers locally. Regional programs now mirror most of the major visa classes. Changes in the skilled migration scheme in July 1999 are designed (in part) to provide a bigger pool of potential migrants for these schemes. Amongst other things, the practice of matching regional employers and aspiring migrants (who may not have thought of settling in the bush) is to become formalised.⁴²

Although a welcome development, the number of visas issued under these schemes remains small.⁴³ If the government is serious about redressing rural decline and the urban congestion, regional programs need to be given much more prominence in the migration program. The revival of the bush will only become a sustained phenomenon, however, when state and federal governments commit to maintaining basic infrastructure and the services necessary for community. These services include the banks which have been withdrawing in droves from rural areas; gas and electricity; schools, health services; shops or trading stations; post, telephone and other technological services. With the push to privatise public amenities and the deification of the “user pays” principle of economic rationalism, it is difficult to see the development, at least in the short term, of anything other than a tokenistic population policy.

Endnotes

1 See the discussion below, at n18.

2 See *Ah Sheung v Lindberg* [1906] VLR 323 at 332; *Mann v Ah On* (1905) 7 WALR 182 at 184-185; *Chia Gee v Martin* (1905) 3 CLR 649; *R v Macfarlane*; *Ex parte O’Flanagan and O’Kelly* (1923) 32 CLR 518 at 557 and 580; and *Koon Wing Lau v Calwell* (1949) 80 CLR 533 at 558 and 589.

3 See R Birrell, “The Chains that Bind: The Australian Experience of Chain Migration” (Canberra, DIEA, 1989).

4 The child’s right to protection without discrimination as to race, colour, sex, language, national or social origin, property or birth, is enshrined in Art 25(2) of the UDHR and Art 24 of the ICCPR, as well as being central to the Convention on the Rights of the Child. See also the Declaration of the Rights of the Child (1959) (CROC).

- 5 See M Crock and P Mathew, "Immigration" in D Kinley *Human Rights in Australian Law* (Sydney: The Federation Press, 1998), at 141. In the American and European contexts, see H Motomura "The Family and Immigration: A Roadmap for the Ruritanian Lawmaker" (1995) 43 *Am J Comp L* 511; C Gordon "Family Sponsored Migration (1990) 4 *Geo Immig LJ* 201; and J Guendelsberger "The Right to Family Reunification in French and US Immigration Law" (1988) 21 *Corn Int'l LJ* 1, 41-43.
- 6 Department of Immigration and Multicultural Affairs Fact Sheet 20: 1998-9 Migration Program planning levels. Note that the 1995-6 family intake figures include the concessional family places. The figures after 1997-8 place the new skilled Australian-linked places within the places in the skill stream.
- 7 The "preferential" component comprises spouses and de facto partners, interdependent partners, dependent and adopted children, parents who meet the balance of family test and orphaned unmarried relatives. See also the Preferential Relative (migrant) (class AY) visa, which includes visa cl 104 for aged dependent relatives; remaining relatives (as defined) and special need relatives. For a discussion of these categories, see M Crock *Migration and Refugee Law in Australia* (Sydney, The Federation Press, 1998), at Ch 5.
- 8 See Sch 4 and 5 of the *Migration (1994) Regulations*.
- 9 See ss 85-91 of the *Migration Act 1958* (Cth)(the Act). Until recently these concessions applied also to aged parents.
- 10 This right is a qualified one that depends on how the individual became an unlawful non-citizen and how long he or she has held that status. On this point see M Crock, above n7, at ch 9.
- 11 (1995) 183 CLR 273.
- 12 The case was the impetus for a Senate Inquiry into Australia's treaty making procedures: see Senate Legal and Constitutional References Committee, *Trick or Treaty? Commonwealth Power to Make Implement Treaties* (Commonwealth Parliament Canberra, 1995). The government's response is apparent in a Bill that remains stalled in the Senate: see the Administrative Decisions (Effect of International Instruments) Bill 1998 (Cth). A number of articles have been written on this case. See, for example, M Allars, "One Small Step for Legal Doctrine, One Giant Leap Towards Integrity in Government" (1995) 17 *Syd L Rev* 204; P Mathews and K Walker, Case Note: *Minister for Immigration v Ah Hin Teoh* (1995) 20 MULR 236.
- 13 See also the example discussed by Crock and Mathew, above n5. In *Chen Wen Ying v Minister for Immigration and Ethnic Affairs* (1994) 51 FCR 332, Davies J considered the principles set out in the Declaration of the Rights of the Child (1959) in his interpretation of the phrase "special need relative". In the result the judge extended the phrase so as to allow the minor children of the non-citizen in question to sponsor their mother on grounds that their infancy rendered them her "special need relatives". The case arose because the woman could not be sponsored on spouse grounds by the father of her children. Note that a quite different approach was taken by the Full Federal Court to a case with similar facts in *Huang v Minister for Immigration and Ethnic Affairs* unreported, FFCt, 29 November 1996.
- 14 See *Mabo v Queensland* (No 2) (1992) 175 CLR 1.
- 15 (1992) 176 CLR 1, 38.
- 16 See DIMA Fact Sheet No 24.
- 17 See the discussion in Crock, above n7, at ch 6.5.
- 18 See the Department's entry on Temporary Entry, available through its website at <http://www.immi.gov.au>.
- 19 See *Sunday Telegraph*, 11 January 1998, at p 2. Nathan Vass wrote: "Tens of thousands of foreigners are working in Australia under a \$60 million-a-year scam involving false claims for refugee status...A gaping hole in Australia's immigration laws means anyone who arrives in the country on a valid tourist visa can apply to become a refugee." The piece asserts that "hundreds of these (bogus) asylum seekers have been

found working in brothels" and "the Government has no doubt that the "\$30 work visa" racket has earned an international reputation". Vass claims that the "involved appeals process" is central to the scam: "The beauty of the scam is that it can take three years to process an application - guaranteeing three years wages and access to Medicare."

20 S George *the Debt Boomerang: How Third World Debt Harms Us All* (San Francisco: Westview Press, 1992), at 110 ff.

21 See, for example, the UN Convention relating to the Status of Refugees, the ICCPR, the UN Convention Against Torture and All Forms of Cruel and Degrading Forms of Punishment. See Crock, above n7, at ch 7.

22 Note that before December 1989, the *Migration Act* 1958 provided a separate discretion in the Minister to grant permanent residence to persons who could demonstrate "strong humanitarian or compassionate" circumstances. For an account of these provisions, see M Crock, "The Impact of the New Administrative Law on Migrants" (1989) 58 *Canberra Bulletin of Public Administration* 150.

23 See Crock, above n 7 at 210-213.

24 The first such complaint was that of *Toonen v Australia* Communication No 488/1992 (1994) 1(3) Int Hum Rts Reports 97.

25 See *Chu Kheng Lim* (1992) 176 CLR 1. Note that it is a precondition of a communication that the author have exhausted all local remedies in her or his attempt to seek redress for a breach of the ICCPR: see T Opsahl, "The Human Rights Committee" in Alston, P *The United Nations and Human Rights: A Critical Appraisal* (Oxford: Clarendon Press, New York: OUP, 1992); and Centre for Human Rights (1991). On the workings of the Committee and its history, see D McGoldrick, *The Human Rights Committee* (Oxford: Clarendon Press New York: OUP, 1991).

26 For a discussion of this case, see Crock above n7, at 30-31, 213.

27 See *SK Elmi v Australia*, CAT Communication No 120/1998, 14 May 1999.

28 I acknowledge the assistance of my student Mr Ben Saul in researching the material that follows on transmigration, or the movement of populations within Australia. See B Saul "The domestic and international issues raised by laws requiring compulsory transmigration of migrants within Australia". Unpublished paper in possession of the author.

29 See CMH Clark, *Select Documents in Australian History 1788-1850* (Sydney: Angus and Robertson, 1950), 198-99.

30 On this point, see further, Crock and Mathew, above n5.

31 See *Gratwick v Johnson* (1945) 70 CLR 1, 11 and the discussion in Saul, above n 28 at 9-10.

32 See *R v McFarlane; Ex parte Flanagan and O'Kelly* (1923) 32 CLR 518, 532-3, per Knox CJ.

33 Under s 51(19) of the Constitution the federal Parliament has the power to legislate for the peace, order and good government of the Commonwealth with respect to naturalisation and aliens. See *Chu Kheng Lim v Minister for Immigration and Ethnic Affairs* (1992) 176 CLR 1; and *Cunliffe v Commonwealth* (1994) 182 CLR 272. The cases are discussed in Crock above n7 at 20-23.

34 See s 51(27) of the Constitution.

35 See *R v Green; Ex parte Cheung Cheuk To* (1965) 113 CLR 506; and *R v Forbes; Ex parte Kwok Kwan Lee* (1971) 124 CLR 168.

36 For a summary of the early law on these issues, see M Coper, "The Reach of the Commonwealth's Immigration Power: Judicial Exegesis Unbridled" (1976) 50 ALJ 351; and PH Lane "Immigration Power" (1965-66) 39 ALJ 302.

37 See *R v Forbes; Ex parte Kwok Kwan Lee* (1971) 124 CLR 168 at 172.

38 *Ex parte Walsh; In re Yates* (1925) 37 CLR 36 at 85 and 127; *R v Kidman* (1915) 20 CLR 425; and *Koon Wing Lau v Catwell* (1949) 80 CLR 533.

- 39 See the discussion in L Layman, "To Keep Up the Australian Standard: Regulating Contract Migration 1901-1950" (1996) 70 *Labour History* 25; and M Crock "Immigration and Labour Law: Targeting the Nation's Skills Needs" in A Frazer, R McCallum, and P Ronfeldt, (Eds) *Individual Contracts and Workplace Relations: ACIRRT Working Paper No 50* (Sydney, The Federation Press, 1997), 123, at 124-5.
- 40 See E Healey, "Specialist Temporary Residents - What's Happening?" (1991) 1 *People and Place* 13. In 1997-98, 217,870 business (short stay) visas were granted (allowing stays of between 1 day and 3 months) and 33,587 business (long stay) visas were granted (allowing stays of between 3 months and 4 years).
- 41 See, for example, DIMA Fact Sheet 26 at 5.
- 42 For an overview of the old and new schemes, see DIMA Fact Sheet No 26, id.
- 43 There were 581 visas issued in 1997-98 in the Regional Sponsored Migration Scheme; 5 State/Territory Nominated Independent (Independent Skills) visas (out of a quota of 200); and 111 Regional Linked (Skilled Australian Linked) visas. See Saul, above n28, at 20.

SENSE AND

CHARITY IN IMMIGRATION

Mark O'Connor

Immigration Minister Philip Ruddock has long been reassuring us that "at current settings" Australia's population will soon be tapering off. It will peak, he assures us, at some 23-24 million – about one Sydney's worth of extra people. Not everyone finds this figure reassuring. An extra five million Australians will mean an extra one million people in each of Melbourne, Brisbane and Sydney. I doubt that even Jeff Kennett in his more reflective moments truly thinks Melbourne would be more pleasant with a million extra people. Bob Carr certainly does not think so for Sydney.

In any case Philip Ruddock's 23-24 million is a major underestimate. For current rates of birth and immigration, the Australian Bureau of Statistics (ABS) projects much higher figures – around 28 million (and still rising) in the year 2030. That's an extra nine million Australians, and means even more crowded megacities for our children. In the words of the veteran immigration advocate Glenn Withers, "there is now a war going on between the ABS and the Immigration Department's statisticians". The debate is essentially over the term "current settings". ABS's definition is, well, current settings. It assumes the current net overseas migration of over 100,000 a year, and the current total fertility rate of around 1.7.

The Immigration Department's definition is more creative. By current settings they mean: net migration of only about 80,000 (because that's the "historical average" of the past 20 years), and net fertility of 1.65, because that's what they believe fertility will drop to. If the department is right, falls in net migration and in the population growth rate should soon be visible. Indeed the department has often been reported as claiming that migration is stable or falling, and that population growth has virtually stalled in Australia. They have also pressed demographers and ABS to make predictions upon the assumption that net migration is falling. The minister knows perfectly well that it is not. These congenial assumptions have of course been seized upon by lobbyists from the Housing Industry and other groups which stand

to profit by population growth. Instead, the ABS quarterly figures of the past three years have shown a sharp, steady rise in our net migration gain to levels far above what it was in the last years of Labor government. As recently as May 1999, Philip Ruddock was still arguing that these figures were a temporary phenomenon and would soon come down.

Now, with the release of the June figures it seems the "war" may be over, and that ABS's demographers have been proved right. The latest figures show that, so far from falling, our population's annual growth rate has shot up in 12 months from 1.1 per cent to 1.3 per cent. This nowadays is a third world rather than a first world growth rate. The blow-out has been worst in Western Australia, where the rate is a stunning 2 per cent – more than twice China's 0.9 per cent, and above even Bangladesh's 1.6 per cent.

Our net migration gain has risen rapidly under the Howard Government (contrary to the impression it creates) and is now some 127,000 a year (higher than our natural increase of some 120,000 a year!). Over the past two decades only Canada has had comparably high per capita immigration. Yet in 1994 the Australian Academy of Science forcibly recommended that net migration gain be kept to well under half its present figure. Amazingly, many commentators reported even the latest figures as if they were nothing out of the ordinary. One business lobbyist even cited them as proof that we desperately needed to boost our falling population!

Vagueness about immigration figures is fashionable. The Immigration Department caters for this weakness by calling one component of its intake "The Immigration Program" – a deliberately misleading term. Naive commentators mistake it for the entire intake, and imagine they need only deduct annual emigration to show that net migration is a mere 50,000 or so. It also becomes possible for ministers to announce that the Immigration Program has been "slashed" – when in fact net migration has shot up.

Where does Australia's bizarre rate of population growth come from? Nearly half is natural increase. Every year, and for some time now, Australia has had about twice as many births as deaths. The figures are not hard to remember: about a quarter of a million births, and about an eighth of a million deaths each year. Natural increase (a net figure) is thus around 120,000. *Pace* Ron Brunton, our natural increase is not, and never has been, negative.

Granted that our fertility has long been below two children per woman, many people naively assume that deaths must exceed births. This is an elementary error in demography. Births go on exceeding deaths for many decades after fertility falls below two. This is because there are far more people in and approaching their childbearing years than there are people approaching the end of their life-spans. Our Total

Fertility Rate was 3.5 children per woman as recently as the early 1960s. Hence by first world standards, Australia's population is both unusually young and unusually fertile. The latest figures show natural increase falling slightly, but only by about 1.4 per cent a year. ABS now estimates it will not be until some time "during the 2030s" that "natural increase will be reduced to zero".

The tortoise of decreasing natural increase, cannot keep pace with the hare of migration increase. Last week's figures show our net overseas migration has shot up to 127,400 persons – a leap of 67 per cent in just twelve months. This is embarrassing for Philip Ruddock, who has long claimed that the rise in net migration would be temporary, a consequence of Coalition policy that brought an upsurge in people entering on one-and two-year employment or business visas rather than as part of the permanent "migration program". In 1995-96 a staggering 265,582 persons were granted temporary resident visas compared to just 77,392 in 1994-95, an increase of over 240 per cent in a year.

Mary Crock asserts, I suspect rightly, that: "These temporary entrants are also migrants and they are responsible for displacing many more local workers than are the 'permanent' migrants". Indeed it is not yet proven that they are any less likely to become permanent additions than those who enter with a permanent settler's visa in their pocket. (Those who wish to stay can always marry, re-apply, appeal, etc.) The Coalition prefers this form of immigration for three reasons:

1. It creates "wage competition";
2. The permanent settler figures then look lower, which pleases the electorate, whereas the headache of making sure these supposedly temporary guest-workers eventually leave is left to some future government;
3. It saves funds on education. (Why train apprentices when you can import them?)

Employer groups also prefer the guestworkers, since they create fiercer competition (and lower wages) for available jobs, while the public purse picks up the social security costs of those displaced from work. It is now clear that we are facing an immigration blow-out, and at the worst possible time, since during the Olympic year people-smugglers may no longer bother to charter boats but simply slip their clients into the stream of Olympic visitors.

None of this should be grounds for despair or fatalism. Australia's boundaries are eminently defensible. Now that fertility seems to be dropping over most of the globe, we can expect to ride out the years of the population storm, and to preserve for the future our extraordinary set of bioregions with its alternative marsupial creation. Obviously, how much of that natural heritage survives, and what sort of an Australia our children enjoy, will depend very much on the figure at which our population finally peaks.

Professor Harry Recher, chair of Australia's National Biodiversity Council, says, "The faster the rate of population growth declines, the better all our lives will be. ...Australians must ask themselves what they value. Do we wish to see Australia converted into a land entirely subjugated to human needs, or do they wish to share the continent —and the planet — with other species." Fr Paul Collins has argued, in his book *God's Earth* that if we choose the former route we will be seen by future generations as the most despised human generation ever.

The electorate has already chosen. Polls show that those wanting immigration reduced outnumber those wanting it increased by some 22 to 1 — a landslide majority. This raises the huge issue of choice: that is, of the right of the electorate and not merely of big business to be consulted before Sydney, say, is turned into another New York. The electorate has also voted with its feet by steadily reducing its own birthrate. Only direct and arrogant lobbying by groups like the Committee for Melbourne and the Australia Unlimited forum is maintaining the present situation of indefinite population growth.

Left to itself, the population will peak; but we may first need to wean our business culture off the teat of population growth. Colin Teese, former secretary of the Department of Trade, has pointed out that the first world countries which boomed in the past 50 years have been those with stable populations and tight controls on immigration. Without a booming population, their financiers had to invest in productive (and exportable) industry rather than in real estate. (Two recent Australian prime ministers are believed to have become millionaires by speculating in the property market. Both were great supporters of immigration).

Italy used to be an ailing overpopulated country whose migrants we took in. Today Italy, with the world's lowest birth rate, has zoomed past Australia on the world table of per capita wealth. Sadly, when Australia negotiated immigration agreements it never sought reciprocal rights. If some disaster in our region makes it necessary one day for millions of Australians to flee to prosperous Italy, we will find we have no right to do so.

The immigration muddle

Why is Australia's immigration so bizarrely high by world standards? A short answer might go like this. The Japanese gave us a scare in World War II, and we accepted massive immigration as a military necessity. By the time we no longer believed in this argument, immigration and rapid population growth had become a habit, one that many of our businesses depend on. Media barons strongly support population growth since for them it's pure profit — an automatic annual increase in their "area under crop". The electorate disagrees; but as we drift

towards plutocracy the political parties have formed a bipartisan alliance to ignore the voters and maintain high immigration.

The above explanation is not adequate on its own. Vested interest is naked without some sort of moral argument to support it. Dr Katharine Betts' new book *The Great Divide* (Duffy and Snellgrove, 1999) draws attention to a neglected issue: the way the New Class conceptualises immigration. She defines the New Class as a socially dominant group of upwardly mobile tertiary educated people – I think that takes in most of my hearers tonight. The New Class still need to think of themselves as left wing, but their interests are in practice different from those of the unemployed or low-paid. Their views have also been gentrified, and in fact “correct” views have become an essential badge of class status. (This is a typical right wing or upper class phenomenon, but it is accentuated because this in-group's status does not depend on inherited wealth or power. Hence they really do need to belong). In short they think of themselves as left wing, but in practice dislike working-class culture and values and tend to side with the business interests of the rich. Hence the fact that ordinary Australians overwhelmingly want immigration reduced does not impress them; the “correct” view within their class is to be for high immigration.

Nice people often get involved in flouting immigration laws because they really don't see the problem with endless immigration, and are rafted along by New Class ideology. The combination of this ideology (which has its idealistic sides) and of vested interests produces a characteristic set of fallacies about immigration. Let me briefly set out and comment on the seven most common.

Immigration fallacies

1. *Our immigration is shamefully low. It is an international disgrace and proof of intolerance or racism.* As we have seen, this view cannot be sustained on the figures. It is simply asserted.

2. *The empty country myth.* Australia's large size on the map leads some to argue that we have plenty of “space” and therefore a destiny (or a duty) to take in a huge population, comparable to that of Europe or the USA. Yet humanity does not live by space alone. Australia is not in agricultural terms a large country (our major food harvest, wheat, is only half that of France). The reality is that deserts, even in the world's most intensely populated countries, like China and India, are usually unpopulated or sparsely populated. As my book *This Tired Brown Land* makes clear, this view is strictly for the ecologically illiterate. The New Class, being tertiary educated, should be immune to it. Yet unstated versions of the Empty Country myth often underpin the New Class assumption that there can be no good reason for restricting immigration.

3. *Aborigines justify immigrants.* It is a common New Class idea that since we stole the land from the Aborigines this somehow means that we must invite in the rest of the world to legitimise the theft. (They never seem to ask what Aboriginal people want!). Of course the argument is rarely put as baldly as this. Instead a burst of rhetoric about the genuine horrors suffered by Aborigines is used, rather like an artillery barrage in trench warfare, to soften up the critics in advance. That way, no one will dare comment on such dubious assumptions as that migrants have a "right" to come in without the electorate's permission, or that it would be "racist" to restrict immigration.

4. *No problems: we'll just all work harder at it.* Don't worry about population growth. We'll just all agree to consume and pollute less and to take up less space. But we don't! Our per capita resource consumption is steadily rising. *Australia: State of the Environment 1996* (page R3-34) reports on Sydney's resource flows between 1970 and 1990, and finds that (per capita) energy use was up 30 per cent, solid waste up 18 per cent, carbon dioxide emissions up 25 per cent and so on.

5. *The fatalism fallacy: Australia can't stop people coming in. That would be Fortress Australia. etc.* This claim is characteristically made in ways that deter examination of how true it is. For instance, it is glibly said that "we cannot ignore what is happening in the rest of the world" – a truism that proves nothing, and unfairly implies that all courses except the speaker's are impractical. This claim is often made within minutes of a quite incompatible suggestion that Australia is so fortunate in its secure ocean borders that only hysterics would worry about a few people breaching them. (New Class thinking, being driven by the need to belong to the right group, can sweep aside mere logical inconsistencies).

6. *Moral Blackmail: "We Australians cannot hope to keep all this affluence to ourselves", etc.* This line is more plausible if the speaker applies it equally to the Americans, Germans, Japanese and a score of other countries as wealthy or wealthier than ourselves. Otherwise it sounds to me like a peculiarly cowardly variant of the Yellow Peril theory or of the Australian cultural cringe. How much poorer and more crowded would Australia have to become before it ceased to be a magnet for immigrants. Does the speaker really want that? And would the voters ever give their consent, or does the speaker plan to impose this scenario without consulting them?

Moral blackmail has many variants. They include the lawyer's trick of presenting immigrant families as having been "split apart" by the heartless Australian law, when in fact individuals in pursuit of economic gain have deliberately moved away from the majority of their families. Note that many dubious arguments are offered, not out of malice or vested interest, but because people are kindly. It is nice to tell migrants they can come in; and many even of those like myself who

think they should not be coming in in such numbers would still find it hard to tell them so in person. Hence the easy way out is to pretend there is no problem.

7. Perhaps this is one reason we still hear regular assertions that: *Immigration benefits the economy*. This would be a nice thing to believe. It would mean we can invite in as many people as we like. The electorate's objections could then be disqualified as mistaken or dog-in-the-mangerish, since the more people we have, the richer we'll all be. The cake would be infinite, and Immigration would be a free lunch all round.

Yet even the Immigration Department's Bureau of Immigration Research (BIR), which was set up with explicit instructions to find proof of this comforting doctrine, and which was staffed by people selected in part for their tendency to believe in it, couldn't do so. After seven years and \$28 million of research the BIR admitted that any positive effects of immigration on the economy or on unemployment were too small to measure with confidence. Unofficially it was embarrassed by one of its own most thorough-going studies which showed that the average immigrant over their first five years in the country was a direct net burden on the taxpayer of some \$34,500 [See *This Tired Brown Land* pp. 138-139]. The BIR's economic models also failed to incorporate the fact that a larger population implies a smaller per capita share of resources and also of the export earnings from such characteristic Australian exports as wheat, meat, and minerals. (Neither mineral exports nor agricultural ones would benefit by a larger labor force).

The ethics of international charity

Debates on immigration have a way of turning into debates on ethics. Let me briefly state a view.

I believe in altruism. Yet I see problems when individuals claim the right to give away what belongs not to them but to their nation. As individuals, we all have the right not to contribute heavily to a given charity, or indeed not to contribute at all. In much the same way, governments and electorates have a right to set limits to their charity towards outsiders.

As this analogy suggests, there is more than one charity in town. Indeed moneys spent on relocating selected immigrants from undeveloped countries into developed countries (estimated at over \$100,000 government investment per family) would be far more helpful to the Third World if spent on health, population and environmental programs, or on female education in the home village. The money required to resettle a single displaced family into a first world country could usually have prevented them and scores of other families from being displaced in the first place. It is almost always better to help people in their own country than to remove a few selected individuals.

These are often precisely the skilled or educated or entrepreneurial or dissident people the country needs. Pirating expensively-trained skilled people from developing countries is the reverse of foreign aid. And as Withold Michakowski has pointed out, it remains a cultural tragedy to be forced to leave one's native land and native language behind, even when there is another land to go to. As the Cairo Conference on world population established, each nation has a primary responsibility to manage its own economy, agriculture and population to ensure a sustainable long-term balance between population and resources. Without this, external aid is ultimately futile, and selective emigration even worse.

Serious altruists should lobby the federal government to increase foreign aid from its present 0.3 per cent of GNP to the United Nations recommended 0.7 per cent, and also to target most of the increase towards ecological sustainability or population programs (including female education). In short, well-directed aid is required – and a new seriousness about birth-control – not selective immigration for a few thousand. Christian clerics sometimes feel they must take a heroically unworldly view. Yet Christ in his most relevant parable, “The Wise and Foolish Virgins” (*Matthew 25*), insists that people have an obligation to act prudently; and that those who do plan prudently (about oil supplies, oddly enough!) are not obliged to bail out those who deliberately leave themselves dependent on chance and charity.

In democracies, public opinion favors helping other nations but rejects extreme unselfishness. Most Australians seem to feel that as a nation, we have obligations to our own people and to the future of our land which should be balanced against the general urge to help others. It is for this reason that immigrationists have often attacked the very identity of the nation, or argued that Australia has no national identity (“just a nation of immigrants”).

Despite all this, Australia is unusually generous in the number of refugees it takes in. I believe there is wide community support for this, even though Treasury grumbles about the cost. There will always be some dissenters in a democracy, but there is also a balance struck. No doubt a dictator or an absolute monarch might on occasions be more generous; but then they might also be utterly heartless; or they might rigorously decide that rescuing individuals is not the way to go in a world headed for nine billion people. In practice I suspect a democracy will be more consistently generous to individuals in trouble.

A moral problem arises, though, when officials or lawyers claim a right to bend the rules or quotas that the elected government has set. Their motives may be good. The very fact of defying the public's will (the better to help those one pities) can give a warm glow of virtue and of moral superiority; but the glow comes from giving away the public's rights and goods, not one's own. Like the Unjust Steward in the parable (*Luke 16*), those who play the kindly doorkeeper in this way are

being generous with what has often no personal cost for them, but may cost poorer Australians quite heavily. The element of arrogance becomes more offensive when the dubious gift is used by officials as a way to assert their own moral superiority over those who pay their wages, and whose goods they are giving away: "Come on in. There's lots of nasty racists who'd like to keep you out of Australia, but I'll find a way to slip you in."

It is sometimes forgotten that financial costs to the taxpayer are also social costs. The costs of last year's net migration (over \$3 billion, as my book points out) might have paid for a world of needed social services, including health and aged care, or for environmental reclamation, or for boosting overseas aid. We have the mentally ill —and perhaps soon the senile —walking the streets because State and Federal governments can no longer pay for services we once took for granted.

Refugees and rights

Since my debating partner, Mary Crock, has chosen to offer a lawyer's perspective, I too will concentrate on legal and semi-legal issues.

Legally, nations have the right to enjoy their own lands and to control who enters those lands. This is not in dispute in either customary international law or UN principles. "Peaceful invasion" (by swamping or ignoring borders) is no more countenanced than outright military invasion. Similarly, no nation is obliged to take in a surplus of immigrants over emigrants. (Indeed the world average for net immigration is — of course — zero). Zero net migration is also the longstanding policy of the Australian Conservation Foundation, and of the Australian Democrats (amply confirmed by three separate polls of their membership). In practice the attractiveness of a first world country will tend to produce some surplus of immigrants over emigrants; but there is no compulsion to let this surplus reach such levels as in Australia.

"Progressive" lawyers sometimes justify bending the letter of the law in accord with the electorate's intentions. But, as we have seen, the democratic will of the electorate is not at variance with laws that restrict immigration. Indeed all recent surveys show that the electorate overwhelmingly believes that immigration is too high. Even immigrant Australians think so. As few as two or three per cent of the total electorate (as opposed to media bosses and journalists) want to see immigration higher. A majority say they would even back an immediate moratorium on immigration. Hence a lawyer who strives to make our present mildly restrictive immigration laws more restrictive could claim some justification from the will of the electorate; but a lawyer who strives to flout them cannot.

Some immigrationists and "legal activists" are not content with even the world's highest or second highest legal immigration rate. They try to open other avenues. One loophole for a rejected immigrant is to

claim refugee status. There are few nations or regimes that do not relax their laws to let in those who arrive at their borders in immediate fear of their lives. Indeed one strong argument *against* filling up Australia (with whatever additional population one thinks it can hold) is that very few of those coming in at present are refugees. Our current net migration gain of well over 100,000 a year contains only 4,000 places for refugees, at least as the UN defines them, and only some 12,000 "humanitarian" places in all. Yet some day we may have to take in a flood of genuine refugees from a collapsing Indonesia.

The ANU philosopher David Bennet has argued on ethical grounds that if Australia wishes to help refugees we should resist pressure from business to "fill up" the country. Instead we should maintain surplus capacity for sudden emergencies. He draws an analogy with the red danger-line on a car's temperature gauge. "The environmental red line is a place to avoid," he says, "not one to run to and then make a stand at."

The legal costs of telling real from fake refugees are now stupendous. The OECD nations now spend far more on legal hearings of refugee applications (many of them frivolous or dishonest) than the UN can afford to spend on genuine refugees in all its camps. In Australia, the Immigration Minister Philip Ruddock has made the point that every fake refugee who bluffs his or her way through our overtaxed court system is keeping a real refugee out of the country.

Lawyers, as *Rumpole*-watchers will recall, have no right to commit perjury. They may present their client's story as if they believed in it; but they must not encourage their clients to present a lie. It seems some of our immigration lawyers are not so scrupulous.

Last year *The Australian* reported the story of a boatload of illegal immigrants who arrived in Darwin. Their story was naively simple. They had come because they heard Australia was a better country, and that the Australians were letting people in. They were impounded, but legal activists were given access to them. Next morning they all had a different story: they were refugees! – driven from their homes by a well-founded fear of persecution. It then cost a fortune to investigate and litigate their claims (and to keep them in custody meanwhile). If this is true, should any lawyers who coached them in that lie be charged with perjury and with waste of public money?

In Australia, Philip Ruddock has indignantly described how people who have entered Australia on tourist visas turn up at his Department asking for "the \$20 work visa" – meaning the papers that are given to asylum-seekers to enable them to work while their case is pending.

The public may be growing impatient with such tricks. Today's Melbourne *Herald Sun* has an article by Michael Mckinnon: "\$100M Sting: And still they come. Massive profits to lawyers are driving the growth of appeals" (15/6/99). Ruddock has been quoted in the

Australian as saying that 47 per cent of those who bring refugee appeals drop them the day before they are due to come to trial. One would imagine that few of the tourists in backpacker hotels are refugees. Yet backpacker magazines contain prominent advertisements from lawyers offering to arrange refugee applications. Perhaps one of our investigative programs should expose some of the shadier operators.

Former Immigration Minister Gerry Hand was a member of the ALP left and proud to be known as something of a bleeding heart on immigration. Yet even he was moved to fury by the unscrupulousness of the many immigration lawyers who advised their clients to claim refugee status. Hand said the lawyers' tactic was to delay putting in the papers for each stage of their application until almost the last legally-permitted day, and then agitate for their clients to be released because the government had "taken too long" over their case. (As we shall see, many immigrants may have been under instructions from criminal gangs that their money would not be refunded if they let themselves be deported too soon. Though the lawyers may not have been aware of this reason for their clients' patience, yet they and the criminals had a common aim: to put our detention system under so much pressure that we are forced to give in). Today some smugglers do not even bother to avoid detection. They leave their passengers on places like Ashmore Reef, assuring them that the Australians will be along to collect them, and that lawyers will represent them. In many such cases the taxpayer foots the large legal costs of both sides of the application.

The British system of "oppositional" justice has value in criminal cases. (It is important that anyone who risks jail should be defended as strongly as possible). Yet this system has less point when the only result of defending to the limits a dubious application for refugee status is that a doubtful refugee is included in our refugee intake while a real refugee misses out - all at vast expense to the taxpayer, who often pays the legal costs of both sides. What is the point of a law that lets dubious cases "push in", come here illegally, and clog up the courts?

As yet Australia has been only a minor target (beside such countries as the USA and Germany) for illegal immigrants and people-smugglers. Yet the recurrent crises in Indonesia remind us that their problems might one day occur here, and on a similarly massive scale. One reason Australia might attract a disproportionate share of such trade in human cargo is that it is widely seen in the region as an easy touch. Asian countries take more draconian actions. In Singapore, for instance, judges recently increased the standard penalty for illegal immigrants to five weeks jail and between four and six strokes of the rattan cane. The maximum penalty for entering Singapore illegally is six months jail and 12 strokes of the cane. Those who hire illegal immigrants face two years in jail plus fines or caning. Singapore's coastline is well protected by patrol boats, and is surrounded with barbed wire on

some of its more isolated parts. As many as 200 illegal immigrants can be caught and sentenced on a single day.

We should be grateful Australia's laws are kinder. At the same time we should resent the preposterous claims of Malcolm Fraser and some other members of the "Australia Unlimited" forum who assert that we will be regarded as "racists" if we seek to control immigration, and that Asian countries will become so indignant that they will invade us. This is wishful thinking by those who may have their own motives for wanting to increase Australia's population.

Detention

Locking people up is not pleasant. Immigrationists have repeatedly claimed the detention system for illegal immigrants is unnecessary, or that it is an hysterical over-reaction to a trivial number of people arriving on our secure ocean borders. Unfortunately the same people are often found arguing a few sentences later that "you can't stop immigration". A sample of what their advice might bring is given in a recent article in the British *Sunday Times* (7/6/1998) by its Home Affairs editor, Nicholas Rufford. (*Asylum tide costs Britain £2 billion a year.*)

Citing a report by immigration officers, Rufford says the cost of asylum-seekers arriving in Britain will reach £2.1 billion in 1998, equal to the government's annual housing and transport budgets combined. The report blames organised gangs, which are supplying thousands of fortune-seekers from Asia, Africa and eastern Europe with false documents and cover stories. "The immigration service has become like an army stripped of its weapons," said John Tincey, a representative of the Immigration Service Union which funded the report. "People who arrive can say the magic word 'asylum' and automatically get right of entry. Once in the system, they get married, which allows them to stay, or they just disappear." The report concludes that the money would be better spent helping refugees in their own countries. Asylum rackets are being helped by British solicitors who are "milking" legal aid. "Some firms are very skilled at putting grinding paste into the gearbox of the immigration system," said a senior official.

In Britain, the Home Office now concedes that some 17,000 people who got admission to the country by claiming asylum have gone underground and absconded before their court-hearings. In the US, less than half of the many thousands who are released into the community on arrival, after destroying their passports in the plane and claiming to be refugees, ever show up for their hearings. Cleaners report that many throw their asylum-hearing papers straight into the bin on their way out of the terminal.

Lawyers and smugglers

By definition, refugee applicants will always tell a story that moves our pity. It is hard, and expensive, to check such stories. Sometimes they are all too true. At other times those who check may find a very different reality. In April this year, when the scale of illegal immigration from Fujian province became clear, fashionable columnists and immigrationists rushed to assure us that these people really were refugees. However Lynne O'Donnell, *the Australian's* China correspondent actually went there, and brought back a very different story. (See the *Weekend Australian* 17-18 April 1999, Focus p. 19 "When the boat comes in").

It opens with a description: "Low-slung sedans with blackened windows glide through narrow lanes lined with huge white-tiled villas, stopping only to disgorge plump bejewelled woman...". Lynne O'Donnell makes it clear that the people coming from Fujian are not refugees and that the trade is organised by criminals. Vast wealth pours back into the province. "Where once stood paddy fields there are five storey mansions." She found the villages "almost emptied of men." Young men pay upwards of \$55,000 to get abroad. The trade is "run by powerful criminals known locally as snakeheads, with links to the Triads that dominate the world's Chinatowns."

Little of the money that comes back is invested in anything to create productive industry or jobs for locals. Instead it goes on luxuries. Schoolboys told her they would go abroad as soon as they finished school. For women, bogus marriages are arranged, but some are delivered instead to Triad-run brothels. Those "refugees" who get caught and deported back to China are fined 20,000 yuan on return, half of which is reimbursed by the Snakehead. "For those who must appear in court (overseas), lawyers are found to delay deportation."

Refugee hearings

Mary Crock notes that "migration law has come into its own as a legal specialty" and that refugee appeals "have come to dominate the judicial review work of the Federal Court of Australia." (p. v, *Immigration and Refugee Law in Australia*, Federation Press 1998). By 1993 Senator Christabel Chamarette noted that "the total cost of all boat people since 1989 has reached over \$21 million. The total cost of legal advice [sought by the Department of Immigration] in the past two years to mid-1993 was around \$1,427,463". She also noted that the cost of keeping in custody those who appeal against not being considered refugees was reported to be some \$73,000 per person per year.

A peculiarity of refugee hearings is that there is effectively no penalty for perjury. The real risk a fake-refugee runs is of being sent back home if they don't lie stoutly enough. Mary Crock delicately describes false claims of refugee status as "an inevitable by-product of

the formalisation and judicialisation of refugee determination procedures". Might it not also be due to failing to prosecute shady lawyers and immigration agents?

The crime of falsely pretending to be a refugee (that is, to have a well-founded fear of persecution) is twofold. It means keeping a real refugee out (in favor of the fake one) and it means wasting large amounts of public money on both sides of the case. Note that the crime lies precisely in the perjury and the (costly) prevarication. This means that the lawyer is not, as with other crimes, someone who enters only after the deed has been done and who bears no blame for it. The lawyer who abets such a client is not merely an accessory after the fact, but an active accessory in the fact.

Conclusion

Despite my concern at the judicialisation of acts of charity, I believe that the refugee quota is the one component of the current immigration intake that deserves expansion. Top priority for places within the Humanitarian Program should go to genuine refugees in the most dire circumstances. These will usually be refugees languishing in overseas refugee camps or the like. They will not normally be persons able to arrange their own travel to Australia.

Our current immigration policy defies both common sense and the electorate's will. What do we need in its place? An immigration policy that is part of a sane population policy, and run from a department of population. A determination to set an example to the world in ecologically sustainable development, and to cherish and preserve our unique bioregions for all humanity and for all generations (and for their own sake). Sex education as a normal part of education. Free or cheap contraception, such as New Zealand now provides for all its citizens. As far as possible, every child a wanted child. A rate of net immigration that stays safely below the infinity threshold, and a firm promise to the electorate that national population will taper off below a certain figure – say 22 million. A continuing or expanded refugee policy, with firm emphasis upon off-shore selection and upon those in most need. Real foreign aid that favors female education, population/sustainability policies, environment protection and better living standards for poorer nations. A new code of practice for immigration and refugee lawyers which eschews the ethics of the Unjust Steward and respects the community's right not to have its kindness abused by false claimants.

Instead of the mindless globalism promoted by those who have over-invested in real-estate and want to invite in the world to push up its price, we need an immigration policy that keeps an intelligent eye on the nation's wider self-interest. A bipartisan policy of sustainable population should replace the present bipartisan policy of defying the electorate and maintaining un-sustainable population growth.



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Photo - David Karonidis

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THE DANGERS OF

DEFLATION

Colm Kearney

Introduction

It was Rodney Adler, who first suggested this topic of research. He also provided funding, guidance and insights that I could not have brought to the issue. It is with sincere appreciation and gratitude, therefore, that I commence my presentation by thanking him for his support and encouragement to pursue the topic. I also thank the Dean of the Faculty of Business at the University of Technology, Sydney, Professor Bob Robertson, for his unwavering support.

Inflation, disinflation and deflation

Inflation occurs when the prices of goods, services and financial assets tend to rise persistently over time. *Disinflation* occurs when prices rise, but at a decreasing rate. *Deflation* occurs when the prices of goods, services and financial assets tend to fall persistently over time.

There are different types of deflation. A benign deflation occurs in an economy in which costs are becoming lower, due for example to successful deregulation or to productivity growth. A malignant deflation occurs due to insufficient demand in the economy or by a substantial excess capacity. You could have both types. Indeed you could have a deflation which starts off being benign and ends up becoming malignant. If so, we would want to be able to know when this might happen so we could take preventive measures.

Australia's highest inflation rates of over 20 per cent were recorded in 1882 and in 1951. Its greatest deflation rates, in excess of 10 per cent, were experienced in 1879, 1921 and 1931. The last period of sustained deflation in Australia occurred during the Great Depression. The immense economic damage that this caused is well known. The Australian economy contracted by 17 per cent between 1929-32, the British economy contracted by 8 per cent between 1930-31 (having already contracted by 25 per cent during the earlier recession of 1919-21), and the United States economy contracted by 40 per cent between 1930-33.

Although the Federal Government has been keen to accept praise for the decline in inflation to historically low rates in the late 1990s, this has been achieved against a backdrop of declining inflation around the world. The fallout from the Asian crisis has contributed to the seriousness of the threat of a worldwide deflationary episode. Given the deflationary trends that are already appearing in some important economies, attention to the likelihood of deflation in Australia is advisable.

Measuring inflation

Inflation is measured as the percentage change in some index of prices. There are several alternative indices available in most countries, including the wholesale price index, the consumer price index (CPI) and the GDP deflator. This presentation focuses on the best known index of prices, the CPI.

A number of governments around the world have for some time aimed for close to zero inflation. The definition of "zero inflation" is an important issue. There are three alternative definitions. They are: *first*, negligible inflation; *second*, literally zero inflation; and *third*, price stability.

- *Negligible inflation means that the measured rate of inflation is so low as to be inconsequential for economic decision-making.* Central banks that are committed to achieving negligible inflation would be content if the measured inflation rate was in the range of 0 to 2 per cent.
- *Literally zero inflation means that the measured inflation rate must actually be equal to zero.* Central banks which are committed to achieving literally zero inflation would be obliged to take disinflationary policies even if the measured inflation rate was negligibly low, at 0.5 per cent for example.
- *Price stability means that the price index must remain stable over time.* Central banks which are committed to achieving price stability would be obliged to undertake deflationary policies to reduce prices if the measured inflation rate became positive for some time period. That is, they would have to secure negative inflation to compensate for any period of positive inflation.

Many commentators and policymakers fail to clarify what they mean by "zero inflation". Some have argued that price stability should be pursued as vigorously as possible, allowing only for the fact that measured inflation tends to overstate the actual rate. The majority view, however, is that negligible inflation qualifies as "zero inflation". The Chairman of the Federal Reserve Board in the United States, Mr Alan Greenspan, has used the term "zero inflation" to refer to a rate of 0 to 2 per cent that occurred in the United States in the late 1960s. In doing so, he was using the looser definition of negligible inflation. This Report adopts the majority view of "zero inflation" preferred by

Mr Greenspan as meaning negligible inflation that is so low as to be inconsequential for economic decision-making.

There is widespread agreement that current measures of the CPI overstate the true inflation rate because it does not account for improvements in the quality of goods over time. Estimates of the extent of this overstatement vary. At a Federal Reserve Bank of Canada Symposium in 1996, all participants agreed that the CPI measure can overstate inflation, and IMF Deputy Managing Director Stanley Fischer suggested that this occurs in the United States by 0.5 to 2 per cent.

Using the "negligible inflation" definition, Australia and many other countries currently have close to "zero inflation". If the central banks in these countries do not account for the extent to which the CPI overstates the true inflation rate, their commitment to further reducing an already low inflation rate could lead them to enact policies that add to the threat of deflation.

Is there a risk of deflation in Australia?

Australia's inflation rate has trended downwards since the mid-1970s. It is most likely that the economy is in a period of relatively low inflation that is expected to continue for some years. It is also possible, however, that the downward trend in inflation could become deflation. The strength of the downward pressure on prices should not be underestimated. It is intense, persistent and global in nature.

- *Commodity prices* have fallen continually over recent years to the point where *The Economist's* index is now at its lowest level since it began a century and a half ago. Oil prices have more than halved in the past two years. Although the latter has recently induced the large producers to cut supply, the economic problems in many of the larger commodity-producing countries are forcing them to increase supply, adding to the downward pressure on commodity prices.
- *Producer prices* are also falling in virtually every developed country in the world including Australia, Britain, Canada, France, Germany, Italy and Japan. This trend will eventually feed into lower consumer prices.
- *Consumer price* inflation in the G7 countries is presently very close to zero or even negative, and has been occasionally negative on a quarterly basis in recent times in many countries, including Britain, China, Germany, Hong Kong, the Netherlands, Singapore and Switzerland.

Amid the gloom in much of the world economy, however, the largest economy in the world – the United States – continues to perform very well, with low producer and consumer price inflation. Although this economy is probably nearing the end of its current

expansionary phase, consumer and producer sentiment remains buoyant and the stock market continues to surge. But there is growing concern about the extent to which the stock market is surging ahead of the economic fundamentals. Lower world demand coupled with sluggish or declining prices is putting strain on the United States' balance of payments. In spite of this, and also in response to the recent Asian financial crisis and its contagion to other regions, the US dollar remains very strong. This situation in the United States is playing an important part in maintaining world demand. If the downturn comes sooner rather than later, it will add significantly to the existing downward momentum in prices.

If the malignant form of deflation takes hold in the world economy, the consequences could be serious. The combination of deficient world demand and excess capacity would reduce corporate cash flows and force companies to cut their outgoings. Companies could respond by some combination of delaying payments to their suppliers, selling inventories, liquidating assets and/or reducing their wage bills by laying off workers. This would put further pressure on the prices of commodities, services and assets, it would reduce household incomes and wealth, and it would raise unemployment and poverty. If this scenario were to unfold with full vigour, the corporate haemorrhaging could spread as even healthy firms felt the effects of the decline in economic activity on their cash flows. The banking sector would be forced to write off bad loans and to mark down asset values, and some could become under-capitalised. Depositors might then begin to suspect their viability, and the cycle of mistrust would gather further momentum.

Some commentators argue that predictions of a repeat of the Great Depression are overly pessimistic. Others argue that although such a scenario is possible, our understanding of economic forces and our policy tools have improved to such an extent that it is highly unlikely.

A good example of the "optimistic view" can be found in *The Economist* in an article published in November 1997 entitled "Deflation and All That".

Economics is not called the dismal science for nothing. Even though America's economy has been growing strongly in recent years, American economists are becoming intrigued by an increasingly fashionable theory. This is the idea that a global excess of productive capacity together with a slowdown in East Asia will result in worldwide deflation. ... It is monetary policy that determines general inflation or deflation, not structural factors such as global competition.... If supply did seriously exceed demand, central banks should simply cut interest rates. This is where the Fed went horribly wrong after the stockmarket crash in 1929, when it raised interest rates and allowed the money supply to shrink. Between 1929 and 1933, prices fell by almost 30%.... Inflation, not deflation, remains the bigger risk.

[*The Economist*, November 15, 1997, 77-78]

This dismissal of the threat of deflation by *The Economist* does not have a sound economic basis. *First*, the statement that “it is monetary policy that determines inflation and deflation” is incorrect. Many economists take the view that the Great Depression is better explained by the “debt deflation” hypothesis; that is, inappropriate monetary policy contributed to the depth and duration of the Great Depression rather than caused it, as opposed to the strictly monetarist hypothesis of Professor Milton Friedman. *Second*, there is general consensus amongst economists that the stagflation of the early 1970s was caused by an eightfold increase in the price of oil brought about by the OPEC cartel, rather than by monetary policy. *The Economist* conveniently ignores the fact that the greatest inflationary shock of the last half-century had very little to do with monetary policy. *Third*, the statement that ‘inflation rather than deflation remains the bigger risk’ is absurd, and aptly illustrates the misplaced focus of many commentators. The inappropriateness of this statement is demonstrated by the fact that since that issue of *The Economist* in November 1997, the downward trend in world inflation has continued.

Subscribers to the view that the “Great Depression” scenario is pessimistic should not forget the Asian crisis that began less than two years ago. The worst affected countries have experienced declines in output comparable to that recorded during the 1930s. Furthermore, those inclined to the view that earlier mistakes will be avoided because of the improvement in economic policymaking should note that the worst affected countries had access to what many consider to be the best available advice from the IMF. Despite the sophistication of present day economic and financial management, policy errors continue to be made. An important purpose of this presentation is to highlight this issue and suggest how to minimise the risk of exacerbating a deflationary situation with incorrect policy settings.

The Economist now acknowledges the likelihood of deflation. In an article published in February 1999 entitled “The New Danger”, it states that:

For several decades the bogeyman for most rich economies has been inflation....But even as the old enemy seems quiescent, a new and possibly more dangerous one may be rising up: deflation...This is not a claim that *The Economist* makes lightly...

In much of the world outside America, the risk of falling consumer prices (ie, deflation) is at its greatest since the 1930s...Japan is already in the grip of deflation. Prices are falling in China and some other parts of East Asia. Continental Europe’s inflation rate, if correctly measured, is close to zero... If the economies of America or Europe were now to take a sudden lurch downwards, the world might easily experience outright depression, with prices and output falling together, just as they did 70 years ago.

[*The Economist*, 20-26 February 1999, 15]

The article includes what it calls the "D-word index". This shows that the number of newspaper articles mentioning deflation has increased twenty-fold in the past decade. Further, it concurs with the argument contained in this Report that policy errors could be made – and are actually being made – by central bankers who underestimate the risks and dangers of deflation, and continue to maintain tight monetary policy to prevent inflation.

The benefits and costs of low inflation

Central bankers who continue to pursue zero inflation frequently base their policy rationale on the presumption that even low levels of inflation impede economic activity. Although there is general agreement among economists that high rates of inflation are harmful to the economy, there is less agreement about the effects of low levels of inflation.

Overall, it is becoming increasingly understood that the relation between inflation and economic growth is complex. There is general consensus, however, that high rates of inflation do impede economic growth, but there is still a wide range of opinion on whether moderate and low levels of inflation impede economic growth. Further research is needed to fully answer this question. More sophisticated analyses, such as allowing for the possibility of nonlinearities in the relation between inflation and growth, may assist in the search for answers.

Inflation in the OECD countries

This section discusses the results from research that we have done on cross-sectional time-series evidence from the 22 OECD countries from 1961 to 1996. We have also studied the time-series evidence on Australia from 1901 to 1998.

We divide the OECD countries into high inflation, medium inflation and low inflation countries. Australia is a medium-inflation country in the sample. We demonstrate that there is no systematic relation between inflation and economic growth for any of these three groupings. Low inflation countries tend to have low unemployment with mixed growth performance, high inflation countries tend to have high unemployment with mixed growth performance, and average inflation countries tend to have average unemployment performance and no relation between inflation and growth. Looking at Australia's experience since the start of this century, we show that inflation has not harmed the country's growth rate.

A proposal to minimise the risks of deflation

When allowance is made for the extent to which measured inflation overstates the true inflation rate, many countries, including Australia, already have close to zero inflation. The monetary authorities in

Australia should now be mindful of minimising the risk of deflation if it arises. If deflationary tendencies arise, a public commitment to maintaining a small positive inflation rate would assist in preventing the emergence of deflationary expectations.

The risks of deflation seem not to have been accounted for by commentators and policymakers who continue to push for zero inflation. This might constitute a form of hysteresis in monetary policymaking that has not hitherto been recognised. Central bankers, having spent most of their working lives trying to defeat inflation, may find it difficult to adjust their thinking to take into account the new low levels of inflation and the possibility of deflation. What is required, though, is a recognition amongst policymakers of the benefits of a small positive rate of inflation.

Summary and conclusions

The world economy currently faces the greatest threat of deflation since the Great Depression. There is widespread agreement that current measures of inflation overstate the true inflation rate by over one per cent. When allowance is made for this, current actual world inflation is close to zero. In the current climate of significant downward momentum in prices, there is a risk of deflation. If this risk becomes demonstrably greater, we recommend that policymakers in Australia should publicly commit to the maintenance of a small positive rate of inflation.

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Catharine Lumby

Author of *Gotcha* Catharine Lumby addressed The Sydney Institute on Monday 28 June 1999 to reflect on issues of the tabloid media. Catharine Lumby is a columnist with *The Bulletin* and Director of Media Studies at the University of Sydney. Just how much importance should be attached to celebrity secrets, concealed cameras, political peccadillos, vulgar video tapes - in short, the tabloid world? Is this the stuff of serious study? Catharine Lumby explored all this and more during her address.

MEDIA CULPA:

TABLOID MEDIA, DEMOCRACY AND THE PUBLIC SPHERE

Catharine Lumby

In the closing years of the 20th century, North Americans have been getting uncomfortably close to their president's penis. Of course, everyone knows the president has a penis – it's seems to be a criterion for the job, after all – but no-one wants to think about it. The presidency is a highly symbolic office. The incumbent is expected to display superhuman levels of self-control, reliability and good judgement, none of them traits – if you'll forgive me – conventionally associated with the male organ. Americans like their presidents to have balls, but a penis is different. A penis can only get in the way of the national interest.

There is, on one hand, nothing new about the sex scandals which have dogged President Clinton's political career. A group of tablets dating from the fifteenth or fourteenth century B.C. record a series of charges against the Mayor of Nuzu in Mesopotamia. One of them deals with a claim that he had sex with a married woman named Humerelli. The writer includes not only the charge but the mayor's response: "I swear that Palteya did not bring Humerelli to the trysting house...nor did I have intercourse with her". (In the wake of the Lewinsky saga, one can't help imagining the mayor's legal advisers huddled in a corner debating the precise meaning of that elusive word "intercourse".)

But if the scandals which have engulfed Clinton's Presidency are not new in form, the manner and scope of their transmission are.

We live in a world where the boundaries between public and private lives are increasingly unstable. A world where the intensity of media coverage is fuelling a public fascination with the "real" people who lurk behind the images which saturate our screens and front pages. We are witnessing the rise of a media culture characterised by tell-all memoirs and exposés, illicit video tapes and hidden cameras – a culture in which confession has gone public and scandal has become routine. It's a culture dominated by personality, celebrity and entertainment. And it has led many commentators to announce the decline, degradation, crisis, or even extinction of meaningful public debate and civic

participation. As US cultural studies theorist Bruce Robbins notes, publicness is a quality, we are told again and again, that we once had but have now lost, and must somehow retrieve (Robbins 1993, viii).

In my paper tonight, I want to paint an alternative picture of life in a mass media age and argue that many of the criticisms of our media culture are not only nostalgic and wrongheaded, but that they hinder the development of fresh and relevant frameworks on which to base ethical and political inquiries into the relationship between the contemporary media and the public sphere.

The shock of the news

In a letter to a friend, the Roman philosopher and ethicist Cicero moans that he's being plagued by trivia. He complains of: "...reports of 'the gladiatorial pairs', 'the adjournment of trials', [a] 'burglary'....and such tittle-tattle as nobody would have the impertinence to repeat to me when I am at Rome". As American media historian, Mitchell Stephens notes, Cicero sounds remarkably "like those who protest that there is too much 'junk' on television" (Stephens 1997, p. 53-55).

The emergence of newsheets, pamphlets, political manifestos and journals dates back to Gutenberg's 15th century letter press. But it wasn't until the 17th century, that products resembling modern commercial newspapers were published weekly in a range European cities. From the outset, early newspapers contained many of the features which are lamented in contemporary news sources. The early English provincial press was full of stories about sexual indiscretion, violence and monstrous occurrences. In his history of the Australian press, Henry Mayer notes that 17th century English papers contained gory descriptions of war and religious persecutions, reports of sex crimes, horror stories about sea monsters and at least one report of a cow giving birth to human twins. (Move over *National Enquirer*) (Mayer 1968). And from the outset of mass circulation, Australian newspapers also revelled in the sensational. There were detailed accounts of floggings, reports of criminal trials and executions and lascivious stories about divorce proceedings and sex scandals. A number of papers even delighted in reproducing "filthy" passages from the Bible.

The fact that a good portion of the press has always been partial to tales of crime, sex, scandal and sea monsters (the ancient equivalent of UFO sightings) suggests it's historically myopic to view the modern mass media as a fall from intellectual and moral grace. But it's equally true that we're living at a time of rapid and significant changes in our information culture—changes which are both grounded in, and part of, technological innovations, new political and social movements, and the emergence of a global economy.

The contemporary media is at once more homogenous and more heterogenous than it's ever been. International news organisations like CNN dominate coverage of world events and globalise the image of Western politicians and celebrities. And yet the late 20th century has equally seen a resurgence of local news programs and stories about "ordinary" people, along with a diversification of the kinds of issues and voices which populate the public realm. The media constitutes a realm riven with contradictions – a zone in which ponderous pointy-headed experts compete with proud to be loud talk show guests. A realm in which feminism is used to sell Wonderbras – and lead stories on Wonderbras sell feminism via the nightly news.

The intense global competition to attract viewers and readers which defines 1990s media has led to a pervasive blurring of the boundaries between information and entertainment in Western media. Since the mid-80s, news divisions in both the US and Australia have delved deeper and deeper into the props department of their entertainment divisions. Over the past decade, we've seen newspapers begin to look increasingly like magazines with colour photographs, breakout boxes, graphics, consumer supplements, celebrity columnists and human interest stories. Television news programs are presented by increasingly friendly and approachable people who bring us increasingly friendly and approachable stories: consumer oriented news-we-can-use, celebrity gossip, swimming rabbits, and spectacular weather in Podunk, Nowhere. They're stories which sell the bulletin and leaven depressing reports about war in the Balkans and growing hospital waiting lists. Dramatic reenactments, fast-paced editing, animated graphics, sound effects, musical accompaniments, hidden cameras and stories manufactured by gimmicks (like sending reporters out in a fat suit or pasting a \$50 bill to the pavement) have all become part of the vocabulary of current affairs.

And technology has not only altered the scope and form of mainstream news and current affairs media – it's opened up new avenues for news production. Today anyone with a handcam and a webpage can potentially produce a news story with global potential – which is precisely how the Lewinsky/Clinton scandal broke. A 30 year old operating a gossipy website out of his LA lounge room, Matt Drudge, reported rumours that *Newsweek* had investigated the Lewinsky affair and declined to run with it. Once the story hit the net, the *LA Times* and the *Washington Post* followed it up, and within days it was making international headlines.

More striking, though, than the formal shifts in information media, has been the trend to cover stories and issues once relegated to the lower echelons of the tabloid press. As the global attention paid to scandals like the Lewinsky saga demonstrate, the distinctions between the issues which focus the attention of the tabloid and quality media are

fast disappearing. Matters which would have once been regarded as purely private, moral issues by the quality press and television media are now routinely covered in the upmarket media. The Lewinsky scandal may have broken in a marginal and gossipy media outlet but it was soon being raked over in *Time* magazine and in endless serious news programs.

This proliferation of "tabloid" style stories in the upmarket media directs us to a fundamental shift in the shape of our public sphere – and, ultimately, of Western democracy itself. In his study of journalism and popular culture, *Popular Reality*, John Hartley sketches something he calls "the postmodern public sphere". He describes it as a place defined by :

...new modes of knowledge which bespeak new ways of forming the public, and of communicating and sustaining what it means to be the public, in communities whose major public functions...are increasingly functions of the popular media, and whose members are political animals not in the urban forum but on the suburban couch...citizens of the media (Hartley 1996, 155)

The mass media in this light can be seen as a kind of virtual public sphere – as an invisible web of information and images which filters and facilitates almost all public communication. It's a model which is very different to the Athenian blueprint for the public sphere in which Western democracies and legal and political institutions have their roots. In Greece or Rome the public sphere was a physical place where citizens gathered to debate, dispute, witness adjudication and vote. For much of Western democracy the public sphere has been symbolically contained in our courts and parliaments.

Analysing today's public sphere, however, John Hartley finds a reversal of many of the hierarchies our intellectual and political traditions have held dear. In the postmodern world, he argues, the image has triumphed over the word and the vox pop has triumphed over the opinion of experts. The public sphere is an image-saturated space which is both "intensely personal (inside peoples' homes and heads)" and "extensively abstract (pervading the planet)" (Hartley 1996, 157).

At the centre of Hartley's book is a claim that the popular media have created their own version of the voting public in the form of audiences and that it's here, in the interaction between media products and their audiences that political, social, cultural and personal meaning is now substantially produced.

It's a provocative thesis, and one which cuts directly across the grain of the way we're often told popular culture works. The popular media is frequently dismissed for being trivial, entertainment-oriented, star-driven and focused on personal or private issues rather than matters of public import. Yet, Hartley argues that it's in this messy, populist arena, rather than in the rarified atmosphere of our parliaments or uni-

versities, that the greater part of culture and politics now actually resides.

But does it also follow that we've become a less informed or politically active community as a result?

In fact, the rapid growth of the electronic mass media since the late 1960s, has coincided with the politicisation of many issues which were once regarded as purely personal matters through the rise of feminism, environmentalism, gay and lesbian rights, indigenous rights and a host of allied movements. Popular protests and the formation of community groups to lobby government have also multiplied in the same period. While adherents of grassroots leftist political movements have often been hostile to the media's failure to adequately represent their claims, it's also true that these new political movements didn't spring fully formed from traditional institutions like the academy or established political parties – they were disseminated and, in many ways, shaped by the mass media.

Researching newspapers and news and current affairs archival footage for my first book *Bad Girls* and later for my PhD thesis, I was astounded to discover how narrow the range of voices and interest groups represented in the Australian and American media was only three decades ago. Contrary to the "golden age" of news mythology often perpetuated by reporters of the period, news and current affairs of the late 1960s was highly paternalistic, moralistic and coma-inducing. Male experts were invariably wheeled in to comment on social trends and they frequently spoke at great length on behalf of exotic species like women, children, "New Australians" and indigenous people.

In contrast today, the popular media is awash with formerly voiceless interest groups and individuals. But it's not just the issues and categories of people who get to speak that's changed – it's the kinds of speech which are new. The rational educated expert discourse we associate with the quality media – and by association with communicative competence in the public sphere – is being drowned out by a cacophony of emotion, "common sense" opinion making and polemic. The kinds of knowledge and dialogues produced in and by the popular media are fundamentally different to those we've traditionally seen as central to Western culture and democracy. The popular media doesn't encourage sustained argument, reasoned objective dialogue, logical progressions or respect for expertise. It's a rapidly changing montage of images and ideas in which the attractive, lively, charismatic or freakish individual is given far more space than measured and verbose experts.

How then are we to respond to and analyse this virtual Tower of Babel without either naively endorsing a utopian view of consumerism (a gesture which ignores the complex political and economic moorings of media production) or alternatively declining into a grumpy, reactive and elitist lament for the mythical good old days? It's a question which

requires a more detailed analysis of the liberal public sphere models which have grounded twentieth century understandings of the media's role.

Mediating the public sphere

One of the first tasks in reframing an ethics of the contemporary mediated public sphere is to acknowledge that the much lamented "public" which frames so many popular and scholarly critiques of the media is itself racked by competing and often incommensurate models. For many feminists the public sphere has always been primarily an economic sphere (the economy of wage earners). For economist-liberals it's the state. The public, as we've seen in the recent debates over republicanism, is also frequently deployed in abstract symbolic terms – as emblematic of community (Moirá Rayner's people power) or of citizenship (Malcolm Turnbull's faith in representative democracy). As Bruce Robbins notes, however, appeals to the public or the public interest (as it's often invoked in debates about the media), "creates an illusion of unit among people who rightly belong on opposite sides" (Robbins 1993, xiii). To some the call to restore or extend the territory of the public will sound as an appeal for stronger more decisive state power and institutions (including media institutions). To others it is a cry for more popular input and even a plea to strengthen market forces at the expense of the state.

Robbins' observations suggest that we need to be extremely wary of assuming that certain media forces or institutions automatically lie on one or another side of the public/private divide, or that they automatically act on behalf of the public interest. Speaking at the Adelaide Festival of Ideas in 1999, media theorist McKenzie Wark made a provocative case for the the abolition of the ABC, arguing that the majority of ABC television and radio programming is skewed heavily towards an older middle class demographic and is therefore in no sense democratically representative of community needs and interests.

When we look at the media, then, we need to ask whose interests are being represented in every case, rather than assuming, as many popular and some scholarly media critics have done, that there's an untouchable "quality" zone in which politics and social issues are properly represented, and a debased tabloid zone which manipulates the under-educated and distracts them with spectacle.

Publicness, then, is a quality which potentially belongs to the market as much as to the state or to the public sphere institutions which represent the public (such as our courts and parliament). The public is not a place but a shifting zone – in the same way that the lines between the public and the private are contested, rather than universal dividers.

Far too much debate about the mass media is driven by a complacent collapsing of commercialism, consumerism and publicity, and by an opposition between these forces and a presumed sphere of public interest. Indeed, many debates about the media are haunted by a mythical public zone: a zone of transparent and rational communication between equals onto which the media has supposedly settled, vampire-like, to feed, turning politics into spectacle, culture into commerce, and active citizens into passive consumers.

In place of this monstrous model of media production and consumption, I want to suggest that the media, like the public, which it traces in a virtual sense, is a complex and contradictory arena which can only be understood in micropolitical and relational terms – that complicated and shifting relations between the public and private inflect the mediasphere and that it's meaningless to speak of the power of media producers or consumers in monolithic or predictive terms.

Like the imaginary public it maps, the media is an arena across which social, cultural and political identities are continually posited, negotiated and dissolved. Habermas famously argued that the world fashioned by the mass media is a public sphere in appearance only. But it's a split between appearances and political or social reality which presupposes that political or social "identities" are something which pre-exist their cultural visibility – a model which opposes genuine face to face communication to inauthentic representations. In contrast, I'd argue that the possibility of forming or claiming particular political or public identities has always been tied to the possibilities of making those identities visible, to the possibilities for performing those identities publicly – and that this is precisely what we mean when we talk about *representative* democracy. The media in this sense might be understood as an extension of the theatre of the public sphere – as an arena for making the diversity of the public visible to itself, of publicising alternative publics. To oppose the public sphere to the mass media is not only to ignore the fundamental interconnectedness of these realms, it's to ignore the critical role the media plays in mobilising and representing collective political and social identities.

The question still remains, however, of how such recastings of the public account for a fundamental tenet of democracy itself: the possibility of communal dialogue – and of how this can be conceived in relation to the highly fragmented discourses which constitute the mediasphere. To put it another way, the question remains of how we're to conceive of public communication in a postliberal era – of whether it's possible to think about conversation in a collective sense at all anymore.

These are clearly issues Australians are currently confronting (or avoiding) in the shape of questions about whether we become a republic and of how to frame a preamble for the constitution. the Prime

Minister's latest effort on the latter score is a classic example of just how inhospitable the terrain of the public good or the commonwealth has become.

Beginning with the delightfully hopeless phrase "With hope in God", Howard's preamble begins by invoking the Australian people in the singular and then dividing them into a bizarre laundry list of groups who have little in common: immigrants, diggers, indigenous Australians, environmentalists and high achievers. This motley crew, who probably couldn't even sit down together over a beer without starting a brawl, are then brought together in the final paragraph in the name of the "national spirit" which "binds us together in both adversity and success".

Howard's transparent attempt to domesticate pluralism is a shining example of what political theorist William Connolly has identified as a central problem at the heart of the liberal imagination. For Connolly, the liberal commitment to the twin ideals of freedom and equality largely defines the tolerance of plurality in contemporary culture and the limit of such tolerance and, therefore, of such plurality. He establishes this claim through a lengthy interrogation of the history of liberal nationalism in which he critiques the universal notion of identity which founds and guarantees such nationalism and which I don't have time to outline here. But in material terms, Connolly's alternative vision of public culture envisages a community made up of multiple interest groups with varying and perhaps incommensurate political or moral agendas. Because these groups are irreducibly multiple there is no definitive starting point or original source from which connections between them flow. There is, in other words, no authoritative centre at the heart of such a conception of public culture. What Connolly's account of the contemporary public sphere alerts us to are the hazards of designing and applying a set of abstract standards which claim to discern or guarantee meaningful and/or ethical modes of communication in advance.

To argue that the contemporary public is actually composed of a diverse array of intersecting publics isn't to argue that all claims are equal or that everyone has equal access to having their say. My point, rather, is that while dominant groups or ideologies may continue to shape much of our media, there are always spaces which resist this. And those spaces don't always open up where educated liberals expect to find them.

Another common concern about the fragmenting of the public sphere into diverse interests and audiences is that public conversation will become impossible because everyone will be speaking a different language. In an essay on the contemporary public sphere, Nancy Fraser rejects the idea that the growth of diverse interest groups over the past few decades has necessarily weakened democracy. She points out that

most interest groups (which she dubs "counterpublics") have one thing in common: they want to disseminate their ideas and aims widely. Counterpublics, she says, have a dual character. "On one hand, they function as spaces of withdrawal and regroupment; on the other hand, they also function as bases and training grounds for agitational activities directed toward wider publics" (Fraser 1990, p.15).

The connection between the formation of *publics* and *publicity* that Fraser makes here is a crucial one. In the contemporary world, the mainstream mass media has effectively become a global village hall, a place where diverse public interests collide. And while it's true that the Western media is itself a hydra-headed beast, it's equally the case that there are particular events, personalities and stories which cut across its diverse formats and consumers and forge national and even global audiences.

What the critics of spectacular media events frequently miss is that stories about presidents caught with their trousers down and princesses who marry the wrong prince aren't simply an opportunity for the braindead masses to get down and wallow in the pond scum of life. Sex, violence, moral misdemeanours and social conflict certainly sell well—but not every story containing these elements grips the public imagination with the same tenacity.

The stories and spectacles which arrest us, often do so for complex, symbolic reasons. The O.J. Simpson trial can be easily written off as an shameful media circus centred on two tawdry killings. Yet, the saturated media coverage of the O.J. Simpson trial equally brought the debate on domestic violence to the fore of public consciousness in the US, told a multilayered story about contemporary race relations in the US, and operated as a focus for debates about the jury system and the media. Like all public debates, it was characterised by dissenting voices. It's true that some of the media coverage of the trial was underwritten by racist and/or sexist stereotypes, but it was also a focal point for debating these stereotypes.

Contemporary popular culture may seem irrational, contradictory, prurient and spectacular when it's compared with the sober, rational and discursive public sphere ideal. But it has a multitude of virtues which weren't in the original Athenian blueprint for democracy. In the late 20th century, Western public spheres have become a forum for voices and interests which were largely excluded from public debate even 30 years ago.

The mass media is a kind of virtual map of the diversity which defines contemporary democracies. From right-wing talkback radio, through highbrow current affairs shows which appeal to urban elites, through daytime talkshows which deal with the disasters of everyday life, to the most amateur website, the media is a vast collage of diverse viewpoints, audiences and forms of speech. It's a sphere saturated with

politics, but not simply the politics of dominant groups. Politics bubbles up from below as much as it trickles down from above. It's there in the heated exchanges of talkback callers with their host and with each other, it's there in impromptu accolades or denunciations of the studio audience on daytime talk TV, it's there in the disgust viewers have for televised political stunts, it's there in workplace debates about the latest media scandal and it's there in the millions of newsgroups which make up the internet.

The media is the foundation of our public conversation today. And, like democracy itself, it can sometimes seem like a Tower of Babel. But it also offers moments of unexpected convergence, media events which draw us as a local, national or global community and give us a forum for thinking about our differences and our claims to identity. Negotiating these differences doesn't require us to reach agreement, but it does entail a recognition that there are always other ways of speaking and looking around.

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Photo - David Karonidis

Natasha Stott Despoja

On Friday 2 July 1999, Senator Natasha Stott Despoja launched Anne Henderson's *Getting Even: Women MPs on Life, Power and Politics* (HarperCollins). At a time when never before have so many women been MPs at State or Federal level, the reflections of female politicians suggest that the voices of women in our houses of parliament have formed into a significant mass that is gradually being accepted. In launching the book, Senator Stott Despoja reflected on many of the struggles and accomplishments for women MPs over two decades.

GETTING EVEN –

BOOK LAUNCH

Natasha Stott Despoja

I am very pleased to have been asked to launch Anne Henderson's *Getting Even*. In fact, I can think of a few male MPs at whom this book should be launched.

This book is the result of more than a year of interviews with 120 women in Australia and New Zealand. Anne has managed to capture the experiences of female MPs and party organisers in their own words, at times disarmingly frank, always insightful.

This book serves as a potted "herstory" of women's experiences in contemporary politics on both sides of the Tasman. But it is also, as I suspect Anne intended (judging by her preface), a "how to" guide for those women aspiring to a political career.

I found I was fascinated by the experiences of other women; I learnt a few things about women that I work with, was occasionally surprised at other women's interpretations of events sometimes and I often groaned because some of the difficulties experienced by women in politics 20, 30 years ago are still relevant.

I am proud to come from a state (South Australia) that led the world, granting women the right to vote and stand for parliament in 1894. Yet, it took 65 years for a woman to get elected and some of those reasons for the barriers to women's progress in politics are still around today. (Anne informs us that only last year the South Australian House of Assembly side got its first female loo).

In Australia, women (with the exception of Aboriginal women in some States) have been allowed to vote and sit in federal parliament since 1902. However, it took more than 40 years before a woman – Dame Edith Lyons – entered federal parliament and it was not until the 1980s that the numbers were more than minimal. In New Zealand while the vote came in 1893 it was not until 1919 they got the right to stand for parliament.

We now have a record number of female MPs in the federal arena, with 55 female members of the federal parliament out of 226; a female prime minister in New Zealand; a female opposition leader in

our most populous state, NSW; no female premiers but a female chief minister. Women are woefully under-represented in cabinets and shadow cabinets. So, we still have a long way to go before women share executive power.

For the past century, each time a prime minister came to office there has been theoretically, a one in two chance that "he" would be female. In practice, there have been 30 male prime ministers – in a row – the odds of which are roughly one in 200 million. Politics is either not very scientific or not a very good bet for women.

It is easy to count numbers of women – very easy when the numbers are low – but it is more complex and valuable to do more in-depth analysis.

Anne reminds us that politics is not simply a numbers game. That we need to decentre and demystify politics and political power and that it is not just about what happens in the Houses of Parliament, but also, what happens to women before they get there – or often, don't get there.

Getting Even is peppered with personal stories as well as analysis.

Anne quotes me saying that Parliament House is designed so that some men don't miss their mothers: well, it has a dry cleaners, hairdresser and a gym but no childcare facilities.

Getting Even shows what this *really* means for women's lives. From Amanda Vanstone's home truths about laundry, to Jacinta Collins' predicament of being caught running to a division with a baby in tow or Lynne Kosky's kids getting chicken pox at the beginning of the parliamentary year or the debate about sitting hours (and the differing views of women on that issue. Compare Mary Easson's views with those of Kelly Hoare).

This book highlights the need for change in our political environment if we are to encourage more women to enter politics (including pre-selection processes, sitting hours, childcare, electoral changes and even the nature of the debate).

With this book, last week came a timely reminder of the significance of language in political debate: Senator Vicki Bourne outlines to Anne how she had the word "whore" (used to describe the Democrats) ruled out of order after a lengthy process. Yet, minutes after reading this passage, a male Senator called some members of my Party – a majority female Party – "whores" during the GST debate. Only Senator Dee Margetts in the chamber called for the word to be withdrawn as the chair struggled to get the *honourable* member to withdraw.

This book also reminds us that we need attitudinal change. Maybe one day we will laugh at tales such as those from Carolyn Pickles about organising a campaign to get tampons in the female toilets in the SA Parliament House, or Gabrielle Harrison being stopped from getting into an event she was about to open because the attendant

refused to believe she was the Minister for Sport; or Judi Moylan being asked to hang up the men's jackets in a plane on her way to Canberra; or my plane tickets continually given to my mother because I looked too young to be a senator.

But when these things are still happening and sometimes on a regular basis, it does wear you down, demeans you, like teasing as it sometimes is intended to do.

Women in this book share their secrets and strategies and frustrations about being a woman in political life. Some like Liz Kirkby are wary of "whinging", others like Chris McDiven help train women. But most believe things will change when there are more women.

The issue of mass *is* a critical question and Anne wonders whether or not more or equal numbers of women in decision-making bodies will make a difference to policy. But our greatest challenge is not simply getting more women into leadership positions, it is also getting *more* women from diverse backgrounds into those positions.

Better public policy is not just about more women in parliament; it is not just about creating an environment less cold to women; and it is not just about battling ridiculous and demeaning stereotypes about appearance. But, goodness, doesn't it help?

When Hillary Rodham Clinton visited Australia, she denounced the continual "hair and costume comments" about women in public life. This book shows that we could fill a book with those stories alone!

Kosky says, "I've had a few comments about my legs. Until I got to this place I was completely unaware of my legs". Pam Allen describes the almost salacious reaction to Gabrielle Harrison's knee length boots.

I never knew women in politics would become so defined by their footwear but even I was taken aback in a classic case of pitting one woman against another when a male columnist couldn't resist contrasting my Doc Martens with Kirsten's Livermore's RM Williams!

Getting Even makes clear: there is no one mould for female politicians. Be it our footwear or political styles, it is precisely our diversity and difference that deserves to be reflected and represented. Senator Sue Mackay is right when she berates her male colleagues for chasing a type of politician, arguing female candidates are "all individuals in their own right".

Throughout this text, however, there are common experiences and discriminations:

I recall my first women MPs lunch (organised by Kathy Sullivan and Margaret Reynolds who should be recognised for their efforts to develop networks and support for women). My hopes that my first women's lunch would be some show of feminist solidarity were dashed when in response to Senator Rosemary Crowley's welcome of "Hello sisters" one MP nearly choked her bread roll, exclaiming "I am *not*

your sister!" Nevertheless, as we ate and talked it was evident that we had much in common although we may face what Anne describes as "divided loyalties".

In *Getting Even*, nearly every woman describes being quizzed about their marital status, the care of their kids or what they would do when they wanted kids (be it was Susan Ryan, Judith Troeth, or Judi Moylan). When Lynne Kosky was asked what she'd do with the kids she said she felt like replying, "I put them in a cupboard leave them there all day and they're still there when I get home." And there are tips for coping too including Trish Worth's discovery of what you can do on a phone!

There are common stories about women having to fight for time in committees (ask Lyn Allison), for the better questions (ask Belinda Neal), for the serious issues and portfolios as well as the need for networks and training.

We know the **personal is political** but women in his book make clear that the personal is more likely to end up in the news if you're a female MP. The role of the media in deterring women from politics and in shaping our view of women in politics cannot be underestimated.

Anne touches on everything from the familiar political pattern of women having to clean up men's political stuff ups as in the case of Carmen Lawrence's and Joan Kirner's premierships, to the madonna/whore dichotomy and the media's tendency to profile one woman at a time.

She observes the frisson that accompanies the possibility of a cat fight, be it one woman versus another like the stoushes between Pam Allen and Kerry Chikarovski or Amanda Vanstone and myself; or en masse, such as the *Sixty Minutes* debacle featuring nearly all the female members of parliament. In fact, it worries me that last week when I asked a question to Senator Vanstone that did not result in an argument between us, I was accused by Labor women of asking a Dorothy Dixier, such is the expectation that we women will fight. Men are treated differently by the media: male colleagues are praised for their media savvy or media hunger, women are hounded for self-promotion and ambition.

As Cheryl Kernot says: "Ambition is regarded as a terrible thing in a woman". (I have stopped counting how many times in news stories I am referred to as the "ambitious" Deputy.) I don't hear Peter Costello referred to constantly as the ambitious treasurer or Simon Crean as the ambitious deputy leader in general news stories.

Images of Jeff Kennett on the front cover of a glamour magazine or parading down a catwalk; Tony Abbott posing in board shorts and little else on the cover of his job network magazine or Richard Alston pictured doing weights in the gym are not greeted with the same media

frenzy as a photo of Cheryl Kernot on the *Women's Weekly* or Kate Lundy posing in aerobics gear.

But we need to ask what's wrong with such diverse coverage of men and women, if that's how women present themselves?

As this book shows, we do lead complex existences that can encompass political concepts like being able to legislate, make speeches in parliament, take part in committees and all the other things that political life includes as well as perhaps having families, perhaps being interested in appearance, having a social life, etc.

I congratulate Anne on recognising and celebrating women's different political styles. She shows that there is room for Dana Vale's which she describes as "enmeshing politics with people's daily lives" and making politics transparent; there's room for Jackie Kelly's down to earth frankness, Nicola Roxon's assertiveness and Joan Kirner's humour that allows her to send supportive letters to female MPs with her pictured singing "I love rock'n'roll".

I think you're right Anne, that were you to revisit that girls school today and ask the girls how to get into parliament you would get an array of responses and – whether that information has come from books or newspapers, programs as diverse as *GNW* or *Lateline*, magazines from *The Bulletin* to *Cleo*, I hope that all of us would celebrate the idea of making politics that little bit more accessible.

It is part of getting the message to young people – and young women in particular – that they can do it and their voices are valid. Deborah Morris, a former New Zealand minister (at 26) says that "having been a young minister, it's going to be easier for more young women to get there and do it".

Australia has seen an exciting influx of new and younger female MPs, especially at the last election. I hope that their experiences will be easier than mine in the same way women before me helped pave the way.

Anne says of this new generation: "These are the bright young women who will challenge for future front bench posts. It will be hard to ignore them." I hope she is right.

I congratulate Anne on asking the right questions and giving us the undiluted answers. Just as you promise in the preface, "Women MPs tell it like it is".

There is a political expression in the United States: "Don't get mad, don't get even, get ahead". This book shows women are doing all three. I am proud to declare this book launched.

Anne Henderson – response

Thanks to all of you for coming. And especially to Senator Natasha Stott Despoja. When I was in Canberra briefly last week I stopped her at a table where she was having a break over coffee and checked that

she was still on track to come. At the time, as you'll remember, the Democrats were rather up to their eyeballs in discussion over the GST and I was worried something might happen to upset my plans for today.

No worry, Natasha assured me. I'll be there. Even if we have to stop parliament to get me there.

So now we know. As a young Stott-Despoja fan at The Sydney Institute put to me yesterday, the hidden agenda for all that media reportage in the last few weeks, over the Democrats and how Senator Natasha Stott Despoja would vote against the GST, was really just the senator's helpful way of getting maximum press coverage to ensure a great turnout at this launch. Thank you again Natasha.

People keep expressing surprise that I've written another book. I guess I have to do something while Gerard does all that media watching.

But in fact this book came about for two reasons. The first was that Angelo Loukakis from HarperCollins, in a quiet moment, asked me what I was going to write next. That was all I needed to think of something. The second reason was that a host of British Labour women MPs were elected to Whitehall in May 1997 and British journalist Linda McDougall put together *Westminster Women* which I had picked up in London just before Angelo popped the question.

McDougall's book is a valuable contribution to the history of how women are increasingly entering our parliaments. And it's a great read. The reason I felt the time had come to do something similar Down Under, however, was that in McDougall's book the vast majority of the women MPs are Labour. In Britain there is not yet a concerted effort in the Conservative Party to encourage women to stand for preselection or to make it likely that they will compete with the men on more equal terms. And this is quite a problem for British politics and for the Conservative Party.

On the other hand, in Australasia – Australia and New Zealand – women are entering parliament as representatives for all parties. For Liberal, Labor and Democrats in Australia in increasingly significant numbers. In the National Party, women MPs, federally, doubled at the 1998 election – from one to two. In New Zealand women MPs make up 30 per cent of the parliament and come from all sides of the house.

So, in March 1998, I set out to interview as many State and federal Australian women MPs as I could physically contact, and a good proportion of New Zealand women MPs. The travel involved was quite substantial, and catching a group of MPs at a single location in limited time is not easy. They have such busy schedules.

Then my publisher overseeing the book, Robin Freeman, gave me November as my deadline. It needs to be more immediate, she said. Thanks Robin. But Robin was right. Politics is a fast moving canvass.

MPs come and go with every election. I managed a little extra time over Christmas from Robin and *Getting Even* was born.

This sort of writing is a bit like quilting. You gather the materials, you cut them up taking the gems that strike you as classics or just most colourful and enriching, and you sew them all together, adding extra texture here and there and your own perspective on what the picture might be.

All very female when you think of it.

But there is some sense in it. The story of women entering parliament is the story of newcomers entering something of an alien world – like a frontier. There are few maps for the journey. Gathering the collective experiences of women MPs is one way of making a map.

And I found an amazingly diverse collection.

The academically well heeled, sharp shooters like Natasha Stott-Despoja, Helen Coonan or Helen Clark leading Labour in New Zealand. Mothers of ten like Kay Elson, Liberal Member for Forde.

A crash repair operator like newly elected National Kay Hull – who also has a grown family. Someone who not only turned crash repairs into a counselling service but who was also active in local politics.

Even a minister of religion – Ann Batten from New Zealand First. I found self made women, women who had little idea of political organisations when they joined a party, women who'd been mayors, state ministers, women who breastfed their babies as they doorknocked. Perhaps the most amazing of the women with child rearing stories were NSW Liberal Peter Seaton and Senator Jacinta Collins who were in advanced pregnancies at the time of their preselections and took their seats with newborn infants.

There's young Senator Kate Lundy who left school early and went scraping asbestos off the National Gallery because the pay was good. She's now one of the best read and most effective of the young Labor MPs. (And I could go on but you ought to read the book, so I won't).

So the tapestry is a dazzling array of talent.

For all that, the journey of women MPs is still a tough one. I came to think of them as a little like immigrants, newcomers to that Anglo gentlemen's club – the pathways trodden well and truly by men over the centuries. Much stated and unstated prejudice to overcome.

What's more, women MPs are also a bit like those early Labour MPs in the late 19th Century entering a club with great expectations thrust on them, and likely to disappoint one constituency or another. Are they there to represent the interests of a forgotten group or the wider interests of their constituents?

Of course the answer is both, but that only makes the task ahead all the more difficult.

The story of women MPs is of course a work in progress. But right now it's a good time for younger women to get on board if they want to. And the first step perhaps lies with the role models – those women MPs who have broken down many of the barriers in the last decade or so.

There's still, however, a way to go knocking over the prejudice beyond parliamentary walls. Women MPs are still subjected to unreasonable media intrusions into their personal lives. Just yesterday Victorian minister Louise Asher was fending off snide remarks about her personal life – that she was living with (not married to) her partner – etc. So what! said her leader Jeff Kennett and so he should. But what sort of media or audience tolerates such double standards? When did anyone last question a male MP like this?

So I'd like to thank my interviewees most sincerely. They offer a frank, no nonsense guide to the process of politics – in a way no group of male MPs have.

I'd also like to thank my publisher, Robin Freeman, for her patience throughout, Carolyn Leslie who was in-house editor, Sarah Gentle for her energy in arranging so much media interest and Angelo Loukakis for asking me in the first place.

To Lalita Mathias, Astrid Campbell and Linda Tellis – thanks for their endless typing of manuscripts.

And for today, Senator Natasha Stott-Despoja – Australia's No 1, political crowd magnet – what can I say? I wish you every success as an MP – long may you stay there and thanks so much for launching *Getting Even*.

To my family, thanks for everything – advice, criticism and hugs. To Gerard especially, as usual – his cuttings collection is one of my secret weapons. I get access to his files and they're invaluable.

And last of all one small thankyou to Isabelle Reinecke who gave me one of the finest images of a young woman yet. (See Chapter 3) Young Isabelle may you achieve your dreams – as I hope will all women who read *Getting Even*.



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Beryl Beaurepaire



Michael McKernan

Photo - David Karonidis

Michael McKernan is an historian and author of several books including *The Australian People and the Great War*. Most recently he has written the biography of the well loved Beryl Beaurepaire, feminist and one of the greats of the Liberal Party organisation over decades. Appearing together, Michael McKernan and Dame Beryl Beaurepaire addressed The Sydney Institute on Wednesday 7 July 1999.

BERYL BEAUREPAIRE

- BEING WRITTEN ABOUT

Beryl Beaurepaire

I will be quite honest with you: I am not enjoying the experience of seeing my life story launched before an unsuspecting Australian public. In Melbourne yesterday there was quite a crush at the launch and while it is always good to catch up with old friends, I had the persistent image of my 21 year old self thrust at me from all sides. I had asked the publisher, Laurie Muller, for a plain cover but he told me that he wanted to sell books. Without being disrespectful to Laurie Muller, I perceived in that remark a divergence in our interests. Strange as it may sound, I do not seek publicity, although I will admit that I have readily used it in my causes and concerns.

While I would not emulate the language or the ferocity of expression, I do now have a quiet regard for Germaine Greer's response to Christine Wallace's "unauthorised" biography. But I have no such excuse. I agreed to and co-operated with the writing of this book. Why, then, did I agree to being written about?

In part it was to honour an undertaking I had given to my husband Ian before he died. He had asked me to see to it that a biography was written because he believed that not enough was known of the way women have contributed to the development and enrichment of Australian life. It was my duty, he told me, having watched me and participated with me in work for so many years, to allow others to see what that involved. Perhaps I may have talked him out of his notion, but I did not and then I felt a sense of obligation to do something. So I asked a historian whom I trusted to look at the idea of a biography. A historian, I reasoned, would want to write history.

When I discussed the project with Laurie Muller he asked me to say what biographies of Australian women I admired. I do read biographies; it has been one of my interests. And yet I could not point to many women's biographies that recounted real influence on political or social life. Too often I have seen biographies that deal with women on the periphery or with women as part of something else.

In the area of the arts it is different and there are substantial, informative, and encouraging accounts of lives of achievement and importance. I am thinking here of the biographies of some of our great singers and writers but here we are talking of areas in which women's involvement has been "approved". It was work that was "allowed" to women and while these achievers have had to struggle mightily to excel, nevertheless they were not challenging men on their own turf. The same may be true of the lives of some religious women leaders in Australia, of which there are some substantial biographies. But this is not an area in which I have personally read widely.

Perhaps from religious women it is but a small step to women in schools and there are a number of biographies of such women, but not enough to crowd a shelf. My own great mentor, one of the greatest pieces of good fortune in my life, my headmistress and later good friend, *Margaret Cunningham of Fintona*, was the subject of a biography. Indeed I played a part in commissioning and supporting the writing of the book, published in 1982. It would be fair to say that I have always esteemed biography. *Margaret Cunningham of Fintona* was written by a former journalist, Joan Gillison, who has only recently died, and it was published by the school. It is a creditable book but frankly I had to wonder if the effort and expense were thoroughly justified. The book was very much "in-house". It was eagerly read by the women whose lives Miss Cunningham touched in her long ownership and headship of Fintona but I could not claim that the book entered the mainstream of Australian writing and publishing.

To be a major influence in the story of Australian social and educational history I now realise that the book needed commercial publishing and support. The question is: would we have gained it or will such "institutional" works be forever marginalised by the publishers who make the decisions? I suspect that *Margaret Cunningham of Fintona* is held by very few public or university libraries where it might have an enduring impact on those who wanted to know about teaching and schooling in the middle years of this century in Australia. If a book about me was to be written, I thought, best that it be published commercially or we will all have been wasting a lot of time. Indeed if the book had not been contracted to a reputable publisher the project would not have gone ahead.

So I needed a historian and a good publisher. If the project was to be done it should be done professionally; but that still does not explain why the project should be done.

I was Chairman of the Council of the Australian War Memorial for ten years from 1985 to 1994 - one of the best jobs I have ever had and from that privileged position I came to learn a lot about the writing, publishing and presentation of history. The War Memorial is, after all, still our greatest history museum. When I was appointed to the

Council by Malcolm Fraser in 1982, I said that one of my interests would be to see that the story of women in war was adequately and fully told. I did not think that it was and yet I had served as a WAAAF and knew what we women had achieved.

I learned that I would have to fight to win a "Women in War" gallery but I also learned that the records dealing with the women's services and women's war work generally were inadequate. I discovered that so much of our history had been lost by lack of care, inattention and lack of interest. The records of Australia at war, so voluminous in every other way, simply fell away when it came to the women's contribution.

So it was with other aspects of women's history. In 1975 I fought hard and at last won the battle to have a women's policy included in our Liberal Party federal election manifesto. I recognised that the Labor Party had stolen a march on us and that women voters, once so crucial to the health of the Liberal Party, were being lost to Labor. The policy that Malcolm Fraser released during that hectic campaign pledged that there would be a national consultative body for women, run by women. It was a major breakthrough, even if the implementation of the policy took longer than I might have expected. Nevertheless the National Women's Advisory Council came into existence in 1978. I was its first convenor. We had a marvellous Council, a great deal of work in front of us, and a government that we could convince to take us seriously. We produced a wide range of reports and recommendations; we had an extraordinary correspondence with women across the nation; we commissioned major studies and investigations that accumulated a very wide range of materials; and our meetings themselves were lively affairs whose minutes did give a picture of women and their concerns.

The records of all this work appear to have been lost by government. I used to complain about our lowly status within the bureaucracy, best exemplified, I would say, by our miserable pay. Just sitting fees at the lowest end of the scale. To make the point I said that we were on a par with the Pig Board. And we were. But I suspect the Pig Board records still exist in government or the National Archives while the NWAC records seem to have been lost.

That angers me, but it does not surprise me. Wherever I look to find the story of women in Australia I find an incomplete, partial account because the records are so haphazard and incomplete. And if the War Memorial taught me nothing else, it taught me that history comes from the creation, retention and preservation of the records. My own instinct, fortunately, has been to retain and to hoard and Michael McKernan tells me that my records for NWAC and even possibly for the Liberal Party are far more detailed and comprehensive than what he has seen elsewhere.

If there is a problem with the records of government and major institutions as they affect women, then what are we to say about the records of women's involvement in voluntary organisations and community groups? One of my major interests has been the Young Women's Christian Association, and as a woman managed organisation, its records are in good shape. But how many Australians know the story of the Y and its inspiring leaders. It is marginalised because it is not mainstream. The story of the contribution of the women of the YWCA, and of dozens of other voluntary organisations deserves to be told. And yet when I was appointed DBE in 1981 the extract of my work issued from Government House noted my long association with the YMCA.

The story of women in voluntary organisations cannot be written unless the records are gathered and retained. If governments will not give the lead through the collection of the records of a major organisation like the National Women's Advisory Council, what confidence can we have that the story of women in Australia will ever be told?

During the course of the writing of my biography I became aware of how dependent it is on the records that I have preserved and that Michael has mastered. It could not have been written, as history, without the records although at the time when I was so assiduously storing things away I had little idea about the use to which they would be put.

That the records do exist has made possible and has shaped the biography that Michael has written. As the project commenced I soon came to hope that the book might have a modelling or mentoring role; that it might serve some purpose in the way of encouraging the others. Some, no doubt, will see the book as "big noting"; you do not have to go far in Australia to be misunderstood. But I do genuinely hope that others will see it as a small step on the road to the fullest coverage of the story of women in Australia. Who I am is not important; but I will never concede that NWAC was not important, or the WAAAF, or the War Memorial under its first female, low-ranking leader, if I might put it that way.

This story has been told, to my personal embarrassment to be sure, because we were there too and we will not be written out of the story ever again.

WHERE HISTORIANS

RARELY GO - BERYL BEAUREPAIRE

Michael McKernan

There was a time in Australian history when it seemed that the academic leaders of the profession had ordained that biographical studies should dominate historical activity. Perhaps it was because the man the *Oxford Companion to Australian History* describes as "generally acknowledged to be the most eminent of Australian historians", Sir Keith Hancock, was himself keenly interested in biography and was the founder of the magnificent Australian Dictionary of Biography at the Australian National University. Biography is what we should all be doing, the followers of Keith Hancock apparently decided.

And so historians flocked to biographical studies. John La Nauze had already marked off Deakin, Laurie Fitzhardinge grabbed Hughes, and there was Crisp on Chifley, Crowley on Forrest, Robertson on Scullin. Historians even began to write about members of their own profession: Crawford on George Arnold Wood, more recently MacIntyre on Ernest Scott. While we await major Manning Clark biographies (how many will there be?) we have recently received the entree: *A Short History of Manning Clark* by Stephen Holt.

Although we can applaud all this earnest endeavour, coverage of our most prominent Australians has been patchy. Sir Robert Menzies, the longest serving prime minister, was ignored for far too long; Allan Martin's second volume, covering the crucial Menzies years of government from 1949 onwards, will be published, I understand, this year; nearly 34 years since Sir Robert's retirement. The great Australian wartime leader, John Curtin, still lacks a substantial scholarly biography that will explain this complex man to us. The materials have all been assembled at the John Curtin Prime Ministerial Library in Perth but papers alone do not make a biography.

Charles Bean, one of Australia's most highly regarded historians and a man who shaped so much of our understanding of national myth, lacks a scholarly biography, too, but perhaps this "plain Australian" would not have much worried about that. Bean was opposed to "big-noting" and knocked back Imperial honours on a couple of occasions.

Co-founder of the Australian War Memorial, he rejected the idea of particular displays in his museum of those who had been awarded the Victoria Cross. Knowing the battlefields intimately, Bean took the view that a Victoria Cross or other high decoration was, to some extent, a matter of chance and that for every man so rewarded another dozen might have been honoured.

Australian biographical studies, I suggest, are to some extent a matter of chance (yes to Chifley, no to Curtin) and will forever remain so until we construct a body that can nominate and sponsor Australians worthy of appropriate scholarly attention. To keep with the military flavour, Sir John Monash was richly blessed that Geoffrey Serle was attracted to his life, while others, (Ralph Honner springs to mind), have so far missed out. But, as a sponsoring body, the Australian Army has done better than any other organisation I can think of to develop and expand the range of biographical studies of its members. That biographies so conflicting in their conclusions as those of Field Marshal Sir Thomas Blamey and Brigadier Arnold Potts have been recently published in the Army series, demonstrates the health of the series and the tolerance of the sponsor. But if there is no such sponsor, or no plan for who might be studied, chance will continue to dominate.

It was chance, through a working acquaintance, that led me to Dame Beryl Beaurepaire as a subject for study. Analysis of the few published histories of the Liberal Party would certainly not have led me to her; she does not feature in the index of any work on the Liberal Party that I have consulted. Nor would I have found her in the standard texts on feminism in Australia, apart from fleeting glimpses, for feminism on the left is far more fashionable as a subject to write about than feminism on the right. And I would not have found her in works on voluntary organisations in Australia, for these are largely unwritten.

Perhaps this is as it should be. History seems to like leadership and conflict; can it notice those who worked quietly and steadily in the background? Beryl Beaurepaire never sought public office through the Liberal Party and believes, anyway, that she would have struggled to win preselection. Her name was mentioned as a possible successor to John Gorton in the seat of Higgins but the selectors there, she believed, could not then stomach a woman. Beryl's role, as she defined it, was to organise and plot for the preselection of others; not to attempt a political career herself.

Only rarely did she show any resentment about the crushing responsibilities and workload expected of her by her political party as when, invited by president Richard Alston to join yet another committee, she told him: "I work almost full time for the Liberal Party and employ a secretary for party work and I do not use the organisation [for personal advancement] as do others". In the reams of paper in her archives of Liberal administrative material, comprising agendas, min-

utes, reports, debates, policy proposals, policy documents, it is very difficult to glimpse Beryl's own individual contribution. It must have been there though, early on Sunday mornings as she started up an area conference when she might have been relaxing at home, or teeing off at the golf course. It must have been there, too, at the many State executive meetings that she chaired, deputy to her barrister president, who was so often at work elsewhere. But those who have written accounts of the party, and biographies of its leaders, could not glimpse the people working off-stage and we will search the indexes in vain for their names.

The Liberal Party, of course, was but one aspect of Beryl's life, overwhelming in importance as it came to be in certain parts of that life. Beryl's involvement with the party would not justify a biography of its own, but it is the joy of this life, and my good fortune as its biographer that the sum is vastly greater than any of the parts. Some, as I have argued, are lucky in their biographer; I have been most fortunate in my subject.

The parts of Beryl's life are so varied and so rich that the life took me to places where historians rarely go. We know the operational story of the Royal Australian Air Force in war through the official history and we know some of the individual pilot's stories through personal memoirs and biography. But where else will we find the story of a WAAAF, a first year university student when she enrolled, sheltered, but ardent in her desire to serve; moved to tears at school by the news of the fall of France. How can we know what it was like to encounter the indifference, indeed the hostility, of those at the Meteorological Bureau who had never had to work with women before and who delighted in degrading the service of one so keen to serve? And how do we account for the sheer military impertinence of this WAAAF who took her protest about the Met Bureau to the WAAAF's highest command, unaware of the layers of military protocol that she was breaching? This is just one part of Beryl's story but it provides a marvellous insight into the foundations and history of the women's services in this country.

We knew from other sources of the discriminatory pay rates that were awarded to the WAAAF; three quarters of the male rate for equivalent work, then further discounted if the woman was under 21 for a minor's wage (not applied to men) and then discounted again because as women ate less than men they deserved lower living-off-the-base allowances. But in the story of the WAAAF who roomed with Beryl and who worked (elsewhere I might say) as a prostitute, part-time, because she had promised her struggling family that she would help out now that she was in a job, we see how these wage rates actually affected WAAAF. Perhaps she was unique, this sex-worker in the WAAAF; we cannot know. But we can know what anger this knowledge aroused in Beryl and what motivation this story gave her in the development of her feminism.

Much later, to give other examples of the richness of this life, Beryl described herself, for those who sought such labels, as "a political activist and community worker" and the chapter which is so essential in this book, but so incomplete is the second last: "Community Worker". It is incomplete because no-one, Beryl included, could ever hope to list all the organisations, committees, working parties and ad hoc bodies of which she has been a member. I describe in the book how I came across a thick file of papers relating to her membership and work for the Centenary of Melbourne's Exhibition Building. Beryl was on two sub-committees and participated in the planning of exhibitions, entertainments, a royal visit, and building re-development. Until prompted, she could not even remember her work for the Centenary because that was done and then there was so much more to do. "Oh, yes", she recalled, "Hamer put me on that to keep an eye on it for him". The Centenary Committee was just part of a myriad of responsibilities and jobs that Beryl happily performed because it was expected of her. In writing of that I am able to suggest that there are a whole range of activities that would never happen without the disinterested goodwill of so many of our unthanked and unheralded community workers.

In working on this book, I found that the aspect of Beryl's life that I had least expected to find was the amount of controversy and antagonism that she generated in the many contentious positions she occupied. Beryl handles conflict well and will keep friends, while strenuously disagreeing with them, as long as they abide by the same standards of honourable conduct that she imposes on herself. Beryl esteems loyalty above all else and honesty and it is important to her that she can say that she would have been a hopeless politician because she has just as many friends on the other side of politics as on her own side.

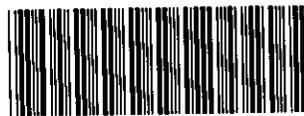
But in her work for the women's movement she encountered sometimes violent opposition, even on one occasion physical opposition when Women Who Wanted to be Women attempted physically to bar her and the Minister, Robert Ellicott, from signing the United Nations Convention on the Elimination of All Forms of Discrimination Against Women at Copenhagen. *The Ballarat Courier* editorialised against the National Women's Advisory Council under the extraordinary headline: "When Butch Power Rears Its Head". Angry women, good Liberals among them, called on the government to abolish NWAC, of which Beryl was Malcolm Fraser's personally appointed convenor. These women believed that the Council denigrated women in the home, that it denigrated religion, and undermined Australian values. The Tasmanian Liberal, Bruce Goodluck, said of Beryl "she's no friend of mine" although later he privately apologised to her. In all that antagonism I can see that preselection might have been difficult for Beryl and yet opposition stretched beyond political antagonism.

Shortly after the Council of the Australian War Memorial elected Beryl as its Chairman, the national congress of the Returned Services League appointed a "watch-dog" committee to monitor developments at the Memorial. Beryl saw this as a direct and immediate response to her election; the first woman in a position of authority at the Memorial, and a woman of the lowest possible rank at that. Was the RSL responding to Beryl's reputation for radicalism at NWAC, or just making a knee-jerk response to the absence of a beribboned male senior officer? The watch dogs were a further and continuing sign of conflict in Beryl's life and the alarm she aroused in some.

The biography shows the price that Beryl has had to pay for prominence and tells us something of the cost to those who are committed to change in Australian life. It shows us how Beryl handled conflict and how she was never deflected from her commitment to change; never forced to surrender her ideals. It shows too how she could fight to win her position; that she could be single-minded and stubborn. The biography might encourage those who want to foster change outside of parliament and the political process because it shows, too, the warmth of regard that Beryl enjoyed from an enormously wide range of people.

Beryl Beaurepaire would think of herself as a quite ordinary Australian who was lucky to be on the spot when opportunity came. In a sense she is correct, although her application, determination and achievements are certainly far from ordinary. Beryl's contribution to the life of her city, her state and her nation deserves study as a life that has not been lived within one limited or constrained space. I do hope that it is the totality of that life, in so many different areas, that gives it meaning for others.

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Photo - David Karonidis

Julie McCrossin

Best known for her part on Australia's popular comedy show *Good News Week* - originally with ABC TV, now with Channel 10 - Julie McCrossin is also a campaigner for better community services and law reform, particularly laws relating to same sex relationships. Julie McCrossin spoke for the Sydney Institute on Tuesday 13 July 1999.

“ALWAYS A BRIDESMAID, NEVER A BRIDE” – RECOGNISING SAME SEX RELATIONSHIPS

Julie McCrossin

I'm going to say a few things that I've never heard anybody else say publicly. When I was asked to speak, which was before the recent law reform in NSW in relation to the recognition of same sex relationships, I was asked to talk on anything I cared to. Now, I consider myself an eclectic person with a wide range of passions. But I discovered that, hitting bedrock, the topic I really cared about was access to the institution of marriage.

It's a topic very few people in the gay or lesbian, transgender or transsexual communities are willing to openly discuss. Many people are still inhibited about speaking openly on these issues for family reasons. So I thought I should take an opportunity, in an environment that I haven't been in before, to talk about same-sex relationship issues.

Equality be the law

What I want to talk about is equality before the law. Until we're able to get married, gay and lesbian couples don't have equality before the law. I have become fascinated by the political, social and legal barriers to "actual" marriage. I think it's fair to say many people, including human rights advocates that I greatly respect, would say that "real" marriage is an unachievable goal for same-sex couples. I'd have to agree that there is plenty of evidence to support the view that it is an unrealistic goal and I do feel utterly unrepresentative when I speak in favour of equality on this issue.

What is the core barrier? Why is this an idea that's considered unachievable, and even unacceptable? We rarely hear advocates for gay rights support access to the institution of marriage. If we believe in fighting for equality before the law, why not seek to achieve genuine equality in the legal recognition of same sex relationships? The magazine *Who Weekly* has a Wedding Special out right now packed with photographs of celebrity weddings. Why do we think that all those young gay and lesbian readers don't feel painfully and unjustly excluded as they look at those images and realise that they will never be able to have a wedding themselves?

Why is it okay for Mikey Robins, the incredibly funny radio broadcaster who I now work with on Channel 10's *Good News Week*, to get married to his partner, Laura, but I can't marry my partner, Melissa, the mother of two young kids?

A personal perspective

Over the years I've done a lot of work in the area of child protection in the welfare sector running panel discussions with foster carers. In fact, I've run 22 workshops around the state in the last couple of years, trying to help foster carers develop a better working relationship with staff from the Department of Community Services and some non-government fostering agencies. I've got to know a lot of good Christian couples who foster children.

A couple of years ago, two of these foster mums asked me to be the MC at the wedding receptions for their adult children. I hadn't been to a wedding for a while, so I took home a tape of a wedding reception. I studied it dutifully, taking notes about all the things that happened. One of the women was a devout and active member of the Salvation Army. I knew the guests would be a religious group and I wanted to capture the spirit, and yet bring some fun and energy to the occasion. It was to be held out in a far western suburb of Sydney. As I prepared for the jobs, I was sitting there watching this video with Melissa's two kids, a little eight year old boy, Luke and a little six year old girl, Amelia. And while I was writing down the various reception activities, one of the kids asked me, "Why don't you and Mum get married?" It was one of those moments when a question from a child's mouth means you hear it in a fresh way.

Now I won't go too much into the personal side of our lives. I'll just say I'm lucky enough to be part of a family situation where Melissa and her former partner, Michael share the care of their children in an amicable fashion and I'm made to feel like a welcome part of the equation. Luke and Amelia live a suburban life style that is amazingly similar to my own childhood in the 1950s and 60s - its just that their Mum has a female partner. They haven't yet experienced any gross discrimination. So as they watch a video of a wedding, it simply doesn't occur to them that it is something Mum and Julie aren't allowed to do.

Up in the Blue Mountains, west of Sydney, we go along to the local school events and soccer. The kids see their Dad and I cheering together when Luke manages to stop a ball as goalie, or clapping when Amelia dances with the other fairies at ballet. Michael, Melissa and I are there with all the other parents and for these young kids it's what they know and it all seems normal to them. So when they see a wedding, where two people who really love each other make a public commitment within their communities, with family support, they want their family to be part of it all too.

Plain discrimination

Originally, when I decided to speak on this topic, I thought it would be a bit of fun to do this talk dressed as a bride. But I gradually realised I didn't feel funny about it. I had to face up to the fact that I feel angry about what is plain discrimination.

To top it all off, I went to a Leichhardt affirmation ceremony. For the uninitiated, if you read the gay press, the papers are full of people either having babies or having affirmation ceremonies.

This ceremony was for two young women in their twenties, one with a child from an earlier time in her life. They had an affirmation ceremony conducted by the mother of a gay man who now bolsters her income by offering this service. She has developed a ceremony that is moving and dignified. If I'm honest, I had gone there expecting something slightly pathetic – a lesbian couple engaging in an inauthentic copy of the “real thing” – the “real thing” being a legally sanctioned marriage. I was only there because my partner, Melissa had been asked to be the bridesmaid, which is amusing because she has been a bridesmaid on eight occasions – seven of them in her earlier life as a heterosexual. Now in the gay community, she is again instantly recognised as bridesmaid material. That's why I've named this speech after her – “Always a bridesmaid, never a bride”.

So I found myself being moved by this affirmation ceremony. It was so obvious that these two young people had the same human yearnings and hopes as any couple. Their ceremony appeared to be fulfilling the same social function as any wedding – the public declaration of commitment; the welding together of social networks; and the affirmation of a nurturing support system for their relationship and the child. Frankly, the social and emotional landscape of this lesbian gathering looked amazingly similar to that of the Salvation Army wedding I attended in my role as reception MC. But of course, the legal landscape was quite different.

So let's turn to the law. What I'm calling for is a change to the *Commonwealth Marriage Act*. I want the definition of marriage to change to include same sex couples. The recently passed NSW legislation, the *Property (Relationships) Legislation Amendment Bill 1999*, is simply not enough. I'm going to assume most of you read the media reports and you know that it has extended the definition of a de facto relationship to include same sex couples in many of our Acts in the state of NSW. And you're probably aware that it introduced a new category called a “close personal relationship”, which was described in the second reading speech by the Attorney-General, Jeff Shaw QC as something designed to capture the caring daughter with a long-term relationship with a caring parent.

It is made explicit in the second reading speech, and in many of the speeches in the associated Parliamentary debates, that this legisla-

tion is not an attempt to provide for any form of marriage for same sex couples. Of course, under the Australian Constitution, only the Commonwealth could do that. This NSW legislation, we were told, is about property, not about taking steps towards marriage. If you read the speeches, you'll see how the Labor Party, with the encouragement and support of the gay and lesbian lobby groups, was very much pushing the line that this is about individual property rights.

Gay and lesbian activists decided in the early 1990s that we would never get anything like marriage. It was decided to aim for an achievable goal, the extension of the definition within the *De Facto Relationships Act*. The fight to gather support for this proposal was based on the selling point of the validity of individual property rights and a broader, carer-related definition of "close personal relationship". If you read the National Party speeches, the thrust of this strategy is very clear. They make it plain that if they thought this was in any way going towards marriage, they'd have nothing to do with it. The carer definition was a stroke of genius.

I want to make myself perfectly clear. I utterly commend the passing of this legislation. It has given same sex couples a whole bundle of rights. I won't go through lists. It's all in the legislation. Let's just say, as one example, that as the result of this law reform, I would no longer be liable for the \$7000 in stamp duty that I had to pay when I bought out the 50 per cent interest in the home I had shared with a former partner of 12 years. Now, like heterosexual couples in the same circumstances, same sex couples wouldn't have to pay stamp duty. There's nothing like feeling discrimination at the hard edge when you write a cheque for \$7,000 that a straight couple would not have had to pay.

But of course, despite the many gains under the NSW's reforms, it hasn't changed a whole bundle of other things. It hasn't gone to the marital status definition of the *Anti-Discrimination Act* in NSW. There's plenty more to be done, even with regard to the de facto definition. My real point is that, while I acknowledge and commend the hard work of all those who fought for it and the hard work of submission writing, it only made me feel more discriminated against when I read Hansard. We really had to massage the message to get it through by declaring we weren't trying to touch the holy grail - we weren't trying to get closer to being able to marry. It reminds me enormously of the way we justify the Mardi Gras by emphasising how it brings in that tourist dollar. Try telling me about the pink dollar one more time and I may vomit.

A crisis of the imagination

It is often pointed out that during the consultations carried out in the early 1990s in NSW by gay and lesbian lobby groups, very few people

spoke up in support of marriage. I've been thinking about that and this is my untested hypothesis which I throw into the ether.

Firstly, it must be said, that the sophisticated political activists within the gay and lesbian community, made an assessment about what was a realistic goal and they supported that rather than waste time on what they knew would arouse strong opposition, particularly from some church groups. However, I also feel the rare mention of marriage as a legal option involves a crisis of the imagination. I've stolen that phrase from Susan Sontag, who said that when people try to imagine a beautiful old woman, most people experience a crisis of the imagination. They simply can't imagine it.

Many gay and lesbian people feel so permanently "outside" how could we be allowed "inside" a core institution like marriage. The other thing is that many of the gay and lesbian lobby in my age group are refugees from the 1970s when marriage was seen as a patriarchal institution. We didn't support it on feminist grounds. Back then, when people wanted equity in the defence forces or the churches, because we saw them as conservative institutions, we refused to support such calls from less ideological sections of our world.

I now feel very differently about that. I think equality before the law is equality before the law, and then it is up to individuals to make the choices about how they express that equality. I personally would be surprised if I ever got married, but I very much believe that option should be there. And I know that young women and men, filling themselves with popular culture like the *Who Weekly* Wedding Special, may well want to have the choice to do the same thing. Marriage is a flexible institution, going through processes of change itself. You might get a different view from consultations with younger gay and lesbian people today if the idea of access to marriage was openly discussed as an option for consideration.

Legal barriers

Let's turn to the reasons why the change is highly unlikely. First of all, here is the definition of marriage. There was a case in 1866 *Hyde v Hyde and Woodmansee* in which Lord Penzance defined marriage as "The voluntary union for life of one man and one woman, to the exclusion of all others." That definition is still essentially the definition that is used in the current *Commonwealth Marriage Act* and in the *Family Law Act*. Civil marriage celebrants in this country must tell the couple that "marriage...is the union of a man and a woman to the exclusion of all others voluntarily entered into for life."

This definition was firmly reiterated in 1971 in the startling case of *Corbett v Corbett* - a case which is still good law in Australia despite considerable academic debate about the decision.

In *Corbett's* case a man sought to have his marriage declared null and void. The wife, April Ashley had undergone a sex change operation

three years prior to the marriage ceremony. All her male bits and pieces had been removed and an artificial vagina had been constructed. Her husband knew everything at the time of the marriage.

The judge held the marriage to be void because the wife was not a woman. He said we must have regard "to the essentially heterosexual character of the relationship which is called marriage". It is a relationship, he declared, "which depends on sex not on gender" and "the most extreme transsexualism...cannot reproduce a person who is naturally capable of performing the essential role of a woman in marriage".

Let me take you now to Canada. In June this year, the Canadian Parliament passed a resolution that "marriage is and should remain the union of one man and one woman to the exclusion of all others." The ruling Liberal government's Justice Minister Anne McLellan supported the motion put forward by the conservative Reform party. She said the government "has no intention of changing the definition of marriage or legislating same-sex marriage."

Clearly the Canadians were on firm legal ground when they backed this "one man and one woman" definition. But why was Parliament talking about it? The House of Commons was responding to a decision handed down by the Canadian Supreme Court which effectively expanded the definition of "spouse" in the *Family Law Act* of Ontario.

It all started with a property dispute between two lesbians.

One party wanted to receive the equivalent of maintenance after the breakdown of the relationship. Her stumbling block was a definition of spouse which was limited to a person who was either "actually married" or "a man or a woman" who fulfilled certain criteria. She argued that this definition was inconsistent with Section 15 of the *Canadian Charter of Rights and Freedoms* - and that "man and woman" should be read out of the definition of "spouse" and replaced with "two persons".

The Canadian Supreme Court essentially agreed, stating that "the crux of the issue is that this differential treatment discriminates in a substantive sense by violating the human dignity of individuals in same-sex relationships".

This decision was the catalyst for the opposition Reform party's motion on the definition of marriage. And they didn't waste any time. The court handed down its decision on May 20th this year and parliament passed the motion on June 8th.

So what is the principle in section 15 of the *Charter of Rights and Freedoms* which underpinned the Canadian Supreme Court's decision? It states, "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination."

Chris Sidoti is the Human Rights Commissioner here in Australia. In February this year he gave a paper at Sydney University Law School - "Issues and Strategies around Couple-Based Discrimination". He

talked in that about the need for explicit recognition in law of partnerships between persons of the same sex. But he said, "There is general agreement that amendments to the *Commonwealth Marriage Act* 1961 to enable marriage between same sex partners, is not an appropriate approach." He talked then about de facto extension and registered partnerships, which are evidently available in some Scandinavian countries.

Is there general agreement against the marriage option? Or are people with similar feelings to my own, not speaking out?

In July this year, Justice Kirby from our own High Court spoke at a conference on the legal recognition of same-sex partnerships in London. He said we all have "the same human needs... for human love and companionship; for family relationships and friendships; for protection against irrational and unjustifiable discrimination; and for equal rights in matters where distinctions cannot be affirmatively justified".

Justice Kirby received quite a bit of publicity for his remarks that "The game of shame is over. Reality and truth rule". He talked a lot about past impermissible love, the current continuing erosion of public opposition to legal change, the strong generational differences in attitudes and about the impact of openness.

While Michael Kirby doesn't specifically refer to same sex marriage, he does say that such studies that exist in Australia indicate a majority of same sex couples, 80 per cent, "do not consider marriage or marriage equivalents as desirable".

I think that the studies that exist are based on extremely limited research, and it has been essentially unprofessional in its scope. I'd like to have some proper research done, to know what the other same-sex couples out with the kids in suburban shopping malls, like Melissa and I in Penrith Plaza, really feel.

The churches

The churches are exploding with debates about sexuality. Some church groups argue that the legal equality I'm supporting will undermine family values and go towards destroying the institution of marriage, or at least threatening the institution of marriage. I think about that a lot because on a Sunday I'm usually at Penrith Plaza with Luke and Amelia seeing films like *Star Wars*, or eating at McDonalds. And as I sit there with the kids eating ice cream, I often wonder, exactly how am I threatening the "family" today? What exactly is the threat to the institution of marriage that Melissa, Luke, Amelia and I pose?

The glory of the common law is its capacity to incorporate change. The pressure builds, the corner is turned – from terra nullius to native title. Then the dynamic dance between the courts and the legislature begins. Has the time arrived for same-sex families? Not according to the Canadian government it seems. And it appears we see it the same Down Under as well.

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Photo - David Karonidis

Vera Ranki

In her book *The Politics of Inclusion and Exclusion - Jewish Nationalism in Hungary* (Allen & Unwin), Vera Ranki uses the case of Hungary to illustrate the changing politics of nationalism and the role of hatred in the process of exclusion. Her thesis is also a useful addition to Australians' understanding of their own modern identity and emerging nationalism. Vera Ranki spoke for The Sydney Institute on Monday 19 July 1999.

THE POLITICS OF

INCLUSION AND EXCLUSION

Vera Ranki

This book is the culmination of almost a decade of work. It was the decade of writing the thesis and the publication of the book. Even though I wrote part-time, it was an all-pervasive presence. I did not just write the thesis – I lived it. Everything connected with it, everything was or became somehow relevant. I wrote the thesis and the thesis wrote me. My life changed because of it.

How did it all start? The topic found me and gripped my heart and my brain. I was always passionately committed to justice and social justice. But this was much more. I was researching and writing my own people's history.

Every possible fate of Jews during the Holocaust happened to a member of my immediate family. My father was in a forced labour battalion, then in Mauthausen. He was part of a forced march from Mauthausen to Gunskirchen, where he was liberated. My mother was in hiding. My grandmother was in the ghetto. Most of the family was murdered.

I grew up in communist Hungary. We never talked about the Holocaust. If at all, it was referred to as "44", the year when the Holocaust reached Hungarian Jews. (Even historians referred to it as "1944". There were two other events that were alluded to by their date. What was liberation from Nazi rule to some, was the occupation of Hungary by the Soviet army to many. To avoid the ideologically contentious issue, it was referred to as "1945". Similarly, the usage of the official name "counter-revolution" was circumvented by saying "1956" or the "October events" instead.)

In 1989, I went to Jerusalem to do a course on antisemitism and the Holocaust at Yad Vashem. When I returned to Australia, I felt an imperative to write. I started a PhD about the Hungarian Jewish experience. The thesis became a book, published in the US and Australia. I translated it to Hungarian and it was published in June in Hungary. More about the Hungarian edition later.

Writing meant facing the fate of Jews in Europe, the fate of my family. It meant that my father and my mother both started to talk to me about what happened to them. Or at least some of what happened. They talked about why they were silent. My father felt that his memories were so awful that he had to protect us from knowing. My mother felt that because she wasn't deported, she had no "right" to talk. She "only" experienced the murderous Arrowcross raid, hiding, not being able to go to a bombshelter during bombing in case somebody denounced her. She "only" lived through the frequent house searches, starvation, and the fear for loved ones. She finally talked of the day she had to put on the yellow star and the humiliation and terror it meant. In the horrible light of the deportation and camps, she felt that her experiences were not important enough.

In this book I tell the story of Hungarians and Jews. A story of nationalism and modernity, of antisemitism and assimilation, of paradoxes and extremes. Nowhere else in Europe was the move from inclusion to exclusion faster and more dramatic.

In the late nineteenth century, Hungarians and Jews shared the project of modernisation and the simultaneous construction of their modern national identity. Assimilation was not only a vehicle for social integration but a higher ideal. But in less than 100 years, policies went from demanding and welcoming assimilation and controlling antisemitism, to pogroms and antisemitism as a state policy.

The case of Hungarian Jews is in many aspects like the veterinarian's horse (a fictitious picture illustrating all the possible illnesses). Both inclusion and exclusion are clearly and strongly defined policies; the role of political and social institutions, ethos and culture are clearly observable thus providing a poignant illustration of the changing politics of nationalism.

Modernity arrived to feudal Hungary in 1871, when with a political compromise the Austro-Hungarian Monarchy was born. Jews were vital in the modernisation process, largely because there was no third estate. As soon as they were emancipated in the newly born Hungarian empire, Jews became industrialists and bankers and flocked to the universities to become lawyers and doctors. But the Jews were also needed because Hungarians did not constitute a majority. In the multilingual empire, Hungarians were only the largest minority. The assimilating Jews helped to make up the "Magyar" numerical balance.

After the First World War the situation dramatically changed. As a result of the Paris Peace Treaty, Hungary lost large chunks of its territory to the newly created states: Czechoslovakia, Yugoslavia and Roumania. Hungary became a real nation state, with Jews as the only minority. Having lost the war, Hungary went through a few months of revolution, defeated in what became known as the White Terror. The White Terror introduced pogroms, and although these did not last

more than a few months, and consolidation set in, the leaders of the White Terror ruled the country for the next decades under the leadership of Admiral Horthy. Hungary was an ally of Nazi Germany during the Second World War, and had racist policies and legislation which eventually led to the murder of 600,000 Hungarian Jews and thousands of Gypsies.

My book centres around the role nationalism played in both inclusion and exclusion. It was through nationalism that Hungarian Jews were called on to assimilate and it was the agency of nationalism which "dictated" the antisemitic policies of the Horthy regime.

As a result of the fusion of nationalism, Christianity and anti-semitism, any one of these elements stood for the other two: a good Hungarian was a good Christian and a good antisemite. It worked in all other combinations. This fusion also explains in large part why Hungarian society stood by while the Jews were deported and massacred.

Hungarian philosopher Istvan Bibo argued already in 1948 that democratic institutions can only develop, if Hungarian society faced their role in the antisemitic culture that prepared the ground for the Holocaust in Hungary, and more: their role in the deportation and murder of 600,000 Hungarian Jews.

In order to be able to carry on and in order to start a new life after the war, Hungarians and Jews tried to forget what happened. The problem was, that both tried to forget a different experience. Jews tried to forget that they had been rejected, victimised, brutalised, and murdered, while the majority of Hungarians tried to forget that they were bystanders or worse, perpetrators of these crimes. This mutual effort of forgetting, but trying to forget diametrically opposite events, characterised, and in certain ways determined, not only the three years immediately after the Holocaust, but the following decades and especially the post-Communist era.

In the orthodox years of Stalinism, the slogan of the time set the direction: "full face to the future". The war years, along with the Holocaust were viewed, reassuringly and conveniently, as the sins of the ruling classes of a by-gone era, when "fascists persecuted antifascists". By de-Judaising the victim, it also denied the "otherness" of Jews while it ingeniously shifted all responsibility onto the Germans and the "cursed old regime". As the dramatic moral corruption and devaluation of the Stalinist years greyed into everyday existence, the Kadar-regime firmly controlled open antisemitism and at the same time maintained the un-mentionability of Jewishness. The Holocaust was not taught in history. Even at Holocaust memorial services the word "Holocaust" or "Jewish" did not appear.

The historicisation of political life and the re-evaluation of the past started in the last decades of the Kadar era. With the lifting of

taboos on history, the "Jewish question" resurfaced. The insinuations and incidents during the first post-communist election campaign of 1989-1990 were the first manifestations of this.

In post-communist Hungary antisemitism became a legitimate ideological component of the Right. This wasn't unique to Hungary. In all other Eastern European countries, the communist regime failed to eradicate antisemitism. The same tensions, passions and political culture reemerged unscathed as if to prove that all the 40 odd years of communist ethos and education accomplished was a mere coat of red paint. In Hungary, where two thirds of the population have been born after 1945, the postwar generations shifted with amazing ease into the political culture and vocabulary of an era that they have had no first hand experience of.

Concerning political cultures, in his controversial *Hitler's Willing Executioners*, Daniel Goldhagen argues that the Holocaust was possible because Germany became a genocidal state where everyone, or most, were happy not only for the Jews to be murdered, but were ready to do it themselves. Like others, I have several problems with Goldhagen's book. My main disputation is this: Goldhagen only looks at the perpetrator society. But for the Holocaust to succeed, the Nazis needed bystanders and collaborators, and everything in between (because there are gradations of bystanderism as well). My book examines the political climate which fosters bystanderism and collaboration.

The Hungarian experience raises the question of the role of state policies and institutions in the success of antisemitism as a political movement. The Hungarian experience suggests that the state and state policies do play a vital role: by supporting or suppressing antisemitism, the state exercises immediate control and influences political ethos.

Genocide, and its prerequisite, murderous hatred, does not erupt in a vacuum. Its preconditions are in culture, in social and political ethos, and in social and legal institutions. The law has enormous relevance. But laws and legal institutions can be changed. Anti-Jewish legislation was passed in countries with differing legal systems. But if the social political ethos does not condone hatred, then the political and social climate can resist even the formation of the law.

After the Holocaust, with the demise of fascism and Nazism, in the West, antisemitism ceased to be a legitimate political agenda and ideology. Nationalism itself for a while seemed to be an issue of the past for Western culture and only relevant for the self-determination of African and Asian nations. Yet we currently witness a revival of tribal nationalism particularly in Eastern Europe.

The question is: can hatred be controlled by the state, by legislation? In Western societies and in democratising post-Communist countries this question is often articulated as a freedom of speech issue: should hate speech be curtailed? The countering argument is that in the

“market place of ideas”, these hatreds and ideologies are freely countered, without the interference of the state or legislation, which could only interfere by limiting freedom of speech, one of the fundamental freedoms of democratic societies.

Yet this freedom is not an absolute, even in the most developed Western democracies. Free speech is curtailed by laws relating to defamation, blasphemy, copyright, sedition, obscenity, use of insulting words, official secrecy, contempt of court and of parliament, incitement and censorship. In countries where democracy is not well-established and has no political and legal tradition, for instance in post-Communist countries, the question seems to be influenced by two contradictory needs. On the one hand, with the tradition of hate-ideologies, such as xenophobic tribal nationalism, there is the need of protection from these ideologies and hate-speeches. On the other hand, democratic institutions have to be built and strengthened, and freedom of speech, one of the pinnacles of democracy is especially cherished after decades of silence.

But even more far-reaching and explosive is another aspect of state control: the manipulation of hatred by the state. In the former Yugoslavia, Turkey, or in some of the former Soviet republics for instance, ethnic conflicts and disputes are clearly used by political leaders. Slobodan Milosevic in Serbia, or Franjo Tudjman in Croatia use nationalist ideologies in producing a highly slanted version of history. As both nationalism and the nation are constructions, Serb and Croatian nationalism and the Serb and Croatian nation are reconstructed through hatred and ethnic cleansing.

So the book is also about identity and nationalism; memory and identity; inclusion and exclusion, intergroup relations, racism, xenophobia, prejudice and discrimination.

I also explore the importance of political culture and legal institutions in the book. While legal institutions and generally the law have enormous relevance, I work with the hypothesis that ethos is decisive. So the question is, what becomes political culture, political ethos?

Take the Hanson phenomenon, with its xenophobia, racism, prejudice as its political platform. From the point of view of the construction of political culture, the real problem is not Pauline Hanson. It was the silence of John Howard regarding Hanson, and his refusal to apologise to the Stolen Children, together with the Wik legislation, which constituted a coherent policy and coherent message.

Returning to my book: it was interesting to experience the reception of it into two totally different political environments, that of Australia and Hungary. The difference was evident in the title itself. In Australia and the US its title is: *The Politics of Inclusion and Exclusion*, with the subtitle *Jews and Nationalism in Hungary*. The discussion and emphasis is on the broader issues of inclusion and exclusion and the

social history of Hungarians and Jews serves as a case study to illustrate. The Hungarian title is *Hungarians-Jews-Nationalism*, and the subtitle is the politics of inclusion and exclusion. The emphasis is on what has happened, how did it happen, how did it affect the two communities, what were the interactions between the two communities. In Australia and in the US this is a book about inclusion and exclusion, through an interesting case-study. The discussions generated by the book are about Aborigines, disability, inevitability, and the nature of intellectual discourse. It prompts debate on current issues of inclusion and exclusion, but does not stir political and historical passions. In Hungary it is all different. But before I talk about the reception of my book there, I would like to give a snapshot of some issues in present day Hungary.

Present day Hungary

Hungary is one of the success stories of post-Communist countries. A serious candidate for the European Union and NATO-member, Hungary has a sound economy. Under the (reconstructed) socialist government, on market economy was established, the *forint* became convertible and the Budapest stock exchange (BUX) is the most successful in east central Europe. Consolidation is visible. The middle class is recovering slowly but steadily.

But when last year the right wing won unexpectedly (even the winners were surprised), the populist economic platform of the winning *FIDESZ* party caused a slump on the stock exchange immediately after the elections.

Those who voted for them, that is, the marginal majority, do not seem to be worried about this or any other aspect of the right wing victory. Yet there are things to worry about. The victory of the right wing included a far-right party, whose leader is good friends with Le Pen and Zhirinovskiy and who openly affiliates with skinheads and neo-Nazis. The history of this party, the tellingly named Party of Hungarian Truth and Life, is bound up with not only the history of Hungarian party-politics in the last eight years but also pre-Communist history.

The party, which won the first free elections in 1990, the Hungarian Democratic Forum had a center-right nationalist platform. The elections themselves were nasty, with antisemitic slurs. Since the Holocaust, this was the first time that antisemitic or racist utterances by public figures were heard. The Forum's victory made antisemitism a constant presence in Hungarian social and political life. The Forum's policies, while undoubtedly building democratic and liberal institutions, allowed nationalism and antisemitism to become legitimate issues. The radical right-wing jelled around the Forum's vice-president and chief ideologue, writer Istvan Csurgu, who soon developed an openly antisemitic national-socialist ideology.

For a considerable time the Forum, led by prime minister Antall, treated Csurka with jovial benevolence. The red herring of Csurka's right to freedom of speech was raised whenever he articulated offensive notions. But many saw this as tacit acceptance of ideas that were full of hatred.

When his increasingly rabid antisemitism and ultra-nationalism became an international and political liability, Csurka was finally thrown out of the Forum. He established his own party. But Antall was late. At the next elections the Forum did not even get into parliament. The party fragmented. The elections were won by the socialists. The defeat was total.

For four years, Csurka was on the peripheries of Hungarian politics. His party became a thinly veiled reincarnation of the Hungarian Nazi Arrowcross party of the 1940s. But his main followers are not only nostalgic old Nazis. Many disgruntled elderly and young people voted for him. The fact that Csurka finishes his long-winded speeches with Nazi salute does not deter them. Much as many of Pauline Hanson's followers simply do not take notice of the inherent racism or the demagogue populism and lack of policies of One Nation, people support Csurka simply because he is different from the mainstream politicians.

The apparent success of Csurka's party, and his appearance in the Hungarian Parliament has ominous similarities to Australian politics. Both Antall and Howard misjudged the situation. Both allowed the monster to grow. Both underestimated the threat and tried to manipulate the situation and pander to the far-right. Antall and his party were demolished in the process, but not before the party was propelled to the far-right – only to find that there is no credible policy or platform left for them.

The Forum, however, crept back through the backdoor in the 1998 elections. The Forum is now made up of those who, ideologically find nothing wrong with Csurka and his party, but prefer to tone the rhetoric down. They are natural allies.

There are many potential problems facing *FIDESZ*. Their allies can easily become hindrances. Even though they renounced Csurka's platform, their influence is free-flowing through the more-than-sympathetic Forum. Csurka's unsavoury presence in the Hungarian parliament is sinister not only in the light of Hungarian history but in the light of the strengthening of the lunar right all over the world.

The growing influence of the ultra-right is evident in some very recent events.

One is connected to what is known in Hungary as the "media-war". The first media war started in the winter of 1993, the last months of the Antall administration. One of the battle-cries of the post-Communist right wing was the revival of the pre-war accusation of the

Jewish-controlled media. In a last desperate attempt to hold on to power, almost a hundred journalists were dismissed from the Hungarian radio and television, and were replaced by "reliable" journalists, committed to the Forum or Csurka. The move had a very bad international press. In spite of the fact that the enthusiastic support of the national radio and television was secure, the Forum not only lost the elections, but did not even make it to parliament.

Now, six years later, the present government started a new media war. An ultra-right wing journalist who was appointed as director of News of the national television, not long ago wrote that he can't be called an antisemite, because nobody saw him shooting Jews into the Danube (a reference to one of the modes of murder perpetrated by Hungarian Nazis in the winter of 1944). Another television personality on the other hand was not only dismissed summarily, but arrested and all his files, computers, discs confiscated. His crime? As an investigative journalist, he publicised documents embarrassing the government, in particular the prime minister. He was released after spending a night in a police prison-cell, but now he is facing a tax investigation.

The picture of Hungary today would not be complete without mentioning the war in the Balkans.

NATO's bombing of Yugoslavia was a painful and controversial – and immensely complex issue. For Hungarians there were aspects which made the situation even more complex. Hungary just recently became a member of NATO. Only Csurka's party opposed NATO membership. Yet when the war started, and planes were taking off from Hungarian airports, public sentiment largely went to their immediate neighbours: the Yugoslavians. Not to Milosevic, but still to Milosevic's Yugoslavia. Then Vojvodina was bombed, where the majority of population is ethnic Hungarian.

The planes were leaving from Hungary nightly, carrying bombs which were a few minutes later dropped on other Hungarians. This was intolerable to a lot of people. There were calls to not allow Hungary to be used by NATO planes. The Hungarian president was invited swiftly to the United States on a state visit. Recently, when John Howard was visiting Washington, he met Clinton for 20 minutes. His visit was not rated as a State visit. The Hungarian president and his wife were invited to the White House, – and I saw this on CNN – the Hungarian president exchanged kisses with Hillary and his wife with Clinton before they disappeared together for dinner in the White House. The US sensed public resentment in Hungary and afforded to the Hungarian president a State visit, with all the pomp and circumstance and the personal attention.

I was in Hungary for the month of June. Standing on the balcony of my mother's apartment, nightly I saw searchlights. They weren't illuminating sideshows. They were for real. When one heard and saw

planes overhead, one knew that they are either on their way to Yugoslavia, filled with bombs, or returning, having dropped their bombs. I keenly felt the intensive perspective of proximity.

As in many parts of the world, in America, Germany, or France, intense debate emerged about the Balkan war. Known intellectuals, mostly philosophers, writers and historians participated. The leaders of the opposing sides are well-known in Australia, not only because of their international fame, but because they both lived in Australia for a number of years. The first missile was an article which was first published in the *Frankfurter Allgemeine Zeitung*, by Hungarian writer Gyorgy Konrad. He argued, emotionally and eloquently, that the war was wrong, NATO should cease bombing. Konrad was member of a small and very famous group of philosophers and sociologists who had to leave communist Hungary because of their anti-communist writings and sentiments. Then Hungarian American philosopher Agnes Heller got into the *melée*. She was part of the same group, whom the communists did not dare to arrest because of their international fame. She argued that the bombing of Milosevic's Yugoslavia was necessary.

What was most bewildering was that the right wing stayed out of the intellectuals' debate. Almost all who wrote emotive and cogent arguments for or against bombing, were on the same political side and often were close personal friends. Like Konrad and Heller.

While of course it was a given that the Csurka-led right wing will oppose anything NATO does, they did not participate in the often emotional and personal exchange.

The debate thus reflected the complexity of the Balkan war, the valid and sober fears and considerations that both sides summoned up. The debate also reflected how the global community took sides and tried to impose solutions, while the former Yugoslavia fell under the spell of nationalistic hatred, and the politics of exclusion.

This was the intellectual and political climate of Hungary my book was launched into. Open antisemitism, right wing agendas and intellectuals debating each other on the Balkan war.

Aftermath

On the 5th of June, in one of the bookshops in downtown Budapest, *Hungarians-Jews-Nationalism* was launched. When he was there for a state visit in April, the President of Hungary agreed with flattering eagerness to launch the book. By mid-May, during the height of the Balkan war, he wrote me a very nice letter, and left for the White House and the Clintons. So the book was launched by a member of the Hungarian Academy of Science, the same person who wrote the foreword for the Hungarian edition. The bookshop is quite big, and it was filled with people, in spite of a tremendous hailstorm hitting Budapest half an hour before the launch. The composition of the

crowd was interesting. Apart from friends and the usual crowd of the literati and gliterati to be expected – and, heartwarmingly for me, the Australian ambassador and his wife – it was predominantly members of the media who attended. I could not have wished for more attention.

I was asked to be interviewed Sunday morning on a TV program, which is something like *Good Morning Australia*. In the sweltering heat I and the book were given some fifteen minutes. The interview was friendly and inquisitive. One of the questions asked kept coming back in various other interviews: why did I write about Hungary, a Hungarian topic, after all I live in Australia. Of course the glib – and not so glib – answer to the question would be: indeed, why? Why was the social history of the Hungarian Jews written up by an Australian and the history of the Hungarian Holocaust by an American? (Because it was Randolph Braham, of the City University of New York, who incidentally wrote the foreword for the Australian and the American publication, who wrote the definitive work on the Holocaust in Hungary. Braham, like me, also was born in Hungary.)

My book was launched during the Hungarian Book Week, which has some 70-odd year tradition. It is a big event in Hungarian intellectual life. One of the traditions is that in the beautiful central square of the city, where people sit in famous cafes, under the linden and chestnut trees, booths are set up, with all the publishers represented, and the whole huge square is filled with people, and authors, dedicating and talking, in front of the booths. One thousand and five hundred new titles came out for this book week. One meets everybody there. Next to me Gyorgy Konrad was dedicating; on the other side Agnes Heller. And thousands of people milling about. As I sat there, dedicating, in front of me a sign saying my name and the title of the book (which had in it the word "Jew"), I was aware, that anything can happen. I did experience antisemitic incidents during previous visits. One of the writers, who dedicated on the square, with a long queue in front of his table too, was Csurka. The queue in front of him was a lot longer and thicker than in front of my table.

I was very aware that I was sitting in front of a sign which said "Jew". By Sunday, people saw me on television and the queue was longer in front of me (it still wasn't comparable to Csurka's) But, apart from strange looks, there were no incidents. Just the weariness and vague apprehension of the possibility of trouble.

There was one really scathing review of the book in one of the right-wing newspapers. I was accused of stirring up unnecessary emotions for my own sinister purposes, by writing about the Holocaust and Hungarians and Jews. The writer of the foreword and I were accused of being "media-stars" – and I was also taken to task for not using the writing of various historians. The other accusations were 1) predictable, 2) bewildering (i.e being a media-star). This last one was ridiculous.

Because I *did* refer to those historians over and over. Their names appear also in the bibliography. This meant of course that the journalist who wrote the review did not read the book, did not even skim it, but stopped after the foreword and the table of contents, and relied on his readers' prejudices thereafter. Since I left Hungary more interviews have appeared. All were positive. The book is sold out in all the inner-city (i.e. intellectuals-frequented) bookshops. And gauging from those I talked to while signing, it is bought by non-Jews in good numbers. After all: it is a book about Jews – but primarily not for Jews.

Writing about assimilation and antisemitism in Hungary led to the anatomy of the process of inclusion and exclusion, relevant not only there and then, but today and anywhere. What this story taught me is that human dignity has to be protected and nourished by all the means that law and culture provides. Because dignity, alongside with equality and freedom, is a basic human right.

Genocide is not a spontaneous combustion, exclusion is process and hate is cultivated. I hope that my work on the anatomy of the culture of arrogance and hatred will lead to a politics of lesser evil.