

The Sydney Papers

Editor: Anne Henderson

Production Assistants: Lalita Mathias
Anyia Poukchanski

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Photo – David Karonidis

Ene Ergma

Originating from the outer limits of the European Union and one of its smallest member states - Estonia - has never stopped Ene Ergma, Speaker of the Estonian Parliament, from saying what she thinks about the big issues of European science. Ene Ergma was trained in her speciality by the cream of Soviet physicists; she is energetic and determined and has achieved her position as lawmaker with her ability to learn and desire to communicate. On a visit to Australia in 2008, Ena Ergma addressed The Sydney Institute on Monday 10 March.

ESTONIA: FROM SOVIET OCCUPATION TO E-GOVERNMENT IN THE EUROPEAN UNION

ENE ERGMA

At first I would like to thank The Sydney Institute for the opportunity to speak before this distinguished gathering. As a subject, “Estonia: From Soviet occupation to e-government in the EU” is really very broad and in my opinion requires a full lecture course to give you a whole picture of the Estonian life during this period. So, please, forgive me for some incompleteness.

This year Estonia is celebrating its 90th Anniversary. After gaining independence in 1918, Estonian people enjoyed life in a free and democratic country. In 1940 Estonia was forcibly annexed to the Soviet Union as a result of adverse developments before and after World War II, and in violation of international law. The first step towards this occupation was taken when Hitler and Stalin concluded the Nazi-Soviet Nonaggression Pact with its secret protocols.

Thankfully, the majority of democratic countries never acknowledged Estonia as part of the Soviet Union. For the Estonian nation, the loss of independence inevitably led to immeasurable suffering, mainly from the enormous loss of human lives. Most Estonians, and probably a major part of the international community, lost their faith in ever seeing a free and independent Republic of Estonia again. But, paradoxically, the Soviet anti-human regime was the strongest contributor to the nostalgia of Estonians for their lost independence, and fuelled the glimmer of hope that some day – nobody knew when – our independence would be restored through some miracle. The beautiful vision of the free Estonian state was kept alive among our citizens who had been forced to flee to the Western democratic countries and managed to set up homes there.

Dear friends, Estonia is very grateful to Australia, to all of you. The Estonians who had been forced to flee their country have been very happy in their Australian homes. Australia has always offered shelter to a number of Estonians. Today, Estonians can again travel freely to Australia, for business or pleasure. All we have to do

is to make sure that our world of free choices stands firm and grows stronger.

The end of 1980s gave us a chance to fight for Estonian independence. Starting with Gorbachov's *perestroika*, Estonian people understood that history gave them the second opportunity to free their country. It was the time for the singing revolution. As cool Nordic people, Estonians preferred to sing and not to shoot. If the coup in Moscow had succeeded in August 1991, the situation could well have developed into a tragedy, for the Baltic countries, as well as for Russia and others. On the second day of the coup, Estonian independence was declared by the Estonian Supreme Soviet.

The restoration of the Republic of Estonia as an action involving the whole nation was completed in a very short time. People who lived through that time have often argued among themselves about the year or the month that each event took place and marvelled at the quick pace of the whole process. If we did not have photos, film tapes, videos or journals documenting these speedy developments to show to the world, one might have to be excused for thinking that the numerous events covered not a couple of years, but several decades. I would like now to draw your attention to the following events in our recent history:

- The adoption of a new constitution which formed the basis of our modern society.
- Adoption of the freely convertible Estonian currency, Estonian Kroon, came in June 1992.
- The organised withdrawal of Soviet troops from Estonia by September 1994 was a result of the treaty signed by the Estonian president Lennart Meri and the Russian president Boris Yeltsin. After 55 years of occupation, Estonia is finally free of foreign forces.
- We have relied on such economic policy principles as an open economy and a balanced budget. These principles created a favourable environment for the development of private entrepreneurship and our market economy. The passing years have strengthened the competitive ability of Estonian enterprises in foreign markets, increased investments and widened consumers' liberty of choice.
- Accession negotiations with the EU ended with Estonia becoming a Member State on 1 May 2004. Sixty-seven per cent of Estonians voted in favour of the EU. Support for the EU has continued to grow and today is around 80 per cent.
- A bit earlier, in March 2004, Estonia became a Member of NATO. This meant that we also assumed members' responsibilities. However, Estonia can look into the future and know that we have trustworthy partners in good times and in

bad times. Estonians get a confirmation of this daily, when NATO fighter planes patrol our airspace. Seventy per cent of Estonians steadily support NATO.

- Estonia continues to strive towards joining the common Euro zone. We aim to join the EURO zone in 2011.
- Estonia joined the Schengen visa free area in December 2007.

Estonia is trying to be a progressive e-state. At the beginning of the 1990s, a real revolution took place in computer technologies. Large, very expensive computers started to be replaced by small, much cheaper personal ones. This process enabled use of computers in everyday life. Also, keep in mind Internet developments. When I think about why Estonian citizens were so successful in implementation of different IT solutions, I can come up with one possible explanation. Our liberation coincided with the personal computer revolution. It was something very new and Estonians grasped this transformation with child-like eagerness to learn new things. So, IT applications became very quickly part of our everyday life. Allow me to give some examples.

Estonia is one of the most successful countries in the world as regards development of the legislation relating to information society and protection of personal freedom and personal data. The Estonian government held its first paper-free sitting in August 2000. Thanks to preparation and submission of documents in electronic form and the use of digital signature, paper costs of the State Chancellery dropped by 52 per cent in five years. A significant step towards a more active civil society was taken: agendas of the sessions and decisions of the Parliament and Government are publicly available on the Internet.

As an active member of the EU in implementing the common European Neighbourhood Policy, Estonia willingly shares its IT experience with other countries. More than 400 participants from nearly 20 countries and regions have benefited from training at the Estonian E-governance Academy. IT applications for people include the special project carried out from 2002 to 2004 - the Look at World Foundation - provided basic computer and Internet training courses for nearly ten per cent of the adult population of Estonia. The training was fully financed by private sector enterprises. The post-training study showed that more than 70 per cent of participants became regular users of the Internet after completion of the course.

By the end of 2007, more than 80 per cent of Estonians had been issued ID-cards. The ID-Card provides a wide variety of public and even private services; for example, travelling in the EU, digital signature, internet banking and e-voting. Already in 2002, digital signature was used for the first time in Estonia. Digitally signed documents are equal to documents signed by hand. State authorities are required to recognise digital signature in dealings with citizens

and companies. In the private sector, digital signature may be used upon agreement of the parties. All commercial banks in Estonia offer online banking services, and conducting everyday financial affairs via the Internet has become a general practice all over the country. Although the Estonian taxation system is very simple and well-structured, income tax returns can be submitted to the Tax and Customs Board via the Internet, without having to fill in forms or appear at the office. In recent years, up to 80 per cent of the people who have submitted income tax returns have used this possibility. In case of e-proceedings, the Tax Board can refund overpaid tax to taxpayers already five days after submission of an income tax return, if there are no problems. In October 2005, Estonia was the first country in the world to organise electronic voting as one option for voting. It was mainly used by people who were not able to access a polling-station. A child's progress and homework given for the following days can be monitored on daily basis by a parent.

Unfortunately, the use of e-infrastructure in everyday life also has a dark side. The issue of cyber security and cyber terrorism - cyber attack against the whole state - was especially acute in Estonia in May 2007. It was then that the most extensive cyber attack against state authorities and private enterprises of Estonia, including servers of banks and other institutions, was launched. Estonia is now supporting a joint fight against cyber crime in all meetings and in all international forums. We highlight the need to accede to the corresponding international convention. Estonia has begun to build a joint centre for the fight against cyber crime together with NATO partners in Tallinn. Large scale cyber crime is a direct threat to many human lives and endangers the functioning of every state with a developed and free information society.

In 2006, the Look at World Foundation partners and the Ministry of Economic Affairs and Communications signed the cooperation agreement "Computer Protection 2009" in order to develop in Estonia the most secure information society in the world. The aim is to ensure security of IT-solutions and e-services, increase trust in e-services and encourage the use of e-services. They also inform the public of threats from the Internet and introduce the means of protection. I should also point out that there are many other e-solutions in Estonia, such as paying for parking, purchasing a ticket in the public transport by mobile-phone, etc.

To conclude, I would like to stress that we Estonians know that only we ourselves are responsible for the Estonian Republic and the way we live in the future depends on us. The main thing is that today we are living in a free democratic country among the friends who cherish similar ideas of democracy and freedom.

ANNUAL DINNER - 2008



Photographers: David Karonidis



Peter Cochrane



Penelope Nelson

Photo – David Karonidis

Historian Peter Cochrane, author of *Colonial Ambition*, and writer Penelope Nelson, author of *Bligh's Daughter*, know a lot about early Australian colonial society, a time when politicians and would-be politicians of Sydney were driven by a determination to lift themselves and their new colony to a higher level. There were tussles with governors like William Bligh in a makeshift society far from its central government in London. Private citizens of note wanted parliamentary liberty, though they were sharply divided over the form it might take. To discuss early colonial politics Down Under, Peter Cochrane and Penelope Nelson addressed The Sydney Institute on Tuesday 11 March 2008.

BIOGRAPHICAL

NARRATIVE FOR WENTWORTH AND BLIGH PETER COCHRANE

Colonial Ambition was my attempt to tell the story of the struggle for self-government and democracy in New South Wales in the 1840s and 1850s. In telling that story I wanted the book to have two qualities that are not all that easy to reconcile – the first of these was solid scholarly foundations; the second was a broad readership beyond the universities. To reconcile those two qualities I decided, after much experimentation, on a literary form that I’ve called “biographical narrative”. *Colonial Ambition* would be political history with a strong biographical thread, represented first and foremost by William Charles Wentworth (1790-1872).

I chose Wentworth for several reasons – firstly, he was a colossus in the struggle for civil freedoms and self government in the colony; secondly, he was immensely talented, ferociously driven and deeply flawed – a fascinating character; thirdly, the documentation of Wentworth’s private or family life was rich enough to permit a dialogue between the public and private Wentworth – an extremely valuable means of understanding his political ambition; and finally, Wentworth was the most eloquent colonial opponent of democracy. The idea of the quintessential anti-hero as my leading man appealed.

Wentworth was big enough, complex enough and fascinating enough to carry the story, in the sense of being the figure around whom a panoramic political history could be organised. I envisaged the book working like a double helix, with the political history winding around and through the story of the Wentworth clan and that “biographical” thread becoming thicker as other key players (in Sydney and in London) worked into the picture. Those key players were Henry Parkes, Sir George Gipps, Robert Lowe, Earl Grey, Herman Merivale and Lord John Russell at the Colonial Office, and others including the women whose political influence has been a much-neglected part of our history.

It is extraordinary how the documentation seems almost to have conspired to keep women out of the picture. Their many and varied roles in politics or on the edge of politics should be pursued. Sarah Wentworth, for example, was an important influence in her husband's political trajectory – family concerns shaping political ambition. There were also the women who were formally excluded from the political sphere, politics being a male bastion, and yet they exercised a considerable influence as wives or companions or relatives of enfranchised men. Examples are hard to find but when they turn up they can be powerful. In the Parramatta electorate during the 1848 election, for instance, a wife spoke out against William Macarthur's henchmen, telling of how she hid her husband under the bed to save him from the "persuasions" of the Sheriff's bailiff whom she described as "the whipper-in of the Macarthur pack".

To sum up this very brief sketch of biographical narrative: the main idea was to revisit our political history in a new way, to tell it as a continuous, interwoven drama of human lives with the Wentworths at the centre of the story.

Now, one problem I was acutely aware of was the attitude in academe to narrative – the view that narrative history was dumbing down, that it's the first step into some sort of Hades of commercialism, that it was not serious history. The question is does narrative have to be like that? The difficulty arises I think from the view that narrative skates along on the surface of things, dealing with plot, chronology, character (most importantly), the flow of events and so on, while real historical scholarship is about delving deep, below the surface, into the structures, whether of language or economy or indeed of culture, forensic stuff that doesn't allow for the kind of movement – the concern with character and drama – that narrative requires.

It is true, I think, that narrative does have to obsess with matters of character and literary form. The question is: is that compatible with deep analysis and engagement with big issues in the discipline? Can the narrative writer obsess with the challenge of "the story" and engage with the "historiography" as well? Answer, yes. The novelist Thomas Mann once said: "A writer is someone for whom writing is more difficult than it is for other people." I think that's spot on. The answer *is* yes, but it isn't easy. The narrative historian has to wrestle with the literary dimension as well as the problem of how the past has been defined, interpreted, ignored or mischaracterised by other historians.

My second quote for the evening is from Julian Barnes novel, *Flaubert's Parrot* where he says: "Form isn't an overcoat flung over the flesh of thought...; it's the flesh of thought itself." Which I take to mean, reading that line as an historian, that merging the two concerns, literary and historiographical, so that they are brought

together seamlessly – story as argument and argument as story - is the real challenge. It's what Simon Schama has called "argument by stealth". *Colonial Ambition* is, I hope, argument by stealth – engagement with the discipline embedded in an alluring story. That's a very quick sketch of the biographical narrative model (discussed in more detail in *Griffith Review*, February 2008) that I hope to bring to my current project on Bligh in New South Wales.

I've begun this project by looking at the rebellion of 26 January 1808 when the New South Wales Corps marched on Government House, just a stone's throw from where we are sitting this evening, arrested Bligh and deposed him as Governor. What interests me most of all at this point is the question how did something as strange and excessive and exceptional as the rebellion of 1808 come to pass? My conclusion is that Bligh's character was the main cause of the rebellion. In a sense, his character, his behaviour, betrayed his commission.

If we look at Bligh's public performance, as Governor, in Sydney (August 1806-January 1808) and if we examine the responses of local citizens and soldiers, we see how Bligh came to epitomise what the isolated residents of Sydney feared most – an unfettered tyranny. They had a good schooling in tyranny, of course, from their own history and from their vicarious experience of the seemingly never ending war with France – Robespierre, The Terror, Napoleon, periodic fears of invasion and so on. So, here I want to make a few observations on Bligh's character and draw them together in a conclusion that reflects a little on Sydney Town as much as on the man himself.

Firstly, Bligh was high-minded in his professed inclinations and perfectionist in his standards. He was a man of faith, a regular churchgoer with an impeccable private life – a wife whom he adored and six daughters, four of them unmarried and a cause for financial concern. He was in the mould of the "new morality" in patrician England, best symbolised by William Pitt (1759-1806). He despised obesity, squalor, lethargy, womanising and drunkenness (though Pitt, of course, had a little problem with that last one). It's important to picture the total performance, the theatricality and the force of his menace: he was prone to fly into a rage, to wave his arms and his fists and to match these actions with wild and threatening words. It was not so much bad language as threatening language that seemed to hit home.

His trademark response to anything but compliance was a barrage of threats, the precise detail unknowable until it scorched off his tongue – he might threaten to "hang", "behead" or "ruin" a man, or thrash him or exile him, or to blow out his brains, or take his land or destroy his home or ruin his business. In Sydney, his violent and somewhat unhinged demeanour was mostly out of all proportion

to the matter at hand. I think he knew he had a problem, if indeed he thought of it as a problem – he described these outbursts as “ebullitions” or explosions of the mind. “Ebullitions” perhaps, but it certainly wasn’t madness – Bligh never spoke to his superiors like this. He was always able to control the direction of these outbursts – they all went downwards! Only his subordinates copped it. And as one victim put it, when seniority gave him permission to explode he “lost himself”. A very interesting word. “Lost”?

In *Mr. Bligh’s Bad Language* (1992), Greg Denning wrote about Bligh on the *Bounty*, the mutiny experience. He argued that Bligh’s language was a problem not because it was intemperate or abusive, but because men could not find in it any sign, any familiar pattern, of legitimate or acceptable authority. So it was in New South Wales. One of his victims was a merchant called Alexander Berry who brought a consignment of goods to Sydney to trade. Bligh worked him over, gave him a terrible time, threatened, among other things, to ruin him, and endangered the profitability of his enterprise. Later Berry wrote: “I felt myself in a remote corner of the world in the power of a lawless tyrant and cut off from every resource. I expected nothing but to be devoured.” It is that epithet “lawless tyrant” that catches the eye, but so too does the phrase “remote corner of the world” for Britons travelled the world, trusting in the reach of British law, even to the far corners of the Empire.

There’s three main areas where this lawlessness manifested itself, and I hasten to add that I’m using the term “lawless” loosely. Whether Bligh actually broke laws is a question beyond me at present. What I know is that he disrupted established judicial procedure, that he breached the spirit if not the letter of vice-regal authority and that he mightily offended established conventions regarding the treatment of officers and men in the military. These failings had an impact in three areas in particular. I can quickly summarise them.

Firstly, there was Bligh’s interference in several important cases in the Civil Court, notably the case of the Irish exiles, Michael Dwyer and four others. The officers of the New South Corps, who by and large ran the Court, thought his behaviour in this regard was “atrocious” and the injustice “horrible”. Second, there was his treatment of the New South Wales Corps itself, both officers and men. He was prone to abuse them mightily, comparing the ordinary soldiers to convicts or worse and impugning the integrity of the entire regiment at times. Examine these cases in detail and it is easy to see that Bligh abused the Corps beyond all good sense and reason. The historian George Parsons has gone so far as to argue that “honour” is the issue at the centre of the rebellion and there is a lot in that argument in my view.

Thirdly, there was Bligh's determination to reassert the rights of the Crown over land grants and leases in Sydney town. He went about rearranging the town with all the sensitivity of a cyclone, ordering citizens and soldiers to tear down their homes in some cases, raging mightily at the slightest objection, insisting he alone was the law, that custom or convention or established precedent meant nothing, and that all resistance was pointless. Those he damaged directly were a small number, but the entire resident population of Sydney felt threatened. Now, as you know, anyone who comes between a property owner and his real estate in Sydney is not likely to be loved. And in his attempts at "town improvement" Bligh, it seems, managed to alienate most of Sydney.

The key point is that no Governor, before or since, has rattled the sanctity of private property as Bligh did. He did this in relation to the town lots and leases and also in relation to his strict curb on the grog trade. Which of course, takes us back to his character – he was puritan in his attitude to grog. He had orders to stop the grog trade and those orders suited him perfectly. He was anti-urban by inclination. It wasn't just grog he objected to, it was the township of Sydney in its entirety – its moral character, its messiness, the cohabitation, the illegitimacy, the drunkenness, commercial greed, officers with convict mistresses parading about on their arm and so on. Bligh was quite happy, as a result, to follow his instructions because his instructions were to foster small farming in New South Wales. He did that from the outset, quickly winning the affection of the farmers at the Hawkesbury River.

His morals dovetailed nicely with a simple agrarian ideal and it ensured he would hate Sydney with a passion. His vision for New South Wales was even less realistic than Thomas Jefferson's dream of an America from which the evils of dark satanic mills (and an even darker proletariat) would be excluded. Unfortunately for Bligh, commercial Sydney was off and running even before he arrived, steeped in trade and graft, crude, boisterous, full of sin, litigious, avaricious, enterprising and unstoppable. A bit like today. Most of all Sydney was a city overflowing with entrepreneurial ambition. Governor King, Bligh's predecessor, had facilitated this, as best he could, knowing that emancipists needed to be employed in one way or another as they came out of servitude. Bligh didn't seem to get it. In the end what we see is two very different visions – the extraordinary ambition (and visions for the colony) of that first generation of traders and entrepreneurs as against Bligh's "vision" of a small farming backwater closed to everything but a penal future.

One last point: the ex-soldier, landowner and woolgrower, John Macarthur, is usually inserted into this saga as the chief conspirator or svengali, the string puller, the puppeteer behind the rebellion. I think there is every chance there would have been a rebellion, some

time or other, without Macarthur, though it has to be said he played a part in the one I've been discussing tonight. But a more useful way to see Macarthur is as one of those visionaries who imagined Sydney as a great city and as a trading port of immense significance in the world, another Liverpool perhaps or a London in the southern hemisphere, an exporting nation, a focal point for trade with the Pacific islands, with India and China and of course with England. Men such as Macarthur were re-imagining the colony when Bligh first put foot on Sydney soil. They were not going to be denied. And it was their vision that prevailed.

BLIGH'S DAUGHTER

- A PERSPECTIVE ON THE BLIGH YEARS

PENELOPE NELSON

For 180 years Sydney had no statue of Governor William Bligh. In December 1987 one was at last unveiled on the Circular Quay waterfront between Cadman Cottage and the Museum of Contemporary Art. My late father, David McNicoll, spearheaded the campaign for the statue in his column in *The Bulletin*, his late magazine. A long inscription on the flatteringly slim bronze describes Governor Bligh as a brave and gallant man who was unlucky in his subordinates.

In our century, we might question the emotional intelligence of a man with so much bad luck. We know that top-notch technical skills – and Bligh was one of the best navigators in history – do not always translate into good management of people. The mutiny on the *Bounty* made Bligh one of the most gossiped about figures of all time.

The events of January 1808 occurred in the context of longstanding conflict between army officers with a locally entrenched power base and naval officer governors appointed from London.

British policy remained more suited to the penal colony of 20 years earlier. Bligh's dream was a colony of law-abiding small farmers – yeomanry. He and his British superiors had little understanding of Sydney's fledgling trading economy. Bligh arrived predisposed to see officers, ex-officers and ex-convicts who enriched themselves through trade as corrupt – and indeed, their mark-ups were steep and their practices sharp. John Macarthur was a well-known Sydney businessman in the full tabloid connotations of that term – talented, entrepreneurial, energetic, profit oriented, impatient of authority and red tape, quick to challenge his critics to a duel, and not above sending in strong men to settle a score. Conflict between Bligh and Macarthur was inevitable, the convergence of the twain, an irresistible force meeting an old immovable object.

I don't propose to go into detail about the armed rebellion. Suffice it to say that Bligh was lawfully appointed, believed he was carrying out his commission and was a man who liked deference. He could

be vindictive to those who questioned his authority. There is not sufficient time to describe the long feud with Captain Short. Bligh was aware of the deficiencies of Sydney's legal system and wrote to London requesting a qualified replacement for the judge advocate, Richard Atkins, a charming alcoholic. Action on this request would have taken at least eighteen months when you factor in sea travel. Macarthur's refusal to accept a trial headed by Atkins was a key cause of the rebellion. As things stood there was no trial without the judge advocate, a point repeatedly made by both Atkins and Bligh. (As an aside, it is interesting that Bligh deleted some of Atkins' worst proposed punishments – for example, that selected prisoners in the stocks should have their ears nailed to the wood).

My novel is entitled *Bligh's Daughter*. After the briefest summary of Mary's life, I'll discuss three topics in more detail: the largely neglected interregnum, controversy around Mary's second marriage. I'll conclude with brief remarks about narrative history and historical fiction.

Mary's life in summary

Aged 22 when she arrived, Mary acted as the colony's first lady from August 1806 to January 1808. She was the wife of John Putland, a naval officer and Bligh's aide de camp. She played the piano well, landscaped Bennelong Point with trees and became a patron of the Orphan School. Mary caused a sensation one Sunday when lace pantaloons were visible under her sheer muslin dress. She nursed her dying husband at Government House (he had tuberculosis) and was widowed just three weeks before the Rum Rebellion. On 26 January 1808, she tried to repel 400 armed soldiers – their bayonets were drawn - with insults and a parasol. She spent a year under house arrest with her father in Government House and shared Bligh's incarceration at the Barracks in January 1809.

Later that year Mary endured cold months marooned at the mouth of the Derwent on *HMS Porpoise*. On her return to Sydney in early 1810 she was befriended by Elizabeth Macquarie and courted by Colonel Maurice O'Connell, Macquarie's deputy. Despite her father's initial disapproval, she married O'Connell, becoming the mother of a large family. After service in Ceylon and Malta, the O'Connells returned to Sydney in 1838, living at Tarmons on the Darlinghurst Estate (now St Vincent's College, Potts Point). After the death of her husband, many years her senior, Mary lived in Paris.

The interregnum

Sydney was not a happy place in 1808 and 1809. Four people headed the government in turn, George Johnston, John Macarthur, Joseph Foveaux and William Paterson. Bligh's supporters lost their government jobs and some were sent to the Newcastle coal mines after

farcical trials. Guards manned the doors of Government House and followed Bligh and Mary if they walked in the garden. The authorities communicated by frigid notes and acts of harassment. They harvested the best fruit and vegetables and put one of the gardeners on the town gang unloading ships. Bligh was allowed to see his friends but he could not correspond freely with London. His self-justificatory documents and letters had to be smuggled past the guards. Mary tried to keep up her father's spirits. He was subject to migraines.

In January 1809 two officers of the Corps were sent to arrest Bligh. In a calculated insult, he was transported to the army barracks (then near our Wynyard) by horse and cart. Mary followed on foot, dashing through the town on a blazing hot day. On arrival at the barracks she refused to be parted from her father. After some days Bligh gave an undertaking that he would sail directly back to England on *HMS Porpoise*.

Bligh was always very conscious of his role as Commander of the South Seas. Once on board the *Porpoise*, his power games began, with ill-considered threats in Sydney Harbour to turn the guns on ships carrying members of the rebel faction. He was dissuaded. When the *Porpoise* set sail it went north as far as Port Macquarie. Then, to the dismay of officers and crew who thought they were bound for Portsmouth, Bligh turned south to Hobart.

His motives are a puzzle. He mentioned not deserting his post without instructions from London. He also hoped for what he called "Succour". At times he imagined armed ships arriving from London or India to overthrow the rebels. He also hoped for help from loyalists in Van Diemen's Land. For a few weeks Bligh and the *Porpoise's* crew were welcome in Hobart but the Governor and his officers turned against him on instructions from Sydney. Bligh loyalists who supplied the ship were flogged in Hobart on David Collins' orders.

Again the officers and crew imagined they were bound for London. But no. For month after cold, indecisive month, the *Porpoise* hovered at the mouth of the Derwent, keeping in sight of north and south shipping lanes. Flying the Bligh pennant rather than a pirates' flag, the *Porpoise* summoned all shipping to come alongside while mail was inspected and stores commandeered.

It was a miserable ship. Relations between the crew and Bligh were strained. Some of the crew deserted. Lieutenant William Kent, under arrest for disloyalty to Bligh, had the freedom of the ship, which is not saying much. Mary endured an isolated existence. Distracted and edgy, Bligh took to his bed for days at a time. He was subject to migraines. At last word came – obliquely – of the Macquarie appointment and of the 73rd Regiment heading for Sydney. In January 1810, the *Porpoise* arrived in Sydney Harbour. Macquarie was already here and, to Bligh's fury, had already taken command.

Mary's second marriage

Bligh reacted with disbelief and rage in April 1810 when he learned of Mary's intention to marry Macquarie's deputy, Colonel Maurice O'Connell. He was fiercely opposed to the match. He had not seen it coming. The pair had only known each other since January. There were difficulties over age and religion. O'Connell was 42 to Mary's 26 and had been brought up a Catholic. O'Connell's very surname would have raised Bligh's hackles. The Irish were distrusted because of uprisings in Ireland in the 1790s and at Vinegar Hill near Castle Hill in 1804 in Governor King's time. In 1807 Bligh had sent alleged Irish rebel leaders to Norfolk Island. However, not long after reacting to the engagement with insults and refusals, Bligh gave his daughter away with a fairly good grace at Government House on 8 May 1810. The Reverend Samuel Marsden officiated at the wedding, so we can be sure the Anglican form was followed.

How was Bligh's consent obtained or, as he preferred, "extorted"? Mary and Maurice, both adults, could have gone ahead without his blessing. The Macquaries supported the match and so did some of Bligh's Sydney friends. I believe there was an additional factor. Gavin Kennedy, author of *Captain Bligh, the man and his mutinies*, writes that Bligh's evidence at the court-martial of an officer named Williamson might be explained by "some secret Masonic connection between the two". (page 255)

Masonic connections abound in this circle and are worth exploring. Lachlan Macquarie was a Freemason. Bligh's patron, Sir Joseph Banks, was a Mason. In letters to Banks, Bligh refers to God as "the Great Architect". This is not the language of *The Book of Common Prayer*. Masonic rites begin with the words "Brethren, in the name of the Great Architect of the Universe, let us declare the Lodge open". I cannot prove that Maurice O'Connell was also a Mason, but around 1800 many military men and many Irish Catholics did belong to lodges. It is surely significant that Maurice O'Connell junior, the O'Connells' eldest son, became the founding Grand Master of the Masonic Lodge of Queensland.

When Bligh wrote to his wife Betsy of "many proofs of the Honor, Goodness and High Character of Colonel O'Connell, and his good sense which had passed under my own trial", the discovery that O'Connell was a fellow Freemason could have been one such proof. A hint would have been enough for the astute Betsy Bligh. The fact that there is no mention of religion adds weight to my interpretation.

History, narrative and fiction

Few subjects divide historians as fiercely as Bligh does. Hostility to Bligh even extends to hostility to Mary in the work of Helen

Heney, the author of *Australia's Founding Mothers* (Thomas Nelson Australia, 1978). She goes so far as to say, "Though she committed no crime, she, of all her contemporaries, most strongly resembled Lady Macbeth. And unfortunately her 'little hand' pulled strings in New South Wales for a very long time."

Heney bases this judgement largely on William Nicholas' unglamorous portrait of Mary in later life. The National Library now owns this portrait, a companion piece to one of Maurice O'Connell, part of an army commission. Heney writes "...her cold expressionless eyes, her lightly folded arms, her stillness and her poise, all combine into a whole that chills the blood." Mary's crime, apparently, was to share her resentment of her father's enemies with her husband. Lachlan Macquarie and his wife tried to overlook the divisions of the Bligh years. "Let bygones be bygones" was the motto of the time. Perhaps it is not surprising that Governor Macquarie had little empathy for the alarms and humiliations Mary suffered during the rebellion, house arrest and the aimless months on the *Porpoise*, but such a failure of imagination by someone writing women's history is frankly astonishing.

It is pointless to set up category wars between academic history, narrative history and historical fiction. At the Sydney Writers' Festival last year, Tom Griffiths, an historian from the Australian National University, reminded us that many historians were originally inspired by historical fiction. Novelists are indebted too. I owe my picture of Waterloo to Thackeray, of Depression Sydney to Ruth Park and of life in makeshift goldfields towns to Henry Handel Richardson. Anzia Yezierska's *Bread Givers* provides matchless insights into the life of poor immigrants in New York's lower east side in the early twentieth century. Good fiction is all the more important when new research by Anna Clark shows that students in our high schools are alienated and bored by repetitive, colourless teaching of Australian history, so there's obviously room for livelier accounts of our past, whatever form they take.

When novelists are accused of seeing the past through a filter of contemporary ideas, historians cannot deny being subject to the same danger. Inga Clendinnen's book *Dancing with Strangers* has an epigraph from novelist Milan Kundera:

Man proceeds in a fog. But when he looks back to judge people of the past, he sees no fog on their path. From his present, which was their far-away future, their path looks perfectly clear to him, good visibility all the way. Looking back he sees the path, he sees the people proceeding, he sees their mistakes, but not the fog.

When we think about the Bligh era, as readers and writers, we need to set aside glib judgements, respect the evidence and exercise our sympathetic imagination to the full.

That is my aim in *Bligh's Daughter*.



Paul Cleary



Frank Brennan

Photo – David Karonidis

Author and journalist Paul Cleary was an adviser to the East Timor government from 2003-05 on the Timor Sea negotiations. He is the author of *Shakedown – Australia's grab for Timor oil* (Allen & Unwin). He also writes regularly for the *Financial Review*. Frank Brennan SJ AO is an adjunct fellow in the Research School of Pacific and Asian Studies at the ANU, professor of law in the Institute of Legal Studies at the Australian Catholic University, and professor of human rights and social justice at the University of Notre Dame Australia. He was adviser to the East Timorese Church Working Group on the Constitution. Paul Cleary and Frank Brennan addressed The Sydney Institute Tuesday 18 March 2008 to discuss recent developments in East Timor.

WHAT'S WRONG WITH

EAST TIMOR?

PAUL CLEARY

A good place for me to begin addressing this rather daunting topic is with one aspect of Timorese society that I can safely say I know well – and that is the neighbourhood in which I lived while working as an adviser to the government from 2003-05. Its experience is instructive in explaining the problems facing other villages right around the country. I've since been back to East Timor three times, the most recent visit being last November, so I can also add a more recent perspective on developments.

I lived in a place called Mataduoro which takes its name from the abattoir that operated there during the Portuguese time. It's a village that runs along the base of a mountain range on the southern edge of the town. When I say village I mean exactly that, because every place in Timor is part of a village, with a village chief and village meeting place, and with chiefs of sub-villages (*aldeias*). The main street of the village indicated that this was a reasonably affluent place by Timorese standards; most of the buildings were made from cement blocks and they had concrete floors. But that was where affluence ended.

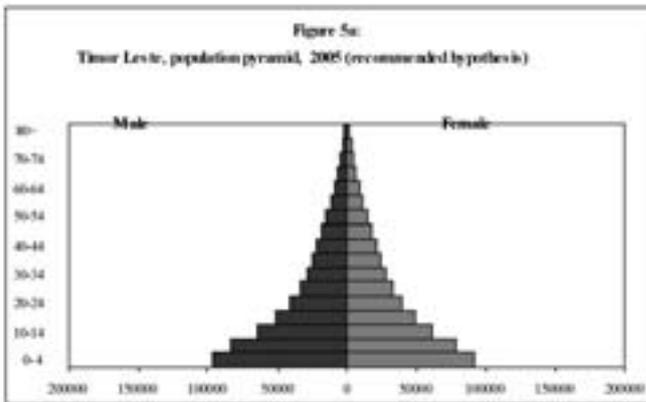
As an indication of what daily life was like in Mataduoro I'll start with the most basic of life's necessities – access to water. Even though it is only a few kilometres from the centre of Dili most people did not have running water and very few even could afford to tap into the bore water that lies underneath the town. For most people water was obtained from a communal tap on a pipe that came down from a creek in the mountain and which often runs dry, thereby requiring a long walk up into the valley to another watering hole. This work was mainly done by women and children who would go up into the valley and bring back water in five litre containers, or if they were more enterprising, it would be moved in a home-made cart.

The lack of clean water in East Timor is one of the factors that contributes to it having some of the worst health indicators found anywhere in the world, particularly for children. Children in Timor suffer the highest rates of mortality found in the world (about 12 per cent do not live to the age of five), while more than 40 per cent show

the signs of under-nutrition (stunting and wasting) – the result of *both* inadequate calorie intake and poor sanitation.¹

Mataduoro wanted for many other things that we take for granted, and perhaps the most acute need was the lack of work. On most days a group of young unemployed men would gather under an enormous banyan tree opposite my house where they would sit and play guitar in the relative cool for most of the day and into the evening. When some were asked if they had worked they would reply with a blank stare. Some had worked during the heyday of the United Nations administration as security guards. The sense of frustration in talking to this group was palpable; many of them were well into their twenties and at the point where they would like to marry, but without a job this was a dim prospect in a society where men are required to produce a dowry in the form of a herd of buffalo.

This figure shows one of the key challenges facing the country – its very young population. East Timor doesn't have a baby-boom bulge; it has a tapered population pyramid as a result of low life expectancy of about 55 years, and because the Indonesian occupation from 1975-99 is believed to have led to death of about a third of the population.



I'm sure many of you are thinking at this point “but hasn't East Timor got a lot of money from oil, and so couldn't the government have done something about the lack of services and jobs for young people?” The answer is both yes and no, and it depends on what time period you are looking at. Just to put things in perspective, consider what East Timor faced after the 1999 ballot and as a newly independent country in 2002. Building a newly independent, impoverished country from scratch was always going to be an uphill battle. This is why the Timorese leadership had wanted a 10-year transition – it was BJ Habibe and John Howard who fast-tracked the 1999 ballot, which led to awful consequences.

Immediately after that ballot East Timor and its UN advisers were faced with the following challenges:

1. Overcoming the loss of most of the country's infrastructure and public administration
2. Dealing with a legacy of violence as a result of the Indonesian invasion and occupation, and the potential for old grievances to re-emerge
3. Running the public sector with very limited financial resources – an annual public sector budget of around US\$80 million a year
4. Introducing a new national language and making it work
5. Resolving complex land ownership claims
6. Combining a leadership of Portuguese-speaking exiles with an Indonesian-educated youth

Just to take the first two points, it has to be understood that East Timor faced a vacuum in administrative capacity upon becoming independent; most of the trained professionals had gone back home to Indonesia. There were only a handful of foreign doctors and nurses in the country, and perhaps one or two Timorese doctors. In 2003-04 I visited districts where I met *the* doctor for a district of 60,000 people. So the ability to kick-start the economy and deliver new services and generate jobs was very limited, and in the early years so was the amount of money available. As mentioned, the annual budget was around US\$80 million in 2003 and 2004, or about US\$100 per head.

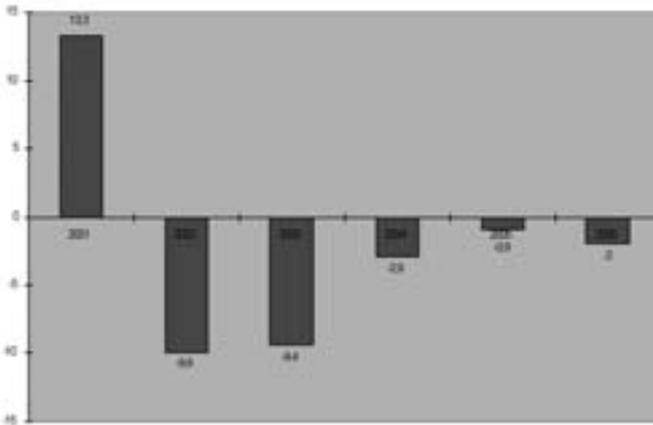
When the oil money began to flow in 2005 there wasn't the capacity to make effective use of it. To make matters worse, the newly-elected Fretilin government had put in place a cumbersome and highly centralised public sector. This mainly reflected the time that the leadership, most notably Prime Minister Alkatiri, had spent in communist Mozambique, where there is a preoccupation with centralisation and process, rather than achieving outcomes. The Portuguese author and journalist Pedro Rosa Mendes, who has spent many years in Angola and Mozambique and is now a correspondent in Dili, noted that the Timorese leadership, like their African counterparts, were fixated with protocol and process and the centralisation of power and administration.²

From 2005 onwards, however, when the government attempted to hit the spending pump, very little happened. All spending decisions had to be approved by ministers in Dili, but they regularly went unapproved for some time because ministers were out of the country. (I have a chapter in my book on this period which is called *Animal Farm* which I think says a lot about the leadership style.) About one-third of the expanded 2005 budget of about \$US130 million went unspent, which surely must verge on gross negligence in a country with such great need.³

Poor public administration in East Timor was not helped by some of the attitudes of the Fretilin government. Senior figures believed that the Timorese would develop a “dependency mentality” if the government splashed money around. For example, there was much pressure to give veterans a pension and the government responded belatedly and in a mean fashion – the modest pension was limited to those who could prove that they served continuously for 24 years of Indonesian occupation, which probably included about 10 people.

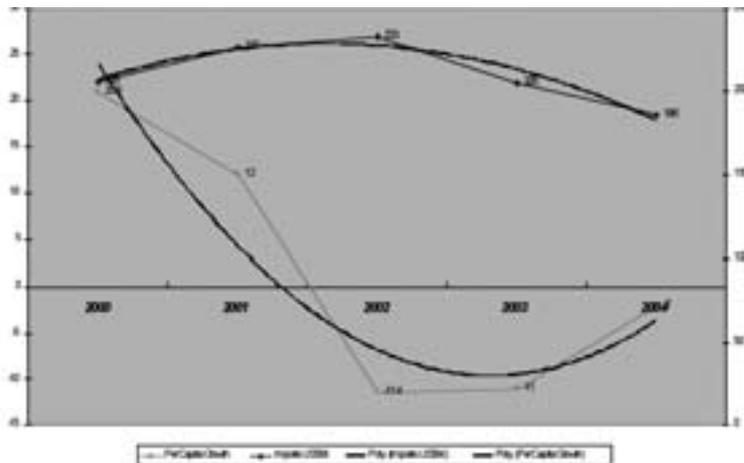
For all intents and purposes East Timor did not really have an economy outside Dili. There was very little money circulating around the country, very little purchasing power, and this is why in my village, and in so many villages around the country, young men sat under banyan trees and grew increasingly frustrated.

The GDP figures for 2001-2006 show starkly how East Timor’s economy imploded after the UN scaled down its presence from 2001 onwards, leading to five straight years of contracting per capita GDP.



Measuring GDP in a developing country is fraught with difficulty, especially in East Timor, which is not highly monetised. But the following graph shows that life was getting increasingly tougher, and hungrier, under the Fretilin government.

The top lines shows imports of goods, and as you can see there was a sustained decline from 2002 onwards, in step with measured GDP growth. Note that in East Timor imported items are not largely composed of luxuries as they are in Australia; the main components of this aggregate are food and fuel.⁴ In 2004 one of the major newspapers ran front page stories about people dying of starvation in the mountainous region of Hatu Bulico. Prime Minister Alkatiri responded by cancelling the government’s subscription to that newspaper and banning its journalists from press conferences, but the import figures indicate that perhaps those stories were correct.



This incident also says a lot about the autocratic style of the Fretilin government, and this certainly played a role in latter events. It's my view that these economic factors were the backdrop to the armed forces crisis of 2006. Many analysts – most notably the International Crisis Group – have focussed on all manner of internecine political factors in explaining what happened, but I really think it is a case of “It's the economy, stupid”.

The armed forces dispute came about when the government sacked 600 soldiers – almost half the East Timor army – and thereby created a new division within the tiny country. The “petitioners”, who hailed from the western districts of East Timor, complained of discrimination by the army's top brass who were mainly easterners. The division within the armed forces also reflected one of the legacies of Indonesian rule; the easterners were more fiercely opposed to Jakarta whereas there were generally more collaborators among those from the districts near the border with West Timor. The same can be said for the National Police Force, given that some of the leadership had served in the Indonesian police force, which also came into conflict with the easterners in the F-FDTL, as East Timor's army is known.

That the dispute snowballed into a national crisis, and put the country on the verge of a civil war and in need of intervention by foreign troops, is simply a reflection of the hubris and autocracy of the Fretilin government. After the soldiers were sacked Prime Minister Alkatiri said these famous last words: “The government is in control of the situation. The party presently in charge is a big party and therefore has the power to go to the base and control the situation.”

In my former village there was some burning of homes and property as seen on TV here in Australia. Some of it was directed

at easterners, but it also seemed to be aimed at the people who were generally more affluent. One of the torched houses was owned by a couple who came from both east and west. But one very clear outcome of this tumultuous chapter was that rebel leader Alfredo Reinado had become a popular figure among the youth of Mataduro; slogans supporting him were painted on walls around the village. Violence erupted again in the village, and elsewhere in East Timor, in February 2007 after the Australian army launched a botched raid on Reinado's base in Samé, killing five of his men. My former home was caught up in the melee, and the new occupants had to be extracted by the Portuguese republican national guard (GNR) who firstly arrived in a van, and after assessing the situation returned in an armoured personnel carrier in order to complete their mission. After the people were rescued the house was looted and the owner, a genteel Indonesian from Flores Island who had married a Timorese woman, died of a heart attack.

Following this violence a circuit-breaker came in the form of elections for the parliament and presidency in mid-2007, and these were relatively incident-free. Fretilin's vote collapsed, falling from 60 per cent to 29 per cent. It was no longer a "big party". It was unable to form government in its own right, although the leadership claimed it had the constitutional right to do so as the party with the largest vote. The new coalition government led by resistance leader Xanana Gusmão comprises five parties, with the dominant party being Gusmão's CNRT.

It is very encouraging that there was a peaceful handover of power by Fretilin. The party still has the potential to act as a "sore loser" in a resource rich country where the stakes are high. In my book I talk about how the Alkatiri family in particular was building a Soeharto-style empire of family businesses based on securing major government contracts. Fretilin did create mischief by claiming that Gusmão's coalition was unconstitutional, relying on a bizarre interpretation about the meaning of the word "majority" in the Constitution.

While the handover bodes well for democracy in East Timor, some disturbing trends emerge when the outcome is analysed in more detail. As shown by the following table, a serious threat to the future stability of Timor is the polarised vote between the eastern and western districts of the country. On a recent visit last year to the district of Viqueque there was ample evidence of roadblocks and anti-government banners, together with Fretilin flags, indicating that this stronghold does not accept the new government. It is also a concern that many of the refugee camps are also flying Fretilin flags, including the one right outside the international airport.

What really needs to happen next in East Timor is an urgent resolution of the dispute with the petitioners and the rebels, especially

East v west results

| EAST | Fretilin | CNRT |
|-------------|----------|------|
| • Baucau | 62% | 13% |
| • Viqueque | 60 | 13 |
| • Lautem | 45 | 15 |
| <hr/> | | |
| WEST | | |
| • Díli | 22 | 45 |
| • Liquiçá | 12 | 39 |
| • Aileu* | 8 | 67 |

* CNRT result includes ASDT

after the tragic shooting of the president José Ramos-Horta. There has been a proposed amnesty for the petitioners, who unlike the rebels did not take their arms with them, but this is a difficult solution for the senior brass in the army. If they can't be re-absorbed, then a payout or pension might be a good second-best solution.

It's also essential that numbers in refugee camps are dramatically reduced. But people cannot be forced to move, and they won't move until they feel that their neighbourhood is safe. This will depend on the rebuilding of both houses and domestic security forces, which are formidable tasks.

Aside from these specific issues, the focus must remain on getting money circulating around the country by streamlining the process for awarding government contracts. This may raise concerns about corruption, but the focus for now is to get projects rolling. The budget for the 2008-09 fiscal year proposes pensions of US\$15 a month for veterans, the elderly and other poor households as a means of alleviating poverty and spreading money around a semi-subsistence economy.

The US\$348 million budget represents an increase in the order of 50 per cent on what is likely to be spent this fiscal year, and a quantum leap on budget outlays of less than US\$100 million a year under the former Fretilin government. Gusmão has already shown some enthusiasm for splashing around the greenbacks (the country's official paper currency is the US dollar). In December he awarded 250 veterans one-off cash payments of \$9600 each in recognition of their service during the 24 year resistance struggle. This represents three years' salary for an average worker.

There's now visible evidence of money flowing more readily, and teams of workers are now busily engaged in various public works programs in the capital and around the country. A new program to build footpaths throughout the capital is symbolic of this new era. This labour-intensive work by scores of road gangs is also removing a health and safety hazard by covering drains, and is making the capital

more accessible for would-be tourists who may one day flock to this picturesque island.

The new government has highlighted centralisation as the main weakness of the Fretilin administration and has vowed to decentralise. This must remain a top priority. As a result of Fretilin's centralist-style, the population of Dili increased dramatically after independence, and this created the potential for conflict over land. Many of the new arrivals squatted in houses left vacant by the Indonesians who had come to Timor under the *transmigrasi* program.⁵

It will be a long time before East Timor is back to where it was in early 2006, just before the crisis. At this time hundreds of executives from around the world had recently attended conferences on the investment potential generally, and in oil and gas. Momentum in tourism was building. The luxury liner *Orion* was regularly visiting Dili and Baucau, and many hundreds of tourists had booked trips through companies like Intrepid Travel, which were then cancelled.

The new economic initiatives should help East Timor to stabilise, and provided the government can navigate through the dispute with the 600-odd unarmed petitioners, and the remnants of the heavily armed Reinado rebels, the country does have a reasonably good outlook. From here on it is a matter of doing well the simple things which were overlooked and neglected in the early years after independence.

Endnotes

- 1 For an extensive discussion on the link between child mortality and poor sanitation see "Ending the crisis in water and sanitation", *UN Human Development Report 2006*, pp25-75, UNDP, New York.
- 2 Conversation with the author November 2007, Dili.
- 3 These views are likely to be hotly challenged by a pro-Fretilin coterie of academics in Australia who saw Alkatiri as "nationalist" pin-up boy who was prepared to stand up to multinationals and western powers, most notably Australia. But most of these academics have turned a blind eye to his style of governance.
- 4 I am indebted to Dr Carlos Risopat for these graphics and data interpretation.
- 5 It is estimated by an Australian National University research project that up to 70 per cent of the housing in Dili was vacated by Indonesians after 1999 and this vacuum of tenure has been a major source of conflict. Susana Barnes, Field Researcher working on the ARC Project "Waiting for Law: Land, Custom and Legal Regulation in East Timor", conversation with the author February 2008.

EAST TIMOR: WHAT'S

WRONG

FRANK BRENNAN

Last week I participated in the launch of my sister Bernadette's book *Just Words? Australian Authors Writing for Justice* (University of Queensland Press, 2008). I have a chapter in the book addressing the stipulated question to me as a public advocate for indigenous, refugee and various other human rights, Why do I (bother to) write about justice?. I answered with a chapter entitled "Writing: seeking justice and truth amidst the imperfect good and the necessary". I made the observation:

I spent 15 months working in East Timor after independence. But I saw no case for my publicly critiquing the fledgling new Timorese government nor the misconceived UN gestures at reconciliation in substitution for the establishment of a functioning judiciary, police force and serious crimes unit. Rather, I confined myself to writing about the injustice of Australia's proposed oil and gas deal in the Timor Sea, welcoming a more just outcome when Foreign Minister Downer reopened the negotiations offering a revenue split of 50-50 rather than 82-18 in favour of Australia. Being an Australian, not a Timorese, it was important for me as a writer not to cause offence nor to add difficulty to the task of government by indigenous leaders seeking to establish a new nation from the ashes of the 1999 conflagration.

I have no intention of changing my approach this evening, having agreed to speak at this forum with Paul Cleary long before the shooting of President Ramos Horta and the death of Alfredo Reinado. I will be even more cautious in light of the observation by my friend Justice Patrick Keane of the Queensland Court of Appeal at another book launch this last week. He told members of the Queensland Bar that Frank Brennan "who is a member of the Queensland Bar, though he rarely practises, is a prolific author on subjects of legal interest. Of course, his books are, in his Jesuitical way, usually directed to the destabilisation of democratically elected governments."¹ In addressing what's wrong, I will confine myself to a consideration of what could be made more right in Australia's dealings with Timor Leste and in the UN's ongoing consideration of Timor issues. I have of course no

interest in undermining the democratically elected governments on either side of the Timor Trough.

The oil and gas question

The Australian and Timor parliaments have now approved the Timor Sea Treaty between the government of East Timor and the government of Australia, done at Dili on 20 May 2002 and the Treaty On Certain Maritime Arrangements In The Timor Sea done at Sydney on 12 January 2006 and which came into force on 23 February 2007. The two governments have agreed not to agitate the issue of maritime boundaries in any way for the term of the latter treaty (which will be 2057 unless the petroleum resources of Greater Sunrise are exhausted earlier) and they will share equally revenue derived directly from the production of petroleum lying within the Greater Sunrise area in so far as the revenue relates to the upstream exploitation of that petroleum. Timor Leste now exercises jurisdiction in relation to the water column, and sovereign rights over the resources of the water column within the Joint Petroleum Development Area defined in the Timor Sea Treaty.

So there is no need for Australia and Timor Leste to finalise maritime boundaries in the Timor Gap for another 50 years. Timor Leste controls the water column and the fisheries inside the JPDA. Timor Leste continues to enjoy 90 per cent of the tax revenues from Bayu Undan. Timor Leste and Australia will share the tax revenues from the upstream development of Greater Sunrise 50:50. Australia is entitled to continue developments outside the JPDA and to the south of the 1972 seabed boundary negotiated with Indonesia.

If maritime boundaries were to be negotiated tomorrow, Australia would continue to assert that it is entitled simply to join the dots A16 and A17, claiming the seabed and its resources to the edge of the continental shelf on the Australian side of the Timor Trough. Timor Leste would claim up to the median line tracing the 1981 Fisheries Boundary line. In response, Australia would argue that it is entitled to move the median line to the north on account of Australia's substantially longer coastline opposite the median line. If such an argument were to succeed, much of Bayu Undan could be on the Australian side of a modified median line. The western lateral line near Laminaria/Corallina and Buffalo is a simplified line of equidistance between Indonesia (West Timor) and Timor Leste. Timor Leste might argue that the irregularity in the Timor coastline warrants the drawing of a perpendicular line from the coast rather than a line of equidistance. Indonesia would need to be party to this discussion as this line would also be used to delimit the boundaries for the territorial waters, contiguous zone, and exclusive economic zone between Indonesia and Timor Leste.

entitlements and keep the Treaty'. In other words, East Timor should go ahead with signing the [Timor Sea] Treaty [2002] while very firmly setting out that it was without prejudice to a final agreement on maritime boundaries."⁵

The eastern lateral line which divides Greater Sunrise 18:82 is a simplified line of equidistance between Indonesia (outer islands including Leti, Moa, and Lakor) and Timor Leste. Timor Leste could argue that the Indonesian islands should be given less than full effect. In past negotiations with Australia, the Indonesians insisted on giving the Indonesian islands full effect and Australia conceded that demand. Indonesia once again would need to be party to this discussion as this line would also be used to delimit the various boundaries between Indonesia and Timor Leste on the east of Timor Leste. It still seems strange to many observers that Timor Leste would get 90 per cent of the upstream revenue from Bayu Undan and only 50 per cent of the revenue from Greater Sunrise. After all, Greater Sunrise is much closer to Timor Leste than is Bayu Undan. Also, Greater Sunrise is much closer to Timor Leste than it is to Australia. It is important to appreciate that when a simplified line of equidistance is used, 82 per cent of Greater Sunrise is closest to Indonesia, and not to Timor Leste. It just so happens that in 1972 Indonesia agreed that all those resources south of the 1972 seabed boundary which would otherwise go to Indonesia (being closest to Indonesia) would go to Australia.

When determining what is fair, a fictitious exercise might help. If Billy were entitled to 80 per cent of the chocolates and Jane were entitled to only 20 per cent, what difference does it make to Jane if Billy has already decided to give his share to Mary? We might consider what would be fair if Timor Leste and Indonesia were negotiating a division of the Greater Sunrise spoils on a *tabula rasa* without any previously determined maritime boundaries between Australia and Indonesia. Once Indonesia was allocated its share, it would need to hand that share on to Australia, honouring the 1972 agreement between Australia and Indonesia. What then would be unfair about Australia receiving its legal entitlement from Indonesia, provided only that Indonesia had received a fair share in its negotiations with Timor Leste?

The Timor Leste government and their negotiators have much improved the deal which was on offer back in 2004. Originally, Woodside had warned Timor Leste that Greater Sunrise would be postponed indefinitely unless the unitisation agreement was approved by parliament by early 2004. Alexander Downer told them they would not get a cent more than the 18 per cent then on offer. The East Timorese negotiated well. They are still awaiting the results of an independent assessment about the practicality of piping the Greater Sunrise deposits to Timor Leste so they can reap

the downstream processing benefits. Until those results are in, the Timorese are unlikely to be in any desperate hurry to approve the new arrangements. With rising oil and gas prices, Bayu Undan is now yielding them much more than was predicted.

The final shape of the deal splitting the share of government revenues and delaying agreement on maritime boundaries until exhaustion of petroleum reserves owes much to the published comments of Mr José Ramos Horta, speaking at the Lowy Institute on 29 November 2004, following up suggestions put in private negotiations four years earlier. Having publicly outlined the proposal for the first time, Horta said, "We are not impressed by pressure or bullying tactics. We have self-respect and a sense of dignity." The Timorese were still smarting from Australia's precipitate withdrawal from the maritime boundary jurisdiction of the ICJ and ITLOS. When Australian officials had warned the Timorese about the possibility of such withdrawal, the officials described it as "Australia's get out of jail card". Horta urged Australia to show good faith in legal multilateral bodies such as the ICJ, suggesting a joint request for mediation or arbitration. Regular attendees at The Sydney Institute might recall that Kevin Rudd, when he addressed *Multilateralism in the Post-Iraq Order - Australia's Commitment* here at the Institute on 27 May 2004, was unable to give a commitment that a Labor government would re-subscribe to the jurisdiction of the ICJ and ITLOS on maritime boundaries, and this despite the fact that the Labor members of the Joint Standing Committee on Treaties had said "the ICJ declaration made by (Alexander Downer) damages Australia's international reputation and may not be in Australia's long-term national interests. The declaration may be interpreted as an effort to intimidate and limit the options of neighbouring countries in relation to any future maritime border disputes."⁶

Once the Timor Leste parliament had signed off on the Sunrise deal with only a handful of voices in dissent, I was happy to close the file, congratulating the Timorese on a skilful negotiation. Once their parliament joined their government and President Xanana Gusmao in giving the deal the tick, there were good grounds for thinking this is a fair deal given the contested maritime boundaries which will be settled only when Timor Leste, Australia and Indonesia come to the table. Cleary's limited release of the Brownlie advice confirms me in that view.

Last month Woodside CEO Don Voelte presented the company's 2007 Annual Results. Woodside advises: "During the presentation Don Voelte discussed that in January he had met with senior representatives from the Sunrise Joint Venture who are encouraged that Sunrise could progress to concept selection in 2008. He outlined a target Final Investment Decision (FID) in 2009 and target start-

up 2013-2015. He reiterated the Joint Venture's intention to select a concept which enables the development of the Greater Sunrise gas fields to best commercial advantage consistent with good oil field practice. He discussed three development options - piping gas to Darwin (DLNG), floating LNG facility (FLNG) and piping gas to Timor (TLNG).⁷ Following this Woodside presentation of annual results, *The Age* reported "Woodside's surprise confidence in meeting FID in 2009 suggests that the Timor option has been ruled out."⁸

Meanwhile L'ao Hamutuk, the Timorese NGO long sceptical about oil and gas developments in Timor Leste has published a detailed report *Sunrise LNG in Timor Leste: Dreams, Realities and Challenges* warning that onshore downstream production of LNG need not be a bed of roses for Timor Leste even if it be economically viable as a proposition.

The presence of Australian troops

Last December I made a return visit to East Timor. It was my first return visit since the troubles of May 2006. I directed the Jesuit Refugee Service there in 2000-2001 and have made annual visits since then. I returned to Australia troubled by the future prospects of East Timor, and this was months before the shooting of President Horta and the killing of Alfredo Reinado.

The new government there is anxious that the Rudd Government extend the operation of the international security force (ISF). Australian troops were first recommitted to East Timor under an emergency arrangement between the two governments. The Status of Forces Arrangement (SOFA) was finalised by an exchange of notes between the two governments on 26 May 2006. Initially it was hoped that the arrangement would need to be in place only for a short time. Now both governments are agreed that the troops should stay for years rather than weeks. For the good of our troops and in our national interest, I suggested on my return to Australia that the ongoing presence of our troops be made the subject of a formal agreement between the governments and that the agreement comply with all Timorese constitutional provisions for an international agreement in the field of defence and security. In particular, this would require that the agreement be approved by the East Timorese Council of Ministers. Further, I suggested that the government of East Timor be encouraged to submit the agreement to parliamentary approval so as to ensure not only constitutional validity but also the political legitimacy which can come only from cross-party support. The Australian government remains convinced that the SOFA "is of less-than-treaty status and is morally and politically binding".⁹ Stephen Smith, the Minister for Foreign Affairs says, "It is for the government of East Timor to determine what parliamentary scrutiny

of treaties and arrangements is appropriate within its system. As this SOFA is not a treaty, however, it cannot be 'ratified' as such and lack of ratification does not affect the legality of the ISF deployment under international law."¹⁰

My fear is that if the new Timorese government fails to deliver social and economic reform in the next year or two, there will be even greater civil unrest, especially on the streets of Dili. We should do all we can to minimise the perception, especially amongst that government's critics, that the Australian forces are there to enhance the prospects of the Timorese government parties against those of its opponents. We should leave no stone unturned ensuring not just the legality but also the legitimacy of our troops' presence in troubled East Timor.

There is some confusion in the Timorese Constitution about the relevant competencies of the President, the National Parliament, the government and the Council of Ministers on these matters. In the field of international relations, the President has the power to conduct any negotiations "towards the completion of international agreements in the field of defence and security" (Section 87(d)). He is to exercise the power in consultation with the Government.

But then, the Constitution provides that the government has the power "to prepare and negotiate treaties and agreements and enter into, approve, accede and denounce international agreements which do not fall under the competence of the National Parliament or of the President of the Republic". (Section 115(1)(f)) Though the President and the government both have power to negotiate international agreements in the field of defence and security, only the government has the power to enter into or accede to such agreements.

Once an agreement or international treaty is entered into, the National Parliament has the power to approve or denounce it. ((Section 95(3)(f))¹¹ There is no provision stipulating that all international agreements have to be submitted to the national parliament. Neither is there any provision stating that a particular class of international agreement has to be submitted to the national parliament. Given that Parliament has a broad power to approve or denounce agreements or treaties, it is arguable that all agreements or treaties would have to be submitted to Parliament.

However the Constitution provides that the Council of Ministers has the power to approve any international agreement that is not required to be submitted to the national Parliament. (Section 116 (d))¹². So the more likely construction of the Constitution is that treaties and agreements do not have to be submitted to Parliament unless Parliament passes a statute requiring that all or a particular class of agreements of treaties be so submitted. However, there would be nothing to stop Parliament insisting (by formal resolution) that a

particular agreement or treaty be considered by the parliament for the purposes of approval or denunciation.

The President then has the power to order the publication of any resolution of the National Parliament approving an agreement or ratifying an international treaty (Section 85(a)). The rules in any such agreement or treaty would become part of the internal law of East Timor once published in the official gazette (Section 9(2)).

In this particular instance, the letter requesting assistance of the ISF was signed on 26 May 2006 by President Gusmao, Prime Minister Alkatiri and Lu Olo, the President of the National Parliament. Foreign Minister Horta then signed the bilateral agreement with Australia. That agreement was never presented to the Timorese Council of Ministers or Parliament for authorisation, approval or endorsement. On 26 July 2007, Horta as the new President issued a public request that Australian troops remain until the end of 2008. At the very least, this would be an extension of the agreement of 26 May 2006, which itself would require compliance with the constitutional requirements. In December 2007, even before the Reinado shootout, there were indications that the Timorese government would like the ISF to remain well beyond the end of 2008.

The original agreement and any new agreement relating to an extension of the original agreement could still be approved or renounced by the Timorese Parliament. Even the original agreement could be prospectively invalidated by a formal renunciation of the Parliament. If this legal analysis be incorrect on the ground that the original "agreement" be classified only as an emergency, short term "arrangement" not requiring any constitutional compliance, any new agreement for protracted troop presence (including an agreement to extend the original arrangement) ought not be classified as an arrangement but as an agreement requiring constitutional compliance and deserving enhanced political legitimacy through parliamentary approval of all parties including Fretilin, if that be possible.

I willingly concede Foreign Minister Smith's claim that "the ISF's presence in East Timor is consistent with international law".¹³ In its Resolution 1704 of 25 August 2006, the UN Security Council expresses "its appreciation and full support for the deployment of international security forces by the governments of Portugal, Australia, New Zealand and Malaysia in response to the requests of the government of the Democratic Republic of Timor-Leste, and their activities aiming to restore and maintain security in Timor-Leste". Compliance with international law is one matter; using the full Timorese constitutional machinery to lock in cross-party support for the ongoing presence of our troops is another.

I remain convinced that the election of the Rudd Government provides the fresh air for transforming an emergency arrangement into

an agreement with undoubted constitutional validity and enhanced political legitimacy. The simple maintenance of the arrangement risks our troops being perceived by Fretilin supporters as the plaything and political insurance of the Timorese President and Prime Minister of the day. I think that risk can be minimised by our government's insistence on due process. I do not think it is wise for our government simply to leave it to the Timorese government of the day to determine what parliamentary scrutiny of a long term agreement for the posting of our troops is appropriate within the Timorese system, especially when a major political party like Fretilin has senior members expressing reservations about the legality of the troops' presence. Why not insist that the Timorese government use every means in its constitutional armoury to ensure broad based Timorese support for the ongoing long term presence of our troops?

The oil and gas dispute over the Timor Sea provides a salutary lesson. There are many Australians as well as Timorese who wonder about the fairness of the final deal thrashed out by the Howard and Alkatiri governments. Despite the complexity of the issue, a majority of citizens in both countries were reassured by the overwhelming vote of the Timor parliament across party lines to support the final outcome. Critics of the new government and president are suspicious that Gusmao and Horta are too close to Australia. Thus they have reason to be suspicious of arrangements with Australia when those arrangements have not been approved by the parliament or even the Council of Ministers. Transparent arrangements following the letter and spirit of the Timor constitution could save everyone grief in both countries.

When in East Timor last December, I heard many garbled reports circulating at all levels of Timorese society about an incident involving Australian troops confiscating a Fretilin flag at a community meeting. Even one very reputable Timorese citizen assured me that the Australians had taken the flag and deliberately stomped on it as a sign of disrespect. In such a context, we should do everything we can to ensure that all major political parties in Timor Leste are locked in to supporting the presence of foreign troops.

Just one week before his father was shot, Loro Horta published an article stating: "The great majority of Australian military personnel have acted with honor and professionalism while on service in East Timor. However, the arrogant behavior of a small minority has broadly undermined the ADF's image in the eyes of the Timorese population. While the current wave of anti-Australian sentiment is the result of many factors - some of which, to be fair, are beyond the ADF's control - addressing the issues over which they have command is crucial for the continued success of their mission."¹⁴ Then ten days after his father's shooting, Loro Horta wrote:¹⁵

While the overwhelming responsibility for the tragedies that have ravaged Timor-Leste since its independence goes to its leadership, the unwise meddling in local politics by external powers has not been helpful at all. For instance, during the 2006 crisis it became clear that Canberra had no love lost for Alkatiri and was happy to see his back. Since the formative years of the country's security forces Australia and to a lesser extent the United States favoured Xanana's armed factions while trying to contain Alkatiri and his Fretilin.

For my present purposes, it is not relevant to determine whether Australia has harboured such a bias. It is relevant only to ask how such a perception of bias can be countered for the good of all parties including our own troops. Compliance with international law, moral and political obligation, and UN acknowledgment could be complemented by formal cross party parliamentary support of our troops' long term presence as a precondition to continued engagement beyond the initial emergency period.

Just days before President Horta was shot, he convened a meeting of the major political parties including Fretilin to consider the major issues such as the IDPs (the internally displaced people), Reinado, the Petitioners, justice sector reform, defence and security sector reform, and public sector reform. This initiative resulted from discussions that occurred during UN Secretary General Ban Ki-moon's visit last December. Understandably, the initiative has been on hold since the shooting. But it highlights the utility of having broad based discussion and endorsement of proposals and commitments in the areas of defence and security. As I said before the shooting, I say again with greater confidence: would it not be in everyone's interests, including the interests of our own troops, to have Fretilin and all other political parties formally committed by parliamentary resolution to the ongoing, long term presence of the International Security Force? If even the President's son post-shooting remains concerned about perceptions of Australian bias against Fretilin, we should do more to ensure Fretilin's formal endorsement of the presence of our troops.

If Australian troops are to be there for a long time, if they're not to go in as "blue berets" but rather as an international force chiefly with the New Zealanders, it would be very wise to ensure that there be specifically stated cross party support in the Timorese parliament.

Foreign attempts to make up the shortfall

In December, despite my anxieties about the situation in Timor Leste, I did not return expecting that there would be anything like the terrible attack on President Ramos Horta, the failed attack on Prime Minister Gusmao, and the death of rebel Major Alfredo Reinado. It had been 18 months since I'd been there and I did come home to

Australia at that time very troubled, that I thought things had gone downhill very greatly.

The roots of these present troubles go back to April 2006 where there was a very serious mishandling of the departure of almost 600 petitioners from the military. Protests and killings occurred. There was an urgent request for the Australian troops to come in. Then things just fell apart politically; ultimately Prime Minister Alkatiri resigned. Fretilin had been the major party and had previously dominated the parliament having run the Constitutive Assembly which established the new Constitution. Even though it got the largest vote of any party in last year's election, Fretilin didn't end up in government. Fretilin members became very disaffected. There was an emerging east-west divide, about which I have to confess in the 15 months I worked there I never heard very much. There is now a situation where the judiciary remains under-developed, the police force as ever is under-trained, the legal profession is still all but non-existent. Unemployment remains very high. There are tens of thousands of people still homeless, and living under tents in major urban centres like Dili. It's a recipe for something to go dreadfully wrong.

There are always conspiracy theories in Timorese politics, and I'm one of those Australians who think that we don't serve things very well by buying into any of those theories ourselves, at least publicly. The disempowered Fretilin's stronghold is more in the east of the country exacerbating this east-west divide that is playing itself out.

The usual instruments of the State have not worked in relation to someone like Reinado. The man was up on murder charges; he'd broken out of prison. When there were calls by some of the judiciary that he be dealt with, other organs of the State were urging judicial forbearance and arguing that things should play themselves out. The international troops were unable to bring Reinado and his cohort to heel. It was hoped that somehow negotiations might occur.

These developments are very foreign to notions that we have about separation of powers; they're very foreign to notions we have about the transparent exercise of constitutional power. But that's the way Timorese society has always worked, and at the moment is still working. This accounts in part for the radical complexity of the present situation and why we have to be scrupulously careful to minimise any risk that the Australian troops or the Australian police be perceived to be the instrument of one political faction or of one grouping within East Timorese society.

There have been some in the Fretilin party who have been questioning both the legitimacy of the government because of the way in which it was appointed by President Horta, and the legitimacy of the presence of an international security force.

Back in 2001, my major concern was that that the UN and the international community were doing nation-building on the cheap. A lot of eggs were being put in the basket of national reconciliation. People in Dili at that stage were surprised that I, a Jesuit priest who'd advocated reconciliation in Australia for so long, was one of the strong critics of the so-called reconciliation process. Why? Not because I'm opposed to reconciliation. Back then it was very clear, first that the court system was unworkable; second, the police and legal system itself were under-developed. The major violators who had been involved in activity in East Timor were not within the jurisdiction but in Indonesia. Imagine trying to run a Reconciliation Commission in South Africa without a credible court system to try unrepentant wrongdoers, and with all major wrongdoers beyond reach, living outside the jurisdiction. In such circumstances, reconciliation is cheap justice with spin.

My concern was that the UN, which is very good at publishing documents which come off computers, composed by people who are very well-intentioned and who come from every nation on earth, can make very compelling written cases about the causes of present unrest. But that is no substitute for building the solid institutions of the nation-state which are able to ensure justice together with reconciliation.

That concern of 2001 is borne out if we look at what happened in 2006 when the troubles erupted. If you'd had a developed nation-state then of course the police would have gone into action, the prosecution authorities would have gone into action, the courts would have started their work. Timor Leste has none of that in working order, so what happens? Ramos Horta does the only thing that he can do: he puts in a personal request to the Secretary General of the UN, asking, "Can you please set up an Independent Commission of Inquiry into what's happened?" And so an Independent Commission of Inquiry is held. Three worthy people from different nations on earth come for two one-week visits, and they say, "Well, we don't have the police available to us, we don't have the prosecutors available to us, we can't apply the usual onus of proof, but we can write a very long and eloquent document which concludes that the structures of the State are inadequate in East Timor." They observed.¹⁶

An issue arose with respect to the standard of proof that the Commission would apply in its investigations. In view of the limitations inherent in its powers, the Commission decided that it could not comply with the normal criminal standard of proof beyond reasonable doubt. Rather, the Commission concluded that the most appropriate standard was that of reasonable suspicion. This would necessitate a reliable body of material consistent with other verified circumstances tending to show that a person may reasonably be suspected of involvement in the commission

of a crime. Obviously the Commission would not make final judgements as to criminal guilt. It would make an assessment of possible suspects in preparation for future investigations and possible indictments by a prosecutor.

The Commission then went on to detail many of its suspicions including that:¹⁷

- The former Prime Minister (Alkatiri) failed to use his firm authority to denounce the transfer of security sector weapons to civilians in the face of credible information that such transfer was ongoing and involved members of the Government
- The speech given by the President (Gusmao) on 23 March 2006 was perceived as divisive and the President should have shown more restraint and respect for institutional channels by exhausting available mechanisms before giving the speech and by communicating directly with Major Reinado after the latter's desertion.

The report did not result in successful prosecutions. It was not limited to observations about criminal activity. It did not resolve any political impasse. It probably contributed to a further breakdown of trust within the political elite and to a further public disillusionment with Timorese politicians. Whatever optimism we have about the spirit of the Timorese, and their spirit is extraordinary, we have to face the fact that it has always been a very factionalised society and it's going to take many, many years to build the structures of the state in order to ensure that troubles of the sort that we've seen last month don't recur. UN observations about individuals' "failure to use (their) firm authority" and the need for them to show "more restraint and respect for institutional channels by exhausting available mechanisms" have done nothing to resolve the crisis.

Australia can continue to assist with nation building and trust building if it ensures that any intervention it makes is with broad, cross-party support within East Timorese society. Whenever we do anything in Timor Leste, we need to do it with humility continuing to say, "You're the Timorese, you are self-determining. No matter what problems you face, we're here to work with you." Giving full credit where it's due, I think Prime Minister Rudd and Stephen Smith have so far done that each time they visited there, and that needs to be maintained. I just wish they would insist on Timorese parliamentary authorisation for the long term presence of our troops in such a lawless, conspiratorial environment.

Endnotes

- 1 Launch of The Law of Rescission - Remarks by Keane JA, *Hearsay: The Journal of the Bar Association of Queensland*, Issue 25, March 2008, p. 1
- 2 Quoted by P. Cleary, *Shakedown*, Allen and Unwin, 2007, p. 104

- 3 Ibid, 237
- 4 Quoted by Cleary, Ibid, at p. 64
- 5 Ibid, 64
- 6 Joint Standing Committee on Treaties, Report No 47, *Review of Treaties tabled on 18 and 25 June 2002*, August 26, 2002, para 4.32
- 7 Sasha Pental, Sunrise LNG Development Project , Woodside Energy Ltd, Communication to author, 14 March 2008
- 8 “Woodside’s foot on gas in Timor”, *The Age*, 21 February 2008
- 9 Letter of Stephen Smith to author, 27 February 2008
- 10 Ibid
- 11 Section 95(3)(f): “It is also incumbent upon the National Parliament to approve and denounce agreements and ratify international treaties and conventions.”
- 12 Section 116(d): “It is incumbent upon the Council of Ministers to approve statutes, as well as international agreements that are not required to be submitted to the National Parliament”.
- 13 Ibid
- 14 L Horta, “Aussies Outstay Their East Timor Welcome”, *Asia Times*, 5 February 2008
- 15 L Horta, RSIS Commentaries, No. 18, p. 2
- 16 Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste, Geneva, 2 October 2006. p. 14
- 17 Ibid., pp.75-6

ANNUAL DINNER - 2008



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Photo – David Karonidis

Malcolm Turnbull

The Hon Malcolm Turnbull MP is the Shadow treasurer and Member for Wentworth. With the election of the Rudd Labor Government, debate over climate change alongside economic responsibility moved to centre stage. In his address to The Sydney Institute on Wednesday 26 March 2008, Malcolm Turnbull put it bluntly: “As the source of only 1.5 per cent of the world’s emissions whatever we do domestically will make little or no difference to the global result. If we reduced our emissions dramatically, but the rest of the world did not, we would find ourselves paying a high cost for mitigation by reason of our own action, and a high price for adaptation by reason of the inaction of others.”

TAXATION AND

CLIMATE CHANGE

MALCOLM TURNBULL

The Liberal Party is a party of enterprise and individual freedom. It is a party whose mission is to create the economic environment in which Australians can have the greatest range of opportunities in which to fulfill their ambitions – for themselves and for their children.

We recognise the great social and moral challenges of our time, among them global poverty, social and especially indigenous disadvantage, climate change and environmental degradation. We recognise that the resources of government must be deployed to address them. But deep in the DNA of true Liberals we know that every dollar the government spends was earned by someone else and that this money – “other people’s money” – must be spent as prudently and effectively as possible.

There is no virtue, none whatsoever, just in spending taxpayers’ money. There *is* virtue in spending taxpayers’ money and achieving real results as long as the benefits exceed the costs. The real benchmarks for political achievement are not how much money can be spent on any given good cause, but how much can be done, how much reform can be effected and how efficiently taxpayers’ money can be deployed.

We need more bang for less buck

It is this spirit, this core value, of individual enterprise that led me to join the Liberal Party more than 30 years ago. All my life I have believed in, and in many fields practised, what I would describe as resilient individualism, the enterprising spirit that leads a person to push themselves to achieve their goals and if they do not succeed, enables them to dust themselves off and get started again.

Our society as a whole is strongest when individuals are able to take responsibility for their own lives and when governments create the environment – the level playing field – in which they can do so. Our party has always recognised that it is only a strong free enterprise economy that will generate the means to care for the vulnerable and disadvantaged. Compassion without capacity assists no one.

A vital difference between our party and Labor is our approach to taxation. So it was no wonder, that one of Mr Rudd's most breathtaking excursions into Orwellian doublespeak was when he said in Perth recently that for its eleven and a half years the Howard Government did not put forward a strategic vision for the tax system." The tax reforms of the Howard Government, in particular the GST, were the most sweeping in any of our lifetimes. Kevin Rudd described these reforms as a "fundamental injustice". Treasurer Wayne Swan went further and called the GST a "bastard tax".

The truth is that it is the Labor Party which has no strategic vision for tax reform – this year's tax cuts are just a photocopy of 92 per cent of the Coalition's 2007 election tax policy. Tax reform is like painting the Harbour Bridge – the task is never complete. And much more always needs to be done. Labor's tradition of opposing significant tax reform while in opposition does not bode well for its future in government.

The tax system should be designed and maintained to collect no more money than the government needs, and it should do so fairly and efficiently. As Adam Smith observed in his *Inquiry into the Nature and Causes of the Wealth of Nations*: "Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the state." Tax compliance and administration should be easy and above all designed to minimise economic waste. Again, Adam Smith understood this in 1776 when he wrote: "While [the tax] ... obliges the people to pay, it may thus diminish, or perhaps destroy, some of the funds which might enable them more easily to do so."

Our tax system today is a fairer and more efficient one than John Howard found it in 1996, but there is much more to be done. We have many taxes which are highly inefficient, many at the State and Territory level. Our income tax system, while much improved by the Coalition, remains complex. The Business Council of Australia's recent *Tax Nation* report, for example, found that there were 56 separate business taxes levied in Australia, including 21 federal, 33 state and territory and 2 local taxes. The BCA identified 182 separate taxing points.

So let us now from the ground zero of opposition, rebound and recommit ourselves as the party of enterprise to a fair tax system that is the most efficient we can make it, a tax system that raises no more money than is needed by a government which spends no more than it must to achieve the goals to which it is committed.

There will be no Liberal return to government if, in the ashes of electoral defeat, we try to sound more and more like Labor or, like a conquered nation ape the manners and the rhetoric of the victors. There is nothing in that for the Liberal Party and less for Australia.

The health of our party and the health of our democracy require the Liberal Party to be different, to be bold, to be prepared to tackle the great challenges of our time with the enterprise and the efficiency that is at the core of its political values. We need to offer a clear choice, a distinct alternative. We must stand up for our principles.

Right at the very centre of our economy is the roughly 40 per cent of our GDP that is represented by federal, state and local public sector revenues. The manner in which that money is collected and then disbursed is vital to the strength and competitiveness of our economy. I have accordingly asked Mr Henry Ergas to assist us in a full review of our system of taxation – federal, state and local. We intend to consult widely and invite public submissions.

We drove the tax reform agenda while in government and we will drive it again in opposition. This brings me to the topic of climate change. Let us restate the challenge. The world's governments have now accepted that our growing emissions of CO₂ and similar greenhouse gases has caused the earth's climate to warm and that in order to avoid catastrophic climate change we must dramatically reduce our emissions of those gases.

This global objective which is both consistent with the science and growing in acceptance is a reduction of emissions by 2050 to a level equal to 50 per cent of global emissions in 1990. Note that this is much, much larger than cutting 2050 emissions to half their business as usual level. The Stern Review estimated this would amount to a reduction to 23 per cent of the business as usual level.

This will be a costly exercise. We will all be faced with consequences of climate change whatever reduced levels of emissions are achieved. That can be described as the cost of adaptation, some of it certainly unavoidable. In addition we will be faced with the costs of reducing emissions. That can be described as the costs of mitigation. For Australia, an example of the cost of adaptation is the many desalination plants being built around our coast line, or the National Plan for Water Security – \$10 billion to secure the future of irrigated agriculture in a hotter, drier future. An example of the cost of mitigation will be the extra we will all pay for low emission energy. Gas is dearer than coal. Wind, solar, geothermal, nuclear are presently dearer than gas.

As the source of only 1.5 per cent of the world's emissions whatever we do domestically will make little or no difference to the global result. If we reduced our emissions dramatically, but the rest of the world did not, we would find ourselves paying a high cost for mitigation by reason of our own action, and a high price for adaptation by reason of the inaction of others.

Many economists have rightly argued that we need to trade off the cost of adaptation to climate change in a presumably far wealthier

future time against costs of mitigation today. British economist Sir Nicholas Stern used a controversially low discount rate in assessing the future costs of adaptation and while I understand the economic criticism of his approach to discounting, it is important to remember that the estimates of future costs which are the subject of the discount rate are themselves inevitably very uncertain. In the climate change arena, policy makers are beset with imponderables.

However, it is important to remember that the dollars of mitigation today versus dollars of adaptation 50 years from now is not a calculation Australia can make alone. Our cost of adaptation in the future will depend on the global response which we can only influence to a small degree. Our cost of mitigation will depend entirely on our own policy decisions.

During my time as Environment Minister three points about climate change became very clear to me and you will have heard me making them often. They bear repeating today. The first is obvious: climate change is a fact, not a theory. By that I mean that whatever reservations people might have about the science, policymakers must, as Rupert Murdoch once observed, “give the planet the benefit of the doubt”.

The second point is less obvious. Given that so much of our emissions are from sources that are likely to be very hard to abate either at all or at realistic cost, the emission reduction goals we are setting ourselves for 2050 will mean in practical terms that we will need in 42 years to have a world where all or almost all of our energy comes from zero emission sources and where deforestation, currently the source of 20 per cent of global emissions, is replaced by a global program of reforestation – an initiative I was proud to have pioneered while Environment Minister in the Howard Government last year.

This would mean that there would be no coal fired power stations unless the CO₂ was captured and stored safely under the ground. Automobiles would be electric – a whole energy hungry world would have to undergo an industrial and technological transformation of a kind never seen before in its global scope and scale.

The third point is that there is no prospect of achieving the massive global reductions in emissions that science demands unless all of the major emitting nations both in the developed and developing world play a part. Until a few years ago that was a controversial statement, but as always the relentless logic of arithmetic has won the day. Indeed, as we saw at the US President’s first Major Economies Meeting on climate last September even if the developed world cut its emissions by 100 per cent by 2050, to achieve a global reduction to 50 per cent of 2005 levels, the developing world would need to cut its emissions by 47 per cent.

So what does this mean for Australia? We are a nation which has built its prosperity not only on cheap coal fired energy – our electricity is among the cheapest in the world and more than 80 per cent of it comes from coal. But we are also the largest exporter of coal in the world. In other words, both our domestic and our export economies are heavily dependent on the most carbon intensive energy source in the world today.

Direct emissions from the export oriented industries of coal mining, other energy commodities and mining activities and production of metals and minerals are responsible for over 30 per cent of our total emissions – all before accounting for the emissions associated with their electricity usage. Resources – all energy intensive – are 37 per cent of our exports versus an OECD average of 8 per cent.

That's the bad news. The good news, on the other hand, is that we are also a leading exporter of uranium and nuclear power will be a key part in the global low emissions solution. In addition we have outstanding solar, wind and geothermal resources. Further, while carbon capture and storage is yet to be shown to be commercially feasible at scale, we have plenty of promising geology. Even more importantly we have some of the world's leading scientists in all these fields.

Finally, while it is true that some of our dirtiest power is our cheapest (Victoria's brown coal for example), it is also true that the additional cost of CCS while substantial will still be building off a relatively low base. In a carbon constrained world, the countries with respect to which we will be disadvantaged will be those who do not impose a cost on carbon at all, or, like France (nuclear) or Brazil (hydro and biomass) have substantial sources of low emission energy.

It is important to remember that apart from the essentially symbolic issue of ratifying Kyoto the differences between the climate change policies of the Coalition and the Labor Party were not great at the time of the last election. And that was in large measure because in so many respects the Coalition was the agenda setter in climate change responses which the Labor Party then endorsed. The National Plan for Water Security, the Global Initiative on Forests and Climate being two obvious and recent examples.

Given the Coalition's failure to ratify Kyoto it was inevitable that the political debate in Australia would be a fairly arid affair between the "believers" against the supposed non-believers or sceptics. That political debate is over. The question now is how are we going to respond? We know that future historians will record that some nations met the climate change challenge with great efficiency. Others will no doubt make poor decisions, informed by deep green ideology rather than economics, and will achieve less abatement at greater cost. A

rational, business-like approach to climate change in Australia would have the following objectives:

- We must achieve the greatest abatement at the lowest cost.
- We must ensure an early and effective agreement on global action. The most heroic efforts in Australia will be of no effect if they are not matched by similar action everywhere including the rapidly industrialising developing economies such as China and India.
- We must safeguard trade-exposed, energy-intensive Australian industries until such time as there is a global climate agreement which ensures that carbon is taxed at comparable levels everywhere. Otherwise we will export our industries, our jobs and our prosperity together with the emissions. This is happening already – much of Europe’s slow growth in emissions is because carbon intensive industries have moved to Asia. In one spectacular example the steel mill of Dortmund, Germany was cut up and moved to Handan, China. Dortmund has cleaner skies and the Germans feel that much greener. But they still use just as much steel as they did before and the emissions are still going up the same smokestack into the same sky, warming the same planet – just from a different city. Transferring industry and emissions from one country to another purely because of differing carbon prices is both economically inefficient and environmentally pointless.
- We must do everything we can to ensure that carbon capture and storage works. The Coalition Government invested a huge amount into this effort and no doubt more needs to be done. Unless the world is prepared to move to a massive ramp up of nuclear energy globally, there is simply no presently conceived alternative for additional large scale baseload power than clean coal (or gas). Put another way, we have a gigantic bet on the viability of clean coal.

Harnessing market forces is essential to achieving abatement at the lowest possible cost. If we require industries to acquire permits to emit CO₂ and we limit the availability of those permits so that over time our emissions dwindle it will follow that those permits will become more valuable until such time as they hit the cost of abatement. Put another way if the cost of emission-free electricity is equivalent to a cost of \$50 a tonne of CO₂ (that is, an additional \$50 per MWh) then the price of a permit should never, at least on average over time, exceed \$50.

Of course the cost of abatement is different altogether to the cost of generating zero emission electricity. There are many opportunities for reducing carbon intensity through energy efficiency some of which will pay for themselves in that the cost of abatement (putting

insulation in the roof, or better design to allow natural ventilation) may be less than the energy saving.

But it is important not to be seduced by the “easy being green” mantra that the transition to a low emission economy is a simple one. Yes there *is* plenty of low hanging fruit in terms of energy efficiency. But in a rapidly growing economy such as our own, let alone China or India, the improvements in energy efficiency will be overtaken rapidly by growing demand for energy and the inescapable reality of over time having to generate all of our stationary energy from zero emission sources remains.

The Rudd Government is set to introduce its emissions trading scheme (ETS) in 2010 a year earlier than that proposed by the Coalition in its ETS plan. Last week, Professor Ross Garnaut released a thoughtful discussion paper which proposed auctioning off all of these permits. This will impose a price on carbon, as would a carbon tax. The key difference is that under an ETS the government sets the amount of emissions permissible and the permit price is set by the market and can fluctuate freely, whereas under a carbon tax the price is set by government and the amount of emissions is the result of market behaviour.

An ETS is to be preferred not simply because it allows the market to find the least cost abatement but it will be able to interact with similar schemes elsewhere in the world. An ETS will see the federal government collecting substantial amounts of additional revenue. The Department of Climate Change projects that Australia’s greenhouse gas emissions will be about 600 million tonnes in 2010. So even if Labor’s ETS only covers two thirds of all emissions, an auction price of \$25 per tonne would raise \$10 billion per annum in the early years. In 2010 this would almost offset the revenue that will be foregone as a result of the income tax cuts.

What should be done with this revenue? While an ETS is, strictly speaking, distinctly different from a tax on carbon it will, like a tax, result in the transfer of many billions of dollars from business and households to government. The Rudd Government has committed not to allow tax revenue to increase as a percentage of GDP and the revenues from the ETS should, for that purpose, be classed as a tax. We will be holding the Rudd Government to account on this vital point. This means that the ETS revenues must be matched by a reduction in other taxes.

There are other claims on the ETS revenues apart from tax cuts of course. Clearly we should continue to invest, but effectively, in research and development on low emission technologies. The Coalition showed great leadership in that regard and the new government should aim to do better still. We should also consider providing additional incentives to households and businesses to invest

in energy efficiency. The solar hot water heater rebate I announced last year is a good example. A similar rebate to encourage insulation would be a good initiative and consideration should be given to accelerated depreciation for energy efficiency measures for businesses. But the sums flowing from the ETS are going to be much greater than any of these items are likely to absorb. We should take the opportunity with the revenues from the ETS to address both inefficient taxes as well as inefficiencies and inequities in our income tax system.

A lot has been said about assisting low income households who will be hard hit by higher energy and fuel costs. Reducing tax, including high Effective Marginal Tax Rates, on low income households should be a key priority. But the objective should be this: compensating tax and welfare measures must ensure that low income or pensioner households are not overall worse off by reason of the introduction of the ETS.

The ETS also offers an opportunity to phase out a number of very inefficient State government taxes. There is *always* a strong case for replacing relatively inefficient taxes with relatively efficient taxes. And with government raising new carbon revenues the total tax take should be kept constant, or reduced. But it is not only an issue of compensating the most vulnerable. An emissions trading scheme in which permits are auctioned and traded will interact with existing taxes in a complex way. As a result, the deadweight costs of many existing taxes could rise. In other words, when viewed through the lens of climate change policy, tax reform in other areas - cutting other taxes - actually makes very good economic sense.

Let me illustrate this point with a few examples. Quite apart from the issue of reducing emissions, allocating risk in an efficient way is a key issue for adapting to the possible adverse and beneficial effects of climate change. Australia has well developed insurance markets for allocating risk. These markets allow risk-averse individuals to shift risk onto others, who may be better placed to deal with it. In the long run, well-functioning private insurance markets save taxpayers money. They are an integral part of our response to climate change. When catastrophic events occur, they allow us to avoid placing an undue strain on government resources.

Private insurance premiums also help with dealing with the moral hazard problem of government assistance – individuals must think more carefully about the consequences of their actions. Those that take action to reduce the risks of their behaviour are rewarded with lower insurance premiums. But insurance taxes hinder the efficient allocation of risk, and deter many individuals from taking out insurance. In the context of climate change policy they make no sense.

The Insurance Council of Australia estimates that in 2005-06, state stamp duties on general insurance raise around \$2.8 billion in

revenue. Access Economics rates these taxes as being among some of the least efficient in terms of the deadweight loss that they create. By raising the price of taking out insurance, they are a significant deterrent against individuals reallocating risk. In short, they reduce the quantity of insurance. Surely a coherent climate change policy should examine ways of reducing these taxes, with the ultimate goal of completely eliminating them.

Consider stamp duties on property transfers. As a general rule we want markets to work efficiently and we therefore want to eliminate barriers to trade. Right? Well not exactly. We eliminated stamp duty on stock market traded shares many years ago for precisely that reason, but stamp duties still remain in other areas notably on transfers of real estate.

Is that a property tax? Not at all. Stamp duty is a tax on changing locations. The more you buy and sell, the more you are taxed. And yet at a time when housing affordability is so much debated wouldn't we want a property market that was as unfettered as possible, where there are as few barriers as possible to trade? Well we would, but every year States raise around \$11 billion in stamp duties on property transfers. These, of course, are only two examples of inefficient taxes. There are many others and we will be looking closely at all of them in the course of our work with Henry Ergas.

Conclusion

Climate change is the greatest economic challenge of our times. But the most sincere passion for saving the planet will be no consolation if the power of government is not used shrewdly and efficiently. An exponential global growth in energy has helped lift millions out of poverty around the world. The challenge is to combine a continued acceleration in energy availability with a dramatic reduction in carbon emissions. Free trade too has contributed to the reduction of poverty – a failure to agree on an effective global climate agreement could see carbon taxes at the frontier and a chauvinistic assault on free trade under a green banner.

Australia has much at risk in this epic transition to a low emission future – the decarbonisation of global industry. And there will be a price to pay – being green is far from easy. The design of our ETS, its response to international developments and the way in which it interacts with the rest of our economy will determine how high that price will be.

The emissions trading system will open up a major new source of government revenue. Reviewing the efficacy of our tax system is always a good idea, but the pending arrival of the ETS makes it essential. If we were to invest much of the revenue earned from the ETS into removing inefficient and inequitable taxes we would

not simply keep the tax share of GDP neutral, we would also be reinvesting those revenues into a more efficient and productive Australia.

Let us ensure the challenge of climate change is not simply met by the ingenuity of a free society finding unimagined technological solutions tomorrow to the intractable problems of today. Our capacity to respond to climate change is founded in the strength of our economy. We must use this transition to a low carbon future as an opportunity to make our economy stronger still, so that the costs we impose on carbon will be more than matched by the dividends from a more productive and prosperous future for all Australians.

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Photographers: David Karonidis



Photo – David Karonidis

Andrew Robb

The Hon Andrew Robb MP is the federal Member for Goldstein and shadow minister for foreign affairs. In his view, “The Rudd Government’s decision to reverse the former Coalition government’s agreement to supply India with uranium for power generation is a serious snub to India, and reduces India’s capacity to combat climate change.” On Monday 31 March 2008, Andrew Robb addressed The Sydney Institute to discuss Australia’s new position on uranium sales to India, the world’s largest democracy, an increasingly influential regional power and an important potential strategic partner for Australia.

URANIUM SALES TO

INDIA: A STRATEGIC IMPERATIVE

ANDREW ROBB

In August 2007, the Howard Government agreed to export uranium to India. The uranium was intended only for power generation and would not contribute to nuclear proliferation. The decision has since been overturned by the Rudd Government. The Rudd Government position is wrong and unsustainable. The decision also reflects confused and inconsistent policy priorities given that one of Mr Rudd's supposed three pillars of his foreign policy is enhancing relations with Asia. Ultimately I expect that the Rudd Government will need to reverse this decision not to sell Australian yellowcake to India. The decision, and the amateur way in which the decision was communicated to the Indian Government, has left a very bitter taste in Indian mouths.

From a climate perspective there is overwhelming merit in India, the world community and Australia addressing the reality of India's energy needs, given the very stringent conditions India is prepared to accept to enter the international nuclear market for peaceful energy purposes. The Rudd Government's position will also set back the cause of nuclear non proliferation. The nuclear protocols agreed to in August 2007 would see 65 per cent of all nuclear reactors in India coming under the strict coverage of the International Atomic Energy Agency. Global non-proliferation would be greatly strengthened by including India, a country which has an exemplary record on non-proliferation.

Furthermore, the Rudd Government's position is unsustainable from the point of view of wider bilateral interests, notably the potential free-trade agreement between our two countries. In August 2007, Australia and India agreed to undertake a joint feasibility study on the merits of a bilateral free-trade agreement between the two countries, with a view to seeing large-scale elimination of trade, investment and services barriers between our two economies. The economic, social and security implications of such an agreement are potentially of enormous benefit to our community. Australian opposition to uranium sales to India for energy purposes could severely compromise

and undermine any worthwhile progress on a bilateral free-trade agreement.

An historical perspective

From independence through until the end of the twentieth century, Australia-India relations could best be described as qualified indifference. The foreign policy position of non-alignment pioneered by Prime Minister Jawaharlal Nehru saw us on opposite sides on many international issues through the Cold War period, from the Korean War, to India's support for China in the UN, to the Vietnam War and to the Soviet presence in Afghanistan. All of this, when combined with the state of the Indian economy, a 1980s and 1990s Australian view of India through the narrow prism of the "India-Pakistan" conflict and the nuclear tests of 1998, meant that relations between our two countries came to be characterised more by mutual disinterest or mutual testiness. Our shared commitment to cricket and democracy probably helped us weather significant differences which sprung from other commitments and other alignments over these decades. As well, the bond of the Commonwealth should not be underestimated in the role it played in carrying us through our differences.

However, in this century so much has changed. In a few short years our relations have not only normalised, but reached the point of a potentially strong and enduring strategic partnership. And, just as the powerful strategic partnership India is forging with the United States has as its cornerstone the agreement for civilian nuclear cooperation, so too is this nuclear cooperation a primary factor in India's prospective full engagement with Australia. For Kevin Rudd not to see this is a serious error of judgment. This is particularly so at a time when Kevin Rudd is seeking a rotating seat on the UN Security Council while denying India reliable clean energy, the very thing that will bolster India's legitimate claim to be a permanent member of the UN Security Council. Australia must engage because India has truly begun to look east with constructive and responsible eyes.

India is increasingly playing a vital role in the evolution of our region. It is the emerging economic powerhouse of South Asia. It is expected that India will pass China's population as the world's largest within 20 years, at around 1.5 billion people. The economic revolution masterminded by India's current Prime Minister, Manmohan Singh, when he was Finance Minister, heralds an economic awakening comparable to that prompted by Deng Xiaoping in China. Along with China, the rise of India in the years ahead looks to be one of the two major forces altering the global economy and world politics.

The time for Australia to make a major political investment in India is now. The strategic imperative is overwhelming. In recent years, important groundwork has been laid, beginning with the

significant counter-terrorism cooperation with India following 9/11, the joint action over the Tsunami, the decision by the Howard Government to allow the export of Australian uranium for civilian nuclear energy, the active support for India's bid to become a permanent member of the UN Security Council, the beginning of negotiations for a bilateral free-trade agreement, the involvement of Australia in quadrilateral talks involving the US, Japan and India, the joint naval exercise held in the Bay of Bengal in 2007 and the extraordinary growth in our trade.

Already India is Australia's fourth largest export market, with exports growing at year-on-year rates in excess of 30 per cent since 2000, faster than export growth to China. Mining and agriculture are obvious growth centers, but investment and services also hold huge potential for growth, with India already our second largest source of overseas students, and tourism expanding dramatically. All of this on top of the 250,000 strong Australian Indian community that contributes so vibrantly to the multicultural success of our nation, no less than our successful Chinese community.

In terms of strategic initiatives of enormous moment to Australia since World War II, we should aim to be in a position in future years to look back and see comprehensive engagement with India in the twenty-first century standing alongside our achievement of other great partnerships - the signing of ANZUS in 1951, the formalising of our involvement with Japan in the 1950s and our engagement with China in the 1990s and into this century.

India's energy needs

Rapid population and economic growth will see a rapid rise in India's energy needs as it seeks to grow at close to ten per cent to lift its people out of poverty. As India grows it will rank third behind the US and China in terms of global energy usage. Power generation will account for much of the increase in primary energy demand, given surging electricity demand in industry and in residential and commercial buildings. Most of the new electricity generating capacity will be fuelled by coal. Among end-users, energy demand for transport sees the fastest rate of growth, as rising household incomes drive accelerating demand for motor vehicles. In the absence of strong alternative policy action, galloping energy demand will see major increases in imports of coal, oil and gas, and in the generation of greenhouse gas emissions.

Over the next 25 years, for logistical and quality reasons, much of India's coal needs will need to be met by imports. The trend is evidenced by the growth in Australia's coal exports to India since 2000. Until 1990, Australia exported no coal to India. In 2000/2001 Australia exported just over \$800 million worth of coal to India; last

year our coal trade reached \$2.5 billion, an extraordinary 300 per cent growth in six years. Again, over the next 25 year period primary energy demand in India is expected to double, with India overtaking Japan before 2025 to become the world's third largest net importer of oil after the United States and China.

India's greenhouse gas emissions

All of this adds up to India becoming the world's third largest emitter of carbon dioxide by 2015, after ranking fifth in 2005. Two-thirds of India's emissions come from burning coal, mainly in power stations. Without a change in the method of base-load power generation, this share of emissions from coal fired power stations will increase through to 2030, and beyond. India will not sacrifice development to reduce greenhouse gas emissions. This will only occur by employing less carbon-intensive energy – nuclear, gas or clean coal. This has been strongly emphasised by Prime Minister Singh who has said, "Nuclear energy offers a way out by providing clean energy for development. So I see enormous opportunities for members of the Nuclear Suppliers Group and India with regard to supply of raw materials, technology and reactors."

The greenhouse impact of nuclear power generation is brought home by the fact that the export of Australian uranium ore concentrates in 2006-07 was sufficient to power 50 reactors, producing about 40 per cent more than Australia's total electricity production. Countries using Australian uranium avoid carbon dioxide emissions roughly equivalent to our entire annual CO₂ emissions from all sources. Around the world, nuclear power today reduces global emissions by more than two billion tonnes a year. If the uranium deal succeeds, and the existing restrictions on the import of nuclear technology and uranium for peaceful power sources are removed, it is estimated that by 2050 as much as 35 per cent of India's total energy needs could be met by clean nuclear power plants.

Australia's uranium exports policy

Australia's uranium export policy acknowledges the strategic significance which distinguishes uranium from other energy sources. Australian policy has consistently recognised that special arrangements need to be put in place to distinguish between the civil and military applications of nuclear energy.

When adopted in 1977, Australia's export policy was a more rigorous safeguards policy than that of any country supplying uranium to world markets. Today it is now very similar to that of the USA and Canada. Australia's policy embodies fundamental tenets first outlined in 1977, and adjusted to reflect a number of developments in the intervening period. For example, the sale of

uranium to a non-signatory of the Nuclear Non-Proliferation Treaty (NPT) is not unprecedented. In 1981, the Fraser Government negotiated an agreement to sell uranium to France, with Australia exporting uranium to them throughout the 1980s under the Hawke Government. However, France did not become a signatory to the Nuclear Non-Proliferation Treaty until 1992.

Australia has always required assurances that exported uranium and its derivatives cannot assist the development of nuclear weapons or be used in other military programs. It is only sold for exclusively peaceful purposes of power generation and related research and development. This is done by precisely accounting for amounts of Australia-Obligated Nuclear Material as it moves through the nuclear fuel cycle. It is exported under Australia's network of bilateral safeguards agreements which ensures coverage by the International Atomic Energy Agency from the time it leaves Australian ownership, for the full life of the material.

Nature of the Australia/India Uranium Agreement

The US-India nuclear deal, struck personally between Prime Minister Singh and President George W Bush, was concluded in principle in August 2007 after two years of negotiation. The deal separates India's nuclear energy program from its nuclear weapons program. To be finalised, the agreement must pass the US Congress, get the International Atomic Energy Agency to meet a special protocol to oversight India's peaceful nuclear power plants and receive agreement by the 45 member Nuclear Suppliers Group to sell uranium to India.

Very importantly, the US/India deal will strengthen nuclear non-proliferation by making very significant progress in drawing India in under the safeguards and oversight of the International Atomic Energy Agency. In due course this may prompt progress with other non signatories of the Nuclear Non-Proliferation Treaty (NPT). The agreement will put 65 per cent of India's nuclear program, or 14 of its 22 nuclear reactors, under the stringent safeguards of the International Atomic Energy Agency.

The agreement would be a break with the Nuclear Non-Proliferation Treaty which disallows sales of uranium to countries with nuclear weapons, except the US, Britain, France, Russia and China. As India has nuclear weapons it cannot join the NPT, despite never proliferating nuclear technology to any nation. Against this background the US-India agreement accepts the reality of India as a weapons state, but allows India's peaceful nuclear energy program to gain access to uranium, nuclear technology and nuclear reactors. It is a commonsense accommodation of India's circumstances, just as sensible accommodations have been made for China in various

regional and global matters. The Howard Government agreed last August to sell uranium to India subject to the finalisation of the US-India deal, and the conclusion of a bilateral Australia-India safeguards agreement.

Strategic importance to Australia

It was proposed that Australia sell uranium to India according to the identical strict safeguards under which we sell uranium to China and Russia. In years gone by China has sold nuclear technology to Pakistan and North Korea; unlike India which has abided by the NPT obligations, even from the outside. In these circumstances, and provided the conditions agreed with India are fully met, it would be highly hypocritical to deny India this technology while China benefits from full nuclear access. Furthermore, if the US-India agreement is finalised, including approval by the International Atomic Energy Agency, then any Australian Government opposition would be a very serious matter, and invites long-term misunderstanding in our relationship with India.

India and Australia are two great democracies sharing the common values and interests of democracies. We are partners in regionalism as members of the Commonwealth members of the East Asia Summit. This is a critical moment in seeking to cement an Australian/Indian strategic partnership – a relationship of great importance to Australia's interests and Australia's future. It is a strategic partnership that can be built around the challenge of energy in an energy hungry world, while simultaneously addressing two of the great challenges of our time – climate change and non-proliferation of nuclear weapons.

On greenhouse considerations alone this agreement is a “must do”. Opposing it forces India into increasing reliance on its substantial dirty coal reserves. However, other considerations are also compelling. There is strategic sense in seeing the largest democracy in the region taking a stronger role in the region, and in a way where it enjoys the respect and standing of other major regional powers. There is India's position as our fourth biggest export market, in a burgeoning trade relationship, to be protected and nurtured. There is a growing bilateral security relationship to be fostered, especially involving cooperation in counter-terrorism and in maintaining stability in the Indian Ocean. And, critically, there is an opportunity to significantly advance the cause of nonproliferation by bringing 65 per cent of all India's nuclear reactors under UN inspections, and under the protocols of the International Atomic Energy Agency. At the same time, it creates a safer and more secure environment for these nuclear power stations.

Labor government position

Given all these considerations, it is remarkable that one of Labor's first acts as a government was to summon the Indian nuclear envoy, Shyam Saran, and advise him that, for "party political" reasons, Australia would not be selling uranium to India. The manner, timing and substance of this communication were highly condescending, inept and wrong. The national interest was not considered. Climate change was ignored. Nuclear non-proliferation was sidelined. A China bias was implied. Constructive US policy towards Asia was opposed. India's feelings were trampled on. And all in the interests of an irrational and weak sop to the hard left of the Labor Party. Mr Rudd is putting the internal machinations of the Labor Party ahead of the national interest. Again it goes to poor judgment.

If Labor is committed to all it has said about global warming, then refusing to sell uranium to India, while supporting new uranium sales to China and Russia, is totally irrational and hypocritical. How can the Rudd Government claim moral leadership on the global stage in reducing greenhouse gas emissions when it ducks the first hard decision which would result in massive reductions in emissions. Furthermore, the decision comes at a time when the sale of our coal to India has grown 300 per cent in six years, with the growth in sales showing no sign of slowing. So much for consistency.

This old thinking of Australia's Labor government is starkly revealed when compared against the agreement last week of Britain and France to construct a new generation of nuclear power stations and export the technology around the world in an effort to combat climate change. To add to the confusion, the Rudd Government is saying to our Indian friends that we do not trust them with our uranium, while at the same time Kevin Rudd has said he has not yet made up his mind on whether to veto sales by the 44 other members of the Nuclear Suppliers Group.

This makes no sense. How can Australia refuse to sell our uranium to India, yet plausibly support the rest of the world supplying uranium. Either way, Australia will be adding insult to injury. How can the Rudd Government claim that Australia's relationship with India is a high government priority when it snubs this direct and heartfelt request from the highly respected Prime Minister of the world's largest democracy. It is stupidity.

India's reaction

India is understood to be deeply offended by the Rudd Government decisions, and the manner in which it was conveyed. Influential foreign affairs commentators from India have denounced the decision in the strongest terms, labeling the scrapping of the

pledge to sell uranium as “retrograde ideology, pathetic hypocrisy, misplaced non-proliferation zealotry” and accusing our Prime Minister of parroting “the same lame excuse, as if he has not read the Nuclear Non-Proliferation Treaty text”.

The observation has been pointedly made that far from the NPT forbidding civil exports to a non-signatory, the treaty indeed encourages the peaceful use of nuclear technology among all states. Further comments claim that “Prime Minister Rudd has no qualms about selling uranium to China but will not export to India”. As well, the simultaneous holding of a strong position on greenhouse gases, and a disposition against selling uranium to an energy starved India, is seen in India as showing “a lack of logic”.

Conclusion

The bottom line on all this is that reversing Australia’s commitment to sell uranium to India will do substantial damage to the Australia-India relationship. It makes absolutely no sense to sell uranium to China and Russia, and not to India. It makes absolutely no sense to claim climate change to be the great moral challenge of our time and then block the adoption of nuclear technology which is greenhouse gas free, and which already provides 16 per cent of the world’s electricity needs.

The US-India nuclear agreement is good for India, good for Australia, good for the region, good for climate change and good for nuclear non-proliferation. In this regard Labor is standing against a critical new engagement in Asia. This issue can make Australia a strategically important partner to India. It is the thing India really wants from us. It is a big issue. Labor’s position is very bad policy, and disastrous politics. It is a position that is unsustainable. It can and must be reversed.

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Photographers: David Karonidis



Douglas Kirsner



Pru Goward



Photo – David Karamidis

Tony Moore

Reform of the Australian Broadcasting Commission has been a controversial issue for years, especially at a time of increasing debate over public broadcasting generally. On Tuesday 1 April 2008, The Sydney Institute brought together three notable commentators on ABC reform to discuss all this. Professor Douglas Kirsner from Deakin University, Pru Goward, a shadow minister with the NSW Opposition and former ABC presenter, and cultural historian, author and publisher Tony Moore, a former member of the ABC National Advisory Council.

REFORMING THE ABC

DOUGLAS KIRSNER

There can be little doubt that things have improved at the ABC since the appointment of Mark Scott as Managing Director and the appointment of Maurice Newman as Chairman. A new broom has swept aside some of the egregiously obvious problems of bias and a more professional approach has supervened.

There have been new programs that increase debate, including the ill-fated, experimental *Difference of Opinion* to be replaced with a new *Q and A* program, based on the lively and controversial BBC *Question Time*. *Media Watch* is not as politically partisan to one side of politics. Paul Chadwick has been appointed as Director of Editorial Policies to try and ensure that the ABC fulfils its statutory obligations under the ABC Act to be accurate and impartial. In terms of balance, Middle East correspondents Matt Brown and David Hardacre are marked improvements from the days of Tim Palmer and Peter Cave.

For anybody who believes that the taxpayer funded broadcaster needs to be impartial and accurate, balanced and fair, this is all to the good.

The two major issues for the ABC are those of bias and genuine diversity. The culture of the ABC is clearly left of centre. Bias has not been so much party political as cultural. It is often not deliberate but bespeaks taken-for-granted assumptions, mind-sets that are far from the concerns of the mainstream Australia that pays for the ABC and which in return the ABC is supposed to serve and be fair to in its range and content. It is not the job of the taxpayer funded national broadcaster to act as a counterweight to other media or mainstream ideologies perceived to be too right wing by a staff whose centre of gravity is way to the left.

Why is it that the only intentionally liberal/conservative program on Radio National is titled *Counterpoint*? It is a counterpoint to a way of thinking that dominates the culture of the ABC in the taken-for-granted assumptions of the mentalities of the “people-like-us” who broadcast to other “people-like-us”. I think these recent observations by British journalist Nick Cohen about how things have changed in British cultural institutions is relevant to the ABC:

A contact at the BBC says that when the workers were the repository of radical liberal hopes in the Sixties, his predecessors encouraged working-class writers and directors. Now women and members of ethnic minorities have unparalleled opportunities, and that is a welcome advance, but the beneficiaries of the new order are always from the upper middle class. In the name of diversity, everyone is the same.

High cultural institutions that once dreamt of a proletarian uprising now treat the white working class as racists or squares. As Michael Collins, a rare modern example of a working-class intellectual, put it in *The Likes of Us*: “The vision of a multi-cultural Utopia needed its common enemy, and it was increasingly the tribe that played a major role in previous Utopian fantasies.” (*Observer*, March 21, 2008).

In 1968, German student leader Rudi Dutschke drawing upon the idea of hegemony of Marxist theorist Antonio Gramsci and also of Marxist critical theory, suggested what he termed “a long march through the institutions of power” to create radical change from within government and society by becoming an integral part of it, as the critical theorist Herbert Marcuse put it, “working against the established institutions while working in them”. The countercultural capture of cultural institutions meant the emergence of what Swinburne University sociologist Katherine Betts has termed a “new class” whose object was not old wealth but instead, Betts writes, “The attack was concentrated on the Australian mass, and its materialism, racism, sexism, and insularity” (*The Great Divide*, 1999, p. 158).

This noticeably homogenous class of inner city, tertiary educated social professionals, often referred to as the “chattering classes”, has an identity that developed together with mass tertiary education. While the old left emphasised economic reforms to help the working class, the new class focused on issues such as refugees, multiculturalism, reconciliation, civil liberties, etc. This new class of social professionals includes teachers, academics, public servants and welfare workers who adopt distinct ideological positions and values that serve as social markers for the new class. The “knowledge-class”, which includes ABC journalists, is an important segment within the new educated class who have more distinct values that increasingly set them apart from business and the general community.

I mention this not because I think that the ABC has no diversity at all, but because it’s a trend embedded within the institutional culture that will take another “long march” to reverse, this time in the opposite direction towards the centre. It’s a march that has begun from the top but needs to infuse its way to the bottom.

A recent *Four Corners* program, “Dangerous Ground”, broadcast on 10 March 2008, illustrates some of these issues. The program began with problems about setting up an Islamic school in Camden. Those against a Muslim school being set up are described in primarily

racist terms. In the next suburb, according to the blurb, “Aussie-born sons of the Middle East bitterly complain of being treated like enemies in their own country. Now some community leaders”, the program blurb continues, “are warning of a nasty backlash due to the hostility that young men like these feel is aimed against them.” The program is concerned that “counter-terrorism and security could actually be increasing the threat of breeding home grown terrorists”.

Erring on the side of aggression – just to be on the “safe” side – can radicalise and alienate the people who are targeted, analysts tell *Four Corners*. An expert suggests that radicalisation occurs because of “young people feeling under siege from police and wider public. His fear is this could morph into an agenda for violent change,” *Four Corners* asserts. Finally, *Four Corners* suggests, “defeating terrorism presents not just a policing issue but also a challenge to core community values of pluralism and tolerance”. No mention of Sheik Hilali and those more extreme than he or the impact of Muslim fundamentalism and propaganda, or the role played by police and security forces in protecting us from Muslim extremism.

The only actors of any consequence for *Four Corners* are those who buy the narrative that the causes of Muslim extremism lie in the west. It is a problem of criminality, law-enforcement, poverty, and racist behaviour towards suspects of middle eastern appearance. Of course there are legitimate issues here to debate but I am pointing to the one-sided narrative that suffuses this program and others, which does not take Muslim extremism seriously in its own right, but mainly as due to its exacerbation by us. Or consider what amounted to a campaign for David Hicks by ABC Online. The ABC is not unique here. Consider the following comments about the BBC by Andrew Marr, political pundit and BBC Political Editor 2000-2005 as reported in *The Daily Mail*, 21 October 2006:

The BBC is not impartial or neutral. It’s a publicly funded, urban organisation with an abnormally large number of young people, ethnic minorities and gay people. It has a liberal bias not so much a party-political bias. It is better expressed as a cultural liberal bias.

Or Jeff Randall, former BBC Business Editor, in *The Observer* on 15 January 2006: “It’s not a conspiracy. It’s visceral. They think they are on the middle ground.” Randall further commented on this in the *Guardian* on 15 September 2007:

I think there’s a streak of hypocrisy at the BBC. I said it when I was there: its definition of impartiality or the middle ground is not how many of us see it. That’s why I’m contemptuous. There is a liberal consensus. The BBC denies this but Andy Marr – who most people think is part of that liberal consensus – came out and said it. So it’s not just right-of-centre people. When you’re there, you can feel it, you can smell it, you can almost touch it.

In June 2007, a report commissioned by the BBC concluded that it failed to promote proper debate on major political issues, particularly single-issue causes – such as climate change and poverty, because of its staff’s inherent liberal culture. The report concludes that they should be more willing to challenge their beliefs, concluding: “There is a tendency to ‘group think’ with too many staff inhabiting a shared space and comfort zone.” Executives admitted at a 2006 staff impartiality seminar that “they would broadcast images of the Bible being thrown away but not the Koran, in case Muslims were offended” – “BBC Report finds bias within corporation” in the *Telegraph*, 18 June.

Former *New Statesman* editor John Lloyd observed, “The reflexes of the BBC, and of most broadcasters, are culturally and politically on the liberal-left, reflecting the leanings of the humanities-educated intelligentsia in most states.” - cited in Robin Aitken, *Can We Trust the BBC?*, Continuum, 2007, p 194.

One could easily substitute “ABC” for “BBC” in all this. It all goes to the issue of culture. That the Labor Party and the Liberal Party receive similar treatment on the ABC only demonstrates that there may not be cultural bias towards one mainstream party rather than the other. It is true that the ABC has criticised both sides over the years, but that may be because they are cultural liberals who are to the left of both the major parties, in the direction of the Greens.

The ALP has been the victim to the ABC while in government, as Gerard Henderson would well remember. During the first Gulf War in 1991, the ABC employed Dr Robert Springborg, Associate Professor of Middle Eastern Studies at Macquarie University, as its expert commentator for *The Gulf Report*. In an article in the Melbourne *Sun*, Springborg had equated the modes of government of Saddam Hussein and Bob Hawke. Hawke’s decision to send ships to the Gulf was “every bit as much of a one-man show as is the country we may be fighting”. It was Gerard who blew the whistle on the fact that Springborg was scarcely impartial. Hawke went further, denouncing the ABC’s coverage of the Gulf War as “loaded, biased and disgraceful” - Ken Inglis, *Whose ABC?* p. 229.

Eleven years of the Howard Government, basically bipartisan Estimates critique in the Senate and an ABC Board comprising conservative and centrist members has made some difference to all this. But the much-mooted number of ideologically conservative members have not translated into a conservative agenda for the ABC. Nor has it impacted on the visceral culture of many among the staff. But the Board and the Senate Estimates hearings have made for more accountability for the public corporation to adhere to its charter and be more fair and balanced and not advocate for politically correct

causes. These necessary changes have had to come from the top leadership down, so entrenched has the institutional culture been.

However, I am pleased to note that this culture does not dominate all parts of the ABC. In News and Current Affairs, *PM* is fair, balanced, impartial and very professional. I think that *Lateline* casts a wide net and is generally fair and balanced, as is *The World Today*. The ABC should not advocate causes left, right or politically correct but should be a repository for a genuine diversity of views in addition to being accurate and impartial.

If the ABC Board takes action on these issues, it is not “interfering” with the ABC but doing its job as required by the ABC Act on behalf of the taxpayers of Australia. Almost every organisation is run by a Board that leads and oversees the activities of that organisation. At least in the world as we know it, they are not run by workers’ collectives. The ABC Act (1.a.i) obliges the ABC to broadcast “programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community”. The ABC Board has a vital statutory role here. The ABC Act (8.1c) says “it is the duty of the Board...to ensure that the gathering and presentation by the Corporation of news and information is accurate and impartial according to the recognised standards of objective journalism”. Genuine diversity at the ABC, reflecting a wide range of views and subject matter in line with the diversity of the Australian population, together with making certain that high journalistic standards are kept to tasks that the ABC Board has a clear duty to perform effectively. As Tony Wedgwood Benn, British Labor Minister of Technology, put it in 1969: “Broadcasting [is] too important to be left to the broadcasters”.

I think there has been more recognition of problems and potential problems in relation to political bias, culture and genuine diversity at the ABC recently, and that the chairman and managing director deserve to be commended on progress in a positive direction. But I am afraid that the reverse long march through this institution still has a long way to go.

REFORMING THE ABC

- IT’S NOT JUST A QUESTION OF MONEY

PRU GOWARD

Let’s all agree for starters that the ABC is left-wing.

I worked there for 19 years and it was difficult to find people who were not Labor supporters, unless they were Greens or Democrats. The heavy unionisation of the ABC probably accounted for much of this but not all, by any means. People are entitled to their values and views. “Like recruits like.” Reporters are human: when pricked, they bleed. Much of this is entirely defensible.

The exception is the last bit, “like recruiting like”. That is not defensible. People need to be recruited on merit, not on political values. Of course there are honourable exceptions to this, like Gerard Henderson, who is seen as to the right of the ABC’s centre, and even myself. In political circles, I know that whenever the ABC is accused of bias it replies that it cannot possibly be because it employed both Gerard Henderson and Pru Goward. That we are seen as to the right of the ABC’s centre tells you a bit about where that centre is. But you could never say that Gerard Henderson and Pru Goward balance out the rest. There are obviously other ABC reporters who work very hard at not being biased, even in this room and among those with known ALP allegiances. But I fear that to name them may be to condemn them to being tagged as fellow conservatives so I will not. It’s also true that the ABC’s blogs promote the views of people like David Barnett, my husband, also seen as being on the Right. But blogs aren’t mainstream, at least not yet.

Why is it that the direction of lean is almost always left, not right, Labor, not Liberal? This is not true in many regional newspapers, magazines or parts of the commercial radio and television world of reporting. But it is a part of the ABC.

I have tried to answer this question many times. I used to think it was a reporter’s idealism that drove it, but it is a long time since Labor stood for that. Perhaps it is peer pressure of the so-called intellectual elites, or the socio-economic backgrounds of reporters, perhaps it is about the reporter’s tribal character. Reporters were the tribe of

bright, cheeky tongued kids who sat at the back of the class, underperformed but had a lot of fun. The swats sat down the front, entered the professions and became Liberals. That sort of thing.

I used to think about this a lot – today, I don't think it is worth understanding. I do believe in an era of blogs, Wikipedia and the many other sources of untested information now available to the public that the importance of the ABC being above all that, being a believable news service, has never been greater. Almost every one I know who takes the world seriously listens and watches the ABC. Almost everyone of these also hates the ABC. This tells you something about the people I know. It tells you several things other than they are irrational. Andrew Peacock used to say when he was Opposition leader that he listened to *AM* while he was working out on his exercise bike, and as he got angrier and angrier he got faster and fitter.

These ABC customers I know are intelligent, take the world seriously, are educated and in particular rely on the ABC for news and analysis of news and current affairs. Yes, they might also watch its documentaries, police shows and period costume dramas but that is not at issue.

I often find myself saying to them that if they don't like the ABC they should watch commercial television or listen to one of the many commercial radio stations. Sadly, my advice is usually rejected along with a crack about my unfair, unworthy and cheap debating point. Their rejection of commercial television has nothing to do with commercials, which in a grotesque sort of way most people find interesting, although perhaps not the number of them. SBS's commercials are actually very nicely done. At the top end of advertising the production values of commercials are greater than in ABC or SBS TV shows so this is not surprising.

The rejection of commercial radio and television by these serious, well-educated people who take a deep interest in the world around is based on its content. Content is not just the *selection* of stories it believes to be relevant and the ABC's persistent pursuit of them (whether or not their public is interested), but also their *construction* of the story.

The ABC has, by default, come to be the entertainment channel for the elites. And the Elites are comprised of both Left and Right, progressive, conservative, radical and conventional, scientists, poets, artists, managing directors, accountants and university lecturers.

Unlike the commercial channels, which need to make money, the ABC does not need to entertain the mass demographics. These are well catered for with money provided by consumers through advertising instead of taxes. Without being told to, the ABC has evolved to being the network for those who want more than mass entertainment but who are not sufficient in number to support a

commercial network of their own. The ABC is also required to play a role in promoting Australian culture, interests and ideas, again, more an interest of these audiences.

And let's face it, this would have to be the most critical and difficult – although also loyal – audience of all to please. The absence of clear measurables such as advertising revenue, or of relevant measurables (such as audience share, which is of no relevance to this niche market) bedevils debate about the adequacy of the ABC. There is nothing as simple as ABC about the ABC. So we should acknowledge that that the ABC has a tough job.

Most of the ABC's home grown non-news and current affairs content is uncontroversial – antiques shows, gardening shows, children's shows, rural life style shows, book shows and interview programmes. ABC comedy is particularly successful, innovative and, when it can be adapted to mass audience tastes, commercially successful. (Once the masses find out that Kath and Kim are laughing at them of course that show might return to the ABC.)

The ABC's dalliance with Australian drama is a hit and miss affair – *Sea Change* being a hit, and *East of Everything* I suspect about to become a miss. *Sea Change* being sharp comedy drama, snappy and conventional. *East* being untidy, visually ugly, with scenes shot in vans and run down houses. *East* is all the things Australians never admit to hating about their own movies but explains why so few Australians actually watch them. There is a link (I suspect) between ABC Australian drama productions and its news and current affairs, the latter being the target of almost all resentment of the ABC and where all the demands for reform are actually focussed.

That link between the ABC's unpopular Australian dramas and its unpopular current affairs is the attempt to be different – without quite enough skill to be brilliant. If you are poor then the only way to get noticed is by being different. Experimental. Counter-conventional. Sometimes the experiment comes off. The punk who wears the outrageous torn dress with nappy pins in it which becomes a designer dress worn by Liz Hurley. This is the ABC's position and also the Australian film industry's problem. Think ugly Australian movies like *Mullet*, soliloquies in lavatories and dead exchanges between shabby and unlikely people in asbestos houses. Think Australian drama on the ABC.

Meanwhile the mass audience demographics hate all this and don't apologise for not watching movies or TV dramas that look like it. They don't feel any nationalistic commitment to watching Australian drama if they don't understand it and it isn't pleasurable. The elite, like the rich, are different. They like complexity and ambiguity. They even like what they don't enjoy. They want to be challenged, intimidated,

mystified, intrigued, informed, and they believe in Australian culture because they either run it or have a stake in it.

So when it comes to home grown ABC drama, don't be surprised if it's often a dud. With a population of 20 million people it is not possible to churn out the quality of drama produced by say the BBC or US television channels without enormous budgets well beyond the scope of a state owned television enterprise. The BBC it must be noted has invested heavily in quality production and does extremely well out of program sales. SBS has used its advertising revenue to good effect also. So long as the ABC and its friends refuse to accept advertising revenue and the government of the day goes along with them, then the capacity of the ABC to produce high quality drama with attractive people, great scripts and high production values is inevitably limited. Remember the US may have 20 script writers working on a show where the ABC may have two. The number and complexity of shots used, lighting and so on are all production values compromised by lack of funds.

In opposing commercial revenues for the ABC we need to accept the result that some of its productions will be good, maybe excellent, and many others will be poor. That risks will be risky and not come off; that experiments will fail. If it makes you angry watching an impenetrable ABC drama as the one who is closest to me on the couch is often angry, and grumbles about his taxes at work, remember that is a choice we have made.

In a sense the role of ABC news and current affairs has also evolved to be different, provocative, counter-conventional. That guarantees it will be controversial and as likely to be wrong as right. It is certainly likely to offend people - all of whom write letters and complain much more than those who were not offended or who thought it was right. So if the role of the ABC is to feed the elites with their news and current affairs, among other entertainment shows, then how well is it doing it and does it need reform? And let's focus on news and current affairs because that is where the fight is.

Let's start with staff selection. Like recruiting within the business world, diversity is recognised as a high performance tool. Yet again, the reliance on the public purse has historically enabled the ABC to avoid the inclusion of this fundamental principle in its recruitment and professional development. Unless you restrict diversity to meaning diversity by gender, disability and race, in which case the ABC works very hard at diversity. In fact it should also mean diversity by class - ALL classes - probably religions and certainly social attitudes. Opening up the ABC to advertising might change this, but it is no panacea.

In any case there should be no connection between the private values and views of ABC reporters and their output. The stories they

choose to report as news, the talent they interview, the questions they ask, the grabs they run, the cutaway shots they use all should not reflect the personal views of the reporter. Reporters are supposed to leave their personal views at home when they come to work. That they frequently and manifestly do not leave them at home is the issue here. We should be trying to guess the political and social values of reporters, not to know them with confidence.

It seems to me entirely reasonable to expect objectivity from reporters. That is what they should be trained to do: keep themselves out of the story, recognise their own biases and leave them at home. They must be hungry to know and report all sides to an argument, explore and test the facts. Sadly, unless objectivity in the institution's news-gathering culture is fiercely guarded it will in fact attract people very unsuited to objective reporting, that is advocates who see reporting news and current affairs as a means of promoting their own views. Articulate, adversarial and committed advocates whose verbal showmanship and daring-do not only enables them to shine but also makes the work of the objective reporter look, in contrast, much less exciting and interesting.

While commercial reporters might have to meet entertainment standards to sell ratings, that is not the obligation of the tax-payer funded reporter. Of course the ABC's report must be watchable and listenable, but it can certainly afford to also be objective. Intuitively the ABC audience understands this, which is why its elite members, Left and Right, expect more from the ABC than its commercial competitors. At times of crisis, or when a really big story breaks like a tsunami or a terrorist attack, the ABC's audience share leaps, demonstrating that the general public also believes the ABC to be objective and informed.

As a one time lecturer in Broadcast Journalism at Canberra University, I can say objectivity is extremely hard to teach. It is difficult for the human brain to introspectively take an objective position on itself. This is the journalist's equivalent of a conflict of interest but unlike the commercial conflict of interest, no one need ever know what values and loyalties and prejudices we hold, not even ourselves. However, introspectivity is only one part of the problem.

More significant, objectivity is extremely difficult to teach and to adhere to when we lack sufficient knowledge or analytical tools, yet this is precisely the position of the journalist in almost every story they report. Jack of all trades, master of none. Yet the big issues of today require quite detailed knowledge. Reporting on a terrorist cell, the latest report on climate change or a debate about constitutional reform or interest rate movements all require the journalist to be well-informed. They need to understand the technical use of particular words and be able to manage statistics and facts.

Now not only do we live in a post modern reality where your facts are not necessarily my facts and both are equally valid, we also live in a world where journalists are trained to be journalists, not analysts. It is possible to become a finance reporter without ever having studied a graph at university because journalism teaching does not provide it. Journalism graduates, who today make up the bulk of reporters, may go through three years of an undergraduate degree and learn no science, statistics or maths, no history, no economics, no sociology, no government or politics. Most importantly, in not studying a body of knowledge and in not acquiring intellectual analytical tools, they also do not learn what they do not know.

Instead they learn the craft of telling a story efficiently and identifying points of audience interest or relevance. They learn how to present conflict in a story but they do not learn how to test facts, relying instead on other parties in the story to perform this task. Many times they do not know who to believe and either report claim and counter claim as equally valid or, disturbingly, will favour the claim of a party they believe to be more trustworthy and ignore counter claims. The basis of their trust may be valid, or it might reflect their own prejudices, but frequently the reporter is unaware of the basis for their own judgement. For reporters that might mean preferring the word of an NGO to a government official, (despite the fact that the government official can be sacked for providing a journalist with inaccurate information), or preferring the word of an environmentalist to a business representative because the environmentalist is altruistic and therefore more likely to be honest. Can we expect more of a twenty-something gun reporter with a microphone?

And that goes for the selection of stories as well as their make up. As a friend of mine, then very senior in the ALP, observed as he was driving home from Sydney to Canberra one night when he kept listening to news on the ABC and wondering what planet they were on. It bore no relevance to the voters he knew and to the voters he wanted to vote Labor. Only on the ABC could we expect to find lengthy debate about Kevin Rudd and the United Nations or on-going debate about the children-overboard affair. For good or ill.

This is not to say ABC journalists cannot learn on the job and because they are curious, confident people – some do, but many do not. When they have they are poached by companies and politicians keen to use their skills and experience, and inevitably their knowledge.

The development of journalism degrees and the industry's reliance upon them has, in this era of fast moving news gathering, put the ABC journalist at a distinct intellectual disadvantage. It needs to be said that serious newspapers such as the *Financial Review* and the *Australian* do recruit subject experts, as do parts of the ABC with for

example the recruitment of Dr. Norman Swan, but overwhelmingly broadcast news and current affairs does not.

And we all know what happens when people are required to deal with information they do not understand. They are susceptible to misinformation and their own prejudices and character. It is in the character of the reporter to love a drama, for example, so inevitably distressing or alarming predictions and statements are preferred to more mild-mannered ones.

So if I were to reform ABC News and Current Affairs, I would strongly discourage the recruitment of journalism graduates who did not also have strong analytical and information backgrounds. In fact I once established a post graduate journalism diploma for graduates which I believed would provide the industry with informed reporters but unfortunately that course is no more. The popularity of News Radio suggests there is an appetite for mild-mannered, colourless but factual news information and, despite the fact that it would be less interesting for journalists, sub editors with red-ink editing programs should be encouraged to delete colourful adjectives and adverbs.

The employment of journalists with science, history or economics backgrounds might also encourage the reporting of more policy, less politics. Politics is easy for reporters: a leadership challenge, opinion polls, election date guessing are all inexact and supposition. Gaffs and stumbles, no matter how essentially irrelevant to the government of the country or the state, are easier to report than policy developments for reporters with little time and little background. But even with this reform, it is inevitable that most reporters will be ignorant – and I include myself in that. I had a background in economics and even some university exposure to the sciences but certainly no great body of knowledge or analytical understanding of government.

Which leaves us with institutional culture, and the importance of news directors, sub-editors and producers respecting the rules of fact finding and factual reporting. They need to drive this culture through of respect the news rooms, editing suites and production meetings.

Not out of fear of the government of the day, not because it's the safe or the easy thing to do, or even because ratings are important to the ABC, but because the reporter must revere fact. It is the foundation of news reporting. The ABC reporter must worship fact. On this reverence is built the trust of a nation.

The reporter must be sceptical at all times and of all quarters. The conscience of journalists must not be ruled by the expectations of their peers or, worse, by moral assumptions, but instead by the importance of accuracy and a genuine interest in matters affecting the lives of our citizens.

Perhaps the ABC should remind its reporters that their job is in fact a simple one, to record and test the facts. They are

not historians, they are not even required to consider the public interest, although that might be considered to be consistent with news judgement, they are not, much as they might like to be, law reformers, advocates or players in public affairs. They are privileged bystanders with front row seats at the world's great events and all they need do is provide accurate accounts of that witness. It is for others – academics, researchers, public servants and even NGOs with their specialist knowledge and skills – to perform these other tasks. This of course has never stopped newspaper proprietors especially from seeing it differently but we are concerned here with a publicly funded organisation and in finding a broadly acceptable role for it in an inevitably contentious industry, the ideas industry. The ABC must recognise and celebrate that its strongest news brand is not its righteousness, but its rightness. Its correctness, not its political correctness.

Informed and informing evidence, not belief driven.

The elites, if they too could stop bickering between themselves, should be extremely grateful if that were all there was to ABC news and current affairs. Accuracy is quite enough.

A NEW VISION FOR ABC

TELEVISION

TONY MOORE

The ABC is grappling with how to transform itself from a paternalistic public broadcaster catering to a loyal if passive audience to a multi-channel narrow-caster, engaging diverse and conditional audiences that have an expectation that they will participate, or at least be consulted, in content creation. While many innovators within the ABC are rising to this challenge, the wider public debate has been a sterile contest between those neo-liberals who loath a state broadcaster which they imagine to be a nest of radicals, and those social democrats and old-style conservatives who uncritically love an “Aunty” that is no more. Unfortunately, opposition to the Howard Government’s funding cuts, bullying of staff and stacking of the Board have led to a negative, siege mentality that stops people who value the ABC from doing hard thinking about how public broadcasting needs to change to remain relevant to emerging audiences with different, and in many ways more exacting, expectations of media.

On the eve of the 2020 Summit, ABC Managing Director Mark Scott came up with a wish list for six digital television channels to be achieved by that date. This ambition is to be welcomed for demonstrating that the ABC is preparing to appeal to audiences in their diversity, by moving from broadcasting to narrow casting.¹

The ABC currently operates two TV networks - the old analogue station we grew up with, rebadged as ABC1, and a digital channel, ABC2, which currently survives on the smell of an oily rag by recycling content. In March 2008, Scott announced another two channels to be accessed through the internet that will be able to be viewed on TV sets in the future. So far the channels are still behaving like broadcast channels, and recycling *The Bill* and Margaret and David from ABC1. But having multi-channels as does the BBC will potentially allow Aunty to cater for the different niche tastes of her numerous nephews and nieces without offending each other’s sense of quality, beginning with a kids/youth channel. However, these will require additional resources if they are to be fair dinkum and Rudd the fiscal conservative has been careful not to promise funds for a

“Triple J” of TV as Lindsay Tanner did as Communications shadow during the 2004 election campaign.

What is missing from this vision, however, is an appreciation that emerging audiences want to participate in content creation and interact with program makers and each other. This is what digital technology and the internet do well, but the danger is the continuation of the old paternalist model of public broadcasting where passive audiences simply consume what is offered by program makers who know best. To deliver the multi-channel nirvana envisaged by Scott, the ABC must deal with structural and cultural problems in the corporation inimical to diversity that have intensified over the last decade. Luckily, there are changes under way on the ground at the ABC that are laying the foundations for further cultural democracy.

The Pymble broadcasting corporation

The ABC suffers from a too homogenous view of Australian culture, imposed through management structures that have centralised control of television content in the hands of a few senior executives. There is insufficient consultation with audiences about programming - signified by an over reliance on commercial ratings - and inadequate community participation in ABC corporate decision-making.

Over the past decade the layers of management bureaucracy and its remuneration increased at the ABC while creative craftspeople were shed, at a time when successful private corporations flattened their management and gave greater autonomy to team-based production. The report of the Australian National Audit Office, *Corporate Governance in the Australian Broadcasting Corporation*, prepared under Jonathon Shier’s regime, identified a problem of managers working up to the apex of the corporate pyramid, rather than down to stakeholders.² Translated to TV, that means shows are green-lighted because the Director of TV likes them, rather than in reference to audiences or Charter obligations.

The challenge for us today is rethinking the public sector from the midst of the information revolution. Media is moving beyond a crude dichotomy between the old elite public broadcasting and the old commercial broadcasting that appeals to the lowest common denominator. Twenty-first century media is concerned with audiences in their diversity, satisfying those niche interests that help to make us unique and encourage a vibrant, complex dialogue between cultures. Hence the decline in use of free-to-air TV by younger audiences and their attraction to the internet.

Luckily the Charter supports this approach by committing the ABC to “broadcast programs that contribute to a sense of national identity and inform and entertain and reflect the cultural diversity of,

the Australian Community”. Perceptions of what constitutes “quality” and innovation depend on particular cultural literacies which nowadays are not shared in a community criss-crossed by aesthetic and attitudinal divides overlaying differences in age education, class, ethnicity and geography. This is the real challenge for a national broadcaster but one that the ABC hopes to meet by multi-channeling.

In 2002, the Auditor found that “there has been a decline in ABC share of younger adult viewers (under 40), but an increase in ABC share of older viewers”.³ This is less about youth than changing media patterns. The evidence shows young people are watching less and less free-to-air TV that looks to common denominators. The “loyal” ABC viewer is making way for the discriminating conditional viewer, who makes an individual choice from the array of media options at their disposal – websites, blogs, books, videos, games, pay TV, radio, cinema, mobiles, chat lines, magazines and commercial TV – on the basis of personal interests and passions. Media that seek to treat the under-40s as one group, to attract them on the basis of what they are assumed to have in common, will have no audience. The ABC’s diversity deficit lies in its monolithic perception of an “ABC audience”, the shared assumptions of those who commission, and failure to range widely enough in recruiting program-making talent. For all the huff and puff about the ABC’s left wing bias, having only two wings – right and left as represented by Labor and Coalition – is a pretty narrow debate. There are a lot more perspectives out there.

When I was at the ABC in the late 1980s and 1990s a left-liberal, harbour hugging tertiary educated attitude to social issues prevailed alongside a pro-market bias in economics and a rather old fashioned bush and Kokoda track nationalism. As a young ABC doco maker this world view struck me as pretty conventional, conservative, middle brow and incurious. It still does.

But many program makers wanted content that was more risky, dangerous, intellectually challenging and experimental rather than reverential of TV rules; content that dared to be offensive. This occasionally came along in comedies like *Front Line*, in youth initiatives such as *Beat Box*, cinema verite exposes and in gritty drama such as *Blue Murder*. It still does in the comedy area with *The Chaser* and *Summer Heights High*, but more often the story is one of senior managers spending a great deal of money blanding out programs to appeal to what they imagine to be the “core” audience. This is sometimes referred to in ratings jargon as the “As” and “Bs” but I was told “mate, we make programs for Pymble”, just as Mike Carlton a decade later was told to imagine his listener as a neighbour in Epping. This is perhaps what John Howard had in mind when he described the ABC as our enemies talking to our friends.

I suspect program makers are projecting their own tastes, prejudices and backgrounds on to the potential audience. A rare iconoclast among content commissioners, Courtney Gibson, who has attracted young audiences with new comedy, recently criticised the ABC as “too white, too straight, too middle class ... If you don’t have diversity in the production offices, you’re never going to get it on screen”.⁴ I don’t think Gibson means we need a politically correct mandarin-slice view of the world. Rather there are vibrant cultures that the ABC is failing to tap in its programming.

What perspectives is an ABC viewer denied? Even if many staff are republican, the ABC remains the great defender of British culture in Australia and persists in maintaining a colonial deference to the BBC as the benchmark for quality. Combined with the budget squeeze this colonial cringe results in far too many BBC imports dominating prime time and a perverse inattention to innovative programs made elsewhere, such as HBO in the United States. But at least the Brits know how to make risky cosmopolitan TV. Because of the existence of SBS, the ABC has never really come to terms with its Charter responsibility to reflect Australia’s ethnic diversity. Non-Anglos still appear on ABC TV shows as well-meaning tokens, loudly justified by an ethnic plot development, rather than as a natural part of the Australian mix. White, inner urban program makers present ethnic difference and hybridisation of cultures in the back blocks as an unusual disruption to the “Aussie” mainstream rather what it is - the major narrative of contemporary Australia. For this reason the ABC struggles to make sense of factions in party politics or power struggles among socially mobile migrants in the outer suburbs as revealed by the Wollongong corruption scandal. The auditor identified an under-use of the ABC by lower socio-economic audiences. The ABC is good at exhibiting working class individuals and communities as subjects with problems to be diagnosed or eccentricities to be celebrated, but always they are presented as “the other” to an assumed middle class audience. *Pizza* on SBS and the films of David Caesar show a different approach, where creative program makers have emerged from these communities with different, often confronting aesthetics from the perspective of middle class tastes.

Freeing up content

So how can the ABC better harvest the risky and original stuff that emerges from outside the official TV culture that the ABC’s managerialism usually filters out?

First, the commissioning and budget power currently wielded by the Director of Television needs to be dispersed down by returning to the old system where the department heads and commissioning editors control content and executive producers are trusted with

editorial authority over their own autonomous units, with decisions to be reviewed annually. This will restore creative friction to the ABC and provide more diversity.

Outsourcing is often offered as the panacea for engaging program makers outside the silo. Much non-news and current affairs content – drama, docos, comedy – is now either outsourced or produced internally by external production companies. I have admiration for the work of both in-house ABC program makers and the independents. It's an artificial divide as so many independent producers are ex-ABC staff, who reckon they get a better deal this way. It is often the case that, free from managerial interference and compromise, contracted production teams are able to break more rules, especially in comedy and documentary.

However, outsourcing is far from transparent and the ABC needs to spread its patronage widely rather than indulging the usual suspects. Outsourcing has the potential to burn the ABC and needs to be governed by legislated rules and benchmarks. It matters less whether programs are made in house or out than that this public commissioning is spread equitably and those taking the money are accountable and deliver value-for-tax-payers dollars. The current gene pool is too narrow in terms of class, ethnicity and region and the ABC needs to engage with storytellers from beyond the TV industry working in cinema, theatre, literature, music and even computer games. Progressives ignore reforming outsourcing because they favour in-house production, but this horse has truly bolted, and the debate is about how to ensure emerging innovators get the nod rather than the same old mates. I would like to look at the parlous state of ABC drama as an example.

In recent years the ABC and its private co-production partners have failed to live up to its potential as the power-house of Australian fictional story telling, especially when compared to HBO, Channel 4, even the BBC. Instead of the brain-and-aesthetic-stretching of *The Sopranos*, *Deadwood*, *Rome* or *The Wire* the ABC persists in cuddling up with bucolic melodramas like *East of Everything* and *Valentine's Day* where sensitive middle class white breads talk plot, mid life crises and last decade's political correctness. The stodgy state of ABC drama has less to do with funding than the aesthetic and intellectual conservatism of production houses, a failure to engage with story tellers in the wider creative community and obsession by commissioners with a narrow range of genres. The ABC Drama department and its preferred commercial providers are locked into expensive budgets and pedestrian, out of date script-writing and a bland house style that made a mini-series on East Timor look like *Police Rescue*. Good drama need not be expensive, and often it is the low budget guerrilla independents that produce the interesting,

innovative work. This is illustrated by comedy sensations such as *Summer Heights High* that played with a documentary style, and *Frontline*, shot on digital handycam by Working Dog back in the 1990s. The ABC should move away from high cost drama and make more low budget stories using small scale “indie” producers who can afford to take risks with ideas and the medium.

Drama commissioners need to move out of the narrow pool of TV drama writers and try novelists and other types of writers as they do in the UK. Give talent like Christos Tsiolkas, Helen Garner and Peter Carey a burl. Move beyond the Palm Beach/Balmain/Bondi Triangle and find young writers and directors from a variety of backgrounds and media. The net can be thrown wider to bring other art forms into the drama mix. A collaboration between the ABC, OzOpera, MusicArts, Dance Films and musicians Paul Kelly, Kev Carmody and composer Maireed Hannan produced *One Night the Moon*, a tragic tale of a lost child in the outback condemned to die because of the impasse between white and Aboriginal world views. This strange hybrid brilliantly directed by Rachel Perkins and enjoying limited theatrical release shows that great art is within the ABC’s grasp when it goes outside its comfort zone.

We need more historical drama. Nineteenth century Australian history and literature is a mine of great stories and characters. No one minds a bit of Dickens and Austen on a Sunday night, but what about Marcus Clarke, Christina Stead or Kenneth Slessor? ABC drama needs to be freed from the shackles of British realism and try science fiction, fantasy, horror and the gothic popular with teenagers, young adults and working class audiences. George Miller and Peter Weir had enjoyed great success with *The Last Wave* and *Mad Max* yet the ABC sniffs at such low entrainment for adults, preferring to churn out formulaic series about police rescuers, doctors, lawyers, diplomats and firemen. The New Zealand government backed experiments in the low art of horror and fantasy, nurturing schlock director Peter Jackson who went on to stun the world.

Another problem area for ABC Television is the so-called “Factual” area. Under the last Labor government, the ABC had a Documentary department that produced outstanding historical and social documentary films on a par with the British and American imports that now grace our screens. Carefully researched and fearless docos of the calibre of *Cop It Sweet* and *Nobody’s Children* made both Labor and Liberal governments squirm in the late 1980s and early 1990s. The funding squeeze from 1996 led to most docos being outsourced to the independent sector or Film Australia, the department was absorbed and the ABC lost a centre of excellence and the public a critical window on the nation. Sadly, the new ABC Factual department specialises in connect-the-dots half-hour info-

tainment that reduces the complexity and curiosities of life to the banality of Mrs Marsh instructing school kids about teeth.

ABC Television needs intelligent, innovative documentaries about social, political and cultural issues, leavened with short, low budget guerilla docs that dare to offend and experiment with the form of TV itself. To recreate a centre of in-house documentary innovation, the ABC should establish cross TV/Radio units of excellence in history, social issues, culture and science equal to the standards set by the Religious and now recently defunct Natural History Units. Building on *Lateline's* astute policy focus, a centre of policy research with its own weekly program should be established in the Current Affairs division that allows for informed critique of government policy actions, rather than simply accepting the limits of prevailing orthodoxies or reporting politics as a football game – though in style it should borrow from the spontaneous and playful intelligence of *Insiders*.

These centres of excellence should employ top academic researchers on the cutting edge of those subjects as well as proven aesthetic innovators as commissioners and production staff who are not beholden to outdated TV rules, who take risks. Outreach into the wider knowledge and creative community should be central to the role of these units, to glean talent and stories, but also to establish creative partnerships. The Howard years saw a shrinking of a sense of national vision and ambition at the ABC, exemplified in the decline on our screens of flagship national documentary and dramas series. Their return will likely require a visionary initiative by the Rudd Government.

Reversing the trend to centralisation in Sydney would also assist diversity, by allowing commissioners in the so-called “BAPH states” (Brisbane-Adelaide-Perth-Hobart), and even regions to establish relationships with local creative communities. The BBC’s decentralisation has enabled it to garner the talents of Manchester, Scotland, Northern Ireland and Wales in its drama, variety and current affairs. As long as the states provide most government services in Australia, ABC TV needs more state-focused scrutiny than one night a week. The decline of government standards and services at the state level is partly attributable to media disinterest, including the abandonment of the state-based *7.30 Report*. I suggest a new nightly current affairs vehicle at 7.30 pm, more *Insiders* in style, that ditches the human interest guff for 15 minutes on the state in which the program is viewed.

Putting the public back in the public broadcaster

The ABC needs some democracy at the very top. Since the election, some have called for Howard Government appointees to

resign from the board. Obsessing about individuals and their bias is not the best way to stop the board from being a political plaything, and it is not the solution to the ABC's governance problems. Perhaps we need to be more creative in what we wish for? A progressive response should reject score settling, and instead ask how to enhance public participation in the ABC. Labor went to the election promising to surrender the government's right to make appointments and adopt the "arm's length" Nolan Rules, recently confirmed by Senator Conroy, used for choosing members of public boards in Britain.⁵ Vacancies are advertised and a selection panel independent of the Minister draws up a short-list based on merit from which the government must choose. This will mean a vast improvement to the quality of all public boards to which it is extended, as mates, dates, assorted party hacks and ideological axe grinders make way for the media qualified or those with deep community connections.

Rudd Labor also promised to restore the staff-elected director to the board (we're still waiting as I write).⁶ But as part of the ALP's promise to "further increase the transparency and democratic accountability of the ABC", why not extend the principle of election further, and allow the election of one or two non-party community representatives, and a representative from the cottage industry of independent producers who provide so much of the ABC's content? Due to a century of grounding in producer value and worker's rights, the ALP culture is comfortable with workplace democracy, but still suspicious of calls for consumer democracy. However, I'm convinced strong candidates will get up and that the debates surrounding election to the Board will increase the relevance of the ABC to a changing community and enhance the public's sense of ownership. Election will ensure some ideas entrepreneurs and mavericks who may be knocked back by the Nolan process get to make their case. Furthermore, all members of the National Advisory Council, presently selected by the Board, must definitely be elected by the public.

Representative structures only go so far towards democratising the ABC. Online and new digital stations have the greatest potential to enhance audience participation in our ABC. Viewers and listeners are now contributing ideas and comments through the ABC's forums and blogs such as *Unleashed*. Just as listeners have done with radio talkback, audiences are becoming part of online content, contributing passionate and informed discussion alongside program makers. New media has also liberated the ABC from the tyranny of the ratings, allowing audience numbers and use patterns to be measured via pod and vod cast downloads (17 million in 2007, with even more "hits"). Lo and behold, as well as the favourite *The Chaser*, Radio National programs are actually popular, not just in Australia but internationally. The Auditor felt that reliance on the commercial

ratings system was inappropriate for measuring how successfully the ABC was meeting its charter requirements and recommended it establish its own Audience Appreciation Service.⁷ Unfortunately, the ABC persists in over-reliance on OzTam or Nielsen ratings and still favours executive hunches over audience consultation, as the recent debacle about its watermark logo demonstrated.⁸ But Online offers a qualitative way for audiences to impress themselves on their ABC.

While many an older rusted-on ABC viewer might sneer at *Big Brother*, this one-time Channel 10 hit demonstrated that the younger audience wanted to participate in the narrative direction of a TV show. Building on its own pioneering efforts in audience generated content like *Beat Box* and *Race Around the World*, I urge the ABC to allow audiences to shape content still further via the internet, commenting on pilot programs and even offering up their own pilots for comment, YouTube style, as children already do on the just-launched Roller mache site.⁹ The *Argonauts* could sail again, only this time by fibre optics and a set-top box.

Rather than the old paternalist model of public broadcasting the new digital channels could be the medium by which the diverse creative energy in the community, from suburban garages to inner city garrets, can be siphoned into the mainstream public conversation. I don't mean a *Wayne's World* of amateurism, but genuine democratic talent scouting, a 21st century version of the approach of F.J. Archibald's *Bulletin* of the 1890s, that scoured the bush and the back lanes looking for poets and artists and discovered the likes of Henry Lawson, Banjo Patterson and Norman Lindsay. The best Australian culture erupts when media enfranchise a passionate community and become clearing houses for new ideas and styles, as happened with 1970s cinema, *Nation Review*, *Double Jay* and even *Countdown*.

Where the ANAO lamented a tendency for Shier-era bureaucrats to manage up the pyramid to the Managing Director, the ABC's digital initiatives are orientating program makers in the other direction, towards their diverse audiences.¹⁰ This is a democratic and creative trend collapsing the barriers between consumers and producers, and it should be a priority for resourcing by the Rudd Government that has pledged to ensure that the ABC is "able to exploit the potential of new technology".¹¹ However, the ALP went to the election only promising "adequate" funding of the ABC, and an increase seems unlikely in the coming belt-tightening budget, despite community expectations to the contrary. Nevertheless, a targeted grant to assist the ABC continue its ground breaking initiatives in digital narrowcasting would be money well spent by a government interested in innovation and "democratic accountability".

Through his Australia 2020 Summit, Kevin Rudd has signalled that the government is open to new ideas and solutions, rather than

the ideological orthodoxies that have dominated the agendas of right and left for the past decade. Applying this type of thinking, progressives should move beyond the culture wars and the funding fetish, and towards bigger ideas about a culturally democratic ABC. In the meantime it would be good to hear if the Labor government has a new vision for the national broadcaster.

Endnotes

- 1 [<http://www.brisbanetimes.com.au/news/opinion/theres-a-whole-lot-more-to-see-with-abcs-2020-vision/2008/04/16/1208025283865.html>]
- 2 Australian National Audit Office, *Corporate Governance in the Australian Broadcasting Corporation*, Audit Report No. 40, 2001-2002 Performance Audit, "Summary", 55.
- 3 *ibid.*, "Summary", 89.
- 4 Quoted in G. Callaghan, "The Power of Two", *Australian Magazine*, Jan 26-27, 2008, p. 17.
- 5 [<http://friendsoftheabc.org/labors-abc-policies-advance-and-retreat>]; [http://www.alp.org.au/platform/chapter_16.php#16public_broadcasting]; Australian Labor Party, *Platform*, 2007 Paragraph 59.
- 6 *ibid.*, Paragraph 59.
- 7 ANAO, *Corporate Governance*, "Understanding the Audience", 7.48-7.54.
- 8 [<http://www.crikey.com.au/Media-Arts-and-Sports/20080214-New-Logo-taking-aim-at-the-ABCs-rebranding.html>]
- 9 [<http://www.abc.net.au/rollercoaster/kidstv/rollermache.htm>]
- 10 ANAO, *Corporate Governance*, "Management Arrangements", 3.36 -3.37.
- 11 ALP, *Platform*, 2007, Paragraph 57.



Ross Fitzgerald



Margaret Fink



Photo – David Karamidis

Gerry Connolly

The phenomenon of increasing longevity in Western democracies for their citizens has produced much discussion on how best to pass those last decades of life. The Baby Boomer bubble is now over 50. Author and university academic Ross Fitzgerald and his wife Lyndal Moore have put together an anthology from contributions by 35 of their “over fifty” friends in *Growing Old (Dis)Gracefully* (ABC Books). At the launch of GOD, on Wednesday 9 April 2008 at The Sydney Institute, Ross Fitzgerald, film producer Margaret Fink and comedian and musician Gerry Connolly – three of the contributors to the book – gave their reflections on growing old.

GROWING OLD

(DIS) GRACEFULLY
ROSS FITZGERALD

As Gerard Henderson knows better than most, my stunningly beautiful wife, Lyndal Moor, and myself are contributing co-editors of *Growing Old (Dis) Gracefully*. And as if we didn't feel old enough already, on Monday two days ago at Parliament House, premier Morris Iemma launched the book to coincide with the fiftieth anniversary of Seniors' Week!

Yet one of the advantages of Lyndal and I both being seniors is that we can say what we like - which is precisely what we have done in this book. I might be biased but, in my opinion, Lyndal's contribution, *Becoming Invisible*, is one of the funniest pieces in *Growing Old (Dis) Gracefully*.

Of course truth goes both ways. Apart from the fact that, as each year rolls by, I seem increasingly to resemble an old dog - half deaf and a quarter blind - the state of my physique is not improved, as a comedian friend remarked, by me eating like a man with two arseholes. Not surprisingly, other bits of the body, to which I will not refer, are sometimes slowly, sometimes quickly, giving up the ghost. Then there is what appears to be emotional and mental deterioration. Recently I said to my brother-in-arms, Gerard Henderson, "I think I'm becoming more neurotic." To which Gerard replied, "That's scarcely possible!"

It will not come as any revelation to those who know me like Lyndal and Anne and Gerard Henderson that "give" is not my middle name. One day in Brisbane, after I presented an acquaintance who'd just had a baby with a less than expensive gift, I inexplicably broke into tears. A mate explained the situation thus: "You were," he said, "Overwhelmed by your own sensitivity." Last weekend, Lyndal reminded me of a scathing review of my work written by one of my many enemies from Queensland. This devastating attack concluded, "Ross Fitzgerald is one of Australia's most prolific, yet least read, authors." The sad fact is that, in many ways, Lyndal agreed. Yet at this Sydney Institute function, here tonight, we hold a shy hope that *Growing Old (Dis) Gracefully* might buck the trend and be both well-received and actually widely read.

For Lyndal and I, it has been a joy to edit this book of 35 essays, whose contributors range in age from the 84-year-old Erskineville-based communist, Hal Alexander, to my dear friend Gerry Connolly – who has just nudged the big Five O and who will be speaking shortly.

Contributors to the book, the initials of which spell GOD (i.e. G. O. D.), include committed Christians like Brisbane-based writer Phil Brown and the chairperson of the State Parole Authority, Ian Pike, as well as less certain believers, including noted film producer Jim McElroy, through to unambiguous atheists like myself and Lyndal, and the marvellous Margaret Fink who will speak later. All of GOD's writers, in their different ways, demonstrate that being 50 and over is anything but easy and that, to paraphrase the American playwright Lillian Hellmann, old (er) age is not for wimps.

Intriguingly, a number of contributors confide that, slowly or suddenly, they woke up one morning and the realisation dawned that they were growing older, if not old. Yet when push comes to shove, all contributors to the book, including Anne and Gerard Henderson, manifestly value life itself and their part within it, while most, if not all, believe that in some ways (many of them unpredictable) life can get even better. Yet despite some signs of physical decline, most contributors reveal the presence in their lives of hope, trust, commitment, persistence, good humour and, perhaps above all, the resilient capacity to cop whatever life dishes out in the twilight, or at least the second half (or final quarter), of their lives.

But don't be mistaken, physical and mental signs are there indeed; in my own case often in spades. Part of my current angst concerns time and its passing, something I try to control by always carrying a diary. In it, I write a daily shopping list: people to meet, places to go, things to write, to do and buy. Indeed each year I go through at least two diaries, sometimes three. When, as happened once in London, I actually lost my diary, I was, to use that peculiar phrase, "beside myself", and had to try and remember, as it happened quite unsuccessfully, all the entries for the rest of that year.

So growing old is not something I'm dealing with all that well. One of the many suggestions made by self-appointed experts about how to cope with ageing is to deliberately not remember crucial dates. In my case this is impossible. How can I forget my birthday, Christmas Day, or my wife Lyndal's birthday which is 11 September (what most of the world now calls 9/11), or even our wedding anniversary which is 5 November or Guy Fawkes Day?

Balanced against this is my chronic inability to remember names. A promising suggestion from Barry Humphries is to associate each person's name with some other thing or object. Recently, on a board on which I serve, I was introduced to a new member called Yiah. As her name sounded like "ear", I decided to associate her name thus.

Unfortunately the next time we met I asked, "And what do you think about this matter, Chin?"

The best advice I've been given to cope with all of this mental and physical deterioration, and indeed with most other life problems as well, comes from my policeman friend from the Gold Coast, Detective-Sergeant David Isherwood, known as "Davo", who simply says, "Mate. What else can you do but cop it." All of this is aided by reminding myself of an Old Russian proverb I made up: "All that trembles, does not fall."

Another Queensland friend maintains that the cleverest and most brilliant idea that I have ever come up with is that, shortly before I eat a meal at home, I turn my cardigan or jumper inside out. This means that whatever food drops down on me, including all the dribbles and stains, will not show up when I later put it back on the right way up. The only problem is that while this procedure works wonders at home, it is difficult to achieve when Lyndal and I are eating out! Speaking of Lyndal, one of the many reasons that we have been married so long (for 33 years) is that she is a woman who isn't the slightest bit interested in illness. I remember years ago saying to her in a self-indulgent way, "I don't feel very well." To which she replied, "Darling, the pyramids were built by people who didn't feel very well."

These days, one of life's pleasures is to agree to review whatever books I am sent, no matter what their scope or subject. Thus, to any reviewing request, my motto is "Never, never say No; Never refuse". It is rather like my tendency never to respond to criticism, a position to which I almost universally adhere. Accepting a random spread of books enables me to read about new and recondite things, to confront different and unusual ideas. It is so important to try and keep learning, and constantly to explore with curiosity and enthusiasm. Each day, I try to follow Sigmund Freud's dictum, that the secret to a good life is "love and work". So every day I try to contribute, to achieve and be productive. As my friend "Antique Harry" said, "If you aim for the stars, you won't shoot yourself in the foot!"

After we had lived in Brisbane for over a quarter of a century, two years ago Lyndal said, "Darling, I want you to know that I am going back to Sydney. I'd like you to come with me," she said, "But I want you to know that I'm going." As I wanted (and still want) to stay with Lyndal, the decision was crystal clear. *A fait accompli*. QED! So here we are, living in Redfern, in a terrace house called "Greystoke" which was the name of the ancestral home of Lord Greystoke – Tarzan of the Apes.

One of the many positives of living in Redfern is that it is close to the airport and only a 25-minute walk into the city. Another pleasure is going to Peter the Greek's Seafood Café in Bourke Street which sells the best fish and chips in Sydney. And, despite my wife's constant objections, I especially enjoy regularly having my hair cut next door to

Peters by Theo the Greek barber, who not only deals with hair on the head, but with recalcitrant hairs in the nose and ears as well.

Theo is famous/infamous for his VERY SHORT haircuts. What I really like is when Theo puts down his scissors and says, "Will that do?" I pause for a moment and then almost always say, quite deliberately, "I think we need off just a little bit more!" Lyndal thinks that no one else has ever said this to Theo. In any case, it certainly produces in my barber what one might best describe as a frisson.

Outside Theo's barbershop, there is a large sign facing the street saying "Gents Hairdressing. Specialising in All Styles". I like that. In some ways it describes the way I operate in my mid-sixties. Never limit any opportunities or possibilities. Be open and eager for experience. Avoid sloth and self-pity. And above all, be comforted by the fact that, no matter what happens, within a month or two my hair grows back to "normal".

As I mentioned, I think Lyndal's revelations about coping with life in her sixties, after having been a well-known Australian model and actor, is one of the funniest contributions to the book. I haven't the time now to detail Lyndal's many suggestions for life improvement, including the multifaceted possibilities potentially available should there ever be travelling Botox clinicians and salespersons knocking door to door.

But did you know the vast educational opportunities provided in the first decade of the twenty-first century by women's panty liners? "For Everyday Freshness", Lyndal uses Libra Absorbent Liners. As she reveals in her essay, *Becoming Invisible*, a bonus for the over fifties and over sixties with time on their hands, is that inside each Libra Liner is a short page of "interesting facts". For example, one morning recently, Lyndal learnt that: "Mosquitoes have teeth and are attracted to people who have recently eaten bananas"; "American Airlines saved \$40,000 dollars in 1987 by eliminating one olive from each salad served in First Class"; "Sigmund Freud had a morbid fear of ferns"; "Cats can hear ultrasound"; "Sugar was added to chewing gum in 1869 by a dentist, William Semple"; "Liquorice can raise your blood pressure"; and "When the Eiffel Tower was built in 1884, Parisians referred to it as 'the tragic lamp post'".

So here's a tip to take home tonight for yourselves, your partners and for all your friends. To add considerably to one's general knowledge, modern-day panty liners, at least the absorbent Libra brand, are highly recommended reading for women, and for men, and for their male and female friends and associates who have moved, or are moving, beyond the big Five O.

So there it is. *Growing Old (Dis)Gracefully* – dedicated to our darling daughter Emily, who is 25.

HURRY, LAST DAYS

MARGARET FINK

It is probably too late for improvement over 70, but maintenance is critical. Hanging onto one's teeth, for instance, not only to eat raw food but – only joking – for the impact of one set upon the other to prevent softening of the brain. Good posture is important, and a survey of old models' longevity might throw light on its advantages. Although the jury is still out on supplements, a few trace elements might find their way to ageing parts, and so far as food goes, it still holds that fresh is best, with one meal a day enough for any old soul.

Sometimes it occurs to me that I only eat to throw down health pills. Moderation in all things is one of the dullest adages, and going easy on the grog can't be right, but gorging is morbid, and it is better to be underweight when falling over. Falls seem to be a part of old age and, a doctor once told me, no one over 50 should stand on a chair or a ladder. Going more slowly might help but who will remember that when you're in a hurry?

No matter which way I look at it, getting old is no picnic. Struggling to find a bright side, there is more time for reading, while I can still see, and my grandchildren are a joy. According to the anthropologist Margaret Mead, the reason grandparents and grandchildren get on so well together is because they have a common enemy. Ambition, envy and suspicion seem to diminish with time and give way to emotions I should have had in the first place. Goodwill is hard to beat. Certainly being patient is more than a virtue – it's a necessity – but as my mother would say, that is easier said than done.

A couple of years ago after a hip replacement operation, my patience, and that of the people helping me, was tested while I learnt how to walk again, to say nothing of trying to put on socks. Even getting dressed can become an achievement for many seniors, but it's worth making an effort to look one's best. Investment in new clothes might seem a waste of money but a lot can be done with old ones given fresh life with accessories. Now that hats are mandatory for schoolchildren, adults should follow suit; if you look at a photo of Sydney in the first half of last century almost everyone is wearing one. Why worry about being bald or spend hours at the hairdresser when putting on a witty hat can do the trick. Turbans and clever ways

with scarves can help – who knows what was under the ones Edith Sitwell wore? Gloves and net veils deserve a comeback and pinning on a piece of jewellery gives any tired beret a lift; in fact, old age is the time for going all out with jewellery – fake or real. A string of pearls, or anything pale near the face is flattering. Compliments for a seventy-four-year-old are thin on the ground, but a few come my way if I remember to add something light around my neck. With naturally slim arms, but a thought for others, I have worn long sleeves for decades. There's little uglier than old tops of arms and wrinkled elbows. Jeans on anyone over 40 look ridiculous and the ubiquitous running suit is hideous on people of any age.

Smoking has become so reprehensible it's novel to see someone light up; it takes me back. In the past, when cigarettes were thought of as glamorous, it was considered bad form to smoke between courses at dinner, or in the street. The worst that could be levelled at the habit when I was in my twenties was that it was unladylike. A friend of mine has an old lover who used to be very good-looking. Over the years, as well as determinedly staying indoors, he has had a dodgy diet and smoked non-stop. "He used to turn heads; now he turns stomachs," quips his partner. The best thing about this couple is that they both find the joke amusing. A recent survey published in a US neuro-psychological journal reports that laughter has been linked to health benefits. So, if it's possible to have an up-side to the thought of extinction it could be to have the last laugh.

Talking about senior moments was amusing before the phrase became hackneyed, but losing track of what you just thought of is all too real, although I can remember forgetting things when I was young; the trick then was to return to the place where it came into your head and it would click back. This doesn't work so well now.

A few weeks ago I gave a party for some old friends. We were all more or less close in the 1950s as students and in those days saw each other frequently. Political predilections, family commitments or career choices meant that in most cases connections had been severed over the decades although sometimes we would glimpse each other at funerals. At the party, however, the general age was between 70 and 80, with a couple of young ring-ins still in their sixties. As it turned out the weather was miserable which meant everyone was crammed into a fairly small space, but what followed was a room full of noisy people very pleased to see each other and bent on having a good time. No one left early and it was a job to get the stragglers to leave – just like old times.

Someone asked a friend of mine whether she believed in life after death. No, she said, but I believe in death after life. As a devout atheist, I'm surprised to find that many people I'd thought of as non-believers have high hopes of a glorious future in heaven. The

art historian Bob Hughes' idea of God as something between a fairy story and a bad joke strikes me as very funny. And, speaking of God, Australian author Miles Franklin said she found it hard to believe in someone who needed to be fed such everlasting praise, adding, "If He did that to a son, what would He have done to a daughter?" The courageous writer, Ayaan Hirsi Ali, is continuing Miles' and other feminists' condemnation of patriarchal religion. In her memoir, *Infidel*, Hirsi Ali describes how, when she was five years old, she suffered the agony of genital mutilation, a practice common in Somalia, where she was born, and in many countries across Africa and the Middle East. Why should women be denied orgasms? Feminism still has a long way to go.

I've been asked to a sixtieth birthday party soon for someone who, years ago, was asked to mine. At the time, he recently told me, he thought to himself, "How old!" The cliché that 70 is the new 50, or whatever, has some weight, and my dog Busy, who is six and therefore fortyish, looks no more than a four-year-old, or so I tell myself. There is no doubt that a cat or dog, even a bird, can provide good company for those who may have had enough of human contact. But the best antidote to potential decrepitude must be remaining alert to the possibilities of creative endeavour, whether nurturing a garden or composing a sonata. It is reassuring to remember that Frank Gehry, born in 1929, designed the Bilbao Museum in his late sixties. Not to have a project on the books is dispiriting, and I look forward to producing my next film, which is at present in development.

FEAR AND LOATHING

GERRY CONNOLLY

It's a curious thing that when asked to write on the subject of ageing I suddenly leave the country. I've already missed a few deadlines in practised avoidance and denial, but contributing to such a volume is a bit previous. For, isn't 50 the new...black? We had no idea our parents reached these milestones; they tended to celebrate wedding anniversaries. It's the Boomers' waypost we've all bought into, the magic of numbers with a nought on the end. There will be no repeat performance of the turmoil that turning 40 brought with it.

I had done a cabaret season in Sydney and was preparing to host an outdoor concert for my exact contemporary, the Queensland Symphony Orchestra. But that was still a long way off...I would mosey back to Melbourne. A couple of hours along the highway, I got a bit wobbly, light-headed and of all things, double vision, alarmingly yet comically exactly like a black and white cinema effect. This was so strange I took the Bowral exit and went directly to find a doctor. He took my blood pressure, looked worried and asked if I had a tractor parked on my chest. No, not at all, even though we were in the lush region of the Southern Highlands. His next thought was that, as I was wearing black jeans and a dark shirt (I was returning to Melbourne) and driving in the sun without a break, I was more than likely dehydrated. Have lots of water, a fizzy drink, idle a while, and oh good, if you've got friends nearby stay with them the night and you should be okay. I did all that and was. Making an offer any sundowner should, I found no wood to chop for my friends, so I mowed their not inconsiderable lawn. Bed and breakfast, I was on me merry way.

It was that next evening, at home in Albert Park, I felt the first rumblings of the gathering storm. Chatting on the phone to a friend, an ominous sensation percolated its way up from my boots, had me short of breath, heart racing, cold damp hands and left me with a sharp pang in the head. I explained and hung up and staggered next door to Peter and Vicky's. I calmly told them; no, I breathlessly told them that I was having a heart attack or stroke and would they please call an ambulance. Worried as this made them, I detected just a hint of relief at this news, since the last time I unexpectedly knocked them

up was at half past five one Sunday morning to tell them my house was on fire, and as a direct result of this, theirs was too.

In no time, I was laid out on their bed, clutching the family Bible, reciting the Rosary, falling away more deeply into the chasm, hearing Vicky, a nurse, describe my symptoms to the ambulance man on his way. Another weakly rasped Hail Mary, a sip of water; ninety seconds later, and he still wasn't here. Call back, call back, I'm going, I'm going.

An eternity.

Then, the sound of a sensible vehicle outside. Frank swung the gate, came in with heavy foot, whistling too cheerfully for Vicky. "Will you please have some respect? My friend is dying!" No he's not. "How do you know?" From the symptoms you described. Nope, he's having a panic attack. How ya goin' Champ? Frank's plain approach of course snapped me right out of it, but as I wobbled out to the ambulance, passing through the gate, the only one I would that night, I rattled like a skeleton.

It was a shaky episode, and there were many after-shocks to come: during the following months I would take a cab or dare to drive to Emergency in the small hours... No, this time it's a real heart attack. It got to the point where I had to slip off-stage during the ball scene in Opera Queensland's production of *Fledermaus*, to pop a calming tablet under my tongue.

From the first gingerly-taken climb up the steps of the school bus as a five year-old, in my blue convent school uniform with the grey socks with bands of red, yellow, green at the top, and the state schoolers calling "Hey Frogface", I knew it was going to be a tough old world out there for a self-conscious kid.

The same churning stomach, cold fingers, hot ears would reappear before the first reading at midday Mass on Wednesdays. Making the best ten year-old effort, determined not to lisp through A Reading from the Thecond Epithtle of Thaint Paul to the Thethalonianth, it didn't always come off. The relief and release of stepping down from the block was intense though.

There seems to be a lesson in the karmic repetition of crossing a threshold and mastering breath control; stepping up to the bus, up to the lectern, out from the wings to the stage presents a similar obstacle. It's the unpredictable fear that leaves us in the dark.

Which is exactly where I head - into the night the long way round, flying into the sun, across two mornings in a day and find myself after sunset, awaiting final approach at JFK airport, New York. Then, like this piece, we go into a holding pattern. And I look up through a portside window and catch the moon, shimmering full or at least a waxing gibbous, and that song starts in my head:

If you get caught between the moon and New York City,

The best that you can do is fall in love.

But there is no Ralph Fiennes moment.

It was Peter Allen and Carole Bayer Sager who had been caught between the moon and city, and were joined by Burt Bacharach and Christopher Cross who added a lyric or two, came up with a song and together they won a ©[®]™Award for the title song of the Dudley Moore vehicle, *Arthur* 1981.

Could I age disgracefully like Dud's character, skidding his boozy old way through the ultimate decline? It seems unlikely, now that I've been on the wagon for seven months. No booze or fags since March. I didn't quit or give up. I just stopped. No meetings or steps or counselling, a patch or two. Perhaps it was the thought of a mate thrashing around on a hospital emergency table being defibrillated last year, after a life's commitment to the joys of tobacco; or closer to home, at home in fact, waking up dead, in the middle of the night struggling for air. Sleep apnoea. Coming out of a deep coma, suffocating, panicked is what...a wake-up call? Leaving aside the possibility of heavy snoring, weight issues, head position etc, the transfer of oxygen to the bloodstream via my bronchial tree down to the alveoli is rather crucial, and taking 25 toxic inhalants per day is not going to help.

I still have enough addictions to go on with: sugar and flour in any combination, afternoon coffee, Lee Lin Chin, Sudoku, counting the number of times commercial TV reporters and weather presenters say Now..., politicians say Look... Parliament watching is not even a habit now that there are no more performers worth the effort. Watching out for the incorrect use of fulsome is a favourite pastime, the most recent ironic example being Helen Mirren speaking the eponymous Queen's English in the movie of the same name.

If you stop the dollar haemorrhage on daily re-tox though, it means you can jump on a plane and avoid deadlines. And death-lines. After all, Doctor has given me 30 years to live, and who wants to stay around and discuss life hereafter until the life hereafter? The veteran substance abuser, Elton John recently admitted that addictive people are always running away from something. In my case it's mostly me. Lining up for my reservation at a hotel, I'm often disappointed to find that I've already checked in. But this time I'm making a go of it and run for it.

So here I am in this holding pattern, with the moon and this lyric.

Below us is JFK airport named for, as the Yanks say, named for a President who didn't see his forty-seventh birthday. And there somewhere on Central Park, would be the Dakota building – what age did Lennon make? Forty? And those dead white males of classical music? Beethoven wrote his heroic "Emperor" piano concerto when he was 40, and it was all over for Chopin at 39, Mozart 37.

But that was back then, and they got composers' diseases like TB, cholera, consumption. The most unfortunate or most ludicrous death certificate of course goes to Jean-Baptiste Lully who, in 1687 punctured his foot with his rhythm stick and died after a shoeful of gangrene set in.

Gotta take the AirTrain – not the A Train – to Jamaica, then the R or V line to Northern Boulevard in Queens. I make the connection, find my mate on the platform and get to the apartment before too long. Go out for a stroll through Astoria; eat, as if I need to, then sleep for a while.

Suddenly awake, bright as a button at three am, time to check the status of the moon online. It is not full. It's an in fact waning gibbous with 99 per cent of the Moon's Visible Disc illuminated. I'm at least two per cent out in my calculations. And now it hangs there in the pre-dawn, the sensible sun about to wash out its cool, romantic light. A squirrel's silhouette runs the limb of the grand old oak out my window and scampers down the trunk.

On the bright screen on my lap, there's an email and with it the waft of skunk from the past. It is reported in Australia that the former English cricketer, Ian Botham has recorded his recollections of an event in Melbourne for a video sports archive.

“World Cup final, 1992, last game I'm going to play, big game in a big arena, retire the following summer ... and I'm there and I've got some poofter gay guy comes on stage in drag with a stuffed corgi under his arm and takes the piss out of the Queen.”

That, of course, is meant to be me.

Here in the great American republic, as if we need reminding, because every day is Increase the Presence of the National Flag Day, I hear an echo of a hollow simian screech a world away and two centuries back. The recently titled Sir Ian obviously still smarts, or pretends to, but he is gilding the Lilibet a bit.

What a funny old night that was, back in 1992. The dinner was in the Royal Exhibition Buildings in Carlton, Melbourne, the site of Australia's first parliament. I walked the length in tight shoes, went to Botham's table and he suggested I should sit at the English team's table.

As I wander down Madison Avenue, I recall how 20 years earlier in the same street, a T-shirt came walking towards me. The words were so densely written, I had to quickly scan it before it passed.

If you love something, set it free.

If it returns to you, it is yours to keep forever.

If it doesn't return...

It was a big read, for a garment. The tag was on his back. And I laughed, probably out loud.

The Queen herself is a wicked mimic and the word is she was actually sprung by a black African diplomat, up whom she was sending, taking the ahem, piss, when she thought he'd left the room. He is said to have responded to the reddening monarch good naturedly, "Not bad Ma'am, not bad at all."

It was this facility of hers I was using to amuse the crowd at the World Cup dinner, barking down the microphone doing the Queen doing her former Prime Minister Margaret Thatcher, and I was reciting the New York T-shirt in her bossiest, most strident, dispassionate tone.'

If it returns to you, it is yours to keep forever,

If it doesn't return...hunt it down and kill it!

This is when they made their move. Gooch and Botham marched out and marched right into the Queen's Honours List in the UK: each receiving the MBE for their trouble, whether it was for defending the Sovereign's honour or a hearty contribution to the Conservative Party election funds doesn't matter. It was an outward and visible sign, if a modest one.

The irony is that when they left the Exhibition Building that night, I was about the only one who noticed. So when I told the producer I'd created an international incident he said, "Naah, they're only going to the loo." Naah. They weren't pissed off; they didn't leave in a huff that night. They left in a cab, pissing themselves laughing that they'd got out of a boring gig. I happen to know – I got the same cabbie a week or so later, and he dropped them at some bar in town. But sweet – they had got themselves out of a boring gig and poor old Imran Khan had to sit there and cop it.

The fun continued at a dinner in South Africa a little while later, when Ian Botham rose to speak, the Australian team staged a walk-out. I'd only been hired to do Her Maj because all the teams had the Commonwealth in common, and South Africa had been allowed back into the fold. It was meant to unite the audience, not cause division.

But the humour has faded and history re-written, and fifteen years later, the bit o' ruff turned knight is trying to parlay a reputation for drunkenness on planes, trashing of hotel rooms, fist fights and the rest into mediaeval chivalry and defence of the crown. On the Darwinian tree of refinement, the loyalist cry of the boofhead is just one poofteenth away from the soccer hooligan on a nationalist rampage, and now he re-states and amends his outrage to fulfil his gentrification, his ennoblement, this knight-errant.

There will be swifter retribution on another front, however. Beefy, my big brother is a cricket fan and his father-in-law is the former Test umpire Lou Rowan, and both them will come round to your place and

whack you with a bat. No, I can defend myself. Tell you what I'll do. I'll...I'll...I'll...it 'im wiv me 'andbag.

The Sturm und Drang has passed, the storm has lifted, a fulgent expanse of sky breaks open, and I will sail into my second half-century unencumbered and optimistic, for life I've decided begins at 50.



Photo – David Karonidis

John Hatzistergos

At the 2020 summit, former Hawke Government minister Michael Tate proposed an Australian Bill of Rights which he hoped would be implemented by the Rudd Labor Government. The issue of an Australian Bill of Rights has divided Labor. In Victoria, the Brumby Government supports the introduction of a charter of Rights at the State level but, in Western Australia, the Carpenter Government has not gone down this trail. In an address to The Sydney Institute on Thursday 10 April 2008, NSW Attorney General and Minister for Justice John Hatzistergos MLC outlined the reasons that a NSW Labor government would not support a Bill of Rights for New South Wales.

A CHARTER OF RIGHTS

OR A CHARTER OF WRONGS?

JOHN HATZISTERGOS

Deprived of the protection of a human rights charter, Australia descends into tyranny. The M5 and federal highways become clogged with refugees from the other states fleeing to Victoria and the ACT, the last oases of protection against the cruel abuses of the governments without a charter. The only things standing between totalitarianism and the Australian people are the paper-thin texts of the Victorian Charter of Rights and the ACT's Human Rights Act.

This is, of course, a fantasy. But it is not far from the vision of the future contained in the new orthodoxy propounded by those who tell us that Australia must have a Charter of Rights.

The election of the Rudd Government in November 2007 has brought renewed focus to the issue of rights protection in this country. That focus, and the interpretation given to it, has in many cases ignored a significant change in Labor's position as reflected in the 2007 national platform. Whereas in previous times Labor had specifically committed itself and campaigned on the concept of a Charter of Rights, in 2007 it resolved instead to initiate a public inquiry about how to best protect human rights and freedoms. Specifically the new platform states:

Labor will establish a process of consultation which will ensure that all Australians will be given the chance to have their say on this important question for our democracy.¹

The change in Labor's position did not come about by accident. It came about because of a recognition that the party's previous position had failed to resonate with the electors and therefore the issue needed to be looked at afresh. The consultation process to be initiated by the Commonwealth Attorney General is an opportunity to do just this. For my own part I support this process. What reasonable person would not? In fact, the question of how to ensure that the rights of Australian citizens are adequately protected has been at the centre of public debate even preceding Federation.

The framers of the Australian Constitution had the US model of a constitutionally entrenched Bill of Rights before them during

the Convention Debates of the 1890s. During the constitutional conferences of 1890 and 1891, Tasmania's Attorney General Inglis Clark promoted the idea of constitutional protection of broad based rights and freedoms.² Richard O'Connor (later a High Court Judge) argued at the Melbourne convention of 1898 for a constitutional protection of equality rights borrowed almost word for word from the fourteenth amendment to the United States constitution.³ Needless to say these efforts were defeated. It is worth noting the subsequent efforts to constitutionalise further rights fared no better. A referendum proposal by Attorney General HV Evatt in 1944 to guarantee freedom of speech, expression and freedom of religion was defeated.⁴

The 1988 referendum sponsored by the Hawke Government to constitutionally extend to the states' freedom of religion, the right to trial by jury and compensation on just terms as well as to provide fair and democratic elections across Australia were also defeated. Even an attempt by the Howard Government to have a non-justiciable preamble failed to arouse popular support. These decisions of the Australian people reflect in my view a desire to retain the essential balances and separation of powers that have served our community well. Instead of a Bill of Rights, our founding fathers preferred the safeguards of responsible parliamentary government and the common law, typical of British Commonwealth nations.

The Australian Constitution is therefore informed by this older model of rights protection – where rights are secured through the constitutional order of a political regime of civil liberty. Our constitutional system combines a range of federal institutions with parliamentary responsible government. The effect of combining features of federalism and parliamentary responsible government with largely bicameral legislatures is to ensure a decentralised system of government with institutional features consistent with rights protection, diffusing political will and multiplying opportunities for democratic input. Sir Harry Gibbs, ex-Chief Justice of the High Court of Australia encapsulates this when he said in 1991:

... the most effective way to curb political power is to divide it. A federal Constitution, which brings about a division of power in actual practice, is a more secure protection for basic political freedoms than a bill of rights, which means those who have power to interpret it say what it means.⁵

Our institutions have exhibited remarkable stability and constituted a powerful force for ensuring the peaceful development of our nation within the context of maximum personal freedom. It is unsurprising therefore that in all my time in public life not one ordinary constituent whose door I have knocked on has pleaded for a Bill or Charter of Rights. The referendum results and previous

election results have shown the public have been unenthusiastic about such proposals. Instead the constituency for such change has come not from ordinary citizens but rather professional lobbyists and law school elites. Recognising that constitutional amendment is hopeless, the protagonists have turned their attention to a statutory charter model which it is argued gives the Courts an interpretive and/or declaratory role but nevertheless preserves parliamentary sovereignty.

Rights claims turned into legal claims

In essence, whether one talks of bills or charters of rights essentially one is discussing the degree to which the primary power for making decisions about rights will shift from legislatures to the courts. This to me is the crux of the problem.

Basic to our system of representative democracy is the identification and accommodation of conflicting social interests in the process of making laws and governing the state. The sophisticated electoral system of preferential and proportional representation, of our bicameral parliament, standing committees and inquiries together with institutions of a free press and ministerial accountability all work together to ensure that complex political conflicts are resolved smoothly and competing rights, values and interests are weighed up and decided in a democratic way.

To put it simply: parliaments are institutions specially designed for consultation on, discussion and resolution of difficult political questions. On the other hand, the judicial branch of government is set up in a different manner to achieve different ends: the adjudication of private conflicts and the application of law. By transforming social and political questions into legal ones, a Charter of Rights threatens to harm the integrity of both institutions. It blurs the Parliament's authority to decide important political questions which the public has entrusted to it and for which it has evolved a sophisticated democratic infrastructure. It also forces the courts to start making decisions on these same issues, responding to questions which they are ill-equipped to answer and for which they do not have the democratic legitimacy.

The NSW Solicitor General, Michael Sexton, has argued that bills or charters of rights are "*fundamentally anti-democratic*" because they transfer decision on issues like freedom of speech from parliaments to courts. He said in 2003:

The fundamental point [is] that law cannot be a substitute for politics. To hand these questions over to courts does not make them legal rather than social or economic questions.⁶

Furthermore, rights continue to expand and evolve over time. The rights we recognise today are wider than those recognised in the

past and will continue to change into the future. Sydney University Associate Professor Helen Irving said last year:

[rights] should be able to evolve, and the best way to do this is through the political process. The political process is accountable, and it is flexible. It allows for compromise, where litigation is usually a matter of winning or losing.⁷

While some would argue that statutory Charters of Rights are not entrenched in the way as a constitutional Bill of Rights, the reality is that they become semi-rigid, a process akin to constitutionalisation. A corollary of the shift of responsibility to the courts consequent on the adoption of a Charter of Rights is that different types of political resources and societal interests are privileged. Rights become legal battlefields with only those with the knowledge and resources to work the court system being able to participate.

Helen Irving has argued that the *outcomes* of litigation based on a Bill or Charter of Rights are not necessarily straightforward advances in social justice that many proponents may assume. She has provided the following examples from the Canadian experience:

- A law prohibiting the advertising of tobacco products without health warning was found to be in violation of the guarantee of freedom of expression;
- Legislation limiting cross-examination of a sexual assault complainant's sexual history was struck down; and
- Freedom of association was held not to support the right to strike.⁸

Even in Australia, Professor Irving's analysis of the implied freedom of political communication decisions discloses that those who have successfully invoked the freedom have been, in almost all cases, the big, well-resourced and powerful organisations, not individual rights campaigners.

It is interesting that a previous advocate for the enactment of human rights instruments, Chief Justice James Spigelman AC, has recently moderated his opinion on the desirability of a statutory Bill of Rights. Earlier this year, the Chief Justice observed that in the context of statutory bills of rights: "[r]eal issues about the proper role of the judiciary in a parliamentary democracy arise."⁹ Further,

[t]he range of legitimate opinion on this matter is wide and remains the subject of vigorous debate. I do not wish to be understood to take any particular position on the desirability, or otherwise, of a statutory human rights act.¹⁰

In expressing these views I do not mean to imply that the courts have no role to play.

I have already remarked on our constitutional framework. Chief Justice Spigelman argued that the common law rules of statutory

interpretation provide systematic protection of human rights at the judicial level. According to His Honour this “common law bill of rights” comprises rebuttable presumptions that the Parliament does not intend to:

- retrospectively change rights and obligations;
- infringe personal liberty;
- interfere with freedom of movement;
- interfere with freedom of speech;
- alter criminal law practices based on the principle of a fair trial;
- restrict access to the courts;
- permit an appeal from an acquittal;
- interfere with the course of justice;
- abrogate legal professional privilege;
- exclude the right to claim self-incrimination;
- extend the scope of a penal statute;
- deny procedural fairness to persons affected by the exercise of public power;
- give executive immunities a wide application;
- interfere with vested property rights;
- authorise the commission of a tort;
- alienate property without compensation;
- disregard common law protection of personal reputation; and
- interfere with equality of religion.¹¹

The key to all this however is that these presumptions operate at the judicial level and leave to the people’s representatives decisions on their scope and their balance with competing values. When this democratic role is diluted or removed then there is also an inevitable impact on judicial independence. In the United States this ideological and political conflict has affected the Supreme Court with attitudes to social policy issues such as gun control, affirmative action, race relations and capital punishment being influential in the selection and confirmation process. Professor Yves-Marie Morissette in an article published in the *Australian Law Journal* said this in relation to the Charter of Rights in Canada:

We see a pronounced devolution of power from legislatures to the courts – at the request of almost anyone, really, every provision of every enactment may be subjected to review by the lawyers and by the judges, themselves all former lawyers, on grounds which are broader and vaguer than ever before...

With this devolution comes the inevitable politicisation of the judiciary. Concerns are now expressed about judicial appointments which previously were only heard in the electoral process.¹²

“Dialogue” between the courts and the parliament

I appreciate that many Australian proponents would distinguish these experiences arguing that a Charter would operate in a different way; to assist in interpretation and to promote a dialogue between the legislature and judiciary. The benefits of such a dialogue are not clear. The primary dialogue that a parliament must have is with the public. Prioritising a conversation with the judiciary over one with the people who elected it is a strange and undemocratic path for a parliament to take. This would transform the relations between the institutions of governance, creating a special role for the judiciary to comment on and determine important matters of public policy. Courts would become a social laboratory where the balancing of rights and interests would be undertaken according to the political leanings of the bench.

Bret Walker SC, the then Senior Vice President on behalf of the NSW Bar Association, addressed the absurdity of this situation in his submission to the 2001 Legislative Council Inquiry:

The notion that you remove difficulties by giving to the courts a power to say to the legislature “Do it again, and do it better” is, to my mind, politically, a very frightening one...

It seems to me that we must never move away from the tradition of positive law-making, which is that a text in the vernacular which people can understand emerges from the law-making organ which can then be read. You do not cross Macquarie Street, then, to ask the Court of Appeal “Does it work?”¹³

The creation of a dialogue deprives legislation of its authority and finality, creates uncertainty around its meaning, and removes the ability of Parliament to finalise political questions by enacting laws. The dialogue envisaged by the Charter advocates could take years to resolve and will lead to political conflicts that should have been worked out in the parliamentary process being drawn out in ongoing litigation.

Australia alone without a Charter - problematic?

Many proponents of constitutional or statutory Bills or Charters of Rights argue that Australian exceptionalism in not enacting a Bill or Charter evidences grave deficiency in rights protection in Australia with the consequence that the international jurisprudential developments are unintelligible to Australian practitioners.

Former NSW Supreme Court Justice the Hon Malcolm McLelland QC responded to this argument before the 2001 NSW Legislative Council Inquiry by drawing attention to the fact that rights instruments around the world are all different and nearly always the product of significant historical events, causing difficulties in

making straightforward applications of international decisions to local contexts. Mr McLelland stated:

Those different historical circumstances produced different kinds of Bills of Rights, that is one of the reasons why they are all different but the fact is that they are all different. I would take the view that the public interest in Australia would be better served by avoiding the confusion, the difficulty, the time and expense involved in Australian courts and lawyers trying to understand these various different provisions and instead trying to be consistent with their own national culture and traditions.¹⁴

The NSW Chief Justice has not repeated his emphasis on Australia's "intellectual isolation" as the only common law country without a Bill or Charter of Rights; rather His Honour's emphasis has shifted in part to the role of Australian institutions and jurisprudence in Asia.¹⁵ In many countries, constitutionally entrenched rights protection followed long periods of civil war, and were intended to heal rifts and restore trust and the rule of law:

- The US Bill of Rights was enacted in 1791, 8 years after the War of Independence, and the fourteenth amendment to the United States Constitution (that includes the due process and equal protection clauses) became law in 1868, three years after the Civil War ended. These rights protections were introduced in order to ensure that African-Americans were not subject to continual marginalisation after the abolition of slavery.
- The Declaration of the Rights of Man and of the Citizen provided the basis of the French constitution following the French Revolution. The Declaration is still referenced in the preamble to the current French Constitution.
- The Constitution of South Africa, enacted in 1996, was intended to contribute to nation building, reconciliation, and the cultivation of an inclusive non-racial citizenship in post-Apartheid South Africa. Section 7 in Chapter 2 provides: "This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom."
- Canada's adoption of a Charter of Rights arises against a background of disputes between Anglophones and Francophones

The UK *Human Rights Act 1998* gives legal effect to the European Convention on Human Rights. The government's White Paper *Rights Brought Home: The Human Rights Bill* unambiguously states that the impetus behind the Act was to retain power to interpret British laws in UK courts, stating:

... the time has come to enable people to enforce their Convention rights against the State in the British courts, rather than having to incur the delays and expense which are involved in taking a case to the European Human Rights Commission and Court in Strasbourg.¹⁶

There is no comparable international court to which Australian laws are tied and therefore no need for a similar human rights instrument to keep Australian courts in control of our laws. I know some point to New Zealand as an example where a country adopted a Charter of Rights without a background similar to that which I have described above. However, it is worth remembering that the Charter in that country arose against a background of an unwritten constitution with a unicameral legislature with concerns about an over concentration of power in the elected government. The introduction of multimember constituencies and the Charter were in part attempts to diffuse power and create checks and balances in that country's structures. To put it simply: a Charter or Bill of Rights is not a prerequisite for effective rights protection. Separation of powers and strong institutional governance are.

Nazi Germany had what purported to be an excellent Bill of Rights that provided for a "dignified existence for all people". As did the Soviet Union under Joseph Stalin.

Since 1973 Pakistan has had constitutionally entrenched fundamental rights. The Pakistani Constitution empowers the President to suspend fundamental rights during a declared emergency, which is what occurred in Pakistan in November 2007. The newly-elected government is yet to restore the Constitution and thereby restore constitutional rights of the people of Pakistan.

Other jurisdictions

The Australian Capital Territory and Victoria have implemented rights charters. The ACT conducted a 12 month review of its *Human Rights Act* in June 2006. In her twelve-month survey, Dr Helen Watchirs, the Human Rights Commissioner, noted that the Act had "only a small impact in a handful of cases where parties have specifically argued human rights issues".¹⁷ Mr Richard Refshauge SC, the former Director of Public Prosecutions and now a Supreme Court Justice, observed that:

The decisions [in the criminal sphere] were all ... made on the basis of principles of law or the exercise of a discretion that were unexceptional applications of the common law and which were unaffected by or independent of the [Act]... The same seems true of those decisions in the civil area also.¹⁸

Based on this observation, he found the present record to be "a little disappointing".

Although the ACT foreshadowed amendment to introduce a direct action for breach and expanded rights it has not done so. While the Victorian experience was significantly shorter it is noteworthy that one of the earliest users of the new Charter is Tony Mokbel, whose lawyer has argued that he can use the Charter's fair trial provisions to avoid facing charges if he is extradited back to Australia.¹⁹

The sorts of Rights protected in these Charters appear unobjectionable and so generally phrased to the point of not making clear their real impact. The right to freedom of thought, for instance, or to freedom of movement within the Australian Capital Territory are no doubt good things, but it is hard to imagine a situation where they would be a pivotal element of a legal claim. But these apparently benign instruments are not going to be the end of the process. The Mokbel case suggests there is still potential for aberrant results.

The ACT has foreshadowed the introduction of more substantive social and economic rights into its *Human Rights Act* in the future. Victoria will also be reviewing its charter after one year and there is the potential for its rights to be similarly expanded. Western Australia and Tasmania have both also recently undertaken inquiries into having a Charter of Rights. The Western Australian study involved a somewhat predetermined agenda which sought comment on a draft *Human Rights Act*.

The government identified several "essential issues" that it wanted to form the basis of the inquiry, including which human rights should go into the Act, the form it should take, and how a Human Rights Act could "create greater respect for human rights".²⁰ In all the Committee attracted 377 written submissions. Despite these low numbers the Committee did not recommend putting this major political change to the people of the state through a referendum. It appears to have preferred the suggestion of Sven Sorenson, in respect of whom the report said:

He considered that a WA Human Rights Act was overdue, and would need to be done in discussion with [the] community but not by a popular vote. WA people are very conservative and ultimately intolerant of change that can affect them (eg daylight savings, shopping hours, a republic).²¹

So, because they did not like the views of the public they would be ignored. The Tasmania Law Reform Institute also asked a number of pointed questions in its inquiry:

If change is needed to better protect human rights in Tasmania, how should the law be changed to achieve this?

Would a Charter of Human Rights enhance human rights protection in Tasmania?

Should some rights be included at first with other rights being considered for inclusion subsequently after review of the Charter?²²

The Institute received a total of 407 submissions.

When confronted by leading questions of this kind, it is hard for members of the public to express an opinion that looks at alternatives to a new Charter. It is noteworthy that notwithstanding favourable recommendation both Western Australia and Tasmania have decided not to go ahead with the implementation of a Charter of Rights at this time.

An additional layer of interpretation over all legislation

Many proponents of a bill of rights cite the educative value of having rights gathered together in a bill or charter. The second reading speeches for both the ACT *Human Rights Act* and the Victorian *Charter of Human Rights and Responsibilities* invoke the educative value of the legislation. Depending on its form, a Charter of Rights may in fact operate to distance Australians from the legal system by imposing an additional layer of interpretation over all legislation, so it can no longer be understood at face value.

The ACT Act specifically provides that the rights in the legislation are not absolute but they are limited to the extent that is demonstrably justified in a free and democratic society. The Victorian Act is also subject to such limits as are demonstrably justified in a free and democratic society. Section 3(1) of the British *Human Rights Act* provides that “so far as it is possible to do so”, all legislation “must be read and given effect in a manner which is compatible with the Convention rights.” The leading British case on the interpretation of their *Human Rights Act*, *Ghaidan v Godin-Mendoza* established that:

Section 3 may require the court to depart from this legislative intention, that is, depart from the intention of the Parliament which enacted the legislation. ...

[Section 3] is also apt to require a court to read in words which change the meaning of the enacted legislation, so as to make it Convention-compliant. In other words, the intention of Parliament in enacting section 3 was that, to an extent bounded only by what is ‘possible’, a court can modify the meaning, and hence the effect, of primary and secondary legislation.²³

Perhaps it is here that the “real issues about the proper role of the judiciary in a parliamentary democracy” alluded to by the Chief Justice arise.

In 2001, I sat on the NSW Parliamentary Standing Committee on Law and Justice when it determined that it was not in the public

interest to introduce a Bill or Charter of Rights, even in a statutory form. The primary concern that guided this conclusion was that a bill would undermine the roles of both Parliament and the Courts. The Committee concluded that such instruments would:

- undermine parliamentary supremacy;
- require judicial policymaking, and therefore inevitably legalise political decisions; and
- lead to the politicisation of the judiciary.²⁴

Nothing I have seen or heard since has led to me changing my opinion. One person who has seen the a Charter of Rights in action is Justice Strayer of the Federal Court of Canada, who gave this warning about his own country's experience:

There is a belief shared by some academics, lawyers, journalists and an increasing number of citizens, that every ill must have a Charter cure. In other words it is assumed in some quarters that the Charter is a total guarantee of good government and that the courts and that the courts must act wherever legislators are negligent, indolent, or downright wrong-headed in the legislation they pass or refrain from passing. This creates a certain temptation for many of us on the bench to try to set aright all the injustices brought to our attention. But it was never understood by those who gave the Charter the necessary approval that it was to be a substitute for the primary responsibility of elected representatives to provide good government for Canadians.²⁵

In summary let me say this. There are several reasons why adopting a Charter of Rights is a wrong decision for Australia to make. A Charter is wrong because it moves debate about rights out of the political arena and places it into the judicial sphere. It is wrong because it removes it from democratic parliamentary processes and distances ordinary citizens from an important part of political life. It is wrong because it threatens judicial independence and blurs our institutional governance. It is wrong because it generates uncertainty about the meaning of laws and deprives legislation of its finality.

It is wrong because, rather than being a simple educative tool, it creates a new level of interpretation over and above the vernacular meaning of the legal text. This distances non-lawyers from the legal and political process, depriving them of the ability to read and understand a law without applying the complex apparatus of the court's interpretation.

I have stated at the outset that I have no objection to a consultative process subject to it being a fair and honest consultation with the public in general. The consultation process must look at alternative models to the Charter, including ones that recognise the principle of parliamentary sovereignty and seek to better inform it of potential human rights violations. Lawyers bear the scars of litigation. To suggest that advancement can come about through adversarial

litigation where community values are converted to legal battlefields is, with respect, both ludicrous and dangerous.

We do not live in a perfect society and never will. There may well be laws perceived by some in our community to be unjust. It is however wrong to suggest that they can be remedied by enacting charters with wide ranging values and all will be well. The remedies and accountability should rest with the democratically elected Parliament preserving and respecting the traditional role of the courts and the balance between our institutions of governance.

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Photo – David Karonidis

Shelley Gare

Writer and editor Shelley Gare is a former editor of *Good Weekend*, a former deputy editor of *The Australian* and founding editor of *The Australian's Review of Books*. She is also the author of *The Triumph Of The Airheads – and The Retreat From Commonsense* (2006). In 2007, in an investigation for *The Australian*, Shelley Gare uncovered serious inconsistencies in the best selling memoirs *A Long Way Gone*, by former Sierra Leonean child soldier Ishmael Beah. In an address to The Sydney Institute on Tuesday 15 April 2008, Shelley Gare recalled some of the saga behind that investigation and its implications for modern day publishing.

CHASING ISHMAEL

– TRUTH, RACISM, THE US MEDIA AND BLOCKBUSTER PUBLISHING

SHELLEY GARE

Like all the best mysteries, this story starts off with just one thing going wrong. It was an email – a clumsily worded, insulting email. Because of that email, child soldier Ishmael Beah’s memoirs about his part in Sierra Leone’s brutal civil war, *A Long Way Gone*, have come into question, something which has now had ramifications around the globe.

The truth is that stories like this very rarely begin because of something big, or because of some major event. Instead, they begin because something very, very small goes wrong or comes to someone’s attention. It just strikes the wrong note, and that prompts curiosity. That then sets off other reactions and events far greater than anyone could have visualised at the beginning.

Very often, when the people involved look back and remember that one tiny thing that went wrong, they think: if only, if only ... If only we hadn’t done that ... Or if only, if only we’d fixed that ...

I like the Aesop’s Fable quality of all this; the sense that although humans are the most deceitful species on earth – and we all at times practise deception, sometimes for good reasons as well as bad – we know we labour under a kind of natural law that our deceitful actions will almost certainly come back to bite us. And when I think about this investigation into the veracity of Ishmael Beah’s memoirs –

- an investigation that began with me sitting in a small attic office in East Sydney; to which *The Australian* newspaper then committed, putting on two of its own reporters; and which has now made the cover of one of America’s very well read journals, *The Village Voice*;
- an investigation which is now quoted regularly on blogs and in interviews around the world;
- an investigation which by the way has led to my two newspaper colleagues, David Nason, Peter Wilson and myself being called – “effing muckkraking hacks” – on a website read by millions

of people.... (We're actually so staid, so drearily diligent, that we're thinking of having that printed on some T-shirts)

When I think about all of this, I like to also think that there might now be a few high-powered, high profile New Yorkers thinking: If only... If only... If only that email hadn't been sent ... Then maybe Ishmael Beah's best-selling tale of his descent into hell followed by redemption and a new life in America would not have been revealed to be, at best, a book with key errors and exaggerations; or, at worst, a book that contains many fabrications.

Up until our stories broke in *The Australian* on 19 January, there had been very, very little criticism or close questioning of Beah's story of how at 12 he became caught up in Sierra Leone's terrible civil war that lasted from 1991 to 2002. Of how he saw his parents supposedly being murdered and how he was forced to dodge death as a child on the run before being dragooned into the Sierra Leone army, turned into a 13-year-old killing machine, high on cocaine and dope and driven by a need for revenge.

A couple of reviews, one by William Boyd in *The New York Times* and another critique in *The Wall Street Journal*, lifted an eyebrow a little at the specificity of Beah's memory but the only really sceptical questioning in the early stages was done on a blog called oneminutebookreviews by American critic Janice Harayda.

Here's some background. The setting of Beah's book is like something from hell. The civil war in this small West African country might have started with a bunch of youthful, ideologically driven rebels, the RUF (Revolutionary United Front), taking on a corrupt and weak administration but it soon disintegrated into a war about diamonds, about greed and control. Villagers were killed indiscriminately; tens of thousands were murdered; limbs, hands, feet, ears, lips were hacked off in terror campaigns; a third of the population was displaced – and children were forced to fight on both sides.

A British journalist, Anthony Loyd, described the Sierra Leone rebels who took on the government like this in one of his books, *Another Bloody Love Letter*: "The RUF was about as raving and insane as rebel groups get, its operations hallmarked by savage and wanton cruelty, utilising terror as a delight rather than as a tool."

A Sierra Leone refugee said to me the other day that the war went over any boundaries you can imagine. He said it affected every village, every town ... Everyone suffered. In one passage of his book Beah describes the expression in the eyes of captured and bound rebel soldiers just before he shot them: how their eyes gave up hope.

Now that's the kind of observation which has garnered this book ecstatic reviews and mentions from around the world. From *The Washington Post*, *The Guardian*, *Time* magazine, *Newsweek*, *The*

New York Times, *The Christian Science Monitor*, *Entertainment Weekly*. *The Washington Post* declared: "Everyone in the world should read this book". American TV host Jon Stewart said in an interview that reading the book had made his heart hurt.

So our investigation from Australia – which has dared to point out that there are major discrepancies between the book and what witnesses and records actually reveal, discrepancies that seriously undermine Beah's account, how old he really was, how long he really served – has caused an embarrassing ruckus and one which has become ugly as a result. Basically, it's us, the reporters, on one side, throwing, I suppose, a bucket of cold water on some of the book's more sensational claims and incidents.

On the other side are Beah's American publisher and editor, Sarah Crichton who has her own imprint at the very important New York publishing house Farrar, Straus and Giroux; Beah's agent, Ira Silverberg; and the woman who has become Beah's unofficial guardian in New York, Laura Simms. Oh, and you can also throw in UNICEF (although even UNICEF has had to acknowledge there are problems with a part of Beah's story-telling). The dispute has also been picked up in the blogosphere with interested bystanders joining in on either side.

Beah's admirers are pretty fierce too in their appreciation of this young, charismatic writer. (We could never get an interview with Beah so at one stage, to get access, Peter Wilson went to a talk given by Beah in London and he had to ask some tough questions in front of over a hundred adoring fans. And I said to him: what was that like? How did they all treat you? And I could hear the cockney photographer cackling in the background: "Like a rattlesnake in a picnic basket.")

So what is it about this story that made us pursue it? What mattered to me? What mattered to *The Australian*? Well, first, there are some basic issues here that affect us all: most generally, does a memoir have to be as truthful as say, an autobiography or a biography? What responsibility does the publisher bear for the truth of a non-fiction book? What is owed to readers? And there's another element: to what extent has this controversy and how it has been received been affected by race? (And I'm not just talking about Ishmael's; I'm talking about our Australian status as well, given that Ishmael Beah is a darling of America.)

And that leads to another question – was this young man encouraged by the people around him in America to exaggerate and make his story more gripping for Western readers? Or did he even do it himself, to win our attention? Given what he has come out of, given the horrors of the Sierra Leonean civil war – just watch the opening scenes of the film, *Blood Diamond*, or better still, the documentary

Darkness over Paradise which was made here in Australia by some refugee Sierra Leonean journalists – if that were true, it would be obscene.

Are we saying that a young boy can be caught up in that and it's still not enough for our Western tastes? He has to embroider his story in order to make it sell? What are we? A bunch of Romans watching African gladiators fight in the Coliseum? And there's the final question – does truth matter? Especially now people feel almost embarrassed by the word truth and insist on sticking quotes around it.

Now, it's not at all surprising that there *are* things in Beah's book that don't match up with reality. After all, he was a young kid, he was on drugs, and confronted everyday with the kinds of horrors the rest of us might only see in a slasher movie. In this mayhem, Beah certainly wasn't travelling with a notebook. But the trouble is that the publisher and the 27-year-old author refuse to countenance any suggestion that the memoir is less than factually honest and that it might need a gentle disclaimer upfront. What's more, Beah has always claimed that he has a photographic memory to justify the way he includes precise conversations and the most minute details. And so our investigation has had to continue.

So back to this email, this small thing, this bit of irritating grit in the shoe that set this investigation going. It was 300 words long and it was sent in November 2007 from New York. It's hastily written, accusatory, slightly threatening - and it got right up the nose of the people to whom it was sent; a comfortable, middle-aged couple from Busselton on Western Australia's south coast. Their names are Bob and Peta Lloyd. They're in their fifties and while they now own a bookshop in Busselton, their background is the mining industry. They've lived everywhere from Botswana to Vietnam and Siberia because of their work.

Now last July, Bob was headhunted to take over as general manager of a mine in the Southern Province of Sierra Leone. To his amazement - because at the time, he was reading an advance copy of *A Long Way Gone* which was about to come out in Australia - he found himself at the very mine where Ishmael Beah's father had worked before the war and near where Ishmael had had his idyllic childhood growing up in the small village of Mogbwemo. Even more astonishing, he seemed to have found Ishmael's father, Joseph, alive and well, actually working in a laboratory at the mine. And Ishmael Beah, remember, is the most famous orphan on earth.

So when this unfortunately worded email from New York hit the Lloyds' computers, they were already pretty twitchy because, for the previous several weeks, they had been trying to contact young Ishmael with their startling news. They truly thought they were doing a good thing. But whoever they had approached – first HarperCollins

here in Australia who are the local distributors for the book; then Farrar, Straus and Giroux - where Bob eventually got to talk to Sarah Crichton - they couldn't seem to get anywhere.

It was very odd. And this hostile email was the last straw. It was signed in the name of Laura Simms, Beah's adoptive mother. And what particularly frustrated the Lloyds was that, from their reading of the book and having seen Beah interviewed, they really admired Beah - and yet now *they* were being treated like rattle snakes.

It's true that Ishmael Beah has done many admirable things. With his book, interviews and talks, he has helped focus attention on the plight of the 300,000 or so child soldiers caught up in wars in Africa, Asia and South America. Last November (2007), UNICEF appointed him as their first advocate for children affected by war.

He also sits on a children's rights committee advising Human Rights Watch and he's started the Ishmael Beah foundation, to raise money for other child soldiers. Tragically, these kids can find, after they have been rescued and rehabilitated, that they have so few prospects - because of poverty, or lack of education and training, or just massive unemployment in their countries - that they go back to being soldiers, mercenaries, all over again. At least there they get paid, they have a structure, they have camaraderie ... And these kids often can't go home because their families have disowned them because of the terrible things they've done. Their lives and souls have been plundered.

Now Beah's own story offers much more hope. It's not just about a descent into inhumanity, it's about redemption. Salvation. For, after two years in the army, Beah writes in his book he was handed over to UNICEF in January 1996 and sent to a rehabilitation camp. He then went to a UN conference in New York where he meets an extraordinary woman, who turns out to be Laura Simms, a professional storyteller and activist. Later, she helps get him out of Sierra Leone to Manhattan, and then she sends him to school and later to college in Ohio.

And this is where he first starts writing his memoir. Although interestingly at that stage, he *is* writing it as fiction, as short stories, in a creative writing class. And he never dreams - he says - that his writing will end up being published. When he does eventually find a publisher, *A Long Way Gone* comes out in the United States in early 2007. It debuts at Number Two in *The New York Times's* bestsellers list and it makes Beah - this dirt poor kid from Sierra Leone - a millionaire. Eighty per cent of his countrymen live on less than a dollar a day. It's dizzyingly inspiring: Beah's story is truly the American dream.

There have been other books about child soldiers before - David Eggers' novel, *What is the What*; there had been other novels, *Beasts*

of *No Nation* by the Nigerian-American Uzodinma Iweala and *Moses, Citizen and Me* by Delia Jarrett-Macauley. But what captured attention this time was that Ishmael Beah was relating his true life story. This was not fiction. These terrible events had actually happened to him – and he had still saved himself.

It has now sold over 700,000 copies and that figure will soar this coming August 2008, when the paperback is finally released in the US. Ishmael Beah continues to give interviews, to appear on TV shows and to give lectures and perform book readings. Except there's one big difference now. When I first went to his website late last year, it listed his upcoming events, presumably so that fans could make sure they went along. Not any more. Mysteriously, since *The Australian's* investigation started, the listing has been kept blank.

When, in January, Ishmael Beah spoke in front of the Oxford Union, which calls itself the most prestigious debating society in the world, “aiming to promote debate and discussion across the globe”, the press were barred. Peter Wilson, who'd gone along, was told that Beah's publisher in Britain and here – HarperCollins – had requested the ban to “keep out a troublesome reporter”. And while Beah is used to giving hundreds of interviews, when *The Village Voice* recently decided to do this 6000-word cover story on him, his book and our investigation, using a journalist who has been a Pulitzer Prize-winning finalist, he refused to give an interview. As did his publisher and editor Sarah Crichton.

And the terrible thing is that, back in last November, the Lloyds, the couple from Busselton, had never intended any of this hoo-hah to happen. Certainly, they had never intended to go anywhere near the media. That wasn't their style. They just wanted someone to listen politely to what they had to say about the existence of this man called Joseph.

Oh... and they had noticed something else. Bob said in one early and lengthy email to Laura Simms, sent on 11 November 2007, that the chronology in Beah's book wasn't right. The timeline was out. The events Ishmael described had happened two years later, in 1995. (Not 1993 as Beah had it.) And, said Bob helpfully, Joseph's story of the war is quite different from the story in the book.

Now I can only imagine – in retrospect – the effect of that aside as that email was read in New York. Two years might not sound like much – but for this book two years makes all the difference. In his book, on its second page, Ishmael says the war came to him in January 1993 when he was 12, when there was a rebel invasion – of first the Sierra Rutile mine where his father worked and the surrounding villages – Mogbwemo, Kabati – and then, a few weeks later, the bigger township of Matru Jong where Beah actually was at the time. It was this series of attacks that he describes that sent him hurtling towards

his dreadful existence in the army. But, said Bob Lloyd, the locals told him all that happened in January 1995.

In the book, Beah wanders the country for almost a year, as a civilian refugee, has a birthday before going into the army, which makes it at least November – and then enters the rehab camp in January 1996. So if the attack happened in 1995, not 1993, then Beah can't have been in the army for two years; it would have been more like two months. The real date also means that Ishmael would have been 14, not 12, when he was forced on the road and lost his family, and 15 – not the much more emotive and child-like 13 – when he was forced into the army. (I'm not saying that 15 isn't ghastly and two months isn't shocking – but in terms of marketing and PR, a 15 year old who fights for two months doesn't have the POW! factor of a 13 year old fighting for two years.)

So this extra material about the date being wrong – which was just two sentences in Bob's long email – must have come as a jolt ... to someone. After that, Bob and Peta didn't hear anything for many days until Bob sent a reminder email. And then the 300 word email I've been describing arrived. It seemed to accuse the Lloyds of possibly being dishonest or people out to make trouble. Why are you getting in touch at this time, it asked. "Is there something that you want?" And it warned the Lloyds that they should not talk to anyone else. "We are deeply concerned that this issue not go further than you, Sarah – [that is, Sarah Crichton] - and myself."

The email is also oddly phrased. Strange syntax. It has wording like this: "Why you said in my letter that this man came to you and why you told Sarah that you sought out the boy's father. And why you are passionate about reaching him." It is quite different from two other emails I've seen which have also been signed Laura Simms. The truth is it reads as if it has been written by someone whose native language is not English. Anyhow, the combined effect, the perceived rudeness, the jangling language, pushed the Lloyds over the edge. They ended up – through another series of coincidences involving a good friend, of mine Anita Jacoby, executive producer of *Enough Rope with Andrew Denton* – talking to me. And I have to say that originally, I went into it thinking this must be a confusion: maybe Bob and Peta hadn't expressed themselves clearly to the publishers.

And then suddenly, *I* was the rattlesnake. I walked into the same wall of hostility, resentment, dismissiveness and plain rudeness. And I was really surprised. I could imagine the Dad angle the Lloyds mentioned might have been offputting, but why didn't these people want to know about this crucial date?

Now the issue of fact-checking things like dates, or the soundness of someone's story, is a bit of a sore point for publishers everywhere. There have been many scandals recently where memoirs have turned

out to be fabrications or much exaggerated. How come the editing process hadn't picked up these flaws? But in the past, when I've talked to book editors, I've been surprised by the low rates they're paid and the short lengths of time given to any project. And major publishers will actually admit: we don't do enough fact-checking; too costly, too time-consuming; we rely on the author for that.

And now, as I worked with what the Lloyds were telling me, it seemed that somewhere along the line, someone *had* forgotten to do the most basic fact-check on Ishmael Beah's book, on the date around which his whole narrative was built. It's not that hard to check. The events of January 1995 are well chronicled and it's easy to find on Google let alone in various books and reports. However, I have yet to find any mention of such a serious attack in early 1993, either on record or from a witness.

So I was also puzzled by the attitude of the Americans. The truth is, it got up my nose too. And it made me suspicious. It still does. So eventually, over a period of about seven weeks, from late November, through December 2006, to early January 2007, I did my research and roughed my story up to a point where *The Australian* felt justified in putting two of its foreign correspondents on to the story to do the on-the-ground reporting. That had always been part my deal with them: that the story couldn't run until that had been done.

The correspondent in New York was David Nason, and the Europe correspondent, Peter Wilson. Between them, they've done fantastic reporting. On 17 January, Peter flew in to Sierra Leone and within a few hours had established that the father angle didn't pan out – but that the timeline discrepancy definitely stacked up. The events definitely took place in 1995. Our first big story – of almost 5000 words – ran that weekend.

Over the next fortnight, Peter wrote a series of stories pulling apart Beah's narrative, even finding a document, a school report, that placed him in school when he said he was already out on the road, running for his life. Beah had also written about a deadly fight that had taken place when he'd first gone into a rehab centre in the country's capital, Freetown, after being taken out of the army. It's a key scene in the book, so vivid and shocking that it is often quoted in stories. *The New York Times* featured it when it ran a very large extract. The fight is between rival child soldiers who accidentally meet at the camp. Six of them are killed. One has his eye gouged out with a bayonet. The victorious children including Beah are jubilant.

But we cannot find any official record that this fight ever took place. Not from UNICEF, not from the UN High Commissioner for Refugees, nor the local Ministry of Social Welfare, Gender and Children's Affairs. And it would have been a big deal – six deaths in an officially run camp. It would have been recorded. A few weeks ago,

UNICEF told *The Village Voice* that no, it could not confirm Beah's account of the brawl that left six dead. (Although I hasten to say that UNICEF remains very loyal to Beah and his accounts.)

Every time, we made a finding like that – and that was an extraordinary one by Peter Wilson – we would go back to Farrar, Straus and Giroux or direct to Sarah Crichton and ask them to comment. And every time, they'd say the same thing: that they stood by Ishmael Beah's book. To this day, they still will not accept – publicly at least – the fact that the attacks on the mine and Mogbwemo and then Mattru Jong happened in 1995, not 1993. And Beah insists: I didn't mean *that* invasion.... I meant *another* one. But he has been very specific in his description of that series of attacks, right down to the appearance of a Catholic priest who had been captured by rebels and sent into Mattru Jong with a warning. Beah says, well, the rebels often used similar methods, a kind of formula, so this was a coincidence.

But the intrepid Peter Wilson actually tracked that Catholic priest down – his name is Moses Sao Kailie – and he said: "There is no coincidence at all because this only happened once ... in 1995. I know because it was me. And it was just impossible for it to have happened to any other priest in 1993 – I was the only priest in the region – from 1991 to November 1995."

Now when Peter told me he had found the Catholic priest, the very priest who had figured in Beah's own account, albeit at a different date, we were both elated. By this stage, the three of us had had almost a solid fortnight of not just denials from FSG, Crichton and Beah – but attacks. We'd been accused of distortion, unethical conduct, recklessness, harassment ... We'd had to issue our own statement correcting the record on this. I remember it was a Friday evening in late January. I don't think Peter, who was writing out of London, had been to bed for the previous 20 or so hours. And I remember him saying: "What else do we have to do to prove our case! They won't be able to deny this!"

Well, you know what? They did. This is what appeared on Slate.com when it did a story on the controversy. The reporter writes: "When I asked Crichton if the conflicting accounts by the Catholic priest who said he witnessed the only attack on Mattru Jong in 1995 gave her pause that maybe the book fudged at least some of the timeline, Crichton said no, that she believed Beah's narrative to be true."

The Americans are fiercely protective of Beah – and I would suggest, that they may be as protective of what his book has done for their careers and reputations. A lot of people have done well out of this book. Sarah Crichton only joined FSG in 2004. This book has made her imprint. Beah's agent is Ira Silverberg. In early 2006, he was much embarrassed when another of his clients, J.T. Leroy, someone

he'd defended hotly, was unmasked as a hoaxer. Any questioning of Beah must worry him.

Then there's the Oberlin College creative writing professor, Dan Chaon, who first talked Beah into revealing that the pretty gruesome short stories he was writing in class were actually based on his real life experiences. Beah had kept that secret until then. He had never talked about it with his friends. Chaon was the first person to work closely with Beah on his manuscript, meeting once or twice a week, going through the manuscript line by line. At one stage, the professor told one of the college's journals: "I still think about moments where I'd say things like, 'the scene where the kid dies needs to be more vivid'. There's something monstrous about that. But he got closer and closer to his emotional truths."

The final manuscript from college was close to 400 pages long in typescript. It was then offered to a few agents who turned it down. Beah told a British reporter in mid-2007 that "Some people said, we should just have the war part; they were only interested in the violence. So to those people I said goodbye." It eventually got to Ira Silverberg and was sold to Sarah Crichton in 2005. Crichton, who has been a co-writer on other books, including Mariane Pearl's memoir *A Mighty Heart*, then met Beah, every Monday for almost a year, discussing the book and refining it. It came down to about half its original size.

So by this stage, you can't help thinking: just who wrote this book? Who shaped this book? Under what kind of direction was Beah writing? And when was the timeline decided? And by who? Chaon told our New York reporter David Nason that he couldn't remember seeing any dates in the memoir at the time he was helping Beah with it. And he told David that he thinks he would have remembered if there had been dates.

And, interestingly, in view of what Beah said about his earlier experiences with agents and his attitude to them, Chaon also told David Nason on tape that during this time with Silverberg and Crichton, when the manuscript was virtually halved and refined, that – and I quote from David's transcript: "A lot of stuff was cut from the front part – his memories of childhood, growing up, his grandparents, his parents' divorce and father's remarriage, some memories of being at school ... You know, the final version focused the book primarily on his experiences in the war. It focused the book on what was originally the central, the middle part of the book. It's substantially the same but with the first third lopped off and the last third lopped off."

So clearly, the war material fascinated Beah's publishers and that's certainly how the book was marketed – the subtitle of *A Long Way Gone* is: *Memoirs of a Boy Soldier*. And yet, even then, one of the curiosities of the book is that only 40 pages of 218 deal with his

soldier experiences and they are written rather differently from the rest of the book. It's almost as if he's reporting dream sequences. In *The Village Voice* article, Neil Boothby, a highly regarded expert on children and war at Columbia University, a man who has worked with child refugees in Rwanda, Mozambique and Darfur, questions the fact that Beah's account happens to include just about every possible trauma that can occur in the bleak life of a child soldier; that it would be extraordinary for all of those horrible events to happen in the life of a single person.

Boothby also commented on something else which the three of us at *The Australian* had discussed often: the pressure on such people to tell exaggerated stories. Boothby said the most sensational accounts tend to get the most attention. Orphans fleeing the Khmer Rouge who had the most horrific stories, for example, tended to be resettled much more quickly than other refugees.

Ira Silverberg is adamant that Beah was never encouraged to jazz up his account. In fact, he told me that my suggestion that that might have happened was "offensive". (Possibly not quite as offensive as I found his description of us being "effing muckraking hacks" but that's by the by.) So if Beah wasn't being tempted to tell a few porkies and thus make his book even more marketable, what were his publishers doing to make sure that his story was accurate?

Well, as far as we can ascertain from our own research, not that much, although Crichton assured me in a letter that the book had been "significantly vetted".

Now you have to ask yourself at this stage, how can all these sane people in these high powered, responsible jobs keep denying that the sun comes up every morning? Well, you know why? Because, as with all examples of bad behaviour, they are doing it because they can. They are getting away with it because they are being allowed to get away with it.

I know I've cited *The Village Voice's* cover story several times and that's had a big impact and I've just mentioned Slate.com, but for the most part, the established American media have treated this story the way party guests might treat an interloper who's just drunk all the rum punch and then thrown up on the floor. They have delicately stepped around it and pretended it wasn't happening. Even *The New York Times*, which ran such a massive, excerpt from the book, supposedly fact-checked by their own people – an extract which included the fight that we've discovered never happened – has mysteriously failed to cover our allegations except to run Beah's statement dismissing them. And this is supposed to be one of the world's most serious papers of record.

There are actually, I think, several reasons for this po-faced denial of the bleeding obvious. First, many, many illustrious Americans and

American journals have been caught with their pants down. Secondly, Farrar, Straus and Giroux is a very prestigious publishing house and most human beings don't like taking on powerful – and prestigious – adversaries.

There is also an element of what I would call a kind of reverse racism. People do not want to be seen to be criticising someone who has supposedly been through terrible things and who is a black African. Africa is a continent which is much in the news at the moment because of the war on poverty, the genocide in the Sudan and the attentions of stars like Bono, Angelina Jolie, Brad Pitt and George Clooney. It might be okay to criticise James Frey or the latest fabricator Margaret Seltzer, but to criticise young Ishmael Beah could look uncool and lead to accusations of racism. And – more seriously – it might damage Beah's work. Boothby actually said this. Although he felt the book exaggerated, he said: "I've refrained from any sort of comment or criticism because I would hate to see something like this undermine the human-rights momentum". Boothby's attitude is also seen often in the blogs. And I know it's well-meant but it does disturb me.

Would we have said the same if, say in 1955, someone had done the same thing with an account of his time, a decade before, in Auschwitz, a concentration camp that killed millions of Jews in World War II. Exaggerated his time there by a thousand per cent? Made up incidents? Would we say – oh, it doesn't matter, one Holocaust survivor is the same as any other Holocaust survivor? I don't think so. That would be atrocious. But that does seem to be happening here.

Now, from the very beginning, all Farrar, Straus and Giroux would have had to do for this controversy to go away is to take responsibility, and say it intended to insert a small acknowledgement or preface or disclaimer into any new editions and especially the new paperback edition in the US. But Crichton has said there will be no such concession. She told Slate: "There will absolutely not be a disclaimer. A disclaimer is used when you say I've changed names, he hasn't; moved locales, he hasn't. So, no, there will not be a disclaimer."

A very senior Sierra Leonean from the commercial sector was talking to me recently. We were talking about the elasticity of truth, especially in places like Sierra Leone where people are still just trying to survive each day and where there is a strong story-telling tradition that plays with time and facts. Sierra Leone's infrastructure was devastated during the war. Even Freetown still doesn't have 24 hour electricity. Medical and education services are minimal. But the people are determined to rebuild their country – one of the poorest in the world. They are devoted to it, calling it Sweet Salone.

And the two of us were saying: if you want to restore infrastructure and get the schools and hospitals established, you need truth. It's not some abstract notion to be debated over a couple of lattes in an inner-city café. What is truth? When somebody says the water supply to ten villages has been put in place, you want to know that that's true. If somebody says they've delivered the wiring to a hospital so they can have power, you want to know that is true. You want to know that the prices you are being quoted are true.

In these circumstances, truth is not a luxury; it's a necessity. Truth is what keeps our society on the level. We need it. Without truth – and an appreciation of truth – how do we know what we believe in? How do we know who or what to trust? Without the rigour of truth, people get away with things.

There is one post-script worth mentioning: Ishmael Beah has announced that his next book will definitely be fiction.



Photo - David Karonidis

Kevin Rudd

On Wednesday 16 April, The Hon Kevin Rudd, Prime Minister of Australia, delivered The Sydney Institute's Annual Dinner Lecture for 2008 at Star City Harbourside Ballroom to a capacity crowd of 900 guests. Kevin Rudd was introduced by Sydney Institute board member Carol Schwartz and the vote of thanks was given by ABC presenter and journalist Geraldine Doogue AO. The MC for the evening was Chairman of The Sydney Institute Nicholas Johnson, CEO of Barclays Capital Australia. The Annual Dinner for 2008 was sponsored by Australia Post.

AUSTRALIA 2020

- SETTING OUR NATION'S SIGHTS FOR THE FUTURE

KEVIN RUDD

Thank you for the invitation to address the annual dinner of The Sydney Institute. Since 1989, the Institute has been a platform for public policy debate on Australia's future. The nation should always embrace such debate – with genuine intellectual passion and with genuine intellectual rigour.

Great challenges lie ahead of us. Now more than ever, we need a real debate that transcends the old battlelines of the left and right of Australian politics. The global context in which this debate now occurs has moved a long way over the last 20 years. Market-based economic solutions have now been embraced across much of the current and former communist worlds. At the same time, we have seen a parallel recognition in the capitalist west that Adam Smith's invisible hand does not represent the solution to every economic problem.

In recent times this has been demonstrated by the current debate on the proper regulation of global capital markets. The real terrain for productive public policy debate resides in a clear recognition of:

- how markets should be regulated to ensure equitable competition;
- how to identify where markets fail; and
- what represents the proper scope for the provision of public goods such as education, health, a humane safety net and global environmental sustainability; and
- how we build the nation's competitive strengths in an increasingly competitive global economy.

Each of these invite a rich political and policy debate in itself. These are the core debates at the progressive, reforming centre of contemporary Australian politics. And these are very much the debates that the government intends to advance. The purpose of my remarks tonight is to provide a broad outline of the government's vision for the nation's future; the start that we have made in advancing that vision; and the role we hope the upcoming national summit can play in taking that vision forward into the longer term future.

Values, vision and a strategy for the nation's future

The new Australian government is committed to building a modern, competitive Australia capable of meeting the challenges of the twenty-first century – to secure the nation's future as well as a future for working families. Our agenda for achieving this is shaped by the core values for which we stand. Values of security; of liberty; of opportunity; of creativity. Values also of equity; of family; of community; of solidarity; of sustainability. And an underlying fundamental value of an irreducible human dignity.

These values very much shape the government's vision for Australia's future. We are committed to a secure Australia – strong at home and fully engaged abroad through what I have described elsewhere as a creative middle power diplomacy. We are committed to building a robust economy – through a combination of responsible economic management and a program to enhance Australia's global economic competitiveness. We are committed to opportunity for all Australians, not just for some – through a vision for Australia to develop the best educated, best trained, best skilled workforce in the world. We are committed to a creative Australia where imagination and creativity drive our efforts in the arts, sciences and the development of a pervasive national culture of innovation and enterprise.

We are committed to the advancement of a fair go for all Australians through education, health and the rules that govern workplaces. We believe that as a Labor government it is our responsibility to challenge the limitations placed on people's potential (including the potential of Indigenous Australians) by the circumstances they inherit. We are committed to the protection of the family by advancing family friendly workplaces and better work-life balance. We are committed to the concept of community – not as a collection of disconnected individuals but as a place where people are bound by common core values and a common sense of responsibility to one another. We are committed to a principle of social solidarity that extends beyond private philanthropy to a public responsibility to protect the most vulnerable through a humane safety net for all Australians.

We are also committed to the greatest public good of our age – the protection of the global commons that is the planet itself - both for all who share the planet today and for those who come after us. Finally we are committed to fundamental human dignity, through a judicial system that provides for the proper protection of the basic human rights of all.

Part of our vision is to give every opportunity to individuals to provide for their own future by rewarding hard work, enterprise and

success. While part of our vision also goes to a contrasting (but at the same time reinforcing) sense of social responsibility. In fact our vision incorporates quite consciously a combination of private markets and public goods. Or what I have already called tonight a new tradition of the reforming centre of Australian politics. This is where I believe the modern Australia of the twenty-first century wants to go.

For many years it has been unfashionable to talk of a vision for the nation's future. In fact, some have argued that framing such a vision is ideologically unsustainable because nations simply evolve as a consequence of the market forces that shape them. I disagree because I believe a small country occupying a vast continent in a region as wildly disparate as our own has no option other than to plan for its future.

As it is written elsewhere, "without a vision, the people perish". I believe that as a nation we need to come together around clear, long-term goals for the Australia of 2020 and beyond. These objectives should be ambitious. Excessive caution and a fear of failure should not hold us back. In fact it has been the absence of such agreed national goals over the last decade that has seen us waste the great dividend that has flowed to Australia through our record terms of trade.

How different it would be now, if we had invested the estimated \$398 billion boost to the Budget bottom line in the decade from 2002, into funding a total education revolution? But instead of investing in the future, against concrete, realisable goals, the revenue was consigned to consumption – both public and private. Opportunities squandered. Rather than opportunities seized. In the century ahead, it's not unreasonable for Australia to aspire to be the best place on earth to live, to gain an education, to work and to raise a family:

- a nation with first-rate business and employment opportunities, powered by the world's most educated, most skilled and best trained workforce in the world;
- a nation where we strive for the highest public health standards in the world;
- a nation where we care for the vulnerable and where we include the marginalised;
- a dynamic, vibrant culture incorporating the best of our many immigrant cultures within the best traditions of European civilisation that we have inherited – turbo-charged with the best understanding across the collective West of the languages and cultures of the high civilisations of Asia, and
- a nation with a liveable climate, a clean environment and extraordinary, well protected natural beauty.

We can also be a nation with a sense of wider purpose – not a nation turned in on itself and occupied only with its own future, but:

- a nation that is a great force for good in the world;

- a nation that contributes to peace and prosperity in our region and beyond;
- a nation whose belief in the 'fair go' extends beyond the continental shelf;
- a multicultural, multilingual nation standing on the doorstep of the world's fastest growth region, and
- a nation that fully comprehends the meeting place between East and West as the Asia-Pacific century begins to unfold.

But the kind of nation we are in 2020 will be only what we plan for, and what we build together. And that, in large part, is why in a few days' time we are convening the national 2020 Summit:

- to unleash the national imagination from beyond the ranks of politics and the public service, and
- to help fashion a national consensus around a common vision for the nation, with common goals to aim for within that vision.

We can either drift into the future or we can take hold of the future with our own hands – to shape the future, to seize the day.

Progress to date

We have been in office for a little over four months – and we've been making progress towards our vision for a modern Australia:

- Within minutes of taking office, the government signed the instruments to the Kyoto Protocol and we are now active participants in the Bali Roadmap on climate change.
- On the first sitting day of our parliament, I extended an apology to the stolen generations of Indigenous Australians, and we have begun a policy program of closing the gap between Indigenous and non-Indigenous life opportunities in Australia.
- The government has also embraced a comprehensive productivity agenda based on a new program of microeconomic reform beginning with an education revolution and reform of the nation's infrastructure.
- The government has commenced a new era in Commonwealth/State relations through the COAG reform process - to reform the Federation, to remove the regulatory burden on business, and to rebuild our nation's health system.
- The government has concluded an historic agreement with the state and territory governments of Australia to establish a single national authority to manage Australia's major inland river system – the Murray-Darling – whose future is threatened by the impact of over use and climate change.
- The government also has commissioned its first White Paper on homelessness and is looking at how to invest in

compassionate, market-based solutions which deal with this important social policy challenge.

- Internationally the government has been active in establishing the three pillars of our relationship with the world: a strong alliance with the US, engagement with the United Nations (including our candidacy for the UN Security Council after a 25 year absence) and a strong commitment to our own immediate region, including a determination to tackle under-development across the Pacific Island states through our new proposal for Pacific Partnerships for Development.
- And most recently, the government has also advanced the cause of greater gender equality by appointing the first female Governor General in 107 years.

Through these actions we have made progress in our first four months. It is a start. But it is only a start. And, as we move towards a bolder, more ambitious reform program for the future we are also conscious of the challenges we face in implementing that program – including the storm clouds that continue to gather across the global economy.

Global economic challenges

The global economic context has clearly become more complicated since we took office. The global economic outlook has sharply deteriorated – with a double warning of lower growth and higher inflation. Last week the International Monetary Fund estimated a 25 per cent probability of global growth slowing to three per cent or less in 2008-09, equivalent to a global recession. The Fund has now lowered its global growth forecast to 3.7 per cent this year from a 4.1 per cent prediction in January. It anticipates a “mild recession” in the U.S and slower growth in Europe and Japan. It also noted that growth would slow in the emerging Asian economies from 7.4 per cent in 2007 to 6.2 per cent this year as a result of further global financial market turbulence and reduced demand for Asian exports.

Recent developments in financial markets also affect the financial security of Australia’s working families, because of its impact on the real economy and the availability of credit for lending. As financial markets become more global, so too must proper regulation, supervision and transparency become more global - but without crushing the capacity of markets themselves to respond flexibly to new opportunities in the future. Recently, I have spoken at length about these challenges with policy leaders, financial decision makers and regulators in the US, UK, the wider EU and China – including the head of the IMF. I emphasised Australia’s willingness to contribute to what must be a global response by our respective national regulators to what is truly a global financial crisis.

The Reserve Bank of Australia is actively contributing to the work of the Financial Stability Forum. We are also taking action at home. The government's approach involves several elements including monitoring liquidity needs internationally and, through the RBA, participating where appropriate in coordinated central bank action.

We will continue to monitor the Australian financial system in light of the current turbulence to ensure that it remains efficient, flexible and competitive. Beyond these immediate measures concerning financial market stability, it is now more critical than ever at a time of declining global economic confidence to bring the Doha Round of free trade discussions to a successful conclusion. That is why the government is redoubling its efforts in Geneva and why Doha was a prominent feature of my discussions in Washington, Brussels and London.

In summary, the global economic context in which the new government is framing its long term reform strategy, as well as the upcoming budget, is the most challenging Australia has faced since the Asian financial crisis of 1997 and arguably since the global recession of the early 1990s. The cornerstone of the government's economic strategy therefore is responsible economic management, maintaining our anti-inflation strategy based on producing a significant budget surplus while at the same time advancing a comprehensive agenda of microeconomic reform aimed at boosting long term productivity growth.

Global conditions in 2020

Looking forward to the decade ahead, Australia must be mindful of both the immediate challenges to the global economy – as well as the unfolding mega-challenges that are radically transforming the world in which Australia must carve out its future. We know that on current trends, the demography of our planet will change significantly over the next twelve years. By 2020 the world's population will have grown by another billion to 7.6 billion people. By 2020 a representative group of 100 global citizens would include:

- 56 Asians, including 19 Chinese and 17 Indians;
- 16 Africans;
- four from the United States;
- five Western Europeans, and
- not even one Australian.

In 2020 the world's five largest cities by population will be Seoul, São Paulo, Bombay, Jakarta, and Karachi – all cities in emerging economies. We also know that, on current projections, the global balance of economic power will shift significantly over the next 12 years. By 2020 the world economy is expected to be about 80 per cent

larger than it is today. The average per capita income will be roughly 50 per cent higher.

By 2020 Asia will have grown to 43 per cent of world GDP and Asia's economy will be larger than the US and Europe combined. Alongside the shift in economic power, there are likely to be parallel shifts in the global strategic balance of power. China's defence spending is forecast to rise to \$150 billion per year, according to the US National Intelligence Council – making it second only to the United States.

By 2020, the demands on the world's energy resources will have increased dramatically by nearly 50 per cent. China alone will seek to increase its energy consumption by about 150 per cent by 2020 to maintain a steady rate of growth. Even though the world's fossil fuel reserves are being depleted at a rapid rate, absent policy change, alternative energy will still account for only a small fraction of overall energy consumption in 2020.

As our use of fossil fuels increases, so will its observable effects on the natural environment that sustains us all. Sea levels will rise, temperatures will increase and there will be more extreme weather events. Climate change means variable water availability; more frequent droughts, floods and bushfires; altered distribution of pests and weeds and the move of tropical diseases into what are currently categorised as temperate zones.

Australia in 2020

Australia too will have changed significantly by 2020. Our annual output, on current Treasury projections, will have risen by \$400 billion to \$1.4 trillion dollars. GDP per capita will have risen by around \$11,000 to over \$60,000. Australia's population in 2020 is expected to grow to over 25 million people, while the median age of our population will increase from 36 to 40 years. Our population of Australians over 85 will have doubled from 300,000 now to 600,000 by 2020, with profound implications for national health care expenditures. The number of households in Australia will grow by an additional 3 million in the next 15 years but the average size of those households will likely continue to decline. By 2020 the average Australian household will contain just 2.2 people.

If current trends continue, by 2020, diabetes will be the leading cause of disease for men and the second leading cause for women. Dementia, anxiety and depression, will feature in the leading four health challenges for both men and women. On a three decade projection, the fastest escalation in costs in health expenditure will be incurred by diabetes, at 400 per cent, followed by neurological disorders, at 280 per cent.

Those statistics give us just a snapshot of the challenges we confront in the years ahead.

2020 Summit

This gives some indication of the depth and breadth of the global and national challenges Australia faces in planning for the decade ahead. In planning ahead for this decade, the most powerful force in our nation is not the federal government's capacity to make laws or implement programs from on high. The government cannot, on its own, legislate productivity, competitiveness, business innovation, or healthier lifestyles.

Our most powerful force is the ideas, talent and energy of the Australian people themselves. Our greatest potential lies in forging a new partnership between communities, businesses, the various levels of government and other non-government organisations – to work together to tackle the big challenges that lie ahead.

If as a nation we are genuinely practical and empirical in our approach to finding new approaches to tackle old problems then we can move forward. And many of these new discoveries will dissolve old debates between left and right based on outmoded versions of reality. Witness for example the collapse of the age-old debate between welfare entitlement and individual responsibility – largely because community engagement has taught us that mutual responsibility is the best way forward both for the individual and for the public purse.

If we therefore genuinely engage society, and not merely the state – in other words, Australian people and not just Australian governments – then we will begin to also identify a new way of doing business for the nation. The Australia 2020 Summit is an important part of this process – recognising that government does not have all the wisdom, and recognising that our political opponents also have a contribution to make. This is why we welcome contributions to the Summit from across the political spectrum.

This is why we have included distinguished Australians like former National Party leader Tim Fischer and former Liberal minister Warwick Smith as co-chairs of different streams in the Summit. I also welcome the participation of the Leader of the Opposition.

The 2020 Summit is an opportunity for us all to rise above partisan politics, and we should create more such opportunities in national life. The Summit will address the long term challenges confronting Australia's future across ten critical areas:

1. Future directions for the Australian economy – and how we build a competitive economy in a world being transformed by the rise of China and India.
2. The productivity agenda - including education, skills, training, science and innovation.

3. Population, sustainability, climate change and water.
4. Future directions for rural industries and rural communities.
5. A long-term national health strategy – including the challenges of preventative health, workforce planning and the ageing population.
6. Strengthening communities, supporting families and social inclusion.
7. Options for the future of Indigenous Australia.
8. Towards a creative Australia: the future of the arts, film and design.
9. The future of Australian governance: renewed democracy, a more open government (including the role of the media), the structure of the Federation and the rights and responsibilities of citizens.
10. Australia's future security and prosperity in a rapidly changing region and world.

In the lead-up to this weekend we have already conducted Local 2020 Summits, School 2020 Summits, a national Youth 2020 Summit and one on Monday with the Jewish community given that next weekend coincides with the Passover.

The Local 2020 Summits have attracted thousands of attendees. The School summits have been held in more than 500 schools. Some students offered very practical ideas, like tackling the rural skill shortage with a “farm bonus” that would operate like the baby bonus, giving an incentive for students to return to their local communities after vocational training. Some responses highlighted serious social problems. Many students have commented on their parents’ long work hours, and some have sobering words:

Give advice to parents – teach people how to be a mum and dad... We should help people so they don't have to work so much... Parents need to play with their kids more... Parents need to pay more attention to their children.... There is no time for kids, kids need more time.

On a similar theme, a group of students mid-way through high school recommended some positive steps:

Increase interaction between parents and children through working from home, reducing work hours, a “Take Your Children to Work Day” every so often. The employer could also give out promotions which will help to build up family activities, eg tickets to theme parks and sport games.

A Victorian student linked modern work demands to future health problems: “Exercise? No time in future because we work longer hours.” Today’s students love new technology, but many show a sophisticated understanding of how technology is contributing to social isolation – like the primary school student in Queensland who remarked: “People won’t have to leave their houses because everything

will be able to be completed online and delivered to the door and this will be very sad.”

School teachers have done a particularly first rate job in getting their students to think about how we make Australia an even better place. After the completion of these School Summits, last weekend Parliament House hosted a national Youth 2020 Summit. One hundred young Australian leaders came together to put forward thoughtful and substantive proposals on matters including education, preventative health, mental health, climate change and Australia’s place in the world. The Youth Summit came up with ten key proposals and 30 additional ideas, and my Department is now reviewing them in more detail.

Participants in all these events would confirm that we have no predetermined agenda and no predetermined outcomes. To help focus the discussions this weekend, I will be asking each of the working group co-chairs to nominate at least one “big idea” in their area for the future. Second, I will also ask them to submit at least three concrete policy ideas, at least one of which must involve no cost or negligible costs. And third, I will be asking them to identify at least three specific goals for which we should aim by 2020.

The government will sift through the submissions and recommendations from the Summit and provide a response to its outcomes by the end of this year. I will also be taking a proposal along to the Summit for discussion. My proposal for Australia in the year 2020 is to create universal, high quality, affordable Parent and Child Centres for all 0-5 year-old Australian children. I believe such centres could offer real, practical assistance to working families under financial pressures struggling with the practical challenges of raising very young children. These Parent and Child Centres will bring together maternal and child health, long day care and preschool into one stop shops for parents with young kids. The goal of this ambitious proposal would be to offer all parents with 0-5 year olds access to a one stop early childhood centre that provides:

- maternal and child health services such as baby health checks, baby weighing, feeding advice and vaccinations;
- long day care including play-based activities for children whose parents are at work or studying;
- preschool and early learning including age-appropriate play-based learning provided by a four year qualified teacher; and
- playgroups and parental support and advice to ensure parents have a place to meet their peers and get access to advice while their children play.

This model would require partnerships between federal, state and local governments as well as existing private and community service providers. The aim would be to provide most of these services

at low cost to parents - however some services on offer (such as long day care services) would continue to be fee-based but with the cost still subsidised by the government. Access to these Parent and Child Centres would be universal, but not compulsory, and the quality of service provided would be underpinned by strengthened national quality standards.

Some or all of the services offered in these centres could be supplied by the private sector and would be subject to competition between providers, helping to drive quality up and prices down. A single service centre model for all 0-5 year olds would offer great benefits to kids, great benefits to parents, and great benefits to the whole community. It would improve the quality of health and education and care services for 0-5s, with:

- Better quality care that is underpinned by strengthened national quality standards;
- The introduction of more four year trained early childhood education professionals for all young children regardless of age; and
- Provision of education, health and other supports for children to make sure they are developing both physically and intellectually.

These Centres could improve the level of support for parents:

- Providing convenient health, education and care services for working parents;
- Providing age-appropriate services for parents with several kids under 5; and
- Providing opportunities for non-working parents to meet, to develop peer supports and to access advice while their children play.

These Centres could also improve outcomes for the whole community:

- Making better use of early childhood resources, reducing duplication, which means more money for frontline services;
- Freeing up capacity to strengthen national quality standards; and
- Providing additional support to disadvantaged families to improve the life chances of their children.

A little over a century ago, few would have dreamt that today we would have universal and affordable schooling for our children. We have already set ourselves the goal of introducing universal preschool services for all four year olds by 2013. We should aim to take the next step and create universal Parent and Child Centres for all children aged 0-5 by 2020. Early childhood reform lies at the intersection of our aspirations for this nation:

- lifting long term productivity and participation through greater investment in education, particularly the early years;
- a commitment to reducing the cost of living pressures on working families; and
- a serious effort to reducing the opportunity gap that holds back children from disadvantaged families and communities across the nation.

This proposal builds on the extensive research which has already been done on the critical impact of a child's early nurturing, care and engagement with learning, on every aspect of their later life. The proposal has been put forward to be debated on its merits. And I look forward to the inputs of my fellow Summit participants on this and other proposals this coming weekend.

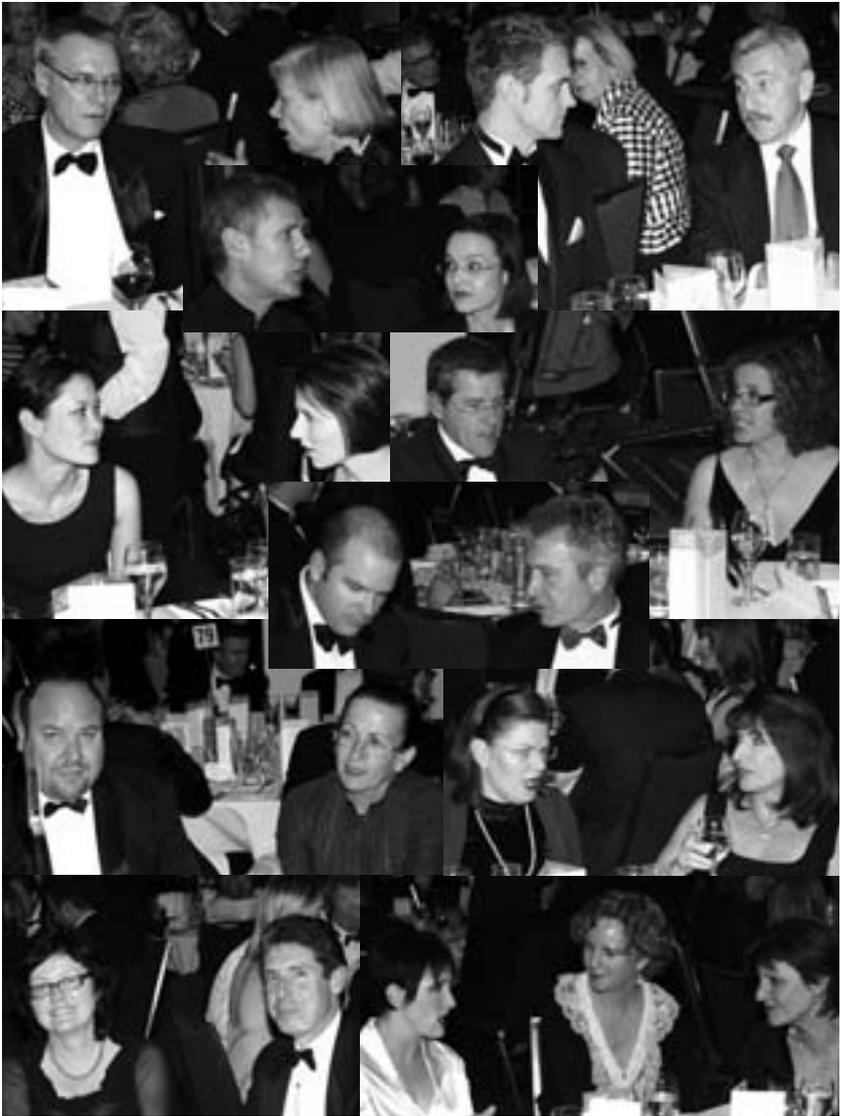
Conclusion

Twelve years from now, another group of Australians will gather to celebrate The Sydney Institute's 2020 Annual Dinner, marking what will be the Institute's 31st year. Who knows what they will take as their subject – maybe the low carbon energy revolution in response to climate change; the rise and rise of India; new security challenges from a new generation of contagious diseases; new transformational technologies, or perhaps the new challenges of inter-faith dialogue among the 80 per cent of the world's population who are religious believers.

I hope they can look back on the Australia of twelve years before and say, 2008 was something of a turning point. A time when Australia saw its potential, recognised its strengths and seized the future. A time when we took stock, looked beyond the trenches for a bit and imagined what we as a people might become. A time when we said that we were done with short-term thinking and began substantial planning for the long term. A time when we injected not just new ideas but also a new approach to policy making. A time when we brought into the policy making process people whose skills and ideas had never been fully embraced before.

And I hope the results will be evident in the modern Australia of 2020. A nation whose education revolution has transformed future opportunities for a rising generation of young Australians. A nation with a key role in expanding global markets – perhaps clean energy technologies; the biosciences; agricultural innovation and across our service industries. A nation that leads in its response to climate change. A nation that has become a great force for good in its region and the world.

ANNUAL DINNER - 2008



Photographers: David Karonidis



Photo - David Karonidis

Peter Balakian

New York Times best selling author Peter Balakian visited Australia in 2008 as a guest of the Armenian National Committee of Australia (ANC Australia) and addressed The Sydney Institute on Monday 21 April. Born in the USA of Armenian background, Peter Balakian is the author of many books including *The Burning Tigris: The Armenian Genocide and America's Response*, a narrative of the massacres of the Armenians in the 1890s and the 1915 genocide at the hands of the Ottoman Turks, which won the 2005 Raphael Lemkin Prize. He is Donald M. and Constance H. Rebar Professor of the Humanities at Colgate University and was the first director of Colgate's Center for Ethics and World Societies.

THE ARMENIAN

GENOCIDE AND THE MODERN AGE

PETER BALAKIAN

You may ask why, 93 years later, the Armenian Genocide matters, in fact seems to matter more than it ever has since the World War I era. Why, 93 years after the event, 20 countries have felt it necessary to pass resolutions that reaffirm the facts of the Turkish extermination of the Armenians in 1915. Or you may ask why the Turkish government is investing millions of dollars a year in a propaganda campaign to deny the facts and moral reality of the Armenian Genocide. To what lengths will the legacy of the perpetrator government go in order to falsify history, and not only inside Turkey but everywhere it can, though it is having little luck stopping the flow of knowledge about the events of 1915. Today, sparks are flying over this early twentieth century history, suggesting many things about the importance of honest and ethical historical memory.

Before I entertain the issue of Turkey's denialist campaign that consumes Turkey and has created an international ethical problem, I think it's important to situate the Armenian Genocide as what one might consider a landmark event in the evolution of the modern age. We often think of the modern era or modernity as coming into formation in the first decades of the twentieth century. Many historians see the First World War as a threshold in our understanding of modernity, and others have focused on 1915 as a cultural moment for the idea of the New: the new politics, the New Woman, the new psychology, the new art, the new theatre, the new dance. (Heller & Rudnick, 1991). Much of this is a celebration of the wondrous new, the breakthroughs to new methods, forms, and paradigms, but we must also acknowledge that the modern era brought with it dark, destructive forces: technological and mechanised killing inaugurated by World War I, the rise of the nation state as killing organisation; nationalism, the state's ideological mouthpiece with its xenophobic and racist ideas; and genocide, which the Ottoman Turks would carry out against unarmed, minority populations, not only the Armenians, but Assyrians and Greeks, the other Christian minorities of Anatolia. However artificial the appropriation of a year might be, the collision

of such various forces in the second decade of the twentieth century suggests something about the dynamics of social, cultural, and political change that happened in the second decade of the century.

The extermination of the Armenian population in Turkey in 1915 has been defined by the overwhelming opinion of genocide scholars as the first instance of modern genocide, which is to distinguish it from genocide carried out in a pre-modern era, a human institution that goes back to the Athenians wiping out the Melians or the Romans expunging Carthage. (Chalk and Jonasson, 1985). However, unlike genocidal campaigns before 1915, the Turkish extermination of the Armenians is marked by certain salient features that define what came to be modern genocide: the full use of government apparatus – bureaucracy, military, and technology and communications – in order to first target and isolate and then eliminate an ethnic or culture group – that is, a defenseless sub-group of the larger population – in a concentrated period of time.

It is clear as we look back at the twentieth century that the Armenian Genocide became the template for what became modern genocide. When Adolf Hitler said to his military advisors, eight days before invading Poland in 1939, “Who, today, after all, speaks of the annihilation of the Armenians?” (Lochner, 1942), he was inspired by the fact that Turkey’s ruling party in 1915, the Committee of Union and Progress, had succeeded in eliminating a hated minority population from Turkey. And he was emboldened by the fact that what, for the West, had been the most dramatic human rights disaster of the first quarter of the twentieth century had all but disappeared down the memory hole only 20 years later.

So what can we learn from the Armenian Genocide all these years later? For one, we can learn a good deal about how the systematic mass-killing of a targeted population can happen. In the anatomy of the Armenian Genocide plan we see the template for genocide that followed in the twentieth century, in the Holocaust, Cambodia, Rwanda, the Balkans, Darfur and other places. In a century that saw somewhere between 120 and 150 million lives lost to war, genocide, and human rights crimes, the significance of the Armenian Genocide is not small.

Secondly, we can see in the Armenian Genocide an extreme case of the consequences of genocide carried out with impunity. It seems clear from his exhortation of 22 August 1939 that Hitler was emboldened by the Armenian Genocide and the ensuing impunity granted the perpetrators, making clear that genocide committed with impunity encourages more of the same. The failure to bring the perpetrators to justice in the aftermath of the Genocide also has created, ninety-three years later, an international scene of seemingly unprecedented denialism on the part of the Turkish government

and moral outrage as well as continual wounding for Armenian community world-wide, and a horrific continuation of human rights abuses and atrocities inside Turkey from 1915 until today. I'll return to this issue in my conclusion.

A fine-tuned bureaucracy

In thinking about the anatomy of modern genocide, we note first that bureaucracy is essential to its planning and implementation. In Turkey in 1915, the extermination of the Armenians was overseen by a hierarchical administration under the direction of the Ministry of the Interior. The Committee of Union and Progress (CUP), which had come to power after a violent coup d'état in 1913, used government bureaucracy with precision.

The bureau in charge of the plan to exterminate the Armenians was a covert branch called the Special Organisation (SO) (*Teshkilat-i Mashusa*), and high-ranking party officials (Dr. Nazim, Dr. Behattin Shakir, Ziya Gokalp) were instrumental in the planning. Holocaust scholar Richard Rubenstein described the Turkish extermination of the Armenians as the “first full-fledged attempt by a modern state to practise disciplined, methodically organised genocide.” Like the Nazis, the CUP understood that bureaucratic methods could create a totally vulnerable, “expendable” people, (Rubenstein, 1985) the extermination plan proceeded in a series of roughly sequential events.

The CUP used bureaucracy to identify and arrest the Armenians, to carry out organised forced marches or deportations, which were in reality death marches, (on foot or by train) of every Armenian man, woman, and child in Turkey, to form killing squads, and to create legislation for the purpose of eliminating the Armenian population of Turkey and redistributing their property. The final solution for the Armenians was directed by Minister of the Interior Talaat, who told US Ambassador Morgenthau, “the deportations were the result of long and careful deliberation.” (Morgenthau, 1918) The German Ambassador Wolf Metternich underscored this when he wrote: “The Committee demands the extirpation of the last remnants of the Armenians.” (Dadrian, 1998)

The killing squads

In creating an efficient killing process, the Special Organisation recruited, organised, and deployed tens of thousands of convicted criminals for the purpose of massacring the Armenian population. In this astonishing use of the nation's criminal manpower, the military authorities were given autonomy to authorise the release of thousands of convicts from the prisons. (Dadrian, 1993) The organisation of the *chetes* – the ex-convict killer-bands – was similar to the Reich Security Main Office's creation of *Einsatzgruppen*, or mobile killing units, but

in this case, the *chetes* were augmented by the military police and by provincial police known as gendarmes, or police-soldiers.

Though Raul Hilberg notes that the Reich Security Main Office conducted “for the first time in modern history. . . a massive killing operation,” (Hilberg, 1961)^a it seems clear that the CUP’s Special Organisation was the first state bureaucracy to implement mass killing for the purpose of race extermination. The British historian Arnold Toynbee was among the first to assess the role of these killing squads when he wrote that: “Turkish “political” *chettes* [*cetes*] made their debut on the western littoral and, in 1915, after being reinforced by convicts released for the purpose from the public prisons, they carried out the designs of the Union and Progress Government against the Armenians in every province of Anatolia except the vilayet of Aidin.” (Toynbee, 1922)

But the *chetes* were only part of a killing operation that involved the CUP mid-level bureaucracy (the Responsible Secretaries, Delegates, and General Inspectors), military police, and the gendarmes. This nexus of command and communications carried out the rigorous process of arrest and deportation city by city, town by town, village by village. Staff officers became chiefs of staff in the interior, and put in command of killing units in order to assist in “the liquidation of the Christian elements.” One reserve officer put it bluntly when he said the aim of the whole process “was to destroy the Armenians and thereby to do away with the Armenian question”. (Dadrian, 1993)

Some of the elite German military leaders, who as Turkey’s closest wartime ally had access to the process, confessed their horror at the killing squads. Colonel Stange, the highest-ranking German guerrilla commander in the Russian-Turkish border region, referred to the “so called chetes” as “scum” (*Gesindel*) who “in the area of Tercan killed without exception all the Armenians of the convoy coming from Erzurum.” “This incontestable fact,” he wrote, was carried out “with the assistance of military escort.” (Dadrian, 2002) German Consul Dr. Walter Rossler, in a report from Aleppo on July 27, 1915, noted that the killing brigands were created by “the Turkish government, which released convicts from the prisons, put them in soldiers’ uniforms and sent them to areas through which the deportees are to pass.” (Dadrian, 2002)

Eliminating male subgroups: able-bodied men

While the Special Organisation, the killing squads, provincial police, and the rest of the bureaucracy were consumed with massacring and deporting the civilian Armenian population, they also aided the Ottoman army in disposing of all able-bodied Armenian men. At the beginning of the war, Armenian men between the ages of about 20 and 45 (later between 45 and 60) were conscripted into the

Ottoman army. But after Minister of War Enver Pasha's humiliating defeat by the Russians at Sarikamish, just north of the Turkish border in the Armenian part of the Russian Caucasus in January 1915, Enver and his ruling elite, looking for a scapegoat, blamed the Armenians, claiming they were in sympathy with the Russians.

Within a month, by late February 1915, all the Armenian men in the Ottoman army were officially disarmed and thrown into labor battalions. Almost immediately thereafter, the army began an organised plan of massacring the Armenian men in the labor battalions. These killings preceded the beginning of the deportations and massacres of spring 1915. As historian Erik Zucher has noted, "once the massacres started in April 1915, the Armenians in the labor battalions were sitting ducks. Under the guard of armed soldiers, they were taken out into secluded areas where they were killed by gun shot or with bayonets by Turkish soldiers often with the aid of the gendarmes and the chetes. (Zucher, 2002). In this manner tens of thousands of Armenian men were disposed of.

Cultural leaders

The CUP targeted the Armenian cultural leadership as early as possible in the eradication process. By killing intellectuals and community leaders, the Turkish government hoped to silence Armenia's most accomplished and potent civic voices – voices that might rise in resistance. The plan was to eliminate all Armenian writers, political activists, artists, teachers, and church and civic leaders. As the able-bodied men were being massacred in the labor battalions of the Ottoman infantry, as early as the winter of 1915, the plan was to wipe out the cultural leadership by the spring and summer. In doing so, the CUP hoped to render the Armenians as helpless and vulnerable as possible.

What happened in Constantinople in April began the process of killing the Armenian cultural elite empire-wide. Since the mid-nineteenth century, the capital was home to the richest and most influential Armenian community of the empire and the center of Armenian intellectual and cultural life. Constantinople was the obvious place for the CUP to begin its formal eradication of Armenian cultural and community leaders. On the night of April 24 and into the following day, about 250 were arrested, and in the coming weeks another several hundred from the city and its vicinity would be arrested.

The events of 24 April 1915 in Constantinople would be repeated all over Turkey. In cities and towns, Armenian cultural leaders were arrested, tortured and murdered as quickly as possible. In the end, thousands of Armenian intellectuals and community leaders were killed, and the core of Armenia's intellectual life was destroyed.

In the city of Van, Dr Clarence Ussher, an American missionary, recorded the round-up and arrests of Armenian professors, intellectuals, and community leaders in late April and May of 1915, and in Harput, American consul Leslie Davis reported that in June and July, Armenian intellectuals and professors were among the first to be imprisoned and murdered. (Balakian, 2003)

Ideology

Genocide usually requires a set of ideas, an ideology that will disseminate the extreme nationalist vision of the government that wishes to eliminate a particular minority group. The perpetrators always believe they are killing the designated group for a virtuous reason, that in killing the group they are cleansing the society of an ill. In this case, the ideology known as pan-Turkism advocated “Turkey for the Turks”. If Turkey was to reclaim its past glory it must be ethnically homogenous.

The chief propagandist of the Young Turk nationalists, Zia Gökalp, a prominent member of the CUP’s Central Committee, played an important role in disseminating the new nationalism. Foreshadowing the leading Nazi propagandists Alfred Rosenberg and Joseph Goebbels, who propounded the central notion that Germany needed to be *Judenrein* if it were to revitalise itself, Gökalp advocated that Turkey could only be revitalised if it rid itself of its non-Muslim elements. In ways that anticipated the Nazi race-hygiene ideology of the 1930s, which depicted the Jew as “harmful bacillus” and “bloodsucker,” infecting the German nation from within (Hitler called the Jew “a maggot in a rotting corpse,” “a germ carrier of the worst sort),” pan-Turkist ideology envisioned the Armenian as an invasive infection in Muslim Turkish society. Armenians were at times depicted as “tubercular microbes.” The governor of Diyarbakir province, Dr. Reshid, asked rhetorically, “isn’t it the duty of a doctor to destroy these microbes?” (Dadrian, 1986) Gökalp’s pan-Turkism was rolled up in a grandiose romantic nationalism and a “mystical vision of blood and race” (Landau, 1995). in which Turkey had to reclaim a pre-Islamic Golden Age of Turkic warriors such as Genghis Khan, Tamerlane, and Timur Babur, and the Armenians situated in eastern Anatolia stood in the direct path of an empire spreading eastward through the Caucasus to Asia.

Acts of legislation

In order to accelerate the extermination plan and to give it a further sense of governmental legitimacy, Talaat Pasha requested that the Grand Vizier, through the Cabinet, pass a special law authorising the deportations. The law, called the *Temporary Law of Deportation*, was passed on May 30, 1915, and gave the power to commanders

of armies, army corps, and divisions, and commandants of local garrisons to deport any groups of the population “on suspicion of espionage, treason, or military necessity.” (Dadrian, 1995) This law gave legislative licence for the administrative network and the killing squads to round up, deport, and massacre Armenians.

Because expropriating Armenian wealth and property was vital to the plan to liquidate the Armenian presence from Turkey, the CUP devised legal as well as violent means of stealing and appropriating Armenian moveable and immovable wealth. In another legislative maneuver, the *Temporary Law of Expropriation and Confiscation* (September 1915) was passed. US Consul Jesse Jackson, in a report from Aleppo to Ambassador Morgenthau in August of 1915, assessed the role of the government’s confiscation scheme, calling it “a gigantic plundering scheme as well as a final blow to extinguish the [Armenian] race.” (Jackson, U.S. State Department Record Group, 59, 1915). Turkish historian Dogan Avjioglu notes that “among those who enriched themselves in the process of the expropriation of the Armenians were party influentials, ex-officers serving as party operatives, and Turkish immigrants” (Dadrian, 1989)

As Raphael Lemkin – the Polish-Jewish legal scholar who coined the word *genocide* and developed the concept of genocide as an international crime – made it clear that cultural destruction is a significant aspect of the process of genocide – the eradication of cultural institutions, material culture (churches, schools, indigenous architecture, art and artifacts that define a people’s identity, culture and contribution to civilisation). Given the fact of the Turkish eradication of more than five thousand Armenian churches, monasteries, monuments, and schools, the significance of Lemkin’s point cannot be overemphasised. (Lemkin, 1933)

Technology

Modern genocide was defined, in part, by the Ottoman government’s use of new technology for mass killing. For instance, from the start of the process Minister of the Interior Talaat and others in the government used the telegraph, then a newly upgraded technology, to transmit messages across long distances in order to relay orders for deportation and massacre from Constantinople to CUP offices and officials in the villages, towns, and cities of the interior provinces. Similarly, new rail lines across Anatolia facilitated the process of genocide. (Balakian, 2003)

The railway

Just as the Nazi deportation of Jews “began in the trains,” as Terrence Des Pres put it, “in the locked box cars, eighty to a hundred people per car – crossing Europe to the camps in Poland,” (Des Pres,

1975) similarly the century's first genocide began, in part, in the cattle cars of the Anatolian and Baghdad Railways. In many cities and towns a part of the Armenian population was piled into cattle cars, or cattle-trucks, as they were called – around 90 in a space that was made to transport six large animals, or about 36 people. Stuffed in behind the slatted bars, they were starving, in terror, and defecating on themselves. Most of the rail cars went south and east, most often to the city of Konia, where the deportees were often let out to continue on foot before they were robbed, and raped, and murdered by the killing squads. Sometimes, they were shipped all the way through to Aleppo - where those who survived arrived emaciated and near death - or further on, to the Der Zor desert and certain death. With the rail deportations of the Armenians, “the Ottoman government introduced into modern history,” historian Hilmar Kaiser writes, “railway transport of civilian populations” as part of the plan of race “extermination”. (Kaiser, 1998)

The railway deportations were directed by the Ottoman government, and Minister of the Interior Talaat received reports on the numbers of deportees and their locations. For example, on 9 and 10 October 1915, some 11,000 Armenians who had been transported from other places to Konia were sent further south. During the following three days, 5,000 Armenians were sent from Konia, and 4,854 during the next two days. When deportation by rail was interrupted because of military needs, the people were marched along the railway track. On 23 October, 1,050 Armenians were crammed into 14 cars going south from Konia. And so, according to interior ministry reports, in October 1915 alone more than 20,000 Armenians were crammed into livestock cars to be sent to their deaths in the Der Zor desert. (Kaiser, 1998)

As deportation by rail developed, detention camps sprang up alongside the tracks and stations. From Konia south to the desert, it appeared as one long concatenated detention camp. According to Ottoman reports, there were 40,000 Armenians in the camp by the railway station at Konia; by the end of October there were also about 40,000 at Katma, a town on the deportation route north of Aleppo; the camp near Osmaniye, less than 100 miles east of Adana, may have held as many as 70,000. In the camps, the Armenians were attacked by the killing squads or brigands, women were abducted and raped, and thousands died of disease and starvation. (Kaiser, 1998)

As the railway and its immediate environs became a zone of perpetual mass murder and rape, railway officials were constant witnesses to the atrocities. An engineer named Spieker reported from Ras-ul-Ain that he continually saw the arrival of remnants of the death marches; only women and children were left because all the men and boys over 12 years old had been killed. In his detailed

reports on what he called “the systematic mass slaughter of women and children,” Spieker noted that a Turkish inspector informed him that nine out of ten Armenians had been killed on the marches. The engineer also described how Muslim railway officials and Ottoman officers raped women and sold children and women in the slave trade. One Sargent Nuri, who was the overseer of the camp at Ras-ul-Ain, bragged about raping children, and boasted about how many of the Muslim employees of the railway left their jobs in order to participate in the massacres. (Kaiser, 1998)

All through the summer of 1915, U.S. Consul Jesse Jackson in Aleppo recorded the deportation of Armenians by train. To Ambassador Morgenthau on September 29, he wrote:

SIR: The deportation of Armenians from their homes by the Turkish government has continued with a persistence and perfection of plan that is impossible to conceive by those directly carrying it out, as indicated by the accompanying tables of “Movement by Railway”, showing the number arriving by rail from interior stations up to and including 31 August last to be 32,751. In addition thereto it is estimated that at least 100,000 others have arrived afoot.

In this same dispatch, Jackson notes that the treatment of the deportees is “so severe” that “careful estimates place the number of survivors at only 15 per cent of those originally deported. . . . On this basis the number of those surviving even this far being less than 150,000 up to 21 September, there seems to have been about 1,000,000 persons lost up to this date.”(Jackson, US State Department Record Group, 59, 1915)

Death toll

Diplomats and journalists at the time estimated that between 800,000 and one million Armenians died in 1915 alone. (Bryce, 1916) In the summer of 1916 another 200,000 were massacred in the Syrian desert around Der Zor. In addition, tens of thousands of women were abducted into harems or Muslim families, and as many children were taken into families and forced to convert to Islam. After the war, further massacres took place, in Marash, 1920; and Smyrna, 1922. In the end, from one-half to two-thirds of the more than two million Armenians living in their historic homeland in the Ottoman Empire were annihilated. The International Association of Genocide Scholars conservatively assesses that more than 1 million Armenians were killed, and probably 1.2 to 1.3 million – and Raphael Lemkin put the figure at 1.2 million. Some historians put the figure at about 1.5 million. (IAGS, 1999, 2005), (Lemkin, 2002)

The legacy of impunity

After the war, the British government, occupying Constantinople (the former CUP leadership had fled the country), called on Turkey to hold a military tribunal to try those responsible for the Armenian massacres and crimes against war prisoners. British Foreign Minister Lord Curzon declared that the Young Turk leaders “had murdered hundreds of thousands of their own subjects ... and deserved any fate which was inflicted upon them.” (Bass, 2000) Ottoman Grand Vizier Damad Ferid admitted the need to bring to justice “the truly responsible authors of these terrible crimes.” (Lloyd George, 1939)

The tribunal prepared more than 200 files to indict those in the military, the CUP, and at the top level of government; four major trials were set up on the basis of municipal law and the Ottoman penal code, legitimising the trials in a national legal context. The “Key Charge” was premeditated (*ta’ammüden*) mass murder organised by the Central Committee of the CUP and the SO. The records of the trials can be found in *Takvim-i Vekayi*, the official gazette of the Ottoman parliament. (Dadrian, 1991). In short, the trials yielded an impressive body of testimony and confessions that the plan to annihilate the Armenians was created and carried out by the central government. The main verdict of the Trebizond trial (22 May 1919) affirmed that “deportation” meant “massacre”.

By the end of 1919, faced with the Kemalist takeover of Turkey, Grand Vizier Damad Ferid resigned, and with the new nationalism in Turkey and British postwar fatigue, Britain’s commitment to the trials waned. To appease the Kemalists, Britain’s War Office, led by new Secretary of War Winston Churchill, decided in 1921 to free its Turkish prisoners held at Malta in exchange for the British prisoners the Turks held, and the trials were abandoned. It was a pragmatic deal which, as one member of the Foreign Office noted, destroyed Part VII (Penalties) of the Treaty of Sèvres and was “tantamount to complete capitulation to Turkish blackmail.” (Bass, 2000)

In August 1921, the British released 43 Turkish prisoners accused of perpetrating the Armenian massacres. Although there were three hangings and many convictions, none of the convicted served out their prison sentences, and after the British-Turkish prisoner exchange, the majority of the perpetrators escaped punishment. (Bass, 2000)

Britain’s deal came at great cost to international justice. Nevertheless, the trials produced critical evidence about the plan to exterminate the Armenians and its implementation - evidence that came from Turkish officials who were participants in the killing and from a wealth of official government documents. Although some have called the trials a milestone in the history of war crimes tribunals

and an antecedent to the Nuremberg Trials, the failure to bring the perpetrators to justice has had disastrous consequences.

Raphael Lemkin, as he was working towards defining the concept of genocide, was so disturbed by the failure of the trials that it galvanised his pioneering work; he wrote:

In 1915. . . I began. . . to read more history to study whether national, religious, or racial groups as such were being destroyed. The truth came out after the war. In Turkey, more than 1,200,000 Armenians were put to death. . . After the end of the war, some 150 Turkish war criminals were arrested and interned by the British Government on the island of Malta. . . then one day, I read in the newspapers that all the Turkish war criminal were to be released. I was shocked. A nation that killed and the guilty persons were set free. . . I felt that a law against this type of racial or religious murder must be adopted by the world. (Lemkin, 2002)

Turkish denial

Every episode of genocide is followed by forms of denial, usually by the perpetrator and sometimes by those who identify with the perpetrator. Denialist literature has followed the Holocaust and other genocides, but the denialist texts on the Armenian Genocide are unusually extreme, in part because they have been aggressively promoted by the Turkish government from the very time of the crime.

After World War I, the policy of erasing Armenia from Turkish history would become part of the Turkish Republic's founding mythology. Turkish historian Taner Akçam notes that in forming the new Turkish Republic in 1922, Mustafa Kemal and his government created an extreme nationalism built on several myths and taboos, among them: 1) Turkey is a society without class distinctions; 2) Turkey is a society without ethnic minority groups or cultures; 3) There was never an Armenian Genocide. (Akçam, 2004) This institutionalisation of historical forgetting socialised Turkish people into having no critical understanding of their past and has created the kind of erosion of memory that enabled Hitler to make his famous comment: "Who today, after all, speaks of the annihilation of the Armenians?" (Lochner, 1942)

After Armenians began worldwide annual commemorations of the Genocide, on 24 April 1965, Turkey's official policy of denial intensified. Turkey began to pressure the press to not use the word "genocide". The Turks began aggressively and publicly referring to "the alleged Armenian genocide" and calling it a "civil war." Even though during the period of the trials Turkish officials had admitted that close to one million Armenians had been killed, the number dropped to 600,000, and has fallen to the 300,000 espoused since 2007.

Richard Falk, professor emeritus of international law at Princeton, has perceptively called the Turkish campaign of denial “sinister” and “a major, proactive, deliberate government effort to use every possible instrument of persuasion at its disposal to keep the truth about the Armenian genocide from general acknowledgment.” (Falk, 1994)

Denialist scholars

A small number of scholars have accommodated Turkey’s denial and produced statements and books attempting to give academic legitimacy to Turkey’s claims. In their efforts to sanitise the history and negate the genocidal nature of the event, Bernard Lewis, Stanford Shaw, Justin McCarthy, and Gunther Lewy, most notably, have ignored, trivialised, and denigrated – in ways that seem deliberate and calculated – the evidence and conclusions of the massive record of documents and decades of scholarship as well as the 1948 UN Genocide Convention’s definition of genocide. (Power, 2002) Denialist scholars have engaged in what many scholars call unethical practice: “Where scholars deny genocide in the face of decisive evidence . . . they contribute to false consciousness that can have the most dire reverberations, and lend their considerable authority to the acceptance of this ultimate crime.” (Smith, Lifton, Markusen, 1995)

In its efforts to undermine the moral memory of the Armenian Genocide, Turkey has gone so far as to its military alliance with the United States to pressure the State Department to block passage of various nonbinding congressional resolutions affirming the Armenian Genocide (in 1980, 1985, 1989, 2000 and 2007), and has paid lobbyists millions of dollars annually to work against such resolutions. Turkey has lobbied to stop Jewish-American organisations from acknowledging the Genocide, and pressed them to work against the resolutions. Most dramatically, in 2007, after the Anti-Defamation League, a major Jewish-American organisation, acknowledged the events of 1915 as genocide, Turkey demanded that Israel intercede and force the ADL to retract its statement, lest the well-being of Jews in Turkey be affected and Israeli-Turkish foreign relations be damaged.

World opinion and rejection of denial

In the face of Turkish denial, scholars, organisations, and nations, motivated by an ethical sense and the value of confronting historical truth, have made statements of acknowledgment and affirmation of the Armenian genocide. The International Association of Genocide Scholars has issued several Open Letters which underscore that the historical record on the Armenian Genocide is overwhelming and unambiguous and noting Raphael Lemkin’s first use of the term genocide to describe the Armenian case as well as the applicability of

the 1948 *United Nations Convention on the Prevention and Punishment of the Crime of Genocide*. (IAGS, 2006)

As a moral redress to Turkish denial, 20 countries as well as the Vatican and the European parliament have passed resolutions acknowledging the events of 1915 as genocide. Nobel Laureate Elie Wiesel has called Turkish denial a “double killing” that strives to kill the memory of the event. Deborah Lipstadt has written: “Denial of genocide whether that of the Turks against the Armenians, or the Nazis against the Jews is not an act of historical reinterpretation ... The deniers aim at convincing innocent third parties that there is another side of the story ... when there is no ‘other side’ of a legitimate debate. ... Denial of genocide strives to reshape history in order to demonize the victims and rehabilitate the perpetrators.” (Lipstadt, 2000)

The need for bystander response in the face of Turkey’s campaign is increasingly morally valuable. Government affirmation is an ethical redress to a misguided campaign of Turkish nationalism and is important for several reasons. I believe that it is important to understand that Turkey’s state policy on the Armenian Genocide is a congruent part of Turkey’s human rights crimes and abuses that have continued to the present day. Beginning with the Armenian Genocide of 1915, the Ottoman Turkish and modern Turkish governments have carried out a campaign of ethnically cleansing the minorities of once multi-cultural Turkey. The destruction of the Asia Minor and Pontic Greek and Assyrian communities, and the brutalisation of the Kurds, forced to assimilate culturally and called “mountain Turks” for most of the last century, have all been part of a campaign of Turkification.

Throughout the twentieth century and into the twenty-first, minority rights have not existed in Turkey, and intellectual freedom has been legally disallowed, so much so that in the final three decades of the twentieth century Turkey was cited by PEN International (the major writer’s organisation) and Human Rights Watch as having more writers, journalists, and teachers in jail and legal detention than any other non-communist country. On 23 January 2008, the European Court of Human Rights announced that, in 2007, Turkey was the *worst* offender of human rights among European Council members, found guilty in 319 cases; Russia followed with 175. In the past decade, Turkish Penal Code article 301 has been used by nationalists to prosecute Turkish intellectuals, many of them for just using the term Armenian Genocide. They include novelist and Nobel Laureate Orhan Pamuk, who received death threats right after he received the prize; novelist Elif Shafak; publisher Ragip Zarakolu; and Turkish-Armenian journalist and publisher Hrant Dink — who subsequently was assassinated by Turkish nationalists. In the past 15 years, 18 journalists were murdered, 241 books banned, and scores of

journalists, scholars, and writers have had to face trial. According to the *Manchester Guardian*, UK, Turkey is the eighth deadliest country for journalists (23 January 2007).

While the Turkish state and Turkish ultra-nationalists refuse to confront the events of 1915 honestly, it seems clear that a significant part of the Turkish population is in favor of confronting the Armenian Genocide honestly. Various Turkish intellectuals have noted that the Kurdish and Alevi populations of Turkey are sympathetic to proper acknowledgment of the events of 1915, and if one estimates that those populations constitute perhaps more than half of the Turkish population, and adds to that the progressive and pro-democratic forces inside Turkey, including much of the young generation, one gets a sense of Turkish people being denied their own conscience by their government. Denialism harms Turkey and its attempt to be a modern, democratic nation in pursuit of European Union status. In a recent article in the Turkish-Canadian newspaper *Yeni Hayat* (May, 2008), historian Taner Akcam is quoted:

The manner in which the Armenian question is being discussed is in itself indicative as to what is the main problem of our country. We do not possess the culture affording open debate about mass murders. We are devoid of the moral foundations which enable us to damn such crimes. One needs to have a sense of sorrow in order to be able to speak of the great human tragedies; but we do not possess such a sense of morality. Look at the things that have been written about this topic. In them you don't find a single sentence, a single word that recognises the tragedy. When Turkish children learn about these righteous Turks, they can be proud of the way these people acted. They will be absolved of any responsibility. As renowned writer Ahmet Altan stated in May 2005: "I have nothing in common with the terrible sin of the past Ittihadists [the government of the day]... instead of justifying and arguing on behalf of the murderers, why don't we praise and defend the rescuers' compassion, honesty, and courage?"

It seems clear that, if it were to deal honestly with the events of 1915, the Turkish government would allow itself to move forward on many fronts. Acknowledgment of the Genocide would open the atmosphere in the way that *glasnost* opened the atmosphere for change in the Soviet Union in the mid 1980s, or the way the end of apartheid opened a new era in South Africa in the same decade. In both cases, the outside world played a significant role in helping these needed changes happen, and so too can moral leadership from democratic societies help to lead Turkey into a new era.

When the Turkish government protests that other governments should not be adjudicating history, we can only agree by saying that the history has been settled; the controversy is only maintained as a state policy by the Turkish government and a few scholars it has cajoled into service. The human rights community has asked

bystander nations to affirm the record of the Armenian Genocide as a way of letting Turkey know that honest recognition of history matters to a culture's health and well-being and to its moral identity.

Secondly, while it is a violation of human rights for the Turkish state to prosecute its own citizens for free speech, it is unthinkable that the Turkish state should be interfering with the intellectual discourse on the Armenian Genocide or the freedom of ideas, education, and the curriculum *outside* of its own country.

Furthermore, when Turkey appeals to the world community for a historical commission to be set up to study the events of 1915, it should be clear to bystander states that this is a desperate political gimmick designed to allow the Turkish state to insert its denialist scholars into a public forum for the purpose of casting doubt on what is, in the record of the mainstream scholarly community, a resolved history. That a government that has disallowed intellectual freedom, punished and persecuted its writers and scholars for decades, and has one of the worst records on human rights in the world would be making such a ploy is both arrogant and morally obtuse.

Bystander states should not bend to Turkey's coercive tactics and state bullying, which export that country's repressive institutions to democratic societies. Turkey's continuous campaign of denial is an assault on the moral meaning of memory and is, as scholars of genocide have reiterated, "the denial continues the process" of genocide, and "has implications for the future . . . by absolving the perpetrators of past genocides from responsibility for the actions and by obscuring the reality of genocide as a widely practised form of state policy in the modern world, denial may increase the risk of future outbreaks of genocidal killing." (Smith, Lifton, Markusen, 1995).

Being in Australia and thinking about ethical issues of collective memory gives me an acute sense of the importance of Prime Minister Rudd's apology to the Aborigines of 13 February 2008. It was a landmark statement in the history of government acknowledgement about past human rights abuses. In its eloquence and thoughtful depth, in its probing questions about morality and memory, it opens the way for all nations to raise their own civilisations to higher places. Rudd speaks of the value of a nation "turning a new page" in its history "by righting the wrongs of the past" in order to move forward, in order to help "part of the healing of the nation". He notes that "there comes a time in the history of nations when their peoples must become fully reconciled to their past if they are to go forward with confidence and embrace their future." He emphasises the importance of dealing with "unfinished business of the nation, to remove a great stain from the nation's soul." And, in a moving appeal to the universal value of historical honesty, he sees acknowledgment as part of "universal human decency," which "demands that the nation now

step forward to right an historical wrong.” It is this kind of leadership that is needed now to help a much needed healing process in the long, tortured aftermath of the Armenian Genocide.

Given the close and intertwining relationship between the Armenian Genocide, which began on 24 April 1915, and ANZAC’s landing at Gallipoli, it would be especially significant for the Australian government to join Canada, France, Poland, Russia, Greece, Argentina, Lebanon, and the other states and political institutions in taking a moral position and affirming the genocidal event that inaugurated the ultimate crime of the modern era. Australia would join a vital process of nation-states taking an active role to prevent more genocidal episodes by standing up to genocide past and present.

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Photo - David Karonidis

Stephen Conroy

Senator The Hon Stephen Conroy is the Minister for Broadband, Communications and the Digital Economy. In his new role, Stephen Conroy has taken on the task of revolutionising Australia's telecommunications industry. As Senator Conroy puts it, "The Australian government is committed to improving broadband for all Australians, including the two per cent of homes and businesses which may not be covered by the National Broadband Network. ... This process will explore long-term options that ensure rural and remote areas of Australia have access to the best available broadband services through future-proof telecommunications infrastructure." To discuss all this and more, Senator Stephen Conroy addressed The Sydney Institute on Tuesday 6 May 2008.

BROADBAND AND THE

DIGITAL ECONOMY

STEPHEN CONROY

The Sydney Institute is an important forum for the serious discussion and debate of public policy and policy reform. With many significant developments in my portfolio area underway, today presents a great opportunity to outline the government's digital economy agenda.

Last week, I attended National ICT Australia's Techfest, where they were showcasing 20 outstanding research projects. This really was an exciting glimpse of our digital future. It was fascinating listening to these researchers talking about where they see technology taking us into the next decade. NICTA Lab Manager, Doctor Terry Percival, talked about a future where ICT addressed some of the major problems we face in the world today. In the area of healthcare, for example, he spoke of a pre-emptive system where doctors would call patients *before* they got sick. Dr Percival also envisioned a much cleaner world where ICT had drastically reduced energy consumption, improved public transport, and even removed the need for work-related travel!

I suspect many people would approve of all of these developments. No doubt, everyone in this room has heard the phrase "digital economy". You may have also noticed that my Department has been renamed to make this an explicit focus. I am often asked why this government places such an important policy focus on the "digital economy". The answer is that how we manage the digital economy will have a profound effect on our economic performance and the lives of all Australians. Our future prosperity will be bound to the growth of the digital economy.

In essence, the "digital economy" encapsulates the framework within which increasing levels of economic activity and social interaction will take place into the future. The convergence of technological platforms is changing the way services and applications are being delivered. We truly are moving into a new frontier. Around the world, policymakers are grappling with how to ensure their

countries harness these benefits. Countries that embrace them will prosper.

In many ways, the digital economy is already booming. ICT is already entwined in our economic and social fabric, in areas as diverse as financial markets, government services, social networking, entertainment and telephony. Fuelled by the increasing pervasiveness and power of the internet, ICT is changing the nature of economic activity and social interaction. New services and applications are increasingly viewed as essential by consumers and businesses.

You do not have to look far to see this. Take the business sector as an example. Businesses are using ICT and the internet to revolutionise their systems and processes in order to improve efficiency and promote innovation. Old business models are giving way to new ones. In some cases, competition is just as likely to come from overseas as down the road. Technological change is breaking down the tyranny of distance. Consumers are also benefiting. They are watching IPTV and vodcasts, making travel arrangements online, enjoying cheaper phone calls through voice over IP technology and roaming through virtual worlds such as Second Life. And not only are the services and applications changing, but so too are the platforms over which they are being delivered. “Content” and “connectivity” is now available to businesses and consumers in the office or on the move. Indeed, the ‘mobility’ of services is now an accepted feature of modern day life.

Perhaps some of the most exciting possibilities in the transition to a digital economy are in the education and health sectors. Schools and universities are increasingly using the internet for education and research. Using the internet, students can remotely access audio or video recordings of lectures and better participate in distance education. Researchers can use the internet to collaborate with colleagues around the world, accelerating the development and availability of scientific breakthroughs.

The link between investment in education and broader economic benefits is well accepted. Equipping current and future generations with the best possible technological opportunities will enable Australia to make an effective transition towards a knowledge-based economy. Improvements in ICT – particularly if underpinned by the widespread availability and affordability of higher speed broadband – will further open up the possibilities for improved distance learning education.

We are also on the cusp of exciting developments in the e-health sector. Some doctors and hospitals are already diagnosing patients remotely. High quality video conferencing facilities allows for this via ‘real time’ interaction between patients and doctors in separate locations. The Veterans Association of America has implemented a remote patient monitoring program. As a result of this scheme, hospitalisation has been reduced by up to 60 per cent. The social

benefit of this type of program – which allows older people to stay at home and retain independence – is enormous. And along with this there are huge economic savings – particularly if we project into the future and recognise that Australia has an aging population.

Broadband the digital driver

Harnessing the potential of the digital economy is critical for Australia's long-term economic prosperity and international competitive standing. But it will also be critical for promoting social cohesion, and even cultural depth. Obviously, the availability and affordability of first-class internet services for all Australians is one of the *key elements* in harnessing this potential. Recent statistics provide an interesting snapshot of the internet and the effect it is having on our lives.

As at March 2008, there were over 1.3 billion internet users worldwide. More and more people are going online to do business. Over 25 per cent of people in the OECD ordered goods or services online in 2007, while over 30 per cent of the OECD population performed online banking activities. But the internet is also helping people in more intangible ways. Forty-five per cent of internet users in the US reported that the internet helped them make big decisions. And in Korea – a country where 94 per cent of households are connected – users report positive effects on their lives such as convenience, promotion of civic rights, participation in politics and an increase in leisure time.

In the 2008 Digital Future Project – which is a study of internet usage in the United States – 45 per cent of users said that the internet was important or very important in helping them to maintain social relationships. In Australia, the most recent ABS statistics show that at the end of 2007 there were 7.1 million internet subscribers in Australia. They also show that – where available – there is an increasing demand for higher speed broadband services. And it is not just email and banking that people are using the internet for. Roy Morgan data shows that nearly 60 per cent of users have downloaded audio material while more than 30 per cent have either streamed or downloaded internet video.

Three years ago I spoke to experts who openly questioned why anyone would want to move video around the internet. Yet YouTube reported recently that nearly 4 million Australians visited their site in January – up a staggering 74 per cent from the year before. Increasingly, the internet is being viewed by some as an essential facility – in much the same way as gas, electricity and the telephone.

A recent report by the Australian Communications and Media Authority (ACMA) indicated that Australians already see the internet as an essential part of their lives. Seventy per cent of household

consumers indicated that broadband is a “critical service for the future”. The internet is also increasingly being used as a mechanism for interaction and consultation between government and the broader community. Research posted last month showed that a quarter of all Australians now conduct most or all of their entire dealings with government online. Three in five people used the internet to access government services in 2007, a 20 per cent increase compared with 2004-05 usage rates. The report found that Australians value the convenience that the internet provides in their dealings with government agencies. All of these developments suggest that we are in the process of a profound social and economic transition.

But what role is there for government in this transition? The transition towards the digital economy represents the next frontier. It is the government’s responsibility to ensure that Australia has the infrastructure, the confidence, the skills and the regulatory settings in place to embrace an effective transition towards a fully-fledged digital economy. This government’s vision is to position Australia as a highly competitive and innovative knowledge based economy. This vision will not be achieved by one policy in isolation, however important it may be. Over time, it will require the government to consider a range of coordinated policy measures and responses in a range of areas. This includes:

- ensuring that the necessary infrastructure and regulatory frameworks are in place; and
- ensuring that the necessary protections are in place to enable Australians to plug into the digital economy safely.

The government’s vision for Australia’s transition to a digital economy is based on a number of clear and sound policy principles:

- Australians should have access to the best infrastructure and services possible in order to maximise the potential benefits from the transition to the Digital Economy.
- Connectivity should be available to *all* Australians irrespective of where they choose to live or work.
- And the affordability of services – including for disadvantaged members of our society – is a critical element of the equation, and an important policy focus for government.
- Australians should be protected from cyber-safety and e-security threats, and assured that they will have access to new and innovative services as they emerge.

It is critical that the government provides leadership in this area, not only by setting out clear and sound principles, but also by getting the policy and regulatory settings right to ensure they are promoted. I’d like to step through a number of areas of policy reform we have underway to maximise the benefits of the digital economy for all Australians.

Spectrum reform

One area of particular focus for the government is the efficient management and use of our national radio spectrum assets. Spectrum is used for key communications in the modern world – television, mobile telephony, wireless broadband, satellite broadband, emergency services, security, logistics tracking to name but a few. It is a core plank of our national infrastructure. The Rudd Government recognises the importance of spectrum and intends to make sure that we maximise the potential benefits for Australian consumers and industry. New and emerging wireless technologies deliver some obvious productivity benefits; however, spectrum also provides a huge economic benefit to a developed economy. A recent study estimated that radio spectrum contributed 42 billion pounds to British economy in 2005–06.

There is no reason to believe that the benefit would be any smaller here as a proportion of the economy. Many other economies have already completed reviews on key radio spectrum issues and are moving into a decision-making phase. The Australian government also wants to progress spectrum reform. Considerable work is now required to position ourselves so that we — and I emphasise ‘we’ (this is not just about the government) — can make informed judgments.

Digital TV switchover

An area attracting particular attention is the transition from analog to digital television. The television industry is well underway in moving to digital production and delivery platforms and many developed countries have already made the switch or are in the process of switching to digital TV. The Rudd Government wants to ensure that Australia is not left behind, and that the switchover is completed with minimum disruption and maximum benefit for Australians.

The government has set 31 December 2013 as the date for completing the switch-off of analog TV. We have established the Digital Switchover Taskforce and allocated \$37.9 million for a range of measures to ensure a smooth transition. Digital television will deliver a range of benefits for consumers including a better quality picture and the provision of additional channels. It will also deliver a national benefit as spectrum previously allocated for analog broadcasting signals becomes available for new uses. Known as the digital dividend, some estimates put the value of this spectrum at close to \$1 billion. Spectrum realised in the switch-off of analog television broadcasts could enable the launch of new services, including wireless internet, mobile telephony and broadcasting services. The government has started consultation on the digital dividend and other spectrum

reform issues and is committed to ensuring we maximise the potential benefits of this key national infrastructure asset.

National Broadband Network

The government's policy for a National Broadband Network has received lots of attention. Before the election we committed to make up to \$4.7 billion available in order to facilitate the rollout of a high speed broadband network to 98 per cent of Australian homes and businesses. The widespread availability and affordability of first-class broadband services is a first-order priority for the Rudd Government. The National Broadband Network will rival the Snowy Mountain scheme in its scale and national significance. It will provide infrastructure to transform our society and our economy – moving us confidently into the digital age. The National Broadband Network will be foundation infrastructure that will support services and applications that people need now, and those innovations that will emerge in the future. Since the release of the Request for Proposals, there has been a range of speculation by some commentators on the Government's broadband policy.

I would like to take this opportunity to reiterate a couple of things about the upcoming assessment process. This government is committed to a *genuinely* competitive assessment process. This is precisely why:

- I have appointed a Panel of Experts with a range of specialist experience to assess proposals and provide me with a recommendation
- the Request for Proposals has been designed to maximize competitive tension and encourage innovative proposals; and
- we are working to ensure that proponents will have access to relevant network information to assist in the preparation of their bids.

I know there are a range of parties out there with the interest, skills and capabilities to get involved in this process and put forward seriously competitive proposals. I encourage them to do so. Let me also take this opportunity to reiterate another point about this process. The government has always recognised that it may need to consider regulatory or legislative changes to facilitate the deployment of the National Broadband Network.

The Request for Proposals invites proponents to put forward structural measures or models to address the government's objectives of competition and a genuine open access regime. Labor opposed the current operational separation regime that applies to Telstra because we regarded it as ineffective. Now in government, we have not changed our view. We are prepared to carefully look at structural arrangements similar to those adopted in countries such as UK , NZ

and Singapore. The regulatory arrangements and structures around the National Broadband Network are a central consideration in this process. This is why I have also called separately for submissions on what the future regulatory settings should look like.

The government is determined to ensure that arrangements are in place to promote robust competition in the market for delivering services over the new network. This will underpin a more innovative market that delivers new and exciting applications to Australians at prices that represent value for money for consumers and businesses.

E-security considerations

As I said before, the National Broadband Network will be a key driver in Australia's transition to a fully-fledged Digital Economy. The National Broadband Network will accelerate the rate at which Australian's are plugging into the digital economy. Yet many of the opportunities that come with a connected world bring with them risks and dangers which we cannot be blind to. There are emerging e-security threats and vulnerabilities that pose a challenge to the effective and efficient use of new technologies. Governments and the private sector need to work together across jurisdictions to improve cyber-security, combat spam and protect privacy, consumers and minors. Concerns about security, trust and privacy are also barriers to users buying online.

Recent OECD figures show that in the EU, over 30 per cent of internet users do not buy online because of security concerns. In Australia this figure is about 20 per cent. As the most vulnerable segment of the Australian digital economy, home users, students and small businesses need to be aware of these security risks and have the tools to protect themselves from threats.

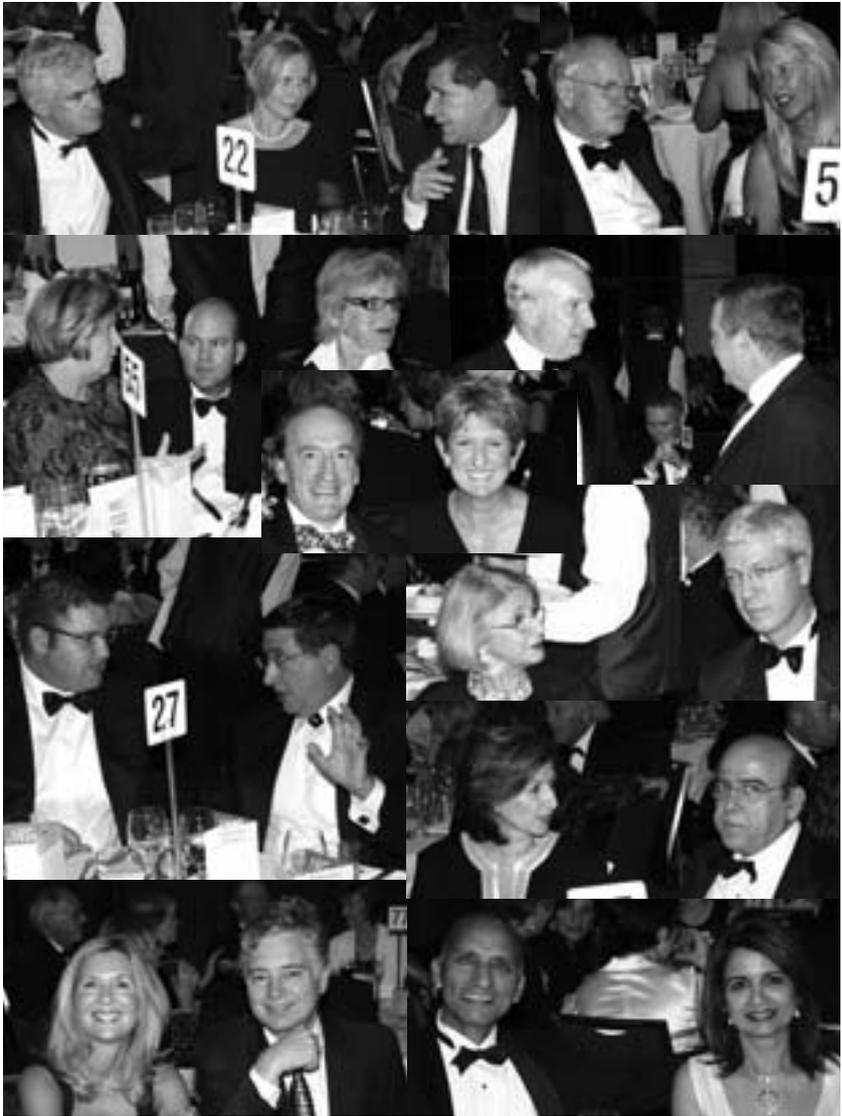
The government has adopted an integrated approach that addresses e-security risks to Australian Government networks, critical infrastructure, home users and small businesses. We are focusing our efforts on a number of areas. For example, we are educating parents, children, teachers and business on the risk of online engagement and empowering them with the skills to avoid the dangers. And we are engaging with industry to set priorities for action. We are also making sure we are informed of emerging issues and solutions by conducting research and keeping abreast of what the rest of the world is doing in relation to cyber-safety and e-security. Addressing these issues is a vital component in maintaining trust and confidence not only in the internet, but within the wider digital economy.

The government has identified three priorities to provide an integrated approach to Australia's e-security. The first of these priorities is reducing the e-security risk to Australian Government information and communications systems. The second is reducing

the e-security risk to Australia's national critical infrastructure. And the third is enhancing the protection of home users and small and medium sized businesses from electronic attacks and fraud. To ensure parents and teachers have confidence in the internet as a valuable educational and social tool, we need to address the online risks to children, which is why the government has a cyber-safety policy. This policy focuses on education, research, law enforcement and on managing current threats through technical mechanisms such as ISP level filtering of illegal material, including child pornography. A range of awareness and education measures will focus on teaching a generation of children to be good cyber-citizens.

As I have set out today, this government has a clear vision for Australia's digital future. To make this vision a reality, we need sound policy and leadership. We are pursuing a coordinated approach. We will ensure that Australians have the infrastructure, confidence, skills and regulatory environment needed to take full advantage of the digital economy. By keeping an eye on the future we can create a foundation for economic prosperity for the decades to come.

ANNUAL DINNER - 2008



Photographers: David Karonidis



Photo – David Karonidis

Helen Irving

As Dr Helen Irving sees it, whether old or new, no democratic constitution today can fail to recognise or provide for gender equality. Constitution makers need to understand that constitutions are historically “gendered” and remain so; their provisions often have a disparate or differential impact on women, even where they appear gender neutral. Helen Irving teaches in the Faculty of Law at the University of Sydney and is the author of *Gender and the Constitution* (CUP). She addressed The Sydney Institute on Wednesday 14 May 2008.

WHY CONSTITUTIONS

MATTER TO WOMEN

HELEN IRVING

A constitution is a powerful instrument. Indeed, in most countries, it is the supreme law, sitting at the peak of the political and legal hierarchy. It is the source and the voice of power, both constitutive and authoritative. It sets out the legal and political structures for the country it governs; it identifies and names political and judicial offices and spheres of jurisdiction; it describes and establishes the arms of government, and allocates powers between and among them. It also empowers and constrains the subsequent operation of government.

For these reasons – set out at in my book, *Gender and the Constitution* (Cambridge University Press, 2008) – constitutions matter to women. Women who value equality should take their country's constitution seriously.

Most Australians, however, do not understand the importance of constitutions. They tend not to recognise the power – both symbolic and functional – that a constitution can wield, or the immensely important role a constitution plays in maintaining stability, and assisting order and confidence in a nation's life, and as a consequence, in the life of individuals. They tend to think of the Australian constitution (in the rare moments they think about it at all) as something that can continue to function without change, or review, or even the occasional dusting and airing.

Paradoxically, of course, this complacency is a sign of the stability of the Australian Constitution, and of its relatively uncontroversial character. The Constitution can work away, virtually invisible to the majority of people, doing what constitutions do, governing the distribution and exercise of power in this country. George Elliot said that happy nations have no history. Perhaps happy nations also have no constitution, or at least appear to have none.

So, to ask “why do constitutions matter to women?” is difficult in Australia. But it is not an obscure, specialist or provocative question in many parts of the world. In places where the importance of

constitutions is already recognised, the importance of constitutions to women is increasingly under discussion. The question is treated seriously in much of the developed world where a constitution already operates, and is significantly on the agenda in countries where new constitutions are being framed.

Indeed, one of the primary reasons is the huge growth in new constitutions in recent years, as democratisation has been either embraced or imposed on former undemocratic regimes, and as other countries seek to modernise their laws. More than half of the existing 200 or so constitutions in the world have been written since 1980. This trend is continuing.

I put the final touches on the text for my book in September 2007. In less than nine months since then, several new constitutions have been adopted or are undergoing drafting (Nepal, Ecuador, and Burma, are examples). Others (the French, for example) have been amended, and in the United Kingdom, there is talk, once again, about a written constitution. So, real processes that require thinking about the fundamental principles to be included in a constitution are happening, right now. This, then, is not an abstract business.

I invite you to think about what happens when a new constitution is drafted. Imagine sitting down with a blank piece of paper and a new pen, poised above it. How would you start? What words would you first put on the page? How would the necessary choices be made?

But drafting is not the real start. Constitution-writing usually begins after a process of agreement on broad goals, often expressed in resolutions in which common values and commitments are captured. The actual drafting follows, putting these broad commitments and aspirations into provisions that will work legally. This was the case in America at the end of the eighteenth century; in the Australian colonies at the end of the nineteenth century and, in South Africa 100 years later, and it has probably kicked off constitution-making processes in most countries.

In Australia, for example, it was agreed that the constitution they were going to write would “enlarge the self-government of the colonies”; it would be a constitution under the Crown, it would be federal, it would follow the US federal model; it would be democratic. In South Africa the commitments were more detailed, and they included, among other things, the equality of men and women.

So, imagine we were writing a constitution in Australia today, in 2008. What fundamental principles or values might we commit ourselves to, in advance? Let’s say we agreed that our constitution was to be democratic – that one of our fundamental values was “democracy”. I think it’s a fair guess that we could get almost universal agreement on this. What, then, would follow? What, constitutionally, is required for a country to be democratic?

Here, then, is my argument, the point of departure for my book. If one is committed to a democratic constitution, and one asks the question “what does democracy require?” an inescapable conclusion is that it requires gender equality. It requires recognition of equality between women and men. Why is this? I hope the answer will be obvious to many of you – to all of you! But I know that it isn’t, to many people at least. I know this because of the response I’ve had when describing the subject of my book. People have said to me – either directly or effectively – that to call for gender equality to be a core principle in a democratic constitution is to engage in special pleading, or to promote identity politics, or to go down the path of a sort of a post-modernist approach to the law.

My simple response is this: the ordinary, unthreatening, uncomplicated principles of liberal democracy lead to the conclusion that gender equality is essential to democracy. Modern democracy rests upon the idea of equality, representative government, and majority decision-making (at least for most processes). A democratic constitution must require, sustain and enforce equality. This principle is no more complicated than the principle that, in the political sphere, democracy requires women to have the right to vote.

Women are not a minority. They are an “equal majority” in most parts of the world, and an absolute majority in some. Minorities, of course, need attention, and no democracy could claim the title and simply enforce majority views on minorities. But, as I write in my book, “[a]lthough women’s experience as historically subordinated human beings has much in common with the experience of minorities, it cannot be analogised with this experience, either jurisprudentially or practically, nor should women’s status be conceptualised as that of a minority. Women are half the world, half of each nation. This is not just a slogan or a naïve observation about statistics. It is a fundamental, indeed, ontological observation.” In a democracy, the claims for constitutional rights or recognition of minority groups need consideration in their own right and on their merits. In a democracy, the interests of an equal majority do not require concessions. My concern is with the majoritarian dimension of democracy and with the principle of equality.

Now, the recognition that women and men are equal majorities is a starting point. It is not all there is to democracy. It does not even exhaust the search for constitutional expression of the goal of gender equality. In my book, I adopt a liberal democratic framework, in which equality is itself a value, and in which individual freedoms and the opportunity to maximise individual potential are central. However, I also acknowledge that there are differences between women and men, and to think about these in constitutional terms is not merely a matter of writing in the preamble a commitment to equality, or including in

the constitutional text a provision prohibiting discrimination on the ground of sex and/or gender.

It is well known that simple, formal equality of this type, is not enough. Formal equality – that is, treating persons alike, without distinction (as we do, for example with the right to vote) – may also, in some cases produce or reinforce inequalities. That is, to treat all persons equally, regardless of gender, by offering them identical, “gender-neutral” treatment or subjecting them to identical laws, may work against the goal of equality. Formal equality will often work only where people are similarly situated. It may be counter-egalitarian where people are not. Substantive equality, or affirmative action (as has long been accepted) may be needed to redress this. Constitutional arrangements that do not take into account the difference between the parts of the majority will tend to assist inequality.

The Canadian Constitution – to give one example – includes a provision asserting equality and prohibiting discrimination on the grounds, among others, of sex. It also adds a qualification to this, stating that the provision “does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, including those that are disadvantaged because of ... sex”. This, then, allows for special measures that are designed to achieve equality but are not offered equally to all.

The ordinary principles of liberal democracy (which I support) – the John Stuart Mill type of principles – require gender equality, both formal and substantive. But women and men are nevertheless different, and some of the ways in which they are different require different treatment, and are relevant to constitutional design. Women are also different from each other, but they are relevantly similar, in ways that also make them different. One is mutable (we hope); the other permanent.

Women, unlike men, have in common the shared experience of historical oppression. Historically, women have been denied entitlements available to men; they have been placed in positions of subordination, and excluded from many spheres of life. Even today when, in the Western democratic world, the battle for legal and political equality has largely been won, they remain subject to indirect discrimination. They are under-represented in positions of power and influence, and are often under-valued. One doesn’t have to be particularly radical to know this. This type of difference, it is hoped, is mutable. It can change. Much progress has been made in reducing sex discrimination, at least in some parts of the world, and further progress can be urged, even expected. Constitutions, if designed with gender equality in mind, can contribute to this progress.

But even in an ideal future, where arbitrary discrimination and stereotyping have vanished, women will still be different from men. They will continue to have in common the fact of their reproductive capacity. Even the complete achievement of formal equality would leave them different in this respect. The development of medical knowledge and technologies will alter the actual experience of reproduction, but it will not alter this gender difference. It endures, independently of the many cultural practices and prejudices surrounding reproduction that might, one day, be eliminated. It endures despite progress in the degree to which women can control their fertility. This is not a matter of saying that biology is destiny. The fact that women bear children, and that men do not, is a critical, permanent difference. A constitution that seeks gender equality as one of its core goals will also need to take this into account.

So, what I set out to do – beginning with the assumption that gender equality is critical to democratic constitutionalism and, notwithstanding the differences of race, ethnicity, sexuality, etc *among* women, was to think about the ways in which constitutions either reinforce inequalities or can assist equality.

In fact I began to think about the different ways in which a country's constitution affects men and women some years ago, when working on the history of Australia's federation, and finding that women had views about the constitution while it was being framed, and that they made efforts to influence the drafting of the Constitution, some of which left a trace in its provisions. I also discovered that women in the colonies had organised themselves into lobby groups for and against federation, and had been active in public campaigns and debates, taking part in the referendum campaigns on the proposed Constitution. At a time when women had the right to vote almost nowhere in the world, women in two of the Australian colonies were among the voters in the referendums themselves. All these initiatives were taken at a time when, previously, it was assumed they played no role at all, indeed that they were silent, in the Constitution-making processes in Australia.

I discussed these historical findings in my first edited book *A Woman's Constitution?* (1996) and subsequently in a chapter in my book *To Constitute a Nation* (1997). The role of women became accepted as part of the federation story; indeed, it was included in most centenary of federation histories, and in much of the schools educational materials developed at the time. Australians were ready to acknowledge, then, what had previously been overlooked: that women were part of our own constitution-making story, and that women's perspective on the design of the then new Constitution was, at least in some respects, distinctive and different from men's.

Having had the satisfaction of seeing this research become accepted, then transformed into something routine, I began to ask the question: if the historical gendered analysis of a constitution could be accepted, why was the idea of a modern women's perspective on the Constitution thought odd? My next opportunity to think about such matters occurred in early 2005, when, along with a political scientist in the UK, Professor Vivien Hart, I was commissioned by the UNDP to write a paper on gender equity and constitution-making with respect specifically to Iraq. This paper, as with a number of others they commissioned, was prepared in the event that the Iraqis, then engaged in post Saddam constitution-making, sought advice or assistance on this aspect of constitutional design. The Americans and others were, after all, putting pressure on Iraq to write a constitution that was not inconsistent with gender equality.

I don't know whether our paper was read by the constitution's framers, but it certainly focused my thinking on the ways in which a constitution matters to women. In existing literature on democratic constitution-making, it was already well accepted that women needed to be involved in the processes of writing and adopting a constitution. The legitimacy of the finished constitution, the sense of "ownership" by the population, and the likelihood of a constitution's success, depend upon wide participation among all who are to be members of the new constitutional community. As women are an equal majority with men, any constitution – these days at least – that represented only the voices of men could not be regarded as legitimate. Further, it was recognised that special initiatives were needed to ensure women's participation in constitution-making, especially in less developed parts of the world where, for example, women's literacy levels are significantly lower than men's.

It was all very well, however, to emphasise the importance of encouraging women's involvement. But a constitution doesn't just emerge from a participatory process. It is a document, a legal instrument. It consists of *words*. It has to be written. Agreement may be reached about the values or commitments that are to be captured in a constitution. It may well be accepted that the widest participation possible is needed in the constitution-making processes for a constitution to be democratic, and legitimate. But a choice still has to be made about the words that go on the page.

If women got the opportunity to take part in the choice of words, what would they want? And how would we find out what they wanted? I looked at several sources. There were records of women's historical demands, going back at least to the mid-nineteenth century; and also some very recent world examples of women's organisation and their participation in other country's constitutional processes. Women had been involved in the processes surrounding the adoption of

Canada's new constitutional Charter of Rights and Freedoms in 1982; women had taken part in the South African process of post-apartheid constitution-making in the early 1990s; in Kenya in the early 2000s, in Nigeria, in Rwanda, and in other parts of the world. They had organised meetings and forums, and left a record of the things they wanted in their countries' constitutions. So, there was a small, but useful record of women's demands for a "gender friendly" constitution. There were, I found, surprising commonalities among these perspectives in different parts of the world.

A year after Vivien Hart and I wrote the Iraqi paper, I found myself still thinking about these matters, and I decided first to turn that thinking into a course that I would teach at Harvard Law School, and subsequently at Sydney Law School on Gender and Constitution-Making. In between the Harvard and the Sydney course, I decided to turn this thinking into a book: a full attempt at creating a framework for writing a new constitution with the goal of gender equality in mind. This framework would also serve for a "gender audit" of existing constitutions.

It might be assumed that a constitutional statement of gender equality rights, or a prohibition on gender discrimination would be all that was needed. But designing a constitution to include gender equality is not the equivalent of opening a gate and saying: all are welcome to come in, regardless of whether you are a woman or man. Constitutional rights, I argue, are only one consideration among many. Indeed, although gender rights are almost universally accepted as necessary in a modern constitution, there are good reasons to be a little wary about depending on rights, especially with respect to women. Still, I accepted that it would be quite unrealistic to recommend that equality rights should be left out of a new constitution, if gender equality was a goal. All the same, gender equality in a constitution is about much more than rights. Many other things must be taken into account. The enforcement of constitutional rights only arises after many other considerations have been taken into account.

Decisions have to be made about the constitutional design of the institutions in which the judges who interpret and enforce rights are appointed and work, through which the laws they review are framed, through which the laws that are framed are put into effect, and through which the lawmakers are chosen. In other words, a lot goes on before constitutional equality rights come into play, and many opportunities for women's equality have been presented before then. Borrowing and adapting from political science literature, I referred to what I was looking for as "constitutional opportunity structures": ways in which the institutions of government and law are shaped and

operate so as to facilitate opportunities to take part in decision-making and processes of change.

What, then, were the things one needed to think about in assessing whether a constitution facilitated or obstructed women's opportunities to participate in decision-making, and to be full members of the "constitutional community"? I began from the beginning, from the hypothetical moment of sitting down with blank paper and pen, to begin drafting a constitution (assuming that agreement had been reached beforehand about the broad principles and commitments to be followed).

In the beginning is, of course, the word. As I wrote in my second chapter, a constitution is made up of words, and the words have to be chosen with great care, particularly because constitutions are typically difficult to amend. They are intended to be more or less inflexible. Their words are intended to endure. These words will be interpreted by judges on constitutional courts now and in the future, and will come to have a life of their own.

So, what should one look for in the wording itself, from the perspective of gender equality? Not a great deal had already been written about this stage of constitution-framing, or about what is involved in the choice of words, and even less about what is involved when one is committed to gender equality. Fortunately, however, there were a couple of accounts, including a very valuable description by Christina Murray, a member of the South African Constitution drafting team for the post-Apartheid constitution that took effect in 1996. In her account, entitled "getting the wording right", she describes the efforts they made, among other things, to find words that reflected their commitment to gender equality. There was other literature, regarding the legal effect, for example, of gendered pronouns, and of rules of statutory interpretation governing these. There were also some wonderful historical examples that showed how interpretation of even apparently gender neutral words could have a discriminatory effect. My favourite is the Canadian "Persons Case."

The Canadian Constitution of 1867 included a provision for the appointment of Senators to the Senate. It used the expression "qualified persons". In 1927, Emily Murphy, who had been appointed in Alberta in 1916 as Canada's first woman magistrate, joined with four other women – making up the "famous five" – to petition for a Supreme Court interpretation of the constitution on women's eligibility to serve as Senators. Murphy (whose right, as a woman, to serve as a magistrate had already been unsuccessfully challenged in the Supreme Court of Alberta) had been proposed as a Senate appointee on more than one occasion, but it was assumed by the government that the constitution precluded a woman's appointment. Acting on the petition, the Minister of Justice asked the Supreme

Court to rule on the question: “Does the word ‘Person’ in section 24 of the [Canadian Constitution], 1867, include female persons?” The following year, the Supreme Court answered in the negative.

The Supreme Court of Canada interpreted this expression in light of its meaning at the time the Constitution was written. The case was appealed to the Privy Council in the UK. The Privy Council interpreted the word differently. Its meaning, the Judges said, did not lie in its history, but in the progressive meaning it had in the present: in the 1920s. The Constitution, they said, had “planted in Canada a living tree capable of growth and expansion within its natural limits” – To those who ask why the word ‘person’ should include females, the obvious answer is why should it not?”

I was also able to draw on the accounts left by various female judges in the US and Canada of what it was like to serve on their court (and while I was at Harvard, I also spoke with the Chief Justice of Massachusetts, Margaret Marshall). Some accounts were responses to the question: does it make a difference, if judges are men or women? The most common response was this: it makes a difference, not in all types of case, and not to outcome, or conclusion, but to the types of reasoning or thinking that informs the judgment. Chief Justice Marshall was absolutely blunt when I tentatively asked her that question. “Of course it makes a difference,” she said. “Our experience informs our thinking. The experience of being a woman is different from being a man.”

In my own formalist equality days, I used to think this was wrong – that different gender experience was itself just a product of cultural and social stereotyping. I no longer think that. And, in any case, who was I to disagree with the Chief Justice! But, I concluded anyway, that it didn’t really matter whether women brought a different perspective to the bench. What mattered was that, for gender equality to be achieved, women must be able to be appointed to the bench in the first place. As judges do the interpreting of a constitution’s words, the processes by which individuals are appointed to a country’s constitutional court are vital. I considered, therefore, whether the constitutional rules for appointment, facilitated or obstructed the appointment of women.

It was not just the rules of appointment that counted, but also rules governing retirement. Early retirement, for example, may create obstacles for women’s appointment, in societies (as is still the case in Australia) where women reach seniority in the legal profession later than men. On the other hand, very late retirement or life appointment (as in the US) means a lower rate of turnover in judicial appointments, and fewer opportunities for women. It also means that the views of the bench are like light from a distant star. It reflects the past by the time it reaches us, and progressive ideas about the value of having women

on the bench run ahead of it. The South African Constitution, having confronted this paradox, has a very effective solution. It includes a retirement age of 70, or the alternative of a maximum non-renewable 12 year term for Constitutional Court judges.

It is notable, however, that the South African Constitutional Court is not gender egalitarian. Only two women sit on an eleven judge Court. The Court's racial composition is much more egalitarian, but gender has not yet caught up. This illustrates what we cannot lose sight of: that constitutions do not work of their own accord, and that they cannot, by themselves, reverse social and cultural discrimination or disadvantage, no matter how well drafted they are and no matter how ingenious their provisions are.

I also needed to think about the other side of the bench. How does constitutional litigation proceed? What, in particular, are the rules that govern who is able to bring a case before the court – the rules of standing? Do these rules work equally for women and men? Is access to the constitutional court expensive, or is information about how to gain access difficult to find or read? Do tests for standing rest upon having personal economic interests in a matter? Is legal aid limited or restricted only to criminal cases (where men are disproportionately over-represented)? In thinking about these questions, we should remind ourselves that, in every country – but in developing and post-conflict countries in particular – women are disproportionately represented among the poorest sections of society; they constitute the overwhelming majority of supporting parents in single parent households; they are more likely to be property-less; and more likely to be illiterate and uneducated. Their enjoyment of justice is likely to be lower where the law is difficult to understand, expensive to access, or restricted to those with economic interests in a matter.

Of course, the laws that are reviewed in the light of a constitution's words, as interpreted by judges appointed to constitutional courts, must first be passed by the country's legislature. And so, I asked similar questions about the way a constitution might obstruct or facilitate women's participation in government. These include not only electoral laws, but also the sorts of indirect disincentives we still find in our otherwise formally egalitarian systems of election; for example, the rules, or standing orders, that govern sitting times, or parliamentary sessions, so that MPs often have to go for days on end without seeing their children, letting along putting them to bed. Such rules should act as a disincentive to all parents, but as things stand they may particularly serve as a disincentive for women even to consider standing for parliament.

Opportunities to take part in government and to be full members of the "constitutional community" are closely related to conditions surrounding the acquisition, retention, and transmission

of citizenship. Women have historically been especially vulnerable to loss of citizenship. And at the same time citizenship – as a legal status – is especially important for women. Despite lofty ideas we might have about what comes with being a citizen, and despite the confidence we might have intuitively about the security of holding citizenship, women have historically been denied the entitlements of citizens, and they have also been especially susceptible to loss of citizenship.

Everyone knows that, in the United States, citizenship is gained by simple fact of birth in United States territory, and many know that the US Constitution (the Fourteenth Amendment) sets this out. What many, including many Americans, do not know, is that, between 1907 and 1922 (or 1931 for women of Asian origin) American women lost what one might consider their birthright citizenship on marriage to an alien. In cases where such women could not acquire the citizenship of their husband, they were rendered stateless. Indeed, the majority of stateless persons in the United States in the twentieth century were American women, married to alien men. This “denaturalisation” upon alien marriage was also applied around the British Empire, and in many other parts of the world for decades.

A legal inability on the part of women to transmit citizenship to their children in their own right was also the case in similar countries. Until recently, British women whose children were born abroad could not automatically transmit their citizenship, where British men in a similar situation could. An unmarried British mother whose child was born abroad was unable to transmit her citizenship until even more recently. Similar laws could be found in Canada and the United States, for example. Interestingly, the situation is now reversed. Unmarried citizen fathers with children born overseas are now unable automatically to transmit their citizenship. This, too, is an example of gender discrimination needing attention.

In the book I have of course addressed equality rights in detail, and also, as a separate chapter, reproductive rights. I also discuss the role played by international law in a country’s constitution, and – one of the most challenging questions – the place of customary or religious law. In these chapters, I confront the fact that “rights collide”, that cultural rights and rights to religious freedom, among many others, will at times clash with principles of gender equality.

My analysis, as is evident, is based on principles of liberal democracy, and liberal equality. In the end, when a choice had to be made between constitutional provisions protecting cultural or religious rights, and gender equality provisions, my conclusion was that gender equality prevails. This, I was pleased to find, was the solution adopted by South Africa’s Constitution framers. They had a big battle between proponents – mostly male tribal leaders – of prioritising cultural rights, and proponents – mostly women, white

and black – of prioritising equality. They opted, finally, for the latter. The South African Constitution includes a section protecting freedom of cultural or religious choice and prohibiting cultural or religious discrimination. It also includes the statement that these rights “may not be exercised in a manner inconsistent with any provision of the Bill of Rights”. The Bill of Rights includes gender equality.

My book concludes with an exploration of processes of constitutional amendment, but I would like to conclude here with another observation: constitutions can be fine and beautiful things. They cannot be too aspirational or poetic, but they have a power that transcends the ordinariness of their words. But, for all this, they are not magical. They cannot work without a culture that supports their aspirations; they cannot work without cooperative institutions of government. They also cannot, and should not become sacred; their words should not be frozen. They should continue to be challenged, to be criticised, to be progressively developed. But a democratic, egalitarian constitution should also retain its core commitments. And among these must be the fundamental equality of women and men.

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Dr Ene Erma (Speaker, Estonian Parliament)

Estonia: from Soviet occupation to e-government in the European Union

Peter Cochrane (Author, *Colonial Ambitions: Foundations of Australian Democracy*)

Penelope Nelson (Author, *Bligh's Daughter*)

Early Colonial Society: Bligh and Wentworth

Frank Brennan SJ AO (Author & Professor of Law, Institute of Legal Studies, ACU)

Paul Cleary (Author, *Shakedown - Australia's Grab for Timor's Oil*)

East Timor: What's Wrong?

The Hon. Malcolm Turnbull MP (Shadow Treasurer)

Taxation and Climate Change

The Hon. Andrew Robb MP (Shadow Minister for Foreign Affairs)

Uranium Sales To India: A Strategic Imperative

Dr Tony Moore (Commissioning Editor, Pluto Press)

Pru Goward MP (Former ABC Presenter; Shadow Minister NSW Liberal Opposition);

Professor Doug Kirsner (Deakin University)

Reforming the ABC – It's not Just About Money

Professor Ross Fitzgerald (Columnist, *The Australian*; contributing ed – *Growing Old (Dis)Gracefully*)

Margaret Fink (Film Producer)

Gerry Connolly (Comedian & Actor)

Growing Old (Dis)Gracefully

The Hon John Hatzistergos MLC (NSW Attorney General and Minister for Justice)

A Charter of Rights or a Charter of Wrongs?

Shelley Gare (Editor, Writer and Columnist)

Chasing Ishmael – Truth, racism, blockbuster publishing and the US media

The Hon Kevin Rudd (Prime Minister of Australia)

Australia 2020 - Setting our Nation's Sights for the Future

Professor Peter Balakian (Author, *The Burning Tigris: The Armenian Genocide and America's Response* & *Black Dog of Fate: An American Son Uncovers His Armenian Past*)

The Armenian Genocide and The Modern Age

Senator The Hon. Stephen Conroy (Deputy Leader of the Government in the Senate; Minister for Broadband, Communications and the Digital Economy)

Broadband and the Digital Economy

Dr Helen Irving (Associate Professor, University of Sydney; Author, *Gender and the Constitution*)

Why Constitutions Matter to Women

