

EQUALITY AND AUSTRALIA'S FUTURE

Inaugural oration by

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Australians are often said to be anti-intellectual. Certainly, because of our small population, we have difficulty in sustaining what we might describe as "loyal oppositions" to currently vogue ideas. Ideas and attitudes fashionable among educated people, the young professionals and the carriers of ideas - those in the media, for example - do not have to mix it with the counter-ideas of a significant minority of articulate dissenters. This means many people are disappointed with a "battle of ideas" when such comes their way. Perhaps this is one reason why mass education has not resulted in a raising of the quality of public debate. Indeed, there has been a deterioration in the quality of debate within higher education, at any rate outside formal classroom and seminar discussions.

In hoping that increased participation in higher education would lift the standard of public debate, we were referring partly to the role of the new participants themselves. Somehow, we thought, more highly educated people participating in public debate would result in others lifting their game to comply with the higher standards that were being set. How wrong we were!

To illustrate my claim, let us reflect on the extent to which two of the most blatant fallacies operate unchecked and generally unremarked in Australian public life. The first of these is the genetic fallacy. This occurs when one replies to the content of a particular person's argument by addressing not the substance of the argument but the ancestry of the person who propounded it. By identifying the gender or ethnic origin of the person who put the argument particularly when the argument, if sound, supports those of that gender or ethnic origin, one scores a cheap but dishonest victory; cheap because it has all the advantages of theft over honest toil, dishonest because its validity is logically independent of the genetic history of the body from whose lips or pen it flowed. For instance, there has been much public condemnation of a recent High Court decision confirming the view that the child care expenses of working mothers are not tax deductible as expenses necessarily incurred in the production of income. Instead of reading the reasons given by the judges and evaluating the soundness or otherwise of the considerations, people, including some women law graduates, have been reported as expressing the view that this is a consequence of having an all-male High Court!

Then there is the statement by Dame Roma Mitchell, chairman of the Human Rights Commission, that those who opposed the Commission's recommendation to outlaw certain forms of racist speech will be people of Anglo-Saxon origin. Many people have expressed concern that the Commission's proposals to end the evil of inflammatory racist or, more strictly, racist propaganda are an example of ineffective over-kill. They will not be effective in stemming the lamentable tide of racist invective, but will assign it to anonymity. Moreover, they certainly will have the effect of limiting what Dame Roma Mitchell calls valid discussions of matters with racial import. It is proposed bona fide scientific reports and works of art be exempt from this new legislation. I can imagine nothing more ludicrous than the Human Rights Commission judging whether something is a bona fide scientific report or a work of art!

I do not believe Dame Roma Mitchell's comment that calls to oppose the recommendations of the Commission and "mount the battlements to defend the right to freedom of speech ... will be made by people of Anglo-Saxon origin" ("Need for a law against racism", Canberra Times, August 12, 1984, p.3) should go unremarked or, more precisely, uncondemned. Firstly, it is false, in that a number of people who have expressed concern about the proposed legislation are not of Anglo-Saxon origin but include people of Russian, Baltic, Indian and Jewish origin. Secondly, it is a paradigm example of the genetic fallacy - dismiss the argument on the basis of statements, albeit false statements - about the ethnic ancestry of its propounders. Thirdly, it should not be overlooked that, in current usage of the term, Dame Roma Mitchell's statement is a blatantly racist one. What an outcry there would be notably from entities such as the Human Rights Commission, if a leading figure were to dismiss certain arguments on the ground that the people putting them forward were of Aboriginal descent, or were Jewish, or had Chinese blood. But apparently it is legitimate to warn people away from considering certain arguments on the ground that the people putting them forward are Anglo Saxon!

I believe it is a matter for profound regret that Dame Roma Mitchell chose to couch her rejection of concerns about the Human Rights Commission's attitude to freedom of speech in a snide, calculated, and hypocritically racist form. Perhaps the Human Rights Commission, increasingly committed to hard affirmative action measures, thinks a little reverse racism might help things along. If that is the case, then I think we should remind Dame Roma and the Commission that two wrongs always did, and always will, add up to two wrongs.

The other vogue fallacy is condemning an argument by the company it keeps. How often do we see arguments ignored or ridiculed because the propounder happened to be on the same platform as a member of the League of Rights, for example? Thirty years ago, the condemnation would have been for sharing a platform with a member of the Communist Party! I know of good people who are terrified to take advantage of opportunities to present their views on certain matters because of others who might be present, sharing their views on this particular matter, but having an utterly alien or even abominable outlook on most other matters.

Today, the charge of guilt by association, the condemnation of certain people as tainted, derives from the new left. For example, a distinguished New York philosopher vehemently opposed, both intellectually and practically, to the feminist movement, has twice visited Australia. His reputation as an academic philosopher is impeccable, measured by scholarship, research publications and all of the usual criteria. Yet in many Australian universities Michael Levin's papers, not on feminism but on matters totally unrelated, were boycotted by new class academics because of his opposition to feminism.

Recently, John Stone's views on taxation were reportedly dismissed by a spokesman of the present government on the ground that Stone had become a spokesman for the new right, which "includes such people as Hugh Morgan and Geoffrey Blainey". It is a pity that a government, led by a Prime Minister who is fond of condemning critics for insulting the intelligence of the Australian people, includes many who repeatedly, as it is sometimes put, "play the man rather than the argument".

I do not think anybody can doubt the extent to which more and more facets of Australian life, both institutional and informal, have become politicised over the last two decades, a phenomenon which coincides with, although I will not say is necessarily caused by, the growth of higher educational institutions and the increasing penetration of teaching, the media, the public service, the political party machines, business, and even the churches and welfare organisations by graduates. These graduates predominantly came through our universities during the late sixties and the seventies - a period of fifteen years of unprecedented institutional turbulence. As well as the crisis of authority, both within and without the institutions themselves, there was widespread acceptance, particularly with the social sciences and humanities, of the nonsensical doctrine - a confession, indeed, of incompetence - that academic objectivity and detachment is impossible and, therefore, by a fallacy of mindnumbing grossness, it is not important to pursue it!

One of the dangers of the alleged anti-intellectualism of Australians is that it leads us to underestimate the power of ideas over people. There is no way of beginning to understand what is happening in Australian society today unless one looks to the animating ideas. I should like to single out one idea which I believe is the key animus among these ideas, and one which is having a most deplorable effect on Australian life. It is the idea of equality. At this point I will be condemned by some as an elitist, and by others, no doubt, as a racist or sexist. As I am slightly over fifty percent Anglo-Saxon, no doubt that is sufficient to dismiss at least fifty percent of what I am saying.

As a person who fought against the White Australia policy, who demonstrated against apartheid in South Africa and who was active in fund-raising for Aboriginal Scholarships to universities before they were allowed to be counted in the census, I believe my practical record in opposition to racism is at least comparable with that of many who today trumpet its evils.

Equality is an over-riding value in the value system of those who put it forward. Yet most people do not really believe in equality and there is no good reason why they should. I am not talking about moral equality, in which I certainly do believe. Moral equality is the doctrine that no human being is more worthy of respect than another solely on the grounds of differences in one or more of ethnic origin, nationality of birth, physical or mental endowments, or gender. The new concern with equality is not simply a drawing out of the practical implications of moral equality. For example, affirmative action plans, couched in the language of targets, are being sold quite deceitfully to the Australian people as implications of the acceptance of moral equality. In particular, we are repeatedly assured we are not getting a version of the American quota system, which we are told has failed. Rather our affirmative action plans are to be couched in the language of targets and timetables. So there is no need to fear reverse discrimination, against men or non-Aborigines, for example. I chose the word "deceit" advisedly. The fact is the shift from the language of quotas to the language of targets is not an improvement on, or modification of, American affirmative action strategies, but is precisely what has happened and is happening in America.

I find it somewhat depressing that so many in the equality industry believe they have a monopoly of knowledge of the literature and the arguments. There is something particularly abrasive about the patronising "put downs" with which opposition, or even questioning, are so often greeted.

The distinction between targets (which are supposedly good) and quotas (which are supposedly American and bad) is actually semantic and political. The only distinction that has ever been drawn between quotas and targets, and which is now drawn with hindsight, is that quotas meant filling positions with members of a particular target group even if it meant appointing incompetent people to get the numbers. Targets, on the other hand, are supposedly consistent with the merit principle because you appoint from the target group to the extent of the numerical target only if there are sufficient qualified people available to reach that number. In fact, virtually nobody has ever argued that incompetents should be appointed just to get numbers, so, by mis-representing the quota doctrine in this straw person way and then giving a specious reassurance that targets are consistent with the merit principle, busy managers and the many members of the community genuinely concerned about issues of equality are soothed into thinking that claims about reverse discrimination and violation of the merit principle are silly and uninformed.

To see the way present policies on affirmative action involve a repudiation of the merit principle and reverse discrimination - in this case favoring women over men - consider two cases. The South Australian College of Advanced Education, selected by the federal government as a pilot for its voluntary affirmative action schemes, states in its Affirmative Action Policy Explanatory Notes (October 14, 1982) p.1:

Staffing Committee (shall) be required to examine the percentage of male and female staff on contract, both academic and general, and take the relative percentages into account when considering tenure.
and that
(the) test of equal opportunity for women in the college lies in the representation of women throughout the institution in proportion to their availability in the college population.

The claim commonly made in affirmative action documents, that the test of equal opportunity is proportional representation in the domain in question, is a classic example of the fraudulent rewriting of language common in this area. It is demonstrably untrue that the test of equality of opportunity is equality of result. Plainly what is happening is that, through a chain of redefinitions so that perfectly good but vague ordinary words are shifted significantly in their connotation, it becomes a tautology, in affirmative action-driven employment systems, that the test of equality of

opportunity for particular groups is proportional representation of those groups.

Secondly, the SACAE case is a perfect example of what used to be called a quota hiring policy. It means that, whether or not a man will be given tenure, the major single step in the academic's pursuit of career security will no longer be determined by his merits and achievements, but by something over which he has no control and is totally unrelated to his merits and achievements, namely, the effect it will have on the male:female ratios in academic staff. And if a woman applies for tenure, as there are more men than women tenured and this ratio involves a greater disparity than the distribution of male and female academic employees, the result is that the standards applied to tenure women will be lower than those applied to tenure men. This is inconsistent with the merit principle.

The second example concerns a hypothetical university where the Professor of Geophysics has a vacancy for a lecturer. The entire staff is male and permission is sought to advertise for a lecturer with a Ph.D. in Geophysics. When the equal employment opportunity officer is told that there are significantly more men than women with a Ph.D. in Geophysics, the professor is told the Ph.D. requirement is indirectly discriminatory because it is a criterion that significantly more men than women satisfy. Asked whether it is absolutely necessary to have a Ph.D. to be capable of performing the duties, the professor answers that, strictly speaking, it is not. He is then told he cannot include a Ph.D. requirement in the advertisement but should specify a level of qualification representing both the minimum standard necessary to be capable of performing the job competently and is likely to be the least "indirectly discriminatory". The professor suggests "a good honors degree in geophysics" is the minimum, and remarks in passing that if the best applicant has a Ph.D., he would recommend that person's appointment. This drew the sharp reply that he certainly could not do that as this would involve discriminating on the basis of a qualification not specified in the advertisement.

I mention this example to illustrate affirmative action at work, because it is important people realise that the community is being taken for a complex semantic ride. Reverse discrimination is being introduced, but because of a series of special definitions, it is not described as such. The merit principle is being eroded, but because of different conceptions of merit it is possible to point to a sense of "merit" in which it is not. It is also important that the community realise that the main beneficiaries of affirmative action are not the most disadvantaged women. They are essentially middle class white women in an American-style culture.

Equality, understood in the current garbled fashion, is seen as such an over-riding value by those keen to manipulate public institutions to reflect their conceptions of "group justice", that many other important values are cast to one side. It is a pity the public debate about the Sex Discrimination Act (1984) (C' wltH) was conducted in terms of whether it would mean the end of the family, or the end of western civilisation as we know it.

The mistake in conducting the debate in such cosmic terms is not that there were no wide social implications of the legislation, but that they were not readily verifiable and lacked credibility. Tragically, it deflected attention from certain features of the legislation concerning justice and the rule of law.

People were not aware this legislation denies a person the unrestricted right to be legally represented in proceedings designed to determine whether or not he or she has acted unlawfully. People were not aware that, under this legislation (Section 77 (1)), in determining whether or not one has acted unlawfully, the body that makes this determination is not bound by the ordinary rules of evidence.

Were it not for the persistence of some members of the National Party, the legislation would have contained a requirement that in any subsequent court hearing, bound by the ordinary rules of evidence, the person who had been judged to have acted unlawfully (by a body which is not a court; namely the Human Rights Commission) would have had the onus of proving that the facts were not as that Commission held them to have been. I am still amazed civil liberties groups were deafeningly quiet about these provisions, and are still silent about the provisions which remain.

There is a particular irony in the fact that at present a secret Bill of Rights is in circulation which is based on, and purports to implement within Australia, the International Covenant on Civil and Political Rights. It is being championed by the federal Attorney General. Article 14 of the International Covenant on Civil and Political Rights provides that, in the determination of criminal matters, everyone shall be entitled to have adequate time and facilities for the preparation of a defence and to communicate with counsel of his own choosing. The implication of this provision has been avoided by the semantic gimmick of not treating breaches of the Sex Discrimination Act as criminal offences. Because the legislation is complaints-based and works on the administrative rather than the criminal model, the rights which are internationally guaranteed and which we are so keen to introduce through a Bill of Rights are deliberately set aside. Sexual equality is so important that these other rights may be casually traded away. And if in sex discrimination, why not in shoplifting or fraud? Why not redefine other matters so that they are not technically criminal and, therefore, the much trumpeted international covenant is an irrelevance?

Moreover, I believe most people assume that if they are suspected of being in breach of the Sex Discrimination Act, the determination of whether or not they have acted illegally will be made by a court, or a court-like body. It will not. It will be made by the Human Rights Commission - an organisation which is required to have only one legally qualified member. One of the traditions associated with what used to be called "British justice" is that a court, with the power to affect the rights and liberties of the subject, must be totally disinterested in the matter at hand. Yet, if we look at the Human Rights Commission, it combines three functions which would, if combined in a genuine court, constitute a parody of so-called British justice. The Human Rights Commission has a propaganda function in relation to sexual discrimination; an investigative function into alleged breaches of the law; and is charged with determining whether a particular person has broken the law. Whether or not justice is done will depend on the standards of integrity and fairness of those sitting on a particular matter. It will have to earn such a reputation.

Indeed, I must confess I would have a great moral difficulty in deciding what advice to give someone who was required to appear before the Commission. The last thing I would do is appear before the Commission, and I urge others similarly to consult their consciences.

This debate should have taken place around the Sex Discrimination legislation. It has nothing to do with one's views about the family or women in the workforce. It is not that these are unimportant, but because the debate concerned vague

general issues, other very real and important issues were lost.

But it is in the area of the proposed Bill of Rights that I am particularly concerned. Unlike state governments and "selected interest groups", I had to employ ulterior means to gain access to the now much-leaked secret Bill of Rights. Its introduction will involve increasing still further the strength and the powers of the Human Rights Commission, and that in itself should give us deep unease. Much has been made of the government's failure to spell out its tax proposals before the December 1984 election. More important, because it affects many more things than tax and may affect things more precious than money, was its failure to release the Bill of Rights or to confirm the leaked versions. In essence the government is saying, trust us in relation to tax but we do not trust you in relation to revealing what we think should be your fundamental rights, and we propose to legislate!

The existence of a Bill of Rights is neither sufficient nor necessary to ensure the existence of the rights guaranteed. It is not necessary as, for all their warts, England and Australia, which do not have a Bill of Rights in the relevant sense, have been among the better protectors of fundamental human rights. The best way to handle questions relating to fundamental rights is with specific legislation in relation to specific rights, where judged necessary by parliament. A general Bill of Rights, because of its very generality, grants tremendous power as well as responsibility to those charged with interpreting it, and this means a shift of important powers away from elected representatives to appointed officials, something that pleases the government in power that has the power to make the appointments. I do not believe Australians really want a third legislative chamber, whether that chamber be the Human Rights Commission, a new federal court, or the High Court. Not only does the draft Bill make the Human Rights Commission a third legislative chamber, it sets a penalty of up to three months' gaol for individuals who do not co-operate with the Commission.

There is something particularly undemocratic about a Bill of Rights which is not the expression of an historic compromise, a constitutional transformation, or a post-revolutionary settlement. It is an attempt by one generation to legislate, not just for itself, but in a way which constrains the legislative discretion of the next generation. I realise that Australia's proposed Bill of Rights will be ordinary federal legislation and not entrenched in the Constitution, so it will be amendable by the ordinary processes. Nonetheless, the political costs associated with securing such amendments would be considerable.

Whatever else it is, a Bill of Rights should be an expression of considered public opinion. The Opposition should make it perfectly clear it will not have any enlargement of the Human Rights Commission; instead, it should make the quality of its work an issue on which to challenge the government.

Australians do not want equality as group proportional representation. They want more opportunities to advance, whoever they are. Australians do not want to be understood as a set of groups defined in terms of genetic or other characteristics, and certainly do not want a package of rights handed down by a government which does not trust the people and the free institutions to debate them in advance. The Sex Discrimination Act stands as a warning as to what this government is prepared to do to implement its preferred values. If this is the price Australians must pay for what the government understands as equality, we do not want equality so understood. Australia's future must not be left to a new breed of zealous Platonic guardians (though made of silver rather than gold) and their attempts to replicate the Form of Equality.