



A WEEKLY COMMENTARY

ON TARGET

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The price of Freedom is eternal vigilance –

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THOUGHT FOR THE WEEK: *“Right through the ages we find this universal sense of Divine inspiration – this feeling that a wisdom beyond that of man shapes the destiny of States; that the institutions of men are but the imperfect instruments of a Divine and beneficent energy; helping their higher aims. Should not we, sir, grant the prayer of the many petitions that have been presented to us, by recognising at the opening of our great future our dependence upon God?”*

- Delegate John Glynn, South Australia, Constitutional Convention, 1897.

A CASE OF SELECTIVE INDIGNATION by David Thompson:

To the horror of an indignant Labor Party, the Government last week used its numbers to clear Mr. Warren Entsch, Parliamentary Secretary to the Industry Minister, of any wrong-doing in the question of not having fully declared his interest in a concreting business in north Queensland. Mr. Entsch, as a Director in a company that was awarded a contract by the Defence Department, would appear to be in breach of Section 44 of the Constitution. In defence of his position, Mr. Entsch has declared that he knew nothing about the contract, and was only a Director of the company by virtue of having loaned the principals a sum of money.

However, a number of vital principles are involved in the issue. The first is that of an independent judiciary. The reason that the judiciary is an organ of the Crown is that impartial decisions can be seen to be free of political influence. The usual concern is that the judiciary might be used to pursue political opponents. However, the protection of political cronies is potentially just as serious, and it is this that applies in the Entsch case.

Mr. Entsch may well have been entirely innocent of having concealed any personal advantage through the awarding of Defence contracts. But should his mates use their numbers in the Parliament to declare his innocence (or guilt)? Or should such matters be decided in the courts? The issue merely underlines the importance of the Crown being seen to be an impartial force – a force above power politics. It is certain that the removal of the Crown from the Constitution would render the question of court impartiality even more unlikely.

The second question at stake in this issue is that of double standards. Mr. Entsch is alleged to have transgressed Section 44 (v) of the Constitution, which states that anyone who has a “direct or indirect” financial interest in agreements with the public service is disqualified from sitting in the Senate or House of Representatives.

Although the Labor Party is keen to test Mr. Entsch's position in the High Court, it is interesting that Mr. Beazley and the ALP studiously ignore other provisions of the Constitution which might disqualify Members from sitting in the House. In fact, it is another part of Section 44, which states that anyone "under any acknowledgement of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights and privileges of a subject of a foreign power" is also disqualified from sitting in Parliament (Section 44 (i)).

Many readers will recall that when the late George Turner sought to challenge a number of MPs about their right to sit in the House (and the Senate) he found it impossible to have the issue treated seriously. There was certainly no support for the suggestion that such questions should be settled by the High Court. The matter was settled by the Parliament closing ranks, and refusing to address the issue. Some of those alleged by George Turner to have been in breach of Section 44 (i) are still in the Parliament.

However, when One Nation, the political and social pariah, had a Senator elected from Queensland, an Asian businessman successfully forced a High Court challenge to Heather Hill. As a British citizen, Hill is alleged to be a "foreigner", and therefore disqualified from sitting in the Senate! The ALP has provided strong (if muted) moral support for this challenge to Senator-elect Hill's right to occupy the Senate.

Will Mr. Beazley apply the same standards to his own MHRs and Senators? Or is his righteous indignation about Mr. Entsch and Mrs. Hill a case of indignation of the most selective kind?

HAS THE BALKANS WAR REALLY ENDED? by Jeremy Lee:

Latest news claims an uneasy truce in the Balkans. Serb forces are withdrawing from Kosovo, the Kosovar Liberation Army has pledged not to fight against departing Serbs, 850,000 refugees will return from Serbia, Montenegro, Albania and Macedonia to a province whose infrastructure has been devastated, and 50,000 NATO troops are already stationed in Macedonia ready for peace-keeping operations immediately after the Serb withdrawal.

All sane people round the world will fervently hope that the war and attrition is over; but the signs are not promising.

By far the longest of Kosovo's borders is that with Serbia, into which Slobodan Milosevic's troops – with their weapons intact – are withdrawing. As savage and seasoned fighters with, rightly or wrongly, a cause to die for, the chance of coming to grips with ground forces rather than the technically-immune air bombardment they have faced so far, jeopardises the vain hope that they will settle peacefully into neutrality.

With old scores to settle on both sides, let alone the atrocities that have occurred since the recent conflict commenced, coupled with the return of not far short of a million refugees to a country where their homes, jobs and in many cases relatives have disappeared, an explosive situation will exist. The first example of retaliation will spark a resurgence of the guerilla warfare at which the Serbs are so skilled – this time directed against NATO forces, administrators and welfare workers. Such a war, if it occurs, will not be remedied by air-strikes. The targets will be increasingly elusive.

In the midst of this potential powder-keg, NATO will be trying to administer the biggest reconstruction programme in world history. *The Australian Financial Review* (11/9/99) gave some idea of the directions:

"The US special envoy for the Balkans Carl Bildt told the UN Security Council yesterday that the task of rebuilding the region following the Kosovo conflict will be the most 'complex peace implementation in modern times'. Kosovo will have to be taken 'from virtually nothing to practically everything in the next few years' Mr. Bildt said . . . Sums of money to be invested were yet to be decided by the G8 yesterday, but the total aid is expected to be enormous: European Commission estimates suggest at least \$US 20 billion (\$30,777 billion) will be needed just to launch the initiative, not including the cost of rebuilding Kosovo . . ."

Already arguments have broken out within NATO as to who will have overall command of the peace-keeping forces. Once this has been resolved – if it is – there will be the additional task of keeping harmony between the diverse array of troops who make up the force, as well as the differing political views of the governments in the countries from whence they come.

If the disaffection of military commanders in previous "peace-keeping" exercises is anything to go by, NATO's problems are only just beginning.

IS THE GST CONSTITUTIONAL? Apart from the fact that opinion polls show an increasing opposition to the GST, and the obvious divisions among the Democrats on the issue, a constitutional time-bomb hangs over the legislation.

Section 55 of the Constitution reads:

"Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

"Laws imposing taxation, except laws imposing duties of customs, or of excise, shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only."

The Australian Financial Review (11/6/99):

"When the Federal Government was first asked about the constitutional validity of the GST bills in April this year, it refused to table its advice in the Senate and has since maintained a stonewall response.

"The truth is more likely to be that the Government did not have any legal advice at the time on the key section in the Constitution relating to indirect tax, s.55. The Government did not seek advice from the Australian Solicitor-General until after those questions were raised . . ."

An accompanying article in the same edition reported that Professor Geoff Lindell, a constitutional expert at Melbourne University, believed there was a major constitutional problem with the GST Bill.

"... The imposition in the same act of a tax on goods and services raises a serious question under Section 55 which could lead to a High Court challenge . . ."

Additional weight is lent to Professor Lindell's position by the fact that the High Court has already created a precedent in a similar case in 1992, when a swimming pool manufacturer, Mutual Pools, contested the application of Sales Tax. The High Court found in Mutual Pool's favour, ruling that Sales Tax was invalid because it was a tax on land and goods.

Such a ruling on the GST would not eliminate the tax, but it would require the Howard Government to redraft the legislation – currently in 27 bills – to comply with the ruling. This could not be done before the Senate elected at the recent Federal election takes its place, with a stronger opposition to the GST than at present.

THE SHADOW OF FINANCIAL CRISIS: *The Bulletin* (15/6/99) has again reiterated a sober warning about approaching financial convulsions. Editor Max Walsh believes it now certain that the Federal Reserve in the US will be forced to raise interest rates at the end of June. Included in his remarks were:

"... the first storm of the season will have as its trigger point the decision of the US Federal Open Market Committee (FOMC) to increase interest rates. That is now a near certainty to occur at its next meeting, on June 29-30) ... My view is that an interest rate move is baked in ... US Federal Reserve Chairman Alan Greenspan knows the US equity bubble, which has now become a global equity bubble, has to be pricked ... The expectation of a constant flow of capital gains from the stock market has seen household saving in the US (and in Australia) collapse to near zero. Rocketing consumption has led to a blow-out in the current account deficit with the continued health of the US economy (and Australia's) dependent on large capital flows ... Greenspan and Co. face the uncomfortable reality that the bigger the US equity bubble grows, then the more collateral damage will be experienced when it bursts ... Should ... his watch be seen as responsible for setting up the global economy for a train smash caused by the collapse of the Wall Street bubble, then a lustrous career will end in ashes ... The trouble with serious weather is that hurricanes tend to hit in a random way without warning."

Max Walsh is not the only one with such fears. Peter Switzer, in *The Australian* (11/6/99) started his column:

"No, don't say it. Don't even think it. BIS Shrapnel's interest rate forecast of 9 percent home loan interest rates in 2000-2001 couldn't come true. Could it?"

"What worries me most about this once unthinkable economic outcome is that the forecaster's forecaster, Frank Gelber, has been getting it right lately. . ."

Another column in the same issue said: *"... Rising anxiety in the United States over inflationary growth has fuelled an increase in 'unofficial' cash rates domestically ..."*

An accompanying table showed the 'creep' in 90-day and longer interest rates, despite the official line of Reserve Bank chief Ian MacFarlane that there is no contemplation of interest rate increases at this stage.