



A WEEKLY COMMENTARY

ON TARGET

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The price of Freedom is eternal vigilance –

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THOUGHT FOR THE WEEK: "The practical difference between the theory of rewards and punishments, and the modern scientific conception of cause and effect, can be simply stated. The latter works automatically, and the former does not. If I place my bare finger upon a red-hot bar, so far as science is aware, I shall be burnt, whether I am a saint or a pickpocket. That is a Modernist view. It is not so many hundreds of years ago since the Classical view held that I should only be burnt if I were a pickpocket or similar malefactor; an ordeal by fire was a ceremony conducted on this theory. It is alleged in select circles even yet, that it is possible to be so saintly, that fire loses its power over human flesh.

But a manufacturer of rolled steel rails, who laid out his factory on the assumption that it would be possible to hire enough saints to handle his white-hot product without apparatus other than saintliness, would undoubtedly experience labour troubles.

That is the point. It is not necessary to have a contempt, or to be lacking in a proper respect, for qualities in human beings which add to the grace, dignity and meaning of human existence, to be quite clear that those qualities are not in themselves at issue in regard to many of the economic and industrial problems which confront the world at this time." – Clifford Hugh Douglas in *"Social Credit"*, 1924

RACE HATE LAWS AND ABORIGINAL VIOLENCE by Ian Wilson LL.B.: I need not add to the debate on Aboriginal violence, in Alice Springs and elsewhere, any remarks about its horror and misery. Nor am I a social scientist ready to wade into this debate with a tool kit of repairs for a bleeding community. However, I do know as a civil libertarian that no solution will be possible unless there can be free discussion of cultural, ethnic and racial issues without fear of prosecution under the Racial Discrimination Act. However, in the light of the recent finding by the Human Rights and Equal Opportunities Commission finding that Professor Andrew Fraser was in contravention of the Act for his remarks about Black African migration to Australia (and the rejection of a section 18D defence) it looks like politically correct law could be used by the new class elites to stifle debate and inquiry.

Neill and Reed: Let us consider a compassionate, insightful and brave article by feminist journalist Rosemary Neill, "Aboriginal Violence has a Lengthy History", *The Australian*, 19/5/06, p.14. James Reed has written an interesting commentary on this article. Sexual abuse is rife in Aboriginal communities, in part, because Aboriginal culture has traditions of misogyny "deeply inimical to women". Reed goes on, after agreeing with Neill, to blame pornography, "porno culture" as well and without sustained

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argument supports the ban of both alcohol and pornography. All this is not new. Sexual violence in New Guinea by 'rascals' led community elders to all call for a ban on alcohol and pornography. I do not agree with Reed on philosophical grounds. Philosophically he is accepting the same principle as his new class opponents, against whom he rages each week. As a matter of practice, prohibition doesn't work, as the American experiment shows. All it does is create a black market. Greedy and evil White men will only be too eager to get in their utes, filled with grog and girlie books and DVDs to sell to Aboriginal men.

It is bad enough that Aboriginal women and children are suffering; let us not make the unscrupulous Whites richer in the process! Reed says that "the road to hell is paved with political correctness," but the original proverb is wiser. Mere "good intentions" will not solve this problem.

Saying Hard Things: Let us now turn to Rosemary Neill's central thesis. Neill said: "It's still unacceptable to say so, but it's clear that some aspects of traditional Aboriginal culture are deeply inimical to women. French and British colonists and explorers recorded how Aboriginal men inflicted serious injuries on their women with seeming impunity."

Neill then quotes from Joan Kimm's book *"A Fatal Conjunction"*: "The sexual use of young girls by older men, indeed often much older men, was an intricate part of Aboriginal culture, a heritage that cannot be easily denied." Such customary marriages still occur. Neill cites the case of a Northern Territory Aboriginal man of 55 years, who abducted, anally raped and bashed his 14-year-old promised bride. His one month in goal was increased after a public outcry.

Neill concludes: "If the indigenous children and women are to enjoy the same protections the rest of us take for granted, forced marriages and sex with underage girls must be condemned and challenged, not just under Whitefella law but also within those indigenous communities where these misogynous customs persist."

Race Hate to the Rescue: In my opinion Neill has made a fair comment on an important public issue even though what she said, is, in her words, "still unacceptable to say". But let us look at the case of *McGlade v Lightfoot* ([2002] FCA752 (13/6/02); [2002] FCA 1457 (26/11/02) heard before the Federal Court of Australia. Senator Ross Lightfoot had said to a journalist with the *Australian Financial Review* that "Aboriginal people in their native state were the most primitive on earth" and "If you want to pick up some aspects of Aboriginal culture which are valid in the 21st century, that aren't abhorrent, that don't have some of these terrible sexual and killing practices in them, I'd be happy to listen to those." (quoted from [2002] FCA 752 at [4]) The remarks were published in the context of the senator's opposition to the teaching of Aboriginal culture in schools.

The Aboriginal applicant sought relief - an apology and compensation under Section 18C of the Racial Discrimination Act 1975 (Cth) which makes it unlawful for a person to do an act, other than in private where "the act is reasonably likely, in all circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and "the act was done "because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group."

Section 18D gives exemptions, for acts "done reasonably and in good faith" in the performance, exhibition or distribution of an artistic work, for scientific, academic purposes, or in the public interest or in reporting events, and finally if the comment is a "fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment."

Lightfoot first defended himself by arguing that the comments were made in private: it was the act of the newspaper which made the statements public. The Court rejected this argument and held that Lightfoot's giving of the interview caused the words to be communicated to the public. (at [19]) Even so, that is still consistent with Lightfoot's act of vilification i.e., the speaking of the words being done in private. The act itself did not cause the words to be communicated to the public for the

words spoken disappeared at the time. The cause was the journalist recording an act, done in private.

In *McGlade v Lightfoot* [227] FCA 1457 the court found that Lightfoot's act was reasonably likely, in all the circumstances to offend, insult, humiliate or intimidate Aboriginal people, based upon witness statements which said just that. The Court consulted the Explanatory Memorandum to the Racial Hatred Bill which stated that the bill "is not intended to prohibit people from having or expressing ideas." Rather the bill was directed at acts "calculated to wound the feelings, arouse anger or resentment or disgust or outrage in the mind of a reasonable person". Lightfoot's remarks were found to be reasonably likely to offend, insult, humiliate or intimidate Aboriginal persons. This was the true for both the Statement about primitiveness and also the one about Aboriginal culture.

In other words the Federal Court found that it was in contravention of the Act to say that "there were some aspects of Aboriginal culture which were abhorrent" including sexual and killing practices. [63-64] In this case Lightfoot did not argue for a section 18D exemption so the Court assuming that the onus of proof was on him, he lost.

Lightfoot's remarks seem somewhat mild compared to what "shock jocks" have been saying on radio, often cold heartedly, about the Aboriginal violence situation. Further, numerous politically incorrect things have been said by journalists (in opinion and not in reporting events). In the light of the virtual non-existence of a section 18D defence, I wonder if the thought police will be doing the next round of prosecutions?

A GOOD LAW FOR RAPISTS by Ian Wilson LL.B: In August 2005 a 55 year-old Aboriginal Elder was given one month's gaol by the Northern Territory Chief Justice Brian Martin for the bashing and anal rape of a 14-year-old Aboriginal schoolgirl promised to him as a wife. The attack is described in *The Weekend Australian* (20-21/5/06, p.4) thus: "While holding a boomerang, with which he threatened the child, the man dragged her by the leg, screaming, into a bedroom as his wife and children went into another room. He subjected her to a terrifying two-day ordeal in which the child tried to resist his advances, kicking him in the groin and telling him: 'I'm too young for sex.' This is truly a horrific crime.

The Chief Justice accepted that the man's customary law beliefs had lowered his moral culpability. The Northern Territory Court of Criminal Appeal found the one month sentence manifestly inadequate and gave the man a three year term of which only 18 months of the sentence had to be served because a suspended sentence was given. The maximum penalty of 16 years sits on the books, but of course that is usually only given to Whites who have no such "customary" beliefs to use as a "shield".

The Aboriginal Elder took his case all the way to the High Court. The Full Bench of the High Court refused to grant the man special leave to appeal against the sentence. High Court judge Michael Kirby said that this was not a case in which Aboriginal customary law should be explored.

Why not? If ever there was a case where it should be explored, this is it.

On the 24 May 2006 *The Australian* on page one carried the headline: "I got it wrong on tribal rape: Chief Justice." The Northern Territory Chief Justice Brian Martin admitted that he had made a mistake in sentencing the Aboriginal Elder to only one month's gaol for the rape of the 14-year-old girl and the assault with the boomerang, as he placed too much emphasis on Aboriginal customary law. However, the learned Chief Justice still maintained that an Aboriginal belief in customary law reflects their moral culpability in an offence.

Whether Aboriginals "hide" behind customary laws is an interesting mooted question. Our concern though should be with a judiciary who allow multiculturalism and political correctness to dilute punishments.

As the Indigenous Affairs Minister Mal Brough said, even an 18 month sentence for a two day abuse of a minor showed that there are "some very serious questions to answer".

The Northern Territory Opposition Leader Jodeen Carney has said that customary law was a shield to protect violent Aboriginal men. She hopes that the Federal Racial Discrimination Act should be changed to stop customary law being used to reduce sentences for convicted criminals.

Let's go one more step: Let us repeal the U.N. inspired Act completely. One Law for all people.

THE GOVERNOR-GENERAL AND CONSTITUTIONAL POWER: Readers are enquiring: Under what powers did the Governor General disallow the A.C.T. legislation which sought to recognise gay and lesbian relationships?

ABC online, 13/6/06, reported: "The Federal Government objected to the law, which recognises gay and lesbian relationships, saying it was at odds with the Marriage Act. Attorney-General Philip Ruddock says in a meeting of the executive council this morning, the Governor-General agreed to overturn the law. The move is effective from today, and Mr. Ruddock says it will prevent the ACT Government's attempt to speed up the approval of civil unions.

"In effect the ploy of bringing forward the date of operation and endeavouring to provide for registration of civil celebrants has failed," he said.

The Governor-General had heard a request from the A.C.T. Legislative Assembly Speaker, Wayne Berry, that the laws be upheld. In an address at Government House, Mr. Berry told General Jeffery that the Civil Unions Act was within the A.C.T. Government's law-making powers. "The Federal Government has decided for partisan political reasons to intervene on a law which removes discrimination," he said.

But Mr. Ruddock says the Federal Government respects the rights of the A.C.T. to make laws, as long as they do not exceed the Territory's powers. "We have no quarrel with the Territory's legislating in those areas in which it has responsibility, and we accept the decisions that they make supported by their electorate," he said.

"Except when they provocatively and deliberately seek to intrude into areas in which they have no responsibility.""

Constitutional authority Dr. David Mitchell has kindly explained for our readers: "A.C.T. and Northern Territories are "colonies" of the Commonwealth. The "colonial power" (Commonwealth Government) has ultimate authority over the laws of the "colonies" and can disallow any legislation passed by the Territory (colonial) legislatures.

"In order to be valid, every decision of the Commonwealth government has to be "allowed" (or, to put it another way, the executive minute has to be signed) by the Governor-General. The A.C.T. civil union issue went before the Commonwealth Parliament and the Governor General signed the executive minute of disallowance.

"The disallowance of the A.C.T. legislation on this occasion is neither ground breaking nor unique. Another recent instance was the disallowance of the Northern Territory legislation relating to euthanasia."