



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 danger of royal absolutism is past; but the danger of Cabinet absolutism, even of Prime Ministerial (or Premier) absolutism, is present and growing. Against that danger the reserve power of the Crown, and especially the power to force or refuse dissolution, is in some instances the only constitutional safeguard. The Crown is more than a quaint survival, a social ornament, a symbol, an automaton, with no public will of its own. It is an absolutely essential part of the parliamentary system. In certain circumstances, the Crown alone can preserve the Constitution, or ensure that if it is to be changed it shall be only by the deliberate will of the people." – E.A. Forsey, *"The Royal Power of Dissolution of Parliament in the British Commonwealth"* (revised reprint), Oxford University Press, Toronto, 1968.

## **WHAT'S LOVE GOT TO DO WITH IT?... PLENTY! by Ian Wilson LL.B: Against the Lawyers**

**Series:** A friend recently e-mailed me a copy of Professor (Emeritus) Michael Detmold's manuscript, "Four Lectures on the Law of Love", delivered at the University of Adelaide. Detmold taught law at the University of Adelaide Law School and gave these lectures to mark his retirement. In this series I have been criticising "The Law" and lawyers primarily for their reductionism and lack of substance, but Detmold's book shows that legal writing can transcend the present bog that it is in. Indeed, Detmold begins his lectures by saying that lawyers "have a somewhat spotty reputation at this time" and that there is a need to "do better" and "understand better".

Based on the idea of the foundation of law being the "law of love", the Christian principle of loving one's neighbour by treating them as you would have them treat you, Detmold attempts to construct a metaphysics of law, something which hasn't been tried in this detail for fifty years or so. Only in the dusty books on jurisprudence do we find such ambitious tasks.

**Morality reduces to law:** For example, Detmold argues that law does not need a moral foundation for, on the contrary, law does not reduce to morality but rather, morality reduces to law. Law historically came before morality and even today has a more basic nature than morality.

From there Detmold goes on to argue that freedom is the binding power of the laws of physics and the common law and he looks at the relationship between love, personhood and freedom. With my limited philosophical understanding, that is about all that I could make out of the text. However, although he doesn't discuss it, this sort of metaphysical framework would seem to allow a role for God to once

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again enter the scene both of law, physics and metaphysics, for God can be viewed as the source of the origin of the law of love, both in human society and the world. Interesting speculative stuff indeed!

**RUDD'S HEALTH CARE 'REFORMS':** A devastating assessment of Kevin Rudd's health care reforms from Tony Morris QC, who led the first royal commission investigating Bundaberg Hospital and Dr. Jayant Patel:

According to Kevin Rudd, the... real problem with our healthcare system is a chronic shortage of bureaucrats.... Take Queensland Health, the state's biggest employer, with more than 65,000 people on the payroll, as many as 30 per cent of them doctors or nurses. How could anyone expect an efficient and effective hospital system, when up to three out of every 10 staff members are preoccupied with caring for patients?

Rudd's proposal will, he promises, "put an end to the tiresome cycle of the blame game between the Australian government and the states"... Hence, patients and taxpayers will have the comfort of knowing that state responsibility for inadequate services has reduced from two-thirds to two-fifths, while federal responsibility has risen from one-third to three-fifths.

Obviously, though, the problems go much deeper than not knowing the precise proportions in which the blame should be attributed; at present, there are simply not enough bodies to shoulder the blame. As Rudd points out, "There is too much blame and fragmentation, making it hard for patients to work out which level of government is responsible for the care they need."

**Introduce a third tier of bureaucrats:** The Rudd solution is so self-evident that it is astonishing nobody thought of it sooner... Introducing a third tier of hospital administration will certainly ensure that the blame is distributed more equably...

Now ... there will be three tiers of administration, each with its bureaucratic mechanisms to deal with the projected increase in complaints. A federal directorate will divvy up the funds that have been "clawed back" from the states. There will also be a federal "umpire", who will ensure that funds are distributed fairly...

In addition, though, there will be new "regional networks" to run hospitals at the local level. Rudd's announcement was a bit light on the details of who is to constitute these networks. But some lack of detail is only to be expected, when the Prime Minister is proposing (in his own words), "one of the most significant reforms to the federation"...

(I)f one did not laugh at the absurdity of Rudd's "fix", the only alternative would be to cry at the shamefully cynical political opportunism with which this retrograde package of non-solutions is presented as the universal panacea for a healthcare system already in extremis.

**A REFERENDUM WITH THE NEXT ELECTION? ASKS DAVID FLINT:** The latest possible date for a general election is Saturday, 16 April 2011, although almost everybody thinks it will be this year. But a double dissolution election cannot be granted after 11 August; the actual election would be later.

I think it unlikely that the Prime Minister will go to an early election. He will hope as, Crikey's Bernard Keane does, that Tony Abbott has peaked. That is unlikely, but advisors will warn the government that the public prefers a government to serve close to its full term, something the Prime Minister has repeatedly affirmed.

The particular interest for constitutionalists is not so much the timing of the election. It is that the path to the election is governed by a number of constitutional provisions, and that there will no doubt be calls for a simultaneous vote on a politicians' republic.

The Prime Minister has said that if the states refuse to sign up to his health plan, "we will take this reform to the people at the next election - along with a referendum by or at the same election to give the Australian government all the power it needs to reform the health system". (Paul Kelly, *The Weekend Australian*, 6-7 March 2010. At the time of writing this was not on the web)

If a referendum to increase the Commonwealth's power with respect to hospitals is held by or with the election, there will be demands addressed to Mr. Rudd from republicans to hold a referendum or plebiscite on Australia becoming a politicians' republic. Seasoned political advisors will tell Mr. Rudd not to touch this.

**The Senate and the referendum....** First, polling trends indicate a republic referendum or plebiscite will be lost. More importantly for the government, it would soak up too much media time which will be diverted from other issues. If the Senate rejects the referendum, or fails to pass it or passes it with an amendment unacceptable to the House, and three months passes, the government may try again. If the Senate rejects it or fails to pass it or passes it with an unacceptable amendment, the Governor-General may submit the referendum to the people (Constitution, section 128).

An undecided question is whether this is part of the reserve powers, i.e., does the Governor-General make this decision in her discretion? There is good reason to suggest that the Governor-General should consider the government's advice, but come to a decision which she considers correct. The analogy, I would suggest, is in the deadlock provisions concerning a double dissolution where the Governor-General comes to an independent decision as the Australian constitutional head of state.

**A double dissolution?....** Second the prime Minister may advise a double dissolution. In exercising the power to dissolve both Houses, the Australian Electoral Commission (AEC) says the Governor-General acts on government advice. True, but the Governor-General is not bound to accept the advice. That was the view of the Labor Party in 1914 when Sir Ronald Munro-Ferguson granted Joseph Cook a double dissolution, to which they strongly objected. A double dissolution cannot take place if the term of the House of Representatives will expire within 6 months. This means a double dissolution can only be granted on or before 11 August 2010. (section 57) The writs must be issued within 10 days of dissolution (section 32), and polling day follows between 33 and 58 days after that. The AEC advises that while a double dissolution must be proclaimed by the Governor-General by 11 August, the actual election could occur as late as 16 October 2010 (based on maximum timetables), but with the usual minimum timetables, the latest date would be 18 September 2010.

The question is how likely is the Prime Minister to want to close down the Parliament on or by 11 August and have up to two months of campaigning and perhaps losing the chance of having a referendum. On the other hand he may prefer that, particularly if he thinks he would lose the referendum. More than one Bill may provide the basis for a double dissolution. It is possible for a government to save up (or "stockpile") double dissolution bills as 'triggers' during a term of Parliament, in order to get them all passed at the same time.

Just because an election is called on the basis of a rejected bill or bills does not of course mean that will dominate the electoral campaign. If the trigger were, for example the rejection of the bill to means test the private health insurance rebate, this is hardly likely to be the dominant issue in the election.

**Six double dissolutions....** There have been six double dissolutions since federation and one joint sitting. In 1914 and 1983, the government lost the election that followed the dissolution and no further action was taken on the disputed bill or bills. In 1951 the government won the election with a majority in the Senate and so the deadlock was broken in that way.

In 1974 and 1987 the government won the election but did not have a majority in the Senate. In 1974 the six bills that had been the basis for a double dissolution were passed by the one and only joint sitting. One was subsequently found to have been invalidly put to the joint sitting. In 1987 the Hawke

government decided not to proceed with the bill which triggered the double dissolution. The double dissolution in 1975 was unusual. More than 20 double dissolution bills had been stockpiled when the Senate delayed three other money bills, including a key appropriation bill. The Governor-General (Sir John Kerr) eventually dismissed the Prime Minister (Mr Whitlam) and asked the Leader of the Opposition (Mr Fraser) to take over as Prime Minister on condition that he would advise the Governor-General to dissolve both Houses and call an election held on 13 December 1975).

Source: David Flint's *Opinion Column*.

**NOTHING TO DO WITH A CARBON CURRENCY... OR IS IT?** by Betty Luks: Governments of all persuasions have plans to 'measure our carbon footprint'. Those with internet facilities can just type in climate change and carbon credits and will be amazed to see how far advanced are the schemes. (See the *New Times Survey*, February 2010). Below is just a few of those listed on google:

- Department of Climate Change – Australian Carbon Trust – Think Change 10 Oct 2009 ... The Australian Carbon Trust is being established to further support individual action by households and businesses, with the Government ...
- [www.climatechange.gov.au/government/.../aust-carbon-trust.aspx](http://www.climatechange.gov.au/government/.../aust-carbon-trust.aspx) - Cached -
- [PDF] Post Cabinet comments, Australian carbon trust, Copenhagen, Carbon ... File Format: PDF/Adobe Acrobat - Quick View 21 Jul 2009 ... SUBJECT: POST CABINET COMMENTS, AUSTRALIAN CARBON TRUST, COPENHAGEN, CARBON POLLUTION REDUCTION SCHEME, STERN HU. E & O E - PROOF ONLY ... [www.climatechange.gov.au/~media/Files/minister/.../tr20090721.ashx](http://www.climatechange.gov.au/~media/Files/minister/.../tr20090721.ashx) -
- Australian Carbon Trust | Kevin Rudd in Brisbane 21 Jul 2009 ... Mr. Rudd said the Australian Carbon Trust was a practical body which would provide help to businesses and households save money by altering ... [www.brisbanetimes.com.au > Queensland](http://www.brisbanetimes.com.au > Queensland)
- Australian Labor Party : Helping Australians do their bit on ... 4 May 2009 ... The Rudd Government will establish the Australian Carbon Trust to help all ... The \$75.8 million Australian Carbon Trust will incorporate: ... [www.alp.org.au > News](http://www.alp.org.au > News) -
- Australian Carbon Trust The Australian Carbon Trust is an initiative of the National Trust of Australia (W.A.) to provide an opportunity for the private sector to work with the ... [www.naturalheritage.org.au/Australian\\_Carbon\\_Trust.html](http://www.naturalheritage.org.au/Australian_Carbon_Trust.html) - Cached -
- Carbon labelling expands internationally | Carbon Trust 30 Jun 2009 ... The world's first carbon label for consumer products is set to go global with the announcement today that Australia is to join the U.K. in ... [www.carbontrust.co.uk/News/.../carbon-label-australia.htm](http://www.carbontrust.co.uk/News/.../carbon-label-australia.htm) - Cached - Similar -

**So it was not surprising to read the following report of the introduction of microchips in wheelie bins in the United Kingdom:** "The growing threat of a stealth tax on the rubbish we throw away was exposed by startling figures yesterday. More than 2.5 million homes now have wheelie bins fitted with microchips to weigh their contents. This is an increase of nearly two-thirds in just a year. The bins, which can be electronically identified and weighed, are designed for 'pay-as-you-throw' rubbish tax schemes.

**Stealth tax: 2,629,052 homes have now been given bins with chips:** Under such schemes – which are likely to be hugely unpopular – families who put out more waste will pay higher taxes to their local council. Disclosure of the rapid spread of chipped bins followed the announcement this week of the first council to bring in a bin tax. Bristol City is presenting its scheme as a reward for recyclers, with cash payments to homes that leave out less rubbish. *Continued in The Bulletin*

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