

Australian Adam Smith Club (Melbourne)

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Error of opinion may be tolerated where reason is left free to combat it.
Thomas Jefferson (1801)

David Archibald on The Future of Energy in Australia

**The Adam Smith Club will host a meeting on Monday the 20th of July 2009,
at the Malvern Vale Club Hotel, 1321 Malvern Rd, Malvern 3144.**

David Archibald is a Perth-based scientist operating in the fields of oil exploration and cancer research. He has recently published a number of papers in the field of climate science. His book in that field, entitled *Solar Cycle 24*, was published late last year with a foreword by Professor David Bellamy. David Archibald has been an expert witness in the Supreme Court of New South Wales in the fields of petroleum geology and rolling mills in steelworks. He is a co-inventor of an anti-cancer drug with two professors from Purdue University, Indiana and sole inventor of a drug targeting benign prostatic hyperplasia. This drug demonstrated efficacy during in vitro trials at Queensland University in 2008 and will be entering human trials in 2009. His papers and presentations are available on his website at www.davidarchibald.info.

With the recent passing of a sweeping energy-climate bill in the US House of Representatives, more pressure will be placed on an emissions trading scheme in Australia. The passing of such legislation in Australia will have profound implications for the cost of energy, productivity and employment.

Attendance is open to both members and non-members. Those desiring to attend should complete the attached slip and return it to the Club no later than Friday the 17th of July 2009. Tickets will not be sent. Those attending should arrive at 6:30pm when finger food will be served until 7:00pm, when the speaker's presentation will commence. The cost is \$17.00 per head for members and \$22.00 per head for non-members (see next page for explanation of arrangements and for electronic booking details).

**Enquiries to Ms Regina Bron, tel. 9859 8277 (AH) or mob. 0412 006 786 (BH)
or email asmith@economic-justice.org**



detach and return

The Secretary,
Australian Adam Smith Club (Melbourne),
PO Box 950, Hawthorn, Victoria 3122.

Please reserve place(s) at \$17.00 dollars per member andplace(s) at \$22.00 per non-member for the July 20th meeting of the Australian Adam Smith Club. I enclose the amount of \$..... in payment for the same.

NAME (please print):

ADDRESS:

SIGNATURE: TEL:

LAISSEZ FAIRE ON THE WEB

This newsletter has an address on the web: <http://www.adamsmithclub.org/laissezz.htm>. The Club's web site can be found at <http://www.adamsmithclub.org/>.

ELECTRONIC PAYMENTS

By popular demand, the AASC now offers electronic booking and payment to dinner meetings. Bookings can be made by emailing the number of members and non-members attending to asmith@economic-justice.org; a reply email from the club will then be sent with a link to PayPal where the payment can be made by Mastercard, Visa, AMEX, Diners or PayPal Account. Bookings made after Thursday 16th of July will not be accepted online. FEES - a \$2 card fee will apply for the transaction.

MAY DINNER REPORT

The May meeting was addressed by Alan Cornell, former chair of Yarra Valley Water, on the topic of Melbourne's Water Supply. He gave an insiders account of how the planning of future needs was slowly degraded in favour of inner city green mantra's, and generally poor provision for maintenance. He outlined some schemes to provide for our future, but all required jettisoning the shibboleths on pricing and dams.

The Curry Club provided the usual high quality of service and an enjoyable evening was had by all. *TW*

VENUE ARRANGEMENTS

July Meeting - NEW Format

Over a number of years there have been calls for the Club to try differing formats and pricing to encourage more participants. The July meeting will be the first of the new alternative format.

Guests will arrive at the normal time of 6:30pm in the upstairs meeting area and finger food will be provided, with drinks at bar prices. At 7:00pm we will have the speaker, followed by Q & A. The official meeting will close around 8.00pm. However we intend to be flexible with this time, depending on the length of our speaker's presentation and subsequent level of discussion that is generated.

The Malvern Vale has a Bistro downstairs at which tables will be set aside for those attendees wishing to dine - please let Tim the Hon Sec know if you wish to join us for dinner and he will arrange the tables.

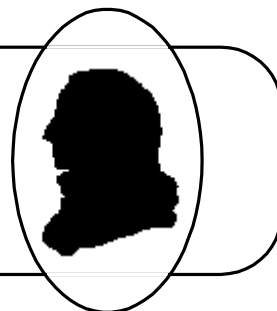
The Bistro has a range of items, soup at \$8.50, light meals from \$13.50 to pastas, steaks and fish from \$17 to \$27. Each guest at dinner will order & pay for their own meal and drinks.

The aim is to provide access to the discussion and fellowship at lower cost - whilst not forgoing the option of breaking bread as a social occasion.

Feedback is encouraged to allow for future improvements in our programme.

Laissez Faire

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FAT CHANCE

The First Home Buyers' bonus was introduced to assist first home buyers in purchasing a home in a rising market, where taxes, compulsory environmental improvements and a competitive investment market had a significant effect on low end housing prices. Evidence now indicates that all this did was push prices up more than the actual bonus, benefiting not the first home buyer, but the seller and developer.

Now it seems we are set to introduce similar legislation to 'assist' another 'disadvantaged' sector of the community. As reported in the *Herald Sun* (25/06), the Government's National Preventative Health Taskforce is expected to call for tax breaks or subsidies for gym memberships and gym equipment.

However, this policy appears based on a number of doubtful assumptions about the value of gym based exercise, the management of such facilities and public behaviour. Having a gym membership and using it effectively are rarely part of the same equation. Many studies have shown that usage drops off significantly after the initial honey moon period. Will the bonus be based on the calories expended, time spent or frequency of member visits?

It also supposes that one of the main cures for obesity is regular equipment based exercise. Where is the evidence to support this? Is running on a treadmill more effective than jogging round the block?

Logic would suggest that gyms will be required to meet accreditation standards to be eligible for the membership subsidy, necessitating a new bureaucracy to administer the accreditation program, and consequently adding to the cost of each membership.

Similarly, equipment will likely need a rating or accreditation assessment to attract the subsidy. This of course pre-supposes the purchase of equipment is an indication of an on-going effective weight-loss or exercise program - consider the many homes where the ab-exerciser can be found gathering dust in cupboards and under beds.

The subsidy will benefit the wealthier suburbs at the expense of the less affluent suburbs and regional areas where gyms are fewer and further between, and will most likely, as our experience with previous subsidies has proven, drive up the base cost of the service, benefiting the gym owners or shareholders more than the members themselves.

If implemented, it will be interesting to see the measure of the success of the subsidy program - will it also see the introduction of mandatory universal fitness tests, a weight loss register, an equipment use log book? The mind boggles. *RB*

THEFT BY ANY OTHER NAME...

I am fond of quotes. One of my favourites is "Democracy is two wolves and a lamb voting on what to have for lunch." (Benjamin Franklin, 1759) The second part of the quote is not heard as often: "Liberty is a well-armed lamb contesting the vote." Is this because the state has effectively disarmed the population? The wolves run the police, who supposedly protect us from each other, if not from the government (that is, the wolves themselves). The judiciary tends to side with the wolves, against the rights of the lambs. After all, their bread is buttered by the wolves. The lambs, (that is you and me), have very little say in government, as wolves are in power no matter what party wins the election.

This brings me to the recent so called stimulus package from the Rudd Government and another quote. "The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least possible amount of hissing." (Attributed to J. B. Corbert, c. 1665.) Taxation in Australia is indeed an art form, where the wolves have realized that eating too many lambs for lunch reduces the number of future lambs. So now the wolves have determined that it is better to fleece the lambs rather than to eat them. In the so-called stimulus package, the \$900 handout to some taxpayers is a good example.

Assuming that the government is not expanding the money supply and is not borrowing the money, the \$900 could only come from one place: our taxes. But the taxation system, our leaders proudly tell us, is a progressive one. That is, the more is your taxable income, the higher is the fraction of your earnings taxed. Leaving aside the questionable morality, it is clear that such a system is a disincentive to earning more (and thus producing more). So the government has collected the taxes and is now giving it back to us. If it gave back the

\$900 to the same taxpayers it collected it from in first place then one might say, "fair enough." (But then one could legitimately ask why take it from us in the first place? It seems a particularly inefficient way of letting us keep what is ours in the first place.) However those who earn too much (that is, those taxpayers who pay a higher proportion of their income as tax) don't qualify for the hand out. In other words, this is a redistribution of money from the more productive to the less productive. The agent for this distribution is the government. Morally there is no difference between the government and a robber, (like Robin Hood), who gives away some of his ill gotten gains to others.

For the government, the beauty is that the robbery has been hidden behind the voodoo economics of a stimulus package that is supposed to save jobs. It has not been lost on the recipients of the largess that they have received this "gift" at the expense of others. But the recipients are those lambs who mostly voted for this government in the first place and the message is clear. If they want to continue to benefit from some of the scraps off the wolves' table, they will need to make sure the other wolves don't get in.

And this brings me to my final quote from one Alexander Tyler (c. 1787), "A democracy is always temporary in nature; it simply cannot exist as a permanent form of government. A democracy will continue to exist up until the time that voters discover they can vote themselves generous gifts from the public treasury. From that moment on, the majority always votes for the candidates who promise the most benefits from the public treasury, with the result that every democracy will finally collapse due to loose fiscal policy, which is always followed by a dictatorship." *MG*

RIGHTS AND THE COMMON LAW

As reported in *The Australian* (26/06), the likelihood that the National Human Rights Consultation, chaired by Father Frank Brennan, will recommend the passing of a statutory Charter of Rights has declined significantly. This follows upon manifest divisions within the ALP and the legal profession over the desirability or otherwise of such a Charter, and the outright opposition of the Liberal Party. For those, such as this writer, who are strongly opposed to the concept, this is welcome news.

Whilst coverage of the debate has been extensive, media analysis and understanding of the issue has generally been poor. In considering the nature of the task, most commentators have focused on the Victorian and ACT Charters or the Universal Declaration of Human Rights as providing appropriate precedents for the Commonwealth to follow or build upon. Despite the present absence of a Charter, the existence in Australia of at least some rights has been generally assumed. Few however have considered the source of such existing rights or wondered how they have been protected until now. Nor, seemingly, has much thought been given as to the effect such proposed Charter will have on such existing rights, on the source whence they have arisen, or on the means whereby they have, until now, been protected.

The great rights which Australians enjoy today have essentially arisen over centuries from the determinations of judges. They include the individual's right to life and liberty, to assemble and speak freely, to own and trade property, not to be detained or imprisoned without just cause, to be presumed to be innocent of any crime until duly convicted by public trial at which an opportunity has been given to confront the accuser, not to be subject to post facto laws or be forced to self incriminate, not to be prosecuted more than once for the same crime, and so forth. In making such determinations judges have sought to discover, interpret and reflect the underlying culture, conscience and morality of the community, and have relied and built on previous determinations on similar issues, regarded as being binding precedents. Such is referred to as the "Common Law."

Whilst the Common Law has always been subject to legislative change, and judges are bound by the principle of Parliamentary Sovereignty, such principle is itself part of the Common Law, to which judges have bound themselves. As NSW Chief Justice Spigelman pointed out in his 2008 McPherson Lecture, "The Common Law Bill of Rights," the legal principles which judges themselves apply in their task of interpreting statutes is in effect a common law bill of rights. How judges perform the task of interpreting and applying statutes is part of the judicial function.

Australia's system of government, as inherited largely from Britain, is based on a separation of powers between the legislature, the executive and the judiciary. Relationships between the three are not necessarily harmonious and there are continuing tensions between them. The system works best when each performs its own properly allotted function. It has been said that a Bill of Rights will transfer power, properly the preserve of the legislature, to unelected judges. In reality this could not be further from the truth. The recognition, application and protection of rights are part of the proper role of the judiciary. Whilst nominally a statutory bill of rights can be seen as an exercise of legislative power, legislative power, in Australia, due partly at least to the party system, has largely been supplanted by that of the executive. A statutory Charter of Rights will thus take power from the judiciary and transfer it effectively to the executive, the very branch of government, from the power of which, rights are intended to protect. Rights created by statute can be readily made, but can as readily be unmade or remade.

The Judiciary are not perfect in their task and judges are not immune from bias. However unlike the executive and the legislature, which, by their very nature, are partisan and biased, it is the nature of the judicial role to be disinterested and impartial; it is part of the job description. Judges are constrained by their role to act judicially, often thereby to act contrary to their own personal preferences. Historically, the rights enjoyed by citizens of common law countries have consistently been amongst the best protected in the world. Yet the inevitable effect of a legislated Charter of Rights will be to supplant common law rights and subordinate the proper role of the judiciary to that of the executive. Such result is undesirable. *DBS*

KAFKA IN AUSTRALIA

Despite some vigorous opposition from various legal professionals, the push for uniform so-called anti-bikie laws continues unabated. Proponents of the extraordinary measures proposed have painted a picture of motor cycle gangs and their members as a scourge on decent members of society and a threat to the community, against which the normal defences of the state are powerless. They have sought to reassure those concerned by the draconian nature of the measures proposed, (and in some states already enacted), that the measures are intended only for application against outlaw motorcycle gangs. However, in a brilliant article in *The Australian* (19/06) under the headline "Did Franz Kafka draft the new bikie legislation," Mark Le Grand deconstructs the new legislation, as proposed for NSW.

Le Grand was the director of the official misconduct division of the Criminal Justice Commission and directed the investigation of organised crime by the National Crime Authority. In his article he rejects as patently incorrect the suggestion that the legislation is targeted at bikie gangs, noting that the provisions of the act can be applied against any group of people that the police suspect of broadly-defined serious criminal activity. He then compares the potential fate of a person subjected to the act to that of Josef K, the main character in

Franz Kafka's famous novel *The Trial*, in which Josef K is accused of an unspecified crime, is tried without being informed of the evidence against him, is convicted and executed, without ever being informed why.

Some of the aspects of the legislation which are highlighted by Le Grand are the ability for the police to apply to a selected judge for a declaration that a person and his friends are members of a group engaged in a serious criminal activity and for the judge to make such order, initially in the absence of those accused, and thereafter can proscribe such persons meeting together for any purpose, based on material supplied to the judge, which material is not subject to the rules of evidence and, if the police object, need not be revealed to the accused. Such declaratory order can be made on the balance of probabilities rather than the usual criminal standard of 'beyond reasonable doubt.' The judge is not required to give grounds or reasons for his decision and no appeal or review thereof is provided for or allowed. Thereafter any meeting by the proscribed persons, regardless of how innocent, can result in 2 years jail.

Le Grand concludes his frightening article by bemoaning that what was only fiction in Kafka's novel has become a reality in today's Australia. *DBS*