

Australian Adam Smith Club (Melbourne)

President: Timothy Warner, Editor: Mannie Gross, P.O. Box 950, Hawthorn, 3122

You shall have one judgement: it will be the same for the alien and the citizen... (*Leviticus 24:22 c. 700 BC*)
The more corrupt the state, the more numerous the laws. *Tacitus (History, III, c. 100 AD)*

Katy Barnett on The Limits of Law

**The Adam Smith Club will host a meeting on Tuesday the 8th of March 2011,
at the Curry Club Cafe, 396 Bridge Road, Richmond.**

Dr Katy Barnett is a lecturer in private law at the University of Melbourne, and a long-time blogger at <http://skepticlegal.com.au>. She has published a range of scholarly articles on property law, equity, contract law, restitution, remedies and the theory of law.

Prior to teaching at the Melbourne Law School, Katy held a variety of positions, including banking litigator at Russell Kennedy, Associate to Justice Mandie at the Supreme Court of Victoria and Research Assistant to the Court of Appeal at the Supreme Court of Victoria.

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 Monday the 7th of March 2011. Tickets will not be sent. Those attending should arrive at 6:30pm for dinner at 7:00pm. The cost is \$40.00 per head for members and \$45.00 per head for non-members (see next page for explanation of arrangements and for electronic booking details).

**Enquiries to The Hon Secretary, mob. 0403 933 786
or email: asmith@adamsmithclub.org**



detach and return

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

Please reserve place(s) at \$40.00 dollars per member andplace(s) at \$45.00 per non-member for the March 8th 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/laissez.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@adamsmithclub.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 Friday 4th of March will not be accepted online. FEES - a \$2 card fee will apply for the transaction.

NOVEMBER MEETING

The November Meeting of the Club had WA writer/poet/barrister Hal GP Colebatch speaking on 'How Red are the Greens?' Given the proximity to the State Election Day and the recent Federal Poll the audience may have expected some political commentary, but were treated to a detailed history of ecological/deep green thought from classical writings to present day.

The dangers to civilization inherent in deep green thought and its anti-technological bias were discussed. The completion of the speech left some listeners puzzled as the speaker was editing on the fly as the speech ran long, the vision of a world with technology achieving great feats was captivating for those who could follow the heavily edited path.

Question time was robust and the sales of the speaker's biography of his father (a former WA Premier) were brisk. The Curry Club provided their usual high standard of fare. *TW*

COAG AND THE DANGER OF EXPERTS

The hung Federal Parliament and the precarious status of some of the State administrations may lead supporters of limited government to hope that governments without mandate and majorities may be slower to grow - alas, the world does not work that way.

In the last twenty years the old Premiers Conference - traditionally where Premiers and Prime Ministers parcelled out Federal taxes - has evolved into something much more sinister and far reaching. Under Hawke/Keating, Howard and now Rudd/Gillard the Council of Australian Government (COAG) has become a driver for harmonisation and cooperation. The Ministers from each of the States and Territories, the Federal Minister and commonly the New Zealand Minister reach agreements on wonderfully aspirational measures. These directives are then worked on by working parties. The output of these working parties are then sent to the parliaments for enactment - with the message prominently attached that as this is the outcome of an agreed process there can be no action other than passage of the agreed measure.

This style of governance makes the European Union structure look democratic. In the European Union they simply issue Directives that National Governments must obey, they do not normally demand elected bodies pass the Directive.

Two measures have called attention to this system in the last year. The first was the new national medical database which was started in 2005 and despite repeated rejection of proposals by

various Ministers and Parliament the latest manifestation requiring all Medicare related treatments to be registered on a searchable database went 'live' on 1st July 2010. The planning of this scheme went somewhat further in that a corporation was registered so that no part of the joint planning was answerable to any of the Parliaments or to any FOI legislation, State or Federal.

A new planning group responding to the Transport Ministers Committee is looking at the future of Transport Legislation. The draft includes three interesting points - all vehicles to be fitted with tracking devices to improve traffic monitoring, all vehicles to have alcohol interlocks - it doesn't say if all drivers will have this activated, and that the allowable blood alcohol level would be reduced to '.00'. You may believe that this is simply bureaucratic wishful thinking, that public pressure will stop the implementation of these measures. But if they become part of this monstrous COAG process the Ministers will all proclaim their powerlessness in the face of the 'Nationally agreed approach'.

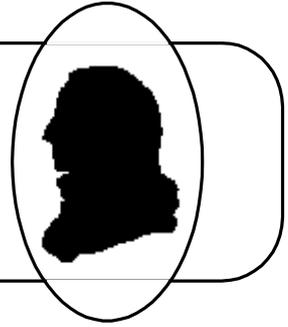
One point of interest is that both the Victorian and NSW Coalition Policy documents have mentioned the destructive and anti-democratic structure that has been fashioned at COAG. It is hoped that some light and transparency may lead to a rethink of this profoundly worrying rule of the expert and bureaucrat. *TW*

VENUE ARRANGEMENTS

For the Curry Club Cafe, drink is not included in the price. You may bring your own drinks (no corkage will be charged) or purchase from the restaurant which is fully licensed. A room has been reserved for the dinner meeting. We hope these arrangements do not cause inconvenience and we welcome your feedback.

Laissez Faire

Newsletter of the Australian Adam Smith Club (Melbourne), No 98, February 2011



MULTICULTURALISM HAS ALWAYS BEEN A FAILURE

The first weekend in February, whilst David Cameron was in Munich, he declared that “multiculturalism has failed”. It was not the first time such sentiments have been publicly aired. In fact Angela Merkel, the German Chancellor had said the same last October. It is finally dawning on Europe’s leaders that State sponsored multiculturalism has been the most pernicious and divisive policy pursued by Western Governments since World War II.

Multiculturalism was successfully introduced as a policy because it is grossly misunderstood. The politicians had led people to believe that it meant multiracialism or pluralism but it does not. Accordingly, anyone who dared to criticise the policy was decried as “racist”.

The true character of multiculturalism could not be hidden for ever however. State sponsored multiculturalism treats the host country like a hostel. It judged that the state should not “impose” rules on the values of immigrants but instead, it should bend over backwards and accommodate their demands. The result was that people were judged by the criteria of whatever the “community” they were born into.

A British school principal suggested (back in 1984) writing in the school magazine that the students in his state-funded school should be prepared to learn English instead of disappearing to Pakistan for months on end. His career was ended when he was confronted by howls of “racism”, whilst his arguments were wilfully ignored.

But for the rise of radical Islam, the multiculturalism model may still enjoy some popularity. However, the terrorist assaults around the world, often from home grown extremists have provided the breaking point which few thinking people can ignore. So what is to be done?

Mr Cameron suggested in the Munich speech that amongst others, groups whose views are opposed to those of the state should no longer be funded by the taxpayer. It is a symptom of how low we have sunk that ceasing to fund our society’s opponents constitutes an improvement.

But this is just a start. The fact remains that many European countries as well as Australia have nurtured a generation of citizens who bear no loyalty to their country of residence but instead despise it.

The first step is that from school age upward our societies must reassert a shared national narrative - including a common national culture. This has been termed “Leitkultur” (core culture) by the German Muslim writer Basam Tibi. Short of having a fully privatised education system, this would seem to be the most decent antidote to multiculturalism. It concedes that in societies with a high level of immigration, they will only work together if united by a common theme.

The Muslim communities that Mr Cameron was referring to, will not reform themselves. Terrorist and extremist organisations including some “charities” should be treated like common criminals. Clerics and individuals who come from abroad and preach hate should be deported.

It is unlikely that Mr Cameron will manage to do much of this. Remember, the 2005 tube and bus bombings in London when the then PM Tony Blair announced “the rules of the game are changing”? Well, nothing did change.

However if Mr Cameron does muster up the courage he will be derided by the defenders of multiculturalism and also become a leader of significance. But if not, he will be associated with Munich – not for the recent speech – but by association with a previous PM who also went to Munich and came back with an honour that proved to be deeply temporary. *TJ*

FREEDOM AND THE LAW

On 17 February 2011 the High Court concluded its hearing of the appeal of Vera Momcilovic v The Queen, and reserved its decision. The appeal to the High Court was with respect to the decision of the Victorian Court of Appeal given in the matter eleven months earlier. The Victorian Court of Appeal decision has been described by a university legal academic Edward Santow as one of its most important, and the case itself as being a landmark.

Momcilovic is a solicitor. She had faced drug possession and trafficking charges following a police raid on the home she shared with her partner, a person allegedly involved with drugs, which had uncovered a trafficable quantity of drugs in the house. Momcilovic was charged pursuant to the Victorian Drugs, Poisons and Controlled Substances Act, convicted, and sentenced to prison. Unlike the usual process with respect to serious offences, which requires the prosecution to prove beyond reasonable doubt all of the elements of the alleged offence, the relevant Act is one of a growing number, which, for whatever reason, has provided for a reversal of this onus of proof. In this instance, instead of the prosecution having to prove beyond reasonable doubt that she knew or should have known that a trafficable amount of drugs were in her house, (and hence in her possession for trafficking), Momcilovic had to prove, on the balance of probabilities, that she did not. She thus had to prove she was innocent, failing which she was presumed to be guilty.

Following her conviction, Momcilovic appealed relying on the provisions of the Victorian Charter of Rights, claiming that in being subjected to a reverse onus of proof she had been denied her right to a fair trial, something against which the Charter allegedly protected her. The Court of Appeal seemingly agreed with her allegation that she had thereby been denied the right to a fair trial, but held that it could not overturn her conviction, since reversing the onus of proof in such an instance, was clearly the intention of Parliament. It did however overturn the remaining, as-yet-unserved, portion of her sentence.

As appears from the judgment of the Court of Appeal, and the High Court transcript, the arguments and legal submissions raised were directed towards and related to the provisions of the Charter. Commentators have suggested that the result so far will satisfy neither those who claim the Charter to be worse than useless in protecting freedom in Victoria, nor those who, to the contrary, claim it to be a most effective instrument for such purpose. Regardless, the judicial significance of the case so far, and the likely significance of any High Court ruling, is what is the legal interpretation and effect to be placed by a court on the provisions of the Charter. In the overall scheme of things this is unlikely to be of major importance on the question of freedom.

The presumption of innocence is a cornerstone of Common Law criminal jurisprudence. It is sometimes referred to as the golden thread of English criminal law. With some notable exceptions, moreover, it is accepted as such throughout the enlightened world. (Bismarck for one was not allegedly a supporter of the presumption). The presumption is a fundamental of freedom.

In the case of Coffin v United States the American Supreme Court purported to trace the origins of the presumption back to the Old Testament, Roman Law, and Magna Charta. Its classic formulation is attributed to the English jurist Blackstone, with his comment that, "the law holds that it is better that ten guilty persons escape, than that one innocent suffer." (*Commentaries on the Laws of England* (1769))

It is the role of courts, judges and lawyers to pursue and apply justice. In so doing they have accepted and submitted to the sovereignty of Parliament. But there is a duty and responsibility too on Parliament; namely that the laws that it drafts and promulgates are just and proper. The application of a patently bad and unjust law is inconsistent with the function and duty of a court, and a legislature cannot expect or seek for it to act otherwise.
DBS

GOOD NEWS FROM EUROPE

Switzerland's 8 million people have long had the reputation of living in the most peaceful nation in Europe, as well as being its most heavily armed. Per head its people have the third most guns in the world, after the USA and Yemen. On February 13 a referendum was held to introduce and tighten controls on firearm possession and use, allegedly triggered by a spate

of firearm-related suicides. The vote was 57% against the proposal.

Meanwhile in neighbouring Italy the troubles of its Premier Silvio Berlusconi continue unabated. Although facing a number of criminal charges of both a financial and a sexual nature it appears that Berlusconi's role as PM is safe for the moment, due to the continuation for him of support from the so-called Northern

League, a political group drawing its support, as its name suggests, largely from Italy's northern provinces.

Commentators suggest that the League supports Berlusconi because it sees him as the most likely politician to be able to steer Italy towards federalism, which the League sees as the only real alternative to a likely break-up of the country. DBS