Australian Adam Smith Club
(Melbourne)

President: Michael Warby, Editor: Regina Bron, P.O. Box 950, Hawthorn, 3122

The freedom of each individual can only be the freedom of all.
Friedrich Dürrenmatt (1977)

Peter Attiwill

on

Green Forest v Green Politics: Timber, Biodiversity and Fire

The Adam Smith Club will host a dinner meeting on Wednesday the 26th of March 2003, at Nikitas Greek Tavern, 258 Swan Street, Richmond.

Peter Attiwill retired from the position of Reader and Associate Professor in Botany, The University of Melbourne. He is now Principal Fellow in Botany, The University of Melbourne. He is the author or co-author of some 120 papers in the scientific journals. Most of his research career has concentrated on sustainability of growth, productivity and nutrient cycling in forests. He is co-author of *Forest Soils and Nutrient Cycles* and co-editor of *Nutrition of Eucalypts*. He is currently writing a book on the role of disturbance in forests, and co-editing an Australian ecological text to be published by Oxford University Press. He is Chairman, Editorial Committee, *Australian Journal of Botany*; and a Member of the Advisory Boards of *Forest Ecology and Management, Tree Physiology, Plant and Soil, Biogeochemistry*. In 1998, Attiwill initiated a program - 'Scientists for Sustainability' - aimed at providing a network of scientists who have worked in the field of sustainability. Scientists for Sustainability organized a series of Colloquia around Australia on the subject *Sustainability of Australia's Native Forests in the 21st Century and Beyond*. The result of this is a comprehensive study of the environmental credentials of Australia's forests and forest industries – from the forest to the manufactured product. This study was released by the Commonwealth Minister for Forests in December 2002.

The recent devastating bushfires have, for the first time in the mainstream press, produced open questioning of the management of Australia's vast native forest reserves. Too often forest management arguments are irrational and emotional. Peter Attiwill is well placed to discuss these issues objectively, based on an understanding of the relevant science.

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 24th of March 2003. Tickets will not be sent. Those attending should arrive at 6.30pm for dinner at 7.00pm. The cost is $36.00 per head for members and $41.00 per head for non-members (PTO for explanation of arrangements).

Enquiries to Ms Regina Bron, tel 9859 8277 (AH)
or Dr Tom Jellinek, tel 9706 7400 (BH)

detach and return

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

Please reserve ..... place(s) at $36.00 dollars per member and .....place(s) at $41.00 per non-member for the March 26th 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 a new address on the web: ***http://www.economic-justice.org/asmith.htm***. The Institute for Economic Justice has been created by David Sharp a former president (and current committee member) and Timothy Warner the current Treasurer of the Club. As stated on the web site, 'The Institute has been founded to assist those who have been subject to economic injustice, and to increase both public and professional awareness of remedies available under the Law.'

2030: THE 'FIVE YEAR PLAN' LIVES

To very little fanfare a new grand plan for the Greater Melbourne Area, 'Melbourne:2030', has been announced and submissions called prior to implementation.

This grand strategy was launched on the day before the Melbourne Cup 2002, amidst Election fever. Submissions were called for over the Christmas vacation period, and closed on February 15, 2003.

What's in this plan? A mish mash of special pleadings and buck-passing. We will have a line drawn around the existing metropolitan area, and no housing sub-division will be allowed outside that line. All areas around major shopping centres and public transport hubs will have set height requirements (five to seven storeys is the mooted requirement). Most other areas will be allowed to build one storey higher than any existing structure in the area on an agreed date. Heritage controls will be made mandatory over the remaining areas of 'suitable' housing.

Throw in a bit of green with the new urban 'green wedges' where either no housing, or highly restricted development can occur, and you have the complete picture.

Why did I mention buck-passing? Because a key driving force behind the plan is the desire to stop building main roads, police stations and schools in new areas. These cost the State big money, and they lead to underutilized assets in the inner city, which the Labor Party cannot close due to the political cost. It also means that pesky questions from Labor friendly groups about expanding the train and tram network (which would cost real money) can also be quietly shelved.

A win-win situation, low future capital budgets, less pesky questions - so who loses? Property owners who yet again are having their property rights disposed of without a passing care. The new home buyer, who will have a government mandated housing stock of limited choices. *TW*

TWO HUNDRED YEARS OF RULE OF LAW IN USA

An important milestone in US history had its bicentenary last month. Judicial review of government legislation, as founded by *Marbury vs Madison*, was delivered on 24th of February 1803. The oversight of all government action is a foundation stone of limited government. This review ensures that policies and acts of the executive are both within the agreed framework of government, and meet the principles of Common Law justice.

It is an interesting exercise to remember the bicentenaries that have passed in the last three decades as they mark the path to successful limited government. 1776 - the right to of the governed to institute a form of government without regard any existing authority. 1788 - the creation of the Bill of Rights which specifies the limits of government authority and reserves all other powers to the People and their local institutions. 1803 - all acts of government must be subject to review, bearing in mind the agreed limitations on the sphere of government.

It is a breathtaking vision, especially compared to the muddle that each of the Anglo-Saxon countries have made of these principles. But we should celebrate these great concepts all the more for our recent failings. To look at the rest of the world is to see what the lack of these principles brings – let us recommit to defend these principles and values, Individual Liberty, the Rule of Law and Limited Government. *TW*

VENUE ARRANGEMENTS

In order to control costs the Club is attempting a number of new formats for our meetings. Drink is not included in the price but can be purchased at the venue. BYO wine only. An upstairs room has been reserved for the dinner meeting. We hope these arrangements do not cause inconvenience and we welcome your feedback.

Laissez Faire

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ELECTIONS OF CRIME

The March 22 New South Wales elections have provided an opportunity for the politicians of the various parties to outdo each other in promising to crack down on crime; mandated tougher punishments, ever more legislation and increased funds and power for law enforcement agencies.

Law and order is of course always a mainstay of political posturing. And in the Australian context this has been particularly so in NSW. A good law and order campaign however generally requires the backdrop of an existing or threatened crime wave, either real or perceived.

Normally the media can be relied upon to provide the appropriate backdrop since crime and its associations make up much of what they have to show, talk and write about. It becomes more difficult however when, as would seem to be the case in Australia, the latest crime rates are largely stagnant or even declining. This has prompted the NSW Director of Public Prosecutions, in an embarrassing display of independence, to allege publicly that the statistics show that the current debate was being hijacked by politicians pandering to talkback radio. This in turn led 'The Australian' [7/3] to respond to him, with an impliedly critical editorial in support of the politicians. The really interesting aspect however is, assuming that the figures are correct, why is crime declining?

There are two basic approaches to fighting crime, the political and the economic. Until recent decades the approach to fighting crime in Australia was almost exclusively political; an approach stigmatised by its opponents as being characterised by the pursuit of power, pelf and pandering to prejudice.

Whilst politicians and public officials have been quick to claim credit for the declining crime rate, citing a variety of measures such as more police powers, harsher sentences, greater spending, new legislation and so forth what has been the most notable feature of crime fighting since the 1970s has been the growth in the non-political areas. These include private security companies which offer a wide range of services including crowd control, escort, guard and watch, personal bodyguards, investigations and so forth. Consultants are now available to provide advice on business methods designed to minimize the possibility of criminal activity and to vet potential employees.

At the same time there have been significant technological advances such as improved locks, lighting and surveillance systems which have become available and been taken up more and more by private firms and individuals. Few modern buildings including homes are designed or built without making some security provisions.

Registration, automatic disabling and permanent marking of valuables are also now widely available making disposal or use of stolen items more difficult and recovery easier.

On a more personal level there has been a significant growth in communal security groups such as neighbourhood watch. On a more personal level again large numbers of martial arts schools now exist and are patronised by those wishing to be less vulnerable to physical attack.

One controversial area in which the trend in Australia has been away from market orientated individual responsibility has been personal firearms ownership, despite studies in America which suggest more privately owned guns lead to significantly less crime. The deterrent effect of personal firearm ownership is significant in such crimes as burglary, rape, robbery and assault which generally speaking have apparently been the crimes showing the least tendency to decline. In the crime fighting area it is also probably the most pro-feminine measure that could be introduced, since possession of a small personal firearm is the demonstrated most effective measure to provide personal security to single women.

The advantages of the economic approach to fighting crime are that remedies tend to be efficient effective and tailored to individual needs. In the USA it is suggested that the security industry is the second fastest growing in the country and its beneficial affects on crime prevention are substantial. There is no reason to believe that the situation is not similar in Australia. *DBS*

LEFT TURN AT THE POOL

Shadbolt vs Wise is a Queensland Supreme Court case decided on 31 October 2002. Mr and Mrs Shadbolt built a large in-ground swimming pool in Buderim. As built, the pool encroached into the land of their neighbour Mr Wise. The actual area of encroachment was 46 square metres. The Wise property was used for grazing and comprised 32.375 hectares. The encroachment enabled the pool to have a view of the ocean.

The Shadbolts applied to the Court under a provision of the Queensland Property Law Act for a forced sale of the affected land to them. The judge acceded to their request and ordered that the land be excised from the rest of the Wise property and be transferred to the Shadbolts

The judge determined what he saw as the market value of the land at $5000 and ordered that the Shadbolts should pay 3 times that amount to Wise as compensation for what he found was their reckless encroachment into his property. Wise's wish not to part with any of his land was considered by the judge in the circumstances not to be a significant factor in the ultimate decision.

The case has generated considerable controversy and recently featured as the lead story on a TV current affairs program. The emphasis of the story was that the judgment represented an unacceptable attack on the right of private property. The approach suggested a refreshing awareness and concern by the producers of the program of the importance of property rights in the functioning of any successful society.

In granting the relief sought, the judge relied on the statutory provision as purportedly providing the necessary power. In itself there is nothing remarkable about the statutory provision. Equity, that branch of the law which traditionally exists amongst other things to override the provisions of the Common Law where its strict operation would otherwise work an injustice, has always been available to aggrieved parties to curb any outrageous reliance on strict property rights. Arguably the statutory provision did no more than provide a legislative enactment of the equitable remedy.

If it is not the law itself that has produced such a shocking result then it is necessary to look at its application. Examination of the judgment suggests that the judge approached his task in a way, which if it were to become general, could only result in the complete abolition of the concept of property as an individual right as we know it.

Rather than commencing on the basis that the overwhelming right of the matter lay in the property owner and that the sole right of the applicants was to attempt to show that reliance on this right constituted an outrageous injustice entitling them to some form of relief, the judge has approached the matter as though each party was possessed of a competing right to the land in question, which right, in the case of the Shadbolts, had been acquired merely by their act in constructing a pool on their neighbour's land.

By paying lip service to the property right of the owner but ignoring its paramountcy the judge has essentially laid claim to the power to determine himself who shall have the use of the land.

The traditional approach of Equity in such a case would be, having first proclaimed the paramountcy of the owner's right, to determine whether the applicants for relief were innocent of fault in causing their own predicament. Failure on their part to show that they were blameless or largely so could expect to be fatal to any hope of success.

Far from being blameless, the judge, whilst declining to hold that the applicants had acted wilfully, nonetheless ruled that in building their pool as they did, they had acted recklessly. Needless to say, as a general proposition, one can be convicted of any number of crimes by acting recklessly. Certainly the Shadbolts could not be described as innocent victims of circumstance. Nevertheless the judge did not consider that the Shadbolts had thereby precluded themselves from relief.

The judge noted that that the overall cost of construction incurred by the Shadbolts was $53,755 and that demolition would cost at least $15,600. The ruling does not indicate whether total demolition was necessary or whether there was any salvage possible. Assuming therefore that total demolition was required and that nothing was salvageable the most noticeable absence from the judgment is any indication of the Shadbolts' overall worth; nothing to indicate for instance that the loss of such large amounts [as opposed to the loss of $15,000 by way of compensation to the owner] would leave them financially devastated or even destitute. In the absence of such indication one can only assume that this was not the case.

Ultimately one is left with the conclusion that the judge has decided the case mainly on a balance of cost and convenience as between two equal or near-equal competing parties. The judge summed up what he saw as the reality of such invasion of his property by the Shadbolts as constituting merely an annoyance to the owner, whilst the loss of approximately $54,000 to the Shadbolts would be significant.

Although nominally the judge in effect ordered the transfer of the ownership of the relevant land to the Shadbolts it is difficult to think of what they will thereby possess as ownership, since what has been granted them today could with equal facility be taken from them tomorrow. The effect of such a judgment ultimately is to destroy the very concept of property itself.

Experiments in the abolition of private property have usually been associated with bloody revolution such as with Russia in 1917 and China in 1948 and have resulted in predictable failure. There is however no reason to believe that abolition of private property by court rulings would have any different result. *DBS*