



Australian Adam Smith Club (Melbourne)

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

We have to remember that we have to make judges out of men, and that by being made judges their prejudices are not diminished and their intelligence is not increased.
R. G. Ingersoll: Speech in Washington (1883)

Alan Anderson on Judging the Judges

A Defence of the Role of the Executive in Judicial Appointments

The Adam Smith Club will host a dinner meeting on Sunday the 30th of November 2008, at the Curry Club Cafe, 396 Bridge Road, Richmond.

The Rudd Government claims to have reformed the process of Commonwealth judicial appointments to introduce “greater transparency” as part of its commitment to “open government” and to eliminate “political appointments”. Beneath this rhetorical boilerplate lies a fundamental question: is the appointment of judges, vested in the Executive by our Constitution, a political function? Only by understanding the nature of this constitutional responsibility may we assess the merits of competing judicial appointment processes.

Alan Anderson served as Policy Adviser to Attorney-General Philip Ruddock in 2006, with responsibility for Commonwealth courts and tribunals and family law. He subsequently served as Senior Policy Adviser to Treasurer Peter Costello until the 2007 election, with responsibility for tax and prudential regulation. Prior to his employment in politics, he worked as a lawyer with Allens Arthur Robinson and was a regular freelance columnist in the Sydney Morning Herald.

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 28th of November 2008. Tickets will not be sent. Those attending should arrive at 6:00pm for dinner at 6:30pm. The cost is \$35.00 per head for members and \$40.00 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)
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detach and return

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

Please reserve place(s) at \$35.00 dollars per member andplace(s) at \$40.00 per non-member for the November 30th meeting of the Australian Adam Smith Club. I enclose the amount of \$..... in payment for the same.

NAME (please print):

ADDRESS:

.....

SIGNATURE: TEL:

MEMBERSHIP RENEWAL

The Club's subscriptions are now due. We have used email and our new website to keep communications costs down, but to keep the Club financially sound we rely on supporters joining the Club. Printing, venue deposits and mail outs require an ongoing fund that maintains interest and subsequently allows us to entice engaging speakers by offering a well regarded platform for their views. An individual subscription of \$20 also offers discounts on dinners, which for regular attendees, pays for itself. A family subscription at \$30 pays for itself after three dinners. www.adamsmithclub.org/renewal09.pdf

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@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 27th of November will not be accepted online. FEES - a \$2 card fee will apply for the transaction.

OCTOBER DINNER REPORT

The October Meeting was given a very detailed address by Senator Mitch Fifield (which can be downloaded from the Club website). He outlined some proposals to limit government expenditure and give a constituency to those wanting cuts in expenditure. He started by calling attention to the other Smith, Australian businessman, philosopher and politician Bruce Smith. Senator Fifield noted the importance of Smith's "Liberty and Liberalism" to the formation of classical liberalism in Australia, and that lessons can still be learnt from this important work.

Senator Fifield was very forthcoming in question time. The Club's Hon Secretary/Treasurer Tim Warner offered the Vote of Thanks, calling attention to Senator Fifield's central role in defeating the ID Card in 2007. It was Senator Mason (Lib, Qld) as Chair and Senator Fifield (Lib, Vic) as Deputy Chair of the Senate Committee overseeing the legislation who voted down the Howard Government Access Card Bill in Committee - without that hiccup we might all be lining up for our identity papers.

The venue had a rearranged menu and we were pleasantly surprised by the size and quality of the servings, a fine evening was had by all. *TW*

FOOD FOR THOUGHT

While Australians often level criticism against the American system of non-compulsory voting, it is interesting to note that in America, the presidential elections are always held on the first Tuesday of November in the four year cycle. This is not a public holiday; it is a normal day of the normal working week. Voters must take time out of their working day to get to a polling booth, line up (some voters reported waiting three or more hours) and finally to vote. What should be surprising is that given the inconvenience, so many Americans actually chose to exercise their right to vote. *RB*

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

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GET RID OF COMPULSORY VOTING

Compulsory voting is seldom questioned. Australia is one of the few democratic countries where voting is compulsory. Are we so apathetic about choosing our leaders that we must be forced to vote?

The main argument for compulsory voting is that all adults are forced to take part in elections and therefore to determine the direction of the country. This could be termed 'enforced consent.' But what if you don't wish to take part? What if you so resent authority that you don't wish to affirm the right of the rulers to govern in your name?

Take local council elections for example. In Victoria, voting in council elections is compulsory. You can vote at any polling booth you like in Federal elections and you will not be penalised for not voting in your local electorate. Your vote will be registered. But in council elections, you must vote in your council area. Say, for example, you are at your holiday house for a weekend. You vote in that council election. Voting there is not compulsory, as you are not a permanent resident. But you do not vote in your local residential poll held on the same day. You have voted, but you can – and will – be penalised for not voting in that election. To spell it out – voting in a council election is not enough. You must vote in a specific electorate. Or you will be punished.

Councils are supposed to be the closest level of government to the people. But frequently they are dominated by the same clique that has governed for generations, often a family, especially in the country. Even in a genuine election, campaigning is limited. A common attitude is 'a pox on all your houses' – why vote, if you have no idea who you are voting for? But you are forced to vote. To quote an old anarchist saying 'no matter who you vote for, you end up electing a politician.'

A common belief is that compulsory voting favours the left, as the marginalized and disadvantaged are least likely to vote if voting is voluntary. If this is the case, why don't the Liberals and other right-leaning parties campaign for an end to compulsory voting? The answer is money. Each vote cast is worth money to the party, because they receive election funding from the government according to the number of votes cast. Contrary to popular belief, the Liberals are not rolling in money. Their main donors are fickle corporations who can – and do – cut off the money if they are not happy with the party's policies or electoral prospects. Is it possible they are desperate to hold onto the supply of money that comes from government electoral funding?

If you are forced to vote, why not vote informal? It is an offense to advocate an informal vote. The late B.A. Santamaria said after the demise of the Democratic Labor Party (DLP) he did not vote for any party, but he was careful not to advocate an informal vote.

Anyone seeking a detailed analysis of the pros and cons of compulsory voting in Australia can go to www.compulsoryvoting.org. As for the prospects of ending compulsory voting, don't hold your breath. The parties, especially the Liberals, are dependent on government funding to stay in business. *JRB*

GREEN MADNESS

One may have assumed that the current world financial problems would have given our Australian global warm-mongers (also known in the U.S. as Gore-bull warmers) pause to reconsider. But if anything, their level of hysteria has increased as they fear a slackening of resolve from our politicians to impose a carbon 'cap and trade' regime on Australia by 2010. There have been numerous press statements and media releases claiming that we cannot afford to delay 'climate mitigation' notwithstanding the global financial crisis. Why is there such a clamour to impoverish the country?

When one looks at the science all that we have is a hypothesis (which, for short, we will name the AGW Hypothesis) that increased levels of carbon dioxide (CO₂) (caused by increased human industrialization) was the cause of 20th Century global warming (about 1°C) and that further increases in CO₂ in the atmosphere will cause catastrophic global warming. What evidence do we have to confirm this hypothesis? So far, we only have a weak correlation between CO₂ and global temperature over the 20th Century. Climate models are projections into the future of the increase in global temperature, if the hypothesis is assumed to be true. They are not verification of the hypothesis.

Anyone who has studied the scientific method will know that it is not possible to prove a scientific theory true but it may be possible to refute a theory. Therefore it is the duty of the scientist to try to refute any theory by subjecting it to stringent testing. Only after failing to refute a theory, after such testing,

may it be accepted as tentatively true. However there is no guarantee that a theory may not be refuted the next time it is subjected to a different test. It follows from this that all scientists must be sceptics.

So the AGW Hypothesis cannot be proved true and thus the science is never settled as the warm-mongers claim. However the hypothesis may be refuted by testing. And this has been done conclusively. In a paper by Douglass et al, (Dec.2007, *Internat. Journal of Climatology*), it is shown that the unique tropical hot spot fingerprint, that all climate models based on the AGW Hypothesis predict, does not exist. If this were not enough, the AGW Hypothesis predicts the warming will be greatest at the poles, yet the Antarctic has cooled over the last 50 years. And still worse, no climate model predicted the falling global temperature over the last eight years when CO₂ in the atmosphere increased by about 5%.

The AGW Hypothesis is dead and the warm-mongers' greatest fear is that the world will find out. In the mean time far better correlations have been found between solar activity and global temperature. There have been a number of studies which predict, on the basis of the cyclic nature of the solar activity, that the sun is entering a period of low activity, which in turn will lead to a cooler Earth – perhaps as cold as the Little Ice Age by 2030. Every day the Earth fails to warm (indeed continues to cool), more people will begin to wonder. *MG*

GROWING UP

We are all aware of the ever increasing trend for young adults to return home to live with their parents to moderate or avoid the costs of independence in the real world. But for how long must parents be legally responsible for their children? For as long as we can make them, apparently. A 33 year old Australian man, now living as a woman, has filed a suit against his parents for the cost of his sex reassignment surgery and associated costs - such as hair removal, a weekly living allowance, travel allowance, the

purchase of a luxury dwelling, including all furnishings and furniture, a car, payment for university fees, health insurance and orthodontic treatment (*The Age* 18/10/08). This is despite the fact that the man had been financially independent for the last 15 years, having even been married during this time. If this sets a precedent, it may prove the best contraceptive ever and railroad proposed paid maternity leave, baby bonuses and the like. *RB*

WITHER FREEDOM?

Throughout its history as a nation, Australia has enjoyed, (and rightly so), a reputation as a free country. To those who regard individual freedom as the primary virtue, and the pre-requisite for a moral and satisfactory existence, it is this aspect of life in Australia, its freedom, that constitutes its most attractive feature, not its prosperity, laid-back culture, or secure and comfortable lifestyle, appreciated though they all might be.

Presently Australia's reputation continues, seemingly unchanged, Freedom House, an American think-tank widely accepted as the authority in this area, continues to bestow upon it its free-country rating. In similar vein, in the international 2008 Index of Economic Freedom, Australia is rated 4th freest, behind only HK, Singapore and Ireland. Yet all is not well. Like an old hunting dog that stands, hackles raised and softly growling, freedom-lovers can sense danger.

What is it then that gives cause for concern? Both history and political theory demonstrate and explain how it is in times of crisis and war that freedom is frequently lost and, thereafter, infrequently regained. Crises, whether real or imagined, natural or manufactured, currently abound; global finance, climate change and HIV/AIDS. Apart from real wars in Iraq and Afghanistan, we are presently waging war on international terrorism, drugs, poverty, smoking and obesity.

As crises begin to mount up around us, certain facts are likely to become more significant. Various institutions, which once might have been expected to repel or deter, or at least blunt, any attack on freedom, effectively no longer functionally exist. Such defunct institutions include the Constitution and operative Federalism. If there were any lingering doubts about this, such doubts, (as the dissenting judges Kirby and Callinan JJ in their judgments make clear), were dispelled in the 2006 High Court decision in the Workplace Relations Case, the last in a long line of cases affectively reaching such conclusion. As Lord Acton, the British historian of freedom observed, Federalism is the protector of freedom. We can but deplore its demise.

Whilst noting the barriers that have fallen, we should be conscious of the attacks on freedom in Australia that are now occurring. There are many. We can examine some.

Freedom of speech is a keystone of freedom. As John Milton said, "Give me the liberty to know, to utter and to argue freely according to conscience, above all liberties." The press freedom index compiled by the respected Reporters Without Borders ranks Australia at 35th, a damning indictment. The Commonwealth government now proposes to implement mandatory censoring of the Internet, utilizing similar measures to those imposed by Communist China, popularly referred to as the Great Firewall of China.

Security of property is a classic measure of freedom in any country. Both Commonwealth and State governments now seek to outdo each other in imposing populist, draconian asset forfeiture and confiscation legislation, which can include the seizure of assets on suspicion of criminal activity, without the need to lay charges, and can reverse the onus of proof to require those deprived of their property to prove that they acquired it legally.

One of the classic indicia of an unfree society is the presence of numerous regulatory bodies, each charged with regulating an area of activity, amply endowed with staff and money, lead by its own high-profile commissioner or otherwise designated head, and empowered to make rules and bring prosecutions. Australia now has a veritable alphabet soup of such bodies. Ever more frequently, breaches of their rules are being classified as both criminal and so called civil offences, enabling those accused of breaches to be tried twice. Yet the nature of civil and criminal litigation is fundamentally different. Enabling what are essentially criminal allegations to be tried, firstly as civil proceedings and then subsequently as a criminal trial, as can now occur, is to destroy the safeguards so painstakingly created in our law of criminal procedure to protect our freedom.

Now, more than ever, we need to heed Thomas Jefferson's advice, "The price of freedom is eternal vigilance." *DBS*

RON PAUL'S REVOLUTION

There is considerable interest in Ron Paul's latest book "The Revolution; A Manifesto". The Club has purchased a number of volumes and will be selling them at the dinner. Those attending will be able to purchase a copy for \$25, a considerable reduction on the Melbourne retail price.