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The Peronist and the ghost in the state of Australia

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Abstract

The spirit in this article is that of liberal democracy, that precisely state of affairs in which there exists a separation of powers among the executive, legislature and judiciary, an independence of the judiciary and a substantive independence of the legislature from the executive. Additionally, in the 19th century there was added to this structure, in the United Kingdom and subsequently in the Australian colonies, a tenured civil service. Writers in mid to late Victorian Britain saw this addition as a necessary restraint on a Parliament elected by an ever-widening franchise comparable – if one listens to Maine’s gloomy assessment of popularly elected legislatures (Maine 1897, Essay II) – to the process of judicial review established in the United States. However undemocratic in origin, the civil service nevertheless operated by guaranteeing – in the eyes of the political ‘establishment’ – disinterested advice to secretaries of state and ministers, to help ensure that those selected to government were, so far as possible, given the information upon which to make choices, and therefore to carry responsibility to the legislature for those choices. Its very paternalism in restraining ‘irresponsible’ popular politics helped ensure the answerability of government to popular politics.

The Peronist and the ghost in the state of Australia¹

Ian Duncanson

The spirit of liberal democracy

The spirit in this article is that of liberal democracy, that precisely *state* of affairs in which there exists a separation of powers among the executive, legislature and judiciary, an independence of the judiciary and a substantive independence of the legislature from the executive. Additionally, in the 19th century there was added to this structure, in the United Kingdom and subsequently in the Australian colonies, a tenured civil service. Writers in mid to late Victorian Britain saw this addition as a necessary restraint on a Parliament elected by an ever-widening franchise comparable — if one listens to Maine’s gloomy assessment of popularly elected legislatures (Maine 1897, Essay II) — to the process of judicial review established in the United States. However undemocratic in origin, the civil service nevertheless operated by guaranteeing — in the eyes of the political ‘establishment’ — disinterested advice to secretaries of state and ministers, to help ensure that those selected to government were, so far as possible, given the information upon which to make choices, and therefore to carry responsibility to the legislature for those choices. Its very paternalism in restraining ‘irresponsible’ popular politics helped ensure the answerability of government to popular politics.

Disinterest is not, of course, neutrality. The British civil service designed by the Northcote-Trevelyan report of 1853 assumed that the political pre-eminence of the upper middle class and aristocracy was inevitable and beneficial, and that the interest of that class alliance in maintaining at all costs the economic supremacy of City finance capital, was in the public interest (Cowan 1987). Nevertheless, such assumptions are a contingent feature of what was undoubtedly a check on what Stuart Hall has termed authoritarian populism (1988: ch 4). According to Maine, anticipating Hall's analysis, one of the 'fundamental infirmities' of democracy in large polities was overcome by the principle first established in the new United States, of representation, but that resolution was itself at risk once political parties achieved such organisational power that members of the legislature ceased to represent their constituents and became instead delegates of Party (Maine 1897: 94) — or perhaps, in the US, hostages to corporate interests (Bakan 2003). In the contexts of the fears expressed by Maine and Hall about the dangers to British, and by implication, antipodean, democracy, one reads with alarm if not surprise that Australia's new experiment with authoritarian populism began with an attack on its public bureaucracy amounting to

... a bloodbath of unprecedented proportions. On assuming office [Howard, the new Prime Minister as of 1996] sacked a full third of all department heads and replaced them with hand-picked substitutes whose talents seemed to lie more in their loyalty to the new government than in their eagerness to give frank and impartial advice (MacCallum 2004: 64).

What was abandoned in 1996, if not earlier, the argument runs, was the older conviction that the colonies brought to the federation named the Commonwealth of Australia — an evocative name — in 1901:

A knowledge and a conviction that the state would be the most likely protector of individual rights against other agents of coercion, and that the major constraints on civil liberty were not public but private (Pusey 1991: 1).

From the point of view of organised labour, an important ingredient in the establishment of federation (Kelly 1992), if not always an

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enthusiastic agitator for it (Macintyre 1999) restraints on public institutions are insufficient to secure liberal democracy in the face of the powerful private interests represented by organised capital. Negative liberty is not enough to prevent the individual's being subordinated into a mere consumer or employee. If s/he is to be a citizen, that is to say, an active participant, more is required.

To the freedom of expression, too, that Hume considered vital to the construction of the subject as citizen (Hume 1777 [1985]: 9), we have to add machinery that would facilitate substantially free access to information about the means by which government is accomplished, decisions reached and alternatives precluded. The implications for liberal democracy of a monolithically owned media — media controlled by a cartel of rich white men anxious to support whatever government offers the most profitable patronage to their media, but also other interests — is liberal democracy's demise. The implication of the now-routine secret 'commercial-in-confidence clauses' in 'public-private partnerships' and government asset sales,² is that citizenship is demeaned and diminished. Citizenship is merely derided when decisions such as those dishonestly made recently by governments in Britain, the US and Australia on the basis of distorted intelligence reports to wage war on Iraq contradict treaties made by previously elected governments (Wilkie 2004, Melbourne *Age* 9 August 2004) — most obviously the treaty obligation not to wage war without direct United Nations sanction.

In Australia, government justifications for the Iraq war have changed retrospectively, as no nuclear or imminent nuclear capacity, no chemical or biological weapons, and no danger to countries beyond Iraq's boundaries have been found; and as the patently absurd claim that a secular dictatorship such as Saddam's had connections with religious terrorist groups has predictably proved false. The goal of removing Saddam because of the brutality of his regime was explicitly rejected as a war aim prior to the invasion, presumably because such an aim would have contradicted the support given by all three countries to numerous brutal regimes, including to Saddam himself. But, government PR automata, trained, perhaps, to sell peas or swimming pool

purifiers, have emerged with equal zeal to sell the ‘product’ of government justifications for putting citizens at risk with stories that properly belong in the pages of JM Barrie, of Peter Pan, Wendy and the villainous Captain Hook. Ironically, of course, the Iraqis for whom such sympathy is now mobilised are the compatriots hitherto demonised and detained in appalling conditions in desert camps in violation of Australia’s obligations under the International Covenant on Civil and Political Rights and in breach of its own laws, including its *Constitution* (Burnside 2004).

Media owned by those with much to gain by supporting government give scant room to dissent from what we might have termed the government line, were it not so vague and opportunistically flexible as scarcely to constitute a line. What less dependent print media exists displays its lack of bias³ with prominent columns containing the musings of former government speech writers, members of government, and syndicated columns from right of centre overseas writers.

To the equality of citizens demanded even in jurisdictions (unlike Australia) that possess standard bills or charters of rights, we need to add Marx’s observation (Marx 1843 [1975], III: 153), that a ‘political equality’ that is not practised in the context of attempts to accomplish a much more broadly conceived social equality — attempts that we now associate with the welfare state: health, education, employment protection and income support — actually preserves existing political inequality. A functioning liberal democracy, then, also needs to be a social democracy, just as social democracy requires as its precondition those institutions and commitments that we associate with the classical liberalism of JS Mill. I will use the term liberal democracy to include social democracy.

My argument is that Australia has never fully implemented liberal democracy in the sense in which I have used it, though perhaps that was its federation trajectory, if we ignore the racism fundamental to the colonial union (Duncanson 2002). Currently, the regime is retreating from the tenets of liberal democracy at a rapid rate (Rundle 2002) and seems indeed to have embraced — if not uniquely among contemporary Anglophone political cultures — a kind of Peronism.⁴ Election

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victories become empty mandates to pursue previously undisclosed or hitherto non-existent policies. Opportunistic opinion polls act as plebiscites on single issues, only one side of which may reach public attention. In government itself, especially in Australia, since the People are taken to have spoken at the election, there is no need of constitutional checks; there is little need of ministerial responsibility to the legislature if the Leader has confidence in him or her. A public service, now largely without tenure, selected according to criteria of political loyalty, can shelter a minister, whilst remaining invisible, by supplying or purporting to supply only certain information. Ministerial ignorance of matters relating to his or her portfolio no longer seems to indicate either his or her culpability or the failure of the system of representative government. Or, we might say, government now represents itself with the object, simply of maintaining itself in office.

Stat(e)ing

If we follow the argument of Benno Teschke's recent text (2003), the first modern state was none of the polymorphous organisations that collectively participated in what he terms 'the myth of Westphalia'. Conventionally, the treaties of Munster and Osnabruck of 1648, collectively known as the Peace of Westphalia, are considered to have inaugurated international law as the relations between newly conceived political forms — modern states — each politically autonomous with a hierarchically organised sovereign government and definitively bounded geographies. Teschke, by contrast, argues that the modern state is inseparable from the rise of the capitalist organisation of economic production,⁵ around which particular forms of legal and fiscal apparatus develop which contrast with the ramshackle jurisdictional practices and inefficient tax-farming means of revenue raising to which Louis XIV, the classic Absolutist monarch remained, precisely, subject. Forty years after Westphalia, mercantile and agrarian elites finally took control of England in their Glorious Revolution, creating a polity as economically advanced but more coherent politically than the United Provinces, many of whose financial practices they adopted. It was larger than the United Provinces and, with the addition of Scotland by the

Act of Union of 1707, became, as every child knows, the largest free trade zone in Europe. This is Teschke's first properly modern state. This externally aggressive 'fiscal-military state' (Brewer 1989), according to Teschke, forced European states into modernity through its continual defeats of them, subsidising allies to confront its enemies on the continent, and directly confronting European rivals, militarily and economically over most of the world. In more ways than one, the first modern revolution 'and its defining documents, the Declaration and Bill of Rights, have continued to provide a template for constitutions and political manifestos to the present day' (Prest 1998: 68).

In contrast to its political cohesion, its fiscal efficiency and its military power, Britain's constitutional basis was one of studied vagueness. The 17th century revolutions and the memory of their attendant chaos had, Roy Porter writes (2000), persuaded its leaders to mistrust enthusiasm and assertions of certainty in both religious and connectedly political registers — a mistrust manifested classically in Hume (Hume 1736 [1978])⁶ — which recent experience seemed to have shown, led to confrontation and conflict. If, as John Phillip Reid has it, 'eighteenth century British political theory was wrenched with the eternal predicament that government power was needed because humans had to be policed, but because mere humans exercised government power, humans could not be trusted with power' (1991: 129), politeness became the preferred form of policing practice, securing the polity at least in the early years of the Revolution. Shaftesbury and Locke (Klein 1994, Locke 1693), whether consciously or not, import many of the preoccupations of the 16th, early 17th century European writer, Althusius. His main concern was with the 'promotion of civility and virtue throughout civic life from conversation to eating'. If we know our etiquette, a new and peaceful form of social reality becomes possible in which government is based on the populus, 'defined as the web of corporations', each of which has its own government, 'none of them wielding absolute power' (van Gelderen 2003: 87). Civility and civil life are linked in early Europe in the same way as politeness and the polity in what will be, by the 18th century, the 'free-born Englishman'. They were based on what they could be, convention. And, of course,

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the Convention Parliament, illegal under the Stuart constitution, and made legal only according to the conventions of authority its participants initiated and accepted, was what had made the English experiment possible.

The disavowal of this polite, compromising basis for the polity in favour of something more abstract, but also more muscular, more apt for a global power, is something we associate with Bentham and his followers, preoccupied as they were with applying social engineering experiments to luckless subjects. During the last third of the 18th century, a number of political developments parallel the authoritarianism implicit in Bentham's more Hobbesian contention that law is the sign of the volition of the sovereign (Bentham 1970: 1). Following Clive's spectacular conquests in India, East India Company officials began, in effect, evoking the Hobbesian notion of sovereignty by conquest to justify their rule over Bengalis and subsequently others on the subcontinent (Guha 1982: 33).

In the eyes of increasing numbers of English observers, the empire of the seas, once idealized as the domain of free white peoples, had become the imperium of palpably alien colonial subjects, and the nation was confined increasingly to the island of Great Britain itself; even Ireland was excluded (Wilson 2003: 11).

Ireland was, of course, incorporated into the Union in 1800, but not as an equal partner: as Theodore Allen puts it:

... the distinguished historian and Abolitionist, Henry Hallam (1777-1859) pointed out the racist affinity of the Spanish genocide of Christian Moors and the English oppression of the Irish ... The pre-eminent Anglo-Irish historian William Lecky noted how the people of the English Pale in Ireland "came to look upon the Irish much as later colonists came to look on Red Indians" (1994: 29).

Nothing of the above was changed by the union imposed in 1800, and it was in vain for those who objected to observe that in 1778, the secret Carlisle Commission had (equally vainly) attempted to preserve the Atlantic empire by offering equal status with Westminster to the American colonial assemblies (Harlow 1952, I: 527). Why, it was asked,

could the Irish Parliament not have equivalent status to that envisaged for the American assemblies? But Ireland was to be governed by a sovereign Parliament in London without even the mediation of a protestant Parliament in Dublin. The continuing process, to which Michael Collins (1916 [1996]) points, of non-recognition of indigenous law, property and religion in Ireland would be shared under the second empire by indigenous, 'primitive' peoples from Scotland to Australia. Henry Reynolds writes movingly of the dispossession of the Aborigines (1987). Less well-remembered, perhaps because of their own scattering and assimilation to other cultures, and the later romantic appropriation of the Highlanders' past were the more or less contemporaneous Clearances: 'the contempt for the Highlander was responsible for the brutalities that followed Culloden [in 1746] and the same indifference to his way of life was shown when the Clearances began fifty years later' (Prebble 1968: 10).

The spectre of a broader liberal democratic citizenship discernible in the emphasis on convention and politeness (Wilson 1995) nevertheless haunts the political and legal positivists. In his discussion of Bentham's well-known terror regarding the supernatural, Miran Bozovic suggests that our fear of ghosts arises precisely because we don't believe in them (1995: Introduction). What frightens us in the haunted house is what is not in it, what is impossible, *unheimlich*. The citizen of liberal democracy with whose trace I'm concerned, often assumes the form of this impossible, non-being in the more authoritarian *mentalité* of certain second empire figures, rulers, and those who justified their form of rule. Austin, as we know, fled this uncanny being, renouncing legal positivism in his *Plea for the Constitution* in 1853 (Hamburger & Hamburger 1985: ch 9). Dicey, too, abandoned Austinian Parliamentary sovereignty for a time, when the legislature contemplated Home Rule for Ireland, glimpsing briefly the citizen-legislator with values behind the abstraction of Dicey's own sovereign, a citizen with a volition that did not reflect of Dicey (Heuston 1964: ch 1).

The APEC meeting

The suggestion that this ghostly citizen has been somehow made less uncanny by electoral reform, perhaps even charters of rights, was thrown into doubt by the collection that prompted this article, *Pepper in Our Eyes* published by Wesley Pue, a law professor at the University of British Columbia, after the scandal of the Asia-Pacific Economic Cooperation summit meeting in Vancouver, British Columbia in 1997. Pue was not originally a human rights or even a constitutional lawyer, but a historian of common law with a particular interest in the political process of common law diaspora in the western regions of the Dominion of Canada (2000, 2001). He happened across the APEC disturbances because they unfolded almost literally outside the window of his office in the UBC Law Faculty building, a room above an entrance concretely inscribed with the maxim, 'fiat justitia, ruat coelum'. Let Justice be done, though the heavens fall.

The conventional Whig notion of balance that qualifies the extremism of that motto and forms an elusive if appealing component in the ideology of the Atlantic world before its late 18th century collapse, represented itself in some of the Canadian reactions, articulated by Pue, to their government's realism, its attraction to the idea of politics as a particular form of art, the art of the possible. Prior to the APEC meeting there had been considerable indignation in some Canadian circles that the country was hosting a meeting of leaders of some very dubious regimes. As if to confirm the grounds of this indignation, Suharto, then president of Indonesia and who famously came to power in a coup that was also the slaughter of some half-million, largely Chinese, Indonesians, expressed a wish not to be 'embarrassed' in Canada during the leader's meeting by public demonstrations of opposition both to his by then notoriously corrupt and repressive regime, and to Canada's association with it.

The meeting nevertheless took place in the Museum of Anthropology of the Pacific Coast on the edge of the University of British Columbia campus, a place of re-collection and meditation about First

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Peoples and the inscriptions of their hope of reconciliation and coming-together with the invaders from Europe. Protests were planned along the route the motorcade was to take to the museum from the luxury hotels of downtown Vancouver through the University of British Columbia campus, two minutes' walk from the Law Faculty, and even less from Green College, a graduate student and scholarly visitors' residence.

The Royal Canadian Mounted Police, which, rather than the Vancouver Police, exercises jurisdiction on campus land, preserved Suharto from embarrassment with enthusiasm, confiscating banners and assaulting and arresting peaceful protesters even outside the anti-embarrassment exclusion zone they had set up. Crowds were doused with pepper spray, beaten, handcuffed, and in the case of one man, detained for 14 hours without charge. Pue's and other law academics' initial responses were understandably to this police violence, inappropriate, they insisted, at a peaceful protest. Of course there is no doubt an ingredient of violence in confronting dictators, leaders of authoritarian regimes, or even on other occasions, to think of one example, those employers who appropriate one's labour without balanced negotiations concerning the conditions in which they do so (Green 1990), with disagreement, non-compliance, resistance and the utterance of loud, frank and vocal and written evaluations of dictatorial conduct on the streets or adjoining buildings. In the haunted state, how dare the subject question the way it is administered, embarrassing its rulers and presuming to the uncanny status of participating citizen?

The principally symbolic violence involved in confronting oppression with assertions of its illegitimacy, is, on the other hand, of a kind that liberal democracies would protect — rather than feel provoked to physically violent retaliation by its manifestation when their citizens engage in it — through policing in both its old (ie, the activity of maintaining a healthy polity), and its more restrictive and new, meaning. One could venture further and suggest that the failure of citizens to engage in that kind of violence signals a dangerous decline in democratic commitment. Policing in its older sense might include precautions against such a decline.

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When it became clear to the Canadian federal government that the physical and repressive violence of the RCMP at UBC would not be allowed on this occasion univocally to be portrayed in the media as more the work of a few ‘bad apples’ among the Mounties, a federal inquiry was set up. Complainants to it and beyond argued that the excessive use of force by federal police was not all that there was to object to. The entire episode, they argued, was symptomatic of a deeper constitutional problem that gave too much power to the federal government to impose its will on reluctant Canadians, namely the too close links between police leadership and the office of the Prime Minister. The police, law academics claimed — with a commendable awareness of possible tautology in a world where politics has become the art of what is often depressingly possible — had been politicised.

Following this evident belief that politics is the art of the possible when others would rather he had tried something more ambitious, the then Prime Minister, Jean Chrétien had been, despite the repressed complaints, able to showcase his government as a responsible member of the APEC, an organisation that assiduously avoids discussing anything but the narrowly defined economic policies of its members. He was able to exorcise the superstitious fears of the dictators among his guests, that the spectres of democracy or human rights would be allowed to haunt them in the mellow daylight of a Canadian university campus, between the Faculty of Law now revealed unexpectedly to be without the faculty of constituting liberal democratic citizens, and an evocatively named Green College. Refusing to respond to complaints — Chrétien refused to give evidence to the inquiry — his government simultaneously concealed and revealed what many suspected was its complicity in the heavy policing at UBC.

Two events in Australia: tropes and troops

One is reminded of the cliché of politics as the art of the (depressingly) possible by recent events in Australia. The first is the famous waterfront conflict. There was here, according to the leading account of it (Trinca & Davies 2000), a plan to substitute newly trained, non-union

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personnel, some ex-, some not so ex-military, for the existing unionised labour force on the docks around Australia. The federal government was apparently strongly implicated in the plan, although the details of this were obscured by an out of court settlement of the Maritime Union of Australia's conspiracy action against the government. Dubai was originally intended to be the site of the non-union workforce's training, but this was thwarted by the organisation of international waterside workers. In the event, the National Farmers Federation funded the training at a spare wharf in Australia.

The plan was of a kind long since foreshadowed by the Mont Pellerin Society, which was formed in the 1930s in Europe in the shadow of fascism, to plan the political demise of organised labour. As a number of scholars have noted (see the references in Duncanson 1997), the Mont Pellerin agenda replicated itself in postwar think-tanks media propaganda masquerading as opinion pieces, and in corporately sponsored academic work, opposing socialism, and later feminism and new thinking in historical, cultural and legal studies. Hence the so-called 'culture wars' (see, eg, Macintyre & Clark 2003) and the fashion for vocationalism and corporate bureaucratism in universities (Reid 1996, Thornton 2004). The scholarship detailing the unfolding of this agenda is meticulous. As we all now know, much of the vocabulary of the organisations that embody the agenda resembles the script of Joan Littlewood's *Oh What a Lovely War*, a grim satire of World War I. Corporately sponsored intellectuals are, in think-tank literature, to bombard enemy intellectuals, conduct artillery barrages and combat with them, and direct propaganda toward non-intellectuals deemed gullible and easily led (Carey 1995). Like Littlewood's generals and royal mannequins, no doubt, corporate leaders would in this drama, sit back and wait for the war to be won for them (Cockett 1995, Bakan 2003).

The new government's *Workplace Relations Act* 1996 (Cth) appears to have been heavily influenced by just such a corporately sponsored organisation, the HR Nicholls Society. The Australian Senate, in one of its bursts of independence, refused some of the early drafts. In the event, applying the Act eventually agreed to, the legality of the action of sacking union labour, simply for being union labour, was

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rejected by the Federal Court (*MUA v Patrick Stevedores* in 1998). The justification offered by the stevedoring company for the sackings, that the subsidiary company it used to hire labour lacked the assets to continue to do so was rejected by the court, since, in effect, the state of affairs had been brought about for just this reason by the principal company. Employers dislike trades union, of course, much as police officers find juries inconvenient. Both constitute countervailing powers, potentially contradicting a world-view about what is obvious to powerful protagonists. We rightly suspect a state that erodes juries by diminishing their function, that selects them — or ‘pricks’ them in the 18th century term of which EP Thompson reminded us — of becoming dangerously authoritarian (1980). Equally, making due allowance for a state that presides over a capitalist economy, the subversion of trades union by legislation and again by bizarre and unacknowledged conspiracy invites criticism as the attempt of capital and government to overbalance a constitution with many centres of power, and achieve untrammelled power for themselves (see Mill 1859 [1975]).

A second event is the Tampa affair and the so-called ‘children overboard’ incidents in 2001. The story, now familiar, is one in which the federal government, apparently about to lose an election, discovered a winning rhetorical trope in the conversion of a, by international standards, small number of asylum seekers in boats heading for refuge in Australia into an engulfing flood from which only the determination of the incumbent government could save the ‘ordinary Australian’. Even the normally conservative *Australian* was led to comment that ‘the crisis that John Howard would have us believe exists just is not there. Australia received 6,500 applications for asylum compared with 78,000 in Germany and 74,000 in Britain last year’ (9 November 2001). The rhetoric resonated with the historical xenophobia that many Australians have inherited as part of the mythology that surrounded a Federation (Trainor 1994) in whose formation in 1901, the:

... big picture ideas [were] no different to those of the German thirties and forties: of the necessity to create “one people without admixture of races”⁷⁷ (to use Deakin’s words); of unbridgeable racial inferiority; of races destined to die out; and of the eugenics of progress. Nor were the technologies of

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race management so dissimilar: the enforced separation in concentration camps; the petty regulation of movement and association (Kalantzis 2001).

Clearly, Australians can no longer be interpellated as members of a small community of white Christians, beleaguered by hordes of undesirable yellow or brown heathens. Undesirability is now signalled by the trope of the ‘ordinary Australian’, the stoical, often hard-pressed but self-sufficient, egalitarian individual, whose wellbeing is at risk from asylum seekers who will not wait patiently in line to be offered refuge in Australia. Unfairness and ingratitude are the subtexts of this discourse. The ordinary Australian — now allowably southern European or Asian — is quietly cultivating his garden and outsiders want to trespass and enjoy the fruits they have not themselves cultivated (Duncanson 2003). Public acceptance of the story was assisted in the 1990s and beyond by concealing asylum seekers in remote camps, and by federal government directions that photographs of their faces were not to be published. Asylum seekers could not have a face, they could not be human. One is reminded of the shaven stick figures in striped uniforms in Nazi camps. The extremity is different, the dehumanising motive of their captors the same.

In late 2001, a Norwegian container ship, *Tampa*, rescued around 400 asylum seekers from a sinking boat and sought to disembark them on Christmas Island, an Australian Territory. The Prime Minister defended his compatriots from this invasion with the promise that ‘those people will never set foot on Australian soil. Never’.⁸ Armed special forces troops were dispatched to the ship despite its master’s urgent request, instead, for medical supplies to alleviate dehydration, diarrhoea and other sicknesses of the 400 plus passengers on a ship designed for a tiny crew.⁹ Chillingly reminiscent of the famous Nurnberg rallies were the campaign posters of the Prime Minister, right arm raised in a fervour of nationalism and the slogan: ‘We have an absolute right to determine who comes into this country and the manner of their coming’ (*Australian* 1 September 2001).

In a second incident, which is perhaps even better known in Australia and elsewhere, because revisited by a Senate inquiry a few months after, a Navy warship, the *Adelaide* intercepted a small vessel overfull

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with asylum seekers and described by Navy observers as unseaworthy. Unsuccessful efforts were made by the Navy to force the boat to return to Indonesia, but a day later it began to sink. Its passengers began to abandon it. Photographs were taken, possibly because two sailors from the warship, a man and a woman, dived into the ocean to help those in difficulty. In government propaganda, the photographs were represented as having been taken a day earlier, before the commencement of the sinking, making room for the additional gloss, that asylum seekers were throwing their children into the ocean to ‘blackmail’ the warship to take them to Australia.

David Marr and Marian Wilkinson (2003) expose an arrogance similar to Chrétien’s in the government’s responses. The Australian Minister for Defence almost certainly knew of the deception, but he had signalled an intention to retire from politics, and subsequently moved from Defence to a job with a defence contractor. The Prime Minister and Minister for Immigration were able to say, after the election that saw them back in office, that they repeated the falsehood because they were not told it was false. The possibility has now been raised that they were lying. Before the election, crew from *HMAS Adelaide* were reported as saying that no children were thrown overboard. A senior public servant has now revealed that he told the Prime Minister that no evidence existed for the allegation that children were thrown overboard the evening before Howard made a pre-election speech asserting that the evidence was compelling (Scrafton 2004). Michelle Gratton, a far-from-radical *Age* columnist concluded, ‘the Prime Minister’s honesty is important: we should not be blasé about new evidence suggesting that John Howard lied’ (2004). Scrafton’s revelations were dismissed by the government as conveniently late, but as he pointed out on a TV interview, he was instructed not to make them to an internal investigation, and he had, as he put it ‘a mortgage and two kids’ (*ABCTV* 16 August 2004). His then superior, Max Moore-Wilton, was known as ‘Max the Ax’ because of his dismissal of so many public servants.

Worrying as official comfort with deception and deniability may be for our assessment of the polity, more worrying still is the absence of any serious institutional *corrective*. Marr and Wilkinson report public

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service complicity in the lies, and, among other inadequacies in the political system, the inability of the subsequent Senate inquiry into the children-overboard incident to compel the testimony of some key witnesses. And just as Chrétien's depressing cynicism about public unconcern seemed vindicated, so do the Australian PM's description of the Australian public's having 'moved on' by the time an accurate account of events and deceptions surfaced in February of the following year. Old lies are stale lies and the discussion of them belongs, presumably, to 'black armband history', which is the right's term for historians who ponder the implications of the massive theft of Aboriginal land, the massacres and attempted assimilation of Aborigines to the Europeans (Macintyre & Clark 2003).

If one of the gloomier conclusions in *Pepper in Our Eyes* was precisely that the Chrétien government's evident assumption that the public would not be greatly concerned about the probably misuse of the federal police was correct, the same assumptions are found in the behaviour of Australian governments. As Pue, Margot Young and other contributors to *Pepper* saw it, public commitment to liberal democracy was momentarily revealed as dangerously weak. The involvement of emblematic institutions, such as the Mounties for Canadians, contributors to *Pepper* argued, are especially likely to encourage the complacent belief that all is well, and that they are indeed citizens of a successful liberal democracy.

Unease

One does begin to detect in Australia an anxiety that the public is not hearing or heeding what the geist of liberal democracy is attempting to communicate to them. It may be worth quoting at length from the Introduction to a collection edited by *Sydney Morning Herald* journalist, Margo Kingston:

This book contends that John Howard [the Australian Prime Minister] is not a liberal or a Liberal, or a conservative or a Conservative. It seeks to show that he is part of an ideological wrecking gang made up of radical-populist economic opportunists, one which long ago decided that robust

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liberal democracy was an impediment to the real elites — Big Business and Big Media — that sponsor them, rather than an essential complement to and underwriter of market capitalism ... that Howard's wrecking gang ... now threatens the long term future of Australian democracy ... We are not consumers ... (or) commodities, we are citizens (2004: 4).

But if this seems too partisan, word that not all is well is heard in seances of a more conservative character. In a statement published in the press on 9 August 2004, 43 former senior public servants, ex-ambassadors and former heads of the military expressed concerns summed up by General Gration, ex-Head of the Defence Force: 'Demonstrably over the last year or two, truth in government has not been what it should be'. Deception over the motives for invading Iraq was the catalyst, but for Gration and his colleagues and, he reportedly adds, many serving diplomats, public servants and members of the military who cannot speak out, disquiet has been felt about 'effective democracy' in Australia since *Tampa* and the children overboard affair. Cavan Hogue, one of the 43, former High Commissioner to Malaysia and former ambassador to Thailand and the UN is quoted: '... we are not a bunch of pinkoes. There are Liberals [this means, in Australia, conservatives], Labor and swinging voters among the signatories' (*Sydney Morning Herald* 9 August 2004). Again, one cannot press analogies too far, but government dismissals of 43 retired senior officials of the military and diplomatic corps as alcohol-soaked has-beens evokes the rhetoric of many radical-right regimes, whose eagerness to destroy the credibility of traditions and people who oppose them leads to extremism.

In a recent collection of essays edited by Robert Manne, one finds expressed the sentiment that 'Australia, of course, is nothing like a classical tyranny, but at the same time it is worth recalling Hume's warning that it is seldom that freedom of any kind is lost all at once'. The author of the essay, William Maley, is described in the information about contributors as 'Professor and Director of the Asia-Pacific College of Diplomacy at the Australian National University', which is not generally seen as a hotbed of radical alarmism or overblown polemic. Writing of the treatment of asylum seekers by middle to senior

bureaucrats, Maley describes a ‘culture of control ... To put it bluntly much of the bureaucracy has become indifferent to considerations of common humanity’ (Maley 2004). Hannah Arendt termed this elision of ethics by bureaucratic routine, of course, the banality of evil.

A minor example of this banality, at least of indifference, was reported in an *Age* report of 26 February 2004. One Aladdin Sisalem, beaten up by police in Kuwait for being a Palestinian — he was a guest worker — by association a supporter of Arafat and therefore by further association a supporter of Saddam, fled Kuwait, walked across war zones in West Papua and eventually sailed to the Torres Strait Islands, where he claimed refugee status. Because he failed to ask immigration officials for Form 886, according to the report, he was deported and became part of the Pacific Solution on Manus Island, Papua New Guinea. At the time of the article, he was living there alone, suffering depression and costing Australia \$23,000 a day — without the cost of the depression medication, which had been withdrawn. ‘Money well spent’, Immigration Minister Amanda Vanstone was quoted as responding, referring to the message people such as he apparently send to other victims of overseas brutality. Government encouragement of a tired xenophobia, cynicism and sociopathology, which form the context of responses of this kind, Maley compares with ‘Hitler’s rise to power’. If this sounds melodramatic, it’s worth remembering that small Hitlers abound everywhere — in the microcosmic analyses of workplace bullying, for example — causing misery, without the ability, ambition or capacity for world domination. An early Nazi accolade, we do well to recall, was awarded to the architect of the eugenics program adopted by many US states and reflected on poignantly in Martha Collidge’s film *Rambling Rose* (see also Gould 1996: ch 7). It is possible that EO Neville, the Western Australian bureaucrat zealously in charge of that State’s assimilationist policies from the 1930s, and portrayed in Phillip Noyce’s film, *Rabbit Proof Fence*, was unknown to the Third Reich, and missed being similarly celebrated.

The future belongs to me¹⁰

From a contemporary Australian perspective, the events examined in *Pepper* are signs of a healthy constitution in Canada. The too-cosy relationship between the federal police (on other occasions, the military) and the government of Ottawa was identified, and recognised as incipiently anti-democratic, and if Chrétien himself was not held in some way liable, post-APEC outrage has led to a new awareness of the importance of police independence from the executive.¹¹ If such a scenario now seems unlikely in Australia, it is pertinent to ask when the etiolation of citizen into geist began; when did s/he become an uncanny visitor to what might once have been home? One beginning was foreshadowed by James Bryce, when he distinguished the power of the monarch to dismiss a British government with the confidence of the House of Commons — by convention impossible in modern times — from that apparently acceptable power of the monarch's colonial representative to dismiss a government with a majority in its supply-raising assembly in the colonies (Bryce 1901, I: ch 8). Such a power was, of course, manifested when the Australian Governor-General dismissed a federal Labor government with a lower house majority in 1975.

Two authors locate a transition in governmentality in the 1980s. Paul Kelly locates such a transition in the end of what he calls the 'Australian Settlement' in which employers were given tariff protection against overseas manufacturing competition in return for paying a judicially determined fair wage (Kelly 1992). Such a link implies that with the radical reduction of tariffs in the 1980s, the necessity for fairness in the labour market ceased to be a central concern of the state and, indeed, casualisation of employment and the subversion of the trades union movement has ensued. The second author, Michael Pusey (1991: 1), in the work already referred to, places this departure in the same period as Kelly, although with less confidence in its potential for social justice. Xenophobia aside, federation has been criticised for trying to square the circle: to reconcile the divergencies between the interests of labour and those of capital by giving labour the vote and by

subordinating the power of both labour and capital to a judiciary with a stake in neither camp. Perhaps in Australia, where local capitalists may often have been *nouveau riches*, this liberal solution could have seemed less naive than it would in Britain where judges, City men and landlords were chums through public school, Oxbridge and gentlemen's clubs, and shared social outlooks (Cain & Hopkins 1993). In any event, the traditional pattern of liberal democracy was more thoroughly integrated into an Australian welfare state based on fair wages and tariffs than was the case in the British model that owed more to the bureaucratic intervention in the operation of capital envisaged by TH Green and, later, Keynes and Lord Beveridge, Butler, and the consensus that prevailed in political practice until the 1970s.

As one might expect, then, the dismantling of the Australian version of a welfare state, Kelly's 'Australian Settlement', was much less insulated than Britain from the much older, inherited, Settlement, made law in the statute of that name, passed in 1701 in the wake of the English Glorious Revolution, and guaranteeing the independence of the judiciary from the executive. In 1989, the then federal Labor government removed Justice Staples, a judge appointed with tenure to the federal Arbitration Court, but sacked by the expedient of repealing the legislation setting up his court, then creating a new court with all the judges re-appointed, except Staples. This is in sharp contrast to the procedure adopted by both the Gladstone and Disraeli administrations in Britain. There, the *Judicature Act 1875* (UK), which reformed the English High Court structure, preserved existing judicial appointments to those courts made obsolete by the Act, in accordance with the Act of Settlement, preserving judicial tenure from extinction without due process, despite Westminster's then vigorously Diceyan claim to a more complete sovereignty than the Australian federal Parliament currently claims. More breathtaking than the Staples sacking itself, perhaps, was the supine indifference of constitutional lawyers, with the exception of Michael Kirby (1990). One consults the student texts in vain for some discussion of this breach of constitutional principle, but not with surprise. More predictable was the response of a descriptive political scientist: we believed that Staples had tenure but then, as it turned out, he

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did not (Solomon 1992: 166). Is this Weimar resignation about the debacle to come, or the dewy-eyed presentism of HG Wells' Eloi? Whatever it is, it does not augur well for the future of liberal democracy in Australia.

What is unleashed, made respectable, is the politics of instrumental rationality and short-term expediency, one that judges institutions solely in terms of the selected present goals of those currently in power. On the one hand, this risks what Robert Bolt recognised in the lines he gives to Thomas More in *A Man for All Seasons* (1960). In a dispute with his future son-in-law, Roper, More is urged to have arrested a man, Richard Rich, who is undoubtedly going to become an informant against More. More replies that, while Rich is a bad man, there is no law against that, and that the Devil himself is entitled to benefit of law — to be tried for what he had done before an impartial tribunal, not for who he is, or is thought to be. Roper refuses the hypothetical concession of benefit of law to the Devil.

Roper: So you'd give the Devil benefit of law?

More: Yes. What would you do? Cut a great road through the law to get after the Devil?

Roper: I'd cut down every law in England to do that!

More: And when the last law was down and the Devil turned on you, where would you hide, Roper, the laws being flat? This country's planted thick with laws from coast to coast — Man's not God's — and if you cut them down — and you're just the man to do it — d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law for my own safety's sake (Bolt 1960: 39).

More, or course, lost his head, but to an Absolutism that lost its head several times, figuratively, before the establishment of the Whig constitution that Bolt's More represents *avant la lettre*.

On the other hand, the dismantling of liberal/social democratic traditions in Australia has shifted the state on to the strange terrain of negative liberty. The concept of the state as protector and guarantor of fairness that, we saw, underpinned federation, is re-defined partly in which Quentin Skinner terms the 'neo-Roman claim that dependence

constitutes a form of constraint' (2003: 24). This selective Whig liberalism, which I suggested was historically the beginning and politically the precondition of liberal democracy, Skinner writes, 'worked well for those whose chief concern was to limit arbitrary power', but it is a regression from the tenet of federation that a state that intervened to secure the material welfare of its citizens was not thereby creating a situation of dependency. A second aspect of this selectively Whig liberal approach to government is one associated with Isaiah Berlin, among others. For Berlin, a person is not unfree so long as another person or group is not intentionally forcing or intimidating her to do or refrain from doing something. If I am detained, I am unfree. If I am compelled to enter an unfavourable contract on unequal terms with an employer, I am not unfree. A poor person who cannot afford equivalent medical care or education to that obtainable by a rich person, is not thereby less free. It follows that intervention by the state to rectify imbalances of this kind — the act of creating positive liberty — is unjustified and smacks, for Berlin, of incipient totalitarianism. Inequality is natural — Berlin quotes Helvetius with approval:

The free man is the man who is not in irons, nor imprisoned in a gaol, not terrorized like a slave for fear of punishment ... it is not lack of freedom not to fly like an eagle or swim like a whale (Berlin 1969: 120).

In a philosophical world in which, dogmatically, 'everything is what it is: liberty is liberty, not equality or fairness or justice or culture or human happiness or a quiet conscience', inequality is naturalised and ameliorative measures, although presumably not charity, are unnatural (Berlin 1969: 122). There is an echo of Malthus here, but also of Hume, who equates human difference with social inequalities. Thus, the consequence of trying to produce and maintain material equality would be 'pernicious' because it would require the repression of 'men's different degrees of art, care and industry': the authority to inquire into inequalities and end them 'must soon degenerate into tyranny' (Hume 1777 [1902]: para 155). Berlin, like Hume, believes that one might enjoy a fuller liberty under a benign absolutism than under a democracy (Hume 1777 [1985]: Essay VII, Forbes 1985: 156 et seq).

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Skinner writes:

The contention that our freedom is taken away only by identifiable acts of interference worked well for those who wished to insist that contracts were free so long as they are not coercive and that colonization is legitimate so long as subject peoples are not actively oppressed (2003: 24).

Current Australian politics are, then, increasingly informed by the view, rejected at Federation, that persons in 'dependency' situations, on government pensions, for example, are not full citizens and may be drafted into involuntary work, or, in the case of the unemployed, may have their movement restricted so that they cannot choose to relocate to where the cost of living may be lower, but where their chances of re-employment are judged to be lower. The threat to 'private' power to freedom is discounted.

Conclusion

I have suggested, especially in the context of Australia, that the future of liberal democracy depends on our being able to summon the geist that is citizenship. The house that s/he haunts is ordered by those who do not believe in her, who are therefore mortally afraid of her and exist perpetually in a state of exorcism and denial. A thorough investigation of the Anglophone premises reveals the post-revolutionary English learning, in Hume's words, 'a lesson in moderation in all our political controversies', a constitution premised on compromise, a polity premised on politeness among the people who ruled. But, as the title of Kathleen Wilson's book suggests, there was a broader 'sense of the people' (Wilson 1998, see also Wilson 2003), in 18th century politics until non-sense of it was made in the language of government that informed the approach to the Thirteen Colonies, and which led to their revolt. In the British remainder of the Atlantic empire, the sense of the people grew vaguer, as James Vernon has observed, as the term expanded formally, as those admitted to the franchise widened (1996). Once the state began to appear to be the product of law rather than constituted by compromise among the political classes, and law to be

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the will of the sovereign rather than the practice of that compromise, there was an abstraction with which to eviscerate a promising growth of political inclusion.

The future of liberal democracy depends upon the institutional settlement discussed and agreed in the half century after the English Revolutions — the separation of powers, the scrutiny of the executive by the legislature on behalf of the commons, the free availability of information through which public scrutiny is made possible. This future requires an excavation of the politeness and compromise concealed in the foundations that are not foundations, not static but ever accommodating change, as well as the Marxian recognition that liberty, *pace* Berlin, is equality. Colonel Rainsborough put it well during the Army debates in 1647: ‘the poorest he hath a right to live as the greatest’ (in Woodhouse 1986: 53) — unfreedom is inequality in the possibility of realizing oneself in the recognition that one is one of many other selves.

The deceit, divisiveness and the xenophobia that conceals the oppression of the majority by a minority of obscenely rich, with their obsequiously affluent managers, behind an appeal to a community threatened from without, is no more than an obsessive exorcism of citizenship. In our centuries, we have seen it practised through charisma, but more often through the fearful mediocrity of small grey (actually white) — mostly — men who sacrifice with eagerness the welfare of their fellows for one small moment’s flattery by the rich. In his ghostly raiment, the citizen watches; like Kipling’s redcoat, s/he sees:

While it’s Tommy this an Tommy that, an “Tommy fall be’ind”,
It’s, “Please to walk in front sir”, when there’s trouble in the wind.

An’ it’s Tommy this an’ Tommy that, an’ anything you please;
An’ Tommy ain’t a bloomin’ fool: you bet that Tommy sees (Kipling 1892
[1994]: 399).

Notes

- 1 This article is based on two papers, one given in the Faculty of Law, University of British Columbia, and one in the Department of Political Science, Melbourne University. Thanks particularly to Wes Pue and Laura Watts in relation to the former. The latter conference was entitled 'Geist '04', hence my invocation of the supernatural. Thanks to Peter Chen for organising that. I should like to dedicate my offering to the courage and inspiration of my son, Sandy Duncanson in having fought and survived so vigorously his ninth bout of cancer at this time, and to the compassion of his sisters, Kirsty Duncanson and Danielle Irvine for their help to him in doing so. Also, I owe so much more on this difficult occasion than the usual incisive criticism and encouragement from Judith Grbich and the help that she always dedicates to my work.
- 2 'Privatisation' assumes a distinction between government and the public contradicts a fairly basic notion that governments own nothing except that which the public provides, the deployment of which it is therefore entitled to scrutinise — at least on the Revolutionary principles that 'have continued to provide a template for constitutions and political manifestos to the present day' (Prest 1998: 68).
- 3 A recent ABC Radio interview with a former diplomat critical of Australia's policy on Iraq was cancelled after the announcement of the federal election date on the basis that broadcast criticism might be construed as bias. It might more likely be construed, one would have thought, as free speech.
- 4 It may be no accident that the musical emphasising the poignancy of the Argentinean's widow was by Andrew Lloyd Webber, apparently a staunch supporter of Margaret Thatcher.
- 5 Production, not distribution, is vital for Teschke, since it requires institutional facilitation in particular territories.
- 6 '... the understanding, when it acts alone and according to its most general principles, entirely subverts itself and leaves not the lowest degree of evidence in any proposition, either in philosophy or common life' (267–8).
- 7 'Ordinary Australian' is the current government's preferred trope.
- 8 Many of the *Tampa* rescuees, re-routed to camps on Pacific islands whose agreement to provide them with temporary accommodation was not

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- unrelated to their economic dependence on Australia, did indeed set foot in Australia because they were found to be refugees.
- 9 Ironically, the crew of the warship *Adelaide* were immediately dispatched to help confront the supposed dangers posed by the dictator many of the rescuees were fleeing. The SAS, whose units were landed to ‘secure’ *Tampa* were soon in action on the ground against that very regime, also, to destroy a regime in an action, as we have seen, retrospectively justified on the ground that it brutally repressed its people.
 - 10 This is the title of a song from the Bob Fosse film, *Cabaret*, loosely based on Christopher Isherwood’s *Goodbye to Berlin*. The singer plays a member of the Hitler Youth and the song’s theme, like that of the film, is the replacement by new, younger men of vigour and direct methods, of the older, Weimar democratic tolerance — or, from a Nazi perspective, its inefficiency and decadence.
 - 11 *Pepper*’s editor, Professor Pue, now regularly advises the RCMP on the ethics of its relations with government.

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