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FOREWORD

"THE AUSTRALIA CARD" BY Ewart Smith

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An electric moment

A few years ago I had to attend a conference on Information Technology and Society in Paris. Mind you it was no great burden. The French government put the delegates up in a leading hotel near the Champs Elysées. The morning walk to the Congress Centre near the Place de l'Etoile took me past the elegant shops and the coffee tables where the vigorous conversationalists paused only to dip their croissants in the aromatic coffee.

The conference, like most, had tedious moments. But suddenly, an electric event occurred which I have never forgotten. At the end of a dull speech by one of President Giscard's Ministers about the benefits of a proposed machine-readable identity pass, a bearded man leapt to his feet. He demanded the microphone. In an eloquent and telling intervention, he reminded his listeners that efficiency was not all. The French Republic was about Liberty, he declared, or nothing. Those who did not learn from history were bound to repeat its mistakes. A dictatorship of dossiers rather than hobnail boots was, as Jacques Ellul stated, a dictatorship nonetheless.

The bearded critic took his listeners back to wartime Paris. How distant those days of occupation seemed as the sunshine streamed in from outside. He reminded the audience of what had happened to the Jews of the Netherlands and of France in those times. Those of the Netherlands, had with northern efficiency, virtually disappeared: gobbled up in the death factories of the Nazis. They suffered that fate along with others who did not meet the rigid stereotypes of the New Order. Gypsies. Socialists. Communists. Homosexuals. Slavs. The mentally or physically disabled.

And why had this occurred, the bearded man demanded of the droopy eyed Minister? Why did the French Jews largely escape the same fate? The Oppressor was the same. It was not a difference in the courage of the respective National Resistances or of good people in the Netherlands and France. No. The explanation, he declared, was to be found in a painfully simple thing. In the 1930s the Netherlands Mint had produced an identity card, truly impossible to forge. The technique of a special watermark had not been followed in France. Many Jews and others are alive today because of this little bit of Gallic inefficiency. Efficiency is not all. We also boast of other values.

A metro demand for papers

I walked out into the streets past the whirring computer displays of the congress hall. These symbols of the future - of disembodied information about all of us - re-inforced the telling message of the bearded man. And a ride on the metro that night underlined his arguments. The Raid. Police with

batons and hand guns. The demand for papers. Not, mind you, directed at the suited conference delegates. But at bearded people. Everyone knows people with beards tend to be unconventional. Arabs and black people were stopped. "Papers!" was the demand that rang down the caverns of the underground.

If you have papers, there is always the risk that you will be required to carry them. If you carry them, there is always the risk that you will be required to produce them to officials. Of course, the excuses will be good. We have only to look at telephonic interception and eavesdropping in Australia to see the way of the erosion of precious privacy. The intrusion of the State and its agencies spreading their net to catch hundreds of innocent telephone callers, in the hope of catching a few enemies of society. At first there was no legal interception. Then, for the great cause of national security. Then, for the "war on drugs". Then, for other serious crimes. Then co-operative arrangements with State police. Now suspected child abuse. And in the process, the very nature of society, almost imperceptibly, changes. Who would trust the telephones in Australia? This is not a question which paranoid people ask, obsessed about their privacy. It is a question which raises a central issue of this book. The place of officialdom in our form of society. The balance between freedom and control. The contest between efficiency and liberty.

An unconventional gadfly

I first met Ewart Smith when Attorney General Lionel

Murphy brought me into a High Court case. Ironically enough, it was a case which concerned the Joint Sitting of the Australian Federal Parliament in 1974. A conference of the barristers was arranged in Canberra with the Solicitor General, Mr (now Sir) Maurice Byers, the Secretary of the Attorney General's Department Mr (now Sir) Clarrie Harders, and various other legal luminaries. It was at this conference that my eyes first fell upon Ewart Smith. He was unconventional. Indeed, he was something of a gadfly. But he had an original mind. And he was that rare bird - a good draftsman. What he lacked in dignity, solemnity and pomposity, (the usual badges of the legal profession) he made up with sharpness of comment. As I was to discover many times in the succeeding years, his unconventional manner masked a fine legal mind. Disconcertingly, it would often display itself.

It was that mind which played an important part in two recent events of significance in Australia's political history. One event concerned the identification of the simple legal flaw which frustrated the attempt to introduce a universal national identity system in Australia with the engaging name "the Australia Card". A double dissolution of the Federal Parliament had been called. An election had been fought and won on the Card. The Government had the numbers for a Joint Sitting. But then doubts began to arise. There were unprecedented demonstrations of popular opposition throughout Australia. And it was Ewart Smith who found the clause in the legislation which eventually persuaded the Government to abandon the proposal. Time will tell whether it has

re-emerged, Pheonix-like, in the new proposal for a computerised tax file number system.

The second event concerned the recent referendums for the amendment of the Australian Constitution. It was Ewart Smith who drew attention to the consequence of the key provision of one proposal: the extension of the maximum term of the current House of Representatives. This became a telling political point for the opponents. In September 1988, all of the proposals for constitutional change went down to an overwhelming defeat. They showed once again, in Geoffrey Sawyer's words, that Australia is still, constitutionally speaking, "the frozen continent".

The state of liberty

One can disagree with much that Ewart Smith has written in this book. In a free society, citizens enjoy that privilege of difference of opinion and expression. To some readers he will no doubt emerge as a conservative ex-bureaucrat, acting out his well honed administrative talents at stopping reform and protecting the status quo. To others he will be seen as the very best kind of citizen. A man actually concerned about the state of liberty in his society. And with the intellect and experience to convert his concern into action at critical times.

Beyond the chronicle of the Australia Card and the recent referendums, there are other interesting tales here that are rarely told in the history books. The often frantic work, behind the scenes, by highly talented officials as the great political events of the nation unfold day by day. But the

centrepiece of this book is its description of the Australia Card debate. It is a story worth retelling and recording. Of course this is no impartial history. Yet I do not judge it to be a partisan political tract. The Australia Card proposal divided political loyalties. It stimulated some odd and unexpected alliances. And it mobilised into action a man whose quirky style and unconventional manner disguised a lifelong passion for individual freedom, as he saw it, and a formidable determination to do something about preserving it.

What a blessing it is to live in a country where, for all its faults, these qualities exist and, occasionally, prevail.

SYDNEY

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