

...alia- and the Things That Ought to Be",
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AUSTRALIA - AND "THINGS THAT OUGHT TO BE"

The Hon Justice Michael Kirby AC CMG*

VERY SOLID DUST

I have rarely seen three such worried men. Picture the
John Newcombe, national treasure, leads Derek Speake
and Rod Northam of the National Australia Day Council into my
office. Deep frowns. They were there to discuss with me the
subject of this speech. "We've done our homework on you",
says Northam. The frowns grow even deeper. A positive
atmosphere of melancholy settles on the room.

For a moment that Christian charity in which I was
brought up almost leads me to offer to withdraw. But the
flavour of Irish-Australian mischief tells me to hang in there.

"I'm afraid I'm not a nationalist", I declare. If you
want to give a speech about "dinki-di and ridgy-dij", you should have
invited someone else. Warming to my theme I begin
by mentioning the three wise men who have come to see me. "In
my opinion I believe that, after Hiroshima, old-fashioned
nationalism is dead". "That's all right", says John
Newcombe. "I'm an internationalist too". "Just send them

away feeling uplifted about Australia", says Northam. "That's certainly what we need at the moment. Too much gloom and doom. We need to get our problems in perspective and to think positive".

My mind speeds away to another time in Australia's life. Another Depression. Another turn of century mood. Another time of transition.

In the Depression of the 1890s, Henry Lawson captured the mood of despair - but of hope in his "Poets of the Tomb":

*"They say that man is made of dirt, and die, of course, he must;
But, all the same, a man of made of pretty solid dust.
There is a thing that they forgot, so let it here be writ,
That some are made of common mud, and some are made of grit,
Some try to help the world along, while other fret and fume
And wish that they were slumbering in the silence of the tomb."*

An earlier generation of Australians turned the great challenge of the 1890 Depression which followed the stevedoring strike into positive achievements for Australia. As Dr John Hewson has pointed out in an address to the Business Council, for good or ill, the future of Australian national life for most of this century was shaped by the decisions taken as Australia tried to grapple its way out of the Depression of the 1890s:¹

* The Federal Constitution was adopted in a form which, at least on paper, remains virtually unchanged today. We laid down the problems of Federal/State rivalry and buck-passing which have provided the constitutional and political controversies of a century;

We created the highly centralised system of compulsory arbitration for the idealistic purpose of spreading throughout the Australian community the wealth that flowed from our already prosperous rural and resource sectors;²

We used the power of the new federal polity to encourage a widely diversified manufacturing industry behind tariff walls which protected our continental country with the power of a single, uniform federal tariff;

We adopted an immigration policy designed to ensure that Australian work practices were not threatened by a flood of migrants from countries near its shores. This migration policy - "White Australia" - was fundamentally economic in its purpose. But it flourished in a provincial backwater of the British Empire, fuelled by the notions of the white man's burden a self-assured in the sense about superiority of British white men in particular. After all, we ruled a quarter of the world. Who could doubt that such power would last indefinitely? The King's subjects were to be found in every continent. British naval power held sway in all the oceans and had since Trafalgar. Britannia ruled the waves. To celebrate this self-assurance, Elgar was shortly to pen his mighty hymn *Land of Hope and Glory*.

These were the features of Australia which persisted from colonial days until very recent times. They affected the way we looked at the world and the way we looked at each other. At first - indeed for a long time - they reinforced the basic

erty which put this country at the very top of the pops
standard of living. This, indeed, seemed to be the "lucky

Dr Hewson contends that we made fundamental mistakes as
ed to escape with the Depression of the 1890s. Indeed,
asserts that the federal tariff policy, the centralised
determinations and the nature of the federal agreement
b were struck then are the origins of the economic
lems of today. In his opinion:

*We have [to learn] something from the last 80
or 90 years as we have pursued some of these
policies which have bred a lot of values and
attitudes that exist today and have got to be
changed if we are going to turn this country
around. I think it is important that we recall
one fact about the turn of the century which was
that we did at that time rank number one in the
world in terms of standard of living - now we
rank somewhere between 14 and 18 depending on
what measure you use and I think that is what
tells the story."*

enough as a political point. But with respect (as we
in the law), this analysis may over-simplify the history
our country and its economy during this century. It is
amely difficult for us to see the 1890s world through the
acles of the 1990s - just as we cannot foresee the world
Century to come. Who is to say that the principles of
eral wage fixation and tariff barriers were not
ppriate to the Australian economic needs of that time?
all, Australia was not the only country which put up
tariff walls. The equity achieved by national industrial
fixing standard, minimum salaries and conditions,
buted to the unity of the new federation and reflected
ervading sense of fairness and democratic egalitarianism

which has been one of its abiding strengths. Furthermore, the heartburning about Australia's fall from the number one slot in the world table of prosperity may not be all that important. Perhaps it simply shows that other countries of high potential have, quite properly, reached a standard of living which we for the best part of a century have taken for granted. And some of those which have overtaken us have societies in which most Australians would probably not be either happy or comfortable.

There was an interesting letter to the *Sydney Morning Herald* last week about Japan. In those crowded islands millions live with nothing like the natural conditions that we take for granted every day. Perhaps we need a new scale for deciding comparative standards of living. Possibly we should not let the economists loose in the evaluation of such a nebulous condition. Perhaps it is a condition which has more to do with quality of life, hours of sunshine, access to sport and culture than raw GDP per capita. After all, it is what you do with your little share of the GDP that counts; not how many coins you have rattling around in your pocket.

The United States is above Australia in most lists portraying the comparative standards of living. It is a wonderful country. I admire it. It is still an engine of ideas. But I never cease to be amazed at the number of beggars on the streets or the level of social problems I see when I go there. When I think of the patients with HIV/AIDS and compare their predicament in the United States with the way we have handled that problem here, I am sure that there is a lot to be said for our quality of life, with its measure of compassion.

The economists and the politicians can try as they will to make us a striving, enterprising society of selfish go-getters. They will have some success at the margins. The near pays principle will seduce a few. But they basically come up against two phenomena of which they should be aware. The first is the Australian weather. The second is the Australian ethos.

Even economists cannot change the weather. On a sunny, blue weekend day you have to be a workaholic judge or a businessman with a very big overdraft to drag yourself away from the recreational pursuits which captivate most Australians. That is just the nature of our sunny country. We may have north European genes burning in our blood, urging us to strive and work. But the torpor of the sunshine works its Mediterranean charm upon succeeding new generations. This is a fact which cannot be ignored. And who is to say that walking in the bush or sitting by the glistening sea with a glass of wine is not a better way for a human being to pass a day than in the traffic jams I lately saw in Tokyo or the congested concrete blocks of Seoul?

The Australian ethos is also a problem for us. I have tried over the years to get people in Australia interested in the special rights of gifted and talented children. I can tell you it is an uphill battle. For many it offends the ingrained egalitarian principle. I try to say that equal rights for gifted children is economically essential if we are to compete with our neighbours. I try to urge the principle of equal opportunity in education. Deaf ears greet this instruction. With few exceptions, the great mass of the Australian populace aspires to excellence in one thing only -

Sport. I despair at this. Begging John Newcombe's forgiveness, I gnash my teeth. But I can jump up and down as much as I like and I will not change these abiding characteristics of Australians. What is truly astonishing is to talk with taxi-drivers from countries as far apart as Lebanon and Uruguay and to find how captivated they are with cricket. They learn it through their children. Cricket of all things!

But this is not all bad news. A country which concerns itself with sport may confine many of its serious battles to the playing fields. Its people may grow up with that happy mixture of individual prowess in a team environment. They will learn to lose gracefully as well as to win heroically. Inculcated in them will be acceptance of an umpire and the compliance with sensible rule of the game. These are not bad characteristics by which to live in harmony and tolerance in a sunshine society.

THE AUSTRALIA OF HUMAN RIGHTS

This week, I had a humbling experience. Humbling experiences for judges should be a compulsory part of their agenda, happening at least once a week. The Australian Human Rights & Equal Opportunity Commission awarded me the Human Rights Medal for 1991. Last year's medal went to the Australian of the Year, Professor Fred Hollows. So you can imagine that I was proud to follow in his footsteps.

I went to the awards ceremony at the Powerhouse Museum - itself a marvellous monument to the creative world in which Australia has played an honourable part. It was an extraordinary ceremony. Human rights awards were handed to a marvellous range of creative and dedicated Australians from

parts of the continent.
The ceremony began, suitably enough, with the song
A film clip transported us, with the throbbing
back to the Aboriginal people who were here on this
land long before our forebears came. The haunting melody
the popular song set the tone for what was to follow. But
the lyrics of the song had a serious point. Two centuries
ago some official in the British Colonial Office decided that
Australia was an empty continent. There was therefore no
need (as there had been in North America) to negotiate a
treaty with the indigenous people. We could just ignore
them. If they became a nuisance, there were other ways to
deal with them. Now the Aboriginal Australians of today seek
a treaty of reconciliation with the other people of their
land. It was an important message and appropriate to the
occasion.

Anne Deveson came up to receive her prize for *Tell Me
of Here* - the story of her late schizophrenic son,
Jonathan. She shares her pain with the rest of us in our
society. She does so out of love for Jonathan but also
out of love for us. Can there be any greater vote of respect
than to tell your fellow citizens of the problems which
confronted a son with the illness of schizophrenia? By
telling them you may secure a measure of understanding. Out
of understanding may come respect for another human being and
his or her precious qualities.

Andrew Houghton and David Marr won the Human Rights
Award for the television documentary *The Big Finish*.
It was the story of Stuart Challender, Principal Conductor
of the Sydney Symphony Orchestra. Battling with AIDS and with

stance of himself as he is, Stuart Challender gave his
every a gift even greater than his musical accomplishments
offer. He shared with us honestly, his inner thoughts
faces death. It is a good country that honours such a
and joins him in reflecting on the burdens of his life.
doing this, it is a country which restlessly strives to
love itself. Henry Lawson had words for this too:

*(Such wormy songs of mouldy joys can give me no
delight;
I'll take my chances with the world - I'd rather
live and fight.
Fortune may laugh along my track, or wear her
blackest frown-
I'll try to do the world some good before I
tumble down.
Let's fight for things that ought to be, and try
to make 'em boom;
Mankind gets small assistance from our ashes in
the tomb.*

A marvellous point was reached in the ceremony when
Komninos Zervos read his poem about himself. It was a poem
modern Australia. It was a poem of the Greek boy in a
fish-shop at Richmond who was first called Kevin by his mates
then decided to insist on his real name "Komninos". Yes
was unusual. Yes it was difficult to say. Yes he was a
poet. Yes he lived as a poet. No, he did not live on the
tomb.

A country which can produce a man such as this, writing
in the lyrical tongue of the Anglo-Saxons, sharing the pain
of a migrant family with only partly realized dreams, working
in a fish-shop. Putting it all in verse and celebrating the
human spirit. A country which will recognise the right to be
different and to be yourself is a country to be proud of.

On and on the awards went. The documentary film
recognised was one on Lionel Murphy's life: *Mr Neal is*

entitled to be an Agitator. The title of the film was taken from one of Murphy's judgments in the High Court. Mr Neal, an Aboriginal, was indeed an agitator. The prosecutor regarded this as a title of condemnation. But in our still lucky country, invoking the common law and referring to the long line of agitators who have bought our freedom, our highest court reversed the conviction. Neatness and tidiness may be severely upset by agitators. But progress in human ideas, tolerance and understanding is often the global reward for the agitator. Ours is a country with a high tolerance of peaceful agitation. Long may that last.

When my turn came, Gough Whitlam was asked to introduce Mr. The introduction strayed ever so slightly as the former Prime Minister wandered into the complexities (in which his mind delights) of obscure UNESCO conventions and ILO treaties:

*"Why man, he doth bestride the narrow world like
a Colossus
And we petty men peep under his huge legs."*

Then an electric moment occurred. A woman rose from the audience and went up to the stage to stand beside Mr Whitlam. I thought she was going to offer a translation for deaf members of the audience. Not so. She was there to have her say about East Timor and what she thought was Mr Whitlam's part in Australia's acceptance of the Indonesian takeover in 1975. She made a short statement and left the stage. Mr Whitlam answered firmly and said that, when the papers were revealed, he would be vindicated. Subsequently, some members of the audience rather unkindly suggested that the Human Rights Commission had organised this intervention

as a very practical demonstration of human rights and free speech in our society. That was indeed the point I made. Surprising, even rude as the intervention might have been, it showed that Australians will speak up about things that touch them deeply. And they will not be shot at dawn for doing so.

LOOKING OUT AND LOOKING IN

If I were an economist, I would regale the business captains with my pearls of advice. Doubtless I would urge you on to stay the course in the opening up of our economy to the world. I would undoubtedly warn you about the cyclical nature of the market, our need for more micro-economic reform, our place in the global economy and our needs to go off-shore, our needs to improve the quality of directors who will occasionally say "No"; the requirement to stick to quality assets and to maximise our comparative advantages.³ Level playing fields would get more than a mention. There would be a few pious words about the unemployed of Cringila: with vivid allusions to safety nets and compassion. Perhaps mateship would be thrown in.

But I will do none of these things. I will leave the giving of such advice to the economists who have done such a good job in providing our country with the recession it had to have and the unemployment so many presumably had to suffer.

Instead, I will leave you with three messages about Australia. They are messages about things you already know. They arise from the humbling experience I had sitting with fellow citizens of spirit whose work for human rights in this country help to give a quality to life that few other countries enjoy.

1
First, we must reconcile ourselves with the Aboriginal people of Australia. We all know this. We all know that the impact of our culture has been devastating for Aboriginal Australia. A Council is to be established to work towards a true reconciliation with the Aboriginal people. We must look inward to our history and backward to the past. As one of the recipients of a human rights award, himself an Aboriginal said, "we must also look to the future". I do not understate the difficulties. Nor do I under-estimate the controversy of choosing the right strategy. But the sight of Aboriginal neglect, illness, homelessness and despair is a blight on our country. And it is one that the world, newly relieved of the worst of apartheid, watches closely;

2
Then we must look outwards. Geographically we are a left-over of a great European empire. Our country has changed remarkably in my lifetime. The pattern of future change can be predicted by a moment's reflection on our place in the world and on our geography. We must relate ourselves to the thriving centres of the world to our north. Inescapably it is in Asia and the Pacific that Australia's future lies. We must learn Asian languages. We must understand the Confucian values of Asian societies. We must market ourselves for the teaching of English and as a safe and happy land for visitors who are truly welcome. The next century is slated to be the century of the Pacific. We should make sure that Australia has its slice of the action; and

Finally, we should reflect upon our many blessings. These are bad times. I have known none worse. Nearly every day, my taxi driver is an architect, a banker, a youth who has had no other job or a person of late years who will probably never find other work. We also see the problems of these people in the courts. In our talk of restructuring we must be sensitive to the rights of the victims. But even in hard economic times, we must not forget to count our blessings. When we feel confused about the GST or depressed about GDP we should think about the things still going for us. The beauty of the eucalypts. The din of the cicadas in summer. The austere grandeur of the Red Centre. The hard-working tourist industry servicing the visitors who often value this land more than we do. The centres for scientific excellence. The Australian Opera whose production of *Turandot* on television is surely unsurpassed. A country of peaceful agitators and progressive thinkers. Of universities of world class. Of independent judges. Of peaceful democratic political change by the ballot.

Australians all should still rejoice. But we should also attend to the warning which another Australian poet, C J Dennis, when he wrote *The Glugs of Gosh*:⁴

*"So the Glugs continued, with greed and glee,
To buy cheap clothing, and pills, and tea;
Till every Glug in the land of Gosh
Owned three clean shirts and a fourth in the wash.
But they all grew idle, and fond of ease,
And easy to swindle, and hard to please;
And the voice of Joi was a lonely voice,
When he railed at Gosh for its foolish choice,
But the great King grinned, and the good Queen gushed,
As the goods of the Ogs were madly rushed.*

*And the Knight, Sir Stodge, with a wave of his hand,
Declared it a happy and prosperous land.*

It is really up to us: what we make of Australia. With so many things of nature and the spirit going for us we should surely get it right in the next century. The third century of our country's modern history beckons us. Beckons us forward.

Footnotes

President of the New South Wales Court of Appeal.
Chancellor of Macquarie University. Personal views.

1. J Hewson, "Address to the Annual General Meeting of the Business Council of Australia" in *Business Council Bulletin*, No 81, November 1991, 32.
2. B Loton, "Presidential Address to the *Annual General Meeting* of the Business Council of Australia" in *Business Council Bulletin*, No 81, November 1991, 28, 29.
3. J Parker, "What We've Learned Since '87" in *Australian Business*, 9 November 1991, 16.
4. C J Dennis, *The Glugs of Gosh*. The poems of Henry Lawson are from *The Poetical Works of Henry Lawson*, "Poets of the Tomb".