

JOHN BRAY ORATION

Tuesday 4 September 2007
1800

Union Hall
University of Adelaide

Censorship and secrecy: threats to an open society in an insecure age.

Barry Jones
AO, FAA, FAHA, FTSE, FASSA, FRSA, FRSV, FACE.
Professorial Fellow, University of Melbourne

Abstract:

The attack by al-Qaida on the Twin Towers in New York and the Pentagon in Washington on September 11, 2001 has created a mood of deep insecurity in the United States and the west generally. The 'war on terrorism' which followed led to a substantial erosion of many elements which characterise a free society. Major decisions, including an invasion of Iraq in March 2003, were based on conclusions based on claims of evidence which was not subject to rigorous examination or challenge, the political process was truncated, where Governments declared that threats to security involved restrictions, however regrettable, to liberty, the media accepted a self denying ordinance, legislation (rarely opposed or criticised by parliamentary Oppositions), often excluded judicial review from administrative decisions involving restrictions to liberty of the subject, torture was redefined as 'coercive interrogation', and persons arrested under Australia's Anti-Terrorism legislation are forbidden to describe the circumstances of their detention, even to family members. Vice President Dick Cheney has described the post 9/11 era as 'the new normal', arguing that the 'old normal', developed by the 18th Century Enlightenment, and depending on rational analysis of evidence, was now obsolete: decisions now need to be 'faith based', relying on 'instinct' and 'gut reaction'. Is this collective reaction within elements of the West precisely the retreat from modernity, the reaction against scientific method and intellectual scepticism, that Usama bin Laden and fellow jihadists are fighting for? How far has the West compromised its intellectual core by adopting fundamentalist policies?

John Jefferson Bray

I was flattered to have been invited to deliver the John Bray Oration for 2007. In Adelaide I saw him in the distance once or twice but we never met or spoke. But during his lifetime and after his death I have read about him extensively and admire his outstanding contribution not only to South Australia but to the nation.

John Jefferson Bray, AC, QC, LLD, DUniv, FAHA was born in Adelaide on 16 September 1912 and died there on 26 June 1995, aged 82. He came from a patrician South Australian background. His grandfather Sir John Cox Bray was Premier of South Australia 1881-84. His father, Harry Midwinter Bray, from whom he was remote, had been a relatively unsuccessful stockbroker and fruit farmer. His father's sister married a Bonython. His adored mother, Gertrude Bray, was a Stow by birth. On his mother's side, he claimed descent from Pocahontas and kinship with Thomas Jefferson, hence his middle name.

John Bray was an exact contemporary of Patrick White (1912-1990) and, like him, drawn from a privileged milieu, with a late radicalisation. J J Bray lived at home with his mother until her death in 1970, when he was 58 years old. He never married.

Educated at preparatory schools at Glenelg and Sevenhill, he was sent to St Peter's College in 1925, first as a boarder, which he hated, then as a day boy.

He was short sighted and physically awkward, not interested in sport and remote from the concerns of his fellow students. He was always very shy and developed an early passion for reading. His father gave him a set of woodworking tools and a motorcycle: he recoiled from both in horror and never touched either.

He enrolled as a law student at the University of Adelaide in 1929, was admitted to practice in 1933 and took out an LL.B. (Hons), receiving a Doctorate of Laws in 1937 for a thesis on 'Bankruptcy and the winding-up of companies in private international law'. He was rejected for army service because of poor eyesight, sought chairs in Wellington and Sydney without success, lectured in Roman Law part time at Adelaide and began a 43 year period as a member of the South Australian Libraries Board in 1944.

He had surprisingly little overseas travel despite his preoccupation with the culture of the Old World. A visit to Europe in 1937-38 was a gift from his parents to celebrate his LL.D. but he did not leave Australia again for another 36 years. No doubt his care for his mother was a major factor in this and he rarely left the State. He returned to Europe in 1974 and 1978, visited Japan in 1974 and 1976, and explored Istanbul in 1978. He was never in the United States.

It would be intrusive and pretentious to emphasise parallels between J J Bray's life and my own – and yet they kept leaping out from John Emerson's account in *First Among Equals* and Peter Ward's essay in *A Portrait of John Bray: Law, Life, Letters*. We were both conspicuously lacking in manual dexterity and any interest in sport. The unwelcome, if well-meant, gifts by John Bray's father paralleled my father's gift to me of boxing gloves in the hope that it would make a man of me. He was a rapid and voracious reader, regarded as one of the heaviest users of the State Library of South Australia and sometimes helped out reference librarians with queries. He was also a regular panellist on Radio 5AD's quiz show 'Information Please' – and I was on the same named program in two of its iterations, on 3DB Melbourne and ABC Radio. We had friends in common, including Don Dunstan, Max Harris and Rohan Rivett. We shared a passion for literature and were both contributors to *The Australian Dictionary of Biography*. Neither of us could be described as snappy dressers.

In 1979 he wrote: 'Fortunately we are all much more Bohemian now. I am about to go down to the shop in shorts, T-shirt and sandals. I could not have done that 40 years ago'. He never drove a car and regularly used public transport.

Andrew Ligertwood wrote: 'Bookish, with an insatiable appetite for classical history, he enjoyed the company of intellectuals, writers and poets and the rigorous debate and enquiry that such company brings'. He seems to have had little interest in music. He explored Wagner's libretti rather than the music.

John Bray took silk in 1957.

Among his best known criminal cases at the bar were the murder trials of Fredella (1957: appeal), Howe (1958), Carbone (1964), Ehlers (19xx) and

Valence (1964: appeal), and the trial of the eminent journalist Rohan Rivett (1960) on nine counts of seditious libel, following the press controversy over the death sentence on Rupert Max Stuart and the ensuing Royal Commission.

Michael Abbott, QC wrote: ‘John Bray started his career at the Bar with the reputation of being a learned but not particularly worldly person. He made a conscious decision to represent individuals whose human rights were infringed or in danger of being infringed, and he ended up with a reputation for being the champion of the underdog, particularly in criminal matters... He became the acknowledged leader of the Bar, appearing in almost every jurisdiction’.

In February 1967, J J Bray was sworn in as Chief Justice of the South Australian Supreme Court on the nomination of the then Attorney-General, Don Dunstan, following a vain effort by the Police Commissioner, John McKinna, to persuade the Premier, Frank Walsh, against the appointment.

In his period as a senior counsel and Chief Justice the South Australian Police was the subject of deep controversy under two Commissioners – John McKinna and Harold Salisbury both apparently convinced that the Commissioner exercised an independent jurisdiction and was answerable, perhaps, only to the Sovereign, but not to the government of the day. Bray often showed deep scepticism about some police evidence, especially in respect to ‘voluntary confessions’, for example where Aborigines were involved. The police also came under attack for their role in the death of Dr George Duncan (1972) and subsequent investigation.

John Bray served for eleven years as Chief Justice, retiring in 1978, four years early. Unlike previous Chief Justices, he declined to serve as Lieutenant Governor, but like his predecessors Sir Samuel Way, Sir George Murray and Sir Mellis Napier, he became Chancellor of the University of Adelaide, holding office until 1983. He also avoided membership of the Adelaide Club.

Chief Justice Bray took a markedly libertarian line, in sharp contrast to his fellow judges, in censorship cases. He followed the arguments of Prof. H L A Hart in rejecting Lord Devlin’s assertion that to protect community values the law should enforce private morality. In the *Oh Calcutta!* case [Attorney-General v. Huber (1971) 2 SASR 142] he opposed an injunction to prevent

performance of Kenneth Tynan's sexually explicit review, but he was in the minority. He wrote: 'If this injunction succeeds I view with apprehension the invasion of the civil courts by bands of self-appointed moral vigilantes using the name of the Attorney-General...seeking to restrain the publication of books and periodicals, the showing of films, the opening of art exhibitions, the performance of plays and, for all I know, the holding of public meetings and the delivery of speeches'.

He was scathing about the continued application in Australia of the test laid down in Britain in 1868 in the Hicklin case that material was obscene 'when it had a tendency to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall', a proposition of astounding breadth based on three cumulative sets of unproved, or unprovable, propositions.

One can only speculate how J J Bray would have responded judicially to the unparalleled growth of child pornography, involving gross exploitation and cruelty, and its ease of access through the World Wide Web.

As Andrew Ligertwood wrote, in *The Queen v. Van Beelen* (1974) Bray led the Full Court to demand that in the interests of a fair trial, 'recognising the inequalities in power between police and accused... the prosecutor in a trial for murder should make available to the defence any information in its possession which might be of assistance to the defence case'.

He concluded: 'In his judicial approach, Bray demonstrated all those qualities of the Herculean common-law jurist... Ultimately he believed each individual idiosyncratic and entitled to be left alone as far as possible by the law. Bray saw us, and our relationship to law, in his own image'.

He was appointed AC in 1979.

It is a subject of understandable sensitivity in Adelaide that no South Australian has been appointed to the High Court bench, although since 1906 three offers have been made. Justice Kirby asserts that John Bray would have 'graced and strengthened' the High Court and noted how often his judgments were cited and followed there, and in other State Supreme Courts. He was also followed with respect by the Judicial Committee of the Privy Council.

He published six volumes of poetry between 1962 and 1990, and translations and adaptations from Latin, Greek and German poets. He also wrote many articles, reviews and the entry on Sir Samuel Way in *The Australian Dictionary of Biography*.

His major work *Gallienus, A Study in Reformist and Sexual Politics*, on which he worked intermittently for thirty years, was published posthumously by the Wakefield Press in 1997.

Gallienus was Roman emperor from 253 until 268, jointly with his father Valerian until 260. Although Bray was not exactly a Christian evangelist, he thought that Gallienus, generally dismissed as a sybarite, had 'saved the fledgling Christian Church which had been persecuted to the verge of extinction by his father Valerian' and deserved recognition.

As Michael Kirby has observed, as a University Chancellor J J Bray was concerned about the directions that modern universities are forced to take, and he quotes him: 'If a hostile critic were asked to encapsulate in two words the distinguishing novelties of the new dispensation, I think he would choose fragmentation and myopia'.

Kirby J wrote that as a judge, 'Bray disdained the trivial, polemical and ephemeral. He kept his eye on the long haul, stimulated by a deep respect for history and informed by an appreciation of the strengths, as well as the weaknesses, of our laws and institutions. He was a special judge; a fine poet and an engaging man.'

That seems like an appropriate point to leave J J Bray and consider the advertised theme of this oration.

Censorship and secrecy: threats to an open society in an insecure age.

The War on Terror

The September 11, 2001 attack by al-Qaida on the twin towers of New York's World Trade Centre and the Pentagon in Washington, causing nearly 3000 deaths, was mass murder. These cruelly calculated acts of terror provoked understandable outrage, but then led to a deluded attack on the wrong target. These cataclysmic events impelled governments to react instinctively rather than rationally, reducing the role of evidence, analysis

and enlightened scepticism in policy formulation. Usama bin Laden declared war on Western materialist values, and the United States and its allies used their material/military strength to retaliate. Since most of the 9/11 terrorists were Saudi nationals, as was Usama, Saudi Arabia, where they were recruited and financed, might have been a logical target for retaliation but the US never considered the option. The first target was the Taliban in Afghanistan, a plausible choice, because terrorists were trained there by al-Qaida. But the main target, irrationally, was Saddam Hussein's brutal and secular regime in Iraq, old enemies of bin Laden and al-Qaida.

September 11 raised haunting questions about the human condition, values, good and evil, power, our incapacity to negotiate outcomes, to balance self-interest and the interest of others, to reconcile the immediate and the long term, examining evidence to seek out the truth. Once again, it transformed the way the world operated, and the prevailing commitment to the irrational on both sides challenged my values profoundly.

Some aspects of the post 9/11 world were baffling. The Americans had been victims of an 'asymmetrical war' on 9/11 and did not know how to respond appropriately. Americans, understandably shocked by the 2001 attacks, had a deep psychological need to retaliate, somewhere, preferably against a state, and Afghanistan, it seemed, was not enough. They were instinctively drawn to a traditional war, state v. state, even if in the case of Iraq, it was a weak and failing one. After 2001 I never doubted that the United States would invade Iraq. I felt more threatened by al-Qaida and its allies than by Iraq because its sphere of operations was wider, more random and not predictable: Nairobi and Dar es Salaam one day, New York and Washington another, then Madrid, Bali and London.

Avishai Margalit, Professor of Philosophy at Hebrew University in Jerusalem, wrote:

Terror as propaganda-by-action counts on one thing: the overreaction of its victims. Out of anger and frustration the victims will respond by punishing bystanders, who will react by becoming more radical in their feelings and more susceptible to recruitment. Fighting terror is a delicate matter, and there is little sign that it has been understood in Washington...But the last thing one should do is fall for 'the fallacy of the instrument', namely to use the instrument you know how to use just because it is the only instrument you know how to use.

Westerners find it virtually impossible to put themselves inside the head of a suicide bomber, whether *kamikaze* or *mujahadeen*, or even of our own warriors, although we judge them by different standards. Terrorist, freedom fighter, patriot: are the terms synonymous? Who are the suicide bombers? Most are fundamentalists but some are highly trained professionals, others educated young people, making calculated, lethal statements about political dispossession. In Iraq, suicide bombers are a new phenomenon, imported at first, then home grown.

Primary justification for war against Iraq was asserted to be its possession of weapons of mass destruction; links between Iraq and al-Qaida over September 11; Iraq's immediate threats to its neighbours, the region and the United States, and its failure to comply with United Nations Security Council resolutions on 'proliferation of weapons of mass destruction'. A fifth justification, 'regime change', was specifically repudiated by Tony Blair and John Howard before fighting began.

Tony Blair used to say: 'Tough on crime. Tough on the causes of crime'. He then said, 'Tough on terrorism', but he was silent on its causes. George W Bush used to say of the jihadists: 'They hate us for what we are'. This is only a half truth. It would have been more accurate if he had said, 'They hate us for what we are **and for what we do**'.

The most troubling aspect of Bush's and Blair's reaction to September 2001 was a lack of elementary curiosity. They never asked 'Why has this happened? What are the deep causes?', and were preoccupied with effects, at the expense of causes. Intellectually, Bush never leaves home. He takes home with him: it's Texas everywhere.

In the United States, Britain and Australia intelligence agencies failed spectacularly to predict acts of terrorism, and they became convenient scapegoats for Government mistakes. Tim Weiner's *Legacy of Ashes: The History of the CIA* (2007) demonstrates that despite its lavish funding, the CIA has had a spectacular series of operational and conceptual failures, on every continent except Antarctica and (presumably) Australia.

Lack of foreign language expertise in the CIA, State Department and Defense Department cost the United States, and the cause of world peace, dearly. During the 1990s, Arab speakers were weeded out of important agencies and replaced by MBAs, people generally lacking in experience, or

understanding, of cultures other than their own. With limited local or expert knowledge, not enough scepticism, they were expected to provide ideological support for Government, which misread or exaggerated their findings. Inevitably they placed excessive reliance on tainted sources of information, men in suits who spoke English, refugees or exiles from Iraq who had a message to sell, and sold it.

After 1991, Saddam's power to exercise an impact was high in his immediate region, non-existent outside. Many of Saddam's worst crimes dated from the period when Iraq was a client state of the US, encouraged to make war on Iran. And why was 2003 judged to be the year to displace him, rather than 1989, 1991 or 1998? We were accomplices to the airbrushing of history, in a way that Stalin and Mao would have recognised and endorsed.

The assumption behind the US invasion of Iraq in March 2003 had been that it would create a domino effect: that despite (or even because of?) Saddam Hussein, Iraq, with its secularism, educated women, and hostility to fundamentalism would be the best adapted state in the Middle East to take up and promote Western values – and that success in Iraq would roll over throughout the region.

The Cambridge political philosopher David Runciman points to 'the familiar phenomenon of a leader who rules by generating fear of the unknown, rooted in some iconic catastrophe to which such fear can be related. The "war on terror" was ideal for this purpose, a war that had no enemy and could thus never be won, a war that need never end. As in George Orwell's *Nineteen eighty-four*, such a war empowers a leader to fight any battle he chooses, and to require any sacrifice, since he can declare the existence of the State to be at risk'. Was I the only person to comment on the similarity between Usama and Orwell's Emmanuel Goldstein?

In *Nineteen eighty-four* the rulers of Oceania propose three central mantras, 'War is peace. Freedom is slavery. Ignorance is strength.' In the 2004 Presidential election, ignorance proved to be a powerful campaigning tool. Complexity could be ignored. Only one point of view needed to be considered. There was no room for doubt.

Fundamentalism

There has been a civil war within the Muslim world over attitudes to Modernity: Fundamentalists v. Modernisers. Fundamentalists supported the *Shariah* law, denounced infidels such as Saddam, opposed tolerance of other belief systems, refused co-operation with the United States (= the Great Satan), or the West, and supported war to annihilate Israel. Modernisers acknowledge the significance of scientific, technological and social change and are prepared to co-operate with the West and recognise Israel, provided there is a land settlement with the Palestinians.

In an era of ‘Twin Fundamentalisms’, Christian and Islamic, when proponents insist, ‘I am carrying out God’s will’, God does not intervene to confirm which view is correct. One of the disturbing questions of the 21st-century is why the United States, with its sophisticated knowledge base in research, industry, arts, literature and music should have such a primitive, fundamentalist attitude to politics, religion and understanding the outside world. Both Bush and Blair have been sympathetic to ‘creation science’ and ‘intelligent design’ being included in the syllabus of public schools.

Muhammad Khatami, the relatively moderate former President of Iran, is currently under strong, possibly terminal, political attack for having, during a visit to Italy, made the unpardonable offence of shaking hands with a woman, an action which is acceptable in the West, but not in much of the Muslim world.

Bush has far more in common with Usama bin Laden than he has with me: both are on a divine mission, fundamentalist, punitive, monocultural, prefer faith over evidence, believe in pre-emptive strikes and that necessity overrides the rule of law, manipulate fear, confuse revenge with justice, lack scepticism or intellectual detachment, are prepared to rewrite history, anti-scientific in mindset, resistant to ideas, surround themselves with unquestioning enthusiasts and never ask, ‘What if I am wrong?’

Is this collective reaction within elements of the West precisely the retreat from modernity, the reaction against scientific method and intellectual scepticism, that Usama bin Laden and fellow jihadists are fighting for? How far has the West compromised its intellectual core by adopting fundamentalist policies?

‘The New Normal’

On 21 October 2001, Vice-President Dick Cheney, in justifying use of Executive power to restrict civil liberties, limit access to courts, stifle debate, and cripple Freedom of Information legislation told *The Washington Post*: ‘Many of the steps we have now been forced to take will become permanent in American life, part of a “new normalcy” (sic) that reflects an understanding of the world as it is.’

In the United States, writers are now adopting, and some promoting, the term the ‘new normal.’ In this view, the ‘old normal’, where decisions might have been based on evidence, analysis, reason and judgment, using techniques refined by the Enlightenment of the 18th-century, had come to an end on 9/11. The ‘new normal’ depends on instant decisions based on ‘gut’, ‘instinct’ and ‘faith’. Increasingly, policies have to be ‘faith based.’

On 2 September 2007, the Google search engine listed 509,000,000 citations of the ‘new normal’, but the term has had virtually no currency or recognition outside the United States.

The essayist Joan Didion wrote in *The New York Review of Books*:

The ‘new normal’ required that we adopt a ‘new paradigm’ which in turn required, according to an internal White House memo signed by President Bush, ‘new thinking in the law of war’, in other words a reconsideration of the Geneva Convention’s prohibitions against torture. ‘Torture’...had become ‘extreme interrogation’, which under the ‘new paradigm’ could be justified when the information obtained by interrogation failed to tally with the information required by policy...

The word ‘truth’...had been redefined, the empirical method abandoned: ‘the truth’ was now whatever we needed it to be, the confirmation of those propositions or policies in which we ‘believed in our hearts’, or had ‘faith’...It was now possible to ‘believe’ in one proposition or another on the basis of no evidence that it was so...as if the existence of weapons [of mass destruction] was a doctrinal point on the order of transubstantiation...

‘I do not believe we should change our course because I believe in it’, Tony Blair was saying by September 2003. ‘I carry on doing the job because I believe in what I am doing.’

For the United States, invading Iraq was a ‘faith based’ decision, not ‘evidence based’, but for Australia it was neither, determined by fear of offending the White House. Under the ‘new normal’, a *belief* that the WMDs

existed was enough and the priority was for immediate action, not for understanding or judgment. Control of Iraq's huge oil reserves, which would have been a completely rational (but not morally uplifting) reason for invasion, was never mentioned. If Iraq had been the world's greatest producer of broccoli, Saddam, for all his hideous cruelty, would not have been disturbed.

The 'new normal' is pre-modern in its rejection of objective evidence. Glaucon's argument in favour of the rule of force that Socrates dismissed so convincingly in Plato's *Republic* is current again. The Salem witch-trials provoked Arthur Miller's *The Crucible* (1953). Will 'faith based' politics stimulate a new generation of playwrights and essayists, or will they all be employed as spin-doctors?

Under the 'old normal' before September 11, 2001, I assumed that our side, the democracies, never began wars (although, as in Vietnam, they were prepared to intervene in existing colonial struggles), even when our opponents were brutal and corrupt and when a pre-emptive strike might have been to our strategic advantage. This assumption no longer applies, and the moral basis for action is now displaced by sheer opportunism and adventurism. Torture, or as currently redefined 'coercive interrogation', is now routinely justified instead of being outlawed. The arguments 'We only torture in a good cause' and 'If they can do it, so can we...' should have been dismissed out of hand, but were not. We should have asked: 'How are torturers recruited? Self-selection? Going with the flow? Does the Eichmann defence of 'superior orders' apply?'

We live in an era of instinctive, reactive and ill-informed leaders and followers, marked by contempt for truth, living by the dictum that 'the end justifies the means'. It hardly matters whether that view is driven by cynicism or ideology.

The 'war on terrorism' which followed led to a substantial erosion of many elements which characterise a free society.

Francis Fukuyama, who inspired American neoconservatives with his thesis on 'the end of history', came to repudiate his admirers. He argued that, through a combination of ignorance and incompetence, they assumed that Communism's sudden collapse in 1989 would be a model for an equally sudden collapse of Islamic fundamentalism after which democracy,

American style, introduced by military force, would emerge as a default position in the Middle East.

Restraints on open debate

In Australia, the Westminster system is in disarray. Parliaments only sit for brief periods, with overwhelming executive control and Party discipline, and Ministers surrounded by a fire wall of political advisors whose job is to create a potential defence of 'plausible deniability' on embarrassing issues, based on the text, 'Don't ask! Don't tell!' Ministers could then inform the Commonwealth Parliament, 'It never occurred to me that it was odd for Iraq to be buying wheat from Australia at a higher price than they could get it from the US and Canada. I'm fundamentally lacking in curiosity but I follow orders faithfully. That's why I am a Minister'.

Compared to Great Britain, the Australian Parliament has far more rigid Party discipline. Members rarely, if ever, cross the floor, discussion is guillotined or gagged, debates never change the result of a vote (except in the rare debates on matters of conscience), public service evidence to Parliamentary Committees is subject to Ministerial directives, Committees face impossibly tight deadlines and as the number of MPs increases, sitting time decreases. The House of Representatives then becomes little more than an electoral college to choose the Executive. Three of Blair's anti-terror laws were defeated in the House of Commons, even after suicide bombing attacks in London in July 2005; it did not harm his Government and demonstrated that Parliaments could still work as deliberative bodies.

The Australian Parliament has lost much of its moral authority, the public service has been increasingly politicised, and lobbying ensures that vested interest has far more influence than community interest. The use of 'dirt files', while not new, is now pursued more avidly in the context of the new brutality in politics: 'Win at all costs! Take no prisoners!' Australian critics or whistle-blowers are routinely dumped-on, a technique reminiscent of Richard Nixon's 'enemies list'. A culture of vindictiveness is poisoning public life. Public servants who turned whistle blowers or gave evidence to Parliamentary Committees that ran contrary to the Government's line were traduced and victimized, and the list includes Mike Scrafton, Lance Collins, Rod Barton, Andrew Wilkie and Kate Burton. In fairness it must be acknowledged that Air Chief Marshal Angus Houston's distinguished career has not been impeded by his occasional failure to toe the line.

In August 2004, 43 former Australian military chiefs and senior diplomats issued a statement entitled 'Truth in Government' attacking the Howard Government for joining the US invasion of Iraq 'on the basis of false assumptions and the deception of the Australian people', especially about Weapons of Mass Destruction. Their intervention was dismissed, contemptuously, as if they had no right to comment, and their experience/expertise was worthless.

The Shergold doctrine, advanced by Dr Peter Shergold, Secretary of the Department of Prime Minister and Cabinet, has worrying implications. As John Quiggin put it in the *Financial Review*:

On Shergold's view, ministers should resign only if they personally ordered public servants to breach the law or "or if a minister had their attention drawn to matters and then took no action". So, provided a minister never talks directly to public servants or others who might draw inconvenient matters to their attention, they can never go wrong. The success of the Howard government in riding out a string of scandals that would have produced resignations under any previous government, or even in Howard's own first term, shows how well these lessons have been learned.

Economists analyse this kind of problem using the theory of principal-agent relationships. The principal is someone paying to have a job done, and the agent is the one who does it. In the case of government services, the ultimate principals are the people of Australia. They elect a Parliament to act as agents, and the government appointed by the Parliament selects public servants and others who act, in turn, as their agents.

The problem is that the agents are not perfectly disinterested souls, seeking only to promote the interests of their principals, the general public. They have interests and objectives of their own. Politicians want to be re-elected, public servants want to expand their empires or enjoy a quiet life, and so on. The central concern of principal-agent theory is to show how incentives and accountability can align the interests of principals and agents more closely.

Australia's draconian Anti-Terrorism Act No. 2 (2005), passed by the Senate after less than six hours debate, is harsher than comparable legislation in the US and UK, imposes heavy penalties on committing, participating, recruiting, supporting, advocating or justifying acts of terror. What about analysing terrorism? Conducting research? Attempting to explain or understand? Where is the line to be drawn? There are legitimate fears that the laws might inhibit research or reportage. Children can be held in secret preventative detention – and it is an offence (maximum penalty five years

imprisonment) for a parent to tell a spouse that their child was being held. Jesus, as a person of Middle Eastern appearance, might well be detained under the Act. Liberal dissidents Petro Georgiou and Judi Moylan showed courage in arguing for amendments, including a reduced sunset clause (from ten to five years) and Malcolm Fraser made a passionate defence of civil liberties. Kim Beazley said that he thought parts of the law could have been stronger.

On major issues, it is depressingly common to hear the mantra, ‘There is no alternative’ (TINA). The task of Government and its advisers is to find a formula, or sales-pitch, try it out on focus groups, call in consultants, put a spin on it and use all the propaganda resources that our taxes can provide to sell it. The concept of the dialectic, or the Socratic dialogue, where an argument is proposed, supporting evidence led, a contrary position put, then examined rigorously and a conclusion or verdict reached is now confined to the law courts, or royal commissions. It has dropped out of politics.

Censorship

The quality of public debate in Australia has been compromised, partly through media indifference and the systematic denuding of the ABC, but also through the retreat of the public intellectual. We have more paid academics than at any time in history, but across the nation, regrettably, they have fallen silent. In universities and research institutions, professional activity and work loads have increased appreciably, and contribution to public debate is discouraged. The term ‘academic’ is routinely used in a denigratory way – to mean remote, pedantic, impractical or irrelevant. The only consolation is that in the medium to long term it is elite opinion that wins out.

Until a few months ago, Australia, like the United States, was marginalising, ignoring, silencing or punishing climate scientists whose research confirmed the need for strong international action to curb rising levels of greenhouse gases. With its heavy emphasis on coal and on energy intensive industries such as aluminium smelting, in annual per capita rates of CO² emissions, Australia ranks first (27.9 tonnes) in the world. We have a bone-headed conviction that our prosperity depends on increasing energy throughputs and that energy efficiency must be resisted at all costs. Having been arguing about Greenhouse issues since 1985, I feel a strong sense of

frustration at our inadequate policy responses. Government says to its science advisors, ‘Tell us the truth, but only if it is what we want to hear’.

In the Soviet Union, Stalin and Khrushchev endorsed research by the botanist Trofim Lysenko which argued that environment shaped genetic characteristics and ‘Lysenkoism’ was seen as a scientific validation of Marxism. Lysenko’s critics were disgraced and some died in labour camps. This state control of scientific outcomes was much derided in the West. But now, we practice our own form of ‘soft Lysenkoism’, with climate scientists silenced, threatened if they do not produce ‘agreed science’, the line which endorses the Howard Government’s ideological rejection of concerns about human impact on climate,

CSIRO’s Division of Marine and Atmospheric Research, a world leader for decades, has been scaled down and departing scientists contribute to a significant brain drain: it is not one of the Organisation’s ‘National Research Flagships’. Public investment in alternative energy has been stripped. Energy efficiency is no longer on the agenda, and perhaps it never was. Renewables have a low priority.

Inside CSIRO, administration accounted for 28.5 per cent of total cost when I was Minister, reaching 46.5 per cent in 2005. Corporate management doubled in six years, while numbers of scientists declined. In 2006, two Board vacancies were filled by nominees drawn from the coal and oil industries: is it cynical to assume that cutting greenhouse emissions will not be priorities for them? Management was preoccupied with micromanagement, avoiding controversy, petrified of causing offence to government or industry. Participation in public debate is no longer encouraged. Scientists are encouraged to take a vow of silence. I am maddened by the double standard – many politicians and commentators who argue that there is inadequate scientific data about the Greenhouse effect are precisely those who argued that the evidence about Iraq’s WMDs was overwhelming. (Blair is an exception – he argued for both).

Ian Lowe’s essay ‘The research community’* gives two disturbing case studies, that of Dr Graeme Pearman, AM, FAA, FTSE, essentially pushed

* *Silencing Dissent*, edited by Clive Hamilton & Sarah Maddison (Allen & Unwin, 2007) out of CSIRO because his internationally recognized work on climate research had policy implications which were unacceptable to the

Government at that time and worrying for the CSIRO management which was ultra-deferential to its clients, in this case, the Government.

He also describes the pressure put on Dr Barney Foran of CSIRO's Division of Wildlife Ecology who led a team commissioned by the then Department of Immigration and Multicultural Affairs (DIMA) to investigate three different options for Australia's population in 2050, one with 20 million, one with 25 million and the third with 32 million people. Other factors included resource use, age spread, water consumption, greenhouse emissions, oil depletion and environmental stresses. When the three options turned out to be different from what DIMA wanted, pressure was put on CSIRO and Dr Foran to bury the report.

Board stacking, which Labor practised a little, has now been taken to extraordinary lengths to ensure that the ABC and CSIRO faithfully toe the Government line. When I was nominating CSIRO Board members to Cabinet, it never occurred to me to recommend 'yea-sayers' or a cheer squad.

There are fundamentally two types of censorship, externally imposed by a government, employer or corporation, and internally imposed, self-censorship which over-rides moral scruples or intellectual judgment, leading to a prudent, self-serving silence. The second may be more corrosive in the long term.*

Hicks, Haneef and the Politics of Wedge Avoidance

The case of David Hicks raises disturbing examples of double standards. It is inconceivable that Hicks could have been held by, say, the French, or the Russians, under comparable conditions as at Guantánamo Bay, without expressions of outrage from John Howard, or even Philip Ruddock.

No American citizen could be detained at Guantánamo Bay because it would violate the US Bill of Rights – but Australian citizens were liable if its Government made no protest.

Before the trial began, Prime Minister Howard and the US Ambassador

* Read Yevgenyi Yevtushenko's poem 'A Career' or listen to it as part of Symphony No. 13 by Dimitri Shostakovich.

Robert McCallum both declared Hicks guilty of unspecified but serious offences. They wanted him to be convicted of something (almost anything would have done) by some tribunal, anywhere but in Australia. Given the composition of the Military Commission set up to try Hicks, and its ability to rely on uncontested and unchallengeable evidence, some extracted by torture, it was inconceivable that Hicks could have been acquitted. Broad hints that Hicks was a member of Usama bin Laden's inner circle never seemed plausible.

Last March in a speech in Sydney I suggested that a 'fix' based on a guilty plea followed by rapid repatriation, and release after the 2007 election might be a way to bury the controversy. So it proved to be.

John Howard and Alexander Downer were virtually exempt from political criticism in Australia because the Opposition, whatever its private concerns, was determined not to be 'wedged' on the issue. It was astonishing to find Australia more deferential to United States procedures than the US Supreme Court, the US Congress, the American legal profession and even US military prosecutors who regarded the Commissions as fatally flawed. Howard and Downer could see absolutely nothing wrong and argued, imaginatively, that each setback to the procedure, for example its overturning by the Supreme Court, confirmed that the system was fundamentally correct.

The linguistic divide brings a wall of incomprehension between us and 'the Other', who are then speedily transmuted into 'the Enemy'. Fear of difference, of other cultures, races, religions, a turbulent climate of suspicion and intolerance, increases the probability of ceaseless escalation, an unending cycle of violence, terror, reprisal, retribution and blood lust. This cycle has dominated the Middle East, much of the Balkans, parts of Africa and Ireland for decades, in some cases centuries.

The case of Dr Mohammed Haneef, locked up at Ministerial behest after a Magistrate had granted bail, was a grotesque example of a Commonwealth agency, the Australian Federal Police, operating out of its depth. Evidence collected was not open to analysis, criticism or cross-examination. When more information, such as transcripts, was released, it became abundantly clear that the interrogators might just as well have been asking questions about string theory or brain surgery as they were about terrorism. When faced with a transcript of a conversation between Dr Haneef and his brother in Urdu, interrogators admitted that they had never heard of the language.

They understood that there were some divisions in the Muslim world but did not know what they were. When the Director of Public Prosecutions, Damian Bugg, QC, dropped the case against Dr Haneef, Minister Kevin Andrews protested, petulantly, that Labor had failed to oppose his actions: another failure to fall into the trap of a political ‘wedge’.

Conclusion

Despite the radical transformation of public and political life in recent decades, I struggle on, trying to find value and meaning and to promote the abundant life for others.

I want to redefine and promote strong belief systems. The open society, rational politics and a sceptical media have been largely crippled by 2001 and its aftermath. It is both difficult and painful to persuade citizens that they have an obligation to participate fully in the way their countries are run, and an even higher obligation as humans, to contribute to the common concerns of our species, *Homo sapiens sapiens*.

Tackling the problem of terrorism by the application of force is unlikely to succeed. Pouring blood on the Iraqi desert produced an upsurge of terrorism where none had been before: cruelty, genocide even, but not terrorism, let alone fundamentalist terrorism.

Terrorism will continue to damage open societies until we understand how to eliminate its causes and we will not be safe so long as we pursue politics that strengthen the cause of martyrdom.

Our prevailing policy line in the West is that terrorism has no cause – it is a baffling phenomenon, beyond rational analysis, an epidemic, a manifestation of evil, not seen as a political reaction, to be resolved, or even understood, by rational processes. Since terrorism is random, irrational and causeless, then negotiation is out of the question. The threat, pervasive, permanent and unpredictable, is seen as totally unrelated to cause, hence the insistence of the Spanish, Australian and British Prime Ministers that terrorist attacks in Madrid, against Australians in Bali and in London were not payback against participation in the Iraq war.

Vaclav Havel, dramatist and former Czech President, referred to a ‘loss of transcendence’, the decline of an over-arching belief system which

makes sense of the contemporary world, contributing to the rise of cults committed to a conspiratorial or apocalyptic view, with members seeing themselves as victims, leading to an absolute commitment to a cause or leader, including, all too often, the use of killing and terror as ideological instruments.

I was inconceivably lucky to be born in remote, safe, democratic, pluralistic, open, improvisatory Australia, far from the killing fields of Europe, Asia or Africa. I think constantly of my contemporaries in Germany who finished up in the fighting line in the last months of World War II. If I had been born German, would my family have resisted the prevailing ideology, like the inspiring Sophie Scholl? I doubt it.

Unilateralism and neo-con advocacy of ‘American exceptionalism’, having manifestly failed, may prove to be mere transitional phases. We must promote fresh initiatives for international co-operation and understanding, promoting generosity and searching for understanding, leading to collaborative attempts to preserve the world and its people. We must address the problems of famine, poverty, dispossession and diseases, trying to address the causes of terrorism, rather than obsessively concentrating on symptoms.

We have to ask *why* things happen, why hatred and violence is an instinctive reaction, and use analysis and reason to pursue peace and security. An endless cycle of eye for eye, tooth for tooth, will lead to a blind and toothless world. Even if it leads to some delay, there must be examination of alternative explanations, with room for scepticism, detachment and irony, even after sudden tragic events.

I recognise that my capacity and commitment to understand another point of view, to grasp the case against some course of action, to avoid oversimplification and comprehend complexity and a commitment to act rationally, would be disabling factors in contemporary politics.

It is essential not to confuse democratic forms with the democratic ethos: remember that Jesus lost a vote to Barabbas and Hitler came first in two free elections in 1932. I am committed to democracy but recognise that democratic processes often produce inflammatory results, witness the success of Mahmoud Ahmadinejad in Iran, Hamas in Palestine and the Shiites in Iraq. Nevertheless, I want the political process to be revived. This

will not just depend on Parliament, political parties and voting. There must be a balancing process with countervailing forces and creative involvement by intermediate bodies, for example, business groups and trades unionists, churches, environmentalists, a fearless judiciary, universities and other research communities, stronger and more diverse media. Reviving politics will involve encouraging knowledge, curiosity, understanding, scepticism and transparency. It will also require a revolution in education to redefine non-economic values and a critical spirit, with heavier emphasis on history, philosophy and language, as well as the skills needed for vocations.

Activists in public life, politicians, academics and journalists must make a commitment to restoring the primacy of reason, rejecting a paranoid view of history and ‘telling truth to power’. As he lay dying, Leo Tolstoy reaffirmed his commitment to rationality: ‘Even in the valley of the shadow of death two plus two does not make six’. When Primo Levi was a prisoner in Auschwitz, he broke off an icicle and sucked it to relieve his thirst, until a guard knocked it out of his hand. ‘Warum?’ (‘Why?’), he asked. The guard replied, ‘Hier ist kein Warum’. (‘Here is no why’). In too many of our public acts, there is no ‘Why?’ Australia’s blind adoption of irrational policies, supine and unquestioning acquiescence, is destructive. Democratic society depends on insisting on answers to the ‘Why?’ questions.

I live – and I think John Bray would have taken the same position – in the spirit of Samuel Beckett’s words in his novel *The Unnamable*:

It will be I? It will be the silence, where I am? I don’t know. I’ll never know, in the silence you don’t know. You must go on. I can’t go on. I’ll go on.

(7698 words)

A CAREER

Yevgenyi Yevtushenko
(translation amended BJ)

The priests insisted what
A wicked and senseless man was Galileo.

That senseless was Galileo.

But, as time demonstrated,
He who is senseless is much wiser.

A scholar, contemporary of Galileo,
Was no more stupid than Galileo.

He knew that the earth revolved.
But – he had a family.
And he, stepping into a carriage with his wife,
Having accomplished his betrayal,
Thought that he had advanced his career,

But in fact he had wrecked it.

To comprehend our planet
Galileo faced the risk alone
And became truly great.

Now that
I understand as a true careerist!

Thus – ‘Hail to a career!’
When the career is like that
Of Shakespeare and Pasteur,
Newton and Tolstoy,
And Tolstoy.

Leo?

Leo!

Why was mud flung at them?
Talent is talent, whatever you call it.

Those who hurled curses are forgotten.
But we remember the ones who were cursed.

All those who reached for the stratosphere,
The doctors who perished fighting cholera,
They were following a career!

From their careers I take my example.

I believe in their sacred belief.
Their belief is my courage.
I make my own career
By not following them!