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Online
ISSN 1440-9828

June 2011 No 572

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With nine claimants the defence chose to cross-examine only three—Pat Eatock, Bindi Cole and Larissa Behrendt. Merkel obtained permission to read out their witness statements in court, they spent short times at the witness stand and were generally lightly questioned by Young. None of them had their Aboriginality questioned. Pat Eatock presented as a fragile older woman. Rather than having profited from her Aboriginality she referred to hardship and long years of unemployment. At times there seemed something more than a fragile old lady in the box as a sharp mind familiar with debate emerged and one was left wondering just what exactly her past political activism had encompassed. Asked when she and her sister (who had different views of their genealogy) had started researching their family history Eatock replied: "That's two questions."

Artist Bindi Cole, who has Jewish ancestry on her mother's side, was asked if she could choose to develop the Jewish aspect of her heritage. She replied: "If I wanted to I could." When asked about the artist Imants Tillers she said she had never heard of him. The prosecution was presumably wanting to ask her about Tillers's 1983 painting *White Aborigines*.

Bolt's articles criticised privileged people receiving benefits which could have been directed towards more needy Aborigines. Professor Larissa Behrendt gave the impression of having come to Melbourne for the shopping rather than a trial. She arrived at the court wearing fashionable black dress, extravagantly tapered black stilettos and carried a large, black Prada handbag. The law professor had to be reminded at the start of her interrogatory that she should face and direct her replies to the judge. During cross-examination she said that she was not familiar with a Parliamentary Library text on Aboriginality and had not heard of the historian Cassandra Pybus.

After their brief appearances Neil Young stated that the defence case was about free speech and he referred to the comments that Merkel had previously made about Andrew Bolt as "extreme and offensive". Then came the turn of Andrew Bolt to take his place on the witness stand where he spent over a day and a half, beginning late on Tuesday morning and continuing until the court rose on Wednesday afternoon.

Dressed in a dark suit Andrew Bolt chose to swear an affirmation. He was asked by Young if the statements in his articles were correct and if he held the views they expressed. He replied firmly, "They are and I do." That morning Merkel's comments about him had made predictable headlines nationally. Surely, more people read Merkel on Bolt than had read the Bolt articles he was on trial for writing. Before taking questions from the prosecution Bolt requested through his lawyer permission to make a statement about what he considered as insults in Merkel's opening submission. Merkel objected that the court was not a forum for making a speech and there were sniggers in the audience. Only when specific remarks Bolt found objectionable were referred to was it discovered that neither the defence nor Judge Bromberg had received copies of the trial transcript from the previous day. A ten-minute recess was called while this was rectified.

When the trial resumed Merkel, seated at Young's left, stretched an arm across the top of his chair tensely positioning himself ready to leap up to protest as Young continued with his discussion of the terminology the lawyer had directed at his client. Choosing his moment he shot upwards into a standing position and objected that he had been misrepresented and that his words had been taken out of context by the media. Bolt looked away shaking his head as Merkel said: "This court is the occasion of giving evidence." When Young addressed another question to him Bolt replied, "Mr Merkel crossed the line." The audience found this amusing.

When Young finished his brief and friendly questioning, Herman Borenstein took his place at the centre of the court and began his long and unfriendly inquisition. Reading the trial transcript in no way conveys the antagonistic atmosphere of the court room. In this place a cutting remark from Borenstein received audible approval from the gallery and a word from the judge was listened to in respectful silence or awarded sycophantic laughter. Bolt's responses were greeted with cold disdain. If you discern intelligence and wit in Bolt's words you must realise that they were delivered under the hating eyes of the gallery audience who had come to see him hurt. There is considerable irony here for though the spectators may have thought they were taking part in a remake of *To Kill a Mockingbird* it may turn out that they were crowd scene extras for a local adaptation of *The Crucible*.

An *Age* video made at the time of the trial began with a description of Bolt as "the commentator Melbourne loves to hate". Bolt is a much liked and respected journalist and broadcaster but it was this type of shared elitist media mentality, which began with a marked dislike of Bolt, which dictated the generally slanted coverage the trial received in the press and on the internet.

In the following transcript excerpt the word *homily*, used by Borenstein, gained a supportive laugh from the audience. But on paper, it may not be the lawyer who emerges as the victor in the exchange:

> Bolt: *But the critical issue in the Aboriginal community is not racism. It is poverty and particularly, the lack of opportunity of a proper education, of a proper life at home, and all that for so many Aboriginal children out in the communities. I have been there. I don't know whether you have, and I think it is a critical, critical issue, and we all lift our gaze from it and chase around this racism ball not focusing on what really counts.*
>
> Borenstein: *And now that we have heard that homily, can we go back to the articles?*
>
> Bolt: *It's not a homily, it is very, very serious.*

Bolt caused consternation when he indicated Geoff Clark, seated in the gallery, and said: "I am sorry to keep picking

on you, Geoff, but someone like Geoff Clark, I think, is a racist. He is not a victim of racism, he is a racist." He also said of Clark, "he divides us".

During his cross-examination Bolt maintained stringent criticisms of his accusers Geoff Clark and Larissa Behrendt:

> *Can I just, without going to Mr Clark specifically then, suggest that it has been put to me in the statements handed to you, and in the cross-examination it is implied, that I am a racist, eugenics, the Nazi stuff, when as my articles insist, I am attacking racism. That is my point of view. I have been anti-racist all along. Mr Clark is relevant in this regard: that I have criticised him not only in this article but in a series of articles in the past for pursuing an agenda that is a division of the country on racist grounds quite explicitly. He is an office holder in the Aboriginal Provisional Government, for example, and he has recommended using taxpayers' funds for the division of Australia, black and white, where the law of the white man, I think you put it, does not run. I consider that a racist agenda and I think it is fair enough to say that in my defence when it is me being accused by him of being racist in opposing his point of view ... If I may just excuse myself, I only mentioned Geoff because I actually like him. We have had a drink together. I didn't want him to think I was picking on him.*

Asked what effect he thought his articles would have on those he had written about he said: "I hoped, remorseful, but clearly not." He also said that the idea the people in the courtroom were racially divided was an "invented difference" and that these were "pixels in a bigger picture". The reality of their Aboriginality was not questioned and Bolt emphasised, "I'm criticising the choice they make, not the person. The choice they make."

Bolt's article referred to Behrendt as a "professional Aboriginal". Asked to explain what this meant he said "her career has developed in a consequence or dependent upon that Aboriginality. Or that assertion of Aboriginality." Bolt explored the problem: "But the whole trend of insisting on racial differences so significant are so—and in forms so divisive is madness. It will lead—it will lead to trouble ... They are pixels in a picture of madness, yes."

Rather than a recantation the trial offered Bolt an opportunity to hone his criticisms. To illustrate his thesis Bolt pointed to what he saw as the falsity of Behrendt's position:

> *That is to acknowledge that one of her parents is not Aboriginal, and that when Larissa Behrendt demands, say, a treaty, where non-Aborigines are to make treaty with Aborigines, she is on one side of that, making a treaty with another side that includes, in fact, her mother. And I think that strikes me as rather bizarre.*

When Borenstein asked why it was necessary to refer to colour Bolt replied, "Because these are rights demanded on a race basis ... Ms Behrendt is asking for laws that divide us on the basis of race." Although Bolt did not mention it, Larissa Behrendt, like Geoff Clark, has been a member of the racist Aboriginal Provisional Government which urges Aboriginal people to form "a nation exercising total jurisdiction over its communities to the exclusion of all others".

Under cross-examination, the previous witnesses had been allowed considerable latitude in framing their responses and Andrew Bolt did so as well. The Bolt-antagonistic gallery encouraged Borenstein towards theatrics. As Bolt framed a response to a question the lawyer turned his head away and gazed towards the windows. The gallery liked it, the media picked it up and it went straight into their reports. But read the court transcript, without the theatrics, and Bolt made a valid point. The head turn began at about the point where Bolt mentions the Second World War:

> **Bolt:** ***So when you get ATSIC, as it did under Mr Clark, advocating a treaty for—between Aboriginals and non-Aboriginals, it forces you to adopt the racial identity, almost, that you resist. And there's a perfect example of that very phenomena that I read recently. The—Victor Klemperer—I don't know whether you know him—wrote diaries throughout World War II. He was the son of the rabbi of Bromberg, actually, and of Berlin, and he adopted Germanic—a German identity. He converted, as was common among a certain class of Jews in Germany, at that time, before Hitler. And it was only by the insistence on Hitler of these race laws, and the persecution—you trace this through his diaries, from 1933 onwards—that his identity as a German was being assaulted, and he had this terrible conflict of whether he was a Jew or not. And it is so fascinating to see that result through the pressure of these race laws, and this insistence on race, race, race, race, race. So he, then, reverted to an identity that he thought he had chosen not to have, and that's what I am talking about.***
>
> **Borenstein:** ***Well, that's not what I'm talking about, Mr Bolt.***

Bolt's use of "Austrian Aborigines" was questioned by Borenstein but without reference to Merkel's accusation of lying or reference to the offending inverted commas. Bolt referred to its original usage and said, "because the *Age* uses it, and you assume an approbation. They are not sitting here in the dock, with me, for using it. I use it, but don't agree, and I am in the dock."

When questioned over his confusion of Welcome to Country and acknowledgment of traditional owners ceremonies he voiced an argument against them:

> *The whole concept of traditional owners, welcome to country, acknowledgment, is again one of these race-based definitions—distinctions—differences that I have long opposed. And this is one of them. And you may say, "Oh, look, I got the form of the ceremony wrong," but it is still entrenching a division on race-based grounds that I think is ludicrous when there seems—this picture of two perfectly nice people, public-spirited people, sharing the same country. Look at them. Are you really trying to tell me that there's a racial difference there that should be acknowledged with—whether you call it an apology or an acknowledgment or a traditional welcome, or an acknowledgment of country—that I oppose. And that is what this is about. Now, you say, "Oh, look, you got the form of the words wrong." The argument remains the same.*

It might not have been the wisest defence. At Justice Bromberg's swearing in as a Federal Court judge this was part of the ceremony: "I acknowledge the traditional owners of the land on which we meet, and I honour their elders past and present."

At one point Borenstein asked about hidden meanings in Bolt's writing in language which evoked an incredulous response from Bolt and caused his lawyer to interject, "Is there a vibe, there, too, is there, that we should know about, that goes beyond the words?" After the defence objection the questioning changed track, slightly.

Lawyer Mark McMillan's gaining of an award that Bolt maintained should have been reserved for less privileged black applicants wandered around an interminable discussion of giving a Black Women's Education—Action in Education Foundation award to a white-skinned man.

> Bolt: *No, my intention was to remark on something intrinsically funny—until you get to a lawyer in court cross-*

examining you on it—intrinsically funny to mark a change in the culture.

When Borenstein charged him with setting out to denigrate McMillan, Bolt's response was realistic:

You know, when you're sitting there, at a typewriter, right, five—two hours before deadline, writing a piece this long, with this many facts in it, it's such a different thing when you're in a courtroom, trying to say, "Well, look, I really thought about this one word, and I weighed it carefully," honestly, a month would go by before you submitted your copy. I don't know that you can do it like that. It's like taking a steamroller to satire. I put in a satirical paragraph right there. It sounded like something that I want to draw attention to. I was promoted [sic] to this by, maybe, the example of Mr McMillan, but whether I sat there and said, "Right, I'm going to get Mr McMillan," you know, it doesn't work that way. I don't know whether you've written creatively or for newspapers, but, boy, it's not quite as forensic as you suggest.

Challenged about his intentions when he wrote "Hark! Is that a man's voice now bellowing, 'And I'm an Aboriginal woman,'" Bolt said:

I watched too much Monty Python. I thought it was a funny scene, and it's satirical, and in a courtroom satire it never works, but I thought it was a funny comment to make … I didn't know satire was a crime, yet.

When Borenstein asked why he had repeated McMillan's own acknowledgment of being gay Bolt asked: "Why do you consider 'gay' to be an insult?" The lawyer said that adding the comment was "a gratuitous insult". Bolt replied, "Sorry, I don't understand why you think calling someone gay is an insult."

Taking this questioning as an allegation of homophobia Bolt responded with an unexpected and impassioned response:

Mr Borenstein, there is no way that I use the word "gay" as an insult. I will give you two reasons why. The godfather of my children, if I am knocked down on the way home, is gay, and I will entrust my children to him to raise. Secondly, the gay Aboriginal I knew as a friend, John Uthon, is the man that I gave a job as a column writer at the Herald to. For you to now, first, smear me with the Holocaust, and now as some sort of gay bigot, I think is an unforgivable travesty.

The judge intervened and told Bolt to reply:

I apologise, your Honour. I woke up on Tuesday with almost every newspaper in this country describing me as some sort of neo-Nazi, planning a Holocaust, and if I wasn't stopped there would be people dead. I have not seen this man apologise for that slur … And several of those papers who carried that allegation have not reported my response … This trial is being used to smear me.

Asked if he wanted a break he refused: "I will calm down, sir, but if you had woken up to those headlines about yourself, you would be incandescent with rage. I am surprised I have kept my cool until now."

The cross-examination continued: "I don't share your implied assumption that being gay is an insult, okay. I don't. Maybe I am a different generation. It's about identity politics. And people familiar with my blog would have seen it as such."

Mention of Bolt's blog in this context led Borenstein to suggest that some *Herald Sun*and blog readers might be homophobic.

As this part of his ordeal made its way towards the end Bolt summed up what was happening to him: "You have picked out four articles. I am being tried for my bad opinions on those." And: "I find astonishing that you should think that a plea against racism is, in itself, racist, and that it should be declared illegal and my articles burned."

After Bolt the trial was taken possession of by the lawyers. For five more days it went on getting more and more complex, and stranger and stranger.

When his closing submission continued on Monday, after a busy weekend, Merkel outlined changes to his case and Justice Bromberg said with a slight smile, "So I have nine cases, not one?"

"As I will seek to explain, eleven," said Merkel. He did, and no one seemed the wiser.

The judge asked, "But what evidence do I have beyond the nine?"

Merkel replied, "You don't."

At one point during Ron Merkel's closing summation the judge asked where in a sentence Bolt had offended. Merkel replied that you have to read all the paragraph to understand it: "everything connects". He also said, "Every time I read these articles something else pops out of the words."

Until the matter is decided, discussion of this case is necessarily constrained.

Michael Connor is the editor of *Quadrant Online*.

http://www.quadrant.org.au/magazine/issue/2011/5/andrew-bolt-on-trial

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James Allan:
The Idea of Human Rights in a Civil Society

My topic is the idea of human rights in civil society. But I want to approach that subject in a rather indirect, Alistair Cooke-like way. I want to start by pointing out that people often argue over concepts and terms and what they mean. This is especially true of concepts that carry a big emotive wallop, where just having the word or phrase on your side is a big plus. These are phrases that send a shiver of delight down the spine just on hearing them. They are rhetorical trump cards—think, say, of the phrase *rule of law* or the word *democracy*.

Now everyone wants to employ these concepts to advance their own side of an argument but not everyone agrees about their content. Think of them as "essentially contested concepts", as the British philosopher W.B. Gallie put it. And when it comes to what is actually meant by "democracy" and "the rule of law", people disagree. And I mean that smart, well-informed, reasonable, nice people disagree.

And as an aside, albeit quite an important aside, acknowledging this reality that differences of opinion and disagreement can be, and are, between sides where both are well-intentioned and smart and well-informed is not the most notable virtue of our publicly financed broadcaster the ABC. Often the default position there, to explain disagreement over, say, carbon dioxide taxes or republicanism or Keynesian economics, seems to be to paint one side of the argument (I leave you to fill in which for yourselves) as being superbly well-informed, altruistic, and pretty much having some sort of mystical and ineffable pipeline to God while the other side is best understood as being motivated by reactionary, possibly racist, and certainly stupid sentiments that could do with a few months in a re-education camp.

But the truth is that almost all disagreements cannot be explained away using this "I'm morally superior and smarter

than everyone who disagrees with me" template, with its concomitant claims that everyone who disagrees is defective, dumb or evil. The truth, the reality, the best description of the way the world is, almost always, is that disagreement is just a fact of life in a country where tens of millions of people live. And neither side of these debates—at least to the disinterested observer—necessarily has higher levels of moral perspicacity or personal probity or greater access to eternal truths.

People just disagree, no doubt linked in part to their upbringings and circumstances and sentiments. But what's relevant to us here is that they disagree not just about these first-order issues but also about the meaning of important concepts and terms. And that means that sometimes you can win a debate by capturing a word, when you might struggle mightily to win the debate on its merits.

Take this example. Let's suppose you don't have much confidence in the views, beliefs and sentiments of your fellow citizens. You don't think much of the political and moral choices of the plumbers, secretaries, teachers and even derivatives traders who make up the majority. But of course you don't want to come out of the closet and say you're against democracy, the idea of counting all of us voters as equal and then letting the numbers count. Just a bit too hard in today's world to admit openly that you're a latter-day aristocrat, and prefer top judges and overseas committee members of United Nations agencies to have more say on a host of debatable social policy issues than your fellow citizens.

Here's what you do. You redefine the concept of "democracy". You take the core idea related to how decisions ought to be made and you stuff it full of moral abstractions; you make it more morally pregnant. So democracy now means not just "how" decisions are taken. It also includes a judgment related to "what" those decisions were and whether they are acceptable ones (to some kept-from-view aristocratic group or other).

You now get to assess how rights-respecting some statute passed by the elected legislature was, or whether it was unduly illiberal. And if was too illiberal, well on this new understanding it just doesn't count as democratic, despite it being a product of the majority's legislature.

Of course left wholly out of sight are two things. First off, people simply disagree about what is and isn't rights-respecting. And second, the judges and internationalists who will now get to make some of the authoritative calls do not have a pipeline to God on these issues.

It's a neat trick. All of a sudden, presto, our redefined notion of democracy builds in a role for an exclusive group of people, a role that lets them gainsay and second-guess the majority. And it still gets to be called "democracy".

That's one example of what I mean. It may sound familiar to some of you because precisely that attempt to redefine the concept of "democracy" has taken place, and is taking place right now in the West.

A similar thing is happening with the debate about "multiculturalism". Now the notion of multiculturalism is by no means an old one. Most people trace it back to my native Canada, from maybe three decades ago at most. As part of the English–French tussles there it was thought that biculturalism might be strengthened by throwing in a few more cultures. Maybe move from "bi" to "tri" to "multi", the way the owner of a cinema complex might try to do.

No one imagined at the time that any core Western notions of the equal status of women or the importance of free speech or the underlying importance of letting-the-numbers-count democracy or the ability and freedom to question and doubt and even mock religious doctrines were somehow up for grabs under this new concept of multiculturalism.

The idea was founded on individualist and liberal pre-suppositions. Go and enjoy Greek and Indian food by all means. Yes, broaden your horizons by understanding how things are done in Indonesian households or how the Estonian language is related to Hungarian. But on the core question of whether all cultures are equal in their effects, well that was a non-starter. The cultural-relativist pretension that all cultures are equally good and have been equally successful in, say, inventing jet aeroplanes and discovering antibiotics and advancing the position of women and doubling expected life spans in under a century, well that pretension is so obviously false that you can't really state it out loud with a straight face.

But over time that sort of pretension has made its way into the understanding of "multiculturalism", through the back door as it were. You start by eliding the notion of "multiculturalism" with "multiethnicism" or "having a multi-racial society". However, those are very different ideas. No one can affect the great genetic lottery that produces you. But cultures are created and can be changed.

It is simply racist (not to mention ignorant about the lack of genetic diversity among *Homo sapiens*) to think one race is better than another. It is not racist in any way at all, though, to judge some cultures as better than others on a host of criteria. In fact, whenever push comes to shove that is precisely what happens. Even the most committed Australian multiculturalists say, "Well, of course there are things that just have to be accepted by those choosing to come to this country, things like democracy and free speech."

In other words, they use core precepts in our Western culture to judge other cultures. That's precisely what British Prime Minister David Cameron recently did in his speech saying that multiculturalism had failed. He said we need a "muscular liberalism" and we need to defend core cultural values "because we have allowed the weakening of our collective identity". Cameron clearly thinks today's understanding of "multiculturalism" has moved from a tolerance of other cultures (up to a point), towards a tolerance of other value systems (thereby paralysing the ability to say "in some ways our Western values are better and they are the ones you have to sign up to").

That's one of the problems with all the debates about multiculturalism. Some people mean by it the rather bland, old-fashioned notion of keeping an open mind about other cultures (and maybe trying their cuisines). No one I know is against multiculturalism in that sense.

But others, people who could never come out of the closet and say so openly, take the notion of multiculturalism and revise it to mean a much more paralysing and "who am I to judge others" sort of nihilistic or sophomoric cultural relativism under which all cultures really are thought to be equally valid or acceptable or worthy—even in their diverging views on democracy, the treatment of women, child marriages, you name it.

And if you don't think that latter cultural-relativist understanding of "multiculturalism" is widespread then you haven't got kids in the Australian school system being fed a steady diet of this tripe.

So that's a second example for my claim that sometimes you can win a debate by capturing a word. (And by the way, in its more recent understanding I am not a multiculturalist. I don't think many nice, tolerant, liberal voters would be either, not if the revised concept were spelled out explicitly.)

And this clarification may, or may not, be useful in responding to those members of the Labor and Coalition parties who toss around this term "multiculturalism" with unrestrained abandon and try to beat down every-one else by suggesting opposition somehow equates to racism. Before

that claim can stick, how about they actually tell the rest of us what they mean by the term?

Here's my bet. Either it will be a bland, wholly unobjectionable understanding that no one disagrees with, or it will involve such toxic cultural-relativist presuppositions that they would be too embarrassed to do it openly.

I could make much the same sort of point as regards "the rule of law". There are two main competing notions as to what this phrase encompasses. One is a morally Spartan one about the good consequences that flow from having a legal system with general rules, known in advance, able to be complied with, and applying to everyone. But this "thin" notion is compatible with having laws you judge to be morally bad ones. A newer understanding is massively more morally pregnant and basically builds in a "these laws must be morally good ones, or at least not morally terrible ones" (according to me, the speaker) before giving them the "rule of law" tick. But in the interests of moving on I say no more about that example.

I think I've now said enough, after embarking on this circuitous route, to arrive at the topic of human rights. And here again we see that this notion of human rights does not define itself. It, too, is an essentially contested concept. People disagree about what will and will not fall under the aegis of this broad notion, just as they do about any particular enumerated claim to a human right, say the "right to free speech".

When I was travelling around Australia debating about bills of rights—and I am very much an opponent of these instruments—I often started by asking the audience if anyone was in favour of the right to free speech. In every audience, every time, every single person raised his or her hand as being in favour. Heck, once in Adelaide I was told there was a Holocaust denier in the audience and even he raised his hand.

But when you forswear the moral abstractions and ask if people are in favour of tobacco advertising on billboards outside schools, or whether they want unlimited campaign finance rules that allow billionaires to buy up television time galore to push their favoured political views, or if they want defamation laws that put a fair bit of weight on reputational concerns, or if they want to stop any speech that might be characterised as hateful by any groups at all, you immediately find that there are all sorts of disagreements in society. And all sides have smart, well-informed spokesmen and women.

Up in the Olympian heights of moral abstractions—where we talk of the right to free speech or to freedom of religion and where disagreement tends to be finessed and glossed over—you can achieve near on universal agreement. But down in the quagmire of day-to-day social policy decision-making you never have that sort of consensus. Not ever.

The language of human rights can achieve a sort of bogus consensus because it deals in moral abstractions so abstract and so couched in emotively appealing connotations and generalisations that almost everyone can sign up to it. But underneath that finessing, very abstract notion, you must realise that what actions are and are not on the side of "human rights" is not something that defines itself. It is contestable, and contested—every day, all the time. Just because someone proclaims himself to be on the side of human rights it doesn't necessarily follow that others—on hearing that person's views on specific issues—will agree with those views. Nor does it follow that they'll concede that this proclaimer is the one on the side of human rights.

One of the great tricks—I would say fallacies even—of those who campaign for a bill of rights in Australia is to exclaim, "Don't you want your rights protected?" again and again and again. As if Australians don't already have more scope to speak their minds than Canadians do (as regards, say, potentially defamatory words, or hate speech or words related to election campaigns and the rules that finance them). Because even though Canada has a super-potent bill of rights, and we have none, it turns out we Australians in fact have more such scope to speak our minds. (You don't hear that from bill-of-rights advocates, do you?)

And as if in any political system known to man you (or anyone else) will always be on the winning side of every line-drawing exercise about such things as whether women ought to be able to wear headscarves in schools or people claiming refugee status ought to be virtually unhindered in arriving in a country or whether women who allege they've been raped ought not to be subjected to the full panoply of cross-examination questions during the accused's criminal trial.

Take that last example, not least because it turns the tables on the pro-bill-of-rights brigade which tends to assume, unwarrantedly, that these instruments are a guarantee of nice progressive outcomes. In the UK not too long ago the legislature passed a statute restricting somewhat what a defence barrister could ask a woman who was a complainant in a rape trial about her own past sexual activity. However, the highest UK court, under their statutory bill of rights, said this law was a breach of people's timeless, fundamental human rights. Any guesses which one? (Yes, it was the "right to a fair trial".)

The real issue is not who is and is not on the side of human rights. The real issue is which institution we want making these debatable line-drawing decisions: the elected parliament or the unelected judiciary (because remember, when you buy a bill of rights, what you are really buying is a much enhanced decision-making role for judges, full stop, whether the bill of rights be of the statutory or constitutionalised varieties). And in making that call between the elected legislature and the unelected judges you know going in that no institution will produce outcomes with which you agree 100 per cent of the time. It's about which has the best hit rate, on average, over time. Is it the one that is accountable to the voters and can be tossed out after making calls on these moral and political issues? Or the one that takes these moral and political issues, translates them into pseudo-legal ones, issues absolutist-sounding claims—even when the outcome in court was a 4–3 or 5–4 one where if one judge had changed her mind or had a car crash your timeless, fundamental rights would magically and mysteriously be the exact opposite of what they ended up being declared to be?

I think the least-bad option—not the perfect, unfailing option, but the least-bad one—is the legislature. Call it democracy if you mean it in the thin, letting-the-numbers-count sense.

The obverse of much of what I've just said is that you can't, or shouldn't, argue for a bill of rights (or think about human rights) in terms that amount to blithely asking: "Don't you want your rights protected?" Of course you want that. But you and I and he and she and that group over there are going to disagree about which actions will and will not amount to protecting those rights and how best to go about structuring our institutions to do so. You simply cannot just assume that *your* take on when prisoners ought to be allowed to vote or *your* take on when speech that some in society see as hateful ought to be suppressed—*your* take on these sorts of things somehow just *is* the view that *is* the rights-respecting one. No more than some top judge who was previously a commercial barrister on a million dollars a year for a couple of decades or a bureaucrat appointed to a human rights commission who likes to speak out on contested social policy issues, no more than their views is your view somehow the self-evidently correct view. You

think yours is. They think theirs is. But the person who disagrees with you about the rights-respectingness of euthanasia or abortion or headscarves in schools or cross-examining rape complainants, well that person also thinks his or her views are the morally correct ones.

And so you need a procedural rule to resolve these differences and disagreements in society. It's not resolved by who shouts the loudest about his attachment to human rights, in the abstract—or let's hope it's not. And it can never be resolved by adopting some substantive test, say a Spike Lee-like "Do the Right Thing" test—that won't work because, as I hope by now I've made clear, people simply disagree about what the substantive right answers are and there is no scientific method for resolving such disagreements, some double-blind drug trial just waiting for us out there.

Even when you hand such decisions off to the courts the decision-making rule there is also a wholly procedural one, however much that might be disguised. Here's the decision-making rule in the High Court: you count heads. Four votes beat three, full stop. It doesn't matter if the dissenting three have crafted morally uplifting judgments chock full of references to John Stuart Mill and the International Covenant on Civil and Political Rights and the majority judges have written callow, insipid judgments, largely crafted by their law student clerks—and I take no position on whether any disinterested person might, on occasion, get that impression from reading some recent High Court decisions such as *Roach* and*Rowe*. No, my point is that it's a procedural test there too; it's just that the size of the franchise is somewhat more limited than when 22 million Australians vote to choose a legislature to decide such matters.

And so perhaps it's worth my while to retreat a bit further at this point and say a word or two about rights themselves. When I ask my first-year law students at the University of Queensland what rights are, these students with by and large the best high school marks in the state struggle to give an answer. Eventually you might get from someone that rights are entitlements, or protections, or guarantees of a sort. But never will they tell you that analytically speaking a right amounts to an "others must" claim. If I have a right to free speech then others must let me speak. Similarly, if you have a right to be free of unreasonable searches then someone must avoid unreasonably searching your property. And those rights, those "others must" claims, are linked—they're correlated—to duties. A duty is an "I must" claim. My duty to visit my sick grandmother in the hospital is an "I must" claim. So her right ("others must") is my duty ("I must").

Wherever there are rights, there are correlated duties. You can't have one without the other, or at least you can't have rights without duties. On very rare occasions you might have duties without rights—for example, saying that I have a duty not to cut down that 2000-year-old tree does not correlate to the tree having a right not to be cut down, at least most people outside the Greens don't see it that way.

And here's the thing, when we look at rights analytically. Not only are rights always connected to duties (which may explain the rather pathetic attempt to label the State of Victoria's egregious little statutory bill of rights *The Charter of Human Rights and Responsibilities*—the lack of any obvious responsibilities having been listed notwithstanding). Not only that. But the rights and duties themselves are always and everywhere tied together by the concept of rules. So any right you care to mention I can transliterate into the form of a rule: "She has the right to free speech" becomes "There is a rule that allows her to speak her mind in the following circumstances". You can do it for any rights. Of course the language of rules hasn't got anywhere near the same emotive punch or oomph, but regardless of that, the language of rules does not provoke that frisson of self-entitled excitement the way the language of rights does. You don't get the same shivers down the spine. But analytically speaking they're exactly the same. A right is a rule.

And once you see that, you can see that rights, broadly speaking, are of two sorts. There are rights (or rules) where we all can see the basis of the claim. These are legal rights (or rules). So habeas corpus is a legal right. Or in some circumstances having recourse to being tried by a jury is a legal right (or rule). Or what you can expect as a residential tenant. And if someone asked where these sorts of rights come from, you can point them to a statute, or maybe to a series of cases from the highest courts. Whether you like the substance of the right or not, its source is clear.

But in other circumstances it is evident we are not talking about legal rights, but rather non-legal or moral rights. The claim that "everyone has the right to free speech in China" might be a most laudable one. But it is not a claim about the legal system now in existence in China. It is a moral claim about the way someone thinks the world ought to be.

On top of that, moral claims, and whether they actually exist with this content or that, are highly debatable claims in a way that is not true about whether most legal rights and rules actually exist and what their content is (leave aside their desirability).

One of the things that the idea of human rights in civil society does is to blur this divide between legal rules and entitlements and moral rules and entitlements. When human rights language is being used, often it is used to make a moral assertion—that people *ought* to have scope to speak their minds in China. Other times, though, these claims are being made at the intersection between law and morality, and these are ones that typically gloss over the highly contestable nature of moral claims. To see that, leave claims about scope to speak your mind in China and park yourself in a nice liberal democracy and start making claims about there being rights to (or moral rules laying down that one can) get married to whomever one wishes, or to end the lives of foetuses when one wants, or to all the sorts of divisive issues over which people in Western nations—the most free, most liberal, and most desirable ones to live in on the planet today—argue about incessantly.

The language of human rights finesses those disagreements and it helps those making rather more specific—but disguised—claims; it helps them to position themselves as though they were speaking from on high, on the mount as it were, with some sort of pipeline to God about the right side to be on such specific, debatable, contested issues. If it were translated into the form of "I think there is a moral rule mandating that my position on same-sex marriage and euthanasia and cross-examining rape complainants is the correct one, and that it ought to be made legally enforceable because it's me making that claim—and lord knows I have exceptionally refined moral sentiments and world renowned moral perspicacity", you might find fewer people would be cowed. And that would be true even if the speaker were a well-known human rights barrister or human rights commissioner or person working for an NGO, even one like Amnesty International that recently spent over £860,000 paying off its two most senior officials—payments equivalent to about 4 per cent of the charity's annual budget.

The philosopher and social reformer and utilitarian Jeremy Bentham (very much a man of the political Left) got at this idea of how the language of human rights can work in a much more devastating and concise way back two centuries ago when critiquing the French Declaration of the Rights of Man (an older Bill of Rights than the US one, by the way). He went through each of the claims made in that French instrument. "All men are created equal," Bentham mused.

Really? In what sense? Is the illegitimate daughter of the charlady born with equal life chances to the eldest son of the Earl of Hampshire? No. No one can think that. What they can think, and what they should think, is that we ought to be working towards a world where there are more equal opportunities and where people are seen as equal before the law.

What the language of human rights sometimes does is to elide these two ideas, the present "is" and the desired future "ought". It's that elision that can cause problems. Or as Bentham rather devastatingly put it, "Hunger is not Bread." Your oughts don't somehow magically become ises just by loudly asserting something is true, such as that everyone has the right to free speech in China. And if you're not careful you won't go about reform in the correct way.

So the idea of human rights can be potent and powerful and a clear force for good. Or it can obscure clear thinking, impede needed reforms, and constrain democratic decision-making in favour of a sort of aristocratic decision-making where the lords of yesterday are replaced by a judicial elite of today. It all depends on how you're using that idea. But if you remember and never forget that today in Western liberal democracies people disagree about almost any important social policy issue down in the quagmire of detail and specifics, and that translating such disputes into the language of human rights does not remove that underlying disagreement, however much it may hide it and finesse it, then we will all be better off. At least in my view.

Now it is customary to finish with a joke. When I was in practice at a big law firm in Toronto, clients always enjoyed a joke about lawyers. What's the difference between a dead lawyer on the highway and a dead snake? Skid marks in front of the snake. They enjoyed these little jokes, at any rate until they got our bill. So I thought I'd try to provide you with a joke or two to end, that related to the idea of human rights in the world at large.

Here are my two concluding jokes. The first is known as the United Nations Human Rights Council or UNHRC, which is the successor to the United Nations Commission on Human Rights or UNCHR. The earlier Commission was considered to be so biased and so ineffective and so politicised that it was disbanded and the UNHRC put in its place. Who would have guessed that the new body would be at least as bad as its predecessor, and probably worse?

Let me tell you a bit about the UNHRC, so that the next time someone tries to win a rights-based argument by appealing to international law or to international norms you have some better idea of the facts. This is the UN Human Rights Council that includes Cuba, China and Saudi Arabia as member states, all places whose views on the rights of women and of minority religions and of when to drive tanks into crowds or put opposition politicians into psychiatric wards you'd be keen to take very seriously indeed. Oh, and until last week Libya was a member of the UNHRC. Did I forget to mention that? Not any more. Having jet planes strafe and bomb its own citizens was too much even for the UNHRC, though not right away.

And it is the UNHRC that seemingly protects or at least has nothing much to say about Burma and China and Sri Lanka and Zimbabwe. True, this new body has passed twelve resolutions since being formed. Three of those were non-condemnatory ones about Sudan and the killings in Darfur. But of course you don't want to jump to any condemnatory conclusions about that do you. Well, that's not exactly true. You see the other nine resolutions made by the UNHRC were all very condemning. And wouldn't you know it, they were all about one single country. So which was it? Which country in the world has such awful human rights tendencies that it, and it alone, receives the only censure from the world's top human rights body? Surely it must be a dictatorship with thousands and thousands of deaths on its hands? Iran maybe, or Burma or Zimbabwe or Syria perhaps. Well, no. Okay, at least it won't be a democracy then, right? Alas, wrong again. I think you all know which country is the single-minded focus of the UNHRC—or at least you've narrowed it down to two candidates. The winner, as it happens and if that's the way to put it, is Israel. And this from the very same UNHRC that passed a resolution urging UN states to adopt laws outlawing the criticism of religion—anti-blasphemy laws. That one was proposed by Pakistan, another model human rights nation. How many people who see themselves as being in favour of the right to free speech thought that the top human rights body in the world sees free speech as encompassing and being limited by anti-blasphemy laws?

My second joke comes from my native Canada. I'll assume some of you know about the Mark Steyn saga. Instead, let me tell you about some of the so-called "human rights tribunals" in Canada, the names there being Orwellian inversions of reality where complainants have their legal costs wholly picked up by the taxpayers while defendants pay their own legal costs and can be fined big sums of money for supposedly hurting the feelings of others—even if the statements made were factually true, as in the Steyn case.

Consider the case of Guy Earle in the province of British Columbia. Mr Earle had to stand trial (so to speak) before the BC Human Rights Tribunal. Mr Earle is, or was, a stand-up comedian. He was working one evening and two lesbians came to his show, got drunk, and started making out in front of the stage. He ridiculed them, including jokes about their sexual preference. But in the British Columbia world of human rights tribunals it turns out there's no assumption that people going to hear a stand-up comedian need to have a thick skin or that they needn't go at all. No, one of the women complained. And the application to have this complaint dismissed was heard by the same tribunal member who chaired Mark Steyn's BC human rights tribunal hearing. No prizes at all for guessing that she did *not* dismiss the claim against the stand-up comedian but let it proceed.

I bet few people who feel a strong attachment to the idea of human rights in civil society think this concept or idea is one that can be, and ought to be, used to censor people whose views you simply don't like. No, that's putting it far too weakly. Try this. I bet you didn't think the idea could be used to censor professional comedians whose shows you choose to go to, and this can be done because you happen to think they're not funny. If the facts were in any way different I'd be tempted to say the whole thing leaves a bad taste in the mouth. Instead, it's a joke. I'm just sorry it wasn't a funny one on which to end.

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James Allan gave this address to the Centre for Independent Studies at the Macquarie Bank Auditorium, Sydney, on March 17.

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http://www.quadrant.org.au/magazine/issue/2011/5/the-idea-of-human-rights-in-a-civil-society

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...now more on a long drawn-out legal action under the RDA, begun in 1996, reaching its end...

Bankruptcy bid to silence me, claims `revisionist' Fredrick Toben

Court reporter Sean Fewster

***The Advertiser*, June 02, 201111:00PM**

FREDRICK Toben says an attempt to bankrupt him actually is a bid to silence his controversial opinions.

Holocaust ''revisionist'' Fredrick Toben outside the Federal Court yesterday. Picture: Greg Higgs

FREDRICK Toben says an attempt to bankrupt him actually is a bid to silence his controversial opinions.

The holocaust "revisionist", in 2009, served a three-month jail term for contempt of court. He breached Federal Court orders banning him from using the internet to insult and abuse Jewish people.

The court found Toben had acted "wilfully and contumaciously" by uploading articles that implied Jewish people offended by Holocaust denial were of "limited intelligence".

Toben insists he is not a Holocaust denier, saying he is "someone who asks questions".

Following his release from jail, Toben was ordered to pay $56,000 in court costs to Jeremy Jones AM, who filed the original case against him.

Mr Jones, a past president of the Executive Council of Australian Jewry, subsequently filed bankruptcy papers with the Federal Court.

Toben yesterday asked Justice Anthony Besanko to adjourn the case for two weeks so his lawyer could attend court. He said it was unfair to hold the case without his lawyer present.

"If this proceeds, I'm not being given natural justice," he said. "I'm being steam-rollered again, as I have been throughout these proceedings. That's exactly what the aim of (this case) is." Justice Besanko said legal precedent held bankruptcy cases could not be adjourned.

He granted Toben a "short" delay, however, to instruct his counsel.

Outside court, Toben said he was fighting bankruptcy to protect his principles, not his finances. "What they are trying to do now is stop me from functioning," he said. "It's my birthday today. The older you get, the more you value your free expression.

"If you take away my freedom to think and speak, you take away my humanity." [- and you commit a crime against humanity. – ed. A.I.]

He said a bankruptcy finding would force him to sell his "little house in the bush", where he lives. "It's not material things I value, it's searching for the truth that is important," he said.

www.adelaidenow.com.au/news/southaustralia/holocaustrevisionistfredricktobenfightsbankruptcyproceedings/storye6frea83122606792056 6&ct=ga&cad=CAcQAhgAIAAoATAAOABA7YCh7wRIAVgBYgJlbg&cd=UcyB512GHkE&usg=AFQjCNFGhjAol5ujoloAL4anbYdbx220AQ

*****Now same article but different photo – Peter Hartung in background*****

Holocaust 'revisionist' Fredrick Toben fights bankruptcy proceedings

Court Reporter Sean Fewster, *AdelaideNow,* June 02, 201112:50PM

Holocaust 'revisionist' Fredrick Toben speaks to media outside the Federal Court. Pic: Greg Higgs *Source:* AdelaideNow

HOLOCAUST "revisionist" Fredrick Toben is back in court, this time on bankruptcy proceedings.

In 2009, Toben served a three-month jail term for contempt of court. He breached Federal Court orders banning him from using the internet to insult and abuse Jewish people. The court found Toben had acted "wilfully and contumaciously" by uploading articles that implied Jewish people offended by Holocaust denial were of "limited intelligence".

http://www.adelaidenow.com.au/news/south-australia/holocaust-revisionist-fredrick-toben-fights-bankruptcy-proceedings/storye6frea831226067920566

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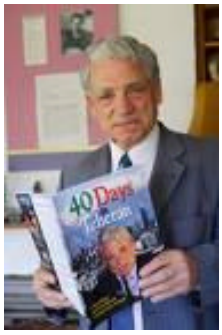
Toben in court – facing bankruptcy

June 3, 2011 by J-Wire Staff

Fredrick Toben lost a case brought by the Executive Council of Australian Jewry in 2009 for uplifting articles to his website implying that those offended by Holocaust denial were of limited intelligence…he was sentenced to three months in prison and $56,000 in costs were awarded to Jeremy Jones who was the plaintiff. No money was received and Toben has faced bankruptcy proceedings in Adelaide's Federal Court.



Fredrick Toben

Jones, who had been acting on behalf of the Executive Council of Australian Jewry told J-Wire: "Not a cent has been received…and although the costs have been awarded to me, any funds received would go straight into the ECAJ revenue as they funded the case. The money reflects only the costs incurred in running the case…not a cent is due to me personally."

Toben asked Justice Anthony Besanko to adjourn the case so that his lawyer could attend court. He was told this was not possible in bankruptcy matters but he was given additional time.

Adelaide Now reports that Toben said that "they" are trying to stop him functioning.

http://www.jwire.com.au/news/toben-in-court-facing-bankruptcy/16626

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Bankruptcy bid against Holocaust denier

Updated Thu Jun 2, 2011 1:32pm AEST

A Holocaust denier who was jailed for contempt over an offensive website is now facing bankruptcy over court costs.

Fredrick Toben was found guilty of 25 counts of contempt of court after disobeying an order to stop publishing offensive material about the Holocaust on his website.

He was jailed for three months in 2009.

Lawyers for Jeremy Jones, a former president of the Executive Council of Australian Jewry who initiated the legal action, filed an application to force Toben into bankruptcy.

Frederick Toben says he cannot pay legal costs (ABC News)

Toben was ordered to pay court costs from the 15-year legal saga.

He said he could not afford them. The judge granted a two-week adjournment so Toben's lawyer could attend the court.

First posted Thu Jun 2, 2011 12:52pm AEST

http://www.abc.net.au/news/stories/2011/06/02/3233754.htm

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Holocaust denier delays bankruptcy order

Updated: 15:49, Thursday June 2, 2011

Holocaust denier Fredrick Toben has asked for more time after failing to comply with a bankruptcy order made against him.

Mr Toben, 67, was sentenced to three months jail in 2009 for ignoring a 2002 court order preventing him publishing anti-semitic material on his revisionist Adelaide Institute website.

The former president of the Executive Council of Australian Jewry, Jeremy Jones, who initiated the action, is seeking to enforce a court order that Mr Toben pay $56,435.72 in legal costs by declaring Mr Toben bankrupt.

Mr Toben requested an adjournment at the South Australian Federal Court after missing the April 13 bankruptcy compliance date arguing his legal representation was in disarray.

'I request an adjournment be made because I have to sort legal representation,' he told the court on Thursday. 'If this proceeds, I am not given natural justice. I am being steamrolled.'

Outside of court, an unrepentant Mr Toben declared himself a fighter for 'truth' and 'justice'.

'If you realise that you are not in the wrong then there is a moral claim to truth, honour and justice, to these basic ideals, you have that inner strength,' he told journalists on Thursday. 'I call it the godliness of seeking justice.'

According to court papers, Mr Toben is seeking to set aside the bankruptcy order saying he was shocked' to learn two days after the expiry of the 21-day compliance order his then legal team had failed to file papers.

Mr Toben said he had enlisted the services of Melbourne barrister John Walsh who would be available via video link.
In 2008 Mr Toben fled Britain when a German bid failed to have him extradited to face charges of Holocaust denial.
He was imprisoned for nine months in 1999 at Mannheim Prison for breaching Germany's Holocaust law that prohibits anyone from defaming the dead.
Mr Toben said he was willing to quieten down now that he had found a 'lady love'.
'I've been in five different prisons, it's nice at my age to have a rest,' he said. 'If you found a lovely lady love you have to just be a good boy...I've got to be a good boy and perhaps shut up sometimes'.
http://www.skynews.com.au/local/article.aspx?id=620584&vId=

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...and back to the Andrew Bolt million-dollar-plus court-costs case...

...and justice for Aboriginals and justice for Jews?

Andrew Bolt caused offence to nine fair skinned Aborigines in column, Federal Court trial hears
Norrie Ross, *Herald Sun*, March 28, 2011 2:20PM
Herald Sun columnist Andrew Bolt caused hurt and offence to nine fair skinned individuals by writing that they choose to identify themselves as Aboriginal for financial gain, a barrister said today.
Ron Merkel QC told the Federal Court that in articles and blogs Bolt inferred the nine were "professional Aboriginals'' who self-identified with the thinnest stand of their racial make-up.
Mr Merkel said Bolt's views were a throwback to the stolen generation and the 1930's where people were categorised as "half-caste'' and "quarter caste'' and treated accordingly by the law.
The nine, a range of teachers, artists, lawyers, academics and political figures, have taken Federal court action against the columnist. They claim Bolt breached the Racial Discrimination Act by saying they made a choice to identify as being Aboriginal for questionable motives.
The nine are activist Pat Eatock, former ATSIC member Geoff Clark, artist Bindi Cole, lawyer and academic Larissa Behrendt, author Anita Heiss, health worker Leeanne Enoch, native title expert Graham Atkinson, political scientist and academic Wayne Atkinson and lawyer and academic Mark McMillan
Mr Merkel said the case was not about free speech and Bolt could have expressed views on the subject of Aboriginal identity without attacking the nine members of the class action.
The Racial Discrimination Act allowed views to be expressed that might otherwise be offensive to individuals or groups but not if the comments were gratuitous and insulting.
"This case is not about the generality of his views but the specific attitudes on individuals,'' Mr Merkel said.
The articles complained of appeared under the headline "It's so hip to be black'' in the *Herald Sun* on April 15, 2009 and on August 21, 2009 in a column headlined "White fellas in the black''.
Mr Merkel told Justice Mordecai Bromberg that he would hear evidence that none of his clients "chose'' to be Aboriginal.
In the case of Ms Eatock she was placed in a segregated white playground at primary school because she had a white mother and then moved to a black playground when her Aboriginal father returned from the army. In their submissions the plaintiffs said Bolt said their Aboriginality was not genuine.
"The articles direct criticism to those named, implying that their choice for identifying as Aboriginal was opportunistic and for the purpose of providing them with financial and other benefits reserved for genuine Aboriginal persons who are darker, rather than fairer, skinned Aboriginal persons,'' they said. The case is continuing.
http://www.heraldsun.com.au/news/more-news/andrew-bolt-caused-offence-to-nine-fair-skinned-aborigines-in-column-federal-court-trial-hears/story-fn7x8me2-1226029426476

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Andrew Bolt columns an assault on fair-skinned Aborigines, court is told
***AAP,* March 28, 2011 2:42PM**
SEVERAL articles by journalist Andrew Bolt were "a head-on assault on a group of highly successful and high-achieving" Aborigines, a court in Melbourne has heard.
The counsel representing nine Aborigines is seeking a public apology from the News Ltd columnist and a ban on republishing the articles, which appeared in 2009 and 2010.
The Aborigines are taking class action against Bolt over articles and blogs including one headlined "White is the new black" and articles "It's so hip to be black" and "White fellas in the black".
Ron Merkel SC said Bolt's articles had trivialised them, were gratuitous and stereotyped a group of Aborigines who had fair skin. He said the articles had questioned their Aboriginality and their right to receive taxpayer-funded grants. "What he says is that if you don't look Aboriginal, then you don't have to be," Mr Merkel said.
He said Bolt's idea of an Aborigine was of a man standing on a hill with a spear. "He is living in a mindset frozen in history, frozen in a period of time," Mr Merkel said. "There is not the slightest doubt that it is a head-on assault on a large number of highly successful and high-achieving Aboriginal people."
Mr Merkel said he had no quarrel with people expressing their views but Bolt's articles were gratuitous and denigrated the people he wrote about. "There are no benefits reserved for people who have dark skin so he has created a fictitious counter-argument that doesn't exist," Mr Merkel said.
The hearing in the Federal Court is continuing.
http://www.theaustralian.com.au/business/media/andrew-bolt-columns-an-assault-on-aborigines-court-is-told/story-e6frg996-1226029441364

From Adelaide Institute's Archives:
Australia's most successful flase flag operation

Through this insider-job former Australian PM John Howard let himself be propelled on to the world political stage, as Kevin Rudd is doing by supporting the 2011 NATO war on Libya. The murder site was almost immediately demolished because of the hurt and bad memories it contained just like the New York WTC Twin Towers, and a public trial was unnecessary because this would further traumatise surviviors – in any case, after making the suspect pliant to plead guilty he admitted to the shootings. The pattern of constructing an orthodox narrative of events is clearly based on the successful formula developed by the Holocaust-Shoah enforcers, which was later followed by those responsible for 9:11, 7:7, Iraq's WMDs lie, and others – and more to come... view the clip at: www.toben.biz.

Port Arthur massacre video goes public

***The Age*, August 28, 2004 - 6:14PM**

Police have confirmed that a graphic police video showing gruesome crime scene footage of victims of the Port Arthur massacre has fallen into public hands.

Tasmania Police Deputy Commissioner Jack Johnston responded to media reports that the highly sensitive police tape depicting the massacre scene had been sold in a Hobart tip shop for 10 cents.

The 22-minute tape, marked as training footage for police use only, includes about 12 minutes of graphic scenes after the massacre, including images of bodies as they were found.

Mr Johnston said he was concerned copies of the police tape could end up on the internet. The tape, which contained images of forensic footage of the Port Arthur crime scene, was not a training video, he said.

He said no-one was allowed access to the video or its copy without his permission. Mr Johnston said police had made at least two requests for the original tape to be returned since an investigation began into the matter several months ago.

"I have already described the public access to this video as being grossly inappropriate and I stand by that particular description," he said. "I am very, very concerned that somebody from within this department has inappropriately accessed a secure document as in a video and then has inappropriately allowed that to be copied or copied it themselves."

The woman who originally bought the video with the intention of recording over it, was unaware of its full content and, thinking it may be of interest, passed it on to a former Port Arthur worker, Wendy Scurr, The Weekend Australian newspaper reported. Mrs Scurr was at the site at the time of the massacre and had since suffered severe post traumatic stress disorder, the newspaper said.

Wally Nash, whose 32-year-old son Peter died shielding his wife from gunman Martin Bryant, said news that the video was in the public domain would shock survivors and the loved ones of those killed. "It's disturbing to me that material that was supposed to be under wraps has got out into the public," Mr Nash said from his Melbourne home. "It doesn't affect me in any way but a lot of people will be hurt, especially if they see it. It's quite disturbing, isn't it? "I would hate any photos of the massacre scene to get into the public view."

The release of the video outraged the Crime Victims Support Association, who called for a police sacking.

"A lot of the victims are still in shock," Crime Victims Support Association president Noel McNamara said.

"Whoever did this (discarded the video) should be kicked straight out of the force and charges should be laid on them because they have retraumatised people."

Mr McNamara said there was only a case for releasing the video in decades to come, as memories of the tragedy faded.

"In 30 or 40 years' time maybe it should be released for history's sake, so younger generations know what happened there, but it's just too soon now," he said.

Port Arthur site chief executive officer Stephen Large said news of the release of the video could harm the historic site's recovery from the massacre. "We're obviously disappointed this has happened now," Mr Large said.

"It (the massacre) was eight years ago and a lot of us have moved on but these things aren't helpful."

State opposition police spokesman Peter Gutwein told reporters his thoughts were with the victims' families.

"I was absolutely shocked and very much concerned for the families of the victims this morning when I read the newspaper," he said at the state Liberal conference in Launceston. "To read that sort of information in such graphic detail horrified me."

Martin Bryant was convicted of murdering 35 people in the massacre on April 28, 1996, and was jailed for life without parole.

http://www.theage.com.au/articles/2004/08/28/1093518161272.html

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Massacre tape uproar

Gruesome video of Port Arthur victims is bought for 10c

BY MARK BAKER, 29 Aug, 2004 12:00 AM

The video, which includes about 12 minutes of graphic images of some of the 35 people murdered by Martin Bryant, was bought at a Hobart tip shop for 10c.

The woman, [Mrs Olga Scully – ed. A.I.] who bought the video with the intention of recording over it, did not know its full content. Thinking it might be of interest, she passed it on to former Port Arthur worker Wendy Scurr. Mrs Scurr was at the historic site on April 28, 1996, when the massacre occurred and has suffered severe post-traumatic stress disorder since.

The 22-minute tape, labelled as a Tasmania Police training video "for police eyes only", records the bloodied victims where they fell after being shot by Bryant's high-powered assault rifle.

The 20 people killed at Port Arthur's Broad Arrow Cafe are shown slumped at their tables or sprawled on the floor. Some of the most disturbing images are of Nanette Mikac, 36, and her daughters Allanah, 6, and Madeline, 3, shot on the roadside after stopping behind Bryant's car.

Mrs Scurr received the video in March but only watched it in full with a former Port Arthur co- worker on the anniversary of the tragedy. "We just sat there totally shocked and disgusted and angry," Mrs Scurr said.

She suffered another breakdown after watching the horrible images.

Yesterday her husband Graeme said it had been terrible to watch his wife go through the events again. "The (State) Government knew the video was in circulation but did nothing to try and warn victims and their families about it," Mr Scurr said. "They should have made people aware of it."

Mr Scurr wrote a letter to Police and Public Safety Minister David Llewellyn in early May, demanding to know why the video had been dumped. Mr Llewellyn replied that he had referred the matter to Police Commissioner Richard McCreadie and it was being investigated.

Deputy Commissioner Jack Johnston yesterday said the leaking of the video was grossly inappropriate and had been the subject of an internal investigation for about four months. "The Commissioner considers it to be a very significant security breach, and assuming it was not accidental we would be looking to ensure that some appropriate remedial steps are taken," he said. He denied that the video was for training purposes.

The footage was made by forensic police at the crime scene. The tape was then copied and Mr Johnston took possession of both tapes. One is held with the Port Arthur forensic file, the other in his office.

Mr Johnston said the forensic tapes were kept in a secure location and his permission was needed to access them. "It appears that someone has taken an inappropriate copy after they've been given legitimate access to the tape," he said.

Mr Johnson asked for Mr Scurr to return the video to police. "It's not a tape that should be for general public consumption," he said. He was very concerned that the tape could now be copied and recopied and possibly end up on the Internet. "That would be one of the worst things for victims or anyone from Port Arthur," he said.

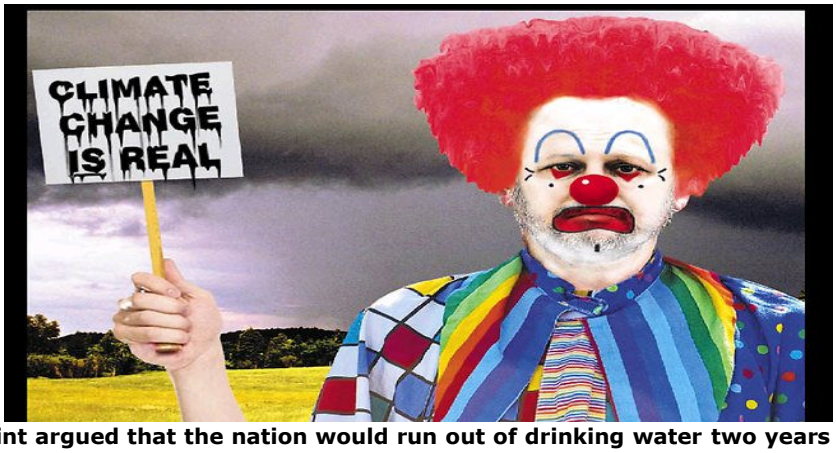
Opposition police spokesman Peter Gutwein demanded that Mr Llewellyn explain why survivors and families of victims had had to find out through the media about the security breach. "My sympathy goes out to all those who have been affected by the revelations, and Mr Llewellyn owes all those people an apology," he said.

Bryant was convicted of murdering 35 people and jailed for life without parole.

http://www.examiner.com.au/news/local/news/crime-and-law/massacre-tape-uproarbrgruesome-video-of-portarthurvictimsisboughtfor10c/1021154.aspx?storypage=0

[A.I. comment: It was Launceston's Mrs Olga Scully who found the tape, then in typical free expression idealism spread the message contained therein. For Mrs Scully it was more important that truth be revealed than possibly someone claiming material compensation for 'hurt feelings'. When Mrs Scully's husband died in 1995 it was time for Jeremy Jones to take on the newly widowed school teacher by dragging her through the Human Rights & Equal Opportunity Commission - HREOC, and then through the Federal Court of Australia –FCA on that nonsensical claim that Mrs Scully's wish to tell her side of World War Two history is 'offensive to Jews'. Mrs Scully lost family and relatives fighting the Jewish-dominated Bolshevik-Soviets that caused her to become a refugee and end up in Tasmania. Why is one side of the historical narrative not permitted to be told? – and don't say it has anything to do with racism because it has not as Jews are not a race but a religion, and even the ethnic category within the RDA remains a nonsense. But that's what the Scully & Töben case never clarified because matters of fact were never canvassed for truth-content – only 'hurt feelings'! This is where matters become childish because as we all know a child can sulk at just about anything – even a glance from a parent will do.]

Nosedive moment for warm mantra



Tim Flannery at one point argued that the nation would run out of drinking water two years ago, says Andrew Bolt. Puzzled historians will one day ask how the great global warming scare died so suddenly, in mid scream. April 20, 2011, http://www.heraldsun.com.au/opinion/nosedive-moment-for-warm-mantra/story-e6frfifx-1226041787475