

## **AUSTRALIA AND THE EUROPEAN UNION A SPECIAL RELATIONSHIP\***

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### **INTRODUCTION**

Those with vision are invariably opposed by the sceptical. As is the following story, probably apocryphal. When the United Kingdom was invited to the discussions at Messina, which resulted in the launch of the first institutions that were to develop into the European Economic Community, a British Minister observed:

You will never be able to agree. If you do, it will never happen. If it happens, it will be a disaster.

Hindsight has shown otherwise. The European Union has grown in more ways than one, from its membership to its relations with the rest of the international community.

### **EUROPEAN UNION/AUSTRALIAN COLLABORATION**

Australia is an ideal partner for collaboration with the European Union in many areas. Between the two of them, there exists what can be called a special relationship, a fact that is more and more being recognised in the region.

When Lee Kwan Yew was Prime Minister of Singapore he gave a blunt warning to Australia. It was a time for Australia of comparative economic decline and a time of industrial disruption. The long-term trend seemed to be that Australia would be overtaken in economic terms, and not just by Japan. Australia seemed doomed to creeping irrelevance. Mr Lee warned that Australia could become the "poor white trash" of Asia. That was always an exaggerated view. It overlooked the fundamental strengths of

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Australia and contained a warning of an apparently irreversible decline. Perhaps it made Australia sit up and that might have been the intention.

## REASONS FOR COLLABORATION

There are at least ten reasons to support the view that Australia is a natural partner of the European Union. Although some are old and some are emerging, overall they are interdependent.

First, Australia is among a select group of nations that understands, and breathes the very air of freedom. It is where stable democratic government is not the exception, but so taken for granted that few citizens know much about its Constitution. Or even that there is one. Australians know and understand democracy. Australians have lived under this system for at least 150 years and their constitutional system has endured in peace and in war, in booms and depression. Few other countries have known such a golden period – perhaps only the United Kingdom, Switzerland, Sweden, Canada, and New Zealand. Even the record of the United States is marred by a disastrous civil war.

Australia has been at the forefront of democratic practice – for example, its role in the adoption of universal suffrage, the secret ballot, and votes for women – democratic innovations subsequently adopted in Europe. Its political system ensures that for every government there is always a recognised alternative, the opposition. And no government in Australia has or has ever had security of tenure, and to their credit, never expected it.

The second reason is Australia's acceptance of freedom of speech. Again, there are few countries that have its experience and its record. Free speech (including a free press) is an essential criterion for long term success in the world, including democratic, economic and cultural success. Without a properly informed citizenry, there cannot be a true democracy. And no matter how good a ministry is, without the exposure of its policies in the market place of ideas they will never be properly honed, forged and tested.

Democracy requires that both good and erroneous ideas be allowed and, indeed, encouraged in the market place of ideas. This idea can be traced to at least Milton who, in his famous *Areopagitica, a Speech of Mr John Milton for the Liberty of Unlicensed Printing to the Parliament of England*,

published in the end of November 1644,<sup>1</sup> said of truth, "Let her and falsehood grapple. Whoever knew Truth put to the worse in free and open encounter."<sup>2</sup> Later, American judges were to expressly use the marketplace analogy to explain the guarantee of free speech and free press. In *Dennis v United States*<sup>3</sup> Douglas J had said:<sup>4</sup>

When ideas compete in the market-place for acceptance, full and free discussion exposes the false and they gain few adherents"

The exchange of free and full information is the very oxygen of a market economy. Without such information, competition in the economic market place is stifled.

There can be no better description of the role of the press in scrutinising government and all matters of public interest, than that suggested by Black J in the landmark decision, the *Pentagon Papers Case*.<sup>5</sup> The Supreme Court of the United States refused to prevent the publication by the New York Times and the Washington Post of certain classified material relating to the reason for the involvement of the United States in the Vietnam War. Black J stated:<sup>6</sup>

In the First Amendment the founding fathers gave the press the protection it must have to fulfil its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government.

The essential role of the press is to expose deception in government. To subject public life to scrutiny is another role of the press.

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<sup>1</sup> The Encyclopædia Britannica, volume XVI (MDCCCLXXVIII, Adam and Charles Black, Edinburgh) 330.

<sup>2</sup> This publication has been referred to as "the most popular and eloquent, if not the greatest, of all Milton's prose-writings": *ibid*.

<sup>3</sup> (1957) 341 United States 494.

<sup>4</sup> *Ibid* at 584.

<sup>5</sup> *New York Times Co v United States* (1971) 403 United States 713.

<sup>6</sup> *Ibid* at 717.

In the long term, a state that is more authoritarian cannot encourage a climate where independence of thought and where true innovation can flourish. Unless citizens are allowed to say what they think, and within the law do what they want, they are denied the culture in which the arts, the media, the science, the universities can truly develop and grow. For example, a nation that is not democratic, that does not have freedom of expression can hardly be a full partner of the European Union, a union of nations whose essence is that they are democratic market economies.

A third reason is that Australia is a federation. Too often, people forget what an achievement the Australian federation is and how much it has to offer and teach others. As Europe moves to something close to a federal structure, the lessons Australia has learnt could be of some utility. Soon after federation, J Quick and RR Garran<sup>7</sup> described that achievement in these words:<sup>8</sup>

Never before have a group of self-governing, practically independent communities, without external pressure or foreign complications of any kind, deliberately chosen of their own free will to put aside their provincial jealousies and come together as one people, from a simple intellectual and sentimental conviction of the folly of disunion and the advantages of nationhood. The States of America, of Switzerland, of Germany, were drawn together under the shadow of war. Even the Canadian provinces were forced to unite by the neighbourhood of a great foreign power. But the Australian Commonwealth, the fifth great Federation of the world, came into voluntary being through a deep conviction of national unity. We may well be proud of the statesmen who constructed a Constitution which – whatever may be its faults and its shortcomings – has proved acceptable to a large majority of the people of five<sup>9</sup> great communities scattered over a continent; and proud of people who, without the compulsion of war or the fear of conquest, have succeeded in agreeing upon the terms of a binding and indissoluble Social Compact.

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<sup>7</sup> Refer Quick J and anor, *The Annotated Constitution of the Australian Commonwealth* (1995 reprint, Legal Books, Sydney).

<sup>8</sup> *Ibid* at 225-226.

<sup>9</sup> Now, six.

The Australian federal structure is absolutely essential for the governance of a large landmass. And Australia's jurisdiction extends even beyond this great continent.

Too often, one sees the irritations of federation and fails to see its advantages. The fact is that a federation allows, and indeed encourages, competition between governments. Different policies, like different goods, can be tested in the marketplace, and the people can choose which they prefer. Australia would not be free of that most hated of taxes, death duties, if it were not a federation. Queensland abolished this tax first, and the elderly flocked there because blood is thicker than water. Every other Australian state and the Commonwealth had to follow suit. But if one of them did not, the effect would concern that jurisdiction only.

What is interesting in the current negotiations between the Commonwealth and the Australian states is the agreement to solve the debilitating phenomenon, "vertical fiscal imbalance". In recent years, the states have had very little in the way of an independent source of income and have become mendicants of the Commonwealth. The states need to return to the situation in which they came into the Federation and which prevailed for most of the first half of Federation. They need to be accountable to their electorates both for what they raise and for what they spend. This, surely, is the essence of government.

Apart from restoring the states to the position which the Constitution intended, Australian exporters need a "level playing field" – at least in terms of taxation – with European Union exporters. It is reasonable to expect that the system encourages exports, namely, tax consumption rather than income, and that the principles of tax neutrality, efficiency and equity be achieved.

A fourth reason is that Australia has a sound financial system. Its regulation of banks and other financial houses is exemplary. Its currency float is clean. It did not make the mistake of some of its neighbours of simultaneously relaxing exchange controls and fixing the currency. Its government finances are in such good order that it could have sailed through the Maastricht Treaty<sup>10</sup> criteria for entry into the single currency,

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<sup>10</sup> The Treaty on European Union and Economic and Monetary Union, signed in Maastricht on 7 February 1992.

and without the creative accounting or waivers that many, if not most, of the European Union governments needed to enter.

In fact, the Australian government cannot now, by law, indulge in such creative accounting, even before an election. Australia's legislated *Charter of Budget Honesty*<sup>11</sup> is being recommended by the International Monetary Fund as a model for other countries to follow.

The fifth reason is related to the Australian legal system. Australia not only uses, but has Australianised the common law, the legal system most preferred in European and indeed international trade and commerce. It is also the legal system that is associated most with the development of modern democracy, probably because it knows no cleavage between public and private law, but extends the rule of law to the whole nation. In this tradition, the phenomenon of a Napoleon simultaneously modernising private law but imposing a public law dictatorship is inconceivable. It has a clearly independent and strong judiciary *and* a legal profession of quality equal to that in London or New York, at bargain rates at that.

The sixth reason is Australia's technology. As a nation, it has contributed significantly to pushing back the frontiers of knowledge and has not just been an importer of all the intellectual property used. It is worth recalling that in information and communication technologies, Australia looks to the world's best practice and this has usually meant greater compatibility with the European Union.

For example, in analogue television, Australia preferred the European PAL system instead of the American NTSC. In digital television, it chose the European DVBT over the American ATSC. In digital mobile phones, it chose the European GSM over the American AMPS. In digital radio, it chose the European Eureka 147 system that uses new spectrum rather than any one of the three systems the United States is proposing, or use of the existing FM band. Even with AM radio, where there is one world-wide system, the United States uses different channelling arrangements (10 kilohertz instead of 9 kilohertz). Australia measures in metric units, where the United States uses imperial measures (except in liquids where United States gallons are preferred).

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<sup>11</sup> 1998 Charter of Budget Honesty Act (Cth).

This is testimony to Australia's natural preference for European technology. Not because it is European but because Australia had come to the opinion, on a case by case approach, that it is the best. It is not one way either. In the regulation of broadcasting, the Australian model of an independent public broadcaster along side commercial broadcasters has been followed in Europe and elsewhere.

There is one other matter worth noting. Australians embrace new technologies as quickly as, sometimes more quickly than, other people. But hitherto government policy has sometimes been an impediment – the introduction of pay television, colour television, even television itself, were all delayed. Government policy has now changed and is no longer a barrier to technological change. For example, Australia will be in the forefront in the introduction of HDTV, which will be introduced in the mainland capitals in 2001, and elsewhere in 2004.

The seventh reason is Australia's geography. It is on the same or similar time zones of Asia and it offers a way of life unequalled in the world. Many of the major cities offer leisure facilities that most people in other countries can only have on their annual holidays. And the tyranny of distance is disappearing owing to the very technologies that are appearing today.

The eighth reason is that the language of Australians is English, now virtually the international language, and a major European language.

The ninth reason is that Australia is an open country, more open to other cultures and other people than most. Unlike other countries with a lower penetration of immigrants that has too often resulted in serious manifestations of racism, even conflict, Australia has absorbed a remarkable variety and number of immigrants, and this has enriched the nation. The Australian culture, still democratic, still egalitarian, still honouring the rule of law and still speaking English, has absorbed the other cultures and flowered. Like the ancient god Janus, this city has always had one face looking to the vast interior of this continent, and the other to the great beyond.

For good reason, the motto of Australia's very first university<sup>12</sup> is "*Sidere mens eadem mutato*", namely, the same mind under different skies.

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<sup>12</sup> The University of Sydney.

Australians have always had and will always have an international vocation and influence. In peace and in war. In trade and in the arts.

Lastly, Australia is a highly skilled, highly educated nation, with universities that have sound international reputation.

In conclusion, Australia is playing and will play an increasing unique role in the region. But it will always have a special relationship with Europe because culturally it is a European nation, one which with the infusion of immigrants from everywhere, will continue to Australianise the culture which was derived from Europe.

One hundred and fifty years ago, Australia began to assume the mantle of self-government. At about that time the great European writer Victor Hugo made a remarkable prediction. He was referring to Europe when he said:

*Un jour viendra où il-n'y aura plus d'autres champs de bataille  
que les marchés s'ouvrant au commerce et les esprits s'ouvrant  
aux idées.*

In other words, one day will come when there will be no other fields of battle other than markets opening to commerce and minds opening to ideas.