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Causes of Coming Discontents

The European Union as a Role Model for Australia?

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Prologue

The Revolution

A revolution is dividing Europe. It is a revolution that has set the Continent at war with itself. But this is unlike any civil war in the Continent's long history. Peasants are not revolting. Workers are not rising up against their masters. The means of production are not under direct threat. This is a revolution like no other in European history. It is what Christopher Lasch described as "[t]he revolt of the elites and the betrayal of democracy."[1]

Douglas Murray called it "a strange death".[2] Murray suggests that this "strange death" has been presaged by the issues of "identity, immigration, [and] Islam". Murray's diagnosis of the European patient has been confirmed by Edward Cranswick.[3]

Kenan Malik has identified the related symptom of multiculturalism as a cause of the demise.[4]

But symptoms are not causes. The European Union (EU) project has, at its heart, an ideology that promotes unrepresentative governing by unaccountable elites, the dissolution of national borders, the merging of separate national identities into a single continental *blancmange*, and the end of democracy.

How did it come to this? Subsidiarity

The unlikely reversal of the Brexit referendum is mooted from time to time. But what is needed is for the EU to consider carefully some of the problems that appear to have contributed to the discontents resulting in Brexit. The possibility of other countries following in that exit is impossible to predict. To prevent that possibility, the EU can either reflect critically on its origins and operations or re-affirm its current course. Its response may well be to punish the United Kingdom along the way with a difficult Brexit as an example to other potential dissidents.

Whatever may happen in the Brexit process, if the EU is to continue, it must address foundational and constitutional issues that are the subject of criticisms considered below.[5] In short, the EU is regarded by its critics as a centrist economic and governmental organisation that does not respond well to the criticisms made by its constituent members and outside observers.

The thesis advanced in this paper is that the foundational myth of the EU as one of a post-democratic form of supranational government is untenable in the longer term. The issues of democracy and national identity need to be addressed. So, too, is the allied issue of subsidiarity.

In their recent analysis of judicial and legislative review

principles in the EU, Gabriel Moëns and John Trone point to the founding treaties of the EU as making clear that "subsidiarity" was intended to be a judicially enforceable principle: government should be effected proximately rather than remotely.[6] This principle, as the jurisprudence of the European Court of Justice discloses, is more honoured in the breach. It cannot be said whether this missing ingredient would, if restored, make the EU workable. But the Court has applied a very weak standard for both substantive and procedural compliance with the principle of subsidiarity.

As Moëns and Trone point out, the most significant application of the principle is its consideration as a part of the EU legislative process. If the principle of subsidiarity were to be given its full operation in the EU, the orientation of government would be precisely the reverse of current practice. Government would focus on the individual first, then the community, then the nation, and then the international community.

Instead, a "top-down" approach to government, at least a contributing cause to the Brexit referendum result, continues to be a source of discontents currently held by some of the weaker performing economies in the EU, such as Greece, Italy, Portugal and Spain.[7]

Australia should learn from this that any weakening of the foundational principle of federalism must, inevitably, bring about like discontents among disaffected States and produce a weakened system of government that would otherwise have been strengthened by its being effected proximately rather than remotely.

Can the European Union change?

For the EU, it is not clear that it has any way to escape bureaucracy. The elites ensconced in Brussels and Strasbourg are subject to far more limited democratic censure than in

parliamentary systems that derive from Westminster. Legislation in the EU originates in the European Commission. Policy is implemented by the Commission. The European Parliament is presented with proposed legislation by the Commission. This is by design.[8]

In the second of the three laws of politics attributed to Robert Conquest,[9] there may be the beginning of an explanation: any organisation not explicitly right-wing sooner or later becomes left-wing. The EU never started with any pretensions to being anything other than an undemocratic, unrepresentative international organisation.

Limitation upon government is intrinsic to the Anglophone tradition. Civil society in countries drawing upon the long traditions of the common law; parliamentary democracy; *Magna Carta*; limiting the power of the executive and legislative branches from impinging upon individual freedoms through a strong professional judiciary and a fiercely independent legal profession; all as a part of the narrative that in their oversight of and dialogue with governments.

The EU diverges from models of democracy influenced by British constitutional history and traditions. The most direct influence upon its organs of government is not through the ballot box but through civil society making direct representations to members of the European Parliament and the European Commission. But there is no way for the EU institutions to determine how representative the views of the members of civil society are of the wider European community. There is, therefore, the potential for members of institutions to be more readily persuaded by organisations who either share the existing view on policy or who have the resources and time to exert influence to change that policy. The supremacy of bureaucracy is an ineffective democratic model. This, too, is a lesson from which Australia can learn.

Australian constitutional vandalism afoot

There are current moves afoot to reinvent Australian constitutional arrangements. The old saw of republicanism emerges with reasonable regularity when ennui besets the electoral cycle. The latest move to reinvent our constitutional structure is in the *Uluru Declaration*,[10] which suggests a new consultative body representing the specific interests of Indigenous Australians. In addition, there is the push of identity politics for reforms to expand the institution of marriage to include same-sex and transgendered relationships. And there are claims that multiculturalism is sufficiently robust in Australia to accommodate larger numbers of immigrants from cultural backgrounds indifferent and, in some cases, inimical to the types of constitutional and social changes being advocated.

These and other suggestions to dismantle or rearrange Australia's existing federal structure betray a dissatisfaction with our colonial and federation myths. Described as elements of the "great cultural swindle,"[11] they also display an illiteracy with respect to the alternatives that have been tried and have either failed or are in the process of failing. Specifically: socialism has only ever worked in the imaginations of theorists; identity politics is laying the foundation for dystopian consequences; centrism which admits of addition to central government is a failed political philosophy.

At its core, the Australian federal Constitution is one of the greatest written constitutions in Western history and, despite its flaws, has worked remarkably well through the struggles and trials that punctuated the twentieth century. If any reinvention is required, it is the revitalisation of the federal structure that is necessary rather than its being diminished.

The Constitution of Australia represents perhaps the greatest protection against tyranny, demagoguery and ideologies of the kind mentioned above. Its function is dependent on

certain conditions, however. First, it must be upheld by the legislature, executive and judiciary and, most importantly, by the people governed under it. We must resist the growing tendency to suppress debate, particularly when the interlocutors are constitutional conservatives. The disparagement of the conservative view, driven by a hostile fourth estate, bespeaks the need for more speech, not less.

To understand just how beneficent is the constitutional foundation of Australia, an examination of the history of the EU is instructive. The EU, from its very foundation, has worked towards the fulfilment of the second of the three laws of politics, attributed to Robert Conquest,[12] that any organisation not explicitly conservative sooner or later becomes left-wing. In fact, the EU never started with any pretentions to be anything other than an undemocratic, unrepresentative, centrist, international organisation.

The United Kingdom was a late joiner to the EU. As a consequence, constitutional traditions such as the common law, parliamentary democracy and limitations upon the respective branches of government, invigilated by a strong professional judiciary and independent legal profession, were not a part of its foundations. The inherited Westminster concept of transparent and responsible government, infused in Australian constitutionalism, never distilled upon the minds of the founding fathers of the EU.[13] The EU thus diverges from models of democracy influenced by British constitutional history and American concepts of federalism. It may be suggested that the notion of subsidiarity places a restraint upon Brussels. This is mere lip-service. Evidence of its inconsequentiality abounds in the tenor of EU legislation[14] and the content of Luxembourg jurisprudence.[15] It is also betrayed by an examination of early EU history when the political and economic behemoth was still but a nascent international trade cartel.[16]

"Brexit" and its lessons for Australia

The British referendum held on 23 June 2016 was only narrowly won by the vote for leaving the EU. Many reasons have been given for this vote[17] and there have been as many predictions as to what comes next on both sides of the English Channel.[18] Most important are the lessons to be learned by Australia from the EU, but principally the mistakes. This country should not be a ready adopter of EU policies and practices in lieu of those that derive from our common law heritage. Australia, as the heir of an almost one-thousand-year-old legal tradition, enjoys an enviable constitutional arrangement.

The loss to the EU of a substantial net fiscal contributor is a great blow. But the tragedy is greater than fiscal. The EU is the poorer for the absence of the United Kingdom in other ways.[19] Legal traditions will over time be felt as a loss: one that few have cared to identify.[20] In the course of its EU membership, the United Kingdom, with its almost one-thousand-year-old legal tradition, has had a subtle positive influence on EU practice.

Judges in Strasbourg and Paris[21] have told me of the positive influence of the United Kingdom upon EU legal culture. The English manner of writing judicial reasons, such as including a *ratio decidendi* and distinguishing clear *obiter dicta* from other parts of the reasoning, has assisted their work as judges. It has also contributed to a developing doctrine of precedent; a development not otherwise possible in systems deriving from the Napoleonic codes. Equally influential has been the strong English tradition of oral advocacy and an independent Bar. Judges have reflected positively on the assistance it is to have English barristers appearing before them. Other common law influences favourably commented upon by EU judges, not previously a part of Continental legal tradition, included cross-examination, discovery, and accusers carrying the burden of proof.

Rather than Australia's adopting practices that have been tried only over the last half of the previous century, both the EU and Australia would do well to reflect upon the flaws in EU origins, structure and operation, the riddance of which would be more conducive to a contented, continued Union. The aim here is to admonish against too readily abandoning the tradition that informs our current structures in favour of new EU ways of doing the business of government, each of which, in turn, appears to be failing.

The EU must reflect, post-Brexit, on whether it will hearken to the better angels of democratic governance or whether it will retain illiberal tendencies of centrist government advocated by its founders. And, for that matter, Australia, derived from federal principles that were democratic, must also reflect whether it wishes to eschew the higher ambitions of its founders and pursue a failed centrist, undemocratic path.

There appears in recent times to be a remorseless decline in the EU with respect to national identity and democracy. It has been set in train by adherence to policy devised by its founders, and implemented contrary to clear evidence of failure. We see in evidence an adherence to an ideology that is in denial of Europe's various histories and cultural origins. The admirably stated objective of ruling a line under two World Wars that decimated Europe, physically and spiritually, has shown itself instead to be a supranational regime intent on denying Europe any of its remaining soul.

The EU Project: does it fail the tests of ancient democracy?

In 399 BC, an anti-democratic, oligarchic political philosophy was rejected by a narrow majority. An Athenian jury voted Socrates guilty of crimes against the state by about the same percentage as carried the Brexit referendum.[22] The EU

project is, on its worst characterisation, a trading cartel with a Platonic political philosophy: it purports to serve the interests of community through an aloof, unaccountable, anti-democratic governing class. If its style of governance had been advocated in ancient Athens, its originators may well have suffered a like fate to that of Socrates.

As described by I. F. Stone in *The Trial of Socrates*,[23] that fatal draught of hemlock was the penalty for his doctrines of elitism, denial of the gods, and the preaching of doctrines that had corrupted the youth of Athens. Plato's Socrates taught a doctrine that ran contrary to the best in Athenian political experience. Charged with denying democracy, Socrates' accusers and jury sought to preserve Athens by removing his influence.

The reluctant Eurosceptic

Sceptics observe a decline in cultural and national identity in its secular rejections of Judeo-Christianity and an embrace of immigration and multicultural policies that are simply not working.

I am most conscious that the world little needs yet another Eurosceptic. But my object is to explain the disillusionment of one who, at one stage, embraced the EU. As an outside observer, I had previously considered the EU to have been an international success story. Indeed, I thought it was a model that, perhaps, could be emulated and replicated in the Asia-Pacific region. The project was one for which I had real hopes; and this was despite my general instinct that governmental programs, and especially international governmental projects, are generally fraught and commonly foredoomed to failure. Could the EU be the exception to the rule? I once thought so.

But, instead of a bright, shiny transparent deliverer of economic and political *Valhalla*, with the Brussels EU buildings standing as metaphors, I have come to realise that the EU holds

strong warnings for Australia. These warnings in a variety of areas are, to date, going unheeded.

In Europe, we thus see one of our possible futures if the warnings go unheeded. The EU is the future that confronts lemming-like progressive members of Australian elites that clamour to join the veritable conga line heading over that same dystopian cliff. It is hoped that what follows may warn others of the cliff ahead.

A European Dystopia?

A phenomenon of the dystopian story-telling is that one is often left to speculate just how the dystopia came about: Wagner's *Das Ring des Nibelungen* is one exception.[24]

In the EU, we see the prelude to, and the early symptoms of, dystopia playing out in real time. But, for some of its harshest critics, like Brendan O'Neill[25] and Douglas Murray,[26] to say that the EU is a living dystopia understates the evidence. They would consider it a democratic *Götterdämmerung*.

Suppression of debate,[27] monitoring for signs of dissent, labelling dissenters as "extremists", legislating for the enforcement of political correctness, promotion of LGBT agendas to transcend existing rights, criminalising forms of speech that offend, conflating concepts and values under rubrics of "equality", "diversity", "multiculturalism," and soliciting private corporations to assist in governmental functions such as monitoring "hate speech" laws – these all serve as warnings for the critics of an EU demise. Similar agendas that have been eagerly embraced by political, education and media elites are equally criticised in Australia. The unfortunate corollary is that imitation in Australia would bring our own *Ragnarok*.

A current problem that confronts the EU is that "rights" have ceased to mean that "majority rules, but that minorities must have their rights protected".[28] Rights were once based

upon the law deriving from democratic principles and processes. Instead, "rights" are now what "the minority simply arrogates to itself." "Rights" now mean "the right of the minority to impose on the majority."[29] Therein lies the seeds of destruction of democracy; a fatal flaw that leads to the "strange death" of Europe and any polity that cares to emulate its political patterns must suffer the same fate.

Current Discontents

Offence and trigger warning

Criticism causes offence in these sensitive times. Calling out any public deception is a taboo. I run that risk. The advice of faded Communist Mick Hume is that one's audience must be warned of potential triggers to feelings of hurt and insult.[30] Among those who will be offended are genuine believers in the project. They are as I once was: taken in by the bright shiny machinery of government and administration with promises of delivery of economic and political utopia. But many are unaware of the corrosion that seizes up the machinery.

Others who may take offence are bureaucrats and politicians, who, with minimal scrutiny and accountability, drive agendas at the expense of European taxpayers.

Europe, indeed, has two souls in its breast.[31] One adheres to the elevated principles of modern liberal democracy. The other is characterised by an illiberal totalitarian tendency. The first promises subsidiarity[32] with continued distinct national identity. The other is the praxis in which subsidiarity is only honoured in the breach, where Article 5 (3) of the Lisbon Treaty[33] is flouted and identity, national and individual, is subverted to centrist and statist objectives.

Offence and penalty

In fact, the discussion that follows could render both writer and reader liable to prosecution in various EU states. The fashion of "hate speech" laws started in the EU. In *Censored: "How Hate" Speech Laws are Threatening Freedom of Speech*,[34] Paul Coleman catalogues the spread of laws supposed to free speech by suppressing "hate". But even a cursory analysis will show that these laws have the effect of suppressing free speech itself.

In Germany, to take just one example given by Coleman, it is a criminal offence to cause personal offence.[35] Coleman shows how multiple provisions for "combatting certain forms of expressions of racism and xenophobia by means of criminal law,"[36] pursuant to the *European Council Framework Decision of 28 November 2008*, have had draconian consequences.[37] The patchwork of European legislation across borders is so complex that it is entirely possible that, in the digital age, published material will transgress more than one state's law.

Offence and social media

This leads to the sanction that is most likely to be felt generally in the EU. The type of discussion being conducted here could lead to Facebook and Twitter accounts being suspended or closed if held via digital social media. The EU has entered a compact, as discussed below, with the major digital companies to assist in enforcing the various EU laws against expressions of "hate", whatever "hate" may mean. But one anecdote reported by Murray serves to illustrate the problem for speech and criticism of the ruling elites. At the height of the German immigration influx in 2015, the Chancellor of Germany, Angela Merkel, was suffering at the hands of digital critics.

> Had it been possible to discuss these matters some solution might have been reached. Yet even in 2015, at the height of the migration crisis, it was speech and thought

> that was (sic.) constricted. At the peak of the crisis in September 2015 Chancellor Merkel of Germany asked the Facebook CEO, Mark Zuckerberg, what could be done to stop European citizens writing criticisms of her migration policy on Facebook. 'Are you working on this?' she asked him. He assured her that he was.[38]

So, the reader is fairly warned that what follows is dangerous reading.

Causes of current personal discontents

My passion for all things European in the 1980s started while living in Germany. Soon an ardent Teutonophile: Beethoven; Wagner; Mozart; Schiller; Goethe; Hesse, and Mann; it seemed an easy step to fall equally in love with all that the Continent had to offer: from Italian opera to Gothic cathedrals and Roman ruins. Into that passionate embrace fell, in time, an acceptance of the EU project. Just what turned me from enthusiast to critic of the EU can be summarised in two events of 2016. Those events brought into question the policies of seamless movement across open borders, multiculturalism, and centrist control that lie at the heart of EU operation.

In March 2016, my wife, Penny, and I were living in Brussels, Belgium. Over the preceding year, we had fallen in love with our adopted home. Our work with institutions of the European Union and the related non-government organisations was a delight. The people with whom we worked were exemplary in their competence, courtesy, and co-operation. Most spoke fluent English as a second language, with perhaps two or three others in which they were likewise fluent. We had no real concerns; we were living the dream.

We were working from a lightly staffed church non-governmental organisation office. Daily, we were at the coalface with other European organisations concentrating on human

rights with a particular emphasis on Article 18 freedoms of conscience, religion or belief. Our flat was five minutes' walk from the European Commission buildings in Schuman, which is a most pleasant area of the city.

We had a commanding view from our eighth-floor vantage out to the Atomium. A variety of restaurants bustled in the neighbouring streets with offerings to sate every palate, a Babel of languages rang out from the pubs and bars during football matches. The park in the square below was often alive with children playing on gym equipment, and with grandparents, parents, pet dogs, and balls.

But that dream fractured and then shattered. The realisation that all was not as it had for so long appeared came on two days: two days that remain indelibly emblazoned on my psyche. They are symbols of a growing disillusionment with the EU project.

22 March 2016: fractures from the Brussels bombings

I had not questioned the relationship among *Schengen* free movement and national security until 22 March 2016 – the day of the two bombing attacks on the Brussels airport and the Maelbeek metro station. The second is 24 June 2016 – the day after the United Kingdom had held its referendum on withdrawal from the European Union.

In the attacks, 34 people were killed and 170 were injured. One of my best friends was severely injured in the Zaventum airport blast. But for a telephone call from me, which delayed her departure by five minutes, my wife Penny might have been on the very train from Schuman metro station to Maelbeek that was hit by the second blast. For a week after the attacks, while arrests proceeded and Brussels was placed on highest security alert, we were confined to quarters. Observable as part of the

security lockdown: playing children and their pets were replaced with military personnel and armoury. An occupied city, Brussels had tanks and armoured vehicles moved in, and troops took up position on street corners and metro stations. We returned to Australia late in March, just after the anniversary of the attacks. The military presence remained.

The bombings were performed by thugs who had direct or indirect involvement in other terrorist acts, including those in Paris in 2015. I had not previously considered that there was any association of the multiculturalism evident in Brussels with the terrorist cell in the suburb of Molenbeek. Neither had I considered that, quite apart from the friendliness of our mature Muslim friends, younger Muslims, influenced by a strange cocktail of Wahhabism and Islamic statism would actually be consumed by this level of hate.

24 June 2016: shattered by the post-Brexit vote

The second part of disillusionment commenced on 24 June 2016. The day after the British referendum on "Brexit", a briefing was held for Brussels operatives at the think tank, The European Policy Centre. The empanelled experts were florid. The "leave" vote had come as a complete shock to the *cognoscenti* of Brussels. No reliable pundit had predicted it. And certainly not after the Prime Minister of the United Kingdom, David Cameron, in preceding weeks, had extracted unprecedented concessions as incentives for Britain to stay.

To say that the room was in a state of apoplexy would be an understatement. The mood was one of a need for introspection. Reform of the European Union and its institutions was needed. Make Brussels more responsive to its constituent members was the mantra; reduce bureaucracy and waste; listen more carefully to member state concerns. In the upshot, two criticisms were accepted by the meeting as needing to be taken

on board: the unresponsive, unelected, unaccountable EU bureaucracy concentrated in Brussels; and the interference with national sovereignty by EU bodies and agencies.

Less than a week later, I attended a meeting of Equinet, the European network of equality bodies. Representatives of each of the EU's equal opportunity and anti-discrimination agencies were present. At the commencement of the meeting, the chair was adamant that we would not be mentioning the "event" of the week before. There was far more urgent business to consider and the meeting could not and would not be distracted from that important work. Among the important matters considered were: how to ensure that member nation governments listened to Brussels and more carefully implemented EU directives; to remove blockage in the European Council to the second tranche of an equal opportunity directive; and how "hate speech" and discriminatory conduct could be penalised sufficiently so as to discourage any offence to sensibilities in the EU.

The solutions proposed, in turn, were, first, to create a new layer of bureaucracy to ensure member nation governments listened; to lobby the new Council presidency to overcome any recalcitrance on the part of members of the European Council; and to increase the penalties for "hate speech" and discrimination to levels akin to those imposed for anti-competitive conduct and to bankrupt offenders that did not or could not pay. This strain of EU policy-making was clearly impervious to criticism.

The intentions of the Founding Fathers of the European project

That there should be the current problems of identity politics, immigration, Islam, and multiculturalism in the EU,

discussed below, came as no surprise when the intentions of the EU's founding fathers are considered. Neither should the thicket of bureaucratic control that constitutes the major industry in Brussels create any wonder.

Yanis Varoufakis sheets blame for the current circumstances to the model conceived by the founders:

> Corporatists like Robert Schuman and Jean Monnet were bent on the Brussels-based bureaucracy as a democracy-free zone. Count Coudenhove-Kalergi put it succinctly in one of his speeches when he declared his ambition for Europe to 'supersede' democracy'. As always happens when a technocracy harbouring a deep Platonic contempt for democracy attains inordinate power, we end up with an antisocial, dispirited, mindless autocracy.
>
> Europeans recognize this in today's Brussels-based bureaucracy. Every survey of European public opinion finds large majorities with no trust in the EU's institutions. While it is true that citizens around the world – for example, in Britain, the United States or India – are highly critical of their state's institutions, the discontent with Brussels is qualitatively different.[39]

In fact, the EU concept of central government traces back to the 1920s when Monnet first conceived of a supranational set of institutions that would replace the national governments of Europe. Monnet was heavily influenced by his international banking experience, his observations of the ill-fated League of Nations and the chaos into which China plummeted under the corruption of the Chiang Kai-shek regime. He was frustrated to observe the League of Nations stand impotently by as Sino-Japanese relations descended into military aggression and the Japanese invasion of Manchuria in 1931. Monnet formed the

conviction that only a powerful European international organisation could guarantee peace in Europe. This conviction was also born of his views of the First World War, the Treaty of Versailles, and, over time, his observation of the descent of the corrupt Weimar Republic into the government formed by Hitler in Berlin and the passage of the Nuremberg laws.

Varoufakis's blame upon the original European vision of the founding fathers is borne out in Christopher Booker and Richard North's *The Great Deception – Can the European Union Survive?*,[40] in which they return to source documents to trace the birth of the European Union Project idea from almost one hundred years ago to the economic and political reality that now inhabits much of the Continent. The idea of a "United States of Europe" emerges as an ideal from time to time and is then often met with denials of any intention to override national borders and cultural identities.

Monnet's developing thoughts on a European supranational organisation were published in 1931 in papers collected under the title, *The United States of Europe.* These papers include an eponymously titled essay, drawing upon the German concept of a "common market", the *Zollverein.*[41] But, as Booker and North explain, there is no denying that a single Europe, transcending the nations comprising it, is a concept that lies at the heart of its conception:

> [Monnet's] 'United States' would work in the same way [as the *Zollverein*], raising its funding through a common tariff on all goods imported from outside. This, like Germany, would need 'a political instrument to determine how the distribution [of those funds] should be made.' He went on to say that:
>
> > the commercial and tariff policy of European States is so central and crucial a part of their general policy the receipts of Customs are so central and

> substantial a part of their revenues that a common political authority, deciding for all Europe what tariffs should be imposed and how they should be distributed, would be for every country almost as important as, or even more important than, the national Governments, and would in effect reduce the latter to the status of municipal authorities.

In other words, he [Monnet] went on, the United States of Europe must be a political reality. Its organisation should be based on that of the League of Nations, with a Secretariat, a Council of Ministers, a parliamentary Assembly and a Court of Justice – but with one crucial proviso. The central source of authority in this new body Salter urged, must be reserved for the 'Secretariat', the permanent body of international civil servants, loyal to the new organisation, not the member countries. The problem with giving too much power to a Council of Ministers was that they would always remain motivated primarily by national interest:

> In face of a permanent corps of Ministers, meeting in Committees and "shadow councils", and in direct contact with their Foreign Office, the Secretariat will necessarily sink in status, in influence, and in the character of its personnel, to clerks responsible only for routine duties. They will cease to be an element of importance in the formation or maintenance of the League's traditions.[42]

From its very beginnings, the EU was a "slow motion *coup d'état*", according to Booker and North, into which members were beguilingly deceived to join, surrendering their sovereignty for touted economic benefits of membership. But the essence of the Booker and North thesis is that it was always a scheme to destroy the nation state. Sir Roger Scruton agrees:

The idea of European integration, in its current form, was conceived during the First World War, became a political reality in the wake of the Second, and is marked by the conflicts that gave birth to it. It seemed reasonable, even imperative, in 1950 to bring the nations of Europe together, in a way that would prevent the wars that had twice almost destroyed the continent. And because conflicts breed radicalism, the new Europe was conceived as a comprehensive plan – one that would eliminate the sources of European conflict, and place cooperation rather than rivalry at the heart of the continental order.

The architects of the plan, who were for the most part Christian Democrats, had little else in common apart from a belief in European civilization and a distrust of the nation state. The *eminence grise,* Jean Monnet, was a transnational bureaucrat, inspired by the vision of a united Europe in which war would be a thing of the past. His close collaborator, Walter Hallstein, was an academic German technocrat, who believed in international jurisdiction as the natural successor to the laws of the nation states. Monnet and Hallstein were joined by Altierio Spinelli, a romantic communist who advocated a United States of Europe, legitimized by a democratically elected European parliament. Such people were not isolated enthusiasts, but part of a broad movement among the post-war political class. They chose popular leaders Konrad Adenauer, Robert Schuman and Alcide De Gasperi as the spokesmen for their ideas, and proposed the European Coal and Steel Community (the Schuman plan) as their initial goal – believing that the larger project would acquire legitimacy if it could first be understood and accepted in this circumscribed form.[43]

Scruton goes on to identify the *modus operandi* of promise of benefits for a stealthy advance to a single Europe, not only in name, but as a polity:

> Booker and North identify Jean Monnet, architect and first president of the European Coal and Steel Community, as the prime conspirator. Following the horrors of the First World War, Monnet conceived the life-long ambition to create a united states of Europe, as the condition of a permanent European peace. Unlike Woodrow Wilson, who wished to divide the continent into nations and achieve peace through a balance of power, Monnet wished to unite the continent in a new and more self-sustaining empire, though one from which the ghost of nationalism had to be finally exorcized. He left public office in 1955 to form the Action Committee for the United States of Europe, dedicated to lobbying on behalf of transnational institutions that would be capable of overriding national sovereignty. This idea was opposed by President de Gaulle who favoured a Europe of sovereign nation states and with whom Monnet was at loggerheads during the 1960s. As a result, Monnet developed the 'Monnet method' of more 'integration by stealth', in which unification would be advanced step by step without the goal ever being clearly perceived or clearly perceivable.[44]

Murray describes the EU project in these terms:

> Europe is committing suicide. Or at least its leaders have decided to commit suicide. Whether the European people choose to go along with this is, naturally, another matter.
>
> When I say that Europe is in the process of killing itself I do not mean that the burden of European Commission regulation has become overbearing or that the European

> Convention on Human Rights has not done enough to satisfy the demands of a particular community. I mean that the civilisation that we know as Europe is in the process of committing suicide and that neither Britain nor any other Western European country can avoid that fate because we all appear to suffer from the same symptoms and maladies. As a result, by the end of the lifespans of most people currently alive Europe will not be Europe and the peoples of Europe will have lost the only place in the world we had to call home.
>
> It may be pointed out that proclamations of Europe's demise have been a staple throughout our history and that Europe would not be Europe without regular predictions of our mortality. Yet some have been more persuasively timed than others. In *Die Welt von Gestern (The World of Yesterday)*, first published in 1942, Stefan Zweig wrote of his continent in the years leading up to the Second World War, 'I felt that Europe, in its state of derangement, had passed its own death sentence – our sacred home of Europe, both the cradle and the Parthenon of Western civilisation.' [45]

Like many observers, Murray predicts an inexorable demise without major change of direction:

> Day by day the continent of Europe is not only changing but is losing any possibility of a soft landing in response to such change. An entire political class have failed to appreciate that many of us who live in Europe love the Europe that was ours. We do not want our politicians, through weakness, self-hatred, malice, tiredness or abandonment to change our home into an utterly different place. And while Europeans may be almost endlessly

> compassionate, we may not be boundlessly so. The public may want many contradictory things, but they will not forgive politicians if – whether by accident or design – they change our continent completely. If they do so change it then many of us will regret this quietly. Others will regret it less quietly. Prisoners of the past and of the present, for Europeans there seem finally to be no decent answers to the future. Which is how the fatal blow will finally land.[46]

Murray may disagree, though only slightly, with the causes of Europe's current discontents. For him, it is all summarised in three words: identity; immigration; and Islam. The current problems and their causes are arguably more nuanced. But the diagnosis of a terminally ill patient nevertheless seems inescapable. As regrettable as many regard it to be, Brexit may operate to forestall the death of Europe by causing the EU to re-examine itself and reform.

Re-examine, perhaps, but without the criticism that Britain has provided internally since entry into the ancestor of the current EU. But there is also the danger of EU doubling down on existing policies and continuing in its undemocratic way, in defiance of the British snub.

But the essence of what is the EU remains undemocratic. This is a matter that has to be addressed. The following observations from Scruton are pertinent:

> In modern conditions, in which governments rarely enjoy a majority vote, most of us are living under a government of which we don't approve. We accept to be ruled by laws and decisions made by politicians with whom we disagree, and whom we perhaps deeply dislike. How is that possible? Why don't democracies constantly collapse as

> people refuse to be governed by those they never voted for?
>
> Clearly, a democracy must be held together by something stronger than politics. There has to be a first-person plural, a pre-political loyalty which causes neighbours who voted in opposing ways to treat each other as fellow citizens for whom the government is not 'mine' or 'yours' but 'ours' – whether or not we approve of it . . . .
>
> However, even in modern conditions, this urban elite depends upon others who do not belong to it: the farmers, manufacturers, clothiers, mechanics, soldiers and administrators for whom attachment to a place and its customs is implicit in all that they do. It is surely not difficult to imagine that in a question of identity, these people will very likely vote in another way from the urban elite, on whom they depend, nevertheless the government.
>
> An inclusive first-person plural is the residue of cooperation and trust generations. Those who have guided and been inspired with the European project have tried to create such a first-person plural by gimmicks and subsidies, while suppressing the national loyalties of the European people. But it is nationality, the home country and its shared culture that define the true European identity. It astonishes me that so many people fail to see this, or to understand that democracy and national identity in the end depend on each other.[47]

Why would Australia wish to emulate this terminal approach to government when our system has everything to live for? With a constitutional pedigree as ours, we should look to a future that eschews the temptations for constitutional re-arrangement mentioned at the beginning of this part.

But can we eschew the worst of the EU and retain what

some consider to be its best? This question requires examination of what may be two of the most egregious errors upon which elites seem intent: immigration; and identity politics and political correctness.

Immigration and multiculturalism

Nature abhors a vacuum

From our flat window in Brussels the dome of the Sainte Marie basilica stood out with its oxidised copper roof as a contrast to the terracotta tiles around it. Sainte Marie was once the centre of worship in the Schaerbeek district. But that is no more. On visiting Sainte Marie, a closer examination reveals a beautiful piece of nineteenth century neo-gothic architecture in a state of abandonment, disrepair, and vandalism. It is boarded up and rotting, external stone walls fretting; the extent of decay in some parts only concealed by the graffiti covering those walls. Few Catholics today live in the area covered by the parish that was once Sainte Marie. Worship in Schaerbeek has moved from Sunday at Sainte Marie to the local mosque on Friday. Sainte Marie is not an isolated instance. As with many former Christian places of worship, it stands as a metaphor for the decline of Judeo-Christianity in Europe.

Parc du Cinquantenaire is one of the largest public spaces in Brussels. An impressive *arc de triomphe* was erected in celebration of the fiftieth anniversary of Belgian independence. It houses museums: art; history; military and automobiles. The *arc* straddles Tunnel Cinquantenaire that leads onto Rue de la Loi, where the European Council, European Commission and the European Parliament stand. The *arc* is a monument to independence; constitutional monarchy; and democracy. One might argue that it stands in stark contrast to all that the neighbouring EU buildings represent.

The *arc* shares the park with one other imposing building: *Grande Mosque de Bruxelles*, the largest mosque in Brussels. The mosque was constructed by Saudi Arabian interests. The Saudis fund the spread of Wahhabism through the mosque. Diagonally opposite the mosque is the Belgian military academy. This combination of buildings near the centre of Brussels provides yet more of a metaphor for Europe: a colonial past; a present of economic and political dependence upon the European Union; a weak military; an uncertain future resulting from Islamic syncretism.

Nature abhors a vacuum. Into the void created by the collapse of Judeo-Christianity and its moral traditions have stepped two forces. Both are at war with one another. The first is the bundle of secular notions, commonly referred to as "political correctness". The second is an Islamic tradition that brings with it, to varying degrees, a morality to which Europeans are not accustomed. These two forces seek to create in their own image a new Europe.

Islam, yes, but which Islam?

The first of the forces referred to, the secular, claims the endorsement of the EU in its drive for secularism and centrism in government. It promotes causes that are considered fashionable and proper successors to the now outdated ways of viewing identity, sexuality, and morality.

The second force, Islam, also receives support from the EU in its promotion of immigration and multiculturalism. Whereas immigration was once viewed as a process by which migrants came to Europe and became Europeans by absorbing the surrounding culture, from the last quarter of the twentieth century to the present there has been an increasing encouragement for immigrants to retain their cultural traditions, as far as possible, intact in their new geographical environment.

In parallel with this EU sponsorship of immigration and multiculturalism has been the preaching by EU bureaucrats ensconced in their bright shiny steel and glass towers on Rue de la Loi of a gospel of tolerance and acceptance. This tension in policy was always going to be a recipe for cultural disaster.

The question is which Islam is being tolerated? Is it the Wahhabism preached in the *Grande Mosque*? Is it moderate Islam and, if so, what is meant by "moderate Islam"? This is a question that Mark Steyn has posed in his examination of Western demographics, *America Alone*.

Murray points to the ill-defined concept of "multi-culturalism". He is not alone in identifying this concept as a failure. Conceived at the desks of bureaucrats and social engineers in the academy, it was foist upon the population with no consultation and without real regard for precisely what need was being addressed. In *Reflections on the Revolution in Europe: Can Europe be the Same With Different People In It?*, Christopher Caldwell asks the question for whom were the programs of multiculturalism and immigration devised?[48] In *From Fatwa to Jihad: How the World Changed from* The Satanic Verses *to* Charlie Hebdo, Kenan Malik describes the progression through the Greater London Council (GLC) program of multiculturalism from the harmonious integration of Pakistani immigrants in the 1960s and 1970s to the separatism that began in the 1980s on to what now manifests itself in Islamist terror. He observes:

> The GLC strategy of the 1980s combined the distribution of council largesse with the celebration of cultural distinctiveness. 'Here's the cash, now go off and do your own cultural thing. Just don't cause a commotion on the streets.' That was the essence of municipal anti-racism . . . . As a means of bridging racial divisions and differences, however, it was far less successful. Multiculturalism helped

> create new divisions and more intractable conflicts which made for a less racist but a more insidiously tribal Britain.[49]

Malik also describes how, apart from its largesse, it was necessary for the program to work for "racism" and what it meant to be British to be re-defined, with unexpected consequences:

> At the heart of GLC's anti-racist strategy was not simply the reallocation of resources but also a redefinition of racism. Racism now meant not the denial of equal rights but the denial of the right to be different . . . . [D]ifferent peoples should have the right to express their own identities, explore their own histories, formulate their own values, pursue their own lifestyles. In this process, the very meaning of equality was transformed: from possessing the same rights as everyone else, to possessing different rights appropriate to different communities.
>
> Scepticism about the idea of a common national identity arose in part from cynicism about the idea of 'Britishness' . . . .
>
> The GLC's anti-racist strategy did not, however, simply question the idea of Britishness. It challenged the very notion of common values, drawing on the ideas of the 'New Left' that had emerged in the 1960s. The New Left was a loose association of groups and individuals that was self-consciously opposed to the 'old left' of the communist parties and trade unions. Where the old left looked to the working class as the agency of change, the New Left found new, surrogate proletariats in the so-called New Social Movements – Third World liberation struggles, civil rights organizations, feminist groups, campaigns for gay rights, and the peace movement. Where the old left talked of class and sought to raise class-consciousness, the New Left

> talked of culture and sought to strengthen cultural identity.[50]

It is one thing for Britain to decide upon its own social policies that have destructive consequences. But on the Continent, it is another matter. Because of the free movement policies under the Schengen arrangements, residents of one member state, under the arrangements, are free to move to other member states. But it is not just people that move. Policy travels too. No example of this is more poignant than the unilateral decision of Angela Merkel to open Germany's borders to sub-Saharan and Middle Eastern immigrants who claimed asylum. Because in the EU the concept of 'rights' had already morphed from meaning that the majority rules but the minorities must have their rights protected to a new meaning that the minority was entitled to impose on the majority, the scene was set for the perfect storm in the EU when one member decided to grant residency to an immigrant despite the views of other member states.

In 2010, Merkel delivered a now famous Potsdam Speech. In that speech to the young party faithful of her Christian Democratic Union, she said the so-called "Multikulti" concept – where people would "live side-by-side" happily – did not work, and immigrants needed to do more to integrate – including learning German. This was in apparent response to opinion polls in Germany showing a growing discontent with multiculturalism and immigration policies. It seemed also to be in direct response to a study by the Friedrich Ebert Foundation think tank which showed that 30 percent of Germans believed the country was "overrun by foreigners". A similar number thought that some 16 million of Germany's immigrants or people with foreign origins had come to the country for its social benefits.[51] In the speech, Chancellor Merkel also said:

> We kidded ourselves a while, we said: 'They won't stay, sometime they will be gone', but this isn't reality.
> And of course, the approach [to build] a multicultural [society] and to live side-by-side and to enjoy each other. . . has failed, utterly failed.[52]

By the end of 2015, Merkel had reversed the Potsdam Speech position in favour of a liberal opening of borders. On this piece of apparent political amnesia, Murray observes:

> At the time she gave her Potsdam speech in October 2010, Angela Merkel seemed to have made an important concession about the past and even signalled a change of direction for the future in the relationship between Europe and its immigrants. Yet within just a few years those much-applauded statements seemed almost entirely meaningless. In the speech the Chancellor admitted that Germany had failed to integrate the people who had arrived to date. In 2010 Germany had a total of 48,489 people apply for asylum. Just five years later, Merkel allowed (if leaked internal estimates from the government were correct) up to 1.5 million people into Germany in the space of one year alone.
>
> If multiculturalism was not working with around 50,000 people claiming asylum in Germany each year, how was it expected to work with thirty times that number coming in each year? If not enough was being done in 2010, how was it the case that five years later the German government's integration network was so much – indeed thirty times – better? And if Germany had been fooling itself in the 1960s about the return of the guest-workers, how much more was it kidding itself that those applying for asylum in

> 2015 would return to their homes? If multiculturalism had not been working well in 2010, it was working even less well by 2015.[53]

As astounding as this kind of policy reversal may at first seem, the lack of any say or control over borders, immigration policy is a matter to which the population has to become inured. The fact is that, while their own external borders are controlled by each member state that faces out from the EU, other members have little or no control over who crosses into the EU through external borders or the way in which neighbours choose to control theirs.

National identity finds its own level. It requires minimal government programs and social engineering to find that level. And when imposed, a miscalculation or failed prediction on the part of the architect of the program can have wide-ranging impact on the individual. Australians should beware of the secular prophets of the elite. And while one polity controls our national border and the purse for programs like "multiculturism", the government of that polity must be closely watched.

European society, under EU *diktaten*, is just not left to find its own level of sociality, free of social engineering policies. Worse, citizens of the EU do not get to vote on those policies in any real or direct sense. No faith is shown by Brussels or Strasbourg in the essential principles set forth in Articles 9 and 10 of the *European Convention for the Protection of Human Rights and Freedoms, First Protocol,* the Convention inspired by the *Universal Declaration of Human Rights*. The Convention is a reaffirmation of a "profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained . . . by effective political democracy and . . . observance of the Human Rights upon which they depend; . . ."

Article 9 provides, relevantly, as follows:

> *Freedom of thought, conscience and religion*
>
> 1. Everyone has the right to freedom of thought, conscience and religion; . . .
> 2. Freedom to manifest one's religion or beliefs shall be subject **only** to such limitations as are prescribed by law **and are necessary** in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. [Emphasis added]

While the emphasis in Article 9 is upon freedom of conscience, religion and belief and their manifestation, the freedom of thought mentioned in that Article is further protected by Article 10, which relevantly provides:

> *Freedom of expression*
>
> 1. Everyone has the right to freedom of expression. This right **shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers . . . .**
> 2. The exercise of these freedoms, since it **carries with it duties and responsibilities**, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are **necessary** in a democratic society, in the interests of national security, territorial integrity or public safety, **for the prevention of disorder or crime, for the protection of health or morals, for the**

protection of the reputation or rights of others, ... [Emphasis added]

The freedoms created under these articles create a constitutional space in which thoughts and ideas are to be protected at the times of their receipt and formation as well as in their being held, received and imparted. It is also clear that while there is the potential for restriction, those restrictions are imposed for the purpose of reminding one that the freedoms carry duties and responsibilities.

They are also imposed for reasons of "national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others . . . . "

By distinguishing serious instances of hatred, racism and xenophobia from occasions when nothing more than subjective offence is occasioned, the law attracts more respect and society overall is more respectful. Freedom of thought and expression ought to be encouraged rather than suppressed.

In order to maximise enjoyment of freedoms guaranteed by Covenants, states should criminalise only the most extreme cases. Causing offence to an individual or group, without more, is insufficient reason for criminal sanctions or penalties. If every instance of offence is criminalised or made the subject of serious penalties, then there is no method by which the trivial and the serious can be distinguished. That has an effect of breeding a contempt for the law which leads to its eventual trivialisation in the public mind.

The more highly a society is regulated, the greater the lack of trust that is shown in those who are governed. Only such laws as are necessary for *society* in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others should exist. For

the EU, it would seem, retreat to these principles of freedom is unlikely. The inexorable march is in the opposite direction.

Democratic totalitarianism

The totalitarian tendencies of centrist political elites are perhaps best in evidence when they are free to act without having to account to an electoral constituency. One agenda driven by a small minority on the back of political correctness that illustrates this, both in Australia and the EU, is that of the LGBT [lesbian, gay, bi-sexual, trans-sexual]. One of the principal pushes has been for the legal recognition of same-sex marriage. That push is, once again, at the time of writing, underway in Australia.[54] This, for the most part, is now a part of Europe's history. Yet again, Australia can learn of its possible future by looking to Europe's recent past.

Unlike Australia, where the matter will be determined, this time, by a postal plebiscite, Germany has recently passed laws permitting same-sex marriage without any electoral mandate.[55] Four years earlier, also without any mention in any election manifesto, 400 British members of parliament voted to redefine marriage in the United Kingdom. David Cameron, the then Prime Minister, announced that despite having made no mention of the issue in the lead-up to the election, MPs would decide on the definition of marriage.

Model for national legislation: the Equal Treatment Directive[56]

There is denial on the part of Australian proponents as to the significant implications of any such change. Their minimisation is either completely disingenuous or reprehensibly naïve.[57] Most poignantly, promises are being made as to the continued future of freedoms currently enjoyed. This is palpable

mockery of a gullible electorate: first, even if passage through Parliament were assured in respect of guarantees of freedom, it is a basic doctrine of parliamentary sovereignty that no Parliament can bind its successors; secondly, recent history in the United Kingdom shows just how readily such promises are abandoned once the new social paradigm takes hold.[58]

For those who say it is "only about a ceremony", as does the current Prime Minister of Australia, Malcolm Turnbull,[59] the questions remain, "What happens the day after the party?" "Who will clean up?" "Who pays for the damage?"

Again, looking to Australia's potential future through the lens of the EU, the answer seems clear. First, discussion of the previous orthodoxy regarding marriage will likely be rendered "extreme". Secondly, that form of extremism, as with any other out of harmony with newly accepted opinion, will be punished by law. Once the Emperor dons new clothes, the tailor insists upon silence. It is vital for the deception to be complete. Free speech must be a casualty. So, too, must freedoms of conscience, belief, and association. To insist otherwise is to deny the evidence.[60]

The relevance of these issues is clear when one looks to legislation that has either been passed or is the subject of changes to policy in the EU.

For almost a decade, a draft directive has been held up in the European Council, known as the "Equal Treatment Directive" (ETD).[61] It has so far narrowly missed the unanimity required to pass the Council and to become EU law. But it has nevertheless had its effect as a draft in providing a model to a number of countries, including the United Kingdom and, most recently, Spain, as to how to draft draconian legislation purporting to prevent discrimination on certain nominated characteristics.

It has been the subject of negotiations among members of

the Council and successive European Presidencies for several years. It has been through numerous drafts, adding, by increments, to its potential scope.

If passed, the ETD will require member states to pass domestic legislation implementing anti-discrimination laws. The laws will provide no protection for individuals acting on religious belief. Some member states may use the ETD to pass even more far-reaching laws reducing religious freedom to a greater extent than is strictly required by its terms.

If passed in its current form, it would have negative impact upon well-established European freedoms of religion, belief, conscience, speech, association and contract. Despite use of the word, "equal", in its title, with successive drafts the ETD has expanded in scope and developed a number of effects that would actually undermine equality.

While there are reservations on the part of some member states, the most comprehensive, strident and outspoken opposition, to date, has come from Germany. Germany currently remains prepared to block passage of the ETD. If Germany's opposition were to be withdrawn, it is very likely that the ETD would be passed by the Council, then be ratified by the European Parliament and so become binding on member states as the template for new domestic anti-discrimination laws. Germany is currently under great pressure to compromise its position. Its implications for subsidiarity are not yet fully clear. Arguably, its damage has already been done by setting a trend by which the state control of public attitudes can be achieved by the discrimination legislation.

What emerges is an Orwellian sense of a seamless web to suppress collective memory of the past and ensure substitution of the new normal. Causes of action and criminal sanctions based upon perceptions and subjective feelings of having been offended, assistance to the complainant through financial and

advisory resources of the state, presumptions of culpability and the reversal of the onus of proof in respect of allegations, all feature in the ETD and the legislation that emulates it. The incentive to amend thought and behaviour to avoid accusation is powerful if not overwhelming.

Once a centrist government takes hold of any agenda, however nobly stated its objectives may be, there is an illiberal element that operates inexorably to suppress individual freedoms and to flout any principle of subsidiarity. If there were but one instance, to suggest the possibility of replication in Australia would be justifiably described as alarmist. But to be able to point to the several instances that appear below, falling into a pattern, that is fair warning.

The abandonment of assurances in relation to same-sex marriage legislation[62]

With the exception of Northern Ireland, same-sex marriage became legal in United Kingdom jurisdictions by legislation. The law in England and Wales was changed by legislation passed in July 2013 that came into force on 13 March 2014. Scotland passed legislation through its Parliament in February 2014, taking effect from 16 December 2014.

The Democratic Unionist Government of Northern Ireland won its most recent election in March 2017 on a platform that has resistance to introduction of same-sex marriage as one of its principal planks. Same-sex marriages are treated as civil partnerships in Northern Ireland.

In 2012, Prime Minister David Cameron faced a predictable backlash at his announcement of intention to introduce legislation for same-sex marriage. In the course of dealing with that backlash, he gave repeated assurances on the preservation of religious freedom:

I'm a massive supporter of marriage and I don't want gay

> people to be excluded from a great institution, ...
> But let me be absolutely 100% clear, if there is any church or any synagogue or any mosque that doesn't want to have a gay marriage it will not, absolutely must not, be forced to hold it.
> That is absolutely clear in the legislation.[63]

In Scotland, there were also clear assurances that there would be no impact upon religious freedom. The First Minister at the time, Alex Salmond, said:

> We are making it absolutely clear that no Christian church or any domination [sic] for that matter, or any religion, or practitioner, or celebrant will be forced to take part in any such marriage, it will just mean people will have equality before the law. I think it's the right thing to do — but the parliament will debate it, and I'm sure, once we can get across the guarantee, of [religious freedom], and above all freedom of speech . . . once we get across that to some of the churches, I think they will feel more reassured . . . . I think it's a debate we can have, and I think it's a debate across the parliament, that will do the country good.[64]

The tenor of assurances given was consistent in its effect: nothing would change apart from giving a new right to same-sex couples to marry.

These assurances did not allay the fears of critics of the move. Among the strident critics was the Grand Orange Order of Northern Ireland. In reaction to the decision by a majority of MPs to support a same-sex marriage bill, the Reverend Alistair Smyth, Deputy Grand Master, articulated the fear that today's assurances would be tomorrow's history:

> It is proposed the Church of England and Wales will not

> be forced to conduct same-sex ceremonies and other religious groupings can choose to opt in or out as suits them.
> Nevertheless, this will most likely be challenged under equality or human rights legislation in the European Courts. Therefore, we fear the religious safeguards supposedly built in will soon crumble.
> We urge all Christian people to continue to hold true to Christian values and to pray that God in his mercy would turn people to seek the Lord and his ways.[65]

As mentioned, fundamental to the doctrines of manner and form and parliamentary sovereignty is that no one is capable of binding a future legislature.

Parliament may change or repeal any previous legislation. It is not constrained by previous legislation or, indeed, any promises made by ministers or members, in or out of the Parliament. It can override common law and repeal statutes without any limitation upon its powers other than may be expressly provided for in a constitution.

When the assurances referred to above were given, Messrs Cameron and Salmond could not have been ignorant that they had no power to bind a future Parliament with respect to the assurances they were giving. Whatever may have been their then current intentions, they were of no value and could never have been, as experience has proved to be the case. Events subsequent are proof that such promises cannot be relied upon.

The Prime Minister, Theresa May, has recently revealed proposals to abolish the need for medical consultation before gender reassignment. Transport for London has prohibited use of "heteronormative" words such as "ladies and gentlemen" over their public-address systems. Universities are threatening to "mark down" students who continue to use the words "he" and

"she". "Gender neutral pronouns", such as "ze", must be used.[66]

The Scottish "named person" program

On 28 July 2016, in *The Christian Institute and Others v The Lord Advocate*,[67] the Supreme Court of the United Kingdom struck down the *Children and Young People (Scotland) Act* 2014, the program under which was commonly referred to as the "Named Person" program. The group of successful appellants had run a public campaign against it prior to its passage into law and sought, at first unsuccessfully in two lower courts, to have it overturned. Despite being struck down for breaches of various human rights obligations owed by Nicola Sturgeon's Scottish National Government to parents and children, the Government is determined to implement a form of the program.

The Government remains determined to appoint a "named person" to monitor the welfare of every child in Scotland. The scheme was due to have been rolled-out throughout Scotland by 31 August 2016 – but that timetable was delayed after the Supreme Court ruled that some of the proposals around information-sharing breached the right to privacy and a family life under the *European Convention on Human Rights*.

Opponents of the scheme had been attempting to have it disallowed in judicial review proceedings, arguing that the legislation amounted to a "Big Brother" scheme that would undermine the position of parents, breach privacy and divert resources away from children who are genuinely vulnerable.[68]

The successful appellants were members of the "No To Named Persons" coalition. They had described named person as "the most calamitous scheme the Scottish government [had] ever dreamed up". The essential objection was that parents could be overridden in authority over their children, or even see their children removed if the named person did not consider that the

rearing was being conducted in a manner of which the government approved. This could, in theory, extend to teaching old orthodoxies that no longer reflected the law as to marriage. A greatly modified scheme was put forward in June 2017 for consultation taking account of the Supreme Court decision, with the Orwellian elements removed.[69]

Throughout the United Kingdom, "sex education" has been transformed. Children's television programs promote "gender fluidity". Ministers have denied parents the right to withdraw children from primary school classes.

The impact of the change in the definition of marriage: freedom of religion

Independent religious schools have come under closer scrutiny and condemnation if they refuse to advocate the same-sex and gender fluidity agenda. Dame Louise Casey, author of the report, *An independent review by Dame Louise Casey into opportunity and integration*, upon which much current government policy is being based,[70] has made clear that, for her, it is no longer acceptable for Catholic schools to teach Catholic doctrine on marriage.

Ofsted, the body responsible for school-assessment, has taken actions that evidence its having been politicised. The example oft-cited is that of Vishnitz Jewish Girls School. In 2013, it was deemed by Ofsted to have passed in every way as a school that complied with Ofsted requirements. In 2017 it was found to have been failing on updated criteria in just one respect. Noting that students were "confident in thinking for themselves", the Ofsted report pointed to the inadequate promotion of homosexuality and gender reassignment. As such, it was failing to ensure. It is one of seven faith schools that currently face closure.

Noting the assurances given by former prime ministers in

the United Kingdom on the future of religious freedom, one might be surprised by the recantation that has occurred at speed, but for an understanding of the doctrine of manner and form and parliamentary sovereignty, set out above. At the time of their being given, those assurances were completely valueless.

David Sergeant describes some of the instances of the backdown and the tragedy for British politics that has ensued:

> Equalities minister Justine Greening has insisted that churches must be made to: 'Keep up with modern attitudes'. Likewise, the Speaker of the House of Commons, a position supposedly defined by its political neutrality, had this to say: 'I feel we'll only have proper equal marriage when you can bloody well get married in a church if you want to do so, without having to fight the church for the equality that should be your right'.
>
> It became clear, during this year's general election, just how militant the LGBT lobby have become, following marriage redefinition. The primary target was Tim Farron, leader of England's third largest political party, the Liberal Democrats. High-profile journalists had heard that Farron was a practising Christian. In every single interview thereafter, they demanded to know: Did he personally believe homosexual sex to be a sin? He practically begged the commentariat to allow him to keep his personal faith and legislative convictions separate. For decades, he pointed out, he had both vocally and legislatively supported the LGBT Lobby. Likewise, he had long backed same-sex marriage, voting for it enthusiastically. This simply was no longer enough.
>
> Shortly after the election campaign, Farron resigned. He

> stated that it was now impossible for a believing Christian to hold a prominent position in British politics.
>
> In a heartbreaking development and in spite of Britain's 'foster crisis', aspiring foster parents who identify as religious face interrogation. Those who are deemed unlikely to 'celebrate' homosexuality have had their dreams of parenthood scuppered. This month Britain's High Court, ruled that a Pentecostal couple were ineligible parents. While the court recognised their successful and loving record of adoption, they decreed that above all else: 'The equality provisions concerning sexual orientation should take precedence'. How has Great Britain become so twisted? Practicing (sic.) Jews, Muslims, Christians and Sikhs, who want to stay true to their religious teachings, can no longer adopt children.

Discussion in Australia of the potential loss of freedom is frequently dismissed as being either alarmist or trivial.[71] But the instances cited by Sergeant are neither isolated occasions of alarm nor trivial instances. The question is whether there will still be freedom to debate. The augurs are not inspiring.

The impact of the change in the definition of marriage: freedom of speech

In reporting on changes in the United Kingdom since introduction of same-sex marriage, David Sergeant expressed his own fears of speaking upon the history of developments since same-sex marriage became law in the United Kingdom:

> I mentioned that I was writing this article to a good friend in the Conservative Party, back at home. He expressed his genuine concern. Had I not considered the consequences?

> Did I not realise that what I said in Australia could be found when I returned to the UK? 'LGBT progress is an unstoppable tide'. He assured me that it was ok for me to '*privately'* believe that marriage was between one man and one woman. He even *privately* agreed that the stuff being taught in primary schools was too much.
>
> But to say it out loud? To actually have it in print? It would blight my career and my personal relationships.[72]

In his article, Sergeant reports on the forces operating to suppress freedom of speech that add colour and movement to the fears he expressed on his own behalf:

> In the lead-up to the Parliamentary vote, we witnessed almost incomprehensible bullying. David Burrows MP, a mild-mannered supporter of the 'Coalition for Marriage', had excrement thrown at his house. His children received death threats and their school address was published online. Similarly, 'Conservative' broadcaster Iain Dale promised to 'publicly out' gay MP's who did not vote for redefinition.
>
> Many hardworking Brits have lost their jobs. Consider Adrian Smith, sacked by a Manchester Housing Trust, for suggesting that the state 'shouldn't impose its rules on places of faith and conscience'. Or Richard Page, fired for gross misconduct after articulating that children might enjoy better outcomes were they to be adopted by heterosexual couples.
>
> Simultaneously, contrary to 'steadfast' government assurances, small businesses have been consistently

> targeted. Courts in Northern Ireland ruled that the Asher's Family bakery had acted unlawfully. What crime committed by this tiny business? Politely declining to decorate a cake with a political message in support of same-sex marriage. The courts maintained that business owners must be compelled to promote the LGBT cause, irrespective of personal convictions.
>
> Even the National Trust, a British institution with over 4.2 million members, has decided to join the bullying LGBT crusade. A message went out. Each of the Trust's 62,000 volunteers would be required to wear a compulsory same-sex rainbow badge. Those who said they'd rather not were told they would be 'moved out of sight' until they were prepared to publicly demonstrate inclusive tolerance.[73]

The potential use of extremism policy to suppress dissent

Since the passage of the same-sex marriage laws in the United Kingdom, there has been a concern as to whether there would be a use of other legislative and policy measures to interfere with or suppress free speech; not just in respect of religionists but of those who take any minority position. This is another fear that would be amenable to dismissal as alarmist. But it has been genuinely held. The concerns arose in the context of "Extremism Disruption Orders" (EDOs).

As announced in the Queen's Speech of May 2016, the intention was for laws that would address "extremism" in all its forms.[74] Those forms were never precisely articulated. But in the speech, the Government said EDOs were aimed at "harmful activities of extremist individuals who spread hate but do not break laws". The former Home Secretary, now Prime Minister, Theresa May, said the measures would focus on "extremism of

all sorts".

The design of EDOs was that they would be issued by the High Court where it is persuaded that someone was "participating in activities that spread, incite, promote or justify hatred against a person (or group of persons) on the grounds of that person's (or group of persons') disability, gender, race, religion, sexual orientation, and/or transgender identity". An EDO is thus a form of gagging order triggered by anything deemed contrary to the Government's definition of "British values". That must have been intended to include matters the subject of the *Equality Act*.[75]

The concern expressed by groups such as the Christian Institute[76] (one of the successful appellants in the "named person" litigation in Scotland) was just how these laws, if not clearly drafted to preclude the potential, could have far-reaching consequences and be used against Christian teachers in the United Kingdom.[77]

A letter from Conservative MP, Mark Spencer, explaining EDOs to a constituent has made things worse by confirming the very fears held.[78] Spencer began the letter with assurances "that everybody in a society has a right to free speech" and that religious school teachers could express in the classroom their faith's view that homosexuality is wrong. But he went on to explain how teachers could also provoke an EDO and end up in gaol if they taught students Christian morality on homosexuality *as a fact*. "The EDOs in this case would apply to a situation where a teacher was specifically teaching that gay marriage was wrong."[79]

Simon Calvert, of the Christian Institute, said:

> I am genuinely shocked that we have an MP supporting the idea of teachers being branded extremists for teaching that marriage is between a man and a woman. This is

exactly the kind of thing we've been warning about.[80]

According to an unnamed staffer at Spencer's constituency office, "the teacher would have to be incredibly overstepping the line" to trigger an EDO. A teacher, he explained, "can tell students that their religion teaches that homosexuality or same-sex marriage is wrong, as long as they balance that by explaining that the law says these things are okay and that many people believe they are okay."[81] But if teachers "categorically" teach that same-sex marriage is sinful as a matter of fact, they could soon be facing court hearings and judge-ordered EDOs that would ban them from repeating their views in public places, on social or electronic media, or in print. And if they disobey the order, like anyone else in contempt of court, they can be gaoled.

It was both Christian and secular rights groups that held fears as to just how EDOs might be used as instruments of policy. Keith Porteous Wood, executive director of the National Secular Society, said:

> If EDOs really could be used to prevent teachers from talking about same-sex marriage, unless they are inciting violence, they are an even greater threat to freedom of expression than I had feared . . . . The spreading of hatred is far too vague a concept to be the basis of legal sanctions, and would be worryingly open to misuse, particularly by ideological opponents.[82]

The campaign against EDOs has prevented their passage into law, so far, because of the difficulty in drafting the legislation. It remains Conservative Government policy to legislate for them, however.[83]

Simon Calvert, spokesman for The Christian Institute, said:

> The government's approach to extremism is unfocused. Unless we can make them see sense, the range of people who could find themselves labelled 'extremist' by their own government is about to get a whole lot wider.[84]

It is "still not clear how new legislation would deal with the problem of defining 'extremism' in a way that would not threaten free speech".[85]

It would seem that, in the event, the Government has found another method to prosecute its desired agenda. EDOs may well be dead for the time being. But, as policy adviser of the United Kingdom's Evangelical Alliance, Simon McCrossan, has said, the progression towards statism continues, irrespective of whether legislation is passed. He says that on current policy readings and discussions with Number 10 Downing Street, the anticipated next step is for oaths administered to members of the civil service to include a promise to be LGBT friendly. A newly politically-appointed commission working on issues of extremism will select just what passes freely into the public domain without censorship and what does not.[86]

Legislation currently before the Cortes generales in Spain[87]

A new *Non-Discrimination and Equality Bill* is, at the time of writing, being presented for a first vote in the Cortes Generales of Spain.[88] The bill was first presented in May 2016 by a parliamentary coalition of three leading left-wing parties: Unidos Podemos; En Comú; and En Marea. As with all legislation of its kind, the bill purports simply to fight discrimination and "homophobia". Allied to its ostensible purpose is the promotion of "pro-active policies" in gender ideology. Sanctions for contravention is a "system of offences and fines" to "guarantee the effectiveness of equality and non-discrimination". That is,

the penalties are sufficient to lead to penury for small scale, conservative voices who may contravene by advocating traditional values in relation to marriage, gender, sexual practice, and sexual identity.

Among the protected attributes from forms of discrimination prohibited by the bill are any form of "felt identity", "trans identity", and "self-identified gender".[89] None of these needs has a reflection in biology or appearance; nothing needs to appear to warn the potential contravener. And, as is to be expected, the burden of proof has been reversed.

> The facts and suspicions from which the existence of discrimination can be presumed on grounds of sexual orientation, gender identity or expression, or sexual characteristics, can be proven by any kind of evidence, provided that it is lawful; without prejudice to the proceedings and the measures taken under the rules of organization, coexistence or discipline of the institutions and public services.[90]

As one observer has suggested, "[t]he manner in which offences are set out will trigger strategic litigation aiming at the dissolution and bankruptcy of conservative Christian organisations and ethos-based institutions." [91] The bill promotes a culture in which the homosexual and transsexual minority are not only protected but promoted through fines of up to €45 000 for each contravention. Contraveners can also be banned from public office for a period of up to two years.[92] Its draconian provisions raise serious concerns for personal liberties:

> The *Equality Bill* 'shall ensure that broadcast content and advertisements are respectful towards LGTBI persons [and] . . . that the media include in their programming, for

all ages, the diversity of sexual orientation, identity, and gender expressions, including LGBTI family diversity.' This means that media is likely to be monitored and, if necessary, censored by the state. It also implies that the media may be prevented from transmitting any message that might be considered offensive to any member of the LGBTI community.
If passed, the new law would apply not just to the media but also to 'any person, natural or legal, under public or private law, regardless of the administrative or personal situation in which the person is found.' Thus, any actual incident of – or even the mere suspicion of – discrimination against the LGBTI community on the part of a Spanish citizen would be subject to penalties.

This raises the question: How can such drastic consequences be allowed against a person merely on the basis of another person's subjective perception of discrimination? How can one person know if something they say will be labelled discriminatory by another? In short: How will freedom of expression be protected under the proposed new law?

. . . not only would unpopular, offensive, or disturbing views be purged from public life and from the online sphere, but the *Equality Bill* would ensure that the perpetrator is not in the position to express his or her view anymore.[93]

The internet policies of the EU

On 31 May 2016 the European Commission and supranational technology corporations Facebook, Twitter, YouTube and Microsoft presented the "Code of Conduct on

countering illegal hate speech online" (the Code) for comment. It is part of a continuing program in the EU to prevent the display of any thought that a member of a minority may find offensive.

Since 2016, the Code has operated and been through two evaluations, the last being reported on 1 June 2017.[94] The Code comprises a series of commitments on the part of the Commission and the respective supranationals to combat the spread of "hate speech" in online Europe. Under its terms the Code elevated the respective corporations to the position of judge as to what constituted "hate speech", to identify the culprits, and to punish them peremptorily by suspension or cancellation of accounts.[95] Despite the evaluations, there remain the obvious questions that would spring immediately to mind:

- Why are corporations invested with this type of para-state power?

- What protections are there for the rights of individuals or corporations that rely upon the internet for social and commercial intercourse?

- What is the definition of "hate speech" to be used in the implementation of the Code?

To these and other questions regarding the Code, the answers have been less than satisfactory.

Corporations as partners in governmental functions

In the four centuries since 1600, when Queen Elizabeth I granted a Royal Charter to the East India Company, policy makers seem to have learned little about how poor an instrument

the corporation is for delivery of public good outcomes. Undemocratic and unresponsive, it remains a puzzle of the modern age as to why governments the world over would repeatedly enter into partnerships with privately held corporations in the performance of public functions.

If they are truly public functions, government should just get on and do it. If not, they should leave it alone. Experience ought to have taught one lesson: corporations and their controllers owe fiduciary duties to their shareholders and *not* to the public at large. Where the public and private duties conflict for the corporation, it must and will prefer the interests of its shareholders over those of the general public.

And yet, again, we have a compact entered; this time between a supranational government and supranational corporations. Does the scale of this compact introduce a relevant variant from the past? Not at all.

Historically, the corporation was devised as a means by which a group of individuals could conduct transactions and limit their exposure to personal liability. Although the corporation has legal personality and many of the rights of an individual, it is nevertheless a legal fiction.[96] Yuval Harari goes further and emphasises that the corporation is a complete fiction.[97] And Joel Bakan has pointed out, the primary purpose of any private corporation must be profit.[98] He gives example after example of large corporations acting to flout the law where it was profitable to do so.[99] The corporation is a cloak under which the activities of a group or groups of individuals can act in combination for the achievement of the common end of their self-interests: profit.

It follows, then, to invest a corporation with state-like power runs the risk of a conflict between the inherent profit motive and the invested public enforcement role. It will always be impossible to discern without thorough investigation

whenever an exercise of public enforcement power is in the collateral interests of the state and corporation or solely in the interest of the corporation itself. The corporations, the subject of the compact comprised in the Code, are each in turn the size of modest states.

Borders are irrelevant to these large corporations. They operate to minimise taxation liability and maximise profit with no loyalty owed to any nation. History teaches us when state-like power is invested in a non-state actor, in the character of a corporation, that rampant abuse of power follows as the corporation pursues its remorseless appetite for profit.

It was insatiable appetite for profit that resulted in the "trust" arrangements of major corporations, including Rockefeller's Standard Oil, that throttled the economy of the mid-nineteenth century United States.[100] The rapacity of a state-like corporation was never better on display than in the East India Company. It took control of the economies and politics of British Colonial Asia, invented the opium trade, and exploited that trade as a mechanism for subjugating the Chinese.[101] And the legal immunity of the individuals who wield power through state-like corporations was in evidence in Edmund Burke's prolonged but ultimately unsuccessful impeachment of the East India Company's Warren Hastings.[102]

Bakan makes the following observation on the relationship between government and the corporation:

> When in 1933, Supreme Court Justice Louis Brandeis likened corporations to 'Frankenstein's monsters,' there was more to his observation than rhetorical flair. Governments create corporations, much like Dr Frankenstein created his monster, yet, once they exist, corporations threaten to overpower their creators.[103]

When the rights of an individual conflict with the profit motive of the corporation, the rights of the individual will be subjugated. But worse than this potential conflict in which individual rights will be breached, the corporation is capable of pathological rationalisation of its position in having breached those rights. The corporation will not scruple to ignore even the most ethical of mandates in any situation in which it is tasked. Profits trump moral positions.[104] Supranational corporations have proven themselves in the past quite capable of hypocritically embracing causes that would appear to be inimical to their commercial objectives. While giving enthusiastic lip-service to the embraced cause, corporations are capable of continuing their less popular but more profitable activities, using their newfound conscience as a diversion in the public eye. Balkan gives the example, among others, of British Petroleum's embrace of "green image" without ceasing its pursuit of its principal business in fossil fuels for a moment.[105]

None of this comes as any real surprise. But it shows that, apart from expediency, there is no reason in good governance to invest the type of power in corporations that the Code does. And it shows the potentially toxic mix of corporations and government, both disconnected from and not accountable to members of the public affected in losing rights without easy remedy.

In fact, if the Code is wrongly applied there is a question as to who is liable:

> The Code of Conduct agreed by the European Commission represents a hybrid situation. Strictly speaking, any interference with freedom of expression resulting from the implementation of the Code cannot be attributed directly to the EC (as the restrictions will be administered by the IT companies). Nevertheless, it is clear

that the EC's role is more than that of a facilitator. By inviting private companies to restrict speech of individuals the EC becomes an initiator of the interference with a fundamental right by private individuals – a type of 'state interference by proxy'.[106]

"Hate speech", the implementation of the Code and its extension

The International Convention on Civil and Political Rights (ICCPR) provides that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".[107] This has been said by the Commission to be the genesis of the Code in the *Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law,* adopted by the European Council on 28 November 2008.[108]

Despite this assertion of implementing a freedom, there is no universally accepted definition of "hate speech". Paul Coleman has made clear that there are several species of what may be regarded as "hate speech" throughout the various jurisdictions in the EU.[109] The term has not been defined by any EU document other than to include certain matters but its outer limits remain unset.[110] And there is ambiguity in some of the legislation that would need to be invoked in order to give effect to the Code.

So, with these difficulties already in mind, the questions arise as to who among employees of the corporations that are party to the Code make the decisions for users of their services? What liability arises and in whom for mistaken or deliberate removals? Nothing in the Code provides for adequate safeguards of the rights and interests of users. Nothing guarantees freedom of speech or expression. Not even minimum standards can be said to have been satisfied by the Code:

> Whether or not the Charter of fundamental rights imposes a positive obligation to protect the right to freedom of expression is open for a debate. On the one hand, the Lisbon Treaty and the Charter did not create new competences in the area of fundamental rights. On the other hand, it is clear that EU institutions must comply with the Charter when undertaking regulating action. As a result, States and EU institutions should not only refrain from interfering with fundamental rights (unless the conditions for restriction are fulfilled) but should also effectively protect them – especially where the interference is initiated by an EU institution. It is disputable whether an EU initiative which stimulates private companies to restrict freedom of expression of individuals without providing any safeguards for that right would stand scrutiny under the Charter.[111]

Although under review, the Code serves as a model for enforcement of EU policy. The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) is a powerful lobbying platform[112] that is, justifiably, pleased with its success in the EU over the last decade. It names the United Kingdom as one of the countries in which greatest progress has been made:

> For all of its progress, Europe as a whole still has much work to do. In May 2015, ILGA . . . released its LGBT equality ratings. The UK and Belgium lead the continent with over 80% of full equality achieved in both countries. Much of western Europe also achieves high levels of equality, but as the map moves further east, those numbers begin to plummet.[113]

The ILGA has suggested ten ways in which its progression

of the LGBT agenda in Europe can be furthered.[114] One of them is for the stalled ETD to be passed by the Council. Another is proper enforcement of discrimination laws.

The European Commission is alive to all of this. It is particularly aware of the need for online surveillance as a means of the prevention of anti-LGBT sentiments. In its report, *European Review of homophobia. Background secondary data analysis*,[115] the Commission says it regards the patrol of the internet for anti-LGBT expressions as unfinished business on which it is currently working:

> The Internet appears to be often used as platform to diffuse hate speech, and as such represents an area of particular concern for LGBT NGOs and National Equality Bodies. This role taken by the Internet can be explained by the fact that, due to its nature, perpetrators are not easily fundable or prosecuted and feel therefore more free to express themselves. Unfortunately, there is a lack of data regarding hate speech and especially hate crime in Europe. This is due, partially, to the absence of legislative instruments in some countries (that do not consider incitement to homophobic hatred or violence a criminal offense (sic.) or homophobic intent as an aggravating factor). But it can be explained also by the fact that underreporting is a key feature of homophobic and transphobic crimes, like in other forms of hate crimes. Most Member States lack the necessary tools for reporting such incidents to the police, such as self-reporting forms or third party and assisted reporting.[116]

The proposed Spanish discrimination law, discussed above, provides for comprehensive internet surveillance for anti-LGBT expression.[117] Once again, the breadth of what is objected

to is matched by the ambiguity of its content. The net will need to be drawn wide if the effect of chilling attitudes is to take hold. That is manifest in the Spanish Bill. ILGA and the Commission would both regard that legislative measure to be a step in the right direction.

But is it?

Conclusion

David Anderson, QC, the UK Government's Independent Reviewer of Terrorism Legislation, said of the 2015 draft of the abandoned Counter-Extremism Bill that it was "the single most alarming document he had seen in his six years in the job", even ahead of top secret material about terrorism.[118] Anderson said:

> Over the last six years I've seen an awful lot of secret material. Everything to do with the operation of the laws against terrorism, everything to do with surveillance. I think the single document that has alarmed me most was the early draft, I emphasise, of the *Counter-Extremism Bill* that I saw in the summer of 2015. Since then we've seen nothing definite.
>
> Rather than focusing on terrorists and their enablers the Government is insisting on legislating against what it calls 'non-violent extremism', even though there are a plethora of laws already on the statute books.[119]

When asked how easy it was to define non-violent extremism, Anderson replied that while the concept was already touched on in law,

> applying it to ideas that are, for example, un-British or opposed to democracy, seems to me very dangerous and quite wrong.
>
> We got through the Cold War after all without making it illegal to be a Communist or to express Communist

opinions.[120]

If more evidence were needed of the intoxication of undemocratic opportunities to control, note the delight in power-grab policies betrayed by Karen Bradley, MP, Secretary of State for Culture, Media and Sport:

> *The Chair*: Does that mean that you envisage banning orders, extremism disruption orders and closure orders being used against right-wing-inspired and organised extremism, in the same way as you envisage them applying to Daesh/ISIL-inspired extremism.
>
> *Karen Bradley*: To be very clear, the whole counter extremism strategy has been a strategy for all forms of extremism, future-proofed for future types of extremism that we cannot possibly imagine. Yes, the civil orders that we are looking to consult on and introduce would apply to all forms of extremism, be that Islamic extremism, far-right extremism or anti-Semitic extremism. If it is activity that would fall under the law as set out, which we will consult on, the law will apply, as it will cover all types of extremist activity. As I said, it will be future-proofed for possible types of extremism that we cannot even imagine.[121]

Anderson's and Bradley's comments, palpably Orwellian, demonstrate how governments with centrist, statist tendencies will exploit any pretext to obtain control over the governed. Much like the corporation, tempted with an opportunity to arrogate power and control, centrist governments unbounded by constitutional and democratic restraint will not resist. This has been evidenced here in the foundational concepts of the EU.

Now well-formed in the image of its founders' theories,

the Brussels bureaucracy appears not to scruple in the subversion of the principle of subsidiarity. It has scant regard for the individual that it governs and greater regard for groups conforming to its centrist principles. The elites that run Europe have largely unchallenged power to devise and pursue failed or failing policy prescribed by ideology. They use executive and legislative power, even at the cost of individual freedoms, when there is an ideological goal to achieve. Whether it is multiculturalism, security, extremism, or sexual identity politics, any and all of them can and will be used as a pretext in the remorseless arrogation of power.

The United Kingdom has contributed to the culture of the EU and applied something of a break to illiberal policy that would occur but for its constitutional heritage and the influence of the common law. Nevertheless, during its membership in the EU, it has also imbibed much of the illiberal policy that comes from the Continent, and, in some respects, appears to have mastered it.

The advantage that Australia has over its European cousins is a written federal constitution that is unalterable except by will of the people, expressed by referendum.[122] No such mechanism is part of the EU architecture. But the Constitution of Australia is only as good as the force we give it. If we permit centrist dogmas to defeat federal principles, we are, in the result, no better off than citizens of the EU. Centrism is a mimicry of failed EU constitutional modelling.

Australian mimicry of the EU political and legislative models would be laughable except that it is real and happening. Dilutions of institutions and structures are proffered under the guise of modernism. Whether it is in the changes to marriage laws in the same-sex debate, the insertion of a new quasi-legislative consultation body or the recurrent refrain of republicanism, we have a heritage that can preserve liberty, but

only if we permit the Constitution to do its work. The federal structure and the Westminster model are its genius.

It is interesting to note that one of the most powerful constitutional bulwarks against statist tyranny that works today in Westminster is the House of Lords, House of Commons Joint Committee on Human Rights. It is comprised of some of the finest minds in the House of Lords and the House of Commons, all of whom have proven diligent in upholding freedoms earned over centuries of British constitutional evolution. That is also our heritage, though arriving by a different route under our Constitution.

In the *House of Lords, House of Commons Joint Committee on Human Rights Counter-Extremism Second Report of Session 2016–17*, the Committee sets its combined face firmly against the insidious arrogation of power on display by Bradley and her ilk.[123]

And so, too, must we ours.

Endnotes

1. Christopher Lasch, *The Revolt of the Elites and the Betrayal of Democracy*, WW Norton & Company, 1995. See, as examples only, recent critical comments made by left-wing journalists: John King http://www.newstatesman.com/politics/2015/06/john-king-left-wing-case-leaving-eu, Alan Johnson https://www.theguardian.com/commentisfree/2014/may/07/left-progressive-euroscepticism-eu-ills.nytimes.com/2017/03/28/opinion and https://www.nytimes.com/2017/03/28/opinion/why-brexit-is-best-for-britain-the-left-wing-case.html?mcubz=1, and Costas Lapavistas,

https://www.theguardian.com/commentisfree/2014/may/07/left-progressive-euroscepticism-eu-ills

2. Douglas Murray, *The Strange Death of Europe – Immigration, Identity, Islam,* Bloomsbury, 2017.

3. Edward Cranswick, "The Mass Immigration Suffocating Europe", *Quadrant*, September 2017, 36-40.

4. Kenan Malik, *From Fatwa to Jihad – How the World Changed from* The Satanic Verses *to* Charlie Hebdo, Atlantic Books, 2017, (Revised Edition), xxiv, 3, 11, 13, 28, 41, 47, 63; *Multiculturalism and Its Discontents*, Seagull Books, 2013, *passim*.

5. See note 1. See also, for a recent example, the reaction to the proposed expansion of the EU and the Eurozone, to which President Juncker seems committed despite current criticisms of structural problems remaining: Yanis Varoufakis, *And the Weak Suffer What They Must?,* Bodley Head, 2016, *passim*; *Euractiv*, 14 September 2017, "Paris and Berlin don't take Juncker's 'Union of equality' seriously", https://www.euractiv.com/section/future-eu/news/paris-and-berlin-dont-take-junckers-union-of-equality-seriously/*Frankfurter Allgemeine,* 14 September 2017, "Juncker für Euro-Einführung in allen EU-Ländern", http://www.faz.net/aktuell/wirtschaft/eu-jean-claude-juncker-fuer-euro-einfuehrung-in-allen-eu-laendern-15196158.html ;*Frankfurter Allgemeine,* 14 September 2017, "Schäuble mahnt bei Ausweitung der Eurozone zur Vorsicht" http://www.faz.net/aktuell/wirtschaft/eurokrise/schaeuble-mahnt-bei-ausweitung-der-eurozone-zur-vorsicht-

15197719.html ; *Spiegel Online*, 14 September 2017, http://www.spiegel.de/wirtschaft/soziales/wolfgang-schaeuble-mahnt-bei-erweiterung-der-eurozone-zur-vorsicht-a-1167550.html

6. Gabriel A. Moëns and John Trone, "Subsidiarity as Judicial and Legislative Review Principles in the European Union", chapter 9, in Michelle Evans and Augusto Zimmermann (editors), *Global Perspectives of Subsidiarity,* Springer, 2014; see also, John Pinder & Simon Usherwood, *The European Union – A Very Short Introduction,* Oxford, 3rd edition, 2013, 51-53, 60; and Kimmo Nuito, "Criminal Law in the Constitutional Setting of the EU", in Neil Walker, Jo Shaw, and Stephen Tierney (editors), *Europe's Constitutional Mosaic*, Hart, 2011, 325-326.

7. Yanis Varoufakis, *And the Weak Suffer What They Must?* Bodley Head, 2016, chapter 2.

8. Pinder & Usherwood, 44-49.

9. The attribution is made in various places with no direct quote from Conquest. But see Robert Conquest's "Three Laws of Politics" at www.isegoria.net

10. http://nationalunitygovernment.org/content/uluru-statement-heart

11. *The Spectator*, "The Great Cultural Swindle", 2 September 2017, i.

12. http://www.isegoria.net/2008/07/robert-conquests-three-laws-of-politics/ : this is the commonly referred to source

for the attributed "three laws", though the website provides no primary source. It may be a distillation rather than a quoted attribution much like asserted quotes from Dostoyevsky on the absence of a Deity making all things permissible: both may have assented to the proposition but resisted the attribution as a quote.

13. *The Great Deception – Can the European Union Survive?* Bloomsbury Continuum, 3rd edition 2016, chapters 1 - 3; Sir Roger Scruton, *How to be a Conservative,* Bloomsbury 2015, 106-107; Yanis Varoufakis, *And the Weak Suffer What They Must?,* Bodley Head, 2016, chapter 2.

14. See, as an example, the concerns expressed in anticipation on the most recent ruling on national marriage laws: "Redefining marriage? EU Court to rule on national marriage laws https://adfinternational.org/detailspages/press-release-details/redefining-marriage-eu-court-to-rule-on-national-marriage-laws

15. Gabriel A. Moëns and John Trone, "Subsidiarity as Judicial and Legislative Review Principles in the European Union". See note 6 above.

16. See note 13.

17. See, for example, Brendan O'Neill, "I'm a 'Brexit extremist' and proud of it", *The Spectator*, 2 August 2017, https://blogs.spectator.co.uk/2017/08/im-a-brexit-extremist-and-proud-of-it/

18. Daniel Hannan, *What Next*, Head of Zeus Ltd, 2016,

passim.

19. The loss of the use of English on the Continent is unlikely to be a casualty of Brexit. The *lingua franca* of the EU Parliament and other institutions is English. Over ninety percent of EU work in Brussels is conducted in English, followed by French and German. This will likely continue. English is often the only common language among interlocutors of various nationalities.

20. For one account of the development of English traditions, see John Hostettler, *Thomas Erskine and Trial by Jury*, Waterside Press, 2010.

21. Informal discussions held in December 2015 and January 2016 in Strasbourg and Paris respectively.

22. Of the estimated jury of 500 it seems that 280 voted to convict. That is a vote in favour of conviction of 56 percent. The result on Brexit on 23 June 2016 was 51.9 percent in favour of exiting the EU.

23. I.F. Stone, *The Trial of Socrates*, Head of Zeus Limited, 2015, (first published in Great Britain in 1988 by Jonathan Cape Ltd), chapters 12-18, Epilogue, at 264.

24. Roger Scruton, *The Ring of Truth – The Wisdom of Wagner's* Ring of the Nibelung, Penguin Random House, 2016, chapters 3, 5, 6, and Appendix. See also Neville Rochow, SC, "An Incurable Malaise: *Commonwealth v. Australian Capital Territory* and *Baskin v. Bogan* as Symptoms of Early-Onset Dystopia", *BYU Law Review* 2015 *BYU L. Rev.* 609 (2016)

http://digitalcommons.law.byu.edu/do/search/?q=rocho w&start=0&context=4277457

25. "I'm a 'Brexit extremist' and proud of it", *The Spectator*, 2 August 2017, https://blogs.spectator.co.uk/2017/08/im-a-brexit-extremist-and-proud-of-it/

26. See note 2.

27. For discussion, see below.

28. Keanan Marlik, *From Fatwa to Jihad,* 11.

29. Keanan Marlik, *From Fatwa to Jihad,* 11.

30. Mick Hume, *Trigger Warning – Is the Fear Of Being Offensive Killing Free Speech*, William Collins, 2015, *passim.*

31. *Du bist dir nur des einen Triebs bewusst;*
O lerne nie den andern kennen!
Zwei Seelen wohnen ach in meiner Brust,
Die eine will sich von der andern trennen;
Die eine hält, in derber Liebeslust,
Sich an die Welt mit klammernden Organen;
Die andre hebt gewaltsam sich vom Dust
Zu den Gefilden hoher Ahnen.

You are conscious of only one passion;
Oh, that you may never come to know the other!
Two souls dwell, alas, in my breast,
The one wants to separate itself from the other.
The one attaches itself to gross lustfulness,
Holding fast with clinging tendrils;

The other thrusts itself from the mire
Into the realms of lofty heritage.

Johann von Goethe, *Faust,* Part I, (1110–1117), (my translation).

32. *Lisbon Treaty,* Article (5) (3); see otherwise note 6 and Pinder & Usherwood, *op.cit.*, 51-53.

33. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.
The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

34. Kairos Publications, second edition, 2016.

35. Coleman, *op.cit.,* 176 -178.

36. *Ibid.*

37. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:en:PDF

38. Murray, *op.cit.*, 4.

39. See: *And the Weak Suffer What They Must?* at 58, spelling from the original (as elsewhere) maintained.

40. Bloomsbury Continuum, 3rd edition 2016.

41. *The Great Deception,* at 583-585; See also 2-3, 10-21.

42. *The Great Deception,* 21.

43. Sir Roger Scruton, *How to be a Conservative,* Bloomsbury 2015, 106-107.

44. Sir Roger Scruton, *The Roger Scruton Reader*, edited by Mark Dooley, Continuum International Publishing Group, "The Nation State and Democracy", 76-77.

45. Murray, 1.

46. Murray, 320.

47. http://www.conservative,woman.co.uk/roger-scruton-the-eu-is-an-affront-to-democracy/

48. Christopher Caldwell, *Reflections on the Revolution in Europe*, Penguin Books, 2010, 46.

49. Malik, 63.

50. Malik, 50-60.

51. http://www.bbc.com/news/world-europe-11559451/

52. http://www.bbc.com/news/world-europe-11559451/

53. Murray, 123.

54. Detailed treatments of the effect of same-sex marriage on constitutionalism and the socio-political structure include:
" 'Speak Now or Forever Hold Your Peace…' – The Influence of Constitutional Argument on Same-Sex Marriage Legislation Debates in Australia" 2013 *BYU L. Rev.* 521 (2014); http://digitalcommons.law.byu.edu/do/search/?q=rochow&start=0&context=4277457
"An Incurable Malaise: *Commonwealth v. Australian Capital Territory* and *Baskin v. Bogan* as Symptoms of Early-Onset Dystopia" *BYU Law Review* 2015 *BYU L. Rev.* 609 (2016); http://digitalcommons.law.byu.edu/do/search/?q=rochow&start=0&context=4277457
Charles J. Reid, Jr., "Marriage in Its Procreative Dimension: The Meaning of the Institution of Marriage Throughout the Ages," 6 *U. St. Thomas L.J.* 454 (2009). http://ir.stthomas.edu/cgi/viewcontent.cgi?article=1198&context=ustlj
Iain T. Benson, "Law Deans, Legal Coercion and the Freedoms of Religion and Association in Canada" *(*2013) 71(5) *The Advocate* at 671-675.
Michael Quinlan, "Marriage, Tradition, Multiculturalism and the Accommodation of Difference in Australia," (2017) *The University of Notre Dame Australia Law Review*: Vol. 18 , Article 3: http://researchonline.nd.edu.au/undalr/vol18/iss1/3
Douglas Farrow, "Same-Sex Marriage and the Sublation of Civil Society", in *Desiring a Better Country: Forays in Political*

Theology, McGill-Queen's University Press, 2015.
Greg Walsh, "Same-Sex Marriage and Religious Liberty" (2017) 35(2) *University of Tasmania Law Review*; 106
Institute for Civil Society, "The Same Sex Marriage Survey: Legal Issues and the Need for Broad Based Freedoms Protections", Sept 2017.

55. http://www.abc.net.au/news/2017-06-30/german-same-sex-marriage-vote/8668740 ; https://www.nytimes.com/2017/06/30/world/europe/germany-gay-marriage.html?mcubz=1 ; https://www.theguardian.com/commentisfree/2017/jun/30/same-sex-marriage-bill-passed-germany-equal-family-rights ; http://www.bbc.com/news/world-europe-40441712.

56. Neville Rochow, "The Equal Treatment Directive – A Critical Analysis and Discussion Paper", Brussels, 11 January 2016, https://wordpress.com/post/nevillerochowsc.wordpress.com/409

57. http://www.theaustralian.com.au/national-affairs/samesexmarriage-postal-survey-without-detail-a-blank-cheque/news-story/88a0c77d05fa6c28f76a7e27866665dd]

58. See discussion below.

59. https://www.malcolmturnbull.com.au/survey-results/same-sex-marriage ; w.bbc.com/news/world-europe-40441712

60. See, for examples of the impact, *The Christian Institute and others v The Lord Advocate (Scotland)* [2016] UKSC 51, www.supremecourt.uk/cases/uksc-2015-0216.html ;spectator]https://www.spectator.com.au/2017/09/whats-changed-in-britain-since-same-sex-marriage/ ; Neville Rochow, SC, "Same-sex marriage and property rights compete in New York State", https://www.nd.edu.au/sydney/schools/law/on-the-case/on-the-case-issue-7; John Corvino, Ryan T. Anderson, and Sherif Girgis, *Debating Discrimination and Religious Liberty*, Oxford, 2017; Ryan T. Anderson, *Truth Overruled – The Future of Marriage and Religious Freedom*, Regnery, 2015.

61. *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation* can be found as an annotated version, detailing its legal and drafting flaws, at http://www.respectfreedom.eu/draft/

62. Where no other source is cited, examples come from https://www.spectator.com.au/2017/09/whats-changed-in-britain-since-same-sex-marriage/

63. http://metro.co.uk/2012/12/07/david-cameron-facing-backlash-after-backing-gay-weddings-in-churches-3307082/

64. Cited and referenced at http://www.religioustolerance.org/hom_marsco4.htm

65. RTE, Orange Order criticises same-sex marriage Bill: https://www.rte.ie/news/2013/0206/366440-gay-

marriage-uk/

66. [https://www.spectator.com.au/2017/09/whats-changed-in-britain-since-same-sex-marriage/

67. [2016] UKSC 51, www.supremecourt.uk/cases/uksc-2015-0216.html

68. http://www.bbc.com/news/uk-scotland-scotland-politics-35752756

69. http://www.bbc.com/news/uk-scotland-scotland-politics-40341333

70. https://www.gov.uk/government/publications/the-casey-review-a-review-into-opportunity-and-integration

71. An instance of this is in the responses from David Marr to the presentation of evidence by Professor Iain Benson on the ABC current affairs program, *The Drum*: http://www.abc.net.au/news/2017-09-12/the-drum-tuesday-september-12/8904672

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73. https://www.spectator.com.au/2017/09/whats-changed-in-britain-since-same-sex-marriage/

74. https://www.gov.uk/government/news/new-home-office-legislation-features-in-queens-speech

75. https://www.gov.uk/guidance/equality-act-2010-guidance

76. http://www.christian.org.uk/campaign/extremism-disruption-orders/

77. https://www.lifesitenews.com/news/christians-equated-with-terrorists-by-defenders-of-proposed-uk-law

78. https://www.lifesitenews.com/news/christians-equated-with-terrorists-by-defenders-of-proposed-uk-law

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86. Interview with the author, 16 September 2017.

87. See: http://www.europeandignitywatch.org/fundamental-

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88. Tuesday, 19 September 2017.

89. Arts 3(1) b, 3(1) h, 31 (2).

90. Art 74.

91. Dr Adina Portaru of *Alliance Defending Freedom*, Brussels. Correspondence with the author.

92. Art 94(4).

93. http://www.europeandignitywatch.org/fundamental-freedoms-under-serious-threat/

94. http://europa.eu/rapid/press-release_IP-17-1471_en.htm

95. http://ec.europa.eu/justice/fundamental-rights/files/hate_speech_code_of_conduct_en.pdf

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97. Yuval Noah Harari, *Sapiens – A Brief History or Humankind,* Penguin Random House UK, 2011, 31-36.

98. Joel Bakan, *The Corporation – The Pathological of Pursuit of Profit and Power,* Constable & Robinson, 2005, ch 4 and 5.

99. See Joel Bakan, *The Corporation – The Pathological of Pursuit of Profit and Power,* 56 – 59.

100. Ron Chernow, *Titan – The Life of John D. Rockefeller, Sr*, Random House, 1998, chapter 7.

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102. For a brief account http://web.utk.edu/~gerard/romanticpolitics/warrenhastings.html. The consolation that might have been taken is that the 11-year trial all but bankrupted Hastings.

103. Joel Bakan, *op. cit.*, 149.

104. Ibid., 51 – 56.

105. Ibid., 40 – 46.

106. Aleksandra Kuczerawy, "The Code of Conduct on Online Hate Speech: an example of state interference by proxy?" 20 July 2016, https://www.law.kuleuven.be/citip/blog/the-code-of-conduct-on-online-hate-speech-an-example-of-state-interference-by-proxy/

107. *International Covenant on Civil And Political Rights* Article 20:
1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

108. http://europa.eu/rapid/press-release_IP-17-1471_en.htm

; http://ec.europa.eu/justice/fundamental-rights/racism-xenophobia/framework-decision/index_en.htm

109. See note 34.

110. http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf

111. Aleksandra Kuczerawy, "The Code of Conduct on Online Hate Speech: an example of state interference by proxy?" 20 July 2016, https://www.law.kuleuven.be/citip/blog/the-code-of-conduct-on-online-hate-speech-an-example-of-state-interference-by-proxy/

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121. Evidence given to the Joint Committee on Human Rights. See the Report of the Committee at https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/105/105.pdf; http://www.secularism.org.uk/news/2016/11/counter-extremism-bill-alarmed-me-most-says-independent-reviewer-of-terrorism-legislation ; http://www.bbc.co.uk/programmes/b080t882

122. Constitution of Australia, section 128.

123. Report at 30.