

RESPONSE TO "FORGOTTEN AUSTRALIANS" SENATE
RECOMMENDATIONS - Author S. J. HARRISON
(Sub 401 to Senate Report)

The Victorian Government refuses to hold its own investigations into past adoption practices or state care.

I currently have to pursue litigation in the Victorian County Court, for an amount of possibly \$15,000 - \$20,000; LESS LEGAL COSTS. I am concerned that the defence costs in defending these claims, should be made open and transparent.

I am concerned that such varying amounts of compensation being offered by other states, without the need for litigation, will only serve to retard the long term prospects of long term reconciliation. The NSW and Victorian Governments are not part of the solution, they are part of the problem.

I accuse the Victorian Government of behaving as the ultimate example of a "VICIOUS CIRCLE", within the context of MAJOR WARDENS case study - MORE VICIOUS THAN VIRTUOUS, Reflections on Power Institutions and civil society. pages 1, 36, 37 enclosed.

Yours ~~truly~~ regretfully
Dr. S. J. Harrison. 17/11/08.

More vicious than virtuous

Reflections on power, institutions and civil society in Australia: a case study of Major Allan Warren

by Patricia Warren and Allan Warren

This is one of a number of documents concerning ex-Major Allan K Warren.

[Go to index page for all Warren documents.](#)

This material is located on

[Brian Martin's website on suppression of dissent](#)

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Krygier's model of a civil society is one in which the rule of law as opposed to law as an institution, provides for a strong state.[1] It is a normative model against which he develops comparative statements between Eastern Europe, in particular Poland and to a lesser degree Australia, cited as 'a privileged provincial liberal democracy'.[2] In explanation of his thesis he argues the rule of law undergirds a society. It is its infrastructural strength because it is able to discipline by restraint and moderation the use and abuse of power. It is able to institutionalize channels of power to entwine the state, politics and civil society in what he calls "mutually reinforcing virtuous circles".[3] His model supports the consequences of a society being "thickly institutionalized" because it generates an ethos in the ways citizens and institutions can behave and be expected to behave towards each other. This makes for its 'civility' grounded in the mutual trust that comes from the rule of law if it "conforms to the values of predictability, regularity, restraint, precision, publicity and prospectively".[4]

Alternatively interactions between individuals, society and its institutions, where there is either a lack of or absence in, an infrastructural strength leads to fear, distrust and violence. These are interactions of what Krygier calls a distinctly vicious kind. Consequently, there is a need for both the state and society to maintain an eternal vigilance of its rule of law. Perhaps it's his passion and love for Poland and its people that's encoded in the warning: "We simply don't know how quickly uncivil disrespect

that's encoded in the warning: "We simply don't know how quickly uncivil disrespect for civilised and civilising institutions will come to erode or deform them, and then deform us. It would be better if we never found out".[5]

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- * There is repetitive evidence of a virulent political culture, un-Australian, undemocratic, that is flourishing because key public officials have in place laws made deliberately weak, allowing them to escape accountability and responsibility. There is an unwillingness of Members of Parliament to impose adequate standards of accountability amongst themselves and an unwillingness to adequately investigate each other, assumably out of fear that they themselves one day maybe the subject of scrutiny. This has been blatantly evidenced in Mr Warren's case. This failure in the rule of law within the government has the potential to make Australia a spectacle of oppression rather than democracy. *
- * History teaches that civil unrest and collapse of 'the state' are principally born from excessive bureaucratic maladministration and from the consequential injustices they cause. Citizens are always at risk from bureaucratic treachery. They are dependent upon that virtuous circle of mutual trust entwining key officials with their societal well-being. Ordinary Australians striving to be part of the 'clever country' expect those officials not to betray their endeavours, even if the latter out of fear or indifference to improper and/or corrupt government behaviour, are unwilling to be part of it. For key officials to take from its citizens for their own gratification and greed not only separates them from these citizens but betrays the worthiness of those same citizens. A key official who betrays his/her office may be cunning but that is not clever! *
- * So what is happening to Krygier's model of "virtuous circles" and the consequences of a "thickly institutionalised" civil society? What happened to its "infrastructural strength"? Why have "vicious circles" been more powerful in Warren's case to date? What have been the important revelations from it for Australia's civil society?
- * Firstly, vicious circles exist within government institutions. They assume the appearance of the rule of law. There are ample facts and evidence in this case to show how sub-cultures working the infrastructural strength of these institutions allow loyalties to over-ride legal integrity in public duty.
- * Secondly, vicious circles exploit and betray the "thickly institutionalized" structure of society. Working within the rule of law they use public resources to maintain legal procedures but at the same time avoid the spirit and intent of the rule of law. Part of their tactics is the ability to delay, obstruct, omit, deny and promote legal argument. And all this is done within the appearance of normal operations of the rule of law. When such abuses reoccur it will in all probability always point to the dominance of vicious circles in control of the institutions of the state. *
- * Thirdly, vicious circles use routine procedures within the rule of law, and so provide opportunity for those involved in the initial violations of the "rules of the game", to

opportunity for those involved in the initial violations of the "rules of the game", to distance themselves from the event. The effect is certainly to destroy any notion of equity. It also destroys the security of the checks and balances of hierarchical decision-making by which government justifies its use of power over society.

Fourthly, vicious circles can penetrate the wider society, rendering people unconnected simply because of the ever present threat of defamation laws in civil

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action. Identities are further protected because the cost of action against wrong-doing by the government against the individual through the judicial process is too prohibitive for ordinary citizens.

Fifthly, these vicious circles become less restrained and less moderate but more powerful as they systematically embrace elected government officials of either political persuasion, including the Head of State, and render them silent one by one. By such action legal doctrine is silence as law loses integrity. The rule of might correspondingly takes control from the rule of law. Ultimately in these circumstances Ministers of the Crown compromise and adjust their consciences and refuse to accept their public responsibility. They are reduced to being mere opportunists allowing their private interests to dominate public affairs.

Sixthly, vicious circles can penetrate the independence of legal institutions in their adjudication to be other than what they legally could be. Such discretionary judgement serves to protect the status quo.

History is tormented by people having to rebel against bad government only to replace it with bad governments. A solution is available and has always been there - expose corrupt officials and make ministers accountable. Let no elected Member of Parliament, or other key public official, think that he/she can manipulate the public's trust or abuse the rule of law so as to betray the community. Integrity is and must be safeguarded by the rule of law else society loses its freedoms and civility.

The rule of law, that which Krygier's model claims is the infrastructural strength of a strong state becomes impotent because of the tyrannies of silence and connivance. These distinctly vicious circles are so powerful they are able to go undetected and undisciplined. They are able work the "thickly institutionalised" fabric of society for their own purpose to avoid accountability. It makes for an uncivil society under the pretext of civility protected by the rule of law. Krygier would argue so the need for 'eternal vigilance'. Warren would argue he has been 'eternally vigilant', in fact for the last 16 years. The state provided access for the individual to act, with political autonomy within the rule of law, to routinely challenge its institutions, of which government and the military are part. This is the essence of the redress of wrongs system of law. In pursuit of that redress the very rule of law has turned into vicious circles entwining both the government and the military against the individual. Tocqueville would argue it all comes with the 'tyranny of public indifference'. But, perhaps any consequent changes to the military's confidential reporting system will be

~~requiring the world argue it in cases like the 1970s~~
perhaps any consequent changes to the military's confidential reporting system will be
towards civility within that institution. After the Warren case it would only be fair to
the officer corps. But Warren still does not have his owed Redress of Wrongs.

Notes

[1] Krygier, Martin 'Virtuous Circles: Antipodean Reflections on Power, Institutions and Civil Society, in Eastern Europe and elsewhere' in Eastern European Politics and Societies Vol 11 No 1 1997 (forthcoming).

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