

## The Sun Rises in the West Conference Papers

## The Sun Rises in the West Conference Papers

The Mannkal Economic Education Foundation and the International Trade and Business Law Review were proud to present the Sun Rises in the West Conference held in Perth on 7-8 October 2010.

The theme of the Conference was *The Governance and Commercial Structures: Foundations of Western Law and Liberty*. This Conference made a contribution to the understanding of Western Civilisation and its legal, social, political, and economic traditions. It raised awareness about issues which threaten individual rights and freedoms, and indeed the very way of life which we currently enjoy. The themes of the conference covered legal, cultural, educational, economic and socio-political issues, involving the active participation of leading experts in their fields, thus making this Conference truly unique. A selection of papers presented at the Conference has been included in this edition of the International Trade and Business Law Review.

Mannkal Economic Education Foundation was pleased to work closely with the International Trade and Business Law Review to facilitate the Conference by underwriting and administering this important event. In supporting events such as the Sun Rises in the West; Mannkal aims to strengthen the free market system in Western Australia and Australia, by promoting ideals of voluntary co-operation, choice, personal rights, limited government and responsible resourcefulness of individuals. It is a registered non-profit organisation with an independent board. Mannkal achieves its aims by financing and organising a number of projects, including: events for the exchange of ideas; seminars and student scholarships to promote a greater understanding of the concepts which underpin free societies; policy papers pertaining to Western Australia; and, an alternative book store for economic and Australian history books.

**MANNKAL**  
ECONOMIC EDUCATION  
FOUNDATION

[www.mannkal.org](http://www.mannkal.org)



Perth Conference

[www.sunrisesinthewest.org](http://www.sunrisesinthewest.org)



their pride as West Australians is complementary with an ardent loyalty to Australian nationhood. The end of another hundred years — no matter what vicissitudes of fortune may intervene — will find this State great and prosperous, the home of happy and united people, stimulated by high tradition, qualified by inherited character, and determined in love and patriotism, to hand on the choicest fruits of liberty.<sup>2</sup>

The cultural mix of Western Australians today extends beyond the 'British race'. It is enriched by migrants from many different nations, and optimism and belief in improvement remain. Patriotism and the defence of liberty also continue, as does the ability to respond to adversity. While being strong supporters of the Commonwealth, Western Australians displayed angst about centralisation and taxation when the proposed Resources Anti-Mining Tax stirred action with public rallies on the banks of the Swan River in 2010.

While the early British settlers struggled against the hostile environment and an unfamiliar setting, they replicated a number of institutions from Britain which provided the basis for the colony to flourish. It was not simply the various commodities that have made the state so rich and prosperous. From sandalwood to iron ore, the accumulation of wealth and the establishment of a stable political environment have facilitated investment and surpluses. Indeed, geographically and geologically, Western Australia is not unique. Many African nations have greater mineral and biological wealth, but seem to wander from military dictatorship to lawlessness, without sustaining a viable society. What makes Western Australia successful is its direct link to British institutions, and the introduction of these ideas, institutions and practices to the Western third of this continent.

Historian James Belich argues that one of the strengths of English-speaking settler societies lies in their ability to 'clone' and break up into smaller, representative regions or zones.<sup>3</sup> A closer reading of history would surprise many people who today believe that the current Australian states are the end point of governance arrangements. Should circumstances have been different, what is now Western Australia could be composed of many different states and/or territories. We see this evolution in the calls from the Northern Territory for statehood. In 1829, Captain Stirling established and, for a little over three years, administered the Swan River settlement. While he had a number of executive responsibilities far broader than those of a Premier or Governor today, he worked within a system where his power was limited by conventions which, in a modified version, remain today. The strength of the society created in 1829 is its ability to adapt and continuously be enriched, and it benefits from a number of foundational concepts around man's place in the universe and his desire to enjoy freedom. The beauty of these ideas and institutions is their ability to last beyond kings, queens, presidents, prime ministers, empires and even epochs.

<sup>2</sup> Sir Hal Colebatch (ed), *A Story of a Hundred Years: Western Australia 1829-1929* (1929) 476.

<sup>3</sup> James Belich, *Replenishing the Earth: The Settler Revolution and the Rise of the Anglo-World 1783-1929* (2009) 165.

## THE SUN RISES IN THE WEST: AFTER DINNER REFLECTIONS<sup>†</sup>

GABRIËL A MOENS\*

Good evening. My name is Gabriël Moens. I am the Dean of Law at Murdoch University and Editor-in-Chief of *International Trade and Business Law Review*, which is one of the sponsors of this Conference. I am disappointed that I was not able to join you yesterday for the cruise. I was very sick and I am still unwell today, but I decided to attend today's session to listen to the great contributions made by the speakers to the Conference. Yesterday, being sick reminded me that, in my home library, I must have a book entitled *Medicine and Western Civilization*.<sup>1</sup> The book is a great compilation of the views of well-known people on the contributions made by Western Civilization to Medicine. But I decided, perhaps wisely, that I was not going to look for it in my library.

Later tonight, I have the privilege of introducing our keynote speaker, Professor Claudio Veliz. But before I do that I propose to make a few comments about our Conference. What we have seen during this Conference, especially today, is truly amazing in Western Australia. We have heard from speakers who explained how Western Civilisation facilitated Australia's journey to a civil society. In essence, Western Australia's prosperity is largely based on its Christian heritage, the rule of law, and its unwavering commitment to property rights and 'liberty'. However, now more than ever, there are many challenges and threats to 'liberty', some of which were discussed today, including the Global Financial Crisis, Terrorism and Jihad, Bureaucracy and Centralisation.

The concept of 'liberty' is, of course, at the heart of this Conference. 'Liberty' means different things to different people. Yet, it is clear that all human beings cherish liberty in one form or another. It is also clear that law has a profound impact on liberty. As a lawyer, I am interested in the relationship between law and liberty. For example, people may be deprived of their liberty contrary to law or they may be denied their liberty by force of law. We all know that law has the potential to both promote and destroy liberty. This Conference sought to engage its participants in a discussion of the profound question concerning the extent to which liberty is dependent on, and fashioned by, the way in which 'law' is understood in our society.

<sup>†</sup> These remarks were made at The Sun Rises in the West: The Rule of Law Together with Property Rights – Foundations of Western Law and Liberty Conference in Perth, 7-8 October 2010 <<http://sunrisesinthewest.org/>>.

\* Gabriël A. Moens is Pro Vice Chancellor (Law, Business and Information Technology) at Murdoch University. He is the Editor-in-Chief of *International Trade and Business Law Review*. He serves as a Deputy Secretary-General of the Australian Centre for International Commercial Arbitration, and Director, College of Law Western Australia. At the time of the Conference, he was Dean of Law, Murdoch University.

<sup>1</sup> David J. Rothman, Steven Marcus & Stephanie A. Keceluk, *Medicine and Western Civilization* (Rutgers University Press, 1995).



In this context, there are at least two opposing understandings of 'law'. First, there are those who argue that preeminent principles or rules exist independently of the lawmaker. On this view, the successes of our Western Civilisation are largely due to the acceptance, maintenance and implementation, by successive generations, of moral rules and values which derive from God or are inherent in the notion of a human being. This understanding of law is embedded in the 'natural law' tradition. This tradition has always maintained the inadequacy of 'law' which associates legality solely with formal validating criteria such as a ruler's express will or a judge's authoritative determination. The tradition, in general, has sought to test enacted law against objective moral criteria. In doing so, it has undoubtedly curtailed the excessive use and abuse of governmental power in the West.

Second, there are those who see law merely as the imposed will of a legislator or judge. This understanding of law denies the existence of preeminent principles or rules. It embraces a philosophy of relativism, which assumes that people have only those rights which are allocated to them by policy-makers and trendsetters, whether they are legislators or judges. This philosophy of relativism is based on the assumption that human beings have the capacity to decide which societal views should be promoted or denigrated. For example, when judges or legislators adopt so-called 'social engineering' laws, such as to whether there is a 'right' to euthanasia, or a right to same-sex marriage, or to abortion, to name just a few, they essentially make an arbitrary and subjective decision on what is deemed fashionable at the moment.

The debate as to whether the former or the latter understanding of law best promotes liberty has been a central issue during this Conference. For many reasons, no agreement may be reached. But the debate between natural law proponents and its relativist detractors is a profound debate that we cannot conduct tonight and, therefore, it needs to be the subject of another Conference. However, I should like to remind you that in 1993, the late Professor Eugene Kamenka in an article *Australia Made Me ... But Which Australia is Mine?*<sup>2</sup> alerted us to the dangers of embracing relativism, especially its capacity to destroy 'culture'. He said:

A crude concept of 'value-free' social science as implying moral, cultural and even epistemological relativism, together with a levelling version of democracy, does indeed end in the desire to excise the concept of judgment from social and moral life and in giving the word 'culture' many meanings and thus no meaning at all.<sup>2</sup>

We all know that without 'culture', Western Civilization cannot nourish itself.

<sup>2</sup> Eugene Kamenka, *Australia Made Me ... But Which Australia is Mine?*, John Curtin Lecture, Australian National University, 16 July 1993.

## THE LIMITS OF PROPERTY AND FREEDOM<sup>1</sup>

SINCLAIR DAVIDSON\*

*The truth is that capitalism has not only multiplied population figures but at the same time improved the people's standard of living in an unprecedented way. Neither economic thinking nor historical experience suggest that any other social system could be as beneficial to the masses as capitalism. The results speak for themselves. The market economy needs no apologists and propagandists. It can apply to itself the words of Sir Christopher Wren's epitaph in St Paul's: Si monumentum requiris, circumspice.*

- Ludwig von Mises<sup>1</sup>

### I INTRODUCTION

It is with some hesitation and reluctance that I propose to disagree with the great Austrian economist and European liberal Ludwig von Mises. While I agree that capitalism has created rising standards of living for all and there is no better social system known to produce better results, it is not enough to simply look around and see its monuments. Capitalism and the institutions of free markets and personal liberty do need apologists and do need propagandists. There is a great tension between the underlying institutions that enable western civilisation in general, and free markets in particular, to function. The trade-off between individual freedoms and collective coercion has long been debated by liberal philosophers; the problem is well understood, yet it is quite clear that the extent of collective coercion has increased while many personal liberties have declined.

### II THE EXCHANGE OF PROPERTY RIGHTS

Adam Smith famously said that little else but 'peace, easy taxes, and a tolerable administration of justice' would carry a society from barbarism to opulence; 'the rest being brought about by the natural course of things'.<sup>2</sup> The 'natural course of things' is made up of the division of labour, and trade. In the second chapter of his *Wealth of Nations* Smith speaks of a 'certain propensity in human nature ... to truck, barter, and exchange one thing for another'.<sup>3</sup> Trade presupposes ownership and property rights. Unfortunately while economists have tended to concentrate on the benefits and costs of trade, they tended also to ignore the economics of property rights. It has only been in the last 50 years or so that economists have come to better understand the institutions underpinning the propensity to truck, barter and exchange.

While many observers contend that capitalism and the market economy revolve around competition, in fact the market economy involves substantial cooperation. According to Smith, 'In civilized society he stands at all times in need of the co-operation and assistance of great multitudes, while his whole life is scarce sufficient to gain the friendship of a few

<sup>1</sup> This paper was presented at The Sun Rises in the West: The Rule of Law Together with Property Rights - Foundations of Western Law and Liberty Conference in Perth, 7-8 October 2010 <<http://sunrisesinthewest.org/>>. School of Economics, Finance and Marketing, RMIT University and Institute of Public Affairs.

<sup>2</sup> Ludwig von Mises, *Human Action: A Treatise on Economics* (Fox & Wilkes, 4<sup>th</sup> ed, 1949) 584.

<sup>3</sup> Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (A Strahan, T Cadell, W Davies, 9<sup>th</sup> ed, 1776) xl.

<sup>4</sup> *Ibid* 17.