

Chapter Eight

A Constitutional Fairy Tale

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In the one year that I spent studying law, I was taught that law is a body of rules, imposed upon, and enforced among, members of a given society. Further I was told, that it is the criminal law that does the enforcing, and constitutional law that does the imposing.

It's nice to be with the imposers rather than the enforcers!

When John Stone asked me to speak to this gathering, I was a little taken aback. I am used to the less elevated areas of the H R Nicholls Society rather than this august body.

The inspiration for my topic tonight actually comes from an address that P P McGuinness gave to the H R Nicholls Society many years ago, where he "took as his text" that marvellous Australian tale, "The Magic Pudding", as a means of explaining the wondrous logic of the then Australian Industrial Relations Commission.

I wish to extend our horizons a bit and delve into that extraordinarily rich literary lode of English fairy tales, particularly by Joseph Jacobs, and especially the story of Henny-penny.

You will all remember Henny-penny. As a well behaved "chook", she was pecking up grain off the ground when she was hit on the head by something, and she concluded that it was the sky that was falling on her. She then decided that she must go and tell the King about this and set off on her journey. She is joined along the way at various points by Cocky-locky, Ducky-daddles, Goosey-poosey, Turkey-lurkey, and last but definitely not least the dreadful Foxy-woxy, who "does them all in".

Of course there is a vast array of issues that can be addressed by allusion to different fairy tales, and at differing times. One of the admirable strengths of this particular art form is its adaptability and overall utility.

From time to time, indeed almost on an annual basis, we will find someone referring to Henny-penny (although frequently mistakenly called Chicken Little), as a means of highlighting a call that is essentially a false alarm, but which is perceived by at least some people to be an urgent and necessary wake-up call.

I want to relate this story of Henny-penny to the response by the ACTU and its affiliates to the introduction by the Howard Government of its then called "Work Choices" legislation, and I want to make the case that, in all of the circumstances, what we have seen from the ACTU *et al* is in fact a moderate, cogently argued, rational and entirely reasonable response. Exactly as was Henny-penny's.

It is all too easy to sneer at the campaign run by the ACTU, to point to the blatant scaremongering. "The sky is falling" is a derisory call that is frequently heard in the circles that I mix in. But is it so?

Let us look beyond the first impressions. Let us look at substance, significant substance; let us look at Ms Sharon Burrows, ACTU President and see if she is just doing her Henny-penny impersonation or whether she has a real story.

Of course her sky is falling. Union influence is down, there are more independent business people in Australia today than there are trade unionists. She must feel that she has been hit on the head by a very heavy object, at least a very leaden sky. What it is of course that fell on her head, is Union membership. And it happened in a field on the edge of a wood.

So, as any good person in her position would do, Shazza-wazza goes off to alert the King. In our case, of course, that means His Majesty Public Opinion (or in this case Ruddy-duddy).

Along the way to see the King, she comes across Billy-willy Shorten, who immediately volunteers to join her in going to see the King, because he too realises that this issue of falling Union membership is so staggeringly important, he may have to stop doing Cocky-locky impersonations outside Tasmanian goldmines. And much and all as he doesn't want to, he feels that it may in fact be necessary for him actually to become King; and as such, at least going and having a look should do that difficult and onerous responsibility no harm.

So Shazza-wazza and Billy-willy go on their way to see the King.

Along the way to see the King who do Shazza-wazza and Billy-willy run into, but the good old ABC.

Shazza and Billy, breathless with the excitement (or possibly just out of breath), tell ABC that falling Union membership has hit Shazza on the head and that ABC should join them in going to see the King, and alerting him to this terrible state of affairs.

ABC immediately sized up the situation, and realized that this was an “issue”, nearly absolutely and almost specifically addressed in its charter. Although from an inclusiveness point of view ABC would have been happier if Shazza-wazza and Billy-willy were a same sex couple, ABC saw no reason to discriminate merely on grounds of sexual diversity. And, showing an otherwise surprising sense of worldliness, ABC thought that if Billy-willy did become King (much and all as he didn't want to), then the broad interests that ABC served could be well “looked after” by King Billy.

That humorous name suddenly sounded horribly like a racist slur to ABC, who was very pleased that this thought had been heard by no one but ABC, and immediately resolved never to even think that thought again.

So ABC joined Shazza-wazza and Billy-willy on the way to see the King.

As Shazza-wazza and Billy-willy and ABC made their way to the King's Palace, they came across a well meaning, though slightly shabby person named Fairfax, who was well known to be close to public opinion, certainly in Fairfax's opinion at least. Indeed Fairfax is pretty sure (you don't want to be dogmatic about these things) that he actually leads public opinion. “Where I go opinion follows”, is writ large in perfectly conjugated pidgin-Latin, just below his masthead.

ABC and Billy-willy straight away told Fairfax about the falling Union membership that had almost concussed Shazza-wazza, and of course his response was immediate and generous.

“I will direct our superior and utterly fearless reporters to get to the bottom of this ‘post haste’ “, he said, thus showing the intellectual edge for which Fairfax was so justly famous. He paused a while and struck his best thinking pose, thumb and forefinger to the remnant jaw, then he unburdened himself of the awesome thought that had come to him. “If Union membership continues this way, who will be here to enforce freedom of choice?”; and he immediately instructed Ross Gittins to prepare a six-part series on the need to impress on the King the requirement to stop the decline in Union membership.

Gittins, good man that he is, queried the imperious tone of the direction from Fairfax. “This isn't an example of the proprietor seeking to influence editorial content, is it?”, queried Gittins. But the short sharp response from ABC, “Mate, this isn't sectoral, this is us versus them”, settled him down.

Then Fairfax joined ABC, Billy-willy and Shazza-wazza on the way to see the King.

As Shazza-wazza, Billy-willy, ABC and Fairfax went on their way to see the King they passed a field where there was a reasonable number of people, standing around, agreeing with each other, and wringing their hands and looking really caring. Among them there was a particularly tall one who was muttering, “Life was meant to be easy”.

ABC and Fairfax knew immediately who this was, and took Billy-willy and Shazza-wazza over to meet Community.

Community of course was delighted to see ABC and Fairfax. They all knew each other really well from Friends of ABC and Friends of Fairfax, and ABC and Fairfax were Friends of Community as well.

So when ABC and Fairfax told Community about the terrible falling Union membership that had so shocked Shazza-wazza, everyone wrung their hands just that much harder; and just as Fairfax expected, they all looked to him and ABC to tell them what they should do.

“Well, we are all going to see the King, to have him change the rules to ensure that Union membership stops falling and grows again, that's what we are doing”, said ABC and Fairfax. Billy-willy stepped forward and said a few words about “working families”, and asked if Community had seen him on *Sunrise*. This comment certainly created a bit of unease about Billy-willy, as everyone there only watched the ABC, and Billy-willy, quick as you like, dropped that subject and was back onto “working families” before you could say “Kochie rules”.

Naturally, Community thought going to see the King was a fantastic idea, and as a long term activist, this was precisely the sort of clearly effective action to which Community was really committed. “This decline in Union membership is an intolerable blow to the people's right to choose”, Community said, very much in line with Fairfax's thinking. ABC, not to be outdone, then chimed in with this contribution:

“Union membership is a lot like climate change. It is such an unarguably good thing, that it is in fact

reprehensible to run the contrary argument, and those who say there are two sides to the story ignore the fact that Unionism is an unarguable good”.

Seeing the positive response that this bold statement was getting from the whole group, ABC went on:

“We like to pride ourselves that we are a civilised society, a society that values its people and its diversities. We simply must ensure that everyone is a member of their Union, simply to safeguard the pluralism that is such a fundamental right in a multi-cultural society. Unionism, friends, is simply not negotiable”.

Community returned to the field for a second go, so strongly were feelings running by now. “You remember there used to be laws against holocaust deniers”, Community orated.

“Well, I think it is past time to have anti-Union ‘hate speakers’, ‘anti-Union good deniers’ and all of their fellow travellers removed from our civilised society, and have them sent off for re-education to a camp run by the Australian Education Union. Unionism, they have to understand, is not A choice, it is OUR choice!”.

As you can imagine, Shazza-wazza was pretty much moved to tears by the profundity of these heartfelt contributions, and she mumbled something about “working families” as well.

This second reference to “working families” was a bit much for ABC and Fairfax, and they took Shazza-wazza and Billy-willy aside to gently remonstrate with them:

“You can’t expect Community to put its shoulder to the wheel for Union membership when you keep talking in exclusionary terms like ‘working families’, which must leave out, and in a very real way denigrate, a significant and active part of the workforce”.

Shazza-wazza and Billy-willy were really a bit crushed by this. “Obviously”, Shazza said, “some of our best friends are gays and lesbians, greens and geeks. The Trade Union Movement is rightfully proud of its generations-long struggle for inclusiveness, aren’t we, Billy-willy”.

Billy-willy, remembering the AWU’s colourful campaigns against Asian and Pacific Islander workers and New Zealand shearers, decided that discretion was the better part of valour in the current circumstances, and just said, “Yeah, bloody oath. Let’s get back to Community before their poor old hands get wrung off”.

Then a really interesting thing happened!

Shazza-wazza, Billy-willy, ABC, Fairfax and Community were all marching off to see the King, when who do they meet but Greggy-weggy Combet.

Now Greggy-weggy listened very attentively as Shazza-wazza, and everyone else, related the terrible story of falling Union membership—but it wasn’t actually a surprise to him at all.

You see, Greggy-weggy was actually in the wood, quite near the field that Shazza-wazza was in when the Union membership fell on her. He had recently taken to spending a fair bit of time “sloping around” in woods, grooming his splendid tail, rehearsing great orations, and such like, and was doing that at the time of Shazza’s terrible incident, and had actually seen it happen. But he didn’t let on at all.

He immediately declared that, “This must be taken to the King at once”.

ABC was the first to speak:

“Thank God we caught up with you, Greggy-weggy. I always knew you were a real man of decisiveness and clear thinking, not just some bastard boy, and this just shows how right I was. I bet you even know the best way to get to the King”.

Fairfax then chimed in with, “Yes, I’ve always thought you ‘*tres magnifique*’ as well”. (Fairfax thought it past time to re-establish who was the man-of-the-world here.)

And Community said not a word, but held hands aloft as in adulation.

Shazza-wazza and Billy-willy were a bit miffed about this, as they were already leading everyone to see the King, long before Greggy-weggy came on the scene. They had decided that was what had to be done, and no one had gone on with all this bourgeois blather about them, but they kept their own counsel and just smiled happily. Or at least Billy-willy did.

Then Greggy-weggy spoke:

“It is a very good thing that we met up, because I do know the best way to the King. It is not short, or easy—nothing worthwhile ever is—and it does mean leaving the safety of Victoria to go to New South Wales, but it is definitely the best way. As you know, I came from New South Wales and I can steer us all safely to the King.

“Actually, we have to go through a place called Charlton, and there was a wicked witch there that I had to smite fairly recently, but I will certainly get us to the King”.

So our “merry band of brothers” marched off in a new and different order. First was Greggy-weggy, then ABC, then Fairfax, then Community, with Billy-willy and Shazza-wazza at the rear.

As they crossed the Murray a *frisson* of real fear ran through them all, and being the leader that he is, Greggy-weggy immediately cautioned the whole group to be on the look out for “free traders, scab shearers and sundry other undesirables that live in these wild and untamed parts”.

“You will need to do exactly what I tell you here. This is such dangerous country that the people hereabouts elect members like Bill Heffernan to represent them”.

That caused everyone to bunch up, and to take a quick look over their collective shoulder—and Greggy-weggy adjusted his glasses, and allowed himself a quiet little smile, and a surreptitious flick of his tail!

“It’s not far now, friends” he said, “and we will see the King, but first we have to go through this long, dark cave. We will need to go through the very narrow part one at a time, and I will call the next one through as I get each one safely to the other side”, Greggy-weggy assured them.

ABC was just about beside itself. “We will have to do an *Australian Story* about Greggy-weggy, there is just nothing else to be said”.

Fairfax, while agreeing, thought a spread in the *Good Weekend* might have more “*panache*” (just can’t help himself, that bloody Fairfax, thought Billy-willy).

Community cleared its throat and declaimed that what was needed was a “Friends of Greggy-weggy Society”, to which there was general agreement.

Shazza-wazza went behind a tree and expectorated quite loudly, and Billy-willy said, in a fairly loud voice, “I’ll second that, Comrade”.

Then Greggy-weggy, cool as a cucumber, entered the long dark cave, and shortly thereafter got the surprise of his life! A long way back into the cave, near its dankest and darkest but just where a small shaft of light entered, Greggy-weggy saw the unmistakable profile of Princess Julia-rulya, and she was studying him, very profoundly.

Holding a paw to his lips he hurried up to her and said:

“If you know what is good for you, Comrade, you will get out of sight, and say and do absolutely nothing about what is going to happen here in the next little while. We can have our little chat after I do what has to be done”.

Julia-rulya had never seen such authority and decisiveness in a man in her entire life, and it quite took her aback, almost brought her undone as it were. “I feel a touch of the Bronte heroines syndrome”, she said. “I’ll just take my kill out of the way, Greggy-weggy, and let you get on with your job”. And then, as a sort of little girl throw-away, she added, “Who said the political and industrial wings can’t work together”.

Greggy-weggy composed himself, gave his paws a quick lick, and after a decent interval he called out, “Come through, ABC”, and ABC came through.

He hadn’t gone very far into the dark, narrow part of the cave when, “Hrumph”, Greggy-weggy snapped off ABC’s head and threw him over his shoulder.

Then he called out, “OK, Fairfax, you come through. Hrumph”, and off went Fairfax’s head and he was thrown beside ABC.

“Community, can you come through now please”, called Greggy-weggy. “Of course, if you say it’s safe, Greggy-weggy”, answered Community; and then, “Hrumph”, and off came that head to join the others.

“Billy-willy, are you ready to come through, Comrade?”, asked Greggy-weggy; and Billy-willy, who was not as simple as some would have you believe, asked, “Where are ABC, Fairfax and Community, mate?”.

Greggy-weggy answered, “They have made their Work Choices, mate, and are out into the munificent sunshine on the other side”.

Thus reassured, Billy-willy lurched into the narrow, dark cave, and “Hrumph”, off came his head, and he joined ABC, Fairfax and Community in the “killing fields” of Greggy-weggy.

“Shazza-wazza, old son—sorry”, said Greggy-weggy, “Comrade, can you come through now?”.

“You listen to me, you bourgeois bull artist, I am the President of the ACTU and you are only the Secretary, and I am a teacher and you are only a mining engineer; can we level with one another?”.

“Shazza-wazza, are you suggesting that there is something that we haven’t been entirely frank about in our opposition to Howard’s emasculation of workers’ rights in this country?”.

“Stuff Howard, stuff workers and in particular stuff their rights. What I want to know is why there are no sounds from those buggers who have gone into the tunnel in front of me”, blurted Shazza-wazza.

“If you weren’t just an ignorant teacher you would understand the venturi effect on the distribution

of sound in a confined space”, Gregggy-weggy answered confidently. “Get yourself into gear and come on through”.

Shazza-wazza was not convinced. She had taught naughty little boys and knew that they could be terribly convincing, even without any substance at all. “A lot like Doug Cameron really”, she thought.

“Are they really all through, safe and sound? You know I hate these individual arrangements, Gregggy-weggy. And another thing, ACTU policy is for a collective approach, we should have stuck together”.

“You will stick together when you come through. The others are already sticking together, I can assure you. Blood is stickier than water”, he added, in a rather Delphic tone that puzzled Shazza-wazza.

“Come on, Shazza”, called Gregggy-weggy, “through you come, come to Gregggy-weggy”; and just as she entered the tunnel, something started to click in her brain .

But it had been a long time since Shazza-wazza had used her brains, and she wasn’t used to trusting them. They weren’t really working class brains at all, she suspected, and she kept pushing into the tunnel while her poor old brains were saying, “Shazza, this is not what we recommend at all”.

And there, in front of her, licking his paws, and generally preening himself, was Gregggy-weggy.

“God, you are a silly old goose, Shazza-wazza”, he said, “and probably too tough for the pot as well. What am I to do with you?”.

Shazza-wazza suddenly realised the full enormity of what was happening here, and was appalled. Community gone, Fairfax gone, ABC gone, and sweet, modest and unassuming little Billy-willy, all gone; all sacrificed on the altar of Gregggy-weggy’s ambition.

Summoning her last reserves of ideological strength, she demanded, “What will you do about falling Union membership, Gregggy-weggy?”, and was surprised to realise that Gregggy-weggy was surprised by her question.

“What, nothing”, he replied. “You can see all the Unions’ supporters over there in that corner—without their heads. What will Unions do without them?. As for me, I’m off to greener pastures”. And with that he leapt up and attacked Shazza-wazza.

Poor old Shazza-wazza, the fight had all gone out of her and she just succumbed. “Hrumph”, went Gregggy-weggy, and off came her head, and she was flung on to the pile of bodies.

Gregggy-weggy sat back and looked at his handiwork. It had been a fairly full day, even by his standards. He had forgotten all about Princess Julia-rulya, and he couldn’t help it, he just started to hum an old song he knew, and he kept returning to one of the verses. “John, John, the grey goose is gone and the fox is on the towno, towno”.

“That’s no way for the Member for Charlton to behave”, Julia-rulya admonished him. “After all, the sky is falling in”.

Her voice snapped Gregggy-weggy out of his happy reverie, and made him focus on the issues in hand.

“That kill of yours, who was it?”, he demanded.

“Oh, that’s just an old Ruddy-duddy”, Julia-rulya replied, in a very off-handed way.

“The bloody King, you’ve killed the bloody King. Hell, there’s a word for that. I wish Fairfax was here, he would have known it”.

“Kevicide”, she cooed, flicking her tail in a most provocative way. “But what about you, it’s all right for you to get uptight about me killing the King, but you’ve wiped out our entire cheer squad. Who is going to explain the regicide of Ruddy-duddy to the masses now?”

“Frankly, Gregggy-weggy, I think you’ve stuffed up! I was counting on Community coming out and saying that everyone is sick and tired of Ruddy-duddy’s mealy mouthed lectures. It’s fine for him to talk about ‘working families’; there’s his missus a mega-millionaire, and him pretending that he gives a damn about working families. Without ABC and Fairfax, who can we rely on to inform and educate the masses. How will we be able to convince the Country that you and I are the answer to the maiden’s prayer?”.

“Hang on a minute, Julia-rulya”, Gregggy-weggy said. “Am I to understand that you are proposing that I should become King, and you my Deputy?”.

“Well, not quite, but close”, Julia-rulya replied. “You have to understand that your smiting of the witch of Charlton has left a very nasty taste in many mouths. People think your actions look like rank ambition and opportunism; and particularly now that you haven’t got ABC and Fairfax shouting what a man of integrity and compassion you are, you really must understand that you have brought yourself back to the field a fair bit”.

To say Greggy-weggy was a bit taken aback by this is to understate his reaction very significantly.

“You have just killed the King, and you think I need all the help I can get from a bunch of broken down half-wit has-beens. Just what sort of a megalomaniac are you?”, he asked scornfully.

“A female one”, she replied, as she dragged her kill back to the pile where Greggy-weggy’s kill was, and sort of tucked poor old Ruddy-duddy in among the other carcasses.

She then sat down on her haunches and gave her paws and chops a very good licking, adjusted her make up, and calm as you like trotted out of the cave to a waiting press conference.

There, as the picture of stoic grief, she was barely able to conceal her emotions, and gulping back tears she announced, “We won’t wait for ABC and Fairfax, they won’t be coming”. Then with head slightly lowered, voice tremulous with emotion, she said simply, “The King is dead, long live the Queen”.

Then, pushing her head up and taking a deep breath, she went on:

“Friends—for I count you all my friends at a time like this—in the cave behind me lie the remains of our Nation’s finest people: Ruddy-duddy, but not just him, Shazza-wazza, Billy-willy, Community, and ABC and Fairfax, all gone. And just as we were all outraged at the terrible treatment of the former Member for Charlton, let us be thankful that she didn’t receive the treatment that all of these stalwarts have.

“For friends, also in this cave is the Member for Charlton, red in tooth and paw, as it were, steeped in the foulness of his crime and utterly unrepentant, seeking anyone to put the blame upon so that he can fulfil his rampant ambitions!”.

Facing the stunned assemblage of the Nation’s finest reporters, “*sans* Fairfax and ABC” (as Fairfax might have said), Queen Julia-rulya went on. “This is no time for slow, clumsy judicial processes. I will summons a People’s tribunal, and we will do justice, here and now. Some of you big boofy News Corp and Channel 7 blokes go in there and bring out the foul murderer”.

Suffice to say, as so often happens in these things, where there is no strong constitutional basis for the action, and no Samuel Griffith Society advocating clear constitutional directions, justice was both done and not done. Greggy-weggy was found guilty and beheaded. Fair enough, I hear you say, but Julia-rulya wasn’t.

There are two morals in this tale, as there should be.

Before you cry wolf, beware of the fox.

But while being wary of the fox, be very, very wary of the vixen.

Thank you very much for allowing me to indulge my “penchant” (as Fairfax may have said) for fairy stories. We all of course realise that the foregoing is only a fairy story, don’t we, don’t we!

And I must give credit to John Stone for coming up with the real villain of this story. (I can hear many, though not here, saying of course he would, wouldn’t he). For he gave me Julia-rulya and also Ruddy-duddy.

John’s contribution to our public life continues.