

A comment on the jailing of Hanson and Ettridge in Australia

1 September 2003

The following letter was sent in response to "Australia: Jailing of One Nation leaders sets anti-democratic precedent" published by the World Socialist Web Site on 29 August 2003.

Former MP Pauline Hanson and a co-founder of her rightwing One Nation Party, David Ettridge were each sentenced to three years' jail without parole under the Queensland Criminal Code on August 20. They were convicted of trumped up charges of fraud related to the registration of One Nation as a party under Queensland's electoral laws in December 1997. The unprecedented sentence came after a protracted political and legal witchhunt orchestrated by the Howard government.

Dear Editor,

I read with considerable interest your analysis of the political and legal manoeuvring involved in the railroading to jail of the One Nation leaders. The whole sinister affair is deeply disturbing in its implications for democratic rights and due process of law.

There can be no doubt that Hanson and Ettridge are the victims of the grossest manipulation of the legal system.

As a lawyer practising litigation for 15 years, including in the High Court, I concur entirely with your assessment of the legal issues especially the abuse of the legal system perpetrated and the criminal justice system in particular.

The following matters highlight the egregious nature of the prosecution and its political character.

1. The very question of whether there was in fact a substantive breach of the Queensland Electoral Act (the Act) in the registration of One Nation in December 1997 is not beyond doubt. The registration, as you point out, was initially approved by the Electoral Commissioner following his scrutiny of the application.

2. Even assuming a breach of the Act, there could be

no doubt that whether "supporters" or "members", the signatures were a genuine imprimatur for registration of the party. Accordingly, it is hard to see that there was any fraud in the legally understood sense, that is, deliberate dishonesty, for example, by the submission of forged signatures. A reasonable conclusion must therefore be that any breach must be considered of a technical kind, which may indeed have been a reflection of the unusual structure and dynamics of the One Nation grouping.

3. Hanson and Ettridge were, following the conferring of registration after scrutiny, entitled to assume that the registration was valid and could properly claim reimbursement of electoral expenses provided for under the law.

4. Again, even assuming a breach, the Act clearly stipulated what penalty applied in the event of wrongful registration, namely, a maximum six months jail or \$1,500 fine. By such provision in the Act the legislature expressly provided what result may follow a conviction (there was clearly discretion up to six months). So the Act "covered the field". A citizen is entitled to expect that they will be treated in accordance with the relevant law.

5. The Act also stipulated a 12-month time limit for the government to bring an action for breach of the Act. That time limit had expired. The purpose of such time limits in this kind of legislation is to prevent the bringing of an action years after the event, placing a defendant at a significant disadvantage and to prevent official abuse of power.

6. No legal action was taken for a period of three and a half years after the alleged wrongful registration (apart from requiring repayment of the \$500,000). That was two and a half years after the expiry of the time limit in the Act (no doubt because there was a view held by many amongst the decision makers that no

lawful step could any longer be taken against Hanson and Ettridge).

7. The use of the Queensland Criminal Code was clearly implemented to circumvent the provisions of the Act. This is a particularly sinister and obnoxious abuse of government power and has all the hallmarks of a malicious prosecution. In fact, I am surprised that an application was not made to a higher court for a stay of prosecution on the grounds of abuse of process.

8. The use of section 408c of the Criminal Code in a matter concerning the registration of a political party is nothing short of extraordinary. That provision, in slightly varying forms appears in the criminal codes of all Australian states. It is a catch-all provision containing indeterminate categories of reference for the purpose of catching unusual types of fraud that do not come within definite established categories such as larceny or embezzlement.

However, the provision is one that is concerned with offences of property involving deception. A good example is the use of a bogus valuation to obtain a bank loan. The benefit or advantage is universally of a financial or property nature. I am unaware of any precedent of the usage of this provision for alleged electoral “fraud”. The use of the criminal code in this instance is extremely crude and cynical. It would be hardly surprising that the notorious Queensland criminal justice system and its police were the first to use it in this way.

9. As you point out even the judge was forced to concede that there was no personal or financial benefit to Hanson or Ettridge. One is left with the bewildering proposition that the advantage or benefit was the registration of the party. That can hardly be said to be any more an advantage or benefit than the right to vote. Rights under the law have never been considered an advantage or benefit—they are simply rights.

10. Finally, there was the sentence of three years. Perhaps the sentence highlights most of all the transparent political character of the entire sordid episode. The Act stipulated a maximum penalty of six months imprisonment for wrongful registration. For precisely that misconduct (but tried under different legislation) the judge imposed a sentence of six times that maximum! It is hard to imagine what kind of legal reasoning led to that outcome (if any).

All the major political parties are deeply implicated in

the jailing of Hanson and Ettridge. One Nation was viewed as an enormous threat by the established parties and to the whole political set up. Clearly neither party had any principled political opposition to the One Nation program. After all, nationalism, racism and xenophobia have all featured prominently in the histories of the Liberal/National and Labor parties.

The “fight” by the Liberals, led by Abbott and his fellow conspirators, against One Nation has more in common with a gangland killing of a rival chief than a political struggle.

One Nation is indeed a foul and repugnant reactionary grouping. But the issue here is one of democratic rights and due process according to law. I agree that Hanson and Ettridge should be released immediately and the charges dismissed with compensation for malicious prosecution and wrongful imprisonment.

Yours faithfully,

RH

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