

“NOT MERELY MALICE”: THE UNIVERSITY OF TASMANIA VERSUS PROFESSOR ORR

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In a society which condones corruption all become more or less corrupt, and the traditional ideals of a calling become proportionately corrupted. As a result, what is socially permissible, or even respected, in that society depends upon expediency, not ethics...

In democratic societies two callings accept full personal responsibility to society for knowledge and opinion and integrity of human relations. The Judiciary is one, the University is the other.

The members of the Judiciary may be dismissed only upon the motion in public of both houses of Parliament; the academic can be dismissed upon the motion in camera of what may be a virulent corporation...

The power of corporations over servants exercising personal responsibility for knowledge and opinion constitutes the greatest danger to the Universities as the intellectual sources of adaptation of societies to new problems...

A governing body of an institution ostensibly devoted to truth and justice is obviously corrupt if it obstructs, by every possible means, inquiry into its stewardship, when this is demanded by significant sections of the community it is supposed to serve...

Such a state of affairs is the antithesis of democratic processes and places the society in imminent danger.

R. D. Wright,
then Professor of Physiology at the University of Melbourne
and member of the Council
of the Australian National University

I must confess to a feeling approaching panic, a kind of fear such as I had never known even in war-time, during the blitzes, the fear of being without the protection of the law; and for the first time in my life I realized something of what it must be like to fall foul of the authorities in a totalitarian regime.

Professor Sydney Sparks Orr,
written during one of the Star Chamber trials
at the University of Tasmania,
quoted by W. H. C. Eddy.¹

Do you believe me. Do you think it is my childish streak coming through to hurt? It is what I feel, have always felt, whatever it is.

I am rather hungry... [In the context of the remainder of a long paragraph this hunger is simply for food.]

I don't know when I will be coming to town again. I foresee nothing as yet. I feel no desperate need to be with you, except when I think of Christ. No doubt this has very interesting psychological implications (I hope not too awful) which I am afraid I can't work out. Perhaps you and He have unconsciously swapped places in my mind. No doubt if you took a sample of my handwriting to a specialist he could give you some interesting psychological data too.

I had better stop as I become rather dramatic and peculiar as the night wears on...⁷

Such writings are reminiscent of the "crush" or the "groupie" phenomenon. This is not to ignore the real problem of sexual harassment on campus. The "groupie" phenomenon is the other side of the problem. Impressionable individuals (female or male, often though not always, teenagers) feel compelled to imagine, or in some cases to act out, fantasies of physical involvement with authority figures. This is so common now of the cults promulgated about pop-stars and movie idols that it is big business to media entrepreneurs (and it is passively accepted in Western societies in spite of the harm that is often done to youngsters who are introduced, not only to irresponsible sexual behaviour, but also to drug abuse and to the general nihilistic values of this self-indulgent set). The "groupie" phenomenon also manifests itself occasionally with other authority figures, notably teachers, athletes, fringe religious leaders, and even the occasional politician, caught with more than his charisma down.

The charge against Orr, of "seduction", carried weight among certain of Orr's academic colleagues and with the Supreme Court judge, but it did not evoke the sympathy from the community that the University administration had hoped.

On the whole, the students of the University of Tasmania supported Orr strongly, even defying the academic staff by inviting Orr to University functions. The former editor of the student newspaper (and later Student Representative to the Council) combined with a teacher to write:

Student observations show that Miss Kemp was an emotionally immature student who had developed a "crush" on the Professor. She made no attempt to disguise her efforts to place herself in his company. There is substantiation for the contention that Orr made definite attempts to avoid her.⁸

As guardians of the community's morals, it is of some importance that nearly all the religious leaders supported Orr. The Head of the Scots Kirk and the Roman Catholic Archbishop of Hobart were among those who proclaimed that Orr was innocent. The Anglican Bishop of Tasmania combined with Baptist and Presbyterian Ministers to make the following statement:

One of our number, the Bishop of Tasmania, whose name was closely associated with the origins of this infamous business, has publicly charged that six months before the dismissal University officers made scurrilous and malicious accusations against Professor Orr which he later found untrue and baseless, that he was misinformed and misused as a Bishop by the University lawyers, and that in his absence his name and position were used to give credence to much highly coloured evidence against Orr and an untrue statement relating to himself was made by the then Vice-Chancellor in the Court.⁹

We are grateful to Professor Polya for pointing out other evidence, not adequately emphasised by Eddy, which suggests Orr's innocence:

Even in... circumstances that counselled extreme caution, Orr had been indiscreet with all his

associates, female students in particular. He avidly sought human company; he had a philosophically absurd desire to be understood and liked; he had the teachers' and prophets' virtue or vice of burning with a desire to communicate. From my long acquaintance with him I feel that given a choice between a night with a beauty queen and the opportunity to talk to her for a week, he would have chosen the second alternative without hesitation.

He was physically weak and had a bad heart — hardly the type for the sexual acrobatics under the bizarre circumstances suggested during the evolution of the Kemp "diaries".¹⁰

However, in fairness to Miss Kemp, Polya also points out that she was *not* a willing witness against Orr, an erroneous inference one might make from earlier descriptions of her. It is not generally known that Miss Kemp was locked in her room and subjected to physical violence until she agreed to join the frame-up.

REACTION OVER THE SACKING

Initially the University of Tasmania's Staff Association did nothing to help Professor Orr, despite the fact that he had been instrumental in obtaining the Royal Commission and the reforms which the Staff Association had also wanted. At the time of Orr's dismissal the Chairman of the Staff Association was, as Eddy¹¹ details, also a member of two of the administrative committees which found Orr guilty. After this conflict-of-interest situation was resolved with new Staff Association officials, Orr then got belated support. Eddy writes: "No Australian University Staff Association gave Orr any support for his Supreme Court action, but small sums were contributed a few weeks before the High Court Appeal."¹²

Just before the formal dismissal action, Orr had become almost totally isolated (by methods summarised so well by Eddy and by Professor R. Douglas Wright in the next section of this chapter) that he even swallowed the Vice-Chancellor's bait: Orr was willing to resign in return for six months' salary. However, the University Council used that device to "prove" Orr's guilt and summarily sacked him.¹³

Some overseas academics quickly came to Orr's assistance, notably a number of staff from Orr's former university (Queen's University, Belfast) and also some eminent philosophers, such as Stephen Toulmin (then at Leeds University). In Australia, the most eminent academic to come to Orr's defence was Professor Roy Douglas Wright. It is the compelling words of Professor Wright, from his prologue to Eddy's book, that we use as the beginning of this chapter and to which we will return shortly. Orr also received support from the Australasian Association of Philosophy, who successfully organised a boycott of his vacant post until a settlement was reached in 1963.

Once mobilised, Australian Staff Associations made an important effort on behalf of Orr and finally persuaded the administration of the University of Tasmania to compensate for the damage. In October 1958, Professor R. H. Thorp and K. D. Buckley, as officials of the Federal Council of University Staff Associations of Australia (essentially the forerunner of FAUSA), issued the first report, condemning the University of Tasmania for convicting Orr on evidence that "would not hang a dog".¹⁴

After another committee's investigation, R. H. Thorp, D. W. Smith and E. L. Wheelwright (President, Vice-President and Acting Secretary, respectively, of the Federal Council of Staff Associations) announced in an official letter on 7 December 1960 the censure against the Administration of the University of Tasmania. That letter summarised the injustices done to Professor Orr as follows:

1. The University Inquiries were defective procedurally, in that they failed to accord "natural justice" to Orr.
2. The findings of the University Inquiries were not supported by adequate evidence.
3. In subsequent litigation, the University of Tasmania conducted its case against the dismissed professor in a manner which warrants explicit condemnation, as conduct totally unworthy of a university.¹⁵

Other organisations condemned the procedures used by the University of Tasmania. The Scots Kirk Session's summary of the University's inquiry into the allegations by Miss Kemp concluded:

This committee conducted an enquiry which denied every right of natural justice to Professor Orr, as did Professor Hytten's committee on the other allegations.

1. Professor Orr was refused a statement of the charges against him in sufficient detail to allow him to prepare a defence.
2. He was forbidden to attend at the University or interview any students and was thus greatly handicapped in the preparation of his defence.
3. He was refused time and opportunity in which to collect evidence for his defence.
4. His accusers were heard in his absence.
5. Witnesses whose evidence was mutually confirmatory were present together, prompting each other.
6. Even though no date was fixed for any act of misconduct alleged by Miss Kemp, Professor Orr was expected to prove immediately that these acts had not taken place.
7. He was refused a transcript of the proceedings.
8. He was refused the right to assistance by his legal advisers.
9. In the absence of his legal adviser, legally qualified members of the enquiry insisted on legal interpretations affecting his standing in the matter.¹⁶

There are no excuses for such violations of natural justice in procedures. If charges are grave, if the evidence for those charges is good, there is no need for a university administration to follow any procedures but those of scrupulous fairness. Ignorance is no excuse. University administrations have largely unlimited access to the taxpayer's purse. Administrations can, and do, buy the best legal advice. University administrations often have some of the most prestigious local legal figures sitting on their governing boards or in their law schools. Is the price of those connections, profitable to the legal elite in terms of self esteem if not financial rewards for themselves or their friends, that a blind eye is turned towards the blatant violations of natural justice in procedures that characterise other cases besides that of Professor Orr? This question has immediate implications, especially in the perspective of certain recent cases, for example that of Dr Spautz.¹⁷ When dismissal cases are brought into court, there is sometimes the plea of absolute privilege, that what is said is exempt from any challenge for defamation. The argument is that universities have their own quasi-judicial system and, like the courts and Parliament, for it to work it must have absolute privilege. That plea of absolute privilege should be challenged on the grounds of the absence of natural justice, or normal legal procedural safeguards to ensure a fair trial.

HOW TO ORGANISE AN ACADEMIC WITCH-HUNT

In the book on Orr one of the most valuable contributions is that both W. H. C. Eddy and R. Douglas Wright independently focus on what is the most disturbing aspect of the dismissal of Orr from the University of Tasmania, and which also characterises other Australian cases: the susceptibility of supposedly rational academics to participate in a campaign against a dissident, a campaign that epitomised irrationality. That campaign is summarised by Professor Wright, then Professor of Physiology in the University of Melbourne and a Member of the Council of the Australian National University:

- a. Defamation of the victim related to professional competence, mental balance, truthfulness, drinking habits and corruption of the young, i.e., juniors, by blasphemy, swearing, seduction, etc. This tends to isolate the victim and encourages defamation by his contacts who, then finding that they are at legal and financial risk, serve the corporation as "witnesses".

- b. Reward of collaborators from the victim's group, which may vary from slight social advancement to extraordinary promotion, usually with definite pecuniary advantage, which costs the governing group nothing personally.
- c. The welding together of the pack of prosecutors, preferably led by a judge and/or clergyman — this misleads the community as to the integrity of the prosecution.
- d. The proclamation at all stages of the authority of the corporation.
- e. The careful leaking of the defamation through personal links and loyalties to other corporations of similar community standing, e.g., Clubs, Churches, Chambers, Chapters, Associations, State Departments and especially the Press owners, so that the attack is broadly based and protected. In this way the subordinates of these organizations may be enlisted to become defamers.
- f. The victim is not told anything, but becomes disturbed by what people do not say, and more especially by the way people move individually or collectively in his presence. This communication of disturbance without conversation is the real basis of a feeling of isolation, and in its crudest form is "sending to Coventry".
- g. As a culmination of this stage most accused people leave the group, i.e., resign, and this is accepted as proof of guilt, whereas it is usually an indication of a feeling of loneliness, confusion, fear and unprotected helplessness. If they do not resign, then dismissal as a *fait accompli* is often effective.¹⁸

Wright is not the only person to suggest that University administrations reward supporters with "extraordinary promotion". Eddy provides examples (including the names, which we delete.) For example, "Mr A... gave the Vice-Chancellor a statement against Professor Orr... for the University Council, which received it and forthwith appointed him a Demonstrator in... *retrospective*..."¹⁹ Or, if you prefer, "Mr T..., one of Professor Orr's accusers, was made Professor T... just before Orr's dismissal, in a manner which called forth the most vigorous protest even from the Tasmanian Professorial Board".²⁰

Those who did not support the campaign had a tougher time. The Law School had been a centre of some support for Orr — and by three years after the sacking "every full-time member of the Law Faculty had resigned".²¹ One staff member who decided to stay in Tasmania, Associate Professor Polya, found himself blocked for further promotion, given a heavy administrative load, and reduced funds for teaching and research in his specialty.²²

Eddy perceptively notes how the accusers choose charges which project their own guilt on to the victim:

One method of confusing the issues was to accuse Orr of doing what was done to him, or at least of trying or of threatening to do it. This also confused attitudes.

Orr was accused of trying to dismiss Milanov — Milanov was promoted; Orr was dismissed. Orr was accused of threatening to wreck Townsley's career — Townsley was promoted; Orr's career was wrecked. Orr was accused of "at least technical violence", of threatening violence, or giving rise to a suspicion of a feeling of a little fear of violence. None of the accusers suffered violence; it was Orr who was assaulted, stoned and shot. Orr was accused of violating academic freedom — his dismissal was a gross violation of academic freedom; nobody's freedom was curtailed by Orr.²³

Allegations are made which may not only reflect the accuser's own weaknesses but the weaknesses of others in order to recruit supporters to the campaign:

The successful framers study men's vulnerabilities and exploit above all weakness which normally would be taken as irrelevant, personal prejudices, irritabilities, vanities, envies and the like. Those who wrong the victim, not those whom he wrongs, are those most hostile to him. Wrongs about which they will feel guilty are most effective. They will then have the vested interest in believing in the victim's guilt — it protects them from their own. This is one of the most

common patterns in the attack on Orr. Someone, they must believe, is guilty. Themselves or him?²⁴

Allegations involving sexual behaviour are especially useful in recruiting supporters to a campaign because they strike a deep resonance of repression (in the psychological sense of the word) in the minds of the frustrated and the salacious:

The emotions aroused by sexual charges were exploited to induce people to invent their own Kemp stories. For those who could not accept that he seduced her, there was the bait of the "Diary" to induce belief that she seduced him; for those who thought neither was proved there was the belief that he must have been indiscreet. Sexual charges to discredit leading champions of freedom are regular, deliberate parts of the pattern, which also exhibits a choice of words of a kind which encourages each hearer or reader to fill in the details for himself and make up his own story.²⁵

Once the critical mass of supporters has come together, the aggressive drive finds new targets, for example the dissident's students or prospective students²⁶, or the dissident's wife. As Eddy says:

Where men are not directly malleable under the pressures used... their wives become special targets...

It is not only in totalitarian countries that family and other close ties are exploited. It is done in "open" societies wherever the techniques of totalitarianism are used. Such methods are especially potent in isolating a victim. Those who wish to manifest solidarity with him are not merely going into a tiny minority group... they are also inflicting on their wives and families isolation and unpleasantness.²⁷

"A VIRTUOSITY IN EVIL-DOING FOR WHICH IT WOULD BE DIFFICULT . . . TO FIND A PARALLEL"?

Both Professor R. Douglas Wright, in the prologue, and W. H. C. Eddy, towards the end of the book, suggest that what happened at the University of Tasmania is unique. Eddy, in the paragraph which provides the title to our case history, argues:

They condoned and encouraged violence, covering it by lying; they protected one set of false charges by another, evading clarification of old issues by ever new slanders. No exposure, no harm suffered by individuals or the institution for which they claimed responsibility, deflected them. Publicly condemned by a Royal Commission, after a thorough probing of the facts, they perpetuated their power and ruthlessly struck down the man whose voice had led to that enquiry, and by every device of propaganda, at public expense, sought to destroy him. They then systematically re-wrote history, falsely belittling the role of the man to whom they had falsely attributed all the trouble. They displayed not merely malice, but a virtuosity in evil-doing for which it would be difficult, within their spheres of operation, to find a parallel.²⁸

But, is it "difficult... to find a parallel"? While a case will always have some unique elements, might not one see many parallels when different case histories are compared? That exercise is left for the reader.²⁹

The administration of the University of Tasmania resisted the censure until December 1963, when it finally settled with the Federal Council of University Staff Associations of Australia. The terms of the settlement included the payment of £16,000 to Professor Orr (at that time this would have been fairly close to the remainder of his salary after tax), plus a separate payment of all Orr's court costs. In addition, the settlement also required: that the Australian Association of Philosophy lift the ban on filling the vacant Chair of Philosophy at the University of Tasmania, that the censure from the Federal Council of Staff Associations

be removed, and that "the University undertakes to refrain from legal or other action directly or indirectly against Professor Orr or his supporters".³⁰

At the end of the document announcing the terms of the settlement, the Federal Council of University Staff Associations of Australia also stated: "that the academic rehabilitation of Professor Orr is essential and the Federal Council assured him of its continued support and assistance to that end".³¹ Unfortunately, it was too late for Orr's "rehabilitation". The strain of the original injustice and the initial lack of support had taken their toll. He was an ill man by the time the settlement was reached and he died shortly afterwards.

Orr is dead but the issues live. The problem is not just the abuse of administrative power. That abuse requires compliance. It is not merely the malice of power-seeking personalities. It is the ability of certain intellectuals to rationalise any injustice so long as their own pursuit of glory or comfort is not disturbed. For the ability to rationalise, we let one of the academics quoted by W. H. C. Eddy have the last word:

If he had had sexual relations with the girl, then there would have been an issue of academic freedom worth fighting for. But Orr will not support that view, so he was unworthy of support.³²

References

1. W. H. C. Eddy, *Orr* (Brisbane: Jacaranda Press, 1961), pp. xiii–xv, 261.
2. The dismissal of Dr Spautz from Newcastle University is given a short summary in the chapter "Archives of Suppression".
3. The removal by "early retirement" of Professor Arthur Burns from the Australian National University is given a short summary in the chapter "Archives of Suppression". What is important here is that an earlier court decision, which basically upheld the concept of tenure and, in particular, the right of an individual to be given the reasons for his removal, was overturned by a sitting of the Full Bench of the Federal Court: Fia Cumming, "Worrying impact of court rule", the *Australian (Higher Education Supplement)*, 22 December 1982, p. 17. A further complication is that Professor Burns' health has improved and he believes that he is fit to return to work; it is of interest that he had originally been given a pension of half professorial level and was offered more if he would go quietly, but he refused it: Fia Cumming, "Staff association threatens legal action if professor isn't reinstated", the *Australian (Higher Education Supplement)*, 17 August 1983, p. 18.
4. Eddy, op. cit., p. 10.
5. *ibid.*, p. 11.
6. *ibid.*, p. 133.
7. *ibid.*, pp. 482–4.
8. *ibid.*, p. 607.
9. G. Cranswick, M. Holly and A. Christie-Johnson, "Statement issued by the Bishop of Tasmania on 18 April, 1963", *Vestes*, vol. 6, issue 2 (June 1963), pp. 153–6.
10. J. B. Polya, in a ten page document dated 31 January 1984, with minor changes in punctuation and paragraphing, comments upon an earlier draft version of this manuscript. Professor Polya tries to be as even-handed as possible, pointing out that Orr was not without serious faults, though not justifying the treatment he received.
11. Eddy, op. cit.
12. Eddy, op. cit., p. xix.
13. We have reason to believe that this strategy has been attempted in other Australian cases, judging from comments made to us by individuals subjected to administrative harassment and judging from our own experiences.

14. R. H. Thorp and K. D. Buckley, quoted in Eddy, op. cit., p. xix.
15. R. H. Thorp, D. W. Smith and E. L. Wheelwright, "Letter", *Vestes*, vol. 4, issue 1 (March 1961), pp. 69–87.
16. Scots Kirk Sessions summary, quoted in Eddy, op. cit., p. 265.
17. See note 2 above.
18. R. Douglas Wright, "Prologue", in Eddy, op. cit., pp. xiv–xv.
19. Eddy, op. cit., legend on photograph facing p. 157.
20. Eddy, op. cit., p. 680.
21. Eddy, op. cit., p. 668.
22. Richard Davis has written to the authors: "The Polya case, incidentally, seems almost as bad as the Orr case in some ways". (Letter dated 3 February 1984.) Richard Davis is working on a more extensive historical study of the University of Tasmania. See, for example, "Free Academics or Council Servants? Tasmanian University Staff Before the Murray Report", Australian and New Zealand History of Education Society, 13th Annual Conference Proceeding, vol. 1 (1984), pp. 49–61.
23. Eddy, op. cit., pp. 596–7.
24. Eddy, op. cit., p. 587.
25. Eddy, op. cit., p. 594.
26. See note 13 above.
27. Eddy, op. cit., p. 589. The second author encountered much the same experience at the University of Adelaide. At one time or another, at least three different staff members expressed surprise that she stood by her husband. Such openly expressed attitudes suggest that there is a serious lack of moral fibre among some Australian academics.
28. Eddy, op. cit., p. 582.
29. On several occasions we encountered from Staff Association officials or other academics a fascinating phenomenon. On the one hand, they were scathing in their criticism of the University of Tasmania over the Orr case (although sometimes not very knowledgeable about the details). On the other hand, they were very defensive about local cases which had many of the same elements, unfair procedures, witch-hunting, and a general reluctance to admit that the charges were insubstantial or inaccurate. Orr did directly challenge the authority of the administration at the University of Tasmania in a way that other dissidents at other Australian universities did not even remotely approach. Thus, in a way, the heavy-handed responses in some other cases were even less justified. True, not all of the other dissidents were sacked — thanks basically to post-Orr statutes. But the treatment otherwise received differs little from what happened to Orr.
30. *Vestes*, vol. 7, issue 1 (March 1964), p. 78. (Italics have been added by us.)
31. *ibid.*, p. 79.
32. Eddy, op. cit., p. 684.

Acknowledgements

We thank Dr Richard Davis, Department of History, and Associate Professor J. B. Polya for their useful comments and corrections on our manuscript. Among the comments made by Professor Polya is one that is especially pertinent to other cases as well:

"Manwell and Baker should bring out that academic persecution affects not only those who criticise the scum risen to the top of the pseudoacademic soup but that innocents suffer from old vendettas carried on by new administrators". One of the most frightening observations in several cases is how new staff and new administrators, not involved in the original witch-hunt, join to defend the old errors and injustices. The only explanation for such behaviour is

that the pressures on certain academics, or perhaps their basic psychodynamics, demand a release of tensions on to a convenient scapegoat; it may also be that, by showing a willingness to victimise a scapegoat, they ingratiate themselves with local power elites.

It may well be that this lack of character and compassion is so common that it has contributed to another curious phenomenon of Australian academic life. Since 1975, Australian academics have sustained severe budget cuts, some caustic (and partly unfair) criticism in the mass media (e.g., Peter Samuel, "The Scandal of our universities", *The Bulletin* (Sydney), 12 March 1977, pp. 14–18), and several examples of unwarranted political interference (e.g., curbs on overseas study leave, attacks on tenure, and the Hidaka case). Recently, there has been the apparently unprecedented situation where the federal government took back part of a salary increase that had been awarded through its own machinery of an industrial tribunal. Although a few voices have been raised in FAUSA, the general academic response has been indifferent. Budget cuts are simply used as an opportunity to punish dissidents or get ride of untenured staff, rather than to curb waste. In contrast, in the UK academics have shown much more solidarity — and have been more effective in dealing with the Thatcher Government, a government with far more serious economic problems than the Australian Government has.