

John Hyde

92.

Republished

24-8-84

The Paddington Bear Affair should say something to the Labor Party, and to us all, about one of the consequences of over-intrusive government. Even when Mick Young's account of his peccadillo is accepted he remains guilty of the most nauseating hypocrisy. It is for that he should resign, not because he breached a customs regulation which no truly free society would have decreed. Parliamentary democracy will not function well by double standards, the Fates have hoisted him by his own petard and they have done so for us all to see. By being caught out Mick Young has actually served the Parliament well.

If enough people see Mr Young's embarrassment as a likely consequence of an over-regulated society, and say that there but for the grace of God and a different station there go I, at the end of the day we may also say Mick Young has inadvertantly served us all well.

(The most common means by which the Government induces people to do things which they would never do voluntarily - like pay customs duty - is to require them to fill out forms accurately declaring the individual's situation in relation to the rules.) The more rules: the more forms. This saves the authorities the need to snoop into every suitcase, every home, car, business, fowl house, surgery, etc. But they must make random checks, and back those checks with penalties. If they don't, we will not obey the rules, and society will drift back toward freedom of choice. The best known and possibly the most extreme example of a society in which this has happened is Italy. The impunity with which Italians break the law is said to account for a more respectable rate of economic growth in Italy than in Australia.

Law breaking is bad, in that it brings even those laws which prevent violence into disrespect, and, in that arbitrary law breaking is often even more discriminatory and unfair than arbitrary laws. However, "civil disobedience" has sometimes led to a better world. I don't see Mr Young in the same light as Thoreau, Mahatama Ghandi, Mr Penheleric who is making such a brave stand against Victorian shopping hours legislation, the NSW unlicensed egg and milk producers, or the Vietnam draft-dodgers, but had he intentionally failed to declare that bear and deliberately sought the publicity he might have been so viewed.

Since Mr Young, a responsible and presumably intelligent man, could unintentionally make a false declaration, we must ask whether the form filling process itself is not at fault. Who could honestly say that all the thousands of declarations he has made are accurate? Were it not for his hypocrisy the Minister's offence should be seen as quite minor. He did no violence to any person, whether he violated property is at least debatable, and by reasonable canons a case can be made that the law he offended was unjust. Yet without severe penalties and police state powers to prevent smuggling, Australia's whole industry protection system breaks down.

Politicians who impose their will, by law, on others must resort to documentation, penalties and ultimately police. It is the clearest double standard to defend Mr Young on the ground that his offence was inadvertant or trivial but to support a law, like Medicare, which imposes draconian penalties on citicizens who fail to fill in forms accurately.

Now consider the case of a General Practitioner who refers a patient to specialists. Let us assume that the general practice is in the country and the specialist practice has several partners and is in a city as much as one thousand miles away.

On pain of \$10,000 or five years gaol the GP fills out a little form, a referral slip. His first problem is that the referral slip supplied to him by the Department of Health is not consistent with section 10(3)(d) of the Health Insurance Regulations pursuant to the Health Insurance Act 1973. The GP may not recently have read this act and its attendant regulations - it is over an inch thick - and he certainly will not have absorbed all its detail.

His next problem is that, not being as well versed as the specialist in the patient's problem, he does not always know whether he is referring the patient for "An Opinion", "Immediate Treatment" or "Continuing Management of Present Condition" yet 10(3)(d) says the GP must choose. Dr Daly, the Regional Director of Health in WA, agrees that the situation "is quite absurd" and has suggested that the referring doctor in effect ignore 10(3)(d) and the penalty by bracketing all three options.

The next problem is that the refering doctor is not always able to specify which doctor in a practice will see his patient, particularly if the case is moderately urgent.

If the Health Department, with time on its side, could not get it right it is not surprising that rushed GPs often get it wrong. GPs faced with a piece of paper which is not relevant have been vaguely ticking it, not signing it or leaving sections blank. Medicare has then denied specialist benefits to the referred patients. Health Department officers have called on practices and politely insisted that the forms be completed. The Department's officers must police the law as they are agents of the system. Medicare cannot function without departmental officers who are policemen by another name anymore than the government can favour protected industries unless some of the Mick Youngs are in fact caught.

It is surely not intended to charge every doctor who makes a Paddington Bear type error with an offence carrying \$10,000 penalty. Yet if the big penalty is taken from the law then Medicare will be subject to costly overuse. Departmental officers must decide who is to be prosecuted, or bullied with the threat of prosecution. Bullying is worse since it does not invite the scrutiny of the courts. The principle of certainty before the law is abandoned because that principle cannot be reconciled with Medicare. The Doctors' circumstance is deplorable but it is not unique as evidenced by Mr Young and his bear.