

ATTACKING THE ‘NEW RIGHT’, AUSTRALIAN LAW REVIEWS AND THE PEER REVIEW PROCESS

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In a just published issue in one of Australia’s oldest and best-known law reviews, the *Federal Law Review*, Dr Harry Hobbs of the University of Technology Sydney has written an article that comes out swinging¹ (read on to see that that is, if anything, a mild description) against critics of three High Court of Australia cases. The three judgments are separated by 28 years in total,² but Hobbs lumps them — or rather various critics of any one of these three decisions — together as part of a supposedly coherent and like-minded whole. I am one of those thus lumped, which is why I am taking the time to offer up this brief reply, though there are dozens of others also so categorised.

Accordingly, I must begin by making it clear in this reply that I speak solely for myself, not for any of the numerous others who are the objects of Hobbs’s wrath (for wrath it clearly is). Let me also set out for readers the label Hobbs chooses to use in order to group or lump together or classify all those whose views about these three cases he dislikes. That label is ‘New Right’. In a 26-page article Hobbs uses the term no less than 52 times.³ As so many different and varying writers are aggregated or amassed together under this one tag or epithet, readers would expect to be given some detailed account of what Hobbs sees as their shared outlooks or perspectives on law or politics that warrants the use of ‘New Right’ as applied to them. This expectation is met in three short paragraphs.⁴ Alas, virtually all of those three paragraphs is devoted to the provenance of the phrase or term — how it first emerged after WWII; when it surfaced in Australia; under whose

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Editors’ note: The decision to publish this reply was taken in consultation with other members of the TC Beirne School of Law, in accordance with our standard procedures for submissions (such as comments and replies) that are not amenable to blind peer review. The UQLJ considers viewpoint diversity to be a critical feature of academic discourse and we publish this reply in that spirit.

¹ Harry Hobbs, ‘The New Right and Aboriginal Rights in the High Court of Australia’ (2022) *Federal Law Review* (forthcoming).

² The three cases on which Hobbs focuses his article are *Mabo v Queensland (No 2)* (1992) 175 CLR 1 (‘Mabo’), *Wik Peoples v Queensland* (1996) 187 CLR 1 (‘Wik’) and *Love v Commonwealth* (2020) 270 CLR 152 (‘Love’).

³ Hobbs (n 1) 1, 2 (two times), 3 (eight times), 4 (seven times), 6, 8 (two times), 9 (two times), 11, 12, 13 (five times), 14 (two times), 16 (two times), 17, 19 (two times), 20, 21, 22, 23 (two times), 24 (four times) and 25 (six times). If I missed any times the term was used, I apologise.

⁴ See Hobbs (n 1) 3–4.

Prime Ministership it became the dominant force within Australian conservatism (author's answer, John Howard); that sort of thing — and to how New Right adherents are generally, but not always, distinct from 'constitutional conservatives'. Here Hobbs also asserts that '[r]ather than [being] worried about judicial activism per se, the focus of New Right criticism is outcome oriented'.⁵ This general claim is re-asserted on pages 13,⁶ 15,⁷ 16,⁸ 19⁹ and 21,¹⁰ though no direct evidence is ever offered in its support — nothing more than repeated Hobbsian 'this suggests' pronouncements, possibly linked to inferred or guessed at states of mind, but never accompanied by any careful (or non-careful, for that matter) consideration or analysis of specific authors' works.

Put bluntly, Hobbs's assertion here amounts to little more than a blanket charge of bad faith but without the usually required extended exegetical analysis of the attacked writer's (here writers') work to try to back up such ambit claims and make them plausible. That blanket charge of bad faith when directed my way is one that I whole-heartedly reject. Indeed, this repeated assertion of caring only for outcomes but not for defensible interpretive methods is, in my own case, specifically contradicted by my writings about Australia's so-called 'implied freedoms' jurisprudence. I have made plain in various peer-reviewed law review articles, and elsewhere including in newspapers and weeklies, that in general I like the outcome of those judicial 'implied freedoms' innovations, and would support them if they were the result of laid-down-by-the-legislature rules (being one of the most pro-free speech law professors in Australia, if I do say so myself), but nevertheless that I believe that the interpretive approach used by the High Court to achieve those freedoms is appallingly self-serving and looks to many, including me, to collapse into judges simply 'making it up' at the point of application under the guise of performing constitutional interpretation.¹¹

⁵ Ibid 4. Hobbs goes on, in the next sentence, to tell readers that despite how 'New Right critics may frame their censure', he will soon tell readers what 'their [ie those in the New Right's] real concern appears to be'.

⁶ 'The ferocity of New Right claims suggests their real concern lies with the outcome of High Court decisions': ibid 13.

⁷ 'Such accusations suggest that the real source of complaint was the outcome of the decision rather than judicial methodology': ibid 15.

⁸ It 'suggests that Allan's criticisms may well have less to do with the methods of constitutional interpretation adopted by the majority than with the outcome of the decision itself': ibid 16.

⁹ This 'reveals that New Right criticism fixed on the Court may be clothed in legal argument, but much of it is political in nature, and should be understood as such': ibid 19.

¹⁰ New Right 'critics were keenly aware of their larger political motivations': ibid 21.

¹¹ For just one such explicit reference see James Allan, 'Australian Originalism without a Bill of Rights: Going Down the Drain with a Different Spin' (2015) 6 *The Western Australian Jurist* 1, 24: 'Now to be perfectly blunt, I like the outcome of this ACTV case; I am at the far end of the spectrum in terms of wanting as much scope as possible for people to speak their minds, including scope to pay for broadcast time to do so in an election campaign. But liking the outcome of a case has nothing to do with thinking that the interpretation of the Constitution that achieved that outcome

As far as what the label ‘New Right’ actually encompasses (as opposed to its provenance or how its adherents are, says Hobbs, really focused on matters distinct from what they claim to be focused on), and despite Hobbs using the term at least 52 times in his article, the reader is left largely in the dark. All we are told substantively is given in one sentence. We are told that what will mark out ‘New Right’ adherents is that such writers:

[are distinguished] from the ‘Old Right’ by a commitment to economic liberalism and a robust defence of the free-market, and from social democratic parties by an emphasis on traditional conservative policies of law and order and support for the family unit, [and hence that they advocate] for a ‘muscular conservatism’.¹²

Now leave aside the fact that ‘the Old Right’ label is itself never defined or delineated by Hobbs. The main problem here is that these generalised markers of support for economic liberalism, for the free-market, for law and order, and for the family unit are pitched up in the Olympian heights of moral abstractions, where they finesse all disagreements on a host of law and constitution-related matters. That means that Hobbs’s account of what it means to be a member of the ‘New Right’ has next to no worth in terms of helping the reader distinguish anyone from anyone else, at least not on the right-of-centre side of law and politics — the side, as this article makes abundantly clear, that is opposite to that of Dr Hobbs himself. Just about any right-of-centre thinker or writer on constitutional law (and a fair few others too) can loosely be said to favour the free market, law and order and the family. That will be true while at the same time this entire side or half of the political and legal divide will be riven with widespread disagreement on all sorts of detailed interpretive and constitution-related matters. Meanwhile, what does and does not amount to ‘muscular conservatism’ is never revealed by Hobbs and anyway is very much in the eye of the beholder, or in this case condemner.

Put even more bluntly still, my grievance here is that Hobbs uses the label ‘New Right’ as a patent term of abuse. He defines it so exiguously that it could apply to all, or to none, of those who differ from him in the realms of constitutional law and politics.¹³ It is a version of the *ad hominem* fallacy, just put

was remotely plausible.’ For just a small sample of my peer-reviewed views on the implied freedom jurisprudence let me here cite two extremely recent pieces of mine published where referees for the *Federal Law Review* might have been expected to see them: James Allan, ‘Constitutional Interpretation Wholly Unmoored from Constitutional Text: Can the HCA Fix its Own Mess?’ (2020) 48(1) *Federal Law Review* 30; James Allan, ‘Arcioni, Crowe and Allan on Constitutional Interpretation: A Word of Crowes’ (2021) 49(4) *Federal Law Review* 499.

¹² Hobbs (n 1) 3.

¹³ For what it is worth, many conservatives would give quite a different account of the views shared by those falling within the ambit of a ‘New Right’ classification. See, for just one such differing view, that of John O’Sullivan who has been (*inter alia*) a speech writer for Margaret Thatcher, an

forward in the plural rather than the singular form. And before leaving this initial point I might also note that in two further instances Hobbs uses the label 'Hard Right',¹⁴ rather than 'New Right', yet in both such instances he never even attempts to define the phrase in any way. The reader is simply meant to realise that it is not good, definitely not good, to be someone whose views fall under its aegis.

Before I move on to make a few observations about Australian law reviews today, and about the peer review process, I think it is relevant to give readers a taste of the sort of adjectives and nouns Hobbs uses to describe the many New Right writers he discusses (or more accurately condemns). Here is a small sample, with more in the related footnote:

'overblown', 'disingenuous', 'legal baselessness', 'political ferocity', 'inflammatory', 'incendiary', 'provocateur', 'caustic', 'beyond the caustic', 'self-evidently absurd' and 'vulgar'.¹⁵

As I said, that is but a sample of how Hobbs describes and characterises the views and writers with whom he differs. I hope it suffices to give readers a general sense of the manner in which he attempts to make his case. Likewise, and perhaps predictably, when it comes to views with which Hobbs happens to agree, readers can find these described in such terms as that they were 'expertly documented'.¹⁶

When it came to criticising me in his article,¹⁷ Hobbs cited one blog post and one podcast I had done (the former growing out of the latter) on *Love v*

editor of the American *National Review* publication, Conrad Black's first editor of Canada's *National Post* newspaper, a fill-in editor of Australia's *Quadrant* monthly, and the author of *The President, the Pope, and the Prime Minister: Three Who Changed the World* (Regnery, 2008). If this does not make O'Sullivan the best connected conservative in the anglosphere it certainly puts him right up there. O'Sullivan recently gave a much different account of what the label 'New Right' might encompass. See John O'Sullivan, 'Athwart History' (2022) (Summer) *Claremont Review of Books*, reviewing Matthew Continetti, *The Right: The Hundred Year War for American Conservatism* (Basic Books, 2022). Other than those he is attacking in this article, Hobbs appears never to cite any writers, in the main text or the footnotes, who are sympathetic to conservative outlooks, be they political or constitutional — not even in line with the standard 'but for a different view see X, Y or Z' practice.

¹⁴ See Hobbs (n 1) 14, 16.

¹⁵ Ibid. Those words can be found at 1 (abstract), 1 (abstract), 4, 4, 11, 12, 14, 15, 15, 18 and 20, respectively. Hobbs also describes those with the views he dislikes (ie the so-called 'New Right' writers he attacks) as seeking 'to inflame the issue' (at 6); as having 'an inability to conceive' (at 11); as being driven by a 'political motivation' (at 16, the pot calling the kettle black notwithstanding); as 'cloth[ing their criticisms] in legal argument' (at 19); as writing in terms that were 'less inflammatory but no less inaccurate' (at 23); as dealing in '[i]naccuracy [which] is a feature not a bug' (at 23); as 'misrepresent[ing] the law to make a political point' (at 25); and with a 'legal baselessness and ferociousness' (at 25).

¹⁶ Hobbs (n 1) 16.

¹⁷ Ibid n 124. Hobbs earlier mentions one of my weekly columns for the *Spectator Australia* when he there takes issue with a criticism I made of the Labor government for withdrawing its appeal in *Montgomery v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (High

Commonwealth ('Love'),¹⁸ which was the third of the three High Court of Australia cases whose sundry and disparate critics were the subject of Hobbs's ire in this article. Of my hundred plus law review articles he cited only one, in passing and from a decade before, as evidence that I had previously criticised the Justices of the High Court of Australia for adopting an implausible approach to constitutional interpretation that amounts to judicial usurpation or judicial activism.¹⁹ There was no critique of any of my arguments or analyses in any of my peer-reviewed work or book chapters or books. That was all ignored as Hobbs's focus was solely on a podcast (turned into a blog) I had done on one of the three High Court of Australia cases. (As it happens, I have never written on *Mabo* or *Wik*, the two earlier High Court of Australia cases decided 28 and 24 years before *Love*, respectively, which combine to make up the Hobbsian trinity.) Furthermore, Hobbs solely refers to the first half of my analysis of the *Love* case in that podcast, my charge that the majority judges were making things up out of thin air, and were doing so by leaving the realm of orthodox constitutional law analysis. I argued the High Court majority Justices in *Love* seemed to ground their *ratio* — when it came to whether a non-citizen person claiming Aboriginal status could be deported — on concepts such as 'otherness', 'deeper truth', 'connection [to Australia that] is spiritual or metaphysical' and more of the same, which were then combined together to claim that judge-made law that purported to speak in the name of the Constitution now recognises 'that Indigenous peoples can and do possess certain rights and duties that are not possessed by, and cannot be possessed by, the non-Indigenous peoples of Australia' and that 'different

Court of Australia, S173/2021, commenced 29 November 2021). I wholly stand by that criticism, for what it is worth, and know of no similar examples of a government pulling a case after it has been argued and judgment is imminent, not anywhere else, ever, in Canada, New Zealand, Britain or the United States.

¹⁸ *Love* (n 2). My position on that case, which is one of the things that triggered Dr Hobbs to write his piece, is set out fully in an article that was accepted for publication before I saw this piece in the *Federal Law Review*. James Allan, 'Wokery and High Court "Otherness"' (2021–2) 12 *The Western Australian Jurist* 31–48.

¹⁹ Hobbs (n 1) n 125. In fact, I have set out my critique of the High Court on this score many times, in various places. In addition to those cited in n 11, above, a further small sample might include James Allan, 'Portia, Bassanio or Dick the Butcher? Constraining Judges in the Twenty-First Century' (2006) 17(1) *King's College Law Journal* 1; James Allan and Nicolas Aroney, 'An Uncommon Court: How the High Court of Australia has Undermined Australian Federalism' (2008) 30(2) *Sydney Law Review* 245; James Allan, 'Implied Rights and Federalism: Inventing Intentions While Ignoring Them' (2009) 34(2) *University of Western Australia Law Review* 228; James Allan, 'Not in for a Pound — In for a Penny? Must a Majoritarian Democrat Treat all Constitutional Judicial Review as Equally Egregious?' (2010) 21(2) *King's Law Journal* 233; James Allan, 'The Activist Judge — Vanity of Vanities' in L Coutinho and S Smith (eds), *Judicial Activism: An Interdisciplinary Approach to the American and European Experiences* (Springer, 2015), 71; and — the one Hobbs cites in passing — James Allan, 'The Three 'R's of Recent Australian Judicial Activism: Roach, Rowe and (no) 'Rigalism' (2012) 36(2) *Melbourne University Law Review* 743.

considerations apply ... to ... a person of Aboriginal descent'.²⁰ In no way at all do I resile from my claim that in *Love* one sees some of the most egregious forms of judicial usurpation and judicial activism going. Put bluntly, it is one of the worst reasoned top-court cases I have ever read, from anywhere in the Anglosphere, in more than a quarter century of slogging through myriad constitutional law cases from Canada, the US, Britain, New Zealand and here in Australia. In the second half of my analysis of the *Love* case — remember, the Hobbs lament is effectively focused solely on one podcast I did — I go on to detail how heads of power interpretation related to federalism is the core constitutional issue that lies at the heart of this deportation case. One must focus on whether the Commonwealth Parliament has the power to legislate to deport non-citizen Aboriginals who otherwise meet other grounds for deportation. And if not, why not? And if not, do the States not have this power in keeping with bog-standard federalism principles? And in what federalist world would states ever be given the deportation power? I then argue that the majority Justices in *Love* wholly ignore the traditional or orthodox approaches to federalism heads of power judicial review in Australia. Now I have no idea whether Hobbs agrees with that federalism analysis of mine, or not. I have no idea because Hobbs never in any way takes issue with, or disputes, my analysis of the federalism dimension to the *Love* case. In fact, he never mentions it at all. Not once. And really, my podcast was not even an hour long so presumably he was aware of it.

I say again, therefore, that I was surprised Hobbs's article had successfully made its way through the peer-review process and been published in an established, well-known Australian law review. Remember, many other supposed New Right adherents are given the same cursory treatment as I by Hobbs. A good few of them are well-known right-of-centre politicians such as former Prime Minister John Howard, former Prime Minister Tony Abbott, Peter Costello, Tim Fischer, Amanda Stoker, John Stone and James Paterson. So let me ask this. Does any reader believe for one second that an article exactly like Hobbs's, but instead a mirror-image one directed against the left-side of politics and against left-leaning views of constitutional interpretation that criticised some exiguously and ill-defined 'New Left' caste of writers (and leading Labor politicians) in the same cursory and perfunctory terms, would ever make it through the peer-reviewed process? Be honest. This Hobbs article has 'political hit job' written all over it. Now to lay my cards fully on the table, I am not in any way against those sorts of pieces. They are part and parcel of the back-and-forth of democratic politics in my view. I just say that they do not belong in peer-reviewed law journals, at least not in any that wish to retain some semblance of political neutrality and to avoid

²⁰ Those are cites from Justices Gordon and Nettle. All the specific case citations for those quotations, and more again, can be found in Allan (n 18). Of course, it is plain that Hobbs could not have known about this upcoming publication of mine. It is also plain, however, that I strongly disagree with Hobbs's assertion that in *Love* 'the Court engaged in orthodox processes of constitutional interpretation': (n 1) 15. That Hobbsian assertion is baldly stated. It is not defended with argument.

the appearance of being overtly politicised, not to mention expecting authors to read and take seriously the relevant views (so more than half of one podcast, say) of those they are criticising. Again, there is in my opinion zero chance that any mirror image article to this one — an anti-matter Hobbsian-type article that instead attacked a largely undefined New Left and Hard Left in the exact same terms and with precisely the same lack of balance and unconstrained adjectival abandon and lack of interest in writers' wider bodies of work — would ever be accepted for publication in the *Federal Law Review*. Or in any of the G8 Australian university law reviews. Or, frankly, in any law review in this country and probably in any one in any country in the developed Anglosphere. The referees would laugh it out of consideration or pillory it relentlessly for not meeting the established academic journal standards — whether you or they like those standards or not. But when it is an attack on conservative authors, well, standards can change, right?

I make that above claim about being surprised this article made its way through the review process with some degree of experience of law reviews. I have spent nearly two decades of my academic career being the sole editor of peer-reviewed law reviews. From 1998-2004 I was the sole editor of the *Otago Law Review* in New Zealand. And for over a dozen years here in Australia, from 2006 until 2018 (when I resigned in protest at changes being forced on the journal), I was the sole editor of the *University of Queensland Law Journal*. I have also refereed manuscripts for well over a dozen law reviews around the world (including the *Oxford Journal of Legal Studies*, *Legal Theory*, *Journal of Law and Society*, *McGill Law Journal*, *New Zealand Universities Law Review*, *Melbourne University Law Review* and even the *Federal Law Review*, the publisher of this article by Hobbs). At the risk of being seen to be immodest I believe I can be said to have a passing understanding of the peer review process in law and with the expected standards to be brought to bear, as well as with the task of finding peer reviewers.

I mention that because, on reading Hobbs's article, I promptly contacted the current general editor of the *Federal Law Review* and asked for a 'right of reply'. Three days after sending my emailed request I received a reply from him, stating that, while I would be welcome to submit a paper to that Journal, it would be subject to the normal review process. In the alternative, the general editor suggested, I could attempt to publish my reply in another journal or communicate my concerns directly to the author. He also noted that he was unaware of any deficiency in the review process.²¹

For readers who have managed to get this far it goes without saying that I disagree with the current general editor's assessment of the review process used in this instance. Nor do I believe it is any easy task to find some other law review willing to publish a short reply detailing perceived deficiencies in the *Federal Law*

²¹ Email from the General Editor of the *Federal Law Review* to James Allan, 8 August 2022. On file with the author.

Review's review process. Readers will see that I was unsuccessful in persuading that journal to run this reply. Let me state publicly, though, that I am very grateful to the *University of Queensland Law Journal* for running my reply and showing its commitment to open debate.

Here is another aspect of my charge. If I am correct in claiming there is an asymmetry at work as regards the peer-review process — that an anti-Hobbs type piece aimed at the left-side of politics and constitutional thinking would have zero chance of being judged suitable for publication — then an interesting question is why there is this lop-sided or one-sided asymmetry. My own take on that is that it is closely related to the collapse of viewpoint diversity on campus. The vast preponderance of public law academics (heck, any sort of law teachers) vote for the left-side of politics. This is well-documented in the United States where political donations are public information and where there is much survey data.²² I believe it is equally true here in Australia. In fact, I could count on one hand, with four fingers, the number of constitutional law professors (including me) who are publicly against the proposed constitutional amendment known as 'the Voice'. And remember, Hobbs's last claim in his article is that the many New Right writers he attacks are not just wrong in opposing this constitutional initiative; he looks inside their heads and asserts that they are writing because they are afraid this constitutional amendment will succeed. I will come back to that claim in a moment. My point here is that if nearly all the academics in an area have one particular political orientation then a submitted article that reinforces and plays to those outlooks and sentiments — especially in an area such as constitutional law which is more than others bound together with politics and political druthers — has a much better chance of slipping through and being approved by referees than does one that is diametrically opposed to the values and sentiments of the referees.

Now of course an editor can attempt to push back against those sorts of truths about human nature by making sure at least one of the referees shares the core political and constitutional outlooks of those being attacked. Did the former editor of the *Federal Law Review* do this when selecting the referees for Hobbs's submitted article? My guess is that he did not, not least because of the miniscule size of the pool of such potential anti-Voice, constitutional law conservative referees. He certainly did not ask me. Or the other three constitutional conservative law professors I had in mind. (I asked all three.) Perhaps, though, he found a retired one to be a referee. That is certainly possible. I do not know. If he did that would certainly buttress the current general editor's claim that he is unaware of any deficiency in the review process for Hobbs's article.²³ Perhaps,

²² For just one source see Jonathan Haidt, *The Righteous Mind: Why Good People Are Divided by Politics and Religion* (Pantheon, 2012) and many of his more recent writings. Haidt, by the way, is a man of the political centre left, as he openly admits. All the same, the trends of ever fewer conservatives in academia worry him greatly.

²³ See the main text to n 21 above.

then, he will ask the referees for Hobbs's article to waive their confidentiality in this instance. I would, were I ever asked to do so for anything I had ever refereed.

Let me finish by setting the record straight on a few matters. I have already noted that I have written extensively as regards Australia's implied freedoms and that it is very much the implausible (verging on 'making it up') approach to constitutional interpretation that I dislike and critique, not the substantive outcomes (meaning Hobbs's blanket charge of bad faith should be made of sterner stuff, at least when directed at me). I have a multitude of publications on the related notions of what constitutes judicial activism or usurpation and when it amounts to anti-democratic conduct, none of which is even mentioned in any way by Hobbs.²⁴ I think Hobbs's declaration that '[t]here is no one correct approach to constitutional interpretation' is wrong,²⁵ and indeed a license for unconstrained conduct. Likewise, I reject Hobbs's assertion that 'constitutional, institutional and professional checks provide a measure of indirect democratic accountability'.²⁶ Certainly, these are indirect and they may deliver some loose form of accountability. But they do not constitute democratic accountability.²⁷ Lastly, because Hobbs himself finishes with this point, there is the proposed constitutional amendment known as the Voice. Hobbs asserts that 'neither a First Nations Voice nor treaty would threaten Australian sovereignty'.²⁸ I disagree. Strongly. Yet that sort of reasonable disagreement is only to be expected in academic life. It is when Hobbs goes on to suggest or assert that New Righters are afraid of the proposed s 128 constitutional amendment that I balk.²⁹ To remind readers one more time, I speak only for myself here. But in no way at all am I afraid of the looming constitutional referendum. If Hobbs had bothered to check anything else I have written he might have seen that I have explicitly welcomed the coming constitutional referendum because I think it will lose. In fact, I think it will not just lose but lose badly. I have even said so at a Samuel Griffith Conference, these conferences receiving much attention from Hobbs. The sooner

²⁴ If Hobbs is interested in my latest foray that in part covers these areas he can see James Allan, *The Age of Foolishness: A Doubter's Guide to Constitutionalism in a Modern Democracy* (Academica Press, 2022).

²⁵ Hobbs (n 1) 13. His immediately subsequent and joined-together claim about no 'one right way for a Judge to exercise their functions' is, of course, a distinct claim to one about no right approach to interpretation and correct. That is because many judicial functions do not involve constitutional or statutory interpretation.

²⁶ Hobbs (n 1) 14.

²⁷ Indeed, to make the case they do, one requires an incredibly fat, morally pregnant understanding of democracy — one that I rejected at length some time ago in James Allan, 'Thins Beats Fat Yet Again — Conceptions of Democracy' (2006) 25(5) *Law & Philosophy* 533.

²⁸ Hobbs (n 1) 24.

²⁹ See, eg, Hobbs (n 1): 'As Australia inches closer towards constitutional reform, the legal baselessness and political ferocity of New Right criticism suggests that perhaps the movement fears that the Australian people do not share their same anxieties' (at 4); 'Perhaps equally important for the New Right is the fear that the Australian people might support meaningful reform' (at 24); This 'suggests that the New Right may recognise its political vulnerability' (at 25).

the referendum is held the better in my view. To repeat, that view of mine would be clear to anyone who took any time at all to discover my views.³⁰ Alas, no reader of Hobbs's article would gain a remotely fair or accurate view of my position on this, or indeed on any of the matters he discusses. That is my gravamen. And that is why I asked for a right of reply.

³⁰ And yes, this means that I believe Hobbs's citing an 'analysis of public submissions made to the government's Indigenous Voice Co-Design process reveal[ing] "overwhelming public support for constitutional enshrinement"', and 'most polls since 2017 indicating 70–75 per cent ... support' (at 25) mistakes, respectively, activist input for the views of average Australians and amorphous poll question results for what comes after detailed voter consideration of a proposed constitutional amendment that includes hearing the 'No' case — not unlike initial polling surrounding a Republic and the actual 'lost in every State' s 128 result.