

AC PAPER # 12: THE CURRENT AUSTRALIAN CONSTITUTION

Some important reasons for retaining our Crowned Republic-

By four of Australia's leading and respected RWM*

A.

The Hon. Sir Gerard Brennan AC KBE RWM is a widely respected jurist and as former Chief Justice of the High Court is an acknowledged Constitutional expert and 'a republican'. His 18 July 2001 paper¹ has many highly relevant and informed quotes – and which should be quoted widely in discussion about changing our Constitution to an unknown and untried republican system.

But coming from a senior RWM they doubly highlight the excellence of the system we enjoy and the risks involved in changing for wholly irrational reasons. Little wonder therefore that RWM are seemingly unable to put before Australians a republican constitution which is equal to or better than the one which has been so effective in giving us unequalled peace and stability for over 100 years.

His paper is not on the net but may be available from the Centre for International and Public Law (Federation Press) at the ANU, Canberra. Some of his more significant and relevant quotes are below. Wide dissemination of Sir Gerard's statements is encouraged, coming as they do from such a respected expert, and should assist an **informed** vote should a repeat of the 1999 referendum occur.

* *RWM (Republican Without a Model) means someone who aspires to "a republic"² but like those seeking change has no model to submit in support of his/her aspirations. Until a model representing the united aspirations of a demonstrable majority of RWM is put forward, no rational debate can be held, as we have nothing to examine, and nothing to compare with our present constitution in order to make an **informed** vote. **RWM is in no way derogatory**. It is simply an accurate and truthful description, to encourage those who seek information to know that a republican system to replace ours, does not exist.*

1. p1 "It (the Constitution) came about in the quietness of the night, the product of law, not a revolution or war. 'It was sought by Australians, not imposed on them.'"
2. p1 "The Constitution is, in every sense, the people's Constitution. As Deane J observed, 'ultimate authority in this country lies with the Australian people.'"
3. p1 "Perhaps the wonder is that an instrument which was a work of inspired compromise should have served us as well as it has."
4. p2 "The Constitution has provided a stable framework for growth, in war and in peace."
5. p2 "Australia is now an independent nation and Australians live in freedom under the law in a stable democracy."
6. p8 "By 1983 a report to the Australian Constitutional Convention held in Adelaide was able to recommend recognition of the convention that – 'The Queen does not intervene in the exercise by the Governor-General of powers vested in him by the Constitution and does not Herself exercise those powers.' The report was based on established practice."
7. p9 "Overall, the absence of codified conventions has been beneficial in allowing the evolution of an independent system of national government. The adaptability of conventions and practices to changing circumstances permits some flexibility in the actual working of government."
8. p15 "Under the Constitution, Australia has grown into a free and independent nation under the rule of law, enjoying a democratic form of Government and an integrated system of law. The Constitution has served Australia well and retains the strengths that have secured that satisfying state of affairs."
9. p20 "The Queen simply does not exercise the powers, or engage in the activities that the Constitution says she does. The Monarch no longer exercises any power other than the power to appoint the Governor-General – and that power is exercised on the advice of the Prime Minister of the Commonwealth."
10. p24 "The Constitution provides the fundamental features of representative and responsible government."
11. p26 "If the Constitution were to vest executive power in a Republican President, would the President be bound by a convention which is the cornerstone of constitutional monarchy?"
12. p27 "If Australia were to become a Republic, a President, especially an elected President, with a fixed term of office would feel less constrained than a Governor-General to act only on ministerial advice."

 P.T.O.

¹ *One hundred years on : strengths and strains in the constitution* / Gerard Brennan. Annandale, N.S.W. : Federation Press, 2001. ISBN 1862874166 (paperback.)

² "A republican" is in inverted commas as they have no published model which defines one/them.

13. p28 “But the principal objection to an elected Presidency is the risk – perhaps the likelihood – that the President, armed with the authority of a popular mandate, might exercise executive and, possibly, reserve power to frustrate the policies or impair the powers of the Prime Minister and Government. There would be two hands on the tiller of national interest.”
14. p28 “If a presidential election were conducted on a platform of policy, would not the President have a mandate to implement the policy even if it were opposed by the Prime Minister?”
15. p30 “It is difficult to spell out conventions prescribing the occasions for exercise of reserve powers. Sir Ninian Stephen, in an address to mark the 75th Anniversary of the Constitution, observed that – *‘The truly difficult and important part, having once identified the area governed, if at all, only by conventions, is that of determining the content of the constitutional rules that should then apply, and accordingly be reflected in the new constitutional text.’* If the Constitution were amended to spell out the powers which can or the powers which cannot be exercised without ministerial advice, the exercise of a power would be justiciable. It has been suggested that the statement of conventions need not be justiciable but that would surely have the doubly unfortunate effect of petrifying the conventions while denying them legal efficacy. However, if the Constitution were to spell out either the reserve powers or the conventions governing their exercise, issues that are more political than legal would be litigated.”
16. p31 “I would think it misconceived to attempt to spell out either the powers which can and the powers which cannot be exercised without ministerial advice.”
17. p33 “The model of direct election could be adopted only at a price, namely, the virtual elimination of eminent, non-political citizens for the Presidency.”
18. p34 “The mode of election is all-important, but it is only when we decide on the powers which a President should have that we can sensibly discuss the mode of election and the safeguards that must be in place to maintain Parliamentary government as we know it.” (*These powers have not yet been spelled out – Ed.*)

And from former Governor-General Rt Hon Sir Zelman Cowen PC AK GCMG GCVO RWM: “*I believe very strongly that such a mode of election (direct election) is unwise and inappropriate*”. It poses “*a potential challenge to a Prime minister who does not have such a base ... the direct election of a President would ensure political outcomes.*” (Williamson Lecture, 31 May 1995).

B.

The statements above confirm Professor Greg Craven RWM on our Constitution:

- “...our existing constitutional framework is fundamentally sound.”
- “...it is one of the great democratic documents of the modern world.”
- “The ultimate proof of the Constitution’s quality has been its fundamental success.”
- “The Constitution is the greatest asset we have.”
- “I also passionately believe in the Australian Constitution.”
- “The more we engage in civilized conversation about it, the better.”

Greg Craven, formerly Professor of Government and Constitutional Law at Curtin University (W.A.). Now Vice-Chancellor of the Australian Catholic University (Sydney). Published in *CEF-A News*, vol. 1, 2004.

C.

And further confirms Hon. Malcolm Turnbull MP’s:

- “**But the strongest argument is that we already have a perfectly good, functioning democracy.** Governments go in and out. They are more answerable to the voter than, say, the British ones. We have elements of Westminster, elements of Washington. **It’s a uniquely Australian system that works well.**”
- From an interview with Frank Devine in p.13 of *The Australian* on 16 July 2001.

One questions why Sir Gerard, Prof. Craven and Mr Turnbull did not advise Australians about the sentiments expressed here **before** the 1999 referendum. Such expert information would have encouraged a more **informed** vote.

Question: when Australia’s 3 top republican experts say as above, plus ‘D’ below, AIDC asks: why should we be asked to consider spending \$2-3 Billion (see AIDC’s Draft paper no. 9) on a matter so divisive and distracting of Government staff unable to perform important regular functions on real and serious community issues such as Education, Health etc.?

Especially when no proposed alternative system has been published to allow an **informed** vote based on a comparison of the two.

D.

- And Prime Minister Julia Gillard: “Can I say we live in a lively and resilient democracy **and it works.**”
- “Blueprint for greater transparency” *The Australian* 8 September 2010, p14.