

19 January 2009

The Standing Committee on Finance and Public Administration
The Senate
Parliament House
Canberra, ACT 2600
Fpa.sen@aph.gov.au

Submission - Plebiscite for an Australian Republic Bill 2008

As someone who has been committed to a green lifestyle and issues for over 30 years, and as a member/supporter of several environment groups – local, national and international, I strongly object to the proposed plebiscite on an Australian republic.

We are faced with the greatest challenges of our time: climate change, sustainable energy, water and food. All basic needs. How might an Australian republic better address these issues - in this country? In the global scheme of things?

In its *Annual Review for the year ended 30 June 2008*, The Wilderness Society has this to say, 'The global economic woes are likely to have impacts on all non-government organisations reliant on the commitment of its members and supporters to fund its activities.' Daily I receive urgent requests from the groups I support for funds to help finance their campaigns. In the current economic climate my capacity to give to them each month is decreased. This will apply to most people. I bitterly resent tax-payer resources (\$10.5m!) being used for, at best, a non-urgent purpose, which could otherwise be channelled to environmental concerns. How do you justify this? Consider:

- The Wilderness Society whose 'vital work for nature and wilderness... for the land and sea' includes campaigns for Climate Change - the preservation of Australian and global forests for carbon storage; the restoration of a healthy marine environment to maximise the capacity of our oceans as carbon stores; protection of the Great Western woodlands and the Kimberley in WA; preserving the wild rivers of the North and of Cape York in Qld; Marine Parks in SA, to name a few. *TWS Annual Review - year ended 30.6.2008*
- Greenpeace: Campaigns include Australia's energy [r]evolution, sustainable energy world-wide, forest protection, sustainable fishery practices (food), safe e-waste disposal...and so on. *Making Waves* newsletter Issue #15 Spring 08.
- Bush Heritage Australia (Land regeneration); Rainforest Rescue in Australia and globally. How far might \$10.5m go to buying back the Daintree? RR is painfully trying to buy this back a square metre at a time (!) trying to keep ahead of the bulldozers?; Australian Marine Conservation Society (sustainable fisheries i.e. our food supplies); Qld Conservation Council (Water strategy for SE Qld, sustainable energy). And much more. A wildlife welfare organisation I support could not spare \$125 (!) to sign on with a volunteer agency for urgently needed help with their work. All are having to put even more energy into fund-raising which would preferably be spent on addressing the issues themselves.

A more relevant question for the plebiscite might be: Where, in a list of priorities would you place the republican issue? And list with it, climate change, food, water, sustainable energy. Wherever one stands on the republican issue (I have sympathy for aspects of both camps) it is hardly a priority in the context of the current critical economic and environmental climate, of potential job loss, of water shortage, of inadequate pensions for struggling senior citizens, the deteriorating hospital system in Queensland and so much else. Given the obscene amounts of money involved - to date \$129.8m. \$10.5m for plebiscite and \$2.5 billion to change to a republic (a conservative figure), promoting this now, with tax-payers' money is, in my opinion, downright criminal.

I would be grateful for acknowledgment of receipt of this submission

Sincerely

Jennie Di Blasi

1 February 2009

The Standing Committee on Finance and Public Administration
The Senate
Parliament House
Canberra ACT 2600

Submission – Inquiry into the Plebiscite for an Australian Republic Bill 2008

Further to my submission of 13 January 2009 by email (acknowledged by your office 22 January 2009), I wish to make a further submission in the form of the enclosed book *For the Sovereignty of the People* by Dr Nigel Greenwood, a scholar of the Westminster system in its application world-wide. I have carefully read this book and recommend that the evidence it collects and the conclusion it reaches should be considered by your committee. Dr Greenwood's approach includes aspects of history, politics and law – a unique combination of wide-ranging knowledge and depth of understanding. As one reader commented: historians do not know the law, lawyers do not know history and politicians do not necessarily know either.

Enclosed also are a resumé *21st Century Australia* and a review of the book in *The Australian Law Journal* November 2000.

As someone who has been active in the Green movement for over thirty years and a member and/or supporter of several environment groups, local, national and international, I believe I am well placed to say that Senator Bob Brown does NOT speak for the thousands of members of the hundreds of environment groups nation-wide in this instance. Grass-roots field-workers have more immediate concerns; at no time in the regular mailouts I receive does 'the Crown' or an Australian republic feature on the agenda of meetings. Though like myself, many may be dissatisfied with aspects of the current system, our efforts are towards a greater participation in the decision-making process of government – continually lobbying for our voice to be heard; a thrust from representative to participatory democracy.

I would challenge Senator Brown to find ONE green voice which would place the question of an Australian republic anywhere on a list of priorities for the expenditure of \$10.5 million (and in the event of change, of \$2.5 billion); a list which included: climate change, biodiversity, land clearing, sustainable energy, agriculture and fisheries, salination, water shortage – which impacts on food supplies, wilderness protection, bushland regeneration and much more. We have more immediate and challenging concerns to which to dedicate our time, energy and material resources.

Dr Greenwood resides in Canberra and could well be available for consultation with the Committee should it so wish. His website is www.sovereignpeople.com

I would be grateful for acknowledgement of receipt of this submission.

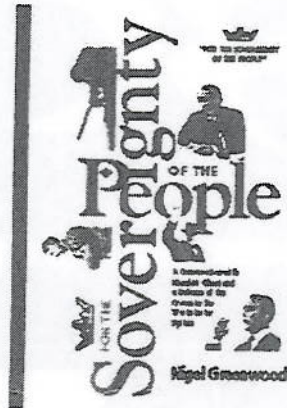
21st Century Australia

...AND LIFE AFTER NOVEMBER 1999?

- ❑ For the November Referendum our current constitutional arrangements were painted as hopelessly outdated, the Crown an historical fossil. In the wake of the "No" result, doubt and uncertainty remain nationwide as to where we are left and our options for the future.
- ❑ With the ALP (and many conservatives) committed to two plebiscites and another Referendum for the next federal Labor government, this is a controversy that will remain in the public mind for years to come.
- ❑ *For the Sovereignty of the People* argues a fresh and unexpected look at the entire controversy. It suggests the pro-republic campaigns are based on an intellectually flawed platform, in many cases axiomatically wrong. In a highly-detailed examination of the arguments put before the Australian people, it suggests we have suffered from slipshod sibyls, many of our high-profile "authorities" guilty of faulty scholarship.
- ❑ Far from being a right-wing tract, the book proposes a case for preserving the Crown based on defences written by eminent left-wing scholars throughout the Commonwealth; particularly H.V. "Doc" Evatt in Australia and Senator Eugene Forsey in Canada. It raises issues like Aboriginal reconciliation *through* use of the Crown's neglected aspects, a cause championed by the late Neville Bonner.
- ❑ The author draws attention to wider implications of the Westminster heritage worldwide and the lessons of 20th Century history. Watergate and Iran-Contra in the United States have raised lasting questions of executive accountability, while the collapse of France's Westminster-inspired Fourth and Fifth Republics in the 1958 military *coup* and De Gaulle's 1960s autocracy have posed direct and complex challenges to the drafting of an Australian republic.
- ❑ *For the Sovereignty of the People* concludes that reform *within* the Australian Crown is essential, and could yield far more accountable government for Australia in the 21st Century than any shift to a republican form, while addressing all issues of symbolism. Hence the book takes the position that the republican form of government and the republican *ideal* of government "...of the People, by the People, for the People" have permanently parted company for this country.

The author has appeared in the media in Sydney, Brisbane and London, and interviewed on a global broadcast on Sky News. His book has been discussed on the BBC World Service and he was one of two experts on the World Service for a global debate (31st October 1999) on the future of constitutional monarchy in parliamentary democracy.

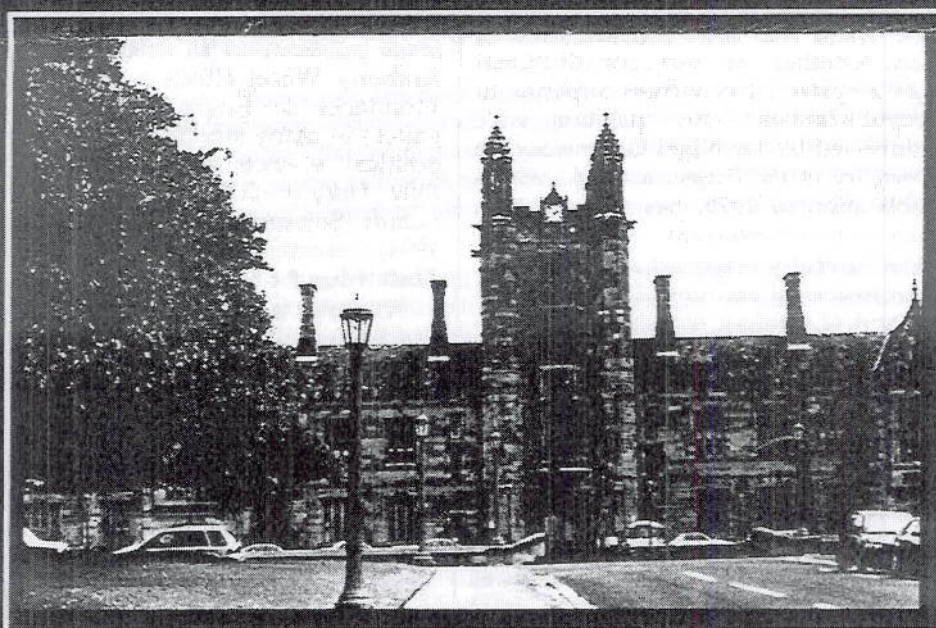
He was a delegate to the June 1999 Constitutional Convention in Gladstone, arguing on the future of the Republic and the States, and was awarded a 1995 Menzies Scholarship to Oxford to research aspects of this manuscript.



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NEW BOOKS

DAVID MACLEAN

For the Sovereignty of the People

AUTHOR: Nigel Greenwood

PUBLISHER: Australian Academic Press, Bowen Hills, Qld, 1999

ISBN: 1 875378 28 6, 423 pp, index, bibliography

PRICE: Softcover, \$32.34

In the public debate which preceded the recent referendum, the question whether Australia should become a republic was generally thought to depend on matters of symbolism or sentiment. There was little consideration of the question whether or not constitutional monarchy, as a system, has virtues superior to those of republicanism. This question was, however, addressed by Dr Nigel Greenwood in *For the Sovereignty of the People*, a work, which since its publication in 1999, has received less attention than its merits warrant.

This book is carefully reasoned and scholarly. It contains an historical account of the development in England of Cabinet government, ministerial responsibility and representative democracy. In the Stuart period there had been a struggle for power between the King and the Parliament, but, as Dr Greenwood shows, since the time of George III the struggle has become one between the Executive and the Parliament, and the tendency to Executive autocracy is restrained by the doctrine that the monarch can neither do, nor authorise the doing of, wrong (thus rendering liable Crown servants who commit a wrong under the orders of their superiors) and by the existence of the reserve powers of the Crown which may be used in exceptional circumstances to resolve a difficulty within the Parliament or between the Parliament and the Executive.

The nature of the reserve power is fully dealt with. The author recognises that for this system to operate successfully the monarch or her representative must stand outside the political scene, and acknowledges that this will not

necessarily be the case with future Governors-General if appointed on the recommendation of the Prime Minister. He accordingly makes a number of suggestions for reform, including the proposal that the power of vice-regal nomination be removed from the Prime Minister and be given to a convocation of distinguished Australians.

The book is remarkable for the width of the research on which it is based. Dr Greenwood's references range from such comparatively obscure publications as *Athenae Oxonienses* by Sir Anthony Wood (1692) and articles and correspondence in English and Australian newspapers to many significant works of history and political science. Cases cited include *Francis Billy Hilly v Governor-General of the Solomon Islands* (Solomon Islands High Court No 299 of 1994), *Federation of Pakistan v Moulvi Tamizuddin Khan* (Munir CJ of Pakistan, 1955) and *Fitzgerald v Muldoon* ([1976] 2 NZLR 615) as well as decisions of the High Court and Privy Council.

Dr Greenwood has described the divergent constitutional development in the United States, and has shown that in that country, and in other republics, the Executives have at times engaged in programmes of calculated lawlessness. In contrast he has referred to the successful working of constitutional monarchy in resolving crises in Spain, Thailand, Grenada and Papua New Guinea, as well as to the dismissals of Mr Lang and Mr Whitlam in Australia.

Notwithstanding the weight of its content, the book is easy reading. The author has adopted the expedient of interspersing the text with imaginary conversations between himself and the ghost of Niccolo Machiavelli as a means of commenting on the development of the argument.

As Sir Walter Campbell has said, this work is a real challenge to those who call themselves

republicans. Its interest is however, not limited to participants in the republican debate. The work is a repository of information regarding earlier and modern historical developments as well as a stimulating contribution to the discussion of political history and constitutional principles.

H T GIBBS

Change and Continuity: Statute, Equity and Federalism

AUTHOR: W M C Gummow
 PUBLISHER: Oxford University Press, 1999
 ISBN: 0 19 829823 4, 122 pp, index
 PRICE: Hardcover, \$89.95

This book is built on three lectures delivered in 1999 at Oxford University. These are "The Common Law and Statute", "Equity follows the Law" and "Federalism". The lectures attempt to play on "themes of continuity and change" (Introduction, p xvii).

When you read Lecture One, "The Common Law and Statute", you find an interplay between the common law and Acts of the legislature. The interaction, or non-interaction, appears in various ways. The common law embroiders statutes, or enlivens statutes. Analogously, legislative history taken up by a court may mould the statutory text. The Australian Taxation Office Rulings may make suggestions to statutes. In a reverse process, statutes may supply notions for the common law, for example, consumer-protection statutes may nourish the tort of passing off. To the contrary, there may be no synergy between the common law and statutes. In other words, what is described as an oil-and-water relation may be manifest, for instance, in a Constitution that does not itself write in common law remedies for a breach of the Constitution.

Tumultuous examples flow in the book, and cautionary exceptions. That is to say, you find minute research into several different legal scenes, English, Australian, United States, Canadian and New Zealand — their case law and statutes, their legal writers in texts and journals. Great industry and erudition are displayed.

As for the theme that the title of the book proclaims — change and continuity — it takes

neither the extreme position of Heraclitus (the only constant is change) nor the extreme position of the French cynic (plus ca change, plus c'est la meme chose). That is, the theme reflects the expediency of law meeting the change of time and circumstance and the predictability of law imposing rules of conduct.

For Gummow, sometimes the common law supplies the change, the statute the constant. Sometimes the roles are reversed. Thus the author shows how the common law breathes life into some statutes or, conversely, and to take a particular example, how fluid criminal statutes that make no distinction between a wife and other women require a rethink on a wife's supposed irrevocable consent to intercourse.

Lecture Two, "Equity follows the Law", is a dense miscellany of equitable doctrines and remedies drawn from the 18th to the 20th centuries, from English, Australian, New Zealand and United States law, from cases, treatises and journals.

The collection of topics includes the formalism and strict logic of the common law, the vitality and adaptability of equity, and the intrusion of equity into the common law. Along the way, particular equitable doctrines and remedies are touched upon: among others, unjust enrichment, contribution, specific performance, injunction against persistent trespass, and unconscientious conduct. There is no doubting Gummow's mastery of this patch on which he has spent much time teaching and writing.

In this lecture also something is said of the common law's certainty and consistency in contrast to equity's mind for the individual case or, the converse, the continuity of equitable concepts as these rationalise a reworking of the common law.

Lecture Three, "Federalism" (better described as "Federations", that is, not political theories but systems of government; I will use the term provided). So, the lecture deals with the federal systems in Australia, the United States, Canada and, by analogy, the system in Scotland since the 1998 devolution (or perhaps the delegation) of power there, or the loose arrangement among the European Economic Community.

Again (as in Lectures One and Two) there are innumerable examples, and contrary examples,