

**'to be consulted, to encourage and to warn'-the ancient role of the Crown
'...powerful...constant...generous...' Napoleon Bonaparte on English Law**

'The rule of law and the preservation of liberty rely on a disciplined army, held in check by an authority that soldiers and society both acknowledge. Consequently the Head of State in many political systems that acknowledge authority, and holds the armed forces on a leash, so that the rule of law and civilian society can function in peace and security. Our Westminster system treats such power as being too dangerous to be bestowed entirely upon a politician, who might be tempted to manipulate it to political ends. That such manipulation does occur can be readily seen in the Commonwealth republics of Africa and countries throughout Asia, the republics of the former Soviet Union, Central and South America.
(Greenwood, N: 1999: 230)

In this submission I quote a great deal from Dr Nigel Greenwood's book 'For the Sovereignty of the People'. I make no apologies for this as it is one of the most informative and eloquent books on this topic I have ever read. It is my recommendation that anyone who has an interest in this issue, republicans included, read this book. To do otherwise is to participate in the debate with incomplete information.

What is the reason for change?

Most Constitutional change comes about from ground swell agitation arising from large scale dissatisfaction amongst the populous. There is no such ground movement in Australia. The republican concept appears to be one dreamt up in the common rooms of the various law schools of Australian universities, and amongst the inner urban café elite, who thrive on telling people how to live their lives. The haste with which some in the republican camp would have us move, without due consideration of the implications, or without even putting forward a viable alternative model to compare with the present arrangements, raises in me a degree of suspicion as to their motives. What is the hurry?

The republicans claim a renewed interest in the republic issue, citing the well stacked 2020 summit in 2008 as their authority. It should be borne in mind that the same summit also came up with a Bill of Rights and the abolition of the State governments (and the Senate), as their vision for the future of Australia. Combined these form a potent and deliberate attack on the checks and balances in our system, designed specifically to thwart a grab for power by the political class.

That these themes were the fodder of radical left wing activists, Spartacists, socialists, Marxists and the odd Sein Feinner at university when I first attended in the late 1970s, and that they are now part of the mainstream body politic should serve as a warning to us all.

I have been sworn to serve the Crown for over twenty years. I have done so proudly and in the full belief that I am serving an institution in which I have ultimate trust. I have also served under a United Nations banner on two occasions, the most recent in 1999 as part of the UNAMET mission to East Timor. This mission was tasked with the conduct of a 'popular consultation' of the East Timorese population on their political future. The question posed was do they wish to accept or reject an offer of special autonomy within the Republic of Indonesia?

About 98% of registered voters actually voted, despite intimidation by the Indonesia backed militia groups. Of that 98%, about 78.5% rejected the proposition, thus paving the way for the eventual independence of what was to become Timor Leste.

The violent reaction by the Indonesian backed militia groups resulted in me being withdrawn to Darwin in early September 1999. Some months later, Australia was also asked to vote on its political future in a referendum on a republic. The Australian Republican Movement had been agitating for a republic for some time. Some had also been advocating a new flag to replace the Australian National Flag, due to the presence of the Union Flag in the canton. This remains part of the republican agenda, although it is downplayed by republicans, knowing full well that the Australian National Flag is very popular amongst the Australian population.

Similarly Her Majesty Queens Elizabeth II is an extremely popular figure in Australia. Intelligent republicans, including the former head of the Australian republican Movement, and now Leader of the Opposition, Malcolm Turnbull, steer well clear of discussion about the benevolence of her reign. Less intelligent republicans, however do not refrain from abuse levelled both at Her Majesty and the Royal family in general. This sort of discussion serves no productive purpose at all and will not be entertained in this submission.

Following a taxpayer funded Constitutional Convention, the matter was put to the people in November 1999.

On the question of a democratic result, the results of the 1999 referendum were overwhelmingly against the notion; a quote from David Flint (*Twilight of the Elites*) bears repetition here:

'While republican lawyers assumed that constitutional success for the Yes case required that it capture four states, all six states voted No and the Northern Territory voted No. Only the Australian Capital Territory voted Yes...Every regional electorate voted No. Every rural electorate voted No. Every truly outer suburban electorate vote No. In South Australia 75% of electorates voted No, in Tasmania 80%, and in Western Australia and Queensland 93%.' (Flint. D 2000: 107-108)

Yet within a decade, we are being asked again to address this issue. Why? I don't hear similar calls to re-visit the 1999 result of the popular consultation in East Timor.

The well stacked 2020 conference conducted in Canberra shortly after the election of the Rudd government is one reason. This hand-picked bunch of Australia's 1000 'best

and brightest' unsurprisingly came up with a republic as one of its outcomes. The area dealing with this actually came up with 99% majority in favour of a republic. The suspicion that this was a contrivance is supported by the fact that only one person dissented, a Liberal Senator from Queensland, and one abstained, a former Governor-General. This is a truly remarkable piece of statistical manipulation, which is now being used to justify re-heating the republican issue again.

Given my observations about radical university activists in the late 1970s, now educated elites, prominent in the law, the media, politics, academia and the arts, I have little doubt that this is revolution by stealth. The vital question is why and on whose behalf. Most revolutions result from mainstream dissatisfaction amongst the populous. There is no groundswell dissatisfaction with the present Australian Constitutional arrangements. Once again the intellectual elites are agitating for their sort of change, to a republic which will favour them...the legal fraternity, the media, the political and judicial aristocracy...not one prominent republican can identify any specific benefits to the average Australian, other than to mouth rhetorical platitudes about sovereignty and independence.

There are a whole host of reasons that this issue needs to be considered carefully, including the very sovereignty and independence these intellectual elitists claim to care so much about. In my opinion, these and other freedoms we enjoy are under direct threat by a politically motivated class which wishes to remove the checks and balances deliberately placed in the way of grasping self interested politicians by the founding fathers. Prima facie, the notion of a republic seems innocuous enough, but combined with instruments like a Bill of Rights, the abolition of the Senate, the abolition of the State governments and a few other bright ideas, these form a platform upon which a self-serving political class can assume maximum power and place themselves beyond scrutiny.

The proposed plebiscite on a republic

The republicans are now asking us to consider a plebiscite which asks the question, 'Should Australia become a republic?' This seems innocent enough, however, an equally valid question might well be 'Do you want to discard a system of governance which world's best practice and which has provided stability, prosperity and equity for all Australian for over a century?' Or perhaps 'Would you prefer Australia align itself politically with countries like Canada, New Zealand and Britain, or with countries like China, Iran, Italy or Venezuela?'

The issue I have with the plebiscite concept is that it appears to be an expensive softening up process, designed to keep the issue alive in an era where far more important issues are demanding the attentions of the government and the public.

A more sinister motive for the plebiscite is that if the notion of a republic gains majority support, it firstly avoids s 128 of the Australian Constitution which requires a referendum to make Constitutional change, and secondly, it does not require the republicans to produce a model. If we are going to change the system, we need to know what changes are to be made and how it will benefit the ordinary Australian.

The republicans must be forced to produce a model which can then be compared to the present system of governance. To do otherwise is a complete waste of taxpayers money, and a fraud upon the Australian people. Without a republican model to compare with the present system, or even an adequate definition of what a republic actually is, the Australian population is being asked to place its trust in an elite political class which wishes to avoid scrutiny in a stealthy grab for power.

Compare this with the lead up to any election where the average interested voter rightfully demands to know what policies are on offer, how they will effect them, how much they will cost, how and when the policies will be implemented...and this is only in relation to one Parliamentary term. The change the republicans propose is permanent and they are seeking to avoid this type of scrutiny by asking the Australian voters to take them on trust. This is not only inconsistent with existent political principles, it is worthy of the title fraud.

One further suspicion I have concerning the plebiscite is that if the notion of a republic gains majority support, any subsequent Constitutional referendum will not include the status quo as an option, it having been knocked out of contention at the plebiscite. The choice will only be then between republican models.

This sleight of hand has the potential to produce extreme instability, particularly if the plebiscite result is close. For instance if 49% of voters prefer the status quo, but 51% prefer a republic, the as yet unspecified republic notion wins. If the status quo is then knocked out as an option, it leaves the remaining 51% to be divided amongst the various republican models. We may therefore end up with a model which only 25% of the entire population supports at referendum. This is not representative democracy, it is an elitists grab for power.

I can only warn that the potential long term consequences of a rash move in the direction of a republican form of government risks the very freedoms we enjoy as Australians. The republicans must be forced to produce a model to be compared with the present system.

One of the great gaps in the Australian education system, is the absence of any sort of civic education on our system of government, its history and of its benefits and of our symbols and their significance to us as a people. It could be argued that the electorate is being kept deliberately ignorant of the benefits of our system, and of the potential dangers inherent in the republican notion.

The public must be consulted on this process and the public deserves to be educated on the advantages and disadvantages of both the present system and the proposed republican system.

I volunteer to present my views and concerns in any forum, debate or conference the Committee forms as a result of this and other submissions. In all fairness, as the Constitutional Convention preceded the 1999 referendum, a similar public forum should also precede any plebiscite.

It seems to me that the entire republican debate can be distilled into a few major points.

Republican model versus republican ideal

Many Constitutional Monarchists argue that Australia is a Crowned republic and there is no need to change our Constitutional arrangements, particularly if it cannot be guaranteed that it will lead to a betterment of the circumstances of all Australians. In this, a subtle distinction must be made between the republican *form or model*, and the republican *ideal* of government.

'...ambiguity dwells on the very word 'republicanism'...One must distinguish between a republican form of government, and what might be described as the republican ideal. The republican form of government, so eagerly championed by the Australian Republican Movement, is to extinguish the hereditary component of the Crown and invest (in the minimalist model) all the powers of the Crown in a figure elected either by Parliament or the nation. In the more radical republican models these powers of the Crown are themselves to be dismantled, so that the Prime Minister acquires more power. The republican ideal (res publica, government for the public good) on the other hand is perhaps best summed up in Abraham Lincoln's words in his Gettysburg address as being government '...of the people, by the people, for the people'.

'It is this ideal which is the valuable part of the constitutional debate, for the republican form of government is only valuable if it enhances this democratic ideal in our society.' (Greenwood, N: 1999: xii-xiii)

On the republican ideal of '**government of the people, by the people, for the people**', I ask which bit of this do we not enjoy now? We are so well served by the democratic process that we send experts overseas to assist in the conduct of other people's elections. East Timor in 1999 is one example of this. I know how effective this can be because I was there, as a police officer working for the United Nations, prior to, during and following the popular consultation of the East Timorese population on their political future.

Proud association with likeminded nations.

Constitutional Monarchists see membership of the Commonwealth and a proud association with likeminded Constitutional Monarchies. Some republicans claim that this issue is about sovereignty and independence; that it is a national issue. Indeed it is. **The Crown has been part of the governance structure of this country since the first British settlement in 1788.** The Crown as an institution has been able to adjust to circumstances and endure to the present situation where it forms an elegant solution to a host of problems which befuddle other systems of governance, and which now guarantees our democratic freedoms.

'Although Australia's recorded history is brief, yet within that brief span we have become one of the six oldest living democracies in the world. Only Britain, the United States of America, Canada, Switzerland and Sweden can look back upon longer periods of democratic government, uninterrupted by self-imposed dictatorship or foreign conquest and occupation. Of these six, three are under various forms the Westminster system with Elizabeth II as their Queen, four are constitutional monarchies and four are British in origin.' (Greenwood: 91)

This is a very proud record. One of the mainstays of this has been institutionalised loyalty to a system of governance few have taken issue with. One symbol of this is the Crown, which in my opinion represents stability par excellence. It is a symbol we share with other likeminded countries.

Crown insignia-common kinship and an emblem of trust

*'...the emblem of the Crown that surmounts the parliamentary systems of Australia, New Zealand, Canada, the United Kingdom and the other twelve realms of Queen Elizabeth II also displays a **shared commitment to parliamentary government, declares a common heritage and denotes a kinship between countries, more so than among Commonwealth republics or by mere membership of the UN.**'* (Greenwood: 1999: 284-5)

This is more than mere symbolism, however, as the symbol of the Crown is one of authority and obligation.

'We're so used to seeing the emblem of the Crown upon insignia and buttons that many of us never give it a second thought. Yet when Paul Keating altered the Oath of Allegiance, did none of his ministers pause to think that the old Oath to the Queen of Australia was worded that way for a reason? That the fact all government ministers, all the judges, barristers and other servants of our courts of law, all State and federal police, all members of our armed services have been required to swear an oath to Her Majesty maybe was done for a particular purpose rather than through a fit of historical absent-mindedness? That the symbol of the Crown is placed upon the badges and buttons of all the police, the armed services and indeed (at least in some States) upon the insignia of all emergency services (fire brigade, State Emergency Service etc) that might need to wield extraordinary authority in a crisis or natural

disaster, is perhaps for a reason other than it looks pretty? Might it not be that, upon acquiring particular positions of power, officials are required to swear allegiance to the Queen because they're given that authority formally as servants of the Queen, thus constrained in the manner set out by Windeyer? That the conspicuous display of the Crown upon uniforms, as well as displaying the source of authority wielded by officials, also offers promise and warning- a promise that if he or she abuses that power by acting unlawfully, he or she is personally liable for the consequences? No special executive order, no excuse of 'national security' or secret agenda of high state can alter that.' (Greenwood: 1999:59)

Geography and culture

The gradual drifting apart of Britain, Australia, Canada and New Zealand in particular, as well as other former Commonwealth countries is an undeniable part of history. The fact that we have retained, what in my opinion, is governance at world's best practice for ALL the citizens of these nations, which comprises a total population of over 120 million people, in the case of the Constitutional Monarchies, and many millions more if the remainder of the Commonwealth countries are included, covering about 35% and 50%, respectively, of the world's surface, is testimony to both the robustness and elegance of the system of Constitutional Monarchy. It is a system which is adaptable to varied geographical and demographical circumstances.

Yet there are those who support a republic because we live in a region in which republics abound, including Indonesia, China, Burma, The Philippines, and a host of small Pacific republics. However, geography does not dictate culture, nor should it dictate our system of governance. This particular line of thought would have Thailand, Malaysia, Japan and Brunei become republics because their neighbours are. Whether the citizens of these nations would regard this as a good idea is highly doubtful

'We've been told we live in a time which Australia shall and should look entirely to Asia, and Britain, entirely to Europe. Entering a century in which ease of global transport is unparalleled in human history, suddenly we are taught to think ourselves constrained by geography in a way never experienced by our ancestors in their wooden ships.' (Greenwood, N: 1999: 296)

In an era of mass rapid transport and communications, we have been able to combine with likeminded nations in some very significant global efforts.

'Irrespective of Britain, both New Zealand and Canada have remained our close and loyal friends. On the floor of the UN General Assembly we informally belong together in the so-called 'CANZ Bloc'-Canada-Australia-New Zealand-standing up as middle-ranking powers, multicultural parliamentary democracies with a shared heritage. Why be ashamed of an emblem we share with these two?' (Greenwood: 1999: 299)

Commonwealth

Although Australia becoming a republic will not immediately impact upon our membership of the Commonwealth, as a Constitutional Monarchy, or Crowned republic, we are in the direct company of Britain, Canada and New Zealand. If we become a republic, we will be more closely aligned politically with Singapore, Malaysia, India, Pakistan, South Africa and Zimbabwe.

There is no doubt the Commonwealth has been a force for good.

*'The Commonwealth is not against anyone; it is a source of common sense in the world where that quality is sadly lacking. It cannot negotiate on behalf of the world, but it can caution the world and help it to negotiate. **The more the Commonwealth preserves its coherence across the oceans and continents, the better for all-including my own country.***

Dr Richard von Weizsacker, President of the Republic of Germany, 1987.
(in Greenwood: 290).

'...the Commonwealth is a free association of independent sovereign countries which, unlike its Imperial predecessor, exists neither to perpetuate some sort of British hegemony nor is founded upon the interests of trade. Spanning countries from the First to the Third World, it's founded upon a mutual heritage of language, experience and institutions. Member countries engage in an exchange of scholars and civil servants and offer one another assistance in matters from education to agriculture, including-if needs be-police and military assistance.' (Greenwood: 290)

In a real and direct sense, the situation at present between Indian and Pakistan, both nuclear armed states, and both vying for dominance in their region, may well break into open conflict. The fact that they are members of the Commonwealth may well prevent this from happening, via political input from Prime Ministers from other Commonwealth countries not so closely involved, such as Britain, Australia, Canada and New Zealand.

'Traditionally High Commissioners enjoy privileges denied ambassadors; instead of communicating through the host's Foreign Minister they have a traditional right of access to its Prime Minister.' (Greenwood: 1999: 291)

In the case of Britain, the Prime Minister also heads a government which is a member of the UN Security Council NATO and the European Union. The counsel of the British Prime Minister in a time of emergency between India and Pakistan may well prove vital in the maintenance of peace.

Although Australia republic or not, is not likely to have a significant impact on such negotiations, President von Weizsacker's words about preserving Commonwealth coherence are worth noting, and in my opinion the relegation of Australia from good present constitutional company, to a closer political alignment with other Commonwealth nations, will serve to weaken the Commonwealth.

Foreign influence and the role of the Armed Forces and Police

Some republicans see Her Majesty the Queen as representing foreign influence and that the Commander in Chief of the armed forces should be an Australian Head of State. Her Majesty has no command powers over Australian armed forces. The Commander in Chief is the Governor General, who acts upon advice provided by the Australian Prime Minister and the Australian Minister for Defence.

'Our system places command (at least in a symbolic sense) of the armed forces in the hands of the Crown, as no mere relic of history but an active and contemporary political principle...The modern, extremely limited purpose of the symbolic command of the Crown is to prevent the armed forces from becoming independent of Parliament and the law.' (Greenwood, N: 1999: 230-231)

'At the moment Australian military officers are 'soldiers of the Queen', which is to say their allegiance rests with the Crown through the Governor-General of Australia, the chain of command passing through the senior ranks up to the Governor-General acting on advice from the Minister of Defence. As servants of the Crown, officers obey the directives of the elected government, but it is to the Crown and its courts of law that they are accountable for their actions...' (Greenwood: 1999:239)

The same can be said of police forces throughout Australia, whose Commanders in Chief are their Commissioners, also appointed by governments, but whose members are answerable to the Crown, with which they have a special relationship.

'...members of the Australian police forces are generally appointed and dismissed either by the Crown directly, or by the Commissioners of Police, with or without any direct government involvement. The Commissioners themselves are appointed and are removable by the Governor-General, Governor, Governor-in-Council or Administrator-in-Council, as the case may be, and sometime on the recommendation of the relevant minister...' (Carabetta, J: 2003: 224-225)

Police retain a degree of discretion in dealing with criminal matters, which places upon them a high level of trust and responsibility. In the Westminster system, police derive original authority or jurisdiction from the law, or the Crown itself, rather than from a chain of command. This places upon them a high degree of accountability as well as authority and responsibility. Police in their actions cannot claim they were following orders, as they are individually responsible.

'...police officers exercise special discretionary powers which they derive directly from the law itself and not indirectly by delegation from some other source, such as a minister for police. A police officer, therefore, is the servant of no-one 'save of the law itself', and 'answerable to the law and the law alone.' R v Commissioner of the Metropolis; Ex parte Blackburn [1968] 2 QB 118, 136 (Lord Denning MR)

'...It is only when in the course of his duties as a servant of the Crown he is confronted with a situation involving the liberty or rights of the subject that the law places upon him a personal responsibility of judgement and action.' Dixon J in (Attorney General (NSW) v Perpetual Trustee Co Ltd (1955) 92 CLR 113

Any breaches of trust, responsibility, abuse of authority or illegality are dealt with by law and the individual is held accountable. In the famous words of Windeyer, J:

'... They cannot justify any wrongdoing by alleging that they were acting in the execution of the orders of a superior. The constable who makes and unlawful arrest, is personally liable at the suit of the injured party, although he may have been acting upon instructions. The King's minister of state, who acts in contravention to the law, can be brought before the King's courts. It will not avail him that he was acting in the King's service, even though it were at the King's actual command., for the law will not impute wrongdoing to the King...Every civil servant should remember that, while it is the duty of the servants of the government to carry out all lawful orders, it is equally their duty to disobey unlawful orders.' 'Justice of the High Court, (Sir) Victor Windeyer KC. (in Greenwood: 1999:58)

A Bill of Rights seeks to limit police discretion and authority by proscribing that certain courses of action must and will take place under certain circumstances. Police discretion is to be minimised. Combined with a republican model of governance, the prospect of a more authoritarian state becomes increasingly possible.

Sovereignty

Some in the republican camp argue that under the present Constitutional system, our national sovereignty is less than complete. It appears that having our armed forces and others serving what the republicans have deemed a foreign monarch is highly offensive.

This line of thought demonstrates a complete lack of understanding of our system. The Commander in Chief of the Australian Defence Force is the Governor-General. The Governor-General is an Australian, and has been Australian for as long as I can remember. There is no influence from Her Majesty on the deployment of Australian personnel. This is an Australian decision, made by the Australian Prime Minister and endorsed by the Australian Governor-General. The end.

Nor as outlined above, can they or their police counterparts be subject to political purpose, as they are sworn to an impartial entity above the political arena, namely the Crown. Whether this would change immediately under a republican system in Australia is uncertain, however, the removal of checks which prevent this from occurring suggest that such political abuse may be made simpler. As we have seen in other parts of the world, including in our own region:

'The spectacle of the armed forces of nations being used by governments to execute their political will upon their own citizens is a distressingly common one, having occurred in recent years in a multitude of nations scattered throughout the world.'
(Greenwood: 241)

I have witnessed this first hand in East Timor. There is no automatic immunity in Australia from such political abuse, other than the safeguards we already have in place.

On the question of sovereignty, having served under a United Nations banner, it is interesting to note that many of those who desire Constitutional change because of a repugnance of foreign influence, are often those whose support for multilateral engagements under the United Nations shows no bounds. The UN is made up of almost two hundred nations, a minority of whom are democracies or active observers of human rights instruments. The UN Security Council consists of five permanent members, three of who are democracies, plus a number of part time members. These are selected by a process of international vote buying. The Secretary General is selected according to race and/or which continent they come from.

In a world of ever present danger, and where reliance upon good command and political support is crucial to morale and also survival, I know where my preference is, when it comes to a decision as to whether to serve under the Crown or under the UN. Does anyone seriously suggest that the multi-lateralism which, under a republic, is increasingly likely to replace our present system is preferable, when Australian troops or police, could well be serving under a command structure which comes from countries where human rights are disregarded or even abused? If the republicans are concerned about foreign influence on our armed forces and police, perhaps they had better have a closer look at the implications of the multi-lateralism which will inevitably follow from a republic.

The Whitlam Dismissal and the Reserve Powers

Some republicans bristle at the use of Reserve Powers and point to the Whitlam Dismissal in 1975 as an example of what they claim to have been unwarranted interference in the political process, by an unelected Vice Regal representative. Constitutional Monarchists, and even moderate republicans, maintain that there still remains the requirement for an entity above politics, with the power to dismiss a government and force it to face the electorate, as occurred in 1975, and that this is a guarantee of our democracy, and freedom from political excess.

'...the prorogation (i.e. closing) and dissolution of Parliament are actions usually (and wisely) performed by the Crown on the advice of its incumbent ministers, they are Crown powers which, unlike power over policy, were historically never surrendered to complete control by the incumbent government. In extreme and reprehensible circumstances the ancient form of responsibility remains available to the Crown...' (Greenwood: 55)

'With the power of appointing ministers must come the reserve power of dismissing them, also to be exercised under the ancient form of responsibility.'
(Greenwood: 57)

Many in the republican camp have 'maintained their rage' since the dismissal of the Whitlam government in November 1975. Indeed it is likely that many of these 'rage maintainers' are those in the law school common rooms and inner suburban cafes, promoting the republic through their favoured channels, the political arena, the media, the legal; system..

This genre claims that a democratically elected government should be able to serve its full term. Under normal circumstances this is not an unreasonable proposition. The reserve powers, however, are designed to come into play in extraordinary (extreme and reprehensible) circumstances. The Whitlam government was clearly profligate in its spending and had lost the confidence of the people. Some facts, conveniently overlooked or completely disregarded by the rage maintainers are worth relating.

'It was senatorial control of Supply which forced the dismissal of the Whitlam government by Governor-General Sir John Kerr on Remembrance Day, 1975. The Senate deferred Supply, claiming the existence of reprehensible circumstances: namely, unlawful and secretive attempts by members of Whitlam's ministry to borrow from Middle Eastern sources a sum of up to four thousand million dollars US for a period of twenty years, the notorious Khemlani affair (named after the government's private financial agent, Pakistani businessman Tireth Khemlani). What this vast sum of money was needed for remains a matter for heated debate. Whitlam's explanation was that it was needed 'for temporary purposes' to 'deal with exigencies arising out of the current world situation and the international energy crisis, to strengthen Australia's financial position, to provide immediate protection for Australia in regard to supplies of minerals and energy' and to deal with 'current and immediately foreseeable unemployment' His description of a secret loan of US\$4000 million (plus

interest) over twenty years as 'temporary' didn't inspire confidence among Opposition senators, although it provided him with an excuse to attempt avoiding the Loan Council. The Opposition senators saw a more sinister possibility for the money: that Whitlam had seen the writing on the wall for his government, that sooner or later events would provoke the Senate to block Supply and so he was hoarding money to govern without Parliament...' (Greenwood: 1999: 343)

'This denial of money proved swiftly corrosive to administration. In the House Whitlam's Defence Minister, Mr Morrison, warned on the 21st of October that defence preparedness of Australia would collapse; that after 30th November all weekly wages and allowances for all defence personnel would be unpayable, the Army immobilized, the Air Force grounded, coastline surveillance ceased and naval forces confined to port. The day after that speech Whitlam's Treasurer, Mr Bill Hayden, warned of a budgetary shortfall of between \$700 million and \$800 million per month once the existing Supply expired, causing government contracts to dry up, and subsequent retrenchments of school teachers and university staff. During this crisis Senator John Wheeldon, Whitlam's Minister for Social Security, moved

A resolution in [Labor] Caucus, seconded by Senator Wreidt and supported by about a quarter or a third of the Parliamentary Labor Party, calling on the government to put an end to the obstruction in the Senate by asking for a double dissolution.

This Whitlam refused to do. On the 11th of November Sir John Kerr finally lost patience and sacked him, replacing him with a Coalition caretaker administration under Malcolm Fraser, and declared a double dissolution. In the consequent general election Fraser won a landslide victory, enabling him thereafter to form a substantive government in his own right.' (Greenwood: 1999: 344)

What is instructive is the reaction of Whitlam, in particular his assumption that because he had appointed Sir John Kerr as Governor-General, he could assume he had control over him and his actions.

'Following the 1975 dismissal of the Whitlam government by Sir John Kerr, himself originally appointed on the advice of Whitlam, protests against the sacking turned into personal vilification of the Governor-General, vilification led by Whitlam himself exhorting his followers to 'maintain the rage'...Most interesting about these protests was the repeated belief that Kerr was a 'traitor to Whitlam'. The slogan 'Judas' was repeatedly used; as Sir John replied in some bewilderment; 'Where is the Messiah whose disciple I am supposed to have been? To whom or to what cause can it be claimed I was a traitor? Can anyone seriously claim that I was or should have been Mr Whitlam's disciple?' (Greenwood: 1999: 215)

The rage maintainers speak about a republic as a solution to what they perceive as an interference in democratic government, but they don't seem able to answer the fundamental question about extraordinary or irresponsible government. Regardless of the system of governance we choose, either retaining the status quo, or unwisely choosing a republic, there still remains the question of reserve powers; the power to appoint and to dismiss a government.

If the republicans are forced to produce a model which can be compared to the present system, at least we may have an idea of which way the question of reserve powers is to be addressed by them. This is important, as if as I suspect, the republican movement is designed by an elitist self serving political class, the question of reserve powers under their republic will shine a spotlight on their intentions.

It should not be forgotten also that the same elitist genre who are pursuing the republic, and the Bill of Rights, are also advocating the abolition of State governments. The direct political implication of this is the abolition of the Senate, long a target of the ALP, since the Whitlam dismissal, re-iterated by Paul Keating's pronouncement of the Senators as 'unrepresentative swill.'

There is a pattern forming here, in which the removal of obstacles to complete political power, and the ability to politically direct the armed forces and police, without recourse to an impartial entity, presently the Crown, is becoming increasingly possible. Slice by slice, the checks against hegemony are being dismantled.

Reserve Powers: a judicial aristocracy?

'A point of difference between the three countries of the United Kingdom, Canada and Australia, lies in their judiciaries. In the republican debate in Australia there's a subconscious awareness that in dismantling the powers of the Crown, some powers residing in the Crown must nonetheless be placed beyond the reach of politicians, As a consequence, what we are actually witnessing in debate isn't the establishment of a republican parliamentary democracy, but a judicial aristocracy in a republic.'
(Greenwood: 1999: xv)

'The actions of our judges are not hedged about with the safeguards we have placed about our executive government, such as the responsibility of cabinet minister to parliament, nor are they subject to the punishments we impose upon our legislature, the threat of members being dragged from their seats by an angry constituency enraged at the passage of bad law. Nor would it be appropriate to surround judges in their usual capacity with such constraints...the most important kind of judicial independence is independence from political pressure exerted by the dominant faction in Parliament.' (Greenwood: 1999: xv).

A republican model would no doubt invest some, if not all interpretation if not implementation, of the reserve powers, with the judiciary, thus obviating completely the doctrine of judicial independence.

The republic and the Flag

Some republicans claim that the present Constitutional arrangements are not reflective of our present demographic makeup. In this there is an inevitable link with the Australian National Flag. Under the present Constitutional arrangements, we have the ability to retain our present flag, or change it. **Under a republican arrangement, there is no way in which the present Australian National Flag could be retained as a national symbol. A republic risks turning the present Australian National Flag into a rebel flag, and those who have served under it, or continue to support it, into rebels.** This is not a situation Australia needs or deserves.

The Australian National Flag can boast the unique claim that it is the only flag in history to have flown over an entire continent. Furthermore it has done so in peace for over a century. This is a proud boast indeed and it deserved far more respect than to be discarded on the whim of an elitist republican thought bubble.

The Australian National Flag, derived from the Victorian State Flag, itself derived from the flag of the Anti-Transportation League is a proud symbol of our national identity. The Union Flag in the canton, itself a flag of unity between England, Scotland and Ireland, is a reminder of our history, the Southern Cross, a symbol of our place in the world and the Federation Star, a symbol of our strong federation. It thus encapsulates history, politics and geography in one symbol.

On the issue of demographics it is true that over the past forty years, many people have come to Australia from non Commonwealth, and non-English speaking nations and cultures. Although it has not been my experience, as most new arrivals have a deeper appreciation of our political stability, freedoms and symbolism than others, some may (incorrectly in my opinion) interpret our national symbols and national Constitutional arrangements as not totally reflective of these new demographics. My response is that those people came here and were welcomed here, because this is a tolerant and free society, which is why they come here in the first place, and the Crown has played a subtle but vital role in preserving this situation. Those people joined us, we did not join them. **To come from another culture and then agitate to change the structure is, in my opinion, the height of arrogance and rudeness.**

Despite their protestations that there is no connection between the republic and the flag, the republican movement should be completely honest and admit that the Australian National Flag will have to change under a republic.

Denying Power to Others: The Crown our guarantee of democracy

Greenwood in his book 'For the Sovereignty of the People' is so eloquent on this matter that a few quotes from him express my opinion without need for further comment.

'Although rarely seen by the public, the main activity of the Crown as the ultimate guarantor of constitutional government...' (Greenwood: 75)

'...the Cabinet is the issuer of the commands, Her Majesty's representative merely a witness. Yet as the Orders are given as a consequence of his signature, it's the Governor's responsibility to understand what is being done in his name by the true Executive. For the Governor to understand the implications of signing all of this documentation he has to read it before attending the Executive Council meeting.' (Greenwood: 77)

*'...although the Queen's representative is reduced to being a witness, the role enables him the exercise the famous rights **'to be consulted, to encourage and to warn'** as a non-politician observing politicians.'* (Greenwood: 77-78)

'Within the highest council of our hierarchy is someone normally passive, whose interests are different from those of the elected politicians who wield the active power of government; someone to whom information of wrongdoing can be given by a 'lower-echelon official with a troubled conscience' and who, in direst emergency, holds the reserve power to do something about it. Surely this is an inheritance we should be very reluctant to lose?' (Greenwood: 86)

'In contemplating the behaviour of individuals, we speak of their acts as being either lawful or unlawful. But in contemplating the unlawful acts of governments a new line must be drawn, between simple illegality and catastrophic illegality, the former being offences that may readily be remedied in a court of law and the latter, offences that threaten the continued functioning of the civilized State under the rule of law, that threaten the operation of the courts themselves and so cannot find secure remedy within those courts. We possess at the moment what other countries lack, and in its absence, find danger: an apolitical figure-Her Majesty's viceregal representative-drawn from within our own community and seated at the top of the Executive hierarchy, under all normal circumstances quiescent, obeying the advice of the elected politicians, but who in times of emergency has the capacity of stripping an apparently unlawful agenda of its catastrophic implications by stripping its architects of executive office. Why should we be in haste to throw this institution away?' (Greenwood: 89)

'To say the Crown actively defends constitutional government is not to suggest that the Queen, Governor-General or Governor is permanently poised to cause a crisis. Rather, it may be said that the Crown actively defends the constitution in the same sense that a watchdog in a garden actively defends the grounds, even when he sleeps in his kennel. Most prospective burglars, aware of the danger, will prefer to let sleeping dogs lie and refrain from an attempt at burglary. For his own part the dog would prefer to sleep. Only the trespasses of those who still dare to violate the grounds will rouse him to the fury of his office.' (Greenwood: 117-footnote)

*'In particular the Crown's modern purpose is to oppose the infection of salient institutions by political partisanship, and to impose non-partisan limits upon the government of the day, so politicians cannot use their immense but temporary power to acquire illegitimate authority, extend their reach beyond constitutional limits or place themselves beyond the accountability due to Parliament and the people. As the traditional adage puts it, **the chief virtue of the Crown rests not in the power it wields, but in the power it denies others.**'* (Greenwood: 255)

'In a Westminster-like system the "Head of State", elected, appointed or anointed, is not a member of the elected government. When striving to subvert democratic government, the most useful weapon is the outward appearance of a democratic mandate. This weapon is possessed in abundance by a directly elected president, in moderation by a president elected by Parliament, and not at all by a monarch anointed or governor-general appointed under the Constitution.' (Greenwood: 192)

'The modern republican movement is founded upon the belief our Head of State should hold a popular mandate from the people through the way he or she is appointed to the post.' (Greenwood: 199)

'To date, Australian vice-regal representatives have been admirable in maintaining the integrity and neutrality of their position, yet this can't be expected to continue indefinitely.' (Greenwood: 215)

*'Replace an impartial Governor or Governor General with a partisan President and the scope for catastrophe will be magnified. **Abolish both Crown and power over Supply, and you will have an elective dictatorship with every majority government.**'* (Greenwood: 362)

Republican alternatives

I have discovered that republicans are reluctant to nominate a single republic anywhere in the world as a model upon which we can base an Australian republic. The two most successful republics I can name, the Federal republic of Germany and the United States of America, were both born out of military conflict, including massive civil strife. Neither of them are perfect, but in my opinion, if we are to become a republic we could do worse than emulating some of the characteristics of these two.

One note of reservation however, about the abuse of political power, particularly Presidential power in the US. The Watergate scandal and the impeachment of President Nixon is an interesting cautionary tale. He had to go because he was forced to go by media exposure. How many of his administration also had to go because they were held accountable for their own actions, as would be the case under our system? For a complete discourse on the significance of this type of Presidential authority to the present debate, one should read Greenwood. Similarly one should also read Greenwood if one seeks a full exposure of the problems inherent in the French republic.

Some of the answers to the questions posed can be found in history...even from one of the darlings of the republican revolutionary genre, Napoleon Bonaparte.

One comment emerging from French political history has Napoleon Bonaparte having assumed power following the bloody French revolution, and having terrorised Europe for over a decade, writing a conciliatory letter to the British Prince Regent. This follows the entry into Paris by the victors at Waterloo; the British under Wellington, and the Prussians under Blucher.

'Your Royal Highness

*A victim to the factions which distress my country, and to the enmity of the greatest powers of Europe, I have terminated my political career, and I come, like Themistocles, to throw myself upon the hospitality of the British people. I put myself under the protection of their laws, which I claim from Your Royal Highness, as the most **powerful**, the most **constant** and the most **generous** of my enemies.'*

Napoleon 13 July 1815.

No doubt this will disappoint those republicans whose revolutionary zeal stems from the French revolution, but ever since that revolution, the French political system has been far from stable.

Other European republics do not inspire confidence either:

Italy

'When the Ciampi government was brought down by a no confidence motion in January 1994, it was the fifty-second government to fall in the forty-nine years since the end of World War Two.' (Greenwood: 1999:93)

And to those Sein Feinners who still have a tear in the corner of their eyes for the system of the Emerald Isle, please bear in mind that the emissary sent to Ireland by Malcolm Turnbull's Australian republican Movement, returned with some advice which may disappoint:

Ireland

'This presidency, described as merely 'an appendage to the nationalist power structure' not only has failed as a constitutional check upon the actions of the government, but has failed even to serve as a potent unifying symbol, as the elu or sprit of the nation. Consequently the report from Dublin suggested we retain our 'Nominal Chief Executive' system, (currently embodied by the Governor-General), and strongly urged that should Australia decide to become a republic it avoid Irish precedents.' (Greenwood: 1999:104-105)

Nonetheless, both Italy and Ireland, as well as Germany, France and to a certain extent Britain, have ceded their own sovereignty in large swathes to the European Union. But this is a subject for discussion at another time.

In summary therefore concerning European republics:

'Casting a summary eye over the republics of Western Europe, the very best of them have merely emulated our success with parliamentary democracy, while none have surpassed us. Nor, with the notable exception of Switzerland, have any European democratic republics even approached the vintage of representative government in Australia: the current span of democratic government in Germany (counting West Germany and re-unified Germany as one) is less than half that of the Commonwealth of Australia, and only one third as old as elective responsible government upon Australian soil (dating the latter from the 1855 enactment of the New South Wales and Victorian Constitution, Statutes themselves inspired by existing Canadian legislation.) If age is an indication of success, then we need not look to contemporary republican Europe for any tuition upon the art of government.' (Greenwood, N: 1999: 105)

Summary and conclusion

The republican movement must be forced to justify its relevance and justify the need for change to a system which has peacefully nurtured one of the oldest democracies in the world's history. Their republic does nothing to better the average Australian who already lives in the republican ideal of government 'of the people, by the people for the people.'

The republican movement in Australia does not arise from a groundswell dissatisfaction amongst the Australian population. This movement is one inspired by former student activists, now well placed in various professions such as the law, politics, the media and the arts. It is a notion they seem to desire in order to remove well placed checks and balances which safeguard our freedoms. These include, command of the armed forces and police, retention of the reserve powers, and the occupation of ground which should not be vested in politicians, vested instead firmly in an impartial, apolitical entity, the Crown.

There are many good reasons to retain our present system of governance, including the fact that the Crown represents a figure head which unites us with likeminded nations, practising political best practice over a significant number of people, and over a large part of the globe, and which contributes to global endeavours via the

institution of the Commonwealth. An Australian republic will serve to dilute this worthy institution.

The republican movement will never admit that under an Australian republic, the present Australian National Flag will have to change. The republicans must be forced to admit this.

The republican movement asks us to take them at face value and trust that a republican model, as yet unspecified, will yield a betterment to all of the Australian population. They must be forced to produce a model before any canvassing of public opinion on this matter. To do otherwise is a fraud on the Australian people.

The republican movement has failed to identify one single example of a republic anywhere in the world which compares favourably with our present Constitutional Monarchy which a unique combination of elegance and robustness.

This entire process risks alienating a large section of the Australian population, many of whom have served in circumstances the republican elitists can only read in books or see in movies.

In the words of Dr Nigel Greenwood, whom I have quoted extensively in this submission:

'...it may be said that the Crown actively defends the constitution in the same sense that a watchdog in a garden actively defends the grounds, even when he sleeps in his kennel. Most prospective burglars, aware of the danger, will prefer to let sleeping dogs lie and refrain from an attempt at burglary. For his own part the dog would prefer to sleep. Only the trespasses of those who still dare to violate the grounds will rouse him to the fury of his office.'

My suggestion to the republicans is to let sleeping dogs lie, or if that is beyond them, to be honest with the Australian people about the threats to their freedoms and the threats to their symbols posed by a republic. They should be honest about the plebiscite process and admit it is an attempted sleight of hand designed to hoodwink the Australian people. Above all they should be forced to produce a model of their ideal republic so it can be compared with the elegant and robust system we have now.

To do otherwise exposes them as the charlatans they are.

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