

A response to matters raised during the hearing on the 19th of May 2004 in Adelaide as part of the Inquiry into an Australian Republic

1. Senator Buckland inferred that:

- 1.1. the Australian Crown is a Tudor Crown. This is incorrect. The Crown under which Australia is governed is the Crown of King Edward the Confessor, born in 1003 and reigned from 1042 to 1066,
- 1.2. the crown has no bearing on Australian life but all generations of Australians have protected the Crown of King Edward the Confessor for the profound purpose of preserving liberty,



- 1.3. history does not matter, only the future matters but Senator Buckland disregards the fact that there is a contract between the Crown and subjects of the Crown. That contract is in the nature of a dynamic agreement, not a manifesto based upon definitions, not a set of laws, but an agreement, signed by King John, in 1215 as the Great Charter, article 61 being:

*Since, moreover, for God and the amendment of our kingdom and for the better allaying of the quarrel that has arisen between us and our barons we have granted all these concessions, desirous that they should enjoy them in complete and firm endurance forever, we give and grant to them the underwritten security, namely,*

*that the barons choose five and twenty barons of the kingdom, whomsoever they will, who shall be bound with all their might, to observe and hold, and cause to be observed, the peace and liberties we have granted and confirmed to them by this our present Charter,*

*so that if we, or our justiciar, or our bailiffs or any one of our officers, shall in anything be at fault towards anyone, or shall have broken any one of the articles of this peace or of this security, and the offense be notified to four barons of the foresaid five and twenty, the said four barons shall repair to us (or our justiciar, if we are out of the realm)*

*and, laying the transgression before us, petition to have that transgression redressed without delay.*

*And if we shall not have corrected the transgression (or, in the event of our being out of the realm, if our justiciar shall not have corrected it) within forty days, reckoning from the time it has been intimated to us (or to our justiciar, if we should be out of the realm), the four barons aforesaid shall refer that matter to the rest of the five and twenty barons,*

*and those five and twenty barons shall, together with the community of the whole realm, distrain and distress us in all possible ways, namely, by seizing our castles, lands, possessions, and in any other way they can, until redress has been obtained as they deem fit,*

*saving harmless our own person, and the persons of our queen and children;*

*and when redress has been obtained, they shall resume their old relations towards us.*

*And let whoever in the country desires it, swear to obey the orders of the said five and twenty barons for the execution of all the aforesaid matters, and along with them, to molest us to the utmost of his power; and we publicly and freely grant leave to everyone who wishes to swear, and we shall never forbid anyone to swear.*

*All those, moreover, in the land who of themselves and of their own accord are unwilling to swear to the twenty five to help them in constraining and molesting us, we shall by our command compel the same to swear to the effect foresaid.*

*And if any one of the five and twenty barons shall have died or departed from the land, or be incapacitated in any other manner which would prevent the foresaid provisions being carried out, those of the said twenty five barons who are left shall choose another in his place according to their own judgment, and he shall be sworn in the same way as the others.*

*Further, in all matters, the execution of which is entrusted to these twenty five barons, if perchance these twenty five are present and disagree about anything, or if some of them, after being summoned, are unwilling or unable to be present, that which the majority of those present ordain or command shall be held as fixed and established, exactly as if the whole twenty five had concurred in this; and the said twenty five shall swear that they will faithfully observe all that is aforesaid, and cause it to be observed with all their might.*

*And we shall procure nothing from anyone, directly or indirectly, whereby any part of these concessions and liberties might be revoked or diminished;*

*and if any such things has been procured, let it be void and null, and we shall never use it personally or by another.*

- 1.4. our constitutional monarchy is an outgrowth of the schism between the Roman and the Anglo Catholic church, but he fails to recognise that the coronation, held in the Abbey Church of St Peter, expanded in his reign by King Edward the Confessor, is performed:

under ritual laid down and developed by Dunstan in the first millennium, balancing as he did the Roman and Celtic church rites,

with liturgy of the communion service developed by Cranmer to bridge the gap between those of Roman faith who believed in literal transubstantiation of the bread and wine into Christ's body and blood and the renaissance view that it was a symbolic representation, and

in reflection that the Crown is infinitely divisible in enabling realms to be governed within their 'respective laws and customs'.

- 1.5. . whatever merits the Crown may or may not have, it was besmirched by the acts of King Henry VIII who split asunder the unity of the Roman church, but he fails to acknowledge that:
- 1.5.1. the sovereignty sought by King Henry, twenty four years married to his brother's widow, seven years his senior, reflected tensions arising from the King of Spain and his influence over Pope Clement VII,
- 1.5.2. the issue of infinitely divisible sovereignty under the Crown has allowed colonies to develop into being totally and absolutely self governing, states to have sovereignty within federations and an empire to be assembled and dismantled without rancour,
- 1.5.3. the behaviour of the Tudor King called into question the legitimacy of the rule of kings, as it was called into question during the reign of the Stuarts and the triumph of parliament was to retain the monarch with the powers of contract with its subjects but no power to affect or contribute to policy or administration,
- 1.6. it is offensive for the Crown to be worn only by a member of the Anglican church, but he fails to note that in the choice of representatives of the crown there is no limit or bias in creed or culture and the Act of Settlement has everything to do with sovereignty, which sovereignty passes with the crown.

2. Senator Payne inferred that:

- 2.1. regulations and statutes are vetted and agonised over by parliamentarians prior to enactment but she fails to understand that once enacted,

administrators may apply rules in detail and development at a rate that may constitute one thousand pages of subtle modifications every six months and the only agencies that can keep up are bureaucracies. Ombudsmen, administrative tribunals and local Members of Parliament are helpless in the transfer of control of knowledge and the transfer of power from a democratic to a bureaucratic structure. Sovereignty is transferred from State to Federal government and power is being ceded increasingly to international bodies. The Economic Commission for Europe is the generator of regulations most encountered by this Australian engineer working at the interface between people trying to produce and those who govern their production.

3. Senator Stott-Despoja appears to underestimate the difference between subject and citizen and between public service and bureaucracy. Problems did not evaporate when King John signed the Magna Carta in 1215 but it became a reference point. King Charles I at the scaffold in 1649 said ‘I go from a corruptible to an incorruptible crown . . . I must tell you that the liberty and freedom of the people consists in having of Government, those laws by which their life and goods may be most their own.’ The Crown imposes responsibilities and obligations on the subject but it protects the subject and the minority from the tyranny of the majority or the fashionable doctrine.

I do not believe the Honourable Senators have grasped the essence that Constitutional Monarchy is the solution to the problems of governance. We enjoy it in its evolved form. We have stability predicated upon the adversarial process of finding the blemish is each other’s argument. He or she with the argument most favoured by people, or the one most supported by evidence in a court will prevail and in the advanced form of public service, a way will be found to allow the existence of an individual or minority.

The Crown does not seek a fairer system, but a fair one. It does not seek a better system but a good one.

Any attempt to change our system will lead ineluctably to an institution whose head will try to improve things and that is what history has shown kings and queens must leave to their subjects. In reciprocity to subjects being given power and now ultimate power, subjects must protect the lives of their sovereign as per the ancient contract.

My thesis is that the gear change in social, economic and cultural development will not come about by dismantling constitutional monarchy but in expanding people’s understanding of it and the opportunities it affords and the obligations it engenders.

I urge the Honourable Senators to cherish and respect our Constitutional Monarchy and to restore the Crown to prominence in public life.

Douglass Potts