AUSTRALIAN ETHNICITY & AUSTRALIAN MULTICULTURISM

THE AUSTRALIAN CONSTITUTION as viewed from the Ethnic perspective

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My party, the New Australian Republican Party, stands for giving political identity to ethnic Australians. We have doubts and reservations about the present Constitution of Australia. We claim that it lacks validity as the Constitution of an independent, sovereign state and cannot regulate the public affairs of this nation in a democratic manner

The present Constitution does not pass all the tests of legality in Australian law and practice, international law or the legal custom that has developed within the United Nations

* Australia's Constitution is an act of the British Imperial Parliament in Westminster, London.
* Australia's supreme law making body, the Federal Parliament, has never formally approved the Westminster Constitution.
* The alleged legality of the Constitution comes from the fact that the Australian colonies accepted it by referendum. However, that particular referendum cannot be accepted as democratic as there was no general franchise at the time. Women (except in South Australia), Aborigines and Chinese could not vote and other permanent residents of non-British origin could only vote if formally naturalised after many years of waiting.
* All the voters were British subjects, not Australian citizens, as Australian citizenship was not legalised until 1948.

Thus neither the Australian Parliament nor any Australian citizen ever voted in favour of the Australian Constitution. This matter should have been raised in 1948 when a separate Australian citizenship was established

The Westminster Constitution is unsuitable for an independent, sovereign nation State like Australia

The Westminster Constitution was created to:

* Create an intermediate colonial unit which would make political and administrative control of the individual colonies easier
* Federate the individual colonies into a higher level colony which would ensure more resources and better co-operation for their common security and continued protection by the Imperial power

The Westminster Constitution is colonial

This Constitution was never intended for an independent, sovereign nation. An analysis of the clauses of the Constitution support this observation. I will quote only one example Section 51 (XXXVIII) states that "The Commonwealth Parliament shall have the power to make laws which could be exercised only by the Parliament of the United Kingdom at the time of the establishment of this Constitution only and it is within the Commonwealth and with the concurrence of all the States directly concerned" This provision transfers sovereignty on matters other than those listed in Section 51 from the United Kingdom Parliament to all Federal and State Parliaments combined without making provisions for joint sittings to arrive at the joint decisions necessary to exercise this sovereignty

One could argue that in the absence of such joint decisions the United Kingdom Parliament still has some reserve legislative power with regard to Australia to fill this constitutional gap. Further this provision restricts the power of the Federal Parliament and the joint power of the Federal and State Parliaments within the Commonwealth of Australia.

The Westminster Constitution lacks sovereignty provisions for the Federal Parliament

The absence of sovereignty clauses in the Constitution prevents the Federal Parliament or the Federal Government from joining international bodies such as the United Nations and their many agencies, formalising international conventions and accepting their findings, initiating and taking part in such bodies as the South Pacific Forum. To fill this constitutional gap the High Court has ruled that Section 51(29) of the Constitution gives power to the Federal Parliament to legislate with respect to external affairs. This should be interpreted as including sovereignty provisions and Federal legislation in such cases should overrule State legislation. This is what happened in the Franklin Dam case. This extension of the Constitution by the High Court is causing disquiet in the community which is realising for the first time that the transfer of sovereignty from the Imperial power (the United Kingdom Parliament) to the Federal Parliament has not been accomplished in a satisfactory manner. Clear and unmistakable sovereignty clauses must be included in the Constitution stating that Australia is an independent, sovereign nation and that sovereignty rests with the Australian people and is exercisable by their elected representatives, the Federal Parliament and the Federal Government.

Under the Westminster Constitution sovereignty is shared between the Federal and State Parliaments

The legislative power of the Federal Parliament is listed under Section 51 of the Federal Constitution while the balance of the legislative power rests with the States. This arrangement was acceptable in the early years of the Federation when neither the Federal nor the State Parliaments was sovereign. The legislative powers stem from the Parliament of the United Kingdom which maintained sovereign power but delegated the legislative power to the colonies or to the Commonwealth. Under such an arrangement it did not matter very much how these delegated powers were shared, as the Imperial Parliament could overrule both. This also explains why there are no sovereignty clauses in the Westminster Constitution. After the Statute of Westminster 1930, the situation changed. Sovereignty is a supreme and independent political authority. A division of it would be a contradiction in terms. Part sovereignty for the Commonwealth and part sovereignty for the State Parliaments is not acceptable as it leads to the conclusion that part sovereignty is no sovereignty at all.

The States have stronger claims to sovereignty, according to their own Constitutions, than the Commonwealth has. The Constitution of each individual State gives unspecified power to the respective State Parliament to legislate on any issue. This power is lacking in the Federal Constitution. If the Australian States have stronger claims to sovereignty, then the Westminster Constitution of the Commonwealth is akin to the Treaty of Rome a multicultural association of European sovereign states known as "the Common Market". However, the interpretation of the Constitution as a Treaty of Rome Constitution would have unacceptable political consequences in Australia: Independent diplomatic representation of the States in other countries, individual representation at the United Nations and its many agencies, separate defence forces, international frontiers within Australia, individual foreign policies to name but a few. The problem of the Australian Federation has always been that the States expect the greater security of a larger unit but are not prepared to give up their own sovereignty for this purpose. History has overruled the concept of States sovereignty with the emergence of the Australian nation.

It should not be forgotten that the fine legalistic and traditional distinctions between Federal and State used by politicians,

lawyers and States righters are insignificant and incomprehensible to the great majority of the people who, afterall, are the people of the States voting for State policies at State elections but at the same time are also the people of the Commonwealth voting for Commonwealth policies at Federal elections. We believe that Australia, an independent, sovereign nation, should bestow sovereignty on the Federal Parliament over the Australian States, but at the same time should delegate legislative power listed in a new Federal Constitution to the Regional or State Parliaments.

The Westminster Constitution cannot regulate the public affairs of Australia in a democratic manner

There are many people in Australia who consider that the Westminster Constitution should not be changed because it is the best protection they have to secure and perpetuate their privileged position. The continuation of the British Monarchy gives political domination to one segment of Australian society. This dominant position is secured by the electoral system based on the Constitution and electoral legislation.

Even though people of non-British background have been in this country since Captain Cook (whose midshipman was Mario Matra, a New York born Italian after whom the Sydney suburb of Matraville was named) and have always formed a substantial proportion of the population, their contribution to Australian society has never been acknowledged or accepted. Their presence has even been questioned or outrightly denied. The last infamous chapter of this unequal treatment occurred only three years ago when approximately 800,000 United Kingdom citizens, who were not Australian citizens, were confirmed in their Australian voting rights while equivalent voting rights were denied to non-British residents.

Ethnic Australians contribute roughly one third of the annual budget of Australia: in calendar year 1987 about $23 billion. They contribute to such royalist and colonial institutions as State Governors, Agents-General in the United Kingdom and other special relationships with the "Mother Country" which is not theirs and which, for them, is alienating.

Another aspect of national life which is suffering from an impractical constitution is the national economy. In the early years of the Federation, Australia's living standard was the highest in the world. Eighty years later about 20 ther nations have surpassed the Australian living standards. The standard of economic management has not deteriorated to such an extent to bring about these dramatic changes. They are in fact connected with the operation of the Australian Constitution. Other countries appear to be able to carry out their decisions quicker, with less dissent and disruption, than occurs in Australia, where the States have used their separate public services against the Federal Government sometimes to the point of economic sabotage.

One more point has to be mentioned in the context of economic management. That is the role of the Australian trade union movement. Trade unions were formed in Australia over 100 years ago by the oppressed Irish minority to protect their interests against the largely English employers. But the Australian trade unions have become more militant than almost any others in the Western world. They have also become more political. The basic cause of this trend appears to be the unwillingness of the British establishment in this country to share political power with anyone. The reaction to this is a militant and politically-minded trade union movement.

Summarising now the causes which render the Westminster Constitution impracticable:

- Lack of provisions to bestow sovereignty on the clearly defined and democratically elected public body.
- Lack of declaration of human rights and protection of them by the Constitution.
- Lack of satisfactory machinery to make Federation work i.e. a co-ordinated public service to implement legislation at Federal, State and Municipal level and carry out regulations by all governments.

The present Constitution should be invalidated by Federal legislation and replaced by a new Australian Constitution. This new Constitution should include:

- Adequate sovereignty provisions. Sovereignty should rest with the Australian people and be exercised by the democratically elected Federal Parliament through the Federal Government. which must be responsible to the Parliament.
- Adequate rules for the functioning of the Parliament fixed terms of office, confidence of the House of Representatives for the Government (but not necessarily for the Senate), the role of the Prime Minister and the Cabinet.
- A Head of State — an **elected** President in a Republican system elected for a fixed term of office. The President must be an Australian citizen.
- Provision for Federalism i.e. delegated legislative power for non-sovereign State Parliaments and for Municipal Government.
- State Parliaments to have protection of their legislative power. Any Federal legislation on State issues listed in the Constitution, if opposed by at least half of the States, to be decided by a referendum.
- Declaration of human rights in a Bill of Rights attached to the Constitution. Declaration of equal rights for all Australian citizens in the form of multiple electorates and proportional representation for the House of Representatives and the one vote one value system for the election of the Senate.
- Provision for a unified judicial system. The State Supreme Courts to merge with the High Court as the highest court in the land.
- A unified Australian Public Service which can implement all legislation whether Federal or State, and which can follow up the regulations of all levels of government.

I want to finish this paper with a haunting thought from Clause 2 of the Commonwealth of Australia Constitution Act which says, in reference to the Queen: "that the provisions of this Act shall extend to her successors in the sovereignty of the United Kingdom". The operative words are **"in the sovereignty of the United Kingdom"**. That means Australia must accept as the Head of State anybody the United Kingdom might choose to elect as their Head of State. So, if the United Kingdom merges with the rest of Europe, the new President of Europe will be the Head of State of Australia. Or if the United Kingdom decides to be a member state of the Union of Soviet Socialist Republics, the President of that state will automatically become the Head of State of Australia.

Now it is no longer a question of Monarchy. It is a question of sovereignty. **The United Kingdom, under this clause, is an Imperial power and Australia remains a colony.** As long as this clause remains in the Constitution, we cannot accept this Constitution as a valid one.