FROM THE CONSTITUTIONAL PAST TO THE NEW EDUCATIONAL IDEAL

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It's a very ancient saying, but a true and honest thought
That when you become a teacher, by your pupils you'll be taught
Rodgers R. and Hammerstein O. 'The King and I' (1956)

Continuing Problems of the Australian Constitution

Australian governments support the new international governance paradigm discussed later. From this perspective, good governance normally requires clear separation of government policy from its administration, with the former driving competitive, transparent, service provision (Rich, 1989; Hilmer, 1993) so all may identify a range of economic, social and environment related outcomes. Program budgeting, as partially implemented in the public service by Wilenski (1982; 1986), is central to this approach. Managers start with program or project aims which have been consultatively developed, then establish strategies to meet them and prepare a related budget. All activities are monitored and their outcomes are measured in the light of general aims. Unfortunately, the Senate Committee report of inquiry into transparency and accountability of Commonwealth public funding and expenditure (2007) ignores program budgeting. It recommends complex additions to the existing budget process which are likely to add to current budget opacity and all related cost. The committee concludes its recommendations are designed to restore the Parliament's historical and constitutional prerogatives. This is undesirable in an era where open partnerships with industry and communities are required to achieve national and regional goals related to health and sustainable development effectively, through fair and efficient competition. The Senate committee seeks to take Australia backwards because it is blinded by an outdated Constitution and financial administration which reflect a British governance model in which elected politicians, administrators, and the judiciary are seen as separate, independent governance pillars. Broader, more up to date, flexible and cheaper education is vitally necessary to bring about community understanding and change. Closed higher education subjects do not meet Australian or international sustainable development goals effectively. New, open education models for public sector, community and industry management are vital for the future. This is the supporting case for a linked and open approach towards education for health, sustainable development and human rights.

Before federation in 1901, six Australian states were self-governing colonies each with a Constitution through an English act. The federation aimed at uniform rules and free trade throughout Australia. However, its form has meant complex over-regulation, general lack of transparency and many other costs which are often driven by a feudal, prescientific, monopolistic, legal culture. The reader of the Constitution finds clear rules about how Australia should be governed. Nevertheless, the Constitution is a law about administration, with Commonwealth and state policies subject to it. This inhibits and deforms all future law and policy making. State parliaments can pass laws on a wider range of matters than the Commonwealth, but the Constitution provides that if a

Commonwealth law is inconsistent with a state law, the former overrides the latter. The High Court is the highest in the land, and also decides disputes about Constitutional meaning. Constitutional requirements about administration thus dominate all other decision-making structures. Many laws have been rendered incomprehensible, inconsistent and illogical by time and the related piecemeal amendments which court actions have brought about in statutes. However, the Constitution has hardly changed. This requires a referendum. The Constitution has outlived its usefulness and should be ignored whenever necessary. Australians should learn from recent international experience, which is discussed later.

The Australian community thus faces central problems of administration driving policy and the power of the court monopoly. The adversarial interpretation and application of the letter of particular law, rather than the resolution of presenting problems within a broader environment, minutely regulates the responses of those in the legal arena. Lord Woolf said of English law that besides being incomprehensible to many litigants, 'above all it is too fragmented in the way it is organised' (NSW Law Reform Commission, 2004, p. 25). Courts normally take a 'black letter' approach to law which means it has no aims, its prescriptions are ideally followed exactly and there are no definitions of key terms. Legal 'interpretations' far less useful than those in a dictionary, exist instead. Alleged breaches or related disputes are ruled upon in courts where adversarial lawyers plan their arguments secretively and according to investigation and evidence presentation rules originally developed in feudal England, to provide for a fair fight. Legal 'privilege' is a central concept justifying denial of information. The assumption appears to be that the lawyer may conceal or mould what his client knows is true, to maximise his interest in revenge or escape from any guilty judgment and its consequences. From a scientific perspective this is fraudulent behaviour. The oppositional approach to presentation of expert evidence is expensive, encourages bias and silences many who might wish to be heard, while often turning science into junk. Lawyers are prohibited by their learned vocation from an understanding of a whole of government approach to the attainment of community interests, let alone a sympathetic implementation of them. Courts provide little or no data to assist more scientific approaches to community or industry management. The legal fraternity do not systematically classify cases or study outcomes of a broad range of apparently related judgements, to gain better understanding of outcomes for groups or individuals so as to promote better injury prevention, rehabilitation, premium setting or better law and policy in future. Scientific principles are instead overruled by feudal ones that lawyers spend years learning in universities. No wonder many countries are sensitive about their education and related human rights curricula (Joint Standing Committee on Current Affairs, Defence and Trade, 2004, p.65).

Neither the Australian Constitution nor other law has any equivalent to the Bill of Rights in the earlier US Constitution, which prevents a legislature passing laws that infringe certain freedoms, supposedly given by God. The Constitutional form of Australian government supposedly represents 'the sovereignty of the Australian people' and superficially may appear to be agnostic. Section 114 states that the Commonwealth must not impose any religious observance or prevent the free exercise of any religion and no religious test should be required for entry to any office or public trust. However, the

Constitution actually appears to stand for a Supra-natural Power, which takes a prescientific approach to all development. How else can the supreme authority of Its word over all other law made by the contemporary community or future generations be explained? This is an authoritarian rather than scientific or democratic approach. History suggests each generation is generally more informed than the previous one and ideally should correct past mistakes in the light of new experience. This is not possible under the Constitution, which keeps Australia looking backwards. In the legal paradigm, the words 'just' and 'justice' are also different from 'fair', and synonymous with access to the courts, (Commonwealth Attorney General's Dept., 2002, p.195), as if the lawyers' monopoly and their adversarial methods entail perfection. This anti-historical approach may be contrasted with recent, holistic and scientific approaches to apparent breach of statute and dispute resolution, which are championed by Sir Lawrence Street (2002) and many others (NADRAC, 2001; Strang and Braithwaite, 2001; Braithwaite, 2002).

The New International Governance Directions

A better designed, international, national or local model of governance from almost any scientific or cultural perspective is now emerging. Foucault (1997) has described this broadly scientific and democratic ideal as 'the politics of truth' and saw it as first expressed by Kant, in the European Enlightenment. It developed faster after the failure of fascism and the related atrocities of World War II led to the establishment of the United Nations (UN). The new regulatory model is based on the 20th century ideal of universally guaranteed standards of living which also place fair treatment, wellbeing and the guardianship of natural resources for future generations at the centre of all development. Program budgeting, as discussed by Wilenski, is central to this process. Australia should be at the forefront of this scientific approach to sustainable development which is ideally guaranteed by law. It is held back primarily by the Constitution, its keenest upholders in central government administration and professional monopolies. Related national competition policy problems are discussed later in this context.

Key international, democratic, governance concepts which Australia has adopted into a variety of legislation, are based on the UN Declaration of Human Rights proclaimed by the newly established UN General Assembly in 1948, after the atrocities perpetrated during World War II. The Declaration states that all human beings are born equal in dignity and rights without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. All are also declared to have the right to a standard of living adequate for health and well-being. The UN Declaration, or 'Bill of Rights', is implemented through the Covenant on Economic, Social and Cultural Rights (ICESCR) and the Covenant on Civil and Political Rights (ICCPR). The former deals with fair wages and equal remuneration for work of equal value; safe and healthy working conditions; equal opportunity; rest, leisure, and working hours. It also deals with community service standards for family wellbeing and specifies international rights to education and cultural freedom. The ICCPR addresses rights to freedom of movement, equality before the law and freedom of thought, conscience and religion. It also discusses the right to freedom of opinion and expression, peaceful assembly, freedom of association, participation in public affairs, and

the protection of minority rights. Governments signing up to UN agreements ideally commit to laws which provide the means for implementing their principles. These may be seen as a state guarantee of national minimum standards of wellbeing for all, albeit delivered in highly varying economic and cultural environments. From this perspective, providing justice is like providing other services, such as health care or education. Services ideally have clear aims and are administered consultatively and comparatively.

After the Nazi defeat, the Nuremberg trials produced a vital Code which expressed the new international awareness that narrowly driven views of scientific experiment may make total destruction as likely as improved wellbeing. The Nuremberg Code stated all those involved in research must be properly informed and have the power and moral responsibility for autonomous speech and decision. The first principle of the Code states:

> The voluntary consent of the human subject is absolutely essential. ……. The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to others with impunity.

Code principles should be applied in any broadly scientific approach to individual or community management, as well as in medical experiments. Broader community education rather than professionally driven ethics committees are needed in this context. The latter may just produce costly red tape. A recent discussion paper on the protection of human genetic information by the Australian Law Reform Commission and the National Health and Medical Research Council (2003) concluded ethical inquiry is consistent with scientific inquiry, in that it is centrally concerned with the kind of procedures or discussions that allow all relevant sources of information and viewpoints on a disputed matter to be taken into account in coming to a decision. Ethical judgment, like scientific inquiry, is ideally an ongoing activity for all, since community life is continually developing, along with knowledge and related conceptions of truth. This inclusive approach to ethical judgment also requires much greater recognition of the need for informed participation of communities in all service provision. It also requires educational approaches which recognize the subjectivity of all, including that of any researchers who prefer to think of themselves as above the fray gripping those below.

The World Health Organization (WHO) has widely promoted broadly coordinated, scientific, approaches to managing all social administration since 1986 when the Ottawa Charter stated that necessary health supports include peace, shelter, food, income, a stable economic system, sustainable resources, social justice and equity. The Charter called for development of public policy, reorientation of health services, and community action to support health goals. The WHO program aims to increase the span of healthy life so that the disparities between social groups are reduced. In 1992, the first principle of the Rio Declaration on Environment agreed to by UN members was that humans are at the centre of concern for sustainable development and are entitled to a healthy and productive life in harmony with nature. At the 1994 Asia Pacific Economic Cooperation (APEC) summit, national leaders agreed to create an Asia-Pacific free trade zone by 2020, and to protect health and the natural environment. Ideally, regional environments are examined to

identify and manage key risks to community and environment wellbeing. In this context, the industry and community approach to management and related education ideally starts with teaching key skills and management principles for the identification, prioritization and control of community and environment problems, in order to devise effective injury prevention and rehabilitation solutions for the future. This is partly expected already in Australian industry as a result of state occupational health and safety acts which provide employers and workers with a duty of care and require the identification and control of work related risks. Open and broader educational support is needed for this approach.

The United Kingdom, Canada and New Zealand have enacted human rights legislation, but New South Wales and most other Australian states have not. The concept of a'Bill of Rights' is highly problematic in Australia's existing legal context, which is colonially based on ancient, English common law and adversarial methods. This means that very broad educational approaches to human rights implementation appear naturally better than those driven by lawyers who appear likely to wish to preserve their dominant court powers and occupational monopoly. Australian governments have recognized that individual rights are ideally balanced by responsibilities to the communities which extend them. Varying historical environments may produce sharply conflicting ideas about how to achieve the freedom of the individual from state interference on the one hand, and the stated right to community protection and to equal treatment on the other. In the US, for example, the Constitution protects and so encourages gun ownership, but voting in elections is voluntary. Australian law bans most gun ownership but voting is mandatory. These moral differences also suggest that implementation of legalistic approaches to human rights will breed major anomalies and costs.

On the other hand, all can agree that community and environment health involves diverse life flourishing, and set up broadly scientific methods to achieve it, as long as they are taught some basic principles first. Differences in cultural interpretation of human rights may be dealt with more productively if community health and sustainable development are primary goals, and the rights and responsibilities of the individual are debated and constructed broadly in this context, through continuing education, communication and debate. All community management and related services are ideally built on this foundation. The process requires systematic information collection on case and program performance and outcomes, which is undertaken in partnerships between government and communities, the private sector or voluntary organizations. Data driven management is ideally designed to achieve health, sustainable development and better policy formulation on a continuing basis. As the Standing Committee on Environment and Heritage report on sustainable cities (2005, p.20) pointed out, coordinated governance structures are essential which can translate the vision of sustainability into targets, and to plan, implement and review the programs that will achieve them. Doing so requires broad education, management openness and service transparency, not secretive dealing.

Hindrances to Australian Governance, Competition and Consumer Principles

Australian acceptance of the new international governance paradigm was clearly signalled in 1990 when the Council of Australian Governments (COAG) agreed anew to

implement a single, national regulatory environment. This was immediately after the states had begun an examination of all legislation to update it and make requirements plain. The COAG passed legislation requiring mutual recognition of all Commonwealth and State laws and continuing review of legislation, in order to develop national standards for health and environment protection, including related occupations and training, disability services, social security benefits and labour market programs (Premiers and Chief Ministers, 1991). Competition was to be designed upon this national platform of standards, with the aim of equal treatment for the private and the public sector service provider, unless another course of action appears to be in the public interest. Against this logic, freedom of information principles have so far been applied only to the public sector. Perfect information appears vital for perfect competition, as it does for perfect accountability, democracy and risk control, but is resisted. For example, the purchaser of higher education usually has little way of knowing what it consists of until it is completed. More open education would be more productive (Florida, 2003).

In 1993, Hilmer's report to Australian Heads of Government after an independent committee of inquiry into a national competition policy, defined competition as, 'striving or potential striving of two or more persons or organizations against one another for the same or related objects'(1993, p.2). The earlier Trade Practices Act (TPA) 'interpretation' of competition currently states that, 'competition includes competition from imported goods or from services rendered by persons not resident or not carrying on business in Australia'. The TPA does not define key terms, but 'interprets' them instead. People wondering what a 'covenant' or 'debenture' is may find themselves no wiser after reading the TPA interpretation, than before. Dictionaries would be better guides for everybody than legal interpretations and reduce legal and related cost. Hilmer wrote:

> Competition policy is not about the pursuit of competition per se. Rather it seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives. These accommodations are reflected in the content and breadth of application of pro-competitive policies, as well as the sanctioning of anti-competitive arrangements on public benefit grounds (1993, p. xvi).

This is recognition that the role of government is to intervene in the market o facilitate more effective competition or to attain other social objectives considered to be in the public interest. Hilmer stated that the Commonwealth, State and Territory governments had earlier agreed on the need to develop a national competition policy which would give effect to the following principles:

> (a) No participant in the market should be able to engage in anti-competitive conduct against the public interest
>
> (b) As far as possible, universal and uniformly applied rules of market conduct should apply to all market participants regardless of the form of business ownership

© Conduct with anti-competitive potential said to be in the public interest should be assessed by an appropriate transparent assessment process, with provision for review to demonstrate the nature and incidence of the public costs and benefits claimed

(d) Any changes in the coverage or nature of competition policy should be consistent with, and support, the general thrust of reforms

Such guidelines appear good for direct implementation into new competition law. They are clear and imply the reasonable view that the unregulated market does not always work infallibly in the common good. However, the way below was chosen to implement the Hilmer Report instead. Although the report addressed consumers only in relation to boycotts, it led to the passing of the Competition Policy Reform Act (1995) which had the stated object '**to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection'.** The implementation of the Competition Policy Reform Act was principally by making amendments to the TPA. The Australian Competition and Consumer Commission (ACCC) was set up to preside over competition concerns.

In the light of the Hilmer Report, all these steps appear wrong. This indicated that the early Australian legislative approach to competition followed the US Sherman Antitrust Act of 1890 which stated that all 'unfair' business 'monopolizations' and 'combinations' are against the national interest. As JK Galbraith pointed out later, 'To suppose that there are grounds for antitrust prosecution whenever three, four or half a dozen firms dominate a market is to suppose that the very fabric of American capitalism is illegal'(1952, p.68). He also pointed out that this has never discouraged the briefless lawyer. The TPA has developed on a similar basis of early legal assumptions about the market being composed of traders whose interactions, when ideally free from government interference or other monopoly influence, naturally benefit the whole society. This is a highly questionable economic proposition, unsuitable for legal reification. Neither are consumers recognized as a subset of traders in this theoretical framework. The comparatively recent concept of the 'consumer', suggests that many traders may need special protection because of their comparative lack of information about their purchase, or for other reasons such as their comparative lack of money, opportunity or related bargaining power. After the Hilmer report, consumers were specifically addressed in a new section of the TPA. This and state fair trading acts now have long, inconsistent and narrow definitions of a consumer.

When studies of health services, education and many other industries discuss consumers, they mean the purchasers or users of a product or service and the term 'access' usually relates to the availability of this to all potential purchasers or users. However, when the TPA discusses access, it normally means access of traders to the market. A growing list of newly added matters related to specific industries is now making the TPA increasingly long, inconsistent and expensive to implement. In its inquiry into telecommunications competition regulation, the Productivity Commission (PC) returned to Hilmer in questioning the economic principles which the lawyers in the ACCC appear to be

pursuing, as a result of the form of implementation of the Hilmer Report. The inquiry concluded there is an inherent difficulty in defining anti-competitive conduct in an objective sense and it is not possible to undertake a full benefit cost analysis of the merits of anti-competitive conduct regulation. It stated lack of transparency in the TPA also limits the ability of telecommunications providers and the community to analyse and comment. The PC's attitude to its own inquiry into allegations of unfair use of market power in telecommunications is summed up in its quote from the Hilmer Report:

> The central conundrum in addressing the problem of misuse of market power is that the problem is not well defined or apparently amenable to clear definition…. …….Even if particular types of conduct can be named, it does not seem possible to define them, or the circumstances in which they should be treated as objectionable, with any great precision……Faced with this problem……..the challenge is to provide a system which can distinguish between desirable and undesirable activity while providing an acceptable level of business certainty. (PC, 2001, p. 154)

This is also justification for the planned, government, industry and community approach to competition proposed in this article. The problems of an overcrowded market were faced in NSW in 1987 when the WorkCover Scheme was introduced after the collapse of five out of over forty insurance companies underwriting workers' compensation and competing on premium price. Government and industry paid for this failure. Under the WorkCover Scheme, government and industry own the premium fund and set rehabilitation benefits and premium levels. Twelve insurance companies are licensed to manage the scheme competitively, with oversight by the WorkCover board. Insurers compete primarily on their ability to assist injury prevention, rehabilitation and fund investment, rather than premium price cutting. This structure promotes general economic stability as well as cost containment. The premium fund is retained in industry and government ownership, not given away. This seems a sensible injury prevention and rehabilitation model for future industry and community developments to reduce risks to the natural environment as well as to workers, consumers or communities. Education and research are ideally designed competitively to meet needs identified through evidence and key stakeholder consultation.

The above approach to controlling work related risks to health is consistent with UN and International Labour Organization conventions and also with the WHO and Australian approach to health promotion. As Duckett (1997) pointed out in regard to heath services, the Medicare monopoly has protected the health of Australians more broadly, equitably and cost-effectively, in comparison with the experience of US consumers of private health care. Would economists think that this makes Medicare a natural monopoly? From industry and related consumer or community perspectives, the government allocation in 2006 of two new digital television services *'for new and innovative digital services rather than replicating traditional television services'* should now presents welcome new educational opportunities, of the kind already discussed by the Joint Standing Committee on Foreign Affairs, Defence and Trade (2003) in its report on human rights, good governance and education in the Asia Pacific region. The best management structures for educational TV, radio and supporting entertainment are worth inquiring into in the related light of continuing skill shortages, the current high cost of tertiary education, and the need

to promote general understanding of new international and national management approaches, as well as sale of other Australian products and services.

However, the need for an Australian paradigm shift to implement the Hilmer Report and related consumer, health and sustainable development goals remains. In its report of inquiry into telecommunications competition regulation, the PC (2001, p. 40) defined 'access' in relation to services providers in the market, rather than in relation to the ultimate program consumer, even though the treasurer had specifically stated that the review should, 'Have regard to the established economic, social and environmental objectives of the Australian government' (PC, 2001, p.v). The PC stated that an **access regime** is:

> 'a set of regulatory arrangements governing the rules by which one party is obliged to provide its services to other parties, even if it does not wish to do so'.

TV program watchers do not exist in this formulation in spite of the fact that the PC (2001, p. 145) stated that the main way in which pay TV providers compete is via content and that 'content is king'. In its discussion of new television licences, the ACCC (2006) later stated that **access** is interpreted in the newly inspired section 118A of the Radiocommunications Act, as:

> '**Access** to services that enable or facilitate the transmission of one or more content services under the license, where **access** is provided for the purpose of enabling one or more content service providers to provide one or more content services'.

Because of its historical background related to government ownership and nation building, Telstra accounts for around two thirds of total communication services revenue. The carrier has also been called the biggest consumer of legal services in Australia (PC, 2001, p. xxv). Yet in spite of many declaring that program content drives the communications industry, neither the ACCC nor others currently inquiring into new television broadcasting licenses appear interested in the most desirable TV content. The ACCC presides over a comparatively dysfunctional, expensive regulatory approach which obtains neither the national interest nor effective competition. Vital skills development, industry and community management needs are also being ignored. Hilmer wrote about the legal monopolies which the professions wield:

> The overwhelming majority of submissions dealing with the professions supported removal of existing exemptions. Proponents of this view included the consumer, business and industry groups, individual businesses and a host of other submitters……..
> Restrictive practices in the legal profession have also been a matter of increasing concern to the community as evidenced by the level of recent scrutiny at State, Territory and Federal levels (1993, p.134)

However, the more things change the more they also stay the same. The ACCC recently stated that it wants even more legal monopoly powers to fight for competition in communication. State professional registration acts also remain one of many problems hindering more transparent and effective approaches to delivering services, including

education, which could be made openly and widely available on TV, radio and computer. Systems for certification of competency to practice are a separate issue for consideration.

Concluding With an Educational Way Forward

Hilmer followed Wilenski, Galbraith and Keynes in extending Weber's perception that the development of bureaucracy requires the progressive extension of more rationally planned, inclusive and competitive approaches to governance, which must also reform law, under the increasing pressures of democratic demand. From this perspective, taxation, mandated insurance or other common funds must also support national community goals and openly competitive administration to achieve community subsistence, health and protection of natural environments fairly. Australia is now embarked upon this new, international governance approach, which is ideally based on national standards for health and sustainable development and better education, service delivery and research to achieve related regional goals. This is currently hindered by the Constitution which prevents effective implementation of scientific, transparent and democratic approaches to management. These require regional health and sustainable development needs to be consultatively identified, prioritised and met using services which also provide data to assist injury prevention, rehabilitation and related budgeting on a continuing basis. Through starting the establishment of open education modules, Australian vocational education systems could be better linked to other higher education and secondary systems to meet the requirements of the communities which should logically support them. More open education and program budgeting are both vital.

Australian government is currently developing a national action plan for education for sustainable development. A duty of care approach to protecting workers, consumers, communities and their supporting environments is also necessary to attain sustainable development in Australia and internationally. This requires coordinated, broadly scientific and open approaches to all problem solving, not narrowly discipline driven and secretive, bureaucratic, professional or adversarial approaches, separated by multiple walls of legal privilege, so nobody really knows what anyone else is doing. If open education content were on an open website it would be available to anybody who had access to a computer and was directed to it, at any time of the day or night. It could also be designed for English and other language learning. Australia universities are currently expected to expand postgraduate education and research. If earlier education content were available in the open manner suggested, then postgraduate students from any country would understand more about what they may be expected to do in self directed post graduate research projects. The quality of education also partly depends on the needs of the learner. Nobody can judge education quality in the absence of full knowledge about its content. Universities are currently devising new and expensive systems to measure education quality, yet appear not to see the obvious need to make education content open. Nobody would ever buy a car in the absence of seeing and driving it first if they wished. Education ideally need be no different in this regard and certification is a separate issue. However, this is not a view to which all teachers appear drawn. To gain the benefits of a competitive economy government should work with those who are.

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THINGS I DIDN'T CARE ABOUT AT THE TIME (THE REPUBLIC DEBATE)

Dear Mr Turnbull and Others

Annabel Crabb's article entitled 'Stop at Nothing: The Life and Adventures of Malcolm Turnbull' in the most recent issue of Quarterly Essays drew my attention to the Options Report of the Republic Advisory Committee entitled 'An Australian Republic: The Options Report'. I missed the Republic debate. It seemed to me to lack clear point.

At the time (1993) I thought Australians needed most to understand and debate the concept of Constitution in the light of the broader and more recent direction of the United Nations Rio Declaration on Environment. **I concluded that Australian behaviour needs to be expressed in more scientific and less feudal ways and the Constitution is a problem to the extent that it calls forth feudal (i.e. pre-scientific) behaviour.**

To the question 'Should Australians want a Republic? I would have answered 'Only if it means we could act more easily in a modern (i.e. scientific and enlightened) manner'. I have now read an 'An Australian Republic: The Options Report' and the Australian Constitution, which I keep close by my bed to dip into when required.

As a result of this reading I conclude that it is not necessary to change the Australian Constitution to fix many of the problems of pre-scientific (pre-modern) behaviour in Australia. Some related problems are addressed below and in the attached. Indeed, changing the Constitution, even if it were possible by referendum, could have many unintended costs and consequences, which would make the current situation of intransigent feudal rather than modern action worse.

I suggest instead the logical 'do nothing' government option in regard to the Constitution, which appears from past referenda to be a popular favourite. The Prime Minister of Australia could merely phone the Queen to get her general agreement to the view that it would be more modern and scientific, and therefore a good idea, if Australians behaved more scientifically and less feudally from now on. More codes, fewer laws and lawyers and less feudal behaviour generally. (One would not want to bore with too many details.)

The terms of reference given to the Republic Advisory Committee began by stating:

> The current purpose is to obtain an options paper which describes the minimum constitutional changes necessary to achieve a viable Federal Republic of Australia maintaining the effects of our current conventions and principles of government.

In my opinion there is nothing in the Constitution which prevents the Australian government ensuring that Australian behaviour is expressed in more scientific and less feudal (i.e. pre-scientific) ways in future. Chapter 3 of the Constitution entitled 'The Judicature', supports this view. Article 71 states that the High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes. Article 72 on the Judges' appointment, tenure and remuneration' says nothing about any

necessary educational or service qualifications for lawyers or others who may act in a judging capacity. It seems obsessed instead with the age at which judges may retire (reminding one a little of Peter Cook's famous comparison of the job with mining). If the Blair government appointed commoners to the House of Lords, it seems the Australian government could also act to show a more modern and less feudal face to the world.

However, the Conclusion of The Options Report was to get rid of the Queen instead of the adversarial problem. In a typically blunt, wrong and disgusting way the report states:

> The primary question for Australians to consider in the course of the republic debate is whether Australia should have an Australian citizen chosen by Australians as its head of state or whether it should retain its head of state the person who is monarch of the United Kingdom……
>
> The Committee has instead addressed a question which is probably just as important –What might be involved in a change to a republic in Australia…… (Sorry, my photocopy cuts off some of the page numbers.)

The earlier summary of conclusions and options (p. 8) states the necessary changes to the Constitution (which requires agreement of the people in a referendum) to achieve a republic in Australia. This involves a long, contentious list, beginning with terminating the Queen as head of state and establishing the office of a new Australian head of state.

I also disagree with the summary of conclusions and options which states:

> The Committee's Terms of Reference require it to produce an 'options paper' describing the minimum constitutional changes necessary to achieve a viable federal republic of Australia while maintaining the effect of our current conventions and principles of government. The committee was asked specifically not to make recommendations but did come to a number of conclusions about matters relevant to considerations. Australia is a state in which sovereignty derives from the people. The hereditary office of the monarchy is the only element of the Australian system of government which is not consistent with the republican form of government. The only constitutional change therefore required to make *Australian* (sic. My italics) a completely republican system of government is to remove the monarch.

The above appears too clever by half. One does not need to remove the monarch for Australians to be able to act in a more modern and less feudal manner. One simply needs to remove all the lawyers who have learned so many nasty feudal practices and who, as every economist knows, will never change them voluntarily because fighting and destroying others who come in their net is far too lucrative, especially when one has been on top for centuries. If the Prime Minister told the Queen that Australians would like to act less feudally and more like modern and scientific as well as free people, I feel sure she would be very understanding and supportive. One expects she has had to face this

sort of thing many times in her life. One also assumes the British Prime Minister would naturally agree. Please see below and attached for related discussion and suggestions.

Yours truly, Carol O'Donnell, St James Court, 10/11 Rosebank St., Glebe, Sydney 2037.