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WEEKEND AUSTRALIAN

BOOK REVIEW

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DON'T HOLD YOUR BREATH

Picture the scene. Admiralty House overlooking Sydney Harbour. A late afternoon on a sunny day. Liveried butlers serving champagne. The legal literati and glitterati of Australia, from the Chief Justice down. Politicians of all complexions. The Governor-General launches a book whose avowed aim is to raise a serious national debate about constitutional reform, including about his office. A helicopter hovers overhead. The Federal Attorney-General, a fraction too defensively, assures onlookers 'it's not one of ours!'

There are not too many countries in the world where discussion about fundamental constitutional change could be promoted at such a high level and with such apparent civilisation. Perhaps this is why Australia remains, constitutionally speaking, the 'frozen continent'. Things are just not seen to be bad enough for enough people to activate a debate about major overhaul of the Constitution. Yet as this important book shows, there is plenty of room for reform, even for the constitutionally conservative. The good thing about the book is that it is readable, topical, relevant and cheap at the price. One of its authors became, shortly before publication, a key player in the drama: the Federal Attorney-General. Senator Gareth Evans wants a dispassionate national debate. In this, he is joined by a political opponent, Haddon Storey, a distinguished Liberal politician and ex-Attorney-General of Victoria. The Antipodean troica is completed by John McMillan, a Lecturer in Law at the Australian Graduate School of Management, and a long-time campaigner for more open government in Australia.

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This cerebral team was aided and abetted by a large group of Australians assembled by the Law Foundation of New South Wales. This is a kind of lawyerly bicentennial project. But citizens who expect a brand new Constitution by 1988 had better not hold their breath. The book opens with the sobering record of constitutional referendum. Thirty six questions have been put, after a recount. Only eight have carried the day. In the light of this sobering information, the most important chapter of the book is perhaps the one that explores the machinery of constitutional change. 'The way of the constitutional reformer is always going to be hard in Australia', the authors conclude. 'But it should not prove impossible if the task is tackled with the right machinery, in the right spirit of co-operation and with the right degree of optimism'. Although it had some achievements, the recent Constitutional Convention in Adelaide left many participants and observers depressed about both the 'machinery' and the 'spirit'.

#### FEDERALISM — AN INTELLECTUAL'S DREAM

But does it matter? The book explores, in practical terms, why it does. It begins with a potted layman's guide to Australia's 1901 Constitution and the problems it throws up:

- \* why can State Parliaments tax some goods and not others?
- \* why is Mr Rupert Murdoch subject of a Federal inquiry when he buys a TV station but a Victorian inquiry when he makes a take-over bid for a newspaper?
- \* why are refinery operators in Kurnell, NSW, regulated by a different award to other oil industry workers?
- \* why are employees in only three States protected against sex discrimination?
- \* why should the right to custody of two children of the same person be determined by two different courts?

Federalism is an intellectual's dream, especially for those trained in the niceties of Medieval theology. But it might just be the right system of government for the next century, when problems, attitudes and technology will tend to concentrate great power. Federalism deliberately divides it. This book explores a rethink of the Federal structure of the Australian Constitution, describes alternatives and offers various suggestions for changing the division of power between Federal Parliament and the States.

Probably the least important chapter, certainly one of the shortest, is devoted to the ancient debate : a monarchy or republic? It is right that the issue should be debated again. The republic has a number of distinguished, thoughtful supporters. But the consistent large pro-monarchy vote of opinion polls conducted over the reign of Queen Elizabeth II, the greater relative urgency of other reform issues, the pain and divisiveness that such a change would involve for many Australians, make it likely that this topic will take a low assignment in the reform pecking order. As Mr Hawke said, en route to Buckingham Palace, this issue is not high on the agenda. Irritatingly enough, many Australians rather like the Australian monarchy. They see it as a symbol of continuity, history, even romance in a dreary, changing world. Everyone concedes the high standards of service, dignity and family life offered by our Royal House. Furthermore, some modernists question the beefing up of fervor for provincial patriotism. Some see such narrowly defined nationalism as the special curse of the 20th century. Sharing a Head of State with diverse countries around the world is a very modern contribution to internationalism. Fierce nationalism and promotion of 'national identity' may harken to the past and even be dangerous in the nuclear age.

#### THOSE PORTLY 1901 GENTLEMEN

To most Australians, this is just a non-issue. The other questions in this book seem much more relevant:

- \* removing the grosser artificialities that have built up since 1901 in the division of powers, Federal and State
- \* removing the more anachronistic links with Britain, such as Privy Council appeals and United Kingdom Instructions to State Governors
- \* clarifying the role of the Governor-General, if we can, to avoid the pain of November 1975
- \* considering limitations on the role of the Senate, partly for the same reason
- \* seeking to unify the court system so that people will not lose out by choosing wrongly between a Federal and State court
- \* considering the need for and form of a national Bill of Rights.

All of these key questions for our constitutional future are examined in this book. It is as dispassionate as a review of such controversial questions of power can be. It is written for the intelligent layman who wants to be right up to date : references to Mr Fraser as Prime Minister being changed to 'former' a few days before publication. It is a tract for our time. The Australian Constitution is now one of the oldest in the world. Remarkably little of it has been changed since the portly, middle-aged gentlemen gathered in Melbourne and Adelaide in the twilight of the 19th century to settle on its final form. It is not remarkable that it needs review for the age of test tube babies, interplanetary flight and nuclear war.

A couple of politics professors wrote a circular letter to leading newspapers, including the Australian, criticising the Governor-General for launching this book. Too partisan, they said. They were misguided. Perhaps the book omits some of the arguments of the 'leave it alone' school. But it does try, faithfully and with intellectual integrity, to put the case for change, pro and con. It is by no means a radical gospel for fundamental change. Rather, it is a reflective guide concerning important debates. The debate about constitutional change asks basic questions about the terms upon which we live together in Australian society as a community of free people. When we halt that debate we will have ceased to be free.

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