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THE YOUNG LIBERAL MOVEMENT OF AUSTRALIA

QUEENSLAND DIVISION

MEETING, BRISBANE, 23 MARCH 1984

CONSTITUTIONAL REFORM AND JUDICIAL REFORM

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The Hon Justice M D Kirby CMG
Chairman of the Australian Law Reform Commission

LIBERAL REFORM

I welcome this chance to speak to the Young Liberal Movement in Queensland. I accept invitations to speak to groups representing all political parties. I have spoken at the Australian Democrats' Convention here in Brisbane. Recently I was invited to speak to the Labor Lawyers in Brisbane. I shall accept their invitation. I have spoken to the Young National Party Conference in Bathurst. I have been inflicted on Young Liberals many times.

Faithful to the British traditions of our judiciary, I will endeavour to avoid any party political observations. Although judges, like other citizens, tend to have their attitudes and predelictions, they should not be neatly stereotyped. Yet they should endeavour to avoid party political entanglements. The judiciary, like the monarchy, keeps out of party politics. That is a principle I support and to which I have adhered.

It is not always easy in reform to do so. Inevitably, when tasks of high controversy are assigned to the Law Reform Commission, political attitudes and philosophies tend to emerge. By this I mean 'political' in the broad and not Party sense. For example, the view one holds on consumer insurance may reflect a general philosophy of the free market or a general philosophy of consumer protection. The view one takes on sentencing reform may reflect a bias to the punitive or rehabilitative philosophy of criminal punishment. The view to be taken on debt reform may likewise reflect differing attitudes to the finance industry and the predicament of indebtedness. So it is, too, in respect of constitutional reform. Attitudes vary. They vary across the whole range from the total 'stayput' to the revolutionary 'overthrow'. There may even be some in Australia who would go back to the absolute monarchy!

Fortunately, as between the major political parties, the debates in Australia tend not to be about whether reform should be introduced but how much, where and at what pace. Mr Fraser, speaking in April 1976 from a Liberal Party point of view, put it this way:

> There are many aspects of Australian institutions where reform is needed. Reform is needed wherever our democratic institutions work less well than they might. Reform is needed wherever the operation of the law shows itself to be unjust or undesirable in its consequences. Reform is needed wherever our institutions fail to enhance the freedom and respect of the individual ... Australia has always been a country where constructive reform has been welcomed and encouraged. Achieving a better life for all Australians through progressive reform will be a continuing concern of the government. The debate in Australian politics has never been over whether reform is desirable. Australians, whatever their politics, are too much realists to believe that no further improvement is possible and too much idealists to refuse to take action where it is needed. The debate has rather been about the kinds of reforms and the methods of reforms that are desirable.[1]

On the subject of constitutional reform, it must be said that the Fraser Government achieved more reforms by referenda than any other government of recent years. The 1977 referenda secured replacement of s.15 (Senate vacancies); alteration of s.72 (judicial retirements) and amendment of s.128 (alteration of the Constitution, to include Territory voters). However, it must be conceded that the major referendum proposal (the nexus between House and Senate elections) failed. The list of all of the constitutional changes achieved by referenda in the history of our Federation is a short one. It numbers nine successful proposals only. It is little wonder that our Constitution, in a fast-changing world, has had to be remoulded by the High Court of Australia. There are some who regard this endeavour as 'destabilising'.[2] I am sure that some observers so regarded the divided decision of the High Court in the Tasmanian Dams case. On the other hand, the Shadow Attorney-General, Senator Durack, has reminded us of the legitimate way in which the High Court moulds and adapts the language in the 1901 Constitution:

> The Constitution has shown itself capable of being adapted to suit changing social, political and international circumstances. The High Court has referred more than once to the silent operation of constitutional principles in the light of which the Constitution can be moulded to serve the nation as it lives, grows

> and expands. It proved completely adequate, for example, to accommodate Australia's emergence as a sovereign and independent State in the international community.[3]

This observation was made by Senator Durack in the context of a criticism, which which I respectfully agree, of those who urge a 'completely new Constitution by 1988'. According to Senator Durack, it is simply not necessary. That is not to say that the Liberal Party, at a Federal level, has set its face against all constitutional change. On the contrary, before the last Federal election, Mr Fraser, on 7 February 1983, made it plain that if re-elected, his government would put to referendum, as soon as possible, two proposals for important constitutional change. These proposals related to simultaneous election of both Houses of Federal Parliament and four instead of three-year terms.[4]

In his important speech to the Committee for the Economic Development of Australia (CEDA) in April 1982, Senator Durack, then Federal Attorney-General, explored 'some of the possibilities for change that need to be considered'. He pointed out that Australia, after all, had an indigenous procedure for constitutional change not until recently shared by Canada. He opposed fixed-term parliaments which he considered a 'leap in the dark' which might undermine the principle of responsible government. But he supported four-year parliaments, pointing out that the average time between Federal elections since 1949 have been two years and four and a half months. In terms of planning and strategies for both the public and private sectors 'it is not a very long time'.[5] He indicated an open mind on the limitation on the Senate's powers over money Bills. He expressed himself in support of the abolition of 'residual constitutional links' with Britain, save for the Crown. Such links include remaining appeals to the Privy Council in London and the procedures by which certain State laws and the appointment of State Governors can only be dealt with on advice to the Queen by United Kingdom ministers. This situation he declared to be 'now anomalous'.

He also referred to the possible need for reform of the industrial relations traditions of s.51(xxxv) of the Constitution:

> Experience has shown that the formal machinery of conciliation and arbitration is not necessarily the most effective means for dealing with disputes, still less with industrial relations generally. Commonwealth powers [should] match State powers which do not suffer from such limitations.[6]

This positive spirit to constructive reform of the Constitution can be seen in the progressive, though agonisingly slow, work of the Australian Constitutional Convention. It can also be seen in the support given in the Parliament by Senator Durack on behalf of the Liberal Party to a number of the current proposals for referenda to alter the Australian Constitution. Specifically, Senator Durack indicated in October 1983 support for:

- the interchange of powers proposal;
- the advisory jurisdiction of the High Court proposal;
- the removal of outmoded and expended provisions proposal;
- Senator Rae's proposal dealing with the grounds for a double dissolution is the Senate rejects supply.

The one proposal which Senator Durack opposed was that provided by Senator Macklin of the Australian Democrats for electors' initiative.[7]

I indicate this background to underline the point made in 1976 by Mr Fraser. Although we have achieved little by way of frank constitutional reform through the referendum process, there is a growing recognition of the need to make that process work more effectively than it has. Making the referendum system work better should have the support of all democrats, and not only those who are fearful of 'destabilising' judicial decisions. Plainly it is preferable that important changes in the understanding of our national basic law should come about after full public debate and with the will of the people rather than after courtroom debates focused on old precedents, minute examination of the language of the statute and without the imprimature of democratic legitimacy. Sir Ninian Stephen, as Governor-General, pointed out in 1983 that the Australian Constitution, though enacted in 1901 and finally settled in the 1890s, was in truth the reflection of the political attitudes and philosophies of men who formed those attitudes and philosophies in the 1870s.[8] It is therefore a very old national political instrument indeed. It should surprise nobody that consideration should be given, and actively given, to its reform to suit the conditions of modern Australia.

A PRIORITY LIST

Sir Ninian made his observations at the launch of a book which deserves your attention. I refer, of course, to the book 'Australian's Constitution — Time for Change?'. It was written by John McMillan of the ANU in company with Senator Gareth Evans (ALP) and Mr Haddon Storey (Liberal, Victoria). An advisory committee assisted this troika of authors. The book is a thoughtful contribution to the debate about constitutional change.

Following the postponement of the constitutional referenda originally scheduled for February 1984 (upon which there was a large measure of political support) some lost heart. Unless Australians can become used to constitutional referenda, Australia will remain, at least in terms of the written instrument, 'constitutionally speaking, the frozen continent'.[9] I understand we may now see the referenda presented to coincide with the next Federal election. If we can build up a tradition of largely bipartisan referenda successes, the hopes of the constitutional reformers will be buoyed immensely.

There are two chief lessons for constitutional reform in recent Australian experience. The first is that we should choose an initial agenda of reform that is modest at first and that establishes the regularity and ordinariness of frank constitutional change. The second is that we should give fresh consideration to the institutions we are using to develop constitutional reform.

So far as the agenda is concerned, a glance at the McMillan, Evans and Storey book, a reflection on Senator Durack's speeches and a consideration of other recent developments will suggest the way ahead.

So far as I am concerned, I would give no priority at all to the so-called debate about the republic. Though I understand the strongly held views of critics of our monarchy[10] and those who call for changes for symbolic reasons (if only to reflect the monarchical constitution of Sweden[11]) I just regard this as a 'non-issue' in Australia's current constitutional debates. In a dangerous world it seems to me we should be doing everything we can to strengthen, rather than to weaken, international institutions, such as the monarchy. Even republicans concede that substituting a President for the Governor-General would merely redirect the focus of that debate on the powers of the Head of State in relation to the Parliament and other members of the Executive Government.[12]

It is my view that high priority should be given to other matters mentioned in the McMillan-Evans-Storey book. For example:

- reconsidering the industrial relations power in the light of the comments of Senator Durack and Sir John Moore;
- rethinking the present Federal-State financial relations under the Constitution;[13]
- removing residual Privy Council appeals;[14]
- defining the limited powers of the Governor General;[15]
- defining and limiting the powers of the Senate over supply;

- providing for the synchronising of elections to both Houses of Parliament;
- considering the respective roles of national, State and local government;
- considering the creation of a national court system;
- considering the introduction of a constitutional Bill of Rights, as has lately occurred in Canada, as a means of defining the agreed principles of Australia society which are put above party politics;
- consideration of the recognition of a compact or Makarrata between Aboriginal and white Australians.

NEW INSTITUTIONS

The other priority that should be considered is our machinery for constitutional reform. Clearly the procedures of parliamentary review (even when bipartisan) have not proved very successful. Likewise, the Australian Constitutional Convention, though it has worked valiantly, has at critical moments been riven by party disputes fuelled by the constant round of elections. It cannot really boast of many great achievements under the belt. The notion of a popular movement and popular conventions such as occurred in the 1890s seems to me to ignore the political realities of the events that have taken place since that time and the parliamentary system we now have. It is perhaps significant that the other option, which has not been really tried in Australia, is the one which lately produced the major reforms of the Canadian and Sweden Constitutions. Indeed, Canada and Sweden are the only two OECD countries that have recently undergone significant constitutional changes. They did it by the use of independent advisory commissions, consulting widely and including, but not exclusively comprised of politicians, of all parties. This is the law reform model. Whilst many constitutional debates are properly the subject of party disputes being about power, many others could doubtless be put beyond those party disputes by the use of a properly constituted and vigilantly independent advisory commission.

Unless we can improve our performance in frank constitutional reform by referendum of the people, the burden will continue to fall upon the Justices of the High Court of Australia to use what Senator Durack has called the 'silent operation of constitutional principle' in order to mould our century-old Constitution to serve the needs of Australia today. This responsibility places specially great burdens on the Justices of the High Court. The burdens on our judges are not growing lighter with the years. This is a point that I sought to make recently in my Boyer Lectures on 'The Judges'. Some of you may have seen a review of those Lectures offered in the Queensland Law Society journal 'The Proctor'[16] by the Honourable Justice Peter Connolly of the Supreme Court

of Queensland. I propose to avail myself of this opportunity to respond to some of Justice Connolly's remarks. They were relevant to the role of the judge in modern Australia. They charged that some 1983 decisions of our High Court had tended to 'destabilize' the Federation.

THE JUDGES, JUDGED

Law reformers in Australia must not be thin skinned. People who write books or speak on sensitive topics, rarely explored, must expect public criticism. Controversy stimulates new ideas and is an inseparable part of a free society. I therefore welcomed Justice Connolly's forthright, if somewhat irascible review, of my 1983 Boyer Lectures on The Judges. But, sadly, in important respects the review was misleading, personal, over-simplistic, superficial, based on out-of-date information, parochial and humourless. What should be done in such a case? Ignore it, and thoughtful people may remain misled. Doubtless conventional wisdom would suggest that judges should not engage in public exchanges. On the other hand, people have a right to form their assessments on correct information and not to be misguided, however innocently. This response is therefore offered to put the record straight and not for an instant to question the right of Justice Connolly, other judges or anyone else to differ strongly from ideas explored in the Boyer Lectures.

Let it be said at the outset that the easier course for me, when I was invited to deliver the Boyer Lectures, would have been to offer a series on law reform or social reform. But the judiciary is an increasingly important and rarely examined branch of government in Australia. That is why I chose the more difficult — and inevitably more controversial — task of examining what seemed to me to be a number of central controversies concerning our judges. My chief disappointment in Justice Connolly's review is that he failed (except occasionally by inference) to address himself to issues such as these:

- How should judges be selected?
- In the age of specialisation, should we train and retrain our judges?
- How will the judicial method fare if Australian judges are called upon to interpret a Bill of Rights?
- Should judges sit in Royal Commissions and other Executive Government bodies?
- Should we introduce a better system for handling complaints against judges than the sledgehammer of constitutional removal?
- What are the proper limits of judicial inventiveness and law reform?
- What impact will technology have on the judicial role?

At the end of Justice Connolly's review, I am left with the impression that he thinks everything in the judiciary is perfect and that there is no need to change or even reconsider our arrangements. That may be right. The purpose of the Boyer Lectures was to invite the legal profession and our citizens to consider these questions. Does anyone seriously dispute that the issues are legitimate matters of community concern? Indeed, if they look back on the Lectures, some, at least, of the issues seem to have assumed a greater relevance in 1984 than when they were put on paper in 1983.

MISLEADING

Much of the critique offered by Justice Connolly is based upon his reading of the first chapter and first broadcast of the Lectures. This dealt with the appointment of judges. It raised the question whether Australian Governments, Federal and State, should be concerned about the serious under-representation in the judiciary of diverse elements of our population. Singled out for special mention were women and what are now usually called people from 'ethnic' (non-British) backgrounds. But also mentioned were lawyers from the solicitors' branch, the public sector and academic life.

As presented by Justice Connolly, I am suggested to be urging the spectre of a flood of unqualified women and migrant amateurs, appointed in a 'disgraceful' move to 'debase' the Bench. I can only assume that because of pressure of work, Justice Connolly could not read my essay carefully. I pointed out that not everyone agreed with the notion of diversity. I conceded that 'for many members of the judiciary in the legal professions these views are anathema'. What Justice Connolly failed to tell his readers was that I had stressed:

> There must be qualities of mind and character first.

I also stressed that any change must come 'gradually and patiently'. I specifically denied notions of 'exact proportionality of minority groups'. My simple thesis was that governments, while still maintaining a judiciary 'excellent in quality' should, in their appointments, move to reflect the variety of the community judges serve.

This is not, as expressed by me, a terribly, radical doctrine, worthy of the anathemas of Justice Connolly. On the contrary, one of the important achievements of Senator Peter Durack, past Liberal Federal Attorney-General, was his conscious endeavour to appoint more women, more academics, more solicitors, more public lawyers and more people from ethnic backgrounds to the Federal judiciary. Indeed, in Queensland, events have rather overtaken Justice Connolly. In the self-same issue of The Proctor in

which his review appears are announced the appointments of three new judges of the Supreme Court of Queensland. One of them was a distinguished professor (Professor Kevin Ryan QC). Another was a distinguished public lawyer (Justice Vasta), formerly Chief Crown Prosecutor and from a non-Anglo-Celtic background.

Justice Connolly criticises my use of a 1972 survey of the High Court of Australia. Yet every lawyer knows that there has been precious little judicial biography and analysis in Australia. Neumann's portrait of the High Court of Australia from 1903 to 1972 is the most up-to-date such analysis now available. In any case, is it truly misleading to quote that author's conclusion that High Court justices are typically

> male, white, Protestant, raised in Sydney or Melbourne (or much less frequently, Brisbane) and of British ethnic origins?

Admittedly, Brisbane has stepped up its representations, Catholics are more heavily represented and we rarely nowadays talk of 'British' origins. But the point made in 1972 remains highly arguable 12 years and nine appointments later.

This is not a criticism of the High Court or of governments who have appointed justices to that Court. It is simply a statement of fact, legitimately drawn to the notice of the people whose lives are so profoundly affected by High Court decisions.

Justice Connolly ascribes to me an assertion that 'Judges are not attuned to reform — he refers to 'the alleged disinterest of Australia's judges in matters of law reform' which he describes as being 'a particularly sore point' with me. If I had said or even implied such a thing it would be, as the judge says 'baseless and should never have been made'. But I said nothing of the kind. On the contrary, I drew attention to the leading work of judges out of court and in court in the reform of the law. I drew attention to their efforts, working after court in law reform agencies. I specifically asserted that the view that reform was no part of the judicial task was nowadays 'a minority view'. Indeed, I pointed out that judges themselves were now urging that their law-reforming function should go further. In direct language I asserted that 'the judges do more than most to right wrongs'.

SUPERFICIAL

Surely it was the heavy burdens of judicial responsibility, rather than pre-existing prejudices, which led to the over-simplistic and superficial treatment of the actual content of the Boyer Lectures:

- Assertions by Justice Connolly that the 'courts' have 'always unfailingly upheld' freedom of speech as 'one of the pillars of individual liberty' are simply not borne out by experience, including recent Australian experience. Indeed, the present references on reform of contempt law in the Australian and Queensland Law Reform Commissions reflect the concern evidenced in the divergent views in the High Court of Australia itself about the competition between freedom of speech and other important values. See Gallagher v Durack[17]. There are many other instances that would cause a thinking commentator to question the judge's grand but inaccurate assertion.
- His claim that the under-representation of women in the legal profession 'would seem, in the past, to have been their own choice' evidences touching ignorance of the dynamics of the legal profession, particularly at the Bar. In a male-dominated community, where the prospects of significant advancement appear to be limited, the element of free 'choice' may be limited.
- His attribution to me of a frank call to judges to become 'social engineers' quite misreads one of the primary points I was seeking to make. This was to call attention to the dangers of reposing ever-widening functions (including public inquiries and interpretation of Bills of Rights) upon judges from such relatively narrow, unrepresentative and ill-prepared backgrounds.

PERSONAL

A leading part of what Justice Connolly had to say (and a part that secured widespread publicity) was highly personal. Justice Connolly could have spared himself the hours of searching for my published judgments by reading sub-section 12(3) of the Law Reform Commission Act 1973 (Cth). That provision requires the Chairman of the Australian Law Reform Commission to be a full-time Member. This was because all major political parties in the Federal Parliament took the view that part-timism had been an enemy of effective law reform. Accordingly, they resolved to ensure that the Chairman would give virtually his whole effort to the work of the Commission. So I have done. It is true that since my appointment to the Federal Court of Australia I have sat, by arrangement with the Chief Judge, in a limited number of cases. That arrangement will continue until I relinquish my post in the Law Reform Commission.

There is a hidden premise in Justice Connolly's review. It is that only a sitting judge, and indeed one of long-standing who has written many judgments, has the real warrant to write or talk about the judicial office. That is a view I reject. In my novel duties as Chairman of the national Law Reform Commission, I have had a rare

opportunity to see the entire operation of our legal system from new perspectives, to meet most of its dramatis personae, to travel to all parts of the country and to engage in a dialogue with lawyers and citizens, such as has not been previously been attempted. Of course, my opinions may be debatable. Some may be erroneous. But the way to criticise such opinions, in an ancient profession of high intellect and great integrity, is to address the issue. It disappointed me that Justice Connolly allowed himself, instead, the luxury of making personal and patronising remarks.

May I also admit to an objection to a frankly political point made by the judge? After referring to his misinterpretation of my calls for 'social engineers' he comments:

> It is a curious feature of those whose political philosophy lies to the left of centre that they have so little respect for the democratic process.

I can only assume that he is endeavouring to characterise my political philosophy. I object to being neatly stereotyped. The whole effort of the Australian Law Reform Commission (as indeed of the law reform agencies everywhere) is to make the democratic branch of government work better. It is to help the Executive and the Parliament to address problems that will otherwise be shelved, thereby putting inevitable pressure on the judicial branch to make new laws, discovering it in the Aladdin's Cave of the common law.

PAROCHIALISM AND ERROR

Finally, there is, in Justice Connolly's review, a distinct flavour of provincialism and a frankly out-of-date understanding of the work of the Australian Law Reform Commission.

So far as provincialism is concerned, he 'hates to crow' but boasts of the law reform system in Queensland. I am second to none in my admiration of the Queensland Law Reform Commission. The Australian Law Reform Commission enjoys a co-operative professional relationship with that Commission and meets with its members regularly. We have some common projects (such as the current inquiry into Admiralty law). We exchange views and information. It is not necessary to promote the QLRC by denigrating the ALRC. Such endeavours strike people in other States as evidence of parochial lack of self-confidence. There is more than enough work in law reform for all of the agencies. I only wish that, for the tasks in hand, the budget of the Australian Commission was 'immense', as claimed. In fact it amounts to about 10 cents per citizen per year. This is a paltry investment in the improvement of our national legal system.

Furthermore, Justice Connolly was well astray with his charge that very little in the way of legislation seems to have emerged from the ALRC. All but one of the reports of the ALRC is either in law, in Parliament or under active consideration by the Federal Government, with ministerial commitments to their implementation. The exception was tabled only 13 months ago and it too is under consideration by the government. In Parliament at the moment, for example, is legislation for a major overhaul of the law of insurance contracts in Australia. It is by any account an immense task of significant reform. Other legislation that has been promised during the current session of Federal Parliament relates to reform of the Lands Acquisition Act 1955 (Cth) (ALRC 14), Insurance Intermediaries (ALRC 16) and Criminal Investigation (ALRC 2). In addition, action by the Executive Government on proposals concerning the sentencing of Federal offenders has been promised, as has legislation to enact the reforms of child welfare law in the Australian Capital Territory. Justice Connolly may refer disparagingly to he laws of Canberra and the Federal Territories. But, as the ALRC report on Human Tissue Transplants showed, work nominally done for those Territories in the ALRC can be adopted throughout the country. It is a commendable fact that it was Queensland that first adopted the human tissue transplants proposals (see Transplant & Anatomy Act 1979). As to the proposals for uniform defamation law reform, these can, it is true, be traced to the Australian Law Reform Commission's report Unfair Publication (ALRC 11). But the New South Wales Attorney-General's comment 'Can it!', which Justice Connolly reports with relish, was addressed not to the Commission's carefully balanced proposal, but to one that emerged after a languid tour through seven meetings of the Standing Committee of Attorneys-General over three years, and which reflects the inevitable compromises and changes that make it a distant cousin to the ALRC package.

The denigration of the Australian Law Reform Commission is specifically insulting to the fine lawyers from Queensland who, as Commissioners or otherwise, have played a vital part in this important national institution. We have always valued our links with Queensland. Mr F G Brennan QC was one of our original Commissioners. Sir Zelman Cowen also played a vital part as does Justice G E Fitzgerald. In fact, I first heard of Justice Connolly's review on a sunny Saturday afternoon when the Law Reform Commissioners were working on the report concerning the Federal laws of evidence upon which the Queensland Law Society and Bar have been generous in providing much thoughtful and practical help.

HUMOURLESS

In addition to all this, there is the sad lack of humour in Justice Connolly's review, despite the paraded virtues of humour to which he aspires. Apparently Justice

Connolly is a stranger to irony. When I quoted Chief Justice Gibbs' witty extract from Lord Elgin's 'urgent words' in Earl of Radnor v Shafto in 1805 ('Having had doubts upon this will for 20 years there can be no use in taking more time to consider it') I said that this statement was received by 'an open mouthed audience'. Our serious reviewer took this to be a 'solemn' comment and drew the implication that 'the audience understood the Chief Justice to be seriously advancing these historical gems as evidence that it was for the best in the best of possible worlds!'

If Justice Connolly could bear to listen to the broadcasts — or even the tapes of the broadcasts which are now selling well — he would have heard the reassuring peels of laughter on the record of Sir Harry Gibbs' statement. Irony and humour are needed even in broadcasts — especially if such broadcasts are aimed (as the Boyer series is) at hundreds of thousands of ordinary citizens, not just 300 judges or even 15 000 lawyers.

REASSURANCE?

Many other things could be said. The remarks by a judge about 'destabilising decisions' of the High Court of Australia during 1983 which he implies upset the essential Federal nature of our system may be considered by some to do much more damage to the integrity of and respect for our judicial system than any remarks of mine in presenting, with attempted fairness, the legitimate debates concerning the future of the Australian judiciary. The remarks about Justice Murphy and Dame Roma Mitchell, I will ignore. They are, as Justice Connolly charged of the Lectures, ungracious. The name-calling at the end of the review ('shallow, superficial, trendy and, it must be said, ungracious') I have sought to meet with this short response.

Is there any consolation in all this? First, I have received many messages of support from judges in all parts of Australia. I am sure Justice Connolly is not alone in his views. But it is reassuring to know that so many Australian judges do not share them. One very senior Australian judicial officer has informed me of his intention to organise a series of extensive seminars of judicial officers in his State to examine, chapter by chapter, the issues raised in the Lectures.

Secondly, the Boyer Lectures are now being described as the 'controversial' Boyer Lectures, as a result of Justice Connolly's review. Undoubtedly, this will cause many more judges, lawyers and fellow citizens than otherwise to listen to the rebroadcasts and to buy the cassettes or published book of them. For my own part, I am content to leave their merits and defects to the good judgment of this audience.

FOOTNOTES

1. JM Fraser, Address to the Melbourne Rotary Club, 21 April 1976, mimeo, 1, cited (1976) 56 ALJ 459.

2. Cf P Connolly, 'The Judges Judged', Proctor (Journal of the Queensland Law Society), April 1984, 2.

3. P Durack, Address to the Committee for Economic Development of Australia (1982) Commonwealth Record 457, 460.

4. Cf GJ Evans, Commonwealth Parliamentary Debates (Senate), 21 September 1983, 824(1983).

5. Durack, Address to CEDA, 458.

6. ibid, 460.

7. P Durack in Commonwealth Parliamentary Debates (Senate), 12 October 1983, 1429, 1430.

8. N Stephen, Address on the launch of 'Australia's Constitution — Time for Change', reported [1983] Reform 114.

9. This is the description by Professor Geoffrey Sawer.

10. See eg Manning Clark, 'The People and the Constitution' in S Encell & Ors (eds), 'Change the Rules!', Penguin, 1977, 9.

11. See eg D Horne, 'What Kind of Head of State?' in Encell, 66, 70.

12. ibid, 83.

13. J McMillan, G Evans and H Storey, 'Australia's Constitution. Time for Change?', George Allen & Unwin, 1983, 104.

14. ibid, 166.

15. id, 184.

16. Connolly, n 2 above.

17. (1983) 57 ALJR 191