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CHALLENGE TO AUSTRALIA

MELBOURNE, WEDNESDAY 12 MAY 1982

LAUNCHING CEREMONY, VICTORIA HOTEL, MELBOURNE

AUSTRALIA'S FROZEN CONSTITUTION : TOWARDS THE THAW?

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

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A VOTE OF THANKS

My duty is to offer the vote of thanks and to round off these proceedings. When I read the elegant supportive introductory words penned by the Governor-General of Australia, Sir Zelman Cowen, they put me in mind of a story told at his table, relevant to a vote of thanks.

According to this tale a person in dire straits was brought into a hospital and ran to the emergency unit. He was put in an oxygen tent, and hushed nurses rushed to get the best medical skill available. Subsequently a priest was brought to the bedside. He asked the man in the oxygen tent if, at Heaven's gate, he would confess his sins. The patient tried to say something but could not. The priest continued to talk and talk of the next world. And finally he pronounced the Extreme Unction. The patient looked pale and tried to talk but he could not. He reached for a little piece of brown paper beside his bed and scribbled a little note which he thrust gently into the priest's hands. Soon afterwards he expired.

Leaving the hospital, the priest wondered what little message of thanks this charming penitent had written for him. How had he expressed his appreciation for the professional efforts the priest had expended to ease this man's path to eternity?

You can imagine the priest's surprise when he opened the note of thanks to find the following message:

Father, you are standing on my oxygen tube.

After the contributions that have gone before, my modest effort, though in the nature of an Uction, must not be Extreme. I certainly have no intention of treading on anyone's supply system.

I make many speeches. Accordingly I hear many votes of thanks. Those who make this speech fall into various classes:

- . those who endeavour to repeat one's pearls of wisdom, but generally in a less competent way and often devastatingly missing the whole point of the address;
- . those who take the occasion to make a speech entirely of their own, adding as an after-thought a perfunctory thanks to the speaker;
- . those who, by their gift of humour, wit or incisive comment make what went before appear dull in the extreme;
- . those few laudatory speakers who have genuinely appreciated your efforts and want to express simply and directly that appreciation.

I am in the last class. First and foremost, I want to thank Sir Barton Pope. It was his initiative that led to the 'Challenge'. He was not content to retire into graceful inactive old age, honoured with a knighthood and respected by the Adelaide establishment — of which there is no equal in our country. The problems of future generations of Australians and of humanity were nagging at him. He felt a responsibility to identify those problems and to collect with him two other famous Australians (Sir Macfarlane Burnet and Sir Mark Oliphant) to offer the identification of some of the chief problems and a few solutions for the consideration of today's generation.

Much is made in the booklet of the combined age span of these three Notables. Together they have lived 240 years of full and rich experience. Each has contributed to our country and beyond. They add, each of them, new meaning to the statement that the triumph over old age is 'to keep the heart unwrinkled'.

I am sure that even those who disagree with particular aspects of the offerings in the pages of the 'Challenge' will agree with me that we owe a debt to these three fine men. They offer their thoughts, their experience and their anxieties without the sensorious moralising that so often marks efforts of this kind. They have avoided the ringing phrases, chauvinistic longing for the past, empty warlike allusions and cliched generalities that so marked the 'Call to the Nation' in 1951. How dated that 'Call' now seems when read against the values of today's world and the events of the past 30 years. Doubtless in 30 years' time, the 'Challenge' will be seen to have missed many points and to

have misjudged others. None of us has the gift of prophesy. None of us can see exactly what the future holds. But we can all perceive the future a little more clearly with the aid of the light offered by these three able, distinguished, practical men.

I must also thank Mr. Bob Ansett for agreeing to launch the booklet. His energetic and optimistic personality is a refreshing and hopeful sign for Australia in a time when hope and optimism are no longer universal. We have even become used to his accents and sometimes, I suspect, they are perceived as a mark of the authentic entrepreneur, in whom we, accordingly, have great expectations.

I must also thank the Australian Jaycees who have enthusiastically and unanimously accepted the responsibility of distributing the 'Challenge' nationally. I must express appreciation to the Challenge to Australia Committee and all those who have taken part in the publicity and promotion of the 'Challenge'. The Australian newspaper which performs a unique function as our national daily news journal, made a responsible decision, I believe, in presenting the 'Challenge', in full, in successive editions at a time of much competing material. It is right that even during the Polish, Palestine and Falklands Crises, the ANZAAS Congress and political activity, we should devote time and space to the long-term challenges before our own country.

The other media also deserve thanks. Without their interest in the issues presented by the Challenge, it would be little more than the private ruminations of three distinguished men. Now, the issues raised will be put before the community in the four corners of this continent. Only if there is a sustained ensuing debate will the object of the Challenge be achieved.

#### TOWARDS THE THAW

You will have seen that the chief theme of my small contribution was to sound a note of caution about the criticisms of our parliamentary and political institutions repeated today by Sir Barton Pope and Sir Mark Oliphant. It is true that the disillusionment expressed by Pope, Burnet and Oliphant concerning the machinery of lawmaking, the party system and the factiousness of our political arrangements, is probably widespread in Australia. Perhaps it is because we have so many politicians (Federal, State and Local Government) and so many administrators working to them, that we suffer the national malaise of contempt, bred of too much familiarity. The tendency of the media often to concentrate on personality issues, the odd, the entertaining, the bizarre and the scandalous, can sometimes deflect our national attention from the long-term issues that should be addressed by our political leaders. A correspondent in the Canberra Times last Sunday suggested:

It ought to be well within the means of the artful Japanese to concoct a kind of sophisticated form of taxi meter which, attached to a parliamentarian, will only run up a fare, as it were, when the wearer is addressing himself to the nation's problems.

Ian Warden, 'Parliament, A Place Where They Kick Men When They Are Down', The Canberra Times, 9 May 1982, p.2.

I believe that the chief merit of the 'Challenge' is its endeavour to identify the nation's issues and concerns. It has avoided the snares of party politics, though, of course, some of the issues raised have party political implications.

For my part, I always refuse to join the brigade of those who denigrate and diminish our parliaments and our politicians. They are the ministers of democracy. There is no acceptable alternative. We can look to them to improve themselves and their institutions and above all to modernise the machinery of parliament so that it can better cope with the problems identified in the 'Challenge' -- especially the problems of mature science and technology. However, as a country we do ourselves a disservice if we continue to heap opprobrium and contempt upon our political leaders. The price we will pay for this attitude is a disinclination of some people of quality to offer themselves for political life, a lowering of self-esteem and self-image amongst those who take part and an enhancement of the spirit of resignation that will prevent reform and improvement of the system. All true democrats should be seeking to improve and uphold our parliaments. They are after all remarkable institutions that bring together representatives from all parts of the country and all walks of life. There are legitimate differences between people in our sort of society -- not least about the future. The issues in the pages of the Challenge present many opportunities for serious and strongly held differences of view. It is the mark of our form of society that we can have our differences out in the open. We can expose them, debate them, castigate our opponents and fight to capture the mind of the majority of people. It is when we look at the dictatorships that flourish in this world, at the military juntas and the alternatives, that we must count our constitutional blessings. At least we have machinery with which, with a due measure of attention and improvement, can, in an orderly way, provide institutional responses to the challenges identified by Burnet, Oliphant and Pope.

My other contribution relates to constitutional reform, a matter in today's news because of the announcement that the Prime Minister had sought the concurrence of the States in a revival of the Constitutional Convention and because of the decision of the High Court of Australia yesterday concerning the validity of the Racial Discrimination Act. Australia has been called, constitutionally speaking, a frozen continent. Last month the Canadian Constitution was amended to permit home-grown constitutional changes. We have had our own method of constitutional change by referendum since the beginning of Federation. But as a people we have been neglectful in using it.

We have been neglectful both at a parliamentary and governmental level in offering proposals for change. We have been neglectful and extremely cautious in accepting proposals once offered. The result has been the constitutional deep freeze, thawed only occasionally — indeed in only eight cases since Federation — at referendum and sometimes by judicial decisions of the High Court of Australia.

Lately, there have been suggestions for the re-examination of the Australian Constitution in time for the Bicentenary in 1988. With the support of all political parties the Law Foundation of New South Wales has gathered together some of the most relevant legal and other minds in the country to identify the issues of constitutional reform for the next century. I am a member of the Consultative Committee working on this project. The committee met earlier this week and it continues its work. It plans a publication sketching the problems and the needs of constitutional reform and a series of seminars in all parts of the country early next year. The Prime Minister has recently suggested that we ought not to aim for an entirely new Constitution by 1988. Certainly our constitutional history suggest that this would be too bold an ambition even if it was desirable. Yet the issues before the constitutionally 'frozen continent' and the problems identified in the 'Challenge' make it clearly appropriate that we should, as a people, be looking to the constitutional and legal needs of Australia in the next century. It is scarcely surprising that a constitutional document put together in the far-off, secure and languid days of the Victorian era should be unable to service the needs of our country virtually unchanged, in the age of interplanetary flight, test tube babies and the microchip. Changes will be needed. But the genius of English-speaking people is to find routine institutional means of delivering those changes. They will not come by revolution. They will come by evolution of our constitutional system including by changes approved at referenda. Our present Constitution grew out of the people before it became an issue for politicians. It would be my hope that a thoughtful debate about constitutional reforms and about the social and technological issues in the 'Challenge to Australia' could be the mark of our real celebration of the Bicentenary. I believe that Burnet, Oliphant and Pope have made a significant contribution to the decade of the Bicentenary of Australia. As we approach our 200th birthday as a modern country, I am sure that the best way of celebrating it is to think of the years ahead and of the challenges which our leaders, our institutions and we the people must face.

I thank our three eminent Australians. Those who value our country's future will promote and sustain a national debate about the issues in the Challenge. Australians of goodwill will take part in the debate and thereby help guide the Lucky Country into the next century.