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AUSTRALIAN SOCIETY OF LABOUR LAWYERS (SOUTH AUSTRALIA)

DINNER ADELAIDE FESTIVAL CENTRE, ADELAIDE

Friday 12 March 1993

THE AUSTRALIAN CONSTITUTIONAL MONARCHY & ITS LIKELY SURVIVAL

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Hon Michael Kirby*

A CELEBRATION OF DEMOCRACY

We meet on the eve of a Federal election. Tomorrow, the Australian people will celebrate their constitutional democratic privilege. They will return members to the new Federal Parliament. They will do so, casting their ballots under laws made in accordance with the Australian Constitution. It is one of the six oldest constitutions continuously operating in the world. Those who feel that this is a matter for proper pride and who consider that we should stick with the Commonwealth which the Constitution establishes should not feel afraid to express their views. What a sad day it will be for us if diversity of opinion is discouraged and fear replaces reason.

I support reform of society and its laws. But reform means more than change. It means change for the better. My proposition is that the establishment of a "Federal Republic of Australia" would not be a change for the better. The vast majority of people of our world do not enjoy the privilege which we will exercise tomorrow. In the Republic of Moldova, where I was recently, they can barely conceive

of our system. In the Republic of Indonesia, this week, the President was once again returned to office: the only candidate. Our processes of choosing our leaders may be more messy. But we uphold the privilege of choice and the dignity of the opinion of each individual citizen.

Out of candour there are three preliminary points which I should make.

First, I acknowledge that the debate about our Australian polity is a legitimate one. We may have it, unimpeded by guns or the opprobrium of official orthodoxy, precisely because of our constitutional history, conventions and instrument. I can, of course, understand some of the criticisms of our constitutional monarchy. For example, I acknowledge that in some parts of Asia the concept of Queen Elizabeth II, as Queen of Australia, may be difficult for some to grasp. Yet I have no doubt that there are niceties of the constitutions of the monarchies of Japan, Thailand and Malaysia - not to say of the republics of the region - that we do not fully understand. No self-respecting country should abandon its history and institutions out of deference for the misunderstandings of its neighbours. No country should alter its constitutional arrangements, if they work well, simply because neighbouring countries do not fully appreciate its history or understand its independence. Regional comity has not, nor should, come to this.

I can appreciate that there are difficulties, even in some Australian minds, in seeing Queen Elizabeth II as the Queen of this country. But that, undoubtedly, by law she is. I admit that there has been a failure to educate our young people concerning our Constitution. It is a failure which I deplore. It should be rectified. But change this as we may it must be accepted that, generally in the world, the Queen is seen as the Queen of the United

Kingdom. Indeed, it is by that sovereignty that she becomes the Queen of this country, under our Constitution, made by us. This was something which the Australian people themselves accepted by referenda at Federation. They did so despite arguments advanced most powerfully then in favour of a republic. Of course, when the Queen goes to Europe or to Washington, she will normally be seen as Queen of the United Kingdom. But when she is in Australia, she is undoubtedly our Head of State. At other times, her functions are carried on, on her behalf, and in her name, by an otherwise completely independent Governor-General appointed under our Constitution. For a long time, Governors-General of Australia have been Australians. The true measure of the independence of the office was fully seen in 1985. The Queen herself declined to intervene in our Australian constitutional crisis. It arose, and had to be solved, exclusively within Australia. That was as the Constitution required and as befits an independent country. The Queen respected this. Yet these matters being said, I accept that there are sincere advocates of various forms of republican government. Intelligent citizens will listen carefully to their arguments. They will remember that no system of government is perfect or unchangeable. In Australia, we should certainly continue our search for the least imperfect form of government. There are various models. But we should not dismiss constitutional monarchy, as it works in our independent country, simply because it is seen as unfashionable by some or because the popular media are going through a phase of disaffection with some members of the Royal Family who, earlier, they covered with fawning attention.

Secondly, I must candidly acknowledge the forces which have fashioned my own approach to the issue of republicanism. My ethnicity is Irish. But with a healthy corrective against the

excesses of anti-English attitudes by links to Northern Ireland. In that part of Ireland, to this day, a majority is fiercely loyal to the Crown. They see in their link to it an element of their own identification as a separate people, with a right, as such, to self-determination.

There is also my religion. I was brought up in the Anglican Church. Every Sunday I spoke, or sang, the prayers for the King's Majesty - and later for the Queen. In formative years, these ideas enter one's sensibilities. That is not to say that in maturity we cannot throw off early allegiances. But many of them become part of our spirits. They are not easily eradicated.

Then there is my age. People of my age have lived through at least two reigns. They have known two admirable Sovereigns. They have seen what they think are the strengths of a personal symbol of constitutional continuity. In a fast changing world, some items of continuity - and the institutions which protect them - provide reassurance and stability.

Now, in my ethnicity, religion and age, I am certainly not alone. Those who would change the Australian Constitution must, if they are sensitive to their fellow citizens, reflect upon the feelings of those who would keep certain fundamentals unchanged. And they must reckon with the strength of those feelings. To be indifferent to such feelings - in an intolerant pursuit of one's own conception of society - runs the risk of the worst kind of majoritarianism. Paradoxically, democracy works best when it respects the opinion of diverse groups in all parts of the population not just the majority. The views of the large number of Australian citizens who rather like the current constitutional arrangement and dislike calls for a change in things so fundamental should not be ignored. Politically, those views will be ignored at the peril of

those responsible. For there are many people in the community of similar ethnicity, religious upbringing and age who have abiding tendencies in the same direction.

Thirdly, I am willing to concede that in the long run some changes to our constitutional monarchy may occur in Australia. In the long run we are all dead. What happens in the *very* long run will be in the gift of the people of Australia in the future time. The process of our constitutional evolution has certainly not stopped. The moves from colonies to dominion and from Commonwealth to a fully independent country continue apace. Our country, like every nation, is on a journey. If Europe is any guide, the journey will probably take us to an enhancement of regional relationships rather than a retreat into the isolation of the nation state. And our region, in the coming century of the Pacific, offers us the opportunities of a special relationship with our neighbours if we can harmonize our national rôle with our geography.

In our relationship with our Sovereigns, Australians have been fortunate for most of the modern history of Australia in the high sense of service and duty which those Sovereigns have displayed. I concede at once that the recent controversies about some members of the Royal Family - and particularly Prince Charles as heir to our Sovereignty - have damaged in some peoples' minds the cause of constitutional monarchy. In the modern age, it seems, it is necessary for the monarch to be admired. I think all would concede this virtue to Queen Elizabeth II. Some people - based upon taped eavesdropping of private conversations and snooping photographers - have formed a different view about the Prince and Princess of Wales and other members of the Royal Family. I pass over how such intrusions came about; how they passed into the hands of a voracious media; how suddenly elements in the media turned upon members of the

Family; and how intercontinental media interests played off each other like modern brigands. The rôle of the modern media in manipulating public opinion - even in constitutional fundamentals - must be a source of grave concern to all serious observers. It is virtually impossible to get published in Australia serious opinions in defence of our constitutional system. This is in itself astonishing - and disturbing.

But all that is as it may be. We must see recent events in their proper context. Only the Queen has any part in Australia's constitutional arrangements. She enjoys good health. Her mother still happily prospers. The Queen will probably be around for a very long time - well into the next century. The crises of the last year will inevitably fade in public memory. In considering republicanism, Australians will see - in increasingly stark relief - the continuity of the service of their Queen. And they will begin to ask about the arguments which suggest that this stable constitutional system should be preserved or overthrown.

In my estimation those arguments are of two kinds. The first are the arguments of *Realpolitik*. The second, for those of a sweeter disposition, are arguments of principle.

THE ARGUMENTS OF REALPOLITIK

Before we change our most stable Constitution, it is essential that we make very sure that the change is undoubtedly for the better. The following considerations must therefore be kept in mind.

First, there is the very great practical difficulty of securing constitutional change in Australia, given the provisions of s 128 of the Australian Constitution. In the whole history of our Federation there have been 63 proposals to change the Constitution. Only 12 have succeeded. We started well enough with the first referendum in 1906 which concerned Senate elections. Six States voted in favour of

the change. The popular vote in favour was nearly 83%. In 1910 two proposals were put forward. Only one succeeded and that by a whisker. By 1911 the course of our constitutional history was becoming clearer. Two questions were put. Both were rejected, the favourable vote being less than 40% and only one State favouring the change. Thereafter the history of formal constitutional change in Australia has been one of intense conservatism.

Unless there is concurrence between the major political parties, it would seem that the people will reject proposals for constitutional change. And even the existence of such concurrence is certainly no guarantee of success. In 1977, the proposal of the Fraser Government for simultaneous elections had the strongest bipartisan support. Indeed it won 62.20% of the popular vote nationally. It even accompanied three proposals which were indeed accepted (casual vacancies; territorial representation; and retirement of Federal judges). But the electorate discriminated. The proposal carried in only three States. It was therefore rejected in accordance with the Constitution for no affirmative majority of the States was secured.

Not all of the rejections of constitutional change have been an exercise of unwisdom. I think it would now be generally accepted that the rejection of the Menzies Government's referendum in 1951 to dissolve the Australian Communist Party was an important protection of civil liberties in Australia. At the beginning of the campaign which was waged by Dr H V Evatt against that referendum, polls showed that 80% of the people favoured the proposal. But when it came to the vote, only three States could be gathered in. Only 49.44% of the popular vote was won. Sometimes s 128 of our Constitution has been a wonderful guardian of our freedoms.[1]

Nor are we alone in constitutional caution. In Canada

recently, a proposal, settled by the politicians, for constitutional changes to meet the demands of the people of Quebec was rejected by the people. The people of Canada affirmed the *status quo*. One commentator has observed that "the Canadians ended their constitutional odyssey by constituting themselves a people through an affirmation of the constitutional *status quo*".[2]

There is an added complication in the Australian case. The States of Australia are also constitutional monarchies. Their separate polities cannot be ignored. The notion that a future Federal Republic of Australia could dragoon a number of States which preferred to remain constitutional monarchies is, as it seems to me, unthinkable. Containing continuing State constitutional monarchies within a Federal Republic might be theoretically conceivable but it would certainly be extremely odd. Effectively, this means that a republican form of government could not easily be adopted in Australia without unanimity within all parts of the Australian polity. This is a reason for great care in approaching the suggestion of a divisive idea.

I set aside the possible argument that constitutional monarchy is so entrenched in the very nature of the Australian Constitution that it could not, even by referendum, be altered. In India, and other parts of the Commonwealth of Nations, some aspects of their constitutions have been regarded as beyond the procedures of alteration: being so essential to the very nature of the constitution. I assume that this problem would not present itself in Australia to add to the difficulties of constitutional reform by the vehicle of s 128 of the Constitution.

Yet those difficulties are clearly formidable enough. The last experiment in constitutional change should not be forgotten by the proponents of a republican referendum. It will be recalled that in

1988, for the Bicentenary of European Settlement in this country, we were told that we had to accept certain changes and to do so by our two hundredth birthday. The changes concerned Parliamentary terms, fair elections, the recognition of local government in our Constitution and the extension of the protection of certain rights and freedoms to the States. Again, at the opening of the campaign, the polls showed overwhelming support for the referendum proposals. But when it came to the vote, not a single one of the proposals passed. Indeed, not a single one gained a majority in a single State. One only gained a majority in one jurisdiction. The proposal for fair and democratic Parliamentary elections throughout Australia - so seemingly rational and just - was accepted in the Australian Capital Territory alone. Nowhere else. The dismal showing of the voting of the people of Australia reflected their great caution in altering our constitutional instrument. The average vote for the four proposals was approximately 33% in favour and 66% against. If this record of constitutional change does not have lessons for the republicans in Australia, nothing will teach them the realities of Australia's basic constitutional conservatism.

Secondly, as I hope I have already shown, the proposal for a republic, at least at this stage, would not go by the nod. There would be many people who for reasons of principle or other priorities, would fight the referendum. Any referendum that promises more real or apparent power to any politician - even a single one as President - faces an especially rough passage. This can be shown clearly enough by the rejection of the proposals relating to the terms of Senators. These had bipartisan support of the political parties in 1977 and 1984. On each occasion a majority of the people was secured. But not a majority of the States. Every other proposal for constitutional change by referendum in the last 15 years has

failed dismally.

In these circumstances, there would be many who would consider that our national energies should be devoted to priorities which would not be so divisive and which would seem to some to be rather more urgent. Priorities such as the reconciliation and proper provision for the Aboriginal people of Australia. The extension of an accessible legal system to our people. The improvement of the operations of Parliament. The provision of new initiatives to reduce unemployment amongst the young and not so young. The assurance of equal opportunity to Australian women and to other groups who suffer discrimination. The provision of proper educational opportunities and fair access to health care and services. The building of a truly multicultural society. The improvement of local government, roads, sewerage and other necessities of government. These are aspects of Australia's national life where things are undoubtedly wrong. They represent areas in which we stand a real chance of forging the national resolve that is necessary to secure positive action. And we need no constitutional changes to gain success in them. To inflict upon our country the wound of a divisive debate about a republican form of government - in a form not yet identified in its particularity - would be grievously damaging to the spirit of the country: at least at this time.

Thirdly, it is important to emphasise that in every legal and real respect Australia is a completely independent country. Its independence of the legislative power of the Westminster Parliament began long ago. It passed through the Statute of Westminster in 1931. It was finally affirmed when the Queen of Australia personally assented to the *Australia Act* 1986 in Canberra. The United Kingdom Parliament now has no legislative authority whatsoever in respect of Australia. An attempt, even indirectly, to extend the

United Kingdom's official secrets legislation to Australia in the celebrated *Spycatcher* litigation failed both in my Court[3] and in the High Court of Australia.[4] A similar result ensued in New Zealand.[5] The legislative link - except to the extent that we have retained, by our own decision, great English constitutional and other statutes (such as *Magna Carta*) - is completely and finally severed.

So is the executive link as the events of 1975 demonstrated. Those events have had their counterparts in Fiji and Granada[6] where the Queen, being absent, declined in any way to interfere in the independence of action of the local Governor-General. The idea of the United Kingdom or its Ministers advising the Queen of Australia in respect of Australian matters, or in any way interfering in the Executive Government of Australia, is now unthinkable.

The judicial link with the United Kingdom is also totally and finally severed. The last of the Privy Council appeals has been argued and determined. Severing the mental links of some Australian lawyers to the laws pronounced in London is a rather more difficult task. But the High Court of Australia has made it plain[7] that English law is now but one of many sources of comparative law assistance available to Australian courts. It has no special legal authority whatsoever in this country. The common law throughout the world is a great treasure-house upon which we can draw in Australia's independent courts. But we are completely free of legislative, executive, judicial, administrative or any other formal links to the United Kingdom. Suggestions that we are in some way still tied to mother's apron strings are completely false. If such links exist they reside in history and spirit. Legal links reside only in the minds of the wilfully ignorant or spiritually paranoid. It is therefore important to realise that republicans in Australia are not

dealing with practical realities of constitutional independence. Their concern is only with a symbolic link in the person of the Queen. It is symbols, not realities, that they want to eradicate - at least that is the clear position of those of the minimalist persuasion.

Fourthly, it should not be assumed that republicans speak with a single voice. The usual proposal is for a minimalist change to the Australian Constitution - virtually substituting nothing more than a President for the Governor-General. But this does not satisfy the true republicans amongst us. For example, Associate Professor Andrew Fraser has described the Australian Republican Movement rather unkindly but accurately I thought as the "Australian closet monarchist movement".[8] According to Professor Fraser they are merely tinkering with names. Their system of government remains fundamentally that of a constitutional monarchy. Nothing much at all changes. For Professor Fraser and his supporters nothing less will do than to root out the notions and approaches of constitutional monarchy and replace them with a thorough-going change of the basic form and nature of our Constitution. This must start with securing a completely separate Constitutional Convention to bypass (or at least complement) the procedures provided under s 128 of the Constitution.[9] So far, the vocal republicans appear, for the most part, to have rallied around the minimalist approach. Perhaps that simply shows how abiding and congenial is our system of constitutional symbols. According to Professor Fraser, a thorough-going republican, it merely demonstrates the mind-lock of most Australian republicans in the true notions of constitutional monarchy. They want a constitutional monarchy - with symbols above politics - but without a real monarch. Is this all that we are to achieve at the price of dividing our country, diverting our national

endeavour from achievable gains and hauling ourselves to the brink of a referendum on a political question where sharp divisions are very likely to result in the continuance of the status quo?

Fourthly, we should keep in mind that our present constitutional arrangement is remarkably inexpensive. It is true that the Queen and members of the Royal Family, when invited, make visits to Australia. That costs Australians something. But we do not pay for their upkeep at other times. We avoid the expensive trappings that typically surround a national Head of State today. Or at least we contain them within decent and very Australian bounds.

Fifthly, there is the personality of the present monarch. Although it is the *system* which is basically in issue, it is difficult, in the nature of things, to disentangle, in the proposed debate, the system from the current incumbent. Queen Elizabeth II is a person whose life symbolizes duty and service. These are symbolic values of great importance in fast-changing times. They are symbols of national utility. They provide a special impediment to those who would change our system and who need a positive, even overwhelming constitutional affirmation to do so. They reinforce an instinctive view that the citizens of Australia, asked to reject this dutiful woman in preference to enhancing the powers of local politicians, will decline to do so - at least during the Queen's reign. Too many of us have grown up with her and rather like and admire her – however fond and foolish that may seem to our republican co-citizens. The high likelihood, at least for the foreseeable future of the Queen's lifetime, is that a proposal to reject the Queen of Australia would suffer the same fate as most referendum questions in Australia which I have itemised.

THE ARGUMENTS OF PRINCIPLE

If we lift our sights from these arguments of *Realpolitik*,

there are three arguments of principle for sticking - at least for the foreseeable future - with our Constitution as it stands.

The first is the argument against nationalism. Much of the rhetoric of republicanism smacks of 19th century nationalism. In my view this is a completely outdated and unsuitable rhetoric and we should grow beyond it. Since Hiroshima, it behoves intelligent people to abhor nationalism and to seek after international harmony. Our Head of State is an international one; and none the worse for that fact. The idea that we must have a local Head of State, always resident in our midst, is one which derives from the inflexibility of the mind, set firm in its orthodoxy before the age of telecommunications, the jumbo jet and global ideas.

Against narrow nationalism, the constitutional monarchy of Australia presents a tempering force. It softens brutal majoritarianism: because it provides an ultimate symbolism and institutions which go beyond the current political fashion. It puts at the head of a nation people who are beyond the nation's politics. It is no coincidence that the most temperate of the states of the developed world, in the Organisation for Economic Co-operation and Development, are constitutional monarchies. Indeed it is no coincidence that more than half of the members of that club of democracy are constitutional monarchies, like ourselves.

Those who harbour a hope of closer relations with New Zealand must also keep in mind the utility of our sharing a constitutional monarch with that close neighbour in our region. It seems unlikely, at least in the foreseeable future, that New Zealand will change its basic constitutional arrangements. We should pause before severing such a special link with the country closest to our history and identity.

The second argument of principle relates to the dangers of

fundamental constitutional change. There is a danger that an elected republican President (or one appointed by elected politicians) would conceive that he or she had the separate legitimacy which came from such election or appointment. At the moment there is - and can be - no such legitimacy in the Queen's representatives apart from the popular will. One of the reasons why the events of November 1975 shocked many Australians was precisely because of the perceived lack of popular legitimacy for the Governor-General's actions. It is this perception which puts a severe brake upon the use by the Governor-General of the prerogative powers. It is a brake I strongly favour. But there is no doubt that, without specific and detailed constitutional amendment, the prerogative powers of the Queen would pass to a President elected or appointed by the minimalist formula of constitutional change. That this is so has been demonstrated in Pakistan[10] and in other countries where a Governor-General has merely been replaced by a President.

In short, there is a much greater risk that a local Head of State - especially one enjoying the legitimacy of a vote into office - would assert and exercise reserve powers which henceforth, I believe, would be most unlikely to be used by an appointed Governor-General or State Governor. We have only to watch the spectacle of the contemporary conflict between President Yeltsin and the Congress of Peoples Deputies in Russia to understand the instability of a political system with two potential heads. Under our present system, because of an accident of history and birth, our Head of State can and should aspire to no such political rôle or power. Nor should - or do - her representatives. The same may not be true if we alter the incumbent and the method of determining the incumbency. This is as true of the State Governors as of the Governor-General. Better, it would seem, to leave things as they

are.

The third reason of principle concerns the utility of our present constitutional compromise. We have in Australia, in all truth, a crowned republic. We have the advantages of constitutional monarchy, as practised in so many peaceful democracies. We have the historical symbols of a constitutional system of a thousand years without the trappings of the aristocracy and other features that would be inimical to Australian public life. And yet we avoid the pretentions to which a home-grown republic could easily succumb: the fleet of stretch limousines, motor cycle escorts, streets blocked off as they pass - especially pretentions in a Head of State and "First Lady" who might be tempted repeatedly to feel the urgent need to travel abroad, to develop official residences and the accompanying expensive features of high office in all parts of this continent so as to be close to their peoples. In fact, we have developed in Australia to a mature system in which, although we have the Queen and the Governor-General and Governors, we are mercifully free of the pomposities that elsewhere accompany local Heads of State. To the complaint that we have no Head of State to travel overseas for us, I would say: we have our Head of Government. It is he or she who should ordinarily do the travelling. I can live quite peacefully with the sombre fact that our Head of Government attracts only a 19 gun salute. A mature democracy can easily miss those extra two guns, and a lot more arrogant pretention besides.

Like so many features of British constitutional history (the jury being the prime example) our constitutional arrangements function rather well, even though originating in a quite different purpose. They have evolved to a point where they are fairly well understood. The Queen and her representatives have extremely limited constitutional functions: to be consulted and to caution and warn.

Because they are psychologically or even physically removed from political strife, or political dependence, their advice can sometimes be useful. Occasionally they can give the lead to the community where politicians are cautious. It is no accident that the elected President of the Republic of the United States of America (Mr Reagan) - the great communicator - could not bring his lips to mention AIDS in the first four years of his Presidency. During that time our Governor-General founded the AIDS Trust of Australia. Our Governors repeatedly supported AIDS benefits. They went to hospitals and hospices. They spoke amongst citizens about this matter of concern. And so in England did the Queen and members of the Royal Family. Occasionally it is important to have courageous but non-political leadership on matters of sensitivity which politicians - answerable to the ballot box - feel unable to give.

And then there is the element of ceremony and history. In my rôle as a Judge and as a University Chancellor I see the deep wellsprings of human need for the ceremonies that mark important occasions in life. This does not mean that we should sanction self-conscious pomposity. Nor that we should resurrect the idea of a Bunyip aristocracy. I deplore that notion. Many may laugh at the investitures; at the openings of school fêtes; at the Vice-Regal presence in the country agricultural shows and for community groups. But these are places where our fellow citizens gather. Where they seem to feel a need for ceremony and personal recognition. We have done without the aristocracy. But it would be a mistake to under-estimate the forces of the emotions of our people which the Queen of Australia and her representatives serve. These may be seen by some as foolish, trifling things. But if they matter to other citizens, they should not be dismissed out of hand. How tedious the world would be if it disposed of all graceful, historical things and

insisted on monochrome utility and cold rationality in all moments of life.

THE NEED FOR OPEN-MINDEDNESS

The only criterion for deciding upon Australia's constitutional arrangements is what best advantages Australia and its people. We must avoid the ignorant simplicities of rejecting something that is old and trusted simply because it is old and seems to some to be unfashionable. We must beware the changing winds of fashion - especially in constitutional fundamentals and particularly when whipped up by one-sided media campaigns. We must be very clear-sighted about the great difficulties of securing a change of our Constitution. We must be sensitive to the divisiveness and sharp differences that any such proposal would bring. As a mature people, we should be specially cautious about invocations of nationalism more apt to the centuries past than to the century yet to come. We should not be too proud to stay - at least for the present - with a system of government which has served us well. We should measure carefully the advantages of our crowned republic - of our modest ideas about a Head of State. It is a mature country that basically gets by with a Head of State who is usually absent and which refuses to submit to the calls of those who feel the need for a more constant, ever-present symbolic Leader.

We can do well enough without such 19th century notions. Our present arrangements may seem irrational, anachronistic and moribund to some. But in the pantheon of governmental systems, Australia's works pretty well. We will see it at work tomorrow. Under the Constitution that has served Australia for nearly a century, we will all peacefully cast our ballots. No blood in the streets. No gunfire will accompany the result. We can rejoice in our mature Constitution. In the words of the poet laureate of a practical

people: "If it ain't broke, don't fix it".

FOOTNOTES

* AC CMG. Member of the Council of Australians for Constitutional Monarchy.

1. M D Kirby, "H V Evatt, the Anti-Communist Referendum and Liberty in Australia" (1991) 7 *Aust Bar Rev* 1993.
2. P H Russell, "The Canadian Referendum: Canadians Affirm the Status Quo" in (1992) 1 *Constitutional Centenary* #3, 5.
3. *Her Majesty's Attorney-General in and for the United Kingdom v Heinemann Publishers Australia Pty Limited & Anor* (1988) 165 CLR 30.
4. *Attorney-General (UK) v Heinemann Publishers Pty Limited* (1987) 10 NSWLR 86 (CA).
5. *Attorney-General (United Kingdom) v Wellington Newspapers Limited [1988] 1 NZLR 129 (CA).*
6. *F M Brookfield, "The Monarchy and the Constitution Today: A New Zealand Perspective" [1992] NZLJ 438.*
7. *Cook v Cook* (1986) 162 CLR 376, 390.
8. A Fraser, "What's in a Constitutional Name? Disarming the Australian Republican Movement" (1992) 1 *Cross Examiner* #2, 22; cf W Hudson, "An Australian federal republic?" (1992) 64 *Aust Quarterly* 229.
9. See generally A W Fraser, *The Spirit of the Laws: Republicanism and the Unfinished Project of Modernity*, Uni Toronto, 1990. Note Review by B Edgeworth (1991) 14 UNSWLJ 352.
10. See *Special Reference No 1 of 1955* [1955] PLD 435 (FC) reported in W I Jennings, *Constitutional Problems in*

Pakistan 1957 and noted Brookfield above n 6, 442. See also the case of *Granada* noted (1986) 35 *Int and Comp LQ* 950 and *Mitchell v Director of Public Prosecutions* [1986] LR Cth (Con) 35 (CA).