

1788-1988
Bicentenary Issue No. 2



GOVERNMENT AND LAW

HERITAGE

LINKING THE PAST WITH THE PRESENT — FOR THE FUTURE



FRONT AND BACK COVERS

1988. The Queen mingles with guests at Australia's new Parliament House.

in this issue

- 2 Christian Roots of English Common Law**
by Eric D. Butler
- 8 Command and Control of the Armed Forces**
by Sir Valston Hancock
- 10 200 Years of Liberty**
by John Bennett
- 12 The Constitution — Past and Future**
by Dr. David Mitchell
- 15 The Federal Constitution and Individual Freedom**
- 18 Who Knows Who is Australia's 'Head of State'?**
by Randall J. Dicks, J.D.
- 20 Canada Calls**
- 22 The 1988 Referendum Proposals**
by Dr. David Mitchell
- 25 The Monarchy**
- 28 Poetry of Australia**



The Essential Christian Ingredient

There is an appalling ignorance within our nation of the workings, value and historical development of our Parliamentary and Legal institutions. A recent survey has indicated that some fifty percent of our population overall, and seventy percent of our youth, are unaware that this nation has a Constitution and that figure reaches seventy percent for our youth.

Worse still, the depth of knowledge amongst our better educated and intellectuals is abysmal. Amongst those whom we would expect learned and informed debates about our institutions, there would be few today who would have been worthy of an invitation to the conventions leading up to Federation in 1901. Few seem able to argue the case for the Monarchy, the trinitarian concept of government or Common Law. Fewer still would be capable of placing them within a philosophic context or outlining the Christian principles that they embody.

This most certainly reflects upon an education system which claims to prepare our young for life within our community. It may prepare them as productive units for the economy, but hardly as responsible citizens equipped with the tools to fully participate in our democracy.

It is our endeavour, with the Bicentenary issues of *Heritage* to outline, both, the major elements of our heritage, and show the inter-relationship that exists between them, for it is almost impossible to gain a complete understanding of our institutions without an appreciation of the principles, the notions of liberty and justice that our founding fathers were trying to embody in our institutions. It is not a matter of preaching, or endeavouring to force the Christian faith upon others, but it is a fact of history that the most essential element in the evolution of the British peoples has been the Christian revelation, and their continuing endeavour to apply in practice the reality that it has revealed.

It follows that since our Government and Laws have developed from the Christian revelation, (philosophy or religion) it is inevitable that a change of philosophy (or religion) by those who govern us will flow through to the laws and institutions of Government. Nothing is more obvious as we witness the rash of humanistic inspired laws which have been forced upon our people in recent years.

Our founding fathers recognized this essential Christian ingredient to our nation and acknowledged our dependance on God in the opening paragraph of the Constitution. The Standing Orders of our Federal Parliaments include a prayer at the commencement of each sitting. However, in keeping with the philosophy of the new breed of Canberra politicians, prayers were originally excluded from the opening ceremony of the New Parliament House. It appears at the last moment there was a change of heart, and they were included.

Whilst a band of Aboriginal protesters received a great deal of publicity at the opening, there was another group who received little or no publicity. They numbered some 35,000 from across the country. They assembled six and seven deep around the new Parliament House on the Saturday before the opening in a prayer vigil for our nation. Perhaps this is the most significant event of our Bicentenary so far. Is it too much to hope that their faith will inspire a new direction from those who grace this new home of our Parliament?

THE AUSTRALIAN HERITAGE SOCIETY

The Australian Heritage Society was launched in Melbourne on September 18th, 1971 at an Australian League of Rights Seminar. It was clear that Australia's heritage is under increasing attack from all sides; spiritual, cultural, political and constitutional. A permanent body was required to ensure that young Australians were not cut off from their true heritage and the Heritage Society assumed that role in a number of ways.

The Australian Heritage Society welcomes people of all ages to join in its programme for the regeneration of the spirit of Australia. To value the great spiritual realities that we have come to know and respect through our heritage, the virtues of patriotism, of integrity and love of truth, the pursuit of goodness and beauty, an unselfish concern for other people—to maintain a love and loyalty for those values.

Young Australians have a very real challenge before them. The Australian Heritage Society, with your support can give them the necessary lead in building a better Australia.

"Our heritage today is the fragments gleaned from past ages; the heritage of tomorrow—good or bad—will be determined by our actions today."

SIR RAPHAEL CILENTO

First Patron of The Australian Heritage Society

PRINCIPAL ADDRESS

BOX 7409, CLOISTERS SQUARE,
PERTH, 6000.

STATE ADDRESSES

BOX 1052J, MELBOURNE, VICTORIA, 3001
BOX 179, PLYMPTON, SOUTH AUSTRALIA, 5038
BOX Q364, QUEEN VICTORIA BUILDING, SYDNEY,
N.S.W. 2000
461 ANNE STREET, BRISBANE, QUEENSLAND, 4000
C/- A.S.K. SOCIETY, P.O. BOX 187, SANDY BAY,
TASMANIA, 7005

EDITOR — P. Nixon ASSISTANT EDITOR — M. Jorgensen

EDITORIAL ADDRESS

P.O. Box 69, Moora, Western Australia, 6510

PUBLISHED BY

THE AUSTRALIAN HERITAGE SOCIETY
P.O. BOX 7409, CLOISTERS SQUARE, PERTH, 6000

© 1988 THE AUSTRALIAN HERITAGE SOCIETY

Contributions are invited for publication in "HERITAGE". Articles should be accompanied by suitable photographs, and a stamped addressed envelope for return if unsuitable. All reasonable care will be taken of material forwarded; however, the Editor cannot accept responsibility for loss, damage or non-return of material.

The views expressed in articles appearing in "HERITAGE" are those of their authors and are not necessarily the view of The Australian Heritage Society.

Justice



Christian Roots of English Common Law

By Eric D. Butler

An eminent English constitutional lawyer, Sir Henry Slessor, once observed that the subject of English Common Law was one which should concern the layman as much, if not more, than the lawyer. The subject is of crucial importance at a time when the rights and freedoms of the individual are being steadily encroached upon by what a former Lord Chief Justice of England, Lord Hewart, described as "The New Despotism".

Totalitarians of different labels are strong in their declared support for "the Rule of Law". But a close examination of what they are saying reveals that their concept of law is a mass of regulations imposed by an army of officials using, in the main, power delegated to them by the ruling party in parliaments perverted from their original purpose. This type of law is a manifestation of what has been described as "bureaucratic lawlessness", often self-contradictory and with no one personally responsible for what is done. With non-elected officials being able to invade individual property rights on a scale which once would never have been tolerated, the traditional Common Law rights of the English-speaking peoples everywhere are under deadly attack.

THE NEW DESPOTISM

When Lord Hewart's classic, *The New Despotism* appeared in 1929, it was only one of a number of warnings by eminent constitutional authorities concerning the erosion of Common Law.

Hewart summarised his main charge as follows: "A mass of evidence establishes the fact that there is in

existence a persistent and well-contrived system, intending to produce, and in fact producing, a despotic power which at one and the same time places Government departments beyond the sovereignty of Parliament and beyond the jurisdiction of the Courts".

Professor Harold Laski of the London School of Economics, one of the most influential Marxist theoreticians of this century, played a leading role in attempting to neutralise the public alarm created by *The New Despotism*. Up until 1917 British Lord Chancellors had expressly stated that Christianity was part and parcel of the English Common Law. Laski had consistently opposed this concept, insisting that it must be replaced with the concept of the "sovereignty of Parliament." "The decision by the House of Lords reflected the weakening of belief in the undergirding of spiritual values of Civilisation, and was a serious break with the tradition of Common Law as expressed by the famous English constitutional authority, Sir William Blackstone, who wrote, "The Law of Nature being coeval with mankind, and dictated by God Himself, is of course superior in obligation to any other".

BREAK WITH CONSTITUTIONAL HERITAGE

Commenting on the break with the Christian constitutional heritage in 1917, but certainly not commending it, Sir William Holdsworth, Professor of Law at the University of Oxford, said, "The Judges are obliged to admit that (Government statutes) however morally unjust must be obeyed ... One might have thought that the excesses of the Nazi regime would have made our jurists realise the iniquity of such a theory of law. England's Attorney-General at Nuremberg demanded the death sentence for Germans who obeyed the Nazi; but back in England the same Attorney-General (Times, May 13, 1946) said, 'Parliament is sovereign, it can make any laws. It could ordain that all blue-eyed babies be destroyed at birth'. Herod could not teach our modern jurists anything. They are grimly earnest — 'Laws may be iniquitous, but they cannot be unjust'."

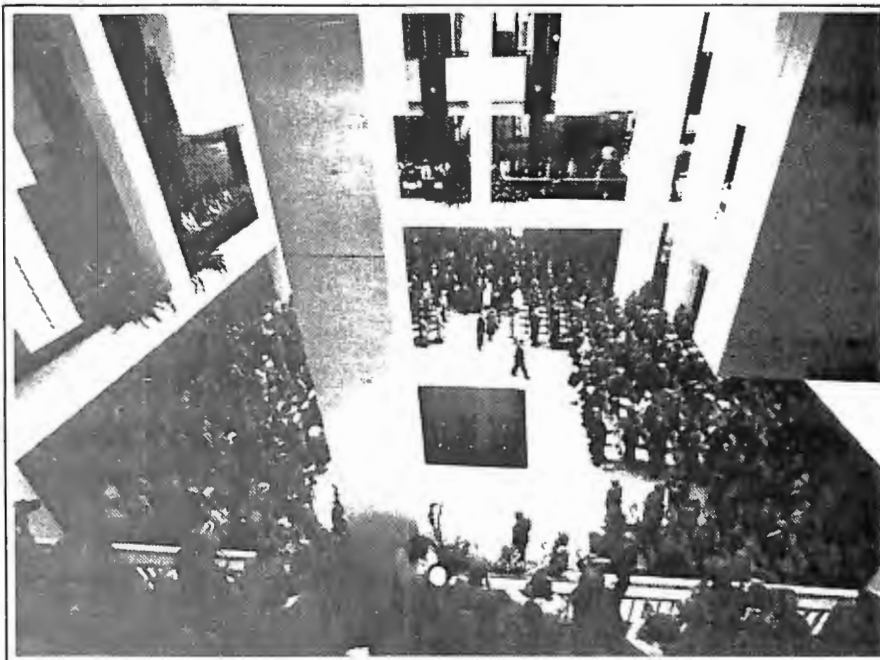
English Common Law evolved in the climate of opinion created by the Christian Church, which insisted that the individual was entitled to enjoy inviolable rights derived from God, not from the State or any other type of human organisation. Western Civilisation has been correctly described as a Christian Civilisation in the sense that it was at least a partial incarnation of the Truths of

Christianity. It is true that this Civilisation has owed much to the legacy of Greece and Rome. The Greek philosophers like Aristotle grappled with the question of how to make individual liberty a reality in the face of the power of the State, while the Romans provided a firm concept of the Rule of Law based upon the philosophy of Natural Law. But it was the Christian teaching that man is a special creature made in God's image, stressing that every individual was of value, which gave the human person a significance unknown outside Western Europe.

CHRISTIAN REVELATION

The Christian revelation dramatically changed the perception of the relationship of the individual to the group and institutions. "The Sabbath was made for man, not man for the Sabbath", was a stinging rebuke to the collectivists of the time, the Pharisees, who had evolved an intricate mesh of regulations and decrees for controlling people. This was all swept away with the Law of Love, Love of God and Love of one's fellow man. The individual was born to be free, and personally responsible, not to be controlled. The Christian Law of Love is not a mere piece of sloppy sentimentalism, but a law partaking of Truth. When applied, it works. In a genuinely Christian society government is primarily concerned with preserving a framework of law and order inside which individuals freely regulate their relations one to the other. The creativeness of Western Civilisation stems from the faith that man has the power to shape history.

Christ's famous answer to the trick question about the Roman coin, that while the individual should render unto Caesar that which belonged to Caesar, but also render unto God that which belongs to God, resolved the problem which had baffled the Greek and Roman philosophers: how to have government without being threatened by the natural tendency of all governments to increase their own powers. Christ gave government a status it had never enjoyed before; it was part of the Divine order and was necessary. But its powers must be restricted to serve the individual who could render unto God that which belongs to God. There was also the concept that Caesar must, like the individual, accept the authority of a Higher Law. The mission of the Universal Church was that of striving to limit the powers of the State, a mission which often failed because the Church concerned itself only with Power and not with authority. Today



*The New Parliament House
Render unto Caesar the things that are
Caesar's, and unto God the things that
are God's.*

large numbers of Christian clergy are teaching that society can only be reformed through the power of the State; they are in fact appealing *from God to Caesar*.

MAGNA CARTA

Any examination of the history of English Common Law rightly stresses the importance of Magna Carta of 1215. But Magna Carta was, in the words of Sir Edward Coke, Solicitor-General and Attorney General, Speaker of the House of Commons during the reign of Elizabeth I, "declaratory of the ancient law and liberty of England, and therefore, no new freedom is hereby granted". Christianity started to develop in England soon after the death of Christ, and its influence extended to political and constitutional developments. Common Law rights, rooted in the Christian concept of the value of every individual and the importance of freedom, had been progressively developed over the centuries. English Common Law grew out of the active part played by Christian theologians in attempting to evolve ways and means of successfully subordinating Power to Authority. While English constitutionalists acknowledged the importance of the Rule of Law, as developed by the Romans, they also grasped that unless a people's customs are considered in the development of any legal system, there can be serious injustices. The

English mystic poet, William Blake, observed that one law for the lion and one for the lamb could end in injustice.

In evolving their system of Common Law, the English broke free from the tendency to rigid legalism inherent in the Roman system, and insisted that the law existed to serve the individual; the law was not an end in itself. The value of each individual was such that he must be assumed to be innocent until proved guilty. In his *Merchant of Venice*, Shakespeare graphically demonstrates the difference between a rigid system of Law and that of a system reflecting Christian values. Justice as seen by Shylock demonstrates the unsuitability of the strict, rigid legal process to anything but — purely static situation.

In the famous mercy speech, Portia puts the Christian view of law, the view which expressed itself in the English Common Law. The creators of the Common Law insisted that the right aim of law is to prevent coercion, either by force or fraud, while there was constant reference to the Common Law as one of mercy, again reflecting its Christian roots. In one sense, Common Law was one of commonsense, reflecting the traditional English suspicion of abstract ideas. The Common Law, as witnessed by Magna Carta is more concerned with specific *rights* and correct situations than with abstract theories.

The Common Law was established in England before the parliamentary system had been developed. This was long before the superstition that individuals derive their rights from the State, as is claimed in the Soviet Union. What the State grants today it may take away tomorrow. Common Law rights were rooted in the concept



The Magna Carta Memorial at Runnymede.

Inscribed "To commemorate Magna Carta — symbol of freedom under law. "The monument was built by the American Bar Association in 1957.

that God was the source of all rights, including life itself. These rights were, therefore, absolute, as witnessed by Magna Carta, and not derived from a "majority vote". Truth is not revealed by counting heads. The mob was persuaded to vote against Christ. This is not an argument against true representative government, which, however, can only operate inside a framework of constitutional law which reflects reality.

INDEPENDENT JUDICIARY

A major feature of the development of the Common Law concept was the establishment of an independent judiciary, the members of which were originally all Christian educated, who applied intellect to an understanding and interpretation of the law as it affected cases brought before them. This was a reflection of the philosophical view that law is reason, not merely will as expressed by government, and that right can be discerned by the use of reason. In spite of the erosion of Natural Law philosophy throughout all countries which have inherited the Common Law from England, including the

United States, members of the judiciary in these countries still exercise a different approach to the administration of justice compared with others. They are, however, in retreat against the advances of the State.

Just as the structure of the Church helped to develop the concept of representative government, so did the ecclesiastic courts, established to uphold Canon Law, make a vital contribution to the development of Common Law. Slowly but surely the Christian philosophy of Common Law found expression in a growing network of decisions, each based upon precedence from other decisions and the development of a body of law which, while constantly upholding basic principles, could adapt to changing circumstances. Common Law was more than a system of rigid legalism.

Common Law rights were rooted in the concept that God was the source of all rights, including life itself.

Magna Carta, confirmed by Edward I in a statute stating that it be read to the people twice a year in all Cathedral Churches, was the formalising of a Common Law developed over the centuries.

CONFRONTATION

Magna Carta was the result of the Caesar of the time, King John, who in attempting to combine both Power and Authority in himself had trampled on the Common Law rights of his subjects. The confrontation which took place at Runnymede was between John, the Barons (more representative of the people than today's party politicians) and the Church leaders headed by Archbishop Stephen Langton. The three groups were a reflection of the development of a Trinitarian form of government in England. The Church leaders played a decisive role in the formulation of Magna Carta, a typically practical English document re-stating Common Law principles.

Here was the Christian Church insisting, not that complete power should be taken from one man and given to another group of men, but that power should be divided and subject to God's laws. As the British historian, Sir Arthur Bryant, writes in his *History of England*:

"It was not Langton's wish to see the Crown overthrown, the law ignored, the realm divided, the Barons petty tyrants. What he wanted was that the King should preserve the law his predecessors created. And it was to the law that the Archbishop appealed, not only of man, but of God. For it was the essence of mediaeval philosophy that God ruled the earth, and that man, and kings above all men, must further His ends by doing justice or it was not in Christian eyes justice at all."



William Shakespeare.

UNDERLYING CONCEPT

The underlying concept of Magna Carta was to establish the rights of every individual, irrespective of his station in life. It was a striking manifestation of the Christian concept of the sovereignty of the individual. One of England's greatest constitutional authorities, Sir William Blackstone, has eulogised Magna Carta as follows:

"The language of the Great Charter is, that no freeman shall be taken or imprisoned but by the law of the land. And many subsequent old statutes expressly direct that no man shall be taken or imprisoned by suggestion or petition to the King, or his council, unless it be by legal indictment, or the process of the common law ...

"Of great importance to the public is the preservation of this personal liberty; for if once it were left to the power of any, the highest magistrate to imprison arbitrarily whomsoever he or his officers thought proper, as in France it is daily practised by the Crown, there would soon be an end to all other rights and immunities ... To bereave a man of life, or by violence to confiscate his estate, without accusation or trial, would be a gross and notorious act of despotism, and must at once convey the alarm of tyranny throughout the whole kingdom; but the confinement of the person, by secretly hurrying him to gaol, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a more dangerous engine of arbitrary government."

HABEAS CORPUS

The framing of the law concerning *Habeas Corpus* was derived directly from the insistence in Magna Carta that no individual could be held for more than a short period before trial. Shakespeare wrote of the threat of "The law's delay". Magna Carta stressed that there were limits to the amount of taxation the Crown could extract. Where tribute was required it was necessary to consider the ability of the property owner to pay. Even the imprisoned person could not be deprived of his tools of trade, as such a procedure would deprive him of the right to earn a living, the right to life. Although not mentioned with enthusiasm, even the Jewish minority was also guaranteed its just rights. Everyone counted.

Magna Carta's stress on private property rights is a reflection of the Natural Law philosophy of the Greeks and Romans as developed by the great Christian philosophers like St. Thomas Aquinas.

Reflecting the historic Christian view, Pope Leo XIII in *Rerum Novarum* said, "That right of property, therefore, which has been proved to belong naturally to individual persons must also belong to a man in his capacity of head of a family; nay, such a person must possess this right so much the more clearly in proportion as his position multiplies his duties. For it is a sacred law of nature that a father must provide food and all necessities for those whom he has begotten; and, similarly, nature dictates that a man's children, who carry on, as it were, and continue his own personality, should be provided by him with all that is needful to enable them honourably to keep themselves from want and misery in the uncertainties of this mortal life. Now, in no other way can a father effect this except by the ownership of profitable property, which he can transmit to his children by inheritance."

Not surprisingly the Marxists and their spiritual predecessors, the Utopians of the eighteenth century, who reject the family as a permanent institution, dislike Magna Carta because of its stress on private property rights, falsely claiming that Magna Carta was merely designed to protect the "privileged". The rights of the Barons, who rejected King John's attempts to bribe them, both before and after the signing of the Charter, were balanced against the rights of the Crown, the Christian church, the freemen and others. The history of the evolution of law-making and constitutional developments demonstrates that to be successful they must be organic and have firm relationship to Reality. When Lord Acton made his famous statement that all power tends to corrupt, and that absolute power corrupts absolutely, he was enunciating an absolute, one which cannot be changed by Man and is defied at his peril.

Magna Carta was a major milestone in a development which, through a division of Power, avoided the corrupting influence of the Monopoly State. The Constitutional development of England reflected the Christian concept of Reality as Trinitarian, with a House of Commons, a House of Lords (both Temporal and, equally important, Spiritual) and the Crown, all accepting the supremacy of the Common Law. The high-water mark of this development was what was known as

Merrie England. The rights of the individual were more assured during this period than they are today, when property and other rights are violated by the growing power of the State, and its various instruments, violations which, if attempted by the Crown during the Middle Ages, would have produced a national revolt.

CHRISTIAN MONARCHS

Much has been said about the alleged abuses and Tyrannies of the Monarchs of Mediaeval Europe, but as pointed out by the great authority on the history and nature of power, Bernhard Jouvenil, "The grossly inaccurate conception of the Middle Ages is deeply embedded in the unlettered ... There is not a word of truth in all this." Christian Monarchs and rulers of the past were far from perfect, but many did recognise the existence of a Higher Law, even when they broke it.

The doctrine of the "Divine Right of Kings" was at least balanced by the presence and influence of a Christian Church which, in those days, claimed to speak with authority. The balance of spiritual and temporal powers manifest itself in the success of European Civilisation, particularly in England, during the twelfth, thirteenth and fourteenth centuries.

The doctrine of the "Divine Right of Kings" has been replaced with a much more dangerous doctrine, the "Divine Right of Government". As far back as 1770, the great William Pitt, speaking in the House of Lords as the Earl of Chatham, warned of the dangers of the new Divinity:

"What, then, my Lords, are all the generous efforts of our ancestors! Are all these glorious contentions, by which they meant to secure themselves and to transmit to their posterity a known law, a certain Rule of Living reduced to this conclusion, that instead of the Arbitrary Power of a King, we must submit to the Arbitrary Power of the House of Commons.

"If this is true, what benefit do we derive from the exchange? Tyranny, my Lords, is detestable in every shape, but none so formidable as when it is assumed and exercised by a number of tyrants.

"But, my Lords, this is not the fact, this is not the Constitution, we have a Law of Parliament, we have a Code in which any Honest man may find it: We have Magna Carta".

In speaking of the "Law of Parliament", Pitt was referring to the *limitations* on the Law-making powers



William Pitt addressing the House of Commons in 1793.

of Parliament which are implied by his reference to a constitution developed from the Common Law principles embodied in Magna Carta.

If English constitutionalism had continued to develop along the lines followed up until the sixteenth century, this world would almost certainly be a different place today.

If English constitutionalism had continued to develop along the lines followed up until the sixteenth century, the world would almost certainly be a different place today. But a disastrous break in Christian constitutional development took place in England when in 1535 King Henry VIII executed Saint Thomas More, generally recognised as the incarnation of English Common Law and of the Christian theology and philosophy underlying it. More resisted the

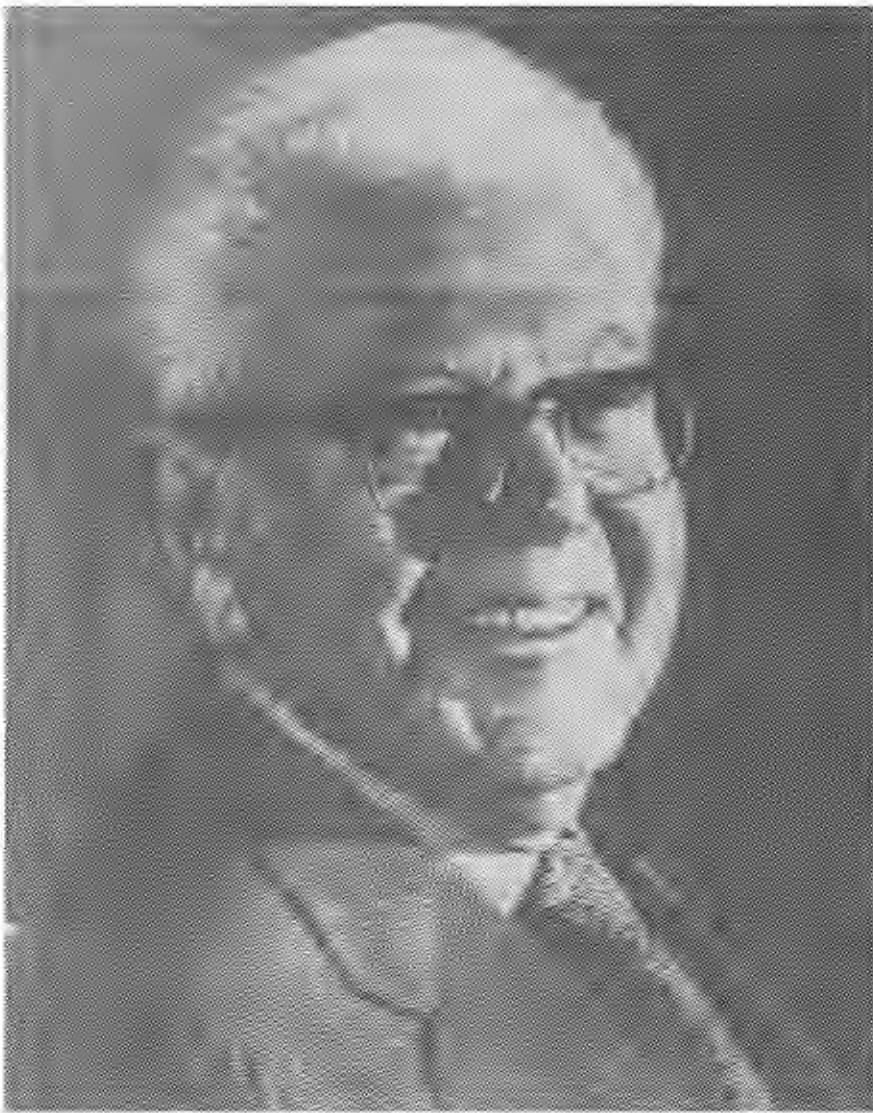
absolutist claims of Henry, and with his death signalled the beginning of the retreat from all that which had been evolved over the centuries.

HOUSE OF LORDS

The 1917 statement by the House of Lords, that Christianity was no longer part of the law of England, was an open admission of how far the retreat from Common Law had gone. The warning in 1929 by Lord Hewart in his book, *The New Despotism*, was taken up as the Second World War came to an end and a British Socialist government dominated by Professor Harold Laski and his Fabian colleagues rapidly advanced the programme of Government by regulation. Writing on "The Twilight of the Common Law" in the April, 1949 edition of the magazine, *The Nineteenth Century*, Professor (later Lord) G.W. Keeton, Dean of the

Faculty of Law at University College, London, said, "It is only very exceptional today that the hunted citizen can escape from the comprehensive meshes of this (bureaucratic) spider's web into the somewhat Olympian calm of the ordinary courts — and when he does, it is frequently to be told that, however regrettable it may be, the court has no power to interfere with the inexorable advance of departmental policy."

1952 saw the publication of what might be described as the sequel to *The New Despotism*, Keeton's sombre warning, *The Passing of Parliament*, its most chilling chapter being entitled, "On the Road to Moscow". Unlike in the Soviet Union, the Executive was not yet completely all-powerful, but this was the direction in which developments were moving. Keeton concluded his book as follows: "In the long run, it is impossible to preserve freedom of the mind when the power to choose has been removed from the



*Sir Marcus Oliphant
Australians now live under an "elected
dictatorship".*

citizen in more and more areas of his daily life. In the end, there will have been produced something approximating the planned stagnation of the Chinese Empire. That would be an odd fate for a people who built the Common Law and who were responsible for Magna Carta, *habeas corpus*, and dominion status. Yet the threat is real, and the hour late. Our present predicament presents a challenge which it is impossible to ignore."

OMNIPOTENT GOVERNMENT

Those words were written 36 years ago. The threat of Omnipotent Governments has increased with the power of the non-elected official to interfere in the affairs of the individual starting to approximate that of the

Soviet system. It is significant that a number of Marxist-Leninists now proclaim that they wish to act "constitutionally". So far from the political vote that under widened franchises offering any protection against growing totalitarianism, it has, as observed by Keeton, become almost valueless and of little significance except in the mass, this increasing the powers of the major political parties. Shortly after he left his office as Governor of the State of South Australia, Sir Marcus Oliphant said that Australians now lived under an "elected dictatorship", that representative government had broken down.

If it is argued that Australia has not made as rapid a retreat from Common Law principles as other English-speaking countries, this is because the basic British principles of Trinitarian government, in both the States (with the exception of Queensland, which has no Upper House), and the Federal sphere have been firmly implanted. The written

Federal Constitution, with the House of Representatives, the Senate and the Crown all part of government, provides some checks and balances.

PRINCE CHARLES

With his deep sense of history, it would be surprising if Australia's future King, Prince Charles, did not fully understand the far-reaching significance of his Sydney address in Sydney on Australia Day, January 26, when he said that the Bi-Centenary Celebrations were a celebration of the nation's constitution, which protects the rights and liberties of the individual. The men who created the Federal Constitution were men steeped in the history of governments evolved under the influence of the Common Law.

One of the early Australian pioneers envisaged Australia as a New Britannia set in the Southern Seas." If this vision is to be realised, the first essential is for Australians to halt the drive towards the Centrally Planned State, by defending and strengthening a written Constitution which reflects the wisdom of a thousand years of constitutional history, heeding the Australia Day message of Prince Charles.

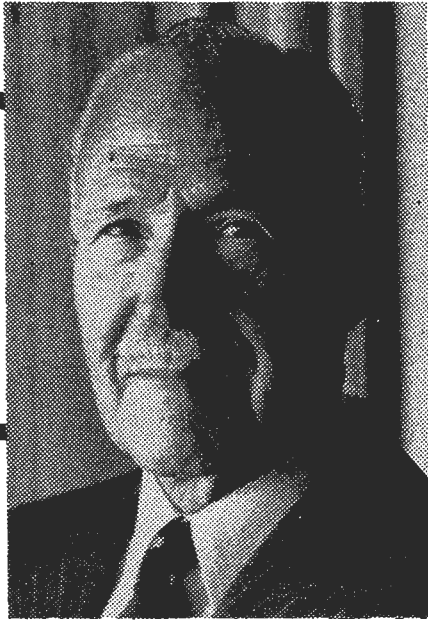
But defence in depth requires a return to a wider understanding of the foundations of the Common Law and the evolution of government subordinated, not only to the Common Law, but the Christian principles undergirding it.

The basic issue facing all Western nations is the same issue which Archbishop Langton and the Church leaders faced at the time of framing Magna Carta: "Do we place Divine Law, the foundation of The Common Law, in the last resort above the law of the State?". The future of what is left of Civilisation depends upon how that question is answered.

Are there no Australian Stephen Langtons who will give Christian leadership and provide an inspiring ray of light as the shadows of a creeping totalitarianism grow ever darker? ●

* * * * *

Veteran journalist, author and international lecturer, Eric D. Butler has over many years written and lectured extensively on what he terms "practical Christianity". He was at one time a member of the Melbourne Anglican Synod and for several years Far Eastern Correspondent for "American Opinion".



Sir Valston Hancock.

Command and Control of the Armed Forces

*by Air Marshal Sir Valston Hancock
K.B.E., C.B., D.F.C., RAAF. (Retired).*

So many aspects of our heritage we take for granted that the full implications of change are rarely considered. By any standards our armed forces have served us well, but what if our system of government changes? In this article the author considers some pitfalls.

The starting point of this study begins with the evolution of the British Command and Control system of its armed forces from which the Australian organisation is derived. Air Vice Marshal Geoffrey Hartnell, before his death in 1982 produced a paper on the Problem of Command in the Australian Defence Force Environment, published by the Strategies and Defence Studies Centre, The Research School of Pacific Studies, The Australian National University, Canberra, Australia and in London, England, Singapore and Miami, Florida, U.S.A. 1983, which bears directly on the subject. He starts with the following observation:-

"The Armed Services of a country normally comprise the most powerful concentration of physical force in the community. They have the potential to be used for good or ill. In the British tradition they have to be associated with a high degree of discipline and a dedication to the protection of the community. But such a state of affairs should not be taken for granted. There are many nations in the world today where the ruling hierarchy or government of the day is actually dependent for its existence on the physical support of the armed forces. In all these countries the armed forces are for all practical purposes "parliamentary armies". In the British world, armies before Cromwell were in effect royal armies. Under Cromwell they became parliamentary armies. With the restoration of the monarchy, however, the first sign of "checks and balances" on the use of the army began to appear. Essentially these checks and balances hung around the interplay between the command of the armed forces on the one hand and their control on the other.

"It has become common practice, unfortunately, for people associated with the armed services to speak glibly of "command and control". The distinction between the two is rarely explained. But what exactly is Command? How does it differ from Control? If the two are identifiably different what is the relationship between the two? Command according to the Oxford dictionary means "to order with authority" ... The meaning given to the word "Control" on the other hand is "to check or verify and hence to regulate". In the case of the armed forces there is a body of men and women who are required to be prepared for and if necessary, actually engage in combat. History has taught us that such armed forces, particularly armies, can be used not for the protection, but for the suppression, of the community in which they are raised.

"To avoid misuse of the armed forces the representatives of the people, the Parliament, what safeguards should be introduced to "control" the activities of the armed forces, particularly in times of peace? One such measure, for example, is the retention by

Parliament, of complete control over the expenditure of funds by the armed services...

"At a particular time in the life of our individual in the armed forces viz., at the time of commissioning, there is a notable change in his status. He then receives a "licence" to command. This act of commissioning, in effect, gives an individual the authority to operate forces comprising men and machines raised with funds authorised by the Parliament. The commissioning document takes the form of a notification that the recipient is an officer in one of the armed forces of the

Commonwealth. It contains an order to carry out the duties in any branch to which he may be appointed, promoted or transferred. The commissioning document comes from the Commander in Chief but it is countersigned by an appropriate Member of State. This dual signature is a reflection of the symbolic relationship between the Crown and the Parliament in the matter of command. Once commissioned, an officer's use of the "licence" lies within the command system and outside the field of executive government.

"Once commissioned, officers command operating entities. In their operation of these entities they must be constantly exercising their judgement and within the limits placed upon them by the "control" measures authorised by



The Armed Forces
 "... the most powerful concentration of physical force in the community".

Parliament to ensure their legality, they must issue commands that must be every bit effective as the "commands" issued, for instance, as the driver issues to his motor vehicle in operating it. When in combat, argument from any of the operating entity can be tolerated no more than in a motor vehicle. Just as an argumentative or unresponsive accelerator can spell death to a driver in a difficult situation, so can an argument from one element of an operating unit in combat. To back up the authority of a commissioned officer to command, there is a need for a form of discipline which does not need to apply to the civilian community.

"In modern times the influence of Parliament on military discipline is effected by a control measure in the form of an Act of Parliament which is commonly known as the "disciplinary code". A vital element of the disciplinary code upon which much of the rest of the code depends, is the section which makes it an offence to disobey a lawful command... Because party political requirements must not be permitted to inhibit the effective use of a lawful command, it follows that no person, not specifically authorised to do so, can issue a lawful command to a member of the armed forces. The only civilian so authorised in Australia at present, is the Governor General".

The Constitution of the Commonwealth of Australia vests the command of the armed forces in the Governor General as the Queen's representative. The Crown has the discretionary prerogative, upon the advice of the responsible Minister, to appoint, discuss, promote, reward or accept the resignation of officers. This prerogative is thus exercised through the Governor General as the Commander in Chief of the armed forces. It is very important that power of this sort should be in the hands of a non-political officer such as the Commander in Chief to avoid pressure to use the powers of appointment, promotion, or dismissal for political and party ends.

The system of Command and Control of the Australian armed forces has been examined at some length, but by no means exhaustively, to clarify the organisation whereby the most powerful physical power in the land can be directed towards securing our national survival in a naked world. We have made provision, as far as possible, for the necessary checks and balances to maintain our basic rights, to prevent the misuse of the armed forces for party political objectives and ultimately prevent the usurpation of force for the support of a dictatorial authority.

"We have made provision ... to prevent the misuse of the armed forces for party political objectives and ultimately prevent the usurpation of force for the support of a dictatorial authority."

It is timely here to note that a member joining the armed forces takes an oath or makes an affirmation that he or she "will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law ... that I will resist Her enemies and that in all matters appertaining to my service I will lawfully discharge my duty according to law".

What might be the impact on the present Command and Control system if Australia were to change its form of government? The variations for consideration are infinite. The subject can only be discussed in the broadest terms. Assuming that a Democratic Republic in the style of the U.S.A. is chosen, the proponents of change will differ in their individual concepts so considerably that reaching a consensus for the purpose of referendum might result in a long period of turbulence and uncertainty with obvious consequences for the nation.

"... the deterrent to intervention in the Command system for party political purposes is removed with the election of a political President."

If a democratic republic is chosen with the President constitutionally the Commander in Chief of the Armed Forces, the first point to make is that the deterrent to intervention in the Command system for party political purposes is removed with the election of a political President. No longer will allegiance be declared to the reigning Monarch of Australia who has no political affiliations. Instead, power of command will be vested in a Commander in Chief, elected no doubt by a simple majority commanding the support of barely half its citizens and subject to change at regular elections. The present Command of the Armed Forces exercised by the Governor General on behalf of the Queen of Australia is more likely to provide a loyal, responsive and cohesive force.

Furthermore the Crown as a symbol of service to the common interests of its subjects provides an example of stability when political parties are in turmoil. It has a steadying influence on the armed forces and reminds them that their loyalty must rise above party politics.

We should not discard our present system lightly. Even though the future is clouded by many unknown factors we should think carefully, and try and judge the impact of any change before we leap.

Viewpoint



200 Years of Liberty

by John Bennett

John Bennett is President of the Australian Civil Liberties Union and this article is adapted from his book "Your Rights", now in its fifteenth edition.

Civil liberties in Australia are constantly under threat, but despite rhetoric about the dangers of Australia becoming a totalitarian society, and police state type raids on unpopular organisations such as the B.L.F., Australia is one of the freest countries in the world.

The Book of World Rankings confirms that Australia enjoys a high level of personal freedom, literacy, expectation of life, equality for women, political stability, and political participation. Australia is in the top 10 of 164 countries surveyed in these respects. The "Physical Quality of Life Index" in *The Book of World Rankings* places Australia in eighth position and the "Net Social Progress Index", which includes political stability and political participation, places Australia in seventh position. Australia has no political prisoners as defined by Amnesty International. Australians do not leave Australia to seek refugee status or obtain political asylum in other countries. Our non discriminatory immigration policy allows net Asian immigration to run at 70% of all immigrants when illegal immigration and Europeans returning to Europe are taken into account. Australia takes in per capita a higher proportion of people of races different to the predominant inhabiting local race than almost any other country in the world. Capital punishment is not used as a method of punishment or deterrence. Trial by jury, habeas corpus, legal aid, and an independent legal profession and judiciary have helped to protect civil liberties. The right of all adults to vote in elections

has ensured that an opposition party obtaining a majority of votes (if necessary after allocation of preferences) gains political power.

TRADITIONS

The media is relatively free and unpopular views are usually given an airing. Security agencies such as ASIO are theoretically under greater control than similar agencies in most other countries. Freedom of movement is protected including the basic freedom to walk the streets without any great apprehension of being "mugged", or arrested without cause by the police. Law reform to give greater protection against abuses of power by government and their agencies has included the establishment of the office of Ombudsman, greater "theoretic" safeguards against illegal phone tapping, and a degree of independent investigation of complaints against the police. Traditions inherited from the English. Scots and Irish of tolerance of dissent, suspicion of Big Brother government, and ventilating issues in the media has enabled threats to civil liberties such as the I.D. card to be defeated. No Australian Government has been toppled by a military coup, or seriously threatened by any other

type of coup or disorder. Trade unionism has flourished and unions have done much to protect the working conditions and liberties of their members.

Our liberties have been secured because of the influence of institutions and traditions brought to Australia from the British Isles (which include Ireland), a spirit of tolerance in our community, again largely derived from the British Isles but reinforced by post war immigrants from Continental Europe, our relatively racially homogeneous population, our geographic isolation and our reliance on community acceptance of liberties rather than a formal Bill of Rights administered by unelected judges.

CITIZEN INITIATED REFERENDUMS

One basic reform is needed to combat the increasing tendency of parties elected to Government to ignore their election promises and ignore public opinion. The Constitution should be amended to allow legislation, repeal of legislation, and removal of officials from public office by citizen initiated referendum as used in the remarkably stable and affluent country Switzerland.

Government by referendums in Australia would help to ensure that majority opinion prevails on matters such as I.D. cards, the entry of foreign

banks, media ownership, uranium mining, immigration, land rights, conservation and multi-culturalism. The elitist argument by politicians (who often ignore majority opinion on specific issues) that ordinary people are incapable of making decisions for themselves and should be ruled by politicians who know what is "best" for everyone, is anti-democratic and is contradicted by the success of rule by citizen-initiated referendums in Switzerland and elsewhere.

ANOTHER SIDE OF THE COIN

There is, of course, another side of the coin. Appalling breaches of civil liberties have occurred in Australia in the past, both before and after white settlement in 1788. Tribal warfare between Aboriginal tribes led to widespread deaths. The arrival of Europeans, mainly Anglo-Saxon Celts, led to Aborigines being dispossessed of their land. Some Aborigines were killed and a far greater number died from European diseases to which they had no immunity. Some massacres of Aborigines such as the massacre at Myall Creek, led to the murderers being sentenced and killed by hanging, but other atrocities went unpunished. Gold miners were often persecuted by Government officials, leading to the slaughter of miners at Eureka Stockade. Irish settlers such as the Kelly gang, with anti-monarchist and anti-English sentiments, were sometimes convicted of crimes on trumped-up evidence. Workers trying to set up trade unions were sometimes sacked and persecuted. Trade union and anti-conscription dissidents were jailed during WWI. Members of the Australia First Movement were jailed without trial during WWII. The use of troops to end a coal strike in 1949, attempts to ban the Communist Party in 1952, and the establishment of a political security police agency (ASIO), were all threats or potential threats to civil liberties. Excessive violence against anti-Vietnam war and anti-apartheid demonstrators, "police state" raids against Croatians in 1973, attempts to curb the independence of the A.B.C., extensions of phone tapping powers, and greater concentration of media ownership were viewed with alarm by civil liberties groups such as the Victorian Council for Civil Liberties during the period I was Secretary (1966-1980). The establishment of a Human Rights Commission, whose first research paper suggested little concern with protecting freedom of speech (and the freedoms of the 75% of the population of Anglo-Saxon Celtic stock), the proposed draconian Bill of

Rights which was inconsistent with many basic freedoms; and the Nazi witch-hunt have been attacked by the Australian Civil Liberties Union, but not by all "civil libertarians" as threats to civil liberties. The Bicentennial Authority has endeavoured to censor and re-write Australian history, has ignored or downplayed our Anglo Celtic heritage, and has downplayed the spirit of ANZAC, the Monarchy and the Westminster system of cabinet government. Members of the Zionist lobby have endeavoured to exclude their critics from access to the media, exclude books they dislike from libraries, obtain legislation to restrict the freedom of speech of revisionist historians, and prevent PLO spokesmen entering Australia.

Most of these threats to civil liberties have occurred under conservative governments, partly because conservative governments have been in power for most of the time since Federation in 1901. As I have pointed out in an article in *Quadrant*, there is no necessary correlation between being "left wing" or "right wing" and having a genuine commitment to civil liberties. Many so-called right wing activists have a genuine commitment to basic freedoms. Some self styled "left wing" civil libertarians are unenthusiastic about defending the liberties of people whose views they abhor. Thus Brian Fitzpatrick, who did much good work in defending the liberties of "left wingers", refused to challenge the

internment of members of the "right wing" Australia First Movement.

REMARKABLY FREE COUNTRY

Although our traditional freedoms are often under threat, Australia is still a remarkably free and tolerant country. The freedoms we enjoy are not much in evidence in Communist countries — or in Moslem countries, most Asian countries, most central and South American countries, and the many tribal black dictatorships and despotisms in Africa. It is because Australia is such a free and tolerant country that many people seek to emigrate here, and refugees seek safety here from persecution in other countries.

Professor Geoffrey Blainey has pointed out that, since the 1970's, there has been a widespread movement to disown Australia's past and to dismiss it or wrap it around with guilt or shame. In our sick economy the guilt industry remains one of the few growth industries. He says that with massive federal and state grants, the multi-cultural industry has become an ardent propagandist, pouring shame on Australia's past. But the fact remains that most of our post-war immigrants came here because Australia — by virtue of its successful past — could offer them economic and political security which their own country could not provide. ●

Contributions

ARTICLES and other contributions, together with suggestions for suitable material for "Heritage", will be welcomed by the Editor. However, those requiring unused material to be returned, must enclose a stamped and addressed envelope.

Address written contributions to:

**THE EDITOR, "HERITAGE"
BOX 69, MOORA,
WESTERN AUSTRALIA, 6510**

Nothing has frustrated our politicians more, nor protected our people so well, over the last 87 years as our constitution. The author of this article, an Australian lawyer who was Attorney-General of the African nation of Lesotho for two years, looks at aspects of its past and future.

The Constitution — Past and Future

by Dr. David Mitchell Ph.D.

For anyone interested in the rich heritage of Australia, the court system, the constitution and the law are alive with unexpected treasures.

King Alfred (848-899), known as Alfred the Great, was not called great because he burnt the cakes, or even for his military exploits. He was 'great' because he introduced a standard legal system for the whole of England. The system was not new, but had not previously been firmly enforced for the whole country.

The Ten Commandments (Exodus Ch. 20) were the basis of the law and were to be applied by all judges. For understanding and applying the Ten Commandments the judges were to use the whole of the Bible. The responsibilities of the king were to ensure that the law was properly administered for the welfare of the people and that the people could dwell in safety, protected from one another and from external aggressors. For these purposes the king had a council of advisers on whose advice he would normally act. (Thus an 'Act' of Parliament is a decision of the monarch taken on the advice of his properly appointed advisers.)

The task of the judges was to declare law, or to put it in other words, to declare the application of the Bible to the case before them. As the judges were simply re-stating, for application to the particular case, rules that already existed, it can be easily understood that each judgement created a precedent that would have to be followed in other cases with the same or similar facts. This raises the problem of what to do when a judge mis-understood, mis-stated or mis-applied the Bible, thereby creating a

"Wrong" precedent. This is where the king's council of advisers came in. The wrong decision made by the judge would stand, but the king's advisers should not allow such a judgment to become a precedent to be followed in subsequent cases. Thus, they had a responsibility to advise the king to 'enact' a law that correctly interpreted the Bible for future application in the courts, in the place of the mistaken interpretation of the judge.

The king, his advisers and the judges were all subject to the law. The judges were bound to apply the law created by precedent and by Acts but could not otherwise be directed by the king or his advisers. The king had no right to place himself above the law but could not be brought before the courts. The advisers had a responsibility to advise the king in accordance with the law and could not be directed either by the king himself, or by the judges what advice to give. It is easy to understand why this has subsequently been referred to as a system of checks and balances.

MAGNA CARTA



*Statue of King Alfred
"... introduced a standard legal system
for the whole of England".*

The weakness in the system established by Alfred appears from the question: "Who controls the king if he does place himself above the law, or if he improperly rejects the advice of his council?" This question does not seem to have needed an answer until after the Norman Conquest of 1066. Although the answer probably was perfectly clear before 1215, history shows the dramatic events of the signing of the Magna Carta. Despite what has been written in some history books and what might have been taught in schools in recent years,



*Sir William Blackstone
First Vinerian Professor of the Law of
England.*

research demonstrates there was nothing new in Magna Carta. King John was forced to recognise some aspects of his existing responsibility under the law. Certainly, Magna Carta largely related to issues raised by powerful interest groups and covered only a small part of the king's existing responsibility. Nevertheless, it was a significant landmark in reminding the monarch of his pre-existing duties.

It would not be true to say that all went well after Magna Carta — the judges did not always faithfully declare the law, the king's advisers did not always firmly advise as they should have, and the king did not always remember that he was subject to the law himself. Indeed, particularly in the Seventeenth Century the political doctrine of the 'divine right of kings' was popular. This doctrine held that the king ruled as God's regent and, this being so, the king's word was law. It was in this setting that Samuel Rutherford wrote his famous book "Lex Rex" (1644). In this work Rutherford reminded the nation that the law is king, and if a ruler (whether king or anyone in authority) disobeys the law or betrays the trust of his position he should be removed from office. He made it clear a ruler should not be deposed merely because of a single breach, but when the governing structure of the country is being destroyed the offending ruler should be relieved of his power and authority.

This is exactly what happened in the case of James II in 1688. The king claimed a 'divine right', rejected the advice of his counsellors and set about changing the governing structure of the country. He was removed from office (as he should have been in accordance with the law) and was replaced by William III and Mary.

BILL OF RIGHTS

William and Mary were required to sign the Bill of Rights of 1689. Again, interestingly, the Bill of Rights contained nothing new but was a restatement of some of the areas of people's rights James had improperly sought to remove. Like Magna Carta, the Bill of Rights included a reflection of the complaints of powerful sectional interests, but was intended only as a reminder of certain inalienable rights of the people and certain responsibilities of the monarch.

William Blackstone, first Vinerian Professor of the Law of England at Oxford University, wrote the first total overview of English law in 1765 (known as Blackstone's Commentaries on the Law of England). He demonstrates that, although the law had developed since the days of Alfred the Great, the same basis of law, function of the judges, purpose of the king's advisers (House of Commons and House of Lords), and responsibility of the king still existed. It can be clearly seen, therefore, that the law of England, the purpose of the courts and the function of the constitution had their derivation in the Bible and not, as is often suggested, from Roman Law or any other source.

It was the law, constitution and court system in the form explained by Blackstone that came to Australia with the first English settlers in 1788.

ENGLISH LAW

It was a principle of English law that settlers brought to a colony so much of the law of England as was applicable to their own situation and the conditions of the infant colony. Any aspects of the law that were not immediately applicable lay dormant until circumstances changed. A change of circumstances automatically revived the relevant dormant laws. Judgments of the courts of England made before settlement continued as binding precedents for the courts of the colonies, and Acts made before settlement also applied. No decision of an English court made after the date of settlement constituted a binding precedent for the colony, and Acts made after that date did not apply to the colony except by express application or necessary implication. Thus it can be said that in English law the date of settlement of a colony is a "cut off" date for the reception of laws. Thereafter the colony makes its own. This principle was varied for the Eastern part of Australia (New South Wales, Van Diemen's Land,

Queensland and Victoria) by the Australian Courts Act which declared 25 July 1828 as the "cut off" date.

A governor was appointed to represent the monarch in each of the Australian colonies. Also, each of these colonies was granted a Constitution establishing a parliament to advise the governor, and courts for the administration of justice. These Constitutions in no way replaced, but merely reflected, the existing constitutional structures imported into Australia by the operation of the law the settlers brought with them.

FEDERATION

After more than ten years open public discussion, the Australian colonies agreed to federate for certain limited purposes and, thus, the Commonwealth of Australia Constitution, and the Commonwealth itself, came into existence on 1 January, 1901. Again, this Constitution reflected the existing constitutional structures — dependence on God was recognised; the independence of the judiciary was maintained; the elected council (House of Representatives and Senate) advised the Governor-General; and the Governor-General normally enacted (or assented to) the advice of the Houses of Parliament. The Commonwealth of Australia Constitution, however, contains two additional and interesting features.

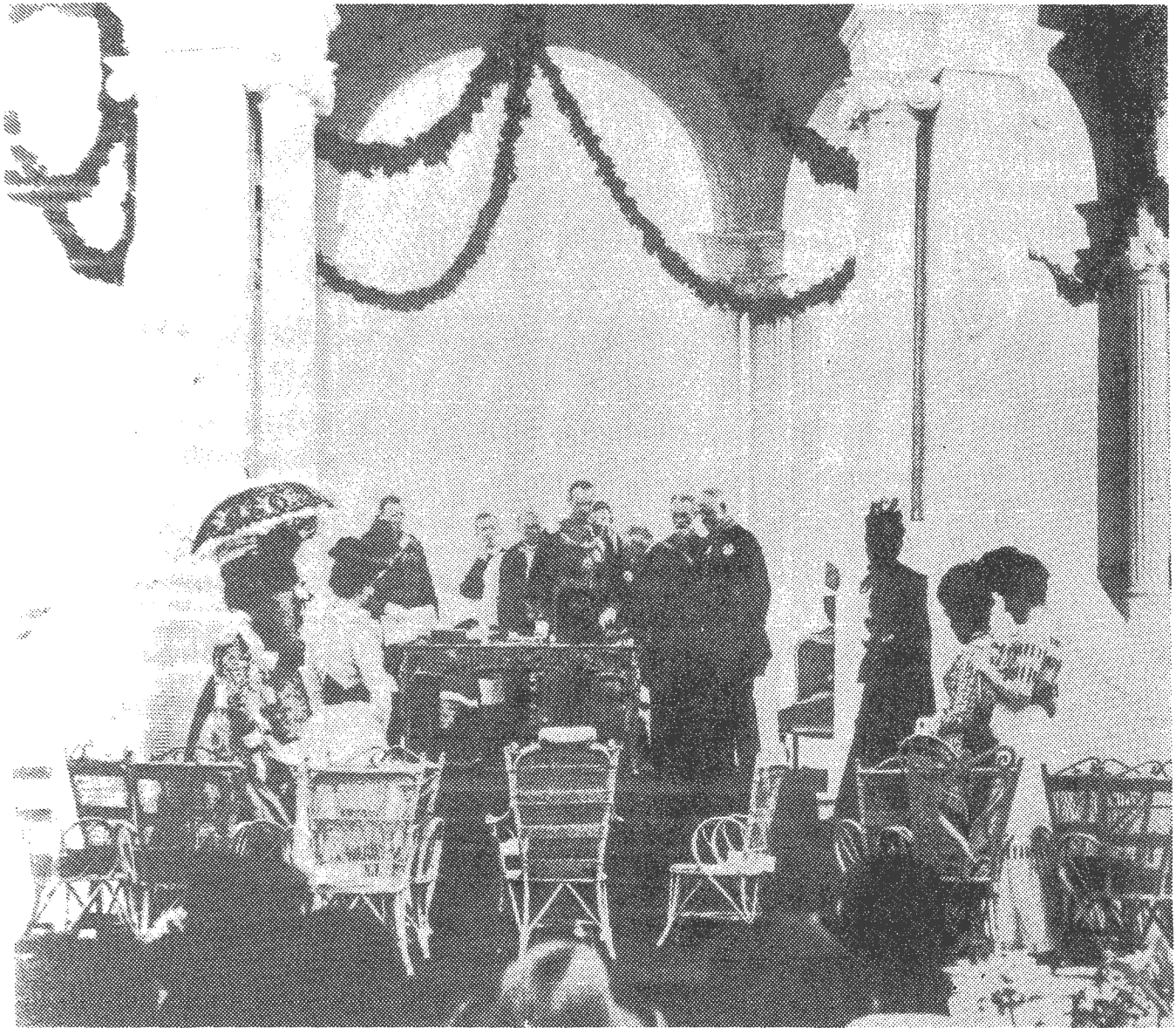
The first of these features is that, although the advice of the two Houses of Parliament becomes law when it is assented to by the Governor-General, the King (or Queen) may disallow or annul any law within twelve months after the Governor-General has given his assent.

The second feature is that the provisions of the Constitution (i.e. the 1901 agreed terms of federation) can only be altered if the proposed alteration is agreed to by an overall majority of voters in Australia and by a majority of voters in a majority of States. A referendum is required before any change can take place.

THE "AUSTRALIA ACT"

It is basically the system introduced by Alfred the Great that is still maintained in Australia's institutional heritage of courts, law and constitution in the federal sphere. However, the Australia Act 1986 brought great change to the structure in the States. In the debates leading up to the passing of that Act (an Act

Continued next page



Official Celebration of Federation 1901. Centennial Park, Sydney.

supported by every member of parliament in Australia) the Hon. John Spender, Shadow Attorney-General, said in the House of Representatives on 25 November 1985:

“The Australia Act will require a State Governor not to withhold assent to a Bill passed according to the requirements of the Parliament of a State; and the power of the Queen to disallow State laws, and any requirement of State laws to be suspended pending the signification of the Queen’s pleasure are to be put to an end.”

This is a fundamental change to the historic constitutional structures. Now in the States of Australia, the Houses of Parliament are no longer advisers to the Governor and monarch, but are the ultimate deciders of the law. The Governor and Queen have been relegated to ceremonial roles.

The present Federal Government has promised it will seek to change the

Constitution of the Commonwealth of Australia in 1988. In the providence of God, there is no proposal for the imminent removal from the Constitution of the powers and responsibilities of the Governor-General and the Queen in the Federal sphere. If these powers and responsibilities are removed, the whole historic governing structure of the nation will be changed. The effect would be to make Australia a republic in fact if not in name; the only remaining control over the absolute power of the government on the day would be the Constitution itself.

As Australia celebrates two hundred years of settlement, its people can also celebrate the tri-centenary of the English Revolution of the peaceful and bloodless removal of a ruler, who sought to destroy the fundamental structure of the nation, from which our heritage of justice and constitution is drawn.

Subscription Drive

We are undertaking a subscription drive for *Heritage*. Please help us by supplying names and addresses of people who you think will be interested in *Heritage*. We will supply them with a free copy of one of our back issues and an invitation to subscribe.

Name to:

The Australian Heritage Society,
P.O. Box 7409
Cloisters Square,
Perth, W.A. 6000.

The Constitution

THE FEDERAL CONSTITUTION AND INDIVIDUAL FREEDOM



Ever since men began to govern themselves through elected representatives, they have also been trying to devise ways and means of controlling those who form governments. History teaches that governments are like fire; good servants but bad masters. The great Lord Bryce in his famous classic *Modern Democracies*, enunciated a basic principle concerning governments when he said that "The tendency of all governments is to increase their own powers." This tendency is greatest among highly centralised governments. Every increase in the power of government is at the expense of the power, and the freedom of the individual.

Constitutionalism is not merely a subject for lawyers to debate; it vitally concerns the rights and liberties of the individual. Such rights can only be protected by a constitution of some type, written or unwritten. Most human activities are governed by the idea of a constitution; the idea that it is necessary to define in advance relationships between individuals, between individuals and governments, and between various governments. No game can be played in the absence of some rules. And it is generally essential to have umpires to make independent judgements on whether or not players are breaking the rules.

CONSTITUTIONAL HISTORY

The Australian Federal Constitution was designed primarily as a set of rules to govern the relationship between the central, or Federal Government, and the States. It was hoped that these rules would in no way infringe on the traditional rights and freedoms of the individual. Constitutional developments in

Australia had their roots deep in British constitutional development, and Australians are fortunate that their fore-fathers had, as a model on which to shape the high ideals, contained in the Constitution a remarkable development of British constitutionalism going back to Magna Carta in 1215, and beyond. Thus, Australia's constitutional history did not start when the Federal Constitution was drawn up at the turn of the century, but centuries earlier, and the slow but steady advancement, through trial and error, of constitutional government in the British Isles, gave Australia the foundations of her expansion into nationhood. The over-riding and traditionally British philosophy, which permeates every aspect of this constitutional growth, is the emphatic distrust of centralised and over-powerful government. The famous British constitutional authority, Sir Edward Creasy, writing in his *History of the English Constitution*, states: "The practice of our Nation for centuries establishes the rule that, except in matters of direct and

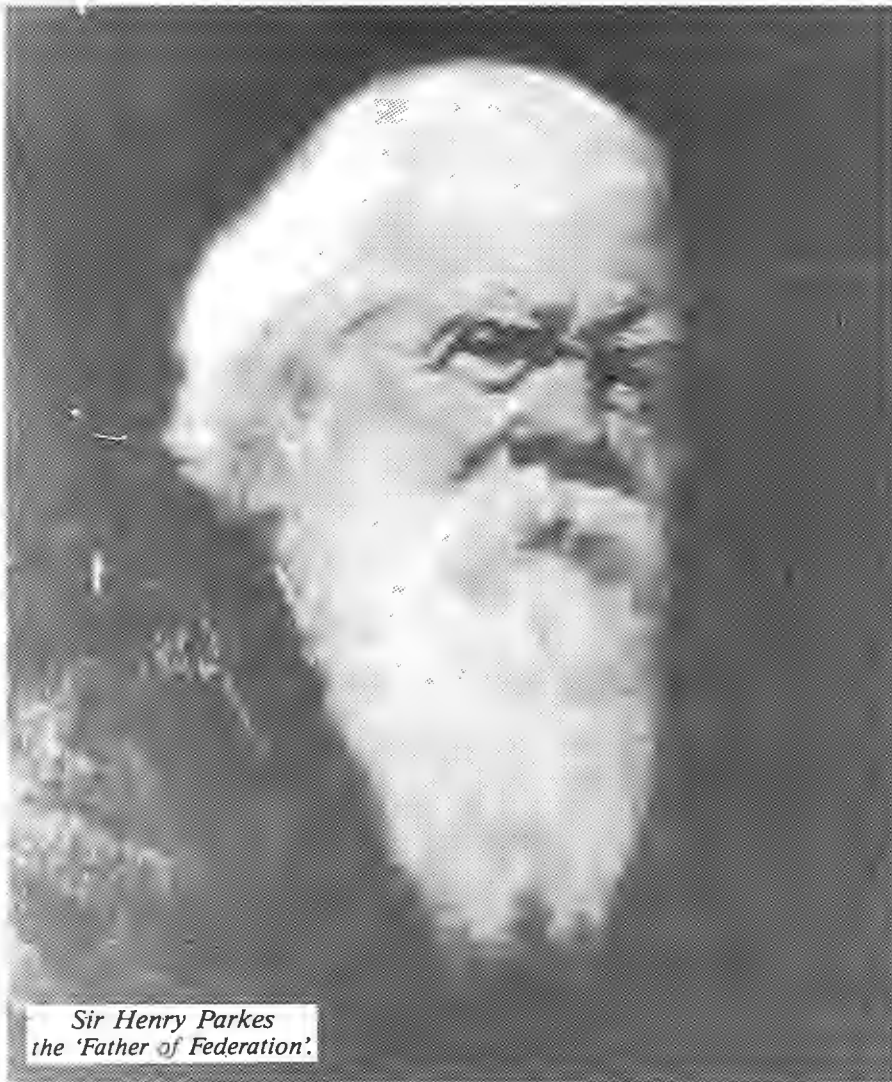
imperial interest, centralisation is unconstitutional."

The foundation of Australia started with the founding of the colony of New South Wales in 1788. As the colony was founded as a penal settlement, the original form of authority was a military government. It was not long, however, before the early colonists were seeking the establishment of a form of British constitutional government. The central objective was effective self-government. This required decentralisation. The basic pioneering, considerable development work, and the firm establishment of constitutional government had taken place long before a Federal Government had been established. Current propaganda favouring the centralisation of all power in Canberra ignores the accomplishments of the original six sovereign States. Such propaganda also ignores the high degree of co-operation between the States, while exaggerating points of friction.

FEDERAL SYSTEM

The concept of a Federal system of government, establishing a firmer and more formal association between the six States, was discussed and debated for nearly half a century before it came to fruition in 1901. As Federation entailed the ceding of powers from the States to their new offspring, the Commonwealth Government, there was a natural apprehension that a cuckoo might be hatched in the nest, which would finally oust its parents. Under the guidance of the "Father of Federation", Sir Henry Parkes, a Constitution containing sufficient deterrents to the progressive centralisation of power was devised, and eventually, albeit somewhat reluctantly, accepted by the States. Western Australia, in particular, and to a lesser extent the other States, feared that constitutional safeguards notwithstanding, Lord Bryce's statement that "The tendency of all governments is to increase their own powers" was too close to the truth for comfort.

The provisions in the Federal Constitution to protect the States were quite plain, and one or two were



*Sir Henry Parkes
the 'Father of Federation'.*

unique. Chapter 5, Section 107, of the Constitution reads: "every power of the Parliament of a Colony, which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue

as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be." Section 114 prohibits the Commonwealth from taxing any property belonging to the States. Section 51, sub-section xiii, prohibits the Commonwealth from intruding



*Alfred Deakin
the States "Legally free, but
financially bound..."*



*Ben Chifley
Prime Minister 1945-49*

into State Banking; a provision peculiar to Australia in the British Commonwealth. The Canadian Provinces, for example, have no such safeguard. Speaking at the Federal Convention in 1891, Sir Henry Parkes said: "I think it in the highest degree desirable that we should satisfy the mind of each of the colonies that we have no intention to cripple their rights, to diminish their authority ... it is therefore proposed by this first condition of mine to satisfy them that neither their territorial rights nor their powers of legislation for their own country will be interfered with in any way." But he went further than this, for he saw an even greater decentralisation of power as a major step after Federation, and express provisions were made for the creation of New States in the Constitution. In Parkes's words: "The division of the existing colonies into smaller areas to equalise the distribution of political power will be the next great constitutional change."

NEW STATES

Chapter VI, Section 121, of the Federal Constitution states that "The Parliament may admit to the Commonwealth or establish new States..." Section 124 states that "A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected."

Although the spirit and intention in which the Federal system was born is clear, and although there has been widespread opposition to centralisation of power by the Australian electors whenever they have been consulted by referenda, nevertheless there has been a continuous shift of power, largely through the manipulation of the Federal Government, and by increasing equivocation from the States.

Section 128 of the Constitution lays down the requirements for a change of the Constitution by referendum. It is necessary for a majority of electors in a majority of the States to affirm a change. Of the thirty eight amendment proposals that have been put to the electors, only eight have been carried. The most important related to the assumption of State debts by the Commonwealth (1909) financial agreements between the seven Governments (1928) resulting in the establishment of the Loan Council, and the extension of Commonwealth Social Services (1946). In 1967 the

Commonwealth was voted powers over
Aboriginals.

DR. EVATT

Section 51 (xxxvii) of the Constitution does authorise the States to cede powers to the Commonwealth. In 1943, Dr. Evatt, Commonwealth Labor Attorney-General, asked the States to cede vast powers to the Commonwealth under this section, thus attempting to avoid a referendum. But a referendum became necessary when the Tasmanian Legislative Council refused to agree. The electors (1944) decisively rejected the Evatt proposals, which had the strong support of the Communists.

The famous Fabian Marxist theoretician, Dr. Harold Laski, lamented the failure of the Evatt "Powers Referendum", "Once there has been a division of powers under a Federal system, it takes something like a political or economic earthquake to change the categories of the division".

Such an "economic earthquake", however, was foreseen by another of the founding fathers, Sir Alfred Deakin, 43 years earlier, when he pointed out that the Constitution left the States "legally free, but financially bound to the chariot wheels of the Central Government". He went on: "Our Constitution may remain unaltered, but a vital change will have taken place in the relations between the States and the Commonwealth. The Commonwealth will have acquired a general control over the States, while every extension of political power will be made by its means, and go to increase its relative superiority."

CENTRALISED POWER

In order to understand the real nature of the growing assaults upon the Federal Constitution, it is essential that we recall that all Federal Governments, Labor and non-Labor, have been responsible for expanding the powers of the Central Government at the expense of Local Government, and reference must be made, therefore, to the philosophy behind the drive for centralised power. There is nothing inevitable or accidental behind such a drive. It is the result of conscious planning. Karl Marx saw the centralisation of power as indistinct from and indispensable to the furtherance of Communism. The Fabian Society, highly influential in both the British and the Australian Labor movements, as well as the Civil Service, made it quite clear that, although they were following a road distinct from Communism, they were



Prince Charles

"The true celebration of this nation is in its Constitution"

seeking the same objective. The Fabian tactic was the permeation of existing parties and institutions, and the substitution of traditional concepts by ideas which, as George Bernard Shaw, the prominent Fabian so blandly put it, "would never have entered their heads had not the Fabians put them there."

The greatest single blow yet delivered against the Federal Constitution was when in 1942 the Labor Government imposed a Uniform Income Tax. This was to have been a "temporary" war-time measure. At the Premiers' Conference of January, 1946, Prime Minister Chifley brusquely told protesting State Premiers that Uniform Taxation was going to continue indefinitely, dismissing objection as "all ... nonsense."

The Liberal-Country Party Coalition (1949-72) continued Uniform Taxation, demonstrating once again the truth that once power is centralised, it becomes extremely difficult to decentralise it.

THE SENATE

The establishment of the Senate was a further effort by the creators of a Federation of the Australian States to ensure that State rights and sovereignties were protected. Irrespective of population differences, the Constitution stated all States must be equally represented in the Senate. The original representation was six Senators per State, but this was increased to ten in 1949. It was the clear intention of the creators of Federation that the Senate should be a States House and one of real review.

But unfortunately this conception was undermined by party politics, which has often made the Senate little more than a rubber stamp for the House of Representatives. However, since the election of Senators by the system of proportional representation, this has enabled Independents and minor parties to have greater opportunities for Senate representation. This has resulted in the Senate playing a much more effective role in keeping political power divided.

The restoration of the Senate to its creators' original intention, by the election of non-partisan, State representatives, would provide the individual with greater protection against those seeking to centralise all power at Canberra.

EXTERNAL POWERS

The most sinister aspect of the continuing campaign to subvert the Federal Constitution has been the misuse of the External Powers by the Federal Government to enter into international agreements and conventions on a wide variety of subjects which have traditionally been under State jurisdiction, and then to argue that because of the external agreements, the Federal Government had the constitutional right to legislate for the whole of Australia, even if this conflicted with State policies. By this procedure Federal Governments could, without consulting the people by referendum, progressively increase their power over all aspects of Australian life.

Australians were jolted into a realisation of how their Federal Constitution was being subverted when a High Court majority decision said that the Federal Government could prevent the Tasmanian people from building a dam. This was the result of the Fraser Government placing part of Tasmania under the World Heritage Commission. The way has been cleared for Federal governments to take over vast areas of Australia by placing them under the World Heritage Commission.

As Prince Charles said in his Sydney Australia Day speech on January 26, 1988, the major feature of the Australian heritage is the Constitution. "The true celebration of this nation is in its Constitution", he said.

Only a vigilant and outspoken Australian electorate can stem the centralist onslaught. Australians must defend the rights their Constitution gave them over eighty years ago. The only safe place for power is in the hands of the many, not in the hands of the few.

Who Knows Who is Australia's Head of State?

by Randall J. Dicks, J.D.

As part of a recent large research project, I wrote letters to the Australian Ambassador to the United States and to the offices of the Governor-General and Prime Minister, asking the question, so simple on its face, *Who is the head of state of Australia, the Queen or the Governor-General?* I knew the answer to the question perfectly well, and had known it all my life, or so I innocently thought. The inquiry was made essentially for the purpose of obtaining a formal written reply to what should be an obvious question.

This message was received on notepaper of the Australian Consulate General in New York, imprinted "PROMOTION AUSTRALIA — AUSTRALIA'S OVERSEAS INFORMATION SERVICE":

Thank you for your recent inquiry.

The Honourable Robert James Lee Hawke, our current Prime Minister, is head of state.

I hope that the enclosed information will assist you with your request.

The signature was illegible, and the writer's capacity not identified. I followed this up with a second letter to the Australian Ambassador in Washington, asking if he agreed with the response that *the Prime Minister is head of state of Australia?* The following reply was received from the Counsellor (Information) at the Embassy of Australia:

Your letter has been passed to me by the Ambassador for acknowledgement.

In response to your enquiry, the Governor-General, representing Queen Elizabeth II, is the Head of State, while the Prime Minister is the Head of Government. This will correct the earlier information provided to you from the Consulate-General in New York.

Unfortunately, your request was mistakenly handled by a new junior staff member, unfamiliar with our procedures and anxious to display initiative.

I trust the above information will be of assistance to you.

This seemed no more satisfactory; the Counsellor (Information) was no better informed than the "new junior staff member". The "new junior staff member" may have been unfamiliar

with procedures, but both he and the Counsellor (Information) showed a lack of familiarity with elementary Australian civics in their responses on behalf of "Australia's Overseas Information Service". I wrote to the Counsellor (Information) about his **misinformation:**

Thank you for your letter ...

Regarding my letter to the Ambassador, about the statement by the Australian Consulate General in New York that the Prime Minister is head of state of Australia.

I am afraid that your statement that the Governor-General is head of state of Australia does not resolve the matter. This statement does not agree with my understanding.

One of the publications sent by the Consulate General is a "Fact Sheet on Australia," published by the Australian Information Service. This says of the Queen: "*Though an independent nation, Australia, like Canada, retains close institutional links with Britain and gives allegiance to Queen Elizabeth II of Great Britain and Northern Ireland, who is also formally Queen of Australia.*"

The Constitution of Australia (Commonwealth of Australia Constitution Act) says, in its Preamble, "*Be it therefore enacted by the Queen's most excellent Majesty.*" and says that the various states "*unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom...*" and refers to the possibility of others of "*the Queen's possessions.*" joining the new Commonwealth of Australia.

Clause 2 of the Preamble says, "*The provisions of this Act, referring to the Queen, shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom,*" thus including the present Queen of Australia.

Section 2 of the Constitution reads: *A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.*"

In an address on "*The Role of the Governor-General*," Mr. David I. Smith, Official Secretary to the Governor-General, said, "*In carrying out all these acts of state ceremonial, whether at Government House or in public, the Governor-General is fulfilling his duties as Australia's de facto Head of State, in the absence of the Queen who is the Head of State.*"

I suggest that the Governor-General is indeed the Queen's representative, the representative of the Queen of Australia, who happens to reside mostly in the United Kingdom. (The U.K. High Commissioner is the representative of the Queen of the United Kingdom.)

I think that Mr. Smith's statement summarizes the situation well. When the Queen is not in Australia, the Governor-General, as her representative, acts as both de facto and de jure Head of State. Whether in or out of Australia, however, the Queen is Head of State, whether one characterizes this status as de jure, legal, or formal.

I would appreciate it very much if you would advise me of the position of the Embassy of Australia on this subject.

This provoked a huffy reply from the Counsellor (Legal) at the Embassy:

[The Counsellor (Information)] has passed to me your letter to him ... about the office of 'Head of State' in relation to Australia.

Your observations on the second page of your letter are correct. The Queen of Australia is the



*The Prime Minister,
The Honourable R. J. Hawke*

Head of State of Australia. In that capacity she is represented in Australia by the Governor-General of Australia. Those are propositions of constitutional law. The Embassy does not have a 'position' concerning them. Because the Governor-General performs many functions 'as' Head of State (i.e. representing the Queen in that capacity) one way of explaining the matter is to say that for those purposes — 'de facto' or 'in practice', — the Governor-General 'is' the Head of State. Whether such a manner of speaking is helpful or is undesirably imprecise or incomplete would, I think, depend on your audience and the purpose of your explanation.

If precision is important I think it would be best to quote the relevant provisions of the Australian Constitution, as you have done in your letter, including section 61 as well as section 2.

(Section 61 reads, "The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General, as the Queen's representative, and extends to the execution and maintenance of this Constitution and of the laws of the Commonwealth.")

"Undesirably imprecise or incomplete"? How about undesirably untrue and inaccurate? And does the truth, does an accurate exposition of Australia's fundamental governmental



Queen Elizabeth II

structure, depend on the audience one is addressing? Is the Queen head of state for one audience, and the Governor-General head of state for another? This approach can be carried to offensive extremes; is Australia an independent nation for some audiences and some purposes, and a British colony for others? Of course not.

"Australia is a monarchy, and always has been; Australia's monarch, however, is not in permanent residence in the country."

Yet this approach perpetuates the common misunderstanding that "the Queen of England" reigns over Australia. Australia is a monarchy, and always has been; Australia's monarch, however, is not in permanent residence in the country.

"Australia's Overseas Information Service" would serve the country better by explaining the situation correctly, rather than saying first that the Prime Minister is head of state, next that the Governor-General is head of state, and finally that the Queen is head of state, if one really wants to be precise about the matter. If confusion exists among Australian representatives abroad, it is no wonder that foreigners must be talked down to by "Australia's Overseas Information Service". Rather than explain the interesting and perhaps unusual system which exists in Australia (and also in Antigua and Bermuda, The Bahamas, Barbados, Belize, Canada, Grenada, Jamaica, Mauritius, New Zealand, Papua New Guinea, St. Christopher-Nevis, St. Lucia, St. Vincent and the Grenadines, and the Solomon Islands), it may be simpler and easier to say that the



*The Governor-General,
Sir Ninian Stephen.*

Governor-General is head of state, but such an answer, such a statement, is incorrect, inaccurate, untrue, and an insult to the Crown, to the Australian monarchy, and to the present Queen of Australia. This amounts to disservice and misinformation.

It takes no great mental feat to establish the difference between the monarch and her representative, the principal and her agent, yet this misunderstanding is more than common, it is routine. To make the system seem more complex or arcane than it really is — "if precision is important" — is deplorable. Worse, it may be more sinister than that; it may reflect a deliberate campaign of confusion and disinformation against the monarchy. Monarchy is a part of Australia's heritage, and contacts between the monarchy and Australia have never been more frequent than in Queen Elizabeth II's 35-year reign, thanks to modern transportation and communication. Official ignorance and apathy should not be allowed to undermine the hard work and dedication of Australia's Queen and Royal Family; perhaps now more than ever is a time for vigilance in defense of the benefits and traditions of the monarchic system in Australia.

Randall J. Dicks, J.D., is an attorney who lives in Pittsburgh, Pennsylvania, U.S.A. Since 1970, he has been governor and editor of the Constantian Society, a monarchist organisation with educational goals and activities.

Canada Calls



Endangered Treasures

By John Wiebe

Australia and Canada were blessed at their creation by the presence of the institutions of constitutional monarchy, parliamentary democracy and the common law. Yet in both countries, the last two decades have seen concerted attacks by the elected executive upon the integrity of all three of these institutions.

The monarchy and its prerogatives have been easy targets for prime ministers more desirous of power than democracy. During the 1970's Canada almost lost its monarch as its head of state due to the Trudeau ministry's notorious Bill C-60. The Bill was later discarded and the unanimous consent of all first ministers is now required when any change in the powers of the Queen, or her representatives, is contemplated. This was a complete defeat for the draughters of Bill C-60, who desired the Queen to become a nebulous "sovereign head" with the prime minister completely controlling the appointment of a governor-general who would be a practically powerless figurehead-president.

Coincidentally, this seems to be much the same role that Prime Minister Hawke envisages for Australia's governors-general in his recent constitutional musings. He seeks to remove the royal power of veto of possibly unconstitutional legislation, and the fundamental royal power of dissolution of a government that could be acting in an unconstitutional or corrupt fashion. The removal of such powers from the crown would create a de facto executive presidency with powers unchecked by the "constitutional referee" of the crown. Who, valuing democracy, would confer such trust upon any prime minister?

UNITING INFLUENCE

It is also ironic that the bogus smokescreen of nationalism has poured forth to clothe such proposals during the past twenty years. The monarchy and its symbols have been an integral part of the daily lives of both nations for so long, that for the uninformed or malevolent to label them "foreign" in this era seems less a lie than a bad joke. History notes that whenever the unity of our two nations was important, during crisis or celebration, it was around the crown, its symbols and the person of its wearer that our citizens rallied.

This is no less true for migrants from outside the British Isles who have become new Australians or new Canadians. Such migrants have often noted that when they saw the sovereign's portrait they knew they were in a truly free country. Is it not far better that such new citizens be educated about their freedoms under the crown, than to lay siege to the institution and symbols that have served for so long and so well?

The age of television has seen politics in both countries become leader-oriented to the apparent detriment of parliamentary democracy. Although there has never been any doubt that the prime minister is the leader of government, that leadership was one of "first among equals" in which the consultative role of individual members of parliament was crucial to a prime minister's success in draughting and passing legislation.

This consultative role is breaking down. A prime minister now seems to

believe it more important to win over the mass media's commentators than the consciences of parliamentary colleagues.

The occasions on which cabinet members and ordinary members vote against their parties have steadily declined as these individuals realise that their leaders can deprive them of the party funds vital for their re-election. The nominations of potential members have even been cancelled in some cases as punishment for not bending to the leader's will, whatever local support they may have for a stand taken in good faith.

POWER POLITICS

The leaders of Canada's political parties are not even chosen by their parliamentary caucuses, but by American-style leadership conventions, where big money buying the devices of the mass media usually triumphs over the quality of ideas presented. The rehearsed catchphrase becomes all under the burning television lights, to be videotaped and used later in commercials. Pious talk from leaders about giving backbenchers more power is continually heard, but such talk only confirms that the power of the ordinary member now seems to come more from the leader than from the electors to whom true loyalty is owed.

Parliamentary democracy is also being bypassed by the proliferation of boards and commissions that tolerate little or no input by the people's representatives after their creation. Originally, such entities were regulatory in mission, dealing with functions like transport or industrial safety. Now Canada and Australia have commissions that directly affect the thinking of the individual, and that often act as police, judiciary and jury. Throughout their activities, they employ a politically charged code of ethics that can bring the weight of law upon the actions of an individual, even though the boards' ethics are worth no more than those of any other citizen. The difference is that the doctrines advanced by these boards invariably have the backing of the prime minister of the day, who

dispenses appointments to them as rewards for accord of political thinking. Dangerously, the will of the people has little place in such an equation of power politics.

COMMON LAW

Then there is the common law, that traditional reflection of the will of an elected parliament and the guarantor of the rights of the innocent and helpless, while punishing the guilty. Australians are fortunate that the law in their society still functions in this matter and that the right of their parliaments to enact laws is supreme. This is not the case in Canada.

Indeed, thanks to the Dominion Supreme Court's recent interpretation of the Trudeau ministry's, "Charter of Rights and Freedoms", the Dominion of Canada is now in the horrific position of being the only western, industrialised state that permits abortion on demand. The overruling of other laws for the common good goes on daily in Canada and this is done by judges who have never had their moral or legal views examined in public.

This situation is quite unlike that in the United States, where judges have similar powers to strike down laws draughted by legislatures. There, judges must undergo either trial by popular election or trial by intense scrutiny of the legislature to determine their fitness for service.

Canadian judges, appointed by first ministers who look for jurists who tend to espouse their codes of morality, now have the last word over the lives of Canadians. They also have an ideological agenda, according to the Canadian magazine, "Maclean's", which is, "(To) reduce the tendency of Canadians to think of themselves as members of regional, occupational or religious groups." George Orwell's fiction creation, "Big Brother", could not better that.

Can the traditional rights and freedoms of the individual withstand such an agenda, which has already appreciably weakened Canadian responsible government? It is hoped that Australians never have to discover the answer and resist with all their might the call of some to insert a rights' charter in their constitution.

And who will save our shared but endangered riches of monarchy, parliamentary democracy and common law? The pioneers of our two lands sacrificed everything for these institutions because they preserved their notions of "home", a place where they and their families could grow and prosper free and without fear. Can those now living do less? ●

Letters

Bound for U.K.

Dear Sir

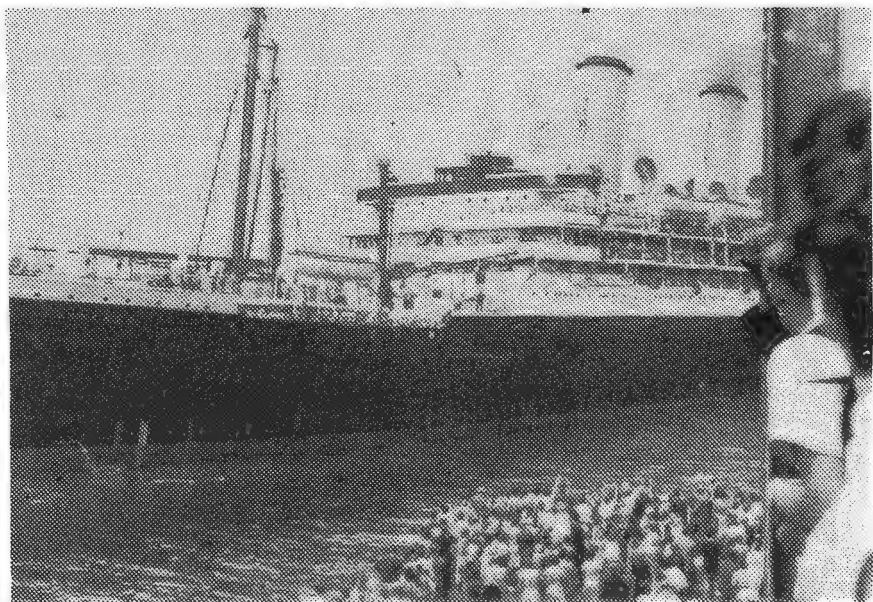
In response to your invitation to send material which may interest readers, I am enclosing photographs of an event which was common in the '50s (possibly until the '60s), but now is seen no more, that is the sailing of a P & O liner, with crowds on the pier throwing coloured streamers to the departing passengers en route to England.

P & O liners visited Australian ports fortnightly bringing mail, passengers and cargo. All this has vanished and is now a part of history.

The ship in these photographs is the P & O 'R.M.S. (Royal Mail Steamer) Otranto', bound for Tilbury in the summer of 1954.

Ships such as these provided a deep emotional link with our Mother Country, but this link also has been steadily weakened since those days.

Lady Dargie
Canterbury, Victoria.



The 1988 Referendum Proposals

by Dr. David Mitchell Ph.D.



Prime Minister Hawke
“... it is not enough to simply obtain a temporary majority at an election, or even successive elections.”

Much has been alleged about possible hidden agendas in the current proposals for changing the Australian Constitution. But is there a hidden agenda?

Former Prime Minister Whitlam wrote in his book: “The way of the reformer is hard in Australia. Our parliaments work within a constitutional framework which enshrines Liberal policy and bans Labor policy. Labor has to permeate the electorate to take two steps before it can implement its reforms: first to elect a Labor government, then to alter the Constitution.” Mr. Hawke, in his well publicised address to the Fabian Society on 18 May 1984, said. “We all have to face the fact that, if our government is to make really great and worthwhile reforms that will permanently change this nation then it is not enough simply to obtain a temporary majority at an election, or even successive elections.”

Does this mean that Prime Minister Hawke looks towards a permanent Labor government whether it is elected or not?

A Labor Government has been elected! That government is now proposing four changes to the Constitution, some of which might have little significance on their own. But if they have little significance, why change? Attorney-General Bowen gives the answer — “Our proposals should be seen as a first instalment in a steadily maturing process...” (*Hansard 10 May 1988, p.2383*).

And what are those four proposals?

1. To provide for 4-year maximum terms for members of both Houses of the Commonwealth Parliament;
2. To provide for fair and democratic elections throughout Australia;
3. To recognise local government;
4. To extend the right to trial by jury, to extend freedom of religion and to ensure fair terms for persons whose property is required by any government.

FOUR YEAR TERMS

It is relatively insignificant whether the House of Representatives has a four year term or three year term except for the question of costs of elections which could usefully be spread over the longer period. Part of the argument for four year terms has been that Federal elections occur too frequently. Indeed, since 1949, there have been 21 Federal elections. This large number has been due to elections being called before the expiration of the governments full term of office. There is no current proposal for “fixed term” parliaments and, therefore, no guarantee that elections will be called less frequently.

If it were possible to consider the House of Representatives separately from the Senate, it would be difficult to mount arguments demonstrating the danger of change. However, the two cannot be separated. If the proposal was to have four year terms for the

House of Representatives and continue with the present arrangements for the Senate there would, at very least, be a Senate election every three years and a House of Representative election every four years. That is not the proposal! The proposal is for the Senate to be reduced to a four year term with concurrent elections of Senate and House of Representatives. This would mean that all elections would be double dissolutions, with the consequence that the quota needed for election would be just over 8%. This would favour sectional interests which might be a good thing. On the other hand, it would also mean Senate voting could be expected to mirror voting for the House of Representatives thereby reducing the effect of the review function of the Senate. The proposal for requiring Senate and House of Representative elections to be held simultaneously has already been rejected twice. It is now being proposed a third time.

Included in the proposal is the removal of the function of issuing writs for Senate elections from the States and vesting it in the Commonwealth.

FAIR AND DEMOCRATIC ELECTIONS

To say the least, this proposal is misleading. It would be an unusual voter who voted against a proposal for fair and democratic elections. What the proposal in fact does is to seek to

include in the Constitution the present provisions for electors for the House of Representatives. It does not seek to change the present voting law for the Commonwealth, but seeks to impose that law on the states as well, so that states will no longer be able to decide the appropriate means of distributing electoral boundaries. It would mean that the people of Sydney could, by virtue of the Constituion, outvote the whole of the rest of New South Wales put together.

That the idea of "one vote, one value" is a myth is demonstrated by the following hypothetical table:

A small country with 500 voters and three political parties establishes 5 electorates of 100 electors each and, at a particular election, the following voting pattern occurs —

Electorate	Voters	N.P.	Lab	Lib
A	100	51	49	No candidate
B	100	51	49	No candidate
C	100	51	49	No candidate
D	100	No candidate	70	30
E	100	No candidate	70	30
	500	153 30.6%	287 57.4%	60 12%

In this example the N.P. with only 30.6% of the vote (with "fair and democratic" boundaries as defined in the proposal for constitutional change) gains 60% of the seats while Lab. with nearly 60% of the vote gains only 40% of the seats.

One might easily think there is something wrong with the example or that "it just wouldn't happen that way". A simple glance at the voting and results for the last House of Representatives election is revealing. With 45.83% of the total formal vote Labor obtained 86 seats while with 46.07% the combined Liberal/National parties obtained only 62 seats. It does happen as the example shows! With a minority of votes Labor has a majority of seats.

This is the system it is proposed to entrench in the Constitution!

The proposal extends to the States but does not extend to the Senate. If it is so important, why not? Tasmania with 500,000 people has the same number of Senators as New South Wales with 5,000,000 people. The vote of a Tasmanian has five times the value of the vote of a Corn-stalk.

Why? Because the framers of the Constitution took the view that regional representation should be recognised, because the States were equal partners in the Commonwealth irrespective of their size or population. If this proposal is intended to reflect a principle it does seem unusual not to seek to apply it to the point of the largest discrepancy. Is extension to the Senate to be a subsequent "instalment in the steadily maturing process?" And what about Australia's position in the United Nations General Assembly — if one vote one value is a proper principle, should not our country immediately recognise that China should have 160 votes to our one?

The U.N. — should not our country immediately recognise that China should have 160 votes to our one?

The proposal makes no difference to Commonwealth elections — it is directed only at the States, in particular Queensland, Western Australia and the Tasmanian Legislative Council. The question I must ask is: Why extend Federal power to restrict the right of States in this way? There might be an answer but I can only guess at it. My guess is that one of the immediate intentions, in putting this proposal to referendum, is to enable the people of the whole of Australia, particularly Sydney and Melbourne, to outvote the people of Queensland on a matter of Queensland state rights.

LOCAL GOVERNMENT

As the Constitution at present stands local government is entirely within State jurisdiction. Suggestions have been made that local government is starved of funds by some State governments and should be funded directly from Canberra. Such funding would, of course, bring local government under Canberra control, for it is a truism that "he who pays the piper calls the tune". Of course, State governments have been known to close City and Municipal councils but this is within State jurisdiction. Indeed, local government is already entrenched in the State Constitutions of Victoria, Western Australia, South Australia and New South Wales.

It is significant that this Constitutional change would apply only to the States and in some cases would have the effect of changing State Constitutions. Again, this is a proposal to put to a referendum for the whole of Australia to determine how individual State Constitutions will

be affected. The proposal requires each State to provide for the establishment and continuance of a system of local government but does not give the Commonwealth Parliament power to establish local government bodies in the States.

It must be noted that this proposal does not apply to the Australian Capital Territory or Northern Territory.

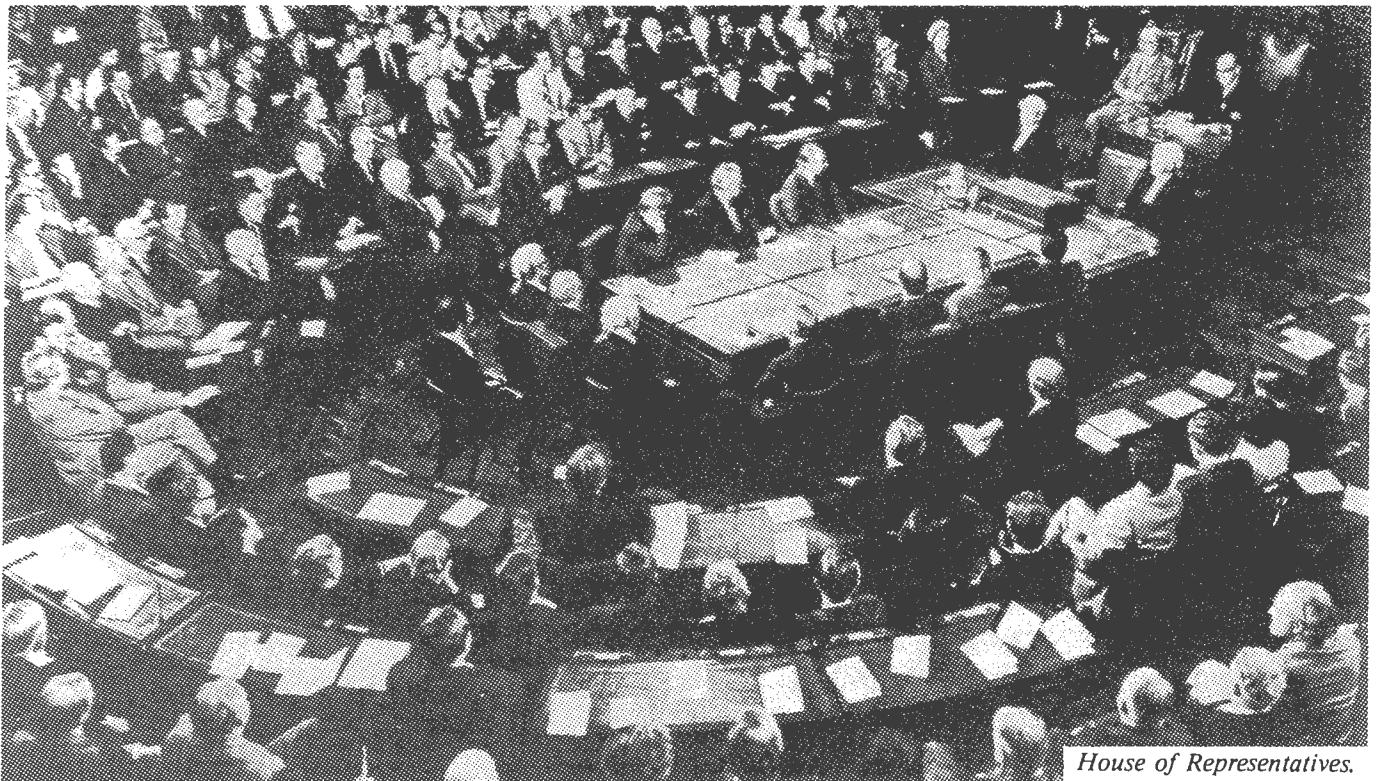
Both the Constitutional Convention that was terminated in 1985 and the Constitutional Commission whose first report was tabled in the House of Representatives on 10th May 1988 have recommended inclusion of a clause recognising local government.

As drafted, the proposal appears to have no effect other than placing an extra control on the States. Even then, the Attorney-General said, "the provision is not intended to prevent State governments from providing for the amalgamation of local government councils or for their dismissal on grounds of incompetence or malpractice." So, what effect does it have? Does it require a local government for Western Queensland when the government specifically recognised that "local government might not be appropriate for remote and sparsely populated areas in the Northern Territory?" (Hansard 10th May, 1988 p.2385). The effect it does have is to reduce the authority of State governments.

To extend trial by jury, freedom of religion, and to ensure just compensation for compulsorily acquired property.

These are fundamental freedoms already referred to in the Constitution. These freedoms do not exist because of the Constitution — they exist independently of it, they existed before it was framed and would continue if it were replaced. Including "freedoms" in the Constitution is a "back-door" method of introducing a Bill of Rights. It is true Prince Charles said in his speech on Australia Day 1988: "The true celebration of this nation is in its Constitution. In those dry sounding but hard-fought-for rules and regulations, every family in this remarkable country has its rights protected and cherished." Indeed the Constitutional freedoms in Australia, inherited through the English Common Law, are second to none. It is not because they are set out in a Constitution (as is the case in Soviet Russia and other Eastern bloc countries where freedoms like ours are limited) but because they exist independently of the Constitution.

The Constitution was a compact among the States to create a



House of Representatives.

Federation, it was not, and was not intended to be a Bill of Rights. Section 80 does confirm a right to jury trial when charged with a Federal offence and Section 51 (xxxi) confirms a right to just compensation when property is compulsorily acquired by the Commonwealth. The proposal is to extend these provisions to establish the Constitution as the source of these rights and to bind the States as well as the Commonwealth. Of course, the rights cannot and should not be criticized. The issue is not whether to support or oppose the rights — the issue is whether the Constitution should become a Bill of Rights, the issue is whether the fundamentals of the criminal law and property law should be controlled centrally, the issue is whether the exclusive powers of State governments should be reduced, the issue is whether the very nature of the Constitution should be changed!

I must repeat, the Attorney-General has made it clear this is intended only as a first instalment. A change now on the basis proposed could pave the way for drastic change in the future. "Gradualism" is a basic Fabian doctrine. Is the proposal part of a gradual process? Although the proposals sound mild their implications, even now, are far greater than first meets the eye.

Freedom of religion is already dealt with in Section 116. This section currently prevents the Commonwealth from making any law for establishing any religion, imposing any religious observance or prohibiting the free

exercise of any religion. It also forbids any religious test as a qualification for any office of public trust under the Commonwealth.

The proposal not only extends this limitation to the States but also changes the wording. It might be thought that the change of wording does not change the meaning but the rules of legal interpretation provide that changed wording creates a presumption of changed meaning. If the impost of the existing section is that the Commonwealth can make no laws about religion, and if the impost of the changed wording would be that neither the Commonwealth nor the States or Territories can make laws discriminating between religions, the difference is dramatic.

The United Nations has made a Declaration on the Freedom of Religion (1981) and is now proceeding towards a Convention. The nature of the Declaration is to guarantee that all religions or beliefs (whether recognising a Supreme Being or not) must be regarded as equal and any proclamation of a religion, or belief to a person who does not already hold it, would be discrimination. It seeks to ensure that religion can be proclaimed to its own believers in places approved for the purpose, that the religious beliefs of parents will be taken into account as **one** of the factors in the training of children (but the best interests of the child are always to be paramount) and that children are to be taught that their highest duty is to their fellow man. Under this Declaration I would be committing a

discrimination if I taught my children (as I do) that the "chief end of man is to glorify God and to enjoy him forever".

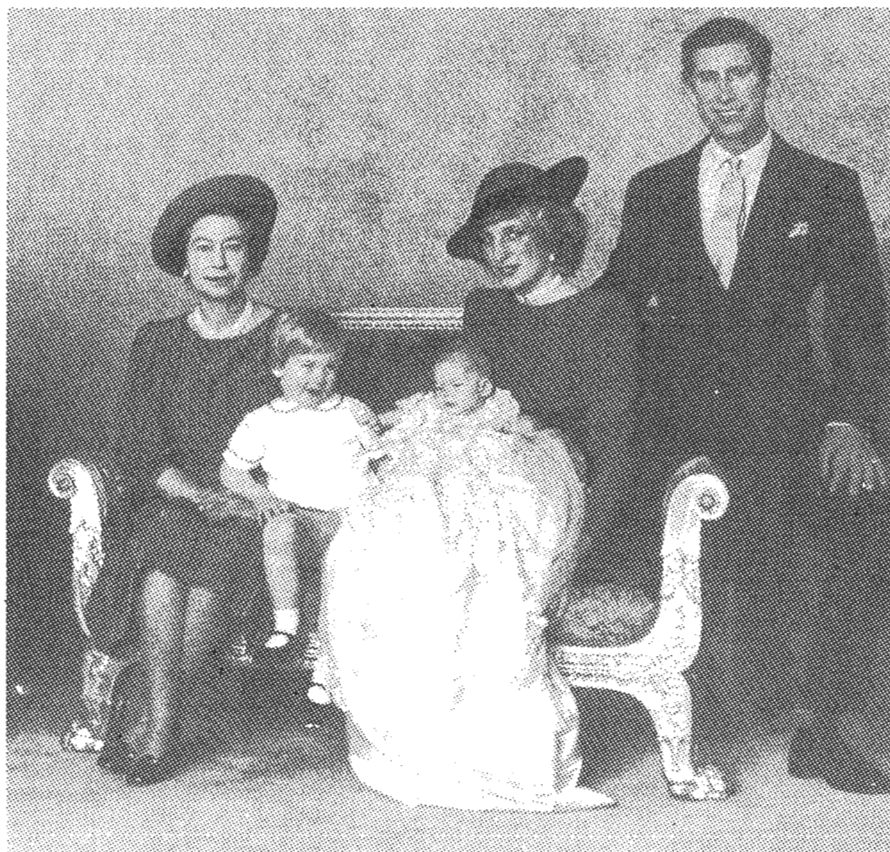
I also ask the question, "Who takes into account the factors for the training of a child and who decides its best interests?"

If the government can make no laws relating to religion, it cannot introduce the United Nations' proposal as law in Australia. If, on the other hand, it can make no laws discriminating between religions it can introduce the U.N. proposal. Perhaps fears on the score of increasing the threat of religious discrimination by a change that appears to give greater protection are groundless, but perhaps they are not. Perhaps, indeed, it could happen even without change to the Constitution but it is certain that change in the way proposed will not increase protection against such possible legislation.

SUMMARY

Some, or all the proposed changes, have the ring of advance and increased protection for the people. It has often been said that not everything that glitters is gold. These proposals need to be carefully understood for what they are — increased centralism, changed parliamentary structure, reduction of State rights and possible (though probably not intended) reduction of personal rights.

Monarchy



*Hereditary Monarchy
Fosters stability and continuity.*

THE MONARCHY

With the recent visit of Her Majesty the Queen and Prince Phillip the media once again opened up the question of an Australian Republic. Perhaps there was a little less enthusiasm in the call by the advocates for change. They have as yet failed to convince the general public of their cause. The opinion polls indicate a majority still favour the retention of our present system, and the Queen and her family are still met with enormous enthusiasm and good-will.

However, in this our Bicentenary year, it is perhaps appropriate that we do stop to consider the role and value of the Monarchy in our system of Government. Is it an appropriate institution for our nation as we move into the twenty first century?

One of the most obvious features of the arguments put up by the proponents of change is their shallowness. "The Monarchy is an anachronism", "It is time Australia stood on its own feet and threw off the symbols of colonialism", etc. No consideration in their argument is given to the depth of wisdom that is

embodied in our institutions, rarely is there any attempt to demonstrate how Australians would be advantaged in such a change. Would we have better government? Would an elected President provide greater cohesion in our nation?

It was the great British Prime Minister, Benjamin Disraeli, who wrote of the Monarchy: "The wisdom of our forefathers placed the prize of supreme power without the sphere of human passions. Whatever the struggle of parties, whatever the strife of factions, ... there has always been something in this country round which all classes

and parties could rally". Do we want party politicians vying for that position of supreme power in our nation? To whom would the armed forces and police of this nation swear allegiance to; a politician?

We elect others to represent our different and conflicting interests and opinions, but the Queen, through the Governor-General, belongs to no class and no party, and her interest is that of the nation as a whole. She is the common denominator of our democracy: the representative, not of a part of the people, but of the people themselves.

CONSTITUTIONAL SYSTEM

The Crown is a central feature of a constitutional system which has its roots deep in the Christian concept of the sanctity of each individual person and in the personal ideal of freedom. At the Queen's Coronation Service she was asked, "Will you to the utmost of your power maintain the laws of God and the true profession of the Gospel?". The Coronation Service reflects the Christian concept of Monarchy, the Monarch accepting with humility the necessity to serve the people and to act as a living symbol of the nation's traditions and historical continuity. This is a service which no elected President can provide.

Because of her unique position in the constitutional system which Australia has inherited from Great Britain, the Queen cannot be tempted with bribes of power or money. So long as the Crown remains, there is always an area of power and influence which the politicians can never invade. Cabinet Ministers are constantly reminded of their correct role by their titles: "Ministers of the Crown." The very existence of the Crown limits the power aspirations of the politician.

The hereditary Monarchy fosters national unity and social stability. Immediately the Monarch dies, the eldest member of the family, trained and educated for a task of destiny, ascends the Throne and claims immediate allegiance "Le roi est mort. vive le roi." (The King is dead, Long live the King.) There is no power struggle, no friction, but a sense of

Continued next page

continuity. The Monarch has no political past and no party followers to reward, and has no party opponents who detest the Monarch. There is no need for spectacular triumphs or gimmicks to win popular support. The history of the British Crown has been one of personifying continuity with sensible change. The Duke of Windsor wrote in "A King's Story" that "I had no notion of tinkering with the fundamental rules of Monarchy ... My modest ambition was to broaden the base of the Monarchy a little more; to make it a little more responsive to the changed circumstances of my times." Queen Elizabeth has continued that process, while providing in her domestic life an example of constancy. Parliament should represent the popular will but the continuing Crown represents nationhood, unity and ancestry.

In his article; "The Origins of Kingship", (*Heritage*, December 19) Edward Rock wrote:

"The known history of England does not record a time when the king was not a Christian King, or was subject to Christian influence. Foremost in that understanding was the knowledge that our Christian God was a triune God who had revealed himself in the three persons of God the Father, Son and Holy Ghost, but all united in the one God. The evolution of the Christian Monarchy in Britain gradually assumed a similar concept of trinitarian division. It was as though there was an innate knowledge that the main problem of Christian Government was to eliminate the power and the wilfulness of one man ruling over the people and replace it with such a division of power as to ensure that injustice and force were reduced to the minimum. Corruptible man would always be prone to corruption, but there were ways and means to reduce the corruption to a minimum. When Lord Acton coined the phrase, "Power tends to corrupt, and absolute power corrupts absolutely" they knew what he was talking about, and that power had to be divided and restricted by a trinitarian system of Government. "So in England there evolved Government by King, House of Lords, and House of Commons, three divisions of the one power, with the monarch the focal point of allegiance. Another form of trinitarianism evolved, the Monarch, the Common Law and the Judiciary. The motivating force behind each revelation of trinitarianism, dividing and restricting power, was an abiding love and concern for each

individual, and that those in authority should be the servants of the people. "He who would be greatest amongst you, let him be your servant," became an actuality as much as it could amongst unregenerate man. Many battles had to be fought to bring about the necessary reforms. The divine right of Kings had to be challenged, as it was at Magna Carta and in the demise of Charles I. But let it be noted the British people quickly realised that while Charles may have erred, kingship under a hereditary King was preferable to power exercised by the might of men as they had suffered under Cromwell."

HEREDITARY PRINCIPLE

It is true that in spite of the hereditary principle, reinforced by specialised training from birth, and



Benjamin Disraeli

"The wisdom of our forefathers placed the prize of supreme power without the sphere of human passions."

vast experience, some Monarchs have acted foolishly. But the record of British monarchs compares more than favourably with that of the politicians. And much more favourably with the record of Presidents.

The most shallow argument of all against the Crown, is that it is "Not our own" and that Australians are "clinging to the relics of their colonial past by expressing their allegiance to a British Monarch". This is not true. The fact that many Australians do not understand that Queen Elizabeth II is as much Queen of Australia as she is Queen of the United Kingdom, or of Canada or New Zealand, is a serious reflection upon the Australian educational system. Her Governors and Governor-Generals are Australian in the sense that they work to maintain the Royal system of Government in the Australian context

They are just as Australian as are the Australian Parliaments and the Courts, where the Queen's writ runs.

The sharing of the person of the Queen with other countries may appear illogical to many. But in fact this unique international constitutional arrangement provides an example of that true internationalism which the world so desperately requires if Civilisation is to survive. What would it gain Australia to throw away this precious feature of its essential heritage? So far from benefitting Australians, it would be an act of national vandalism and the death of the real soul of the nation.

CHARACTER, CULTURE AND TRADITION

The essential soul of a nation is its character, its culture and tradition. This develops organically over a long period of time. The Monarch is a living symbol of the values of the Australian nation, values which Captain Cook did not find lying around on the shores of Eastern Australia when he sighted them. Australia is a British nation in all its essentials and to attempt to deny this with talk about gaining "self-respect", is a manifestation of the ignorance concerning the nature of our heritage.

The Queen is not only the embodiment of culture and tradition. She is the symbol of the nation's sovereignty and independence. As such she is Supreme Commander of the Armed Forces, which are the ultimate sanctions. The Oath of Loyalty to the Queen is more than an oath to another human being: it is an oath to uphold all that the Queen represents. Republicans often overlook the fact that in the United States, for example, the individual does not take the oath of loyalty to the President, who is basically but another politician; the oath is to the written Constitution of the United States. That Constitution was framed by great statesmen to reflect the values undergirding the type of nation envisaged in the United States. The oath of loyalty is in essence to those values. But a written Constitution, however excellent, suggests a static society. The truth is that a healthy society must grow. The Crown is a living symbol of the values upon which Australia was developed and the Royalist believes it is a superior institution than a written constitution.

We are living in turbulent and violent times. Despite the two great wars, all the wars of so called

Continued next page

“liberation”, the League of Nations and the United Nations, there are now more oppressive regimes, fewer free and peaceful nations, than there were at the start of this century.

He holds his great position in trust against the day of tempest.

Australians' would be foolish not to recognize how fortunate they are in this nation, and the role played by our Monarchical system of government in preserving their liberties and security. Australia has experienced crises in the past, as no doubt she will in the future, and it is in these periods that a nation is most vulnerable and during which periods the Crown can play such an important role. Sir Arthur Bryant writes:

“... in a sense, the sovereign is the national lightning-conductor. He holds his great position in trust against the day of tempest. In that day, it is a wise habit of the British people, engrained in them by centuries of love and usage, to look to the Throne. If, in such a moment, any man, or body of men, were to use the ordinary national machinery to try and establish an unnatural despotism, such as would provoke armed revolution and plunge the country into the horrors of civil war, the tremendous powers reserved by the wisdom of our law to the Throne could be used to “frustrate their knavish tricks” and “confound their politics”. No Hitler or Stalin, Franco or Mussolini may reign in these islands, even though the economic or political circumstances which caused the rise of those revolutionary dictators might be repeated here. In such an event we should look with confidence to the powers of our ancient monarchy to save us from lawless despotism.”



In an uncertain age and at a time when Australians are expressing growing concern at the increasing power of our Federal Government, and its inability to reflect in its decisions

the mood of the nation, we can be grateful of the protections still afforded by our Monarchy, an institution built on one thousand years of experience.

LET'S KEEP THEM!



**OUR FLAG
OUR HERITAGE
OUR FREEDOM**

KINGSHIP

“...it is a basic assumption of the institution of kingship that man is by nature a social being; that he is born into an already existing order of life and that his life cannot be divorced from the social relationships into which he entered at birth, or from the social obligations which these relationships imply. That fact is always recognised in normal social life and equally recognised, and for precisely the same reason, by the British political order ... A social order rooted in the person of man; In the sanctity of each individual person and in the personal ideal of freedom; is of one piece ... The ideal of the king and the kingly, the queen and the queenly, is inherent and ineradicable in the human heart. In it may be found all that is truly innate in the moral life of man”.

— John Farthing in “Freedom Wears a Crown.”

Poetry of Australia



The Austral "Light!"

"Breaker" Morant

We were standing by the fireside at the pub, one
wintry night,
Drinking grog and "pitching fairies" while the
lengthening hours took flight,
And a stranger there was present, one who seemed
quite city-bred.
There was little showed about him to denote him
'mulga fed".

For he wore a four-inch collar, tucked-up pants,
and boots of tan —
You might take him for a new-chum or a Sydney-
city man —
But in spite of cuff and collar, Lord! he gave
himself away
When he cut and rubbed a pipe-full, and had filled
his colored clay!

For he never asked for matches — although in that
boozing band
There was more than one man standing with a
match-box in his hand;
And I knew him for a bushman 'spite his 'tailor-
made attire
As I saw him stoop and fossick for a fire-stick
from the fire.

And that mode of weed ignition to my memory
brought back
The long nights when nags were hobbled on a far
North-Western track;
Recalled camp fires in the timber, when the stars
shone big and bright,
And we learnt the matchless virtues of a glowing
gidgee light.

And I thought of piny sand-ridges! — and some-
how I could swear
That this tailor-made young johnnie had at one
time been "out there"!
And as he blew the white ash from the tapering,
glowing coal —
Faith! my heart went out towards him for a kin-
dred country soul!



