

**Constitutional Centenary Foundation
Annual General Meeting of Queensland Chapter
Wednesday 22 September 1999**

7.30pm Banco Court Supreme Court

"WHY CIVICS EDUCATION SHOULD BE COMPULSORY"

The Hon P de Jersey - Chief Justice of Queensland

I greatly admire the efforts of the Constitutional Centenary Foundation. In my recent personal experience, your organisation of the Constitutional Convention in Gladstone, together with officers of the Premier's Department, was done extremely well, and greatly facilitated what I consider to have been a most worthwhile endeavour. But as I acknowledge, your educative thrust penetrates much more deeply.

There is current at the moment in this country an enormous public education program with relation to our system of government: not only within this State by yourselves particularly with relation to the Constitution, but also by the Centenary of Federation Committee Queensland, and others. That Committee has commissioned an impressively wide array of educational activities directed to schools and more broadly into communities throughout the State. One recent survey suggests a quite substantial increase in awareness of federation over the last couple of years, from 2% to 34%, which is encouraging.

All these efforts appear to assume that the Australian community is generally ignorant of the fundamental pillars of our system of government. They also betray a responsible concern that the centenary of federation not pass by simply as an extravagantly expensive celebration devoid of further abiding significance. For my own part, I accept that assumption as probably well founded, and I obviously share that concern.

Some years ago people expressed surprise that a State Premier should, as we were informed, have an at least incomplete perception of the concept of the separation of powers. But I surmise that few people could themselves pretend to any precise appreciation of that particular concept. Certainly many would be able to identify the legislature, the executive and the judiciary as the three "arms of government", and they would go on to identify their independence of each other as the governing criterion. But how many of us could specify the components of the "executive"? How many could identify the true objective of the doctrine, as establishing checks and balances to ensure that no one branch could itself control the machinery of the State? How many Queenslanders would appreciate that in

this State we have only a partial separation of powers, and why?

I have taken to referring to the judiciary publicly, with a frequency falling only just short of the tedious, as being the third arm of government. I have also been explaining as best I can from time to time the concepts of the separation of powers and the rule of law. How many Australians would think of their courts as part of "the government"? When I speak of the rule of law, I sometimes experience misgiving, for concern that I am sounding unduly rhetorical. Could many people describe, with any real precision, the content of that stipulation? A. V. Dicey provides a time hallowed formulation: "that no person is punishable except by a distinct breach of law established in the ordinary legal manner and judged in the ordinary courts of the land: that is, contrary to the exercise of arbitrary power; that every person is equal before the law, regardless of their authority or position in society; and that the fundamental rights of the citizen (such as the right to personal liberty, the right of public meeting or freedom of speech) do not depend on any constitutional declaration, but are secured by the ordinary law" (Queensland Constitutional Review Commission, Issues Paper, July 1999, page vii). Yet would not most people stop at some vague adumbration, such as that the courts are there to protect the rights of the people?

These are grand concepts. Though unaware of the detail, most people would appreciate that they are fundamentally significant doctrines. Yet it is odd that the community should uncomplainingly suffer such a probable paucity of precise knowledge of them. Your Foundation, and the Centenary of Federation Committee, and others, are striving to counter this problem. But it is an immense task. I fear that most Australians simply may not be interested in coming to grips with the detail of our system of government and constitutional history: it is discarded as basically uninteresting.

Intensely symbolic aspects do arouse interest. The flag, the anthem, the preamble to the Constitution are examples. But even in those cases there is scope for some embarrassment. How many Australians would know that the star beneath the Union Jack is called the "Federation Star", and the significance of its points? How many Queenslanders could describe accurately the emblem on our State flag? How many of us felt a surge of State pride 20 days ago, on 2 September, when we were entitled to celebrate the centenary of the referendum in which Queenslanders voted to accept the draft of a federal constitution, and so led this former colony into the Commonwealth? (Courier-Mail, 6 July 1999, "Headstart").

These are quite heady times governmentally. In this State, we approach the federal republic referendum in November 1999 conscious that if it succeeds, a second referendum at State level will be necessary. We have begun to prepare ourselves against that possibility, as illustrated, among many other things, by the Gladstone Convention. The Parliament is in the process of facilitating the

consolidation of Queensland's scattered constitutional provisions into two plain English statutes. The legal profession, which complements the judiciary as the third arm of government, is presently subject to a wide-ranging review. My fear is that many Queenslanders, as with other Australians, regrettably lack a sufficient appreciation of basic concepts, and principal historical signposts, to be able to contribute valuably to these debates.

Major developments in the government of societies like ours will be most effective if they do truly reflect the views of the people. Practically speaking, the detailed day-to-day government of our communities must fall to be managed directly by only a few. But major proposals for change impinging on the system of government should be matured, and "owned" as it is put these days, by the people much more broadly. Broader participation is only worthwhile if the people are sufficiently informed.

These are not original sentiments. Epigrams about the value presently to be drawn from the history of the past abound. Manning Clark has said that men make their own history more wisely when they know what that history has been about. Judge Learned Hand said: "If we realised that most of these things that seem so new have been tried over and over again, I do not know that it is quite true to say that the only teaching of history is that history does not teach anything, for history does give us education in this sense: it teaches us scepticism about any easy explanations." Benjamin Cardozo put the matter pithily: "History, in illuminating the past, illuminates the present, and in illuminating the present, illuminates the future." And finally, if you will pardon me, there is Oscar Wilde's sardonic challenge that "the one duty we owe to history is to re-write it".

In July this year the Queensland Constitutional Review Commission published its "Issues Paper" on "Possible Reform of and Changes to the Acts and Laws that Relate to the Queensland Constitution". Submissions were invited by 17 September 1999. I understand that as many as 900 copies of the Issues Paper were distributed. It contains a lucid, concise synopsis of Queensland's constitutional history, and a diverting and challenging analysis of a range of fundamentally important topics, such as the rule of law, parliamentary supremacy, constitutional conventions, the separation of powers, representative government, majoritarianism, direct democracy, the status of political parties, a republic for Queensland (?) and a constitutional preamble for Queensland (?). The issues paper raises matters which should be of real interest to Queenslanders; to select some of the more "racy": should the Auditor-General be given a constitutionally guaranteed independence - witness the recent Victorian experience? Should a majority of votes ensure a majority of seats in the Legislative Assembly? Should political parties be recognised constitutionally, with legislative regulation of their internal affairs? If Australia becomes a republic, should Queenslanders retain the office of Governor, and if so, should the Governor's "reserve powers" be codified? And, dare I add this, should we seek to formulate a new State constitutional preamble? These are important and interesting questions.

I am informed that only 18 responses to the Issues Paper have been lodged with the Commission: 18 responses to 900 issues paper distributed! What, I ask rhetorically, do we draw from that?

Some years ago, the then Chief Justice of the High Court, Sir Anthony Mason, expressed the view that comprehensive "civics" education should be reintroduced as a compulsory element of the school curriculum. I wholeheartedly agree. Our children are growing up faced with the fascination of a computer age which regrettably often tends to treat information as significant per se. Information is but the first step towards knowledge, but the information must be there. If our children are to be productive, worthwhile citizens, they need to understand the system which governs them. They need to be able to distil from information the principles on which it is based. That will not occur, on a broad scale, until our children are enthusiastically introduced, not only directly to the principal doctrines underlying our system of government, but also to the constitutional history which spawned them. I am not for one moment suggesting that children should be educated into the depths of constitutional and jurisprudential theory. But it strikes me as unsatisfactory - as seems to be the case - that most children should be matriculating from primary and secondary schools without knowing the basics of governmental structure.

These views are apparently widely held. They crystallized into public expression with the work of Prime Minister Keating's Civics Expert Group as long ago as 1994. How "civics" should be "taught" provoked excitement among educationalists: those who rejected the "content approach", those who could not agree even on what that "content" might be, those who feared a sanitized re-written history. In 1991 our own Electoral and Administrative Review Commission had urged the State Education Department to accord priority to "electoral/citizenship education for introduction in primary and secondary schools" in Queensland.

The issue took roots with Education Minister Kemp's distribution of the "Discovering Democracy" kits to schools. Now in our own State, the Queensland Schools Curriculum Council is developing a trial civics curriculum, actually being attempted already in some 45 schools, to start from a broad base in July next year with full implementation intended for the year 2003. The draft curriculum would cover such concepts as the rule of law, the separation of powers, the three arms of government and the independence of the judiciary. As I understand the proposal, students from as early as ages 9 and 10 should be introduced to the system of government in a realistic way. Gone should be the days when "citizenship education" was limited to the annual visit to State Parliament. If this proposal is actively carried through, there is real hope that this currently inexcusably "black hole" in our children's education should be fruitfully filled.

Gore Vidal, when asked what would have happened in 1963, had Khrushchev not Kennedy been assassinated, replied: "With history, one can never be certain, but I think I can safely say that Aristotle Onassis would not have married Mrs Khrushchev." We live here in a robust democracy, a free and secure society. But we are sometimes unduly complacent. I would much more confidently than Gore Vidal predict the consequence were especially our children more comprehensively educated about these important matters: it would be an exponentially more vibrant nation. I hope that the other arms of government will in a more active and practical sense be able to complement the excellent work being done by the Constitutional Centenary Foundation and the Centenary of Federation Committee, and I know that I am not alone in this. Current developments are certainly encouraging, and are to be warmly welcomed.