

Appendix I

Address Launching *Upholding the Australian Constitution*, Volume 3

Alan Jones, AM

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Ladies and Gentlemen, it is my privilege to be amongst you today and to share one or two views with you. If I could begin though by taking, as part of my text, some of the comments that Sir Harry Gibbs made by way of introduction, I suppose one could say that speaking is both my trade and my profession. Let me take up that point, by way of an aside, in relation to the nature of the debate on the Constitution and constitutional change.

Sir Harry said that often that debate is conducted through the media in superficial and ill-informed terms, and I think that is certainly true. I would however just like to say, as a person within the media, that it is important that we don't allow the opposition to occupy all the territory. I suppose I will get into trouble for saying this, but I am increasingly disturbed at the extent to which the media is dominated by opinion and forces of the Left, advocates of change for the sake of change. They really often succeed, not because they win the debate, but because the other side doesn't always fight; and whether we like it or whether we don't, the media happens to be a very powerful and influential force within our community. Unfortunately, it is not always a force for good. Many would argue it is not often a force for good; and they would be able to mount a fairly strong case in support of that argument.

So, in the context in which we meet today, it is incumbent upon me just to urge you to recognise that, wherever your scholarship or your opinion can be used to influence the views of others, often it is through the media, and through the electronic media, that that can happen. I often say to people who ring the much maligned talk-back segment of my radio programme - there are only two half hours of it, and they often have tremendously anguished concerns about some things and they wonder about the futility and impertinence of making a simple phone call, until you explain to them that there are probably half a million people listening to them. So often we try to speak to people, and they are either too precious to be available, or lacking in confidence to present simply a viewpoint. It seems to me that is a golden opportunity to seek to neutralise to some extent the points Sir Harry made - superficiality, and the ill-informed nature of the remarks that often pass for sensible and proper debate.

I suppose today an outsider might wonder why Volume 3, which contains the proceedings of the Perth Conference of The Samuel Griffith Society, should be entitled *Upholding the Australian Constitution*. Why, someone might ask, is it necessary to defend or uphold the Constitution? - which ordinary "Struggle Street" Australians actually think has served Australia for almost 100 years, and done so very well.

I say again that often the views of those people out there who are terrified by the rapid pace of change are not considered, and they really feel quite defenceless and without support. So it is fair to say, if you believe what you read in *The Sydney Morning Herald* and other newspapers, that the Constitution is under threat. It has become almost trite, in the wake of the March, 1993 federal election, to point out that there are some who have adopted an agenda for change, and they specify the date as being "by the turn of the century". Change for change's sake. They

describe their so-called "vision for change" in one word. "We want a republic", they say. They won't come on radio programmes like mine to debate it, because they themselves don't know what it means; and, in fact, it has never been defined. They propose, if you try to flesh out some of the things, "minimalist symbolic constitutional alterations"; and that, paraphrased and put into everyday language, means "remove the links with the British constitutional system and the monarch". I think that is what they are saying.

But what is meant by the concept of a republic? As I have said, that has never been explained. When you break down the rhetoric, it seems that the so-called "demand for constitutional reform" may well have more to do with nationalism than with republicanism. Now we are all undeniably in favour of nationalism, if by nationalism we mean, as I am sure we do, national pride. But of course, nationalism can very easily be exploited, and I wonder if it is proper to use national pride in that way - especially amongst the young - to rally up national pride to deny our history. History has shown that nationalism often has been cynically manipulated to destroy genuinely democratic, including republican, governments.

Suri Ratnapala is a senior law lecturer at the University of Queensland and, while reading some of his writings recently, I was greatly interested by his observations on how nationalism, masquerading as republicanism, was used in his native Sri Lanka to undermine its genuinely republican government. According to him, taking the classic definition of republic as government for the public good, Australia is, or would be if its Constitution were properly interpreted, already a republic. The distinction, as he sees it, between republican government and other forms of government is that the former has built in checks and balances to prevent governments from putting their own self-interest above the common good. So under that definition of republic, notwithstanding our remaining constitutional links with Britain, the Australian Commonwealth ought to be synonymous with a republic. The key words are "ought to be", because Suri Ratnapala goes on to argue that some of the classic republican foundations of our Constitution are already being undermined.

I am not referring to here, and I don't think we should dwell on it too much, all this business about monarchy and the British Parliament. For one thing, republicanism, in the sense of government for the common good, has always relied on the separation of legislative, executive and judicial powers, and it is this separation of powers which imposes checks and balances on the power of the elected representatives, and prevents them using power to pursue self-interest, or the interest of any special interest group, ahead of the public interest. As long as the executive, for instance, has no control over the legislative power, then it cannot legislate to suit its own whim.

To use a sporting analogy, cricket is played according to certain rules determined by a ruling body. During a match, umpires adjudicate according to those rules; but if the umpires both made and adjudicated the rules, they could decide perhaps that the team they thought had played more meritoriously should be the winner of the game. While this might benefit a particular team, it would in no way establish an objective standard in the best interests of all cricketers.

The same principle applies where executive power is also effectively legislative power, because without separation of power, law making and its administration can both be undertaken at the point of law enforcement. In other words, the administrators, being also the legislators, can make the law to suit themselves for any particular case.

The result is that laws are made in our country in response to pressure from individual or special interest groups, rather than founded on common principles designed to benefit everybody. The political system ends up in the market place, where the votes of special interest groups can be

traded for preferential treatment. Yet, despite these dangers, the Australian Parliament has continued to delegate legislative powers to the executive - and "executive" is often in the singular - which, in turn, delegates powers to tribunals and bureaucracies which have not even been elected at all. This process has continued pretty well unchecked even though, as Suri Ratnapala argues, it is against the spirit if not the letter of our Constitution.

Of course, common wisdom is that, because a government can be removed from office for offending the electorate at the next general election, then there is no need for any other limitations on its power; but this assumes that the electorate at the end of the government's term of several years is capable of methodically auditing its performance and producing a balance sheet of deeds and misdeeds. Yet, as you know, it is possible to win elections, as has happened through the passage of time, by simply lying to the electorate. This also ignores the fact that a great deal of damage may be done by a government before the ultimate censure of the ballot box comes into play.

I am no constitutional expert, but it does seem to me that Suri Ratnapala is making some very relevant points. No-one participating in this so-called republican debate has ever, so far as I know - and I have tried to challenge them all - properly defined what is meant by the term "republic". I am asked, "Do you approve of Australia becoming a republic?". I reply, "I don't know what I am being asked to approve. Tell me what it is you are about, then I will tell you whether I like it or not."

You ask people out there, and they are bemused; but I will tell you one thing - they are terrified by change. They have had change up to here; it is thrown at them in every form, and this is another one of them. In general people do associate change with pain - that might be the greatest bulwark we have. The Prime Minister has described his preferred model republic as requiring only minimal changes to the Constitution "in order to simply" - and he uses that word - "substitute the symbols and representatives of the British Crown." But is the impetus for this change truly republican in spirit, or is there a danger that nationalism under the banner of republicanism could be manipulated to undermine the already essentially republican principles of our Constitution?

There is every reason to be vigilant about upholding our Constitution and its spirit. The American politician Madison once said, "If men were angels, no government would be necessary, and if angels were to govern there would be no need to control them; but since government is administered by men and women (he didn't say "and women" - I'm adding that), it is necessary not only to enable the government to control the governed, but also to compel it to control itself." Apart from the ballot box, only a strong Constitution can provide that means of control.

The symbols of our Constitution are important and, as Sir Harry Gibbs said in introducing me, perhaps they should be debated; but if we are going to have a constitutional debate about republicanism, let's first define our terms, and let's also look at some subordinate constitutional issues. Our Constitution may have flaws - nothing is perfect - but its spirit is basically right, and I will fight to uphold that spirit from all that would threaten it.

As I have said, it is because there are subordinate constitutional issues that need to be addressed that we are here today, because *Upholding the Australian Constitution* (Volume 3) directs the attention of the community to some of those issues, presented to us by some of the most learned minds in the country. I thoroughly recommend it to you and I am happy to launch it herewith.

Dame Leonie Kramer: In offering this vote of thanks, I think the best thing I can do is to comment on the three substantial points that Mr Jones made.

First is the failure to consider the views of what he dramatically called "Struggle Street". This has concerned all of us for a very long time. The republican movement is not a grass roots organisation. Who has seen anybody marching down Pitt Street or Collins Street with a placard saying, "Let's have a republic tomorrow - or by the year 2001?" If anybody has seen that I would be delighted to know, because I don't want to go around spreading false ideas. That is interesting, isn't it, because in the absence of that we can only assume that what we are now being asked to consider - and what looks to us, or at least to me, more like a threat than a promise - is an elitist imposition on the public, for reasons which it is not proper to speculate about now.

The second thing that Alan Jones said is very important. It is a real question as to whether the present republican movement is in fact a nationalistic movement, in the worst sense of that word, rather than a republican movement. I think it probably is. If that were not so, there would be absolutely no reason why the republicans would be so desperately anxious to redefine Australia. I have just read the latest effusion, could I say, from Donald Horne's ideas. It is a curious concoction of false definitions of citizenship, distorted history and various slogans. So we are now invited to consider negotiating a new Australia and, to use this terribly clichéd word, reinventing ourselves. Now that displays such an extraordinary lack of understanding of how society or a political culture works that one would just want to throw it away. Don't they know that society is not to be manipulated? It develops and evolves, things change - unless of course you are bent, as Alan Jones implied, on manipulating it; and I think that has to be a real concern. Alan Jones' third point, which is also very important, has to do with the question of the separation of powers. I have been thinking about this a good deal in the last few weeks because we have a seminar about it here in Parliament House tomorrow, and it has suddenly struck me that one of the great strengths of our constitutional arrangements at the moment is that we have a Head of State who is, in the executive sense, totally powerless. Now that might sound a strange thing to say, but that is the strength of the system - that there is someone at the head of the system who can do all sorts of things, who can go around and talk to people in ways which encourage them, which help them, which support them, which no other citizen in this country, or any other country unfortunate enough not to have a system like ours, could possibly do. Politicians can't do it. Business people can't do it. Academics can't do it for a whole variety of different reasons. But a person who is seen to be in the middle, literally in the middle of a society or a State or a nation, can do it because they are seen to have no allegiances at all except to the welfare of every person in that State. Now that alone is an argument for preserving what we have.

Thank you, Alan, for giving us a splendid and heartening speech. People in this situation often say you are talking to the converted, but I like such talks, converted though I am - especially when they are in terms which are so eloquent and so sensible, and make such important and substantial points. Thank you very much for being with us.

Sydney

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