

# A Constitution That Deserves Better Mates

Greg Craven

If constitutions had emotions, ours could be forgiven for feeling just a little frustrated. What exactly is it expected to do to get a decent press? Around the world, constitutions go down like South American currencies, producing mayhem and revolution, yet no-one lifts an eyebrow. The Australian Constitution produces a century of outstandingly stable democracy, and has scarcely a friend.

In reality, our Constitution is one of the beige wonders of the governmental world. In terms of outcomes, it has outlasted the Kaiser, the Depression, the Cold War and world communism to produce one of the oldest continuous constitutional democracies in the world.

In terms of process, it is no less remarkable. For all its drab Victorian draperies, the Australian Constitution is the only true People's constitution of the Anglo-Saxon world. What other constitution was drafted by delegates elected for the purpose, adopted by popular vote, and remains amendable only by referendum? Certainly not the constitutional documents of the United Kingdom, the United States, Canada, South Africa or New Zealand.

Yet at almost any given point in its history, the demolition of the Constitution has been the chosen work of a major portion of Australia's political elites. Historically, it has been the Australian Left that has reviled the Constitution. Most recently, the Left has found the Constitution's dogged refusal to invest unelected judges with absolute power over human rights deeply trying, and it has hurled its anathemas accordingly.

But long before this, Labor and its allies loathed the Constitution on a quite different score. They longed to dismantle its clanking federalism, and replace it with an efficient centralizing apparatus that would usher in all

forms of marvels, from wage control to price-fixing. From Hughes to Whitlam, Labor did battle with Australian constitutional federalism. Casualties were heavy on both sides, but if Labor gave the States as good as they got, it never quite managed to get the States.

Throughout these battles—and making due allowance for opportunism and Canberran hubris—the Australian

erals and conservatives.

To take two of the most obvious illustrations, federalism first promotes freedom by balancing the powers of two spheres of government one against the other, so ensuring that in Australia there is, by definition, no totality of power. Moreover, the existence of these two spheres guarantees competing public dialogues of power, ensuring that few policy balls go through to the keeper unremarked in Australia.

Consequently, from education to health, and from industrial relations to the environment, there is no sphere of government in Australia that is all-powerful, and none whose proposals cannot be subjected to an organized critique from a fellow government.

Second, federalism ensures, or aims to ensure, that the policy issues closest to regional communities are determined substantially by those communities themselves, by committing those issues to local State governments and not the remote bureaucracy of Canberra. In so doing, it not only magnifies local democracy, but promotes decisions practically adapted to local conditions and difference.

Balanced power, contained government, local control of local affairs and respect for regional difference: there could hardly be a governmental creed more palatable to conservative tastes. Yet today, all this goes to underline just how truly remarkable it is that the Howard Government is spitting out Australian federalism like so much constitutional gristle.

In its casual abandonment of its federalist conservative heritage, the administration of John Howard now appears to be embarked upon the greatest centralization of power in Australia since the Second World War. Then, at least, inroads upon Australia's federal character could be justified as a response

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political Right stood with the Constitution and its inherent federalism. It did so not only out of a desire to frustrate Labor's agenda for social and economic control, but from a deep if vague understanding of the link between 'federalism' on the one hand, and notions like 'liberalism', 'conservatism' and even 'democracy' on the other.

Liberals such as Sir Robert Menzies, harking back to the great constitutional founders such as Deakin and Barton, comprehended that federalism was not just a regrettable historical reality of Australian government. Quite beyond that, it was an organizing principle of government designed to protect just those qualities of freedom, balance, community and difference dear to lib-

to the demands of total war.

Consider the fronts upon which Howard's troops are moving. Health Minister Tony Abbott would like to control hospitals. Howard himself, and Employment and Workplace Relations Minister, Kevin Andrews, wish to dismantle State industrial relations sub-systems. Attorney-General Phillip Ruddock seems determined to impose uniform defamation laws. Education Minister, Brendan Nelson, easily the most enthusiastic of the power accumulators, wants Commonwealth control of universities, a national education certificate and Commonwealth technical colleges.

In their unadorned determination to exploit power while the going and the Senate is good, many of Howard's ministers display no parallels with a Deakin or a Menzies, who reluctantly understood that constitutional restraints upon the untrammelled exercise of power are a given good, even if and—perhaps especially—when they most irritatingly restrain you.

Rather, they closely resemble the old leftist social engineers they profess so to despise who, having briefly stormed the citadels of power, will brook no inhibition or argument against the full implementation of their programme of the hour. They are, in short, neither liberals nor conservatives with a respect for balance and restraint, but merely politicians in the usual self-important hurry

towards eventual, inevitable replacement by their opponents.

Take just once example of the utter lack of conservative thought that has gone into this programme of regulatory hubris. Almost nobody would deny that Australian universities are a vital cog in the criticism of governments, and play a major part in the functioning of our democracy. Presently, our universities are regulated partly by the States, and partly by the Commonwealth, the latter largely by financial means.

The outcome has its messy moments, but those with genuinely conservative or liberal instincts hardly could fail to realize that the inability of either sphere of government to comprehensively control the chief repositories of our national intellectual capital is a profoundly healthy position, in accordance with all the best precepts of federalism.

As Australian universities play their part in the vital intellectual debates of this country over such matters as labour market reform, trade, reconciliation, ageing, constitutional change and science policy, would it really be a matter of satisfaction for us that they were, in terms of accreditation, regulation, strategic direction and accountability, wholly-owned subsidiaries of the Commonwealth Government?

Yet to suggest that such thoughts might even occur to some members of the present government would be

to invest them with an innate understanding of the political tradition they purportedly represent that would be as implausible as their adherence to it. It is not so much that they have no commitment to the real constitutional values of liberalism, as that they would not even recognize a constitutional liberal if they met one.

The irony, of course, is that the Howard policymakers eventually will go the way of their Labor forerunners. After their little span in power, the immense national machines they have worked so hard to create will fall cyclically into the hands of their enemies, and from industrial relations to universities, they will be turned against them. The Nelsons and the Howards will moan aloud, and talk of 'balance' and 'federalism'.

In the meantime, where is anyone who really does believe in such arcane concepts to look? Apparently, not to the sullied heirs of Deakin. Perhaps Labor could take some new partners for the new millennium?

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**IPA**

## Strange Times

### Your Aid Dollars At Work

As Donald Rumsfeld recently said, you go to war with the army you have. And it turns out that Oxfam has a gender advisor. So, rather than fritter away this vital expertise teaching a class of cultural studies majors, the gender advisor has been speedily airlifted into the tsunami-affected Meulaboh, in

Indonesia.

While it may seem that the IPA is treating this important service lightly, the advisor has a great deal of work to do. As Oxfam's *International Weekly Tsunami Bulletin* No.19 proudly states, Oxfam teams are being given training in the 'meaning of gender'—a service that could be readily provided by a dictionary. A great deal of emphasis is

placed on 'the differences between men and women'.

To be fair, this is more likely to be of the *Men are from Mars, Women are from Venus* style than slides from *My First Anatomy Book*, but if the service is so essential, one wonders what the teams were like before the training.