

# AUSTRALIAN ASSOCIATION FOR CONSTITUTIONAL LAW

## ‘PLANNING FOR A NEW REPUBLIC’

Julie Bishop MP\*

There seems to be an underlying assumption that has emerged this morning that we need to dispel. Geoff Gallop said it specifically – Liberals supported the ‘No’ case, Labor supported the ‘Yes’ case. That was not in fact the experience either in this State or across Australia. This referendum crossed party lines in a way I do not think we have seen before. Substantial shares of conservative votes were for the ‘Yes’ case. In fact, the ‘Yes’ vote prevailed in many strongly Liberal seats. I live in the republic of Curtin! Kim Beazley represents the constitutional monarchy in Brand!

I believe that an analysis of the referendum results will demonstrate that the ‘Yes’ vote, in many instances, failed most dismally in Labor’s heartland and that is a fact the Australian Labor Party must deal with in the future.

I suggest as a first step, that a deeper analysis be done of who voted, where, how, and why.

Turning to Mr Beazley’s abstract<sup>1</sup>, he makes the case that he believes that the 1999 referendum result indicates that the majority of Australians favour a republic, but that the referendum failed because of the following factors:

- ‘sabotage’ by the Prime Minister;
- public ignorance of the Constitution and the republican proposal;
- cynical opposition by the ‘non campaigners’;
- mistrust of politicians and public institutions; and
- ‘A perception by the majority of Australian people that the

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<sup>1</sup> Beazley, K. ‘How may the people be heard? – Planning for a new Republic Referendum – Process and Content’ (2001) 3 *UNDALR*, 1.

(2002) 4 *UNDALR*

model proposed was not owned by them’.

As an alternative, Mr Beazley proposes, as he did both before and after the 1999 referendum, that the new referendum process consist of:

- a civics education campaign at ‘a grass roots level’;
- an indicative plebiscite as to whether Australians ‘want a republic’;
- an indicative plebiscite to consider what alternative proposal is preferred; and
- a referendum based on the selected model.

It is anticipated that this process will be predicated on achieving a republic by 2010.

## THE FUNDAMENTALS

There are a number of tendentious assumptions in the paper that should not pass unchallenged. However, to understand the fundamental flaws in Mr Beazley’s proposals, it is necessary to cast a critical eye over his analysis of the 1999 referendum.

He suggests that the single most important factor in the referendum proposal’s demise was that it was perceived ‘as being imposed from on high’. He suggests that this ‘flaw’ was a deliberate result of the mechanism used for determining the proposal to be put to the people. He says that the process set up failed to deliver Australians a republic model they could accept!

### What was that mechanism?

The Federal Government conducted a voluntary postal vote election for delegates to a constitutional convention at which the preferred model would be determined. The Federal Government appointed other delegates to the convention.

A convention appears to be the most effective means of engaging in this type of consultative determination. It is difficult to imagine an alternative form of consultation. But could the process have been conducted differently?

The convention could have been entirely appointed, but that would hardly seem to be a likely means of reaching a proposal that was not ‘imposed from on high’.

The convention could have been entirely elected, but it would have been extremely unlikely that the same representation of women, of the young, of indigenous Australians, or of regional Australians would have been achieved. Furthermore, what of the State and Territory governments, and what of the Parliament? Would the convention

delegates have been elected from a single pool or from federal but unrepresentative State or Territory pools?

Given the low voter turn out, could the convention delegates have been elected in a full scale compulsory ballot? Perhaps, but it would be the height of speculation to suggest that the result would have been substantially different had that occurred. One thing is certain; this would have done little to endear the republican cause to most Australian voters!

What could have changed?

The Australian Republican Movement (ARM) might have recognised that it simply could not win a referendum with a parliamentary appointment model. Despite Mr Beazley's protestations, the fact is that the Prime Minister didn't play a manipulative part in bringing the ARM proposal to the referendum ballot box. The proposal was originally conceived by ARM and the then Keating-led Labor Party; it was negotiated throughout the convention by those same authors and brought to the people as a result of that successful negotiation. It should have been obvious to the ARM that the failure to achieve full majority support for their model on the floor of the convention was an indication that the referendum proposal was stillborn.

In fact the 'full majority' issue is a useful blade with which to lance the 'PM as master puppeteer' argument. Faced with the failure of any single republican proposal to attract majority convention support, the Prime Minister could simply have announced that the Government had met its 1994 obligation to hold a convention, and that as republicans had failed to bring forth an alternative constitutional order indicating the matter was now closed. I was there and had this occurred, the uproar from republicans would have been considerable. And yet some republicans have, post-referendum, tied the Prime Minister's agreement to take the ARM proposal to a referendum (despite its failure to achieve a full majority) as a political manoeuvre.

What was he supposed to do? Tell the convention on the final day that the proposal had insufficient support and would not beer?

Mr Beazley's stated 'factors' for failure also indicate a misunderstanding of what actually happened on 6 November 1999.

The public education campaign was not 'inadequate' or 'politically motivated'. It would take a most masterful imagination to believe that the public advertising of the referendum proposal was biased, or influenced the result in any particular way. If Mr Beazley means that the public education campaign failed to convince Australians to vote for the republic proposal then he would be right. But, that is not the

(2002) 4 *UNDALR*

appropriate role of a referendum education campaign. It is the responsibility of the protagonists to argue the merits of amendment, and in this regard the supporters of the proposed model manifestly failed to build a coalition for change. Clearly the ARM's advertising campaign was ineffective.

The referendum result revealed that, despite its media presence, considerable resources and connections, the ARM failed to construct a grass roots movement for change, both between 1991 and 1996 when the movement was accorded political advantage (most notably through the Republic Advisory Committee process), and between 1996 and 1999 when the political ground was a little stonier.

As for the 'cynical campaign of opposition' I hate to break the bad news but (and this may be a shock), there will be a 'No' campaign next time as well. Yes, it might be incredibly unfair that some Australians might not wish Australia to become a republic, whether in total opposition to republicanism or merely one of its variants, but that is reality.

One of the worst mistakes proponents of constitutional change in Australia have made in their analysis of the referendum result is to regard bi-partisanship as a critical factor.

I can say this; the fact is that while the agreement of the major parties to change is useful, it is by no means a guarantee of success. What shifts the likelihood of amendment from the routine to the difficult is the presence of active opposition, regardless of where it originates (eg the 1967 nexus and 1977 simultaneous elections referenda).

Regardless of whether or not there is a change of policy within the Liberal or National Parties before the next republic referendum, there will be concerted opposition to the proposed amendment. Supporters of change must learn to deal with that opposition rather than simply decry it as 'cynical'.

The explanations given by Mr Beazley fail to include the single most important reason for the result on 6 November 1999 - the failure of the republican movement in Australia to convince a majority of Australians that having a 'republic' (regardless of what that actually meant) was a goal so worthy as to overshadow any related concerns. The obvious comparison is the case for Federation. Federation, as a goal, was supported by a majority of Australians in all the States, despite parochial concerns. That support was translated into results at the ballot box.

Could I also suggest that too many republicans have been taken in by opinion polling? A vast majority of Australians may well want a 'republic'. But only a minority of Australians want to become a

'republic' regardless of what actual changes are proposed. That battle is yet to be won by republicans. The News Poll Dick McGarvie referred to asked respondents about wanting an Australian Head of State. In 1999, many Australians believe they already had one in Sir William Deane, and his public role at the Olympics only served to reinforce this impression.

Whether the next referendum proposal is decided by an indicative plebiscite or not, the proposal is likely to be a parliamentary-appointed model or a direct election model.

Regardless of what precedes it, the proposal will have to eventually face a genuine referendum ballot. Regardless of whether or not the proposal is a parliamentary model or a direct election model, there will be opposing republicans who will need to be convinced to vote 'Yes'. Which particular model is presented to a referendum will matter.

## THE TWO STAGE PLEBISCITE

The most obvious flaw of Mr Beazley's alternative process is that, in the end, constitutional amendment must take place through a referendum. In the end republicans have to win the same battle they lost on 6 November 1999.

Furthermore, there are significant practical problems with the use of indicative plebiscites.

The first question, 'Do you want to become a republic?' is truly asinine. The only merit that this plebiscite might have for republicans is the cynical hope that an indicative result in favour of a republic may convince some voters that they are obliged to consider the 'question' settled, so that when the actual referendum arrives, they are duped into believing they've already voted for this outcome and the vote is just a logical formality.

The second stage of the plebiscite is even more problematic. How many different models make it onto the ballot? Is there a 'none of the above' option or a 'no change' option? If this option isn't available then you might see monarchists using their voting power to influence the preferred model (as they were alleged to have done at the constitutional convention), or you might see a boycott that ruins the credibility of any indicative result.

Will the normal constitutional safeguard of a 'majority of States' prevail? Furthermore, if there are more than two proposals, what advantage is gained for republicans by failing to achieve full majority support for a single proposal? Doesn't putting a 35 per cent or 40 per cent supported proposal to a referendum directly replicate what occurred in 1999?

And suppose the referendum failed again. It would be the worst of both

(2002) 4 *UNDALR*

worlds - a constitutional monarchy rejected and delegitimised by a plebiscite, but with nothing to put in its place. The indicative plebiscite process does not address the central question of how to convince republicans to back a model they disfavour.

To my mind, direct election carries with it the potential for far-reaching change - to the role of Prime Minister and to the executive - and it is way off the screen for moderate republicans. In his abstract Mr Beazley does make reference to a 'comprehensive civics education campaign'.

On the one hand, this appears to be minor consideration unless one believes that:

1. not enough young people are supporting the case for change now; and
2. a school-based civics campaign is likely to make a substantive difference to a future referendum result.

On the other hand, the notion that public ignorance was a factor in the 1999 result (and that such ignorance might be corrected) again flies in the face of the suggestion that voters rejected change perceived as being 'handed down'.

What kind of civics campaign? One implicitly designed to prepare the way for a particular constitutional change is a pretty debatable concept; implicit bias could undermine its integrity.

The contradictions in the abstract are considerable. If Australian voters genuinely mistrust politicians and particularly the major parties, why will bipartisan support in the parliament work to the advantage of change?

We can agree that a republic should only succeed in a bipartisan climate and indeed so symbolic a change ought not to occur through such bitter partisan conflict. Yet, it is unreasonable to expect all sides of politics to be solidly committed to a republic - given the model could range from a direct election to a McGarvie inspired model.

However, if there were any perception of a 'sweetheart' deal between the Government and Opposition, it would be a gift to fringe parties who would fill the vacuum for the 'No' case. Referenda failed in 1967 and 1977 when Government and Opposition both advocated a 'Yes' vote - dissident coalition identities and supporters, at the State level particularly, championed the 'No' vote and prevailed.

And bipartisanship will not be advanced by demonising the Prime Minister. For all the criticism about the Prime Minister's stance in 1999 doesn't Mr Beazley's own paper suggest that provided the PM at the time was a republican there wouldn't be anything wrong with his or her 'active' participation in the referendum?

Mr Beazley's broad proposal to obtain consensus for change is laudable,