

Referendum in Australia Republic - To be or Not to be!

by Dr M. Amanullah Khan

Altering the Constitution requires a "double majority" - not just a majority of voters in a majority of states, but a national majority as well. The referendum seeks to receive verdicts on two issues although one is not directly related to the other. Australians may choose to say 'No' to the Republic issues; yet vote for the inclusion of the preamble in its constitution. The opposite may also be the case.

AUSTRALIA goes to a historic referendum on 6 November. More than 12 million voters will decide Australia's new identity as the millennium approaches. They will decide whether or not Australia will maintain its status quo as a constitutional monarchy with the British Queen remaining Australia's Head of State or to become a Republic. Two questions will be put to voters on two ballot papers against which voters will be asked to write 'yes' or 'no'.

1. A proposed law: To alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and the Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament. Do you approve this proposed alteration?

2. A proposed law: To alter the Constitution to insert a preamble. Do you approve this alteration? The text of the proposed preamble is: 'With hope in God, the Commonwealth of Australia is constituted as a democracy with a federal system of Government to serve the common good. We the Australian people commit ourselves to this Constitution, proud that our national unity has been forged by Australians from many ancestries; never forgetting the sacrifices of all who defended our country and our liberty in time of war; upholding freedom, tolerance, individual dignity and the rule of law; honouring Aborigines and Torres Strait Islanders, the nation's first people, for their deep kinship with their lands and for their ancient and continuing cultures which enrich the life of our country; recognising the nation-building contribution of generations of immigrants; mindful of our responsibility to protect our unique natural environment; supportive of achievement as well as equality of opportunity for all; and valuing independence as dear to the national spirit which binds us together in both adversity and success.'

While suggestions were invited by the media and various groups from all Australians to propose an appropriate preamble, the above version was finally written by a team taking into account Australia's deep commitment towards multiculturalism, recognition of the role of migrants over several generations as well as acceptance of the fact that the Aborigines and the Torres Strait Islanders were the first inhabitants on this soil. The above proposed preamble is a synthesis of several suggestions that were put forward.

As an example, my personal suggestion was as follows: 'The sovereign island continent of Australia owes its creation to the omnipotent divine master of the universe and acknowledges the first permanent human settlement on its soil by Aboriginal and Torres State women and men who inhabited this region through centuries. Australians find courage and determination to shape the future of their country in the spirit of its tradition of tolerance, unity, and mutual respect that are the cardinal ethos of the Australian constitution. This constitution provides the source of strengths, honour, wisdom, sorrows and happiness for all Australians, women and men representing first settlers and subsequent migrants who are guaranteed equal dignity and rights.'

Altering the Constitution requires a "double majority" - not just a majority of voters in a majority of states, but a national majority as well. The referendum seeks to receive verdicts on two issues although one is not directly related to the other. Australians may choose to say 'No' to the Republic issues; yet vote for the inclusion of the preamble in its constitution. The opposite may also be the case.

The Case for and against a Republic At present, support for the republic and status quo are equally high (about 43 per cent on each side) while 14 per cent of the Australians have not quite made up their minds yet. There is a great deal of controversy over what shape the Republic might take. And although the controversy over the model is to a large degree contrived, the doubts and fears aroused by it are real. They constitute the greatest threat to the Republic proposal in the referendum. The referendum may be lost not because people do not accept the idea of a republic but because of unresolved concerns about the model. If that happens, it will be a tragedy.

There are two main areas of misunderstanding. The first is seen in the broad array of red herrings, the dangerous consequences wildly asserted to threaten if the republic is embraced. It has been said, for example, that it will increase the risk of dictatorship, harm relations with Britain and fracture the Federation. None of this is true in a republic, the new head of state, the president, will assume the largely symbolic role of the Queen and Governor-General, with not the slightest capacity to plunge Australia into dictatorship. As a republic, Australia will continue to have close relations with Britain and still be a member of the Commonwealth of Nations. The Federation cannot be broken by a vote for the republic. The other area of confusion concerns the manner of choosing the new head of state. The referendum proposal modifies the present system of choosing a Governor-General very slightly and provides a more open selection process than now. It allows public nominations for president and requires the president to be nominated by the prime minister, seconded by the leader of the opposition and approved by at least two-thirds of the parliament. A confused and confusing argument has developed between those who are pressing for a system of direct election of the president and those who believe the proposed indirect method is, as a first step at least, preferable. Undoubtedly there is widespread support for direct election of the president, and for sound reasons. The enthusiasm for direct election points to a high level of engagement with the proposal for a republic and reflects the strength of the instinct of Australians for a high degree of participatory democracy. Support for direct election is naturally high when the popularity of politicians generally is low. The possibility of a directly elected President is something which need not be ruled out. But it is something for the future. The proposed model is a small step within a constitutional arrangement that is well tried and well understood. It is sound, logical and safe. To go further at this stage would be a radical change. It would open a far wider range of constitutional questions - particularly in relation to the powers of a popularly elected president - which have not been articulated in the public debate. Without that consideration of wider constitutional questions, the referendum question must be weighed on its merits. It should not be rejected because of a fixed focus on the preference of direct election. In the absence of the wider discussion of the true constitutional implications of direct election of the president, the arguments against it should stand as a caution. First, far from giving more power to the people and less to the politicians, direct election would practically ensure the political parties' deep involvement, indeed dominance, in any presidential election. A directly elected president would be as much a politician as any member of parliament. The subtler but more important reason to hesitate before embracing direct election is that it would create a new and potentially destabilising centre of power under the Constitution. A directly elected president could claim a popular mandate to challenge the prime minister and executive government. These are potential problems for consideration if and when direct election of a head of state becomes an option. At present it is not. The referendum proposal has also been attacked as too radical by the former Governor of Victoria, Mr Richard McGarvie, but unconvincedly. Mr McGarvie's proposal to leave the power to elect the president solely with the Prime Minister acting on the advice of a constitutional council of three retired judges or governors would produce an unnecessarily narrow approach to the selection of the president. The proposed model is attacked for making it too easy for the prime minister to dismiss the president. But the referendum proposal increases the degree of accountability in this regard by explicitly assigning a role to members of parliament in both the appointment and dismissal of a president. The campaigners in favour of the republic model believe that the republic model preserves the existing, well-tried and familiar balance of power under the Constitution. It is workable and safe. It respects the Westminster principles on which the Australian parliamentary system of government

has evolved. It avoids rather than invites problems in the future. It ensures the selection of a President who will not only enjoy broad political support but also the confidence, indeed affection, of all Australians.

On the other hand, the alliance for the "NO" vote maintains that this referendum is not just about whether Australia should become a republic. It is about the type of republic model being proposed is seriously flawed - it is untried, unworkable, undemocratic and elitist. According to them since the politicians will appoint the president, not the people, it removes the checks and balances from the current system. They seem to be taking advantage of the apparent incivility of many Australians regarding this issue. While they have come forward with some logical arguments in favour of their status quo model, some examples of their way of simplifying the issue for their voters are:

1. Those who don't know - you should vote 'NO' - because that is the only safe way - because... 2. Those who want to elect their President - should vote 'NO' - because under the proposed model, they will have no say in who their President will be. 3. A puppet for President! - Vote 'NO'! 4. Those who want an appointed President - should vote 'NO' - because the proposed model is fatally flawed. The President will be a Prime Minister's puppet, subject to instant dismissal. 5. Keep the status quo! - Vote 'NO'.

6. Those who value the certainty and stability of our current Constitution - should vote 'NO' - because any alternative has to be as good as or better than the current system. This proposal falls that fundamental test. An Analysis In essence, a republic is a system of government where ultimate sovereignty should rest with the people. Australia's Constitution only came into effect by the vote of the people. And one of the great merits of Australia's constitutional arrangement is that under section

128 of the Constitution, the Constitution cannot be changed without asking the people. That is a good definition of a republic. It is also a classic case of direct democracy which can be a matter to replicate in many countries where constitutions remain fragile.

In converting to a republic, the key question is 'how should Australians appoint their head of State?'. By direct democracy, one means a greater public participation in the political process. As Gareth Evans, a Federal Minister says 'I championed the ethic of participation because I see it as an antidote to the sense of alienation many people have with our political process. And that alienation, disillusionment and disaffection has become worse because of the power in the Commonwealth'. The history of referenda in Australia has been decided by whether or not the proposition provides more power for the executive at the expense of the public at large.

Unfortunately, the republican model, now the subject of the upcoming referendum, falls this test. The exclusion of the public from directly choosing the president will only reinforce that feeling of alienation in our society and many have always expressed grave concern about any endeavour to entrench rules by elites. In addition, the ease with which a President could be sacked would weaken, rather than strengthen Australia's democracy.

The electorate today is better informed and better educated than ever before. However, people are also feeling a sense of disillusionment. Many, probably the overwhelming majority, feel disenfranchised by the system. Australian democratic institutions are not set in stone. They will continue to evolve. The reality of greater public participation is the antidote to those who feel alienated in the political process. The Australian public will support a republic but only if they have the final say in the appointment of the head of state. This eventually will make for a better system.

The Australian Republican Movement model, in large part adopted at the national convention, was conceived with an elitist process of appointment as its centerpiece. It fails almost every criteria of democratic design: universality of franchise, equality of voting rights, transparency of vote processes. The model to be voted on is by no means a minimalist one. It goes well beyond substituting the name "President" for "Queen". A major fault lies in the

mechanism for dismissal of a President. The Prime Minister would possess the power to summarily dismiss the President in writing. Such a dismissal would be subject to review by one house of parliament but could not be undone. The Prime Minister's action would result in a vote in the House of Representatives but a loss vote would not restore the president to office.

The model inverts the source of sovereignty by making the president's tenure dependent on the prime minister. It posits de facto sovereignty in the prime minister. It is a common view that a future Australian republic should take on a non-executive form, in contrast to the executive form such as in the US. There are five countries with popularly elected, non-executive Presidents - Austria, Iceland, Ireland, Portugal and Singapore. Ireland and Austria are just two examples which refute fears of those who claim parliamentary democracy and popular election are incompatible.

Another view, however sceptic it may sound, may be that the direct election model would not be captured by the political parties. It would not be in the interests of the political parties to do so. It is acknowledged that all major political parties in Australia consider policy development is properly the province of a pluralist parliament. A party nomination would be elevating the contender to a status that neither side support because it would create a competing point of party leadership that would undermine the authority of the parliamentary party. Secondly, the preliminary act of a political party endorsing a candidate would not be popular. The public do not want a party political head of state.

There is one other reason to vote "No". The referendum proposal is more complex than people realise. Unlike many previous referenda, the details of the actual words to be incorporated or deleted from our Constitution have not been submitted to a convention for debate. To vote "Yes" would be the same as giving away blank cheques. No doubt Australia will convert to a republic in the first few decades of the next millennium. There is no hurry. A "Yes" vote will entrench a third-rate compromise. A "No" vote is a necessary first step on the road to a genuine participatory democracy, a "Yes" to a genuine Republic.

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UN's Fifty-fourth Anniversary: An Observation

by Harun ur Rashid

The non-payment of the budget dues by the US places the UN on the brink of financial ruin. There is a view that threat to international peace and security will emanate from emasculating the activities of the UN and not from the activities of so-called "rogue states". It is disheartening to have a cynical view on the UN's birthday.

THE United Nations celebrated its 54th year on 24th October. It is a successor to the failed League of Nations. Why did the League of Nations fail? One of the principal causes was that the UN Charter, did not ratify the Charter of the League of Nations. Do we see the same pattern of behaviour from the US Senate towards the UN? Some may say yes.

The US Republican party appears to be on the revenge mood because it could not impeach President Clinton on Monica Lewinsky's affair. Therefore for narrow domestic political interests it appears to be determined not to provide President Clinton any success on foreign policy initiatives. Look at what happened to the Comprehensive Test Ban Treaty (CTBT) in the Senate. They failed to ratify the Treaty although British Prime Minister and French President dramatically and in an unprecedented manner requested the Senate to approve it. The Senate did not listen to the world opinion because it serves well for domestic politics. We must not forget that next year is the US Presidential election.

As a result of Senate's action, the Clinton administration lost the moral leadership in the pursuit of its goal of nuclear non-proliferation regime in the world. They have embarrassed the US administration by refusing to ratify the Treaty. As a result Russia has every reason to suspect the US on the conduct of nuclear tests in future as it is reviewing its position. China is reported to have now embarked on more earnestly to develop effective second-strike nuclear capabilities. The US has no moral authority to request India and Pakistan to sign the CTBT. The hope of nuclear non-proliferation seems to have disappeared by the action of the Senate.

It is a pity that the UN is on the verge of bankruptcy because of the defaults of some of the major powers. Let us look at the UN budget at a comparative scale. The 'core' UN spends about less than \$2 billion dollars a year under its regular budget while the entire UN agencies spend about a little over \$11 billion dollars. These are small sums compared to those spent on arms race per year. It is estimated that in Kosovo war NATO members spent about \$27 billion dollars and one-and-a-half days of the cost of the Gulf war against Iraq would have paid for all UN peace-keeping operations for that year. It is estimated that the current expenditure on arms race per year could pay the expenses for the entire UN agencies for 133 years.

The Senate is crippling the activities of the UN by refusing to pay its dues to the UN. The US owes \$1.25 billion to the UN. There is a view that the Senate does not approve the dues because President Clinton recommends it to them. Of course the Senate provides other reasons for not paying the dues, including that of the UN's peace-keeping operations. First, they link the payment of dues to the reforms to be made in the UN. The Secretary-General has undertaken its reforms with whatever was within his power. That does not satisfy the Senate because essentially some of the Republican Senators do not like to see that the General Assembly runs on a democratic principle - one nation one vote. This means Maldives' vote is as important as that of the US. Secondly, many of the Republican Senators have developed a sense of isolationism in their outlook from the rest of the world and they do not care about the image of the US abroad. Why will they care about it? There are no votes lost in the US elections. Thirdly, if the UN has financial troubles, it is easier to keep it under pressure.

Some maintain that the formula of the assessed contribution by the member states needs overhauling and that no single nation should pay more than 10 per cent of the total budget of the UN. The dependency on one nation for a quarter of the budget appears to be a nagging problem for the UN. Till this reform is in place, the member-nations have legal and moral duties to pay their dues to the UN. After all the Charter of the UN is a multi-lateral Treaty which establishes rights and obligations of the member-nations and under the terms of the 1969 Vienna Law of Treaties, no country can invoke its internal law or procedures to justify its failure to perform an obligation enjoined by the UN Covenant to which it is a party.

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The author, a barrister, is former Bangladesh Ambassador to the UN, Geneva.

or reduce its contributions to the UN. For example, Germany, Japan and Denmark have paid less to the UN Development Programme (UNDP). The UNDP is the front face of the UN and if its activities are curbed the people of the developing countries will be adversely affected.

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Womb-to-tomb Prejudice Takes its Toll

As Australians argue over whether or not it is an insulting anachronism for Britain's Queen Elizabeth to preside over the opening of next year's Sydney Olympics, the country's original inhabitants have a bigger struggle on their hand - how to overcome discrimination, debilitating health problems and poverty. Gemini News Service looks at the continuing shame of 'the lucky country'.

Dr Sanjiva Wijesinha writes from Canberra

A resident for president?

On 6 November, 12m Australians will vote in a referendum on whether to keep Queen Elizabeth as head of state, or to become a republic

Graphic with text: 'The question: YES NO or' and 'to a proposed law to alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament'.

To succeed, the republicans need to win a majority of the total electorate, and a majority in four of the country's six states

that of the rest of the population; the number with alcohol dependency is 14 times higher and the death rate from cervical cancer is 10 times higher. All these conditions - lung cancer, alcoholism and cervical cancer - can be reduced with appropriate health education.

It was only in 1967 that Australia following a nationwide referendum, formally recognised its indigenous people as citizens. Says Joe McGinness, who grew up in an institution for Aboriginal children in Darwin, 'When I returned home after the [Second World] war, I discovered that the country I had fought for did not even recognise me as a citizen.'

As president of the Federal Council for the Advancement of Aboriginal and Torres Strait Islanders, McGinness played a prominent role in the campaign for the referendum that ended constitutional discrimination against his people. In 1965, he led a delegation of Aboriginal leaders to Canberra to meet the then prime minister, Sir Robert Menzies. They pointed out that while a census was regularly taken of the rest of Australia's people, and even of the number of sheep and cattle in the country, no such exercise was performed for indigenous people.

Observed former prime minister Gough Whitlam, 'Aboriginals represent the greatest pockets of poverty and shame in Australia. The incidence of leprosy, tuberculosis and infant mortality is higher among Aboriginals than among any other identifiable section of the world's population.'

A recent editorial in the respected newspaper The Australian observed: 'Their general health is still worse than for some so-called Third World countries. Successive international reports from organisations as varied as the US State Department and Amnesty International have pointed a finger at official Australia for lack of progress in bettering Aboriginal living standards.'

It is damning indictment of the way Australia's original inhabitants have been treated since the earliest days of European settlement - in a nation that has come to be known as the Lucky Country.

The author, a medical practitioner who has practised in England, Sri Lanka, Hong Kong and Australia, spent six months working for the Aboriginal Health Service in the state of Victoria.

Cartoon strip by Hanna-Barbera featuring Tom and Jerry. Panels show Jerry talking to Tom about a list of names and Tom's reaction.