

Harris, B. *A New Constitution for Australia*, Cavendish, London, 2002, ISBN 1 876905 06 9, pp. 313 (including index)

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This is a challenging book which is focused on the question of reform of the Australian constitution. That is to say, it is no doctrinaire exposition of the fundamental legal principles allegedly making up the constitutional structure in Australia. It is much the better for it.

One of the failures of many legal texts in this area is the fact that they are simply technical expositions of what this case decided and what that case decided; or how this principle might be connected in some way with that principle. It is a narrative motivated by questions of ultimate validity, although this criterion of validity seems something other than logical. It is if anything historical and authoritarian. Or it is a question of explaining a series of *ex cathedra* pronouncements of high judicial authority and talking of inconsistency and confusion when they appear at loggerheads. What is often missing in this exegesis of technical rules (after all the constitution is the supreme law, so they say) is the underlying political context of the debate.

Harris is certainly alive to that underlying context. The text discusses a number of key areas of reform. Questions such as this are raised. Should the Australian constitution have an entrenched Bill of Rights? Should customary law be recognised in it? This might seem an odd question to many of us in the South Pacific, but in Australia it remains a paradoxical question in some quarters. What kind of federal model or arrangement between the national and regional entities is desirable for the country? Why are judges selected in the particular manner provided for? Does Australia need a monarch and particularly the British monarch as Head of State? There are many other pertinent issues of this order of importance which are opened up for consideration by this book.

Harris is able to draw on his considerable experience as an academic many jurisdictions to draw worthwhile comparisons without seeking either to universalise the issues involved or to engage in some grand assimilative exposition. The experience of other systems, both federal and unitary are drawn into the discussion. The South Pacific jurisdictions do not rate a mention unless we count New Zealand as one of those. Perhaps New Zealand would be happy if we did, if only because Australia officialdom does not usually portray itself as part of this region.

It is true enough that we expect constitutions to change or at least adapt to changing social and cultural circumstances. Australian lawyers have long been aware of the problems in dealing with a constitution which assigns a limited range of powers to the national government and leaving the residue of powers to the States. The Constitution was formed at a time when the forces of national identity in Australia were weak and the power of the former colonies, the States, were very strong. Much was left to the High Court in achieving new balances of national and State powers in terms of a growing national consciousness and the emergence of Australia as a moderate international power. However the Court has on the whole been conservative in its approach to constitutional reform even in the judicial sense. There have been notable periods of exception to this, but nothing approaching wide scale legal realism on the part of judges has really held much sway (the decision *Mabo* notwithstanding).

How is constitutional reform to be achieved? Ultimately, as the last chapter of the book seems to suggest, it must be found and/or located in the broader political consciousness of the people of Australia. Legal change is much more reactive than it is proactive because legitimacy of the court is always a present concern. Unfortunately, I found this to be one of the least interesting and more disappointing of the Chapters in the book as a whole. There is really not much which the author feels he can contribute on this issue. Thus it ends with a whimper rather than a bang.

That aside, the issues raised for discussion are highly significant and well treated. The points are well argued and draw on a good depth of research and scholarship. They might well raise controversy in certain circles. For my own sake, I certainly hope that they do.

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