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2001

This article was originally published at:

http://www.unswlawjournal.unsw.edu.au/issue/volume-24-no-3

MULTICULTURALISM AND THE *AUSTRALIAN CONSTITUTION*

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I INTRODUCTION

The poet Shelley once said that poets are the unacknowledged legislators of the world.[1] He was right. Societies are shaped by images, metaphors and tropes – word-pictures of what particular societies stand for, what principles are important, where the societies are heading. These images are often constitutive in the sense that they provide a unifying language of public action, shape individuals' political engagement, privilege certain policy outcomes and sketch the limits of political disagreement. When we think of what our country stands for – what its essential values are – we generally think in terms of these tropes and metaphors.

The metaphors change over time. Societies change and images change with them, often through vigorous contestation and debate, for there never is a single set of fully agreed values in any nation, even the most unified. The tropes and metaphors, even if shared, provide the terms in which disagreements, not merely agreements, can be expressed. Indeed, at its most far-reaching, political argument consists in the attempt to redefine the terms in which public issues are understood, proposing new metaphors or giving old conceptions new meanings. Political leaders are often effective precisely because of the forcefulness of their imagery – the facility with which they translate complex ideas of nation and policy into simple phrases and striking images.

This process of making and remaking the country through language is related to what we normally mean when we refer to constitutional reform, but we should not simply collapse the two. Written constitutions are poor instruments for defining a country. Countries are always richer and more varied than the bare terms inscribed in legal texts. They contain much more diversity and disagreement. They are more dynamic – changing, creating and recreating themselves, struggling over what they take to be their essential principles, rediscovering rights and wrongs in their past, working to correct some mistakes, working to defend others, struggling to determine where the country has come from and where it should be heading.

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1 Percy Bysshe Shelley, *Defence of Poetry: Part First* (1840).

It is worth keeping in mind this tenuous relationship between images of the country and the written constitution. Our country may change radically, it may embrace new and fundamentally important principles, yet those changes, those principles, may not be reflected in the written text. Moreover, there may be no reason why they should be reflected there. One of the great errors of constitutional reform is the temptation to write the whole country into the constitution. That is impossible. But the aspiration alone can often be stultifying, for it inevitably enshrines a pared-down caricature of the country, one that is anachronistic from the moment the words are formulated.

Written constitutions provide a framework within which public action can be organised and public debates can occur. They provide a structure for the continual creation and re-creation of society through argument and collective decision-making. They should not be expected to define everything about a country – not even everything fundamental about a country.

That forms the backdrop for the discussion of multiculturalism and the *Australian Constitution* ('Constitution') in this article. Australia has changed dramatically since its founding. Nowhere are the changes more far-reaching than in the link between citizenship and cultural diversity. The constitution of Australia, in this fundamental sense, has changed radically since 1901. That does not mean, however, that the written Constitution should be reconceived or amended, even though it does not reflect those changes. The country has changed. But it is entirely a different question whether and how the text should be changed.

This article is about the change in the constitution of Australia as a result of Australians' acceptance – albeit qualified – of cultural diversity. The first part of this article reviews that change and its implications for Australians' self-image. But this article is also about – indeed mainly about – the relationship between three different and interlocking dimensions of the constitution of Australia:

(1) what might be termed the 'symbolic constitution' – the fundamental images that shape our sense of what our country is about, which may be reflected in the constitutional text, in legislation, or in the general course of public discussion;
(2) what might be termed the 'practical constitution' – the cluster of policies and enactments, not necessarily enshrined in the constitutional text, that contribute to the definition of our country; and
(3) the constitutional text itself.

II FROM WHITE TO MULTICULTURAL AUSTRALIA

The history of Australia's move from, on the one hand, Indigenous exclusion and a restrictive and racially-based immigration policy to, on the other, an acceptance of cultural diversity, is well-tilled terrain. I do not intend to review it

here in detail.[2] It is worth reminding ourselves, however, of the centrality of ethnic homogeneity to the original conception of Australia, the nature of that conception, and the extent of the subsequent change.

At the time of Federation, Australia was conceived in terms that presupposed a very high level of cultural homogeneity.

Aboriginal peoples were seen as essentially irrelevant to the new nation, considered to be insufficiently advanced to be capable of citizenship, removed from non-Indigenous society by a profound cultural gulf, and expected by many to be on the road to extinction, at least as full-blooded Aboriginals. They were denied the vote in the new federation. They were not to be counted as part of the population of the Commonwealth or of the States. They were, in effect, treated as part of the environment – the object of governmental action, not political actors in their own right.[3]

But other non-European individuals did constitute (to 19th century Australian eyes) potential claimants to participation in national life. A central theme in Australian Federation involved their active exclusion.

Indeed, the perceived cultural uniformity of the continent was one of the principal reasons that Federation appeared, to many colonists, to be the natural destiny of Australians. As Hirst states:

> The social uniformity within the continent also marked out Australia for nationhood. The people were of one blood or stock or race; they spoke the same language; they shared a glorious heritage (Britain's), the most celebrated part of which was political freedom, which had been extended in Australia to all men so that the country was the freest on earth; the people were also of the one religion (which ignored the Protestant/Catholic divide, although it was not regionally based as it was in the United Kingdom and in Canada).[4]

Moreover, the maintenance of this cultural uniformity against non-white immigration was seen as one of the chief purposes of the new federation, a purpose rendered all the more necessary because of the racial heterogeneity of the Empire itself and Britain's own desire to avoid racial restrictions on immigration in order to maintain good relations with Japan. The vision of a White Australia therefore had very broad support among the founders of the Australian federation. The first substantive legislation of the new Commonwealth Parliament was an act designed to exclude Asian immigrants (although this intention was thinly disguised through the imposition of a dictation test on would-be immigrants, a test that could be administered with discriminatory effect). Parliament also moved quickly to bring to an end the use of Pacific Islanders in the canefields of northern Queensland, prohibiting the entry of further labourers and deporting most of the Islanders already in Australia.[5]

This policy of racial exclusion was intimately linked to other elements that we now consider to be more worthy – elements of progressive social policy in a

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2 For the beginnings of the policy, see, eg, Helen Irving, *To Constitute a Nation: A Cultural History of Australia's Constitution* (1999) 100ff.

3 Ibid 127ff.

4 John Hirst, *The Sentimental Nation: The Making of the Australian Commonwealth* (2000) 16.

5 Ibid 22, 84, 204ff, 285-7; Irving, above n 2, 100-18.

country that was widely seen as one of the most innovative of the early 20th century. Australia was to be a nation founded on democratic participation; it therefore needed to attract residents capable of exercising political freedoms and, more generally, assimilating to the cultural mores of a British dominion. It was to be a country free from vast discrepancies of wealth; it therefore had to prevent the importation of non-white labourers likely to form a subordinate caste within the Australian polity. It was to be a country in which the dignity of work was to be respected and the return for one's labour based on principles of just remuneration; it therefore had to ensure that these principles were not undermined by low-wage competition.[6]

It is troubling to find the heroes of Federation and of early-20th century social movements so thoroughly ensconced in what we now consider to be the wrong side of this issue. But it is worth remembering that to them, White Australia was not about racial hostility. It wore much more acceptable garb (as ethnic intolerance generally does today). It was, in their view, a necessary precondition to the achievement of the objectives they most valued. It was a foundational premise of the country they were creating, an essential part of Australia's constitution (in the broad sense of that word).

That does not mean that it was incapable of being challenged. There was debate over the degree and consequences of ethnic exclusivity. The first Commonwealth Government initially wished to confer the vote on Aboriginal people. Aboriginal people were excluded only after debate.[7] There already were Australian residents of Asian ethnicity, some of whom (like the remarkable Quong Tart of Sydney) were leaders of the community. Japanese and Chinese communities built floats and arches for the Federation celebrations.[8] Like the rationale for ethnic exclusion, this possibility of challenge is worth remembering, for it helps us separate what has been most valuable in the Australian experience from what we now see as a false road.

The image of Australia as an emphatically white nation had considerable longevity.

Once again, the relations with Indigenous Australians had their own dynamic, intrinsically related to the fact that, however ill-fitted white Australians might believe Aboriginal people were for the modern world, the Australian continent was their country. As it became clear, over time, that Indigenous Australians' identity would not simply die out – and, above all, as Aboriginal people asserted their determination to retain their culture and claim their place in this land – successive Australian governments moved towards the acceptance of Indigenous Australians as full members of the Australian polity. Milestones along this path included:

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6 Nor was Australia alone in this coincidence between progressive social movements and racial exclusion. See, eg, W Peter Ward, *White Canada Forever: Popular Attitudes and Public Policy Toward Orientals in British Columbia* (1978).

7 Hirst, above n 4, 288; Irving, above n 2, 113-14.

8 On Quong Tart and Japanese and Chinese floats and arches, see Irving, above n 2, 105-7, 112-13.

- the granting of the Commonwealth franchise to Aboriginal people (by legislation) in 1962;
- the amendment of the Constitution in 1967, to delete the exception of Aboriginal people from the 'races power' in s 51(xxvi) (so that the Commonwealth could now pass special measures with respect to Aboriginal people) and to delete s 127, which excluded Aboriginal people when determining the population of the Commonwealth or a State;
- the adoption of statutory land rights legislation, especially the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth);
- the judicial recognition of native title in *Mabo* v *Queensland [No 2]* ('*Mabo*')[9] and the subsequent enactment of the *Native Title Act 1993* (Cth); and
- the increasing incorporation, over time, of Indigenous elements into the national symbolism.

With respect to immigration, racist policies survived essentially intact through the 1950s and into the 1960s. Immediately following the war, Australian immigration policy was liberalised to accept many more immigrants from continental Europe. Asian immigration was still discouraged, however. In the 1960s, a modest avenue was opened for non-European immigration when 'distinguished' non-Europeans were permitted to apply. The general framework of the policy survived, however, until 1973, when the Whitlam Government abandoned race as a criterion for immigration.

Since that time, there has been express acceptance in Australian political life of a non-discriminatory immigration policy and a multi-ethnic Australia, often justified under the rubric 'multiculturalism'. Successive initiatives have attempted to define what that means for Australia and to put in place measures to support it. The adoption of the *National Agenda for a Multicultural Australia* in 1989,[10] with bipartisan support, was an important crystalisation of those initiatives. At the same time, the experience of non-British immigrants claimed a place in national symbols and celebrations.

The dismantling of the White Australia Policy also opened the way for greater embrace by Australia of principles of racial equality. In the negotiations leading up to the *Treaty of Versailles* in 1919, Australia had opposed the adoption of international norms on racial equality precisely because of their potential impact on Australia's racist immigration policies. The abandonment of those policies permitted Australia's full acceptance of norms elaborated, at times with Australian participation, in the years following World War II. In 1975, the *International Convention on the Elimination of All Forms of Racial Discrimination* ('*CERD*')[11] was incorporated into Australian domestic law through the *Racial Discrimination Act 1975* (Cth).

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9 (1992) 175 CLR 1.

10 Office of Multicultural Affairs, Department of the Prime Minister and Cabinet, *National Agenda for a Multicultural Australia* (1989).

11 Opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

The rejection of the image of a White Australia was dramatic and far-reaching, although, like any such change, not universally or immediately accomplished. Some Australians still cling to the old resistance to Asian immigration. This has been one plank, for example, in the platform of Pauline Hanson's One Nation Party. Even some in the mainstream have questioned whether the volume of Asian immigration might be subjected to greater limits. The historian Geoffrey Blainey triggered such a discussion in the mid-1980s, and his sentiments were echoed by John Howard (as Leader of the Opposition) in 1988. One suspects that similar themes may be at work in the tough stand recently taken by the Howard Government against Afghan and Iraqi asylum-seekers.

III MULTICULTURALISM AND CONSTITUTIONAL REFORM

Nevertheless, the move away from White Australia and towards an Australia that is racially and ethnically diverse has been a fundamental change, accomplished with only the most minimal impact on the text of the Constitution (and that only with respect to Indigenous Australians, actuated by considerations unique to the Indigenous experience, independent of those applicable to immigrant Australians). Is this relative absence of direct constitutional change problematic? Would constitutional amendment be beneficial?

First, it is worth noting that this change was accomplished relatively easily (in terms of procedure) precisely because the written Constitution did not expressly enshrine the former White Australia Policy. Some provisions bear the marks of racist policies. Section 25 specifies that persons of a race excluded from voting in the States are not to be counted in determining the population of those States. (This created a structural disincentive that discouraged racial exclusions from voting, for it meant that States could not take the benefit of minorities' numbers in reckoning their population for the purposes of federal representation while excluding them from political participation.[12]) Similarly, the 'races power' in s 51(xxvi) was originally designed to permit federal action with respect to ethnic minorities deemed undesirable. But neither of these provisions instituted racist policies or required them to be adopted. They left the matter to the legislatures, and thus the former policies could be abandoned without any formal constitutional change. The wording of the provisions may be objectionable in their contemplation of race-specific legislation – legislation that was clearly not intended (at least originally) to be for the benefit of individuals of other races. But once the substance of the policy had changed, the removal of the provisions became more a matter of symbolic than of practical importance.

This was not true of one of the provisions that specifically addressed Aboriginal people: s 127 (which prohibited them, unconditionally, from being counted as part of the population of the Commonwealth or a State). Any attempt

12 John Quick and Robert Randolph Garran, *The Annotated Constitution of the Australian Commonwealth* (first published 1901, 1976 ed) 455-6.

to bring Indigenous Australians into full membership in the Australian polity had to involve removal of this provision, as occurred in the 1967 referendum. That referendum also amended s 51(xxvi) to empower the Commonwealth to legislate with respect to Aboriginal people. Even though the amendment may not require such legislation to be to Indigenous peoples' benefit,[13] there is no doubt that the motive for the amendment was to permit legislation favourable to Indigenous peoples.

Hence, the fact that the framers of the Constitution left the content of immigration policy to political decision-making and did not attempt to determine it through constitutional stipulation permitted the wholesale abandonment of the White Australia Policy without constitutional amendment. But should we now seek to write the new dispensation into the Constitution?

If we were to amend the Constitution in response to the acceptance of a culturally diverse Australia, what provisions might we be tempted to adopt? The answer depends on what specific form of cultural diversity one wants to address.

This is not the place to discuss cultural accommodation at length, but it is clear that different forms of cultural diversity may justify different forms of accommodation. Will Kymlicka writes of the difference between national minorities (such as Indigenous peoples) and minorities resulting from immigration. He notes that measures appropriate for the former generally involve a measure of autonomy, while measures for the latter tend to promote more extensive participation in the society at large, especially through protection against discrimination.[14] This categorisation, like all acts of categorisation, may be too simplistic. But it suggests the need to adjust measures of accommodation to different forms of cultural difference; a diversity of response that is reflected in the significantly different policy approaches that have been pursued with respect to Indigenous peoples and immigrants in Australia. Nor are measures to foster autonomy strict alternatives to measures to promote greater participation in the broader society, even for the same cultural groups. The two approaches are often best combined. This, after all, is precisely what occurs under a federal structure of government. Federalism permits a measure of governmental autonomy for regional political communities (through State institutions), while at the same time permitting all citizens to participate equally at the level of the Commonwealth. Similarly, cultural accommodation may involve a blending of approaches, providing for equality of participation in the general institutions, but in some cases (such as in the case of Indigenous peoples) providing for a measure of governmental autonomy.

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13 *Kartinyeri v Commonwealth* (1998) 195 CLR 337 (*'Hindmarsh Island Bridge Case'*).

14 Will Kymlicka, 'Liberalism and the Politicization of Ethnicity' (1991) 4 *Canadian Journal of Law and Jurisprudence* 239.

IV CONSTITUTIONAL REFORM

So what constitutional measures might be appropriate? I will first set out the array of possibilities, before considering their advisability.

A Options for Constitutional Reform

The first and most obvious category consists of measures that erase the traces of past discriminatory policies. In Australia, this certainly includes s 25, which has no useful role once the franchise is made available to all irrespective of race. The 'races power' (s 51(xxvi)) might also fall into this category if it merely retained its original purpose of permitting the Commonwealth to act against members of races considered undesirable. That provision has, however, assumed a new function as the basis for Commonwealth power to adopt special measures with respect to Aboriginal people. If eliminated, it would have to be replaced with something else that could serve this function.

A second category consists of those measures that facilitate more general participation in the institutions of the society at large. The most obvious constitutional provisions that might respond to this desire would be measures designed to prevent discrimination and to protect individual rights – in other words, a constitutional Bill of Rights. Such a Bill would certainly protect the rights of immigrants in Australia. It might also prohibit any return to a discriminatory immigration policy.

Other provisions might be considered, however, which would directly foster political participation. The most obvious would be the reservation of seats in Parliament for members of particular groups (in the same manner as seats are reserved for Maori in the New Zealand Parliament). There are also more subtle approaches, such as the increased use of voting systems that maximise the accountability of political parties for balanced representation (such as proportional representation on the basis of party lists, where the party can be interrogated on the reasons for the ordering of individuals on its list).

A third category consists of structural measures designed to promote autonomy for those groups for which such measures make sense. These are primarily measures affecting Indigenous peoples, and might include guarantees of self-government for Indigenous communities, guarantees for institutional independence in the administration of Indigenous programs, recognition of Aboriginal customary law, or constitutionally-protected recognition of native title. One role for a national treaty might be to specify precisely these kinds of measures. The Constitution might be amended to expressly authorise such a treaty.

A fourth category would consist of measures whose relationship to Australia's cultural diversity would be primarily symbolic. These might enshrine an express declaration of Australia's multicultural character, or signal the contributions of immigration to the Australian nation, or, with respect to Indigenous peoples, recognise their prior ownership of or special connection to this land. Many proposals for a new preamble (including the proposal supported

by the Howard Government in the 1999 constitutional referendum[15]) have precisely this objective.

Other provisions too might have a profoundly symbolic impact, even if they have operative consequences. This indeed was a large part of the impact of the 1967 referendum, which not only amended s 51(xxvi) and repealed s 127, but also affirmed implicitly Aboriginal people's full participation in the Australian polity. A treaty too would be long on symbolism, through its imaginative restructuring of the relationship between Indigenous peoples and the Australian nation.

The move to a republic has often been justified on symbolic grounds related to Australian multiculturalism, because an Australian Head of State is supposed to be a more accessible object of allegiance than a British monarch to those of non-British origin.

In fact, one suspects that most suggestions for constitutional reform based on Australia's multicultural character have fallen into this last category. They are advanced not so much because of the practical changes such reforms are likely to accomplish, but because of their presumed merits in solemnly declaring, in the country's foundational document, that Australia now is multicultural.

B Evaluating the Reform Options

What of these possible reforms? Are they worth adopting? The response depends not only on the intrinsic merit of the proposals, but also on the value of pursuing them by means of constitutional amendment. The affirmation of cultural diversity, and indeed many practical measures to recognise and respond to that diversity, can be achieved by a range of means. One has to have special justification for choosing constitutional amendment as the way of doing so. Writing measures into the Constitution has consequences that may be beneficial or detrimental, depending on the context.

The most salient characteristic of constitutional entrenchment is its rigidity. Once enacted, the provisions are extraordinarily difficult to change, for any change has to follow the onerous procedures of the constitutional amendment formula. This is precisely why entrenchment is often favoured by advocates of constitutional reform. It holds the promise of putting the measures out of the reach of later governments, which may lack the same regard for the principle of a multicultural Australia.

But that same rigidity has disadvantages. First, it makes the new provisions difficult to adopt in the first place. In entrenching the provisions, one has to muster an extraordinary level of public support, which will affect the chances of success, as well as the nature of the amendments that can be secured. Moreover, the very prominence and permanence of constitutional change may impede the ability to enact reforms. Electors may balk precisely because they are unsure if the provisions can stand the test of time.

Once the provisions are enacted, they are very difficult to change. This may be inappropriate for some measures of cultural accommodation, where

15 Constitution Alteration (Preamble) 1999 (Cth).

experimentation may be beneficial. This may be true, for example, of Indigenous self-government (especially in the first stages), where a progressive extension of jurisdiction, or a process of trial and error with various governmental forms, may be most appropriate. Prior to this experimentation, we may not yet be in a position to entrench anything but the most general principles.

And do we in any case want to place today's substantive judgments – today's ways of pursuing the ideal of a culturally diverse Australia – beyond the control of future legislatures? If our forebears had chosen that route, White Australia would have been enshrined in the Constitution (as a number of commentators have observed in recent years). Quite apart from the prospect of such fundamental change in the mores of the nation, constitutional provisions – especially those driven by largely symbolic objectives – inevitably engage in fine adjustments of relative salience, fine calibrations of relative identity. Those are especially likely to change. We have seen, over our lifetimes, substantial shifts in the focus of attention in cultural policy. That has led, for example, to periodic revision in statements of what multiculturalism should mean for Australians, the most recent being a revision of the 1989 *National Agenda for a Multicultural Australia*, adopted in 1999.[16] Constitutional entrenchment freezes the debate over such issues at the point it happens to have reached at the time of the amendment. It imposes a substantial burden on any future revision. Are we sufficiently confident of today's cultural policy that we wish to impose that constraint? Adopting provisions in non-constitutional form allows more room for reconsideration and revision.

Writing provisions into the constitution also tends to change the location of discussion, emphasising the courts as the guardians of the constitution and de-emphasising legislative deliberation. The courts become the privileged arbiters of democratic rectitude and respect for cultural diversity. There is no doubt that the courts can have a very useful role to play in the protection of fundamental interests. Their great merit is their relative independence from the great political movements of the time. They can focus on the specific consequences for the particular parties appearing before them, free from firm commitments to a political position. But reliance on courts also has disadvantages. Not only do courts have their own procedural constraints and institutional biases, but heavy reliance on the courts can dull the engagement of the citizenry by moving the decisions into a forum in which the public's role is largely passive. The long-term health of our polity may be better served by a population used to grappling with these issues for itself, so that respect for cultural diversity is more deeply embedded in society. One can ask, for example, whether the balance between freedom of speech and protection against hate speech would be better achieved if the issues were settled under constitutional provisions, rather than pursued through popular debate over racial vilification legislation. I strongly suspect not.

Finally, constitutional entrenchment provides added symbolic punch, which in itself is often a motive for pursuing reform by constitutional means. If the

16 Department of Immigration and Multicultural Affairs, Commonwealth of Australia, *A New Agenda for Multicultural Australia* (1999).

campaign is successful, the principle is written into the fundamental document of the country. It becomes, at least ostensibly, part of the definition of the nation. But that symbolic punch has a cost. The changes may be more difficult to attain precisely because they purport to involve such a far-reaching and permanent change. Moreover, given the necessary evolution in our understanding of our country over time, we may well want to pursue our creation of national images outside the constitutional text, in a manner that allows for disagreement and change – a process of democratic, deliberative self-education. And if we do enshrine our images in the Constitution, we may be wise to keep them cryptic, open and susceptible to re-interpretation and deepening over time.[17]

For all these reasons, approaches that avoid constitutional amendment should generally be preferred.

There is obviously good reason to repeal obsolete provisions, especially those that reflect views now considered offensive – although even there, one should not exaggerate the need for repeal. Section 25 of the Constitution presents no impediment to a non-racial franchise, and its continued presence may in fact provide a salutary reminder of the presence of racial discrimination in the country's past.

Constitutional change is especially appropriate when the reform concerns the structural shape of government – such things as the establishment of governmental autonomy. Every democratic constitution must specify the framework through which legislative deliberation takes place. If there are aspects of that structure that should adapt to forms of cultural difference (such as the allocation of legislative authority with respect to Indigenous matters, or the entrenchment of forms of Indigenous autonomy), they certainly are appropriate for constitutional inclusion. Even then, one should ensure that the framework is, as far as possible, adapted to the 'long haul', avoiding responses to very particular concerns that may become less compelling with time. That is one reason not to institute, by constitutional amendment, reserved seats for members of particular groups, but instead to rely on political mechanisms of distribution, augmented by structures for political accountability. One has to be extraordinarily confident that the character of the group will be relevant to the full gamut of political decision-making, and that one can specify the balance of representation that group should have in the long haul, before it is worth instituting those measures in a constitution. Indeed, even with structural measures, much in the way of institutional autonomy can be accomplished by legislative delegation, without constitutional entrenchment.

Above all, one should avoid enshrining substantive values in the Constitution, for fear that today's values will be tomorrow's anachronisms. Our values are always richer, deeper and more complex than the terms we might use, today, to express them. They are always subject to contestation and revision, sometimes (like the White Australia Policy itself) under the force of external pressure, teaching us lessons we would rather not learn. We do much better to rely upon,

17 See Jeremy Webber, 'Constitutional Poetry: The Tension Between Symbolic and Functional Aims in Constitutional Reform' (1999) 21 *Sydney Law Review* 260.

and indeed to foster, democratic deliberation as a means of dealing with these issues, rather than to try to seal them away for all time in the Constitution.[18]

V CONCLUSION

All these arguments are not against the pursuit of a culturally diverse Australia, nor even against far-reaching transformation of the images through which we understand Australia. They are against a particularly restricted form of constitutionalism – one focused entirely on changes to the constitutional text itself; one that implicitly assumes that all dimensions of our country (at least all important ones) must be reflected in the constitutional text.

The profound changes in Australians' conception of their cultural landscape over the last forty years have occurred, with very few exceptions, without formal constitutional reform. Australian governments have used the forms of practical constitutionalism identified at the beginning of this paper – speeches, commissions of inquiry, policy statements, legislative reform – in ways that have fundamentally changed Australians' image of who makes up their country. They have also redefined the national symbols, through argument, contestation, imaginative reformulation, and ceremony. Yet the changes have been no less far-reaching because of that. On the contrary, one would be justified in arguing that they have reached so deeply within Australian public life precisely because they have worked at so many levels.

The task is not finished. Indeed, the task is a continual one of affirming what this country should mean to its citizens, and who those citizens should be. The vision of a multicultural Australia can be eroded, as suspicions and jealousies are played upon. In this respect, the recent years of the Howard Government have not been good, as that Government's pandering to ethnic prejudice has undermined what was once a solid consensus about generosity in refugee policy, scrupulous avoidance of ethnic stereotypes, and a vigorous policy of Indigenous reconciliation. But at the end of the day, in a democracy, the definition of our country is our responsibility. There is no alternative to the requirement that we attend to the health of our constitution in all its dimensions.

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18 A similar argument also applies to the choice of method for the protection of rights. See Jeremy Webber, 'Institutional Dialogue Between Courts and Legislatures in the Definition of Fundamental Rights: Lessons from Canada (and Elsewhere)' in Wojciech Sadurski (ed), *Constitutional Justice: East and West* (forthcoming, 2002).