

\* This is a transcript of a speech presented by Professor Graeme Orr at the 2017 ERRN Biennial Workshop held at the University of Western Australia Club in Perth in November 2017.

### **In Memoriam Professor Colin A Hughes: A Queensland Perspective**

Colin Hughes was a gentleman and a scholar.

In a sense, nothing more I can say will add to that epitaph. But let us see what words can do.

Through his long stints at both ANU and UQ, it is fair to say that Colin was one of the founders of modern studies in electoral democracy in Australia. As others will explain, as the first formal Australian Electoral Commissioner through the initial Hawke years, Colin helped reshape the administrative and policy landscape of how Australian elections were run.

What, however, of electoral law and regulation as an *academic discipline*, the reason we are gathered here?

Long before researchers like Iain McMenamin and Joo-Cheong Tham mapped the empirical and regulatory domains of electoral finance and donations in Australia, Colin had been there. For example, with his 1963 survey of the funding of parties published *The Journal of Politics* and (if memory serves) a study of the Australian Country Party and its campaign finances.

Heck, even before I finished my PhD on electoral bribery as a regulatory concept, Colin left his mark on that area. With a wise article, simply titled ‘Electoral Bribery’. It reflected his deep understanding of law, electoral history and the uniqueness of the political realm.

A gentleman and a scholar... In 1997, I was barely 30, and scraping away at the coalface at Griffith University. Colin had *notionally* retired from his full time life as a professor and administrator. Yet not once, but twice, he cheerfully agreed to write research papers for collections I was editing. One on the institutional aspects of electoral administrations and their independence, for the 2003 *Realising Democracy* book that George Williams and I collated. The other, on electoral bribery just mentioned, for a symposium in the *Griffith Law Review*. Although he was retired, although he crossing disciplines – remembering however that he had practised at the bar – he was more than willing to help out an unknown academic, from a less prestigious university, who was less than half his age.

After that, he would occasionally quote a line I’d written in the symposium introduction. The line was that the law of politics, as an academic discipline, was in a ‘Cinderella stage’. I now realise that line was a bit crude. If the study of electoral regulation was in a Cinderella stage in the late 1990s, that reflected the fact that lawyers and legal academics had ignored it, or treated it as a minor subset of constitutional law. For a long time prior, political scientists had been fascinated by the politics of electoral law reform, and by the administration and political consequences of electoral rules. Colin was foremost among them: if there was a Cinderella he was its fairy godmother.

I’ll pause for a vignette. I ran into Colin at Sydney airport once: he was deep in Trollope. He expounded on Trollope, in that unique mix of dialects that was his voice, with echoes of Britain, the Americas and Australia. And he did so with the enthusiasm only encountered in someone who is scholastic enough to be a deep reader, yet humanistic enough to be a broad thinker.

From the Bahamas to Brisbane is a long way, in latitude and longitude. Less so in terms of climate. In the 1960s and 70s, the two locations also shared the remnants of a colonial mentality. On Saturday night I have to say a few words at the Queensland Council of Civil Liberty's 50<sup>th</sup> anniversary dinner. I'll suggest to those civil libertarians that they reflect on the importance of a decent political system: of political, rather than judge-made, constitutionalism. And I'll ask them to remember Colin, now 15 weeks gone, and his leading role in the post-Fitzgerald Electoral and Administrative Review Commission (or EARC) in Queensland. Colin was acting EARC Commissioner during 1992. Tom Sherman and later David Solomon were the capital 'A' of EARC, its administrative law reformers. Colin was the big 'E', for electoral reform.

The EARC years were a cleansing breeze for Queensland. Both in the Commission's exemplary consultative processes and well compiled issues papers and reports (which remain a great source for researchers to this day). And above all for its fecundity and success.

EARC dragged Queensland into the 20<sup>th</sup> century, as the wags said. But more than that, it was a thorough, modernising and liberalizing force. Amongst the many good governance reforms the Commission gave Queensland, the *Electoral Act* of 1992 stands out. It was a complete revamp, the product of 2 stages of public inquiry and reports, comprising 4 volumes published across 1990-91.

A quarter of a century on, the 1992 Act remains, in form and structure, the basis of Queensland elections. And whilst the political system in Queensland is not all it could be, it's a world away from the dark days when Colin first moved to St Lucia to work, Chapel Hill to live and Peregrine Beach to holiday. A fair electoral system and a truly independent ECQ have formed the basis on which other, more focused, accountability measures like the parliamentary committee system, Right to Information laws and administrative review and integrity functions, have been built.

The 1992 *Electoral Act* included much needed campaign finance reform – reforms along the lines of the Commonwealth model of public funding in return for disclosure, which the AEC under Colin had implemented from 1984. (As an aside, EARC gave an extra rationale for public funding beside the usual 'clean money as quid pro quo for disclosure'. That extra rationale was the cost pressures of modern campaigning, and the barrier erected by the High Court to any ban on tv advertising. Whilst he was one of the first pol scientists to grace TV in Australia, Colin was aware of the value of the British and Kiwi approach to banning 30 second commercials and having free air-time instead.)

One significant reform he and EARC bequeathed Queensland was optional preferential voting or OPV. I almost said 'innovation', but NSW had had OPV for a bit over a decade, and Queensland had had a variant of it until 1941. Like many academics, Colin recognized OPV was fairer than either FPTP or compelling full preferences, especially given compulsory turnout. Electors should not "have either to invent preferences or arbitrarily assign rankings to candidates about whom they know nothing and care less, or accept that their ballot will be [informal]". OPV was adopted *despite* the parties wanting to stick with full preferential voting.

In turn, PR was rejected. EARC thought it inappropriate to break the constituency-MP link in the house of government. Whilst PR and even MMP were canvassed, Colin's British heritage put him in the mainstream on that issue. The problem of unfairness, EARC stressed, lay in Queensland's weighting of votes via zonal malapportionment.

So the foremost reform in 1992 was the end of the zonal system. It had been a tilted scale that had served first Labor, then the Country-National Party so well, for so many corrupting years. But Colin's stamp on that reform was not the absolutist one of pure 1 vote, 1 value in a state as vast as Queensland. Instead, aware that the parties had committed to implementing Fitzgerald era reforms 'lock stock and barrel', he slipped in a creative compromise. The so-called 'phantom voter' rule. Any seats above 100 000 km<sup>2</sup> are allowed to fall well short of the normal quota. That compromise has stood the test of time. If anything its relevance was reinforced by debates last year about the need to avoid a far western seat like Mt Isa stretch all the way to the NSW border.

Of course the alternative might have been an upper house - with allowance for the regions as well as proportional representation for vegemite-spread parties like the Greens. But an upper house was the elephant in the room. Labor, who had sent the suicide squad into the regal red chamber of the Queensland Legislative Council in the 1920s, remained implacably opposed. The conservative parties, especially the Nationals, liked the idea. But the Goss government – and indeed Tony Fitzgerald – kept it off the agenda. In short, bicameralism was the one area of governance in Queensland in which the Fitzgerald process feared to tread.

I'll round up our Bahamian Briton's contributions to the law of Queensland democracy by noting that, along with Professor Gerard Carney, Colin was also the architect of the codification of the Queensland *Constitution Acts*. That was a major task he completed after he turned 71. That codification was enacted in 2001, along with a fresh *Parliament of Queensland Act*. Acts that are thankfully free of the worst excesses of section 44 of the national Constitution!

That revamp of the Queensland constitution ... well that task was the last of the unfinished business of the EARC and Fitzgerald process, having first been surveyed in a 1993 report.

All lives lead unfinished business. But Colin Anfield Hughes's left less unfinished than most.

**Graeme Orr**  
**Professor, Law, The University of Queensland**