Chapter One

The Australian Constitution: A Living Document

H M Morgan

It is a great privilege to have been asked to take the wicket as opening bat this morning at this historic conference. I should begin by confessing that my last formal contact with constitutional matters was over 30 years ago, when as a young law student I sat at the feet of Professor Zelman Cowen, who taught many cohorts of law students, now middle aged, everything they can recall concerning constitutional law.

Those lectures came back to mind when reading, a few days ago, of Sir Gerard Brennan's remarks at a human rights conference in Canberra. When speaking of a Bill of Rights, Mr Justice Brennan said:

"Our society has become more diverse in its ethnic, cultural, religious and economic composition ... there are more minority groups whose particular interests are liable to be overreached by the exercise of legislative or executive power".

Mr Justice Brennan went on:

"A Bill of Rights could also be attractive to the Government which could transfer the controversy surrounding hard political issues to the courts. There are some issues which, in a pluralist and divided society, are the subject of such controversy that no political party wishes to take the responsibility of solving them. The political process may be paralysed".

He indicated that Australian judges "could cope with – indeed revel in – the change" although he refused to personally endorse a Bill of Rights because the question was "essentially political". Such reluctance seems curious in a Justice who is offering his judicial services for the solution of political issues too difficult for the politicians to handle.

When thinking about these remarks in the context of the lectures of 30 years ago I am reminded of Moliere's satirical play about doctors, whom he detested, and the argument about the location of the heart – was it on the right side or the left side of the body? In sweeping aside protestations that the heart used to be on the left side the triumphant protagonist for the new medicine pronounced

"Oh, we've changed all that".

I should not identify the High Court with but one of its justices, even such an influential one as Mr Justice Brennan. But his remarks do give us a revealing insight into the thinking which we are entitled to assume is now characteristic, if not representative, of High Court opinion.

My theme is, I think, a simple one – specifically that the Constitution, as the founders drafted it, reflected the political and social realities embedded in the minds, habits and customs of the Australian people a century ago – but that in its contemporary form it no longer does so. More than that, there is now today a great gulf between the constitutional thought and practice of political and legal elites, and the political habits and thinking of most Australians.

There is a long story attached to the opening up of this gulf between what we can call chattering class Australia on the one hand and working Australia on the other. Professor Mark Cooray has written of the changes in legal philosophy which have influenced the High Court. As he and others have pointed out, the Engineers Case in 1921 was a watershed. Griffith, Barton and O'Connor had retired. Higgins and Isaacs were still in place, and they had direct recollections of

the convention debates. Higgins had always been a centralist, and as his career in industrial relations showed, had a strong belief in the efficacy of government intervention in the economic life of the nation. The wartime experience had boosted faith in planning, regulation, and government ownership.

Each generation, as it takes over the reins of office in the important institutions of the nation, has to interpret the constitution and its history, in the light of its experience, and with regard to the problems with which it has to contend.

The new post-World War I generation of High Court Justices, taking a lead from the Privy Council, began a process of reducing the effective sovereignty of the States. Some justices adopted a literalist approach, preferring to view the Constitution not as the foundation of Australian federalism, but as a document to be interpreted as if it were just another statute. The consequence of this technique has brought about a situation whereby more and more power and responsibility has been transferred to the Federal Government.

The doctrine of literal interpretation has enjoyed enormous standing within the legal profession for many generations. It has worked in the interpretation of statutes, since if the words of a statute lead to a manifestly absurd result, then the legislature can readily amend the statute. And it is the legislature's particular responsibility to do so. Judges have from time to time, in declining to accept legislative responsibility, pointed out the need for legislative reform arising from the judicial construction of a statute.

Under Sir Owen Dixon the doctrine of legalism held sway. Dixon was strongly opposed to a literal approach to the Constitution. He frequently referred to O'Connor's celebrated dictum to the contrary in the Jumbunna Case. But even Dixon's legalism has been misunderstood. The transfer of taxation powers and resources from the States to the Commonwealth continued.

The Constitution, however, is not just another statute, which can be changed by the legislature if it proves, under judicial interpretation, to yield absurd results. It was a compact which was deliberately designed to be difficult to change. The convention debates make this clear. Specifically, it could be changed only if the Federal Government put a referendum to the people which was supported by a national majority and by a majority of voters in a majority of States. That clause was essential if the colonists in the 1890's, particularly those not from Victoria or NSW, were going to support the Federal compact. That constitutional change would be difficult was of the very essence of the compact.

This fact, combined with High Court capacity to interpret the Constitution against the States, introduced an unanticipated ratchet effect. The most generous observer of the history of the High Court will concede that High Court decisions have resulted in the very substantial transfer of power and resources to the Commonwealth. Because there was no mechanism for the States, or the people acting through their State governments, to reverse the process, the High Court has become a one-way stop valve.

Another aspect of constitutional interpretation which has had perverse consequences has been the attempt in Section 51 to set out precisely what powers the Federal Government was to have. The States were to retain unimpaired sovereignty in every other conceivable sphere of legislative power. On the face of it this seemed a very reasonable thing to do. But if, contrariwise, Section 51 had carefully defined all the powers the States were to have, leaving the Commonwealth the rest, then judicial interpretation may well have had the opposite result to that which we have experienced. It is the familiar, half-empty -half-full wine glass problem again. It is natural to concentrate on the wine, rather than on the empty space above it.

The Canadians defined the powers of the provinces instead of the national government, and provincial governments in Canada are far more important than our State Governments. Canada now seems to be a nation now breaking up into its constitutuent parts, but this process of

dissolution is driven by what I believe will be ultimately futile attempts to contain the Quebecois within the Canadian federation. There is no federal structure which will work if a significant part of the country is determined not to be satisfied.

On the one hand, then, the High Court, for over 70 years (in fact since the retirement of Sir Samuel Griffith), has been engaged in this process of reducing the effective sovereignty of the States. The Australian people, on the other hand, have consistently, at referendums, indicated their preferences for constraining the power of Canberra. Their most recent opportunity was in 1988 and that referendum resulted in a most decisive rejection of an attempt to increase, still further, the power and influence of the Federal Government. I still treasure the comment of the then Attorney General, Lionel Bowen, who complained after the referendum that Australia would have to become a more civilised nation if sensible proposals like his were ever to succeed.

We are now in the position that there is hardly an area of political life remaining in which the Federal Parliament cannot, if it so decides, override a State Parliament. The only effective constraints preventing Federal Government encroachment on traditional State powers, it seems to me, are political constraints. For example, as a consequence of the 1967 Referendum, it is widely assumed that there is no constitutional barrier to the Federal Government enacting Federal Aboriginal Land Rights legislation. In 1984, that particular ambition was very high on the agenda of the Hawke Government. It backed away, at that time, presumably because it feared the political consequences. It may also be true that that Government was unwilling to test the then High Court on the issue.

Today, with a different High Court, and the judgments in the Mabo case before us, no such fears concerning judicial constraints need arise. The consequences of Mabo for State sovereignty are, I believe, very serious indeed, and could arguably develop into a constitutional crisis without precedent in our history. More of Mabo later.

I have referred at some length to the perverse effects of High Court interpretation of the Constitution upon the federal compact. Another design failure, from the point of view of the constitutional draftsmen, has been the Senate. The Senate was to be the States' house and provide a counterbalance to the power and authority of the people's house. However, after federation, it soon became captured by party politics.

Senators go to Canberra as party representatives. Some of them become ministers. All of them are members of one of the best clubs in the land. I am often reminded of a comment attributed to the legendary Labor Senator Pat Kennelly, who said, making full dramatic use of his slight speech impediment,

"When they get to Canberra.... Brother...they change."

The Constitution itself has become therefore, under these conditions, a symbol of what Australia might have been if the compact which our grandfathers and great-grandfathers forged a century ago, had not been construed out of recognition by the High Court on the one hand, and had not fallen to the grim realities of party politics in the Senate on the other.

It is nevertheless a document which still appeals strongly to us, because the realities which guided the constitutional draftsmen, and those who criticised and debated their work, are still realities today, grounded in our political traditions and in human nature. The subversion of that document will, therefore, whilst the Constitution can be read, and whilst the convention debates are available, continue to cause resentment in those who identify with the ideals which moved our founding fathers, and brought the federation into existence

There are two separate matters here. The first is the fact, or otherwise, of judicial reconstruction of the constitutional document. This conference is to be addressed by a number of eminent constitutional lawyers and I am sure they will, in various ways, address this issue of judicial reconstruction, and how it has come about. However, one does not need to be a lawyer to grasp

either the implications of the Dams Case, or the destruction of responsibility in political life which is manifest in the annual charade of the Premiers' Conference.

The second is the very great need of rediscovering a more satisfying, a more effective, and (let me use an economic term) a more competitive structure, within the political order which the constitutional draftsmen sought to describe with the words of the Constitution. The political debates of the 1990's in Australia are all about recovering the prosperity and economic growth and entrepreneurial dynamism which we used to take for granted. Our economic decline is, fundamentally, a symptom of political ill health. The question immediately arises whether or not the constitutional changes that have been wrought, particularly by the High Court underlie, or have contributed to, our contemporary, very serious, economic problems. Are our contemporary constitutional practices economically debilitating?

The Constitution is a document of approximately 12,500 words. It might be helpful to us if we think of it, not as a document, but as a mural. It was a mural painted by a few principal artists, notably Sir Samuel Griffith, but in painting this mural the artists had to jointly solve, if they could, the primary problem of federation. That problem was, and remains, the contradictions arising from a sovereign parliament elected by the Australian people wearing their Australian hats, and the sovereign parliaments elected by the people wearing their Victorian, Tasmanian, South Australian and other State hats, and what happens when those sovereignties (the use of that word is deliberate) clash.

In constructing this mural the artists, to continue our metaphor, were obliged to use traditional materials, and these materials, as the convention debates show, were the political habits, modes of behaviour, and ideas of government and political life which the colonists, or their parents, had brought with them from Britain. What is of continuing relevance to us is that they drew heavily on the US Constitution, and the ideas embedded in it, in order to construct this vision of a new nation. Those American ideas, in their turn, had come from Britain in the C18, and the contrast and conflicts between the political habits, ideas, and conventions in Britain of the C18, and one hundred years later, has caused many difficulties for us.

The purpose of the mural was to set in plaster and paint, as it were, a vision of an Australia which would command allegiance from the citizens of the six colonies. In order to command that allegiance the citizens had to be assured that although a new nation was to be born, the political life of the six colonies would continue, in large measure, as it had developed since self-government. The problem was the reconciliation of dual sovereignties.

The fundamental political fact, in the 1890's, was that federation was only possible if dual sovereignty was to be retained; that citizenship of both colony, or State as each colony was to become, was to survive, and flourish, along with citizenship of the new Commonwealth. This issue was a focal point of the debates of the 1890's.

The idea of sovereignty was a very important part of the political tradition which the colonists brought with them from Britain. Sovereignty, coupled with responsible government, was, for them, the unconstrained power of Parliament not only to legislate, but also to appoint the Executive, the Queen's Council, from among its ranks. Parliament was constrained in its power only by periodic election by the people. The theory was, of course, that through election, Parliament expressed the `Will of the People', and that that `Will' should not be constrained.

Unlike the United States, where legislature and executive were constitutionally separated, in Australia executive and legislature were joined together through the actions of the majority in the Parliament. This was an example of attempted reconciliation of differing C18 and C19 British ideas of political arrangements.

That understanding of sovereignty, and its conjunction with responsible government, was fundamentally incompatible with federalism. J W Hackett, of Western Australia, summarised the dilemma in 1891 in these words:

"Either responsible government will kill federation, or federation in the form in which we shall, I hope, be prepared to accept it, will kill responsible government."

The dilemma was reconciled in the mural which the founders painted by allocating specific responsibilities to the new federal parliament, responsibilities defined in Section 51. Apart from those Commonwealth responsibilities the States were to retain their former sovereignty. The guardianship of the continuing vitality of the States was to be the Senate, modelled, of course, on the US Senate, and clashes between the Senate and the House of Representatives were to be resolved through a double dissolution and a joint sitting of both Houses.

This was, and remains, a very cumbersome mechanism. The constitutional draftsmen did not expect it to be used often. Brian Galligan, in one of his perceptive essays, refers us to Edmund Barton, who at the 1891 Convention said that:

"Any constitution such as the Australian that laboured under the misfortune of being partly written, would not work without the lubricating influences of restraint and discretion. However we may err in allotting too much power or too little power to this or that body, we still have the good sense of an English- born race to carry us through".

There has been only one double dissolution election and joint sitting, that of 1974, which passed six Bills. One of them in particular, the Act allowing for the election of two senators each from the ACT and the NT, was subsequently declared constitutional by the High Court in a 4-3 majority, Chief Justice Barwick and Justices Gibbs and Stephen dissenting. That decision is one which, to a run away lawyer like me, exemplifies the process of painting over, completely, the original constitutional mural, and imposing a completely new design on the plaster.

The High Court, together with other federal courts, is prescribed in Sections 71 to 80 of the Constitution. The question of just how much power the High Court was to wield was not often discussed during the convention debates. We take for granted the assumption that the High Court can construe the Constitution in such a way, as in the Dams Case, as to turn its plain meaning upside down. And although we do not like what the High Court is doing we are extremely reluctant to criticise the Court.

That reluctance is well founded. The civil courts are institutions which still retain respect and authority. They play a major part in sustaining the fabric of business and social life. The Rule of Law still holds in Australia and it is the duty of the courts to uphold that Rule. Judges today occupy a place in our society once reserved for bishops. One of the expressed aims of The Samuel Griffith Society is to uphold the independence of the judiciary. The High Court is at the pinnacle of our judicial structure and its reputation and authority either illuminate, or cast a shadow, over that structure. The High Court has boasted some very great jurists, notably Sir Owen Dixon, and their fame still buttresses the High Court and gives it a standing and a prestige which other courts must envy. No other institution in our constitutional framework has enjoyed the near universal respect, and freedom from criticism, that the High Court has enjoyed. Only the communists maintained a critique of the so-called capitalists' court, deciding in favour of the bourgeoisie, giving legal articulation to the class interests of the rulers.

As we look back over the past seventy years I believe it is now impossible to avoid the conclusion that the High Court has acted in such a way as to set aside the fundamental purpose of the federal compact set down in the Constitution. Whether it has done so from a laudable desire to behave in a totally apolitical manner, or from innate centralist tendencies, is ultimately irrelevant.

Somebody has to adjudicate disputes between the Commonwealth and the States. The Constitution, to go back to my metaphor of a mural, has to be interpreted by some body of recognised art critics who can authoritatively say "that is what the mural means in this context", and have that interpretation accepted not just by art enthusiasts and connoisseurs, but by the people as a whole.

I have said before that the Constitutional draftsmen were seeking to solve very real political problems; problems arising fundamentally from the ideas of sovereignty which were current one hundred years ago, and which reflected the substantially unconstrained powers of the colonial legislatures.

We have to remind ourselves that the politics of colonial Australia, a century ago, were predominantly the politics of small cities; not unlike the Greek city states where our political traditions were established two and a half millennia ago. The very word "democracy" is of Greek origin, and democracy as we now understand it, found its earliest full expression in colonial Australia.

The number of people working in agriculture and mining in C19 Australia, and thus cut off from the social and cultural life of the cities, was proportionally much greater than today. Nevertheless, the work of drawing up political agendas and the formulation of political issues to take to the people; the writing for the papers and magazines which had such great influence in those days; all took place in Sydney, Melbourne, Brisbane, Adelaide, Hobart, and Perth, but particularly in Melbourne and Sydney. Our word "politics" comes from the Greek "polis", or city. The life of politics is, in the end, the life of the city.

It is a commonplace observation today that the really successful economies of our time are not the great nations such as the US, let alone that once-upon-a-time nation of the future, the late, unlamented USSR. It is the small city states, notably Hong Kong and Singapore which have achieved the most spectacular economic results. The reason for this success is the same reason which compelled our constitutional fathers to seek to constrain the power and responsibilities of the Federal Government.

It is a very easy thing when legislators can pass laws, and ministers can execute policies, but at the same time spend their lives far away, perhaps thousands of miles, from the consequences of their actions. Contrariwise, when those who govern, and those who are governed, live cheek by jowl, as in Singapore, the consequences of political mistakes, particularly in economic policy, cannot long be hidden from view.

There have been many city states throughout history where tyrants, being able to rule through terror, have been indifferent to the economic consequences of their actions. But that is not part of our problem. Our problem, particularly within the last twenty five years, is that of a Federal Government which believes it knows what is best, in very great detail, for everybody. And unfortunately the Federal Government now has the power, substantially because of constitutional interpretations by the High Court, to act on that belief, and it has proceeded, therefore, to complicate our lives beyond the wildest imaginings of the constitutional draftsmen of a century ago.

The Australian people have, many times, indicated their strong attachment to the same constitutional vision as the founding fathers. Despite all the shortcomings of our State politicians we seem to see them as family, and even if they are in jail, or about to go to jail, still family for all that. The original mural of the 1890's is preferred to the repainted version of the 1990's. This preference is not based at all on economic grounds. But my experience in the mining industry convinces me that the enduring attachment to the home State, to one's native city, is not only emotionally satisfying but also economically very beneficial.

When rulers and ruled see each other day by day in the city streets, and provided that the rulers are unable to blame Canberra for the problems of the city, those problems will get attention. To use the economic jargon, the transaction costs of political life, in that situation, tend to be low.

The great competitive advantage which our Constitution could have, indeed should have, provided to us was the advantage of competitive sovereignty. If Australia had become a real federation, in which sovereign States were forced to compete in offering Australian citizens the benefits of wise government, then the reality of competition would have yielded to this country very great benefits.

If, contrariwise, the States are not able to compete, because all the important decisions are taken in Canberra, then competition between the States becomes trivial. It becomes the completely phoney competition of the Premiers' Conferences. We lose the benefits of the politics of the Greek city of classical times, the politics in which transaction costs are low. We lose the benefits of competition in sovereignty services, to coin what I hope will become a popular term. And in losing those benefits we have, I believe, impoverished ourselves more than we can readily appreciate.

The idea of competitive sovereignty, and its benefits, does seem today to be a contradiction in terms. But competitive sovereignty played a very important part in the economic growth of Europe from the C15 onwards. Europe, unlike China for example, was a subcontinent of competing principalities, many of them quite small. Their competition often took the form of ruinous warfare. But it was the possibility of emigration to a friendlier sovereign that enabled people to take their human capital and seek a better life a few days walk away, or across the Channel in England, under a less rapacious Sovereign. And that was a crucial factor in economic growth in Europe.

Competitive sovereignty lies at the very heart of the Australian constitution. It is the recurring image in the mural painted a century ago. It has, however, been covered over. We need to peel off the overlay of presumptuous paint and restore the mural to its original brightness and form. How do we do it?

I do not think we can escape the necessity of reform of the High Court. That is the institution where the greater part of our present problems have arisen. The High Court comprises a Chief Justice and six Justices. They are appointed by the Governor-General in Council, that is by the Federal Cabinet, and save for the possibility of impeachment, hold office until the age of 70.

Since it is the High Court which must hold the ring as between the States and the Commonwealth, the monopoly which the Commonwealth holds on High Court appointments has become intolerable. Let me suggest a High Court in which each State Cabinet appoints one Justice. Under such an arrangement I would not mind the Commonwealth appointing the Chief Justice. I make this suggestion in order to focus on the present method of appointing justices to the High Court and, I hope, to stimulate debate on the issue.

There is another reason why we should, today, be frightened (I use the word carefully) at what is happening on the High Court. I have referred to the doctrine of interpretation known as "literalism", and its perverse consequences on our constitutional practice and arrangements. None the less the doctrine of literalism did provide constraints. The justices were not free, under this rule, to rewrite the Constitution in their own image. However, on June 3 last, the High court handed down its decision in the Mabo Case. This was the case in which the High Court over-ruled a long line of precedent, of the highest authority, concerning the nature of Crown ownership of land in Australia. The Court decided that native title had never been extinguished in the Murray Islands and declared that the Meriam people are entitled as against the whole world to possession, occupation, use and enjoyment of the lands of the Murray Islands.

Mr Justice Brennan wrote the leading judgment in this case and faced the difficulty of finding strong arguments to justify overturning the most authoritative precedent. Very high standing is granted to precedent in the evolution of the common law. Radical reversals are contrary to its ethos and to its structure. Were it not so the law would be a shambles in which the citizen could never predictably locate himself. No legal advice could ever guide his conduct because the courts, not paying respect to the due weight of precedent, could decide cases in accordance with, say, their political or religious predilections. That was the principle and understanding which, not so long ago, guided our courts in deciding common law cases.

On the other hand the Parliament is in great measure, and of necessity, free from constraint or history. Major policy changes can and do occur as a result of changes in government following elections. Sometimes changes occur because both major parties follow public opinion in tandem. It is the endorsement by the people at election time which confers the ultimate legitimacy on a change in fundamental policy. The High Court, contrariwise, never faces the Australian people at an election.

These two issues are at the very heart of my great concern at the High Court's decision in Mabo. In writing the leading judgment Mr Justice Brennan acknowledged that he is turning his back on precedent. I quote:

"This Court can either apply the existing authorities and proceed to inquire whether the Meriam people are higher "in the scale of social organisation" than the Australian Aborigines whose claims were utterly disregarded by the existing authorities or the Court can overrule existing authorities, discarding the distinction between inhabited colonies that were terra nullius and those which were not." (pp 27-28)

The majority of the High Court decided to overrule existing authorities. The High Court can ignore precedent, and has done so in the past. But it cannot do so without giving reasons. And because this reasoning will apply across the whole gamut of the law, the arguments given to justify overruling the highest legal authorities are of historic importance. What are they? I quote Justice Brennan again.

"Whatever the justification advanced in earlier days for refusing to recognise the rights and interests in land of the indigenous inhabitants of settled colonies, an unjust and discriminatory doctrine of that kind can no longer be accepted. The expectations of the international community accord in this respect with the contemporary values of the Australian people."

There you have it. The combination of international community expectations, and the contemporary values of the Australian people, as perceived by the justices of the High Court, become the basis of fundamental, indeed revolutionary, change to our law.

With this judgment, the lead judgment in the Mabo case, the justices of our High Court have de-robed themselves. The High Court has placed itself at the epicentre of what will become, arguably, the most important political debate of the history of this country since federation; the debate concerning the territorial integrity and the effective sovereignty of Australia as proclaimed in the Commonwealth of Australia Constitution Act of 1900. It could rival the conscription debates of the Great War for bitterness and divisiveness.

Some critics may accuse me of hyperbole. Father Frank Brennan, Jesuit, barrister, adviser to the Catholic bishops on Aboriginal Affairs, and son of Mr Justice Brennan of the High Court, when launching his book "Sharing the Country", on June 11 last, told us (Aust. 13.vi.92) that:

"The Mabo decision changes the law of the land."

"Aboriginals and Torres Strait Islanders may claim more than half of WA and demand payment for land taken by governments."

"Areas over which indigenous Australians had a chance of asserting title included vacant Crown land, national parks, stock routes and public reserves."

"The decision gave indigenous Australians a bargaining chip in negotiations for a treaty with white Australians."

Father Brennan may indeed be wrong in his interpretation of Mabo. But he may be correct, completely or in part. He is very well qualified to make such observations. If so, the debate which I predict must indeed take place.

The High Court cannot, in the end, conduct itself with complete disregard of the opinion of the Australian people concerning what they deem to be right and proper. If there is to be a great debate over the role of the High Court then that is a debate which the people will, if a national consensus emerges, have to win. But in the meantime the meaning of the Constitution, and the role and integrity of the High Court as the interpreter of the Constitution, will be at the centre of the

political stage. However regrettable, even tragic, this may be, it is now unavoidable. It is the inevitable consequence of Mabo.

In eight years time we will be celebrating the constitutional centenary. The Royal assent to the Commonwealth of Australia Constitution Act was given on 9 July 1900. On July 31, 1900 a plebiscite in WA, by a margin of 44,800 (a large proportion of whom were ex-Victorian gold-miners) to 19,691, committed the West to the Federation. I refer to the plebiscite in WA particularly because it is in WA, with the Kimberley Land Claim Case, that the full implications of Mabo will next be tested.

After the success of the federal cause in WA the Royal Proclamation was made on September 17, 1900, and on January 1, 1901, the Commonwealth was born.

As we approach the centenary of these events our capacity to draw on the traditions and political resources we have inherited, if we are to save the federation, and preserve the ideals of the constitutional fathers, will be fully tested.

The Samuel Griffith Society, under the leadership of Sir Harry Gibbs, will provide, I am confident, the opportunity for all Australians to take part in these great debates. The Constitution is part of the birthright of all Australians, not just the eminent, not just the constitutional lawyers, not just political elites. I hope in the next few years more and more Australians will say "We want our Constitution back". "We want to restore it and give it again the meaning and purpose with which the founders sought to imbue it."

I believe we can do this. The opportunity is at hand. Let us grasp it.