

**REPUBLICANISM IN THE TWENTY-FIRST CENTURY:
AUSTRALIA'S FUTURE?**

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So, when it came to pass that [Rome's] kings lost their sovereignty...those who had expelled them at once appointed two consuls to take the place of the king, so that what they expelled was the title of king, not the royal power.

Machiavelli - Discourses on the First Ten Books of Titus Livy.¹

Our institutions are no longer fit for anything: everyone is unanimous about that. But the fault lies not in them but in *us*. Having lost all the instincts out of which institutions grow, we are losing the institutions themselves, because *we* are no longer fit for them. Democracy has always been the declining form of the power to organize.

Nietzsche - Götzen-Dämmerung²

When posing the question whether Australia has a republican future, we should not lose sight of the fact that, in the eyes of many who look to substance rather than form, she already has a fairly distinguished republican past. The constitutional model for Australia's several parliaments is, after all, that of Westminster; and as long ago as 1867, Walter Bagehot observed of the English constitution itself that, when attention was paid to its "living reality" rather than its "paper description"³ it amounted to "the appendages of a monarchy...converted into the essence of a republic".⁴ Today the transformation may have gone ever further. It is hard to deny the force of M.J. Detmold's contention that if the Queen of England were subject to an absolute restriction upon acting without advice - and this is precisely what many English constitutional lawyers contend - "the United Kingdom would not be, constitutionally speaking, a constitutional monarchy, except in a certain sentimental signification".⁵

That is Britain. What of Australia? It would be tempting to conclude from this that if Britain has become in substance a republic then Australia, half a world away from Buckingham Palace as she is, must *a fortiori* be one also. There is a complication, however. The bulk of the English constitution consists of "convention": an unwritten and constantly evolving code of custom and politeness that gradually adapts itself to changed political expectations. Our constitution is not like this. The founders of the Australian Commonwealth, when assigning powers to the monarch, had the singular bad taste to write them down. Moreover they vested them in a local subordinate. Words are stubborn things, and those of section 61 remain with us even after the *personal* intervention of the Queen in Australian politics has been rendered all but inconceivable for reasons that a retired Governor-General has recently explained. As the single Head of multiple States, the Queen is faced with an awkward anomaly. The executives of independent kingdoms may deliver to her conflicting policy advice; or may confide in her information that she cannot communicate to the executive of *another* of her independent kingdoms. It is precisely in order to avoid the possibility of embarrassing the monarch with such a conflict of loyalties that "in Australia virtually all Head of State functions are performed not by the Head of State, but by her surrogate" and that her own functions are "largely confined to those which cannot be performed by him: his appointment and recall".⁶

¹Machiavelli, The Discourses (trans. L. J. Walker) Penguin, 1970, p. 110.

²Nietzsche, Twilight of the Idols (Götzen-Dämmerung) (trans. R.J. Hollingdale), Penguin, 1968, p. 93.

³Bagehot, The English Constitution (1867), Collins, 1963, p. 59.

⁴Ibid., p. 262.

⁵M.J. Detmold, The Australian Commonwealth, Law Book Co., Sydney, 1985, p. 224.

⁶Sir Zelman Cowen, "The Australian Head of State: A Legal Conundrum", Quadrant, April 1992, pp. 63-9.

And yet section 61 remains to remind us that a nation might be, for all practical purposes, without a monarch, and yet not be without the exercise of monarchical power. Again, M.J. Detmold has summarized the position succinctly:

[S]erious constitutional reform might better proceed if it be admitted that in the constitutional (as opposed to sentimental) sense Australia is already a republic, and one with inadequately instituted and dangerously vague reserve powers vested in one man accountable to no-one.⁷

At the definitional level, however, Detmold's characterization dodges the issue. If one person exercises "dangerously vague reserve powers" then, on one possible definition, that person is quite reasonably to be described as a monarch, albeit a monarch who is appointed by the executive, or appointed by the parliament, or elected by the citizenry. It all depends upon what one *means* by the terms "monarchy" and "republic". If one's conception of monarchy is inextricably associated with the idea of personal hereditary succession, then the constitutional reforms proposed by the recently-launched Australian Republican Movement will alone be sufficient to render Australia a republic. If, however, a new constitution continues to vest the powers embodied by section 61 in any one constitutional organ, then Australia will arguably still have a monarch.

If we carefully survey the variety of constitutional schemes that have historically assumed the title of "republic", we are at least as likely to be struck by their differences as by their common characteristics. If we attempt to distil from those common characteristics a plausible *definition* of a republic, we might describe it as a constitutional regime that embodies some form of the democratic principle - whether majoritarian democracy, representative democracy or some hybrid of the two - with the aim of preventing the exercise of tyrannical or arbitrary power by any individual person or interest. An alternative definition, which simply posits that a republic is *not* a monarchy, is specious in its presupposition that monarchies and republics are mutually exclusive and instantly distinguishable. History does not stand still for either monarchies *or* republics, and the one has frequently evolved out of the other as power has shifted between competing political interests. The successors to Augustus, for example, had been effective dictators for the best part of three-hundred years before they entirely abandoned the formal pretence that they were the guardians of a restored republic. At the other end of the spectrum we have already examined Bagehot's characterization of nineteenth-century Britain as a disguised republic.

Even those who, unlike Bagehot, pay more attention to form than to substance, will usually admit that it is possible even in a monarchy for individuals to make important contributions to civil society by practising the "republican virtues". These have long enjoyed pride of place in political discourse in the United States. At their simplest they seem to embody an aristocratic notion of personal civic responsibility that was well known to the ancients, and which is succinctly encapsulated in the French formula: *noblesse oblige*. As an element of political science, they draw heavily for their modern justification upon optimistic eighteenth-century conceptions of the state as a mechanism for equilibrating competing interests and thereby producing an harmonious whole. The notion that those who will not participate in the political process have no right to complain about its outcomes probably underpins the surprisingly sanguine attitude with which many Americans and latterly Australians have greeted the increasing role of agitators and lobby-groups in political decision-making.

When Machiavelli set out to demonstrate the superiority of republican government, it was to Rome that he naturally turned for his model. In its heyday the Roman republic was

⁷Detmold, p. 227.

governed by elected magistrates who wielded judiciously-circumscribed powers within an elaborate system of checks and balances. Among the Romans, the *res publica* had no legal personality independent of its citizens. Australians might argue that the Roman example is less instructive today than in the past. Small, compact, ethnically homogeneous city-states like Livy's Rome and Machiavelli's Florence are, after all, the exception rather than the rule in the modern world. Nonetheless, when we are attempting to define the essence of republicanism it is surely not idle to reflect that the ancients would have difficulty in recognizing as "everyone's thing" the kind of nation-state that today proudly styles itself a "republic".

It is at least arguable that the conception of "the state" as a legal entity separate from its citizens could *only* have developed out of absolute monarchies. "*L'état c'est moi*" is not an English sentiment, but the absolute sovereignty that was politely seized by the British Parliament in 1688 - and which provides the model for Australian constitutional law - remains vested in a fictional legal person that continues to identify itself as "the Crown". In France it is "the Republic" that nominally prosecutes the criminal, in Ireland it is "the People", and each of the United States of America prosecutes under its own territorial name; but the parliaments of these countries - no less than those of the world's constitutional "monarchies" - inherited the habit of regarding themselves as the sole source of binding authority from the pretensions of kings.

With these matters in mind, let us return our gaze to Australia and her future as envisaged by the Australian Republican Movement. From a purely constitutional perspective, it is difficult to see what all the fuss is about. The ARM wants Australia to replace Her unelected Majesty with an elected president. This president's proposed role would, however, seem to differ very little from that of the present Governor-General. Nor, on what is apparently the favoured model, would the election of the president be entrusted directly to the citizenry themselves. Parliament would attend to it, under a joint-sitting formula which, bearing in mind the relative sizes of the two houses, would appear to mean no more than that the presidency might not *always* be, in substance, a mere executive appointment.

Given that the Queen herself has already become constitutionally irrelevant for all practical purposes, this is not particularly revolutionary stuff. There is no suggestion of any change to the Westminster heritage of parliamentary supremacy, nor with the existing federal distribution of powers, nor with the existing degree of separation of legislative and judicial functions. There is nothing in the ARM plan that would preclude Australia from remaining in the British Commonwealth, of which the Queen obviously remains the Head. It is for these reasons that the ARM's platform is probably more accurately characterized as one of conservative opposition to formal monarchism rather than as one that is substantially pro-republican in any sense capable of distinguishing it from the mainstream of Australian politics. The ARM is Australian republicanism showing its respectable face. Many of us did not know that it had any other to show until the *Sydney Morning Herald* recently published in its Saturday magazine an article about the Republican Party of Australia.⁸ The platform of this organization has a distinctly French flavour. It proposes to replace the existing federal system with a unitary government chosen by cantonal elected assemblies rather than directly by the people. It also favours citizen-initiated referenda and voluntary voting, and has a violent distaste for the common law courts and all persons connected with them.

The Republican Party of Australia has not to date polled even two per-cent of the primary vote in any election that it has contested over the ten years that it has been in

⁸F. Robson, "Battle Hymn of the Republicans", *Good Weekend: The Sydney Morning Herald Magazine*, 25 July 1992, p. 16.

existence. Authentic Jacobins do not, it seems, hold much appeal for the Australian public, although Mr. Malcolm Turnbull has lately expressed fears that the Republican Party of Australia might well exploit the publicity generated by his ARM colleagues to obtain a Senate seat in the next election.⁹ It is worth noting parenthetically that, if they do, it will ironically be by virtue of the Senate's system of proportional representation - a system the credentials of which are impeccably "republican" in the sense in which that term is used on the continent of Europe, and in a great deal of American political thought.

Political factions frequently spill more venom upon their close neighbours than their avowed opponents. That is not the case here - the ARM and the RPA are chalk and cheese - and the observation is instructive. For if we accept - as arguably we could - that the classical apotheosis of republicanism consisted not so much in institutions that were representative or even "democratic", but rather in checks and balances designed to prevent the unilateral exercise of tyrannical power by *any* person or institution, then the RPA could quite plausibly argue that the ARM seeks, not to *abolish* monarchical power, but merely to transfer it.

It is precisely because its proposals will, in substance, make so little change that the ARM can make at least as much claim as its opponents to the constitutional highground of gradualism and evolutionary development. The thundering forebodings of a latter-day Burke are as out of place here as the uncompromising fanaticism of a Marat. It is misleading to draw parallels between the Burkean aversion to an historically-insensitive obsession with the logical orderliness of political institutions and Mr. John Howard's maxim "If it aint broke don't fix it". While Burke may have had a powerful aversion to overly-fastidious rationalism in politics, he never advocated that we should wait until our constitutional machinery had actually broken down before asking whether it was in need of maintenance and repair. It is altogether possible that the mere transfer of monarchical sovereignty has much to recommend it. It was just such a transfer that took place in 1688, and apologists for Westminster-model constitutions argue, with considerable plausibility, that regular elections are the only mechanism needed to restrain the potential tyranny implicit in a sovereign parliament. Our Commonwealth constitution adds to this a federal separation of legislative competence and an upper house which, unlike its British counterpart, can do more than merely delay unwelcome legislation. A powerful case can obviously be made for its republican credentials.

But all this tends merely to add to the overall impression that the formal abolition of the monarchy has very little to do with constitutional questions at all. The current Prime Minister falls far short of Saint-Just in several respects, notwithstanding his apparent tendency to distort the facts of history into whatever fable he finds politically propitious. The history lessons which he has lately been in the habit of delivering to the House of Representatives are viewed with some distaste by those who value truth for its own sake, but it is a lamentable fact of life that many, perhaps most, political changes are not brought about by the unaided application of reason to the facts. Our analysis thus far would suggest what many people readily admit: that much of the republican debate in Australia today is not really concerned with constitutional protections. Such people, it seems, would not object to the exercise of the monarchical power, provided it were exercised by a Head of State chosen on a more "democratic" basis.

Several things need to be considered here, not least of them T.S. Eliot's warning that "democracy" is a word which "has arrived perhaps at the position of a Merovingian Emperor, and wherever it is invoked, one begins to look for the Major of the Palace".¹⁰ Let us, however, leave nice definitional questions to one side and accept it as beyond serious dispute that hereditary accession to constitutional office could not satisfy *any* plausible notion of

⁹*Ibid.*, p. 20.

¹⁰T.S. Eliot, *The Idea of a Christian Society* (1939), Faber, London, 1982, p. 48.

"democratic" procedure. If we were dealing with the English constitution, we might respond to this criticism by pointing out that the hereditary principle renders the monarch "undemocratic" only in the most literal and pedantic sense; that we should not allow the fact that the word "monarch" may once have designated an irresponsible tyrant to colour our assessment of the person so designated today; that the monarch today derives her legitimacy from the conspicuous affection with which she is regarded by the citizens of her kingdom.

Elizabeth I may once have warned her appointed Parliament that she would "never be by violence constrained to do anything", but no-one would seriously contend that the living reality of her office had remained unchanged by the time of Queen Anne, whose practice of presiding in person over the House of Lords was a deliberate revival. By this means she hoped to induce the members to act more moderately, but no-one appreciated better than she that her powers in this matter were largely limited to those of moral suasion. And how much have the functions exercised by either of these monarchs in common with those of Queen Victoria, whose speech for the opening of Parliament was delivered "as if she perfectly understood, but did not fully or warmly feel, what she was reading"? Elizabeth II arguably exercises more personal influence over the citizens of her kingdoms - be it for good or ill - than any of her predecessors, but it is by means of direct appeal in her regular broadcasts, and not by means of the addresses delivered to her British parliament annually, and to her Australian one on perhaps two or three occasions in a lifetime.

We must remind ourselves once again, however, that we are not dealing with the English constitution. There is room, even in Australia, for the view that "democratic" procedures are not necessarily the best means of selecting the person to exercise the functions of a Head of State, given that the emergency powers vested in such a Head of State are, by their very nature, a foil to the occasional failures of democracy. In any constitutional system, however thoughtfully devised, it is likely that representative legislatures will occasionally reach stalemates that demand a sharp and arbitrary shock to set the democratic wheels back in motion. The celebrated reserve powers that are apt to provoke such hysterical indignation among those who remember, or half-remember, the events of 1975, have only ever been used for the purpose of forcing Parliament to submit to the will of the people as quickly as practicable. Similar powers - albeit perhaps a little more carefully defined - would probably have to be given to a president, and in the course of defining and delimiting them we would have to confront the real question of 1975, often disingenuously obscured, as to whether the upper house ought to have the power to force, by whatever means, the executive government to seek a fresh mandate.

While we can carefully pre-confine the operation of arbitrary judgements in such situations, it is vain to expect that we can anticipate every possible type of crisis, and thereby eliminate entirely the necessity for, and accompanying potential for abuse of, such emergency powers. Again, Detmold has put the matter succinctly:

[I]t is plain fact that the Queen of the United Kingdom has tenure, such as to enable her to reason without fear or favour. But the Governor-General does not.¹¹

The formula "without fear or favour" is a thought-provoking one. It is generally invoked as the ideal for the exercise of judicial power, and direct election by the populace, though arguably a very "democratic" mechanism, is not generally regarded as a reliable way of obtaining good judges. Prominent members of the ARM seem to acknowledge as much when they are at pains to insist that their proposed president would not be a "party hack", though, as we have already noticed, the joint-sitting mechanism which they appear to favour does not immediately commend itself as a failsafe way of preventing such an outcome. The

¹¹Detmold, *Op. cit.*, p. 227.

powers of the Governor-General may need to be confined, but the abolition of the monarch is not a precondition for achieving this objective. If provision for the exercise of certain types of power is indeed unavoidable, it is sobering to reflect that, if we take such a power away from one constitutional organ, we are necessarily assigning it to another. Those who shy away from the prospect of the arbitrary exercise of reserve powers would do well to ask how truly "republican" is an alternative scenario: that in which an executive government cannot be forced back to the people by any independent mechanism whatever; and in which, in the event of constitutional deadlock, the leader of such a government is effectively made judge in his own cause. This is an issue of real importance, but to characterize the constitutional options that Australia faces for the twenty-first century by reference to constitutional problems that England solved in the seventeenth is simply dishonest.

First published in 1999, *American Higher Education in the Twenty-First Century* offered a comprehensive introduction to the central issues facing American colleges and universities. This thoroughly revised edition brings the classic volume up to date. The contributors have rewritten every chapter to address major changes in higher education, including the rise of organized social movements, the problem of income inequality and stratification, and the growth of for-profit and distance education. They also grapple with growing concerns about the future of the academy and reflect more deeply on the racial, ethnic, and socioeconomic diversity within higher education. No other book covers such wide-ranging issues under the broader theme of higher education's relationship to society.

Republicanism in Australia is a movement to change Australia's status as a constitutional monarchy to a republican form of government. Republicanism is supported by Australia's Labor Party, and by some members of the Liberal Party. At the Australian Federation Convention which produced in Sydney in 1891 the first draft that was to become the Australian constitution, a former Premier of New South Wales, [6]. However, the fervour of republicanism tailed off in the 1890s as the labour movement became concerned with the federation of Australia. The republican movement dwindled further during and after World War I. Emotionally, patriotic support for the war effort went hand in hand with a renewal of loyalty to the monarchy.