
Republics, Monarchies and the Old Dominions

by David E. Smith

These days Australians are doing more than debating whether they should become a republic. They have actually begun the process that could lead to a vote on the matter. During the first two weeks of February 1998, 152 delegates – half appointed by the federal and state governments, the other half directly elected by a voluntary postal ballot – will meet in Canberra to seek a consensus on the question whether Australia should become a republic. If the people's convention so decides, and also agrees on a republican model and a timetable, a referendum will be put by the end of the year 2,000, that is, on the eve of the country's centenary.

Whether the convention will reach the necessary agreement and whether the electorate will endorse what is decided upon is far from certain at this point, although a week following the death of the Princess of Wales, support for republicanism had reached an all-time high of 54 percent (an increase of five percent in three months). Later in September, Sir Zelman Cowen, constitutional scholar and a former governor general, declared his support for a republic in a major lecture at Georgetown University, Washington D.C. The pendulum seems to be moving toward change.

Thus Australians are doing more than talking about severing their last link with Great Britain. But even if that were all, they would still be some distance ahead of their Canadian cousins. Except for proposals in 1978 (as part of an aborted constitutional amendment package) to domesticate the position of governor general by naming its holder the First Canadian and conferring on him or her

all the prerogatives, functions and authority belonging to the sovereign in respect of Canada, Canadians have demonstrated scant interest in organizing to abolish (or, for that matter, retain) the Crown. The Crown remains untouched by the constitutional investigation and introspection of the last three decades. Only the *Globe and Mail's* quixotic editorial support for a republic at the end of the present Queen's reign, with the 150 Companions of the Order of Canada acting as a presidential electoral college, contradicts this generalization.

Monarchists have long suspected Liberal governments in Canada of acting clandestinely to undermine the Crown. Despite, or perhaps because of, this policy, it could be maintained they have Canadianized the monarchy so successfully that the principal argument Australian republicans advance for their cause is never heard in Canada. George Winterton, the constitutional scholar who has written most authoritatively on the subject suggests that the "greatest impact" of the move to a republic will be to "enhance Australians' sense of national independence and self-assurance."¹ In Canada, even the suggestion that the future of the monarchy be examined elicits few responses, and of these the majority are usually of a mild reproving nature; overt support for change is seldom expressed. The contrast between the two former dominions is striking.² If, as Australian historian John Hirst says, the Queen "cannot ... serve as the sym-

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bol of the Australian nation," why is she acceptable as a symbol of the Canadian nation?"

The reasons are complex and specific to each country. Clearly immigration and geography are part of the story. At its founding Australia's population was predominantly urban, highly unionized and except for the substantial Irish Catholic component largely Anglo-Protestant. Until the middle of this century Canada's population was always more heterogeneous as well as predominantly rural and agrarian. For a long time Australia's isolation from the mother country enhanced her military, economic and cultural dependency on Great Britain; Canada's sharing a continent with another power that spoke the language of the majority of Canadians lessened her sense of colonial inferiority but only at the cost of a new form of dependence.

In the history of the nations that comprise the Commonwealth, Australia's confrontation with a republican option is hardly new. India, who celebrated the fiftieth anniversary of her independence in 1997, became a republic in 1949 (the same year Ireland became a republic on leaving the Commonwealth). Since then, the balance has tilted even more toward republics. The Commonwealth now numbers 28 republics, of whom only nine (including India) are non-executive parliamentary republics. Executive power in these countries remains in practice if not in theory within a cabinet of the British (and Canadian) model. The other nineteen are executive republics, where executive power is vested in practice and in theory with a president, as for example in Kenya. The distinction between the two forms of republics has been the subject of discussion and study in Australia, and it is fair to say that the most useful and complete analysis of these different republican models is to be found in publications of the Republic Advisory Committee, appointed in 1991 by the Labour Government led by Paul Keating.⁴

The non-executive republic is the preferred choice of every Australian authority who has declared a preference for a republic. The attraction of that option is that it replaces the monarch with an indirectly elected president but at the same time seeks to retain the present relationship between the formal head of state and the executive government. This is the so-called minimalist republican option. It is the one Paul Keating envisioned and the one that seems likely to emerge from the people's convention if agreement is reached at all. Yet, ironically, it is not the option the people themselves say they want. The polls repeatedly show that the public favour a popularly elected presidency. The reason for this divergence in preference lies in the current distrust the public in Australia, as in many countries, display toward politicians. The problem it presents is two-fold: not only must repub-

lican advocates convince the Australian voter to support a republic but they must convince that voter to support a non-executive republic. If they are successful, at the end of the day Australia will have a republic but one where the houses of Parliament, probably with a two-thirds vote, will select the "people's" president. How will this be an improvement over the present selection? True, the president will be an Australian, but so too is the governor general nowadays. Under the change, however, that president will radiate (albeit at one remove) what the Crown and its representative can never embody, popular sovereignty.

In fact, contrary to what the minimalist republican advocates say – that the change is symbolic only – it actually constitutes a fundamental re-interpretation of the constitution. It will place constitutional authority with the people rather than the Crown, although, unlike the United States Constitution, that authority will be expressed in and through Parliament to the new president. Popular sovereignty is not a new idea in Australian constitutional interpretation. Brian Galligan, a leading political scientist at the University of Melbourne, argues that Australia's founding rests on popular sovereignty – in the popular election of delegates to the Federal Convention of 1897-8 and in the popular approval thus proposals received afterward in each colony by way of referendum. "The real basis of the Australian Constitution," he says, "was the consent of the people."⁵ If that is the case, then the Australian constitution carries in its heart a fundamental contradiction, one a non-executive republic may lessen but scarcely remove.

Much of the debate over a republican future turns on questions about the reserve or discretionary powers of the Crown and what will happen to them. Advice of the working executive, the cabinet, is almost always followed by the Crown in modern constitutional monarchies (although after the dismissal of the Whitlam Government in 1975, Australians more than most subjects of the Crown have reason to know that there are exceptions to that convention). How to create a republic with a president who will act as the sovereign or the sovereign's representative is supposed to act? This is not an antique or esoteric matter: in October 1997 India's president refused the recommendation of the national government to dismiss a state government and impose direct rule from New Delhi. Legal enforcement of the convention that the head of state must act in accordance with advice from ministers of the elected government is an unreliable and contentious substitute. The Australian debate has yet to resolve this conundrum, although one proposal is to retain the appointment system for head of state but replace the Queen with a constitutional council of eminent Australians.

Another difficult matter is federalism. Any transition to a republic has immense implications for the states. So immense in fact, that some proponents of republicanism have preferred to leave the introduction of a republican form of government at the state level to the states alone. The matter is complex because state governors in Australia are appointed by the Crown and, since the *Australia Act of 1986*, on advice of the respective state governments. Australia's reconstitution as a republic would go to "the very heart of federation," says Sir Harry Gibbs, former Chief Justice of the High Court of Australia.⁶ It is no exaggeration to say that an Australian republic would challenge the states to define their own constitutional legitimacy. At the very least each state must come to terms with the possibility of a central government that is a republic.

A move to a republican regime in Australia would mark a clear break in legal continuity in that country. More than that, it would require the assertion of a new basic norm to inject meaning into the new legal order. The implications for Canada of such a transition in Australia cannot be underestimated; in the same way Canada's adoption of a *Charter of Rights and Freedoms* has had a powerful effect on Australian attitudes toward proposals for an entrenched *Bill of Rights*. The ties of empire may have disappeared, and with them Dominion status, but the reciprocal impact of constitutional change in the

great parliamentary federations of Britain's settler societies remains an undeniable force.

Notes

1. George Winterton, *Monarchy to Republic: Australian Republican Government* (Melbourne: Oxford University Press, 1986), p. 8.
2. For a history and bibliography of Australia republicanism, see Mark McKenna, *The Captive Republic: A History of Republicanism in Australia* (Melbourne: Cambridge University Press, 1996).
3. John Hirst, *A Republican Manifesto* (Melbourne: Oxford University Press, 1994), p. 4.
4. Australia, Republic Advisory Committee. *An Australian Republic: The Options, Volume 1 – The Report: Volume 2 – The Appendices*. (Canberra: Australian Government Publishing Service, 1993).
5. Brian Galligan, *A Federal Republic: Australia's Constitutional System of Government* (Melbourne: Cambridge University Press, 1995), p. 29.
6. "The States and a Republic," (a legal opinion by Sir Harry Gibbs and the legal committee of Australians for Constitutional Monarchy in response to the Republic Advisory Committee Report), in M.A. Stephenson and Clive Turner, eds., *Australia, Republic or Monarch?* (St. Lucia: University of Queensland Press, 1994) Appendix II.