

Introduction: The Agenda of the True Republicans[†]

Australians are constantly being told that the years leading up to the centenary of federation provide an opportunity for a review of the constitution and a consideration of whether changes should be made to the constitutional order of the country. Unfortunately, many of those urging this seemingly worthwhile course appear to be determined to force that review and consideration into a particular path and to limit the avenues which might otherwise be open. The proposed decade of review has so far been monopolised by those who have sought to confine constitutional consideration to the so-called republic debate, the question of whether some other office-holder should replace the Queen as the head of state. This debate has been notable for its lack of depth. There are the monarchists, who hold that the constitution is not in need of any major change, and the self-styled republicans who are, on their own analysis, divided into the "minimalists" who wish to make that allegedly simple change and the radicals who want that change to be accompanied by a major "reform" of the constitution.

This stage-managed debate has diverted attention from a more balanced assessment of the constitution and the changes which may be desirable. The choice is presented as one of keeping the status quo, including the Queen, making the "minimalist" change and thereby keeping the status quo without the Queen but with all the other features of the current system of government, whether defective or not, or disposing of the Queen and at the same time disposing of elements of the constitution

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which have nothing to do with the monarchy but which may be regarded as ameliorations of the faults of the current system. The monarchist position of no change and the minimalist position both involve keeping a system which is marked by an unhealthy concentration of power in the central executive government, while the supposedly radical republican position involves dismantling those aspects of the constitution which provide safeguards against that concentration of power. It is a choice of going slowly or quickly in the same direction.

It is appropriate that the public now be informed that another direction is possible, and that a truly republican agenda be advanced. Hence this collection of papers.

A republic, as the dictionary tells us, is a state in which sovereignty or supreme power is vested in the whole people rather than in a monarch. The distinction drawn by the American founders between a democracy, in which the people assemble and administer the government in person, and a republic, in which they entrust political powers to their chosen agents, is a necessary refinement of the definition. The essence of republican government is that elected officials act as the agents or trustees of the whole people. In order to keep sovereignty with the people and to prevent the misappropriation of sovereignty by officials, power is not entrusted to any single officer or body, and the power entrusted to each officer or body is limited in accordance with constitutional rules. This division and limitation of power in accordance with constitutional rules is essential to the theory and practice of republicanism. It has been expounded as such by republican thinkers from Aristotle to the present, and has been the hallmark of all long-lived republics, ancient and modern. The only two modern republics which have lasted for more than 100 years, the United States and Switzerland, are federations, and federalism exemplifies in its most congenial form the limitation and division of power. The existence of different governments operating within their own spheres at different levels in a federation has been the most effective safeguard against the capture of government by tyrants and factions, as the American founders thought. Suri Ratnapala, one of the contributors to this collection, reformulates this thesis that federalism is essential to republican government.

The Australian constitution exhibits many characteristics of republican government. The federal system divides the powers of

government between the central government and the states in accordance with constitutional prescription, and provides a basis for the division of the legislature at the centre, so that changes to the law can be made only by two separately-constituted majorities, representing the states by population and the states as equal units. The separation of legislative, executive and judicial powers is also constitutionally prescribed. The constitution can be changed only by the sovereign people in a referendum, with a special majority to ensure that support for a change is geographically distributed. These are the devices by which successful republics have sought to avoid a concentration of power which would turn them into de facto monarchies or closed oligarchies. Australia's constitution provided the equipment for sound republican government.

Developments since 1901, however, have seriously undermined this constitutional structure and have given rise to a centralisation and concentration of power which is pathological to a republican government. The most significant of these developments has been in relation to what is generally called responsible government. The Australian founders adopted the British system whereby the executive government is carried on by ministers who depend for their tenure of office on the confidence of the Parliament, and may be removed from office by the Parliament if they lose that confidence. In the first 10 years of federation, government worked in this way, with changes of ministry brought about by parliamentary action. Since the arrival of highly disciplined and hierarchical parties, however, a situation has developed of the ministry of the day, led by the prime minister, completely controlling the House of Representatives, and controlling the whole Parliament when there is a similar party majority in both Houses. This has been accompanied by a massive delegation of legislative power to the ministry, so that, in effect, the executive has assumed the legislative power and habitually seeks to legislate by decree.

This development is often viewed in terms of the rise of the welfare state, and Suri Ratnapala's analysis shows how assumption by governments of responsibility for the economic well-being of individuals has undermined the separation of legislative and executive powers by encouraging governments to make laws for particular cases rather than laws for general application. Professor Wolfgang Kasper points out that this

development began with the "Australian Settlement" of the early federal period.

As the papers in this collection also show, however, the third branch of government, the judiciary, has played a large role in this situation. The High Court, in many of its interpretations and applications of the constitution, has reinforced this concentration of power in the hands of the central ministry. The virtual rewriting of the federal distribution of power in the Tasmanian dams case, the failure to place any limitation on the delegation of legislative power, the confusion about "basic rights", rights conferred by statute and "innominate powers", the failure to distinguish between subject and function of powers, and the recognition of the power of administrative bodies to make final decisions concerning individual rights, have all helped to put us into the camp of ministerial absolutism. We have drifted into a system of government whereby we choose a party to govern for three years and entrust the leaders of that party with virtually unlimited powers. As Suri Ratnapala points out, we have put all our constitutional eggs in the one basket, and have come to rely solely on regular elections as the only safeguard against the otherwise absolute powers of government. This is utterly contrary to the theory and practice of republican government.

The proposals now put forward by the self-proclaimed radical republicans would remove the remaining republican safeguards from the constitution, which still provide some amelioration of the despotism of ministers. The federal system still places some constraints on state and central governments; the Senate, which is frequently not under the party control of the government of the day, provides a limit to legislation by decree; and the provision for changing the constitution by referendum with a special majority ensures at least that the politicians in power cannot rewrite the fundamental rules at will. The "reform" platform of the radicals includes abolition of the states, abolition or significant curbing of the Senate and an easier method of changing the constitution. Such proposals would turn the country into a highly centralised state in which the entire government apparatus is dominated by the ministry of the day. Apart from amounting to a fundamental remaking of the country, this agenda, as Professors Kasper and Walker point out, would take Australia in the opposite direction from the rest of the world. Federalism is now flourishing as never before, and is being applied to the

problems of countries recently freed from totalitarian rule. We seem not to have learned the lesson of recent history, that central government power is not the key to economic success.

There is a need to oppose to the authoritarian agenda for change a genuinely republican agenda which would seek to strengthen and add to the safeguards in the constitution, and to provide an alternative to the drift into unmitigated centralism and executive absolutism.

If there is to be an elected head of state, the true republicans could propose that that office be provided with sufficient independence, perhaps by popular election, to provide a balance to an otherwise autocratic prime minister. The extremely wide powers of the executive could be reformed. In the absence of the monarchy, there is no justification for the executive government possessing such monarchical prerogatives as the powers to prorogue Parliament, to dissolve the House of Representatives at any time, and to make treaties and appoint judges without legislative sanction.

Reforms may be proposed to reinvigorate federalism. The first step in this process, as Professor Walker states, is to expound the real case for federalism, as distinct from the empty cliches of "states rights" which are used by centralists to discredit the federal system. Professor Wolfgang Kasper provides an excellent basis for this task with his exposition of competitive federalism. He points out that one of the great potential advantages of a true federal system is that state governments may be encouraged to compete in the search for the best policies and legislation and for the allegiance and support of citizens. This competition may help to make Australia competitive in the world.

A program of parliamentary reform may serve to address the domination of the legislature by the ministry. It is significant that improved procedures for parliamentary scrutiny and control of the executive, such as the Senate's Scrutiny of Bills Committee, have almost exclusively occurred in upper houses not under ministerial control. The further development of such procedures is essential to a restoration of parliament as a representative institution.

More significant constitutional changes, such as Professor Walker's suggested citizen-initiated referendums and recall of

members of Parliament, may provide further safeguards against government abuses. That they are resisted by persons claiming the title of democrats says a great deal about what Professor Walker appropriately characterises as the elitist nature of our current politics.

Such a republican agenda would indicate to the electorate that the options are not as restricted as the managers of the current constitutional "debate" would have us believe, and that there may be a real choice of systems of government. The history of referendum proposals in Australia leads the orthodox radicals to conclude that the populace are conservative; to the true republican they indicate a suspicion on the part of the electors of proposals to increase central government power. They also indicate that a genuinely republican agenda could arouse the interest and support of the citizenry.

The essays in this collection are a significant contribution to establishing such an agenda and to providing the electors with such a choice.