

## Sir Richard Chaffey Baker—the Senate’s First Republican\*

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Late last year I received a phone call from Sue Rickard, then Senior Research Officer in the Department of the Senate. Sue had seen my book *The Captive Republic* and expressed her surprise at the reference in the book to Richard Chaffey Baker in the chapter on federation and republicanism.<sup>1</sup> I had claimed Baker as a republican—a description which I decided would provide an apt if not slightly mischievous title for today’s lecture. Sue asked if I would be interested in delivering a lecture on Baker—the first President of the Senate and perhaps explaining along the way how it was that one of South Australia’s most conservative politicians—a member of the Adelaide Club and a man who frequently boasted of his loyalty to the crown, could be a republican. I had little idea when I agreed to Sue’s request just how useful and interesting a lens Baker’s political life would prove to be. As we progress tentatively towards an explicitly republican form of government, it seems appropriate to reflect on the views of one of Australia’s forgotten founders.

It is typical of Australia’s political history that one of the most pivotal figures in the federation period is a relatively unknown figure. In the United States, a person of similar political stature to Baker would have received far more attention. This brings to mind a comment recently made by Humphrey McQueen in his book *Suspect History*. Australian political history, says McQueen, is not being rewritten so much as written for the first time.<sup>2</sup>

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\* This paper was presented as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 20 June 1997. Dr Mark McKenna is a Research Fellow in the Political Science Program, Research School of Social Sciences, Australian National University.

<sup>1</sup> Mark McKenna, *The Captive Republic: a History of Republicanism in Australia 1788–1996*, Cambridge University Press, Melbourne, 1996.

<sup>2</sup> Humphrey McQueen, *Suspect History*, Wakefield Press, Kent Town, SA, 1997, p. 205.

In Canberra, we seem to have found a means to acknowledge the role of Kingston, Barton, Downer, Griffith and others in the process of federation but Richard Chaffey Baker is left without a suburb, bridge, office block or park bench to his name. All we have is Baker Gardens and Baker Street, both of which are in Ainslie. Perhaps the recently created federation fund will find room in its heart to throw a few pennies in Baker's direction.<sup>3</sup>

Since the occasion of the Bicentenary in 1988, Australian history has taken on new meanings for many Australians. We look more readily to the past to provide the rationale for current political initiatives. Living through a decade which has demanded our focus on the contact history of black and white Australians, as well as the commemoration of European settlement and the federation of the colonies, we have become accustomed to looking to history for reassurance, guidance and support. As we call up the ghosts of federation, it would be tempting to conscript our founding fathers to the cause of our contemporary political designs. There is indeed a story attached to Australian federation which has yet to be told—but it is not always a story that is pleasant to the ear. Like the other founders of Australia's constitution, Richard Baker's political legacy is ambiguous and elusive. In this lecture, I am not about to claim Baker as the direct antecedent of our present day republicans or monarchists. Instead, I want to suggest that an examination of Baker's views on the Constitution offers an opportunity to reflect on the current republican debate in the context of the intentions of one of our most original and independently minded framers.

Richard Baker was born in Adelaide on 22 June 1841, the eldest son of Somersetshire-born John and Isabella Baker. Like his father, Baker was to be both pastoralist and politician, speculator and racing enthusiast. Educated at Eton and Trinity College Cambridge, he possessed the necessary background for the inculcation of conservative values. Shortly after his return home to South Australia in 1864, he set up his legal practice in Adelaide only one year before becoming the first locally-born member of the South Australian legislature. In subsequent years he served as Attorney General and later moved to the Legislative Council in 1877, where he would remain until he took up his election to the federal Senate in 1901.<sup>4</sup>

Baker had grown up in a family environment which groomed him for a public life. A committed Anglican, Baker was also President of the Royal Agricultural Society, a trustee of the Savings Bank and a leading investor in the wool and mining industries. His conservative instincts lead him to form the National Defence League in 1891, a body of wealthy South Australian pastoralists and businessmen intent on countering the influence of the newly-formed Labor party. The League spoke of the great virtues of individualism and the evils of the levelling philosophy of socialism which would bring an end to civilisation. All undue class interests in parliament were to be opposed, except of course, those of the members of the National Defence League. In the best traditions of British conservatism, Baker was wealthy, politically active and blessed with a healthy dose of *noblesse oblige*. In his public life—especially the years he spent involved in the federal conventions of 1891 and 1897–8 and as first president of the Senate from 1901–1906, Baker displayed a talent for the management of divisive political debate. His most significant contribution to federation

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<sup>3</sup> The most useful discussion of Baker is R. van den Hoorn, 'Richard Chaffey Baker: A South Australian Conservative and the Federal Conventions of 1891 and 1897–8' *Journal of the Historical Society of South Australia* Number 7, 1980, pp. 24–45.

<sup>4</sup> See John Playford's entry on Baker in *ADB*, vol. 7, MUP, Carlton, Vic., 1979.

occurred at the Adelaide and Sydney conventions of 1897–98 when as Chair of Committees, Baker was widely praised for his knowledge of parliamentary law and strict impartiality. Similar epithets accompanied his performance as president of the Senate.<sup>5</sup> Baker's keen eye for the virtues of compromise had been in evidence since the mid 1880s when he conceived the idea of forming a Postal Union between Great Britain and the Australian colonies as a means of overcoming the bitter inter-colonial jealousies which had existed in Australia over the payment of tariffs to steamship companies.<sup>6</sup> The so-called Baker agreement demonstrated at an early stage that Richard Baker would be attracted to the concept of federation for its practical benefits—for above all else, Baker was a pragmatist. In the future, he would be willing to sacrifice his own political preferences in the hope of securing the federation of the Australian colonies.

There are few keys to Baker's appearance and personality, but we can discern a considerable amount from the available portraits and photographs and the little that was said about him. He was relatively short—probably around five feet seven and his features were soft and fine. He spurned the fashionable long beard and balding pate sported by many of the founding fathers—favouring the turned up curls of a snake-like moustache and a full head of hair instead. In 1888, he was described as having passed the prime of his life yet as someone who still managed to display a visible vigour and spring of youth which was not normally perceptible among the colonial born.<sup>7</sup> His good breeding apparently protected him from a descent into alcoholism and an early decline. He married once at the age of twenty-three to Katherine Colley, and together they raised one son and two daughters.

Writing in *The Federal Story*, Alfred Deakin went to great lengths to describe the various peculiarities associated with the appearance and personal characteristics of the South Australian delegates to the Adelaide Convention in 1897. Howe was tall, heavy and lumbering, Solomon—dark, well whiskered and portly, Glynn, the little Irishman—large-nosed and florid, yet when it came to Baker, Deakin merely remarked on his knowledge of federal constitutions.<sup>8</sup> Deakin was an astute observer and his reticence to note any of Baker's idiosyncrasies indicates that Baker was not a man who lent himself easily to tabloid caricature. One observation of Baker which seems particularly revealing was made by the Melbourne correspondent to the *South Australian Register* in 1902. Having watched Baker perform in the Senate from the public gallery, he noted in some detail—

The President is always in his place, is ever punctual and never forgets the dignity due to the high position he occupies ... In the chair bewigged and begowned, the President dominates the Senate, and is keen to perceive any disposition to depart from the ordinary and usual practice. He is much disposed to stand by the old landmarks and does not like innovations ... The President is recognised as a

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<sup>5</sup> George C. Morphet (ed.), *The Bakers of Morialta*, Pioneers' Association of South Australia, Adelaide, 1946; also Baker Papers, PRG 38, Vol. 6, [National Defence League], State Library of South Australia.

<sup>6</sup> John Playford, *ADB*, op. cit.

<sup>7</sup> *ibid.*

<sup>8</sup> Alfred Deakin, *The Federal Story*, 2nd ed., MUP, Parkville, Vic., 1963, p. 61 & p. 38.

constitutional authority ... and he loves power ... Taken all in all the President is a success and has won the goodwill of the house over which he presides.<sup>9</sup>

Although Baker was not given to overly demonstrative gestures, he was by all reports firm, courteous and possessed of considerable determination. This tenacity earned him the title Bully Baker from his enemies in South Australian politics.<sup>10</sup> And it was in this arena that one of the most colourful and perhaps telling events in Baker's life occurred. Throughout his political career, the opponent who managed to arouse the most violent passions and bitter emotions in Baker was Charles Cameron Kingston, the radical liberal Premier of South Australia from 1893 to 1899 and leading federationist. It was a credit to Kingston's political skills that he was able to stir the normally reserved Baker into vituperative harangues in parliament. After a particular incident in December of 1892, Baker was to pursue a personal vendetta against Kingston for the remainder of his public life.

In the midst of a dispute over Baker's role in regard to the collection of funds from legislators for the purposes of erecting a Trade's Hall, Kingston described Baker in the house as a 'public defaulter'. In the Legislative Council, Baker responded with a volley of personal abuse, referring to Kingston as a 'coward', a 'bully', a 'perjurer' and a 'disgrace to the legal profession'. Not to be outdone, Kingston quipped in reply that Baker was 'false as a friend, treacherous as a colleague, mendacious as a man and utterly untrustworthy in every relationship of public life'.<sup>11</sup> Even by contemporary standards this exchange of personal abuse would be considered excessive. Kingston must have thought so too, for on the following day he sent a most extraordinary parcel to Baker's offices in Victoria Square. Hand delivered by a 'lad,' it contained a letter in Kingston's handwriting and one English bulldog revolver with cartridges. In the letter, Kingston challenged Baker to a pistol duel on the same day—Friday December 23, in Victoria Square at 1.30pm. This would be a test of courage, said Kingston, and far preferable to a messy brawl or the elaborate rituals of a lengthy sword duel as the French were sometimes disposed to. Baker would not have to walk very far.<sup>12</sup>

When the appointed hour arrived, Kingston stood in Victoria Square with his bulldog revolver loaded, patiently awaiting Baker's appearance. Baker, of course, had no intention of taking up Kingston's challenge. He had lunched at the Adelaide Club and arrived in a horse-drawn cab just in time to see the police he had called for arrest Kingston. As the police lead Kingston away, Baker taunted him by asking him if he still had a pistol in his possession. Kingston quickly replied that he would soon get one if that was what Baker desired. Afterwards, Baker loitered in King William Street with the horn handle of Kingston's revolver protruding from his pocket—no doubt intent on employing the bush telegraph to put his side of the story.

At the court hearing on Thursday December 29, Kingston appeared 'charged with having incited Baker to a serious breach of the peace—perhaps to murder or manslaughter'.

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<sup>9</sup> Baker Papers, Series I, vol. 1 [Judges].

<sup>10</sup> van den Hoorn, *op. cit.*, p. 25.

<sup>11</sup> *South Australian Register*, 24 December 1892.

<sup>12</sup> *ibid.*

Mysteriously, Kingston’s letter to Baker—the most crucial piece of evidence, had somehow managed to be waylaid between the Police Commissioner, the Attorney General and the Crown solicitor, all of whom had taken an inordinate amount of time in proceeding with the prosecution.<sup>13</sup> Newspaper editorials had already conducted Kingston’s trial—the *Register*, for example, suggested that the first presumption was that Kingston was willing to kill Baker if he could shoot straight enough. Moreover, he intended to commit his crime in front of a large lunch-time crowd. A packed court room heard the judge let Kingston off with a warning—he was to keep the peace for twelve months. Baker alleged that the decision had been pre-arranged. In an interview conducted outside the court room, he claimed the verdict as a farce and suggested that the authorities had hushed up Kingston’s crime.<sup>14</sup>

Baker would never forgive Kingston for this incident. For the rest of his life he refused to meet or speak with Kingston except on official occasions. At the Adelaide convention in 1897, Baker, together with Downer, Symon, Howe and Solomon, tried unsuccessfully to stop Kingston’s election as President. They did manage, however, to derail Kingston’s nomination for the drafting committee—a position for which he was ‘obviously designated,’ according to Alfred Deakin. Deakin remarked on the ‘bitter enmity’ which Baker displayed towards Kingston and the unedifying spectacle of the cabal which Baker conducted against him at Adelaide. Forgiveness was not a word which found its way easily into Baker’s lexicon.<sup>15</sup>

Turning away from Baker’s personal life, I want to look now at his political philosophy. This does not mean a chronological overview of his contribution to the federal conventions of the 1890s, nor of his role as first President of the Senate. Instead I intend to take a broad view of Baker’s political views and relate them to our contemporary situation.

The best place to begin is with Baker’s republicanism. After all, from a contemporary perspective, the thought of a knight of the realm as a republican does seem slightly contradictory. Today we seem to have a fixed idea as to the meaning of a republic in Australia. Since the republican debate began in 1991, we have been told by our patriotic minimalists that an Australian republic involves nothing more than an Australian head of state and the absence of the monarchy from Australia’s constitution. We have heard this message so often that we now believe it. This brand of republicanism is one strand in our political history, but it is not the only one. Shortly after the American and French revolutions forged the democratic, nationalist and anti-monarchical model of a republic in the late eighteenth century, there was a growing awareness in Britain that the gradual ascendancy of parliamentary sovereignty at Westminster would effectively render England a republic in disguise. Both at home and in the colonies, the natural counter-argument to those who advocated the abolition of monarchy in the nineteenth century was to point to the fact that the British monarchy was no longer an obstacle to the advance of democratic freedoms. The basis of the disguised republic thesis was straight forward. The true essence of republican government did not lay in the absence of monarchy, but in the rule of law, the separation of powers, balanced government, and the sovereignty of the people. This argument had its roots in the republics of ancient Rome, renaissance Italy and the English bill of rights of 1689.

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<sup>13</sup> *South Australian Register*, 24 & 30 December 1892.

<sup>14</sup> *South Australian Register*, 30 December 1892.

<sup>15</sup> Deakin, *op. cit.*, p. 81.

Monarchy was not necessarily antithetical to republican government so long as its powers were either curbed or completely removed.

For Richard Baker, republican government had little to do with the issue of the head of state or the monarchical connection. In the South Australian Legislative Council and in his public speeches on the federal constitution, Baker proudly proclaimed his loyalty to the Queen in the same breath as he declared himself a republican. Anyone living under the British system of government could not help being a republican, said Baker, after all, Australian colonists possessed the very essence of republican government—government for the people by the people and in sight of the people.<sup>16</sup> It is interesting to note that Baker invoked Lincoln's maxim with one important omission. Baker had no trouble with the patrician notion of government for the people and he was pragmatic enough to accept the natural logic of universal manhood suffrage—hence government by the people, yet he was reluctant to endorse government 'of' the people. His image of a republic was fundamentally conservative. The people should be considered and consulted but they should not be trusted with the reigns of government. They should merely be allowed to observe the process of government in complete openness if they so desired. And it was precisely this form of government which Baker believed had been enshrined in the Federal constitution of 1901—a powerful executive, a strong upper house and judiciary, the separation of powers, an appointed Head of State and a constitution which would be difficult to amend—all under the secure umbrella of the Imperial connection. The Australian constitution thus had the advantages of a conservative republic without the dangers which might have been associated with a more radical, independent and democratic republic. Finally, we know that Baker subscribed to the important republican principle of respect for the rule of law. When he was asked why he did not engage Charles Kingston in the pistol duel in 1892, he replied, with much bravado, that he was not afraid of Kingston or of being shot, 'I was afraid', said Baker, 'of breaking the law'. It seemed Baker was so committed to republican principles that he possessed a greater fear of breaking the law than being shot.<sup>17</sup>

Although Richard Baker was a natural antecedent of the crowned republic argument which we hear so often in today's republican debate, I am reluctant to claim Baker's views as a tidy summation of the political philosophy of either republicans or monarchists. While he remained loyal to the crown he also believed that the constitution should accurately reflect the spirit and character of the people.<sup>18</sup> Baker was a progressive conservative and he had no way of knowing the way in which his political descendants in the twentieth century would cling to the monarchical connection as the linchpin of the Australian constitution. He may well have been surprised by the argument that the constitution would grind to a halt once the monarchical element was removed. In the 1890s, he frequently argued against the election of a popularly elected Governor General on the grounds that it would erect an alternative power base and endanger the smooth functioning of the constitution.<sup>19</sup> The logical outcome of this

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<sup>16</sup> *South Australian Register*, 1 March 1901 and *South Australian Parliamentary Debates*, Legislative Council, 15 September 1891, pp. 1132–1134 and 'Australian federation', a speech by Baker in the *Advertiser* (Adelaide) 15 April 1891. Also see Baker's *Manual of Reference to Authorities for the Use of the Members of the National Australasian Convention*, W.K. Thomas & Co., Adelaide, 1891.

<sup>17</sup> *South Australian Register*, 30 December 1892.

<sup>18</sup> *Australasian Federal Convention Debates*, Adelaide, 23 March 1897, p. 31.

<sup>19</sup> *Advertiser* (Adelaide), 15 April 1891.

argument is that the conservative character of the constitution would be preserved by the continued appointment of the head of state—either by a two-thirds majority of both houses of parliament or the current procedure of appointment by the Prime Minister. The issue of the Head of State's nationality—British or Australian, is really of secondary importance in a constitutional sense. So long as the Head of State is not elected by the people the conservative republican element in the constitution would remain unchanged. It is unlikely that the question of an Australian Head of State would have been a threatening concept to a progressive conservative such as Baker. When he was asked by Lady Tennyson to explain his allegiance, he stated that he was not an Englishman but a colonial.<sup>20</sup> In the same way that constitutions should reflect the changing character of the people, national identity would also shift gradually away from its British source.

I will return to Baker's relevance to the current debate on a republic later, but before I do it would be helpful to understand Baker's political beliefs in a broader context. We know that Baker was definitely one of the most respected constitutional authorities in the federation period from the observations of his peers. Deakin remarked that Baker was in advance of all his federal colleagues in federal knowledge and spirit during the 1891 convention in Sydney.<sup>21</sup> Baker had published a manual for the benefit of delegates which briefly outlined the features of the American, Canadian, Swiss and South African constitutions. In the eyes of John Quick, Baker's manual assisted in providing delegates with a valuable summary of federal principles—Baker was thus one of the 'pioneers' of federation.<sup>22</sup> In 1897, Baker published another pamphlet on the various forms of executive government in federations, which was equally acclaimed. According to John La Nauze, Baker, though precluded from debate in 1897 in his role as chairman of committees, was still powerful in private sessions and deserved to be seen as one of the most significant founders.<sup>23</sup>

One question which seems to arise most clearly when we listen to the kudos accorded to Baker is why he has never been elevated to a more respectable status as a founding father? The answer seems to lie in Baker's failure to see many of his more crucial suggestions incorporated into the final document. While Baker was successful in securing the passage of minor alterations, his views on the two most significant issues, the powers of the Senate, and the model of executive government, were defeated. In a similar sense, his dream of a Senate as a house with roughly co-equal powers to the House of Representatives, which would in turn act as a council of states rather than a house dominated by political parties, was soundly dashed by the time he departed the Senate in 1906. Baker fought tenaciously for his political beliefs, but he saw few of them enshrined as founding principles of the constitution.

Baker's concept of the role of the Senate betrayed his preference for a conservative document which would ensure—in his words, that 'South Australia would not become a mere appendage to Collingwood or Richmond'.<sup>24</sup> His staunch advocacy of state rights and his

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<sup>20</sup> van den Hoorn, *op. cit.*, p. 26.

<sup>21</sup> Deakin, *op. cit.*, p. 38.

<sup>22</sup> van den Hoorn, *op. cit.*, p. 29.

<sup>23</sup> J.A. La Nauze, *The Making of the Australian Constitution*, MUP, Carlton, Vic., 1972, p. 278.

<sup>24</sup> Baker Papers, vol. 9, Australian Federation [ Mount Gambier 1898 ].

suspicion of the tyranny of the mob lead him to advance an interesting mix of proposals for the structure of the Senate. He proposed property qualifications for members and their electors. The Senate would preferably be elected by state parliaments—a measure which would guarantee that only the most talented men were successful. In his rough notes in preparation for a speech on the federation bill in 1898, Baker stressed that in all modern republics there were two legislative bodies. The Senate was fundamental to the notion of dual citizenship which existed in federal republics. The citizen in the federal republic bore a dual allegiance to both state and nation—Senate and House of Representatives.<sup>25</sup> Consequently, for Baker, the Senate was the sheet anchor of the smaller states and the pivot on which the whole constitution turned.<sup>26</sup> It was the most important and naked republican element in the constitution because of its role in balancing and checking the power of the lower house. This division of power was the most fundamental insurance of liberty for the citizen.<sup>27</sup> Baker demanded a Senate with equal powers—especially powers to initiate and alter money bills. The possibility of deadlock between the two houses was rationalised by Baker as the price to be paid for liberty. In addition, he desired a Swiss model of executive government whereby ministers would be chosen by both houses and responsible to both houses.<sup>28</sup> The British system of responsible government was not suitable to a federation such as Australia, in Baker's view, largely because cabinet government would be dominated by the lower house to the detriment of the Senate. In the opinion of Quick and Garran, Baker's position on responsible government which was also held by the likes of Samuel Griffith and Inglis Clark, was best summarised as follows:

... the ... principle of State approval as well as popular approval should apply to Executive action, as well as to legislative action ... State should not be forced to support Executive policy ... merely because ministers enjoyed the confidence of the popular Chamber ... the State House could [therefore] ... enforce its want of confidence by refusing to provide the necessary supplies ... the introduction of the Cabinet system of Responsible Government into ... [ a federation with co-equal powers would mean] ... either Responsible Government [would] kill the federation and change it into a unified State or [that] the Federation [would] kill Responsible Government and substitute a new form of Executive more compatible with Federal theory.<sup>29</sup>

As we now know, the federal constitution of 1901 did not provide for a federation of co-equal houses, and the system of responsible government—much to Baker's undoubted chagrin, is well and truly alive. The compromise of 1891, which was narrowly upheld in 1897, ensured that although ministers could sit in either chamber, the most important bills appropriating money or taxation could not originate in the Senate. Equally, supply bills could not be

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<sup>25</sup> Baker Papers, vol. 7, & vol. 9, Australian Federation 1897–1898.

<sup>26</sup> *ibid.* Also see Richard Baker, *Federation*, Adelaide, 1897, pp. 1–5.

<sup>27</sup> *ibid.* Baker quoted US authorities such as Heame.

<sup>28</sup> Richard Baker, *The Executive in a Federation*, C.E. Bristow, Adelaide, 1897, p. 18. See also *Debates of the National Australasian Convention*, Adelaide, 18 March 1891, p. 466.

<sup>29</sup> John Quick and Robert Randolph Garran, *The Annotated Constitution of the Australian Commonwealth*, Angus & Robertson, Sydney, 1901, p. 706.

amended by the Senate although the Senate could reject the bill, or request the lower house to amend it.

Baker had wanted the Senate to be far more powerful, yet he was well aware that the powers granted to the Senate in the federal constitution made it one of the most powerful upper chambers in the western world. When he addressed his local electors in South Australia in 1901 as a candidate for the Senate, he admitted that while he didn't agree with every word of the constitution he was willing to endorse it as one of the most liberal documents ever framed.<sup>30</sup> Baker intended that the first sessions of the new federal parliament in Melbourne would see the Senate 'assert and maintain its position and powers' as a States' house.<sup>31</sup> As first President of the Senate, Baker was instrumental in initiating a process whereby the Senate developed its own rules and orders for debate. These procedural standing orders would be different from both the House of Representatives and those found in comparable countries.<sup>32</sup> Unfortunately, at least from Baker's point of view, it was clear as early as 1903 that the Senate's vulnerability to the dictates of party government would severely undermine Baker's image of a the Senate as a states' house, not to mention the possibility of the Senate having the power to amend money bills.<sup>33</sup> By the time he retired as Senate president in 1906, Baker must have been disappointed with the Senate's subservience to the lower house. Given Baker's talent for accepting the pragmatic realities born of political compromise, he probably found a way to reconcile his dissatisfaction—after all, he could still bed himself down at night as a founding father of the conservative republic. Even without coequal powers, as watchdog, house of review, and alternative chamber, the Senate was still one of the most critical components in the system of checks and balances which Baker saw as crucial to true republican government.

When we look back on Baker's life we can identify the desire for a national community as the most fundamental and guiding passion of his political career. So determined was Baker to be included as one of the founders of the constitution, he was willing to conform to the political outcome which would most surely guarantee the success of federation. He found a way to accommodate a weaker Senate than he had desired, responsible government, protection, payment of members, and a popularly-elected parliament, all of which were measures which he had opposed at some stage of his life. Perhaps the best example of his basically pragmatic nature can be found in his attitude to women's franchise. Baker had not been in favour of women's franchise when it was introduced in South Australia in 1894, but in 1901 was willing to support it in principle because of his desire for uniformity. Giving women the vote had 'not done much good but it had certainly done no harm', said Baker, 'we should have the same franchise in all parts of the dominion'. Just as he desired a uniform railway gauge, so too he demanded uniformity in the franchise.<sup>34</sup>

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<sup>30</sup> *South Australian Register*, 1 March 1901.

<sup>31</sup> *ibid.*

<sup>32</sup> G.S. Reid & Martyn Forrest, *Australia's Commonwealth Parliament 1901–1988*, MUP, Carlton, Vic., 1989, pp. 142–145, 479.

<sup>33</sup> Ronald Norris, *The Emergent Commonwealth*, MUP, Carlton, Vic., 1975, p. 205.

<sup>34</sup> *South Australian Register*, 1 March 1901.

Naturally, there were issues on which Baker was not out of step with his colleagues. True to his time, he saw White Australia as the defining feature of the new Commonwealth's national identity. In 1901 he spoke of the need to keep the white Australian race free of contamination from Chinese, Negroes, or other coloured races. Directing his gaze north to the federal government's future responsibility for the Northern Territory, Baker remarked that at least the Commonwealth would not have similar problems to those which existed in India, because in the Northern Territory, there was 'no native population to govern'. For Baker, Australia's indigenous inhabitants were a doomed race—destined to play no part in the future Commonwealth other than obliging their white masters by their polite disappearance.<sup>35</sup> If we wish to look to Baker for inspiration, we do not look in this direction, but to his attitude to constitutional change. It is in this area that his ideas offer the most useful stimulus for reflection on our current predicament.

Richard Baker stated frequently that he was not one to rush in and 'kiss the lips of unexperienced change,' yet nor was he one to possess an unrealistic view of the constitution's capacity for reform.<sup>36</sup> Speaking at the Sydney convention in 1891, Baker reminded delegates that it didn't matter how they framed the constitution because the people of Australia would 'mould and modify it in accordance with their ideas and sentiments for the moment'.<sup>37</sup> As a senator, Baker often told his colleagues that there was little point in Australia having a constitution if its legislators were merely going to ape the conventions of Westminster.<sup>38</sup> Political experimentation did not come naturally to Baker yet he was able to yield to the necessity of change because he understood his responsibilities to the electorate. In 1891 he put it in republican terms when addressing an audience in Adelaide:

The republican system demands that the deliberate sense of the community should govern the conduct of those to whom they entrust the management of their affairs.<sup>39</sup>

There are a couple of points worth making here. First, Baker was not a constitutional fundamentalist, rather he was a conservative enamoured of traditional institutions who appreciated that constitutions would evolve naturally over time. The constitution and the monarchical connection were not tablets of stone or pieces of royal china handed down from on high, to be wrapped in cotton wool and locked away in the display case as heritage items. Instead, the constitution was the natural embodiment of the people's values, aspirations and sentiments. To function efficiently it needed to be seen as a work in progress rather than a sacred work of art. Second, the basis of a republican community for Baker was the preparedness of those in power to be attuned to the people's wishes.

Considering the present turmoil over the republican convention, I cannot help but ask whether there is a sincere attempt on the part of our representatives to involve the people in the

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<sup>35</sup> *ibid.*

<sup>36</sup> *South Australian Register*, 15 April 1885.

<sup>37</sup> National Australasian Convention *Debates*, Sydney, 1 April 1891, p. 545.

<sup>38</sup> *ibid* pp. 438–441 & *Commonwealth Parliamentary Debates*, 1 August 1901, pp. 3363–3365, 2374–2376.

<sup>39</sup> *Advertiser* (Adelaide), 15 April 1891.

process of the change. At the moment, it seems that they are more intent on keeping the people as far removed from the debate as possible. It does seem odd for example, that one of the arguments most commonly used against a plebiscite or convention which involves the standard procedure of the compulsory vote is that these measures would afford the convention too much status. Yet there seems to be little point in proceeding with a convention if its *raison d'être* is to avoid democratic legitimacy. Richard Baker was aware of the potentially shallow theatrics of conventions, indeed he warned that they assembled people with 'all their prejudices, their local feelings, their jealousies and their self interests'.<sup>40</sup> The important difference, however, between the federal period and the present, is that Baker and his fellow federationists were willing to compromise and put their political enmities aside in the national interest. In sharp contrast, our current republican debate is still a captive of partisan politics, and it is unlikely to be resolved until our political parties can find a way to place the national interest above their own self interest.

It is interesting to reflect on another attitudinal difference between the federation period and the present day. Reading the federation debates and the associated discussions in colonial parliaments, it strikes me that Australians in the 1890s were far more open to political and constitutional change than we are today. They were not content to leave things as they were. For Australians in the 1990s, the desire to cling to constitutional stasis and even to the monarchical connection, can be a comforting thought when so many aspects of culture and society are subject to rapid change which is largely beyond their control. I suspect that this desire to close the eyes and wish that the forces of late twentieth century globalisation would simply vanish, motivates much of the support for the One Nation party. Yet when we examine our constitution we must remember to ask the same question which Richard Baker asked. Does our constitution adequately reflect the sentiments and democratic values of our people? Furthermore, is the republican debate, as it is currently being conducted, seeking to address these issues, or is it merely a discussion about the nationality of our Head of State?

Richard Baker's image of republican government went to the heart of our system of government. It was concerned with protecting citizens from the abuses of power by emphasising the dispersal of power. It emphasised responsible citizenship and was characterised by a conservative model of political participation. Most of all, Richard Baker saw the constitution and federal parliament as the 'palace of national life'. Baker claimed that the test of any republican form of government was its protection of minorities—majorities, he said, would always look after themselves.<sup>41</sup> Of course, the minorities of which Baker spoke were the citizens of the smaller states, but if we remember his advice concerning the natural evolution of constitutions, we might ask the same question of our own constitution and its protection of present day minorities. This might be an educative process for some, in so far as it would demonstrate that the mainstream are not the victims of noisy minorities but on occasions their nemesis.

Perhaps the most important message we can gain from Richard Baker's beliefs concerning republican government is that they involved much more than the

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<sup>40</sup> *ibid.*

<sup>41</sup> Richard Baker, *The Executive in a Federation*, op. cit., p. 17, also Baker Papers, vol. 9, Australian Federation.

nationality of the head of state. At present, we have not managed to connect our republican debate with the issues which define us as a national community—issues such as reconciliation, human rights, the equality of men and women, and a new preamble which would attempt to articulate our shared values. We might not all agree about the relevance or merit of these proposals, but we would certainly be engaged in a more interesting and potentially rewarding republican discussion.

*Daily Telegraph* (Sydney), 2 March 1891, p. 10

**Questioner** — Mark, in my mind you have partly answered this question already in your very clear assessment and understanding of the type of politician that Baker was, a very interesting mixture. But would you like to speculate upon the future, which is not quite a fair question to an historian who has been looking at the past, but as you have led us in that direction at the end of your lecture, what kind of a position do you think he would have been in today, had he been President of the Senate in 1997? Where would he have stood in the political debate, at least in the Party room, if not in public?

**Dr McKenna** — As a historian I am very reluctant to words into people's mouths. I think that is a very difficult question. I think, as I said in the lecture, as a progressive, as a pragmatist, he would have been open to the question of changing, for example, the nationality of the head of state. As to whether he would have been open to other constitutional reforms I am not sure. He probably would have been interested in strengthening the Senate's role as a house of review. And he probably would have been interested, he actually said, that one of the greatest problems about Australian federation was the bickering over finances between states and federal governments, so I am sure he would have wanted to reform that.

**Questioner** — If Baker did not really like the model of responsible government which we have now where there is really no significant separation between executive and legislative branches, what was his model, what would he have liked?

**Dr McKenna** — He wanted, as in the Swiss model, ministers elected by both houses of parliament and responsible to both houses of parliament, to avoid that system where cabinet government is concentrated in the lower house. He wanted the power dispersed, so that cabinet members were responsible to the Senate and to the House of Representatives.

**Questioner** — What did he want as a head of state?

**Dr McKenna** — The Queen. He wrote quite a lot about the issue of the Governor-General's powers. He believed, for example, that the powers of the Governor-General should be codified in the Constitution, all of the powers, especially the most significant ones. He was very much against the popular election of a Governor-General and he would have been against the popular election of a president based on what he said about the election of the Governor-General. And of course, as I said, he was a loyalist, so at the time there was no

question of him questioning his allegiance to the Queen, but he was, in that conservative tradition, very insistent that the conservative republican element of the constitution would be maintained if you ensured that the Governor-General was not elected. That was one of the things which he insisted on.

**Questioner** — You mentioned that Richard Baker saw no natives in the Northern Territory for the Commonwealth to administer. He obviously was aware of the indigenous population—but I was wondering what, other than the pillow theory, he did propose?

**Dr McKenna** — Well it is quite interesting to note that the issue of a coloured labour force in Queensland, for example, was a vexed one for Baker. On the one hand you can find Baker saying, well it is no good trying to develop the Northern Territory with a white labour force because, I think he said, the women become all hot and bothered and they can not manage to look after the family, and the men find it too exhausting, so therefore it would be good to have a coloured labour force for that purpose. But on the other hand, he did not want to have a coloured labour force because he knew that would mean a hybrid race, and that is what he was very afraid of.

**Questioner** — I am just thinking about the points that you are making about how he may cast light on today's republican convention. But I wonder whether, as a conservative, Baker represents conservatism having gone as far as it needed to go in terms of thinking about republicanism. If he is seeing it as a republic, and still in the loyalist tradition, then perhaps conservatives feel as though that was the achievement and even one hundred years on what else is there to be achieved on that front really, and isn't republicanism really just about more, as you were putting it, minority issues and so on?

**Dr McKenna** — Yes, well that is a good question. I think there is one crucial difference, and that is that, for the majority of Australians of Baker's generation, the issue of continued allegiance to the British monarchy was not an issue, was not an open question. You could not say that that is still the case today, and that explains why you have within our current conservative parties, many republicans, because there are many Australian conservatives who believe that it is possible to retain the essence, the essential basis of our constitution, but that the time to shift, to clearly designate as an Australian head of state etc, has come. So that, I think, is the difference. That, yes, conservatives still have that view, that the constitution is essentially a republican document, but they are probably willing to admit that the allegiance to Britain is no longer what it was.

**Questioner** — I take it that people like the Prime Minister are still of the view that we can maintain that allegiance and that it still has an ongoing authority and purpose. Is that how you see it?

**Dr McKenna** — I think it is somehow almost the opposite, that the continued allegiance is a good idea because it has no authority. It is not resident here, it is tucked away over in London, it does not have any power, it is safe because it is really so detached and removed. There is an argument for that, and I think they see it that way.

**Questioner** — Could I just comment briefly on three different issues you have raised, not in any order. You talked about the people of the 1890s as being more open to change than the people of today. The reason was that they had, in my view, a lot of other things forcing them to take an interest in it. They wanted access, they wanted some of the action, they wanted

some of the wealth of New South Wales. They were all bankrupt, basically, except New South Wales, and they needed New South Wales to get rid of their bankruptcies, that is what was driving the change at that stage, plus a number of other things and people of idealism. So I think it is fair enough to make the point that they were more interested in change then than they are today. We do not have that kind of issue driving us, we have our money spread right across the nation. The second point you made that was a bit odd, was that he was a republican with a knighthood. Richard Chaffey Baker was not the only republican with a knighthood around Australia at that stage, there were others, and they saw absolutely no disparity in that.

**Dr McKenna** — What I meant was that we might imagine from a contemporary perspective that that combination is odd. I did not mean to suggest that it was an oddity at the time. There of course were many others.

**Questioner** — That is one of the biggest curses that we face today, that people are attempting to make judgements, or comment about things that happened 100 years ago in our skin today, instead of getting into the skin of the people who thought about it. You know, it is a similar thing in the stolen generation issue, that people of good faith and good practice made decisions which we find obnoxious today. So with republicans with a knighthood you have to understand the context of the time, as you are suggesting. George Dibbs in New South Wales was a classic case in point. The third point you made was that he argued against an elected Governor-General. He was not unique in that, either, because Edmund Barton very, very strongly argued the same point in November '93, if my memory is right; call him what you will, a President or a Governor-General, if he is elected, he will have, or potentially will have, far more power than we believe he ought. So, Baker was not unique.

**Dr McKenna** — Thank you.

**Questioner** — A comment on that would be that Barton and Deakin were in favour of responsible government whereas you say that Baker was not.

**Dr McKenna** — Yes. That is an important difference.