

Republicanism and the Australian Constitution[†]

(This article is taken from a recent symposium paper and an address to the Harvard Club of Australia.)

The concept of republicanism, rightly understood, is essential to an appreciation of the Australian constitution, because of the way in which the framers of the constitution drew upon republican as well as monarchical models for the keystones of their edifice. This is not readily apparent because they assumed the validity of earlier republican doctrines without repeating the analyses of their predecessors.

Due to a relatively recent degeneration of meaning, similar to that which has overtaken the term "democracy", the name "republic" is applied to any state without an hereditary head of state. That this usage is worthless for the purposes of classification and meaning is demonstrated by the statement that Britain and Saudi Arabia are monarchies while the United States and Iraq are republics. Originally, however, the terms had useful meanings. In particular, the term "republic" had a much more meaningful content, which was closely associated with the most conspicuous and long-lived ancient example, the Roman Republic, and with the first modern republic, the United States, and which was expounded by the famous thinkers and analysts of those regimes.

The essence of monarchy is that sovereignty is vested in the monarch, and all institutions of government and powers flow

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from the sovereign. Thus in England the Parliament was originally an advisory body summoned to consult with the monarch, and the courts exercised delegated royal powers, as "lions beneath the throne". Although these institutions came to have an independent life, they are still seen as deriving their authority from the crown, and an indirectly-elected officer, the prime minister, wields the extensive royal prerogatives. (Incidentally, this character of the Parliament as an advisory body to the crown explains the ceremony of the opening of Parliament, which has also been under discussion recently.)

The essence of republican government is that sovereignty is vested in the whole community and its powers are exercised on its behalf by different officials acting as its agents. To prevent a republic from becoming monarchical, and the governors becoming masters instead of servants, power is divided between a number of different bodies and office-holders, and constitutional safeguards are provided against any of them misusing their power or seeking to assume sovereignty. Division and limitation of power are therefore essential to republican government, a point on which republicans from Cicero to the American founders and their current exponents have insisted. Thus the following passage by one of the American framers is regarded as encapsulating the American revival of republicanism:

In a single republic all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

No republic, ancient, medieval or modern, has survived long without some division of power. The death of republics is caused by concentration of power leading to caesarism or bonapartism, the emergence of a new and popular monarch in the shape of a dictator. It is no accident that the only two long-lived modern republics are federations.

The authors of the Australian constitution combined the monarchical elements of the British system and the republican elements of modern federations, and created a constitution which is a blend of monarchical and republican ingredients. In effect, they erected a compound republic under the crown, and apparently saw nothing incongruous in such a hybrid creation. The principal monarchical, or power-concentrating, elements are:

- executive power of a monarchical kind vested formally in the crown and actually in ministers technically appointed by the crown
- the power of the crown (i.e. the ministry) to prorogue the Parliament and dissolve the House of Representatives
- ministers drawn from the Parliament to absolve the crown of political responsibility
- the judiciary appointed solely by the crown.

The principal republican, or power-limiting, elements are:

- sovereignty vested in the whole people, who have the sole power to amend the written constitution
- the separation of the legislative, executive and judicial powers by the terms of the written constitution
- the division of the legislature into two directly-elected Houses with virtually equal powers
- the division of power between federal and state governments
- the judiciary as the interpreter of the constitution, which is the supreme law.

One could say that the constitution is 70 percent republican and 30 percent monarchical. The monarchical element is not so much the crown as such but the concentration of royal powers in the hands of the ministry which, under the modern development of responsible government, dominates the lower house of the Parliament by party discipline and assumes legislative as well as executive powers.

While the United Kingdom, however, is a profoundly monarchical country, in the sense that its people are accustomed to power being concentrated in one place, Whitehall, Australia has a republican culture to the extent that we are accustomed to the dispersal and limitation of power under the written constitution.

The injection of what is now called republicanism into discussion on the constitution has caused a curious inversion of principles. What is now called republicanism, while aiming to dispense with the formal position of the crown, tends to adhere to the power-concentrating monarchical elements of the constitution and oppose the power-limiting republican ingredients, while the defence of the monarchy tends to rally to the republican parts of the constitution.

Although the republican movement as such aims to replace the monarch with some kind of indirectly-elected president and leave the rest of the constitution alone, this appears to be because of the tactical problem of selling too many changes at once, not because of a fondness for the other dominant ingredients of the constitution. On the contrary, there are declarations in favour of other changes to the constitution, such as abolishing the states and curbing the Senate, which would amount to dismantling its republican elements.

The favoured system of government on this view would appear to consist of a ceremonial head of state, a central parliament with overriding legislative powers, a prime minister and cabinet controlling a single directly-elected chamber, with either no second chamber or one with very limited powers, and a constitution much easier to change. Ironically, such a system would most resemble that of the United Kingdom, and would emphasise the monarchical elements inherited from the British constitution, particularly the concentration of power in a central executive.

Australian monarchism, on the other hand, concentrates on defending the existing constitution and its essentially republican division of power between the state and federal governments and the two chambers of the Parliament.

There are some exceptions to this pattern on both sides, but generally speaking the firmest monarchists are in the

republican camp and the most convinced republicans are to be found amongst the monarchists. The republicans seem to regard the federal system and the Senate as in some way part of the monarchy, while the monarchists view the written constitution and the separation of powers as attachments of the crown.

Unless the question is focused very narrowly upon an hereditary or an elected head of state, the matter could be very confusing. The electorate could be asked to accept essentially monarchical changes in the name of a republic, or to keep the crown as a condition of maintaining an essentially republican constitution.

The consequent confusion could be avoided either by limiting the question to the narrow compass, as suggested, or by adopting more descriptive names for the larger contest. As has been indicated, clarification of terminology is important for clarifying issues. The republicans could call themselves the democratic centralists, and the monarchists could be styled the constitutional republicans. In that way any wider debate might become intelligible.