

Keeping the Australian Republic

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Harry Evans, Clerk of the Senate, draws on republican theory and practice to show that federalism is not an obstacle to Australian republicanism but is needed to preserve the republican principles of popular sovereignty and elected institutions in Australia.

The most striking aspect of Australia's republican movement is its lack of a historical and theoretical base. There is much old-fashioned populist nationalism and anglophobia, whose credence has been enhanced by Britain's withdrawal from great-power status and entry into the European Community, and by the troubles of the royal family. But little attempt has been made to give Australia's republican movement roots in history or political theory, other than that which can be found in Australia. On the contrary, any history and political science not of antipodean pedigree is despised; appeals to anything beyond that boundary are made mainly by the monarchists.

This instinctive hostility to historical and theoretical analysis is appropriate. Republicanism does not begin with Henry Lawson but is inseparable, in theory and practice, from Western European civilisation. But Australian republicanism actually seeks to cut out of the country's cultural heritage a large portion of the historical capital necessary to make genuine republicanism flourish on this continent.

Some Republican History and Theory

Just 200 years ago, when Australia was first being settled by Europeans, the founders of the first modern republic were contemplating in Philadelphia whether lasting republican government was possible. Could the people of the newly independent 13 States govern themselves? The 'celebrated Montesquieu', in his influential work *The Spirit of the Laws* (1748), cast doubt on the viability of republics. A republic, he observed, is a state in which sovereign power is held and exercised according to law by all the citizens or a substantial number of them, rather than by a single ruler, who may rule according to law or despotically. The survival of republican government therefore depends upon its citizens' ability to exercise the powers of government themselves or to control and supervise those to whom they entrust those powers. This can be done only in small states; when a state expands beyond a certain size, it becomes impossible for the citizenry to participate in it or to control it, and power drifts to the centre and to the strongest man at the centre. Successful republics must therefore be small; but that puts them in perpetual danger of conquest by powerful neighbours. Quite apart from the question of size, the citizens of a republic are apt to lose the high degree of virtue that their active citizenship requires, and to

depute their powers to professional rulers. Republics are therefore usually short-lived (Montesquieu, 1991:118–43).

This judgment was amply supported by history. The Greek city states, after short and turbulent lives, had been absorbed by monarchical empires. The Roman Republic, having long survived by the exceptional virtue of its aristocracy and people, collapsed into despotism when the city expanded into an empire. The centralised kingdoms of Europe had subsumed the self-governing towns of late medieval times. Those that kept some independence became closed oligarchies. The English Commonwealth had not outlived its military Lord Protector who had actually overthrown it. The prognosis for the former colonies of America was therefore not conducive to optimism.

The thoughtful assemblymen of Philadelphia, however, were provided with a ray of hope by Montesquieu. There was a way in which republics might be made permanent: by coalescing in confederations, they could preserve the republican form of government in the component units while gaining the advantages of greater size. A confederation could also guard against the propensity of republics to revolution and the seizure of power by tyrants: if one State succumbed, the others could come to its rescue. It would be more difficult for a demagogue or a faction to corrupt every government at once (Montesquieu, 1991:136–8). Evidence for this line of argument was supplied by ancient confederations and that of Switzerland.

The American founders developed, in theory and in practice, this significant discovery in framing and expounding their new constitution. The existence of the 13 independent States unwilling to give up their separate sovereignties was seen, not as a drawback to a union, but as a positive advantage, because it provided the opportunity to realise the benefits of federation. The framers' exposition, published in 1787–88 to support the new constitution, turned the supposedly iron law of the size of republics upside down: the extension of the republic over a large territory and many States would guarantee republican government by conferring greater stability and security against capture by factions or tyrants (*The Federalist Papers*, No. 10, 1970:41–8).

To the conventional confederation, which was simply an alliance of States, the Americans made two ingenious modifications. First, a central legislature

would legislate directly within the spheres specifically delegated to it by the written constitution, and a central executive would execute its laws; while the States would continue to legislate and execute their laws within their own spheres. This was a great advance on a central council relying on the State governments to administer its decisions. Second, the States would be granted equal representation in one chamber of the central legislature, and representation in proportion to population in the other chamber. This device avoided the concentration of the law-making power in one house, so reducing the consequent danger of rule by faction, and provided a basis for an upper house that would not constitute some kind of aristocracy. These inventions of modern federalism have been so widely copied and become so common that we have forgotten what great advances they were.

The American founders thus provided for the separation of the executive, legislative and judicial powers among different offices, which Montesquieu had declared essential to liberty. It has become customary to mock them for adopting what is said to be Montesquieu's misinterpretation of the British constitution, and to deride his failure to detect the emergence of responsible government, whereby the executive power is entrusted to a ministry formed out of, and depending on the confidence of, the lower house of parliament. This conventional wisdom is entirely misplaced. The development of responsible government, after it flourished for no more than 50 years, into a system of executive tyranny whereby the ministry, through party discipline, completely controls the lower house, has vindicated the French theorist and the American practitioners.

The American founders considered that they had found the secret of making a sizable republic last, and republican government feasible for the first time since the ancients:

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists. (*The Federalist Papers*, No. 10, 1970:48)

In other words, federalism is essential to viable republicanism in large countries.

Australia's Republican Founders

When the Australian founding fathers met in the 1890s to form a union for Australia, they had no reason to doubt the truth of that precept. A further 100 years of history had supported it. The United States was still the only stable large republic. The only other stable republic of any size, Switzerland, was a medieval confederation that had been refashioned after the American model in the middle of the 19th century. The

chronic instability of France illustrated the futility of highly centralised republics: a single capital and a single government easily attracted a succession of Robespierres and Bonapartes.

It is not generally appreciated that Australia's founders were republicans in the sense that they wanted their union to rest upon popular sovereignty and elected institutions. The federalist republican system provided them with a ready-made model for such a government over an extensive country. There was never any doubt that they would adopt the methods of delegating specific powers to a central legislature and of providing the States with equal and proportional representation in the two chambers. This plan of federation was put to the 1891 Sydney convention by Sir Henry Parkes and was never departed from (*National Australasian Convention Debates*, 1986:23). There was some resistance, however, to the grafting of responsible government on to the federal structure; a minority of convention delegates urged that it not be adopted for the federal government because of its new and untried character and its inconsistency with the federal system. In 1897 Sir Richard Baker, later the first President of the Senate, attacked responsible government as a 'British sham' (*Australasian Federal Convention Debates*, 1986:782-9). The deterioration of responsible government since their time has vindicated them as well as Montesquieu and the Americans.

This is not to say that Australia's founders only copied foreign designs. On the contrary, they were more republican than the Americans in submitting the Constitution to referendums for approval, and in providing the same method for amendment, rather than relying on representative conventions for those purposes. The special majority (in a majority of States as well as of the whole number of voters) is an ingenious means of ensuring that a majority is both representative of the country and geographically distributed. Federalism thus prevents governments from attempting to follow the false and destructive notion that there are simple majorities and minorities (Elazar, 1987:2, 19). The direct election of senators anticipated the 17th amendment of the US constitution, which was enacted in 1913. The provision for resolving deadlocks between the two houses of the parliament by simultaneous dissolutions was unique. The integrated judicial structure was a distinct improvement. As well as being drawn up in Australia by Australians, the Constitution contains much that is indigenous.

Events since 1901 have vindicated the decision of the founders to follow the federalist road. Republics have tended to prosper in accordance with their adoption of federalist principles; highly centralised republics have not proved enduring. That Australia has prospered may fairly be attributed largely to federalism. The existence of State governments with residual powers and the equal representation of the States in the Senate may well have prevented the

extreme alienation of the outlying regions such as has occurred in Canada, which lacks those institutions. Such devices have certainly placed restraints, as has the written Constitution, upon the power of the majority party at the centre. It is worth contemplating what Australia would have been like with no States, no written constitution amendable only by a special majority, and no Senate. The country would then have been entirely controlled for long periods by the dominant faction in the party that gained 40-odd per cent of the votes in Sydney and Melbourne in elections to the House of Representatives. It is doubtful whether the country would have held together in such circumstances. As it is, two States, Queensland and Western Australia, have provided cautions against entrusting absolute power to the majority-party caucus and ministry. Federalism at least prevented those experiments in unlimited government being conducted over the whole country. (If our republicans want a sound republican agenda they could turn their attention to the excessive centralisation of, and lack of constitutional safeguards against, the State governments.)

The Anti-Federalist Agenda of Australian Republicanism

The current republican agitation in Australia appears to operate in blissful ignorance of, or deliberate blindness to, any such considerations. It believes, or pretends to believe, that federalism, the division of power between the central and State governments, the geographically distributed majority for changing the Constitution, the constitutional restraints on the central government, and the Senate are all, like the monarchy, archaic limitations on native democracy, imposed upon us by the wicked British colonialists. Our whole system of government is judged to be a consistently bad piece of work: 'an outmoded Constitution, outmoded Governor-General and cohorts of supporting knights' (Patrick White, quoted in Keneally, 1993:178). So the States, the special majority for changing the Constitution, and a Senate with legislative powers have to go. One republican, arguing along these lines, really lets the cat out of the bag:

Do we believe that our system is meaningfully representative when governments have been forced to compromise with the wishes of two or three members of an Upper House, representing the views of a relative handful of Australians? Surely representative government means that ultimately the Senate must yield to the wishes of the **executive** of the popularly elected **government**? (Thomson, 1993:158; emphasis added)

This is a recipe for that absolutism of the controlling faction of the party with a simple majority of votes from which we have hitherto been partly shielded. The true

republicans from whom we derived so much would say that these words propose the kind of 'representation' and 'democracy' that have brought so many republics down, and that constitution-makers should seek to avoid. Hence the republican movement's avoidance of any constitutional history that might throw light on the republican federalist basis and the indigenous ingredients of the Constitution.

At the same time, our bunyip republicans adhere very closely to the one genuinely British element in the Constitution, namely, cabinet government, which tends to produce despotism by the rulers of the majority party. Thus Thomas Keneally, conceding that he writes 'flat out', is able to assure us that 'the parliamentary democracy which was our version of the Westminster system would remain in place', while in the same breath (because he writes flat out) declaring that 'the whole process would be immensely more democratic than in the present system, where our Head of State is handed to us willy nilly by Westminster' (Keneally, 1993:220-1). That 'our version of . . . Westminster' is far more rigid, because of party discipline, than the original appears not to trouble him.

Discarding the monarchy thus becomes a cover for dismantling the very thing on which a successful republic would depend, the federal system, and for removing the republican restraints on that ministerial power which, ironically, is derived from the Crown and the royal prerogative. (For federalism as the essence of republicanism, and the monarchical origins of conventional 'democracy', see Fraser, 1990.)

It may be unfair so to characterise the whole tribe, but if there are any genuine federalist republicans in the movement, their voices have been muted. As with all revolutions, the extremists and authoritarians are likely to take over from the liberals unless the latter are resolute. A defence of the Constitution involves saving Australia's truly republican federal institutions from the centralism that would actually be a repudiation of the republican ideal.

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