



*AUSTRALASIAN STUDY OF
PARLIAMENT GROUP
(Queensland Chapter)*

*State Constitutions in a
Republican Australia*

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Thank you very much for the invitation to address you this evening. I am particularly pleased to be able to say something about State Constitutions in a republican Australia because it is a topic which has not, as yet, received sufficient attention in the debate over the republic.

Until now, the main focus has been on how Australia's head of state should be appointed and the powers which the head of state should exercise. These are, of course, crucial issues. But given Australia's federal structure, the position of the States and their ties to the monarchy are also critically important to the republican debate

Earlier this month the Constitutional Centenary Foundation sponsored a conference on the question of sovereignty, both functional and symbolic. During discussion on the republic, the issue of the States was touched upon but not properly examined. My purpose tonight is to canvas the basic questions raised by Australia's Federal system and the republican debate.

These questions are:

- (1) Is a republican Australia consistent with the position of the States in our Government system?
- (2) What are the mechanics by which a State could adopt a republican form.

First, I should outline some underlying assumptions.

The first of these is that we are contemplating the so-called minimalist position of a change to an Australian Head of State. By minimalist I mean no change to the specific powers allocated to the Commonwealth vis a vis the States.

Secondly, I will not argue a case in favour of a republic or a particular republican model. These arguments await all of us in the next few months and years.

Thanks largely to the Australia Acts of 1986, we have now reached a position where the monarchy occupies much the same position in relation to the States as it does in relation to the Commonwealth. Those Acts terminate the remaining powers which the United Kingdom Parliament had to legislate for Australia. They also ended any responsibility which the British Government had concerning the government of the States. Consistently with this, the Acts require advice to the Queen on matters relating to a State to be given by the Premier of that State.

As at the national level, the Queen plays no day-to-day role in the affairs of a State. Those few functions which the Queen does perform, such as appointing the Governor, are done in accordance with advice from the State Governments. A State Governor, like the Governor-General, performs a large number of functions. In doing so he or she is ordinarily required to act in accordance with advice from the Government.

The fact that the Crown's position at the national level corresponds to its position at the State level also means that the constitutional changes required to convert Australia into a republic at both levels are broadly similar. In particular the change could essentially be effected by transforming the office of Governor General, at the national level, and the office of Governor, at the State level, from that of de facto head of state to de jure head of state.

That view strikes some as too simplistic, too straightforward. Even though the Queen plays virtually no role in the affairs of a State, and the Governor's role is largely controlled by the principles of responsible government, some maintain that the Crown is an essential element of the States' constitutional framework. According to this view, it is not possible to remove the monarchy from a State constitution without fundamentally altering its constitutional system.

I cannot agree with that. Of course there are State constitutions, such as Queensland's Constitution, that entrench the concept of the Crown to the extent that it cannot be removed by an Act of State Parliament. And there is at least an argument that section 7 of the Australia Acts also entrenches the monarchy at the State level.

But the fundamental principles that sustain and legitimise the States' constitutional systems are not the monarchy and the Crown. Rather, they are principles such as representative democracy and responsible government. These operative and underlying principles give substance to the States' constitutional systems and shape contemporary Australian society.

Replacing the monarchy at the State level would not infringe or contradict these principles. Indeed, it would be entirely consistent with the notion of representative democracy to replace an hereditary monarch with an office holder in each State who derives his or her authority from the people of that State, whether directly or indirectly, rather than as a birthright.

These facts do not stop some extravagant claims being made to support the monarchy.

I do not doubt for a moment the sincerity of those who claim that the monarchy is the 'bulwark' of parliamentary democracy or the 'keystone' of our constitutional system.

In response, I can only say that this is simply not true. The institution of the Crown is not, and cannot be, an adequate protector of parliamentary democracy. Among other things, the concept of responsible government prevents the Crown or its representatives from having any such role.

In truth, the strength of a democracy rests not on the Crown, but on the constitutional recognition of basic democratic principles, and on the people's continuing commitment to those principles. It also rests on a strong and independent judiciary capable of providing effective relief if and when attempts are made to contravene or subvert those principles.

In this respect, I cannot help thinking that the efforts of those who make extravagant claims about the monarchy's virtues would be better directed towards ensuring that each State's constitution entrenched basic democratic principles such as the independence of the judiciary.

The fears which the possibility of a republic engender in some people are not confined to possible changes to State constitutions. We also hear alarmist comments about the effect that removing the monarchy will have on our federal system.

Two arguments, in particular, are sometimes put to suggest that abolishing the monarchy would threaten the federation as we know it. The first is that removing the monarchy would remove the Crown as the unifying concept of our constitutional system. The second is that removing the monarchy would compromise the States' independence in the federation.

Like many arguments against the republic, these are largely contradictory and based on false premises.

Turning to the first argument, can it seriously be maintained in the mid 1990s that the unifying element of Australian society is some mystical or metaphysical concept of the Crown?

In recent years, in cases such as *Nationwide News* and the Political Broadcast decision the High Court has expressly recognised that ultimate political sovereignty rests with the people. They also recognise that the legitimacy of our political system depends on the Australian people's continuing acceptance of it.

I think it's fanciful to suggest that the Australian people's commitment to the unity of the Australian nation and to the principles of federalism would be weakened or undermined by abolishing our ties to the monarchy.

Equally, I think there is no substance to the view that the position of the Commonwealth vis-à-vis the States would be strengthened if the States' ties to the monarchy were severed.

The critical issue in this respect is whether abolishing the monarchy would affect the federal balance currently prescribed by the Australian Constitution.

The answer to that question is clearly no. A shift to a republic would not affect the federal balance. The relative legislative and executive powers of the Commonwealth and the States would remain the same. Further, section 106 of the Constitution would continue to protect the separate existence of the States and their constitutions.

Obviously, the federal system would be affected if the republican proposal involved replacing the monarchy, the State Governors and the Governor-General with a single Australian head of state who would exercise powers at both the Commonwealth and State level.

But the point here is that no-one is suggesting any such thing. There is no proposal that the new Australian head of state should exercise any powers for the States. The current demarcation of powers and responsibilities between the Governor-General and the State governors would remain the same.

So far there has not been much common ground between the monarchy's supporters and those who favour having an Australian citizen as our head of state.

On one issue, however, there appears to be an emerging consensus.

It is generally accepted by those who have thought about the question that if Australia becomes a republic at the national level, then the States' ties to the monarchy should also be severed.

This consensus recognises that Australia is one nation and one people. It recognises that, at the very least, our constitutional arrangements should not purport to make us strangers to ourselves.

Although constitutionally possible, a national republic with one or more monarchist States would be at best anomalous. It would be inconsistent with the fundamental principle that the Australian people's allegiance should not be divided between a foreign monarchy and an Australian republic.

Given this, the real question is how should the States' ties to the monarchy be severed.

There appear to be two broad options. First, the Bill which will ultimately be put by the Governor-General to the Australian people to amend the Australian Constitution could seek to remove the monarchy at both the national level and the State level.

Alternatively, the question of the States' ties to the monarchy could be left to each individual State to determine.

Both approaches have certain advantages.

The first would entirely remove the possibility of Australia becoming a republic at the federal level with one or more monarchical States. It would ensure that Australia becomes a republic at both the national and State level at the same time.

The second approach is consistent with the view that each State is, subject to the Australian Constitution, an independent body politic within the federation. Accordingly, a State's constitutional system is ordinarily a matter for the State to determine.

According to this view, constitutional change should not be forced on the people of a particular State by the people of other States approving a referendum under section 128. I note in this respect the finding of the Western Australian Constitutional Committee that most Western Australians feel that the form of government in Western Australia is for that State's people alone to decide.

Ultimately, I do not think anything will turn on which approach is adopted.

The development and passage of the Australia Acts demonstrate that the Commonwealth and the States can work together to achieve commonsense constitutional change.

Whatever view the various governments and political parties may take towards the idea of Australia becoming a republic, I think there will be a broad consensus among these governments and political parties that the States' ties to the monarchy should be cut if Australia becomes a republic at the national level. I am sure the overwhelming majority of the Australian people will share that view.

In other words, whether the question of the States' ties to the monarchy is dealt with as part of the one question or is left to each State to determine, the outcome will be the same.

I share the confidence of those who believe that the Australian people will one day decide to replace the monarchy. Australian citizens will then fill our highest public offices, both at the national and State level.

I believe that this change will have enormous significance for Australia's national identity, both for the way we see ourselves and for the way others see us.

But it will not result in a fundamental change to the States' constitutional systems or to their place in the Federation.

In 1986 important changes were made to the States' constitutional systems when the Australia Acts almost completed the process of severing the States' ties to the United Kingdom. This was a process that began in 1823 when the New South Wales Act conferred meagre powers of self-government on that fledgling colony. In light of the profound constitutional and political changes since then, I suggest that the final step in ending the States' ties to the United Kingdom replacing the monarchy—is a small and natural one to take.