

RETHINKING THE AUSTRALIAN REPUBLIC

A Radical Alternative –An Executive Presidency Can we Abolish the Prime Minister?

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The abortive republican initiative in the 1990s had two outstanding and crippling features: minimalism and elitism. A curious alliance favouring a republican switch through minimal change snowballed among traditional public elites and assertive proponents of change grouped around the Australian Republican Movement. Elder statesmen who had served the constitutional monarchy with distinction outed themselves as minimalist republicans. They joined with younger progressives in a coalition to conserve the prime ministerial dominated system of parliamentary responsible government while substituting an Australian President for the Queen and Governor-General. Despite obvious flaws – for example, increasing prime ministerial dominance through selection and summary dismissal powers – the model was strongly backed by such elites.¹ It was ‘as good as we could get’, they said; and we should ‘take advantage of this window of opportunity’ provided by the constitutional centenary. Republicans who expressed reservations about the soundness of the model that was proposed or wanted something more radical, such as popular election of the president, formed an unholy alliance with monarchists and those who preferred the status quo. They were branded as slightly perverse for flirting with dangerous populism, or even un-Australian for opposing the nation’s manifest destiny of constitutional minimalism. The mouth-piece of ‘ConCon’ republicanism (after the 1998 Canberra Constitutional Convention that framed the model) was *The Australian* newspaper.

The 1999 defeat of minimal republicanism was hardly surprising given the strong support of the Australian people for an elected head of state. Such popular support was clearly expressed in opinion polls taken during the Canberra Constitutional Convention in 1998 when the minimalist model was being framed; otherwise a majority favoured the status quo. A Newspoll at the time found that 66 percent favoured popular election, 17 percent parliamentary election and 15 percent

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1 Galligan, B. The Republican Model in the forum on The Constitutional Convention (April 1998) *Quadrant*, 17-21; The Republican Referendum: A Defence of Popular Sense (October 1999) *Quadrant*, 46-52

appointment by a council. When asked whether they were for or against a republic under each of the three models, only popular election won a majority.² It is also worth noting that support for an elected head of state was always stronger than support for republicanising the head of state. That is because some constitutional monarchists who value the independence of the head of state from the political executive favour popular election as an alternative means of preserving the independence and dignity of the office.

Selling the minimalist proposal was a marketing nightmare. The Australian people were told that they could not have an elected head of state because that might politicise the office and produce a politician. Instead, they were asked to entrust elected politicians with choosing a suitable non-politician. Moreover, the people were told how important it was to make the change. On the other hand, they were offered a model that purported to make minimalist change and very little difference to the way things worked. Most remained unconvinced that the proposed change was what they wanted, or that the minimalist model was worth supporting.

LESSONS OF THE PAST

The lessons to be learnt from the 1999 republican referendum are reinforced by the century of mainly abortive attempts at constitutional change.³ Australia's referendum record is a sobering one: more than 100 referendum proposal bills have been considered in parliament; 44 proposals have been put to the people on 19 occasions; and only 8 proposals from 6 occasions have passed. It is worth looking briefly at that record for two reasons. One is to correct mistaken diagnoses that the people have been to blame and cannot be trusted with prudential choice in serious matters, such as amending the constitution or electing a suitable head of state. The other is to help avoid future pitfalls of pestering the people with referendum proposals that Commonwealth politicians favour but the people do not. What the hundred year record shows is that Commonwealth governments typically put questions that would enhance and concentrate their powers, while the people usually say no.

Of the 28 referendum questions put to the people between 1901 and 1973, 24 were for increasing commonwealth power and of these only two passed. Those two were for powers over social services in 1946 (the constitutional basis for much of the post-war welfare state) and to make

² Newspoll reported in *The Australian*, 10 February 1998.

³ Discussed in Galligan B. Amending Constitutions through the Referendum Device. IN Mendelsohn M and Parkin A. (eds) *Referendum Democracy. Citizens, Elites and Deliberation in Referendum Campaigns* Palgrave 2001 116-119

laws with respect to Aboriginal people in 1967. Both commanded majorities in all states, the former with 54 percent support overall and the latter with an extraordinary 90 percent. The long list of failures includes mainly proposals for expansion of Commonwealth power: broadly in 1911, 1926 and 1944; and over more specific matters of finance, monopolies (three times, in 1911, 1913 and 1919), trade and commerce, corporations, industrial matters (twice in 1913 and 1946), railway disputes, trusts, essential services, aviation, marketing (twice in 1936 and 1946), rents, prices (twice in 1948 and 1973), Communists, and incomes. Of the four proposals for changing the machinery of government or restructuring financial arrangements, three passed – concerning senate elections (1906) and financial arrangements and state debts (1919 and 1928). The one that failed was to break the Senate nexus and decrease the relative size of the Senate (1967). After 1974, referendums shifted entirely to machinery of government issues. Of the 16 proposals put to the people since 1974, 13 failed and 3 passed. Those three concerned casual senate vacancies, territorial votes and retirement of judges, all in 1977. A fourth proposal, to have simultaneous elections for the Senate and the House of Representatives, failed in 1977. This proposal had failed previously in 1974 and would fail again in 1984 and 1988. Again, there is a pattern of consistency: proposals to interfere with the separate electoral cycle of the Senate are rejected by the Australian people, and federal governments are rather slow to learn.

We can take from Australia's referendum record some obvious lessons that should guide, and will likely determine, the fate of any future republican initiative. The first and most fundamental is that in a democratic referendum process the people must be supportive if change is to occur. While this might seem obvious, it was not followed for the republican proposal put in 1999 that opinion polls consistently showed did not have majority support. A century of Australian referendum experience shows that the people are prudentially sceptical towards attempts by federal politicians to make changes that concentrate power in Canberra or in the House of Representatives. Given this record, a prime ministerial dominated head of state is hardly likely to succeed. Nor is repetition of failed proposals a promising scenario. Despite dogged persistence by politicians, failed proposals have not been adopted on second, third or even fourth attempts. If this holds, as it likely would, minimalism is a lost cause.

The primary lesson for success in referendums is that the people have to support the proposal. A supplementary lesson is that the people are unlikely to support something for which there is not broad consensus and support among elites. At a minimum that means agreement among republican elites. While there is always a place for radicals and ratbags on the fringes of public debate, serious division in

the republican camp is a recipe for disaster. But unity among republicans is probably not enough if there is strong opposition from monarchists to the change. Many who do not see the matter as urgent might see change as premature if there is strong opposition, even if that is a minority position. Monarchism is stronger among aging Australians and so should weaken over time. As the 1999 republican debate showed, however, some monarchists are strongly constitutional and are prepared to shift to a preferred republican model if a republican outcome is likely. So the challenge here is to come up with a reasonable republican model with constitutional qualities that have broad appeal.

Where should we start? And what might be the end point in republicanising the Australian head of state? I want to make the case for a bolder approach to institutional design than minimalist tinkering. The minimalist models on offer are curiously conservative in wanting to retain the current executive arrangements and constitutional formulations, shorn only of their formal monarchic names. Merely substituting the name 'president' in place of 'queen' and 'governor-general' - the minimalist proposal - enshrines an absolutist model of neutered despotism. Surely this is unacceptable for the executive chapter of a republican constitution. Enshrining executive power in a president who appoints ministers according to pleasure and otherwise does what they please is textual absolutism. In practice, such minimalism endorses the current variant of parliamentary responsible government that has become party responsible government dominated by the Prime Minister. Hence, minimalist tinkering to replace the Queen and Governor-General with a president is not properly a republican move at all but an endorsement of executive absolutism in principle and modern prime ministerialism in practice. There must be a better republican alternative.

We need to rethink what a republican head of state might look like, and then settle on an achievable Australian version. A century of constitutional and political experience forms deep traditions, but the origins and history of federal republicanism in Australia suggest a vigour and prudence that might well be bridled for achieving this belated change. Neither the existing constitutional formulations of formal absolutism nor the current practices of prime ministerial dominance are desirable or sacrosanct. How do we get to an appropriate republican head of state model? As with the Irish joke, not by starting from here, if here is the current executive. Rather we should explore options that are more radical, and countenance variants of current practice that might be more appropriate for a federal republic where the people are sovereign and must endorse any changes to the system. Obvious contenders are an executive presidency with real power or an elected presidency with largely nominal powers. We need to explore aspects of both from an Australian constitutional perspective.

DESIGN OPTIONS: PREFERRING 1897-98 OVER 1891

While modern Australian elites are prone to disparage the Constitution and ignore those who drafted it, when it comes to thinking about republicanising the head of state they are strangely captured by their constitutional design and current practice. Minimalism is an uncritical acceptance of the hybrid product of the 1897-98 Constitutional Convention combined with contingent developments of disciplined party government during a century of practice. But were the colonial leaders of the late 1890s, Barton, Deakin and O'Connor, such constitutional giants that their executive design should so constrain today's republicans as minimalist dwarfs? Reconsidering the earlier model of the 1891 Convention and why it was superseded in the later convention can help us break the conceptual straight jacket that limits modern republican thinking.

It is worth pointing out that the crucial difference between the 1897-98 Convention and successful adoption of its draft constitution in contrast to the 1891 Convention and its abortive efforts was popular input, but in a federal form. The 1897-98 delegates were elected by the people of the Colonies and the draft ratified in popular referendums in the Colonies. Moreover, the 1897-98 draft included a senate directly elected by the people of the States and a referendum process entailing approval of constitutional changes by a double majority of the people overall and in a majority of States. In contrast, the 1891 draft had the Senate appointed by State governments and amendments approved by State elected conventions. Involving the people directly in constitutional decision making was quite radical for the time; certainly more radical than anything envisaged by comparable countries like the United States or Canada. For Australians, however, it was the legitimating and practical foundation of the constitutional system.

The key design problem in drafting the Constitution was how a traditional responsible government executive would fit with a bicameral federal parliament including a senate of virtually equal powers as the House of Representatives. If the Senate were modified to fit with responsible government based in a dominant House of Representatives, the new Parliament would more closely resemble a Westminster Parliament and enable more centralised government. Among the Founders, there were differences of opinion with the balance of consensus shifting between the 1891 and the 1897-98 Conventions. Griffith, leader of the 1891 convention after old man Parkes had proposed the framework principles and taken a back seat, was a strong federalist on both issues. Griffith favoured entrenching a strong senate and leaving responsible government relatively unspecified in the Constitution so that it could be adapted in practice to fit the federal bicameral legislature. Griffith's views dominated the 1891 Convention.

and were incorporated in the executive structure of the 1891 draft constitution. According to the 1891 draft that was never implemented, ministers were to 'be capable of being chosen and of sitting as Members of either House of the Parliament' (Section 4) In other words, they had to satisfy the same prerequisites of nationality as parliamentarians, but they did not have to be parliamentarians

By the 1897-98 Convention, elite opinion had firmed in favour of traditional responsible government. Convention leader Barton was quite blunt about affirming his strong preference in homely language: just as he did not want his boots made in Germany or his constitution made in Switzerland, he preferred 'our British forms of Government, those we have adopted and adapted' and were 'best fitted for ourselves'⁴ This view prevailed despite arguments from the likes of Baker and Hackett that responsible government was incompatible with a strong senate and would 'kill federation'⁵ Deakin, Higgins and Issacs from Victoria led the nationalist cause, arguing for a strong national government with flexible powers and rejecting as bogus the institutional logic of those who championed a strong Senate as the protector of States' rights⁶ The States were protected through constitutional entrenchment in their own right, through the limitation on federal powers, and by judicial review by the High Court. Numerous speakers correctly pointed out, developing the earlier insights of Macrossan and others, that Senate politics would not be about State representation but party government concerned with the national issues of the day. As Deakin predicted: 'We shall have party government and party contests in which the alliances will be among men of similar opinions, and will be in no way influenced by their residence in one State or another'⁷

Even if party and national issues rather than States' rights were to dominate Senate politics, combining responsible government with a strong senate remained problematical. Such an unlikely combination was 'the Scylla and Charybdis of this federal enterprise', according to George Reid. This came to a head in the debate over the Senate's powers over money bills. As Reid put it: 'this Federation will become an accomplished fact if we can hit upon a solution of the difficulties as to executive

⁴ Bristow, C E *Official Report of the National Australasian Convention, Debates - Adelaide March 22 to May 5 1897* Sydney: Republished Legal Books, 1986, 24

⁵ Chapman, G S *Official Report of the National Australasian Convention Debates - Sydney 2 March to 9 April 1891* Sydney: Republished Legal Books, 1896, 280; Bristow, C E *Official Report of the National Australasian Convention, Debates - Adelaide March 22 to May 5 1897* Sydney: Republished Legal Books, 1986, 24

⁶ Galligan, B and Warden, J. 'The Design of the Senate IN Craven G (ed) *The Convention Debates 1891-1898. Commentaries, Indices and Guide* Sydney: Legal Books, 1986, 98-101.

⁷ Bristow, C E *Official Report of the National Australasian Convention, Debates - Adelaide March 22 to May 5 1897* Sydney: Republished Legal Books 1986 297-298

responsibility and the difficulties as to the rights of the two Houses over Money Bills in such a manner as to commend our work to the people of all the colonies'⁸ Institutional incompatibility was exacerbated by entrenching responsible government in the Constitution – albeit in the opaque way of requiring ministers to be members of one or other house of parliament – and having the Senate directly elected by the people. A number of measures were adopted that partly alleviated the problem of conflict between the two houses. One was reaffirmation of the key 'compromise' precluding the Senate from amending as well as initiating money bills. According to Conventions leader Barton, that protected responsible government by ensuring that ministers remained 'responsible to the people through the House of Representatives'.⁹ Otherwise, as O'Connor pointed out, the Senate could not 'amend and amend, and amend, without taking the responsibility of rejection'.¹⁰ Provisions for dialogue between the Houses (section 53) and for banning the tacking of extraneous matters to money bills (sections 54 and 55) were added. These were in addition to the cumbersome section 57 mechanism for breaking deadlocks that entails a three months interval, dissolution of both Houses and a joint sitting if necessary. None of these are fail-safe mechanisms for ensuring harmony, however, and the section 57 mechanism is not adequate for financial deadlocks that require more timely resolution. Nevertheless, the dominant view of the Convention was that the resolution of differences between the Houses should be left to political compromise and the good sense of political leaders, rather than some 'mechanical' provision to resolve deadlocks.

EXECUTIVE CRITERIA

In the 1897-98 convention, the executive form of parliamentary responsible government was adopted because it satisfied three essential criteria of *monarchy*, *democracy* and *familiarity*. That Australia would be a constitutional monarchy within the British Empire was not seriously contested at the time. Sensitivities were such that 'subject of the Queen' was used instead of 'citizen' as the appropriate constitutional language in section 117.¹¹ Despite the retention of British imperial ties and constitutional monarchy, the pervasive force in Australian constitutional politics by the end of the 1890s was popular sovereignty. This was

⁸ Bristow, C.E. *Official Report of the National Australasian Convention, Debates - Adelaide March 22 to May 5 1897*. Sydney: Republished Legal Books, 1986, 273.

⁹ Bristow, C.E. *Official Report of the National Australasian Convention, Debates - Adelaide March 22 to May 5 1897*. Sydney: Republished Legal Books, 1986, 554-555.

¹⁰ Bristow, C.E. *Official Report of the National Australasian Convention, Debates - Adelaide March 22 to May 5 1897*. Sydney: Republished Legal Books, 1986, 500.

¹¹ Galligan, B., Roberts, W. and Trifiletti, G. *Australians and Globalisation*. Cambridge: Cambridge University Press, 2001, Chapter 3.

evident in the crucial steps of making the Australian Constitution: popular election of convention delegates, popular ratification of the draft constitution before formal passage at Westminster, popular election of the Senate and popular endorsement of constitutional changes. Familiarity in constitutional practice as in the cut of one's boots was trumps according to Convention leader Barton. A fourth criterion that was problematical and contentious was *institutional compatibility*. Responsible government in its traditional form presupposed a dominant lower house, whereas federal bicameralism entailed a senate of virtually co-equal legislative powers as the House of Representatives. While some measures were incorporated to alleviate the problem, serious institutional incompatibility was left to be resolved by sensible leaders and prudent politics.

The alternative executive forms that were not considered or superseded in the 1897-98 constitution are worth reconsidering in terms of these four criteria - monarchy, democracy, familiarity and institutional compatibility. These are an American-style executive presidency and the Griffith variant of not necessarily locating the government in parliament. An executive presidency was not on the agenda in 1897-98 because it did not satisfy the two key criteria of monarchy and familiarity. On the other two criteria of institutional compatibility and democracy, an executive presidency would have ranked highly. Such an executive form was compatible with federal bicameralism, as it would remove the executive from parliament and the consequent tendency of the House of Representatives to dominate the Senate. In the Australian variant the Senate was also thoroughly democratic because of popular election.

The Griffith variant of 1891 was proposed mainly for reasons of institutional compatibility, and because of presumptions that the Senate would be comprised of Senators appointed by the States and act as a States' house. Those dual presumptions were overturned in 1897-98 by having a popularly elected Senate that could be expected to pursue popular and national rather than States' interests. Hence protecting a federal States' house was not the issue. Nevertheless, institutional incompatibility remained between differently constituted popular houses with virtually co-equal powers and the executive based mainly in one house. The 1975 constitutional crisis was the most dramatic evidence of this, although for the most part a combination of prudent politics, party dominance and relegation of the Senate to a secondary role have ensured workability of the system. The Griffith variant was rejected mainly because of lack of familiarity - Swiss executives were as unacceptable as German boots. Griffith's model was monarchic with the Governor-General appointing ministers according to pleasure in much the same formulation as used in the later draft. Because it was intended as an open-ended model that would evolve to suit the system, we cannot

say much about its detail. Most importantly, we do not know how ministers would have been appointed in practice. Suggestions were floated for election by both houses of parliament, but this was not specified in the 1891 draft. Hence, on the crucial democratic criterion the Griffith variant was unclear and unacceptable.

REPUBLICAN SWITCH

What happens when we switch republic for monarchy as an essential criterion of executive design, and take account of Australia's century of experience in working its constitutional system? The particular genius of the responsible government form of executive is combining formal monarchy with effective democratic government. The need for such a dualistic device disappears once we switch to a republican form so we are free to experiment, at least conceptually, with versions of an executive and elected presidency.

An Executive Presidency

An executive presidency satisfies three of the four criteria set out above: it is highly republican, democratic and institutionally compatible. But it lacks familiarity. Such an executive would be a major novelty and probably too great a departure from Australia's constitutional heritage to be accepted. It is worth exploring nevertheless, and examining in more detail how it might fit with Australia's constitutional heritage.

According to common formulation, an executive president combines the functions of head of state and head of government. The American President is the paradigm example. The main advantages of combining formal and real executive power in this way are simplicity and strength. There is one office that is easily understood by the people, especially if they elect that office directly as no doubt would be the case if it were adopted by Australia. With no other symbolic superiors, reserve powers or complications about internal order and relations among parts to confuse and weaken, such an executive is single, unified and strong. A further advantage of having such an executive is the transformation of parliament that, purged of an executive located primarily in the lower house, is freed up for an enhanced legislative role.

There are disadvantages, however, in unifying the executive in this way. One is the blurring of distinct roles; another is functional overload. There are advantages in splitting the more formal and symbolic head of state functions from the political functions of running the government on a day to day basis. The former requires qualities of dignity and inclusiveness, while the latter is taken up with the cut and thrust of partisan politics and tough policy and decision making that produces winners and losers. Such

a distinction in offices is common in other institutions of public and private governance. We might use recent experience of the American Presidency to illustrate the problems of overload and the demeaning of the office that political occupancy can incur.

There is a further political, indeed republican, virtue in having a dualistic office with some separation of powers, albeit of formal from political. When the American Founders were designing their executive, they considered seriously a multiple presidency but rejected it on the grounds of weakening the office. Having a number of occupants would complicate decision making and be prone to delays and even indecision. What they were considering, however, was not a popularly elected president but one chosen by state electoral colleges that were appointed by state governments. They thought the legislature would be the dominant branch of government because it was the only democratically elected one, and hence the presidency needed to be unified and strong to balance the system. An elected executive president who is both head of state and head of government is enormously powerful. There is an obvious case for weakening such a combined office somewhat through splitting the formal and political functions and having each performed by different people. This provides an important symbolic dampener to political power in the efficient executive, and depending on the way the office is structured can also provide some real check on power. The Roman Republic is the classic example of multiplying executive offices to check despotic power and enhance the protection of popular interests and rights. Having a dual office is rather different but can achieve some of the same effects.

An Elected Presidency

This brings us to the consideration of an elected presidency for providing the more formal part of a dualistic executive if we retain parliamentary responsible government. It needs to be made clear that the office of president that we are dealing with in this scenario is largely a symbolic one but with special reserve powers. It is not that of an executive presidency.

Because of an exaggerated attachment to the current forms of responsible government, minimalists view an elected presidency with some horror. The system proposed in the 1999 referendum entailed having the President chosen by the Prime Minister and endorsed by Parliament. Giving the Prime Minister the power of instant dismissal of the President in that model was an extreme manifestation of obsessive attachment to the supposed status quo. In fact, however, it was a distortion because the Prime Minister cannot sack the Monarch under the present system, and can only have the Governor-General removed by

advising the Monarch to withdraw their commission Quite properly, Richard McGarvie rejects prime ministerial dismissal as an unacceptable innovation on current practice In particular, it reduces the indirect formality and time lag in having a genuinely independent head of state make the dismissal.

McGarvie's own ultra minimalist model would replace both monarch and governor-general with a select group of superannuated grandees who would formally process the Prime Minister's decisions on appointment and dismissal.¹² Such a committee would effectively rubber stamp the Prime Minister's decision John Power's ingenious proposal for substituting an Australian president for the Queen and keeping the office of governor-general intact preserves the status quo while allowing for an elected president¹³ But why this obsession with minimalism and concern to preserve parliamentary responsible government in its current prime ministerial form? Why retain monarchic forms without the Monarch?

If the Monarchy is dead then we should discard it That means, if we stick with responsible government, finding a new head-of-state arrangement with appropriate constitutional and political bases that ensure the independence and dignity of the office It should be free of influence and manipulation by politicians and, in particular, the Prime Minister It is not that we don't trust our elected politicians; it is rather that this is an office that needs to be independent of them since it stands above parliamentary political contests and has reserve powers of intervention in special circumstances Mutual deterrence might have ensured an uneasy peace during the Cold War, but setting the Prime Minister and President in such a relationship so that each can sack the other is a poor constitutional recipe That is particularly the case given the institutional incompatibility between responsible government and the Senate that would continue

An elected president with largely symbolic function and limited reserve powers is not such a radical change There is indeed a case for bolstering the powers of the President to re-balance the system and restrain prime ministerial dominance Popular election of the office would no doubt achieve that The other key point in favour of popular election is that it gives the people who are the source of all political power in the system ownership of this high office Would popular

¹² McGarvie, R *Democracy Choosing Australia's Republic* Melbourne: Melbourne University Press, 1999

¹³ Power, J 'Accommodating the McGarvie Model in a Directly elected Presidency' Paper presented to a seminar on *Republicanising the Australian Head of State The Way Forward*, Political Science Department, University of Melbourne 11 October 2000

election produce a pop star or a political hack? I doubt it. The best politicians who are elected are people of quality. Would it ensure a politically partisan candidate? Not if the people expect and support a person of quality and independent stature for such an office. How would candidates be selected to stand and what would they campaign on? There are any number of ways of selecting appropriate candidates, not least through political parties choosing an appropriate person. And campaigning in the usual political and partisan way would probably be counter productive

There seems a strange reluctance among elites to take this office out of the gift of politicians and entrust it to the Australian people. Such distrust of popular sense and choice would have been out of place a century ago when colonial Australians were forging their national constitution. The issue of a popularly elected head of state did not arise because Australians at the time were committed to retaining constitutional monarchy and membership of the British Empire. But in all other significant aspects of constitutional design, key institutions were grounded on popular choice. These included the Constitution itself, both ratifying and changing it, and the Senate

I see no good case against directly democratising the office of head of state. Such an office would then satisfy the criteria of republicanism and democracy. Since Australia has a century of experience in popular choice in major constitutional matters, entrusting the people with this office is hardly novel or revolutionary. Rather it would give them a renewed stake in, and enthusiasm for, political and constitutional affairs. Furthermore, the sleeper issue of institutional incompatibility would be safeguarded through having a genuinely independent reserve authority. Republican virtue and institutional balance would be enhanced in additional ways through creating an independent office that constrained prime ministerial dominance of the system

ABOLISH THE PRIME MINISTER?

If we abolish the monarchy, then why not also the prime minister? The two comprised a neat dualistic device for continuing with the person and formalities of monarchy while democratising real power in the Prime Minister and Ministers. This was an ingenious institutional device that achieved the best of both worlds. As Bagehot pointed out in his 1867 exposition of the British Constitution, monarchy captivated the attention of the masses and presented a dignified and human face for government.¹⁴ It enabled the real business of government to be carried on behind the monarchic forms, in a 'disguised republic' where politicians

¹⁴ Bagehot *W The English Constitution* London: Collins / Fontana, 1963

operated in parliament and cabinet. As parliament was democratised, real executive power passed to the political leadership – Prime Minister and cabinet – whose ‘advice’ the Monarch accepted and promulgated.

So in jettisoning the Monarch why not also get rid of the Prime Minister and have a more straight forward republican executive? This is another way of asking the earlier question about having an executive presidency. The disadvantages of a unified and democratic president are too great: a concentration of executive power in one office, overload of functions, and finding occupants with both high political skills and the dignity and stature that the office requires. Moreover, a hundred years of constitutional practice that consolidated fifty years of earlier colonial experience with parliamentary responsible government has served Australia well and shaped its political culture and institutions. Abolishing the Prime Minister would have some beneficial effects on the legislative process, such as freeing up the House of Representatives to be a genuine legislative chamber rather than an executive consistory and forum, and re-balancing the Federal Parliament in the Senate’s favour. But it would be alien to Australia’s political culture and a wrenching change that Australians would not likely accept.

A better proposal is to retain the Prime Minister and parliamentary responsible government but have them serve overt republican rather than monarchic forms. We can take advantages of the benefits that executive dualism allows: a dignified and independent head of state who represents the Australian people in their political Sunday best, and a work-a-day political system with which everyone is familiar and gets the political job done. We should avoid the minimalist tendency to make over formal monarchism as secular despotism by switching the name and leaving everything the same, including the constitutional text. The easiest part of abolishing the Prime Minister would be that no change to the written constitution is required since the office is not mentioned at all in the executive chapter. The minimalist mistake is re-branding the archaic formulations of absolutist monarchism in the Constitution as republicanism. This absolutist language is wrong both literally and symbolically. Presidential absolutism, if only in the formal language of the Constitution, is antithetical to republicanism. Moreover, prime ministerial dominance of the system should be constrained and redressed, not reinforced and extended as the ConCon model would have done.

So let us explore the executive presidency, but retain the Prime Minister and executive dualism. Republicanising the head of state is not so much getting rid of the Queen – she will graciously go when the Australian people decide – as getting rid of the monarchic office of head of state from the Constitution and devising an acceptable republican substitute. That cannot be done by a simple name change, but requires radical surgery to the constitutional text and substantial change in the

practices of constituting the office. The executive section of the Constitution needs basic rewriting to expunge absolutist monarchism and avoid presidential despotism. The office of republican head of state needs to be one of status and independence, and in particular free of prime ministerial and political influence. Under the current system, the Prime Minister cannot touch the Queen nor dismiss the Governor-General, but only advise the Queen to get rid of her surrogate.

An Australian republican head of state should be an office mainly of status but also have the necessary reserve powers that operation of parliamentary responsible government requires. That means constitutional definition of the office and popular election by the people. Creating an alternative source of power to the Prime Minister symbolically and in aspects of overseeing the parliamentary system is a good thing, contrary to what the minimalists claim, and the least that a decent republic requires. If an elected republican head of state clips some of the overblown power and prestige of the Prime Minister, that also is a good thing and would be a republican bonus. The last thing Australians should want for their federal republic is a head of state that has absolutist powers according to the constitutional text yet in practice is the creature of the Prime Minister and politicians.