

BOOK REVIEWS

Monarchy to Republic, by GEORGE WINTERTON, Associate Professor of Law, University of New South Wales. (Oxford University Press Australia, 1986) pp.i-xi 1-221, with End Notes, Bibliography and Index. Cloth recommended retail price \$40.00 (ISBN O 19 554563 X), limp recommended retail price \$19.95 (ISBN O 19 554862 1).

George Winterton, who is Associate Professor of Law in the University of New South Wales, established his credentials to write on the law and practice of government in Australia with the publication in 1983 of his excellent work *Parliament, the Executive and the Governor-General*. It has been this reviewer's belief that scholars with expertise who also have the gift of writing well should take occasion from time to time to pass the benefit of their knowledge and perceptions on to a wider audience than their fellow professionals. As the book under review amply demonstrates, Professor Winterton is of the same opinion.

Another telling recent example in the same field has been the publication by Michael Coper, also Associate Professor of Law in the University of New South Wales, of *Encounters with the Australian Constitution*, CCH 1987, as a contribution to the Bicentenary. Professor Coper too had previously put his scholarly standing beyond question with a fine book on one of the most difficult sections of the Australian Constitution, section 92. To find that lawyers of the calibre of Professors Winterton and Coper are ready to turn their pens to the exposition of constitutional issues of interest to the layman, at book length, is a most encouraging development. Up to now this country has not been much given to the study of our extraordinary system of government and its often baffling legal underpinning. Similarly the publishers, CCH, and in the present case Oxford University Press Australia, are warmly to be commended for their enterprise in making such developments possible.

The standpoint from which Professor Winterton writes is succinctly set forth in the first two sentences of his preface.

This work commences from the premise that an Australian republic is inevitable. Not imminent, admittedly, but inevitable nonetheless. Hence, the sooner Australians understand what a republic entails, what forms of republican government would be viable in the Australian constitutional, political and cultural environment, and the manner in which republican government could be introduced, the better.

And so say all of us. One of the disheartening features of attempts hitherto to conduct public debate on future forms which the government of Australia might take has been the regularity with which the discussion is converted into passionate and dogmatic exchanges of opinion based on comprehensive ignorance. With even moderate luck the book under review will make a substantial contribution to correcting that situation.

For the benefit of convinced monarchists in particular it needs to be stressed that this is not a book written to attack them. Certainly it assumes the inevitability of the last thing they wish to see, an Australian republic. But this is a justification for the book's appearance, not an argument that their preferred position is necessarily wrong. On the contrary, many who regard themselves as unshakeable monarchists are likely to find their fears laid to rest by the careful expositions given by Professor Winterton of exactly what is and what is not entailed in changing our system of government at the top hierarchical level. The author is indeed so anxious to leave an impression of evenhandedness that he includes a short Chapter 9 summarising the standard arguments for remaining a monarchy: his fear is that the effect of the rest of the book, however unintentionally so, may be to give the impression that it is a disguised polemic in favour of a republic notwithstanding his conscientious efforts to avoid slipping into that position. Unfortunately he sees with such clarity, and expresses with such precision, the weaknesses of the case for a continued monarchy that he might have done better from his own point of view to omit Chapter 9, notwithstanding his commendable motive.

This however is a minor point. The substance of the book is a methodical approach to the practicalities of choosing a republican form of government from among the many alternatives theoretically available. The utility of the way in which Professor Winterton sets about his task is well illustrated by a simple but basic point which he makes at the outset of Chapter 2: "[t]he form of republican government adopted by Australia will, of course, largely depend upon the reasons for making the transition from constitutional monarchy to republic in the first place". Absolutely so. This is a particular statement of the more general principle, frequently overlooked, that any form of government ultimately depends for its effectiveness and acceptability on the attitudes, beliefs and preferences, however oddly assorted they may be, of the governed.

The idea of an Australian republic is often attacked by its opponents on the ground that excellent republican constitutions are adopted by totalitarian regimes, whether of the military dictatorship variety or the communist committee variety. The form of government is free and law-abiding but the reality oppressive and lawless. Such critics fail to observe that the fault lies not in republicanism as such, which is a strictly neutral concept, but in the almost total dissimilarity between what the people want and what they have got. In such cases the constitution is an almost irrelevant propaganda exercise. Australia is fortunate in not being such a country. We can reasonably expect that if we decide to make a radical overhaul of our constitutional arrangements, the subsequent facts will bear a reasonable resemblance to what we intended to accomplish.

But the importance of getting aspiration and achievement as nearly as possible into alignment depends precisely on Professor Winterton's point. Although it is never going to be possible to be comprehensively certain about why the change to a republic was decided on, the designers of the subsequent constitution must do their best to divine the reasons, or at least those of them

which have substance, and choose or design a constitutional framework accordingly. The result otherwise will be avoidable disillusionment and dissatisfaction.

Since the Crown and the institutions of government which derive from it play a much greater part in Australian constitutional arrangements than is generally realised, the author very properly takes time out in Chapter 3 to provide a concise statement of the subject. Having covered these preliminary matters, the importance of which is illustrated by the fact that they occupy over one third of the text, not counting notes, Professor Winterton arrives in Chapter 4 at the beginning of his extensive and informative description of the various models which could be adopted, as illustrated by numerous examples drawn from the many republican countries in the world whose constitutions are far from meaningless pieces of propaganda but represent living and working systems of reasonable government. The discussions are clearly presented, the facts usefully marshalled and the examples well chosen. Altogether quite the most helpful contribution to this subject that the present reviewer can recall.

The book is warmly to be commended and deserves to be widely read.

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Encounters with the Australian Constitution by MICHAEL COPER, (CCH Australia Limited, Sydney 1987), pp. i-x, 1-502, with End Notes, the Constitution, Table of Cases, Table of Illustrations, Acknowledgment and Index, Recommended Retail Price \$98.00 (ISBN 0 86903 903 2).

I must be getting old. The hard sell for this book prejudiced me against it. The ethos of modesty and reserve which Australian lawyers have inherited, with the law books, from England, rather turned me against it even before I had seen it. First, there was the razzamatazz of the 'launch' in the Botanical Gardens (no less). And by Mr Whitlam (who else?). Then there were the television and radio reviews and commentaries. Every lawyer knows that the only place for a book review on a 'proper' book about constitutional law is a law journal — like this one. As if this were not enough, for six months one could not open a legal publication without a glossy flyer about this book falling invitingly into one's lap. It bordered on a scandal. It had never been done before. The finest subtleties of the minds of our judges had been lavished on our Constitution. The most delicate nuances of interpretation were reserved to this activity. The deepest erudition — with scarcely a hint of high politics and policy — surely deserved from a law professor more restraint. More dignity. More 'black letter law'.