
A republican meeting

at Manly-by-the-sea

Pat Kavanagh

The debate spills over the PM's minimalist boundaries

On Monday, 28 June 1993, 7.30 to 10 p.m., an interesting, perhaps even historic, public meeting took place in the Manly Pacific Parkroyal Hotel on Manly's national-estate-listed ocean front. The Republic Advisory Committee, created by the Prime Minister precisely two months earlier, had requested Manly Council, along with other local government bodies, to respond to issues raised within its terms of reference. Manly Council formed a working party to draft its response; the working party recommended that Council call a public meeting. The meeting was chaired by Manly Mayor, Geoff Smith. Also on the dais were Town Clerk, Wayne Collins (soon to relinquish his ancient title for the more bureaucratic 'General Manager') and two members of the Advisory Committee: Mary Kostakidis and Nick Greiner. In the hall were members of the Council working party, members of the New South Wales Parliament, activists in the republican movement pro and con, people active in local community groups, academics and about 150 other interested Australians. Everyone present received copies of the Australian Constitution and of the Advisory Committee's Issues Paper. The meeting was constantly lively and entertaining.

The patrician approach

The worthies, Kostakidis and Greiner, spoke little. Mr Greiner explained that they had come to listen, not to debate. He stressed the narrowness of the issues defined by the committee's terms of reference and proceeded to narrow them even further. He more than once insisted that the present debate is concerned only with symbols. Mr Greiner's evident fear is that an open, unstructured debate about republicanism between now and (say) 2001 would be divisive and damaging, and easily manipulated by demagogues. His solution is to contain and manage the expression of opinion within formal structures: the Republic Advisory Committee, a committee reviewing the Constitution chaired by Sir Ninian Stephen, and so on. He reassured the meeting that no changes would be introduced contrary to the wishes of the Australian people — sought through a s.128 referendum. Several people in the hall expressed dissatisfaction with this patrician management of the issues. One remarked that it conceived republicanism as having to do with the head of state rather than the citizens, while another wondered if it meant the important decisions have already been made.

'For the good of the people'

Ms Kostakidis, interestingly, had a more generous and more political view of the committee's terms of reference. She identified the question of reserve powers as the most complex before the committee. She favoured 'de-mystifying' and 'de-paternalising' the reserve powers and tying them to 'the good of the people'. '*Respublica*', she said, means 'good of the people'. Ms Kostakidis did not explain how all this would fit together. At first sight, it combines ascending (de-mystifying, de-paternalising) and descending (good of the people) elements. But at least it attempts to give some substance to the objective of 'a viable Federal *Republic* of Australia' within 'our current conventions and principles of government' (phrases taken from the committee's terms of reference).

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The fundamental issue

In view of the circumstances in which the meeting was called, one expected discussion to be confined within the Advisory Committee's terms of reference. This turned out not to be so. The first question put to the meeting raised a fundamental issue outside the Committee's terms of reference: Do you support the move towards Australia becoming a Republic? Discussion from the hall concentrated on the fundamental issue; and even when Mayor Smith attempted to bring discussion back within the terms of reference, speakers returned to it.

Speakers were about 70/30% in favour of a republic. Of those against, some argued that a minimalist proposal deserved a minimalist response: 'if it ain't broke, don't fix it'; 'if it's only about symbols why bother?' Of those in favour, many pointed to the increasing irrelevance to Australia of the Queen who, after all, is head of the UK Government, a government whose politics are grounded in European rather than in imperial or even international concerns. One speaker, who had immigrated from The Netherlands, spoke amusingly of the irony that struck him when he crossed the world seeking a new life and then found himself swearing allegiance 'to a lady who lived only 30 miles across the water' from where he had come. The Dutch have a monarchy too, he said, but at least it's Dutch.

These sorts of views were to be expected. Essentially, they are views arising within the nationalist, regionalist, political and developmental frame within which much of the 'republican' debate has so far been contained and within which the minimalist position itself arises. What made this meeting intensely interesting and stimulating is that most of the discussion coming from people in the hall appeared to arise within structures of ideals that transcended the mean limits within which the Prime Minister has so far sought to contain the 'debate'. For example, people who argued against a republic spoke as if they conceived of Australian society organologically. 'Monarchy is family' said one speaker who told the audience he was an architect. He proceeded to two, at first sight, contrary images: monarchy 'humanises the head of state' yet the monarch is 'chosen by God'. It did not sound all that far distant from the Tudor and Jacobean discourse of the two bodies: the Queen represents eternal justice in our day-to-day politics. As such, she must reign but need not rule. In similar vein, other speakers linked monarchy with order and peace, republicanism with disorder and irresolvable strife. Take away the Crown, they warned, and we shall feel the naked political ambition of the politicians.

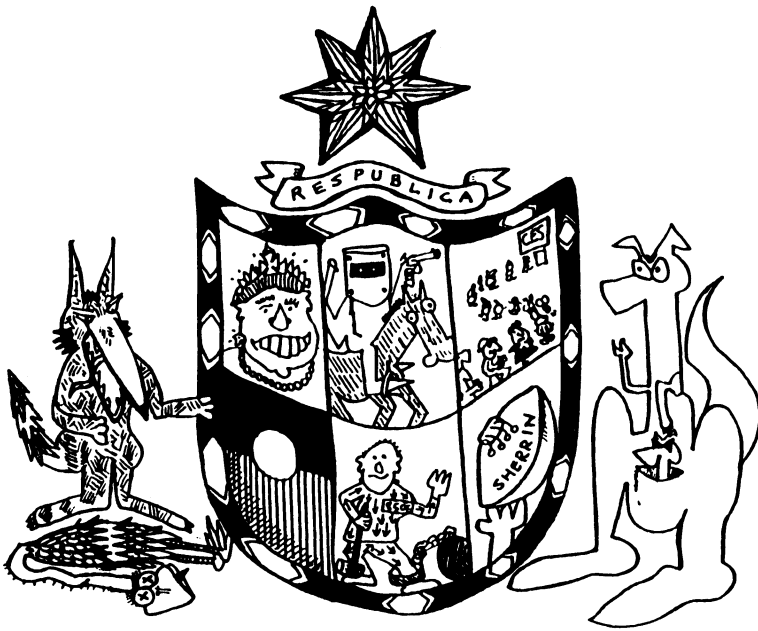
Mr Greiner intervened to reassure the meeting that no proposal before the Advisory Committee 'will increase or decrease the possibility of a dictatorship in Australia', but these Cassandras could see that matters would not long be contained within his limited conception. Mr Greiner saw dictatorship as the result of a struggle for power that had not been contained politically. These objectors saw dictatorship as the result of the disintegration of the basis of legitimate authority. An organological society has objective and perpetual truth at its core and that truth must be represented and institutionalised within the constitution. Constitutional monarchy is the accepted means of doing this, these objectors were arguing. The monarch need not rule but he/she must reign in the sense of laying a legitimate claim to represent perpetual and objective truth in the politics of here and now. Can we retain the substantive value of monarchy without a flesh and blood monarch

crowned and anointed in St Edward's ancient shrine? Other speakers attributed the creeping vice of republicanism to the dilution of our British heritage following postwar immigration. Strip away the xenophobia and we see the spectre of an unstructured society unable to root itself in any history or in any ideals.

These fears are not new and it was fascinating to see how some people continue to legitimate Westminster constitutionalism in the normative vision of an organological society. A.V. Dicey, who adapted Westminster constitutionalism to a liberal conception of society, knew what was being lost and he sought to fill the gap with his conceptions of the rule of law and ministerial responsibility.

Even more interesting were those who spoke in favour of a republic. Their arguments took two main approaches. First, there were those who stressed the cosmopolitanism of Australian society. Australia, it was said, has many national heritages, not just one. A monarch who is inextricably connected to one of those heritages can never supply coherence, meaning and legitimacy to a modern Australian constitutional arrangement which must recognise and maintain the diversity. The second main argument involved detaching Australian history from the narratives built around the governmental power of the British Crown and re-establishing it in new narratives that seek to give force to the initiatives of those peoples who have sought to carve out a future in the sunburnt country. Thus, said one speaker, republicanism is not negating the past: Australia has a history of 40,000 years plus. Said another: if we seek a common factor to unite the Australian peoples in a purposeful future, that factor is dispossession and (impliedly) triumph over it. The Aborigines were dispossessed by the Europeans, the convicts were dispossessed by the British legal system, the 19th century free settlers were dispossessed by poverty and famine, the postwar immigrants were dispossessed by war. The speaker might have added, but did not, that Australian multiculturalism is distinguished from British multiculturalism in this respect. Postwar immigrants to the United Kingdom also were dispossessed, but they went to the United Kingdom because they could claim entry there. In other words, they returned to the Crown. The dispossessed of Australia, however, have looked to themselves and their relationship to this land itself to imagine their futures. The implication of the speaker's insight then was that republicanism can unite the Australian peoples in a new history in which not only do they rise above dispossession but in which they also seize control of their destiny. And this history springs from the peoples themselves: their experiences, their yearnings and aspirations, their belief that they can create a fair society by claiming it for themselves.

One may question the accuracy of the above perceptions of the multicultural Australian society, but that is not really the point. The point is not their accuracy but their idealism. Speakers were trying to conceive of Australian society in a way that *dictated* republicanism. Their republic then emerged not as a mere device to assist the nationalisation and re-orientation of Australian politics. Unlike Mr Keating, these speakers were not merely storming the palace. They were seeking to root the legitimacy of Australian constitutionalism in Australian society. In the process, the monarchy is not so much abolished as simply swept away because it cannot hope to embody the normative power of those principles around which the society seeks to organise itself. At the meeting, both 'for' and 'against' speakers sought the legitimacy of Australian con-



stitutionalism in the relationship between the constitution and society. The difference was that while the anti-republicans sought to deliver coherence and meaning to society by locating the constitution in *a priori* principles vindicated in an historical conjunction of forces in times past, the pro-republicans sought to legitimate the constitution by rooting it in the normative meaning of a modern Australian society being forged in present history, a history that finds its meaning in our present experience and not in a supposed teleology. The former dictates monarchy as much as the latter dictates republicanism. In doing so, the pro-republicans sought to give us an experience which our commitment to imperial constitutions has consistently denied us: the authorship of our own constitutionalism.¹

It is important to realise this movement does not dictate republicanism merely because it originates in society: it is because it originates in a *diverse* society. In this sense the two approaches in the pro-republicans' argument, separated above for analytical clarity, run together. It is the power of diversity in society that generates the normative force, and it is the maintenance of diversity that will characterise the republican 'community without nation'.² If the social movement pushed merely to a new unity then it would dictate the constitutional form of monarchy, even if not the person of Queen Elizabeth II, its source in society notwithstanding. It would, indeed, be indistinguishable from the minimalist position,³ which these speakers were clearly rejecting.

The meaning of the republic

The meeting, then, was fascinating, if only for the widespread refusal of participants to confine themselves within the minimalist perimeters favoured by the Prime Minister. For Mr Keating, Australian republicanism seems to be dictated by what he sees as the necessary realignment of Australia's economic and political alliances. We must cut ourselves off from Britain and, perhaps, even all of Europe and relocate ourselves in Asia. For most Australians the meaning of such a 'republic' could derive only from treaties and other arrangements put in place by governments. Pro-republican speakers at the meeting

accepted separation from Britain, but they insisted that the meaning of the republic will lie in the narrative history of the diverse peoples of Australian society as they seek to realise a purposeful future. This envisaged the *respublica* not so much as the good of the people as the thing of the people.

One may ask: would it be so different to follow the process favoured by Mr Greiner, i.e. a series of committees carefully put in place by the government followed by a s.128 referendum? The answer is yes. A s.128 referendum may involve the people but it does not institutionalise the power of the people. The reason is that s.128 derives its normative force from the Constitution and the meaning of the Constitution simply is not rooted in the Australian peoples. The Australian Constitution was drafted within Australia and approved at referenda in the federating colonies. These referenda were messages to the colonial governments and authorised them to take the next step, which was to request Her Majesty to enact the Constitution in her United Kingdom Parliament. In other words, the Constitution was to derive its legal force not from the people of the colonies but from the Crown in

the United Kingdom Parliament. It must be made clear that this procedure was not demanded by the imperial government. It was the colonial governments themselves who wished to lock the Constitution and the new Australian Commonwealth into the imperial framework. The Australian delegates in London were 'instructed to press for the passage of the Bill without amendment'⁴ in order to preserve its Australian character, but they knew there were no constitutional means through which they could insist on this. Once the Bill was within the realm of Whitehall and Westminster it was within the norms there operating. According to those norms the responsible Minister, Joseph Chamberlain, could not put the Bill before the Parliament unless he believed it was in a form the members could pass. And here both Chamberlain and the delegates were perfectly aware that the United Kingdom Parliament was not the normative voice of the Australian people, even if it was their constitution being enacted. It was the normative voice of the electors in the United Kingdom who returned the members to Westminster.

Therefore, in considering the Bill, the interests that Chamberlain knew the members had to protect were not those of the Australians who had approved the Constitution at referenda. They were the interests of the United Kingdom electors. Once the authority of the Parliament was attracted, this principle followed as night follows day. Hence Chamberlain was obliged to insist that the Constitution Bill be amended to protect 'the private interests of investors . . . interested in Australia',⁵ many of whom were among those electors from whom the Parliament derived its authority. In other words, when the colonial parliaments passed humble addresses requesting Her Majesty to enact the Constitution in her United Kingdom Parliament they ripped the Constitution out of whatever historical narrative it may have been part of in Australia, and projected it into the normative structure of the United Kingdom constitution, a structure from which the residents of the Australian colonies, as non-electors, were quite simply excluded. The colonial governments wished to retain the imperial constitutional links not because those links operated within a theory of virtual representation but because those

links guaranteed the colonial governments access to the United Kingdom government.⁶ But the constitutional role of the Australian people in the process was that of subject, not that of citizen.

Section 128 of the Constitution came into being as part of this history. When we participate in a s.128 referendum we may have the political experience of deciding on our own constitutional structure, but we do not do so in execution of our own authority. Constitutionally, we act as delegates of the United Kingdom Parliament who will allow us to amend one of their statutes so long as we do it in a certain way. That is why, in 1977, we could use a s.128 referendum to broaden s.128 itself (by adding residents of the Territories to the process), something logically impossible if the authority for it had to be found in the referendum of its own force. Legally and constitutionally s.128 has no history and no meaning except that here outlined. If, then, we set the Australian republic in place through a s.128 referendum we will not break this circle. The republic will not be created in execution of our own authority.⁷

Well OK, one might say, logically this is so, but does it make an actual difference? Yes it does! If our authority is effective only when filtered through a pre-existing constitutional structure then we may not speak directly our own concerns. Our concerns will be political, and demand recognition, only when transferred to, and re-interpreted within, a value structure that does not spring from ourselves. We will have the illusion of citizenship while remaining subjects. If we are to experience the reality of citizenship we must insist on operating within a normative structure that executes our own authority. We must not be fooled by those unconvincing arguments about how the *grundnorm* has become Australian, arguments disproved as soon as they are made. The structure is British imperial and our role in it is that of subject. We must reject it and find our own authority.

The nice thing about the republican meeting in Manly is that the pro-republican speakers seemed intuitively aware that the minimalist position will deny us the experience of citizenship. How can a group that identifies itself through a non-British experience (e.g. Australian Aborigines)⁸ truly participate in the public life of the nation if their concerns have to be filtered through a constitutional structure that institutionalises values vindicated in the British experience? Kalantzis and Cope argue that, ironically, the very continuity of the British imperial-derived constitutional structure in Australia, long after it ceased realistically to reflect an Australian society increasingly aware of its diversity, enabled the spontaneous growth within Australian society of an independent politics springing from the elements of that diversity. This, they argue, has actually made Australian politics far less state-centred than those of that great liberal republic, the United States of America, with many significant political initiatives arising within and generated by the diversity of the society rather than the unity of the state.⁹

Similarly, pro-republican speakers at the Manly meeting seemed intuitively aware 'of the continuing vitality, despite the dominance of "official" politics, of civil society'.¹⁰ And they seemed intuitively aware that 'for republicans, the challenge is to nurture and build upon this vitality, to provide the institutional spaces in which citizens can enhance their jurisgenerative capacities'.¹¹

Conclusion

It is this intuitive awareness that lay behind the perception of so many speakers at the Manly meeting that made that meeting so fascinating. Hence, despite the circumstances within which the meeting was called, speakers refused to see the issue as constrained within the minimalist position. The clear lesson from this is that if we are to have a genuinely republican debate there must be more public meetings of the Manly type. Such citizen forums could actually turn the republican 'debate' around, give it a depth and meaning it currently lacks. Pro-republican speakers at the Manly meeting shifted the normative springs of the republican movement from the nationalist concerns wherein the Prime Minister seeks to seat them to the jurisgenerative capacity of the Australian society itself. They gave us a vision of a republic that will rise from the peoples of Australia and institutionalise a *new* Federal Republic of Australia for our second century of federation.

The Mayor closed the meeting at 10 p.m. The hotel provided tea and coffee at \$1.50 a cup. We drank it in the foyer, at the same time renewing acquaintances and swapping views on the evening's proceedings. After a little while we stepped out into the cool night air. The breakers of the Pacific Ocean washed upon the Manly sands. The lights of the hotel softened them in a shell-pink glow.

References

1. Much of the argument here is inspired by the analysis of the Australian constitutions in Davidson, Alastair, *The Invisible State*, Cambridge University Press, 1991.
2. The phrase is that with which Mary Kalantzis and Bill Cope close their interesting essay 'Republicanism and Cultural Diversity' in Wayne Hudson and David Carter (eds), *The Republicanism Debate*, New South Wales University Press, 1993, pp.118-144. Kalantzis and Cope develop a multi-faceted argument to similar effect as that adumbrated in the text.
3. 'Minimalism is the idea that the republic is simply about having a new kind of monarch whom we call a president', Cochrane, Peter, 'The 1990s: daring ideas or mannered meekness', *Sydney Morning Herald*, 2.8.93.
4. La Nauze, J.A., *The Making of the Australian Constitution*, Melbourne University Press, 1972, p.250.
5. La Nauze, above, p.264. See also p.261. Chamberlain insisted that where these interests were involved the jurisdiction of the Privy Council must be retained.
6. The principle of virtue as the normative basis of representation in the United Kingdom was destroyed in the 19th century when the franchise was reformed within a liberal normative framework. See Dicey, A.V., *Law and Public Opinion in England*, 2nd edn with a preface by E.C.S. Wade, London, Macmillan, 1963, Lecture VI. Dicey, however, consistently recognised the role of classical aristocratic politics within the reform nonetheless, and he erected the rule of law as a bulwark against raw democracy.
7. George Winterton himself has recognised this. See his *Monarchy to Republic*, Oxford University Press, Melbourne, 1986, p.5. On pp.122-130 Professor Winterton seeks the meaning of s.128 by locating it in the Australian history of its drafting, but even there he recognises a s.128 law is executed only by the royal assent (p.129); i.e. the people may not execute their own authority.
8. Brady, Wendy, 'Republicanism: An Aboriginal View' in Hudson and Carter (eds), above, ref. 2, pp.145-8.
9. Hudson and Carter, above, ref. 2.
10. Boehringer, Kathe, 'Against Clayton's Republicanism', (1991) 16 *Legal Service Bulletin*, 276, 278.
11. Boehringer, K., above.