

MODELS AND OPTIONS FOR THE AUSTRALIAN REPUBLIC

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Opinion polls have often asked people whether they want Australia to become a Republic. But very few opinion polls have actually asked "what sort of republic" we should have or "what type of government" we should opt for. These questions amount to the essential element in any discussion of a future Australian Republic. There is no point in simply deciding to have a Republic without having any idea of what sort of Republic we should have. Obviously, if the issue went to a referendum there would have to be a clear platform. Doubtless, the Republican Party plans that.

Now there are really three main types of republics if you look around the world: They all have advantages and disadvantages. The first type is the Parliamentary Executive Republic, i.e. a republic with a separate head of state and head of government: the former being a "president"; the latter being a prime minister or chancellor. The leading examples of this system are India, The Irish Republic, West Germany, Italy, Israel, Austria, Iceland indeed, virtually all the republics of Western Europe.

The second type is the Executive Presidency and the leading example is the United States of America.

The third type are various hybrids or mixtures of the above two. The leading examples of these types of republican systems are found in France and Sri Lanka.

THE FIRST SYSTEM

In many respects this applies in Australia under our present monarchical system. The distinguishing features of the first system are that the government is responsible to parliament - usually the lower house. In a couple of countries though, e.g. Italy, the government is responsible to both lower and upper houses. Members of the government are members of parliament but not necessarily. In some Western European countries, e.g. Holland (which is not a republic incidentally) the system doesn't require membership of parliament for members of the government. The head of state (the president) in most of these cases exercises ceremonial functions plus some other limited powers. In virtually all these first system countries the president formally appoints the prime minister or chancellor. Sometimes, the parliament has to ratify the appointments. The president usually receives and sends ambassadors to other countries. In some countries the powers of the head of state are wider and presidents can call for referenda thus by-passing the government of the day.

The advantages of this system are:

1. The split roles of the head of state and the head of government especially if the head of government abuses power and ends up with what the people perceive as "too much power". Ceremonial functions may be an irritant to governmental needs but the occupant who exercises these said ceremonial functions serves as a focus for national identity and also occasionally as a distraction of public attention from the governmental head. Further, a sense of balance is maintained. Problems do arise as in several African countries where the head of state and the head of government compete for power causing civil wars and chaos, but generally this is not a serious problem.
2. The government is responsible to parliament or to the lower house. This is the ultimate protection. If the government behaves in an unacceptable way, parliament or the lower house is able to pass a vote of "no confidence" in the government and have it removed from office. Democratic accountability is therefore also assured.

The great disadvantage of these republics and accordingly, our Australian system, is political parties and more particularly, as in Australia's case: the so-called two party Westminster system which has led to the government controlling at least the lower

house. Government responsibility and accountability is sometimes more theoretical than real. If Australia decided to adopt a republic along these lines then the change needed to be made to the Australian Constitution would be relatively minor. Not minor in number but certainly in substantive effect. Many of the provisions of the Australian Constitution - probably a quarter mention the words "Queen" or "Governor-General". We could remove these two words and substitute them with the word "President".

Making these substantive changes to the Australian Constitution would entail a referendum. Section 128 of the Australian Constitution provides for amendment. In Australia, to have a referendum carried, we need a majority of votes in a majority of States. Thirty eight referenda questions have been put to the Australian people since Federation in 1901, and only eight have been successful. Of the thirty unsuccessful referendum questions, five lost because of the "majority" requirements. Section 128 of the Australian Constitution is a rather difficult requirement. It is hard enough to get a national majority of votes on any issue; but it is even harder to get a majority in four of the six States as well.

Federalism could remain 100% completely unchanged; the rule of law enforced by judicial review would not need to be altered; the kind of judiciary and the separation of powers provisions would also not need to be changed; and the existing system whereby the Government was responsible to the Parliament wouldn't vary either i.e. if the substantive alterations to the Australian Constitution - those of "Queen" and "Governor-General" replaced by "President" - were made. All that would change would be the identity of the Head of State and how this person would be appointed.

THE SECOND SYSTEM

The Executive Presidency means that the executive power is vested in one person - the president. Apart from the United States of America most of Latin America and Central America have executive presidencies. The main feature of this system is the relatively strict separation of powers: legislative, executive and judicial which are vested in separate departments, relatively independent but not totally so. In the American system this separation was enforced by a combination of checks and balances which, in theory, detracted from the strict separation of powers. It was realised by the United States constitutional framers that strict separation of powers would, in practice, lead to the supremacy of one branch of government (probably the Legislature). So, to protect the independence of the three branches and thereby promote the separation of powers in actuality, the framers introduced a neat and practical system of checks and balances giving each branch a role in the functions of the others. Thus, paradoxically, it was necessary to compromise the strict separation of powers to protect the integrity of the three branches. The personnel and the powers of the Executive branch and the Legislature are, to some extent, independent and The President of America and the Congress have fixed terms of office. It is a rigid system - the Congress cannot dismiss the President except through impeachment which requires "high crimes and misdemeanours" to have been proven; the President cannot dissolve Congress. They each have to put up with the other for the two year term of the House of Representatives and the four year term of the Presidency. The Senate in the United States has more than two years but I am referring to the House of Representatives (the Lower House). All crises must be resolved within the system. There is no possibility of Governor-General intervention.

The great advantage of the Executive Presidency is that the Legislature is not the creature of the Government and is therefore able to exercise independence. Congressional Committees make the Government accountable to them and they can force the

President to account to the people through Congress. The Congress oversees the Government and can decline to appropriate the funds that the President needs.

The disadvantages of this particular system include the fact that the President doesn't control Congress even when the same party occupies the Presidency. This often leads to stalemates and deadlocks. The President comes into office on a platform of certain promised legislation but because the President does not control Congress or both the Houses thereof, the President's legislation is often not implemented. Often too, legislation which needs to be passed (in America) isn't! The other negative feature of the American system is that it gives excessive power to one person, who is also the Commander-in-Chief of the Armed Forces.

THE THIRD SYSTEM

The best model of the hybrid or mixed system is to be found in France which was deliberately structured as a hybrid combining features of both the FIRST and SECOND systems. In a sense, it's an actual model for Australia -- a sort of "best of all possible worlds" option. In France, the President is elected for seven years. The President is not removable from office except by the impeachment processes. There is a Government headed by a Prime Minister and the Government is responsible to the National Assembly which comprises two Houses of Parliament elected for five years. There are problems with the non-alignment of the Presidential and National Assembly terms but these do not concern us. In short, the French system (this THIRD system) is a diarchy i.e. two tiers having virtually equal offices at the top. In contemporary parlance, the French system is referred to as "cohabitation". In the French Republican Constitution the President is enjoined to be the guarantor of national independence; guarantor of the judiciary and arbitrator where that particular function is warranted; also the regulator of the functioning of the public authorities; additionally the President appoints the Prime Minister. The French President dismisses other Ministers on the Prime Minister's proposal. The President *presides* over the Council of Ministers (i.e. the Cabinet); dissolves the National Assembly after consulting the Prime Minister; is Commander of the Armed Forces; appoints principal offices, judges and ambassadors; negotiates and ratifies treaties and exercises pardon power. The President can request the National Assembly to consider again (contentious legislation and the like) but does not actually have the power of veto. The French President can submit certain bills to referendum and can invoke an emergency power to rule by decree in emergency situations.

The Government, on the other hand, is enjoined by the Constitution to, literally, "determine and direct the policy of the nation". The Government is headed by the Prime Minister and is responsible to the National Assembly and for national defence and law enforcement. The Government, through the Prime Minister, subordinates offices and exercises rulemaking powers.

In some respects there is an inherent weakness in the French Republican system and that is the seven year term for the President and five year term for the National Assembly -- where parties of different colour can be jointly "in office". In truth, it is a *plus for the people: the President can check the Prime Minister and the Government can check the President*. Commonsense and accommodation of differences is called for. The French system flaws could be ironed out with the structuring of the Presidential and Governmental terms to coincide, say, for five years each, on a fixed basis. On balance, the French Presidency is stronger than the American version because the Parliament of France, as a whole, is weaker; in addition the French Bill of Rights is not as strongly-worded as the American version.

SUMMARY BY THE REPUBLICAN PARTY OF AUSTRALIA (RPA)

It is impossible to canvass all the options for the appropriate model Australian Republican Constitution in a precis of George Winterton's opinion and overview, expressed above. The RPA, after weighing up all the considerations, over a six plus year period to 1988, has come to the conclusion that a blending of the finer aspects of the American, French and unique Swiss systems, with some exclusive variations and special Australian characteristics provisions will be what is arrived at for Australia's needs and purposes. The RPA is progressively formulating an alternative and apposite Republican Constitution for Australia and hopes to publish same in 1989.

This whole topic is thoroughly broached in George Winterton's recently published book which is entitled: *Monarchy to Republic: Australian Republican Government*. It is the only authoritative, eminently readable textbook on the broadranging subject available in Australia. Autographed copies of *Monarchy to Republic* can be purchased from the RPA, P.O. Box 343, Strathfield, N.S.W. 2135 for \$29.95 (which includes postage and handling).