

THE AUSTRALIAN REPUBLICAN MOVEMENT AND ITS IMPLICATIONS FOR CANADA

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I

The recent re-election of Paul Keating as Australia's Prime Minister served to energize the movement to abolish the monarchy and to establish a President as head of state. Late last year Prime Minister Keating invited Australians to begin the process of adopting a republican form of government, but his expected defeat in the then up-coming general election no doubt suppressed public enthusiasm for the idea. Since his surprising victory earlier this year, republican sentiment has swept the nation and the republican debate has risen to the top of the political agenda. It is a sign of the vitality of this movement that republicanism is at the fore in broadcasting (including unexpectedly sophisticated discussions about the role of the head of state) and in the press, and is a commonplace topic for discussion in cafes, kitchens and common rooms. In late April the Prime Minister appointed an eminent persons group to advise Australians about the most suitable republican model with instructions to report before the end of this year. Expressions of dissent over the republican proposal have been both weak and resigned — the long-term inevitability of Australia becoming a republic seems to have been universally accepted.

Thomas Keneally, Australia's living literary legend (perhaps as significant to Australia's cultural self-definition as Robertson Davies and Farley Mowat combined are to Canada's) has published a book entitled *My Republic* that has been excerpted everywhere. In it, Irish disdain for the influence of things English is fully explored; it serves as the unanswered (and unanswerable) pamphlet for change.

Australia, like Canada, has had constitutional reform at the top of its political agenda for a long time. There have been commissions, assemblies and referenda but little of this has attracted positive attention. On the other hand, the prospect of ending the monarchy has produced a political energy that has repeatedly caused the agenda for implementing the necessary constitutional change to be moved forward.

Meanwhile, in Canada, there has been no counterpart to this public campaign to adopt a republican form of government and to create a President as head of state. This is

remarkable in that both Canada and Australia are monarchies having in common, as regnal head, the person of the monarch of the United Kingdom, the former imperial power over the colonies that became the nations of Canada and Australia. Furthermore, both nations have a long history of striving, first, to have full sovereignty recognized and, second, to put in place all the symbols and practices of national sovereignty. Likewise, constitutional developments in both nations have expressed a strong commitment to democratic values; the adoption of a *Charter of Rights* in Canada and the recent development of an implied bill of rights in Australia have been rooted in democratic theory (not, of course, the same thing as majoritarianism). The use of referenda in Australia since Federation in 1901 and the recent adoption in Canada of a national referendum to obtain approval for the Charlottetown Accord are even clearer examples of a strong democratic commitment.

Notwithstanding the common history and common ideology, Canada seems not to be bent on reform of the head of state. The surprising aspect of this disequilibrium is not that Australia is preoccupied with what, at first glance, may seem to be a matter of minor reform but, rather, Canada's indifference to the continuation of a deeply anomalous constitutional symbol. After all, ending the monarchy would purge vestiges of imperialism as well as end a strong symbol of class ascendancy and privilege. One might reasonably expect Canadians to be every bit as committed to these goals as Australians.

In this essay I shall first address the possible constitutional impact of the adoption of a republican form of government in parliamentary democracies which, like Canada and Australia, have as their head a monarch. I shall then address two further questions. First, what explains Canada's apparent lack of interest in this reform and, second, if Australia were to become a republic would that development produce a mirror campaign in Canada?

II

The current quest in Australia to establish a republican form of government represents a more momentous

constitutional shift than is perhaps being admitted. Republicanism is a rich political tradition, not adequately described as simply the replacement of the monarch with a popularly chosen President. It is a theory of statecraft resting on the idea that the highest collective human endeavour is the joining of citizens (in a condition of approximate equality) in the on-going political project of self-government. At heart, republicanism is about the moral claims on citizens in political communities that aspire to self-determination. It is less about the conditions of individual autonomy than it is about establishing conditions for political autonomy. These conditions include an educated population that is committed to the well-being of the state and a habit of open discourse over real political choices and issues. Republicanism is, of course, profoundly anti-monarch (literally, sole ruler) because it is about the rule of all citizens; it also expresses something about the different role of citizens. The citizen is no longer the subject (or beneficiary) of the King's peace, or army or court, but becomes the joint bearer of responsibility for the safety, sanity and efficiency of state power.

Nothing of all this is completely novel in a democratic state like Australia. Yet, it is important to remember that the root ideas of republicanism go beyond democracy and present a morally freighted version of popular government. Office holders who are elected by specifically republican processes can be said to be representatives of the citizenry acting at its most politically focused and self-conscious moments. The platitude about holding a sacred trust from the electorate has its genuine origin in republican theory.

What is at stake in this debate is the foundation of state authority. In a monarchy, the elected governors — the ministers of the Crown — are invited to govern by the regnal head and governing is done in his or her name and with his or her consent. The regnal head has, of course, little choice in the exercise of power: who to invite to govern is mostly determined by the electorate, the advice given to the monarch is usually binding and, in truth, there is no discretion in giving royal assent to bills. From this perspective, having these functions performed by a head of state who is popularly elected would not seem to be a significant change.

On occasion, the head of state is required to make independent judgments: who to invite to form a government in a minority situation; or whether to dissolve parliament and allow an election or, on the other hand, to invite another political leader to attempt to govern. The instances in which these independent judgements will be called for are likely to become more frequent as "interest" based politics grows, as party loyalties weaken, and as multi-party election and Parliaments become more common.

In a democracy, the power over the selection of who should govern or over whether those in power should continue to govern cannot be minimized. In any political system there is a reasonable anxiety that those in power will take as their chief political objective the perpetuation of their own position. Democracies are not immune from this concern because of the ever-present possibility that those who currently control the instruments of government will seize authority either to determine the authentic will of the people, or, worse, to act under an imagined mandate from the people. Hence, the power relationship between the head of state and the state's political leaders is something that requires a clear constitutional basis.

The question is whether adopting a republican form of government will alter the dynamic of this relationship. Under current arrangements, in Australia and Canada, the two players in this relationship enjoy different bases for legitimacy. The political leader has a popular constituency while the head of state carries an ancient and, in a sense, patriarchal responsibility for public peace and orderly public authority. In a democratic monarchy there is a sense of a single person — hopefully a person of wisdom and judgment — carrying residual responsibility for the good government of the people.

When the legitimating basis for the power of the head of state changes so that he or she is the instrument for expressing the people's self-governing duties then the head of state and political leader share a similar claim for authority. In other words, the head of state and political leader are in natural competition to claim to be the superior manifestation of the citizens' will and the superior interpreter of the citizens' wishes.

This could mean that a prime minister, seeking to continue to govern or seeking to prevent any other leader being given a chance to govern, would engage in a campaign of disparagement of the President's legitimacy, or of his or her political evenhandedness, or of his or her right to intrude into the continued working of a 'popularly elected' government. The basis of this disparagement would be that the President's election represents a hollow or purely formal mandate. The people's choice to conduct government, it would be said, is the prime minister — the leader of the dominant political party. Furthermore, there would be no other legitimating basis for political action by the head of state — no historically-based responsibility for guaranteeing the propriety of political power. Concerns over such disparagement and over the possibility that the President's orders would be ignored by political leaders are, admittedly, concerns about extreme political situations; they contemplate a prime minister who refuses to submit to the direction of the head of state and this would amount to a revolutionary moment.

A further possible distortion in the relationship between President and prime minister could come from the republican aggrandizement of the head of state. There is the possibility that the President would abandon any form of deference to advice concerning the dissolution of a parliament. Or, perhaps he or she would be tempted to exercise independent judgement in other areas where currently the role is only formal, such as signing executive orders, assenting to new legislation, or making public pronouncements. The President could take seriously his or her role as the current expression of republican virtue — as the embodiment of citizens will to exercise political autonomy. The President could feel bound to preserve the electorate's "true" interests and, to that end, resist the "mistaken" advice of the prime minister or the legislators. In short, the President might be tempted to become the actual governor.

Two strategies have been developed to lessen these concerns over political competition. First, it is suggested that the President not be directly elected by the people but by parliamentarians, perhaps under a system requiring an absolute majority or, even, a two-thirds vote. In this way it is thought that the President will have some degree of political legitimacy and, hence, have the political grounding to intervene when necessary. On the other hand, the President will never be tempted to take over a broader governing function because he or she will be seen as an agent of Parliament and not the direct representative of the people. Although this plan would certainly lessen the risk of a President taking on a political role that would undermine the government, the question remains whether the electorate would view such a President as a mere pawn of Parliament — and the dominant party — and, hence, would be concerned that the fully independent political judgement sometimes required would not be exercised. Perhaps it will simply be impossible to achieve balance between political legitimacy and independence, on the one hand, and a limited legitimacy and appropriate restraint on power, on the other.

The second strategy is to set out in a special constitutional section all the instances in which the President could exercise independent judgement with respect to inviting party leaders to govern or with respect to dissolving Parliament. In this way, there would be no bases on which the President could intervene other than those spelled out in the constitution. In fact, it is highly unlikely that such a code of head of state powers could actually be written. Even if it were written it would of necessity be subject to constant interpretation and contextual amplification, a situation not markedly different than presently exists.

There may, however, be a way around the problem of not being able to articulate a comprehensive set of rules. It should be remembered that in writing and interpreting constitutions

what is central is not always the precise constitutional rules but the political ideas and values embedded in the structures and relationships that are created. Interpreting a constitution is often an exercise in inferring from the constitutional recognition of certain offices what are the essential conditions for the office to be performed and what are its necessary constraints. From this conception of constitutionalism it follows that the constitution could express that the exclusive function of the head of state is to ensure the democratic legitimacy of government; it is not to assume responsibility for governance. The President's role is that of guarantor of constitutional government, never that of provider of good government. It would not be difficult to find words to express the limited and residual role of the head of state that would allow superior courts to strike down, or refuse to enforce, executive and legislative orders of a head of state acting alone.

This sort of constitutional check will not, of course, provide standards by which hasty or premature parliamentary dissolutions can be challenged but it would be adequate to forestall the restructuring of the role of President by ambitious incumbents.

In statecraft there is no firm binding of those who are empowered through constitutional recognition or creation. There are, however, ideas of legitimate authority which, when expressed in the constitution text, will control the excesses of office holders. Beyond that, the only thing that can be claimed with great confidence is that constitutional adjustment requires great care; changes in structure in the constitutional order will invariably pave the way for changes in power and behaviour.

III

Why have Canadians not been as interested in republican proposals as Australians currently are? It is not as if abolition of the monarchy has never been broached in Canada. In 1978 the Canadian Bar Association Committee on the Constitution included in its thoughtful and scholarly report a recommendation that the Canadian monarchy be ended. With respect to this recommendation the committee was strangely terse. The recommendation did, however, catch a great deal of media attention — largely disdainful — and this may have led to relatively little attention being paid to the balance of the report. (It was reported in the Canadian press at the time that Prince Philip took exception to the monarchy becoming a political football in Canada — a view that was clearly misguided since Canadians have the right to decide what belongs on their constitutional agenda. Much has happened in the past fifteen years to render obsolete such expressions of umbrage over attacks on royal dignity.)

It is possible that the Canadian Bar Association experience was sufficiently searing to dissuade, at least for a time, talk of republicanism. There are, however, more plausible explanations for the relative degree of Canadian silence on this topic. First, it may be that having a Queen of Canada serves as Canada's strongest reminder that it is not a suburb of the United States. It is reassuringly distinct to have a hereditary monarch as head of state, especially one that seems to surround herself so successfully with royal trappings — bands, uniforms, sesquipedalian titles, protocol and, now, just as in the old days, flashes of domestic irregularity. Although this account of the Canadian constitutional agenda may seem trivializing, one must not underestimate the depth of Canadian anxiety over being non-American.

Second, having a monarch as the head of state may not be a deep concern because, for most Canadians, it is not a fact of tremendous practical or, even, symbolic significance. For some Canadians, however — Canadian francophones and Indians being the two groups that come most readily to mind — the formal fact of the Canadian monarchy is of considerable importance. Nevertheless, the role of the Queen in Canada is seldom spoken of and it is widely realized that the head of state function is performed entirely by the Governor General and by provincial Lieutenant-Governors. Canadians know that the Queen's place in our constitutional arrangements is vestigial — a textual anachronism. They also know what it is to be slow in making formal constitutional changes that codify new realities: until 1982, amendments to the Canadian constitution were effected by enactments of the United Kingdom Parliament.

Third, there is a particular Quebec aspect to abolition of the monarchy that may explain Canadian backwardness. Although Quebec governments have traditionally declined to dedicate any time, effort or political capital to this issue, the rest of Canada, somewhat perversely, is likely to view the adoption of republicanism as severing a tie with England and, therefore, doing something that Quebec will specially value. Until such time as Quebec nationalism again becomes a genuine threat to the integrity of Canada (which may not be in the distant future) the rest of Canada is likely to resist constitutional reforms, a leading aspect of which is doing something which will be seen as paying special regard to Quebec interests.

Finally, abolition of the monarchy would be seen by Canadian Indian communities as an immense threat to their special status within Canada. Indians understand their political commitment and fidelity to the Queen and, conversely, the obligations of protection and support that lie against the Queen. This view is largely a product of the form of the nineteenth century treaties with the Indian nations that were conducted in the Queen's name and that bound the Queen as

head of the government. The continuous process of modernizing and Canadianizing the head of state office has been treated as irrelevant by the Indians in face of what they see as the clear textual basis for a direct and personal relationship. This is not an example of primitive literalism on the part of these communities; it is a shrewd tactic to maintain the original purity of the treaties and their implicit acceptance of inherent Aboriginal governmental powers. This latter claim is currently the central tenet of Aboriginal politics and no constitutional change that gives rise to any possibility of undercutting that claim through domestication of the treaties, or reduction of their original status, would be acceptable to them. This is not a trivial political barrier to republican reform.

With respect to the question of whether Australian republicanism will influence Canadian constitutional politics, it is safe to say that the republican movement in Australia in itself will not have a major impact. Canadian consciousness of Australia does not run to political movements. However, if the monarchy were to be abolished in Australia, Canadians would certainly know about it and would understand its direct relevance to Canada. The reason for this is that the Australian reform would be seen as expressing a view about the incompatibility (specifically, the theoretical incompatibility) of a continuing role for the Queen with sovereignty and democracy. Canadians are not so self-confident about their own political maturity that they would dismiss the Australian reform as meaningless. In any event, the republican movement is a one-way street; once it is advanced as serious reform (and an Australian adoption of republicanism would certainly confer seriousness on this idea within Canada) a positive case would have to be made for retaining the British monarch as the Canadian head of state. Quite simply, this would be difficult to do even taking into account the political weight given by Aboriginal communities to maintaining the monarchy.

There are however two further reasons for republicanism to have political momentum in Australia that do not apply in Canada. First, Canadian society is not in the least bit British, and the same cannot be said for Australia. Having the Queen as head of state strikes close to home — it underscores the precise colonial origin of Australia that is widely manifest in the social environment. Canada has no national preoccupation with British influence (it has American influence to fuel its doubts about identity) and, as a result, the continuing role of the Queen has weaker resonances in the national psyche.

Finally, notwithstanding the number of aspects of constitutionalism common to both countries, Australia has a considerably stronger republican sensibility, in the contest of which the monarchy is particularly anomalous. Australians participated in the original adoption of their constitution and

they have participated directly in every reform to it. The Australian constitution reflects the crucial distinction between representative politics for everyday political choice — politics as usual — and direct universal participation in the basic organization of the authority of the state. This latter feature is a pure reflection of republican theory — a theory that rests on the idea of citizen responsibility for and citizen engagement in the project of self-government and in the process of establishing the nation's deepest commitments. Republicanism is about the rule of all citizens and this has been the central idea of the Australian constitution from the beginning. In "republican" Australia, it is the monarchy that represents the radically dislocated idea of authority.

The same cannot so readily be said of Canadian constitutional theory. This is a country which, even in the process of changing the foundations of government, is governed by first ministers, their cabinets and their legislative bodies. From traditional and historical perspectives, the ultimate responsibility of the governors is to the monarch. This view, of course, is utterly misleading as a matter of actual political description but our constitutional arrangement has never been expressed in a way that denies it. Republicanism has not enjoyed clear constitutional expression in Canada.

There is, to my mind, little doubt that Australia will become a republic. The significance of that event will reach beyond Australia and Canada will be required to question the appropriateness of remaining a monarchy under the rule of a "foreign" monarch. When that debate unfolds it seems likely that Canada will also find both the cultural distaste for an anachronistic arrangement and the latent republican sentiment that will propel it towards republicanism.

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