

BOOK REVIEW

Monarchy to Republic by George Winterton (Oxford University Press 1986), pp i-xi, 1-211. Paperback recommended retail price \$19.95 (ISBN 0195548621)

Professor George Winterton's book may now be read in conjunction with the Report of the Advisory Committee on Executive Government to the Australian Constitutional Commission, which was published in August 1987. He and I were members of that Committee, and for many of the issues we considered, *Monarchy to Republic* was a valuable source book. So too was his earlier book, *Parliament, the Executive and the Governor-General* (1983). *Monarchy to Republic* is not primarily an exploration of the merits of a monarchical or republican form of government for Australia. In one short chapter he reviews arguments in favour of retaining the monarchy, and he has something to say about the unsatisfactory way in which the issues are often framed and debated. Winterton starts with the premise that an Australian republic is inevitable, though not necessarily imminent. That it is not imminent is beyond doubt; the Committee on Executive Government which traversed the arguments at some length, and looked at expressions of Australian public opinion, concluded that it should make no recommendation for a constitutional referendum for a republic at this time. "We reach this conclusion because we believe that regardless of the merits of the arguments, there is no prospect on the evidence available to us, of a change in public opinion in the near future which would result in there being majority support for a republic." All members of the Committee, the author of *Monarchy to Republic* included, went along with that.

Winterton draws attention to difficulties which may arise out of existing monarchical structures and arrangements within the Commonwealth of Nations. Queen Elizabeth is Head of State of the United Kingdom and a substantial number of other Commonwealth countries by separate titles. Sir Garfield Barwick sees no problems with this; it should trouble only "minds unaccustomed to the subtleties of distinction and difference". Yet there is more to it. Winterton refers to an occasion on which the Queen, on a state visit to the Middle East, spoke on policy issues in terms which may not have commanded agreement of all the governments of states of which she was Queen. It is clear that she was stating views of the United Kingdom government, but there may not unreasonably be grounds for discomfiture on the part of other Commonwealth monarchical governments, when their Queen or at least the person of their Queen is seen and heard to take public positions with which they disagree. There are other cases where the fact of a single person monarch and a multitude of titles may cause problems, though I do not canvass them here. It is possible for her to receive discordant advice, though overall the system works well enough. There is a further point which arises from the Queen's Commonwealth wide description as Head of the Commonwealth. It is argued, as for example by the first Secretary General of the Commonwealth, Arnold Smith, that there are circumstances in which the Queen in this capacity may act independently of the advice of the individual Prime Ministers. I believe that this is entirely wrong, and that this title gives her no *special* capacity or function.

Professor Winterton's principal concerns are with the practical constitutional and governmental issues involved in the establishment of an Australian republic. If we embarked on such constitutional change, what form of executive government should we adopt? And what form of executive-legislative relationship? That involves consideration of existing forms, institutions and structures. Winterton examines the existing Governor-Generalship in some detail, and particularly in the context of the scope and exercise of the "reserve" powers which have commanded much attention in recent years. He has some interesting observations on Lord Casey's role as Governor-General in making an interim appointment of a Prime Minister on the death in office of Harold Holt. In the context of the exercise of the power of dismissal, involving acts of illegality or apprehension of such illegal acts by government, Winterton suggests that the alternatives do not lie simply between dismissal by the Governor-General and doing nothing at all. "Public opinion can exercise immense influence on a democratic government, and there is no reason whatever why a governor-general or governor could not issue a press statement or even address the nation or state on radio and/or television, outline the circumstances of the constitutional crisis, and call upon the government to do its duty. Such an appeal would almost certainly succeed in persuading the government to resile from its unconstitutional course." He suggests that this would compromise the neutrality and impartiality of the vice regal office "far less" than an act of dismissal.

Sir Paul Hasluck, in his well known essay on *The Office of Governor-General*, spoke (both in the 1972 and 1979 versions) of "abnormal times or in case of any attempt to disregard the constitution or the laws of the Commonwealth, or even the customary usages of Australian government [when] it would be the Governor-General who could present the crisis to Parliament and, if necessary, to the nation for determination". For my part, I would have grave doubts about the appropriateness of an appeal by the Governor-General to the nation, as Winterton suggests. We know how the King of Spain steadied the nation some years ago by a television appeal to his people to see that the processes of constitutional government were maintained, but we are not Spain, and we have a different constitutional history. Again, we live at a time when the unfolding of events following the coup in Fiji is, de facto anyway, providing a new role and image for a Governor-General, but that is not our case either. In the constitutional books, there is an uncertain situation of "crisis" or "emergency" or "gravely unconstitutional action", which may justify action by the Governor-General within his independent judgement. This was discussed by the Committee on the Executive in its consideration of the reserve powers of the Governor-General. Let me say, however, that I doubt very much that any possible presentation of crisis "if necessary to the nation" should take the form of public populist appeal to the people by the Australian Governor-General.

Professor Winterton provides very useful detailed and clearly written statements about "alternatives": among them the French presidential system, the United States executive presidency, and varying constitutional relationships between legislature and executive. We have, in some respects, a governmental system which may be described as "Washminster"; the author borrows happy

imagery in saying that "both the Thames and the Potomac flow into Lake Burley Griffin". His conclusions with respect to the retention of the basic principle of the parliamentary executive and with respect to the appointment of ministers accord with the recommendations of the Advisory Committee on the Executive.

In a discussion of monarchy to republic, it is necessary to take into account the position of the States. Winterton argues that the advent of republican government at the Commonwealth level need not be deferred until all States are willing to abandon monarchical forms, though plainly it would be better if we all go together when and if we go. He also examines at some length the issues of constitutional amendment: whether and in what ways abolition of the monarchy is constitutionally possible in Australia. This was a matter to which the Advisory Committee on Executive Government, having decided to recommend no present action to convert to a republic, gave only cursory attention.

In his discussion both of the position of the States, and of the possible role of the United Kingdom legislature in any process of constitutional amendment, Professor Winterton stated the law as it stood in December 1985. In his preface he noted the impending passage of the Australia Act 1986. That has important consequences for the States, and the author summarized these in his preface. He also noted the provisions in the identical Australia Acts passed by the United Kingdom and Australian Parliaments that henceforth "no Act of the Parliament of the United Kingdom . . . shall extend . . . to the Commonwealth, to a State or to a Territory" as part of its law. This means that the United Kingdom can have no role in promoting a republican change of government for Australia. To this extent any discussion of a possible United Kingdom role in providing for an Australian republic "will cease to have practical relevance, but, hopefully, will remain of interest to constitutional historians." Not all is lost.

I welcomed the opportunity to work with George Winterton on the Committee on Executive Government. He is a very good and learned lawyer and scholar, and this book confirms that. It has the great merit that it can be readily understood by a wide public, and it makes a valuable contribution to the discussion of political institutions and change in Australia. Moreover, the contemporary relevance of the book does not altogether depend on a decision to support a republican form of government. The book addresses questions with which we should be concerned independently of that.

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