

WHAT ROLE FOR REPUBLICANISM? A REPLY TO ANDREW FRASER

*George Williams**

Andrew Fraser has made a valuable contribution to the debate over the role of republicanism in Australia. He has raised an important, and generally ignored, question: would Keating's model for an Australian republic¹ achieve a republican republic? A corollary of this is a further question: is it in any event desirable that an Australian republic be based upon the strong republicanism favoured by Fraser? On the former question, I would agree with Fraser that Keating's model would not imbue the Australian nation with Fraser's version of republicanism and that, if Fraser's version of republicanism were to be accepted, Australia would remain an unrepublican republic. However, as to the latter question, we would disagree. Fundamentally, I do not see Fraser's version of strong republicanism as being viable.

Fraser has significantly broadened the discussion of republicanism and has widened perceptions of what the ideology, for want of a better word, might encompass. However, while much of his criticism of my article, "A Republicanism Tradition for Australia?"² is explicable on the basis that he and I obviously share very different starting-points and approaches, I feel that he has misconstrued my argument in some respects. My point is not that republicanism does not have anything to offer Australia now or in the future. Instead, I argue that republicanism, at least in the strong sense put forward by Fraser, does not currently have a place within the Australian constitutional framework. As such, it could not be considered a tradition capable of influencing the interpretation of the Australian Constitution by the High Court. I further suggest that it is now, while we are enmeshed in the push for an Australian "republic", that such a tradition might emerge. This might occur through constitutional change in 2001 or perhaps through rediscovery of Australia's republican past.³ However, even if Australia were to embrace republicanism, I would not see this as being the strong republicanism favoured by Fraser, but a version more in keeping with Australia's existing constitutional structures.

* Lecturer, Faculty of Law, The Australian National University. Barrister, Supreme Court of the Australian Capital Territory and of the High Court of Australia

1 See Republic Advisory Committee, *An Australian Republic: The Options* (The Report of the Republic Advisory Committee, 1993), 2 vols; Prime Minister Paul Keating, *An Australian Republic: The Way Forward* (7 June 1995).

2 (1995) 23 *FL Rev* 133.

3 See J M Williams, "With Eyes Open': Andrew Inglis Clark and Our Republican Tradition" (1995) 23 *FL Rev* 149.

I approach republicanism from a very different perspective from that adopted by Fraser. While I argue from *within* the current system, he argues from *without*. I place faith in the institutions and structures of power in Australia as they currently stand, while recognising the need for considerable change in many areas, including the need for enhancing the citizenship of the Australian people and for more appropriate forms of political deliberation. In contrast, Fraser appears to possess little faith in the current system and argues for a fundamental and practical reformation of both the institutions and processes of the Australian state. At the heart of Fraser's argument is the notion that rule from above must be replaced by republican government. For my part, I accept that representative democracy, despite its flaws, should remain as the basis of government in Australia.

Consequently, I view the relevance of republicanism to Australia through a much narrower lens than Fraser. My focus is on how the High Court might apply republicanism in the context of *existing* constitutional structures. Hence my conclusion that, *within* such structures and processes, republicanism can only, though not necessarily in the future, be seen as an "extra-constitutional notion".⁴ This difference in perspective explains my use of the works of writers such as Sunstein⁵ and Pettit,⁶ who seek to incorporate republicanism into the *existing* constitutional structures, rather than to promote a revolution from *without*. My emphasis therefore is upon the empowerment of the Australian people by education and the enhancement of citizenship (through, for example, Australians joining bodies such as the Constitutional Centenary Foundation⁷ or through the work of other bodies such as the Civics Expert Group). I do not propose a grass roots reformation of the system.

Fraser states that "Williams concludes that republicanism has not got much of a future in Australia". This statement may be correct if limited to the stronger forms of republicanism advocated in his reply, rather than to the versions put forward by Sunstein and Pettit. Otherwise, I disagree. My point is that republicanism cannot *currently* be seen as a constitutional tradition in the mould of doctrines such as representative democracy, as recognised by the High Court in recent decisions such as *Australian Capital Television Pty Ltd v Commonwealth*.⁸ However, republicanism may come to loom large in constitutional discourse in Australia in the future. I welcome the revitalisation that the doctrine may bring to tired political structures and to the Australian people's participation in, and enthusiasm about, their system of government.⁹

4 G Williams, above n 2 at 134. See G Winterton, "Extra-Constitutional Notions in Australian Constitutional Law" (1986) 16 *FL Rev* 223.

5 C R Sunstein, "Beyond the Republican Revival" (1988) 97 *Yale LJ* 1539.

6 P Pettit, "Republican Themes" in *Legislative Studies* (Vol 6, No 2, Summer 1992) 29.

7 Cf A Howe, "The Constitutional Centenary, Citizenship, The Republic and All That — Absent Feminist Conversationalists" (1995) 20 *MULR* 218.

8 (1992) 177 CLR 106. See also *Attorney-General (Cth); Ex Rel McKinlay v Commonwealth* (1975) 135 CLR 1; *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1; *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104; *Stephens v West Australian Newspapers Ltd* (1994) 182 CLR 211; *Cunliffe v Commonwealth* (1994) 182 CLR 272.

9 See G Williams, "The High Court and the People" in H Selby (ed), *Tomorrow's Law* (1995) 271.