1. A framework for constitutional reform

a) The contingent nature of this monograph

The basic principle that should underlie any attempt at constitutional reform is one that is fundamentally Old Institutionalist in character (Power 2009) and, possibly because of this, the need for caution often seems better appreciated by the citizenry than by the experts; any change must safeguard those arrangements that time has shown to have worked well.¹ For the most part, the Australian system of government has performed as well as most democracies, so we should be especially careful when we consider changing it.

If we are to move towards a new regime, we need to be clear about the distinction between the monarchical and the republican styles of governance. The former is quite comfortable with the buried and the implicit; the latter is always engaged in the Sisyphean tasks of making explicit what can be made so, of always holding open to question crucial assumptions whenever they are discovered.²

In this monograph, then, I shall be aiming to demonstrate how the existing Australian governance regime could be modified in ways that would be of international significance.

To date, progress towards a republic in Australia has been blocked by a deep division between the direct electionists and the selectionists. This division will continue as long as the two schools of opinion see themselves competing for the definition of a single office of head of state and the way that person

¹ Shklar (1987:60) has presented a salutary Montesquieuian caution at this point: ‘tampering with a long-established system...is always a very dangerous thing to do. For it is only in retrospect that we can recognize what the basis of its stability was.’ Sometimes, however, circumstances demand reform; all that those who undertake such reform can do is to be as conscious as they can be of the strengths that the old system exhibited.

² This characterisation of the republican style of governance might seem to be at variance with the Montesquieuian position, at least as this has been put by Shklar (1987:78–9): ‘Republican constitutions are exceptionally fragile because they depend on the customs, habits and attitudes of the citizens.’ A Burkean might well ask why this should make such regimes so fragile. The important point to be made in the current context is, however, that the English regime that Montesquieu extolled worked well because the monarchy delivered the public trust needed. Weaken the monarchy—as has happened in Australia—and more explicit attention must be paid to the fashioning of public trust through fiducial arrangements.
should be selected. Progress to the republic will resume when it comes to be widely recognised that what the two schools want might be so different as to warrant a continuation of the current bicephalous arrangement: a monarch (to be replaced by an elected president) and a set of governors (left largely, but far from completely, undisturbed).

b) Towards a feasible framework

Somewhat later in this section, it will become apparent that, in preparing the theoretical framework for this monograph, I have drawn most from the recent works of two scholars: Bruce Ackerman and John Keane. At the outset, however, I want to make one observation about these two writers that sets the scene for all that is to follow in this section. I have been encouraged by the preparedness of both writers to go beyond the Rhodes observation at the head of this monograph and propose that new good governance regimes—constrained parliamentarianism and monitory democracy—could be acknowledged in ways that accommodated the numerous institutional mechanisms (estimated by Keane to number close to 100) that now constrain our governments.

Between them, however, Ackerman and Keane did not take me far enough in probing some of the machinery of government issues that will need to be settled before we can progress to a regime of fiducial governance. Neither of them has attended to the emergent roles that heads of state could play in such a new regime, so neither of them has gone on to consider the ways in which the emergence of such roles could greatly strengthen the reform of constitutional monarchies along republican lines.

Now, because the exploration of several of these theoretical concerns will take me well into the left field noted by my two readers, it would be likely to turn off many of the Australian readers with republican interests. Accordingly, I am preparing two works—one theoretical and comparative (Power forthcoming), and this one—in which several of the theoretical points made in the first piece will be presented as givens in the development of the more practically oriented argument of this monograph.  

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3 The project that has produced this monograph had its roots in the 1990s, when Australians were confronted with the opportunity of moving on from the monarchist regime that had so well served the interests of European Australians for a couple of centuries. Our reluctance to take that opportunity, on the terms in which it was presented in a referendum, has convinced me that an Australian republic will be worth having only if it opens up the prospects for better governance. Determining just how republicanism and good governance are best related has for me proven to be a daunting task—and one on which I have only now embarked.

4 In the fullness of time, interested readers will be able to access the theoretical arguments in full in the companion essay. If, however, the appearance of this companion essay occurs only some months after the appearance of this monograph, a stopgap arrangement will be required. Anyone wishing to obtain a draft copy of my theoretical essay—or any of the other unpublished papers of mine listed in the references—can
c) Writing about fiducial governance: two constituencies

I identify two differing constituencies of readers from whom intelligence will be needed if the necessary governance design work is to be satisfactorily progressed. This design work will be far beyond the capacity of a single individual and will require substantial inputs from knowledgeable constituencies. All that this individual will be able to do is to propose some frameworks for the organisation of varied forms of intelligence as they come in.

The first constituency—and the one at which a companion essay is being aimed (Power forthcoming)—is that of the comparative administrationists, for one of my primary concerns is the exploration of some fundamental issues concerned with machinery of government matters. In particular, I wish in that essay to explore in some depth questions about the ways in which the branches of governance have been conceptualised and differentiated.

The second constituency—and the one at which this monograph is aimed—is that of governance practitioners in a nation-state that impresses me as being exceptionally well placed to lead in the introduction of a new fiducial governance regime: the Commonwealth of Australia. While the argument in this monograph will be informed by several of the findings of the more theoretical companion essay, it will not probe as deeply, for many of the working premises of the Australian machinery of government will be taken as givens.

In this way, I hope that knowledgeable members of these two constituencies will be able to provide us with the intelligence we shall need if we are to progress to a fuller appreciation of the nature of fiducial governance regimes in the twenty-first century. If the interpretative framework I shall be presenting gains some acceptance, it could be possible to compose a series of collaborative monographs on the reforms of particular regimes and, indeed, of global institutions as well.

I shall be contending that we shall realise the promise of fiducial governance only if we explicitly recognise that the leading roles in such governance are highly political. The constitutional design task is not politically to neuter our heads of state, but rather to consider ways in which these political roles can be reconciled with the needs of democratic government.

This will not be an easy design task, for the twentieth century witnessed the steady erosion of the traditional head-of-state roles that had earlier protected
the integrity of each nation’s major institutions. The vacuum so created has produced growing anxiety about the effectiveness of the mechanisms that are now in place to counter corruption and protect institutional integrity. So strong have these concerns shown themselves to be that there has in recent times been increasing support for the recognition of new ‘integrity branches’ of government, but to date no-one has proposed that revived heads of state could be accorded leadership positions in such branches.

In pre-democratic times, heads of state typically played central roles in governance. Because most of these heads of state were monarchs, modern democratic theory has universally marginalised them, so that these traditional roles have fallen into desuetude.

Accordingly, both presidents and constitutional monarchs have been largely ignored in recent discussions about the nature of modern governance. As a result, insufficient attention has been paid to some serious issues concerned with the maintenance of public responsibility for the quality of our governance. Because discussion of possible head-of-state roles has been taboo, no-one has yet given serious attention to the overall design of the branch structures of governance and the ways in which they could be accommodated in existing machineries of government. There is thus a significant gap in our understanding of fiducial governance.

Anyone doubting the existence of this serious gap in our understanding of governance need go no further than Fukuyama’s seminal work, *Trust: The social virtues and the creation of prosperity* (1995).

The argument that sustains the work is both stimulating and subtle and provides us with much of what we need as we go about the task of specifying a meaning for fiducial governance. Yet, Fukuyama himself does not use his own materials in this way. Although he remarks in passing (on p. 355) that the phenomenon of trust is probably more central to the political than to the economic sphere, his work—as its subtitle indicates—remains oriented much more to the latter than to the former.

As Fukuyama convincingly argues, much of the content of trust cannot be legislated, for its existence depends on informal but generally recognised rules—what (although Fukuyama himself does not mention it) in constitutional studies are termed conventions.

One of the most intriguing of the patterns uncovered by Fukuyama is the apparent link between constitutional monarchy and relatively high levels of trust. On the measure central to his analysis—the capacity of a nation to foster the emergence of a multinational firm—constitutional monarchies (Japan, Britain, Sweden and the Netherlands) have loomed large. If Australia is to
proceed to a republican regime, great care will be needed if the positive features of constitutional monarchies are not to be disrupted. Yet the republican policy community in Australia has been strangely unconcerned about this need. If we are to progress further down the pathway to a republic, we need to understand the reasons for this neglect, so as to be able to transcend it.

d) Regaining the sacred at the centre of governance

[T]he sense of the sacred is allowed to erode. Everything in public life risks being desacralized: persons, places, pledges, prayers, practices, words, sacred writings, religious formulas, symbols, ceremonies.

— Pope Benedict XVI, 2009 Good Friday Address

Republicans have paid insufficient attention to the lessons that can be learned from long monarchical experience in governance.\(^5\) In particular, no attention has been paid in the current age of democratic hegemony to the important linkages that should be formed between the office of head of state and the realm of the sacred.

Some years ago, Clifford Geertz (1983) made the pertinent observation that, in all traditional regimes, the office of head of state occupied a space that was widely believed to be sacred. In the absolutist states of the early modern era in Europe, this belief found its most forceful expression in the doctrine of the Divine Right of Kings. As long as this doctrine remained unchallenged, government attained the highest levels of legitimacy. What could be more legitimating for a regime than God’s blessing?

We are not yet finished with Geertz. He goes on to assert that the sacredness of central authority persists in modern regimes: ‘Sovereignty may rest now in states or even in the population of states…but the “vast universality” that inheres in it remains, whatever has become of the will of kings’ (Geertz 1983:146). With the growth of secularism and the decline of monarchical institutions, this level of legitimacy is no longer available. We shall have to make do with a different,

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\(^5\) One of Australia’s leading historians, Alan Atkinson (1993:122), has convincingly shown how the monarchy long ‘symbolised the moral purpose of government’. He seems completely at a loss, however, when it comes to a consideration of the ways in which this moral purpose might be recovered when the influence of the monarchy declines. The best he can come up with is a weird proposal that the Australian monarchy could be ‘reconstituted’, either through the British royals spending more time in Australia or through royal acquiescence in the installation of a cousin as the Australian monarch.
more contingent form of regime legitimation. While most republicans are quite happy to accept this trade-off between level and form of legitimacy, two implications should be openly recognised.

First, much of the continuing support for the monarchist cause doubtless stems from the respect of its adherents for some awe-inspiring remnants of the old sacred space. Second, republicans should appreciate that they are being asked to endorse a more contingent form of government legitimacy.

This new form of legitimation could appropriately also be described as fiducial—resting on a constantly renewed pact between the citizenry and those responsible for ensuring the integrity of our major institutions. To date, fiducial activity has been seen as being undertaken only spasmodically: at times of regime founding, such as the referendum that established the Australian Federation at the beginning of the past century. Some theorists, most notably Wolin (1996), have contended that only in such rare moments can democracy be said to be fully alive. As we shall soon see, however, the prominence accorded by Ackerman to serial referenda in his framework of constrained parliamentarianism opens up the possibility of widening such opportunities for democratic legitimation. In such a manner, the sacred space once occupied by the head of state will be replaced with a form of democratic legitimation less robust but more suited to the current age.

A proper understanding of the importance of the sacred and of the ways in which it could be revived in a modern secular democracy is essential for the achievement of a republic worth having. We cannot be confident about the trustworthiness of our major institutions without the existence of a ‘sacred’ core.⁶ One useful understanding of the sacred conceptualises it as ‘[h]aving symbolic value and thus, like good music, facilitat(ing) the evolution of the group’ (Lundy 2002).⁷

Just what would be the role of the State in facilitating the evolution of the national group is a hazardous task best left to authoritative collegial bodies, such as the councils of state whose creation I shall be recommending. This monograph will thus be concerned, inter alia, to suggest provisional agendas for such bodies, together with brief rationales for the inclusion of the agenda items proposed.

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⁶ Keane (2009:16) pertinently observes that there was a close association between democracy and the sacred in ancient Athens.

⁷ Eisler (1995: 21) holds a similar conception, linking it to ‘the power to give, nurture and illuminate life...’
e) Ubiquity in governance of imputation

I first became aware of the importance of imputation when I came to consider the implications for modern governance of Friedrich’s magisterial work *Man and His Government* (1963)—in particular, the conception of authority around which much of his argument rested. According to Friedrich, authority is the capacity for reasoned elaboration in terms of the values, interests and beliefs shared by the authority wielder and those subject to its exercise. The politics of governance, however, require an extension of this understanding, for what is of the utmost importance is the fact that the authority wielder is not required to provide such elaboration in justification of every decision. Authority is the most effective form of power in governance precisely because its exercise is usually not questioned, which allows the public authority wielder to get on with the work of governing. The capacity for reasoned elaboration is imputed to the authority wielder by those subject to that authority.

Thus, imputation is central to my understanding of public authority and governance. As with authority, policies are the purposive constructions that are imputed by interested publics to the actions and resource commitments of those in authority. Of course, those in authority will never be backward in advancing their own purposive constructions, but what is of the highest political significance is the extent to which interested publics are prepared to accept these authoritative constructions. Sometimes they have good grounds for doubting the purposive constructions that have been advanced from on high. More commonly, interested publics will concede some validity to these constructions. Indeed, the authentication of these authoritative constructions is a central element in any responsible system of governance.

As authority is the most pervasive basis for public power, its putative nature poses a central political problem for republicanism. To have a capacity imputed to a public leader is a great benefit to that person, and it is such a benefit that it easily slides into a distaste for ever being called on to validate authority through the real demonstration of the capacity for the reasoned elaboration that has been imputed. This tendency is especially pronounced when the public leader holds a position in a state structure, for much of the affairs of state must always be transacted in a setting of confidentiality; hence, ‘reasons of state’.

Thus authority all too easily morphs into authoritarianism, when the holder of a public office comes to believe that there is no longer any need for the imputed capacity to be validated. Fiduciary governance must resist this tendency wherever it manifests itself, for the bedrock of such governance is genuine authority. It is therefore of the highest political significance that the authority wielder should be regularly held to account. But how regular is regular?
Clearly, the frequency and indeed the nature of the interrogation of the authority wielder will vary from one setting to another, so we could expect considerable variation among the councils of state as they establish their responsibility systems. There is much that inevitably is implicit in the exercise and testing of authority, and nowhere is this tendency stronger than in the realms of confidentiality that are always at the centre of many of the most important concerns of a head of state. The republican style of governance requires regular critical inspection of claims of confidentiality. These claims will often prove justified, but a republican public is always entitled to some form of vouching, where a trusted governance leader who has been privy to considerations of confidential matters testifies as to their integrity.

**f) Constraining executives**

The orthodox Australian position on the accountability of our political executives has most recently received clear expression from Rhodes and Wanna (2009:129): 'Networks not only obscure accountability but they pose a challenge to executive co-ordination, and require different management skills to bureaucracy or contracts. They open a major research agenda.'

Apparently, Rhodes and Wanna did not consider it part of their brief to go beyond the identification of research opportunities to consider some of the normative issues raised by constraining reforms aimed at making our executives more clearly accountable. For the best recent example of such an endeavour, we must turn to the British governance practitioner, Geoff Mulgan.

Although he uses terminology differently to the ways in which I am using it, Mulgan's 2006 work, *Good and Bad Power*, presents an excellent opportunity for the further opening up of many of the issues concerned with fiducial governance.

For Mulgan, the primary problem for the attainment of good governance can be stated simply: the purpose of governments is everywhere to serve the interests of their constituents. Possession of the state power needed to realise good governance is, however, so valuable a resource that the state apparatus will always attract those who wish to use it for the furtherance of their own particular interests, often to the detriment of the public interest.

In order to counteract this ever-present danger, Mulgan (2006:319) proposes the establishment of a set of ‘aligned’ constraints (which he terms ‘devices that force governments to live up to their roles as servants’):
• contestability through election
• divisions of power
• the rule of law
• visibility, free media and free access to information.

All four of these constraints need to be properly ‘aligned’ if they are to enhance the trust that the citizenry has in the integrity of the institutions that govern them. In other words, this alignment is necessary for the attainment of fiducial governance. Mulgan, however, does not go far beyond identifying the necessity for such alignment; he does not identify an institutional mechanism that could take the lead in developing such a mechanism. (One infers that the responsibility for this alignment will in Mulgan’s view remain the responsibility of the very interests that seek to profit from inside access to state powers. *Quis custodiet ipsos custodes?*

One reason for Mulgan’s inability to go further stems from his failure to distinguish the State from government. Once such a distinction is made, it becomes possible to distinguish the fiducial governance roles of heads of state from the executive roles of heads of governments. It is the former that is best equipped to lead in the discharge of this governance function, if only because s/he is usually better placed to secure the trust of the citizenry. The strong support of heads of government will be necessary for the establishment of a viable mechanism to work on these fiducial tasks, but the head of government must in day-to-day political life always be most sensitive to the needs of his/her party and the interests that have clustered around it.

Because Mulgan has avoided the formalism that inevitably accompanies efforts to draft proposals for constitutional reform, he has been able to explore very perceptively the interrelations that should exist between governments and their citizenry. His is therefore an outstanding contribution to what an earlier work described as ‘societal constitutionalism’ (Sciulli 1992). As this monograph is ultimately about constitutional reform, however, we must bite the bullet and attempt to render the subtle Mulgan argument in more formalistic terms. It is at this point that the work of the comparatist Ackerman is of the greatest use.

**Constrained parliamentarianism**

In the way that Ackerman has developed the framework, constrained parliamentarianism offers the prospect of maintaining a measure of coherence as we struggle to comprehend the bewildering array of institutions now becoming enmeshed in processes of governance. We can speak of no more than a prospect at this stage because the theory of constrained parliamentarianism, for all
its considerable virtues, is itself still underdeveloped. If we understand by ‘constraint’ a limit than can support as it restrains, we can assert that the theory of constrained parliamentarianism needs itself to be more heavily constrained.

The great virtue of the Ackerman polyarchial framework is that it enables us to assess differing institutional arrangements through use of a good governance value base, which has three ‘legitimating ideals’:

The first ideal is democracy. In one way or another, separation may serve (or hinder) the project of popular self-government. The second ideal is professional competence. Democratic laws remain purely symbolic unless courts and bureaucracies can implement them in a relatively impartial way. The third ideal is the protection and enhancement of fundamental rights. (Ackerman 2000:640)

Ackerman proceeds to discuss the principal constraints on executive power—on my reading of him, seven—that serve these ideals. The relations between the ideals and the constraints are shown in Table 1.1.

Although the bulk of his long paper is devoted to the exploration of these relationships and their implications, Ackerman also goes on to consider a long-neglected topic: how the creation of new branches of governance could enable us to overcome some of the inadequacies of existing sets of institutional arrangements. As Ackerman (2000:727) puts it: ‘The power of this center is checked and balanced by a host of special-purpose Branches, each motivated by one or more of the three basic concerns of separationist theory.’

8 Like many Americans who have been unduly influenced by the reading of Montesqueui by their founding fathers, Ackerman (2000:695, n. 138, where he describes a prime minister as a head of state] is unclear about the fundamental distinction between head of state and head of government. It is for this reason that I have found it necessary to add an important further element to the Ackerman framework of constrained parliamentarianism: a viable role for the head of state.

9 This positive if contingent understanding of constraint is one that is shared by Ackerman (2005:106) himself: ‘If we are lucky in our leaders, they will look upon the emergency constitution in a favorable light: rather than seeing it as an obstacle, blocking their reach for arbitrary power, they will appreciate how it enhances their legitimate authority to act decisively at times of national crisis.’ The sense, if not the term itself, seems also to be present in the observation of Patapan (2000:2) that checks can sustain.

10 It is at this point that the virtues of the Ackerman approach are most readily appreciated. In many important respects, his value base strongly resembles the ‘liberal democratic’ base proposed by Kukathas et al. (1990). Ackerman, however, proceeds from this base to the specification of an extensive reform program, whereas Kukathas et al. ultimately have little to propose except a sceptical negativism.

11 Curiously, Ackerman (2000:727) places the Parliament at this ‘centre’: ‘As the centrepiece of my model of constrained parliamentarism is a democratically elected house in charge of selecting a government and enacting ordinary legislation.’ The centrepiece to be constrained in any parliamentarian system is not, however, the legislature, but rather the political executive: ‘A cabinet is a combining committee—a hyphen which joins, a buckle which fastens, the legislative part of the state to the executive part of the state. In its origins it belongs to the one, in its functions it belongs to the other’ (Bagehot 1872:71–2). All political executives are quite properly constrained. Even the traditional sovereign supremacy of the British Parliament was in practice constrained by numerous practices and conventions, and in recent years many of these have become expressed explicitly in legal instruments, some of them not readily negated by Westminster itself (to the point that one distinguished British scholar has been brought to ask whether his nation still has a constitution [King 2001]).
### Table 1.1 Ackerman’s values and constraints

<table>
<thead>
<tr>
<th>Ideal</th>
<th>Democracy</th>
<th>Professional competency</th>
<th>Citizen rights</th>
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<tbody>
<tr>
<td>Federal structure</td>
<td>‘[T]he (democratically elected) center may...be checked by a subordinate federal senate.’ (p. 727)</td>
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<tr>
<td>Strong upper house</td>
<td>‘Although the [Japanese] upper House of Councillors has significant powers, it is not the constitutional equal of the lower House. Call this the “one-and-a-half house solution”.’ (p. 635)</td>
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<tr>
<td>Professional public service and integrity of major institutions</td>
<td>‘From the side of functional specialization, the center is constrained not only by an independent court system, but also by an integrity branch scrutinizing the government for corruption and similar abuses.’ (p. 727)</td>
<td></td>
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<tr>
<td>Independent judiciary</td>
<td>‘Democratic laws remain purely symbolic unless courts and bureaucracies can implement them in a relatively impartial way.’ (p. 640)</td>
<td>‘We will require a constitutional court to make the principles enacted by the people ... into operational realities.’ (p. 668)</td>
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<tr>
<td>Securing human rights</td>
<td></td>
<td>‘[A] constitution ought to constrain the exercise of democratic self-rule by protecting fundamental individual rights.’ (p. 722)</td>
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<tr>
<td>Serial referenda</td>
<td>‘[W]e should seek to divide [lawmaking authority] between parliament and the people—the former managing routine governmental decisions and the latter expressing its will through a carefully constructed process of serial referenda.’ (p. 668)</td>
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From Ackerman (2000).
Central to Ackerman’s approach to structure, then, is his grouping together of diverse functions in branches of government. He builds on the familiar triad—legislative, executive, judicial—and goes on to identify a fourth, bureaucracy, and to recommend a further four: integrity, regulatory, democracy and distributive justice. In addition, he has more recently recommended the establishment of a decency commission (Ackerman 2005:112 ff.).

If we were to agree that the recognition of a new branch of government is not something that should be advanced lightly, we might well respect Addison’s warning that there should not be more than four (see Preface, fn 1). If we decided to restrict ourselves to one further branch, which should it be? For those with a particular commitment to fiducial governance, the claims of a branch concerned primarily with institutional integrity are of the highest significance.

Each of the universally recognised three branches is headed by a collegial body (cabinet, supreme court, legislative chamber), is led by an identifiable officer (head of government, chief justice, speaker) and has a process (as contrasted with a goal) orientation. Any new branch should exhibit the same characteristics. But what should it be called?

I propose to appropriate a term recently introduced by Keane (2009): ‘monitory.’ This serves my purposes better than the Ackerman term that has attracted a measure of support in Australia—‘integrity’—because it refers to a process, whereas the latter term refers to a goal.\[12\]

**h) A monitory branch**

In his recent important book, Keane (2009) has drawn our attention to the systemic significance of the sets of monitory institutions (for example, regulatory and anti-corruption commissions, parliamentary committees, auditors and ombudsmen, and so on) that have appeared in most jurisdictions in recent decades. As he points out, since 1945 modern democracies have witnessed the birth of nearly 100 new types of power-scrutinising institutions (Keane 2009:690).\[13\] So significant have these become, in Keane’s view, that he has advanced the claim—one that has been widely noted—that a new form of regime now exists: monitory democracy. The next step—which Keane has

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12 I explore this issue more fully in a paper to the 2010 Public Policy Network Conference: ‘Monitory democracy—or a monitory branch of a democratic regime?’.

13 Coming from another direction—public sector employment—Nelson (2008:56 ff.) has recently come to a conclusion that supports the argument of Keane, for she claims that the activities of national governments have in recent years been becoming increasingly monitory.
not yet taken—is to explore the ways in which republicanism could further the purposes of monitory democracy. And in this enterprise, the work of Braithwaite (1998, and especially 2008) is relevant.

Indeed, it is striking that in his work on monitory democracy, Keane (2009) does not pay attention to the ways in which Braithwaite (2008) had earlier treated much the same phenomenon from the different perspective of ‘regulatory capitalism’. Both examine the ways in which republican measures of explicitness have proliferated in recent years, with the former focusing on government institutions and the latter on those associated with governance. Yet neither one is capable of moving on to examine the ways in which these measures might be properly coordinated, as they should be in any responsible regime, for neither has explored the ways in which head-of-state offices might be developed in ways that promote the democratic ideal of polyarchy (which I discuss more fully below).

Given the ubiquity of imputation, republican theorising must inevitably be trailing behind the adoption of measures that might forward the republican cause. For example, Australian monarchists are fond of claiming that we already have a ‘crowned republic’, because we possess many regulatory and monitory institutions. They do not go on, however, to assess the quality of the republican regime that has been gradually emerging, for such an exploration would require attention to possible republican changes to our head-of-state offices.

In the following striking passage from Braithwaite (2008:85), such an exploration is begun:

[A] republican who values freedom as non-domination (Braithwaite 1997; Pettit 1997) cannot want a separation of powers where each branch of governance is left alone to misuse power without too much interference within its own sphere from the other branches of government. Rather, for the complex world of regulatory capitalism, republican freedom requires many separations of private and public powers, not just three branches of state governance...No single branch of governance is allowed to dominate because, as it seeks to dominate another branch, that branch’s interdependence with third and fourth branches will protect its semi-autonomy.

In this passage, Braithwaite shows clearly the close connections between the central republican goal of freedom as non-domination and the integrity of regulatory and monitory institutions. He does not, however, take the next republican step, which is to investigate the ways in which heads of state might effect polyarchical coordination—that is, the shaping of mutual influences towards purposefulness that falls well short of attempted domination. There are
two dimensions to the achievement of such coordination. First, as Braithwaite recognises, recognition of the need for a fresh look at the ways powers are separated in existing machineries of governance—and here the work of Ackerman is of the highest importance. Second, we face the need for a fresh look at possible new head-of-state roles. Let us take these two dimensions in turn.

The limitations of the language we use often have a significant effect on the form and content of political argumentation. For example, we currently lack a term in common use to describe the regime most conducive to democratic government. A generation ago, the leading modern student of democracy, Dahl (1971), introduced the term ‘polyarchy’ to fill this gap, but the term has never enjoyed common usage. It deserves to, for reasons I shall now outline.

Because of its pluralist connotations, polyarchy seems appropriate to the purpose of describing a regime well suited to the support of democratic government. As Dahl (1971:8) put it, ‘polyarchies are regimes that have been substantially popularized and liberalized, that is, highly inclusive and extensively open to public contestation’. The constraints that legitimately bind and support democratic governments derive from a polyarchical culture. The ‘fit’ between regime and form of government is, however, as Dahl himself reminds us, always imperfect. So the tasks of republican governance are never finished and heads of states should be centrally involved in tackling these tasks.

For the study of comparative politics, I suggest three levels of analysis\(^\text{14}\) of governance, each with its own characteristic suffix

- **-archy** denotes a governance regime, in which internal and external relations are integrated; one whose jurisdictional boundaries are coterminous with those of the modern nation-state (‘mon-’, ‘poly-’, ‘olig-’, ‘an-’)
- **-cracy**\(^\text{15}\) denotes the ways in which a government handles the ‘external’ relations between the rulers and the ruled (‘demo-’, ‘auto-’, ‘aristo-’, ‘cosmo-’\(^\text{16}\))

\(^\text{14}\) We should here note the appropriation by economics of another suffix, which would otherwise have been of obvious promise for political purposes: ‘-poly’, as in ‘mono-’ and ‘oligo-’.

\(^\text{15}\) Terms that possess a ‘-cracy’ suffix—‘demo-’, ‘auto-’, ‘aristo-’—all relate to the style and composition of governments. If their meaning is stretched so as to attempt to cover the regime supporting a particular form of government, as in much ideological rhetoric about democratisation, many assumptions about key relationships—such as those between the form of government and the structure of interests in the civil society and culture—are made and then have to be covered up. The outcome, as Little (2008) has recently argued, has been the promulgation of ‘democratic piety’.

\(^\text{16}\) This is a term coined a few years ago by Keane (2003:98), who defined it as follows: ‘A conglomeration of interlocking and overlapping sub-state, state and suprastate institutions and multi-dimensional processes that interact, and have political and social effects, on a global scale.’ While there are some similarities between this concept and Keane’s later ‘monitory democracy’, two important differences should be noted. Most obviously, the scope of the two differs, with one being focused on the globe and the other on the nation-state. Less immediately obvious, perhaps, is the relative importance of government in the two constructs, for it is much more influential at the level of the nation-state than at the global.
A framework for constitutional reform

• -ism denotes ‘internal’ relations between the branches of governance, especially between the Executive and the legislature (‘presidential’, ‘semi-presidential’, ‘parliamentar-’).\(^{17}\)

Before proceeding any further, a cautionary note should be struck. Many of the terms that are central to the study of comparative politics—such as ‘regime’, ‘government’ and ‘governance’ itself—are not susceptible to this treatment. The use of the schema is therefore limited.

Nevertheless, the suffix schema can with benefit be compared with the earlier ‘levels’ schema proposed by Kiser and Ostrom (1982). Table 1.2 compares the two schemas.

<table>
<thead>
<tr>
<th>Kiser and Ostrom analytical level</th>
<th>‘Suffix’ level</th>
<th>Comparative comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operational</td>
<td>-ism</td>
<td>The central role at this level is an ‘internal’ one and relates to the most operationally oriented of the branches of government—the Executive—in all the machinery of government ‘-isms’ mentioned above.</td>
</tr>
<tr>
<td>Collective</td>
<td>-cracy</td>
<td>This is the level at which the particular nature of public authority characteristic of a regime is most clearly articulated. It is thus primarily ‘external’ to government.</td>
</tr>
<tr>
<td>Constitutional</td>
<td>-archy</td>
<td>In both schemas, this is the level at which the most entrenched rules are to be found. Usually, these are embedded in a particular political culture. It is at this level that fundamental balances between the internal and external dimensions are struck.</td>
</tr>
</tbody>
</table>

In the discussion that follows, I shall, in the next section, which is concerned with the dimensions of constrained parliamentarianism, follow this ‘top-down’ order, so as to deal first with those elements that relate most strongly to the ‘-archy’ level, then with those that bear most strongly on the ‘-cracy’ level, and finally those concerned with the ‘-isms’. Having done this, I shall move on to a consideration of an element largely ignored by Ackerman but one that is central to my reform program: viable head-of-state roles. So important is this dimension that I devote the whole of Section 3 to a discussion of its role and character.

Finally, in the concluding Section 4, I revisit the dimensions of constrained parliamentarianism, but, because of the transformation that could be accomplished by the new head-of-state dimension, in reverse, ‘bottom-up’

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\(^{17}\) Of course, there are several other ‘-isms’ that should here be noted, although they refer primarily to ideologies and thus are not directly relevant to the concerns of the current paper: ‘totalitarian’, ‘fasc-’, ‘naz-’, ‘commun-’, ‘social’. The ‘-isms’ with which this monograph is concerned are those that have to do with machinery of government issues.
order. I end with an account of what remains, suitably constrained, the centre of any framework of good governance: republican parliamentary democracy. In this way, I can most conveniently set the context for a constructively critical if brief assessment of the concept of monitory democracy.

i) Republican parliamentary governance: a lesson from Australia’s Indigenous peoples

It will be amply apparent by now that I favour an indirect approach to the attainment of republican governance. Indeed, one of my expert readers questioned whether I was really committed to the republican cause at all!

My response is a simple one: the minimalist approach favoured by the mainstream of the republican movement (led by the ARM but including some of our major parties as well) has been, and will continue to be, seriously flawed. Some recent thinking among members of our Indigenous community indicates a way in which some of these flaws may be remedied.

When compared with other nations with substantial indigenous populations, Australia has to date refused to grant its own Indigenous peoples reserved representation. This gap could, however, certainly be filled in the constitution of each of the proposed councils of state. The recent report *Our Future in Our Hands: Creating a sustainable national representative body for Aboriginal and Torres Strait Islander peoples* (Australian Human Rights Commission 2009b) provides sound guidance—not only on the question of how Indigenous representatives might best be located in the proposed new bodies, but on the broader questions concerned with the selection of the most appropriate processes that should be developed in the establishment of the councils of state themselves.

Unsurprisingly, in the light of the fluctuating fortunes of and ultimate frustrations with the Aboriginal and Torres Strait Islander Commission (ATSIC, which was abolished with bipartisan agreement in 2005), the leaders of the Australian Indigenous community have had to do some original thinking when it came to the development of proposals that entailed the insertion of new bodies into already crowded machinery of government domains. They therefore proposed the fashioning of three ‘chambers’ to stand between the Indigenous electorate, on the one hand, and a national representative body, to be called the National Congress of Australia’s First Peoples, on the other.

This ‘three-chamber’ strategy could easily be adapted to further the cause of fiducial governance

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18 As it will be up to each council of state to determine how it might shape its internal structure in the light of developments in other relevant jurisdictions, I have identified only the most obvious starting institutions for each chamber.
• chamber 1: national peak bodies (representatives from the three established branches of government\textsuperscript{19}; from the National Congress of Australia’s First Peoples)

• chamber 2: sectoral peak bodies (representatives from the Council of Australian Governments; from other councils of state)

• chamber 3: local community and individual representatives\textsuperscript{20} (representatives from the interests represented in the Australian Collaboration and from those representing interests not specifically covered by the Collaboration (for example, women, the aged, the disabled).

\textsuperscript{19} Although it would be optimal for fiducial governance if each judicial branch were accorded full membership in its Council of State, it has to be acknowledged that, as they stand, the constitutions of many Australian jurisdictions would not permit this. Accordingly, ‘weaker’ forms of representation (of the kind identified in Chapter 4) would be the best hoped for, until the climate of constitutional reform improved.

\textsuperscript{20} The Australian Collaboration was created in 2000, with the following membership: Australian Council of Social Service; Australian Conservation Foundation; Australian Consumers Association; Australian Council for International Development; Federation of Ethnic Communities’ Councils of Australia; National Council of Churches in Australia; Trust for Young Australians; Representative of indigenous population (now the National Congress of Australia’s First Peoples).