Introduction

a) The need for reform

I can most readily provide a simple introduction to what is wrong with the current Australian system of governance by listing 10 excellent modern works that have called for needed changes in our regime but that seem for the most part to have been going nowhere

- Can Responsible Government Survive in Australia? (Hamer 1994)
- The Road to a Republic (Parliament of Australia 2004)
- Into the Future: The neglect of the long term in Australian politics (Marsh and Yencken 2004)
- Chaos or Coherence: Strengths, opportunities and challenges for Australia’s integrity systems – the NISA Report (Griffith University Institute for Ethics, Governance and Law and Transparency International 2005)
- An Australian Republic (Barns and Krawec-Wheaton 2006)
- Promoting Integrity: Evaluating and improving public institutions (Head et al. 2008)
- Choosing the Republic (Patmore 2009)

It is not easy to trace the reasons why these numerous recommendations, which I for the most part support and find progressive, have been stalled. Nevertheless, the Into the Future essay most readily provides us with several of the most salient reasons for its own lack of impact—reasons that are relevant to the others as well. Chief among these is the continuing dominance of our highly disciplined political parties, which have tightened their hold on the levers of power as their community bases have dwindled. The continuing dominance of the parties
means that the institution on which Marsh and Yencken pin their hopes—the Parliament\(^1\)—cannot assume the position of centrality envisaged for it by them as long as the party system remains unchanged.

In the assumptive world of Marsh and Yencken, there is no other institution available to impose new disciplines on the parties that for so long have imposed their own forms of narrow disciplines on policymaking leaders, including those in the Parliament itself. To anticipate a central theme in this monograph, however: what of a directly elected head of state, seated in a council of state in which all the familiar branches of governance were represented? Like all those who have concerned themselves with public policymaking in modern Australia, Marsh and Yencken do not consider this possibility.

There has in recent years been some valuable work done by such entities as Transparency International and its Australian partners (for example, Griffith University 2005; Head et al. 2008). The character of this work has, however, been insufficiently political in nature; the proponents of the cause seeking the establishment in each of our jurisdictions of an integrity branch have not seriously addressed the questions of how structural reforms could generate the political support needed for the implementation of their reform proposals. Such political support could be developed around the ideal of fiduciality in governance—the development of a system that would heighten citizen trust in governance while simultaneously not threatening the legitimacy of the policy priorities of the government of the day. So we must next examine more closely the need for fiduciality, before going on to explore the reasons why the considerations raised by this concept have been so little considered in debates about our republican future.

The citizenry of Australia, like its counterparts in other similar societies, displays a constantly low level of trust in its public institutions (Bean 2005:123–4).

Accordingly, the most careful recent examination of the state of our democracy has concluded that the Australian public exhibits ‘disengagement and lack of trust in existing representative institutions, from political parties through to NGOs’ (Sawer et al. 2009:246). Unsurprisingly, then, Australia has not escaped the international trend that has witnessed the steady diminution of the membership of the major parties (Sawer et al. 2009:136). And most recent surveys show that the majority of Australians do not trust the institutions of government (Sawer et al. 2009:149), and an even higher majority believes corruption to be unacceptably high, especially in large private sector firms.

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\(^1\) In their essay, Marsh and Yencken cite seven overseas institutional initiatives relevant to their concerns. Of these, no fewer than five are parliamentary.
Associated with these ‘disturbing trends’ has been a lack of public confidence in the capacity of the legal system to remedy these defects (Braithwaite 2008:185; Sawer et al. 2009:41).

What is most disturbing about this state of affairs has been the spread of distrust, so that it extends to all the participants—government and non-government—that have become involved in modern governance. Reform policies that are aimed only at government institutions will not therefore be sufficient; fiducial policies and programs must cover the full range of governance institutions—public and private.

**b) Opening up the assumptive world of the republican policy community**

Every policy community has its assumptive world—a set of interlocking and usually unquestioned assumptions that together help it make some sort of sense of the policy domain with which it is concerned. Despite this commonality, policy communities differ in terms of the scope of their concerns: the more narrowly drawn the boundaries around its domain, the tighter are likely to be the sets of assumptions that bind together the participants in that community. Although I shall be arguing that the republican spirit should be one that is constantly questioning assumptions and imputations, in Australia, the republican policy community has been bound tightly by the assumptions of its core agency: the Australian Republican Movement (ARM).

In subjecting these assumptions to critical scrutiny, I am not making assumptions of my own about their invalidity. Some of the assumptions made by mainstream republicans could turn out to be well grounded. For example, the assumption that the two head-of-state offices that currently serve us could conveniently be merged into one office could end up being the arrangement that finally comes into being. I doubt that it will, but deliberations in one or other of the councils of state—whose creation I shall be recommending—might produce agreement on a merged head-of-state office. So, while I am not contending that all that is

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2 Indeed, the two least-trusted sets of institutions are, according to Bean (2005:Table 8.3), non-governmental: banks and financial institutions and trade unions.

3 Because the domain of the policy community has been so tightly drawn, the ARM has been dominant, in a way that it would not have been had the relevant policy community been one that concerned itself with broader issues of constitutional reform. This dominance has been so pronounced that I have recently felt free to describe it as ‘colonising’ other nearby formations (Power 2008b). Responding to an earlier draft of this monograph, one of the readers, who himself had been a leader of the ARM, commented that its strategy had been supported by ‘99% of the wider republican movement, including the Australian Labor Party, the Australian Democrats and the Australian Greens. ARM is not alone in wanting to move directly towards a republic’. Exactly!
contained in the assumptive worlds of those in the mainstream of contemporary republicans is wrong. I am contending that stronger republican thinking is needed. Rather than an ossified republican policy community, we need a strongly republican approach to constitutional reform—an approach that was sadly absent in the 1990s.

In Australia, the republican policy community was to a significant extent the initiative of the Prime Minister of the day, Paul Keating. He took advantage of the then recent creation of the ARM to attempt to build a policy community around it, led by the then leader of the ARM, Malcolm Turnbull, whom he appointed to chair an advisory committee on how to proceed towards the republic. Turnbull was quite open about his lack of interest in comparative and philosophical issues: ‘a gram of Australian experience is worth…a tonne of experience in other countries’ (Turnbull 1993:114). In practice, Turnbull was even more blinkered than this, for he did not accord overseas experience even a gram of weight in his recommendations. And further, he did not really accord any more weight to sub-national experiences in Australia itself.

Right from the start, the fundamental problem was that the issues raised by the transition to a republic were of themselves of interest to only a small minority. Unless these issues could be tied into issues of greater public resonance, opponents of change could cast the proponents as elitists. As things turned out, this monarchist tactic was quite effective.

While any constitutional reformer must always be alive to political pragmatics, the approach adopted at any one time will be very much a product of the governance climate of that time. And here Turnbull was out of luck, for the leader who gave the republican cause such momentum was Keating, and his approach to political pragmatics was not appropriate for the republican project. Keating and his coterie gained an unenviable reputation for arrogant, top-down styles of policymaking. Consider this characterisation of the style from one of Keating’s insiders (with not a hint of embarrassment about its hubris):

Working Nation created the desire to do more. If it was possible to conceive of the means to case-manage tens of thousands of young unemployed, it was possible to case-manage regions and communities. If it was possible to re-imagine the way governments dealt with unemployment, it was possible to re-imagine the way they dealt with Aboriginal health. If the government could take on the challenge of the revolution in business and industry, it could take on the revolution in technology. If it could do these things, surely it might raise the level of knowledge and interest in the democracy itself—in its institutions, the ideas from which they derived, in the nation’s history. We could move on to civics and education generally. (Watson 2002:491)
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Turnbull and his insiders apparently did not find this style all that inimical, for they too believed they had the answers before they ventured into the public domain. Here is the account of the Republic Advisory Committee’s public consultations in Perth from John Hirst, a noted historian, ARM leader and member of the committee:

All round the country professors of politics are indignant. The republican movement has taken off without waiting to listen to their lectures on the true nature of republicanism…

One professor, after finishing his polished address, was about to resume his seat when [chairman] Turnbull, switching into lawyer mode, said: ‘One moment, please professor. Would you return to the witness box for cross-examination?’ In twenty seconds Turnbull had him making concessions and retractions which undid the force of his paper. (Hirst 1994:28)

The accuracy of this account has been challenged by one of the politics professors present at the hearing in question (O’Brien 1995:56). What is of primary relevance here, however, is not the accuracy of Hirst’s account, but rather its extraordinary endorsement of the inappropriate behaviour of his chairman. It is not the job of the chairman of a public inquiry to harass witnesses and it was an abuse of Turnbull’s position for him to have done so. The most likely explanation for Turnbull’s behaviour—and for Hirst’s uncritical endorsement of it—is that the ARM leaders had already decided, in ‘group-think’ fashion, what they were going to recommend, so public hearings were a waste of time. This of course turned out to be a self-fulfilling prophecy, for the hearings were a failure—one that greatly weakened the republican cause. In the public mind, this cause came to be perceived as another exercise in haughty Keating elitism.

From this extremely top-down perspective on policymaking, all that was needed to solve any problem was the getting together of a small number of the Keating cognoscenti, for they believed that they had between them discovered the magic technique of successful policy development. It turned out, however, that the one thing they had not discovered was a way of avoiding a landslide defeat in the next election. As long as the Keating government remained in office, however, it seemed that insiders such as Hirst could be brought to depart from their normal academic disciplines if they believed that they had come up with simple solutions to complex problems. And their shared belief could be summed up in one word: minimalism.

The most serious of the several assumptions of the Australian republican policy community has been that which denies a significant continuing political role for the head of state. Because of this denial, the policy community has found
it convenient to develop a minimalist strategy. If the Australian public could be persuaded that the constitutional changes proposed were only minor ones, it seemed to believe, perhaps it would be possible to sneak a referendum affirmation through, ‘on the quiet’, as it were.

The fatal flaw in this strategy became apparent in the referendum campaign. The monarchists found common ground with some of the leaders of the direct-electionist republicans; both saw much more substance in the head-of-state role than did the minimalists. Unless the positive contributions that monarchs have made to the quality of Australian governance are acknowledged and learned from, a way out of this impasse will not be found.

Good as the Australian system of government has been, it has—in keeping with all the other national regimes around the world—been less sure as it has sought to handle the emerging system of governance. While government lies and should lie at the core of governance in any nation, the emerging system must also attend to non-governmental institutions that have come to prominence in an age of privatisation and outsourcing. Australia confronts a historic opportunity as we move into the new millennium. Just as our colonies took many leads in democratisation in the nineteenth century, the transition to a republic could lead Australia to an important reorientation of political activity, to make it more suited to many of the tasks now beginning to press insistently on national governments around the globe.

c) Beyond minimalism

It will be the central proposition of this monograph that the State and its head must be accorded a leadership role in the pursuit of truly republican governance, but this proposition can be developed only in a broad systemic context. We need to fashion a comprehensive and internally coherent framework of republican governance—one that recognises the strengths, and remedies the weaknesses, of our current arrangements. By establishing this broad context, we can examine the ways in which any reforms that might be proposed to deal with weaknesses in one element might unintentionally affect other elements, and go on to propose ways in which undesirable effects might be avoided.

4 No wonder some of the direct electionists found common cause with the monarchists, for they were scorned by the leaders of the republican policy community. They reminded Malcolm Turnbull (1999:2) ‘of Reformation fanatics burning heretics at the stake to save their souls’.

5 In making this assertion, I subscribe to a long-forgotten Australian tradition, recently recovered by Cochrane (2006: 535 n. 301), in his characterisation of John Dunmore Lang as a ‘loyal republican’, who only came to adopt a republican stance when monarchical arrangements had proved lacking.

6 Beer (1973:76 ff.) has proposed a term—‘engrenage’—to cover a familiar phenomenon: the ways in which government attempts to deal with problems themselves lead to new problems.
We are entering an age in which many of the established boundaries—between, say, law and convention or between the public and the private sectors—are becoming blurred. Democratic government is an essential part of any approach to this blurring phenomenon, but it cannot do it all itself. A new form of politics—to exist alongside partisan politics—needs to be formally recognised and needs to work through a new form of institution, one that reconciles the demands of democracy with those of fiducial republican governance. I shall be arguing that this new form of institution will be councils of state, sitting at the head of equally new monitory branches.

Although I voted in favour of the republican proposal put to the Australian people a decade ago, I am now glad that the proposal was defeated. Too much of the work needed on constitutional reform remained—and still remains!—to be done. Why has this necessary work remained undone?

In the 1990s, the work was not done because of the imminence of the new millennium. It was felt by those leading the republican charge—most notably, Keating and Turnbull—that there was no time to waste if the window of opportunity that they believed to be presented by the centenary of federation were to be used. Although they therefore favoured a minimalist approach, so that all considerations except those suggested by commonsense as being relevant to the abolition of the monarchy were set aside, the intensity of their campaign had a ‘crowding out’ effect. No other constitutional reform proposals have come to centre stage during or since the republican campaign, which has made the past two decades the most bereft of deliberations on such matters in the entire history of the Australian nation. Why has this emptiness continued over the past decade, since the defeat of the republican referendum?

Part of the explanation for this sad state of affairs must go to the quality of leadership provided by Prime Minister John Howard, who must surely have been the political leader least interested in constitutional reform of any that Australia has experienced. The reasons, however, go deeper than this. The minimalism so favoured by Keating and Turnbull in the 1990s has continued to blight deliberations on both the republic and wider issues of constitutional reform.

Yet, some valuable work was done within the minimalist paradigm, and this work can be used to provide relevant launching pads for wider-ranging considerations of the nature of the republic that will be needed in the years ahead. Only when we come to the end of this long journey will it be time for a further referendum on the transition to a fully republican state. This journey will be a long one because the minimalist paradigm will not be easy to shift; it is

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7 According to Ahamed and Davis (2009:222), this Howard diffidence about structural reform extended so widely that they could claim that ‘public sector reform was not a key policy interest of the Howard years’.
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deeply embedded in the commonsense so close to the hearts of most fashioners of public policies in Australia. But shift it will, quite possibly only after another defeat—this time of a premature plebiscite proposal\(^8\)—has demonstrated the dead-end nature of the minimalist paradigm.

So lengthy will this period of reorientation have to be that I have now come to the realisation that I shall not see a fully republican Australia in my lifetime. Somewhat to my surprise, this realisation has served to free me up to begin the work of directly confronting the minimalist paradigm—a task that has to date confounded me. To know that I need only make a start, and that future generations will finally come to benefit from the constitutional reforms (that might have to await the demise of the minimalist paradigm), has turned out to be liberating.\(^9\)

Counter-posing this sense of liberation is a realisation that reforms of the magnitude that are needed will carry appreciable risks of regime malfunctioning. I have attempted to minimise these risks by placing collegial bodies—made up of the most experienced governance practitioners—at the centre of the proposed new regime. In an important sense they will be performing the tasks that have been those discharged by those once dubbed (in more sexist times) ‘founding fathers’. Such collegial bodies should be relied on to cope with unexpected but sometimes serious problems as they arise.

Writing about the American founding fathers, Davis (1995:27–8) made an insightful observation that applies more widely to numerous other constitutional enterprises: ‘they had composed a new form of government with no precise, no defined, no known principles of action. But at base, experience would have told them that as a people conducts its politics, so it gives content to its institutions and its principles.’

\(^8\) In 2008, the Leader of the Greens, Senator Bob Brown, introduced into the Parliament a bill to require the government to hold such a plebiscite at the time of the 2010 general election. Fortunately, this will not happen. In June 2009, the Senate Committee on Finance and Public Administration reported that the bill should not be supported during the life of the current Parliament. (This was about the only merit of the extremely limp report of the committee. Anyone wishing to see a recent example of the aimlessness of current republican thinking in Australia could do no better than to examine this superficial report: Parliament of Australia 2009a.)

\(^9\) In a recent essay reviewing my life’s work, I have come to the sad conclusion that it has had little continuing effect on the work of others (Power 2009). Perhaps this suggests an answer to the curiously liberating effect that this project has had; in this case, I cannot know in my lifetime whether this essay will be different from those that have preceded it, so I can hope that it might ultimately come to exert some influence.
d) Governance and the State

Both governance and the State are concerned with what Low and Power (1984) termed the ‘APRA’: the aggregate of policy-relevant activities. Many of these activities—usually the most important of them—are either determined or shaped by governments, but several are not. Whether they are so shaped or not, all the activities in the APRA that fall within its prescribed geographical area of sovereignty are the concern of the modern State. The domain of the nation-state is thus much wider than that of the government that is embedded in it.

There is therefore a close correspondence (at least for the purposes of this monograph) between national governance, on the one hand, and the concerns of modern states and their heads, on the other. Of course, in the current era of globalisation, many governance activities are not shaped by the modern State; in the memorable term of Rosenau (1992), in many international fields, we now have governance without government. Although this condition of affairs should concern the democrat, it has generally been considered that it could not be remedied in the absence of world government, and the governments of existing nation-states would never tolerate such a regime. In an epilogue to a companion essay to this monograph, I briefly consider the ways in which national councils of state might come together to form a global council of states in a way that might not be opposed by the governments of the world.

e) Energising our publics

When Australia finally does make it to a republic, such a change will be worthy of the appellation ‘constitutional moment’—probably only the third, after the advent of responsible government a century and a half ago and federation a half-century later, in the whole history of white settlement of the continent. A constitutional moment is one when significant shift occurs in the balance of established powers.

Ackerman, who introduced the term in order to come to gain a handle on the achievements of three of the greatest US presidents to date—Thomas Jefferson, Abraham Lincoln and Franklin Roosevelt—used it to refer to great accretions of presidential power, in the last resort independently of what the formal
provisions of the nation’s constitution might have stated (Ackerman 1998:409). Of course, the dramatic contexts of these three ‘moments’—nation building, civil war and the Great Depression—provided these skilled politicians with openings not normally available to political leaders. How could the advent of a republic in Australia ever provide a context even remotely like these?

If we are to attempt an answer to this central question, we must identify a set of issues with the potential power to energise the Australian citizenry. This will be harder to do than in the two earlier constitutional moments in Australia, because the nature of the citizenry has changed so radically. Our culture no longer possesses the heavily ‘British’ deferential culture that supported our political leaders in their earlier achievements. And our party system is now in an enervated state, with our party grassroots populated largely by those hoping to gain some office through party backing. This sad condition of our parties has not, however, inhibited them in the accumulation of ever-greater power. They are indeed well described in the epithet ‘hypertrophied’ (that is, overextended).

Some party leaders—for obvious reasons usually those who have retired (most notably, the late John Button and Malcolm Fraser)—have protested about the directions in which their parties have been heading. The parties will be regenerated, however, only when they come to support a broad movement—a ‘fiducial’ movement—towards the fostering of institutional integrity for our major institutions. Of course, this movement will not—initially at least—be one that will attract deep popular support. We now have the tools, however—if our political leaders so wish—to build the needed momentum.

f) Trust and government

So, what can governments do to promote the cause of fiducial governance? There are, after all, persuasive grounds for contending that often it is governments themselves that are predators on community-based trust: ‘Over the last five thousand years, most people across the world have relied on trust networks for these (high-risk) enterprises, and have guarded the responsible networks as much as possible from governmental intervention’ (Tilly 2005:43).

10 In Ackerman’s view, these moments have been rare in American history, for ‘a constitutional moment need not ripen into a new constitutional solution’ (Ackerman 1998:409). This conception of the ‘constitutional moment’ is particularly stimulating when we come to consider the ways in which this insight might be used in the design of a future ‘moment’. As I shall argue below, a regime that separated the roles of head of state and head of government, and that possessed a collegial body (such as a council of state or a French-style constitutional council to be consulted on relations between the two) (Rohr 1995:22–3, 48 ff.), could offer a more congenial institutional setting than the American system for the workings of a fiducial republican order. 11 Of course, some of the more optimistic of the republicans have contended that the transition to a republic might itself have an energising effect (Uhr 1999:3).
Australia’s most famous corruption fighter, Tony Fitzgerald, has recently provided yet another perspective that illustrates the difficulty of reform. As Fitzgerald (2010) observes, political leaders themselves serve as role models, and if their behaviour is deficient, a vicious circle ensues: ‘People who consider themselves powerless outsiders readily become disillusioned, cynical, apathetic and disengaged and lose trust in government, the integrity of its process and decisions and even fundamental institutions. Principled leadership is essential to preserve our confidence in and support for each other.’

So there should be no doubt as to the extreme difficulty of this task. And the best account of this difficulty is that of Tilly (2005). Central to Tilly’s analysis is the trust network, which he defines tightly as the formation into which people set valued resources that have been placed at risk, typically from the mistakes and failures of others. In this way, he hopes to avoid the vagueness that so often engulfs discussions of the relationships between trust and democratisation (such as the *glissandi* that he plausibly ascribes to the well-known work of Putnam).

Useful as this analytical category is for Tilly, it ultimately is not as relevant as it might have been for the task that has been set for this monograph. Tilly adopts as his primary perspective the interests embedded in his trust networks. From this perspective, governments are seen as dangerous, because ‘regimes and trust networks often depend on the same resources—labor, power, money, information, loyalty, and more’ (Tilly 2005:23).

Dangerous as governments might be, Tilly does recognise some instances—relatively rare ones, in his view—when trust networks can be satisfactorily integrated into ‘public politics’. At no point, however, does Tilly recognise the potential value of a differing perspective—one that accords primacy to a head of state in fostering trust among the citizenry.

It is my contention\(^\text{12}\) that the decline in the authority and power of monarchical heads of state has been an important cause of this loss of state capacity. Therefore, I propose that a strategy to invest new resources in a reinvigorated office of head of state should be able to recapture some of the public trust that has been lost. The opportunity exists for a nation such as Australia, which has been struggling to find a way through to a republic, to do so in ways that further the cause of fiducial governance.

\(^{12}\) At present, this can be no more than a contention, for the decline of heads of states everywhere preceded the advent of public opinion surveys. It is now nearly a century since the collapse of many monarchies during and immediately after World War I. Experience in the interwar years—especially the accession of Adolf Hitler to the office of German head of state—greatly fostered suspicion of the office. In the past decade or so, however, the emergence of semi-presidential regimes has reconfigured some head-of-state roles so as to invest them with moderate substantive powers. As we shall shortly see, that should be enough for current reform purposes.