Preface

Reinventing parliamentary democracy for a differentiated polity in the twenty-first century is a task scarcely begun, in either theory or practice...It is perhaps more a wonder, given the shackles they wear, that leaders achieve anything at all. (Rhodes 1997:222)

When an earlier draft of some of this monograph was circulated to two readers—both of whom I respect for their different mixes of academic and practical skills—the feedback I received was encouraging but concerning. Both readers considered that my argument was a weighty one but so ‘out of left field’ that it would be difficult to attract a wide audience of concerned citizens to consider my proposals. So the purpose of this brief preface is to present some of the key points in what follows in this monograph, in the hope that it might encourage perseverance among readers who might otherwise be put off by my introduction and theoretical framework-setting Section 1. Alternatively, those readers who are interested mainly in the ways in which Australia could best proceed to a republican regime might prefer to go straight to Section 2.

a) The Geertzian challenge

I am here attempting to respond to a challenge issued some years ago by the eminent anthropologist Clifford Geertz. A few years before his death, Geertz threw down the gauntlet to political theorists wishing to embark on the design of governance regimes suited to the new millennium. In his stimulating essay ‘The world in pieces: culture and politics at the end of the century’, Geertz (2000:235) emphasised the ‘disassembly of the bipolar world’ with an increasingly messy and uneven multiculturalism cutting across national boundaries. In his view, a new form of politics was needed (Geertz 2000:245), and a new form of political theorising to accompany it. This new form of theorising should eschew over-hasty generalisation and should flow from concerns with existing institutions and practices and their inadequacies. He convincingly contended that all the major writers in the grand tradition of political theorising—from Plato to Rousseau—had been creatively stimulated by the pressing nature of the problems faced by the regimes in which they lived (Geertz 2000:219).

One of Rousseau’s contemporaries—the governance practitioner and theorist Montesquieu—has proven to be the most heavily influential thinker on modern constitution making, so much so that some of his most important propositions
have become deeply embedded in the contemporary republican assumptive world. It is therefore appropriate for me to begin my response to the Geertzian challenge with a brief critique of a key Montesquieu proposition. In this way, I shall attempt to illustrate what I consider should be one of the most important features of republican thinking—the constant questioning of key assumptions—while at the same time setting an important part of the context for the argument that follows.

b) Questioning Montesquieu

In his extremely influential work *The Spirit of the Laws*, Montesquieu (1748) made one error that was to have a great impact on subsequent constitutional theorising. Because of his own monarchist allegiance, Montesquieu was insufficiently sensitive to the consequences of the ‘Glorious Revolution’ of the previous century. He thus confused the formalities with the realities and placed the monarch at the head of the Executive—one of his three divisions of government. Had he been more fully aware of the real distribution of power in the eighteenth-century British regime, he might have paid closer attention to the role of the head of state, as distinguished from that of the real head of government.\(^1\)

When the American founding fathers came to adapt the Montesquieu framework for a new republic, they were content to replace what they believed to have

\(^1\) Although Montesquieu did not use the term ‘branch’, it has consistently appeared in glosses on the US constitution, with consequences that I consider to have been significant. I thus disagree with Rohr (1995:39), who considers the modern preference for the term (over, for example, the previously favoured ‘department’) as being little more than a change in fashion. In this case, I contend, the term ‘branch’ does carry important connotations, for it can be used—in ways seemingly not open to other terms—to legitimise hegemony over a major sector of modern governance. The establishment of this hegemony could initially have been due to its very trinitarian structure. After rejecting a seventeenth-century view that the durability of this structure was due to its having ‘shadowed’ the structure of the Christian deity, Vile (1967:15) immediately goes on to remark on the ‘mystical’ quality it has acquired. I have not yet been able to determine how this terminology came to be dominant. The *Oxford English Dictionary* cites the earliest use of the term in the early eighteenth century. In 1712, in *The Spectator* (no. 287), Joseph Addison wrote that ancient sages such as Polybius and Cicero ‘gave the Pre-eminence to a mixt Government, consisting of three Branches, the Regal, the Noble, and the Popular’. Addison went on to warn that ‘a greater number (than four Branches) would cause too much confusion’. We need the services of an intellectual historian of the skill of Hirschman to chart the evolution of this term. Some time ago, much of the relevant material was gathered by Vile (1967), except he, like Rohr, was insufficiently aware of the political weight that accrues to interests once they have succeeded in laying claim to the rubric of ‘branch’. He does, however, at one point draw attention to the need to consider closely—as no less a thinker than Locke had done under the rubric of a ‘federative’ function—the attractiveness of another branch: ‘Locke and others had been bothered by the fact that the “ruler”…had to carry out the law when it was clear and easily stated, principally in internal affairs, but he had also to act in areas where the law could not be laid down in detail and where his prerogative must remain almost wholly untrammeled, that is to say largely in external affairs. Thus between them Locke and Montesquieu state at least four functions of government, not three: the legislative, the executive, the “prerogative”, and the judicial’ (Vile 1967:87). In this monograph, I am contending that this prerogative power be revived under the aegis of the head of state, and broadened in scope, so as to serve a monitory function.
been an executive monarchy with an executive president. As Vile (1967:121) has pointed out, this was all too easy for them to do, for the colonial governors, with whom most of them had tangled, possessed powers close to those that Montesquieu had falsely attributed to the monarch. From its inception in this way, the head-of-state role in the United States has been subordinated to that of the head of government, which has in turn become determined by the outcomes of partisan elections. So much for the independence of the head of state in presidential regimes.

In the other form of regime that came to prominence in the twentieth century—the parliamentarist—the threefold Montesquieu differentiation of branches has come to be adopted uncritically, except that it has always been apparent to those involved in these regimes that the head of state could no longer be considered the head of government. As a result, only a small space could be found in the Montesquieu trinity for the head of state. Heads of state in parliamentarist regimes might have become more independent of partisan politics than they have been in presidential regimes, but they have done so at the cost of marginalisation. At no point has the question been posed: should the head of state be accorded the status of playing a leading role in a separate branch of governance?

c) On fiducial governance

It will by now be apparent that if I am to take up the Geertzian challenge in the context of Australian republicanism, I shall have to work out of ‘left field’, for the mainstream has become stalled by Montesquieu orthodoxies; hence my resort to a near-neologism in the very title of this monograph. By ‘fiducial governance’, I mean a commitment by our nation-state to adopt policies and arrange institutional relations in ways that demonstrably strengthen the trust of the citizenry in its institutions of governance. If this commitment is made and followed through, it will end up generating a strong—indeed, in my view, ultimately irresistible—movement to a republican order in Australia.

Composing this monograph out of left field will inevitably open me to charges of elitism, in the sense that I shall at some key points be directing complex arguments at governance elites. Such an orientation cannot be avoided, however, as I am seeking to encourage a substantial change in the culture of constitutional reform in Australia. I am seeking to remedy a state of affairs that has been described by Irving (2009:118): ‘The republic campaign generated a body of theoretical work, but did not engage deeply with questions of constitutionalism. The bill of rights issue looks likely to be similar. The focus in such themes has tended to be practical, rather than conceptual or analytical.’
In order to do this, I am exploring some important structural changes to our current machinery of government arrangements—to provide institutional room, as it were, for governance practitioners to begin the work that will produce the needed cultural transformations. Only when these changes—both cultural and structural—have been effected will it be possible for political activists, with skills I do not possess, to craft proposals for concrete changes that will stand good chances of popular approval through a referendum.

A genuine government commitment to fiducial governance will result in a wide-ranging reform program; there are serious problems that require attention and the very process of implementing reforms will in time make it easier to secure public approval in a public referendum on constitutional changes. As the late former Senator David Hamer—that shrewd political practitioner—observed about the most promising way of achieving constitutional reform in the Australian system:

If...there could be a working period with the new rules before there was any need to include the rules in the various constitutions, by this time they would be accepted practice, and the conservatism of the voters on constitutional matters would be recruited on the side of their acceptance. (Hamer 1994:83)

The character of this monograph is therefore tentative and contingent in tone. It is too early to make confident judgments about the nature of the constitutional reforms that might ultimately be needed. It is possible, however, to outline a framework within which new collegial bodies can begin the needed work without any prior constitutional recognition.

There are important further dimensions to fiducial governance than just the advancement of the trustworthiness of public institutions—vital as that might be. Often, the most effective way forward is to follow the famous injunction of Braithwaite (1998): ‘Institutionalise distrust; enculturate trust.’ For this reason, it is of the utmost importance for regime stability that new institutional arrangements (whether they be for the establishment—in recent times, strongly advocated—of an integrity branch, or, as I would prefer it to be titled, a monitory branch) be designed in ways that prevent corruption before it occurs (Brown 2008:46). And, if this is to occur, the trust that underpins fiducial governance must be especially strong between those officials who are heading up the several monitory units that are being brought together in the new branch.

The term ‘fiducial’ has close connections with other terms in wider use, such as ‘consensual’ and ‘consociational’.2 ‘Fiducial’, however, can be differentiated

---

2 The term derives from the cognate Latin term ‘fides’ (trust) and has until now not been used in governance contexts, its current use being restricted largely to physics and theology. It is thus free of the legal and sometimes confusing connotations of the more familiar term ‘fiduciary’.
from the others because of its emphasis on the close interrelations between leaders and the citizenry. All such terms are readily distinguishable from that which is most commonly used to describe democratic politics: the ‘partisan’. Parties lie at the heart of modern representative democracies, but parties alone cannot deliver good governance. Party politicians often engage in politics other than the partisan; much of the time of many parliamentarians is devoted to non-partisan committee work (Halligan et al. 2007:ch.8). The distinctive feature of such contemporary fiducial politics when it is compared with the partisan form is, however, its fragmented and largely unorganised nature. It is this relative lack of coherence that has determined the lack of success to date of calls for the recognition of an integrity branch—that is, a formation that in my terms would focus primarily on fiducial politics. As I shall argue, the boundaries between the two forms of politics would be best determined on a case-by-case basis by the members of high-level collegial bodies, of which a majority would be members of political parties, but they would be partisans who recognised the need to collaborate across party lines with others with strong fiducial commitments.

The reach of fiducial politics therefore extends well beyond the domain of political leader–citizen relations, for it must affect the ways in which politicians themselves relate to each other. As it does this, it can also lead to a long-overdue rejuvenation of the parties themselves. As increasing numbers of citizens come to see the opportunities for participation in meaningful discourse about the major issues of the day, they will be attracted to parties that offer them the most effective ways of so participating.

Anticipating much of the argument that follows, Table P.1 indicates one way in which this could be done. Fiducial governance, I shall be contending, is most likely when a separate branch is dedicated to the tasks of making public policies worthy of the trust of the citizenry, and a monitory branch is well suited to such tasks.

### Table P.1 A possible fourth branch of the State differentiated from the familiar three

<table>
<thead>
<tr>
<th>Principal political considerations on peak collegial body (shown in each case in parentheses)</th>
<th>Partisan</th>
<th>Non-partisan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal style of branch structuring in order to relate to interests in civil society</td>
<td>Hierarchical</td>
<td>Executive (Cabinet)</td>
</tr>
<tr>
<td>Reciprocal (through elections and committee inquiries)</td>
<td>Legislative (Parliament)</td>
<td>Monitory (Council of State)</td>
</tr>
</tbody>
</table>
So what are the serious problems that need urgent attention because they have been diminishing public trust in our institutions of governance? I begin the first section of this monograph by addressing this critical question.