
REVIEWS

In Search of the True Republic

Patrick O'Brien, *The People's Case: Democratic and Anti-Democratic Ideas in Australia's Constitutional Debate*, Constitutional Press, Perth, 1996

Reviewed by **Rudolf Plehwe**

THE Australian constitutional debate, says Patrick O'Brien, has been diverted from the issues that matter on to the largely irrelevant choice between a royal and a non-royal head of state. The task that desperately needs tackling is to tame the executive government, which, having inherited the undiminished powers of the Crown, now also controls the legislature and is not in practice accountable to anyone. O'Brien, a political scientist at the University of Western Australia, argues for a 'true' republic, characterised by an explicit constitutional recognition of the political supremacy of the people, which would be safeguarded by an effective separation of powers, checks and balances and effective controls on all governmental authorities. Such a polity could be headed by a president or a constitutional monarch. But if the choice *were* to be one between the 'Keating-Turnbull axis' on the one hand and Australians for Constitutional Monarchy and the Samuel Griffith Society on the other, democrats would have to side with the latter. The so-called 'minimalist' republican proposals are meant only as the first step in implementing a hidden agenda and would in any case abolish even the inadequate checks on executive power provided by the Crown and its representatives.

Unchecked executive power is favoured, or unthinkingly accepted, by much of Australia's political elite, including many on what is considered the conservative side. It is justified by arguments derived from positivism, utilitarianism and socialism, which particularly appeal to those who aspire to remake society according to some truth revealed to themselves and not yet understood by the people (who must be educated, cajoled or, if necessary, coerced into compliance). These self-anointed saviours hanker after a unitary state with an omniscient, unicameral parliament through which they and their party can rule unchecked, with the people reduced to passing judgment at election time, when governmental secrecy and widespread use of patronage and the pork barrel will ensure a favourable verdict.

The People's Case was published before the 1996 federal election, and the author devotes a lot of space to what he calls Keating's culture war: the attempt by the former Prime Minister and his disciples to impose their own version of Australia's national identity. In the best (or rather worst) traditions of 19th-century European nationalism, this is accompanied by a tendentious and selective use of history designed to appropriate the past for partisan ends. Since politicians will not act to enforce governmental accountability, we must agitate for a convention elected by the

people to formulate reforms. The people must be, and be seen to be, the source of a new constitution that enshrines their supremacy and limits the powers of all lesser authorities. The author supplies a list of desirable measures to be adopted in time for the centenary of federation.

True to form, Professor O'Brien has given us a vigorous polemic against some of the worst features of contemporary Australian politics. What he calls 'partocracy', or the virtually uncontrolled exercise of both executive and legislative power by party elites concerned to evade all scrutiny, is a serious evil. He rightly draws attention to the acquiescence of 'conservatives' in executive domination. It is also true, as he says, that many who battle for economic freedom show no great concern for those institutions that protect freedom generally by limiting the powers of government. It is worth remembering that both the Thatcher Government in Britain and the Kennett Government in Victoria increased the dominance of the central government over subordinate authorities (such as, in the Victorian case, local councils and the Director of Public Prosecutions).

The People's Case is also valuable in setting the record straight on some historical matters, such as the part played by racism in Australian nationalism and the way many Labor Party and trade union leaders fought against the admission of boat people after the communist takeover of Vietnam. Of course, the author had to be selective, and much more could be written about the vagaries of Australian traditions, past and present. I personally treasure Jack Lang's account of how he and his mates used appeals to White Australia to defeat conscription in World War I, and the almost admirable flexibility of nationalists who denounce the (largely mythical) cultural cringe while trying to make Australia's variant of the Westminster system conform to the even more centralised British version.

The book thus has very considerable merits. But it is a tract for the times, even a call to arms, rather than a detailed and nuanced analysis of the issues. Probably some leading republicans have hidden agendas, but there do seem to be important disagreements among them which O'Brien does not explore. John Hirst, for example, has often fought the very distortions of history that O'Brien deplors. There is an implicit threat to federalism in the current republican program, but it may be due to muddle. It results from the almost total lack of discussion by republicans of future arrangements in the States. The 'official' republican position is that the matter should be settled in each State. But recent discussions of the Governor's role in New South Wales and Victoria suggest that some leading republicans expect the office to disappear. In any case, the general silence implies that the issue does not matter. But if the role of the head of state and the reserve powers are important at the Commonwealth level, they must be significant in the States. Moreover, State Governors in their sphere represent the Crown and carry out its duties (to govern the people according to law) as directly and fully as the Governor-General does in his. If, as republicans and monarchists agree, symbols matter, any change in this arrangement may affect the position of the States in the federation.

Professor O'Brien points out that the term 'republic' has been used in many ways and often has no precise meaning. But he invokes 'democracy' and

'government by the people', which have been used and misused even more. True, he usually argues for 'liberal democracy' or 'constitutional democracy'; but many of the British and American writers and statesmen he admires were wary of the term 'democracy', which to them suggested direct democracy and the constant danger of mob rule. Abraham Lincoln's 'government by the people' is a powerful slogan but is totally impracticable and sits as uneasily with the realities of American government as with the views of the authors of *The Federalist* and Professor O'Brien's own admirable concern for limited powers and the protection of individual rights. The 'sovereignty of the people' has been frequently invoked by the social engineers whom O'Brien scorns, beginning with the French revolutionaries who tried to replace all honorifics by the title of 'citizen'.

The proposals for action are the least satisfactory part of the book. The plan of a people's convention on the Constitution raises many practical problems, as the Howard Government seems to have discovered. The version finally announced, with half the members to be appointed rather than elected, is hardly likely to satisfy O'Brien, and from his point of view the whole exercise presumably became futile when it was announced that the convention would deal only with the question of the head of state. A fundamental problem is that a convention that includes practising politicians is likely to be dominated by them, while one that excludes this group may well be seduced by hare-brained schemes. In any case, even if, as O'Brien demands, parliament binds itself to submit all a convention's recommendations to a referendum, any measure opposed by a substantial section of the political class is likely to fail.

The author presents 21 'proposals for constitutional renewal' which, he claims, 'contain no utopian panaceas' but are 'down-to-earth and practical measures' (p. 133). Some, like a stronger system of parliamentary committees and a re-examination of Commonwealth-State relations, are hardly perennials, though not necessarily any the worse for that. Others would be radical innovations in the Australian context: for example, 'the sole right of the people to directly elect their heads of state and government' (p. 135), the outlawing of all pledges by members of parliament to accept party discipline, and 'recall and/or dismissal of members of all three branches of government through citizen-initiated referendums' (p. 137). In some cases the author's meaning is unclear. Does 'the supremacy of the electorate over the legislature' add anything to other points such as the constitutional limitation of legislative powers or the possibility of recall by referendum? How exactly is impeachment (of members of the executive and the judiciary by parliament or members of any of the three branches by referendum) to work? Impeachment, unlike recall, is a judicial process. Does Professor O'Brien want to apply the American and the now obsolete British systems, where the lower house prosecutes and the upper house acts as a court? As for impeachment by referendum, this is a frightening prospect, whatever it means precisely.

More generally, Professor O'Brien advocates a number of devices that have been tried in the United States, at either federal or state level, without considering the problems they have caused. 'Partocracy' is a great evil, but extreme fragmenta-

tion of power can produce gridlock, where entrenched special interests are almost unassailable and corruption and pork-barrelling are the only ways to get anything done. The point is not that Professor O'Brien is necessarily wrong and that the sceptics are right, but rather that most of his proposals raise serious problems and at the very least need a lot of hard thought before they could be implemented.

But it would be misleading to end on a negative note. In this book, Professor O'Brien continues his distinguished career as a slayer of sacred cows, most of which deserve slaying, or at least a damned good scare. Long may he continue to 'speak truth to power'. And he is never dull.

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