Chapter Nine

The Head of State in Australia

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The second Covering Clause of the Commonwealth of Australia Constitution Act reads as follows: "The provisions of this Act referring to Her Majesty the Queen extend also to the Heirs and Successors of Her Majesty in the Sovereignty of the United Kingdom of Great Britain and Ireland". Australia's link with the British Crown dates from 1770 when Captain James Cook R.N. took possession of eastern Australia "in the Name of His Majesty King George the Third". This link was confirmed on 26 January 1788 when Captain Arthur Phillip R.N., as Governor-designate of the Colony of New South Wales, and a group of officers, standing ashore at Sydney Cove under the British flag, drank toasts to the health of the King, the Royal family and the success of the newly inaugurated Colony.

Australia's Head of State has therefore been the British Monarch from King George III to Queen Elizabeth II during Australia's transition from a colonial status to that of an independent kingdom linked with other independent kingdoms in a personal union of crowns. This short study, while acknowledging this union of crowns in one person, will concentrate principally but not exclusively on the Monarch's local representatives in vice-regal office, or, to employ Professor Anthony Low's term for them, our "surrogate Royals". This paper will touch only lightly on the constitutional changes which affected the role and standing of the Monarch and of these local vice-regal dignitaries. Sir David Smith, in his address to the Society on the evening of 25 July, gave a very full account of Sir Samuel Griffith's distinguished career; one item which he omitted, because it is very easily overlooked, was Griffith's term as Lieutenant Governor of Queensland which ran from 1899 until 1903, when his appointment as Chief Justice of the newly established High Court of Australia obliged him to vacate that vice-regal office along with the Chief Justiceship of Queensland.

The powers vested in Captain Arthur Phillip and his immediate successors were sweeping; more extensive in fact than those the Monarch they represented could constitutionally discharge on his own initiative in Great Britain. And this introduces us to a theme which recurs in Australian constitutional history. Political forces, either through combining or reacting one to another, have from time to time forced our surrogate royals on their own initiative to invoke prerogative powers which, while still extant in Britain, have seemed to fall into desuetude through a less tempestuous if not more orderly conduct of political affairs.

On this form of colonial government, Professor Enid Campbell has written in the Royal Australian Historical Society Journal, vol. 50:

The form of government employed in New South Wales between 1788 and 1823 was altogether unique; never before had the Crown withheld legislative institutions from colonies governed by English law and assumed to itself or delegated to colonial Governors the authority to make laws for the colony which would otherwise have been entrusted to a colonial legislature.

Unique as this form of government undoubtedly was, it was unremarkable in its foundation inasmuch as the metropolitan power was transplanting to New South Wales, not planters, but prisoners and their gaolers. Further to this Professor W G McMinn has written in his A Constitutional History of Australia (1979) p.4:

...Australia's first system of government can best be described as an autocracy. There was always a problem of authority, but the governors were forced to govern: which meant, in this extraordinary and new colony, that they often ignored nice points of law. Indeed, at times they could not avoid taking actions which might seem quite arbitrary.

It also meant that their authority could be challenged locally, as Governor William Bligh in an extreme case was to learn to his cost. The stumbling block in the path of introducing and extending representative institutions to New South Wales was and remained for some time the very reason for the establishment of such an autocracy in the first place: the continued transportation of convicted felons.

The last Governor of New South Wales to exercise these autocratic powers throughout his term of office was arguably the greatest of all of New South Wales's governors, Major-General Lauchlan Macquarie. It fell to his successor, Major-General Sir Thomas Brisbane, an engineer, to implement legislation enacted at Westminster which established a nominated Legislative Council, and to his successor, Lieutenant-General Sir Ralph Darling, to implement further legislation in 1828 which expanded that Council in size and authority. In 1825 a Legislative Council had been established in Van Diemen's Land when it became a separate colony to assist the Lieutenant Governor, Colonel George Arthur. In 1842 the New South Wales Legislative Council was broadened to allow two-thirds of its membership to be elected on a 10 pounds property franchise extending to both free and freed. But this did not mean that conflict between this rudimentary legislature and the executive in the person of the Governor could be avoided.

Surveying the developments in New South Wales from 1842 until the introduction of responsible government there and in Victoria, Tasmania and South Australia in 1855-56, Professor McMinn has had this to say (pp. 40-1) on perhaps the most turbulent period in Anglo-Australian relations:

An historian tracing in the post-imperial world the constitutional development of a British dependency can easily fall into the trap of seeing it in terms of a `struggle' – series of hard-fought but almost divinely ordained stages leading, despite stubborn opposition from London, to either the formal independence epitomized by the United States and India or the de facto independence of Canada and Australia. The risk is particularly great for an Australian historian because the leading participants in the `struggle for self- government' drew much of their rhetoric from the history of the American Revolution and of their practical inspiration from Canadian experience. But such a view is both over-simplified and distorted. The attitude of British governments, whatever colonists may have thought, was never blindly negative; and the Australian experience, despite superficial similarities to that of other colonies, was fundamentally very different. Events in Australia were always in a minor key; and, while attachment to the principle of representation was genuine, the pressures which developed into a demand for responsible government had their origin not, as in the American colonies, in the abstract political theory of the eighteenth century `Enlightenment' or, as in Canada, in the tensions of rival nationalisms, but in mundane administrative grievances spiced with personal ambitions and even with cupidity.

Although those aforementioned elements in the Australian colonies were also very prominent in the American colonies as part of their campaign against the King-in-Parliament, there is little purpose to be served now in highlighting them from the instruction of our American cousins. Professor McMinn continued:

...This is why the demand seemed less impressive to the Colonial Office than it can seem to the modern student, why the Colonial Office was, in fact, less obstinate and more reasonable than is sometimes thought, and why also the system in which a representative legislature confronted an independent executive, apparently on the point of breaking down in 1845, was able to survive in New South Wales for ten more years.

The functions of the Governor were significantly altered with the coming of responsible government. As The Sydney Morning Herald put it:

Hitherto responsible solely for the conduct of legislation – himself the government – he now becomes one of the three recognized Estates. He will surround himself with men whose place and power will depend on support of the Assembly; who, if unable to maintain their position, will be obliged to yield up the staff and make way for more favoured successors...

This was all right as far as it went, but that same leading article was on less certain ground when it continued to deal with what it saw as functional and representational changes in the role of the Governor:

The Governor Sir William Denison has ascended to a loftier position. Formerly the servant of the Cabinet in England, he has become the representative of the Crown.

This would have been an accurate description of the representative function of the Governor-General in a federated Australia some thirty years after its inauguration in 1901 with the enactment by the Westminster Parliament of the Statute of Westminster in 1931, but as a description of the Governor of New South Wales in 1855 or any other Australian governor presiding over a system of responsible government it was 130 years premature. That Governors represented the Crown was beyond question but until 1986 they did not have direct access to the Sovereign as the Governor-General did after 1931; from 1855 they continued to be formally appointed by and continued to deal with the Secretary of State for the Colonies or with whichever Cabinet Minister in subsequent years assumed the functions of that office in relation to the old dominions. Like their Premiers, they did not even have direct access to the British Prime Minister. Until the federation of the Australian colonies in 1901, the role of Governors as agents of the British Government remained significant. As W J Hudson and M P Sharp have expressed it in their excellent study Australian Independence: Colony to Reluctant Kingdom, MUP 1988 (pp. 11-14):

The colonies...did not receive fully responsible government because, however much colonial governors might ordinarily act on the advice of local ministers with the confidence of local parliaments, the governors were also responsible to London, to the government of the United Kingdom. They were Colonial Office officials appointed on the advice of the Colonial Secretary, a United Kingdom minister, and only from the 1880s were colonial governments allowed a voice as to possible appointments. A governor was given instructions by the Colonial Office; he reported regularly to the Colonial Office on the affairs of `his' colony; if he found himself in political difficulties, he looked to the Colonial Office for advice or support. A governor could be sacked by London, but not by a colonial government or parliament... Moreover, even if the colonial governors had been cut adrift from Whitehall, the colonies still would have been left with a second level of dependence because, just as they received less than fully responsible government, they were allowed less than complete self-government even within their own borders.

The second level of dependence was at the legislative level. The colonial parliaments were creatures of the parliament at Westminster, and there were substantial restrictions on their freedom. Thus, for example, some kinds of colonial legislation (constitutional amendment, for one) could not be approved by governors, could be disallowed by the sovereign within a specified period on the advice of United Kingdom ministers. These control devices, reservation and disallowance, were used very sparingly by United Kingdom governments: by the end of the century only fifteen New South Wales bills, for instance, had been reserved for royal assent, and all had received it; of all the bills passed by all the colonial legislatures in Australia to that time, only five had been disallowed [my emphasis]. These devices were used sparingly because London had no interest in unnecessarily provoking the colonies, but also because, by and large,

the colonial parliaments had no wish to provoke London, accepting that legislation on merchant shipping, specie, matters covered by treaties with foreign powers, naval and military discipline, and the royal prerogative must be left to Westminster.
Again, some of the laws affecting the lives of colonists continued to be made at Westminster. In this, Westminster's Colonial Laws Validity Act of 1865 was of central importance...
It might be noted, finally, that colonial parliaments could not legislate with extra-territorial effect: they could not aspire, like sovereign parliaments, to affect activity outside their own borders. As Westminster was usually happy to enact legislation on matters like criminal law enforcement and fisheries when requested by the colonies, this inhibition did not cause much grief. Still, it remains that Westminster had a power which the colonial parliaments did not have, and they did not have it because Westminster did not choose to give it to them.
No doubt it was in a spirit of euphoria that Sir Samuel Griffith claimed at the Australian Federation Conference in 1890 that:
...We have been accustomed for so long to self-government that we have become practically almost sovereign States, States a great deal more sovereign, though not in name, than the separate States of America. We have been given absolute freedom to manage our own affairs.. .
This may well have been a reflection of Griffith's practical experience as a Premier of Queensland, but Tasmania's Attorney-General, Andrew Inglis Clark, at the National Australasian Convention the following year, still felt able to spell out the strictly legal position when he said of the colonies' status with respect to the United Kingdom:
Our real relation to her as dependencies does not depend upon our recognition of the Crown, or upon our appealing to the Privy Council. The great and mighty fact is that our legislative bodies are subordinate to the British Parliament, with their laws liable to be overruled by that Parliament.
But to return to the initial phase of this limited grant of self-government, there were many practical difficulties to be overcome in the local transfer of power from the governors to elected representatives. The party system was not developed and the local leaders were new to political and parliamentary responsibility. Sir William Denison, the Governor of New South Wales in 1855 as already mentioned, a thoughtful and experienced administrator – he had previously been Lieutenant-Governor of Tasmania from 1847 – wrote in a private letter in December 1855 (R M Younger, Australia and the Australians 1982, p.275):
I shall have a good deal of trouble in organizing anything like an effective government, whoever may be at the head; for in these colonies there is but little of the instinct of party. In Victoria, the Government which was installed about three weeks ago has been ejected. I do not think that the persons who have come in to replace it will have a longer existence and amidst this chopping and changing of heads what is to become of the business of the country? It will take some time to teach these political neophytes that the details of work of a government are not picked up in a week or so. In the meantime the subordinates by whom the regular business of the government must be conducted, who are to all intents and purposes irresponsible, will have the charge of what people choose to term a "responsible government".
Sir William's forebodings were fully vindicated. From June 1856 to January 1861, New South Wales had six Ministries, as had Victoria, and Tasmania and South Australia had five apiece. In Victoria's case, even the emergence of political parties did not significantly alleviate this instability until 1955 when the Country Party ceased to be a significant force. The end to what the late Professor A F Davies called "the baroque period of Victorian politics" was sealed in a constitutional crisis in 1952 when for the second time in five years the Legislative Council blocked Supply, this time in an attempt to impose a programme of electoral reform on the Legislative Assembly. An election for the Assembly was called after two changes of ministry

and the electoral redistribution was subsequently legislated into effect by a triumphant Labor Party. In the wake of this crisis a note dated 1 November entitled "Political Parties in Victoria" was issued from the Commonwealth Relations Office's Political Affairs Department. Be it noted that State Governors were still reporting to a member of the British Cabinet, in this case the Secretary of State for Commonwealth Relations. There is a suggestion in this note of Gulliver's lofty contemplation of the antics of Lilliputians:

In the State's 96 years of responsible government there have been a significant number of political crises, strange alliances and party somersaults, in the course of which the State has had 58 ministries, 17 of them in the past 30 years.

One of the prerogative powers is the right available to the Crown of granting or withholding a dissolution. In the words of the late Professor John Mackintosh, "There was, both then and since, considerable confusion about the circumstances in which the King or Queen could refuse a dissolution". I shall not weary you trying to sort out this confusion in the context of the United Kingdom because there appears to have been no such confusion in the Australian colonies (later States) or indeed in the Australian Commonwealth. Australia's third Governor-General, Lord Northcote, refused a dissolution on two occasions in 1904 and his successor, Lord Dudley, felt under an obligation to do the same on another occasion in 1909.

These refusals were mentioned by Don Markwell, Fellow of Merton College, Oxford, in a letter to The Times of 9 April this year commenting on an article in the previous day's Times by Lord St John of Fawsley, Master of Emmanuel College, Cambridge, on the Queen's role in a hung Parliament. Lord St John had claimed that in no circumstances would the Queen refuse an incumbent Prime Minister's request to dissolve the House of Commons. Markwell contested this claim and recited in the British context the circumstances in which as it happens Australia's surrogate royals have refused dissolutions:

On the contrary, if a prime minister had clearly lost the confidence of the Commons, for example in a vote on some vital issue, and it were clear beyond reasonable doubt (e.g., through a cast-iron agreement between parties making up a majority) that someone else could command its confidence, then the Queen would be acting in accordance with constitutional principle and precedent to refuse a request for dissolution from the incumbent prime minister and, upon his resignation (which would naturally follow), to ask the leader who clearly had the confidence of the Commons to form a government.

As it happened, on that very day all speculation concerning a hung Parliament was confounded by the Conservative Party's convincing victory at the polls, but the principles stated by Markwell still hold in the context of Australian constitutional practice. A dissolution was last refused in Victoria in October 1952 by General Sir Dallas Brooks and the most recent instance of such a possible refusal was in South Australia in April 1968 when Lieutenant-General Sir Edric Bastyan, on Don Dunstan's resignation, commissioned Raymond Steele Hall as Premier. Sir Edric Bastyan shortly afterwards became Governor of Tasmania and on completing his term there in 1973 returned to Adelaide to live in retirement. There might well have been a refusal of a dissolution in Tasmania in 1989 if the then Premier, Robin Gray, had sought one from Lieutenant-General Sir Phillip Bennett. Instead Gray chose to resign to enable the Governor to send for Michael Field.

But I am getting ahead of myself. The coming of responsible government meant that the immediate burdens of administration were lifted from the shoulders of the governors and were assumed by responsible ministers even if, in the politically unsettled climate of the time, those same ministers seemed like "transient and embarrassed phantoms". Conformably with this change there were fewer vice-regal appointments of senior naval and military officers, although such a line did not become extinct: such appointments are indeed still made at State level. But, as

if to emphasize that the office had taken on a more ornamental than strictly functional role, at least on a day-to-day footing, aristocrats were appointed to vice-regal office in significant numbers in the latter half of the nineteenth century. Perhaps by virtue of its isolation and the fact that responsible government was not ceded to it until 1890, Western Australia failed to score a peer of the realm. Tasmania scored two widely separated ones in Viscount Gormanston from 1893 until 1900 and Lord Rowallan from 1959 until 1963, and South Australia likewise, but with a shorter period separating them, in the Earl of Kintore and Lord Tennyson, the son of the Poet Laureate. Queensland scored three in the second Marquess of Normanby, who then moved to New Zealand and then to Victoria, Lord Lamington and then Lord Chelmsford, who subsequently moved to New South Wales. Victoria scored four in the nineteenth century in Sir Charles Manners-Sutton who succeeded his brother to become the third Viscount Canterbury during his term, Lord Normanby, as I have already mentioned, the Earl of Hopetoun, who after a spell as Lord Chamberlain in Queen Victoria's Household returned to Australia as its first Governor- General, and Lord Brassey. Victoria saw a revival of aristocratic appointments in this century with the appointments of the Earl of Stradbroke, Lord Somers and Lord Huntingfield. In 1949 Major-General Sir Winston Dugan, who had moved to the vice-regal post in Victoria from South Australia in 1939, was created a baron on completing his term; a barony was also conferred on his successor in Adelaide, Sir Willoughby Norrie, on the completion of his subsequent appointment as Governor-General of New Zealand.

In New South Wales, the aristocratic line, which was broken more than once, began in 1861 with the appointment of an impoverished Irish peer, the fourth Earl Belmore, who was to give his name to a Sydney suburb, a park and sundry streets. Lord Belmore was succeeded by Sir Hercules Robinson who in turn was succeeded by Lord Augustus Loftus. Lord Augustus was succeeded by Lord Carrington, the original "Champagne Charlie" it is said, and he was succeeded by the Earl of Jersey. The aristocratic succession was restored with the appointment of Viscount Hampden who was succeeded in 1899 by the seventh Earl Beauchamp. He was the model for Lord Marchmain in Evelyn Waugh's novel Brideshead Revisited. Lord Chelmsford has already been mentioned as a twentieth century aristocratic appointment in New South Wales, the first since Lord Beauchamp. The last imported Governor of New South Wales was also a peer, Lord Wakehurst. After he had been involuntarily removed from the House of Commons on inheriting his father's barony, Lord Wakehurst took the option of Hilaire Belloc's lachrymose Lord Lundy and went out to govern New South Wales.

The federation of the Australian colonies established another vice-regal office in the Governor-Generalship but, before I discuss that office in any detail, I should like to quote the views on it expressed by Sir Samuel Griffith, not only for their intrinsic worth but in the light of our honouring him by inaugurating this Society in his name. Speaking to an amendment moved at the National Australasian Convention of 1891 by a New Zealand delegate, Sir George Grey, to the effect that the Governor-General of the proposed Commonwealth of Australasia should be elected, Sir Samuel made the following statement which I now propose to quote in extenso:

..I am, to a great extent, in sympathy with the object desired to be attained by Sir George Grey. I believe the highest offices of the state ought to be open to its own citizens; but I do not think it follows that the necessary way to bring about that result is to provide that the Governor-General shall be directly elected by the people. Probably the greatest difficulties which have arisen in the United States are owing to the manner in which the President is there elected. If you have a direct election of the President by the people, or such an indirect election as has been substituted for it there [per medium of the Electoral College], the practical result would be that at every election of the Governor-General there would be a canvassing throughout the whole dominion or Commonwealth by the representatives of respective parties, and the Governor-General, when

elected, would regard himself as the nominee or head of a party, and would devote a great part of his time and attention to securing his re-election. These are not the objects which the hon. member, Sir George Grey, desires to attain. I am inclined to think that this is one of those matters that will work out by itself. I am much inclined to think that before many years are over not only the Governor- General, but the governors of the different Australian colonies, will practically be appointed, not, perhaps, by direct election, but with the full consent and concurrence, known in advance, of the people of these colonies. I believe the tendency is strong in that direction at the present time... I believe it will be to the interests of the Government of England to appoint the best men, men acceptable to the people of the Commonwealth, and that they will exercise all proper care to bring about that result. I have no doubt, especially considering the greatly altered conditions of the Commonwealth, that great weight will be paid to the wishes of the people, and that some means will be found of nominations being made, if not directly by the Australian Commonwealth, yet under such circumstances as to secure appointments which would be known to meet with the concurrence of the people of these colonies. I am of that opinion; I cannot say how it will work out in detail. I believe, also, that when the people of Australia are of opinion – and surely an opinion may be shown in other ways than by an Act of parliament – that it is desirable that a distinguished Australian should be appointed to the office of Governor-General, some instances will be found – if, indeed, the course is not invariably adopted – in which distinguished Australians will be appointed to the position. That, I take it, is all that the hon. member, Sir George Grey, desires to attain; and it can, compatibly with the retention of our relations with the Crown, be attained by leaving the appointment as it is proposed to be left, in the hands of the Queen.

The views of Sir Samuel that the Governor-General should be appointed, not elected, carried the day then and in the final instrument according to which the Australian colonies federated but without New Zealand as an original State. But it is, I think, worth quoting with suitable editing the views of Alfred Deakin as expressed in that same debate:

...I should be loath to say a single word that would appear to derogate from the great dignity and honour attaching to the office of governor of one of the colonies, and much more to that of the Governor- General of Australasia, a most high, and honourable, and dignified position. But is it a position to which any number of people of the colony are ever likely to aspire? In my opinion there is nothing in it to arouse the ambition of those who claim to stand on the liberal side of the community. What they seek, if they seek anything, if their ambition is a worthy one, is to give effect to the principles in which they believe – to be able to do something, to strike some blow, to be able to do some deed which shall establish their principles in the government of the country. What can a governor or a Governor-General do to give effect to the highest principles which he holds? Nothing. What do his convictions count in a country such as this is and will be? He may cling to his principles with an ardour and devotion equal to that of any other man, but he of all men in the community is the one who is debarred from the privilege of doing anything to advance them. Setting aside the tacit, the silent, personal influence which such a man inevitably exercises upon those who surround him, he is as much removed from the interests and the future of the country in which he lives as if he were still a resident of the mother country. What we say is, therefore, that the ambition of the democracy of this country is an ambition to shape its laws, to guide its destinies, to widen its opportunities, to make life in this country better worth living than it has been hitherto. For this purpose the position of a representative in any of these colonies is infinitely superior to that of Governor-General. We say that any man who has received his authority direct from the people, who is commissioned to devote his abilities to great tasks, and who joins his fellowmen in performing public duties, fills a position, politically, far higher than the post of social distinction occupied by the Governor-General. When the hon. member points

to the splendid example of Lincoln, the hero of America, his proposal to make such a man a governor or a Governor- General, is almost grotesque. Lincoln exercised powers such as will never be possessed by any Governor- General. If we have any Abraham Lincolns in this country who desire to fulfil the same destiny, the position of Governor-General is the very last into which we should put them. If we ever possess a man of his rude, rugged magnificent nature we should not offer him an office of this kind which, indeed, he would not deign to accept, because he would feel that in it his splendid powers would be wasted. What should we do with such a man? I trust that we should make him premier of Australia; and I should say then that he was filling the office for which he was fitted, that he had stepped into the position in which he could best employ all his ability, that he had found the worthy object of his ambition, and that he could fulfil his own destiny and the destiny of his people. It is because... we cannot see that the office of governor or Governor-General is one so much to be desired by those who take the democratic view of it... that we feel so little concern about the matter... To make... the office of Governor-General... an object of ambition you must change its character altogether, and make it an office like that of the President of the United States - a high executive office in which a man can carry out his ideas and give effect to his principles. If he becomes a personage in the political life of the country, his office must be elective... At the present time we say that the Governor- General exercises... the power of the Sovereign of Great Britain, and no more than the people of Great Britain feel degraded and limited, because no one there can hope to aspire to be the monarch of that country, do we feel degraded and limited because we cannot aspire to be Governor-General... We feel no regret through being debarred from this one ceremonial office...

It is only recently that the office of Governor-General of the Commonwealth of Australia has been the subject of sustained interest on the part of scholars and commentators. Just as Dr H V Evatt's study of the reserve powers, The King and his Dominion Governors, was inspired by the events surrounding the dismissal of the Premier of New South Wales, J T Lang, in 1932 by Air Vice-Marshal Sir Philip Game, the arousal of interest in the Governor-Generalship was due to the events of 1975 when the Governor-General, Sir John Kerr, dismissed the Prime Minister, Mr E G Whitlam, for the purpose of ending an inter-House deadlock over Supply which bore many similarities to a couple of such deadlocks in Victoria in 1947 and 1952, but with this important difference: in each case in Victoria all parties ultimately conceded the need for an election. I should add that I have never entertained a moment's doubt as to the constitutional correctness and propriety of Sir John Kerr's action in withdrawing Mr Whitlam's commission. Sir Zelman Cowen, who succeeded Sir John Kerr in that office in 1977 and relinquished it in 1982 to become Provost of Oriel College, Oxford, contributed a chapter on the office to Australia: the Daedalus Symposium published in 1985 claiming that it would not have been likely that before 1975 such a volume would have included an essay on such a subject. The following statement is quoted from that essay:

The office of Governor-General made its appearance within a federal constitutional structure in which there were already six governors of the federating colonies that became the States. In the debates preceding federation, the possibility of dispensing with State governors was canvassed, but State wishes to preserve these offices prevailed. So it was that the relationship of the Governor-General to State governors had to be determined. The title "Governor-General" suggests a supervisory or superior authority, and when the first Governor-General of Australia (who had earlier been a governor of Victoria [the Earl of Hopetoun]) sought to establish this by requiring State governors to report to the United Kingdom authorities through him, he met strong resistance on the part of State governors, and they sustained their positions. So it is established that State governors do not answer to the Governor-General. In practical terms, then, the title of Governor- General matters primarily for purposes of ceremony and precedence. There are cases

when State governors inform the Governor-General of State action, but this is for convenience, and as a matter of courtesy, not of obligation.

From this quotation one can find ample support for the claim by Hudson and Sharp (p. 28) that in drawing up a federal constitution "the colonists were concerned mainly to change intra-Australian relationships rather than the imperial relationship". The concluding paragraph of their chapter "Federation" reads:

What federation achieved was the potential for the independence of an Australian nation state. Once formed, the federation might become independent, and there could be virtually no prospect now of several independent states in Australia along Latin American lines. That was the profound significance of federation. Australia in 1901 was a colonial federation which might one day become an independent federation. The Australian federation was not independent in 1901.

Although a one-time High Court justice, Sir Victor Windeyer, ambiguously called the Commonwealth Constitution "the birth certificate of a nation", there was nothing ambiguous in his treatment of Australia's colonial experience in his 1977 Commonwealth Lecture at Cambridge:

The Australian Colonies had all begun as `settled colonies' in the legal sense, truly colonies in a linguistic sense – that is to say they were places that, in Blackstone's words, had been `planted by English subjects', a colony being defined by Doctor Johnson as `a body of people drawn from the mother country to inhabit some distant place'. Australians of past generations were proud to belong to a self-governing British Colony. Only in recent times has the word `colonial' become a pejorative misnomer for rule by a foreign power, so that, in the jargon of today, `de-colonization' means independence [from that foreign occupying power].

I feel that these sentiments cannot be re-iterated often enough to counter the recourse by latter-day Australian nationalists who, in describing and defining their country's colonial experience, have recourse to the rhetoric of Third World countries with a history of foreign rule. This demeaning falsification of the record plumbed the very depths of absurdity in a reported claim by the Prime Minister, Mr Keating, during his first visit to Indonesia as our head of government, that Australians could understand the struggle of Indonesian nationalists for independence from the Dutch in the light of their own "struggle" against the British.

Australia's Governors-General from the Earl of Hopetoun to Sir Isaac Isaacs have been the subject of an interesting study by Dr Christopher Cunneen entitled Kings' Men, (Allen & Unwin) 1983. In reference to Lord Hopetoun, Dr Cunneen wrote of his "dual role" in representing the Crown in the Commonwealth of Australia. Sir Zelman Cowen spelt this out in broad terms as follows:

The early Governor-Generals saw themselves, and were seen by the British and Australian governments, as charged with dual responsibilities... as "both local constitutional monarch and imperial diplomat". The discharge of these two roles was not always easy; a Governor-General of Canada explained – it may be complained – "a colonial governor is like a man riding two horses in a circus". In one aspect, the Governor-General performed the role prescribed by the law and custom of the constitution; in the other, he was the principal representative of the British government in Australia and, as such, was a protector of British and imperial interests. Thus, such matters as immigration and tariff policies were of special concern to the United Kingdom government and so too were defence and foreign affairs. The Governor-General reported to the United Kingdom government and communications between the Australian and the United Kingdom governments were passed through the office of the Governor-General.

This arrangement was to persist until 1926 when, during the term of Lord Stonehaven, the Balfour formula on imperial relationships left the Governor-General confined to the functions of a local constitutional monarch and relationships between Britain and the self-governing

dominions came to be handled though exchanging high commissioners. The Balfour formula was devised at the Imperial Conference of 1926 although something like it had been foreshadowed at the 1923 Conference chiefly at the instigation of Canada, South Africa and the Irish Free State. It was to have its full flowering in the Statute of Westminster of 1931. Hudson and Sharp, who have dated Australia's effective independence from that Act's proclamation in 1931, have recounted how the Australian Government was less than enthusiastic about these steps at the time. This apparent lack of interest was noted by the Australian correspondent of Round Table, but he explained that the Australian attitude towards Imperial relations was neither frivolous nor indifferent. Rather Australia was "... not interested in the dogmatic assertions of equality of status, for it has not been conscious of any inequality and considered that Australia was perfectly secure in whatever status it wanted". Secure in status Australia might have felt but her concern for security in an international environment was far greater than that of the proponents for a redefinition of Imperial relations, hence her uneasiness at any formula which might in the immediate term weaken the unity of empire. There was a consistency of view on this subject upheld alike by William Morris Hughes, Stanley Melbourne Bruce as Nationalist Prime Ministers and by Bruce's Labor successor James Henry Scullin, although the latter's attitude has been obscured by his insistence at the Imperial Conference of 1930 that King George V should depart from precedent and for the first time appoint to the Governor-Generalship a native-born Australian in the person of Sir Isaac Isaacs.

As you are all doubtless aware, Isaacs's appointment did not end the practice of importing Governor- Generals from the United Kingdom, but the decisive factor influencing such appointments was the attitude of the Australian Government. The governments of Canada, South Africa and New Zealand henceforth also exercised the same influence in the matter of their vice-regal appointments. Sir John Colville, at the time a private secretary at 10 Downing Street, wrote in his diary on 5 January 1940: [The Fringes of Power: Downing Street Diaries Volume One 1939-October 1941,] "Lord Bledisloe [Governor-General of New Zealand 1930-35] has written to ask the P.M. for the Governor-Generalship of Canada. It is extraordinary how shameless people can be". But it is clear that Lord Bloody-Slow, as King George V had nicknamed him, had sent his importunate letter to the wrong address. On the recommendation of Canada's Prime Minister, William Lyon Mackenzie-King, the appointment as Lord Tweedsmuir's successor went to Queen Mary's younger brother, the Earl of Athlone.

Sir Alexander Hore-Ruthven VC, as Governor of New South Wales, was more astute than Lord Bledisloe: he commended himself as Sir Isaac Isaacs's successor as Governor-General of Australia to Dr (later Sir) Earle Page, Australia's Acting Prime Minister in the absence of J A Lyons, at King George V's Silver Jubilee celebrations in London. In the event, Hore-Ruthven obtained the appointment in 1936 as a newly created baron, Lord Gowrie; whether Gowrie's appointment to Yarralumla was because of or in spite of his earlier approach to Earle Page, I do not know.

Although Australia showed no haste in adopting the Statute of Westminster, from 1931 the United Kingdom acted as if she had, to this extent that the United Kingdom government only acted with respect to Australia after consultation with the Australian government. In 1937 at his Coronation King George VI did not swear the same oath as King George V at his Coronation in 1911, but one revised after consultation with the Dominion governments to take account of the change in Imperial relations. This Oath acknowledged the standing of the Old Dominions as independent kingdoms owing allegiance to the Crown in the person of the Monarch. On Australia's adoption of the Statute of Westminster, Sir Victor Windeyer had this to say:

In 1942 when Mr Curtin, leader of the Labor Party, was the notable wartime Prime Minister, the Australian Parliament passed the Statute of Westminster Adoption Act. This brought provisions

of the Statute – sections 2, 3, 4, 5 and 6 which had not previously extended to Australia – into force there as from the date when the war began. The purpose was, as the Act stated it, to remove legal difficulties which had created doubts as to the validity of Australian legislation enacted `for securing the public safety and defence of the Commonwealth of Australia and for the more effectual prosecution of the war in which His Majesty the King is engaged'. Thus the Statute of Westminster was made applicable to Australia – not as an assertion of independence or a severance of Imperial ties, but by the exigencies of Australia's participation as a British Dominion in war.

It was not until the passage of the Australia Acts 1986 that the Australian States were brought within the scope of the Statute of Westminster: that particular legislation severed all formal links with the British Parliament and government leaving the Crown as the only link between the two countries in the person of a shared Monarch. In 1953 the Australian Parliament passed the Royal Style and Titles Act to acknowledge Queen Elizabeth II's standing as Queen of Australia. In 1963 the Queen adopted a distinct standard to be flown whenever she was in Australia discharging her responsibilities as its Queen. In 1973 Australia's Royal Style and Titles Act was amended to delete any reference to the Queen as Queen of the United Kingdom. The upshot of all this is that Australia, like Canada, New Zealand, Papua and New Guinea and others, shares a Monarch with Britain in much the same way as England and Scotland shared the same Monarch as independent kingdoms between 1603 and 1707 and as Great Britain and Brunswick-Luneburg (more commonly known as Hanover) as independent states between 1714 and 1837. It is because of this very pertinent historical analogy that I am unable to see any anomaly in Australia having a non-resident Monarch whose functions in her absence are discharged by a Governor-General in respect of the Commonwealth and by Governors in respect of the Australian States. It is now the case that all Australian vice-regal appointments are native – born or naturalized Australians, as Sir Samuel Griffith had predicted in 1891. I should add, however, that Sir Henry Bolte (Premier of Victoria 1955-72) once told me that he personally had steadfastly resisted dispensing with the policy of importing Victorian governors in favour of Australian vice-regal appointments because he did not have to shell out as much as one cent from the Victorian Treasury for the pensions of governors imported from Britain; those he could safely leave to H.M. Treasury in Whitehall. I should add that those Australian republicans who imagine that the republic of their yearnings would be a cost-effective arrangement might be in for a rude shock. Sir Henry also gave me an amusing account of the process of selection of a successor to Sir Dallas Brooks who had been Governor from 1949 until 1963. At the invitation of the Secretary of State for Commonwealth Relations, Duncan Sandys, he arrived at a reception in London at which a crowd of contenders had been mustered by the Commonwealth Relations Office like so many bulls being herded into a paddock prior to having their points judged. Bolte was not impressed by any of them, said as much to Sandys, and then went on a hunt of his own. Ultimately he personally selected Major-General Sir Rohan "Jumbo" Delacome, the recently retired G.O.C. in the British Berlin Sector.

The telegraphic link with Australia was opened in 1872. The Australian colonial writer, Francis Adams, noted sourly that the "mail steamer and cable have brought England too close". It is with some amusement, therefore, that I note the oft-repeated assertion by our latter-day republicans that our present Head of State is too far away: this, be it noted, is asserted in the age of satellite communication and of intercontinental jet travel which can bring the Queen to Australia faster than any Stuart monarch could have travelled from London to Edinburgh or any Hanoverian monarch up to 1837 could have travelled between London and Hanover.

There remains, however, the debate on Australia' s future as an independent kingdom. I do not wish to trespass on the allotted territory of Bruce Knox, who will be dealing with the republican debate shortly in a paper of his own. But I should mention certain factors which should not be

overlooked. At present our Governor-General and our State Governors are appointed by the Queen on the recommendation of the head of government, be that Prime Minister or the State Premier. It is hard to see how an arrangement in a purely local sense – effective appointment of the Head of State by the head of government - could survive a change to a republic, even though a recent editorial in the Canberra Times has urged that it should. Some form of election would be insisted upon, and yet the elective process would not broaden the range of distinguished citizenry from which such appointments could be made. In fact the range of choice would be narrowed. Once an elective process is decreed for our Head of State, however broad or narrow that constituency might be, the office of Head of State will be cornered by our politicians with the invariable outcome of one of their own getting the appointment. I say this confidently because I am not aware of any other republic with a Head of State substituting for a constitutional monarch where this has not been the case. Consider, if you will, the French Third and Fourth Republics, the Federal Republic of Germany and the Republic of Italy as it has functioned since the exiling of the House of Savoy. In this context, I am reminded of some statements by the Chairman of the Australian Republic Movement, Mr Thomas Keneally, who, it must be said, is not niggardly when it comes to providing comic relief. When first asked to comment on the type of person he would like to see as Australia's first President in the event of his dreams in this connection being fulfilled, he suggested a possible choice between Geraldine Doogue and Ita Buttrose. Even if either identity could be considered a suitable candidate for such a position, neither one would have a snowball's hope in hell of getting it in view of the certainty of that position going to a politician. Since that initial statement Mr Keneally has given us a further statement on the subject in the form of "Home Thoughts from Abroad", for he had declared himself in London. Now, it appears, he hopes Australia's first President will be an aboriginal woman, an outcome as unlikely as his earlier expressed hope unless aboriginal women in the meantime break into politics in large numbers. There was such a tokenistic patina to this, Keneally's latest lead ballon d'essai, that I was irresistibly reminded of that Barry Humphries character Phil Philby, an Australian film maker who won the Gold Goanna (or was it the Bronze Scrotum?) for a film entitled "Cage of Darkness" which dealt with "discrimination against lesbianism in an aboriginal women's prison".

Now I do not know how Senator Rod Kemp's party, which is at present opposed to a republic, would comport itself in any process of election for a republican Head of State if what it now opposes came to be established. But we do have some scope for judging how the Labor Party, which has adopted republicanism in its official policy, would approach the matter. If one is to judge from the operation of factions in the election of members of Labor Ministries, we would have to draw certain conclusions. It has become clear that inter factional trade-offs have not served consistently to raise suitable appointments or even presiding officers from the back benches. If the party can show such scant regard for one of those organs of state which the nineteenth century writer, Walter Bagehot, in his classic The English Constitution, designated as an "efficient" part of the Constitution, can we expect that same party to show a more sensitive appreciation of the office of the Head of State which Bagehot identified as one of the "dignified" parts of the Constitution?

Sir Robert Menzies once said "that to get an affirmative vote from the Australian people on a referendum proposal is one of the labours of Hercules". How much more so will it prove to be in effectively rewriting both Commonwealth and State constitutions to convert this country into a republic. It seems to me to be even more unrewarding when the practical objective in contemplation is to empty our Government Houses of surrogate Royals and replace them, duly vested with republican prefixes, with a collection of cretinous factional clones. At this point I would recommend a reading of the statements by Griffith and Deakin in 1891 which I quoted earlier in this paper. Constitutional reform, if desirable, should be directed to a more edifying

goal, in both a practical and in an inspirational sense, than making available some grace and favour mansions during the term of office and then some non-contributory pensions, to augment their already accumulated and substantial superannuation entitlements, as a form of severance pay to this nation's Leaping Leos.