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## “THE CROWN DOWN UNDER”: ISSUES AND TRENDS IN AUSTRALIA AND NEW ZEALAND

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*Toute évaluation du rôle de la monarchie en Nouvelle-Zélande appelle inévitablement la comparaison avec la situation de l’Australie et, dans une moindre mesure, du Canada et du Royaume-Uni. Mais si ces pays ont plusieurs caractéristiques en commun, il est important de prendre la mesure exacte de ce qui les différencie. Car si tous sont des monarchies parlementaires fondées sur le modèle de Westminster et sont le produit d’une évolution graduelle, des différences majeures s’appliquent au cas de la Nouvelle-Zélande. Premièrement, elle ne possède pas de constitution écrite et dûment établie, à l’inverse d’autres royaumes, mais comme au Royaume-Uni. Deuxièmement, c’est le seul État unitaire des quatre. Mais surtout, les liens tissés entre la Couronne et la population indigène des Maoris ont procuré à la monarchie un réel ancrage en Nouvelle-Zélande. D'où les conséquences négligeables de l'absence d'inscription constitutionnelle de la monarchie. D'où également la relative inanité de l'agitation républicaine.*

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### INTRODUCTION

Any appraisal of the position of the monarchy in New Zealand inevitably invites comparisons with Australia, and to a lesser extent Canada and the United Kingdom. We share many common attributes, though it is important to be mindful of the differences. I will begin by highlighting some of the differences and similarities between Australia, Canada and New Zealand.

### AUSTRALIA, CANADA AND NEW ZEALAND

In common are our constitutional origins and underlying principles, both originally from the United Kingdom. We share a common Crown. This is

not simply the same Queen, but a common perception of what it means to be a constitutional monarchy, and many of the principles inherent in a monarchical government on the British model. We share a belief in a system of parliamentary democracy, so that we both entrust the day-to-day government of our respective countries to politicians responsible to parliament and ultimately to the electorate. We also share the concept of the separation of powers, where no single branch or organ of government is entrusted with more power or responsibility than it can reasonably be expected to exercise. These are but a very few of the enormous range of similarities between our two countries.

But there are also marked differences between Canada and New Zealand. On the constitutional level, perhaps the most crucial is that we in New Zealand do not have an entrenched constitution. That is not so say that we do not have a constitution, but simply that there is no formal document which can be said to be the source of constitutional power in New Zealand. As a consequence of this situation there is no formal limitation upon the supremacy or sovereignty of Parliament. Although New Zealand shares this distinction with the United Kingdom, there are now limitations upon the sovereignty of the British Parliament as a consequence of its membership of the European Union.

New Zealand never acquired an entrenched constitution, for it was never required (as it was needed in Australia and Canada upon federation, to assign powers between the state and provincial legislatures, and the federal authorities). We were never the victim of revolution, or the beneficiary of a deliberate grant of independence. Like the United Kingdom, New Zealand evolved as a country over time. With particular respect to the monarchy, the immediate consequence of this situation is that the New Zealand Parliament could, in strict theory, pass an act establishing a republican form of government without recourse to a referendum. In practice it is almost certain that a referendum would be held, either because the government felt obliged to hold one, or because sufficient voters petitioned for one to be held. But, unlike in Australia, the outcome of such a referendum would not be binding on Parliament.

#### THE MONARCHY IN NEW ZEALAND

New Zealand's form of government, in common with other countries established predominantly by settlers from the British Isles – excepting only the United States of America – is that of a constitutional (or limited) monarchy. In 1840 the monarchy meant the "British" monarchy. It was the Queen of the United Kingdom (not England as the Treaty styled her) who concluded the Treaty with Maori chiefs at Waitangi. With the growth of the newly settled colony, the British government progressively entrusted more powers and responsibilities to the colonial parliament

and executive. This process was accelerated during the early part of the twentieth century when New Zealand, together with several other long-established British colonies, notably Canada and Australia, were granted the status of "dominions."

Each dominion shared allegiance to the Crown. Although the personification of the Crown was the sovereign, the Crown included the sovereign's advisers as well. Initially these were primarily based in the United Kingdom, but later came to include individuals resident locally. Over time, each dominion began to develop its own concept of the Crown. Beginning in the 1930s the sovereign acted in relation to New Zealand only on the advice of New Zealand ministers. As the Queen came to be regarded more and more as the Queen of New Zealand and only incidentally as the sovereign of these other countries, so a distinct New Zealand Crown evolved. Thus the once-single imperial Crown slowly evolved into a multiplicity of national Crowns. This meant that obligations once undertaken by the British Crown were now the responsibility of the New Zealand Crown. This can be illustrated with reference to the Crown's obligations under the Treaty of Waitangi. Although for all practical purposes such obligations were vested in the ministers of the New Zealand government, Maori continued to hold the sovereign responsible for upholding the terms of the Treaty. In 1984, for instance, Maori bypassed the New Zealand government by appealing to Queen Elizabeth to uphold the provisions of the Treaty. But it was the Queen of New Zealand rather than the United Kingdom to whom they appealed.

This evolution of a distinct New Zealand Crown went hand in hand with the nationalizing of the office of governor general. During the early part of the twentieth century the governor general was seen as the local agent of the British government. Despite being granted a measure of personal discretion, successive appointees were expected to refer contentious matters to British ministers or senior Whitehall officials. Although this link began to attenuate from the 1920s, the essentially British nature of the institution persisted for as long as appointments were limited to those who were not only born, but also domiciled, in Britain. As well as representing the Crown, the office of the governor general in New Zealand had come to represent, to some extent, the values and attitudes of a particular slice of British society transplanted into New Zealand, namely the aristocracy.

The first New Zealand-born governor general, Sir Arthur Porritt,<sup>1</sup> was appointed in 1967, and while this did not produce any significant immediate change in the functions of the office, it did mark the beginning of a transition in its character and style. Porritt was an eminent surgeon and

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<sup>1</sup> Freyberg was born in London, and, although largely brought up in New Zealand, had spent the greater part of his adult life abroad.

former Olympic sprint medallist who, at the time of his appointment, was an honorary member of the Queen's Household. Like other prominent expatriate New Zealanders, such as the scientist Ernest Rutherford, he became well known only after leaving New Zealand. However, having forged a dual New Zealand-British identity, Porritt was seen subsequently as an important transitional figure in the nationalizing of the office of governor general. When Porritt returned to Britain on the completion of his term, a former New Zealand high commissioner to London, Sir Dennis Blundell, became the first New Zealand-born governor general who was also a New Zealand resident. He held the post from 1972 until 1977. Because neither Porritt nor Blundell was a member of the British aristocracy,<sup>2</sup> there was no expectation among New Zealanders that they would conduct themselves as if they were. Moreover, while they represented the Queen, they did not in any sense represent Britain.

Thereafter every appointee has been a New Zealander, appointed (as indeed they have been formally since 1941 and informally since 1910) by the Queen on the advice of the New Zealand prime minister. While the powers of the office are limited, each modern incumbent has the potential to shape the character, and also the role, of the office of governor general in response to changing conditions and expectations. More recent appointments include the first Maori governor general (Sir Paul Reeves, 1985–90), followed by the first woman (Dame Catherine Tizard, 1990–96). Both were notable for stamping their distinctively New Zealand qualities and personalities on the office (Lange 1998). That two of the three most recent appointments (Sir Michael Hardie-Boys 1996–2001 and Dame Silvia Cartwright 2001–06) were former Court of Appeal and High Court judges respectively is a reflection of the potential for constitutional uncertainty surrounding the appointment and termination of coalition governments under the new electoral arrangements of the mixed-member plurality system (MMP). The current governor general, Sir Anand Satyanand, was both a District Court judge and ombudsman.

Although for most purposes the governor general is the head of state, the country is not a *de facto* republic, but rather a "localized" monarchy (Ladley 1997). Appointees derive their status from both their constitutional position at the apex of the executive branch of government and their role as representative of the sovereign. The office can be said to have three principal roles: community; ceremonial; and constitutional (Tizard 1997). It is perhaps in their community leadership role, which includes both public engagements and commenting on social trends and issues, that governors general are most conspicuous. According to Dame Catherine Tizard (1993, 4), it is the responsibility of the governor general to both

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<sup>2</sup>Though, after his retirement, Porritt was to become a *de jure* British aristocrat. It was customary, though not invariably the practice, for the governor general to receive a peerage until Porritt's time.

acknowledge a sense of community spirit and affirm those civic virtues that give New Zealand a sense of identity and purpose. This aspect of the community role is not only demanding, but potentially perilous, with incumbents being required to tread a fine line between the bland and the politically controversial. The ceremonial role, in contrast, is constrained by New Zealand's lack of a strong tradition of overt symbolism, pomp, and ceremony. Events such as the State Opening of Parliament have rarely played a major part in public life in New Zealand. The dangers inherent in the community leadership role were illustrated in 2002 when Dame Silvia Cartwright was criticized in some quarters for suggesting that the parental right to discipline children should be reassessed. She attracted further controversy by observing that imprisonment was not an effective way to reform criminals. In both cases she was drawing upon her prior experience as a High Court judge rather than as governor general, but that did not isolate the office – and her – from criticism.

The third, constitutional, role flows from the position of the governor general as representative of the sovereign. This said, most of the powers of the office derive from statutes and regulations rather than the royal prerogative. The governor general assents to bills and orders in council, opens and dissolves Parliament, appoints ministers, and makes a range of other appointments. Once seen as an instrument of imperial will, the governor general is occasionally now seen as a constitutional safeguard against executive despotism.<sup>3</sup> However, arguments that the governor general can act as a guardian of the constitution appear to overstate the case. New Zealand's economic and social policies have been dramatically altered over the past two decades without intervention from the governor general. This reflects the fact that the governor general can only intervene to preserve the constitutional order itself. Like the sovereign, the governor general will almost always act only on the advice of ministers responsible to parliament. However, as we have seen, the importance of the constitutional role was doubtless an important factor in the selection of Hardie-Boys and Cartwright following the introduction of MMP in 1996.

While the office of governor general has evolved over time, so too has that of the sovereign and the monarchy as a whole. Just as the evolution of the executive government through the twentieth century often saw the diminution of the role of the governor and then governor general, a process seen as strengthening the political independence of the country, so the Queen's role has also diminished at the expense of the governor general and other members of the executive, especially (in recent years) the prime minister.

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<sup>3</sup> Auckland District Law Society Public Issues Committee, *The Holyoake Appointment*, 1977, p. 7.

## REPUBLICAN ARGUMENTS IN NEW ZEALAND

There is comparatively little tradition of republicanism in New Zealand. Republican sentiment in New Zealand has never been as strong as in Australia, but in 1994 Jim Bolger, then prime minister, raised the issue of New Zealand becoming a republic by the turn of the century. The reason given was that "the tide of history is moving in one direction," towards republicanism as a fulfilment of national identity. Although Mr. Bolger knew what he was proposing did not have popular support, he seriously underestimated the level of opposition to his proposal from within his own party and ultimately weakened his position within the government. Nor was the response from the left wing opposition as favourable as he might have wished.

The immediate origins of Bolger's call for a republic belong in the neo-liberalism adopted by successive governments since 1984. The wish to bury the colonial inheritance, to face towards multiculturalism, and to locate New Zealand firmly in Asia was a conscious, market-related choice forced by external developments. The argument is that New Zealand is a South Pacific nation that should train its focus on Asia. There were also political arguments around nationhood, what New Zealand stands for, and its feeling of self-respect. Most important among the symbolic issues, and that upon which Mr Bolger relied, was the idea of the inappropriateness of "the Queen of England" "to be Head of State and to have power to appoint a Governor General to exercise her royal powers on her behalf in New Zealand." National identity, the argument goes, requires a New Zealand head of state. Thus attacks upon the Crown have been motivated, not by criticism of the way in which the political system operates, but by the connection with the British monarchy.

The position of the Crown, however acceptable and useful the system of government may otherwise be, is potentially undermined by the very symbolism which is one of its strengths. This is the essence of the Australian republican movement. Yet this very aspect is of importance in New Zealand because of the Treaty of Waitangi and for other reasons. In short, recent changes in New Zealand society, economy and government do not necessarily indicate that a republic is likely to be adopted in the short to medium term, even if Australia opts for one. On the contrary, these changes, including the adoption of MMP, have left people exhausted and inclined to look with disfavour on proposals for further change.

The Fenian element, so significant as the historical intellectual basis of much of Australia's republican movement, was also largely absent from New Zealand politics. The Crown can be seen as equally representative of all people. It is not necessarily confined to those of British ancestry. It is also true that to equate Irish Catholicism with republicanism is both erroneous and harmful. Certainly it can be said that there is little evidence of such sentiment in New Zealand. For their part, to the Maori the Crown

was often seen as an ally against the colonial (and later) government. For it is at least symbolically important that the Treaty of Waitangi was signed by the Maori chiefs with the representative of the Queen in 1840 and not with the European settlers.

Whilst most criticism of the monarchy focuses on what republicans call the "self-evident absurdity" of sharing a head of state with another country, people seem to be more concerned with the effectiveness of the political system. Symbolism is all very well, but the system works reasonably effectively. For most purposes the Australian head of state is the governor general anyway, and he has never been a partisan political figure.

The same cannot be necessarily expected of a president, especially one liable to removal by the prime minister. The inherent disadvantage of a republic, whether in Australia or New Zealand, would be that the highest office becomes a matter of partisan contest, or of factional division. This seems to be generally understood in New Zealand. A monarchical system of government removes the office of head of state from the realm of party politics. Any republican system risks the politicization of the highest office, whether the president is elected or appointed.

Public dissatisfaction with politicians is widespread, on both sides of the Tasman. There has yet to be shown any good reason for changing the role of head of state of Australia, or New Zealand, into just another prize for politicians.

Opinion polls showed that voters in Australia in the 1999 referendum were concerned by the details of the proposed republic. If they had to have a president, most would prefer one directly elected by the people, rather than appointed by politicians. It is unlikely, however, that New Zealanders would favour any constitutional reform which would increase the number of politicians, or the power they hold.

The success of the referendum in Australia did not silence the republicans in New Zealand any more than it did in Australia. But we have been preserved from more active republican agitation. New Zealand should learn from the Australian experience and not let a matter of national identity become the cause of division. The referendum campaign was, as could be clearly seen from across the Tasman, a hard-fought battle. It is not an experience I would wish anyone to have to face. Of course, New Zealand can choose go its own way, whatever Australia ultimately decides. We have our own unique political system, especially the Treaty of Waitangi, and fortunately lack the more noticeable nationalist republicanism that has bred across the Tasman.

One of the more amusing comments by a republican was that New Zealand should show its independence by following Australia (and holding a referendum). Such a simplistic argument is typical of the shallowness of the current debate in New Zealand – and this argument was used by former Prime Minister Helen Clark. At the time of the Queen's Birthday a few years ago the Republican Movement of New Zealand issued a

bizarre “declaration” that the first Monday of June each year will now be known as Republic Day. I am pleased to note that the republicans have graciously condescended to suspend their festivities until New Zealand actually becomes a republic, if that ever occurs.

The advent of a republic in Australia or Canada would make a New Zealand republic neither more nor less likely in the short term, as we are a distinct country and society founded on a compact between the Crown and the Maori people. Any move to a republic in New Zealand would require careful consideration of the future role of Maori in society and government. If the protracted process of settling land disputes is any precedent, such a debate would require many years of effort before any conclusion could be reached.

#### STATUS OF THE MONARCHY IN NEW ZEALAND TODAY

In New Zealand today it can probably be said that there is only a small republican movement – if indeed it can be dignified with the term “movement.” Although it received a reasonable degree of media attention at times, the movement can be said, with much accuracy, to depend upon the exertions of one man. Indeed, the Republican Party itself disbanded several years ago, though it has since been revived as a tiny fringe party. The major parties do not advocate a republic – though many members of the minority Green Party do so ideologically, as do many individual members of the Labour Party, perhaps the majority. Yet it has not been perceived as a popular option to promote, so it has been allowed to languish. We can be sure, however, that republican sympathizers watched events in Australia closely ten years ago.

The New Zealand National Party, the major government party, officially holds that loyalty to the Queen is the first principle of the party (although the issue of republicanism was first placed on the political stage by a National Prime Minister – to the dismay of his colleagues). Attempts recently to discuss the possibility of a referendum on the monarchy at some indeterminate time in the future were met with strong opposition from within the party.

More insidious is the idea that a republic is inevitable, that New Zealand will one day become a republic. Even some supporters of the monarchy seem blighted by this particular disease. The present prime minister, John Key, who is from the National Party, is a pragmatist. But he has been quoted on a number of occasions as saying that a republic is “inevitable.” He has not proposed active steps to promote a republic because that would be contrary to National Party policy, and because he is conscious of the difficulties in the way of the republican option, including popular support for the monarchy, and the complication of the Treaty of Waitangi. Peter Dunne, Leader of the United Future Party and

a junior government minister, challenged the prime minister to follow the Australian government's example and make a referendum a matter of priority (*New Zealand Herald*, 27 April 2009).

Although some commentators have spoken of the republican debate in New Zealand, there is not really a debate yet. The great majority of people either support the monarchy in a general sort of way, or they cannot be bothered to think about an alternative. The republicans see this, and rely on the inevitability argument (with a careful use of criticism of members of the royal family and a general effort to ignore the role of the Crown in New Zealand).

In early 2010 a private member's bill was introduced into the New Zealand Parliament by Green MP Keith Locke. Locke, like most republicans, was primarily interested in destroying what currently exists. He proposed no alternatives. Instead, he asked that the voters trust him to come up with a replacement that is just as good as the system we have now. He was asking people to give him the keys to their democracy. We should be wary of writing Locke and people of his ilk a blank cheque. The bill itself was also poorly drafted and the procedure it proposed ill-conceived. Fortunately common sense prevailed and the bill failed at its first reading.

The biggest threat to the monarchy in New Zealand is indeed its own success. A system which has worked successfully for two hundred years is one which is easily taken for granted. The level of ignorance of our constitutional system is appalling. Though the situation is somewhat different in Australia, I applaud any initiative which seeks to increase public awareness and understanding of our constitutional structures.

## CONCLUSION

The majority of New Zealanders want the country to remain a monarchy. It is doubtful whether many of those who support a republic will approve of the Republican Movement's latest proposal. Indeed, their suggestion is so eccentric that it is quite comical. But the relatively lightweight nature of organized republicanism should not be allowed to mask a more dangerous and insidious threat. Their press release repeated the inaccurate claim that 40 percent of New Zealanders favour a republic. Such distortions are dangerous because of the support they give to the "inevitability" argument. It is no argument at all to say that it is inevitable that New Zealand will become a republic. The majority do not wish this to occur, although it may be that many believe New Zealand will eventually become a republic.

A clear majority, approximately two-thirds, support the status quo. The rest are divided between supporters of change, and the undecided. With such odds the monarchy should not be seen as beleaguered. But the onus is on us, as avowed advocates (or apologists) for the monarchy,

to remind people of this. There is a regrettable complacency at large, and an even more dangerous perception (particularly amongst the news media) that the end of the monarchy is inevitable. That is far from being a foregone conclusion.

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