

# The Problem of Presidents...

Peter Botsman



The two Peter Botsmans, 1973, Upstate New York

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Can Conservatives, Labor and Social Democrats find common ground? Maybe not in the height of battle, during the heat of the contemporary moment. But reflection over a long period brings surprising agreement and allies. If you had told me in the 1970s that Malcolm Fraser would die a hero of sorts for the progressive community I would have thought you mad. As I came to know several major Labor figures it surprised me what went on away from the public eye. There were times when the barricades came down. Tom Uren always thought John Howard a trustworthy friend when it came to supporting returned soldiers and they were always civil to each other as a result. I always reached out to Warren Mundine across the notorious divide of Right and Left at NSW Labor conference when it came to Aboriginal policy and issues. For a time also Mark Latham and I were allies supporting Families in Partnership – a Campbelltown based cooperative for children with disabilities that foreshadowed the National Disability Insurance Scheme. A great mentor, Paul Q. Hirst once emphatically told me: “Your political enemies are not always wrong”. On big national issues, during times of crisis and war and when the posterity of the nation is at stake.. it is good to find common ground.

## II

My father was a wise, devoted teacher, Liberal/National supporter, believer in J.S. Mill's brand of classical liberalism. He detested the Labor Party. There was a time when he was a King of Brisbane. It was fated that as his first son, also named Peter, I would be a radical social democrat, post-Communist, Whitlam supporting, anti-Vietnam war lefty, anti-Joh, street marching, Labor Party devotee from an early age.

Dad was born in the depression and had his teens during WWII. His father Eric was someone who I was also close to, he went broke in the depression and fought through the entire war in New Guinea to redeem his bankruptcy. I was a child of the bountiful, relatively peaceful 1950s some kind of catalyst for them both. I was lucky to have had such a meaningful upbringing with both these men and of course the women in their lives.

After a life time of reflection I realise that there were many things my father and I agreed on that transcended official political labels and positions. There were some things that I concede Dad was just dead right about. The diminution of Australian universities and the amalgamations of colleges and training institutions in the 1980s and 1990s was one of those issues.

One of my first essays at the Evatt Foundation in 1988 was a paper tentatively supporting Bruce Chapman's idea of the Higher Education Contribution Scheme. I feel ashamed to have given it any support at all because I had enjoyed free tertiary education, well at least for my undergraduate degree. Now I see my sons saddled with tens of thousands of dollars of debt for their undergraduate and post graduate degrees, with a much harder task than we ever had with housing.

All Dad's predictions about amalgamations came true. Higher education did diminish in quality and professional training was fluffed up into a quasi university imitation that was unsatisfactory from the stand point of quality of work outcomes. Most of all Dad was concerned that education had just become something measured by money and he was right. I think his thinking had something in common with the Communist Laurie Carmichael who envisioned education as a life long pathway; but we have lost the primacy of skilled craft and trade education and erred towards the theoretical and abstract. Older paramedics despair at the younger graduates coming on to the job with all sorts of legal and philosophical knowledge but not enough experience in acute care.

Mea culpa.

## III

I started my university studies at Cornell University in the heady year of 1973. Dad had funded himself and the whole family to come to Cornell while he completed his Ph.d on the topic of blue collar workers educational aspirations and opportunities under the great Professor, William Foot Whyte. Like his father, my father served a (somewhat easier) apprenticeship in New Guinea, as Head of the English Department, at what would become the University of Technology, Lae. He saved every cent for a shot at something bigger. As a result I got a chance to see and feel the rise of Michael Somare and PNG independence in all its fragility.

In my high school years I boarded but the student body at the then Hitech were effectively the first high school graduates from every PNG province, budding engineers, accountants and surveyors came to Lae and those in the arts, law, sciences etc went to Port Moresby and the

university there. As a young boy I spent every moment I could with them in awe of traditional cultures and languages, playing football and learning of the up and coming PANGU party. and listening to the music of New Ireland and Manus and so many other places. It was a magic time.

Then suddenly we were headed for the freezing winter of up state New York, a family with two finishing high school students and two young primary children. All thanks to the sheer gutsiness of my mother and father. All of us kids thrived on this spirit of adventure. I had an opportunity, most Australians could only dream about, Year 11/12 at an American high school and an “Ivy League” education. It was not something I appreciated enough at the time, although I was very glad to be free of my depressing and oppressive boarding years at Peninsula Grammar, Mt Eliza.

## IV

Life on campus at Cornell was not dull.

Richard “Tricky Dicky” Nixon was sworn in for his second term as President on Jan 20. At Cornell I was swept up in the post-1969 African American studies movement, anti-Vietnam war protests, Attica Prison riot aftermath, and very soon into that year, the Watergate scandal erupted. I proudly enrolled in Walter (***How Europe Underdeveloped Africa***) Rodney’s African Socialism class and learned, for the first time, through Rodney, of how many African Americans and Africans viewed Australia as second only in racial oppression to South Africa’s then apartheid system. It was an instant slap in the face for my naive Whitlam inspired Australian patriotism and the beginning of a long journey I am still on. In New Guinea, Julius Nyerere’s Ujama was admired and Professor Rodney set off a spark in me, I started to understand the deep crime of colonialism from which I had benefited so much, even if my father’s mothers family were themselves convict victims of the Irish genocide of the mid 19th century.

In Cornell’s famous Willard Straight Hall the Senate Watergate Hearings were shown, gavel to gavel, day after day on PBS and also the commercial networks. I proudly stuck an “Impeach Nixon” sticker on the bumper bar of my gas guzzling Pontiac and worked that summer reaming barrels for shot guns in the Ithaca Gun Factory – at the same time secretly investigating whether riot guns were being manufactured and exported to Chile – cloke and dagger stuff for a young student – a measure of the times.

The whole Watergate atmosphere through 1973 and 1974 reached an intensity and fever pitch that eventually led to Nixon resigning. We students had apoplexy at every new twist and turn of the Watergate saga. It was one of those times when it seemed easy to be on the left side of politics. Dad watched all this with bemusement, but he knew very well that Nixon had committed an unpardonable offence. One day he simply said to me, “mate in Australia he would have been gone in a day”.

I didn’t really understand what he was saying to me, but I now understand that he was comparing the system of Westminster “responsible government” with the almost impossible task of impeaching and then forcing a popularly elected President from office. He saw very clearly how the whole system in the United States was unweildy and could become unbalanced.

## V

The Constitution of the United States gives Congress the authority to remove the President from office in two separate proceedings. The first one takes place in the House of

Representatives, by approving articles of impeachment through a simple majority vote. The second proceeding, the impeachment trial, takes place in the Senate. There, conviction on any of the articles requires a two-thirds majority vote and such an outcome would result in the removal from office (if currently sitting), and possible debarment from holding future office.

Impeaching a President involves very high bars to jump. So high that no President has ever been removed from office because of the Impeachment process. Nixon resigned but he could have fought it out for many more months if he had dug his heels in. But can you imagine Donald Trump resigning his Presidency under any circumstances..??

Clinton was not impeached. Trump was not impeached twice. So they did not even get to the Senate process. Dad's point was that, had they been parliamentary leaders, their colleagues would have dispatched them quick smart for lying, misleading behaviour, let alone the acts they committed. Had they been seen to cover up a break in of a party headquarters during an election like Richard Nixon, chances are they would have been convicted and faced jail.

In the Australian parliament the Prime Minister is elected and removed by his party caucus peers after of course his or her party holds a majority of House of Representative seats. The effective *competition* between representatives elected, in Australia, by average 110,000 citizens, serves to put a brake on bad and corrupt behaviour. The performance of the leader also very much determines whether parliamentarians will win their seats. Some might argue that the fluidity of the parliamentary caucus process is too flexible and promotes a degree of opportunism. In the 12 years there have been no fewer than seven Australian Prime Ministers and on five occasions the changes were not determined by the people. In the period from 1996 to 2013 the Labor Party leadership seemed like an endless turns stile: Keating, Beazley, Latham, Rudd, Gillard, Rudd, Shorten and then the relative stability of Anthony Albanese. It is notable that Albanese is now the 13<sup>th</sup> longest serving Federal Labor leader.. only Whitlam, Curtin, Hawke, Evatt, Fisher, Scullin, Calwell, Watson, Chifley, Charlton, Beazley and Shorten have served as Federal Labor leader for a longer period, and several never became Prime Minister. Certainly the mysterious factional numbers men and women in both parties are not necessarily healthy components of our democracy. But you take the good with the bad, at least corruption and poor behaviour is more accountable.

## VI

If the all powerful President is a problem in the United States – here writ large is the problem of a popularly elected Head of State for Australia. The US President has more power than the houses of Congress. Tens of millions of people directly elect him or her to office, while the average house of representatives constituency is 750,000 odd and the Senate, which still, despite population, elects two representatives for each State has no-where near the electoral base as the President. The biggest Senate electorate by votes cast is California with 10 million votes - still only a relatively small percentage of the Presidential vote.

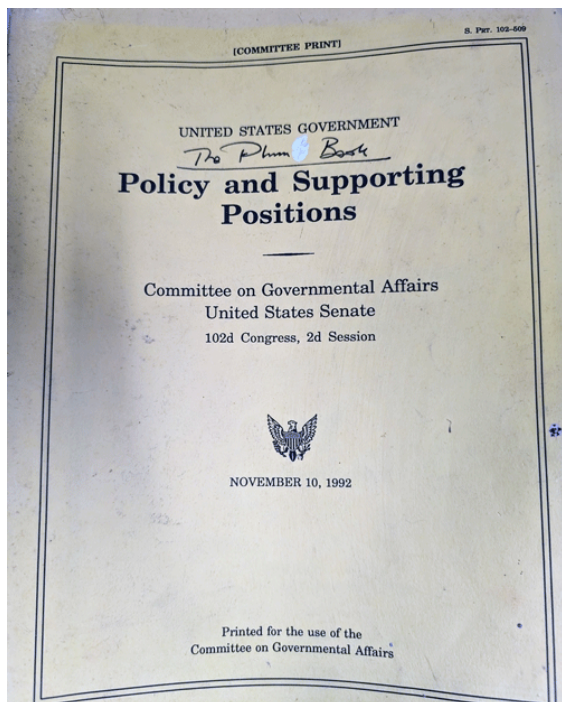
Despite all its imperfections the US system works so long as the conventions and understanding of the balance of powers between Congress, the President and the Supreme Court are observed.

Donald J. Trump has suddenly exposed the weaknesses of the system when a rogue President comes to power. On 1 July 2024 the Supreme Court further consolidated the power of the President.. It ruled that “Under our constitutional structure of separated powers, the nature of Presidential power entitles a former President to absolute immunity from criminal prosecution

for actions within his conclusive and preclusive constitutional authority. And he is entitled to at least presumptive immunity from prosecution for all his official acts. There is no immunity for unofficial acts.”

Even further emphasising the power of the President, the potential beneficiary of this decision was the ex-President who brought Trump v the United States to the Supreme Court. The court is made up of Republican appointees. Trump of course appointed Gorsuch, N, Kavanaugh, B, and Barret, A to join Bush appointees Roberts, J, Thomas, C and Alito, S. The Justices effectively voted down party lines to make US Presidents even more unaccountable and to give Trump complete immunity for any acts performed while in office.

Perhaps this will not save Trump from his convictions before the New York court which were all performed while he was not in office and pertained to the 2016 Presidential election. Nevertheless in her judgement, Sotomayor, S wrote: “Orders the Navy's Seal Team 6 to assassinate a political rival?” "Immune." "Organizes a military coup to hold onto power? Immune. “Takes a bribe in exchange for a pardon? Immune. Immune, immune, immune." "Even if these nightmare scenarios never play out, and I pray they never do, the damage has been done," "In every use of official power, the President is now a king above the law."



## VII

Equating the US President with a future Australian Head of State is perilous and improbable.

The US President, elected by the people, appoints not only his Cabinet and his Executive Office positions but several layers of each Department and those of many Independent Agencies and government corporations. Thousands of civil service positions turn over with each Presidential election. “The Plum Book” or United States Government Policy and Supporting Positions (above) is a very eagerly sought after guide for jobs every four years. Many thousands of jobs come up for appointment. This is hardly imaginable for Australians who are accustomed to electing a Prime Minister who appoints members of his or her Party members as Ministers and Cabinet



office holders. The Civil Service barely changes when compared to the four yearly upheaval in the United States.

Given the immense power of the US President and his or her role as Commander in Chief of the US military it is entirely appropriate that every US citizen has a vote to elect him or her to office every four years.

An Australian Head of State is currently a ceremonial position. The Governor-General is the British Monarch's representative. He or she presides over the Federal Executive Council, facilitates the Commonwealth Parliament and Government, dissolves Parliament and issues writs for a Federal election, commissions the Prime Minister and appoints Ministers and Assistant Ministers, swears-in other statutory position and holds and possibly exercises the reserve powers of appointing a Prime Minister in the case of an uncertain election result or some other ambiguous outcome.

My view is that even in the United Kingdom the role of the monarch is redundant. As Tony Benn once argued "The case for electing our head of state and claiming our right to be citizens rather than subjects is unanswerable; the royal family could stay at Buckingham Palace, financing the changing of the guard by a grant from the tourist board, free to live the lives they want. Such a change would transform the culture of Britain and radicalise the people by getting us off our knees - which would really frighten those at the top. They cling to the monarchy and would be ready, as in 1936, to ditch the king himself, or in this case the heir to the throne, leaving Prince Charles, unlike his predecessor in 1649, with his head but not his crown." (Benn, 2003)

Unlike in the United States, Australia and the United Kingdom has a lot of tidying up to do. The Prime Minister and Cabinet in both situations are the heads of executive government and commanders in chief of their respective armed forces. The monarch effectively operates with the authority of the Prime Minister.

There is no need to elect a head of State separate to the Prime Minister, rather the parliament might as a whole appoint an administrative council to take over the functions of the current Governor General and save a lot of money.

## VIII

The United States has its own problems. It is ironical that the Supreme Court of a country that began with the declaration of independence and promised 'a nation of free individuals protected equally by the law' has now effectively placed the President above the law. The sovereignty of every man has become corrupted by dint of the election of a King anointed by popularity.

If ever there was an example of why a future Australian Republic should not create a popularly elected Head of State then there it is for all to see in the United States of 2024. The office of the United States President is a carefully crafted by the United States constitution and is balanced by Congress and the Supreme Court. US Founding father James Wilson in a famous passage compared the unaccountable British monarch with the President as "the dignified, but accountable magistrate of a free and great people". If we conflate the sovereign power associated formally with the monarch with a popular vote then we undo the balance of popular sovereignty and the temptation to usurp the powers of the parliament might always, already be there.

The wise constitutional model developed by the Australian Republican Andrew Inglis Clark in 1890 joined the organics of American Federation with the collective responsibility of parliamentary government. It is an anomaly that the UK monarch remains the Australian Head of State.

So Dad was right about the merits of responsible government. I agree with him that a parliamentary system is more accountable. But.. two years later, after our ephiphany in 1973, John Kerr, much to Dad's delight, sacked Gough.. and that put us at logger heads for at least another decade, and in the end, I was right about the utter impropriety and injustice of that.

But that is another story.

