

THE GLORIOUS REVOLUTION AND THE IMPACT ON AUSTRALIAN CONSTITUTIONAL LAW

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I INTRODUCTION

It has been proposed that ‘The Glorious Revolution is irrelevant to Australian Constitutional Law.’ This statement is far from accurate. This essay will explain how the events leading up to, and following the Glorious Revolution, assisted in the development of the *Australian Constitution*, and the implementation of the current principles of constitutional law. I will be examining the creation of a constitutional monarchy, the doctrine of parliamentary sovereignty, and the concept of responsible and representative governments in both the United Kingdom and Australia. By critically examining the background of constitutional law in England and Australia, it will be found that there are unequivocal links between the two.

II THE GLORIOUS REVOLUTION

The Glorious Revolution was one of the most notable events in development of the United Kingdom’s system of government. In the early part of the 17th century, King James I of England (who was the monarch at the time) believed

in the ‘divine right of kings’.¹ This is the idea that a monarch should have absolute power, that they should only be accountable to God, and that any resistance to the King should be considered a sin.² King James I believed that a monarch should have absolute power over the government. He therefore involved himself in cases that were being tried before the court, and proclaimed new laws without parliaments consent.³ The idea of the ‘divine right of kings’ was also adopted by King James I’s son, King Charles I, who attempted to raise money through the use of a ‘forced loan’, without the Parliaments consent.⁴ These practices were not accepted by the Parliament, leading to the civil war of 1642. Between 1642 and 1651, there were three civil wars between the forces of King Charles I, and the Parliament.⁵ Ultimately, the Parliament was victorious, and a republican form of government was created.⁶ This however, soon collapsed, which lead to the anointment of King Charles II in 1660.⁷

Between 1660 and 1684, Charles II reigned over the United Kingdom; however his methods were in short, disastrous. He not only believed in the ‘divine right of kings’ as his predecessor’s did, but was a devout catholic, who was known to not only ignore the Parliament and their advice, but to pardon

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¹ John Neville Figgis, *The Divine Right of Kings* (Cambridge University Press, 2nd ed, 1914) 5-6.

² Ibid.

³ Jennifer Clarke, Patrick Keyzer and James Stellios, *Hanks’ Australian Constitutional Law: Materials and Commentary* (LexisNexis Butterworths, 8th ed, 2009) 73 [1.4.5].

⁴ Ibid.

⁵ Paul L. Hughes, Robert F. Fries (eds), *Crown and Parliament in Tudor-Stuart England: A Documentary Constitutional History 1485-1714* (G.P. Putnam’s Sons, 1959) 223.

⁶ Ibid.

⁷ Clarke, Keyzer and Stellios, above n 3.

Roman Catholics who had committed crimes.⁸ James II, Charles II's successor, took a similar approach, creating two 'Declarations of Indulgence', which were to be read from every stage for two Sunday's.⁹ Those who tried to oppose him were put on trial for 'seditious libel'.¹⁰ In 1688, the people of England had finally had enough. One bishop, along with six prominent politicians, wrote to the Princess of Royal England Mary (the daughter of King James II) and her Dutch husband, Prince William III of Orange, Netherlands.¹¹ This letter invited the pair to bring an army to London to invade. In November 1688, William's army began their slow advance to London. After realising that his army had made a run for it and that he was now left defenceless, James II fled to France.¹²

William II called the first 'Convention Parliament' on 22 January 1689 at the request of the Parliament.¹³ It was then that it was decided the departure of James II could be taken as an abdication of the throne.¹⁴ The crown was then offered to William and Mary as joint sovereigns, rather than following the usual procedure of going to the previous monarch's oldest son (in this case James II's oldest son, James Francis Edward). This offer however came with various conditions, including that if Mary defaulted, the crown would be passed on to her sister Anne.¹⁵ These conditions were contained in the Declaration of Rights, which later came to be England's Bill of Rights.¹⁶ This

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Bill of Rights 1688 (1 Will & Mary sess 2 c 2).

agreement made between the Parliament and William and Mary, forms the basis of the doctrine of parliamentary sovereignty to this day.

III THE UNITED KINGDOM

So, what did the Glorious Revolution actually mean for England? As explained above, by 1689 England had a new crown, and a new document called the Bill of Rights. This is considered to be one of the most important stages in the development of the United Kingdom Government. The Bill of Rights was a document that was created as a restatement of the Declaration of Rights. It is an Act of Parliament that deals with constitutional matters and sets out the basic civil rights of citizens.¹⁷ Law LJ explained in *Thoburn v Sunderland City Council*,¹⁸ that he believes a constitutional statute (such as the Bill of Rights) is one which ‘contains the legal relationship between citizens and state in some general, overarching manner, or... enlarges or diminishes the scope of what we would now regard as fundamental constitutional rights’.¹⁹ The creation of the Bill of Rights was a landmark moment for the United Kingdom Parliament.

A Constitutional Monarchy

The introduction of the Bill of Rights meant the transition for the United Kingdom from an absolute monarchy, to a constitutional monarchy. A constitutional monarchy is defined as ‘a form of government established under a constitution which retains a monarch as the head of state’.²⁰ This new system

¹⁷ *Ibid.*

¹⁸ [2003] QB 151.

¹⁹ *Thoburn v Sunderland City Council* [2003] QB 151 [186].

²⁰ LexisNexis, *Concise Australian Legal Dictionary* (LexisNexis Butterworths, 5th ed, 2015) 132.

of government was the first step in the Parliament gaining more power, and thereby reducing the absolute power of the monarch.

B Parliamentary Sovereignty

One of the main concepts this new system of government brought about was the introduction of the doctrine of parliament sovereignty. This doctrine meant that the Parliament had the right to make (or unmake) any law should they choose to.²¹ As well as this, it was established that no person or body (including the court) has the right to override or remove a law of Parliament.²² This idea is one of the most fundamental rules of English constitutional law. It was outlined in section 1 of the Bill of Rights, following the Glorious Revolution of 1688,²³ and was one of the conditions that was proposed to William and Mary before they accepted the role of joint sovereigns. The relevant section outlined that William and Mary's rights and privileges would be limited by law, and that they must recognize the supremacy of parliament. As well as this, it reaffirmed the condition that there must be freedom from royal interference with the law. This was done by placing limits on the sovereign's powers, by forbidding them to establish their own courts or to act as a judge.²⁴

C Responsible and Representative Government

²¹ Ibid 459.

²² A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 1885) 39; *Pickin v British Railways Board* [1974] AC 765.

²³ Bill of Rights 1688 (1 Will & Mary sess 2 c 2).

²⁴ Ibid.

Another idea that the Glorious Revolution brought about for England is the idea of responsible and representative government. This development occurred gradually, but was seen to have been initiated when the Privy Council extinguished the King's power to choose his own ministers.²⁵ The effect of this was that the Crown was no longer able to have the same influence over the Parliament as it once did. As this system of representative government developed, the idea of responsible government followed, until the Crown's role was eventually diminished to a purely ceremonial role.²⁶

III AUSTRALIA

It is important to examine how the Glorious Revolution impacted the government of the United Kingdom, as Australia's system of government was greatly influenced by the British Westminster system.²⁷ In 1788, Great Britain founded several colonies in Australia. When these colonies were initially established, English laws applied to them (providing that these laws were appropriate to the local conditions of the colonies).²⁸ In 1901, the *Australian Constitution* was created, which established the Commonwealth of Australia as a federation. However, the preamble to our *Constitution* outlines that the States of Australia have united '...under the Crown of the United Kingdom of Great Britain and Ireland...'²⁹ It is here that we are able to see exactly how much of an influence the United Kingdom had on Australian constitutional law. Their influence was so great that the United Kingdom still had constitutional

²⁵ Patrick Parkinson, *Tradition and Change in Australian Law* (LBC Information Services, 3rd ed, 2005) 101-102.

²⁶ *Ibid.*

²⁷ Clarke, Keyzer and Stellios, above n 3, 41 [1.2.3].

²⁸ Dicey, above n 22.

²⁹ *Australian Constitution*.

authority, which was set out in writing at the creation of the *Australian Constitution*. The *Constitution* itself is one of the major parts of Australian constitutional law in which we can see not only the influence of the United Kingdom, but the direct relationship between our two governments. The *Constitution of the Commonwealth of Australia* is actually contained in a British statute, titled the *Commonwealth of Australia Constitution Act 1900*.³⁰ The ninth section of this act contains the 128 sections that make up our current *Constitution*.³¹

A Constitutional Monarchy

Our nation has a system of representative democracy, as well as a constitutional monarchy. A representative government is one in which the members of parliament are chosen directly by the people.³² Australia is also considered a constitutional monarchy, as we have a constitution which sets out our basic laws and civil rights, and our head of state is the Queen of England (who is represented in Australia by the Governor-General).³³ The system of constitutional monarchy is arguably the most important aspect of the British Westminster system that Australia adopted.

B Parliamentary Sovereignty

The doctrine of parliament sovereignty is another doctrine that was influenced by the Bill of Rights that is still present in Australia today. However, A V

³⁰ *Commonwealth of Australia Constitution Act 1900* (UK).

³¹ *Australian Constitution*.

³² *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

³³ LexisNexis, above n 20, 293.

Dicey proposed that there are various limits to this concept of parliamentary sovereignty.³⁴ At the time of the drafting of the *Australian Constitution*, this doctrine held that the British Parliament had authority to make laws.³⁵ This sovereignty of Parliament extended to the making and implementing of laws in all of the Queen's colonies including Australia.³⁶ The authority of Britain was one of the most crucial elements in the *Constitution* when it came to the enactment of it. The preamble stated that the Federation of Australia would be enacted under the power of the Crown.³⁷ This meant that Australia would continue to derive their legal validity for both Commonwealth and state level institutions from the British Parliament and Crown.³⁸ However, it was demanded that a provision be included in which the Australian Parliament (by way of their citizens) could alter the *Constitution* through the process of a referendum.³⁹ As well as this, under s 51(xxxviii) of the *Constitution*, it was established that the states could agree to refer a matter to the Commonwealth Parliament to legislate.⁴⁰ This ensured that Australia had not only the legal authority derived from the United Kingdom, but their own power as well.

C Responsible and Representative Government

The effects of the Glorious Revolution can still be seen in Australian constitutional law today. The principles and doctrines that were created with the implementation of the Bill of Rights, have translated across into our

³⁴ Dicey, above n 22.

³⁵ Jeffrey Goldsworthy, *The Sovereignty of Parliament* (Clarendon Press, 1999) ch 2.

³⁶ Nicholas Aroney et al, *The Constitution of the Commonwealth of Australia: History, Principle and Interpretation* (Cambridge University Press, 2015) 8.

³⁷ *Australian Constitution*.

³⁸ Aroney et al, above n 36.

³⁹ *Australian Constitution* s 128.

⁴⁰ *Australian Constitution* s 51(xxxviii).

government. The idea of responsible and representative government especially, is present in Australia. A representative government requires that members of both levels of houses be elected by the citizens of the states,⁴¹ and the Commonwealth.⁴² The *Constitution* also created a system of responsible government. A responsible government embodies the principle of accountability, and requires the government to be responsible to the parliament rather than the head of state.⁴³ Examples of where this principle is shown, is seen in the requirement of retirement when ministers lose the confidence of the parliament, and how the parliament has gained control of government expenditure.⁴⁴

IV CONCLUSION

The Glorious Revolution of 1688 is not irrelevant to Australian constitutional law. The Glorious Revolution was a crucial point in history for the United Kingdom Government, and signalled a change from an absolute monarchy to a constitutional monarchy. It brought about the introduction of the doctrine of parliamentary sovereignty, and the concept of a responsible and representative government in the United Kingdom. These ideas can all be seen in Australia to this day. The Westminster model of government was one of the biggest influences on Australia's *Constitution*, so much that our system of government has been named the 'Washminster Model', a play on words combining both the United Kingdom and the United States of America's government system. As

⁴¹ *Australian Constitution* s 7.

⁴² *Australian Constitution* s 24; *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

⁴³ Clarke, Keyzer and Stellios, above n 3, 102 [1.6.1].

⁴⁴ *Commonwealth v Colonial Combing, Spinning and Weaving Co Ltd* (1922) 31 CLR 421.

shown, there is a clear and direct link that can be found between the events of the Glorious Revolution, leading all the way through to the creation of the *Australian Constitution*.