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*The Governor General in Australia
and Gender Equality*

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The Governor General in Australia and Gender Equality

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Abstract: This article takes the appointment and term in office of Governor General of Australia, Dame Quentin Bryce (2008-2014), as the basis for a discussion about the potential role of the Governor General in promoting progress on issues of gender equality and minority rights protections. The article adopts a multidisciplinary methodology, combining law and feminist political science to analyse different receptions of the post when it is occupied by men and women engaged in debates concerning different minority populations. It makes a brief comparison with the institution of the President of the Republic of Ireland as functionally equivalent to that of the Governor General, in their respective roles promoting national identity and unity. With this comparison in mind, the article contends that the Governor General's constitutional mandate presents no barrier to the holder of the office advocating for gender equality and minority rights protection. In fact, such advocacy, as exemplified by Quentin Bryce's controversial public support for marriage equality during her term in office, is desirable, because equality is a key normative element of modern democracy. The article then critiques—from the perspective of feminist institutionalism—the gendered nature of the office of Governor General and considers how the office can and may in future evolve away from its gendered foundation.

Keywords: Governor General; Australia; marriage equality; gender equality; feminist institutionalism

The 2008 appointment of Queensland Governor and former Federal Sex Discrimination Commissioner Dame Quentin Bryce as Australia's first female Governor General was widely heralded as a statement on gender equality. Bryce herself understood it as a landmark, claiming, "what this day says to Australian women and to Australian girls is that you can do anything, you can be anything, and it makes my heart sing to see women in so many diverse roles across our country."² Labor Prime Minister Kevin Rudd's recommendation of Bryce for the role formed a signature component of his symbolic agenda, including the Apology to the Stolen Generations and ratification of the Kyoto Protocol, to distinguish his progressive administration from the past twelve years of

¹ Many thanks to Professor Carol Johnson for providing advice on an early draft of this article.

² Dana Robertson, "Quentin Bryce to Become Nation's First Female G-G," *AM*, 17 April 2008, <http://www.abc.net.au/am/content/2008/s2215693.htm>.

conservative rule.³ Rudd described Bryce as, at last, a Governor General “who captures the spirit of modern Australia” by “giving proper voice to the rights of women, giving proper voice to the proper place of women in modern Australia.”⁴ For the most part, the Australian media agreed, with talk of cracks in glass ceilings, “girl power,” and a “great day for Australian women” abounding.⁵ Even international media applauded Australia for finally embracing gender equality in the nation’s top post.⁶

It is curious to consider what it was imagined Bryce’s appointment would do for individual women, or for gender equality. Undoubtedly, it was her role as sex discrimination commissioner from 1988 to 1993 that had the greatest impact on Australian women’s lives. But in terms of symbolism, breaking the male stranglehold on the Governor General position after 107 years could hardly be beaten. In this article, we consider the possibilities for the Governor General to lead social and political change in the arena of gender equality. Typically, the Governor General’s role is described as an apolitical and non-partisan post that must somehow at once be above politics while providing unifying cultural leadership of the country. Particularly since the term of Sir William Deane (1996-2001), the cultural function of the office has been enhanced in the public mind; at the same time, the partisan connotations of the 1975 dismissal of Labor Prime Minister Gough Whitlam by Governor General Sir John Kerr have been steadfastly avoided.⁷ Bryce’s bipartisan support, as evidenced in her recommendation by the Australian Labor Party (ALP) and the extension of her term on the recommendation of Liberal Prime Minister Tony Abbott, appeared to fit this bill ideally. But what of her capacities for cultural and social leadership in the role of Governor General?

To assess the role of the Governor General of the Commonwealth of Australia (hereafter the Governor General) is to assess the role that the constitutional monarchy plays in Australian political life. As Rosalind Dixon notes in the introduction to this special issue, one stated function of a monarchy is national unity. In the absence of a monarch “on the ground” in Australia, we consider the role the Governor General might play in terms of national unity and how this corresponds to the protection of minorities, especially sexual minorities. It is undeniable that Bryce presented as a valuable symbolic role model for women in leadership, just as she had in many of her past positions, including as a pioneering lawyer, academic, and mentor to young women since the 1960s.⁸ However, on the question of the unresolved, nationally symbolic issue of marriage equality, commentators on both the Left and the Right criticised Bryce for voicing her support while in office. Moreover, the period of Bryce’s tenure was a volatile and regressive time for Australian marriage equality campaigns, during which Australia’s international standing as an egalitarian country was greatly undermined.⁹ In this

³ Peter Hartcher, “The Signs That Tell You I am Not John,” *Sydney Morning Herald*, 25 April 2008, 35.

⁴ Robertson, “Quentin Bryce to Become Nation’s First Female G-G.”

⁵ Mario Xuereb and Liz Porter, “Women Rule OK?” *The Age*, 20 April 2008, 16.

⁶ Greg Ansley, “Finally the Aussies Embrace Girl Power,” *New Zealand Herald*, 15 April 2008, https://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10504118.

⁷ See: Tony Stephens, *Sir William Deane: The Things that Matter* (Sydney: Hodder Press, 2002).

⁸ Andrew Fraser, “First Among Equals,” *The Australian*, 14 April 2008, <https://www.theaustralian.com.au/news/inquirer/first-among-equals/news-story/edcb3b67176992b342521ef57f1fe08e?sv=e4af161b316a9f10ef8fce2145eccddf>.

⁹ Ben Doherty, “Unacceptable: UN Committee Damns Australia’s Record on Human Rights,” *The Guardian*, 19 October 2017, <https://www.theguardian.com/australia-news/2017/oct/19/unacceptable-un-committee-damns->

article we question whether the constraints placed on Bryce speaking out about minority rights and gender equality are indeed a formal function of the office of the Governor General and, if not, why the role was construed in such a manner in Australia. We suggest that such questions go to the heart of broader debates about the role of the office that have arisen since the realisation of Australia's dominion status in the mid-twentieth century.

To illustrate the connections between politics and the laws that govern the office of the Governor General, we apply a multidisciplinary methodology of law and feminist political science as a form of comparative studies focusing on the different receptions of the post when occupied by men and women engaged in debates concerning different minority populations. We also briefly consider the institution of the President of the Republic of Ireland as “functionally equivalent” to that of the Governor General, especially the commitment of each to promoting their respective national identities.¹⁰ In particular, we consider the prerogative of the representatives of each institution to intervene in political debates that concern the protection of minorities such as lesbian, gay, bisexual, transgender, and intersex (LGBTI) communities. We examine how these interventions have been received in each country, and associated debates about the significance of women occupying each post. The example of the Irish President is instructive because the 2015 Irish referendum on marriage equality was identified as a model for the Australian plebiscite on this issue in 2017.¹¹

In considering briefly the situation in Ireland, we aim to respond to suggestions that the constraints on the Governor General making statements supporting national unity relate to the appointment process for the office, which is a function of parliamentary politics and responsible government, rather than participatory democracy (as in the case of the Irish President). In the context of marriage equality as an instrument of gender equality, we argue that the constitutional mandate of the Governor General presents no such barriers to national leadership. Any such constraints are informal conventions that have been tested and expanded over the years; failing to interrogate these conventions perpetuates the status quo with a vested interest in excluding the representation of minorities from the national discourse. Much like the Irish President, the Governor General has great potential to provide leadership in national unity and social and political inclusion. But to develop this potential, the informal constraints and the interests they represent would first have to be unmasked and confronted. This would involve interrogating the gendered nature of the institution itself.

[australias-record-on-human-rights](#).

¹⁰ Konrad Zweigert, *Introduction to Comparative Law*, 3rd ed. (Oxford: Clarendon Press, 1998), 34; Malcolm Hazell, “The Role of the Governor-General,” *Public Administration Today* 15 (April-June 2008): 70; Dan Meagher, Amelia Simpson, James Stellios, and Fiona Wheeler, *Hanks Australian Constitutional Law: Materials and Commentary*, 10th ed. (Chatswood: LexisNexis Butterworths, 2016), 744–745; Anne Twomey, *The Chameleon Crown* (Sydney: Federation Press, 2006), 44.

¹¹ Conor O’Mahoney, “Ireland’s Vote on Marriage Equality Holds Many Lessons – But Are Any Relevant to Australia?” *The Conversation*, 28 September 2016, <https://theconversation.com/irelands-vote-on-marriage-equality-holds-many-lessons-but-are-any-relevant-to-australia-65872>.

The Australian Governor General

The Australian Governor General is a distinctly local institution, with differences arising even in comparison to its Canadian and New Zealand counterparts.¹² The Governor General is appointed by the Queen of Australia following advice from the Prime Minister (who need not consult the Opposition Leader in their selection of candidate), and as the Crown's representative, exercises their institutional duties as an unbiased and apolitical representative of the Commonwealth of Australia.¹³ The role is defined by the constitution,¹⁴ the Letters Patent Relating to the Office of Governor General,¹⁵ conventions,¹⁶ and a series of shared assumptions.¹⁷ In a constitution that says little about the nature of parliamentary democracy, the formal role of the Governor General is remarkably clear. The list of institutional duties includes ceremonial tasks such as welcoming diplomatic representatives,¹⁸ executive duties such as presiding over the Federal Executive Council,¹⁹ and constitutional reserved prerogatives such as the dismissal of the Prime Minister explained below.²⁰ In this article, we focus on the assumption that the office, as a constitutional institution, should perform "community activities"²¹ that foster the unity of the Commonwealth of Australia as an independent nation.²²

One of the most notable assumptions governing the office is that the Governor General will not use the institutional role in a way that promotes partisan narratives.²³ Another convention demands that the Governor General's previous professional reputation should not negatively affect the standing of the office.²⁴ Although the role is typically described as the Crown's representative in Australia, the Prime Minister's recommendation for Governor General might trigger an analysis of the candidate's past political associations and religious

¹² Meagher et al., *Hanks Australian Constitutional Law*, 777; *Role of the Crown and the Governor General – Compendium of Procedure – House of Commons*, https://www.ourcommons.ca/About/Compendium/ParliamentaryFramework/c_d_rolecrownngovernorgeneral-e.htm.

¹³ Australian Constitution s 6; *Summary of Proceedings of the Imperial Conference*, 1923. Cmd 1987 (1924), 14–16.

¹⁴ Commonwealth of Australia Constitution Act 1900 (UK), ss 2–5, 7, 15, 17, 19, 21, 28, 32–33, 35, 37, 42, 56–65, 67–70, 72, 74, 83–85, 103, 126, 128. (Hereafter: Australian Constitution).

¹⁵ Queen of Australia, "Letters Patent Relating to the Office of Governor-General."

¹⁶ Donald Markwell, "The Office of Governor General," *Melbourne University Law Review* 38, no.3 (2015): 1099.

¹⁷ Markwell, "The Office of Governor General," 1100; Office of the Governor General, "Governor-General's Role," 25 January 2012, <http://www.gg.gov.au/governor-generals-role>; George Williams, Sean Brennan, and Andrew Lynch, *Blackshield and Williams Australian Constitutional Law and Theory: Commentary and Materials*, 6th ed. (Sydney: Federation Press, 2014), 357, 359; Jennifer Clarke, Patrick Keyser, and James Stellios, *Hanks Australian Constitutional Law Materials*, 9th ed. (Chatswood: LexisNexis Butterworths, 2012), 87–88, 749, 757; Twomey, *The Chameleon Crown*, 44–48; *Summary of Proceedings of the Imperial Conference*, 1923. Cmd 1987 (1924) 12–14.

¹⁸ Meagher et al., *Hanks Australian Constitutional Law*, 744–745; Hazell, "The Role of the Governor-General," 68.

¹⁹ Australian Constitution s 62.

²⁰ Australian Constitution s 64.

²¹ Hazell, "The Role of the Governor-General," 70; Markwell, "The Office of Governor General," 1098.

²² Meagher et al., *Hanks Australian Constitutional Law*, 746; Blackshield et al., *Blackshield and Williams Australian Constitutional Law and Theory*, 357.

²³ Meagher et al., *Hanks Australian Constitutional Law*, 746; Blackshield et al., *Blackshield and Williams Australian Constitutional Law and Theory*, 357.

²⁴ Blackshield et al., *Blackshield and Williams Australian Constitutional Law and Theory*, 356.

affiliations.²⁵ In this context, we briefly consider the example of Dr Peter Hollingworth, whose former role as Archbishop of Brisbane ultimately compromised his term as Governor General in 2003. Who or what is perceived as partisan, however, is apparently in the eye of the beholder. Despite the much-vaunted apolitical nature of the role, a series of former politicians such as Sir Isaac Isaacs, Sir William McKell, Richard Casey, Baron Casey, Sir Paul Hasluck, and Sir William “Bill” Hayden have been appointed as the Australian Governor General.²⁶ In contrast, Canada has mostly appointed eminent public figures not associated with a political party.²⁷ In New Zealand, debate over the role has been less concerned with political affiliation and more concerned with the identity (ethnic or otherwise) of the individual called to the office.²⁸

The office of Governor General may therefore be understood as a distinctly Australian multi-faceted institution.²⁹ First, it is expected that the Governor General will behave in a way that is in tune with the Australian monarchy, yet due to the appointment process, they cannot claim to have as apolitical a role as that of the royal family. The Governor General will usually come from the same social class as the Prime Minister and the “power dynamics” of their relationship will be different from those of a Prime Minister and the sovereign.³⁰ Second, the Governor General must carry out a series of executive roles similar to those of a President (for example, presiding over the Australian Federal Executive Council that includes all federal ministers), yet their role is only that of verifying the procedural soundness of government policies. Third, and like the British monarch, they must give assent to bills that have passed both houses of Parliament, and they formally appoint the Prime Minister. In the case of political deadlock, the Governor General also has the distinct constitutional prerogative to dismiss the Prime Minister, for example, as a consequence of a vote of no confidence in the House of Representatives (the Australian parliament’s lower house), or in the case of the government acting illegally.³¹ A third, more controversial option is derived from the assumption that the Governor General has the prerogative to dismiss a Prime Minister who cannot convince a majority in the Senate—the Australian parliament’s upper house—to provide supply to the government (as was claimed in 1975).³² While in most instances the Governor General acts on the advice of institutions such as the Federal Executive Council, the power to dismiss the ministers set out in section 64 of the constitution may be exercised without obligation to consult.³³ The effects, and perhaps even the existence of this reserved power, only became part of common knowledge during the 1975 constitutional crisis when

²⁵ Markwell, “The Office of Governor General,” 1110.

²⁶ Markwell, “The Office of Governor General,” 1110.

²⁷ David Johnson, *Battle Royal: Monarchists vs. Republicans and the Crown of Canada* (Toronto: Dundurn, 2018), 250.

²⁸ Jack Doig, “New Nationalism in Australia and New Zealand: The Construction of National Identities by Two Labo(u)r Governments in the Early 1970s,” *Australian Journal of Politics and History* 59, no. 4 (2013): 559, 567.

²⁹ Markwell, “The Office of Governor General,” 1099.

³⁰ Anne Twomey, “From Bagehot to Brexit: The Monarch’s Rights to be Consulted, to Encourage and to Warn,” *The Round Table* 107, no. 4 (2018): 420.

³¹ Australian Constitution s 57; Blackshield et al., *Blackshield and Williams Australian Constitutional Law and Theory*, 360.

³² Blackshield et al., *Blackshield and Williams Australian Constitutional Law and Theory*, 360; Australian Constitution ss 53, 57, 64.

³³ Markwell, “The Office of Governor General,” 1111; Australian Constitution s 61.

ALP Prime Minister Gough Whitlam was dismissed.³⁴ At the same time, due to a quirk of history, the Governor General may also be dismissed on the advice of the Australian Prime Minister.³⁵

Quentin Bryce served as Australia's 25th Governor General, from September 2008 until March 2014.³⁶ Before this, she had been Governor of Queensland since 2003, and is widely recognised as a “trailblazer” for women in law and academia.³⁷ Although she has personal ties to the ALP through marriage (Bryce's daughter Chloe married Bill Shorten in 2009, with Shorten's tenure as Leader of the Opposition overlapping with Bryce's Governor-Generalship), Bryce was generally considered an apolitical—or at least non-partisan—appointment as Governor General (even though she defines herself as a political activist).³⁸

The Governor General as the “Conscience of the Nation”

The contemporary role of the Governor General is described as bearing only a “superficial resemblance” to that of 1901.³⁹ The post was designed as both the British Ambassador and the direct representative of the British monarchy,⁴⁰ but the ambassadorial role lapsed following the Imperial Conference of 1930 and the Statute of Westminster 1931.⁴¹ Because it was no longer required to act as an intermediary between governments, the significance of the post declined.⁴² In 1967, Prime Minister Robert Menzies suggested a renaissance in the office in that it involves “some derivative sense of Royalty,”⁴³ and therefore, “social” leadership of the Australian community.⁴⁴ Still, it is often suggested that it was not until Kerr's dismissal of Whitlam that many Australians were aware of the existence of the office.⁴⁵ The point of the Governor General has been debated ever since. It was the work of former High Court judge Sir William Dean (1996-2001) that developed the office's potential to be performed in a manner akin to contemporary junior British royals, by drawing attention to the needs of disadvantaged communities, especially minority groups.⁴⁶ Deane reiterated the statement of Governor General Sir Zelman Cowen (1977-1982) that his role was one of interpreting “the nation to itself” in a “non-political way.”⁴⁷ In his former role as a judge of the

³⁴ Markwell, “The Office of Governor General,” 1111.

³⁵ George Winterton, “Lessons from the Hollingworth Affair,” *Monash University Law Review* 1 (2003): 2.

³⁶ Nikki Henningham, “Bryce, Quentin,” *The Encyclopaedia of Women and Leadership in Twentieth-Century Australia*, <http://www.womenaustralia.info/leaders/biogs/WLE0361b.htm>.

³⁷ Henningham, “Bryce, Quentin.”

³⁸ Quentin Bryce, *Boyer Lectures 2013: Back to Grassroots* (Sydney: ABC Books, 2013), 33.

³⁹ George Winterton, “The Evolving Role of the Governor General,” *Quadrant* 48, no. 3 (2004): 42.

⁴⁰ *Summary of Proceedings of the Imperial Conference*, 1923. Cmd 1987 (1924).

⁴¹ Twomey, *The Chameleon Crown*, 81; Clarke et al., *Hanks Australian Constitutional Law*, 28–29; Peter Boyce, *The Queen's Other Realms* (Sydney: Federation Press 2008), 13.

⁴² Winterton, “The Evolving Role of the Governor General,” 43.

⁴³ Winterton, “The Evolving Role of the Governor General,” 43.

⁴⁴ Winterton, “The Evolving Role of the Governor General,” 43.

⁴⁵ Winterton, “The Evolving Role of the Governor General,” 43.

⁴⁶ Winterton, “The Evolving Role of the Governor General,” 43.

⁴⁷ David Headon, “Howard's Way or Deane's Way? Culture Wars in Contemporary Australia,” in *Managing Diversity: Practices of Citizenship*, ed. Nicholas Brown and Linda Cardinal (Ottawa: University of Ottawa Press, 2007), 179.

seven-member bench of the High Court of Australia, Deane had delivered the historic *Mabo* decision along with Justice Mary Gaudron in 1992.⁴⁸ As Governor General, Deane continued to emphasise Indigenous disadvantage including the unreconciled issue of Native Title, which he raised in numerous speeches such as his historic address to Corroboree 2000.⁴⁹ Deane's stance on Indigenous affairs was clearly progressive. However, despite the apparent criticism of some conservatives that he had combined the "twin roles of Governor General and shadow minister for social welfare,"⁵⁰ or that he would "drown in his tears" over lost hopes for reconciliation,⁵¹ Deane mostly eluded any serious public charges of partisanism, even as his term coincided with the first two terms of the conservative Howard coalition governments.⁵² This was a significant diplomatic accomplishment, as the question of Indigenous sovereignty continues to divide political parties,⁵³ manifesting most recently in debate over Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples.⁵⁴

More than any other Governor General, Deane has been described as providing the country a "universal conscience," and as transforming the role from that of "officer of the Crown" to "property of the people."⁵⁵ Since Deane, it is said, Australians have come to consider the Governor General as "their effective head of state."⁵⁶ With this transformation came heightened public attention and scrutiny paid to Governors General ever since, and even greater deliberation of the symbolic and practical function of the post. Ironically, it was during the period of Deane's high profile and mostly popular tenure that the Australian Republican Movement experienced its greatest advancements, culminating in the unsuccessful republican referendum of 1999.⁵⁷ Deane was widely recognised as a probable republican (whom Labor Prime Minister Paul Keating may have selected, optimistically, to oversee Australia's transition to a republic) but Deane made no statements backing the cause during his time in office. When

⁴⁸ *Mabo v Queensland (No 2)* [1992] HCA 23.

⁴⁹ William Deane, "Address to Corroboree 2000," 27 May 2000, <http://australianpolitics.com/2000/05/27/governor-general-sir-william-deane-address-to-corroboree-2000.html>.

⁵⁰ John Howard, *Lazarus Rising* (Sydney: Harper Collins, 2010), 232.

⁵¹ John Gorton, in Tony Stephens, *Sir William Deane: The Things That Matter* (Sydney: Hodder Press, 2002), 3.

⁵² In comparison, Deane's term on the High Court, and *Mabo* in particular, formed a primary focus of conservative criticism and the importation of American-style attacks on "judicial activism" as a key battle site of the "history wars" of the 1990s. See: Tanya Josev, *The Campaign Against the Courts: The History of the Judicial Activism Debate* (Sydney: Federation Press, 2017).

⁵³ Megan Davies, "Political Timetables Trump Workable Timetables: Indigenous Constitutional Recognition and the Temptation of Symbolism over Substance," in *Constitutional Recognition of First Peoples in Australia: Theories and Comparative Perspectives*, ed. Simon Young, Jeremy Patrick, Jennifer Nielsen, Simon Young, Jeremy Patrick, and Jennifer Nielsen (Sydney: Federation Press, 2016), 70; Simon Young and Sharon Mascher, "Rights-Based 'Recognition': The Canadian Experience," in *Constitutional Recognition of First Peoples in Australia: Theories and Comparative Perspectives*, ed. Simon Young, Jeremy Patrick, Jennifer Nielsen, Simon Young, Jeremy Patrick, and Jennifer Nielsen (Sydney: Federation Press, 2016), 176.

⁵⁴ Anna Henderson and Eliza Borrello, "Abbott Facing Internal Rebellion on Indigenous Recognition Push," *ABC News*, 20 August 2015, <http://www.abc.net.au/news/2015-08-20/abbott-facing-rebellion-on-indigenous-recognition/6711708>.

⁵⁵ Winterton, "Lessons from the Hollingworth Affair," 2.

⁵⁶ Winterton, "Lessons from the Hollingworth Affair," 2.

⁵⁷ However, Paul Kelly suggests the experience of Deane as Governor General intensified John Howard's commitment to defeating the republican movement. See: Paul Kelly, *The March of the Patriots* (Melbourne: Melbourne University Press, 2009), 518–519.

he did reflect on the political debate over the referendum, Deane tied this debate explicitly to the issue of *national unity*, in his formal role as Governor General. In 1996 Deane said:

Clearly it would be inappropriate for me, as Governor General, to express any view at all about whether Australia should or should not become a Republic in circumstances where there is deep division in the community on that subject. I do, however, presume to make a plea to you ... in relation to any discussion of it. It is that, in that discussion and in your future lives, you remember one thing ... that we Australians are truly one people, one nation. What injures one injures all of us. To belittle or discount the convictions, the loyalties, the ideals or the aims of some is to demean the whole. It is of the very essence of a great and compassionate democracy such as ours that, when the views and the aspirations of the majority, whatever they may prove to be, ultimately prevail, there is respect, tolerance and understanding of the views and aspirations of the minority. Otherwise, the unbearable cost of our development as a nation will be our own disunity.⁵⁸

Somewhat paradoxically, despite coinciding with heightened republican campaigns, Deane's term is described as having "shored up the vice-regal system and the monarchy" in its transformation of the role of Governor General to one that could be filled by neither "President nor monarch in contemporary life" as "the people's representative."⁵⁹ Since Deane, monarchists have described the role as imbued with "almost religious significance" for mirroring the "nation to itself" and giving "expression to its soul."⁶⁰

Few such grandiose statements were made about Quentin Bryce's tenure, despite her eloquent interventions in debates about Indigenous standing and sovereignty,⁶¹ and her continual representation of the interests of women in disadvantaged, violent, and abusive circumstances, among numerous other causes.⁶² As Governor General, Bryce was routinely described as graceful, although this was often accompanied by feminised connotations concerning her fashion sense and "style." As Prime Minister, Abbott stated that "no one has added more to the office than the current Governor General, who has lent enormous grace and style to our national life."⁶³ In a cringe-worthy display, the Australian press described her, while in office, as "a woman of substance and stilettos."⁶⁴ Respected political commentators scrutinised her weight and her eating and exercise habits (somewhat incredibly promoting her role-model status for the otherwise obese population), while complimenting her mutual "strength and frailty" and "brilliant blue eyes."⁶⁵ While Deane was all but canonised for

⁵⁸ Stephens, *Sir William Deane*, 5.

⁵⁹ "We Did But See Him Passing By," *Arena Magazine*, June-July 2003, 3.

⁶⁰ Andrew Hamilton, "Taking the High Road," *Eureka Street* 11, no. 5 (2001): 5.

⁶¹ For example: Quentin Bryce, "Launch address for A Worthwhile Exchange: A Guide to Indigenous Philanthropy - Rio Tinto Aboriginal Fund, Christensen Fund & Greenstone Group," 8 December 2010, <https://www.gg.gov.au/printpdf/speech/launch-address-worthwhile-exchange-guide-indigenous-philanthropy-rio-tinto-aboriginal-fund>.

⁶² For example: Quentin Bryce, "Launch of Plan Because I am A Girl 2009 Report," 20 October 2009, <https://www.gg.gov.au/printpdf/speech/launch-plan-because-i-am-girl-2009-report>.

⁶³ Markwell, "The Office of Governor General," 1099.

⁶⁴ Damien Murphy, Deborah Snow, and Tim Dick, "A Woman of Substance and Stilettos," *Sydney Morning Herald*, 19 April 2008, <https://www.smh.com.au/news/national/a-woman-of-substance-and-stilettos/2008/04/18/1208025479622.html>.

⁶⁵ Peter Hartcher, "You've Got to Deliver Goals and Targets," *Sydney Morning Herald*, 5 June 2010,

championing the inclusion of minority cultures in the nation's self-identity, Bryce sometimes veered close to being relegated to the fashion pages. For observers of Australian politics, this might come as little surprise, as Bryce's term coincided in part with the Prime Ministership of Julia Gillard, Australia's first woman to hold the top political role (2010-2013). International post-mortems of the sexism with which Gillard was received abound to this day.⁶⁶ Hence, we suggest that there is a profoundly gendered aspect to the ways in which the role of Governor General is interpreted and received in Australian civic life, and that this is particularly evident in the case of gender equality for sexual minorities. We now consider this in light of the unduly protracted Australian campaign for marriage equality.

Marriage Equality in Australia

Despite his symbolic reform agenda, the great progressive totem of marriage equality remained untenable for Labor Prime Minister Kevin Rudd. Once the Marriage Amendment Act 2004 was passed with bipartisan support to preclude same-sex marriages and the recognition of their international counterparts, the issue proved divisive for the ALP. In the lead up to his watershed 2007 election, as Opposition Leader Rudd assured the Australian Christian Lobby his government would oppose same-sex marriages and legal arrangements that "mimic marriage," suggesting an opposition even to gay civil partnerships, which was included in the ALP platform.⁶⁷ Rudd's commitments to LGBTI communities were instead met via less symbolic, more pragmatic means. The Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008 was a standardising measure removing multiple sources of discrimination against same-sex couples and gay individuals in areas governed by the Commonwealth, such as access to children, superannuation, tax, health, aged care, and workers' compensation. In effect, the Act redefined the terms "couple," "partner," "child," and "family" to include all adult couples and their children.⁶⁸ The ALP's commitment to LGBTI equality was rounded out by the Gillard government's recognition of unlawful discrimination on the basis of gender identity, intersex status, and sexual orientation in the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013.

While generally welcomed by LGBTI communities, the passage of the 2008 Act sparked a period of extended intense debate over the desirability of same-sex marriage, as campaigns on both sides became energised and targeted parliaments. This was an uncomfortable and divisive decade for LGBTI communities from which the country only emerged with the passage of the Marriage Amendment (Definition and Religious Freedoms) Act 2017. The argument for equal treatment in marriage, rather than the compromise of civil partnerships, concerns the equality of dignity that is realised in the primary function of the

<https://www.smh.com.au/national/youve-got-to-deliver-goals-and-targets-20100604-xklw.html>.

⁶⁶ For example: Linda Trimble, "Julia Gillard and the Gender Wars," *Politics and Gender* 12, no. 2 (2016): 296. For an Australian analysis, see: Carol Johnson, "Playing the Gender Card: The Uses and Abuses of Gender in Australian Politics," *Politics and Gender* 11, no. 2 (2015): 291.

⁶⁷ Carol Johnson, Sarah Madison, and Emma Partridge, "Australia: Parties, Federalism and Rights Agendas," in *The Lesbian and Gay Movement and the State: Comparative Insights into a Transformed Relationship*, ed. David Paternotte, Carol Johnson, and Manon Tremblay (London: Routledge 2011), 36.

⁶⁸ Johnson, Madison, and Partridge, "Australia: Parties, Federalism and Rights Agendas," 36.

“expressive aspect” of marriage.⁶⁹ Because dignity is a concept connected discursively and rhetorically to notions of personhood and civil standing, and marriage has served for centuries to confer “some kind of dignity or public approval on the parties and their union,”⁷⁰ any public deliberation over same-sex marriage was always going to be experienced as a proxy debate over the dignity and standing of gay individuals and their families.

A great deal of this deliberation took place in the Australian Parliament. The period between 2008 and 2013 saw no less than eight failed marriage equality bills put to both houses by minor parties the Australian Greens and the Australian Democrats, and ALP backbenchers.⁷¹ A change in the ALP platform allowed the Labor government of the Australian Capital Territory (ACT) to pass the Marriage Equality (Same Sex) Act 2013.⁷² This was a bold attempt to legislate for marriage equality within the ACT that was ultimately struck down in a High Court challenge pursued by the Commonwealth.⁷³ It is undeniable that the period of successive Labor administrations from 2007 to 2013 produced net wins for LGBTI communities. However, throughout this period overseen by the first female Governor General with clear sympathies and support for LGBTI constituents, the equality measure of dignity in marriage remained out of reach. Support from the other side was even less forthcoming. Liberal leader Tony Abbott went to the 2013 federal election with a platform opposing same-sex marriage, including uncharacteristically denying his members a conscience (free) vote on the issue. This was at a time when even the UK Conservative Party had converted to the cause,⁷⁴ and the New Zealand government had recently legislated for marriage equality.⁷⁵

Quentin Bryce and Marriage Equality

Quentin Bryce’s support for marriage equality was only made public towards the end of her term in November 2013 when she delivered the Boyer Lectures—a series of annual lectures hosted by the Australian Broadcasting Corporation since 1959, and long recognised as agenda-setting, aspirational nation-shaping discourse. In the lectures, Bryce discussed her feminist awakening on the realisation that “the personal is political” in the 1970s, and its influence on her career.⁷⁶ She reflected on the status of women worldwide, Indigenous disadvantage, and the character of Australian citizenship in an articulate narrative explicitly

⁶⁹ Martha Nussbaum, “A Right to Marry?,” *California Law Review* 98, no. 3 (2010): 671.

⁷⁰ Nussbaum, “A Right to Marry,” 671.

⁷¹ Marriage (Relationships Equality) Amendment Bill 2008—Kerry Nettle (Greens, Senate); Same-Sex Marriage Bill 2008—Andrew Bartlett (Australian Democrats, Senate); Marriage Equality Amendment Bill 2010—Sarah Hanson-Young (Greens, Senate); Marriage Amendment Bill 2012—Stephen Jones (ALP, House of Representatives); Marriage Equality Amendment Bill 2012—Adam Bandt (Greens, House of Representatives); Marriage Amendment Bill (No. 2) 2012—Carol Brown (ALP, Senate) Trish Crossin (ALP, Senate), Gavin Marshall (ALP, Senate) and Louise Pratt (ALP, Senate); Marriage Equality Amendment Bill 2013—Sarah Hanson-Young (Greens, Senate); Marriage Act Amendment (Recognition of Foreign Marriages for Same-Sex Couples) Bill 2013—Sarah Hanson-Young (Greens, Senate).

⁷² Johnson, Madison, and Partridge, “Australia: Parties, Federalism and Rights Agendas,” 36.

⁷³ *Commonwealth v Australian Capital Territory* [2013] HCA 55.

⁷⁴ The Conservatives introduced the Marriage (Same Sex Couples) Act 2013 to extend marriage equality in England and Wales.

⁷⁵ Marriage (Definition of Marriage) Amendment Act 2013 (NZ).

⁷⁶ Bryce, *Boyer Lectures*, 18.

supporting the unity of the Australian nation. The section of her third speech “Australians at Their Best” is, for example, one of the most lucid evaluations of a distinct Australian sense of neighbourly cooperation.⁷⁷ It was only her closing remarks of the final lecture on “Looking to the Future of Australian Citizenship” that attracted great attention and opprobrium. Just as the Australian High Court was deciding the challenge to the ACT marriage equality law, Bryce said: “In advancing a fairer Australia I ask you to imagine a nation ... Where people are free to love and marry whom they choose. And where, perhaps, my friends, one day, one young boy or girl may grow up to be our nation’s first head of state.”⁷⁸ The following day the front-page of the *Sydney Morning Herald* announced “Queen’s Rep backs republic and gay marriage.”⁷⁹ The tabloid *Daily Telegraph* called her comments an “outburst.”⁸⁰

Most media criticism of Bryce concerned her apparent support for a republic, but marriage equality was also of concern, even for some commentators who supported reform. Although Prime Minister Abbott defended Bryce,⁸¹ some conservatives described her as provoking “deep personal controversy by aligning herself, and more worryingly, the Office, with the political Left.”⁸² Australians for a Constitutional Monarchy accused Bryce of damaging the institution of the Governor General by “breaching protocol and convention” and becoming a “divisive figure” as a result.⁸³ Less predictable was the chastening editorial of the left-leaning political magazine *Crikey*:

As Governor General she does not have the right to express such views. As Governor General Quentin Bryce must be a national figure, one who brings together rather than divides us. ... The Governor General is an appointed figure, not an elected one. Their views on significant issues, whether the republic, same-sex marriage or anything else, should be irrelevant to the performance of their duties.

In expressing such views, Bryce has taken sides on a political issue in a manner inappropriate for her role. They are divisive and add nothing to the debates. Australians who disagree with her are entitled to wonder why the representative of our head of state is using her position to advance them—in the same way that progressives would be offended if a conservative Governor General expressed views with which they disagreed.⁸⁴

Constitutional lawyers clarified that Bryce’s role did not preclude her public comments and that “there is no fixed rules in any event for what the governor-general can’t say. It’s a judgment call.”⁸⁵ For her part, Bryce did not comment on the media response, and proceeded

⁷⁷ Bryce, *Boyer Lectures*, 45–65.

⁷⁸ Bryce, *Boyer Lectures*, 86–87.

⁷⁹ Tony Wright, “Queen’s Rep Backs Republic and Gay Marriage,” *Sydney Morning Herald*, 23 November 2013 <https://www.smh.com.au/politics/federal/queens-rep-backs-republic-and-gay-marriage-20131122-2y1x0.html>.

⁸⁰ “PM backs Bryce’s Outburst,” *Daily Telegraph*, 24 November 2013, 10.

⁸¹ “PM backs Bryce’s Outburst,” 10.

⁸² Dean Janesch, “Governor General Misconstrues her Role,” *The Advertiser*, 4 December 2013, 22.

⁸³ Peter Begg, “Comments ‘a Slap in the Face’: Bryce Faces Political Fire,” *Geelong Advertiser*, 25 November 2013, 3.

⁸⁴ “*Crikey* Says GG Must Leave Politics at the Door,” *Crikey*, 25 November 2013.

<https://www.crikey.com.au/2013/11/25/crikey-says-g-g-must-leave-politics-at-the-door/>.

⁸⁵ Jamie Walker, “A Role Fit for a Queen,” *The Australian*, 25 November 2013, 9.

to launch *Beyond Blue's* mental health manual for families of young LGBTI+ people within days of the public furore.⁸⁶

Bryce's speech was clearly interpreted by some as a partisan and inappropriate intervention in the polarised Australian debate over marriage equality.⁸⁷ The fact that the comments were delivered alongside commentary seeming to support a republic only fuelled her critics. However, we suggest that at play was a more fundamental concern than simple partisanship, and that this involves the place of minorities in discourses of national unity. Bryce's views were construed as a proxy for the championing of political claims for the minority groups of LGBTI citizens.⁸⁸ According to *Crikey*, Bryce *should not* have spoken out because she should act as "a national figure, one who brings together rather than divides us" and because "the Governor General is an appointed figure, not an elected one."⁸⁹ Such an argument suggests it is only elected figures who have a right or duty to make politicised statements about minority issues, even though they too are tasked with representing a nation as a whole. We consider this example briefly in the case of Ireland below, but we suggest such an analysis misinterprets both Bryce's intention in her speech, and the modern role that the Governor General has, or should have, in the Australian constitutional system.⁹⁰ This relates to the "community activities" portfolio of the office identified above, which has long been understood as connected to the promotion of national unity.⁹¹

The dilemma is whether the unelected Governor General's commitment to fostering the unity of the Australian nation is compatible with the prerogative to speak in favour of minority groups—in this case, in service to gender equality. The convention concerning the Governor General's commitment to national unity has positive and negative implications.⁹² The positive is that the office will act in a way that reduces cultural and social divisions within Australian society.⁹³ The negative constitutes a duty of *not intervening* in political debates in a manner deemed inappropriate or partisan.⁹⁴ In considering the example of Bryce, we are faced

⁸⁶ "Governor General Quentin Bryce has Voiced her Support," *Daily Advertiser*, 27 November 2013, 13.

⁸⁷ "Governor-General Backs Gay Marriage, Australia Becoming Republic in Boyer Lecture," *ABC News*, 22 November 2013, <http://www.abc.net.au/news/2013-11-22/governor-general-quentin-bryce-backs-gay-marriage-republicanism/5112020>; "Bryce's Remarks More than Appropriate: PM," *The Sydney Morning Herald*, 22 November 2013, <https://www.smh.com.au/politics/federal/bryces-remarks-more-than-appropriate-pm-20131122-2y1kx.html>; Amanda Hooton, "Same-Sex Marriage's Unlikely Hero: Liberal Dean Smith, the 'Invisible Man,'" *The Sydney Morning Herald*, 14 December 2017, <https://www.smh.com.au/lifestyle/samesex-marriages-unlikely-hero-liberal-dean-smith-the-invisible-man-20171205-gzyuvd.html>.

⁸⁸ Markwell, "The Office of Governor General." For a general comparative review on this debate, see: Man Yee Karen Lee, *Equality, Dignity, and Same-Sex Marriage: A Rights Disagreement in Democratic Societies* (Leiden: Brill, 2014), 16–36.

⁸⁹ "Crikey Says GG Must Leave Politics at the Door."

⁹⁰ Markwell, "The Office of Governor General," 1101.

⁹¹ Blackshield et al., *Blackshield and Williams Australian Constitutional Law and Theory*, 357; Meagher et al., *Hanks Australian Constitutional Law*, 746.

⁹² Anne Twomey, *The Australia Acts 1986* (Sydney: Federation Press, 2010), 44.

⁹³ Hazell, "The Role of the Governor-General," 69–70.

⁹⁴ In relation to the negative implication of the commitment towards fostering a national identity, there is an overlap between the Governor General's commitment to projecting the image of an unbiased institution and the principle of responsible government, but here our focus is on the apolitical figure of the Governor General that is a proxy for national unity. Twomey, *The Australia Acts 1986*, 4; Meagher et al., *Hanks Australian Constitutional Law*, 746; Markwell, "The Office of Governor General," 1102.

with an inexplicable conundrum in that the most significant refining of the role of the Governor General over the past two decades has taken place not in the context of the republic debates, but in regard to the question of the place of minority cultures in national unity discourses. This has been especially the case in the example of Indigenous communities championed by past Governors General, including Bryce, as discussed above. It is apparent that this refined role of the office has not yet been extended to sexual minorities and their campaigns for dignity in gender equality. Indeed, we argue that how the function of the Governor General is interpreted in Australia would appear to have a significantly gendered character, and this has had discriminatory outcomes for sexual minorities and national unity discourses that would otherwise benefit from the gravitas and standing of the office.

Gender and the Institution of the Governor General: The “Father of the Nation”

The notion that a public institution might be gendered, regardless of who populates or performs it, is the essence of feminist intuitionist theory, a subset of neo-institutionalism, which studies the ways that institutions order political life. The idea that institutions are gendered suggests that although political institutions present as neutral, constructions of masculinity and femininity are intertwined in their daily culture and logic, rather than existing “out in society or fixed within individuals which they then bring whole to the institution.”⁹⁵ In particular, “the masculine ideal underpins institutional structures, practices, discourses and norms.”⁹⁶ In ordering political behaviour, institutions “distribute power” along gendered lines thereby “differentially constraining and enabling actors in ways that “stick” over time.”⁹⁷ An example of this theory in practice is the Dr Peter Hollingworth affair. Appointed as Governor General in June 2001 on the sole recommendation of Prime Minister Howard as a form of “anti-Deane” who would “restore traditional authority” to the role,⁹⁸ the former Anglican Archbishop of Brisbane’s tenure was always controversial.⁹⁹ Howard was immediately criticised for blurring church and state in the “bizarre”¹⁰⁰ choice of a senior cleric of a religion representing around 13 percent of the population.¹⁰¹ Far greater controversy arose in December 2001 on the resolution of a lawsuit brought against the Anglican Diocese of Brisbane by a woman who had been sexually abused as a student at Toowoomba Preparatory School in 1990.¹⁰² Punitive damages were awarded against the Diocese for failing its duty of

⁹⁵ Mona Krook and Fiona Mackay, “Introduction: Gender, Politics and Institutions,” in *Gender, Politics and Institutions: Towards A Feminist Institutionalism*, ed. Mona Crook and Fiona Mackay (New York: Palgrave Macmillan, 2010), 6.

⁹⁶ Krook and Mackay, “Introduction,” 6.

⁹⁷ Vivien Lowndes, “How Are Things Done Around Here? Uncovering Institutional Rules and Their Gendered Effects,” *Politics and Gender* 10, no. 4 (2014): 685.

⁹⁸ “We Did But See Him Passing By,” 2.

⁹⁹ Winterton, “Lessons from the Hollingworth Affair,” 2.

¹⁰⁰ Kelly, *The March of the Patriots*, 518.

¹⁰¹ Winterton, “Lessons from the Hollingworth Affair,” 1; Australian Bureau of Statistics, “2016 Census: Religion,”

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/mediareleasesbyReleaseDate/7E65A144540551D7CA258148000E2B85?OpenDocument>.

¹⁰² *S v The Corporation of the Synod of the Diocese of Brisbane* [2001] QSC 473 (7 December 2001).

care, with Hollingworth “deeply implicated” in his role as Archbishop.¹⁰³

Hollingworth’s explanation for having refused to meet with alleged victims from the school when he was Archbishop—because of the “advice of Church lawyers”¹⁰⁴—was met with instant calls for his resignation as Governor General.¹⁰⁵ Even more damning was the finding of a 2002 internal Anglican inquiry that Hollingworth had allowed a suspected sex-offending cleric with credible allegations against him to continue his ministry in the community in the 1990s.¹⁰⁶ Hollingworth managed to remain as Governor General until he stood down in 2003 after the revelation that he was the subject of a lawsuit in the Supreme Court of Victoria that claimed he had sexually assaulted a woman when she was a teenager at an Anglican youth camp in the 1960s.¹⁰⁷ The suit was withdrawn after the plaintiff suicided.¹⁰⁸ Hollingworth returned to his role, only to finally resign in response to a sustained campaign including an unprecedented Senate motion put by the ALP that called for him to be sacked, and for the government to establish a Royal Commission into child sexual abuse.¹⁰⁹

Feminist theorists such as Barbara Baird interpret Hollingworth’s failure as Governor General as a failure to perform the patriarchal, indeed fatherly, quasi-clerical function of the institution.¹¹⁰ As “the people’s representative,” tasked with giving expression to the nation’s “soul,”¹¹¹ Hollingworth’s position was clearly untenable once the child abuse scandals (and rape allegations) broke. Baird explains this as a *gendered failure* of both the man and the post, which is symbolically understood as that of the nation’s “public father” in the sense that all nation-states are configured in terms of “domestic genealogies.”¹¹² The replacement of Hollingworth with the ultimate masculine identity of the “military man” in Major General Michael Jeffrey (2003-2008) as a stabilising influence on the office would appear to support this analysis.

¹⁰³ Barbara Baird, “The Resignation of the Governor-General: Family Drama and National Reproduction,” *Cultural Studies Review* 15, no.1 (2009): 69.

¹⁰⁴ Greg Rooney and Margaret Ross, “Mediating Between Victims of Sexual Abuse and Religious Institutions,” *Australasian Dispute Resolution Journal* 18, no. 1 (2007): 17.

¹⁰⁵ Demands for Hollingworth’s resignation intensified after his notorious February 2002 interview on the ABC TV show *Australian Story*, when he described a relationship between a 14-year-old girl and an Anglican cleric who went on to become bishop. He said, “this was not sex abuse, there was no suggestion of rape or anything like that. Quite the contrary, my information is that it was rather the other way around.” Baird, “The Resignation of the Governor-General,” 69.

¹⁰⁶ Baird, “The Resignation of the Governor-General,” 69.

¹⁰⁷ Peter Gregory and Andrew Stevenson, “Death of Accuser Seals Fate of Rape Case Against G-G,” *Sydney Morning Herald*, 24 May 2003, <https://www.smh.com.au/articles/2003/05/23/1053585700843.html>.

¹⁰⁸ Gregory and Stevenson, “Death of Accuser,” *Sydney Morning Herald*, 24 May 2003, <https://www.smh.com.au/articles/2003/05/23/1053585700843.html>.

¹⁰⁹ Philip Hudson and Greg Roberts, “Senate Motion to Sack GG,” *The Age*, 13 May 2003, <https://www.theage.com.au/articles/2003/05/12/1052591734572.html>. In 2017, the Australian Royal Commission into Institutional Responses to Child Sexual Abuse, which the ALP finally established in 2013, found that Archbishop Hollingworth had made a “serious error judgment” when allowing the offending cleric to remain in his ministry in the 1990s. Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No. 36: The Response of the Church of England Boys’ Society and the Anglican Dioceses of Tasmania, Adelaide, Brisbane and Sydney to Allegations of Child Sexual Abuse*, 23 (<https://www.childabuseroyalcommission.gov.au/case-studies/case-study-36-church-england-boys-society>).

¹¹⁰ Andrew Hamilton, “Taking the High Road,” *Eureka Street* 11, no. 5 (2001): 5.

¹¹¹ Hamilton, “Taking the High Road,” 5.

¹¹² Cited in Baird, “The Resignation of the Governor-General,” 74.

Feminist institutionalism highlights the ways in which public institutions might be gendered, and yet how that gender can hide in plain sight. For example, a great deal of ostensibly “gender-neutral” law and policy has been exposed over the years to privilege and represent men, and to obscure or deny the representation of women.¹¹³ Political institutions, such as offices of the Crown, might similarly be gendered in the functions they perform and the discursive identities they represent. The case of Hollingworth is relatively straightforward in that his identity prior to that of “father of the nation” was as a patriarch of religion; his irredeemable transgression concerned children. But there are also more subtle ways in which political life is organised. Gender means more than men and women, and is the primary regime by which sex and sexuality are ordered. The fact that Hollingworth was appointed during the period when a lawsuit was brewing concerning allegations of negligence for child sexual abuse suggests a profound gender-blindness and inability to perceive the strength of minority interests on the part of Prime Minister Howard, who failed to foresee the constitutional catastrophe that was about to unfold due to a failure of gender justice. Hollingworth’s persistence and endurance in the office suggests an equal lack of sensitivity to these issues of gender and power. A “gender-blind” approach was experienced as deeply unjust by survivors of sexual abuse.

Since the observations of R.W. Connell, that institutions constitute “gender regimes,” feminist political scientists have worked to identify the sometimes obscured, gendered nature of institutions that promote facades of neutrality or “gender-blindness,” and how or if they might be reformed to represent egalitarian and/or multiple identities and interests, rather than simply the masculine (supposedly neutral) norm.¹¹⁴ Key to their analyses is the neo-institutionalist characterisation of institutions as rules and norms that order public life. Rules are valued by governments because they increase “action capabilities and efficiency”¹¹⁵—the ability to solve policy problems and produce services. Rules are followed because they are seen as “natural, rightful, expected and legitimate.”¹¹⁶ Hence, in the form of institutions, rules make for an efficient ordering of the body politic. When these rules are gendered, but presented as neutral, they shape both politics and the populace in accordance with gender hierarchies.

A primary contribution of feminist institutionalism is the emphasis placed on informal rules (institutions) that may be just as powerful and pervasive as formal rules, and yet even more difficult to unseat, due to their slippery character.¹¹⁷ While formal institutions are defined as rules and procedures that are created, communicated, and self-enforced through channels widely accepted as official, including domestic laws like the constitution,¹¹⁸ informal

¹¹³ For example, see: Regina Graycar and Jenny Morgan, *The Hidden Gender of Law* (Sydney: Federation Press, 2002); Louise Chappell, *Gendering Government: Feminist Engagement with the State in Australia and Canada* (Vancouver: University of British Columbia Press, 2003); Krook and Mackay, eds, *Gender, Politics and Institutions*.

¹¹⁴ R.W. Connell, “The State, Gender, and Sexual Politics,” *Theory and Society* 19, no. 5 (1990): 507.

¹¹⁵ James G. March and Johan P. Olsen, “The Logic of Appropriateness,” *ARENA Working Paper 4* (Centre for European Studies, 2004), 10, https://www.sv.uio.no/arena/english/research/publications/arena-publications/workingpapers/working-papers2004/wp04_9.pdf.

¹¹⁶ March and Olsen, “The Logic of Appropriateness,” 3.

¹¹⁷ Gretchen Helmke and Steven Levitsky, “Informal Institutional and Comparative Politics: A Research Agenda,” *Perspective on Politics* 2, no. 4 (2004): 725. See also: Georgina Waylen, *Gender and Informal Institutions* (Lanham, MD: Rowman and Littlefield, 2017).

¹¹⁸ Helmke and Levitsky, “Informal Institutional and Comparative Politics,” 727.

institutions are defined as “socially shared rules, usually unwritten, that are created, communicated and enforced outside of officially sanctioned channels.”¹¹⁹ These may include customary laws, social norms, and cultural practices. In particular, the concept of “rules in use” (as opposed to “rules in form”) helps capture the nature of an institution like the Governor General, which is governed by, and gives legitimacy to, a mix of formal conventions such as the constitution, and informal conventions such as the assumptions associated with the community activities of the position.¹²⁰

In this article we have focused on a public debate about the proper role of the Governor General and the perceived tension between the informal rule creating a positive obligation for the office to be used to foster national unity, and the equally informal rule creating a negative obligation that it not be used to promote partisan narratives. That interventions in debates over Indigenous disadvantage and sovereignty were, for example, subject to significantly less public opprobrium than those in support of marriage equality would suggest that the informal rules governing the Governor General are particularly biased against gender equality, although presented as neutral. The informal and slippery nature of these rules as they are interpreted as “rules in use” makes them no less powerful than formal rules, the biases of which may, in fact, prove easier to identify. Such observations about the gendered nature of institutions help steer political analyses to questions of structure, as opposed to agency. The standing and formidable character of Quentin Bryce, and her credentials in furthering gender equality as sex discrimination commissioner could hardly be surpassed. The limitations of her role as the Queen’s representative suggest that what is at stake in this debate is the very institution itself, rather than the individual who populates or performs it.

The Elected Representative: The Example of the Irish Republic, and Presidents Mary

As one last contrast, the question remains as to how the institution of the Australian Governor General might compare with international institutions with similar popularly understood mandates of “representing the nation,” and what role any such institutions may play in advancing the rights of minorities or fundamental social change such as gender equality. Here we briefly consider the example of the President of the Republic of Ireland (“the President”). To recall, a fundamental basis for the criticism of Bryce speaking out in favour of marriage equality was that hers was an appointed, not elected, role.¹²¹ Hence, we look to the example of a functionally equivalent elected role and its socially transformative powers.

The President was established in the 1937 Irish constitution as a replacement for the British monarch, who had been the head of state in the independence constitution of 1922.¹²² As a non-executive post, the President was imagined by founding patriarch Eamon de Valera

¹¹⁹ Helmke and Levitsky, “Informal Institutional and Comparative Politics,” 727.

¹²⁰ Vivien Lowndes, Lawrence Pratchet, and Gerry Stoker, “Local Political Participation: The Impact of Rules in Use,” *Public Administration Today* 84, no. 3 (2006): 539.

¹²¹ “*Crikey* Says GG Must Leave Politics at the Door.”

¹²² It is arguable that it was not until the commencement of the Republic of Ireland Act 1948 in April 1949 that the President assumed the role of head of state: David Gwynn Morgan, “Mary Robinson’s Presidency: Relations with the Government,” *Irish Jurist* 34 (1999): 256, 260.

to be the “Guardian of the Constitution,”¹²³ whose powers and functions would be exercised “only on the advice of the Government.”¹²⁴ The role was designed as a function of nationalism: the most authoritative symbol by which “the State” is “made manifest.”¹²⁵ Irish constitutional scholars describe the President as “a way of personifying the State—a way by which Irish people could say to themselves and others: ‘this is who we are.’”¹²⁶ In a clear contrast to the Governor General, any soft power possessed by the President may be conferred by the electoral process. If there are multiple candidates for the post, the President is directly elected by the people of Ireland.¹²⁷

Although the President does not represent the executive,¹²⁸ the role does share many institutional duties with the Governor General,¹²⁹ including carrying out constitutional powers, institutional activities, and community activities, most of which require the advice of other institutions, or government authorisation.¹³⁰ In terms of the formal institution, it is undeniable that the Governor General possesses greater powers than the President. The President cannot dismiss the Taoiseach (Prime Minister) and is not tasked with solving constitutional crises.¹³¹ There are no implied presidential powers equivalent to the ones subsumed by the Governor General.¹³² The formal role of the President is fundamentally passive,¹³³ and there is a disproportionate power between it and the institution of the parliament.¹³⁴ There is a general assumption that the President can speak freely but “should not embarrass the government.”¹³⁵ The President has a relatively free role displaying to the world who the Irish people are, as the primary function of the political institution,¹³⁶ including through giving a voice to political minorities as part of promoting a united yet diverse national identity.¹³⁷ We now consider this example explicitly in the cases of Mary Robinson and Mary McAleese.

Together, the terms of “the Marys”—Mary Robinson (1990-1997) and Mary McAleese (1997-2011)—are often described as energising the institution of the Presidency in a manner compatible with, if not contributing to, the transformation of the Republic into a dynamic modern state with the booming international economy associated with the Celtic Tiger

¹²³ Morgan, “Mary Robinson’s Presidency,” 256.

¹²⁴ Constitution of Ireland Art 13.9.

¹²⁵ Morgan, “Mary Robinson’s Presidency,” 257.

¹²⁶ Morgan, “Mary Robinson’s Presidency,” 257.

¹²⁷ Constitution of Ireland Art 12.1; Michael Forde and David Leonard, *Constitutional Law of Ireland* (London: Bloomsbury, 2013), 81; Harris, “The Irish President,” 611.

¹²⁸ Constitution of Ireland Art 13.9; Bruce Harris, “The Irish President, the New Zealand Governor-General and the Head of State in a Future New Zealand Republic,” *New Zealand Law Review* 4 (2009): 611, 615; James P. Casey, *Constitutional Law in Ireland* (Dublin: Round Hall Sweet & Maxwell, 2000), 78.

¹²⁹ Casey, *Constitutional Law in Ireland*, 80–81.

¹³⁰ Morgan, “Mary Robinson’s Presidency,” 261. For a succinct description of the presidential powers, see: Fergus W. Ryan, *Constitutional Law* (Dublin: Round Hall Sweet & Maxwell 2002), 71.

¹³¹ Harris, “The Irish President,” 615; Casey, *Constitutional Law in Ireland*, 80–90. Constitution of Ireland Article 13, s 2(1): “Dáil Éireann shall be summoned and dissolved by the President on the advice of the Taoiseach.”

¹³² Casey, *Constitutional Law in Ireland*, 95.

¹³³ Harris, “The Irish President,” 611, 651.

¹³⁴ Harris, “The Irish President,” 651.

¹³⁵ Harris, “The Irish President,” 627; Morgan, “Mary Robinson’s Presidency,” 259.

¹³⁶ Morgan, “Mary Robinson’s Presidency,” 270–271.

¹³⁷ Yvonne Galligan, “Transforming the Irish Presidency: Activist Presidents and Gender Politics, 1990-2011,” *Irish Political Studies* 27, no. 4 (2012): 596.

moniker.¹³⁸ Even more significant is the negotiation and implementation of the Good Friday Agreement within this period, which brought enduring peace to Northern Ireland for the first time in a generation and finally re-negotiated the constitutional and diplomatic arrangements between the North and the South after they were severed in 1922.¹³⁹

On her surprise election in 1990 as the Independent but preferred Labour candidate, and the first woman President of Ireland, Robinson was explicit that her role was to revolutionise the institution to represent and serve the people, and women in particular, as a form of “working presidency.”¹⁴⁰ After campaigning with the slogans “a President with a purpose”¹⁴¹ who would provide “a voice for the voiceless,”¹⁴² Robinson’s acceptance speech included recognition of the women’s vote that had sealed her victory:

I want to be a President for all the people. Because I was elected by men and women of all parties and none, by many with great moral courage who stepped out from the faded flag of the civil war and voted for a new Ireland, and above all by the women of Ireland, *mná na hÉireann*, who instead of rocking the cradle rocked the system, and who came out massively to make their mark on the ballot paper and on a new Ireland.¹⁴³

Robinson was clear that she performed her civic duties “as a woman” which allowed her to cultivate “a more nurturing role” as President.¹⁴⁴ Robinson’s term was directly associated with progressive reforms such as the decriminalisation of men’s homosexual sex via a criminal law amendment, the legalisation of divorce via a constitutional amendment,¹⁴⁵ and the limited right to abortion recognised in a landmark Supreme Court case and two constitutional amendments.¹⁴⁶ Long before her term as President, Robinson had championed gay rights and women’s rights (and the rights of other minorities such as the Mincéirí (Irish Travellers)) whilst at university and as a human rights barrister.¹⁴⁷ After two decades of campaigning for the decriminalisation of homosexual sex, including appearing before the European Court of Human Rights, as President, Robinson signed the decriminalising measure, the Criminal Law (Sexual Offences) Act into law in 1993. She regularly delivered lectures on gender violence.¹⁴⁸ Robinson’s Presidency was also diplomatically significant. She was the first Irish head of state

¹³⁸ McAleese’s term also coincided with the recession of 2008.

¹³⁹ The UK Government and The Government of Ireland, “The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland 1998. Cm 3883 (the Belfast Agreement)”; T. Hadden and K. Boyle, “Northern Ireland: Conflict and Conflict Resolution,” in *Ethnic Conflict and Human Rights*, ed. K. Rupesinghe (Tokyo: United Nations University Press, 1998), 53; Garth Stevenson, *Parallel Paths: The Development of Nationalism in Ireland and Quebec* (Montreal: McGill-Queen’s University Press, 2006).

¹⁴⁰ Mary Robinson, *Everybody Matters: A Memoir* (London: Hodder & Stoughton, 2012), 125.

¹⁴¹ Robinson, *Everybody Matters*, 135.

¹⁴² Galligan, “Transforming the Irish Presidency,” 602.

¹⁴³ Mary Robinson, “Acceptance Speech,” 9 November 1990, <http://www.president.ie/en/media-library/speeches/president-robinsons-acceptance-speech>.

¹⁴⁴ Robinson, *Everybody Matters*, 182–183.

¹⁴⁵ The Fifteenth Amendment of the Constitution of Ireland 1996.

¹⁴⁶ *Attorney General v X* [1992] IESC I. The Thirteenth Amendment of the Constitution of Ireland 1992; The Fourteenth Amendment of the Constitution of Ireland 1992.

¹⁴⁷ For example, see: *Norris v Attorney General* [1983] IESC 3; *Norris v Ireland* (application no. 10581/83); *Airey v Ireland* (application no. 6289/73).

¹⁴⁸ Galligan, “Transforming the Irish Presidency,” 601.

to meet with the Queen of the United Kingdom of Great Britain and Northern Ireland, and she visited both Protestant and Catholic communities in Belfast in the early 1990s, including shaking hands with Sinn Fein leader Gerry Adams, much to the disapproval of the Irish government.¹⁴⁹

Less explicitly associated with gender equality reforms, the Presidency of Fianna Fáil candidate Mary McAleese, as the first woman in the world to succeed a woman President in 1997, is nonetheless remarkable for its continued transformation of the office in ways that have been attributed to her gender. McAleese's term was seen by some as perhaps even more significant than Robinson's.¹⁵⁰ Like Robinson, McAleese sought to maximise the President's representative role.¹⁵¹ She was committed to reducing gender discrimination and promoting minority groups.¹⁵² She too had been a founding member of the Campaign for Homosexual Law Reform, and championed divorce, but in a clear contrast to the humanist agenda of Robinson, McAleese did not support abortion and maintains ties to the Catholic Church.¹⁵³ As the first and only President born in Northern Ireland, McAleese's Presidency is associated most with the peace process culminating in the Good Friday Agreement, her role in which she described by emphasising the feminised qualities of empathy and care. She defined the task of the President as "building bridges." Less militant than Robinson's, McAleese's inaugural speech was characterised by the "poetic language of caring,"¹⁵⁴ offering support for Ireland's modern transition to embracing "the flowering diversity" of the population including minority religions such as Protestantism. She explained her relationship to the populace in terms of a desire to "nurture and celebrate commitment to community" and encourage "self-belief among the most marginalised."¹⁵⁵ And she described the signing of Good Friday as "offering a new beginning ... an opportunity to build bridges and partnerships based on mutual respect for all traditions, cultures and creeds on this island."¹⁵⁶ On the invitation of McAleese, Queen Elizabeth II visited Ireland for the first time.

Yvonne Galligan describes the lasting impact of the Marys as reconstructing "the nature of the Presidency from being a sinecure for elder statesmen to being a political institution that evoked public pride in its representative function."¹⁵⁷ Not all of this renovation went without comment. Robinson was sometimes criticised for aggrandising her personal role in the state and, occasionally, for passing comment on unresolved social issues. In response to the 1995 divorce referendum, for example, Robinson's public comments in effect supporting reform were interpreted by some as a political misstep.¹⁵⁸ Regardless, the institutionally

¹⁴⁹ Morgan, "Mary Robinson's Presidency," 264.

¹⁵⁰ Galligan, "Transforming the Irish Presidency," 604.

¹⁵¹ Galligan, "Transforming the Irish Presidency," 602.

¹⁵² Mary McAleese, "Seeking the Best for Women Around the World," *Presidents and Prime Ministers* 12, no. 3 (2003): 7.

¹⁵³ Regardless, McAleese is extremely critical of the Church, especially its treatment of women: "Catholic Church an 'Empire of Misogyny': McAleese," *BBC News*, 8 March 2018, <http://www.bbc.com/news/world-europe-43330026>.

¹⁵⁴ Galligan "Transforming the Irish Presidency," 607.

¹⁵⁵ Galligan "Transforming the Irish Presidency," 607.

¹⁵⁶ Mary McAleese, *Good Friday Statement*, 10 April 1998, <http://www.president.ie/en/media-library/news-releases/good-friday-agreement>.

¹⁵⁷ Galligan "Transforming the Irish Presidency," 597.

¹⁵⁸ Morgan, "Mary Robinson's Presidency," 264.

transformative powers of the combined tenure of both women cannot be denied, and this was generally a welcomed development. On the completion of Robinson's term, she was polling at 92 percent popularity.¹⁵⁹ The combined capacity of both women to use the Presidency to represent minority interests in the name of national unity and, ultimately, peace, has transformed the institution itself. That the great majority of these activities were undertaken with minimal interference from the government, would suggest substantial political support. Michael Higgins, the President to follow McAleese (2011-present) has continued in the tradition of representing minority interests on the international stage, emphasising, in his case, the role of public intellectualism in national discourses.¹⁶⁰ Higgins's term so far would suggest that the transformation of the institution transcends the individual personalities of Robinson and McAleese.

Along with changing the institution, in the example of Ireland it would appear the President was able to bring the country with her. Although McAleese's term oversaw the introduction of gay civil partnerships in 2010,¹⁶¹ neither hers nor Robinson's time coincided with the historic marriage equality referendum of 2015. But each woman had paved the way for the outcome including through decades of lobbying for homosexual law reform. McAleese understood the referendum as precisely in tune with the progressive narrative of modern Ireland valuing the tolerance and support for diversity evident in the "overwhelming popular endorsement" of the Good Friday Agreement in referendums in both the North and the South 17 years earlier.¹⁶² She described the outcome as showing "our respect for the 'otherness of others' and their right to parity of esteem. The marriage equality referendum put beyond doubt the widespread belief in the right of all Irish citizens to live as equals, to love as equals and to marry whoever they choose."¹⁶³ In Australia, in contrast, if Quentin Bryce has commented on the 2017 marriage equality plebiscite, inspired in part by the Irish model, the Australian media have not reported on it in this way.

Conclusions

It is likely that Quentin Bryce's term as Governor General was treated with significant sexism. We suggest it would be unthinkable for a mainstream newspaper to describe any comments by the current inhabitant of the post, ex-army general David Hurley, as an "outburst."¹⁶⁴ Similarly, it is apparent that there was a selective lens applied to assessing Bryce's supposed partisanism in expressing support for a republic. Governor General Michael Jeffrey refused to even meet with representatives of the Australian Republican Movement, and made public comments undermining the Republican case, but this was generally not reported as a

¹⁵⁹ Galligan "Transforming the Irish Presidency," 597.

¹⁶⁰ Simon Carswell, "President says Irish Had Role in Injustices Against Aboriginal People," *Irish Times*, 10 October 2017, <https://www.irishtimes.com/news/ireland/irish-news/president-says-irish-had-role-in-injustices-against-aboriginal-people-1.3250758>; Alfred Michael Markey "Contesting Intellectual Crisis: Michael D. Higgins and the Irish Postcolonial Mind," *Études Irlandaises* 40, no. 1 (2015): 241.

¹⁶¹ *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*.

¹⁶² Mary McAleese, "Foreword," in Gráinne Healy, Brian Sheehan, and Noel Whelan, *Ireland Says Yes: The Inside Story of how the Vote for Marriage Equality was Won* (Sallions: Merrion Press, 2015) 11.

¹⁶³ McAleese, "Foreword," 11.

¹⁶⁴ "PM backs Bryce's Outburst," 10.

partisan position on his part.¹⁶⁵ It was certainly not “an outburst.” However, along with sexism, it is also apparent that despite its monarchical and executive power, the institution of the Governor General, when compared to a role such as the Irish President, is resistant to transformation into an effective modern, cultural head of state with great soft power deployed either at home or abroad. Even the term of Sir William Deane, while hugely symbolic for Indigenous Australians, was not reflected in the progress of Indigenous affairs or policy formation. In fact, Deane’s term coincided with profound and regrettable regression in this arena, including the unfortunate and painful stalemate over the Apology that was only rectified in 2008.

The paradox is that while the Australian Governor General has the power to dismiss a Prime Minister, they are limited in cultural leadership. We tie these limitations of the office to a combination of formal and informal rules, which together amount to unnecessary constraints on the power of the Governor General. The formal rule concerning appointment rather than direct election does appear to limit the ability of the Governor General to claim popular legitimacy for their representation of the nation including minority interests and the public good, particularly in a manner that is politically influential. Does this mean that we agree with the editors of *Crikey*, that Bryce should not have publicly supported marriage equality in her appointed position? No, it does not. We argue that this perception is merely an informal convention that, as we have suggested, may be revealed to be particularly biased against the rights of minorities, especially sexual minorities. This perception could be transformed, with political and social will, but that would necessitate coming to terms with the inequality that is often maintained through vestiges of “neutrality.” The informal rules that surround the Governor General are simply that: informal conventions that have been deployed (probably in politically expedient ways) in an organic fashion to give evolving meaning to a post that established its legitimacy in colonialism. With political will, these rules could be transformed to enhance the unity of the country through the standing and gravitas of the office in a modern, not archaic colonial, role.

¹⁶⁵ Doug Conway, “No Republic While Queen Reigns, says G-G,” *Sydney Morning Herald*, 23 April 2008, <https://www.smh.com.au/national/no-republic-while-queen-reigns-says-gg-20080423-283p.html>. Although, see: John Warhurst, “G-G Should Not Comment,” *Canberra Times*, 1 May 2008, 19. In 1995, Governor General Bill Hayden voiced his support for legally recognising same sex relationships via “partnership contracts similar to marriage,” and although Prime Minister Keating did not agree, he responded only by saying “this is not a matter for government policy.” Carol Johnson, “From Morality to Equality: Labor’s Sexuality Conundrum,” 29 August 2014, *The Australian Political Studies Association Annual Conference, University of Sydney Paper*, <https://ssrn.com/abstract=2440135>.