



***AUSTRALASIAN STUDY OF  
PARLIAMENT GROUP  
(Queensland Chapter)***

***The Constitutional Convention  
in retrospect***

Guest Speakers

Mr David Muir (Clem Jones Team)  
Mr Michael Lavarch (ARM)  
Mr Tom Bradley (ACM)  
Ms Mary Kelly (Women for a Just Republic)

**WEDNESDAY, 25 MARCH 1998  
Parliament House  
Brisbane**

*Reported by Parliamentary Reporting Staff*

The Forum commenced at 6.15 p.m.

**The CHAIRMAN:** It is my great pleasure, as the Chair of the Australasian Study of Parliament Group, Queensland Chapter, to welcome you to this forum this evening. We have three functions a year: one at the beginning of the year, which is this one; an annual general meeting in May; and an end-of-year function.

I am sure that this has engendered a tremendous amount of interest in the community. I think that many of us would have been quite surprised to see the extent to which the community embraced the concept of the Constitutional Convention. The ratings for its broadcast on television were a surprise, I understand, even to the ABC. So there has been interest in the community out there, and not just confined to the so-called chattering classes. I think people have seen this as an opportunity for re-creation and to come to terms with the nature of the state and how we organise ourselves for the next millennium.

We are very fortunate to have a distinguished panel of speakers, all of whom were elected to represent various facets of opinion in Queensland at the Convention. They are Mr David Muir, Mr Michael Lavarch, Mr Tom Bradley and Ms Mary Kelly. Mr Lavarch apologises for his late arrival. He is flying up from Canberra and coming here directly from the airport. He will be along later.

Before we get under way, let me give you the format of the meeting. Each of the speakers will speak for 15 minutes, and they will go back to back. After that we will throw it open for question time and comment, and that will last as long as there are questions, comments and discussion forthcoming. If you wish to ask a question or direct a comment, I ask you to be specific to a particular speaker or a couple of speakers. If you want to make a general comment, could you make that plain? That will then be picked up by any of the speakers who choose to do so.

Most of you should have, I hope, a flyer in your hand concerning our next meeting, which is our Annual General Meeting on 13 May. Our Constitution requires us to have the AGM in May. We have been extremely fortunate to secure as our speaker Mr Wayne Goss, who will be speaking on his reflections of his time in the Queensland Parliament. He was quite enthusiastic when we invited him. I am sure it will be a night to remember. I did mention to him that, as is our custom, Hansard would be recording this, to which he replied, "Well, that's no news to me." We will go according to the information on the flyer, and I mention that as an early warning.

It is my great pleasure to call upon the speakers. The order will be: Mr Tom Bradley from the Australians for a Constitutional Monarchy; Ms Mary Kelly from Women for a Just Republic; Mr Michael Lavarch from the Australian Republican Movement; and Mr David Muir from the Clem Jones team. I will not bore you with potted biographies of our speakers. They are well-known people in the community, and I think it best that they speak for themselves. I call on Tom Bradley.

**Mr BRADLEY:** I probably take as my text for this evening's address this comment from the TLS—

"Great frustrations must attend all efforts to locate some disciplines within the larger context of intellectual history. There is little settled in the matter in the very definition of what might be referred to as 'that nasty little subject' and even less agreement on the proper methods of inquiry, the forms of explanation, disciplinary kinships and dependencies."

When you are talking about reconstituting or reviewing a Constitution for a nation, all of those problems attend it. How do you go about the process? What field are you operating in? What level of expertise do you require? And who should be involved in the process?

During the two weeks that we spent in Old Parliament House in February, those sorts of issues circulated around the corridors with ghosts of present, past and perhaps future crises. It was really a unique and extraordinary event. It was unique because the Howard Government has pledged to put to a vote a proposition with which they disagreed. And it was extraordinary in the sense that the decision as to what the question would be for the Australian people to decide was not going to be decided by the Cabinet but by some convention—an extra, an additional or an unusual body.

The pace and the patterns of debate in the course of the Convention varied very greatly over that two-week period. From the beginning some things were clear. One was that Ian Sinclair and Barry Jones were going to play a magisterial role in guiding this rambunctious body along a path to some sort of a solution. I think it has to be admitted that they both achieved that goal very well.

There were significant numbers of delegates elected who came to the Convention with interests much broader than the issues formally before the Convention. There were real republicans and just republicans, there were Greens, there were shooters, there were Women for a Just Republic

and there were many, many more. There was one fellow from Tasmania who was elected as the voice of ordinary, honest, fair-thinking Australians. It is a pity that only one of those was elected.

There were also 76 appointed delegates, almost half of them non-politicians. For the most part, very little was known of their personal views. So on the first couple of days of the Convention, everyone—particularly the main republican group, the ARM—was treading very carefully. They wanted to be seen to be as receptive as possible to all the various groups there in the hope of attracting their support. One of the first motions considered by the Convention was moved by Archbishop Hollingworth and seconded by the Reverend Tim Costello that we were to say prayers at the beginning of each day of the Convention, modelled on the Federal parliamentary prayers. Nobody seemed game to speak against that for fear of upsetting someone, and it was carried overwhelmingly. As Barry Jones later remarked, this was quite a good Convention for God, because we decided not only to retain Almighty God in the Preamble to the existing Constitution, but if there was to be a new or an additional Preamble, Almighty God was to go into that as well. Only Mrs Holmes a Court seemed upset by this fact. She told the Convention that she had some difficulty because, although a Christian, she felt a lack of acceptance in the church because she did not believe in God. Aside from her own personal moral qualms about these theological issues, the Convention as a whole seemed relatively agreed on that.

The other aspect of this effort to win friends and influence people was that, particularly the Republican Movement on the first day supported proposals to lift the lid on what I called "Pandora's Esky". We were going to have discussions about Bills of Rights, ongoing constitutional reform, gender equity, recognition of indigenous occupation and continuing special rights for indigenous people. All these things were to find their way onto the agenda but, at the outset of the Convention, they were not really within the circumspect role that the Government had plotted for this particular body. So on the first day there was this warm, fuzzy feeling extending out over the group of 152 delegates that almost anything was possible and we were all going to be friends somehow or other. At the end of the second day we took the first votes, and all the friendships were over.

The topic was the powers of the head of State and how to appoint and remove the head of State. Under the Convention's rules, these votes were only provisional votes—whatever that meant. Provisional or not, they demonstrated the voting strengths of the various groups in the Convention. In particular, they made clear the voting strength of that group within the Convention who supported direct popular elections. Central to that platform was the codification of the powers of a head of State; that if a head of State was going to be directly elected, the powers should be clearly codified. That seemed to be the thought process of that particular group. Codification in a resolution was overwhelmingly defeated. This seemed to result in the direct election delegates at least questioning whether they should stay for the remaining eight days or go home in an early protest. The whole Convention then seemed to get sidetracked by the concept of: how do we keep the Bedouins in the tent? How do we all remain together for the Convention period to make the process work? It was clear that this was a priority both for the Government—not wanting to be embarrassed by the Convention breaking up—and for the ARM, who wanted the Convention to have some credibility in the hope that they would produce the right result.

A solution was devised, and it was a most unusual one, but perhaps a typically Australian one. The solution was this: if any resolution at a provisional stage achieved 25% voting support, it would be regarded as carried. So the vote could be 25 for, 75 against, and it would still be regarded as carried and it would go forward to the resolutions group. It is a very interesting concept in terms of voting. Really what this meant was that almost every proposal put forward in the course of the first eight days went forward to the resolutions group for consideration and for final voting on the last two days. As the days passed, more and more matters were referred to the resolutions group. As delegates, I think we began to wonder whether the final two days would be sufficiently long to handle all the voting that was going to be involved.

Also as time passed, it became clear that there were four distinct positions emerging in the Convention. There was the first group, who finally came to call themselves the McGarvie-ites, who supported a proposal put forward by a former Governor of Victoria by that name for a council of eminent persons to take the role of the Crown—or the Queen at least—and these eminent persons would then appoint the head of State on the recommendation of the Prime Minister. It was said that this was the micro-minimalist model. It seemed to enjoy support, particularly amongst those eminent persons—or would-be eminences—who were at the Convention.

Secondly, there was the well-known Australian Republican Movement model, which had been developed for Mr Keating by Mr Turnbull and which came to the Convention with quite substantial support amongst those people. There was the direct election model, which remained a bit inarticulate

for a while in the sense that we were not entirely sure how the process was going to work, except that the people were going to be directly involved at some stage. Then there were the people like myself who supported the status quo. Our role at the Convention over those first eight days was to highlight the shortcomings, as we saw them, in each of the models that were put forward.

There were some who thought deeply and listened carefully and still were unpersuaded. Amongst those was one of the supporters of the status quo, former Senator Don Chipp, who told the Convention that he had been searching for 25 years for a safe recipe for a system to be substituted for the present one, but he was yet to find one. He told the Convention that he had not heard of a system that he could regard as safe and simple and that would allow the country to keep on governing in a safe way. He promulgated this test which, for my own part, I find to be the crucial test. He described it as the acid test: What would happen in a 1975 situation under each of the proposed models when tempers were high and an application of the Constitution had to be applied? How would the models work? Would it work like the present system worked, because it was referred immediately to the people who, in an overwhelming way, gave their voice to the solution and so the problem was solved?

As supporters of the current constitutional system, we were left with three what we thought were fairly unpalatable alternatives. There was the McGarvie constitutional council of the three wise men, appointing the president on the nomination of the Prime Minister; the Keating/Turnbull model of parliamentary appointment and Prime Ministerial dismissal; and the direct election model which, at the end of the day, seemed to say that the people could vote only on a list of candidates approved by the Parliament rather than by themselves.

The temptation to play a role in selecting the model was fairly strong. Clearly, the status quo supporters had sufficient numbers to have an impact on model selection. Should we, for instance, push for a McGarvie-type model on the basis that because it lacked any popular support and might find endorsement perhaps in one of the major political parties, it was a relatively low risk? Or should we opt to support a popular election model which had fairly widespread public support but very little support in the political institutions of the nation? Really, what should we do? For my own part, I would have thought that the best model to emerge from the Convention was the Keating/Turnbull model, because it had little popular support and was likely to be rejected by both of the coalition parties and therefore suffer a difficult fate in a referendum campaign. It would be, in my view, the easiest one to defeat. In the end, what we described as a sense of responsibility prevailed, and those of us who supported the present system for the most part abstained from voting in the choosing of a model. We took the view that the republicans should choose the model that they wished themselves, and then whatever model they chose would be the one against which we would debate.

There were some supporters of the status quo who took a different view. Professor Craven from Western Australia took a very emotional view about this. He thought that any sense of responsibility should push you to advocate a McGarvie model because it was the least damaging to the Westminster system. Others, such as Bill Hayden, thought that if we were going to have a republic, it should be what he called "The Full Monty" and should be a direct election model. In the end, we chose for the most part to opt out of choosing the model. It was clear that before that choice was made, though, at the end of the day the Keating/Turnbull model would be the preferred model of the Convention. I say that it was clear because it had the greatest support, in terms of a bloc, in the Convention. The other two models, the McGarvie model and the direct election model, were at opposite ends of the spectrum. There was only a negative consensus against the Keating/Turnbull model, and there was no positive consensus for any alternative.

On the Thursday of the second week, we came to voting on the particular republican model, and a modified Keating/Turnbull model succeeded, although the voting could not have been closer. There were 75 votes in favour, 71 against, and four abstentions. Interestingly enough, the Republican Movement relied on the votes of appointed delegates rather than elected delegates to win this vote. In fact, the elected delegates voted 42 to 33 against the Keating/Turnbull model, while the appointed delegates voted 42 to 29 in favour of it.

The near success of the ARM in attracting support of exactly half the delegates who were voting left them fairly publicly confident that they had sufficient support the next day and would get the extra votes to push themselves across the line, but this was not to be. In fact, when the ARM model was voted upon on the next day—the final day—it attracted two fewer votes than it had on the Thursday. This left some of the ARM delegates, like Ann Witherford from the ACT, in tears at the thought that the model would not get majority support. The final vote was 73 in favour, 57 against and 22 abstentions. Again, the Republican Movement relied heavily on the appointed delegates. Only 34

of the elected delegates voted with the Republican Movement, 30 voted against the model, and 12 abstained.

In the end, I thought that one of the more interesting contributions to the debate came from one of the non-aligned youth delegates from New South Wales, Miranda Divine, a journalist. She drew an analogy which I think was very interesting. She said—

"In the past week we've heard long-time politicians waxing lyrical about the virtues of Old Parliament House and how inspiring it is to mingle in the corridors and see the whites of your opponents' eyes in debate. There is no fondness for that shiny, new, expensive building up on the hill that is so alienating, so anti-people and so dishonest, posing as it does as a minimalist grass mound with a flagpole on the top. I fear that if we rush into a half-baked republic without full involvement of its citizens, we'll end up with a Constitution like that building—shiny, new, alienating, inhuman and, ultimately, hollow."

I was reminded of that when, on the last day, the Leader of the Opposition spoke. I think it is fair to say that Mr Beazley seemed the most reluctant of republicans. He said, "Look, it might not be much of a republic, but at least it is a republic. Vote for it and we can probably fix it up later." It seemed to me absolutely amazing to expect someone to believe that, having given to the members of the Federal Parliament the power to choose and dismiss the head of State, those people would pass an Act to even allow the Australian people to vote on the proposition that the people themselves should choose. Our referendum process involves not just the people voting but, as a preliminary to that, the Parliament has to pass the laws which frame the question on which the people can vote. I thought that it was a bit gullible for anyone to think that, having accrued to themselves these powers, the members of the Federal Parliament would offer the Australian people the choice of taking those powers from them.

On the whole, I thought that the Convention was an extraordinarily useful exercise in this sense. Classically in referendum debates, issues narrow and narrow and narrow down to simple propositions so that, at the end of the day, people are voting on the basis of a slogan. What happened in the Convention was almost exactly the reverse because, as the issues were debated and opened up, and as more and more people watched and listened and read about it, they came to understand and become involved in the details and complexity of the issue to a much greater extent than could ever have occurred in a straight referendum vote. I believe that there is a lot to be learnt from the educational process for the Australian people as whole that results from a process like this which exposes complex issues to fairly rigorous debate in quite a robust forum where there are people who represent all sorts of views from around the nation.

I think that, for me, the key lesson from the Convention process was that now, when I speak to people in community groups or people I come across in my work or socially, I find that they have a much greater level of understanding—and even the most basic level of understanding is greater—of the issues involved in this particular issue. I cannot believe that that process could have come about if we had gone straight to a referendum vote on this issue. I think people would have had to narrow down their proposals and end up with very simple sloganistic views. On the whole, I think that the process was a very useful one, and it is a process that we could well replicate in other issues which are complex, difficult and, in a sense, require the sort of courage that we no longer seem to find amongst some of our elected leaders. Thank you.

**Ms KELLY:** I am going to talk a little about my reflections on the Convention, and I will confine myself to a couple of issues, because I know that David and Michael are going to cover some more detailed issues about models and so on. I am going to talk about issues surrounding equality and women; in part, the process; and a little bit about the future.

To enable you to understand my engagement with the Convention, I have to say a little about the Australian Women's Party, which ran candidates in two States on the Women for a Just Republic slogan. I was elected here, but we were not elected in the other State. Our platform has been, since the establishment of the party, to pursue equal representation for men and women in our Houses of Parliament as a constitutional guarantee, not just as a target that we might one day aim for but as a mandated outcome guaranteed by the Constitution. We have been putting that forward for some years, and we have worked out a low-cost, no-fuss way to deliver that by pairing electorates and so on.

We could not resist the chance to put that view at a convention dealing with the Constitution. We took to the Convention a view about a Bill of Rights, not just about equality for women but that all sorts of other rights should be encoded in our Constitution. We took a view about the head of State: that it should be an Australian. We were pro republic. Our initial position was that, in an operational sense, Australia did not need a separate head of State at all. This was not a widespread popular view,

as we were to find out, but we did go to the Convention with a view on popular election, that is, to support it provided that the powers of that head of State were limited and defined very strictly.

In brief, I found the process fantastic and the outcome a bit ordinary. To talk about that, I think that we need to look at the whole question of direct election and why that did not prosper at the Convention when there is some evidence that it is desired by people in the general community. There was a bit of a debate about how much evidence there was, but let us just accept that it is in the minds of many that this would be a good thing. Why was it that the Convention could not accommodate that? In a way I think it is because it was just too different from what we have now and because the main group, the ARM, had a view of the world which has some historical precedence, namely, that any referendum question would need bipartisan support. Therefore, they had to come up with a model that roughly kept the two parties on side and, therefore, it really could not accommodate direct election, which became a rather polarising issue. I think that drove a lot of the struggle over models.

We did not take that view. We took a view that this is an open moment in Australia's history; that people were ready and predisposed to change; and that another important subtext—and, I think, the overriding one—was people's desire to re-engage with the governance of Australia, which is the opposite of their current alienation from those processes. We made the point many times—and I still think it is an important point when we look to the future and think, "Will this referendum succeed?"—that the outburst of civic energy that we saw around the Convention and its processes was a new, refreshing and different thing from what we have seen for a while.

The normal predisposition of people to the political process now is one of alienation and cynicism. They do not like politicians and they are not interested in Parliament. I mean, I think you are a very different audience, but if you talk to young people and so on, they are generally cynical about self-interested people who do not have their interests at heart. That is a predisposition, but the Convention seemed to bring out something different. We saw that in the degree of public engagement beforehand and at the Convention itself. There was a pigeonhole system, and each day there would be a pile at least two inches high of just faxes and letters from citizens who had been following it on the radio and sending you their models. There must be at least 5,000 models of the Convention out in the suburbs, and I have every one of them, if you are interested. People would write in and say, "I heard you say that. That was good" or "That was terrible" or "Why don't you do this?" There was an enormous amount of open correspondence with the Convention delegates themselves and an enormous amount of viewing and listening, as we know, from the number of hits on the Internet and so on, and just an enormous amount of interest and energy.

The point that is important to understand is that we took the view that that outburst of civic energy was the gift of our lifetime; that to find a model of a republic that could engage that and keep that interest and drop the alienation and the cynicism, that is, which tried to incorporate something about direct election, would be a good thing to do; and that that was, in fact, a more interesting and useful and long-lasting thing to do than just get a republic. In any case, that view was not shared, but I think it will stay as an issue. What will happen to that burst of civic energy now? Will it go back to cynicism and so on? How will the question fare at the referendum? I will return to that point.

There was another option before the Convention which was defeated three times. That was the plebiscite option, that is, to put to people in a multiple-choice, non-binding referendum the four developed models and see what they picked before you took it back to them in a fully-fledged referendum form. That also had early hopes, but they became dashed through various processes. It was put up by various groups three times, but it was not carried.

I think the process of life and energy in the Convention itself—and perhaps this was not evident from outside; it might be an insider's experience—was a little about the political structures around it, about Howard and the tensions and the uncertainties, and also about the diversity of people who were there. I was very conscious of this. As you know, about 100 years ago, when we had other conventions to put Federation together, there were no women at all—no Aborigines and so on. In fact, at that time only white women in South Australia had the vote, whereas 12 years later all white women had the vote. So it was also a time on the cusp of a bit of rapid change. Yet at this Convention a third were women, there were indigenous people, there was a huge spread of ages, and so on. So there was diversity there, and I think that gave life to the interactions.

The other thing that gave it life was that no-one basically had the numbers, so you could not sit back and not work at dialogue. Nobody could deliver their position without courting others. So the dialogue was constant and back and forth, and I think it generated some real exchanges about matters of substance, not just about trading votes and so on. Another thing that brought it to life was the surrounding public interest and the overwhelming sense that you felt that this mattered in some way

and that you had to do something that met people's interest, because they were watching and listening and had expectations that you would do something useful.

On women's issues, suffice it to say that the Convention did not adopt equal representation as a constitutional guarantee in our two Houses of Parliament. In fact, a lot of these issues could not be dealt with because of the narrowness of the agenda. On day one, when it was determined by the meeting itself that we would not talk about a Bill of Rights, a whole lot of important things did not get talked about and we stuck largely with the head of State question. The only two things that were admitted to that agenda and into which one had to try to infuse all these ideas and values was that we would talk about the Preamble to the Constitution—that it did need revision because it was full of references to the Queen—and we would talk about ongoing constitutional reform. In both of those issues you will see evidence of the consideration of equality issues. There are references to indigenous Australians, cultural diversity, rights and responsibilities and so on in the Preamble.

In relation to ongoing constitutional reform, a decision was made that, in about five years' time, we probably should have another convention-like discussion to talk about a list of issues, including the Bill of Rights, equal representation for women, and so on. Now, whether that will ever come off, of course, is to be talked about. So those things did find a secondary place, if you like.

The things that were determined by the Convention itself are essentially inside the models that came out. The model that was adopted has two substantial references to equality and gender balance. In the appointed president model which came out, the citizens committee, which essentially does the short-listing for the Parliament, has to be constructed around geographical, gender, cultural and age diversity. In other words, it cannot just be all former lawyers or whatever; it actually has to look like the citizenry. That is one useful process outcome.

The second is that that committee, in its short-listing, must be mindful of community diversity when it puts its short-list together. That can mean many things, but it clearly means that you do not put up three of one type of person; you basically have to be conscious that this is a person that all citizens can and will aspire to, and that has to be kept in mind.

What was not agreed to or even tested was the concept of gender balance in the outcomes of that model; that when you have a single position, it can only look like taking turns and that, basically, if a man is the head of State for one term, the next one must be a woman, and so on. I was keen to run that, but I could not even get enough signatures to propose it towards the end of the Convention. So okay on process, no good on outcomes in terms of gender equality.

The Convention itself was generous in its adherence to a decision it took on day one, which was basically to seek to have gender balance in all its own processes, that is, who spoke, who was on committees and who gave reports. Remember that we had 40 parliamentarians there in their own Old Parliament House, so there were people who were not shy and had a lot to say. They took a decision on day one that they would attempt to have gender balance in their own processes, and they pretty much adhered to that, except for the last day, which was grandstanding day, and certain types prospered on that day.

All in all, I was surprised and relatively pleased about the level of consciousness of equality issues, and gender equality in particular. Some of the things that were adopted were good on process but not so good on outcomes. That probably says something about a shift in the Australian consciousness, and I think that is a good thing.

As for the future, I do not know if the referendum question will be carried. There are not just monarchists who will predictably campaign against it. There is now a cohort of disappointed people because direct election is not in it. It is unclear how they will deal with that question and whether they will vote for this and seek further change or say, "No, not this one, I will wait", or whatever. There are also sleeper issues. Since the Convention I have spoken to a few groups on request, and a lot of what comes up is the cost. People are so conscious at the moment of money shortages, unemployment and so on. There is a genuine question, not a fabricated proxy question, about whether the country can afford it. I think that is a bit of a sleeper issue.

I think it will be fascinating now to watch what the Parliament does to flesh out that model, and what it looks like when it finally comes to us, and to watch the dynamics of the referendum question itself and what has happened to that burst of civic energy that had a brief life, and whether it will sustain through to that process. Thank you very much.

**Mr LAVARCH:** I suppose that, at its essence, what we are talking about tonight is power. We are talking about the power of a sovereign nation to have one of its own citizens as its head of State. We are talking about power that is drawn and has its source in legitimacy from the democratic