



***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

commitment of the Australian people. We are talking about the division of power between various elements of government within a representative system of government. We are talking about the powers of the head of State, the Parliament and the Executive Government within a republican framework. The Convention concentrated very much on these issues of power; the public debate to this point by and large has not. Rather, I think the public debate has been about the threshold question—about whether the monarchy has any relevance to modern Australia.

This stage of the debate was decisively reached at the conclusion of the Convention, when I think you have to say that the public point had been reached that Australia must move beyond the monarchy. The Convention reinforced that a hereditary monarchy is really quite inconsistent with Australian ideals and national self-interest. I suppose that is why the Convention really only witnessed one-way traffic in the stance of previously uncommitted or undeclared people. We had the Federal Treasurer, Mr Costello, the conservative Premiers of Victoria, Western Australia, South Australia and Tasmania, and the Federal Attorney-General all declaring themselves for the end of the monarchy, provided that they were happy with the particular model which replaced it. Equally, there were leaders like senior company director Helen Lynch and community leader Archbishop Pell who also declared themselves in favour of an Australian republic.

More importantly, the election of delegates to the Convention showed the relative strength of public support on the threshold question, and this support is strongly in favour of a republic. The Convention on this point at least was clear, with 89 delegates favouring a republic, 52 against and 11 abstentions. Once the threshold question of change or status quo was crossed, really the issue became one of the structure of government and the respective powers of the republican head of State, the legislature and the Executive arms of government. In other words, there are the four Ps of power: the people, expressed through the roles of the president, the Parliament and the Prime Minister. I think it is fair comment to say that the public debate has not closely examined the question of the powers of the head of State. Rather, popular media has, to an extent, zeroed in on the myth of appointment of the president, and the debate has been somewhat reduced to simplistic sloganeering in relation to a choice between popular election and parliamentary appointment.

The assumption underpinning this is that all other things are equal and that this is a straightforward choice. The problem is that this underlying assumption is wrong and all things are not equal. The core issue is not how you pick the president, and it is not who the president is. The core issue is not personalities or popularity, it is power. What are the powers of the head of State? What is the relationship between those powers and those assigned to the Parliament and the Prime Minister and the Ministry? Is there a potential for conflict between the powers given to each element of government? How are such conflicts to be resolved? Logically, you need to determine the nature of the office and its powers before you decide how you get your office holder. For instance, the United States vests Executive power in the President. The President is, together with the Cabinet, effectively the Government of America. Of course, in such a system the office is directly elected by the people, because the people, through the United States Constitution, vest this power in the President. But what is our situation?

Our Constitution vests power notionally in the Queen and the Governor-General which is exercised by the Parliament, the Executive and the judiciary. On the face of it, the powers of the Government rest with the Queen and the Governor-General, yet we know that this is not the case. The power, of course, actually rests with the Prime Minister, the Executive Government, the Parliament and the courts. The ostensible power of the Governor-General is constrained by some express provisions in the Constitution but largely by unwritten convention or rules on how the Governor-General's power is to be actually used. These conventions in turn stem from those which govern the relationship between the British monarch and the British Government. In most circumstances the power of the Governor is exercised on the advice or the recommendation of the Prime Minister and Ministers, but there are occasions when the power can be exercised contrary to this advice. We know, of course, from the dismissal of the Whitlam Government that the powers of the office are great indeed.

The model which emerged from the Convention deals with powers like this. Firstly, it proposes that the respective roles of the head of State, the Executive and the Parliament remain the same. It does not propose that we have an Executive President, like the United States, or a legally constrained president, like Ireland. Secondly, it provides for the non-reserve powers of the president to be codified in the Constitution. These are the powers which can be exercised only with the advice of Ministers. Thirdly, the reserve powers—for those occasions when the president might act contrary to the wishes of the Government and even dismiss a Government—should remain as they are now, governed by unwritten conventions.

There were delegates—and I was one of them—who would have liked to have seen the powers of a president fully codified and the so-called reserve powers eliminated. I also believe that, hand in hand with this, one has to come to grips with the position of the House of Representatives and the Senate, whether there should remain a capacity to block a Government's Budget, and whether that power should be removed. It was, of course, this power which was the catalyst for the Whitlam dismissal—the only really serious constitutional crisis that we have had at a Federal level.

The Convention was not about a personal agenda or particular party or group agendas. Rather, it was a vehicle to draw out common ground and to move forward. The consequence of this answer to the question of power is instrumental in the issue about whether the president should be elected or appointed. This was a point which was recognised by the advocates of direct election. The final direct election model voted upon at the Convention acknowledged that a mere transfer of the existing constitutional arrangements as between the Executive Government, the monarch and the Governor-General was not sustainable. Rather, the direct election model proposed a full codification of the powers of the president and the removal of the reserve power to dismiss a Government that retained the confidence of the House of Representatives. So to apply Mr Bradley's Don Chipp test of what happened in 1975, when a Government retains the support of the House of Representatives but is unable to secure a Budget through a hostile Senate, the direct election model proposed a political rather than a constitutional solution; a Government could retain power by simply not spending money. By suspending programs, such as the payment of benefits or pensions, or starting a process of standing down the Public Service, a Government could retain power. That was the solution which was proposed by the direct election model. This, in my mind, was not a viable option. I think it is highly destructive of the public interest that such a circumstance would arise, nor do I think it would be ultimately particularly saleable in terms of a referendum campaign.

Why did the direct election model believe it necessary to deal with this issue at all? Why could a directly elected head of State not adopt the same constitutional arrangements regarding the relationship between the president and the Executive Government as that proposed in the parliamentary appointment model? This is really very much the crux of why the Convention went down one path and not the other. The answer is, of course, again this issue of power. A directly elected head of State draws his or her authority of office directly from the people. The mandate of that office holder must inevitably be much stronger than that of an office holder who draws authority indirectly through the Parliament, because the relationship between our current arrangements concerning the head of State and the Executive are difficult in terms of their not being simply laid out in the Constitution. To pick them up and read the Constitution and have a full command of what it all means, one must understand the unwritten rules of the Convention, how it all fits together and how the checks and balances fit together. You really had the choice of completely codifying the powers and dealing with the position of the House of Representatives and the Senate regarding the power of the Budget. If you went down that path you would end up with an Irish-style model. I think that closed off the option of direct election. I would have quite happily supported in my mind direct election had the Convention been able to reach that outcome, but the decision was made that the idea of trying to remove the power of the Senate would not be saleable. It was a policy decision or practical political judgment decision rather than even a policy one as to why that was not included in the direct election model.

I think that, over the next 18 months following the Convention, the movement away from sloganeering, away from the threshold question of monarchy or not, and into the more detailed considerations of the relationships between the various components of Government is where the debate must go. I agree with the previous two speakers; it was a wonderful experience. It was also an opportunity for the Australian people to engage in a debate far more than many cynics at the beginning of the process thought likely to occur. But one cannot put so much lead in the saddlebags of this change to think that it will be the vehicle to overturn alienation in terms of the public and the political system. Everyone should take every opportunity to re-engage people in this, but this change will not deal with it itself. There will still be people who are unemployed and there will still be concerns about the health system. People will still be concerned about the capacity of Government to deliver. We will still be in an environment of the forces of globalisation and its change from the notion of the sovereign State and where we all fit into the great scheme of things. None of these issues will be changed by Australia becoming a republic. However, the one thing that it will change, and the one thing that will be a final and unalterable change, is that Australia will have taken that final step in terms of one of its own becoming our head of State. If that is successful, whereas in the future there may well be further constitutional reform and debate, there may well be incorporation of a Bill of Rights, and there may well be a change to the very essence of the system of government in Australia, maybe one day we will have an Executive presidency. It may, over time, alter very greatly, but once the change is made we will

never see a political party or a popular groundswell of people demanding that an Australian, as head of State, be removed and replaced with the English monarch. That will never happen once the change is made. All future notions of evolution and change to the constitutional system are still available to us.

I am also sanguine as to the prospects of this referendum, but it does have a chance, in my view, because I think it has a chance to draw in the widest coalition of support behind the proposal. I think that gives it a chance. It is by no means certain, and history dictates that the process ahead will be very hard. But the Convention was very useful. It improved public understanding and has given us a model, which is a good, workable model, which will take us forward. I think there is a chance of that model succeeding. Thank you.

Mr MUIR: My topic tonight is essentially in relation to the direct election model. On day seven of the Convention, those who were supporting direct election were somewhat buoyed by the front page of the Australian newspaper, which carried the headline "Voters rule: No election, no president." It went on to say—

"Most people would rather keep the Queen as the head of State than accept a republic that denied them the vote for a president, a Newspoll conducted for The Australian has found."

This Newspoll is interesting in the sense that it basically gave people a choice as to status quo and a kind of model of the republic. You would probably be well aware that, for many years, there have been many polls taken of the issue in relation to direct election. Consistently over a period the Australian people have responded to those polls by saying that they want a hand in electing the president of any republic. This poll is interesting in the sense that they were given some choices in relation to status quo and different kinds of republics. The three kinds essentially were: the two-thirds Parliament election—essentially the ARM model; the direct election model; and the McGarvie model. This Newspoll showed clearly that the direct election model was the one that had favour with the people, and that should not be a surprise. One thing that may have been a surprise to people, though, was that an indicator of this poll was that the people of Australia are prepared to wait for a model of the republic that they want, and they will accept the status quo until they achieve that.

The Macquarie Dictionary definition of a republic is "a state in which the supreme power"—and that is the term which Michael was referring to previously—"rests in the body of citizens entitled to vote." When we move from a monarchy to a republic, we have a choice about where the sovereignty lies. The sovereignty with a monarchy resides with the Crown. It is interesting to think that we can pick up this sovereignty and put it somewhere else. We can deposit it with the people, which would be consistent with the definition of a republic that I have read out, or we could put it somewhere else. We could put the sovereignty with, say, the Prime Minister or the Parliament. I think we should be very much aware of the process of moving from a republic to a monarchy and about where we put the power or the sovereignty. As Bill Hayden said at the Convention, if one is going to make a change, it should be a worthwhile change or it should be what somebody else referred to tonight as "The Full Monty". That is an interesting perspective from a monarchist. Any change to a republic is going to involve cost. The referendum next year, as I understand it from Peter Costello's letter which was tabled at the Convention, could cost in the order of \$55m. If the referendum was held in concert with a Federal election it would cost \$8.7m. That exercise in itself is costly. Of course, there have been significant costs involved in holding the Convention.

With all those costs, like any person who is making a decision about what to do, one needs to weigh up the benefits. We need to undertake—as perhaps businesspeople often do—a cost-benefit analysis. So in moving to a republic, we should examine whether there is going to be a significant benefit from the change. I am of the view that the more minimalist models of the republic—and there is an expression that John Howard, our Prime Minister uses, which is a fairly negative one: the least worst model of a republic—would virtually have no effect on the esteem in which the political processes in this country are held. I know that Michael indicated that our move to a republic is not going to be the cure of all ills. That is certainly the case. However, I think that if we are going to make a significant change—as it would be, moving from a monarchy to a republic—we should take the opportunity to make it a worthwhile change.

There is a clear message from not only citizens but also from politicians that the parliamentary processes for politics generally in this country are very much on the nose. Bob Ellicott, who served as Attorney-General in the Fraser Government, said in 1991—

"The major political parties and institutions they run are becoming increasingly irrelevant and unresponsive to the need of the country."

He even spoke of "indecisive, sometimes inept, and even corrupt and lying politicians". That was the view of a former Attorney-General. I do not know whether Michael Lavarch shares the same views, but that is a sample of the view of a person who has served in the Federal Parliament. I think that if you go among the suburbs of the cities of our nation you will find many people voicing that same sentiment.

There were certain reasons for dissatisfaction. When we have a Federal election here in Australia, only about a quarter of the people who vote really have a say in what Government governs our country. I base that on the proposition that about a quarter of our seats are what one would call swinging seats. The other 75% of the people are not really in a position to influence the Government. Of course, we have only one Federal electorate which votes in the Prime Minister. So the Prime Minister has the support of one Federal electorate. I would expect, of course, that that person would have the support of his or her own political party. But that is an example of perhaps some of the reasons why people in this country feel very alienated. They do not believe that they have any say in the political process. You cannot blame people for feeling apathetic and alienated and having a lack of care about our political processes. Our Prime Ministers can be dismissed in mid term. We have seen that happen on a number of occasions in recent history. Once again, the people have no say as to who is the Prime Minister. I believe that, in recent years, there has been a concentration of power in the hands of the Prime Minister and in the elites who control power in our country. It is no surprise that those most opposed to direct election are Prime Ministers and former Prime Ministers and perhaps aspiring Prime Ministers. They want to control the power. They want to control the head of State.

It is also no coincidence that direct election finds more favour amongst local authority representatives and State leaders. These people, by their very nature, are closer to the people. The Clem Jones team contained a number of local authority representatives. Of the three who were elected, Ann Bunnell is the Deputy Mayor of Townsville. We also had on our team the Mayor of Charleville and the Mayor of Emerald. We had a number of other people who are connected with local authorities and who were actually elected. People like Ted Mack, of course, have served in all three tiers of government, but he is probably better known for his work on the North Sydney Council. We had others who were in favour of direct election who were local authority representatives. State leaders all around Australia, from the Liberal Chief Minister of the Northern Territory, the Liberal Chief Minister of the ACT, Labor leaders of Queensland, Western Australia, South Australia and Tasmania, were all in favour of direct election.

Gareth Evans, I believe, laid a furphy across the trail on day two of the Convention. He supported direct election, but it was on the proviso that the power of the Senate be reduced—relating to the power that was exercised in 1975 in relation to the dismissal of the Whitlam Government. I think that the scars of the dismissal are still pretty visible in the psyche of Gareth Evans and certainly Gough Whitlam himself, who is an opponent to direct election. I find it difficult to appreciate the argument of Gareth Evans when he says that it is a direct election model that is the one that has to deal with this power of the Senate and not the other ones, on the basis that whatever way the head of State is appointed or elected, the reality is that you have a person who has certain responsibilities in fulfilling a role and a function. It seems to me to be defying logic that, if you deal properly with the powers in relation to codification, there is any weakness that can be attributed to the direct election model that you could not attribute to any other in relation to the power of the Senate.

Some people say that you cannot codify the power of the head of State and, on that basis, we cannot have direct election in Australia. That is not true. The fact is that the powers have been codified. What those people are really saying to you is that they are not satisfied with the way in which those powers have been written down. The reality is that you can codify. It has been codified by the Republican Advisory Committee itself. They have a version of codification of powers. The powers have been codified in many parts of the world, including Finland, Ireland and other places. It is the way in which those powers are written down that people might say that the powers are too wide or too narrow. The fact is that you can codify. So do not let anyone fool you into thinking that you cannot codify the powers. As I said, the Prime Minister is clearly wanting to control the head of State. John Howard has made his position very clear. He prefers the status quo; but if there is going to be a republic in Australia, he wants to be able to essentially control the head of State. I will elaborate more on that in a few moments.

Under the model that is going to the referendum next year—and it is true to say that this would be the case in relation to any model that may be put to a referendum next year—in a sense we do not change our brand name here in Australia. We are looking at significant change, but the Convention agreed that we should remain known as the Commonwealth of Australia. The Convention did not form a view that we should change our name to the Republic of Australia but that it should remain the Commonwealth of Australia. The term "Commonwealth" is what you would call a republican term, so

that in itself should not cause any problems to anybody. The reality is that the brand name has not been changed.

So what is being changed? That is the question we should ask. What is being changed under the model that is going to be put to the people next year? My view is that there is a much greater opportunity to achieve things in this country under a direct election model than under a minimalist model. We have an opportunity to forge, on a greater scale and greater dimension, a new national and international identity. As I said, the brand name is not going to change, so we need to do something else to forge our national and international identity.

In much the same way as Mary Robinson has done that for the Republic of Ireland, the reality is that if Mary Robinson had not been elected by the people of the Republic of Ireland, it is not likely that she would have had the same mandate or authority or power of persuasion as somebody who has been elected by the people and obviously embraced by the people of the country. That, I think, probably harks back to Michael's point about power. There is a sense of a power of persuasion by somebody who has the mandate of the people. But of course, if you are concerned about too much power, you can always deal with that in relation to the codification issue. I believe that the power of persuasion is a very healthy thing in a democracy, as well as being able to discuss and argue issues. It is healthy to have that. I do not believe that you can argue in relation to the power of persuasion if you see that as being an extra power that may come out of a person who is directly elected by the people.

Any model for the republic must have about five or six features. Mind you, these are features that are dealt with in the model that is going to the people next year in the referendum. The first feature of the model is a nomination procedure. That is critical in relation to direct election. I will come back to that. The next feature which has to be dealt with by the model is the appointment or election of the head of State. The next is dismissal. The next is powers. The next is the qualification to become head of State. The final feature is the term of office.

The nomination procedure is critical for direct election. I know that some people will say, "If we have a direct election, we could have Ray Martin as our head of State. We could have Pauline Hanson as our head of State. The reality is that if you have a nomination procedure of a certain quality, you will ensure that the people of Australia have an opportunity for voting for a number of very able and well-qualified people. The Clem Jones model had a nomination council of 100 persons made up of representative organisations, such as the Business Council, judges, community organisations and so forth. The way that one works is that, if you have the support of one third of that council, you go forward as a candidate. So in other words, you have a screening process. That is a key feature in any direct election. I think it will allay any fears that people may have. We also devised laws in our model in relation to governing the politicisation of the process to make it unlawful for political parties to support the head of State and for the head of State to elicit with certain appropriate embargos in relation to being able to proceed with a nomination.

There are a number of problems with the model that is going up next year, and I want to mention those briefly. The first is that the nomination procedure allows for community involvement but it is written in such a way that it can be effectively mere window-dressing. The Parliament is demeaned, in my view, in that you have the Prime Minister taking one candidate from the recommendations of the committee and, without debate and in concert with the Leader of the Opposition, putting that candidate up for appointment by the two-thirds majority of the Parliament. I believe that that is demeaning and, once again, is treating Parliament as a rubber stamp, in much the same way as the Executive in recent years in our Parliaments has been treating Parliament. I believe that the demeaning of Parliament is something that is another reason why there is an alienation out there. The candidature is in secrecy. People are not supposed to be aware of who has been nominated as candidates. Obviously, the final person becomes public. I believe that a more likely outcome is that the least dangerous person would be put up to the two-thirds of Parliament—a compromise candidate, somebody who is not seen as a star, and somebody who is not seen as being able to persuade too many people against the wishes of the Government. The Prime Minister alone can dismiss. To illustrate that point, if Dr Reynolds would come forward for a moment, I could perhaps do a very quick role play here. Assume that Dr Reynolds has been elected by the two-thirds majority of Parliament, and I can for this moment assume the role of Prime Minister. I summon the head of State to my office and hand to him a note which perhaps Dr Reynolds might just read out.

The CHAIRMAN: "To the head of State, you are hereby dismissed. Yours faithfully, the Prime Minister."

Mr MUIR: That is the way that it can be done under the model that is going to the referendum next year. So near enough is not good enough in terms of the problems with the model that is going to

the referendum next year. It is time for us to move away from appointing earls and barons, brigadiers, field marshals, lawyers and former politicians. It is time to widen the field for our head of State. We want somebody whom the nation can embrace—a household name; somebody who can elevate our nation onto the world stage and achieve the fullest potential. This can be achieved through direct election. Let us have a fair dinkum, wholehearted approach. Give voters a fair go. Allow ordinary Australians to be involved in a more meaningful way. Finally, please do not bury the aspirations of Australians who want to elect their president. Thank you.

The CHAIRMAN: I always remember that, when David was a student of mine, his seminar papers were well worth listening to—and packed. I am glad that is still the case.

Thank you to all our speakers. Mr Blake will now take the roving microphone amongst you. Those who wish to ask a question should just jump to their feet.

Questioner: I am somewhat intrigued. Most of the speakers referred to the 1975 situation as being somewhat central to the whole debate. I am intrigued by Tom Bradley's comment, referring to Don Chipp, that we need to have a look at what other system would have yielded a different result. It seems to me quite uncontroversial that anyone else other than John Kerr would have yielded a different result. Since that has happened, no Prime Minister is going to make the mistake of appointing a John Kerr ever again. Indeed, we sit in a Chamber which was denuded of its members by an act of a former Executive Government under our Westminster system of appointing a large number of members to this Chamber to abolish it. I am directing this question to both Tom and Michael. The 1975 imbroglio yielded a crisis of legitimacy in the system. It seems to me that what was wrong with John Kerr, in the eyes of the voters, was not that he was the Queen's man but that he represented no-one in particular. Has the direct election model at least addressed this issue of legitimacy?

Mr LAVARCH: We all have our particular views as to how the 1975 issue should have been resolved. I suppose that what it shows to us is that we do have to bear in mind that the office of Governor-General and that being proposed for a president is a very powerful one. There is a power there to act contrary to advice, and that has to be focused upon and dealt with.

You talk about the legitimacy of the office bearer. Under either system—either direct election or parliamentary appointment—the office holder, the head of State, will be a far more legitimate position than currently occurs. At the moment, the Governor-General is appointed purely by the Prime Minister, even without reference to the Cabinet. So when Sir William Deane became our Governor-General, as Attorney-General I was advised about it because I had to go about the task of finding a new High Court judge, but that was the only reason I was told about it. It did not go to Cabinet. It was an appointment purely within the hands of the Prime Minister. That is the practice for the appointment of Governors-General. Under the bipartisan model, which is the model that will go to the referendum, that power moves out of the hands of the Prime Minister. The actual personality of who the individual is goes through a public nomination process, screening through not a parliamentary but a community committee. Names emerge, and then a name goes to the Parliament, and it must be supported by a two-thirds majority. That means that no more can the Government of the day—simply the Prime Minister of the day—appoint this very powerful office holder. Hence, I think that model does deliver a great deal more legitimacy as to the nature of that office than is currently the position and was the position in 1975. Obviously, someone who is directly elected into that position would also have legitimacy.

Mr BRADLEY: If I heard you correctly, I think there is a mistaken assumption in what you say. I do not really think that anyone can look at the result of the 1975 election and say that, in the eyes of the voters, there was some doubt about the legitimacy of what was done, because the Fraser Government was returned with the greatest majority ever in the Federal Parliament. So I do not believe that result indicates that there was some problem about the legitimacy of what was done.

The difficulty I see with a renewed 1975 situation is this: will a president and a Prime Minister ever meet under this system without having gone through a paper detector to see who is carrying a note to say that one will dismiss the other? Or if not, will they ever meet without having one of those notes in one of their pockets? Then when they do meet and one of them looks like they might be about to fidget and pull out a piece of paper, will the other jump and act first? And what if we have to decide who was first? Who will decide that? The real difficulty with this situation is that these sorts of issues never arise under our system except in a time of crisis. So the Prime Minister will only ever dismiss the president in a time of crisis.

What does this model say to us about what will happen in a time of crisis? The Commonwealth will meet and, by a two-thirds majority, agree on someone to replace the president who has been dismissed by the Prime Minister. In a time of political crisis, do you think that you would get the

bipartisan warm-heartedness, compassion and unanimity that this model assumes our Federal parliamentarians are capable of to replace a president who has been dismissed in times of crisis? It seems farcical. The most likely result of the dismissal of a president under this system is that there will be no president, because it will be impossible to get the agreement of a two-thirds majority of the Federal Parliament on a replacement if the dismissal occurred in controversial circumstances, as it nearly always would do.

So if you put this model back into 1975, one of the options is you might not know whether you have a Prime Minister or a president until the High Court sits and tells you which one struck first. Or if it is clear that the Prime Minister struck first, you would have a Prime Minister and no president for some extended period until tempers cooled, or until the elaborate facade of consultation went on to come up with a short list of candidates for a process which really means that, instead of the Prime Minister alone selecting the head of State, we would have the Prime Minister and the Opposition Leader buddying up between the two of them to agree on a head of State. That is a great enlargement of the franchise; we go from a single person's appointment to a dual one. So I think that the model proposed fails because, precisely in a time of crisis, it will not work.

Ms KELLY: You really have to decide whether you think someone should be able to dismiss a Government—an individual. We took the view that no, they should not. That is how we ended up saying that we should not have a separate head of State at all; that power is safer in the hands of the many than the one. It does not matter how good a person you pick, they can go feral on you, basically, if they are given too much power. Lots of power for single individuals is not a good thing. So the way to avoid all of this sparring is to have a head of State who does not have those powers. That was fleshed out in full on day two and got the chop. The way the Senate stuff fitted in was that, if you stripped away the powers—and the current Governor-General has heaps of power, which is now going to transfer virtually unchallenged to the head of State, because it was going to keep the powers the same with a bit of codification—if you are going to remove the umpiring power then you have to remove the most likely source of crisis creation so that you do not need an umpire. That is how you come to the view that the Senate's power to block Supply should also go. So that got the chop, but we had another go. We said, "If you don't want to take the Senate's power away, we will leave that there but we will constrain what the umpire can do in those circumstances." So you do not get a premature dismissal or a dismissal without talking to anybody. That partial codification, which was in the Gallup model—the compromise direct election model that came out on about day six—talked about, "Well, we will cop keeping the Senate's power to block Supply, but we will constrain what the umpire can do in those circumstances so that it is more democratic." There are those options as well, but they did not prosper.

Questioner: Was the issue put that there perhaps could be a two-stage referendum in that we go to a minimalist model, where the head of State is appointed through the Parliament, and then, at a set time in five years' time, you would perhaps go back to the people to see whether they would like to go to the next step of having a popularly elected head of State rather than one appointed by the Parliament? Was that considered at all?

Mr MUIR: It was not considered as such. Mary referred previously to the plebiscite issue and the choice without binding. The important thing to know about constitutional change is that it can be effected only by referendum, which requires four States out of the six. I have a personal view. My personal view in relation to this issue is that if a model republic succeeds—say the one next year succeeds—it is going to be a long, long time before any other significant change will occur. Constitutional change is so difficult; you need a real head of steam to change it. A head of steam is being developed now in relation to becoming a republic, but that head of steam would be diminished somewhat if we became a republic that maybe was not satisfactory. It would have to be really bad to, within a short space of time, go to another referendum to modify it. My personal view is that that staged process is probably not practical in the sense that you are probably not going to get the four out of the six States and the majority of people in Australia who will so readily, in a short space of time, make so much constitutional change. It is a one-hit thing. It would be many decades later before we could have a chance of going back. For instance, if the minimalists won next year, a direct election would be a fair way away, because the symbolic issue about the Queen no longer being the head of State would be achieved. A lot of people would be satisfied with that. I think it is probably fair to say that a lot of people in the Australian Republican Movement believe that the most important thing is the moving away from the Queen as head of State to an Australian head of State. To that extent, I think that the head of steam would be diminished, and it would take a long time to move any further. But to answer your question—my understanding is that that was not put up as a process.

Ms KELLY: In a way it is there potentially, and it is in the decision on ongoing constitutional reform. The major purpose of the Convention-like discussion in about five years is to review republican

arrangements. I think that offers interesting possibilities. One of them might be an analysis that says that once the peak is over, you do not build up again in under five years. We will have road tested the new procedures only once before we get to the point of reviewing them. So you may not get a community desire to change them at that point. On the other hand, that is a decision, and it might well be that there is a message in there for the pro-ARM people to say that that has to be seriously pursued as part of the package if they want direct election people to support this current question. It will make a difference for some people. If they thought that this election question could be voted for but that, in five years' time there would be a review, that is a better package than this referendum question being voted for and then nothing ever happening until some major trigger or intervention develops in two decades. That is an interesting bit of dialogue that might need to occur.

Questioner: Given what appears to be the popular support for a publicly elected president, what is the possibility of a change between what was decided at the Convention and what will eventually go to the people? I seem to remember that, when we brought in decimal currency, people were scratching their heads about what we might call the unit of currency. At that time nobody really wanted the dollar, because that was too American. Bob Menzies, the ultimate politician, gave us something that nobody wanted. He said, "Let's call it the royal, or let's call it an emu." Everybody said, "Oh no, let's call it the dollar." I wonder whether what has been decided out of this Convention is going to be so unacceptable to the masses that there will be political pressure to change it to something which is more acceptable. The outcome of the Convention might unite people to some different model. What chance is there of a change?

Mr LAVARCH: I would have to say pretty little, to be quite honest with you. The Convention reached an agreement that was developed through incorporating the resolutions—the principles which were decided at the Convention—and putting them into legislation to be the basis of the referendum. I do not think that either John Howard or Kim Beazley is likely to deviate from that.

I just want to make a point about your premise that popular election is the be-all and end-all of the masses' support and a movement will come towards it. I have no doubt that popular election is, by far and away, the preferred notion of the appointment of the head of State. I will be accused of being elitist or contemptuous of the wisdom of the Australian community by saying this, but I do not think there has been a really great focus on the issue of powers and the relationship of the office and how it fits into the Executive Government and what have you. I think that will emerge over a period, and that will have its impact on the level of support.

David mentioned a public opinion poll which was published during the course of the Convention. There was a public opinion poll in the Sunday Mail, I think, the week after the Convention which showed majority support in favour of the model that emerged from the Convention. In 1988 we saw referendum proposals in relation to putting into the Constitution an expanded notion of freedom of religion, with starting point support of 92%. However, at the end of the referendum campaign, it got 28%. The notion that State Governments should pay compensation if they take your property started with 78% popular support and ended up getting about 33% support at the end. I think that, at the end of the day, you have to be conscious of opinion polls, but you also have to devise what you think is a good, structural change which serves the long-term interests of the nation. If that is accepted, then it is accepted. If it is not, then the wisdom of the Australian people will make a judgment on it. But I do not know whether you can devise things fully around the notion of what you think public opinion may be at a particular point in time.

Mr BRADLEY: I think there are three reasons why there is such broad support for popular election. Firstly, I think that, when they hear the word "president", people immediately associate it with the President of America. They know that Americans vote for the President. Therefore, they automatically assume that they should be able to vote for an Australian president.

The second reason is that the way in which the Republican Movement has run its campaign for a republic has been effectively to hide all the detail of how the president would be chosen from the front line argument and keep it all in the back line argument, so that people just assumed that that is what this was all about. For many people, it was not until all this spilled out at the Convention that they understood that the people for whom they voted were not going to support popular election. At one stage during the Convention campaign here in Queensland, the ARM said that they might support a popular president, presumably because they thought it would affect the votes they got. So there has been a level of concealment there which has fed into that process.

Fundamentally, I think the problem is this: there are certain modes of government that people know of around the world. There is the Westminster system of government, which is what we have. There is the American presidential system of government, where the whole Executive is taken out of

the Parliament, the president is elected, and the Cabinet is appointed from anywhere in the world. They do not have to be American citizens even, and they do not have to be members of the Parliament. It is a different system of government. Both of those systems seem to function reasonably in good times. They have their own faults. However, the hybrid model of a bit of one and a bit of the other is a mess. People cannot get it clear in their minds. There are all these different things, like public consultations, and you can nominate anyone you like, but then someone will short-list it. Ultimately, the Prime Minister and the Opposition Leader have to agree on that person, and then you do not get a say. All of that is a bit confusing, and I think that is partly what makes the model fairly unattractive. It is a difficult model to poll on, because people do not understand it. Maybe in a referendum campaign they will come to understand it, but I think that is very unlikely, because the nature of referendum campaigns is such that people do not come out of them with greater understanding than they had when they went in.

Questioner: My question is to the whole panel. Do any of you have any particularly strong views on the implications for the States if the Commonwealth is going to move to a republic?

Mr MUIR: The States issue has been well ventilated by Sir James Killen, whose major contribution to the debate needs to be recognised. The reality is that the States are autonomous. So technically, what could happen is that Australia moves to become a republic and Queensland remains a monarchy with the Queen of Queensland. That is technically possible. Obviously, it is not desirable. In fact, the Queen may be somewhat reluctant to remain Queen of Queensland while the rest of Australia moves to a republic.

The reality is that the position of the States highlights the importance of a consensus of people in Australia. I do not think people in Australia are engaged enough at the moment to move to a republic, particularly in Queensland, Western Australia and some of the other smaller States. I believe that you really do need not only four out of the six States but six out of the six and a clear majority in support, otherwise it would be very divisive. I believe that Australians need more time to make the move.

The fact is that, technically, the States can remain as monarchies. We have to have a referendum here in Queensland, mind you. We will have the referendum for the Australian position. We also require a referendum here in Queensland to move from the monarchy to a republic, because the Crown is divisible; she is the Queen of all the various States as well as Queen of Australia.

Ms KELLY: There was a decision of the Convention on that. Basically, it said: let the States do what they like; that simultaneous change was not possible and we would wait forever for that; and that whatever decision was made at the Commonwealth level would not impinge on States' rights and they could stagger their removal or whatever as they chose. That is a bit messy, but it was easier than any other mode. So that satisfied States' rights people who wanted to decide when the Queen of Queensland got the chop and when she did not. It also satisfied people who did not want to wait for each of those State decisions before they could do anything federally. So it is let many flowers bloom as far as the States go.

I want to say one last thing about the fate of the referendum question. I actually think it is going to scrape through. That is my current judgment. In the end, the dynamic will shift from disappointment with the Convention outcome to the choices that are on the paper, which is this model or the Queen. There are no abstentions in a referendum. It will be a bit like the dilemma I faced on the last day, which was that direct election had been stabbed to death, the plebiscite had been given the chop, and you had this or the status quo or abstentions. I voted for it on that basis. That is a decision about which I will always have mixed feelings. I think it will be that sort of a dilemma for many people, but many will judge that it is better than the status quo. So the dynamics could well shift from disappointment to "These are the two choices before me." It will be interesting to watch that public mood.

Mr LAVARCH: Just on the States—it is constitutionally possible for the Federal referendum to give the Federal Parliament sufficient power to remove it all in one hit. As Mary said, the decision taken was to leave it to each of the States to go down their own paths. For the referendum overall to succeed, at least four States have to vote for it. I think you would find that the practical outcome would be that if five States voted for it and Tasmania did not, Her Majesty would say, "Given this, I do not particularly want to remain Queen of Tasmania", just as she refused an attempt in Western Australia to reintroduce imperial honours after they had been removed nationally; she politely declined. I think you would find that would be the same outcome in a practical sense. Legally, I think it would be possible. In practice, I think we will arrive at the same outcome by the path that has been selected.

Mr BRADLEY: I am always a bit surprised by my colleagues who seem to have such an intimate knowledge of the Queen's thoughts on these matters.

Ms KELLY: You're the one who really knows.

Mr BRADLEY: I would not purport to say that the Queen would act independently of what her Governments would advise her to do in any State.

The real difficulty with this is that the Convention fudged this question. The Convention said, "Look, we can be a sort of spotty cow, and some parts of Australia will be republics and other parts will be monarchies." In fact, at one stage one of the official ARM spokesmen said, "We will do away with the Crown at the Federal level and then we will have just six Crowns to deal with." The reality is—and it is advice, as I understand it, from the Federal Solicitor-General—that it is quite possible under the Commonwealth's power for the Commonwealth to prohibit communications between the States and Buckingham Palace, in effect, about the appointment of State Governors under the existing Commonwealth constitutional powers. So instead of 1,000 flowers blossoming, the windows would be shut and you would wait for the existing Governors to suffocate, and you would end up with the present Governors being unable to be replaced. You would move to lieutenant governors. At the end of the day the State process would go away.

What we really need to understand about this is that, in a Federal system such as ours, the independence of the States rests absolutely crucially on the independence of the State Governors. And the moment, under any change to the system, we allow the Commonwealth Government to control the position or appointment or access to State Governor, we lose the independence of the States. It is as simple as that. The moment that we move to a constitutional change which threatens that, the issue of States' rights has to be on the agenda.

The other issue that has to be on the agenda is this: when the States agree to unite in one indissoluble Commonwealth under the Crown, what if you have a State that does not wish to be part of a soluble Commonwealth under a president? Do you allow them to leave? Those sorts of generous, open-minded thoughts on that subject did not seem to be very forthcoming from our republican friends. So while it was said that all would be tolerance and light at the front end before the vote was taken, after the vote comes in I am not sure that there will be much room for diversity of views on this subject matter.

The CHAIRMAN: Before I call on one of our executive members, Mr Clem Campbell, MLA, the member for Bundaberg, to move the vote of thanks, I would like to invite those of you who are interested to join the Australasian Study of Parliament Group. It will cost you \$25. If you join tonight, the membership will be current until June 1999. For the \$25 the local chapter keeps \$5 and \$20 is remitted to our national body in Canberra. That will entitle you to receive two copies per year of "Legislative Studies", which is the journal of the association. This contains a wealth of material, both academic and the less academic type, on matters to do with Parliament and parliamentary activity.

Mr CAMPBELL: It is my privilege to move the vote of thanks to our four fine speakers here tonight. There are some themes that came through from all the speeches. First of all, it was the enjoyment of the process of participating in the Convention and the energy and interest that it provided not only to themselves but also to the nation as a whole. Secondly, there was the diversity of views and the diversity of people, and that came through tonight. Four different and diverse views were put to the Convention, and we have heard them here tonight. Thirdly, there was this aspect of power, where that power will lie under the model, and whether there could be more discussion in this regard. I believe that this is probably the ongoing question of all politics: who should have the power and, when it is not used properly, to whom should we give it then?

It also would seem that there is an acceptance from three of the four views that we are moving from the hereditary monarchy to some type of republic. When we consider this issue, what is interesting are the figures that Tom provided, comparing the elected delegates to the appointed delegates and showing how they were different. And that brings me back to this Chamber. Perhaps we would not be here talking tonight if, in 1922, the delegates to the Upper House of Queensland were elected rather than appointed. We may still have an Upper House.

But the important point is not whether we have an Upper House. The important point is that, because of the work done and the decisions that were made at that Convention, you and I will be there to cast our votes in a referendum to decide where Australia goes as a nation into the next century. Please join with me in this vote of thanks to our four fine speakers for giving us their views on the Convention.

I thank those present for their show of appreciation.

The CHAIRMAN: Before I invite you to move off to the Strangers Bar, I want to thank the Hansard reporter for recording this session. The speakers will receive transcripts of this forum. I also

want to thank the catering staff who have stayed behind to service us with refreshments and so on.
Thank you one and all.

The Forum concluded at 8.06 p.m.