Chapter One

A Funny Thing Happened on the Way to the Referendum

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On Friday, 13 February, 1998, in the House of Representatives Chamber of Old Parliament House, Canberra, republican delegates to the 1998 Constitutional Convention began to clap and cheer and embrace each other as the vote on the final resolution was taken. Spectators in the public gallery stood and cheered with them. But in the months that have followed, the republican euphoria has dimmed, even for some who had so enthusiastically joined in the clapping and the cheering and the embracing back in February. Not only have some of them predicted that the referendum to turn this country into a republic will fail: some have even dared to suggest that it will be a disaster for Australia if the referendum is carried.

The final resolution recommended to the Prime Minister and the Parliament that the republican model supported by the Convention be put to the people in a constitutional referendum. This resolution received the votes of 133 of the 152 delegates. It was supported by delegates representing Australians for Constitutional Monarchy because we, too, want the issue of the republic settled once and for all. We welcome the opportunity to have it taken out of the hands of the various elites who have controlled and stifled the debate to date, and to have it put to the Australian people.[1]

Of more significance was the preceding resolution, which called for the Convention to support the adoption of the Turnbull republican model in preference to our present constitutional arrangements. The Turnbull model, which went under the grandiloquent title of the Bipartisan Appointment of the President Model, and under which the President would be appointed by the Commonwealth Parliament, and removable by the Prime Minister, received the votes of only 73 of the 152 delegates, or 48 per cent. Hardly a ringing endorsement.

Two earlier resolutions were also put to the Convention on that final day. The first one expressed the Convention's support in principle to Australia becoming a republic, and received the votes of 89 of the 152 delegates.

The second resolution dealt with what were described as transitional and consequential issues — a collection of motherhood issues to be set out in a new Preamble within the Constitution, as distinct from the present Preamble which is, of course, outside the Constitution.

This new Preamble would start with "We the people of Australia", followed by references to "Almighty God"; the origins of our Constitution; the evolution of the Commonwealth as an independent, democratic, and sovereign nation under the Crown; our federal system of representative democracy and responsible government; affirmation of the rule of law; the original occupancy and custodianship of Australia by Aboriginal peoples and Torres Strait Islanders; Australia's cultural diversity; respect for our unique land and the environment; the agreement of the Australian people to re-constitute our system of government as a republic; another assertion of our sovereignty and our commitment to our new Constitution; provision for ongoing constitutional change; affirmation of the equality of all people before the law; recognition of gender equality; and recognition that Aboriginal people and Torres Strait Islanders have continuing rights by virtue of their status as Australia's indigenous peoples. This rag-bag collection of "feel-good" statements would give us a new Preamble that would be longer than the rest of the Constitution put together.

Then, no doubt having scared themselves witless at the magnitude and the potential significance of what they had done, the republicans added two riders: that the Preamble should be

drafted in such a way that it does not have implications for the interpretation of the Constitution; and that the Constitution itself should state that the Preamble is not to be used to interpret the other provisions of the Constitution. This resolution received the votes of 102 of the 152 delegates.

It is interesting to note that, of the four resolutions put to the Convention on the final day, the one which received the smallest number of votes, and the only one which failed to get the support of even a bare majority of delegates, was the Turnbull republican model, which is to be pitted against our present Constitution at next year's referendum. What a pathetic outcome after seven years of so-called public debate.

I propose to say more about the Convention proceedings, and about the debate over the past six months since the Convention, but it might be useful to look first at some of the events which brought us to the Convention in the first place.

In 1985 the Hawke Government set up a Constitutional Commission consisting of three very distinguished constitutional lawyers and two former heads of government — Sir Maurice Byers, former Solicitor-General of Australia; Professor Enid Campbell, Professor of Law at Monash University; Professor Leslie Zines, former Professor of Law at the Australian National University; the Hon Sir Rupert Hamer, a former Liberal Premier of Victoria; and the Hon E.G. Whitlam, a former Labor Prime Minister. The Commission was advised by five expert advisory committees, including an Advisory Committee on Executive Government, chaired by the Rt Hon Sir Zelman Cowen, a former Governor-General of Australia.[2] In all, more than forty eminent Australian men and women were involved in the review process.

The Commission was required to report on the revision of the Australian Constitution in relation to four major aspects of our life as a nation.[3] These were:

(i) Australia's status as an independent nation and a federal parliamentary democracy;
(ii) the most suitable framework for the economic, social and political development of Australia as a federation;
(iii) an appropriate division of responsibilities between the Commonwealth, the States, self-governing Territories and local government; and
(iv) to ensure that democratic rights are guaranteed.

In setting up the Constitutional Commission and its five Advisory Committees, the Hawke Government had placed high hopes in their ability to help us prepare our Constitution for the 21st Century. But then the Government seemed to change its collective mind; or was it just the Attorney-General, Lionel Bowen, changing his mind?

With the Commission required to report by 30 June, 1988, the Government had proposed to hold a referendum in December of that year. Suddenly, it brought the referendum forward to September. The rub is that, although the Commission finished writing its report on the afternoon of 30 June, the first part of its two-part report was printed only a few days before the four *Constitution Alteration Bills* were introduced in Parliament on 10 May, 1988,[4] while the second part of the report, which dealt with matters that were the subject of the referendum, did not become available until after the referendum had been held.

In total, the Commission made over 100 specific recommendations for alterations to the Constitution, but the Hawke Government selected only a few to be put to the people. It gave no reasons for rejecting the others. The four propositions that were put to the people did not represent the top priorities of the Commission, and indeed one of them — dealing with the terms of members of Parliament — was actually contrary to the recommendation of the Commission.

With so many substantive issues that it might have put to the people, the Government put together a collection of second-order proposals which Professor Geoffrey Blainey was to describe as "a clever assault on Australian democracy".[5] Even the form of the referendum questions was designed to deceive: instead of being couched in customary neutral terms reflecting the short titles of the Bills, the questions on this occasion were couched in deceptive — even dishonest —

terminology.[6] And yet, all four referendum proposals were soundly and decisively rejected in the worst defeat of any referendum proposals ever put to the Australian people.

In response to its first term of reference, requiring it to report on the revision of our Constitution to "adequately reflect Australia's status as an independent nation",[7] the Commission traced the historical development of our constitutional and legislative independence, and concluded:

> "It is clear from these events, and recognition by the world community, that at some time between 1926 and the end of World War II Australia had achieved full independence as a sovereign state of the world. The British Government ceased to have any responsibility in relation to matters coming within the area of responsibility of the Federal Government and Parliament".[8]

The Commission went on to report unanimously that "the development of Australian nationhood did not require any change to the Australian Constitution".[9] Two and a half years later this recommendation was also rejected by the Government that had commissioned it.

In April, 1991 in Hobart, the Australian Labor Party's national conference resolved that Australia should become a republic on 1 January, 2001. The motion was moved by a junior back-bencher right at the end of the conference, when most of the delegates had already begun packing up to go home. The conference chairman, in declaring the motion carried on the voices, chided delegates for their apparent lack of enthusiasm.

For the next eight months the Hobart resolution just sat on the conference record. Bob Hawke was still Prime Minister, and he was of the view that no change should be made to our present constitutional arrangements during the Queen's reign. But in December, 1991 Paul Keating became Prime Minister, and he set about trying to turn Australia into a republic as quickly as possible.

From the outset, Keating's motivation was clearly anti-British. He denounced those who disagreed with him as "lickspittles" and "forelock tuggers"; he derided the Constitution as a British document, despite its inspiration and its drafting being entirely Australian; and he publicly attributed his republicanism to his Irish Catholic background, a view which is not shared by all Irish Catholic Australians.

Soon other republicans announced their reasons for wanting to change our Constitution. We were constantly reminded that the republic was "inevitable". The arrogant assumption of the inevitability of something on which the electorate was yet to exercise a free and democratic vote was an insult to the Australian people.

The media quickly weighed in with their support. On the whole, most of those who are engaged in the media are personally committed to the republic. They are allowed to intrude their personal views into their news stories and commentaries, so that the line between news reporting and comment becomes blurred or sometimes even disappears altogether. It's not very professional or ethical, but it has been very effective in skewing the debate.

Paul Kelly, the then Editor-in-Chief of *The Australian,* told a constitutional seminar that the media would give prominent and priority coverage to constitutional change because "the media has a vested interest in change — change equates to news, and news is the lifeblood of the media".[10] In other words, the media support constitutional change, not because it is good for Australia but because it is good for their business.

Peter Collins, a former senior Liberal Minister of the Crown in New South Wales, and now Leader of the Opposition in the State Parliament, told us that he was a republican because the ultimate decision-making process for Australians rests with a foreign government, and that "it would be from the British Government that any monarch receives, and will continue to receive, advice on constitutional issues".[11] The assertions made by Peter Collins are simply not true, and what is more, they ceased to be true two years before he was born.

Al Grassby, a Minister of the Crown in the Whitlam Labor Government, told us that the monarchy was responsible for the recession of the late 1980s, for the one million Australians who were unemployed, for the business excesses of that period, and for the exodus from Australia of our top scientists![12] How can you possibly have a sensible debate about constitutional change with people who argue like that?

Michael Lynch, General Manager of the Australia Council for the Arts, told us that the monarchy stifles artistic talent and prevents our artists from fully expressing themselves![13]

Former Chief Justice of the High Court of Australia, Sir Anthony Mason, confessed that he had become a republican at the age of eight, while watching a cricket Test match between Australia and England during the 1932-33 bodyline series, though it would seem that he waited for sixty-five years before revealing it.[14]

Janet Holmes a Court, an Australian Republican Movement delegate to the Convention, told a delegation from the British Chamber of Commerce that she wanted a new flag and a new Constitution because an Asian Cabinet Minister had told her that his country would help the Australian people in their struggle for independence from Britain![15] It also worries her that her Asian acquaintances are confused by the Queen's portrait hanging on Australian Embassy walls.[16]

Sallyanne Atkinson, former Lord Mayor of Brisbane, former Australian Trade Commissioner to France, and an Australian Republican Movement delegate to the Convention, said that she was a republican because she found the French confused by the fact that the Queen of England was also Queen of Australia.[17] I should have thought that the French would have been more confused by the fact that, following their bloody revolution of 1789 and the execution of their Monarch, they endured the Reign of Terror, an Empire under Emperor Napoleon, the restoration of the Monarchy, the Second French Empire, Republics One, Two, Three and Four, and the Vichy Government that collaborated with the Nazis during World War II, before President de Gaulle gave them their current Fifth Republic. The Trade Commissioner might more usefully have spent her time in Paris in telling the French something of the enduring stability of our constitutional arrangements.

Unfortunately, Mrs Atkinson is typical of so many of our foreign service officials. The former Secretary to the Department of Foreign Affairs and Trade, Richard Woolcott, and other former diplomats from that Department, have argued for constitutional change in order to simplify matters for our overseas diplomats when it comes to explaining our constitutional arrangements to foreign Heads of State and their officials.[18] Mr. Woolcott has mentioned particularly his own difficulties in explaining the 1975 Dismissal to former President Suharto of Indonesia as a reason for altering our Constitution![19] If our diplomats and trade representatives cannot understand, explain and defend our present system of government, they should get off its payroll.

Bill Ferris, the former Chairman of the Board of the Australian Trade Commission, and now the Chairman of the Australian Venture Capital Association, told us that the republic would present a windfall marketing opportunity for Australian exporters because our present constitutional arrangements were harmful to the overseas promotion of our products and services.[20] According to Mr. Ferris, the republic will help us gain international recognition for our technology and our inventions, and will ensure that much more venture capital than at present will flow back into our newer industries.[21] So now we know — the monarchy is responsible for our trade deficit!

Lindsay Fox, founder and Chairman of Fox Group Holdings Pty Ltd, and an Australian Republican Movement delegate to the Convention, together with other business leaders, saw the republic as an opportunity for Australia to "re-badge" and "re-brand" itself, thus reducing the nation, its history, its Constitution and its system of government to the level of a new car or a packet of detergent.[22]

Neville Wran, former Premier of New South Wales and an Australian Republican Movement delegate to the Convention, told us that changing to a republic would boost jobs and invigorate Australia's spirits.[23]

With so many specious arguments being advanced for constitutional change, what hope has the ordinary Australian of understanding how the present system actually works? Most Australians don't know enough about our present system to enable them to put into proper context any proposals for change. The Constitutional Commission reported in 1988 that almost 50 per cent of all Australians were unaware that Australia has a written Constitution, and that in the 18-24 year age group the level of ignorance rose to nearly 70 per cent.[24] In 1994 the Keating Government's Civics Expert Group found that nothing had changed, with 82 per cent of Australians still knowing nothing about the content of the Constitution.[25]

The sad thing is that ignorance about our Constitution is just as pronounced among members of Parliament as it is in the general community. During last year's parliamentary debate on the legislation which led to the Convention, the last word on the Bill was had by the Honourable Member for Werriwa, Mark Latham, a member who has served on parliamentary committees dealing with public administration and constitutional affairs and who is, of all things, the Opposition's shadow minister for education. In the course of that speech he revealed his total ignorance of the basic provisions of our Constitution in relation to the powers and functions of the Queen and the Governor-General. In his attempts to describe these provisions he was dead wrong: his references to our constitutional arrangements were simply not true. I do not think he was being mischievous or that he deliberately misled the Parliament — he just doesn't know any better.[26]

Right from the outset, the role of the Governor-General under our Constitution has never been properly understood, as I hope I demonstrated in my paper to this Society's eighth Conference in March, 1997.[27] That conference paper became the basis of a paper[28] which I tabled during my speech on the first day of the Convention.[29]

The nub of the republican push, at least so far as supporters of the Keating/Turnbull/Australian Republican Movement model are concerned, consists of a desire to assert our independence of Britain and to have an Australian Head of State. But the Constitutional Commission found that we have been fully independent at least since 1945.[30] It reported that:

> "…..[a]lthough the Governor-General is the Queen's representative in Australia, the Governor-General is in no sense a delegate of the Queen. The independence of the office is highlighted by changes which have been made in recent years to the Royal instruments relating to it".[31]

As the Governor-General is undoubtedly a constitutional Head of State, and as the office has been held by an Australian since 1965,[32] the republican nub is very small indeed.

Whether republicans like it or not, a long series of legal opinions and political decisions since 1901 has confirmed that Australia has two Heads of State: a symbolic Head of State in the Queen, and a constitutional Head of State in the Governor-General. The role of the Governor-General viz-a-viz the Sovereign was finally put beyond all doubt in 1984 when, acting on the advice of Prime Minister Bob Hawke, the Queen revoked Queen Victoria's 1900 Royal Instructions to the Governor-General — instructions that were invalid and should never have been issued.[33]

In the lead-up to the Convention, republicans and the media drew comfort from statements by former Governor-General Sir Zelman Cowen and former Chief Justice of Australia Sir Anthony Mason, so let us look carefully at what these two distinguished and learned gentlemen actually said.

In his Washington lecture last September, Sir Zelman restated his earlier view that:

> "…..the case for conversion to a republic had not been made out, since we had achieved the substance of independence within the existing framework of government, and I believed

that it served no significant national interest to go further, to create community division without compensating benefit".[34]

But he went on to add:

"On further reflection, I have come to the conclusion that this symbolic change [to a republic] should be made, and that it is a matter of importance for an independent Australia to state simply and unambiguously our national status in constitutional terms".[35]

Sir Zelman did not, however, reconcile this change of mind with his own use of the term "Head of State" in previous interviews and speeches to describe the role of the Governor-General, and his oft-expressed view that, in carrying out his constitutional duties, the Governor-General acts in his own right and not as a representative or surrogate of the Sovereign.[36]

I find this particularly odd as it was Sir Zelman who, in 1980, when I was his Official Secretary, set me off on my research into the constitutional position of the Governor-General by pointing out to me that, in the exercise of his constitutional role, the Governor-General was not the Sovereign's representative or surrogate. And in 1987 Sir Zelman had chaired the Advisory Committee on Executive Government, whose advice had helped the Constitutional Commission to conclude in 1988 that we were already a sovereign and independent nation, and that our Constitution required no alteration on that score.[37]

As a precondition for his support for the republic, Sir Zelman set out other constitutional matters which he now sees as central to proper constitutional change, including enumeration and definition of the powers of the President.[38] But this is the very matter which Mr. Keating told the Parliament and the nation that his Government had found impossible to do,[39] and which the Constitutional Convention found too difficult to do and left for the Parliament to consider.[40] It should also be noted that Sir Zelman's views are not shared by former Governor-General Bill Hayden, nor would they have been shared by former Governors-General Sir John Kerr, Sir Paul Hasluck and Lord Casey, to my certain knowledge, and probably not by other former Governors-General as well.

Sir Zelman was followed into the debate a month later by former Chief Justice Sir Anthony Mason. I have already referred to Sir Anthony's confession of his closet republicanism from the age of eight. When asked about the monarchists' view that we had two Heads of State, and that we already had an Australian constitutional Head of State in the Governor-General, he replied: "They should re-read section 2 of the Constitution".[41]

Of course, Sir Anthony made no reference at all to s.61, under which the Governor-General exercises the executive power of the Commonwealth; he conveniently ignored the fact that s.2 and s.61 refer to two different sets of powers.[42] He overlooked the fact that the monarchists' view is supported by such eminent constitutional lawyers and jurists as Inglis Clark and Harrison Moore, both of whom had participated in the drafting of our Constitution;[43] Lord Haldane, sometime Lord Chancellor of Great Britain and President of the Judicial Committee of the Privy Council;[44] former Justice of the High Court, Dr. H.V. Evatt;[45] former Solicitor-General of Australia, Sir Maurice Byers;[46] and two former Chief Justices of Australia, Sir Harry Gibbs[47] and Sir Garfield Barwick.[48]

When asked about the difficulty of codifying the Governor-General's reserve powers, Sir Anthony replied that Malcolm Turnbull could do it in half an hour. It was a great pity, though not at all surprising, that the ABC interviewer failed to ask Sir Anthony why, if it really was so easy, had Prime Minister Keating said that it could not be done at all; and why had Malcolm Turnbull, if he could do it in half an hour, still not done it after seven years; and why had the Australian Labor Party still not done it after being warned about the general problem by Dr. H.V. Evatt sixty-two years ago?[49]

Sir Anthony also credited Malcolm Turnbull with putting forward what Sir Anthony called a moderate proposal for constitutional change, yet Turnbull had to tell a National Press Club audience that the republicans had not been able to settle the details of their proposed

constitutional changes.[50] Although this failure had now gone on for the past seven years, Turnbull claimed that they would be able to do this fairly quickly once the people had voted for a republic. That, of course, was when the republicans were still hoping to hijack the debate by persuading the Government to go to a plebiscite before a referendum. Instead, the Government held the Constitutional Convention to see if the republicans could really make up their minds as to what sort of republic they thought we should have.

The holding of the Constitutional Convention showed just how unprepared the republicans really were on the question of the republic. Though they agree that they want to remove the Queen from our Constitution, they are utterly divided and confused over who or what to put in her place. The reality is that the Crown has a most important role in ensuring the continuity and the stability of our system of government. Behind it lie almost a thousand years of history and tradition which none of the several republican models on offer could hope to replicate. Indeed, after seven years of "It's inevitable", and a two-week, multi-million dollar Convention, the republicans are still hopelessly divided over just what "It" actually is.

Under our present system of government the constitutional Head of State is chosen by the Government of the day, is advised by the Government of the day, and may be removed on the advice of the Government of the day. All public office holders are either elected by the people, or appointed by those who have been elected by the people. Nothing could be more democratic, or more republican.

The role of the Crown in the appointment and removal processes ensures that the Governor-General's allegiance is to the entire nation and not just to those, whether in the community at large or in the Parliament, who voted him or her into office. In our democracy, election to a public office, as distinct from appointment, carries with it the notion of a mandate, with policies to pursue and supporters to be rewarded, and there is no place for such influences on the person who occupies the desk at Government House, Canberra. I have known Governors-General who have been deterred from acting or speaking in a particular way simply because they knew they had been appointed and not elected. It would be constitutional madness to surrender this very powerful restraint on what is potentially a very powerful position under our Constitution.

Last year, as republicans argued over the Keating/Turnbull/ARM republic (in which the President would be appointed by Parliament), and a popular election republic (in which the President would be elected by the people), we saw Sir Zelman Cowen opposed to popular election of the President, while Sir Anthony Mason was not. At about the same time, Mr. Richard McGarvie, former Judge of the Supreme Court of Victoria and former Governor of Victoria, entered the debate to reject both methods of electing a President:

> "They may sound all right in theory. They sound innocuous but are really changes of drastic potential. In the living reality of the political culture and constitutional practice of this country they would immediately corrode and ultimately destroy our democracy".[51]

Mr. McGarvie was to have a profound influence on the outcome of the Convention.

The republican delegates came to the Convention in disarray, so much so that in the initial stage the Convention was presented with no less than ten republican models. Faced with the tightly disciplined Australian Republican Movement, some of the other republicans quickly formed a loose coalition and called themselves the Direct Election of the President Group. By Day 9 the Convention was down to four republican models. The "Direct Elects" made an overture to the ARM, which would have required Parliament to receive public nominations for President, from which Parliament would have selected the candidates who would contest a popular election. This overture was ignored.[52]

The essence of the McGarvie intervention was to point out the defect in the ARM model relating to the dismissal of a President, for the requirement of a two-thirds majority of Parliament would have made virtually impossible the removal of a President who was causing grief to the

Government of the day. Unfortunately, in their scramble to cobble together a few more votes for their model, the ARM have placed the President entirely at the mercy of the Prime Minister, who would be able to summarily dismiss the President, subject to later ratification by the House of Representatives only. The Senate is to be involved in the appointment process but is to be excluded from the removal process. So much for federalism. That State and Territory parliamentary delegates could support such a proposal is beyond belief.

In an attempt to placate those republicans who wanted, and still want, the people to be involved in the appointment process, the ARM offered them a committee that would receive nominations from the community and compile a short list for consideration by the Prime Minister. This committee would operate in secret, nominations made to it and recommendations made by it would be secret, and the Prime Minister would not be bound by its advice. Sir Harry Gibbs has rightly described this process as a clumsy sham.[53]

In the concluding ballots the Direct Election model was eliminated ahead of the McGarvie model: the final survivor was a significantly modified ARM model. Among Convention delegates it became known as the "camel", and the Treasurer, Peter Costello, referred to it as a "hybrid on a hybrid on a compromise".[54] At the end of the Convention the ARM and the "Direct Elects" were still at loggerheads, remain so today, and will be right up to the referendum.

Mind you, the "Direct Elects" don't deserve too much sympathy over their disappointment. By the end of Day 2 the Australian Republican Movement had used the procedures of the Convention to side-line the "Direct Elects" and to exclude their proposals from further consideration: nothing, it seemed, was to be allowed to stand in the way of the Turnbull steamroller.

Former Governor-General Mr. Bill Hayden was outraged by this travesty of democracy, and he drafted an amendment that was designed to allow the "Direct Elects" back into the debate. He obtained a seconder from among their ranks — Pat O'Shane — and he set about getting the numbers. He approached me and asked if my monarchist colleagues and I would support his motion. When I protested that we were not there to help an unworkable republican model get up, he reminded me that Clem Jones had tried — unsuccessfully, as it turned out — to eliminate the Constitutional Monarchists from further participation in the Convention on Day 1, and that we should therefore know how it felt to face being cheated out of a right to participate throughout the Convention. There was a delicious irony in the fact that the "Direct Elects" had now received a dose of the medicine they had tried to administer to us, but in the end I was able to tell Pat O'Shane that we would come to her aid and that of her colleagues.

The threat of a rebuff to the Australian Republican Movement on the floor of the Convention set off a flutter in the dove-cote, and the matter was quickly brought before the Resolutions Group. After a hurried lunch-time meeting, the Resolutions Group presented the Convention with an interim report and made the novel recommendation that resolutions which received 25 per cent support should go forward to the next stages of debate. It further recommended that this recommendation be adopted retrospectively, so that earlier resolutions which had failed to achieve 51 per cent support, and which had thus been eliminated, would again be put to the vote and re-admitted if they received 25 per cent support.

As the presenter of the Resolutions Group's novel proposal, Gareth Evans was credited with getting the "Direct Elects" back into the game, but the real credit for restoring this bit of democracy to the Convention's proceedings should go to Bill Hayden. He did not switch camps, as the media claimed; he still supports our present Constitution; and he certainly did not deserve the scorn which, in their ignorance, the media heaped on him. He was simply defending the right of all Convention delegates to participate throughout its deliberations.

A feature of the concluding stages of the Convention was the raft of amendments which were made to the ARM model as Malcolm Turnbull sought to pick up extra votes from republicans who were not fully committed to his particular model. As each key element of the model was

being settled by the Convention, last-minute amendments were circulated: we even had the spectacle of Malcolm Turnbull drafting amendments on the floor of the Chamber and having them projected on the screens as the final votes were being taken. So much for the well-thought-out republican model which we are to be asked to accept in place of our present Constitution.

Moira Rayner, a member of the Resolutions Group, has given a description of the bullying and offensive behaviour which was used to deliver the results ARM wanted;[55] and Peter Costello has described how Malcolm Turnbull came to him "like Nicodemus, by night to try and steal my vote on this, and said 'Don't worry about any of that: the Parliament can ignore it' ".[56] No wonder the ARM model failed to satisfy even a bare majority of delegates.

Oddly enough, Malcolm Turnbull's final comment that "Parliament can ignore it" seems to have struck a chord with Peter Costello. This newly declared republican, who refused to support the final compromise ARM model, was reported as saying that he would urge Parliament to amend it when the *Referendum Alteration Bill* came before it. It was pointed out that the Government would have scope to tinker with elements of the ARM model when it is drafting the legislation.[57]

For the Government to allow the Treasurer and the Attorney-General to produce their own versions of what they think the Constitutional Convention should have come up with, or for Parliament to tolerate such action, would be a betrayal of the Convention, and a repudiation of undertakings given by the Prime Minister and the Leader of the Opposition to put the Convention's republican model to the Australian people at a referendum — undertakings which were given to the Convention immediately after its Chairman and Deputy Chairman had handed the final communique to the Prime Minister.[58]

I hope that the community debate that lies ahead of us will be aimed at keeping the bastards honest, and I am heartened by the reported comments of Senator Nick Minchin, Special Minister of State:

> "The Government made a fundamental covenant, both with the Convention and the public, that we would introduce legislation to give effect to the model agreed by the Convention. We will not be departing from that. After all, that is the model championed by the ARM itself".[59]

What the Minister was saying after the Convention was merely confirming what the Prime Minister had said in his opening speech to the Convention:

> "I inform the Convention that if clear support for a particular republican model emerges from this Convention my Government will, if returned at the next election, put that model to a referendum of the Australian people before the end of 1999".[60]

He was followed by the Leader of the Opposition, who said that "[t]he next step after this Convention must be a direct appeal to the people".[61]

One of the most shameful episodes of the Convention failed to arouse even a ripple in the media, which in itself is a sad commentary on the standards of public life in this country. On Day 7, on the recommendation of Gareth Evans on behalf of the disgraceful and discredited Resolutions Group, the Convention adopted a contrivance that had been designed to control the way in which ACM delegates could vote in the final votes. It was deliberately contrived to prevent us from voting strategically, and the republicans were quite shameless in admitting this when called on for an explanation.[62]

Unconvinced by the explanation for what was a most extraordinary voting procedure, Bill Hayden said:

> "Frankly, Gareth, if I did not know you well, I would say there is a bit of a ramp being worked up here in a way that is not unknown in the Labor Party conferences".[63]

Mr. Hayden's objections to the proposal were supported by a number of delegates, including Peter Beattie, then Queensland's Leader of the Opposition and now its Premier. When he had finished speaking, Mr. Beattie was taken outside the Chamber by Malcolm Turnbull. A few

minutes later Mr. Beattie returned to the Chamber and voted for the proposal. When I called across to him, "Why the turn-around, Peter?", he laughingly replied, "I've been persuaded to see the light".

Shortly afterwards, I moved and former Senator Reg Withers seconded a motion[64] by which we made another attempt to amend the voting pattern for Day 9 and to reject the rigged voting pattern which Mr. Hayden, and Mr. Beattie, had denounced in the earlier debate. As soon as we had spoken, Mr. Turnbull strode across the Chamber to us and said: "If you go ahead with your amendment, all deals are off", to which Mr. Withers replied: "We made no deals with you, Malcolm, so push off".

What the republicans didn't realise was that, in the final vote to choose the Convention's preferred republican model, ACM still had the capacity to upset their schemes completely anyway, had we wanted to. What they didn't know was that we had taken a decision last December to allow the republicans to choose their own model without any interference from us. We felt we could not honourably go into the referendum to oppose a model which we had helped to select. But the whole episode shows how the ARM was prepared to control the Convention at any price.

The motion for the adoption of the compromise model was moved on the tenth and final day by Archbishop George Pell, whom Mr. Lloyd Waddy described in his reply as:

> "…..a man appointed by the head of the oldest continuous monarchy in Europe, the Vatican, where Australia sends its own Ambassador. It is interesting that His Grace is able to be such a monarchist in his occupation and such a republican in his sentiment".[65]

The Archbishop spoke of the constitutional monarchists having voted with discipline, integrity and honour,[66] a theme that was taken up by other delegates and by sections of the media. I was angry earlier at the suggestions that we might have voted strategically, and that the method of voting had to be specially contrived to prevent this, and I said so at the time.[67] But I think I was even more upset later by those who seemed surprised that we had in fact acted honourably and with integrity, and praised us for it. Had they really expected us to act differently?

In summing up the Convention I can do no better than quote from the latest paper by Mr. Richard McGarvie:[68]

> "February's Constitutional Convention was enormously successful in revealing to the public for the first time the importance and complexities of the issue and the crucial differences in practical effect between the safe and risky ways of becoming a republic.
>
> "That the place in history of the model and the method of community choice which emerged from the Convention for the 1999 referendum, will be no more than that of an educational step contributing to the later resolution of the issue, is not the fault of the Convention process.
>
> "It is the result of the model's basic structure having been designed in the warm glow of theory, promoted in the public relations mode designed to attract votes, and its actual impact on our system in the harsh realities of politics receiving little attention. At the Convention other structural parts were added on, so as to get the votes on the floor that enabled the model to draw the highest level of minority support there".

Well, so much for the Convention — what has happened since? By and large the media have left republicanism alone for the time being — they have more important fish to fry. But commentators and academics have continued to tease out the many questions left unanswered, or with unsatisfactory answers, by the Convention. The Editor of *Quadrant,* Mr. P.P. McGuinness, has said that:

> "[t]he real question remaining for Australia is whether the electorate can be persuaded to accept a republican model which it never wanted. ... In the meantime, the elitist republicans ... may well ensure that republicanism of all kinds is defeated at the 1999 referendum".[69]

Professor Brian Galligan, Professor of Political Science at the University of Melbourne, has described the Convention model as deeply flawed and anti-republican, and has predicted that it will

fail at the referendum. For Professor Galligan the real issue "is not whether Australia becomes a republic or not; we are that already according to any substantive meaning of the term", and he goes on to show that we are a republic in the modern political sense of the term and in the constitutional sense of the term.

Professor Galligan is concerned that the debate has been in the hands of "constitutional tinkerers", and he reminds us, in terms that will resonate with members of this Society, that the progressive elites and the Labor Party, who now comprise or support the constitutional tinkerers, have been persistent throughout Australian political history in their calls to:

> "…..abolish federalism and the States because they are obstacles to democratic centralism, to abolish the Senate because it divides the legislature and provides equal representation for smaller States, and to jettison judicial review by the High Court because it is undemocratic".[70]

Mr. Harry Evans, Clerk of the Senate, has injected a note of reality into the debate by pointing out some of the practical problems which could be caused by the adoption of the Convention model. He has reminded us that the effect of constitutional proposals in recent years has been to dismantle constitutional safeguards; that the provision of constitutional safeguards is quintessentially republican; and that a country without safeguards is no republic.[71]

One of the most blatant pieces of dissembling I have so far come across in the post--Convention debate is to be found in the latest magazine of the Constitutional Centenary Foundation. It got the facts right in describing the content of the Convention's final Communiqué, but in its summation of the vote on the final model it gave up all pretence of bi-partisanship.

The final vote on the Turnbull model was 73 in favour, 57 against and 22 abstentions. After ten days of public debate and private negotiating, 79 delegates refused to endorse the Turnbull model — 48 per cent supported it and 52 per cent declined to support it — yet the Constitutional Centenary Foundation felt able to tell the readers of its magazine that the model had been "endorsed by a majority of delegates who voted for or against the motion".[72] Such weasel-wording is unworthy of the Foundation and the on-going debate.

Some of the best and most recent published contributions to the debate will be found in the June, 1998 issue of *The University of New South Wales Law Journal*.[73] The entire issue has been give over to *The 1998 Constitutional Convention: An Experiment in Popular Reform*. It contains fourteen articles, including one by our President, Sir Harry Gibbs, and six by Convention delegates. If I mention only some of them, I hope the others will forgive me, for I believe that all have made contributions to the debate which the community is yet to have.

Professor George Winterton, Professor of Law, University of New South Wales, and an appointed delegate to the Convention, believes that the Commonwealth Parliament should "generally honour" the Convention's resolutions. He also acknowledges that the Turnbull model is "flawed, but not beyond repair by a parliamentary committee or by the Convention itself if recalled". The Professor seems to hope that elements which he sees as unsound, inappropriate or incomplete, will be repaired, no doubt by reinstating proposals of his own which were not accepted by the Convention.[74]

Professor Cheryl Saunders, Professor of Law, University of Melbourne, and Deputy Chairman of the Constitutional Centenary Foundation, comments that the Convention model is "significantly flawed", admits that, "[w]ith hindsight, minimalism has been a mistake", and now hopes for "some active intervention by the Parliament".[75]

Professor Greg Craven, Professor of Law, University of Notre Dame Australia, and an appointed delegate to the Convention, notes the development at the Convention of three distinct strands of Australian republican thought, where previously it had tended to be perceived as a single, more or less uniform entity. His three strands are: radical republicans who favour dramatic change to the Constitution; mainstream or ARM republicans who ardently desire dramatic change

in our constitutional symbols, but not in our substantive systems of government; and conservative republicans who reluctantly accept the republic as inevitable but want to ensure that the new republic is merely an adaptation of our highly successful constitutional monarchy. Professor Craven, who was deeply troubled by some of the Convention's decisions, raises some real and troubling questions for any republican, particularly a conservative one.[76]

Linda Kirk, Lecturer in Law, University of Adelaide, and an ARM delegate to the Convention, perceives a number of incongruities in the Convention model, particularly in relation to the dismissal of a President, and calls for the Parliament to reinstate an alternative proposal raised by the ARM at the Convention and rejected.[77]

The position taken in his paper by Mr Jason Yat-Sen Li, an elected delegate to the Convention, is a little worrying. He saw the Convention, and he sees the republic, purely in terms of the interests of Australians of non-English-speaking backgrounds (NESBs). Dr Tony Cocchiaro, an ARM elected delegate from South Australia, told the Convention that he had gone through the *Delegates' Handbook* and had identified only twelve NESB delegates.[78] As the first line of my entry read: "Born Melbourne 1933 (family migrated to Australia from Poland 1929)",[79] I interjected, "Did you count me?" but received no answer.[80]

The answer has now been given by Mr Li — he lists Dr Cocchiaro's twelve, and my name is still not there. Of the now thirteen NESB delegates, three were constitutional monarchists, yet Mr Li writes of four NESB issues on which he believes that NESB Australians find common ground. All relate to changing our Constitution to that of a republic. He tells us that 30 per cent of Australians are NESBs; he assumes that there is a common NESB view about constitutional change; he ignores completely those NESBs who are opposed to constitutional change; and he ignores the other 70 per cent of the community who are not NESBs, just as he ignored the non-republican NESB delegates. Altogether a disappointing and unhelpful contribution to the debate.[81]

Julian Leeser, a law student at the University of New South Wales, an ACM elected delegate, and the youngest elected delegate at the Convention, has raised the loosest of all loose end which the Convention left unresolved — does the referendum need to be carried in four States or in six States? Importantly, if the voters of two States reject the referendum, will they be allowed, or able, to remain as monarchical States within a republican Commonwealth, or will they be forced to become republican States anyway, regardless of how they voted? Mr. Leeser concludes that:

> "The republic debate has been a divisive one. The worst scenario for republicans who argue that a republic will bring Australians together is a High Court challenge that will tear Australians apart".[82]

Sir Harry Gibbs dissects the Convention and its model with his customary precision, and sums it all up in his final paragraph:

> "One rather gets the impression that some delegates to the Convention were less concerned to achieve excellence in the proposed constitutional model than to have a republic at any price. The model proposed by the Convention is so obviously defective that it must surely have little chance of success at a referendum. If, by some possibility, it were adopted, the result would be a disaster for Australia".[83]

I cannot leave this survey of the current state of the debate without referring to the latest contribution by former Chief Justice of the High Court, Sir Anthony Mason. In March of this year the Australian National University Law School, which last December did me the honour of appointing me an honorary Visiting Fellow, invited me to give the first paper in a public seminar series on *The Republic: What Next?* My seminar paper was based on my paper to this Society's March, 1997 Conference in Canberra.[84] It stated the case for my "two Heads of State" view, and it pointed out that the Convention had confirmed my view when it determined that the powers of the President shall be the same as those currently exercised by the Governor-General. If the former will be a Head of State, then the latter must be a Head of State now.

Nine weeks after my paper Sir Anthony gave his paper in the ANU public seminar series.[85] In his opening paragraph he stated that, for the most part, he would deal with constitutional and legal issues, but that he would also indulge himself to the extent of commenting on some observations made by earlier speakers in the seminar series. So far as I can tell, I was the only earlier speaker whom he singled out — I was certainly the only one whom he named.

Sir Anthony once again quoted s.2 of the Constitution and stopped there, thereby revealing himself as just another republican who cannot read on as far as s.61.[86] Sir Anthony found it very easy to say that my view of our Constitution is incorrect. After all, I am not a constitutional lawyer. I am not even a lawyer. I am only a political scientist, and I am therefore a very easy mark for a former Chief Justice of the High Court.

Sir Anthony might have found it more difficult to tackle the seven distinguished constitutional lawyers and jurists, and one Governor-General who is also a distinguished constitutional lawyer, to whom I have already referred. Sir Anthony is obviously not aware that our Constitution gave to our Governor-General executive powers not previously granted to any other Governor-General in the British Empire. Sir Anthony is obviously not aware that Queen Victoria's Ministers were wrong in advising her to issue Royal Instructions to the Governor-General in 1900. And Sir Anthony is obviously not aware that the Queen revoked those Instructions in 1984.

Sir Anthony tries to take me up on what I have said about Governors-General being accorded Head of State status when travelling overseas. I have referred to the 51 State and official visits to 33 foreign countries since 1971. Sir Anthony mentions only one such instance, and gets it wrong. He talks of a supposed visit by Sir John Kerr to Iran for the Coronation of the Shah. The Coronation visit was made by Sir Paul Hasluck in 1971: Sir John Kerr's State visit to Iran was made in 1975.

Sir Anthony refers to the early role of the Governor-General as the representative of the British Government — a situation which did exist, and was changed in 1926 — and speculates on whether I am aware of this. I am indeed, for I delivered a paper on the subject in Parliament House, Canberra, in 1995 in the Australian Senate's *Occasional Lecture* series.[87] What Sir Anthony refers to as a change in the way the Governor-General saw the responsibilities of his office was in fact a change in the way British and Australian Ministers saw the responsibilities of the office — the Governor-General had nothing to do with it.

Sir Anthony refers to a so-called convention that the Governor-General does not attend a function in Australia when the Queen herself is present. We certainly had such a practice once, but there was no constitutional or practical reason for it, and Sir Anthony is in error in his reliance on it. He correctly states that the Governor-General has not attended when the Queen has "opened" the Commonwealth Parliament.[88] But he is wrong in his assumption about the reason for this. The Standing Orders of both Houses of the Parliament provide for the "opening" speech to be delivered by the Governor-General, and in 1953 both Houses amended their Standing Orders to provide that, in certain circumstances, references to the Governor-General shall be read as references to the Queen.

In a footnote to this part of his paper Sir Anthony states that the "*Royal Style and Titles Acts* were enacted by the Commonwealth Parliament on two occasions (1953 and 1973) to set at rest any doubts that the Queen could deliver the address at the opening of Parliament". But Sir Anthony manages to get this wrong too, for the *Royal Style and Titles Acts* did no such thing — they merely amended the Queen's Royal Style and Titles! Sir Anthony has confused these Acts with the *Royal Powers Act* 1953.

That Act was not only the basis for the amendment of the Standing Orders of the Parliament. Its purpose was also to enable the Queen, whenever she is present in Australia, to exercise any power under an Act exercisable by the Governor-General. The Act does not prevent the Governor-General from continuing to exercise his statutory powers while the Queen is in

Australia, and in fact Governors-General have continued to do so. Thus we see that the representative role, which seems to have bedazzled Sir Anthony, is actually reversed, with the Sovereign being empowered by the *Royal Powers Act* to act as a delegate of the Governor-General.

Sir Anthony's final attack on me centres around Sir Zelman Cowen's absence when the Queen opened the High Court building in Canberra in 1980. And you will not be surprised when I tell you that Sir Anthony gets this wrong too.

Sir Anthony refers to what he is pleased to call a robust convention which decrees that there is no place for the Governor-General when the Queen is present. Sir Anthony is wrong again, for there is no such convention. To be sure, in Australia we had followed such a practice on previous Royal visits, but I knew of no constitutional or other basis for it, so I took the matter up with Buckingham Palace in the course of our preparations for the 1980 visit. I was told that the Palace knew of no basis for the practice, which seemed to be peculiar to Australia, and that the Queen would be pleased if the Governor-General were present when she opened the High Court.

I so informed the ceremonial officers of the Department of the Prime Minister and Cabinet, and draft orders of arrangements were prepared which provided a place for the Governor-General on the dais. It was only when the Prime Minister, Mr Malcolm Fraser, saw the draft that he decided that the Governor-General should not be present: with the Governor-General out of the way, his place in the official procession next to the Duke of Edinburgh would be available for the Prime Minister. Sir Zelman asked me not to pursue the matter, but he was disappointed and very hurt.[89]

When the Queen opened the Commonwealth Games in Brisbane in 1982 the Governor-General, Sir Ninian Stephen, was present and seated next to her, as had been the Governor-General of Canada when the Queen had opened the Commonwealth Games in Edmonton in 1978 — two years before our High Court opening. So much for Sir Anthony's so-called robust convention.

Perhaps next time Sir Anthony will be more careful before he indulges himself in commenting on observations made by earlier speakers, and less dismissive of what he was pleased to call the Head of State nonsense. If the participants in the seminar series were exposed to nonsense, they certainly didn't get it from me.

In bringing this paper to a close, I can do no better than use the words of Richard McGarvie in his latest contribution on the subject:[90]

> "I consider that the referendum in 1999 will fail because Australians are instinctively a wise people. They are well aware that they have the responsibility for maintaining for future generations one of the world's oldest and best democracies, which Australians have built. A referendum campaign tends to be all-revealing. By the time they vote, people will realise how the model would damage essential elements of our democratic system, and how much it would strain our federation to have the Commonwealth become a republic while the States are left to fend for themselves. The referendum will not resolve the republic issue because numerous voters, at heart favouring a republic, will put their democratic system and federation first, and vote against it".

As we approach next year's referendum, it is time that the Australian Republican Movement came clean, and told the people of Australia their real reasons for wanting to alter our Constitution. The Turnbull model will not give us independence, for we have that already. It will not give us an Australian Head of State, for we have that already. It will not give us a republican form of government, for we have that already. And it will not give us a better Constitution, for even the ARM's most ardent supporters are now telling us why it will not work, and are seeking to change it. Nicodemus in the night clearly has not been able to improve on what our Founding Fathers fashioned so carefully and so patiently over two decades. With the help of $40 million of taxpayers' money, the Australian Republican Movement has been given the chance to put up, and it failed. It is surely time that it shut up!

Endnotes:

1. For a summary of the final day's proceedings see *Report of the Constitutional Convention,* Volume 1, pp. 40-41; for details of the resolutions and the voting on each one, see *Report of the Constitutional Convention,* Volume 2, pp. 118-134.

2. *Executive Government: Report of the Advisory Committee to the Constitutional Commission,* Canberra Publishing and Printing Co., Canberra, 1987.

3. *Final Report of the Constitutional Commission,* Australian Government Publishing Service, Canberra, 1988, p. 1.

4. *Commonwealth Parliamentary Debates (H of R),* 10 May, 1988, pp. 2385-91.

5. Geoffrey Blainey, *What the Constitutional Commission Achieved: A Comment*, in Brian Galligan and J.R. Nethercote (eds), *The Constitutional Commission and the 1988 Referendums,* Centre for Research on Federal Financial Relations and Royal Australian Institute of Public Administration (A.C.T. Division), Canberra, 1989, p. 15.

6. Richard Alston, *The No Case*, in Galligan and Nethercote, *op.cit.,* p. 87.

7. *Final Report of the Constitutional Commission, op.cit.*, p.1.

8. *Ibid*., p. 75.

9. *Ibid*..

10. Paul Kelly, in a speech to the Constitutional Centenary Foundation, 12 November, 1993.

11. *The Weekend Australian,* 28-29 August, 1993.

12. *The Canberra Times,* 8 December, 1993.

13. *The Australian,* 25 October, 1994.

14. *The Australian,* 28 October, 1997: see also note 41 below.

15. *The Canberra Times,* 26 March, 1998.

16. *The Age*, 7 November, 1997.

17. *The Australian,* 8 October, 1997.

18. *The Sydney Morning Herald,* 9 January, 1998.

19. Personal knowledge.

20. *The Canberra Times*, 1 September, 1993; and repeated in *The Canberra Times*, 10 October, 1997.

21. Bill Ferris, *Confidence at home helps us out abroad*, in *The Australian,* 10 October, 1997.

22. See, for example, James Kirby, *Business begins to join the republican team*, in *Business Review Weekly,* 10 November, 1997; Michelle Grattan, *What's in it for business?,* in *The Australian Financial Review,* 24 January, 1998; and Bill Ferris, *op.cit.supra*.

23. *The Australian Financial Review,* 20 November, 1997.

24. *Final Report of the Constitutional Commission, op.cit.*, p. 43.

25. *Whereas the People ... Civics and Citizenship Education,* Australian Government Publishing Service, Canberra, 1994, pp. 18-19.

26. *Commonwealth Parliamentary Debates (H of R),* 28 August, 1997, p. 7120.

27. *The Role of the Governor-General*, in *Upholding the Australian Constitution,* Proceedings of The Samuel Griffith Society, Volume 8 (1997), pp. 167-187.

28. *But We Already Have an Australian Head of State*, tabled 2 February, 1998. See *Report of the Constitutional Convention,* Volume 2, p. 19.

29. *Report of the Constitutional Convention,* Volume 3, pp. 66-69.

30. *Final Report of the Constitutional Commission, op.cit.*, p. 75.

31. *Ibid*., p. 313.

32. Lord Casey was appointed on 22 September, 1965.

33. See note 27 above. Two distinguished Australian constitutional scholars, A. Inglis Clark, who had worked with Samuel Griffith on his drafts of the Constitution, and who later became Senior Judge of the Supreme Court of Tasmania, and W. Harrison (later Sir Harrison) Moore, who had worked on the first draft of the Constitution that went to the 1897 Adelaide Convention, and who later became Professor of Law at the University of Melbourne, expressed the view that the Instructions were superfluous, or even of doubtful legality, on the grounds that the Governor-General's authority stemmed from the Australian Constitution, and that not even the Sovereign could direct him in the performance of his constitutional duties. That advice was to be confirmed in 1975 in an Opinion entitled *Governor-General's Instructions*, given to Prime Minister Gough Whitlam by the Solicitor-General, Sir Maurice Byers: *Opinion of the Solicitor-General of Australia,* 5 September, 1975.

34. Sir Zelman Cowen, *One Hundred Years a Nation: Australia Looks to 2001,* the *Inaugural Melbourne Lecture,* Georgetown University, Washington, D.C., 23 September, 1997, p. 2.

35. *Ibid.*.

36. See, for example, the report of an interview, *The Fragile Consensus,* by Claude Forell, *The Age*, 13 August, 1977; and Sir Zelman Cowen, *Leadership in Australia: The Role of the Head of State*, being the *Williamson Community Leadership Lecture,* Melbourne, 31 May, 1995, p. 2.

37. *Final Report of the Constitutional Commission, op.cit.*, p. 75.

38. Cowen, *Inaugural Melbourne Lecture, op.cit.*, p. 11.

39. *Commonwealth Parliamentary Debates (H of R),* 7 June, 1995, pp. 1434-41.

40. *Report of the Constitutional Convention,* Volume 1, p. 45.

41. ABC Television, 27 October, 1997; ABC Radio, 28 October, 1997; see also note 14 above.

42. H. V. Evatt, *The King and his Dominion Governors,* Frank Cass and Company Limited, London, 1967, 2nd. Edition, pp. 311-12; and Byers, *Opinion of the Solicitor-General of Australia, op.cit.*.

43. See note 33 above.

44. [1916] 1 A.C., pp. 586-7, quoted in Evatt, *op.cit.*, p. 311.

45. *Ibid.*.

46. Byers, *op.cit.*.

47. Sir Harry Gibbs, *A Republic: The Issues,* in *Upholding the Australian Constitution,* Proceedings of The Samuel Griffith Society, Volume 8 (1997), pp. 1- 16.

48. Sir Garfield Barwick, *Parliamentary Democracy in Australia,* in *Upholding the Australian Constitution,* Proceedings of The Samuel Griffith Society, Volume 5 (1995), pp. 205-219.

49. Evatt, *op.cit.*, pp. 1 - 11. (First edition published in 1936).

50. National Press Club lunch, Canberra, 30 July, 1997; a debate between Mrs. Kerry Jones, representing Australians for Constitutional Monarchy, and Mr. Malcolm Turnbull, representing the Australian Republican Movement.

51. Richard McGarvie, *Our Democracy in Peril: The Safe Way to a Democratic Republic*, in *The Australian,* 1 May, 1997; and (1997) 101 *Victorian Bar News,* 31.

52. Moira Rayner, *A View from the Fringe*, in *The University of New South Wales Law Journal,* Volume 4, No. 2, June, 1998, p. 28.

53. Sir Harry Gibbs, *Some Thoughts on the Constitutional Convention,* in *The University of New South Wales Law Journal,* Volume 4, No 2, June, 1998, p. 16.

54. *Report of the Constitutional Convention,* Volume 4, p. 975.

55. Rayner, *op.cit.*, pp. 29-30.

56. *Report of the Constitutional Convention*, Volume 4, p. 975.

57. Christopher Dore, *New republican Costello wants changes before he signs on*, in *The Australian,* 16 February, 1998. See also Karen Middleton, *Vow to amend model before poll*, in *The West Australian,* 16 February, 1998; and *Republicans hope to win Treasurer's support*, in *The Age,* 16 February, 1998.

58. *Report of the Constitutional Convention,* Volume 4, pp. 997-9. For the text of the Communiqué see Volume 1, pp. 42-50.

59. Mike Steketee, *Republican Rumble*, in *The Weekend Australian,* 11 July, 1998.

60. *Report of the Constitutional Convention,* Volume 3, p. 3.

61. *Ibid*., p. 7.

62. *Report of the Constitutional Convention,* Volume 4, pp. 626-641.

63. *Ibid*., p. 634.

64. *Ibid.,* pp. 648-9.

65. *Ibid*., p. 970.

66. *Ibid*., p. 966.

67. *Ibid.,* p. 333. Mr. Malcolm Turnbull claimed that a system for voting on the republican models had to be devised to prevent "people who are committed to the defeat of the referendum voting in favour of the model they regard as being most likely to be able to be defeated by them". See also Report of the Constitutional Convention, Volume 4, p. 334 and p. 393 for responses by the author to Mr. Turnbull.

68. Richard McGarvie, *Resolving the Republic Issue by 2005,* (1998) 105 *Victorian Bar News,* 18.

69. P.P. McGuinness, *The Constitutional Convention*, in *Quadrant,* April, 1998, pp. 2-3.

70. Brian Galligan, *The Constitutional Convention*, in *Quadrant,* April, 1998, pp. 17-21.

71. Harry Evans, *Strange Death of an Australian Republic*, in *Australian National Review,* April, 1998, pp. 13-14.

72. *Round Table,* No. 1, 1988, p. 5.

73. *The University of New South Wales Law Journal,* Volume 4, No. 2, June, 1998.

74. George Winterton, *The 1998 Convention: A Reprise of 1898, ibid*., pp. 4-9.

75. Cheryl Saunders, *How Important was the Convention?, ibid.,* pp. 9-12.

76. Greg Craven, *Conservative Republicanism, the Convention and the Referendum*, *ibid.,* pp. 18-20.

77. Linda J. Kirk, '*Til Dismissal Us Do Part: Dismissal of a President*, *ibid.,* pp. 20-22.

78. *Report of the Constitutional Convention,* Volume 3, p. 287.

79. *Ibid.,* Volume 1, p. 106.

80. *Ibid.,* Volume 3, p. 287.

81. Jason Yat-Sen Li, *The Constitutional Convention from an Ethnic Australian Perspective: Was it all Chinese, Greek and Double Dutch?,* in *University of New South Wales Law Journal, op.cit.*, pp. 30-33.

82. Julian Leeser, *Tying Up the Loose Ends of the Constitutional Convention: Is it a Four or a Six? Time to Call in the Third Umpire?, ibid*., pp. 36-38. See also Sir Harry Gibbs, *A Republic: The Issues*, in *Upholding the Australian Constitution,* Proceedings of The Samuel Griffith Society, Volume 8 (1997), pp. 1- 16; and Sir Harry Gibbs, *The Constitutional Framework of the Australian Monarchy*, Gareth Grainger and Kerry Jones (eds), *The Australian Constitutional Monarchy,* Australians for Constitutional Monarchy, Sydney, 1994, pp. 23-35.

83. Sir Harry Gibbs, *Some Thoughts on the Constitutional Convention*, *op.cit.*, pp. 16-17.

84. See note 27, *supra.*

85. Sir Anthony Mason, *The Republic and Australian Constitutional Development*, unpublished seminar paper, 11 May, 1998.

86. The respective sections are:

> "2. A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him".
>
> "61. The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth".

87. *An Australian Head of State: An Historical and Contemporary Perspective*, in *Papers on Parliament,* Number 27, March, 1996, Department of the Senate, Canberra, pp. 63-82.

88. In actual fact Parliament has never been opened either by the Queen or the Governor-General, but by Deputies appointed for this purpose by the Governor-General. See J.R. Odgers, *Australian Senate Practice,* Sixth Edition, 1991, pp. 232-235; also L.M. Barlin (ed.), *House of Representatives Practice,* Third Edition, p. 241.

89. Cowen, *Williamson Community Leadership Lecture, op.cit.,* p. 14.

90. McGarvie, *op.cit.,* 105 *Victorian Bar News,* 18.