

Chapter Four

The Republic: Report from Corowa

Professor David Flint, AM

The invitation

The Corowa People's Conference was conceived and developed by the Hon Richard McGarvie, who insists he is neither a constitutional monarchist nor a republican, to approve a process to "resolve the Head of State issue". Mr McGarvie was formerly a judge of the Victorian Supreme Court, and then the Governor of Victoria. He is a distinguished jurist, and is the author of *Democracy – Choosing Australia's Republic*.

Australians for Constitutional Monarchy (ACM) were invited by Mr McGarvie to send sixteen delegates, but we explained we saw no problem with the issue of an Australian Head of State, as we already had one. Even our most republican Prime Minister held out the Governor-General as Australia's Head of State to foreign governments and the United Nations, and officially declared him to be so. We made it clear, therefore, that we would not support any process to resolve a problem which just does not exist. Nevertheless, Mr McGarvie, a courteous and very decent man, wanted us to come. It was on that basis that we accepted.

With the support of a Victorian government agency, there was a major advertising drive for delegates. It was clear that only republicans would be interested in such a conference, and that proved to be the case. Strangely, several celebrities whom the organisers had said were coming, including former Prime Minister Malcolm Fraser and Victorian Premier Steve Bracks, did not turn up. Apart from a few who favour the existing Constitution, the self-selection process resulted in the attendance of a considerable number of lawyers. We knew this because speakers had to announce their names and their work. Quite soon, the designation "lawyer" was met with amusement – even exasperation – from the other delegates, even from those who themselves seemed to be republican lawyers!

It reminded me of Edmund Burke's surprise in finding that a very great proportion of the French revolutionary assembly were lawyers. Burke obviously did not think much of them. Most of them, he said, were:

"... the inferior, unlearned, mechanical, merely instrumental members of the profession...intoxicated with their unprepared greatness...(who)... must join in any project which could procure to them a litigious Constitution; which could lay open to them those innumerable lucrative jobs which follow in the train of all great convulsions and revolutions....".

I hasten to add that I have no reason at all to think this harsh description applies to those who came to Corowa!

The shortlist

Before the conference it became clear that it had been taken over, although it was all Richard McGarvie's idea, and his hard work. So rather than the one clear process designed by Mr McGarvie, other processes were invited and nineteen admitted. After an internet vote, five were shortlisted. They were Professor Winterton's (with Sir Rupert Hamer and Dr Philips), 40 votes; Richard McGarvie's (with Jack Hammond, QC), 39 votes; Bill Peach's, 19 votes; Dr Bede Harris', 15 votes; and Professor Greg Craven's, 14 votes. This was a very low turnout, only 127 votes cast out of 418 delegates, a mere 38.38 per cent! But if this were a fair sample, the Winterton proposal would win on preferences.

Of the eight proponents, four were academics (three of whom were legal academics) and five were lawyers. Although all were men, this was (unusually) not the subject of criticism.

The proposed processes fell into two classes. First, there was Richard McGarvie's, which tried to be neutral and fair, and particularly respectful of the original federal compact. Under this our Founders had unanimously proposed, and the Australian people had agreed – and in 1999 affirmed – that Australia should be an “indissoluble Federal Commonwealth under the Crown”. To change this, you have to go back to the federal compact, the agreement of the people in each of the States. So the McGarvie process involved first, a plebiscite on the way the Head of State would be chosen if we were to terminate our relationship with the monarchy. This would be followed by a referendum to change the Federation and the States simultaneously into a republic. It would depend on an affirmative vote both nationally and in *all* States, not merely four.

All of the other four proposals began with a plebiscite asking Australians whether they wanted a republic. There can be no doubt that this goes against the spirit of the Constitution and the intention of the Founding Fathers, which I explained in my opening speech, which follows. Assuming that preferences would flow between these four proposals, and those who voted on the internet were a representative sample, it was likely that either the Winterton or the Peach proposal would win.

The threshold question

The Conference began with a speech by former Governor-General Sir Zelman Cowan, who in office had once affirmed that he was the Head of State. Sir Zelman is now a republican. Then the threshold question on whether the Head of State issue should be put was debated. Richard McGarvie spoke in favour and I spoke against. I said:

“Mr Chairman, I rise to speak against the motion.

“Alistair McGrath, referring to those who chose the glorious words of the King James Bible, but who relied so much on their predecessors, likens them to dwarves sitting on the shoulders of giants.

“He cites John of Salisbury, who wrote eight centuries ago:

‘We are like dwarves sitting on the shoulders of giants. We see more, and things more distant than they did, not because our sight is superior or because we are taller than they, but because they raise us up, and by their stature add to ours’.

“So we are today, at best, dwarves sitting on the shoulders of our Founding Fathers.

“And the giant we honour first and foremost today is Sir John Quick. While the rule of law, self-government, democracy, the Westminster system under that ancient institution beyond political capture, the Crown, were all inevitable, Federation never was.

“We must thank Sir John Quick, and those other giants that it was achieved, the first of a whole continent, and one of the world's most successful.

“We must thank them that our Federation – unlike all the others – was the result neither of fear nor war, but, as Quick pointed out, because of the people's intellectual conviction of the folly of disunion and the advantages of nationhood.

“And we must especially thank Sir John Quick that it was the first federal Constitution to be approved by the people. Moreover, that this was through a referendum with all the details on the table, and not through the totally discredited constitutional plebiscite which asks the question first and gives the details later. The Founders well knew the plebiscite as the tool of a succession of deceitful governments, intent on obtaining a blank cheque from the people for nothing more than the abuse of power.

“And consistent with their wish not to hoodwink or deceive, the Founders insisted that the method of constitutional change – the sole method – should be the constitutional referendum with all the details on the table.

“This was to have particular application for any proposal to change the core of the new

entity – the ‘indissoluble Federal Commonwealth under the Crown’. They considered such a change most unlikely. As Quick himself pointed out, ‘not a solitary public writer or speaker seriously proposed the possibility, much less the probability’ of its separation from the Crown.

“For the Crown was identified as that great heart of the political system, State and federal, a principal check and balance against the abuse of power by politicians and by political parties. To the Founders, it was a major part of the answer to Acton’s warning that power tends to corrupt and absolute power corrupts absolutely.

“But Sir John Quick himself did not see this as freezing the Constitution in aspic. He saw the referendum – with all the details of change known by the people before, and not after the vote – as not being there to prevent or indefinitely resist change.

“It was there for one reason, and one reason only. It was to prevent those evils of change being made in haste or by stealth. It was there, Quick emphasised, to encourage discussion, and to delay change until there was ‘strong evidence’ – strong evidence – that the change proposed, and minutely detailed – was ‘desirable, irresistible and inevitable’.

“The delegates today should carefully note this threshold, this onus prescribed by Quick himself – strong evidence that the change is desirable, irresistible and inevitable.

“I ask whether the proponents of the motion have satisfied the burden that is placed on them.

“The clear answer is that they have not. They have not even got to first base!

“We do not even know what change they are proposing. In fact, we haven’t got the foggiest idea.

“But Mr Chairman, it’s worse than that. Neither do they, unless of course they are hiding their hand, which I hope they are not.

“The proponents of this motion have had the better part of a decade to do this. They have produced two official and several other models. The latest – their preferred model – was supported by most of the politicians. It was supported by one of the major parties, the greater part of the organisation of another and the Australian Council of Trade Unions (ACTU). (But not, it seems, by their members). It had the support of the gallery, most of the political journalists, and the press. It had great wealth behind it. It had all the deadlines of the new Millennium, the Centenary of Federation, the Olympics with the threat that if we kept our Constitution and our flag we would be, as one university Vice-Chancellor declared, ‘an international laughing stock’.

“But every State and the Northern Territory voted ‘No’. Seventy two per cent of electorates, rising to 93 per cent in the States furthest from Canberra, voted ‘No’. And those electorates represent more than 99 per cent of the landmass of Australia. In other words, a landslide.

“While a small and wealthy élite had succeeded in diverting millions and millions of dollars from the taxpayers’ funds, from schools, hospitals and aged care – into their obsession, and while politicians across the Commonwealth had been diverted from their core functions – law and order, border control, the economy, as well as schools, hospitals and aged care – the people had clearly spoken.

“And now a mere 25 months later, at a time when the nation least needs to be divided, the élite are at it again.

“Mr Chairman, I continue to search for, yet I cannot find, the strong evidence that this change – unspecified, undefined and unknown – is desirable, irresistible and inevitable.

“No wonder then that we see the desperate insertion into this debate of that diplomatic term, unknown to any of our Constitutions, any of our several constitutional documents, and unknown, at least until a few years ago, in ordinary parlance, the term ‘Head of State’. What a pity then, that Mr Keating himself had not only held out the Governor-General as

Australian Head of States to foreign governments, the United Nations and to all the world, but had also actually officially declared him to be so.

“Rather than having strong evidence for change, the proponents of this change cannot even agree on what they are talking about, Mr Keating not even agreeing with himself.

“It is a reminder of the occasion when, to the great amusement even of the republican press, Mr Turnbull and Mr Barns sought to have two words removed from the referendum question in 1999 – the word ‘President’, and believe it or not, the word ‘republic’. Was it that Australia is already a republic? Or was it that voters linked the word to some unsavoury republics?

“As a last resort, we are told the evidence is in the polling. Some evidence! Polling funded by organisations with an agenda! Polling with words which are unknown, foreign to our Constitution, words and notions which are vague, imprecise and undefined, Alice in Wonderland words! There’s a term for this. It is little more than push polling.

“If the proponents of this motion were *bona fide*, they would commission two questions.

“First, do you, the Australian people, want more money diverted from schools, hospitals and aged care into some vague, imprecise, unknown and unnecessary constitutional change?

“Second, do you, the Australian people, want the members of all the State and federal Parliaments to be diverted from their core functions – from defence, from border control, from law and order, from the economy, from schools, hospitals and from aged care – into a search for vague, imprecise, unknown and unnecessary constitutional change?

“The answer is of course obvious. As Mr Turnbull confided to his diary four months before the referendum, ‘We have Buckley’s chance of winning. Nobody is interested’.

“Nobody is interested.

“Mr Chairman, the organisation which I have the honour to convene has as its mission, the preservation, the protection and the defence of the Constitution of this indissoluble Federal Commonwealth under the Crown, our National Flag and our heritage. Without the luxury of calling for foot soldiers from the ALP and the ACTU, and without being able or wanting to pay them, ACM still managed in the referendum to field an army of over 50,000 volunteers across the length and breadth of the Commonwealth. That, and the result, means we represent a considerable voice, whatever our numbers at this conference.

“It would make my path easier and it would greatly assist ACM if the conference were to pass this motion. For by passing this motion the conference would demonstrate, to the nation and to the world, that it is completely out of touch with mainstream Australia.

“But notwithstanding the great advantage you would give us, I ask you to pause, and to reflect on what you are doing, and if not to vote in the negative, at least to abstain.

“For in this motion you are passing judgment on one of the world’s most successful – if not the most successful – Constitutions. You must now know it will be difficult, if not impossible, to graft some new model republic onto our Constitution and yet maintain its strengths. Yet you are in effect doing what no reasonable American or Canadian would do: you are passing a motion of no confidence in the Constitution of our Commonwealth without having the foggiest idea of what is to replace it. And you will be asking the Australian people to do likewise; of which, in Mr Turnbull’s own words, there is Buckley’s chance.

“Remember three things. That first, that at most we are like dwarves on the shoulders of our Founders; that secondly, we are living under one of the world’s most successful Constitutions; and that thirdly, in John Quick’s own words, change must be delayed until there is strong evidence that change, in all its details, is desirable, irresistible and inevitable.

“And to those still committed to change for the sake of change, to use the words of that more reluctant republican, Oliver Cromwell, I beseech you, in the bowels of Christ, think it possible you may be mistaken.

“Thank you”.

Once into my speech there were increasing interjections and booing, which reached a crescendo as I concluded.

Although not previously announced, Greg Barns (Australian Republican Movement (ARM) Chair) seconded the motion. He used the refrain “How dare you?” in his speech. This was, incidentally, the theme of the late Neville Bonner’s address to the Constitutional Convention, the only one which attracted a standing ovation.

Kerry Jones followed, pointing out that as the people knew little about their Constitution – a fact which has been clearly established – they could hardly be asked to vote for change. Education was absolutely necessary.

And as we know, the motion was carried.

The five proposals discussed

Each proposal for a process to resolve the Head of State issue was then debated. One of the interesting interventions was by Andrew Robb. He supported the McGarvie process. He made the obvious point that it was unrealistic to think that any government would allow a constitutional plebiscite to be put at the same time as an election. It would distract people from the policies the government wished to fight the election on. So a government would have to be prepared to spend about \$80 million on a separate plebiscite.

He also pointed out that no government would initiate a process which was programmed to produce a form of republic unacceptable to the government – that is, a directly elected President, at least one with any powers. But the republican audience seemed to refuse to accept these arguments.

Another intervention illustrates that the majority of republicans still see Australia from their “inner metropolitan republic”, as Malcolm McKerras put it. Former Minister and Senator, Susan Ryan, strongly argued against the importance of the States, and the need for unanimity among the States, in the McGarvie proposal.

Eventually, the long day ended, but not before the Chairman, Barry Jones had agreed that proponents of proposals could discuss amendments and even mergers that evening.

So while constitutional monarchists enjoyed a good dinner and then slept well, republicans were condemned to an evening of Jacobean debate, negotiation and compromise.

The final three proposals

By Sunday the Winterton, Peach and Harris proposals had merged under the provocative title of the “Royal Hotel Resolution”. (Dr Harris hails from Zimbabwe, and his principal reason for a republic is that his young daughter could aspire to be Head of State. When he said that constitutional monarchists would support the “least worst” model and then campaign against it, this understandably provoked the interjection that at the Constitutional Convention the constitutional monarchists had done exactly the opposite! At this point John Paul leaned across to me and asked if, in contrast to “the McGarvie process”, Dr Harris’ could perhaps be described as “the Mugabe process”.)

There were now only two other proposals. First, Professor Craven’s, who has been described as Australia’s Talleyrand because he had previously changed his position from monarchist to McGarvie republican, then to favouring the Turnbull model. The other was Mr McGarvie’s, who decided to compromise, unwisely in my view. He abandoned the need for unanimity among the States. I think this was unfortunate, because this is an important and fundamental principle. (In any event, only one referendum has succeeded with less than six States in support. That was the referendum on State debts in 1910, when only New South Wales voted against the proposal.)

An ACM explanation

Before the voting procedures were outlined by the Victorian Electoral Commissioner – a curious fact, as Corowa is in New South Wales – I was allowed to speak. Although I only asked for one minute, there was considerable opposition and hostility – but Chairman Barry Jones generously ruled that I could. Well before I had spoken for one minute, points of order were made about the time I had taken, as well as frequent noisy interjections.

I said that when we were invited, we had made it clear we would speak against there being a Head of State issue, and not support any process. Notwithstanding that, and on this understanding, we had still been invited and we had accepted. I pointed out that at the Constitutional Convention in 1998 there was considerable pressure, in the press and otherwise, for us to vote “strategically”. This meant we should support the “least worst” McGarvie model at the Convention and yet campaign against it at the referendum. Had we done this, the people would have voted on the McGarvie model and not the Turnbull model in the 1999 referendum. But we refused to do this because we thought this would be unprincipled and improper.

I said we would do the same at Corowa. While we respected the right of republicans to do what they wanted to do, we neither wished to affect the result by our votes, which would be wrong and unprincipled, nor did we wish to support any process, for all were against our belief in the present Constitution. While I was speaking the points of order continued, as did the interjections, which were becoming even noisier and more emotional.

I stopped at what I estimated was one minute, Barry Jones remarking with some irony: “That was one minute and five seconds and I don’t think I should have stopped Professor Flint”. I would have concluded this way:

“And finally, if we meet again on the battle field of yet another referendum, I hope that on that occasion we will all agree that the decision of the people will be final. We just cannot go on meeting this way”.

During lunch, two beautiful young ladies – about 16 to 18 – came up to me and said:

“We are neither monarchist nor republicans, but we didn’t like the way you were treated. We want to know more about the issues”.

Yet Susan Ryan said on Melbourne radio a few days later that republicans will win because the monarchists are all dying off! (In fact, in 1999, after the oldest, the younger voters were the strongest “No” voters.)

The chosen process

The result of the vote was predictable – the Winterton merger won. But it was closer than I expected. A total of 418 participants were entitled to vote, but 36 did not. There were 47 informal votes, of which 36 had written “abstain” on the ballot paper. So an absolute majority of 168 was necessary. The Winterton proposal received only 159 first preference votes. On the allocation of preferences it scored 195, and was declared the winner.

Then an Enabling Committee was established to put the issue before the government and the Parliament. The members are:

Sir Gerard Brennan (a former Chief Justice) (Chairman)

Sarah Henderson (Deputy Chair)

Sir Darryl Dawson (a former High Court Justice)

The Hon Tim Fisher (former Deputy PM)

Dr Bede Harris

Barry Jones, AO

Bill Peach

Dr Phillips

Professor Winterton

The Hon Richard McGarvie, QC (I understand he has since left the Committee)

The task of the Enabling Committee is to seek the establishment of:

- A multi-party Commonwealth Parliament joint committee to consult the community and constitutional experts to prepare a plebiscite asking the following questions:
 - Should we become a republic with an Australian Head of State?
 - Should the Head of State be called the President or the Governor-General?
 - Should the Head of State be selected by the Prime Minister, a two-thirds majority of the Parliament or an electoral college, or be popularly elected, with defined powers?
- A Commonwealth Parliament joint committee to outline the core features of the models and prepare neutral information for the plebiscite.
- An elected Constitutional Convention to draft a constitutional amendment reflecting the will of the people as expressed in the plebiscite.
- A referendum to be held on the constitutional amendment.

The future

As I understand it, the Howard Government regards the people's decision in 1999 as having settled the issue, at least for now. After all, it's little more than 900 days since that vote! The Committee will probably have some chance of getting their programme onto the parliamentary agenda through a sympathetic Senator, and there are plenty of those. But without government support, it will not get further.

And the recent federal election confirms that pursuing the Keating elite social and cultural agenda is a "turn off" for both Coalition and Labor voters, that is about 90 per cent or more of the population.

The core of the elite agenda is now the three 'R's: the Republic, a Reconciliation Treaty (when this means not just practical reconciliation, but a Treaty with a separate indigenous State), and automatic admission as a Refugee to any client of the people smugglers.

The problem for the republicans is that any political leader who advances the republic will immediately announce to the electorate, including the "battlers" and the so-called "aspirational voters", that he (or she) is still running with Paul Keating's discredited social and cultural agenda. Labor, if it wishes to reconnect with its heartland, will surely let the inner city elites stay with the Greens on this and related issues. Obviously a Labor leader will not wish to demonstrate that he or she disregards – or even despises – the battlers. Even Kim Beazley, in his policy speech, had abandoned reference to his previously announced policy of a cascading series of plebiscites and referenda to turn Australia into a republic. And he seemed to have renounced the earlier policy of changing the flag. Now Simon Crean says the republic is a matter to be left to bipartisan agreement.

Any future Liberal leader pushing the republic would divide his (or her) party, especially the rank and file, to say nothing of the voters. They, like Labor voters, are not interested.

A republican assessment

Professor Greg Craven commented in *The Australian* (7 December, 2001) that until Corowa, our chances of becoming a republic in the short term were slim. He says they now seem non-existent. Why? The process would ensure a "direct elect" republic would be the model put to a referendum.

He continues:

"So the republican debate has reached a historic point. Despite a lot of rhetoric about consultation, ARM bosses such as Greg Barns seem to think that direct election is their best bet. They are moving to lock it in. If so, this is the opening act of a protracted constitutional suicide.

The first casualty will be the crucial alliance between the ARM and the conservative republicans who worked warily with them in the 1999 referendum. Next, the ARM will

have given up the slightest chance of bipartisan support at any future republican referendum. Finally, the likely next Prime Minister, conservative republican Peter Costello, inevitably will cross ARM off his Christmas card list.

“Not bad for a weekend’s work in Corowa.....

“Presumably, the tactics of the ARM leadership are based on a fool’s hope that conservative republicans will come on board once they realise that direct election is the only model on offer. What people such as Barns fail to understand is that the first loyalty of these cautious republicans is to the Constitution. They regard direct election as constitutional strychnine.

“So it appears the leadership of the ARM is progressing majestically towards a referendum where a complex and controversial model for direct election will be opposed, not only by monarchists but by every conceivable variety of non-direct election republican”.

And then Professor Craven delivered the *coup de grâce*. He says the vote in that referendum will make the 1999 referendum result look like “a republican triumph”!

Conclusion

The republican movement is in some difficulty. When, on the recent Queen’s Birthday weekend, Mr Barns came to the media – now an annual rite – he proposed the direct election of State Governors. All State governments seemed to distance themselves from the proposal. The now republican *Sydney Morning Herald* in its leader even declared the proposal to be an “ARM no-brainer”!

I have come to three conclusions. First, it is impossible to graft a republic on to the present constitutional system and not do it damage. Secondly, Australians, whom Richard McGarvie describes as “a wise constitutional people”, came to this conclusion in 1999, and will repeat that if any further model is put to them. And, as we have seen, they are not at all interested in the issue, and will become irritated if it is put again, at least in the next few years. Thirdly, if Australia were to become a republic, a completely new Constitution would be necessary. Fourthly, while anybody can draft a Constitution, few, if any, ever rise even close to the standard achieved by those remarkable people, the Founding Fathers of the Commonwealth of Australia, and the Founding Fathers of the United States of America.