

## Chapter Four

### Let's Give Democracy a Chance: Some Suggestions

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I appreciate the opportunity to deliver a paper to this conference. I attended the inaugural conference of The Samuel Griffith Society and I consider it an honour to be asked to present a paper today.

I was to have delivered a paper to your conference on 31 July, 1994, but three days before, on 28 July, 1994 I had spoken at a seminar in Canberra on direct democracy that I had organised with a number of parliamentary colleagues. As a result there was a lot of political controversy within the Coalition Opposition about my views on participatory democracy, and I was prevailed upon not to make my presentation to your society.

You can imagine that I was therefore appreciative when John Stone rang me earlier this year and said, "Why don't you present that paper that has been sitting in your drawer since 1994?". So here it is – living proof that the best speeches should remain in the bottom drawer! Of course, I have amended the original but, as is usually the case with constitutional debates, some things do not change, and so my paper still reflects the views that I held and the speech that I had drafted then. Since those days, I admit to have been influenced to some degree – perhaps "mellowed" might be a better word – by my experiences in government, but not fundamentally.

As my paper implies, it is my view that civic engagement in all its forms, including the formation of think tanks, discussion groups, societies and the like, to promote interest in public issues and to evidence a commitment to public causes, is fundamental to the nature of our society. I don't think it overstates the matter to say that organisations like The Samuel Griffith Society are not merely symbols of our democratic society, but they are also the building blocks of our democratic society.

I want to start today by recognising the significance of our Constitution, to proclaim my pride in the Australian Constitution, and to say that the Founding Fathers, who spent years making sure it was right, drafted a first class Constitution. It is one of the best Constitutions in the world. It establishes the institutions and the framework which safeguard our freedoms.

It has been a great success in providing Australia with a system of stable and democratic government. It transformed six separate Colonies into States in a great federation, and it established our federal parliamentary democracy. It established the High Court, which for most of its time deservedly has had the reputation as one of the premier courts in the world.

Australia has one of the most successful political systems in world history. Pivotal in the structure conceived by the Founding Fathers was a Senate with near equal powers to the House of Representatives. The establishment and the evolution of the Senate as a barrier against the use of excessive powers by the Government were to be master-strokes of those early Australians. The Founding Fathers saw very clearly the dangers of too much political power in the hands of too few. In those parts where checks and balances are incorporated in our Constitution it embodies principles of enduring relevance.

However, in other aspects, it is also fair to say that our Constitution has been buffeted by our changing circumstances. For example, in the 1890s the United Nations was not even contemplated and the Founding Fathers did not foresee the impact of international treaties, and yet their very existence now has significant implications.

Further, in the last 100 plus years, power has drifted to the centre of the political system. This has fostered a political climate wherein the public feel a sense of alienation from the political process. This is probably less so with John Howard as Prime Minister because he is genuinely consultative. But a

Constitution needs less to be drafted in fear of good Prime Ministers; rather it needs to function when the likes of a Paul Keating are ensconced in the Lodge.

Whilst the electorate is better educated and better informed than it was in the 1890s, and demands a greater say in the affairs of the nation, some politicians and parts of the political process are more élitist and centrist than ever. John Howard says voters are no longer rusted on to political parties as they once were. I agree, and the reason is that the public are more inclined to form their own view than accept the views of their party or local MP.

In my opinion we should always strive to improve our Constitution. So I am not a constitutional conservative, I'm a constitutional reformer, and I think it is healthy to debate the options. So today I will argue for reforms to make our democracy better.

I should also say at this point that there seems little public interest today in constitutional reform. Most of my former colleagues would oppose any reforms. But that is not to say that they are right, and I would encourage them to remember that there are a lot of reforms and policies implemented by the Howard government that were only pursued because they were the right thing to do, not because they were popular.

The process by which we consider reforms is vital from start to finish. So before coming to the substance of the reforms I want to make two points about the process. The first is to suggest the need for some reforms to the “nuts and bolts” of the process by which the Constitution is reformed, and the second is to propose the establishment of a new National Institute to better inform us about politics.

The four referenda in 1988 were defeated with the largest “No” votes ever recorded. One of the factors in this record rejection of Labor's proposals was that the public thought that the process surrounding the referenda was unfair or unreasonable, or biased to promote a “Yes” vote. (I believe concerns about the process also played a role in 1999, albeit the electorate were less concerned then about bias due to the Howard government's exemplary fair play.)

For example, in 1988, Question 1 on the proposal for four year terms did not disclose that there was no guarantee that elections would be held every four years. The question also failed to disclose that the current fixed six year term for the Senate would have been abolished. The Coalition opposed the four year terms for this reason, amongst others.

Questions should be framed to ensure that, as far as practicable, voters are able to make an informed decision. This could be achieved in a number of ways – but there is no doubt that the public must be satisfied that the process is fair.

In 1988 our campaign slogan was, “There is more to this than meets the eye”. It was very effective. It might have to be used again unless the process is not only fair but also seen to be fair.

The second thing I want to say about process is that it is surprising how little empirical and quantitative research is undertaken in Australia into the operation of our democracy. We are not as well informed as we should be.

I have no pretensions to be a political scientist. I am an ex- politician. I am now a mere observer, not a theorist. Generally speaking, politics is not a boiling cauldron of new ideas, but rather a process by which society reconciles the irreconcilable. I believe that politics is the art of the possible.

This is not a grubby concession to the lowest common denominator, but rather a proper recognition that in society there are competing interests, and these interests must be given due weight and consideration. This is not to suggest that politicians should not strive to achieve ideal outcomes. I even supported advocating a new tax before an election – not once but twice! The pursuit of ideas is central to politics, so we should never be embarrassed to be ideological. I am still proud to have been associated with fighting for a grand plan and good ideas. Politicians should be ideological, although ideology must be tempered by commonsense, and politicians need to be well informed.

Our political system can benefit from constant scrutiny, analysis, discussion and the advocacy of

reform. Not all proposed reforms will succeed, but debate is healthy. If necessary reforms can improve the system, then tangible benefits for all Australians will flow.

Political science has become more popular with students in recent years, but it is still a relatively minor discipline in Australia. For example, when I first researched this speech, I found that in 1992 political scientists received a lot less from the Australian Research Council than psychology researchers, even though government is the biggest business in the nation. I also understand that, throughout the 1990s, it has been difficult to obtain adequate funding for research into political behaviour.

The word “science” suggests a quantitative approach, yet, according to one political scientist, “Australian political science has been chronically weak in quantitative studies”. This situation is unsatisfactory.

We should not take our democracy for granted. We have built a very successful political system in Australia, and if it is to continue to be relevant we have to work at it. If our democracy is to be able to meet the demands of the electorate for the new Century, then we need to be better informed about how it works. We need to be better informed about the values and expectations of our citizens.

I propose therefore that the federal government should promote the establishment of a “National Institute for Democratic Values”. The objective of the Institute would be to study political behaviour in Australia and, in particular, to encourage empirical and quantitative research. I believe this project could yield positive results for our democracy. It should be established in conjunction with the Australian National University in Canberra. This would put it close to national politics, politicians and the party machines, which should be encouraged to take a keen interest in its work. Obviously, it would need studiously to avoid becoming embroiled, in any way, with contemporary politics. This will be a challenge in itself.

So let me recap on my introduction by drawing an analogy. The Constitution is like a substantial public building. Our Constitution has served us well, some internal renovation would modernise it, and there are available some technologies and fibre optic cables that would improve it. Only a vandal would tear it down.

The machinery of reform needs reform. And we should establish a National Institute to promote research so that we are all better informed.

Before proceeding, I also make the point that reform should not be confined to the Constitution. Legislative reform, and reform of the many practices of the political process, can play their part in improving our democracy. All need to be addressed.

Let me now turn to substantive issues.

I thought I should start with the issue of the republic because I addressed it back in 1994, and today the call for a republic is a possible trigger to introduce a genuinely participatory element into our Constitution through the election of a Head of State.

### **An elected Head of State**

The referendum on the republic failed because there were no additional rights for citizens in the proposal. It will fail again unless this fundamental flaw is remedied. That is not a guarantee that a new referendum will succeed, but it is a precondition for success. The history of referendums in Australia is that the public will nearly always vote “No” to propositions to enhance the power or standing of the central government. Nearly all referendums since 1901 have tried just that, and so have failed.

The proposal for a republic needs to match the constitutional temper of the Australian people. In my view, the Australian people would support a change to a republic if they could decide who got the top job. Many Australians would see that a referendum that gave the public that responsibility was worthy of their support, and a change, that justified the holding of a referendum. It would be a big change, even if the referendum intended that the role and powers of the Head of State would be no different from the

practices of the Governor-General as they have developed to this point in time.

Let me make four points.

Australia is barely a constitutional monarchy, as the Monarch is hardly ever in Australia. It is not a monarchy. Personally I am not pro-monarchy. I am a federalist and a constitutionalist. The monarchical tradition was never adopted by the Founding Fathers, although they were politically astute enough not to say so. If anything Australia is a constitutional Governor-Generalship, although that terminology is a bit odd.

In the Oxford English Dictionary, “republic” is defined as:

“A State in which the supremacy of the people or its elected representatives is formally acknowledged”.

In Australia, political authority rests ultimately with the Australian people. This was established by the fact that the Constitution only came into effect after the vote of the people, and politically can only be formally changed by the vote of the people. In this sense we are a republic already. But do not be deceived. Many of today’s republicans are not the rightful heirs to Australia’s federal traditions. They are the descendants of yesteryear’s anti-Senate, anti-British, anti-monarchy, anti-federal, mainly Labor and pro-centralist republicans.

Secondly, nationalism is a strong emotional force. Nationalism is not always a positive force – it beset the world with many problems in the last Century. Nationalism was Mr Keating’s only card. It is the populist’s favourite. But we should recognise that, since 1900, Australian nationhood has matured and we have become more independent. Whilst retaining cultural and other links, we have through World War I, the Depression, the Statute of Westminster, World War II, and the *Australia Act* 1986, slowly cut our formal, legal ties with the United Kingdom, until only one significant tie remains. It may never be cut if we cannot achieve consensus about the means of converting to a republic. But I can understand why the public believes that ultimately Australia will become a republic, and why many believe that it is part of our nation’s development that, eventually, we will assert our nationalism by cutting that tie with the United Kingdom.

Our Queen is British. To make this statement is not to disown the Crown, but rather to acknowledge the facts, just in the same way that I acknowledge, rather than disown, the fact that my paternal grandfather was a Scot and I am Australian. The fact that the Queen is the Queen of Australia is immaterial to her nationality, just as the ridiculous attempt made a few years ago to have the Queen declared the Queen of Queensland could not have succeeded in making Her Majesty a Queenslander. Our monarch is not an Aussie.

This brings me to my third point. In July, 1994 Paul Keating said:

“The change is not about a change in the way our system of government works”.

And he also said:

“Let me tell you this – seriously and jocularly – there would be no way whatsoever, no matter what the outcome is, that there is more power for the Government, or for me, in this”.<sup>1</sup>

Now that was not true. Perhaps that is why he suggested his statement was a joke! It was a repeat of the original Greiner line that a republic could be created with minimal change. Even Malcolm Turnbull admitted that a minimalist change was not possible,<sup>2</sup> and at the same time Paul Keating publicly admitted that he’d like to re-write the whole Constitution.

In his July ’93 speech in Corowa, Mr Keating was more honest about his real views. After admitting that the republican push was a “manifestation” of his own ambition, Mr Keating made it perfectly clear that minimalist change was not on his real agenda. How could it have been? He wanted to change Australia, he wanted this change to be symbolised by a new flag, and his republic was to be the vehicle for delivering “a new sense of unity and national pride”. To emphasise the revolution he proposed, I quote from his speech:

“... our Constitution should be re-made to reflect our national values and aspirations, evoke pride in our Australian heritage and confidence in our future, and help to unite us as a nation.

“We want Australians to consider the strengths and weaknesses of their Constitution”.

And he said that the republic:

“... can deliver a re-cast Australian identity defined by the commitment of Australians to this land above all others, which will say unequivocally to the world who we are and what we stand for”.

These goals for a republic are not going to be achieved by minimal changes. Major changes would be necessary. For this reason, it would be, as conceded by the national president of the ALP, Mr Barry Jones, a recipe for “political paralysis” to abandon our existing system without knowing what form a new system would take.<sup>3</sup>

Mr Keating has said there were two steps to his republic. Firstly, declare for the republic and renounce the existing Constitution; and secondly, work out how the new system would operate. This proposal was grossly irresponsible. No one in their right mind would abandon a practical system with a good record before agreeing on a new system.

An elected Head of State would represent a big change, and the public would see it as worthwhile and not just a grab for more power by the politicians.

By allowing the Australian public to vote for the Head of State, a proposal to establish a republic would have real meaning and relevance. I don't think Australia will ever be a republic until this is accepted.

My last point is about timing.

Four referendums were held in 1988, Australia's bicentennial year. The Government's strategy then was to cash in on the euphoria of the nation's celebrations to make “simple” changes to our Constitution. The referendums were defeated heavily. Six years later, the strategy was to cash in on the expected euphoria of the celebration of the Centenary of federation in 2001. That did not happen either. The only substantive event which could trigger a change, in my opinion, would be the death of our current Monarch. But for that to happen, it would be better if it were said now and if plans were put in place accordingly. The republican movement has a big job ahead of it – so the sooner it enlivens its approach, the better.

### **State initiated referendums**

My second possible reform to the existing system would be to require the conduct of a referendum on a constitutional amendment proposed by a majority of the States.

This proposal was supported by a majority of the delegates at the 1985 Brisbane Constitutional Convention. The ALP delegates were split on the issue. The Federal ALP delegates were strongly opposed, for reasons expressed by Senator Michael Tate, who said:

“I, for one, do not lack faith in the national Parliament as the proper forum to decide what questions should be put to the Australian people. I do not believe the Australian people wish to put the referendum process to the mercy of some conglomeration of State parliamentary majorities, none of which is ultimately responsible for the conduct of Australian national affairs”.

Of course, it is the people directly who are ultimately responsible for the conduct of national affairs, and not a Labor or Liberal caucus or Executive, although I have no doubt that a large majority of federal MPs today would strongly agree with the Tate sentiments.

Over time, opening up the Constitution to reform from other than the centralising vested interest of federal politicians could be a very significant move. It is unlikely ever to be supported by federal MPs, or federal parliamentary journalists, who also have a vested interest in the importance of the federal Parliament – but I still think it is a good idea.

### **Elections consequent to Senate blocking**

Another area that should be carefully examined is the proposal sometimes referred to as the Court proposal. It requires the Senate to face an election when, as a consequence of the Senate's action, the House of Representatives faces an election. The Labor Party does not like this proposal because it recognises the power of the Senate in circumstances like 1975. For the Labor Party to support this proposal, it would have to admit that the Governor-General was right in 1975 to require that an election be held. Many in the ALP would prefer an alternative approach, perhaps because it is now accepted that the events of 1975 could be repeated in the future.

In his maiden speech, former Senator Evans said that the way to abolish the Senate is to white-ant it from within. Paul Keating made the point very clear when he said:

“We shouldn't have a Senate basically. It's an impediment to the smooth operation of the parliamentary system”.

But despite Labor's opposition to the Senate, the Court proposal is a sensible one. Fortunately, in 1975 there was a bank of double dissolution triggers available to resolve the impasse. If the trigger had not been available, then Australia could have faced a crisis. If the powers of the Head of State need to be spelt out in the Constitution, then the issue will need to be confronted. Having an election to settle a constitutional impasse is not a bad idea, so I think the Court proposal should be discussed again. It would ensure that the public are to be the final arbiters of such a conflict, and it is a practical proposal to remedy a genuine deficiency which has been exposed.

### **Four year terms**

I still think a four year parliamentary term is a good idea. Admittedly, it seems out of place for an advocate of more participation (and intuitively, even more elections!) to support longer terms, but we do have a lot of elections in Australia and the public sometimes turn off because there are too many. It is still Liberal Party policy, and I believe that the Labor Party still favours a four year term.

The issue has gone quiet in recent years, partly because John Howard does not favour early elections and so we have had less elections.

Back in March, 1991 Prime Minister Bob Hawke wrote to the Leader of the Opposition saying that:

“I am strongly in favour of this much needed reform and believe notwithstanding the failure of the 1988 referendum proposals, further efforts should be made to persuade the electorate of its merits”.

The idea of a four year term for the lower House has been around since the 1890s. In fact, in my researches for this paper back in 1994, I came across unpublished minutes of a Committee to the Constitutional Conventions in the 1890s which had actually recommended a four year term for the House of Representatives. The Committee's draft Constitution with the four year term incorporated in its provisions was submitted to the 1897 Convention, where the four year term was amended to three years. Supporters of the four year term included Deakin, Downer, Forrest and Quick. The wisdom and foresight of these Founding Fathers has been confirmed by the success of our Constitution, so their arguments for a four year term should not be lightly dismissed.

There are strong arguments in favour of having a four year term. A longer term would enable governments to adopt a longer view, and would promote efficiency rather than expediency. It would enhance business confidence, because the private sector would be more able to plan in the knowledge that government policies would be in place for longer than has hitherto been the case. A longer term would reduce the frequency of House of Representatives elections, and the four year term would be more in line with most State Parliament terms.

The problem with achieving a four year term is not so much the problem of having a longer term

for the lower House; the real problem has been the impact of any changes on the term of the Senate. This was the problem in 1988. The Coalition was not opposed to the idea of a longer term for the House of Representatives in 1988, but we were implacably opposed to reducing the role of the Senate. Tucked away in the detail of the proposal for a four year term in 1988 was the plan to abolish the fixed term of the Senate, and establish a new system whereby the Senate's powers would be significantly reduced.

An alternative proposal would have been to provide that Senate terms would be equal to two terms of the House of Representatives. This is otherwise known as the simultaneous elections proposal, but as it has been previously rejected by the electorate on three occasions it seems pointless to put the proposal again.

In my view, the only way to achieve a four year term for the lower House is to introduce that reform only and leave the Senate term as it is. The Downer/Deakin committee was right.

The powerful simplicity of this proposal accommodates and appreciates that, in the past, four year term proposals have been rejected because of the impact on the Senate. The defenders of the bicameral system have been prepared to defend the Senate at the expense of a longer term for the House of Representatives. But with my much simpler proposal, supporters of the Senate would vote for it because, if anything, it would marginally enhance the independent status of the Senate. An independent Senate is a useful safeguard. I admit that does not seem the case today. From the perspective of the Constitution I strongly support an independent Senate.

Of course we do have a problem with the operation of the Senate. The Democrats have prided themselves on preventing the current Coalition government from implementing its promises.

The problem goes back to the time when the House was enlarged and, as a consequence of the nexus between the two Houses, the size of the Senate was increased. The practical result is that neither side of politics can win a majority and so be given a free hand to implement their mandate. This is not a problem all the time, but occasionally in the life of any nation you need to have a situation where, with a large mandate, a government can introduce a big reform programme. Victoria needed it when Jeff Kennett was elected in the early 1990s, and Australia needed it when John Howard was elected in 1996. This issue needs to be addressed by legislation, which is only ever going to be passed after a successful double dissolution initiated by the proponents of the legislation.

My proposal would set a maximum term of four years, not a minimum term. As a matter of logic, the government with a term of four years is likely to serve longer, because it will have longer to weather the results of unpopular longer term policies, and a longer period generally within which to gauge economic and other factors likely to have a bearing on election dates.

The crucial objective is to enhance government stability and so, therefore, if the cost of gaining longer terms for the House of Representatives and hence the government is an occasional separate Senate election, this should not be regarded as too high a price to pay. My proposal does not guarantee longer terms, but it should increase the average length of time between elections in the House of Representatives.

Since 1901 federal elections have been held on average every 2.3 years. The frequency of elections has increased since World War II. A two year House of Representatives term, when viewed against a 3/6 year Senate rotation system, is just as likely to result in numerous elections as my proposal of a maximum term of four years. My proposal is likely to result in some lengthening of the electoral cycle but, in practice, and judging from past experience, is unlikely to result in four year parliamentary terms. It is more likely simply to increase the existing average length of parliamentary terms, perhaps to three years. If this is the case, there is every likelihood of House of Representatives election dates coinciding with the dates of half Senate elections. Thus, under my proposal, there could be fewer half Senate elections in the future than there have been in the past, and fewer elections overall.

The idea of four year terms was also recommended in the Royal Commission in 1929, in the

Constitutional Commission in 1988 and on numerous other occasions. Over about a 30 year period the savings that would result from holding fewer elections, as a consequence of increasing the average term of the House of Representatives to three years, would be between 200 and 300 million dollars (as calculated in 1994!). These savings are worth having. A large majority of the Parliaments listed with the Inter-Parliamentary Union have terms of four years or more. This is a simple change that could be made, and I believe could earn bipartisan support. It would make our democracy work better.

### **Direct democracy**

The Australian Constitution is not writ in steel, nor should it be. It is already subject to effective change. Change can be for better or worse.

In my view, the big change since 1901 has been the centralisation of power in the federal Government. Other changes, detrimental to the body politic, have also occurred. Within 20 years of the new Federation, concerns were expressed that the federal Parliament had become largely a rubber stamp. Today debate in the lower House rarely decides an issue.

Question Time is not what it used to be. Whoever the Prime Minister is at any point in time, if the PM is not in Question Time it lacks the sense of occasion which makes it important. Mr Keating treated Question Time with contempt. Behaviour in Question Time is much better now, but the public are not easily convinced that our side are better than the other lot although we are, by a big margin.

More fundamentally, our political system is awash with apathy and indifference. Discussion about political philosophy is nearly non-existent. Ignorance of our Constitution is widespread, and many politicians are obviously unaware of the history of the development of our political traditions.

In Australia today, the Executive is all powerful. It was not always intended to be so. Historically, the Parliament created an Executive as a means of controlling the power of the Monarch. Today in our system, the Monarch is irrelevant, the Executive controls the Parliament, and the Governor-General is the last check against the excesses of the Executive if all else fails. In its turn, the Executive is as much influenced by party machines, and in the ALP's case, the unions, as it is influenced by members of Parliament.

Meanwhile, the High Court has interpreted constitutional provisions in such a way as to enhance the power of the central government. So significant has this development been that Labor has lost a lot of intellectual interest in constitutional reform, because it no longer sees the Constitution as a barrier to its centralist agenda. This is no surprise, as the Court's pronouncements on the external affairs power give constitutional jurisdiction to the federal Parliament over virtually any subject which is itself the subject of a treaty with a foreign power, entered into at the whim of the Executive.

Other developments, for example the adoption of uniform taxing powers by the Commonwealth, have also been significant. The Commonwealth's purse power is now so strong, and the States so used to fiscal mendicancy, that efforts in recent times to give the States greater responsibility have been opposed by the States themselves. So, I think we have a problem.

US President Woodrow Wilson reminds us that:

"Liberty has never come from the government; liberty has always come from the subjects of government. The history of liberty is a history of resistance. The history of liberty is the history of the limitation of governmental power, not the increase of it".

I am opposed to too much power being accumulated in too few hands. The participation by citizens in the government of our society is the essence of our democracy, and the Constitution is an essential instrument to achieve our objectives.

Many people believe that political rights and society's political development will follow successful economic development. I think that is the wrong way round.

In my view, if you have the right institutions within a strong civil society, you'll end up with a



successful economy, a vibrant culture, innovative industries, and a flourishing community in every aspect of human endeavour.

These issues have been studied very carefully. In Robert Putnam's work *Making Democracy Work*, which examined the introduction of regional government in Italy over 20 years, it is said:

"This is one lesson gleaned from our research: social context and history profoundly condition the effectiveness of institutions. Where the regional soil is fertile, the regions draw sustenance from regional traditions, but where the soil is poor, the new institutions are stunted. Effective and responsive institutions depend, in the language of civic humanism, on republican virtues and practices. Tocqueville was right:

'Democratic government is strengthened, not weakened, when it faces a vigorous civil society'.

"On the demand side, citizens in civic communities expect better government and (in part through their own efforts) they get it. They demand more effective public service, and they are prepared to act collectively to achieve their shared goals. Their counterparts in less civic regions more commonly assume the role of alienated and cynical supplicants.

"On the supply side, the performance of representative government is facilitated by the social infrastructure of civic communities and by the democratic values of both officials and citizens. Most fundamental to the civic community is the social ability to collaborate for shared interests. Generalised reciprocity (not 'I'll do this for you, because you are more powerful than I', nor even 'I'll do this for you now, if you do that for me now', but 'I'll do this for you now, knowing that somewhere down the road you'll do something for me') generates high social capital and underpins collaboration.

"The harmonies of a choral society illustrate how voluntary collaboration can create value that no individual, no matter how wealthy, no matter how wily, could produce alone. In the civic community associations proliferate, memberships overlap, and participation spills into multiple arenas of community life. The social contract that sustains such collaboration in the civic community is not legal but moral. The sanction for violating it is not penal, but exclusion from the network of solidarity and cooperation. Norms and expectations play an important role. As Thompson, Ellis and Wildavsky put it:

'Ways of life are made viable by classifying certain behaviours as worthy of praise and others as undesirable, or even unthinkable'.

"A conception of one's role and obligations as a citizen, coupled with a commitment to political equality, is the cultural cement of the civic community".

This research, described by *The Economist* as "a great work of social science", concluded that the form and practice of civic community is the most important factor in determining the success of democratic self-government and a region's capacity for economic growth. To me, intuitively, this makes a lot of sense.

So I'm in favour of change, not for the sake of change, but because I believe we can make our democracy work better for a more democratic Australia. At the risk of being criticised for merely mouthing rhetorical flourishes, I believe that Australians can be the world's leading democratic practitioners. We could set a standard for others to follow for a century or more.

There are two factors at work. There is a sense of alienation in our citizenry that needs to be overcome. But a more positive factor is creating a new opportunity by building on the strong civil society we have today, and the egalitarianism we have nurtured.

In my view, in the future, citizens will demand a greater say in the conduct of their own affairs. In their capacity as economic agents, citizens, through the strength of market forces, can make governments largely irrelevant. The world's capital markets demonstrate this new force on a daily basis. They don't

recognise national boundaries.

This globalisation of economics will continue to be a major feature of the world in the Century ahead. But this is not the only way in which the world is going to continue to change. The public will be better educated. In turn this will encourage a greater appreciation of political issues. And the growth of sophisticated and rapid communication systems, the information superhighways, will give the public an unprecedented power to make informed choices and to relay their views back to the decision-makers.

These developments have not escaped the attention of others, either locally or internationally. A survey of the future by the respected *Economist* enthusiastically endorsed the idea of direct democracy. Associate editor Brian Beedham argued that the “arrested development” of representative democracy and a better educated electorate would pave the way for direct democracy.<sup>4</sup>

Direct democracy is a process that enables the public to initiate and then make or repeal laws by referendum. Such a process is undeniably democratic. It should be embraced more fully at local, State and federal levels of government in Australia. It would encourage a more transparent political system by encouraging debate. It would make it hard for the politicians to sweep issues beyond public view. It would motivate public interest in political issues and so erode apathy. Successful referendums reflect the views of the otherwise silent majority, and are thus a counter to noisy minority groups who sometimes can have undue influence. By giving the public an opportunity to directly influence law-making, the system would also thereby improve the integrity of the law. And it would be very popular with the electorate, as it is in the US, where its support consistently rates about 80 per cent with the public. It has attracted growing support in Australia.

I favour direct democracy for legislative initiatives, but as a safety valve system and as a supplement to our existing system, rather than as a substitute.

The key features of a proposal for direct democracy at the federal level could include:

- (a) A requirement of about 350,000 signatures for a petition to trigger a referendum. This is a high trigger. It means that we would not have to live out the satire of *The Rise and Rise of Michael Rimmer*. It is equivalent to about 3 per cent of votes at a general election. Based on American evidence, there is no doubt that this requirement would ensure that only referendums with wide support would be initiated;
- (b) Referendums to be held on the same day as elections to keep down the cost;
- (c) A parliamentary Committee to publicly examine any proposal; and
- (d) Federal court jurisdiction to give legal opinion on a proposal prior to the vote.

These latter two measures would enhance the publicly available information, and ensure that the public was well informed on referendum issues before they went to the polls. There are other features, such as regulations requiring the disclosure of donations, and a provision to allow the Parliament to place an alternative proposal on the ballot paper, which could also be added. An examination of overseas experience reveals many other options.

In modern times, the concept of citizens' initiated referendums originated in Switzerland. It has now spread worldwide. It is practised in 28 of the States of America and is very popular with the US electorate. In Europe recently, referendums have been conducted on significant policy issues in Italy, France, Denmark and Ireland.

Of course the concept is not new to Australians. Kingston's 1891 draft of the Constitution included a form of voters' veto, and the referendum concept was accepted by incorporation of the Swiss model into Australia's Constitution in 1901 for the purposes of securing public consent to any proposal to amend the Constitution.

(Kingston's draft was dated 26 February, 1891 and was printed in Adelaide by the Government Printer. A copy is included in Griffith's volume *Successive Stages*. The proposal was that no Bill could be assented to until after a referendum, if that were demanded within three months by one-third of the

members of either House, or both Houses of any two State Parliaments, or 20,000 qualified electors. The referendum would be decided by a simple majority of votes.)

Since then most Australian politicians have recoiled at the suggestion of actually giving the public a say on the big issues that confront our society.

Before proceeding, let me make it clear that while I support direct democracy, I do not advocate regular federal referendums. To me the value of the concept is not to have a vote every second Saturday, but rather to have a safety valve in the system. A high trigger of 350,000 signatures ensures that frivolous proposals would not qualify. So the proposal is designed to be used sparingly, although the mere fact that it is available helps to keep the politicians in line.

In my time in politics the most likely issue to have generated a referendum campaign would have been the Australia Card controversy. In that case the Government's legislation was twice rejected by the Senate and that rejection was used to trigger the 1987 federal election. After the election the ALP falsely claimed to have a mandate to keep a computer file on every citizen. When the public became aware of the full implications of Labor's plans there was widespread outrage.

But for the legal genius of the late Ewart Smith, the ALP's scheme would have proceeded. If it had proceeded, and if we had had a form of direct democracy, a widespread campaign to support a referendum to repeal Labor's legislation would have been the only chance to stop it. Such a campaign would probably also have prevented the bureaucrats from inventing the alternative tax file numbering scheme which has since been instigated.

The only other political issue that could have generated a sufficiently strong public reaction would have been a move to change our flag without reference to the public.

The opponents of direct democracy claim otherwise. Laurie Oakes has suggested that petitions to overturn anti-discrimination laws, or to return the death penalty, would be quickly initiated.<sup>5</sup> He says, rightly, that in the US there is an example of the death penalty being introduced, but he forgot to mention that there is also an example of the death penalty being abolished through this process. To my knowledge, 31 US States have reintroduced the death penalty. Of these, in 29 cases the reintroduction was by ordinary parliamentary legislation.

US experience is interesting but can't be conclusive. Likewise the Swiss experience is interesting but not conclusive. They have voted for trans-Alpine freight to be limited to rail, they have voted against the disbandment of their armed forces and, in 1993, they voted for a Goods and Services Tax. To suggest that the process would open the door to prejudice and intolerance is contradicted by the evidence.

In Australia, the Communist Party dissolution referendum and the Aboriginal rights referendum were both about the rights of minorities, and suggest that Australian voters are quite capable of making decisions that meet Mr Oakes's requirements. Anyway, the Canberra Press Gallery is well known for its tolerance, honesty, fairness and impartiality, and can be relied upon to continue to censure intolerance.

A free press can also help ensure that Australia would mirror US experience, where it is generally agreed that money can't buy a new law by referendum. In one case the opponents of a referendum to legalise marijuana spent only \$5,000, but defeated the supporters who spent \$214,000. In another case, the tobacco industry outspent its opponents 10 to 1 but was still beaten.

In North America, the systems in the States vary considerably, although there is a fairly consistent pattern in the response of voters. Political analyst Arthur Ranney has surveyed the US experience from 1945 to 1976. He concluded that the "pattern is consistent with the widely held view that American voters are predominantly liberal on economic issues and conservative on social issues".

At the turn of the century Australia led the world with innovations to enhance our democracy. Today the public is disenchanted with politics. The need for reform is obvious, but the path to reform could be blocked by existing political élites.

The immediate task must therefore be to foster public support. In time, this public support, and

changes in society, will generate the required political pressure to persuade the politicians to give the public the right to vote on a proposal for direct democracy.

Support for the concept of direct democracy in Australia – which was originally ALP policy – has come from a diverse group, including Professor Geoffrey de Q Walker, most Liberal Party State Councils, the Deputy Chairman of the Constitutional Centenary Foundation, Professor Cheryl Saunders,<sup>6</sup> the Australian Democrats, the Queensland National Party, the Hon Frank Walker, Mr Ted Mack, the Advisory Committee on Individual Rights (Constitutional Commission, 1988), Mr Tom Keneally, Mr Bryce Courtenay, Mr John Hyde (former Director of the Institute of Public Affairs) and many others. The day will come when direct democracy will play a bigger part in our democracy, and Australia will be a better place for its introduction.

#### **Endnotes:**

1. *The Age*, 12 July, 1994.
2. *The Age*, 22 July, 1993.
3. *The Age*, 25 July, 1994.
4. *The future surveyed – 150 Economist years*, in *The Economist*, 11 September, 1993.
5. *The Bulletin*, 26 July, 1994.
6. *The Australian*, 22 July, 1994.