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This issue of *Papers on Parliament* brings together in published form six lectures given during the period from July to December 1995 in the Senate Department's *Occasional Lecture* series. This issue also includes a paper by Professor Howard Cody.

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Reinventing Government in the United States: What is Happening with the National Performance Review?

Professor Beryl A. Radin

As most of you know, there is a special relationship between Australians and Americans. Despite the distance between the countries, there is an unusual affinity between the two peoples. For Americans who are hooked on Australia—and I count myself as one—time spent here provides a very unusual vantage point. Because, while much is familiar here, enough is different to make the long trip more than a good time with a great group of people. The challenge is to figure out what appears to be the same but is, indeed, different in the two systems.

The theme—what is similar and what is different—is the underlying message of this lecture on ‘Reinventing Government in the US: What is Happening with the National Performance Review?’ In previous visits to Australia, I have learned that one can be misled by seeming similarities in our administrative worlds. We use the same vocabulary, we confront similar problems and we are increasingly aware of each other’s activities. So the Clinton administration’s National Performance Review, the NPR, provides a good vantage point on this situation.

This paper focuses on three elements in the NPR. First, I will attempt to place the NPR activity within the context of the American system, past management reforms and expectations emerging from Clinton’s election in 1992. Second, I will describe the experience of the NPR which, at this point, has been divided into two periods: the first called NPR I; the second, which was defined after the congressional elections of 1994 and the emergence of Republican control of both Houses of Congress, called NPR II. Finally, I will conclude with some contrasts between the NPR and what I understand to be similar efforts in Australia.

1. The Context for Reinvention

Americans have had a particularly difficult time coming to grips with administration and hence administrative reform. To some extent, this difficulty is common to all democracies in which representatives must make decisions and policies that involve multiple and often conflicting values. Imperatives of accountability and political responsiveness do not always, or indeed often, lead to efficient administrative capacity. Political representatives in democracies constantly face the juggling act of making trade-offs between competing values of efficiency, equity and effectiveness.

But the American political system makes this problem even more complex. Our system of shared powers—separate institutions of the executive, the legislative and the courts—means that the trade-offs are made by more than one institution. The reality of federalism with divided authority between central government, states and often localities further constrains the ability of the national government to take unilateral action.

Despite the structural realities, for more than a century many American administrative reformers have sought changes that do not often fit easily into the American political system. They have sought to separate politics and administration and have advocated a framework that provides for administrators selected by and rewarded only for their neutral competence, often ignoring the layer of political officials within executive branch agencies in the US. The reformers have also attempted to create administrative changes that accentuate the powers of the executive branch, usually at the expense of the legislative branch. Rather than emphasising the accountability relationships that emerge from shared powers, the focus has been placed on the relationship between the public servant and the chief executive.

Finally, for almost a decade, reformers have been enamoured by the techniques and methods used by the private sector and have accentuated efficiency values over all others. The effect of all of these elements has been to attempt to create an administrative culture that many believe ignores basic issues related to the need for a public sector, particularly questions of equity and redistribution of resources.

If this were not enough, American administrative reformers have behaved much like the purveyors of the fashion world. They move from one costume to another; they have a short attention span substituting one set of reform attempts for another. The streets of Washington and many state capitals are paved with the residuals of the Program, Planning and Budgeting System (PPBS); Management by Objectives (MBO); Zero Base Budgeting (ZBB); and other reforms. They have promised much, indeed overpromised, and searched for the panacea—the silver bullet—that will rid the political system of politics.

By the 1980s, another force emerged on the scene in the US and around the world that reinforced the emphasis on private sector values. The anti bureaucracy mood, bred from many different elements, made it more difficult to articulate the reasons why the public sector exists at all.

Osborne and Gaebler's book, *Reinventing Government*, published in the United States in 1992, provides a clear picture of this reality. Focusing on local government in the US, the authors emphasise the way that analogies can be drawn between the public sector and the private sector, particularly in their discussion of markets. They praise contracting out of

government services; they draw on the Total Quality Management (TQM) concept of citizens as ‘customers’; and they call for the development of an ‘entrepreneurial spirit’ within the public administrative sector.

This rhetoric was extremely attractive to Bill Clinton, both as a candidate and as President. He was taken with the private sector approaches to management change and the political benefits that could be gathered from drawing on Osborne and Gaebler’s reinvention concept. As he faced the reality of the mounting budget deficit, it appeared to provide a way to look ‘tough’ without evoking the ‘bash the bureaucracy’ rhetoric of the Reagan and Bush years. This was the context for the NPR.

2. The NPR Itself

Unlike most administrative reforms of the past in the US, the NPR became a public issue from its earliest days. The ever present pollsters—and the Clinton administration uses pollsters on everything—found that this issue, which was voiced by Vice President Gore on late night talk programs, turned out to be a popular political issue. The first stages of the NPR resembled a political campaign: fast, intense and controlled by generalists. It utilised direct communication with citizens, face to face exchanges with career bureaucrats and a series of teams of experienced federal employees that examined agencies and cross-cutting decision issues. It began seriously in March or April of 1993, very soon after Clinton assumed office in January. The first report issued by the group came out in September 1993. That report entitled *Creating a Government that Works Better and Costs Less*, which is known as the Gore report, had four parts—Cutting Red Tape; Putting Customers First; Empowering Employees to get Results; and Cutting Back to Basics.

Much of what has been understood to be the National Performance Review has come from speeches, reports and analyses released by the Vice President’s Office, the White House and the independent office established within the Executive Office of the President to implement the NPR. These efforts have focused on government-wide strategies for change as well as specific recommendations for particular departments and agencies. These activities express a set of values and strategies articulated by, or at least indicated to be, a part of the Clinton presidency.

In addition to efforts in the White House, a parallel set of activities took place in each of the federal departments and agencies. The Gore report noted that: ‘The President also asked all cabinet members to create Reinvention Teams to lead transformations at their departments, and Reinvention Laboratories to begin experimenting with the new ways of doing business.’

Although packaged as part of the NPR, some of these activities were viewed as experiments and a number of them described in the report actually predate the NPR process. Indeed, in several cases the agenda for change for the federal agencies or departments was devised before the advent of the Clinton administration. Some activities were originally conceptualised as a part of the policy or management agenda of the organisation’s chief executive who could be either a cabinet secretary or an agency head. Other undertakings, however, were developed in response to the Vice President’s directives and closely followed the approach defined by the NPR.

The executive departments and agencies were given the difficult job. Not only did they have implementation responsibility for the government-wide cross-cutting issues such as customer service, procurement and personnel change, as well as the specific agency recommendations in the NPR report, but they were also held responsible for carrying out their own agendas. While the NPR continued to play a role in the process, described by some as a ‘cheer leading’ role, the management of the details of what is now known as NPR I was left to the departments and agencies.

During the first six months of 1994, I looked at the process of implementing the NPR in the following six departments or agencies: the Departments of Agriculture; Health and Human Services (HHS); Labor; Interior; Housing and Urban Development (HUD); and the Agency for International Development (AID). Each of these federal organisations was identified as a major success story in interviews that I had with the NPR leaders. They were held up as examples of public agencies that took the reinvention task seriously. But even these ‘successes’ illustrate significant variability in both the process and substantive response to the NPR inside the federal bureaucracy. There was wide variation in the pace of change achieved as well as its content. It also appeared that there was much going on within the federal government in 1994 in the name of the NPR that may have had little or nothing to do with the administration’s ‘reinvention’ plans or priorities.

I found at least six different types of departmental or agency activities that were defined as fitting under this NPR umbrella: policy change, reorganisation, budget reductions, empowering line managers, improving customer service and changing decision systems. I will describe each briefly.

Policy change. Some of the NPR activities and recommendations involve substantive changes in the construction and design of policies or programs. It is important to note that, in most cases, those changes required action by Congress as well as the support of the White House. They were not easily done within this executive office rubric.

Reorganisation. The organisational structure of the implementing department or agency was sometimes a target of the reinvention effort. Thus proposals for change in the organisational structure—both in headquarters and in field structures—emerged as NPR initiatives. In the US system, many of these proposals required congressional action.

Budget reduction. A major assumption of the NPR activity is that the reinvention processes will produce budget savings or new sources of revenue for agencies or departments. Reductions in the size of the work-force were expected to be a major element in achieving budget savings.

Empowering line managers. Bureaucratic cultures that are based on a command and control approach were believed to be major contributors to ineffective government performances. Decentralising decision making to lower levels of the organisation, devising new accountability mechanisms and improving the quality of the work situation were viewed as important components to an alternative approach.

Improving customer service. This aspect of the NPR strategy builds on the private sector TQM emphasis on customer service and attempts to emphasise the importance of looking beyond the government agency to determine improvements in the ways that government services were delivered. This, within the NPR activity, includes an emphasis on customer surveys, competition and other attempts to simulate a market situation.

Changing decision systems. Slow, unresponsive and inefficient bureaucracies were the target of these NPR efforts. The changes that were recommended in this area involved new ways of developing budgets, personnel, procurement, regulations, intergovernmental relations and inspection processes.

Among the organisations that I examined, I found great variation in terms of their response to the NPR activity. Much of what has occurred followed past patterns of management reform reflecting the authority structure of the organisation, the level of autonomy of sub-units within the organisation and both the positive and negative experiences of the past. In several cases, there was a general perception both within the organisation and in the external environment that change was needed, so there was a match between the internal agenda for change and the expectations of Congress and other external players. At the same time, however, other organisations fell into the trap of separating the management agenda from efforts at substantive policy change. This occurred both because of the types of officials involved (career or political appointees) as well as the strategy employed (top-down or bottom-up). While organisations were often creative in terms of the ways that career officials were involved in the process, these efforts tended to exclude external actors.

The six organisations employed strategies that were both permanent and temporary in nature. Several of the departments created NPR offices that were transformed into on-going institutional structures, charged with orchestrating continuing efforts at change. Others, by contrast, behaved as short term task forces that spun-off assignments and activities to the institutionalised units and processes within the organisation.

The substantive range of the proposals for change was extremely wide. All six of the agencies engaged in activities to empower line managers; in two cases these activities predominantly involved career staff while both political and career staff were involved in the other four situations. Five of the six organisations engaged in policy change; these activities were the agenda of the political appointees in three of the organisations while both political and career people were involved in policy changes in two situations. Changes to decision systems were also found in five of the organisations; in three cases both political and career staff were involved; in two situations only career staff were predominant. Activities involving improving customer service were found in three agencies as a result of both political and career involvement. Budget reduction activities, while also found in three agencies, were the agenda of political appointees in two and joint efforts by both career and political staff in one. Finally, reorganisation activities were found in two situations; in one department they were the result of political appointee involvement while they were the result of joint activity in another.

While some of the recommendations that emerged from the Gore report as well as from internal processes were far-reaching in scope, some of the proposals that were identified by career staff members involved micro-management questions that sometimes appeared to be trivial to political appointees and those outside the organisations.

Both the political appointees and the careerists, however, were influenced by concepts and literature borrowed from the private sector. The popular management writers—Osborne and Gaebler and Hammer and Champy—clearly influenced the internal process. The presence of technological developments, particularly the accessibility of the computer—reinforced desires to eliminate many jobs in the public sector as well as the private sector, particularly middle management positions. The language of TQM was pervasive, particularly concerning the need for an emphasis on customer service. These examples also indicate that the management concept of re-engineering found its way into the public sector.

All of the organisations that I examined confronted widespread cynicism among the career staff as they embarked on their activities. To some degree, this reflects a sense of burnout and a perception that the NPR is simply one more in a series of management reforms that have been unsuccessfully advanced by political figures over the past several decades. In addition, however, much of the cynicism can be attributed to the linkage within the NPR between personnel and budget cuts and other aspects of management change. Downsizing overwhelmed much of the other activity.

What, then, can we learn about the NPR I in practice from the evidence gleaned from these six profiles? Even given the variation in organisational settings, were there any central tendencies that can be ascertained from the early experience to this point?

Separation of management and policy. Some of the organisations did not separate management reform from processes and agendas dealing with policy issues. They did so because of attributes that were operative at the departmental or agency level not because of directives or even guidance from a central NPR office. The link between policy and management reform in Labor emerged as a result of the strategy of the top leadership. In AID, it occurred both because of the top leadership as well as external pressure from Congress to change. Similarly, the HUD approach reflected a belief both by top leadership as well as external actors that change was dramatically needed. The failure to link policy and management also occurred as a result of both past and current forces within specific organisations; HHS was preoccupied with policy change and, as well, had historical problems with management reform. Reorganisation efforts within the Department of Agriculture took top billing for time and interest.

Emphasis on executive power. All six of the agencies examined borrowed concepts, models, and expertise from private sector management. In some cases, the individuals who played the major strategy role for the activity came directly from the private sector. Even when career officials played a leadership role, they relied on private sector experience as their model. This tended to emphasise internal aspects of change, using the concept of a chief executive officer as the focal point. Although informants in all of the organisations studied did emphasise the relationship between their efforts and those of the NPR White House office, they tended to view that relationship as one which legitimated their own internal activities. In effect, the NPR and the White House provided a useful ‘cover’ for the change that was desired within the agency and leverage for top officials to ‘shake up’ their organisations.

Conflict avoidance. Some of the organisations invested in a bottom-up process, emphasising processes which reached out to career staff with a message that ‘we’re all in this together’. In

several instances, these processes did not produce approaches that fit the agenda of top leadership; thus it was difficult to meld the two. Four of the six organisations were able to develop activities that empowered line managers through involvement of both career and political staff. However, it was more difficult to find ways to deal with budget reductions and downsizing through collaborative action.

The NPR I tended to avoid politics and the conflict that occurs as a result of dealing with Congress and interest groups. Three of the organisations studied, however, did reach out to acknowledge the diverse perspectives of Congress and external groups, suggesting that they did not perceive themselves to be constrained by the guidance provided by the NPR.

Accountability mechanisms. By the summer of 1994, it was difficult to ascertain whether the agencies examined were able to create bureaucratic, legal, professional or political accountability mechanisms that were appropriate for the new approaches. Much of the rhetoric about accountability involves promises related to the measurement and assessment of performance through the requirements of the Government Performance and Results Act (GPRA). That legislation, enacted in 1993, required agencies to develop outcome measures of their performance. While Congress enacted that legislation, it delegated the enforcement authority to the executive branch through the Office of Management and Budget (OMB). In the NPR's first year, however, GPRA was still a promise, not a reality. While expectations about change were pervasive, it was not clear what was being asked of career public servants that would continue. For what and how will they be held accountable? The widespread cynicism reported among career staffers suggests that they, too, were unclear about their future role and the durability of current initiatives.

However, from the perspective of the White House, NPR was touted as a success. It pointed to savings of an estimated \$63 billion that came from the NPR activities. It noted that federal employment was cut by 100,000 people, ahead of schedule to meet the stated goals. It boasted of enactment of a procurement reform bill and other procedural changes.

Then came the 1994 congressional elections. In many ways, the December 1994 announcements about the second phase of the NPR, that is, NPR II, appeared to be closer to the Republican Party's Contract for America than traditional Democratic policies. Where NPR I had emphasised the processes of administration—the 'how' of government—the second phase focused on the 'what'. It is useful to quote from the Clinton–Gore message of December 1994. It stated:

The first phase of NPR cut back to basics, but we can do even better. The second phase of NPR will:

- eliminate remnants of yesterday's government that just don't make sense in today's world, and
- restructure things that can be better run as a business instead of a bureaucracy.

The first phase of NPR devolved authority to state and local government, but we can do even better. The second phase of NPR will identify things that can be done better by:

- the state and communities involved, and
- individual Americans.

The first phase of the NPR involved the regulatory process, but we can do even better. The second phase of NPR will undertake a major reinvention of the way the federal government regulates and how it enforces its regulations.

In January 1995, a memorandum from Vice President Gore to heads of executive departments and agencies asked them to form agency teams to review everything they do. He asked them to answer three questions:

- If your agency were eliminated, how would the goals or programs of your agency be undertaken—by other agencies, by states or localities, by the private sector or not at all?
- If there are goals or programs of national importance that will remain undone and require a federal role in order to be accomplished, should they be done differently than they are being done today in order to enhance the service to the customers?
- How do your customers—not just interest groups—feel about the possible eliminations or changes?

Similar questions were posed to the agency and department heads in March 1995 regarding regulatory reinvention. They were asked the following questions.

- Is this regulation obsolete?
- Could its intended goal be achieved in more efficient, less intrusive ways?
- Are there better private sector alternatives—such as market mechanisms—that can better achieve the public good and vision by the regulation?
- Could private business, setting its own standards and being subjected to public accountability, do the job as well?
- Could the states or local governments do the job, making federal regulation unnecessary?

In May 1995, the OMB Director, Alice Rivlin, gave testimony to the Senate committee on governmental affairs. She listed three basic concepts that she said underlined phase II:

- The first was privatisation—that is, divesting Government of all operational responsibility for an activity or service and allowing the private sector to meet the need.

- The second was corporatisation—that is, creating alternative forms of organisation, such as government-controlled corporations to ensure better management of a program that serves the public.
- The third was contracting out—that is, procuring a product or service in the private market while retaining federal responsibility for fulfilling a governmental function.

These developments are full of ironies. If the Clinton administration, a Democratic administration, had proposed them to a Democratic Congress, they would have faced significant opposition, particularly from individuals who worry about issues of equity, race, class and redistributive impacts. The basic questions that underline most political decisions—who gets what, who wins, who loses—would have been asked, and Democratic Congress members would have been concerned about the effect of these changes on their constituents, particularly those members who lack political and economic power. While the institutional conflict between the powers of the White House and the Congress would have been discussed, it would have been less worrying than the substantive impacts of these proposals.

But the Clinton administration does not face a Democratic Congress. Instead, it engages in these reform efforts with a Republican Congress—a political environment which is very congruent with private sector values and where issues of equity and redistribution are not raised nor considered to be central to policy concerns. Indeed, under the guise of efficiency and budget cutting, Congress has taken steps that disproportionately impact on the helpless and the poor in the American society.

Where does this leave us? NPR II shows once again that reforms that are posed as strictly ‘management concerns’ have substantive outcomes. Many thought that value assumptions were implicit but hidden in NPR I; however, questions of equity and values became explicit in NPR II.

Those who are most uncomfortable with the current developments are individuals who believe that changes must be made in the status quo. They do not want to be in the position of simply defending the status quo, but they do not like the ideology and assumptions that are found in the NPR path. They find themselves in a strange position. They believe that government service to citizens should improve, but that the many and often conflicting types of individuals and interests served by government make the private sector concept of the monolithic ‘client’ inappropriate as a method of assessing public sector effectiveness.

3. Contrasts with Australia

Many of the reform efforts that I have described are familiar to Australians. Indeed, NPR self-consciously borrowed ideas from Australia, New Zealand and Great Britain. But it is important to emphasise some basic differences.

First, structure. Because it is a parliamentary Westminster system—or what my friend Elaine Thompson calls the ‘Washminster system’—the machinations that I have described in the US that emerge from institutional conflict between the legislative and executive branches are not experienced in Australia in a formal structural sense. From my years visiting Australia, I have discovered that some of those tensions do exist, but they are related to the functions rather than the structures of governance.

Second, time frame. I began my visits to Australia in 1985. At that time, I was introduced to the first stages of the Financial Management Improvement Program (FMIP) and other reform efforts emerging from Finance. I may be exaggerating somewhat, but I believe that the effort that was undertaken in the US in approximately a six-month period, which culminated in the Gore report, took more than five years to develop in Australia and involved multiple levels of organisations and constant refining of recommendations and processes. As a result, you did not experience the level of cynicism and sense of trendiness among public servants that surrounded the Gore report.

Third, stability in top officials. Unlike the US, Australia’s Public Service system does not have the relatively deep layer of top political officials: thus there is a level of continuity that is found in agencies in Australia that is not apparent in the US.

Fourth, investment in training. Australia has acknowledged that the kinds of dramatic changes that are proposed in reform efforts of this type required an investment in training of staff. The US has not made that investment.

So what? Why should Australians be interested in the NPR, despite these clear differences in approach and structure? And why should members of the legislative branch focus on these experiences?

I will leave you with two observations that I think are relevant to Australians. First, despite the rhetoric to the contrary, management reform has a real policy impact. It is not a neutral set of activities that has no impact on citizens. These impacts are not uniform but, rather, vary across class, region, ethnic group and other social divisions.

Second, because of this reality, members of the legislative branch should be attentive to these impacts. Although management reform will always be more important to the executive function than to the legislative, it is relevant for legislators to watch these activities and acknowledge the close linkage between management and policy. While the form of these impacts may differ across the globe, the experience of the American NPR does contain a message of interest to Australians.

Questioner — Where do you see the initiative for management reform or organisational change in the US coming from now? The experience in Australia has been to look to the private sector to lead some of our reforms in the public sector.

Prof. Radin — The experience in the US is not much different from that which you have described occurs in Australia. This may be sour grapes from someone who is a Professor of Public Administration, but the first phase of the Gore report in the NPR totally ignored any of

the work that was done in the public administration field. Instead, it relied almost entirely on the private sector writers, thinkers and advisers. They used that language.

There has been debate for many years about the differences between the two sectors. I happen to believe that, even though there are some similarities in important ways, they are really very different and they have different functions in the society. One of the things that bothers me now is this total reliance on the private sector models and forgetting that there is a reason why we have a public sector.

Questioner — Two of the things that you emphasised in your talk were value and accountability. Do you have any comments as to how value, value in terms of equity, might be accommodated more in the new model, the NPR II model, and how accountability could be more effective under this new devolved fragmented system?

Prof. Radin — As I tried to mention, there is very little attention to questions of equity and redistributive questions in the NPR. From the beginning until today, you find it in some of the specific department efforts. For example, what is being called ‘reinvention’ within the Department of Housing and Urban Development is constructed on a set of clear values and a concern about providing housing services to the underserved in the American society. But that did not come from the NPR; it came from the cabinet secretary in that department.

The question we need to ask is: whose accountability? One of the difficulties in a democracy is that we have accountability to many different stakeholders and institutions. Right now I would say that there is probably accountability to a majority in the Congress that want to make cuts. So that is what we live with when we have a change of government in the society. But, if we think about accountability in terms of accountability to people who have not been served, I do not see it.

The TQM concept of customers in the United States has been extremely problematic. The customers in many of the social programs have been defined as the people who are the providers of the service, not the people who are the recipients of the service. They have quite different perspectives on the world.

Questioner — I also have a question about the role of clients. Has there been a public reaction to Alice Rivlin’s recent proclamations about corporatisation, contracting out or privatisation? We have heard a little bit over here about the fact that parts of NASA, including the space shuttle, might be privatised. Has there been any public reaction to that third phase as yet?

Prof. Radin — I have not heard of any. I would say she would not have given that testimony unless they had done some focus groups and got a view that there was a positive response to that rhetoric. The major privatisation, contracting out, corporatisation proposals are really coming from the Contract with America. What is a little bit surprising is that they emerged from the Clinton administration. But, in a general sense, it has not become an issue. The debate will probably be about specific proposals rather than these three principles. We will see how they are applied.

Questioner — I am puzzled by the picture you have given of the imbalance between Congress and the executive. We understand that President Clinton and Vice President Gore have a strong focus on equity and distribution effects. But it seems that in a very short time—in a year or less—equity and distribution considerations have been ignored in favour of other models. Is this the picture you have given us? If so, does it not indicate that Congress seems to have more power in America than the President?

Prof. Radin — I do not know whether it indicates that Congress has more power. What it indicates is that there is an election coming up and that Clinton, I believe, is posturing himself to take positions that he thinks will give him the most credibility with the American voter.

Questioner — Can you state the reasons for having a public sector? In Australia, it seems to be getting lost in rhetoric.

Prof. Radin — I think it is getting lost everywhere—not just in Australia. That is the point that I was trying to make. That is why it is inappropriate just uniformly to adopt private sector techniques. There are reasons why we have a public sector. They clearly involve providing services to people who may or may not be able to pay for them. A public sector is there to safeguard against the tyranny of the majority. That is why we have constitutions. It seems to me that we have something in the public sector that has to do with legitimacy and authority that the market concept just does not capture.

Questioner — What is the effect of these changes on local government? You have mentioned that some services are devolved to local government in the United States from the federal sphere. What happens if a person is unable to pay for essential services like water?

Prof. Radin — When we say devolving to state and local government in the United States, we have tended to mean devolving to the state government, because the local government is a creature of the state. Many of the policies—there are a number of ironies here—that are being examined and the programs that are being thrown out are actually those that local governments like because it is a way for them to get national resources at the local level. If, as has been the case over the last fifteen years or so, the proposals are to increase the number of block grants that go to the states, local governments will then have to go to the states and become supplicants to the states. In some cases, local governments do well but, in many other cases, local governments find that their concerns are not concerns of the state government and that they have done better with what we call ‘categorical programs’ from Washington.

A lot of people are extremely concerned about this devolution pattern that is being proposed and developed. The states are getting more authority, but they are also getting less money. The states are already, for the most part, in a miserable financial condition, so they are going to displace costs to the localities which are also not in a good financial condition. So the net effect is likely to be that many services such as water may suffer as a result. As many of you know, much of local government in the United States is supported by local property taxes. If you are an affluent community, your property taxes are higher: if you are not, you have fewer resources to be able to utilise and to deal with the needs of your citizens.

Questioner — Are these reforms of contracting out being implemented in local government?

Prof. Radin — Many of them started in local government. If you look at Osborne and Gaebler, you see that the examples are almost 100 per cent from local government. There is a mixed bag. I am told that the California community—it was described in quite a lot of detail in the book—has found that much of the privatisation and contracting out did not work and it has gone back to more traditional public provision of services. But it is happening. When you have fewer resources, people are trying to work out ways of getting more for less. As one of my colleagues used to say, ‘when you have less, you get less for less’.

Questioner — I was a bit surprised when you talked about the motivation behind the actual reform process. One phrase that comes up all the time as being the driver of public sector reform but which did not come up is ‘international competitiveness’. When I look at the motivation behind most of the public sector reforms in Europe, I see that the underlying reason for it is always, ‘We’ve got to cut the size of the public sector in order to actually reduce costs on firms which have to be internationally competitive. A country such as Thailand has a public sector that is about one-third of our size; therefore it is much more internationally competitive.’ Could you give us some indication of whether that particular argument played any role at all within the US debate.

Prof. Radin — The US tends to be pretty insular. US politics is rarely involved in international issues. Clearly, some firms are concerned about international competitiveness, but it is relatively tangential to the NPR activity. There is plenty of other activity that is related to competitiveness, but I did not see it playing a major role in the NPR. It is interesting. I had not thought about that before.

Questioner — Given the reasons for the NPR, how much has the NPR cost so far and has costing been done of similar fashionable performance reviews in the past?

Prof. Radin — I have not seen any explication of the cost of the NPR. The NPR office, which is in the executive office of the President, is very small. It may have five or six people—no more than that. Clearly, a lot of time is spent by people in the departments and agencies. The question is whether they would be spending their time on something else that might be more effective. I have not looked at what is being called NPR II in the same departments and agencies that I examined in 1994. It is clearly something I need to do when I get back.

I also see a disjuncture between what is being said government-wide and what is actually happening in these departments. Anecdotally, I am told that some interesting and positive things are happening under NPR II in departments that have nothing to do with corporatisation, privatisation and contracting out. I do not know. But that is a very interesting question.

Questioner — I am interested in the question of costing, as raised by a previous questioner. In this evaluation of the public sector, it does seem to me that economists from the monetarist and economic rationalist school are very narrow in the way they cost and evaluate private sector contributions, public sector contributions and public sector policies. I am wondering whether there is any movement in the United States to cost privatisation more effectively?

Prof. Radin — We saw the privatisation move earlier during the Reagan administration and those issues were raised. People talked about contracting out, saying that the contractor could do the job for less money than the cost of providing the services in the public sector. In the first round of this, nobody ever costed the amount of time that it took for staff within the agency to play an oversight-accountability role. Then people realised that you have to do that. When they did that, they slowed down some of the contracting out activity because those hidden costs showed that in a number of cases it really was not cheaper to contract out than to provide it inside the government. I think those kinds of things are very important. There really are hidden costs as well as resources and subsidies that go into that calculation that we often ignore.

Questioner — You did not really elaborate on your feelings about the Contract with America and Newt Gingrich. Can you tell us your ideas about how you would feel about a possible Republican coup?

Prof. Radin — Some of us call it the contract on America. Maybe that sums it up.

The Commonwealth and the Republic: An Historical Perspective.

Professor Neville Meaney

It is with some trepidation that I venture to speak to you today on ‘the dark and bloody ground of the republic’—to adapt a figure of speech from American history—for I know that this is a subject about which feelings often run high and that a number of learned scholars and concerned citizens have already canvassed many of the most important issues.

Bearing this in mind I am in this paper not looking at whether Australia should become a republic or how a republic should be brought about but rather at the more abstract questions of political loyalty and collective identity in a post-monarchical Australia, and, in so doing, I will be considering, from an historical perspective, the implications of a republic for the Commonwealth and of a ‘commonwealth’ for the republic.

To this end it is my intention firstly to point out the role that British constitutional monarchy has played in Australia’s political culture and the possible costs of becoming a republic, secondly to assess briefly the ideas of political community which have been proposed as substitutes for constitutional monarchy, namely nation, democracy and republic, and finally to argue that both on intellectual and historical grounds the term ‘commonwealth’ has the best claims to be the core of a new legitimising myth; a new basis of political obligation.

The British Constitutional Monarchy in Australia’s Political Culture and the Possible Costs of Becoming a Republic.

A British heritage has been central in the shaping of modern Australia, especially Australia’s political culture. At this time when the process of disentangling the destinies of the two countries has reached a critical stage and new definitions of community are struggling to be

born, the British heritage still cannot be ignored, even by those most committed to the republic.

The Prime Minister's recent speech on 'An Australian Republic: The Way Forward' acknowledged, even if in a rather confusing manner, this British heritage. Australians, he said, do not lack 'respect for the British monarchy, or the British people, or our British heritage, or the British institutions we have made our own...On the contrary, Australians respect them, as they respect The Queen.' And then he added, 'But they are not Australian'. Surely there is a problem here. While this might be true of the British monarchy and the British people how, it must be asked, if the British heritage is 'ours', if we have made British institutions 'our own', are they not 'Australian'? This confusion does not arise so much from careless drafting as from the cultural tensions which Australians are experiencing in coming to terms with their new circumstances. In one sense it might be said that the hegemonic influence of nationalism's teleology has put the emotional needs or supposed emotional needs of the future in conflict with a rational understanding of the past.

This British heritage has been especially important in shaping Australia's political culture. The Australian system of government derives from British constitutional history and is justified in theory and practice on the basis of principles and conventions which have evolved out of this history. The federal features of the national government are, for the most part, merely a superstructure imposed on the Westminster system in order to deal with the division of powers between the states and the Commonwealth.

The Australian Constitution in its fundamentals follows the British Constitution.¹ As a constitutional monarchy it accepts that the Crown is the formal source of authority and the fount of honour, and that the prerogatives of the Crown, with the exception of the so-called reserve powers, have by convention become the privileges of the people acting through their representatives in parliament. The symbolic sovereignty of the Crown is everywhere present in the language and processes of the Constitution. The people are subjects not citizens. All acts of government are made in the name of the Crown. All members of the government are commissioned under the Crown as servants of the Crown. They are, as the Commonwealth Constitution puts it, 'the state ministers of the Crown'. The Governor-General acting as the representative of the Crown is the commander-in-chief of the Commonwealth's defence forces all of whose arms are 'royal'. Judges, who hold commissions under the Crown, administer the Queen's justice and those alleged to have broken the law are prosecuted in the name of the Crown. Royal commissions, which are normally presided over by a judge, are appointed by letters patent to inquire into serious matters of public probity or social concern. Insofar as the public life of the country has an official focus for loyalty, authority and dignity it is to be found in the Crown.

The question I then wish to ask is whether, since the monarchy has been so integral to our system of government, its abolition might have unexpected and adverse consequences.

¹ For the British Constitution, see especially Sir Ivor Jennings, *The British Constitution*, Cambridge, 1950, and *Cabinet Government*, Cambridge, 1951; and for the British constitutional monarchy, see especially Ernest Barker, *Essays on Government*, Oxford, 1951, chapter 1.

Will nothing of importance and value be lost? Can we, as the Report of the Republican Advisory Committee and the Proposals of the Prime Minister suggest, cast off the British-derived constitutional monarchy and assume that the practice of parliamentary democracy will continue untouched and untroubled by this change?

As a supporter of the republic I would like to think that this was so, but as a student of history and politics I have cause to consider further this question, especially for example as it might affect the protection of civil liberty, the facilitating of social reform and the observance of constitutional conventions.

Firstly, civil liberty. A constitutional monarchy where the Crown is the formal sovereign is less likely to restrict liberty and persecute the unpopular than an unqualified democracy. Under a constitutional monarchy though the people give their loyalty to the Crown, they know that they and the Crown are not one, that the Crown stands above them and is historically the institution against which they have struggled for their freedom. Consequently, even when animated by a common fear or passion, they hesitate to consent to the abridging of the rights of their unpopular fellow subjects for fear that the Crown might use such powers against themselves. Under a democracy, however, where the people are the formal sovereign there is no such restraint. There the people are the acknowledged source of authority, *vox populi, vox Dei*, and therefore they have less compunction in punishing or ostracising those fellow citizens who offend them. This difference is perhaps most clearly seen in the respective responses of the American democracy on the one hand and of the Australian and British constitutional monarchies on the other to what David Cauter has called 'The Great Fear' of communism at the onset of the Cold War.²

Secondly, social reform. Sir Keith Hancock in defending constitutional monarchy often invoked the dictum: conservative institutions, radical measures. Though his commitment to the monarchy was probably as much sentimental as instrumental, the point he was making should not be lightly dismissed. With the Attlee Labour government's reform program in mind, he maintained that by accepting traditional institutions social reformers could achieve more more quickly and with less resistance than would be the case in a republican democracy. In a constitutional monarchy conservatives could not refuse to accept as legitimate social change which was carried out in the name of the Crown; loyalty to the constitutional monarchy would tend to reconcile the minority to the will of the majority. In a republic, however, where the government belonged to the people, that is to everyone and no one, both the means and the measures would be more bitterly contested and political harmony would be less easily achieved. Litigiousness might well run rife.

Thirdly, constitutional conventions. The operation of our system of parliamentary government, which the republican movement wishes to retain, depends very much on the dutiful observance of constitutional conventions. These conventions derive from the history of the British constitutional monarchy, from a changing relationship between Crown and parliament which established procedures for the appointment of ministers of the Crown and for the exercise of the Crown's authority. These procedures gained their existence and legitimation from the Crown's acceptance of them, and the Crown accepted these procedures

² David Cauter, *The Great Fear: The Anti-Communist Purges under Truman and Eisenhower*, New York, 1978, especially the Introduction.

because to do otherwise would be to commit constitutional suicide. The Crown had no other source of authority to draw upon apart from its hereditary claim to the throne. How then can a president who is either elected directly or indirectly by the people and therefore draws authority from the people be similarly constrained?

And so the question must be asked, what new idea of political community is best able to provide vision for the future while preserving, to the degree that they can be preserved, the benefits of constitutional monarchy?

Alternative Ideas of Political Community—Nation, Democracy and Republic

Despite the view of the Commonwealth government, the Republican Advisory Committee and the republican movement that the change they envisage will make little difference to the political life of the country it would seem clear that the coming of a republic must entail a revision of the idea of political community which will in turn have consequences for political culture. It might be plausibly argued that the cake of custom would in ordinary times ensure that the political practices and precepts inherited from the constitutional monarchy would continue to hold sway. But if the nation should face a major crisis which challenged these established ways of protecting citizen's liberties and of settling disputes then upon what basis could they be defended? People require general ideas or myths to define their community and to legitimise authority, and, indeed, in this transitional period, a range of ideas or myths are being proposed, both directly and indirectly, both generally and specifically, to take the place of constitutional monarchy. The process of name-changing has already begun, and the names most often invoked are 'nation', 'democracy' and 'republic'.

The 'hard-case' Australian at the end of the day sets no great store by names. You will remember how C. J. Dennis' *Sentimental Bloke* approved Juliet's discounting of names in *Romeo and Juliet*.

'Wot's in a name?' she sez. 'Struth, I dunno.
Billo is just as good as Romeo.
She may be Juli-er or Juli-et—
'E loves 'er yet.

But names for political communities do matter. For this purpose 'Billo' is not just as good as 'Romeo'. Grand abstractions such as 'nation', 'democracy' and 'republic' carry with them historical and intellectual connotations and these connotations need to be carefully weighed before any one of the general concepts becomes the foundation principle for a new constitutional order. Though these concepts have no essential meaning and have been defined at different times in different, even sometimes contrary, ways, it is important to understand that they each represent distinct, if overlapping, traditions of political thought, and thereby to appreciate what is involved in opting for one or more of these ideas as a substitute for constitutional monarchy.

To assist in this process I will briefly review these terms.

Nation and its modern familiar, nationalism, were early in the field. In this tradition the monarchy is seen as the supreme symbol of colonial dependence and the chief obstacle to

national independence. Since the Whitlam years when the position of the Crown first came under challenge, there has been something of a revival of the 'Eureka' and Bush Legend myths. The Australian film industry, especially in its films about the Boer War and the First World War, has depicted Australian colonials being used and abused by the British and learning from the experience that they were a different people. The present Prime Minister's references to what he called Britain's betrayal of Australia at Singapore in the Second World War draws upon the same assumptions. A new history of Australia bearing this message is being written. It tells the tale of a struggle which is now bearing fruit and allowing Australia to be, in the words of the title of a recent text, 'A Nation at Last'.

Yet nation and nationalism have their problems. Even the Prime Minister in arguing that Australia's 'Head of State' should 'embody and represent Australia's values and traditions, Australia's experience and aspirations' showed a certain unease with the national idea. While claiming that 'we need not apologise for the nationalism in these sentiments', he added—and in the process detracted from the nationalism of the sentiments—'but in truth they contain as much commonsense as patriotism'.

And well might there be unease. Nationalism has not had a good history. In the nineteenth and twentieth centuries nationalism has imagined and mythologised modern communities in terms which were racial or quasi-racial and which tended to give nations both an oppressive conformity at home and an aggressive arrogance abroad.³ By defining nations as ethnically and culturally unique, nationalism erected barriers between peoples and set one people against another. All the great wars of the twentieth century, and most of the little wars as well, have been wars of nationalism.

Moreover, Australia's experience of nationalism does not lend itself easily to accepting 'nation' as a suitable central idea for a post-monarchical community. During the heyday of western nationalism, that is from the latter part of the nineteenth century until the middle of the twentieth century, Australians predominantly expressed their need for such an identity through what was called 'British race patriotism'. As Keith Hancock put it in *Australia* in 1930 'Among the Australians pride of race counted for more than love of country...Defining themselves as "independent Australian Britons" they believed each word essential and exact, but laid most stress on the last.'⁴ And there was a substantial consensus in the community on this question. In the past Labor leaders spoke almost as frequently as their conservative opponents of Australia as the guardian of British civilisation in the Pacific. Even in the late 1950s, Dr Evatt was assuring parliament that 'Australia will be and must be purely a British community.'⁵

The so-called radical national myth of the 'Bush Legend' never gained the support of a significant number of Australians and was a movement which defined itself against Britain by

³ For the imagining and mythologising of nationalism see Hans Kohn, *The Idea of Nationalism: A Study in its Origin and Background*, New York; Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London, 1983; and Ernest Gellner, *Nations and Nationalism*, Ithaca, 1983.

⁴ W.K. Hancock, *Australia*, London, 1930, pp.56–57.

⁵ *CPD*, House of Representatives, 27 February 1958, p.115.

calling for Australia to be a racially purer and better Britain. Nearly all of its heroes, such as William Lane, 'Banjo' Patterson, Henry Lawson or the Jindyworobaks, when Britain was in danger or British loyalty at stake, joined with their fellow Australians in identifying with the British monarchy and the British race.⁶

Even if a usable national tradition were available I would suggest that Australia, like the Western European countries, has outlived the need; that accepting the permanence of change it no longer requires the kind of irrational and intense national mythology which helped mediate the earlier traumatic transition of traditional societies into modern ones. There should be a place for nation as the shared experience of a common homeland within a unifying concept of political community, but it should be a subsidiary one.

Democracy is in every sense a more popular candidate. It has powerful and persuasive advocates and has already achieved an important status in the new naming process. The new oath of allegiance obliges migrants seeking naturalisation to pledge loyalty to the Australian people and the 'democratic beliefs' which they share. Since the Second World War, Western countries have treated 'democracy' or 'liberal democracy', as it is often termed, as an unqualified good.⁷ It has, in this sense, come to mean not only the rule of the majority but also respect for the rights of individuals and minorities, and indeed it is the stress on the latter which has given it its distinctive contemporary character.

This relatively recent rendering of the term is, however, not altogether consistent with the classical understanding of 'democracy' which literally from Greek *demos* 'the people' and *kratos* 'rule' was the rule of the people. Likewise it is at odds with an influential tradition which since the eighteenth century allowed that the people were in addition to being the source of authority also the source of wisdom and virtue, a principle which was summed up in the maxim, *vox populi, vox Dei*. This principle made possible what from De Tocqueville's study of *Democracy in America* became known as the tyranny of the majority. It took a less oppressive form when populism and demagoguery brought social pressure to bear to compel conformity and to ostracise the outsider. And it took its most oppressive form when leaders or leading parties claimed to embody the idealised general will of the people as in the cases of the French Revolution's Reign of Terror or the Communist bloc's People's Democracies. No doubt Vladimir Zhirinovskiy's so-called Liberal Democratic party in post-Communist Russia draws sustenance from these precedents. Democracy has a compromised history.

It might also be noted that democracy, because of the universality of its appeal and the vagueness of its content, lacks the distinctive quality which a particular political community needs in order to define itself. Democracy as self-government and equal citizenship should have a place in a unifying myth but it would seem inappropriate that it should take pride of place.

⁶ Neville Meaney, *Under New Heavens*, Heinemann, 1989, pp.379–427.

⁷ Indeed Professor G. Maddox in his *Australian Democracy in Theory and Practice*, Melbourne, 1985, pp.432–447 has argued that democracy is not so much a method of government or a constitutional structure as an ideal derived from the Greek polis' notions of citizenship and informed by the French Revolution's principles of liberty, equality and fraternity, an ideal whose concept of justice is relevant not only to Australia but to the whole world.

Republic is the word of the hour. Since republic, in common usage, has come to be equated with non-monarchical forms of government—and for convenience I have myself been employing it in that sense—the proposal to remove the monarchy from the Australian Constitution has pushed the term to the forefront of the debate. Nevertheless as a number of senior academics and constitutional experts have been quick to point out the concept of the republic has much more profound resonance in the history of Western political thought. And taking up this point some scholars have indeed endorsed republicanism as the most ‘fruitful concept’ around which to create a ‘reformulation of notions of citizenship, statehood and nationhood’.⁸

Republic which, like democracy, comes to us from the Classical era has an etymological advantage over democracy in that its Latin roots give purpose to political community, and that purpose is the public matter or the public good. In *De Re Publica* Cicero wrote that the republic was united by an agreement about law and rights and by a desire to participate in mutual benefits. Nevertheless, as the concept has evolved through modern political philosophy and historical experience, it has taken two very different, even contradictory, directions; one sees the republic leading to a perfect state and condones the bypassing of consensual processes and the use of coercive power to force citizens to be free⁹, while the other, more sceptical of the possibility of human perfection, lacks a positive idea of the public good and seeks to preserve liberty and justice by placing checks and balances on the exercise of power in order to constrain and control would-be oppressors, including the majority.¹⁰ Neither provides a credible tradition for the remaking of Australia’s political community.

From this reading ‘republic’ in Western intellectual and historical experience is a confused and contrary notion, and more than ‘nation’ or ‘democracy’ is limited in its use by its pre-modern origins. I do not think that with this heritage it can be reconstructed to serve

⁸ Wayne Hudson and David Carter (eds), *The Republicanism Debate*, Sydney, 1993, especially pp.2–3 and chapter XI, ‘Republicanism and Utopianism’; see also Philip Pettit, ‘Our Republican Heritage’, ABC Lecture, 1 March 1995 and Andrew W. Fraser, *The Spirit of the Laws: Republicanism and the Unfinished Project of Modernity*, Toronto, 1990, especially the Preface and pp.369–375.

⁹ The classic exposition of this view is to be found in Jean Jacques Rousseau’s *Social Contract*, London, 1913, especially pp.30–31 in which Rousseau declared that by republic he understood ‘not merely an aristocracy or a democracy, but generally any government directed by the general will’. Only when this ‘ideal’ or ‘real’ ‘general will’ of the people, which was something above and apart from the empirically expressed will of the people, even of all the people, governed society did ‘the public interest govern and the *res publica* rank as a reality’.

¹⁰ Since the 1970s the notion of republicanism, a civic humanism tradition derived from the Italian Renaissance city-states and mediated through the seventeenth and eighteenth century English ‘country’ political theorists, has become a powerful new paradigm for reinterpreting the political culture of the American revolutionary era. Though the debate over this paradigm has become entangled in a metonymic web of abstracted abstractions republicanism still offers an important insight into the mind of the political leaders who, in the aftermath of the War of Independence, made the American constitutions, especially that of the United States. For the state of the present debate, see Daniel T. Rodgers, ‘Republicanism: the Career of a Concept’, *Journal of American History*, 79, June, 1992, pp.11–38. For the republicanism of the constitution-makers see Alexander Hamilton, James Madison and John Jay, *The Federalist or, the New Constitution*, London, 1911, especially James Madison’s number X.

Australia. Extracting the lessons from both strands republicanism would remind citizens of the centrality of the common welfare, the hubris of idealism, the fragility of human polities and the need to protect human rights even against the people.

The ‘Commonwealth’ as Legitimising Myth

In this debate over the future, the concept of ‘commonwealth’ has been a footsoldier. It has been there all the time but relatively neglected. Perhaps it is so close to us and so closely associated with the tradition of constitutional monarchy that its possibilities have tended to be overlooked.

Yet when confronted it assumes a much greater importance. While lacking the philosophical and universal appeal of its rivals, it by comparison offers a more coherent and usable intellectual tradition, has a much less sullied historical record and makes peculiar claims on Australian allegiance.

Unlike nation, democracy and republic, commonwealth is a word of English origin, making its first appearance at the end of the fifteenth century. While the term was employed descriptively by some English political philosophers, such as Thomas Hobbes in his *Leviathan*, to mean merely the state or society, it has more often carried normative connotations of a community bound together by consent for the purpose of advancing the common welfare.¹¹ Though most theorists assumed that monarchy was compatible with a commonwealth and that most commonwealths would take that form they still regarded monarchy as an accidental not an essential element of their commonwealths. The monarchy enjoyed a delegated authority bestowed upon the monarch by the people for the good of the people, the implication being that when it failed to serve that end the monarch could be replaced, as in the Glorious Revolution, or the monarchy abolished, as in the American Revolution.

In its application ‘commonwealth’ likewise has a better, if less illustrious, history than any of the other general concepts. Apart from the modest blemish which Oliver Cromwell’s military dictatorship gave to the name, its general uses have been benign. In the seventeenth century the English chartered colonies of Virginia, Massachusetts, Rhode Island and Pennsylvania were styled commonwealths and in the twentieth century the self-governing communities of the British Empire chose ‘commonwealth’, first in the British Commonwealth of Nations and then the Commonwealth of Nations, to epitomise the free and equal character of their association.¹² From this the term has gained such respectability in the international arena that

¹¹ For example, Richard Hooker, *Of the Laws of Ecclesiastical Polity*, Cambridge, 1989, p.87 (chapter 10.1), ‘Two foundations there are which bear up public societies, the one, a natural inclination, whereby all men desire sociable life and fellowship, the other an order expressly or secretly agreed upon, touching the manner of their union together. The latter is that which we call the law of a Commonweal, the very soul of a political body, the parts whereof are by law animated, held together, and set on work in such actions as the common good requireth.’ See also Caroline Robbins, *The Eighteenth-Century Commonwealthman*, Cambridge, Massachusetts, 1959, pp.1–16.

¹² S.R. Mehrotra, ‘On the Use of the Term Commonwealth’, *Journal of Commonwealth Political Studies*, II (1963-1964), pp.1–16; Sir Keith Hancock, *Survey of British Commonwealth Affairs, 1918–1936*, ‘Problems of Nationality’, London, 1937, chapter 1.

when the reformed Soviet Union sought a new name for the federation of its republics it adopted the 'Commonwealth of Independent States', using of all the many Russian words for co-operation the same word, 'sodruzhestvo', which was found in the Russian translation of the 'Commonwealth of Nations'.

In Australia the term 'commonwealth' has special meaning. It was the distinctive appellation which the architects of federation selected for the national political community. Australians have not often appreciated the full significance of the making of the Commonwealth. Perhaps it has been obscured by the overshadowing effect of the imperial connection or by the British race sentiment of those times. Whatever the reason, it is clear that the Australian people by this act were redefining for themselves the meaning of political community. They were creating not a fraternal alliance but a federal union. The six colonies, despite their differences and jealousies, handed over to this untried entity the core powers of a state, namely, through the powers over defence and taxation, authority over the conscription of life and wealth. They made for themselves what Keith Hancock stated to be the essence of a commonwealth, namely a free community organised for the common good.¹³

The colonial politicians who drew up the constitution knew exactly what they were about, and the people overwhelmingly endorsed what they had done. This decision to create a political nation was a profound act of social will. The Australian leaders when requested by the British authorities to remove clauses from the constitution which were thought to impair imperial authority refused to do so, explaining that 'the Commonwealth belongs... in a very special sense to the people of Australia, whose only mandate to Governments and Parliaments is to seek its enactment by the Imperial Parliament in the form in which it was adopted by the people.' As John Quick and Robert Garran, who were present at the creation, commented in their *Annotated Constitution of the Australian Commonwealth*, 'Never before have a group of self-governing practically independent communities, without external pressure or foreign complications of any kind, deliberately chosen of their own free will to put aside their provincial jealousies and come together as one people, from a simple intellectual and sentimental conviction of the folly of disunion and the advantage of nationhood.'¹⁴

The first federal convention which met in 1891 deliberately opted for 'Commonwealth' as the name for the new nation, and the constitution-makers never subsequently wavered from that decision. They saw in this word more than a euphonious label under which they could sell their product to the people. Rather it held for them a host of allusions and connotations about liberty and community, most of which were connected to English constitutional history.

Sir Henry Parkes, who presided at the first convention and proposed this title, was deeply affected by such a mentality. He was widely read in the literature of the English Civil War

¹³ W.K. Hancock, *Politics in Pitcairn and Other Essays*, London, 1947, 'A Veray and True Comyn Wele', p.95, M.J. Detmold in *The Australian Commonwealth: A Fundamental Analysis of its Constitution*, Sydney, 1985, pp.10–31 ignores the wider ideological meanings of the term and, following Hobbes, defines a commonwealth as 'a community under law.'

¹⁴ John Quick and Robert Randolph Garran, *The Annotated Constitution of the Australian Commonwealth*, Sydney, 1901, pp.237 and 257.

and from the beginning of his political career in the colony of New South Wales had cited the examples of the parliamentarians of the 1640s to give authority to his causes. This was as true of his protests against convict transportation in the 1840s and his demands for colonial self-government in the 1850s as it was of his commitment to making parliamentary government the key principle of the federal union.

Certainly when Parkes suggested the name 'Commonwealth' he had no thought that Australia should become a republic.¹⁵ In his memoirs, which were written at the end of his life 'to explain my views on some possibilities of the future, and what I conceived to be the destiny of the new Commonwealth' he rejected the idea of separation from either crown or empire. But after paying his formal respects to constitutional monarchy, he delivered himself of a heartfelt paean of praise for the tradition of parliamentary government which Britain had bequeathed to Australia. The colonists had inherited a form of government which 'has been fought for, laboured for, died for, by our ancestors; and the best men of later times have devoted their genius to its purified development in the light of human progress'. And he continued: 'The Australian Constitutions have been modelled on this august pattern, leaving us free to amend their provisions and give still further effect to the essential principles on which they rest'. Australians in building this future were admonished to honour 'the heroic figures of the first half of the seventeenth century' who

must ever command the homage of the students of our constitutional history. Their place cannot be supplied by any of the great teachers of later times. They wrote the lessons which they set before us in their blood. The magnificent fabric of freedom...which the Stuart kings had laboured so strenuously to destroy, rose from their ashes with renewed splendour; and every age since has produced wise and enlightened men to enlarge its foundations.¹⁶

While Parkes never included Cromwell or the Protectorate in his Whig history it was apparent that he gave first place in his ideal commonwealth to popular freedom under parliamentary government and treated monarchy as a desirable but still conditional part of the constitution. Parkes had spoken more openly on this question in the middle of the nineteenth century before the age of mass nationalism had made the monarch not only the head of the constitution but also the symbol of the race. In 1854 at the time of the crisis over colonial self-government Parkes had written that the British monarch was 'an officer of the state and that is all' and that the people had the right to decide 'whether a certain person or a certain family shall occupy a royal position or not.'¹⁷

In the light of progress—of the changes Australia has undergone—is it not imaginable that, if the Australian people, exercising their right to decide whether a monarch should rule them, abolished the monarchy, Parkes would accept that they were merely expanding further the

¹⁵ J.A. La Nauze, 'The Name of the Commonwealth', *Historical Studies*, 15, October, 1971, p.63. La Nauze is formally correct when he asserts that Parkes 'was not against monarchy; he was against tyranny.'

¹⁶ Sir Henry Parkes, *Fifty Years in the Making of Australian History*, 2 vols, London, 1892, II, pp.400–404.

¹⁷ *Empire*, 13 May 1854.

essential principles upon which the Commonwealth was based? Is there not here the seeds of a history of the Commonwealth which might serve a republic?

Conclusion

The Prime Minister, speaking to the government's republic proposal, stated that 'Commonwealth is a word of ancient lineage which reflects both our popular tradition and our Federal system', and he indicated that the government wished the republic to retain the name 'Commonwealth of Australia'. But this distinctive Australian title deserves a better fate than to be left as an inscription on a brass plate affixed to the gates of Yarralumla. Indeed it is for the very reason that 'commonwealth' is a word of ancient English lineage symbolising, as embodied in the federal union, the Australian notions of self-government and common welfare, that I am suggesting it should be taken seriously as the core concept for a republic.

The issue is not an idle one. To repeat, communities need such myths, and as I have demonstrated rival concepts are already in the field, assuming strategic positions as they wait for the day.

'Commonwealth' has many advantages:

- Commonwealth incorporates under its umbrella the best elements from the alternatives, nation, democracy and republic.
- Commonwealth is the symbol of Australian nationhood. Since the nation was formed around political community rather than cultural identity it lacks the exclusiveness and intolerance of nationalism. It is able to embrace the shared affective experience of the community without stifling or suppressing the diversity of cultural traditions.
- Commonwealth also accepts democracy's ideals of popular self-government and equal citizenship. But it insists that these ideals should be expressed through parliamentary forms and constitutional conventions shaped by its heritage.
- Commonwealth is at one with the republican notion that governments exist to serve the common welfare. But from its accumulated practical wisdom it rejects those impatient with human frailty who would impose virtue and believes that human rights ought to be defended even against the will of transitory majorities.
- Commonwealth connects Australia's monarchical past to its republican future. By adopting this British-derived tradition¹⁸ which 'we have made our own' as the central

¹⁸ In recognising the role of the British tradition in the making of Australia's Commonwealth I have no desire as such to privilege Australians of British extraction—Australians of other cultural backgrounds may very well contribute to other core elements of national life, such as the flag, the icons of architecture and the literary heritage. Rather it is that the Commonwealth and the parliamentary system of government for which it stands derives much of its legitimacy and meaning from British constitutional history, and that all Australians, regardless of their cultural origins, have made this parliamentary tradition their own.

focus of loyalty, we would have the best chance of retaining the benefits of constitutional monarchy while adhering to an ideal of tried worth and good prospect.

I commend commonwealth to you in the words of Edmund Barton, the leader of the federal movement and Australia's first prime minister, who declared that 'Commonwealth is the grandest name and most stately name by which a great association of self-governing peoples can be characterised'.

Questioner — What do you say in response to those who say that the constitution-making process in 1901 incorporated federalism: a profoundly un-British concept which British people have never been happy with and have difficulty understanding; and a profoundly republican concept in so far as it involves dividing sovereignty and is difficult to reconcile with the idea of sovereignty vested in a crown? The constitution makers repeatedly reminded themselves that this was a foreign concept. What do you say to those who think that in 1901 we set off down a different path from the one that you are suggesting?

Prof. Meaney — It seems to me that the federal characteristics of the system—the checks and balances, those which you call republican, and I can see that is one aspect of the republican tradition, but only one—are, in a sense, accidental. They were chosen not because they wanted checks and balances but because they wanted federation; that is, they wanted to bring all the states together inside this union. Therefore the essence of the decision in erecting the checks and balances on a federal basis derives from that.

The form of government that is retained is the Westminster one in regard to the way in which governments are formed and as to how a government actually exercises its powers. I concede that the establishment of federation does make a difference to the traditions of constitutional monarchy as inherited, but I would not agree that it fundamentally makes a difference.

Questioner — Do you have a view on what the head of state in a Commonwealth might be called?

Prof. Meaney — My brief answer would be that I am quite happy to accept 'President'. I see no problem with the name 'President'. I have not heard any other name being offered which might be preferable to 'President'—but it should be 'President of the Commonwealth', not 'President of the people'. That follows from my argument.

Questioner — Do you see 'Governor-General' as an alternative?

Prof. Meaney — For the purposes of the republic, that is removing the monarch from the constitution, 'Governor-General' in all of its associations relates to a vice-regal status. That would not be compatible, it seems to me.

Questioner — I have noticed that nearly every one of the independent nations since 1939–45 have been helped to choose a federal government with the help of British influence. So I do

not think it is fair to say that the British do not like federation. Indeed, many of us wish that Cromwell had been there a little longer and was able, perhaps, to make our set-up in the United Kingdom a little more federal so that Scotland would have been less at our mercy economically.

Your talk seemed to miss out the separation of powers, the legal separation, which is so enormously important in many of our minds. Now that we do not have the Privy Council to appeal to as individuals, all that part is equally important.

Prof. Meaney — As I said in answer to the first question, I concede that federation does make a difference, especially in terms of the Senate and the division of powers. But under both the federal and state constitutions it still is the Westminster system of government which determines the way in which government actually operates and works: that is the central tradition. It is the one I think which also inspires our idea and ideology about liberty and self-government. This does not come from federation. Federation is about checks and balances on government. When the checks and balances are put on government for the Australian purposes, they are not done to protect liberty as they were in the American one, but to solve the problems of the relationship between the colonies making the federation. There is no bill of rights attached to the Australian Constitution, which makes this point perfectly clear.

Questioner — Did South Africa and America benefit from their bill of rights?

Prof. Meaney — No, for the very reasons that I gave in comparing the way in which liberty works in a constitutional monarchy as opposed to an unqualified democracy.

Questioner — Right until the end of your speech I thought you were going to say that we should have an Australian monarchy, a home-grown one, and that we should promote the vice-regal post to a regal one. You might explain to me why it is so difficult and unthinkable to set up a royal house in Australia as a constitutional monarchy.

Prof. Meaney — I tend to fear that a bunyip monarchy would go the same way as Wentworth's bunyip aristocracy and be laughed out of court.

Questioner — It is not generally realised amongst the populace that half of our legislative power is based not on the Westminster system but on the American Senate. The republican, non-British Westminster system already has a leg in the Australian legislative process.

Ever since the great break in 1975, there have been attacks on so-called conventions. Even as we speak, there is great controversy over conventions and parliamentary privileges in Western Australia. It worries me a great deal that we are relying on these conventions. I think we should perhaps look abroad to non-Westminster, non-monarchical countries for best practices to codify these things. While we rely on conventions, I think we are getting ourselves into a great heap of trouble for the future.

Prof. Meaney — Yes, I think what you say is one alternative for dealing with the problem of the constitutional conventions in a post-monarchical form of government. Some people have

suggested that these should be spelled out. I feel it would be better if we could keep the legacy of the constitutional monarchy, the constraints which are there, and transform them into the Commonwealth by connecting the republican Commonwealth to the constitutional monarchy; connecting these two traditions so that those things which are of value, which we wish to continue even though they were integrated into the constitutional monarchy, will in fact still continue.

Some precise suggestions have been made and the Parliament is very concerned. This whole question of how the president is to be elected I think is related to the question of how the president would exercise reserve powers, how he would see his authority and so on. It is one of the real problems that the republican movement has to face in dealing with this. Generally speaking, the republican movement wants to continue the parliamentary government system, and it wants to continue it with the old constitutional conventions. But it is a problem that it has to face. I do not think there is an easy solution. At this time, I still tend to believe that the suggestion of taking the Commonwealth as the focus for loyalty for the new Australia is the best way of doing this.

The president would become the 'President of the Commonwealth', not the 'President of the people'. He would stand for the ideals of the Commonwealth as they had been inherited. Therefore, he would be more responsible for observing those conventions dutifully than if he were the 'President of the people' which would give him an independent source of authority directly and, perhaps, a greater freedom in the exercise of such conventions. This is the great fear of both the government and, I believe, the opposition as well: how the president should be elected and how he will see his authority.

Questioner — Don't you think that the monarchists have a responsibility to prove that these conventions are serving Australia well when there is evidence that they are breaking down?

Prof. Meaney — In regard to whether they are breaking down, I am not convinced that there is such a crisis as you have said. There have been occasions when there have been difficulties and disputed issues about whether they are breaking down or not. I do not think those occasions have in any serious way threatened the institutions of parliamentary government in the country.

Questioner — As a member of the Australian republican movement, and despite your reference to yourself being a republican, I am a little concerned at your very strong emphasis on the word 'Commonwealth' in so far as it seems to imply dropping the word 'republic' specifically, perhaps, in any new wording of the Constitution. I would like you to clarify your position on that because the word 'republic' implies two important aspects of the reform that we hope to see. One is the abolition of the monarchy and the second is the separation of powers.

Although this may sound far-fetched, it is just feasible that a president of a commonwealth could still exist under a constitutional monarchy unless the constitutional reform is quite specific and clear-cut. Sometimes constitutional and political reform can become very messy and muddy unless the intentions are made totally clear.

Prof. Meaney — Firstly, I was not intending today to talk about the details of how this change might come about. My main aim was to discuss these grand concepts of collective identity and political obligation and their history and meaning and so on to see what we would be doing in adopting one or the other. But clearly, I suppose you are right in the sense that they all have very practical implications for things such as how do you change the wording in the Constitution.

I would say, off the top of my head, the fact that the Constitution would be amended to remove all references to the monarchy would, in effect, achieve a republic. I can see no objection if this were not satisfactory for the word ‘republic’ in that sense to be included in the Constitution.

I was proposing that as a general concept to which post-monarchical Australia might give its loyalty would be the notion of commonwealth for within commonwealth there was an intellectual history and an experienced history which gave values which have been important to our past and which, it would seem to me, the republican movement in general wished to see continued into the future. In making such a change it is also quite important to try to connect the past to the future so that we can build on that which was best from our previous experience in the new kind of Australia into which we will enter with the abolition of the monarchy.

Questioner — My question relates to the nature of political community. In the Commonwealth of Virginia’s constitution I believe that there is a statement that people should act virtuously, that the leader should be virtuous. Is there room for virtue in a commonwealth without a monarch?

Prof. Meaney — This really refers to my discussion of the concept of a republic which is greatly disputed and for which there are quite contrary traditions. The tradition that you are referring to is the tradition of civic humanism, which has had a great popularity in historical circles interpreting the American revolutionary era in recent times. Certainly, it is true, just taking the American Revolution and the creating of the United States constitution, that under the influence of those ideas the constitution makers, believing that all political communities were fragile, believed that their republic could only survive if the people practised virtue. Indeed, in the Virginian constitution and in their bill of rights there is an exhortation to the citizens to be virtuous.

Virtue meant being public spirited; being willing to do your duty for the common good. Certainly I think that is an element which might well come out of that republican tradition which the Commonwealth could build on. I think all these ideas that have been proposed have their merits, as I have suggested. But I think the best one, the one that is least compromised from the past and the one best able to incorporate the best out of the other concepts, is ‘commonwealth’.

Questioner — It seems to me, taking what you have said, that it may have been unfortunate that we have restricted the use of the word, in the governmental sense when referring to governments, to referring to ‘the Commonwealth government’ in the singular, and that we might almost have been better judged if we had referred to the Australian Government, to the

New South Wales Government and the Victorian Government collectively as ‘the governments’ and the plural of the Commonwealth.

Prof. Meaney — I have no quarrel with that.

Women, Pre-selection and Merit: Who Decides?

Senator the Hon. Margaret Reynolds

Many Australian women would assume that the greatest barrier to women's participation in parliament is attracting sufficient votes to be elected. However, such reasoning ignores the reality of party political systems and the degree to which pre-selection of candidates is carefully controlled by the party power brokers, usually men.

Pre-selection methods vary between and within parties, but the situation for women as candidates is comparable, in that the first hurdle to political representation is actually within the Australian party structure, where a dominant male culture still prevails, regardless of the fundamental and political ideology.

The hurdles for women to gain election to legislative positions in Australia are mainly those that take place within 'the secret garden of politics'—within party selectorate hierarchies...[which] tolerate the continuing advantages of incumbency for men.¹

In 1977, a Labor candidate in New South Wales, Ann Conlon, described the landscape of political parties as that of tribal territory. She said: 'Inside it the ruling group resides and rules, occasionally permitting certain outsiders the pleasure.'²

¹ I. McAllister, *Political Behaviour: Citizens, Parties and Elites in Australia*, Longman, Melbourne, 1992, p.225.

² A. Conlon, "'Women in Politics', A Personal Viewpoint', *The Australian Quarterly*, September, 1977, vol.49, no.3, p.14.

Certainly, the present gender imbalance in Australia's federal and state parliamentary representation—since Australia led the way in women's electoral reform—would seem to reinforce this view of women as 'outsiders' with no major political party having an enviable record in endorsing women candidates. It could be said that it is only the minority parties, the Democrats, the Greens and independent candidates where you tend to see more equitable numbers of women and perhaps that tells us something.

Between 1943 and 1975, the Australian Labor Party endorsed twenty-one women candidates for the House of Representatives, and just one, Joan Child, the Member for Henty, was elected in 1974. In the same period, nine women were endorsed as Senate candidates and just four elected, Dorothy Tangney (1943–68), Jean Melzer (1974–81), Ruth Coleman (1974–87) and Susan Ryan (1975–88).³

There is a similar pattern to women's participation in state parliaments, although the precedent was established much earlier in the states when May Holman was elected to the Western Australian Parliament in 1925. In New South Wales between 1931 and 1975, ten women were elected—Catherine Green, Ellen Webster, Mary Quirk, Lilian Fowler (Lang Labor), Gertrude Melville, Edna Roper, Anne Press, Amelia Rygate, Evelyn Barron and Kathleen Anderson. In Victoria between 1938 and 1975 just one woman, Fanny Brownbill (1938–48), was elected. In Western Australia between 1925 and 1975 four women were elected: May Holman (1925–39), Ruby Hutchison (1954–71), Lyla Elliott (1971–86) and Grace Vaughan (1974–80). In Queensland between 1966 and 1975, just one woman, Vi Jordan (1966–74), was elected. In South Australia, between 1965 and 1975 two women were elected: Molly Byrne (1965–79) and Anne Levy (1975–). In Tasmania between 1951 and 1975, three women were elected: Lucy Grounds (1951–58), Phyllis Benjamin (1952–76) and Lynda Heaven (1962–64). Women were not elected to the Territory parliaments until 1977 in the Northern Territory and 1989 in the Australian Capital Territory.⁴

Federally the recognition of Labor women began to improve between 1975 and 1980 when thirty-seven women were actually endorsed for the House of Representatives, but only three were elected, indicating the category of seat for which women were endorsed.⁵ In Queensland between 1960 and 1992 forty-three Labor women were endorsed for state seats, but only ten were elected as the remainder had been endorsed for predominantly unwinnable seats.

It is quite clear that within the political system that has prevailed in Australia women have been considered to be in the background. They have not even been in the back rooms. I think it does highlight the barriers that women have faced in the past in relation to pre-selection. Women have varying experience of pre-selection and some have paid tribute to male mentors. Sue Neacy, who was a candidate for the Western Australian unwinnable seat of Curtin in 1972, has quite fond memories of the support she received from men in 1972. She says:

³ M. Reynolds and J. Willoughby (eds), 'Herstory, Australian Labor Women in Federal, State and Territory Parliaments 1925–1994', Townsville, July 1994, pp.143–4.

⁴ *ibid.*, pp.145–9.

⁵ R. McMullin, *The Light on the Hill: The Australian Labor Party 1891–1991*, South Melbourne, 1991, p.176.

The old Trades Hall, downstairs, Room 23, one cold night. I always remember Room 23 for being cold. State Executive was sitting for its highest functions—the selection of a candidate. Nervous in front of my mostly (male) audience, who sat patiently listening on those cramped uncomfortable benches, I bungled my speech. Urged by Joe Chamberlain, I muddled through. The goodwill expressed toward me that night and the help was fantastic.⁶

However, other women were less complimentary about the motives of certain male party members. Pat Giles, Senator for Western Australia, 1981–93, recalls standing for pre-selection for the Senate in 1979:

... initially expecting to be unopposed for the third place on a ticket which carried two sitting Senators. At the last minute the second place became vacant with the unexpected retirement of John Weeldon, and the large field of comrades ganged up to keep me out of this precious second position.

Having been perfectly acceptable for the third place, I was now totally inappropriate for the following reasons:

there were too many women in the Senate;
we were preselecting too many damn[ed] academics;
women's issues were not federal issues.⁷

Cheryl Davenport, Member of the Legislative Council for South Metropolitan Province, Western Australia, regards the pre-selection process as a major deterrent for women candidates. She writes:

It has been my personal view that if you are successful in the pre-selection process ballot within the Party, the State or Federal Election which follows seems easy in comparison. Having observed many women coping with the brutality of the pre-selection process it is not surprising that our numbers are still low in the parliaments throughout the Nation. This process is a major deterrent to women trying again for pre-selection.

The argument constantly put that parliamentary representatives must be pre-selected on merit rather than by affirmative action programs or quota systems assumes a level playing field exists. Women are well aware of the systematic barriers. Until those barriers are recognised by ALL in the political process and removed, selection on merit is a myth!⁸

⁶ S. Neacy, 'Where were you in '72?', in R. Joyce, *Social Images 1891–1991*, ACT Branch ALP, Canberra, 1991, p.125.

⁷ P. Giles, personal contribution to *The Last Bastion*, Business and Professional Publishing, Sydney 1995.

⁸ C. Davenport, *ibid.*

And when it comes to women's experience of pre-selection, I am afraid some people are fairly unkind about their experiences. For instance, Diana Warnock, a member of the Legislative Assembly in Perth, in her assessment of the pre-selection process has described her experience of pre-selection as:

an 'open' contest—with a speech to several hundred delegates and some savage and protracted number crunching. You make your speech then are obliged to leave the room whilst your opponent, or opponents make theirs.

In my case another woman—indeed a friend and former colleague—was my opponent. We took nervous turns, she and I, locked outside the meeting room, listening to the relative levels of applause coming from inside the room crowded with delegates; the spectators at the Colosseum.

It is a combat sport invented by men, and the rules won't change until there are many more women in there to change them.⁹

Three Labor women who pioneered representation of their party in parliament were actually demoted by the pre-selection process at a time when there was little recognition of the importance of gender and equity in the democratic process.

Dorothy Tangney, as the first Labor woman elected to Federal Parliament in 1943, headed the Western Australian Senate ticket in 1946, 1951, 1955 and 1961. However, in 1967, when Tangney was aged 55, the pre-selection processes were changed and her position was downgraded by the then male-dominated Western Australian state executive. The electoral backlash to this decision was reflected in a large number of informal votes as supporters of the senior Senator expressed anger at her demotion and consequently voted only for Dorothy Tangney. When she left parliament, she refused to criticise directly the party as she said 'she wanted to go out clean but she was sorry for the women in the party who never got pre-selection or only for the hopeless seats'.¹⁰

A strong critic of male attitudes in the Queensland branch, Vi Jordan, ran unsuccessfully in a plebiscite for the safe seat of Ipswich in 1962. However, it was her second attempt in 1964 which raised the ire of sections of the ALP when she contested the plebiscite against six male

contenders. As Tom Burns, now Deputy Premier of Queensland, recalled in his condolence motion:

I saw Vi Jordan take on a male dominated organisation in the toughest plebiscite I have ever seen in Ipswich.

⁹ D. Warnock, *ibid.*

¹⁰ M. Sawyer and M. Simms, *A Woman's Place: Women and Politics in Australia*, Allen and Unwin, Sydney, 1993, p.121.

After the result had been thrown out, I was sent there to re-run it. She suffered abuse from people who came out of hotels, but she stood her ground. She took on people such as Jack Egerton and won.¹¹

But after eight years in parliament, Vi Jordan was to experience a similar fate to that of Dorothy Tangney when pre-selection was centralised. On that occasion Jordan won a local plebiscite following a redistribution, but she was not renominated by the all-male electoral executive committee and she left parliament aged 61.

More recently, the second Labor woman to be elected to the Senate, Jean Melzer (Victoria, 1974–81), was unable to withstand the pressure of a factional power struggle when in 1980, aged 55, she was relegated as a sitting senator to the unwinnable number three position, allowing yet another male to take the safe number two position at the next election.¹² Women saw Melzer as an important symbol in their determination to bring about social reform in what was then a male dominated party. One positive outcome was that: ‘Melzer’s fate convinced Labor women that the party needed affirmative action more than ever.’¹³

It is interesting to observe that these older women were not treated with the respect normally offered experienced senior parliamentarians, men in their fifties or even their sixties, who are seen as being eminently suitable and indeed at the peak of their careers. That has changed a little in recent years as we focus much more democratically on encouraging young people to come into parliament.

Between 1980 and 1995, twelve Labor women have been elected to the House of Representatives, but the pattern of membership in marginal seats and voluntary retirement has limited the number of Labor women at any one time. In 1980 Ros Kelly and Elaine Darling, followed Joan Child; and Wendy Fatin, Helen Mayer and Jeanette McHugh entered parliament after the 1983 election. The 1984 election saw the number of Labor women rise to seven, with all women maintaining their positions and Carolyn Jakobsen, joining the parliamentary ranks.

However in 1987 Helen Mayer was defeated in her marginal seat but the total reached eight with the election of Mary Crawford, the Member for Forde, and Elizabeth Harvey, the Member for Hawker. By 1990 Joan Child had retired and Elizabeth Harvey had not been re-elected after a very difficult redistribution, but Janice Crosio, the Member for Prospect, maintained the total at seven.

Between 1993 and 1994, five additional women were elected, Maggie Deahm, Mary Easson, Marjorie Henzell, Silvia Smith and Carmen Lawrence, establishing a record number of ten women members. But not long after that record was established, Ros Kelly retired. Since

¹¹ T. J. Burns, *Queensland Parliamentary Debates*, Motion of Condolence, 4 August 1982, p.20.

¹² McMullin, *op.cit.*, p.398.

¹³ *ibid.*, p.399.

1974, only fifteen Labor women have been elected to the House of Representatives and of these, three have since retired and three have been defeated at the polls.

In 1983 there were seven Labor women senators, but by 1987 it remained the same with the retirement of Jean Hearn and the addition of Sue West. But by 1990 two senators, Ruth Coleman and Susan Ryan, had retired, leaving a total of five Labor women senators with the subsequent return of Sue West to a safe position on the New South Wales ticket.

In 1993 Pat Giles retired and Kay Denman from Tasmania was appointed to replace former Senator Michael Tate. Two recent appointments—Belinda Neal from New South Wales and Jacinta Collins from Victoria, who replaced Senator Olive Zakharov after her tragic death—have filled Senate vacancies restoring the numbers of Labor women in the Upper House to six. This is just one short of the position which existed in 1983 to 1987.

There have been steady increases in Labor women's representation in state and territory parliaments since 1983. Western Australia has elected fourteen new women, Queensland ten, Victoria ten, New South Wales thirteen, South Australia six, Tasmania two, the Australian Capital Territory four and the Northern Territory two.

Yet these statistics, when placed in perspective of male participation, demonstrate the entrenched resistance to power sharing in regard to political decision-making. And could I say that, while I am likely to know more about my own party, that resistance exists within both major parties and I believe it is something that is part of the inheritance we have within the culture of Australia in regard to other institutions. There is resistance to more women in senior levels of decision-making in business, in the law and, indeed, even in the federal public service. The total number of all elected members in state, federal, upper and lower houses of parliament is 841. As of July 1995, there were 136 women members and 705 male members. So about 16 per cent of our decision makers in Australian parliaments are women.

Therefore, the debate about equity and democracy continues with many women disputing whether Australia has really embraced complete democratic principles if our representation is so skewed. Could it be argued that we have effectively adopted a gender 'gerrymander', where **49 per cent** of the population actually constitutes **84 per cent** of the nation's parliamentary positions?

Since the ALP introduced its 35 per cent quota rule to guarantee that women will be pre-selected in one-third of winnable seats, the focus has shifted to merit. When it is suggested that women take a share of power, sections of the community doubt their ability to do so and this has particularly been stated by some prominent people, where it was said, 'Well, of course, we would love to endorse more women. We'd love to have more women candidates, but where are they? We'd have to train them first.'

On this question of merit—when was 'merit' ever used to pre-select candidates for political office? And how will we define merit? Do we really want our democracy to become, effectively, a meritocracy? Would we say that everyone has to have an economics degree, a law degree or an IQ of a particular level? So what do we mean by merit and have we defined it? Is there an open advertisement listing the qualifications and experience necessary? Are structured job interview procedures adopted? Are panels of interviewers independently

appointed to select the best person for the vacancy? I think we need to think of these questions and the obvious answers to them when the criticism about selecting on merit comes forward.

Politicians' positions have never been determined on merit. Of course, there are many people who have merit who come into parliament and that is a mix of the ability and the commitment to what they believe in from their particular political ideology. But we have never been able, in any country that I know of, to actually list these particular criteria for determining who will make a good political representative. Politicians' positions are determined by their ability to win support from a narrow section of a political party or trade union, by their knowledge and their experience within that structure and their ability to attract the numbers in pre-selection ballots.

'Merit' is in the eye of the beholder and traditionally Australian mateship has perpetuated the assumption that men will be more likely to have the appropriate mix of qualities to suit them for parliamentary life. Dale Spender's assessment of the merit argument suggests that: 'Men can't or won't see that their definitions of merit, expectation and experiences are nothing more than rules they've made up to protect their own positions.'¹⁴

And Carmen Lawrence considers that:

Politicians, mostly men, have no special training, no intellectual superiority, no particular moral superiority and no particular skills of communications. Those who have come up through the ranks, serve time, do deals and devote themselves to political careers make least effective members.¹⁵

She is referring to whether or not members have links with their communities.

Women's qualifications and life experiences are not so readily assessed as being suitable for a parliamentary career. Yet an analysis of Labor women's educational and professional backgrounds demonstrates the diversity of skills and knowledge offered by the women who have become political representatives.

A majority of women had tertiary qualifications and had worked as teachers, nurses, lawyers, doctors, psychologists, librarians, social workers and journalists. A number of women came to politics from business, from the trade union movement and from public service backgrounds. An urban planner, a scientist, a radiographer, as well as an artist, a writer, a singer and two women graziers represented some of the professions. A considerable number of women parliamentarians have experience as electorate officers and as elected local government representatives. Janice Crosio enjoys the distinction of being the only woman to have served in local, state and federal areas.

As Australians approach the centenary of federation in the year 2001, there is ongoing debate about future constitutional structures; the republic, the relationship between federal and state

¹⁴ D. Spender, article in *Courier Mail*, August 1991.

¹⁵ C. Lawrence, speech to Labor Women's Conference, Adelaide, April 1994.

governments and self-government in indigenous communities. But less discussed is the role of women in the new century—the general community rarely hears of feminist advocacy for a bill of rights to enshrine equality for women within the Constitution.

Justice Elizabeth Evatt has argued for consideration of equality of rights to guarantee recognition of women's status, indicating that Australia could adopt either the United States model of an 'equal protection clause' or adopt something similar to the Canadian Charter of Rights and Freedoms.¹⁶ The Canadian model is the most comprehensive affirmation of equality under the law, but also specifies that this does not preclude laws or programs designed to address disadvantaged groups in the community.

There was recognition of inequality in women's status when in 1910 Vida Goldstein's Women's Political Association asked the Australian delegates to the Imperial Conference in London to put the issue of the loss of citizenship rights upon marriage on the agenda for consideration of all countries in the British Empire. However, the Acting Prime Minister, Billy Hughes, refused arguing that these were merely domestic matters and not the concern of self-governing dominions. The Women's Political Association disagreed, arguing that on the contrary they were questions of human rights and liberties.¹⁷ I suppose every time we think that we are the first to be debating some of these issues, we really need to read our history.

Just this week, I was reminded of the fact when I went to the exhibition about Jessie Street, who was so integrally involved in the establishment of the United Nations. I found the speech she made from San Francisco in a radio transcript absolutely eerie because I was listening to that speech just days after returning from the Beijing Women's Conference. She was using the same language: the same advocacy and the same commitment was coming through in the tone of her voice. I thought fifty years on we are still having to make the same arguments that were made so long ago and in this case we could be approaching 100 years and we are still making the same arguments.

It has often been assumed that women had no involvement in the debate leading to federation just because photos of our founding fathers show men exclusively. But there were founding mothers. Historians such as Helen Irving are rediscovering long forgotten women's political

organisations that were very active. She points out:

The most significant activity of women was around the referendum campaigns of 1898–99 and in Western Australia in 1900, particularly in colonies where popular opinion in the Constitution was sharply divided. Women were divided on the issue. Rose Scott, a prominent member of the NSW Womanhood Suffrage League was opposed to Federation and argued publicly that the proposed senate was undemocratic. Federation would also

¹⁶ E. Evatt, *Final Report of the Constitutional Commission*, vol.1, AGPS, Canberra, 1988, p.541.

¹⁷ See Marilyn Lake, 'Between Old Worlds and New: Feminist Citizenship, Nation and Race, the Destabilisation of Identity' in *Suffrage and Beyond: International Feminist Perspectives*, C. Daley and M. Nolan (eds), Auckland University Press, Auckland, 1994, p.281.

be a financial disaster, she said, unless the Federal Treasurer was a woman.¹⁸

A century later we are still debating the need to incorporate women into the upper echelons of national decision-making. Dorian Wild, the journalist, summed up the current situation a short time ago:

Here we are, in the closing years of the 20th century, after 205 years of European settlement, 92 years of federation and 25 years of assertive feminism, and to all intents and purposes the Parliaments of Australia are awash with testosterone.¹⁹

Indeed, prior to and on my return from Beijing, I spoke publicly of the need to work towards fifty-fifty representation, not just in our parliaments but at local government level, on our boards and statutory authorities and in the private sector to ensure that there is an equity about decision-making. When I advocated this I thought it was a fairly low key reasonable statement to make. After all, my party has committed itself to 35 per cent representation by the year 2002 and I think with further effort we can improve on that. Certainly I am sure we can improve in the next few years within the Labor Party. So what was so special about advocating 50 per cent? A prominent radio commentator thought such a suggestion was weird. 'Fifty-fifty representation? I ask you!' It sounds pretty reasonable, pretty low key and commonsense to me.

The question of women's representation in parliament was under the international spotlight at the United Nations Fourth World Conference on Women in Beijing just recently. The United Nations has studied the situation for women in politics and decision-making in the late twentieth century and has concluded: 'The presence of women in national parliaments is one of the clearest indicators of women's participation in the political process.'²⁰

A recent Inter-Parliamentary Union survey revealed that the proportion of women in the world's houses of parliament has dropped significantly in the last five years from 14.6 per cent to 10 per cent with women from post-communist countries particularly affected. The decline internationally is particularly evident in countries that have gone from a single to a multi-party system or from an electoral system with a mechanism or quota for the representation of various groups in a country to a system of free competition among parties.

The Inter-Parliamentary Union looked at the composition of the single or lower chamber of the parliament of each country. State or provincial parliaments or upper houses of parliament were not taken into account and that is important to note in terms of the rates for the Australian Parliament. Thus, Australia for example appears to have a lower representation than was achieved after the March 1993 election, that is, 13.45 per cent.

¹⁸ J. Conley, 'Federation and the Mothers of Invention', the *Age*, November 1994.

¹⁹ D. Wild, 'No Job For a Woman', *Ita*, vol.5, no.7, September 1994.

²⁰ 'The Advancement of Women', Department of Public Information, United Nations, NY, 1995, p.iv.

The ten leading countries for women's participation were:

the Seychelles	45.8%
Finland	39.0%
Norway	35.8%
Sweden	35.8%
Denmark	33.0%
the Netherlands	29.3%
Iceland	23.8%
Cuba	22.8%
Austria	21.3%
China	21.0%

So you can see why many of us believe that this is an issue about which we have to continually advocate a more realistic approach to women in decision-making in Australia. It is not just for me to advocate within my political party. We must advocate across political parties. We must advocate across the decision-making spectrum, because important decisions are being taken on a minute-by-minute basis around this country and the majority of the decisions that affect you and me and our families and all Australians are being taken by a narrower sector of the society than is necessary.

Now that does not mean that they are bad decisions. That does not mean that we want to change the position of decision-making so that women take over and we have a lopsided position in regard to decision-making in the future. Women expect to be able to power share with men. We believe we have the knowledge, the experience and the expertise to make good decisions. In fact, we know we have and we believe that if you can get some of the entrenched structures to change attitude we will have more effective decision-making.

Next week the Australian Labor Party approaches the first anniversary of our historic quota policy decision. I know there will be sections of the media, and I am not one to criticise the media, saying, 'First birthday of this historic rule change and what has been achieved? There aren't 35 per cent of Labor women in every parliament in Australia'. Of course there are not and it was always known that it would take time to change the culture and change some of the practices, but we have a policy. We are the only party with a policy and we are implementing it.

Progress has been made in the nation's upper houses, and in the lower chambers of Tasmania, Western Australia, South Australia, New South Wales as well as the Northern Territory and the ACT. The following figures reveal that the quota has already been achieved in some areas, or is within reach, given that this is 1995 and we do have that time frame. That is why I am quite happy to say, 'Let's not settle for 35 per cent; let's work towards the 50 per cent'. However, pre-selections in Queensland, Victoria and for the House of Representatives do need to be opened up if these arenas are to reach our target. The statistics for both lower and upper houses are:

	Lower House	Upper House
Tasmania	27.3%	— —

Western Australia	26.1%	14.3%
South Australia	33.3%	33.3%
New South Wales	18.0%	41.2%
Victoria	12.3%	28.6%
Queensland	13.3%	— —
the ACT	33.3%	— —
the Northern Territory	25.0%	— —
the Commonwealth	13.4%	20.7%

Clearly it is easier for women to gain the endorsement of their parties for pre-selection for upper houses where a listing system is adopted and it is easier to argue for power sharing. Whereas, when there is only the one position there is considerable competition.

I want to answer briefly the question that I know will still be put, ‘What about women and merit?’ and why is it that we need to have this particular policy in the Labor Party? I think in the Labor Party we were realistic. We tried affirmative action. We had had affirmative action for over ten years. It was not working as fast as many of us believed it should. Changes were being made and we had seen that increase of women coming into parliaments for the Labor Party, certainly from 1980 onwards. But we felt that if we did not take particular action that rate of progress would be fairly steady and not particularly dramatic.

In conclusion, let me say that it is quite obvious that, given the changes in Australian society over the last ten, fifteen or twenty years, young women are not going to accept it, and indeed many older women do not accept it. We have educated young people to expect that they are equal. We have changed legislation. We have adopted affirmative action policies. We have introduced a whole range of programs to recognise the needs of women in our society. So it is ironic that one of the last bastions is going to be the Parliament where so many of these policies have emanated.

But we do see, quite clearly, that women will not accept the blocking out of their opportunities to enter decision-making. Women will no longer accept that they are outsiders in the democratic process and they will be demanding that ‘the secret garden of politics’ must be opened up to 50 per cent of the population. Voters will no longer accept the old style machinations of politics, factional politics, deals within deals and people pulling strings and having particular approaches in determining the choice of candidates.

Pre-selection procedures must adapt and adopt a much more sophisticated and professional approach to choosing candidates of diversity who will ultimately represent the whole community.

Questioner — I am actually a Liberal candidate for the seat of Fraser in the upcoming election. I am interested in your point about the way the political process of the parties has excluded women. In the recent ACT government elections, where the actual voters had the opportunity to select the candidates, the political process of the parties was effectively excluded. In fact, we lost a woman in our parliament. We went from six women to five. The actual voters decided on less women in parliament. Can you comment on that at all?

Senator Reynolds — Without wanting to get into political debates in what is a general forum, it is clear that it has been demonstrated that women candidates are very popular with the electorate. In fact, when the Labor party announced its quota rule and there was some criticism of it, we found that a majority of both men and women endorsed the concept of quotas to ensure that our political party was moving in endorsing more women.

Obviously, there are other factors at a particular election and, once you are in an election climate, many of those other elements will take over. I have based my comments on ensuring that we actually get more women to that stage, because, once you are out there in a political climate, the debates of the day take over and voters will decide, as voters do decide, on a whole variety of issues. But I think it is the structures that we have to change and, when the major political parties have continued to endorse predominantly men, it is those structures that we have to scrutinise and change as we are now committed to changing.

Questioner — The research that I have been conducting on the three major parties in Australia over the last couple of years reaffirms the perspectives of both speakers so far, Margaret Reynolds from the Labor Party and the local Liberal Party candidate. What it suggests is that in Australia we have entrenched systems of different party cultures.

In my research I included a question about attitudes towards the role of women. I came across some very interesting differences by party and also by state. If we were going to give the parties scores out of ten for their attitudes towards women by party and state, the most progressive party and state was in fact the Victorian Labor Party in which about 90 per cent of men and women all agreed with the need for quotas. This was before the decision last year at the national conference. There was widespread agreement on the need for equality. In fact, the least progressive state was Queensland, where 11 per cent of the National Party agreed with the need for quotas. Within the Liberal Party there were state differences as well.

Unfortunately, parties throughout Australia agreed on the need for more training for women, which I see in effect as a belief in remedial systems. But clearly there are differences. The Labor Party is a more rule based party and believes in achieving change through rules. The Liberal Party believes in incrementalism and the National Party, by its record and its attitudes in the survey, did not seem to believe in the need for women really at all in parliament. This suggests that change has to be achieved within the parties differentially, according to their cultures and also according to the different states. The most progressive Liberal Party division was actually South Australia.

Questioner — I was wondering whether you had any ideas on how the ALP and any other Australian parties, if they chose to follow the quota line, will avoid the pitfalls that the British Labour Party has become mired in, where they have designated some seats as constitutively pre-selections for women only and disgruntled men have taken them to court?

Senator Reynolds — I certainly hope that we avoid that, as I believe we will, in the Australian situation. The quota rule is like so many rules or, indeed, legislation in a parliamentary sense. It is often there to assist a change in attitudes. For example, sex discrimination legislation has impacted more dramatically in terms of changed attitudes in Australia than in the actual and specific implementation of the points of the legislation. I think that is similar with the quota rule.

I do not want to see a situation where party members sit down and say, 'Well, that seat will be a woman's seat and that one will be for a man and this will be for him and this will be for her'. Quotas provide opportunities to make parties aware that, in considering their choice of candidates, they have to keep an eye on how many women are coming through and are being considered. In the case of my own party, there has been enormous improvement in the last fifteen years, but there can be further improvement. I hope that we can achieve change in an informal sense. I think it is easier in the Senate than in the upper houses of the states, but of course that is not really where we have a major problem, certainly not in some of the state legislatures; and even in the federal Senate we are up to 20 per cent.

It is a rule that impacts on attitudes as much as a rule that involves a very rigid process. From all that I have heard coming out of the different state branches, we are strenuously avoiding a rigid process approach, but rather encouraging women candidates. In Queensland, for instance, I am developing a register of potential women candidates. I do not mind if they are sixteen or sixty. I want to know the names, qualifications and interests of women who might, at some stage in the future, consider running for local, state or federal parliament for the Labor Party. These less formal mechanisms are far more appropriate. Perhaps if the British Labour Party had moved that way, they would not have got into the situation that they have. There is a lack of generosity of spirit in the British Labour Party. I will go on record as saying that I am confident that there is an abundance of generosity of spirit in the Australian Labor Party.

Questioner — How do we encourage women to join political parties so that they may participate in a new process? The other part of that question is, given that in the Australian Labor Party we have a well defined factional relationship, we have to make sure that we do not allow the factional manipulations to demerit the process of bringing women into positions for pre-selection.

Senator Reynolds — It is certainly true that women have been influenced as much by the culture and cultural expectations of political parties, and I will talk specifically of our own party. There has not been the expectation, until the last fifteen years, that women would move into those positions. Work has been done by Marian Simms showing how many women initially came into the Parliament because of a husband or father dying. They took the place when the party felt it was important that the name be used. Once they got into Parliament, I am sure they did make an enormous contribution in their own right, but originally they came via that male culture.

Women are now seeing that that male culture is lessening in impact. It is changing; it is adapting; it is adjusting. Some of that might be a little painful on both sides, but that change of emphasis has been going on out there for some time in terms of the numbers of women who have been seeing themselves as potential candidates. Now with a rule change, it does offer us an opportunity to say to many more women, 'Please come and join us because we now have a very specific process'. Some of those hurdles for women no longer exist in the same way that they have done in the past.

Questioner — I enjoyed your suggestion that within Australian culture ‘merit is a mate’. Given that that might be operating, is there a willingness for the ALP women’s caucus to work across party with women from other political parties within the Parliament? Can you give examples of where that might have been demonstrated to work on these issues? Is it a case that ideology comes before gender and could you comment on the recently established women’s political party?

Senator Reynolds — I love ‘merit is a mate’. That is great. Your first question related to whether we can work across the political spectrum within the Parliament. Yes and no, a typical political reply. It is true that within parliaments there is such a hothouse atmosphere of ‘I know what I believe in and the other side must be wrong’. I think that many women do work better across party lines and are better able to try to reduce that sort of combative approach. It is one of the reasons I would argue that we need to change some of the parliamentary structures.

You will notice that some women, and indeed some men, do manage to try to adopt a more low-key, reasonable approach such as, ‘Well, I respect your point of view even though I do not agree with it’, whereas others have to get into a verbal scrum almost to get their point of view across. We do have cross party lunches at least twice a year. We raise and debate issues that affect us specifically as women parliamentarians. There are occasions when we have talked across party lines and certainly in our electorates we work more across party lines. We do that between men and women on Queensland issues or Western Australian issues specifically.

Some of that is happening, but I take your point that there could be more of it if the Parliament were not run in the way that it is, so dependent on that sort of combative, aggressive element that you see, particularly in relation to question time. I always say to people who are critical of what they see in question time that they should come and listen to some of the debates, or that they should come and listen to our work in committees where you get very reasoned debate and people working together.

I will take your third question next, which related to the Australian Women’s Party. The Australian Women’s Party, which was established in my own state, has been established partly because of disenchantment with the slow rate of progress in that state in regard to the implementation of the quota in a particularly bitter pre-selection battle. There I am using words of conflict, but that is what it was. A number of women did, in fact, become disenchanted, particularly with some policy issues as well in that state. I always say it is better to work and change within than to go outside.

As a feminist I do not like to say that I do not think that approach will work. Certainly, from my political and philosophical perspective it will not, but I do not even think from a feminist perspective it will work. Because you really have to work within the mainstream of where the power is and the power is with the major parties. We can be very complimentary about the minority parties and the fact that they have more equitable numbers, but they do not have the power. I guess it sounds a horribly pragmatic answer, but I would always advocate that people work within the mainstream to change wherever they felt comfortable from within.

However, I should just comment briefly on an initiative that we took from Beijing. We had a workshop on women in decision-making. This concept was endorsed by about 300 women attending the Womenspeak. This was not the specific workshop but the Australian forum for Australian women held every evening for networking and debating the issues. It was sponsored by Westpac. We set up a network loosely called the Australian all-party women's cabinet which was a bit cheeky, but cabinets traditionally of course have been male, hierarchical and elitist and you have to go through all sorts of structures to get there. The Australian all-party women's cabinet is simply any woman, wherever she lives and works in Australia, who believes that we should be advocating for more women in decision-making, be it at the local tennis club, the local parents and citizens association, local government, federal parliament, the Westpac board of directors or wherever. It is a very loose network.

We are going to do some work on constitutional reform, a specific group of us, but to be a member of this network, you simply have to believe that women's voices should be heard in decision-making and work towards that in your own community. Ultimately, I would like to see it enshrined in the Constitution.

At a personal level, I find it difficult to consider anything other than as a feminist, but, as a member of my chosen political party, on occasions I have to adapt my feminism to what is happening within my political party. I guess that would be the most honest answer I could give. There are conflicts between political ideology and feminism. I try to juggle each of them in the best way that I can. But at a very personal level, I have absolute commitment as a feminist, but at a public level, I have absolute commitment as an elected Labor Party senator.

Questioner — I was wondering if you had any views on constructive ideas for progress at lower levels down to the grassroots of political parties? Related to that, you have touched on the style of politics—antagonism, conflict and so on. I think that is also evident at very humble levels in political parties. Do you think that drives women away and do you think that that style might change? Finally, once women have been pre-selected and are in Parliament, do you have any views on how you get more representation of women at the ministerial level?

Senator Reynolds — I will answer the last question first: how do we get more women in ministries? Partly we get more women into the Parliament. I pulled out some statistics just recently. The Labor Party has had, over the last fifteen years, some thirty-five women ministers, that is across Australia of course, which, particularly as you look at it for such a short period of time, indicates that there is no question about merit. Women, when they come into the Parliament, do make an impression, do move on and move into ministerial positions. That is demonstrated by those figures.

In regard to what extent do women make a difference in changing the style, I think there has been some change. Those of you who are avid watchers of question time in both the Senate and House of Representatives may doubt that, but that is a particular sort of theatre of the Parliament. It is one of those situations where if people are not forceful, the media would suggest that they had lost it; that they were weak; that they could not cope. I suppose that is a dilemma that women face, and some men. There is such an expectation of being forceful and aggressive in politics that until quite recently, with certain women being more prominent, that

lower key approach of some men has been disregarded as a sign of weakness. In actual fact it may well be, in many instances, a sign of strength.

So men and women can suffer because of the stereotyping and the expectation of what constitutes a strong, competent elected representative. I would argue that women have already changed quite dramatically the way this place functions. For instance, I remember in Old Parliament House, women staff members coming to Olive Zakharov, Pat Giles and me to complain about sexual harassment of a type that today would make headlines. You just do not hear that in this place all these years later because the processes are there; the attitudes have changed. I am not saying we have eliminated sexual harassment, but there is now a law; there are procedures; there are changes of attitudes. Of course, the whole range of legislation that has been introduced over the last ten to twelve years very much relates to gender related issues. It has come very much as a result of women at the policy development level.

Questioner — How do you change the pre-selection processes?

Senator Reynolds — Knowing the way it has been for so long, I do find it difficult to suggest practical reforms because I know there is a tradition about the way pre-selections have been done. I do think we should be looking at a different approach. Certainly in Queensland, and I can only speak from a Queensland point of view in this regard, the form that you fill in as a potential candidate probably would not get you a job in any other sort of senior area. Political parties, and it is not just my political party, are very much a numbers game.

I well remember my own experience of pre-selection in 1980 because I put so much effort into my speech. It was written and rewritten, checked and double-checked and I even had the pages all in order. I got up there and looked out at a sea of male faces, most of them reading the Sunday newspapers. There were a few of my women and men supporters at the back, but there was just this solid block of men. Even before I started I thought, 'What am I doing? I haven't got a hope here. It's all been decided'. Now, it was not that I expected to win, it was my first attempt and I did not at all expect to win, but I did expect to be listened to. It is better now, but I think some of that culture still lingers, and we really need to make our pre-selection processes much more sophisticated and professional. We do pre-select good people, but it is more good luck than good management.

Questioner — Possibly one problem is the overall economic system. If we had a different economic system it might affect the number of women in Parliament. The education system could change and develop political candidates at a much earlier age. The whole education system could change and women of aptitude could be selected at a very early age.

Senator Reynolds — I was focusing very much on those women who would like to come into Parliament, who are ready to come into Parliament and who do not regard that they have particular barriers. But, of course, I did not even touch on the barriers that have existed and continue to exist in education and educational opportunities in the past; economics, as you have suggested; conditioning; and, of course, the traditional role of women as it has been perceived in the past. My best answer to much of what you have said is to draw your attention to our most recent Labor woman senator, Jacinta Collins, who is in the Parliament with her

three-week-old son. We are hoping that young James Michael is going to make quite an impact on the Parliament, particularly with regard to the provision of the child care within these walls. So you are absolutely right in highlighting many of those issues.

Questioner — Do you believe the ALP will make the 35 per cent quota target by 2002?

Senator Reynolds — Yes, I do. As I said in my speech when I quoted those figures, I think we are going to have to monitor Queensland, Victoria and the House of Representatives pre-selections very closely, because they are the ones that are still down at the level of 12 per cent and 13 per cent. But when you look at the percentages in the upper houses of state arenas, New South Wales, Tasmania and Western Australia are all up there in the 20s, some of them are in the 30s and some are close to it or have already passed it. I think the quota rule has been important in reinforcing the need to ensure that we maintain the momentum that was developed from about 1980 onwards, but also to ensure that there is no slipping back.

For instance, Barbara Wiese in South Australia has recently retired. I am not sure if her successor has been named, but I understand that a man was going to take that position. So the 40 per cent that South Australia has attained is going to slip a little. That is what we have to monitor in all states, but I am particularly concerned about the three areas I mentioned. That is where the focus has to be.

Questioner — Could you comment on how you personally would take the election of a woman whose social philosophy was inherently anti-feminist?

Senator Reynolds — I would take it as I take the election of men and women whose philosophy is different to mine. It is a democracy and there will be feminists elected across the political spectrum who agree with me on many issues; there will be women across the political spectrum who will disagree with aspects of my philosophy. But, it is a democracy. It is not a question of only electing people who agree with Margaret Reynolds. It is a question of electing more women, more young people and more people from different ethnic backgrounds to reflect better the total Australian society.

The Medium, Not the Messenger

Pru Goward

Irving Saulwick was the latest in a stream of people to observe that the electorate's cynicism about politics is at an all-time high and that, in particular, people do not 'believe' politicians anymore. For this he blames the media. I agree with him. In my address today I would like to explain why I agree with him and my reasons, perhaps not being Irving Saulwick's, may interest you.

I called my address 'The Medium, not the Messenger' in tribute to Marshall McLure's indecipherable book of the late 1960s. I never understood it. The paperback cover, depicting a fried egg, I understood even less. But twenty-five years later I have finally found that it encapsulates the essential mystery of my own profession. I am eternally grateful to Mr McLure for so cleverly putting those two words together for they have stuck in my mind for a quarter of a century as I have struggled to make something of their pretension—and today I can.

In this lecture I wish to examine that much mourned, lost but not forgotten 'truth in politics', and whether the blame for this should lie with us, the messengers, otherwise known as journalists, or rather the mediums we use to tell the world what we think they need to know.

But first I want to say a word about the importance of truth in politics since it is easily forgotten. Unlike totalitarian governments backed by guns and secret police forces, confidence, as we all feel, is just about all a democratic system of government has going for it. Public confidence in and respect for our police, our courts, our public servants, our law-makers and our politicians are the invisible pillars on which a democracy must be built—confidence and respect. You cannot have confidence in anyone who is not being truthful. So that must mean, therefore, for all of us who value democracy, that there is a special responsibility to maintain that public confidence. As John Bray, the former chief

justice of South Australia once said, ‘the freedom of the people depends upon it’, and indeed it does.

Some journalists would agree with this and argue that this means they have a special professional responsibility to investigate and report corruption, negligence or carelessness in government; to ensure that standards are not only maintained but also seen to be so; and that hypocrisy, cant and broken promises are there to be exposed. You would recognise those phrases as occasional but passionate *cris de coeur* from journalists, often when we are in tight spots—they are not John Pilger’s alone.

Another view of the role of the media is that there is no such responsibility for journalists to support democracy, the upholding of standards or anything else much; that the only obligation of a publication, in which I include television and radio, is to publish stories that people want to read and to inform, to amuse, to challenge, to shock and to get them to keep buying the product. There is also a view that journalistic ethics need only be employed to the extent necessary to maintain the market’s confidence in that product. Take the case of the confidentiality of our sources where the potential suppliers of stories to journalists need to be confident that they are not going to be revealed, otherwise they would refuse to supply information. So that is a market-driven ethic if you like.

There is a great deal of attractiveness, strangely, in this argument for responsibility free journalism. Strangely, because it does not appear responsible or sensible, but it is value free. I get very nervous about people making value judgments on behalf of us all—this is the basis of censorship, which begins as a minor restriction on people’s rights but can end up as a major one, as we see in totalitarian states.

As a reader, listener or viewer, I do not want some middle-aged male newspaper editor, nor, for that matter, any person as fallible as myself deciding what I **ought** and **should** know or, more importantly, what I **ought not** or **should not** know because they have decided that it might weaken my confidence in our democracy. That is not to say we ought to be amoral or value free as journalists—that is impossible. We should recognise our values, but we should be careful not to let those values influence us too much and not have them codified.

So there are two sides to this argument about the role of the journalist in upholding confidence in a democracy. In the end, in a haphazard and intuitive way, the Australian media, like many other media around the world, appears to try to balance those two approaches by saying that ‘anything goes’ most of the time, but drawing the line at some obvious and gross point.

Gareth Evans might have wished that the *Sydney Morning Herald* had drawn the line on the Chinese Embassy bugging story. The story had little to do with improving administration or uncovering corruption and it damaged our international standing and our relationships with our neighbours; it was, on the other hand, a great read for lovers of Le Carré and the mysterious, intriguing world of spies. Nevertheless some journalists would have agreed with Gareth Evans. In a sense, that is all just an aside that allows me to conclude that journalists at least think they are promoting truth in politics, confidence in politics and confidence in democracy.

That brings me to my second aside. I would like to address the more common criticisms made of reporters. You may even have made some of them yourself. We may feel that journalists are too young, as are policemen and, as I am discovering, even politicians. You may even feel that they are not well informed, but you might be interested to know that they are better educated than they have ever been. It is very competitive to get into journalism at a university, and university entrance scores for journalism are not far behind those required for law. We may also believe that today's journalists lack respect, that they are too likely to express their own opinions and too interested in trivia. I think that is the full list of complaints, and these criticisms especially apply to journalists in the electronic media.

It is true that such journalists are young. That is because, for the most part, people do not make old bones as radio or television reporters. It is not just because our looks fade and our figures blossom, but because of the enormous stress on ego. There is quite a lot of battering of self-confidence that takes place in a job that asks you to put yourself on the line as well as your thoughts. There are also performance demands and shift demands in a lot of electronic journalism. The work can also become repetitive and formula like, and journalists often seem to me, by personality, to be people who like to move around and move on.

It is also true that you do hear journalists interrupting, repeating questions, confronting people and occasionally even being rude. I do not think that has changed much in twenty years and it is more part of living in a critical culture and also the consequence of employing smart young people. As we get older, we begin to think that it might be unpleasant if the shoe were on the other foot.

I now want to turn to the trivialisation of issues. The selection of issues owes as much as anything to the nature of radio and television as communication mediums, which is the central question in this address, and I will return to this in just a moment. Another criticism is that you may not like the grammar or the pronunciation. The problem with reporters these days is that they cannot express themselves properly. If you do not like it, go and sit on a bus and you will hear it all around you. In a society where English grammar is no longer taught at primary level, and where correctness is not insisted upon lest it interfere with people's creativity, you can expect little else, and you cannot really expect journalists to be much different until the education system changes.

The biggest change in electronic journalism which makes us more conscious of the behaviour of journalists is that there is a lot more of it. There is a plethora of current affairs and news programs on radio and television where there obviously was not fifty years ago and we depend on it a lot more, so we notice what journalists in these mediums are doing a lot more. Perhaps in the 1950s there was an absence of a culture of criticism and the facilities and the availability of resources were not there to support such programs. It should also go without saying—and it is a very basic assumption in this address—that I do not think politicians have changed very much. They are no more truthful or dishonest than they have ever been.

So if journalists are there to keep politicians honest, and politicians are only as truthful as they have ever been, how can the media or journalists be held responsible for this decline in public confidence in politics? What is the missing link? How have we moved from the halcyon sunshine of the 1950s where we believed everything to the cynical twilight of today where we believe nothing?

My hypothesis is that the missing link went in 1956. It was not the Olympic Games in Melbourne; it was the beginning of television. With every technological advance that television, and with it radio, has made, the march has continued at a faster pace. It is the nature of television as a communication link which is important here, not the influx of violent programs from the United States or those sordid Ealing studio comedies.

Television is the ultimate mass medium of the senses. There are only four senses: sight, hearing, smell and touch. Television employs the two that the human being relies upon most in these mass circumstances—sight and hearing. Television distorts them, of course. Very often the face on your average television screen is much bigger than it is in real life and it rarely has anything much around it more than a neck and the suggestion of shoulders. Voices may be louder on speakers than otherwise. But still it is the senses of sight and hearing that television is employing.

These senses are very old, much older than man. These are the senses of the animal world—the senses our ape ancestors relied on for gathering information. These are the same senses that their ancestors, the birds, relied upon before them. So old are these information collectors that they are built into the human brain as they are in an animal's brain. We are born able to see and hear; we do not need to learn to do either. That must make television a seductively easy medium to take information from, far easier, for example, than reading a newspaper. We are not born able to read, and some of us never can. We do not even have to watch television exclusively because we are so good at taking information from these two senses. We can torment our brothers and sisters, adjust the furniture and we can even knit and cook a meal while we say we are watching 'the box'.

It is little wonder that 80 per cent of Australians now say that their primary source of news and information is from television. In a world where people are so busy, we consider non-exclusive, non-intellectually demanding activities like watching television an efficient use of time for information collecting. You can be six or one hundred and six, illiterate or of low IQ and still watch television.

Of course, you would be wrong if you thought you were actually getting much information from television. Television is a very poor carrier of intellectual information, conceptual information especially, and it is this sort of information that we need if we are to make those sophisticated judgments about the world around us and about politics in particular.

How many of you can remember the items you saw on last night's television news, and how many of you can describe them in any detail? Most of us could not recall in any detail more than one item on last night's television news and most would be hard pressed to remember more than three or four. Weather forecasts do not count.

Television's intellectual conceptual limitations occur for a number of reasons—none of which reflect upon journalists. For a start, you cannot re-read television. You see the pictures and you hear the sounds only once in a live broadcast. Very few of us tape the news and then watch it over and over until we have got it all. That is because we think we are taking it all in, because it is so easy to do so and because we think we have enough. This is starkly different from reading, where the eye may go back and forth over a page, unconsciously checking facts

several times. We choose to do nothing else but read when we read, because we can do nothing else, because this is not an easy exercise for us.

So this once-only watch factor or the once-only hear factor—I think it applies to radio as well—means the information that works best on television and radio has to be simple. The moment you start trying to work out what something means, you stop following what is being said, and before long you have lost track of the story. You cannot go back and check it; you cannot go back and work out what he or she meant a couple of seconds earlier.

That means that statistics and scientific concepts—any concepts for that matter—have to be kept simple. If they can be explained in words that evoke picture images in the brain, which you could call inside sight, then they are the ones that will go in—they are the bits that will stick. That is why story telling is the best vehicle for transferring information on television or on an oral basis. If those story telling words are accompanied by story telling evocative pictures, then the story is much more likely to be remembered. That, of course, is why any good salesman on television or a good politician conjures up images when talking. They avoid conceptual words, report writing words and unfamiliar words at all costs. You cannot think and take it in at the same time.

Something has to be lost, a great deal has to be lost, when politics is kept that simple. Policies, ideas and the defence of difficult situations often need time to explain—time for the listener to think about them, take them in, come back and chew them over. That is not possible when you are watching television.

Television is also expensive. It needs very big audiences to support its costs. Because of the need for big audiences, its content must be populist; it must be accessible by most people. Therefore, it also has to assume either a low level of average interest or only choose items that it knows are of very high popular interest. This need to keep operating on a low level of interest means that no topic can have much time devoted to it, particularly in news programs but also in current affairs programs. People have to be kept moving along before they get bored with it, because they might not be very interested in it at all. When the sports programs come on, that is when I can go and make a cup of tea.

Very unusually, a grab—that is, an electronic quote—in news is no more than a few seconds. Only a few years ago, it was thirty seconds. That was considered a great breakthrough—Neville Wran, the former premier of New South Wales, was the master of the thirty-second grab. Now it is down to five or six seconds. The limit when I was working on current affairs television was thirty seconds. You had to change from interview to pictures every thirty seconds, unless somebody was saying something absolutely extraordinary and, hopefully, crying as they did so.

The exception to this is the studio interview and the modern techniques for making a studio interview, which is only just boring old talking heads, where they have to have very high performance values. They are usually incorporated. The best technique for incorporating performance into a studio interview is to use theatre techniques to inject personality into it. Boring people, however interesting their subject matter, just do not find their way onto prime time television. And remember, it is only prime time television that we need talk about,

because this is the section of the day which has the overwhelming influence on people's views of the world.

The other thing about television and the need for it to be kept simple is that the issues become very literal. They have to be reduced to black and white, and they often circle around one quote. Take, for example, a prime minister's promise that no child shall live in poverty by the year 2000. There are pictures and sounds of the prime minister saying it. You cannot let him say more than seven seconds, so that is all he says. Literally, that is what he is meant to say.

If the poverty promise is not met, then his gesture has become a lie. Technically, of course, he has lied. He said that no child would live in poverty by the year 2000, and by the year 2000 there are children still living in poverty. But it is an absolute nonsense, isn't it? It was really only ever a wish, a gesture, a commitment to a course of policy action. It could never have been a 100 per cent controllable situation for a government. It could never have been something he could absolutely have been able to deliver literally.

But it was held up constantly to the prime minister, by the community as much as by the media, as a failure of policy, as evidence that politicians lie. If he had said, 'I will halve the public service', that is much more in his control, and I think he would be much more correctly taken to task for not doing so. But there is a literalism about the simple unfinished quotes that we take when we take seven seconds that is one of the major sources of dissatisfaction with politicians, because so often they reflect on their promises and their commitments. I think it is unfair and rather childish, but it is an easy outcome of television and radio.

Most significantly of all, the drama on television which is easiest to sell, easiest to arouse a viewer's interest in and to keep that interest, is the drama of conflict. It is people shouting at each other, personally attacking each other. Thus, I think you can see from the evening coverage of parliament—which, as people often observe when they sit through question time, may not have anything to do with what the substantive issues might have been—that that is not always true, but there is certainly an emphasis on personal attack and on emotional interchange, because television portrays that very well.

Television also distorts the issues that are covered. Those issues which are not amenable to television techniques may not be covered at all; because the talent—that is, the protagonists in the debate—are boring; because there are no pictures to go with it; or because the concepts are too difficult to explain and the necessary background too much to impart in a 1.37 minute news story. Other stories which do suit television are covered extensively and perhaps with no real recognition of their news value. The Governor-General's expenses story, fire-engine stories and traffic accidents do very well in television news. We might ask what their value is and what their contribution is to our understanding of the world in which we live.

Of course, people's images on television, just like issues, are reduced to black and white also. Characters are caricatured. They become goodies and baddies. This is because you have a seven second grab. They are not seen often enough in complex or subtle enough ways on television and often on radio for it to be otherwise. I am talking prime time.

There are now politicians who thrive today because they suit television, but they might not have thrived in a pre-television world where soapbox qualities and personal contact qualities

might have been more important. Others would have done better before the world of television. Politicians with the knack for the quick, snappy, evocative comments—that is, image creating comments; comments like the great lines in a play—are the ones that everybody remembers and the ones that a television audience repeats, and that is the politician who does well out of television. Whatever their depth, their policy grasp or their ability to work with their own party, they are given a distinct advantage in the rise of politics and the game of politics.

Television has also led to the rise and rise of the interest group and interest group politics. This, of course, is a topic for another address, but it is a very interesting and, in some ways, alarming development in modern interest group politics. I think this is because television is very hungry for characters, for a variety of characters, a choice, as well as for a greater number of permutations and combinations on any story that occurs. You will find that an interest group, even ten interest groups, may not read well in print, but a good television performer representing the interests of a particular interest group can become a national figure. Therefore, they can have enormous impact and influence on policy development.

I will never forget when I worked on ‘This Day Tonight’ and ‘Nationwide’ in Adelaide. There was a woman we often used to talk to about women’s issues—this was in the 1970s when this was very hot stuff—and her name was Joan Russell. If there was ever a women’s issue that needed to be talked about we would ring Joan up. She always looked amazing: she had black hair out to here, wore huge dresses, was six-foot tall and had big flashing eyes. She was a fantastic talent and she represented the Women’s Electoral Lobby. One day, after I must have interviewed her twenty times, I said what an effective lobby group the Women’s Electoral Lobby had become. She said, ‘Yes, television has a lot to do with that.’ I said, ‘Oh, do you think so?’ She said, ‘Yes, do you know how many members we have in the Women’s Electoral Lobby in South Australia?’ When I said no, she said, ‘Twenty.’

I sometimes think journalists invent interest groups. We are always on the lookout for new ones. They certainly add variety to our little dramas. If people are effective performers, they can go a very long way. Of course, the other aspect to those interest groups is that they are critical of government policy; they are very demanding of governments, which is fine. A government can sometimes become captive to these very effective interest groups and can be undone by them. I think that makes the development of an issue and a policy debate less predictable and, on average, a government is less likely to come through unscathed. So it certainly contributes to this culture of criticism.

I think there are some fairly obvious, if you are within the industry, aspects of television and radio and the way it is used that can very much change and sometimes distort the way political debate is conducted and our impressions of the people in it. I also want to look at the effect that television has on the image of the politician, the person, and, therefore, the images of politics.

I would like to go back to this old brain—that is, the brain I referred to at the beginning; the brain that we had when we were back in the trees; the brain that we had when we were apes and birds before that. It certainly still makes up well over 80 per cent of our total brain. It dominates everything that we do. However large our cerebral cortex might be, it is still not big compared with the rest. As I said, we are born not only able to see, hear, smell and touch, but our brains are actually designed to interpret the information that those receptors can

collect, which gives us such an enormous advantage over other animals. The brain is able to combine information sensory sources in an extraordinary way. If you think about it, reading, for example, is using sight to recognise sounds, but we are not born able to do that. In addition, at birth all the receptors are usually receiving their information okay, but the brain is not necessarily making a lot of sense of it.

A baby hears, but it does not know what it is hearing, so is it hearing? Is hearing only hearing with meaning, or is hearing just hearing? There are, even for humans, one or two necessary exceptions to this hopelessly stupid situation that human beings find themselves born into, where the human baby is no match for a baby goat, and baby chimps seem geniuses by comparison. We are actually born with some pre-wiring. Take, for example, the vagus nerve of a new born baby. That is the nerve running down beside the mouth and down the throat. When you brush the vagus nerve on a baby's face, you stimulate the vagus nerve and the mouth opens. It is a reflex. Since babies must be able to suck milk from the word go, this is quite smart pre-programming—though other animal species, as I said, actually have many more pre-programs or reflexes than we do.

Hunger pains produce cries in a child. That is another reflex. Babies prefer circles to other shapes and respond to circles first. That is obviously quite necessarily a condition of surviving as a baby, unless your mother's nipples are a very odd shape. As we grow older, most of us grow out of these reflexes, because as we mature the information we take in using our four senses makes more sense, not through reflex but through experience—that is, we are learning with our senses.

But I think there is another order of more subtle pre-programs that we are born with. It is the second order pre-programs which actually have such enormous bearing on the judgments we make about people, and which so drastically affect the perception of politicians by the community—that is, the impact their image has on us.

When we were still in the trees we made judgments about other animals, particularly those of our own kind, all the time. They often had to be very quick judgments. Your life depended on it or a mating opportunity depended on it. You decided what they looked, sounded, smelt and felt like. Of course, this, as you might remember, is the basis of Desmond Morris's path-breaking book *The Naked Ape*, which is so path-breaking now that nobody thinks about it anymore. These instant judgments are so necessary to the survival of the human animal that I believe they too have been pre-programmed.

Let us consider a few if you do not think this happens to us. Why do we say, 'He has a strong face; he has an aggressive face, look at his jaw; that man is aggressive, he has an aggressive jaw'? Why do we say, 'She looks honest'? How can a person look honest? You either tell the truth or you do not tell the truth. Why should looking honest be a rational judgment to make about a person? Why do we say, 'He or she looks innocent'? Why is it that we say, 'That person is sensual: that person is sexy'? Sexiness is not what you are looking at but how one behaves.

Why do we say, 'That person is kind, look at their eyes; that person has a kind mouth'? Why do we say, 'You can tell this person is intelligent by their forehead'? Why do we say, 'She is cold, listen to her voice' or 'he is warm, listen to his voice'? Why do we say, 'You can tell

that he is sneaky; you can tell that he is untrustworthy, just look at those eyebrows'? Why do we say, 'That is a weak person', when what we are actually talking about is the breadth of their shoulders? Why do we so often assume that dorks wear glasses? Why do we say that somebody is a dominating male because they look big on television when, in fact, what they have is a large skull? Why do we say, 'Untidy hair means an untidy mind'?

I think we do this because these are all the little pre-programmed things that were so important when we were apes. The prominent jaw is called post-pubescent lower mandible development and, you might notice, only occurs at puberty. The eyes take up at least a half of a child's face, and it is only at puberty that the lower mandible develops. So it is a sexual characteristic in that sense, but it is also an adult and, therefore, a survival characteristic. Why do we say that? Is it because—this is the theory—male apes and animals with large jaws were the most aggressive, more able to defend themselves and more able to tear the other animal to pieces? Why do we associate large eyes with honesty? Why do people widen their eyes when they want to be believed? These are associated with childhood. As I said, in a child there is very little lower mandible development and the eyes are relatively larger in the face. Why do we talk about lips being a sign of a sexy person? I think this is because lip tissue is a tertiary sexual characteristic.

You can go through all of these and find an animal equivalence. Why do men have larger foreheads and larger eyebrow development than women? It is because men were meant to physically defend and attack. These are signs of strength in a person. Why is it that deeper voices are seen as more authoritative? It is because they are associated with the adult male. The length of a person's nose is another one. Little snubby noses are associated with childishness. Big schnozes are associated with maleness. The male face comes forward, particularly in chimps, at puberty. You could have a bit of fun and think about a few of your own.

Politicians have to look like the right sort of animal on television. Because our brain is so dominated by the 80 per cent which is still back in the trees—this unconscious judgmental tree brain—it would be a very foolish politician who did not care about what he looked like. We do not sit there looking at somebody on television saying, 'I like his lower mandible development. That means he must be strong.' It is more subtle and faster than that. We just decide that bloke looks strong. We like deep voices, which is why we select from them our radio and television journalists—because they are associated with authority. But these things happen at a very unconscious and quick level—instantly.

We do not sit there and say, 'They have little piggy eyes, therefore, they are dishonest.' We just say, 'I do not like the look of that bloke. They look shifty.' I think you will find people do it all the time. They do it because they do not know they are doing it; because they were born able to do it. It was all pre-programmed.

Politicians, of course, can get around it. Over time, and as they become more familiar to the audience, it matters less, which is why if somebody is going to say to me, 'Yes, but Paul Keating has a squeaky voice and a poor lower jaw mandible development, why do we think of him as such a great leader?' I would say, 'It might not have started off like that twenty-five years ago.' But you do get used to people and your cortex starts to take over from the bit that is still in the trees. So they can get around it, and, indeed, we can all get around it.

When I started on television in 1978, women were still appearing, as I was, in the evenings on 'This Day Tonight' for live studio work in scoop necks, pearls and puff sleeves. These days you would not be seen dead wearing anything other than something with padded shoulders. In fact, my husband saw me putting my stick-on shoulder pads in one morning and said, 'That is a sign of the times. It used to be falsies.' But it is also important for women to have a strong shoulder line on television because of the sense of strength that it projects.

It is interesting to see how careful politicians are about wearing glasses on television. They do so only if they absolutely have to. You might notice how many politicians and ministers wear glasses for their work but not when they are walking anywhere near a television camera. I remember Clyde Cameron telling me that he remembered the first time Don Dunstan ever came into the ALP office to collect some pamphlets. He was this funny little skinny bloke in glasses and with a lot of tertiary sexual characteristic around the mouth who came in and got his 'how to vote' cards. The next week he was back and Clyde said, 'Do you want some more?' and he said, 'Yes, I have door-knocked the whole electorate.' After this had happened three times, Clyde was pretty quick in deciding this bloke had a future. He said to him, 'You have a future in politics, son.' Don said, 'Yes, but could I have another round of "how to vote" cards.' Clyde Cameron said to him, 'If you ever want to be Premier, you must get contact lenses and go to the gym.' And he did. A lot of politicians have voice training for exactly the same reason.

Of course, the flip side of this is that we can misjudge politicians because we judge them by these characteristics, and then we are let down by our own misjudgments. But then we say that this is the failure of truth in politics. If you are still not convinced that we are primitive creatures, just let me remind you of a couple of things. It is true that, technically, and in our capacity to operate in the world, we have developed enormously. Evolution as the users of the environment has been quite remarkable. But if you look back through the literature, the personal behaviour of the human being seems to have changed very little.

For example, Homer's *Odyssey* dates back to the sixth century BC, and probably earlier. It tells of people behaving just like us—they were jealous, lusty, angry, unfair, threw temper tantrums and cheated on each other. This could have been 1995, but it just happened to be six centuries before Christ.

When you look at the great thoughts of Plato, you ask, 'Are they any less relevant today than they were four hundred years before Christ?' I just looked at a couple this morning. If you open a page of Plato you get a well-known quote. In *The Republic* he speaks of 'the peace that comes with age and escape from love, a mad and furious master'. I can think of some people who might say that today. I am looking forward to being able to say it myself. He also talks about 'the indifference about money which is a characteristic of those who have inherited their fortunes rather than acquired them'. I think we might also recognise that one. Are we not those people? Our natures, despite the technological changes that we have enjoyed, and despite the amount of time that has elapsed between Plato and us, have changed very little. Evolution does take a long time, but so much of what we are lurks in the mysterious grey cells of this pre-thinking brain.

The simple conclusion that you could draw from all this chatter is not to watch television. But television, of course, is upon us and with us and brings us a great deal of joy and satisfaction and information on its own terms. It is not a plea for a ban. It is, though, a plea for an appreciation of the limits of the electronic media, for a better understanding of the distortions it imposes on all of us. I guess there is also a little plea in there to resist your old brains if you must. I sometimes think they are the source of a great deal of prejudice and ignorance and all of those inadequate primeval responses that we seem to be able to produce for very complex situations that do not deserve it. They often worked well when we were back in the trees, but they are not so good now.

I am glad we have left the trees, but I think it is time we admitted that our brains have not climbed down, and instead of blaming the reporter, who has, after all, simply adapted television, radio and our senses to best suit this situation, we should address ourselves to the more realistic questions. How do we encourage a more informed and sophisticated interest in politics? How do we encourage more complete sources of information about politics which may help balance the effect of television?

Questioner — One of the main points of Marshall McLure in *The Medium, not the Messenger* is that there is a big difference between cold media and hot media. Television is the quintessential cool media. In other words, you just sit there and it flows through your brain and so forth. Do you make the same points about other media, like radio or print media, which are much more demanding on the reader or the participant than the cold media? It seems to me that there is a message in that medium too.

Ms Goward — I certainly would make a distinction between television and print because reading is entirely cognitive. But I do not think that I would make that distinction so much for radio. Radio only requires you to listen and in that sense it can be less easy to take in because you only have to listen; you do not have to watch anything. You could be watching something else or driving. I do wonder how much we actually take in while we are driving a car, for example.

Television is only a cold medium in the sense that it is a passive medium when it is done well by its terms. When it is done well, it does not require you to think. When it is not done well, we actually might think that it is doing better because it requires you to think. It should be going at a pace which allows you to keep up with it and to take in the complexity of the ideas at the same time.

Radio is a funny fish because it does have this aspect. For some reason you can get more complex information across on radio and yet it is only relying on one of the senses. When you have two great big basic senses working, you are even more likely to cloud out any intellectual or higher brain judgments that you might be making because you have got these two things hitting you. When you have only one, it is not going to overpower your ability to think about it quite so much. As I say, a man or a woman on television can be talking about God the father, God the son and God the Holy Ghost, but if they have little piggy eyes, a squeaky voice, a jaw that is sticking out and if they are talking out of the side of their mouths, you just will not like what they are saying. I think that is true. That is why they select people with good television faces, because it knocks all the other messages and cues out.

Questioner — I would be interested in your comment on the relative significance of television as opposed to radio as opposed to print in politics.

Ms Goward — That assumes that we see different audiences. I think that for people who are interested in politics all three media play quite a role. I realise that many people who say that the problem is that you cannot trust politicians anymore are people who are very interested in politics and you cannot just say that this is because you only watch television. A large number of people who say, ‘You can’t trust politicians; politics is dirt. They are down there with the used car salesmen’ are people who do actually rely only on television. What is happening is that they are distorting their own impressions.

Radio does seem to have a very disproportionate role in politically interested households. This is perhaps because we are busy and radio has the double advantage of letting you do one thing while you are listening. Radio is a very efficient medium for people who are very interested in politics. Of course, papers take the most amount of time. You have to have a special sort of a life to be able to read more than one or two papers a day.

Questioner — You mentioned that perhaps it is appropriate that the media not be censored, that it provides for mass marketing and that to do otherwise would be inappropriate. Does that imply that you believe that the current scheme of uncensored provision of mass marketed TV is actually giving people what they want?

Ms Goward — That is a very difficult question. In a sense, the market is already giving people what they want, otherwise they would not watch it, unless you would care to argue that they have no choice and they would watch anything rather than be on their own in their living rooms. I think the financial constraints on television are enormous. You cannot have special interest television of any quality in this country when it attracts only very small audiences without the revenue base of commercial television to do it well.

When I was in the UK recently I watched a fair bit of late night television because I often worked in the evenings and I would watch television out of interest when I got back. I was struck by the high quality of these very obscure programs such as religious and talk programs because they have a market of several more million than we have and they also have a very big revenue base to draw on. That is a huge constraint on television. Everything has to be for mass audiences when you have only eighteen million people.

Questioner — Would you agree that in the case of people like Hitler at Nuremberg, where there is an enormous number of people close together, that in effect he has a different kind of audience altogether from individuals here or there in their own houses, kitchens and so on? The fact that they are together gives them a kind of group mentality which transcends or perhaps goes underneath the individual and the receptivity of the ordinary listener or viewer.

Ms Goward — That is quite so. He would have been great television viewing, wouldn’t he? The disadvantage that television would have meant to Hitler is that people would not have gone to see him and you would not have had that mass effect. He would still have been great television, but you would not have had the hysteria because you would not have had people massing in those numbers to see him because there was no other way of seeing him.

When we watch a great figure on television in our homes, we do not sit there with our telephones linked up to one another feeling it together. I think you are right and I am right; that he is great television, but you are quite right he would not have the same effect that he managed in those large squares at those enormous rallies.

Questioner — Why do you think the grabs have changed from thirty seconds to seven seconds?

Ms Goward — Because they found that they could get away with it. The more pace you can get into television, the more stimulus you are offering the eye and the ear. My understanding of the brain is that it works best when it is being stimulated and change is the best stimulus. Our brains really like dynamic equilibrium and if you can get them down to seven second grabs then you can change the input every seven seconds instead of every thirty and you will keep people's attention. It has had quite serious effects I suspect on our ability to concentrate at any other time, as you can see when you go to church with a small child.

Questioner — I would like to focus on your example of Bob Hawke's statement that no child shall live in poverty by the year 2000. It seemed to me that you almost implied that Hawke himself was a victim of the media which demanded that he get this phrase down to seven seconds. And that was what was making it newsworthy; that he could get his message across that no child shall live in poverty. I would suggest that it would only take an extra second for him to say, 'I shall endeavour to ensure that no child shall live in poverty'.

You might have said that we as an audience were somewhat at fault for not employing discretion in interpreting that this was a political statement rather than a statement of fact. Your own argument is that the medium itself is very sensory and seductive and turns us all into couch potatoes. I would say that couch potatoes do not generally use a great deal of discretion and that Bob Hawke had the responsibility to employ discretion when he was giving that statement; not us.

Ms Goward — That is possibly true. I guess, as prime minister he could have taken more of a risk than other people. Unfortunately, neither you nor I have the words. You have to be absolutely meticulous about the way that you say it so that the blade does not go in and that they do not take that seven seconds and miss out those qualifications. But I think it is even simpler than that.

Even if he had say 'no child shall live in poverty' and shut his mouth and said nothing else, it would be impossible that this could literally be what he meant because, as I say, he cannot go into the house of every child in Australia and hand out a bag of lollies and a sleeping bag; that is not humanly possible. It is not a situation sufficiently under his control for that to be literally possible, so why was it treated literally?

Questioner — Because he stated it literally.

Ms Goward — He stated it literally because it is in the context of a wish—an intention. Nobody in her right mind, if you think about it, would have expected that to have been literally possible. The point about human communication is that we assume a great deal about

the listener and we are entitled to assume it. If we go around explaining everything we will never get anything done or said.

We are entitled to assume that listeners understand when they hear that comment that it has a limited meaning, but I do not think that we do. I think that television seems to have produced a greater likelihood that audiences take things literally. I think it is because everything is reduced to these black and white statements and here is just another one. You might be right that he should never have said it because he should not have trusted a community dominated by a medium with this tendency to distort.

It was a pretty good learning experience for everybody. Politicians are changing the way they use the medium all the time. They do not talk about anything anymore. They do not dare have policy debates anymore because of this capacity of the media to present it in such a way that they are stuck with something that is either not achievable or does not mean quite what it sounds as though it should mean. Politics is adapting to this.

An Australian Head of State: An Historical and Contemporary Perspective ¹

Sir David Smith

Today's lecture on the topic of 'An Australian Head of State: An Historical and Contemporary Perspective' follows the lecture given earlier this year by Senator Baden Teague on the topic of 'An Australian Head of State: The Contemporary Debate'.² In his lecture Senator Teague spoke of the Queen as our head of state and argued for her replacement by an Australian head of state. In his replies to questions after the lecture he spoke of the Governor-General as our head of state. The switch from Queen to Governor-General was entirely automatic and unselfconscious.

Senator Teague is not alone in his ambivalence. After Mr Bill Hayden's speech to the Royal Australasian College of Physicians earlier this year, the *Australian* published an edited version under the heading 'The Governor-General has made one of the most controversial speeches ever delivered by an Australian head of State'.³ The next day's editorial in the same newspaper said that 'it is perfectly appropriate at this stage of our constitutional development that the head of State address important issues of social policy'.⁴ These media references to the Governor-General as head of state are not just a recent phenomenon: for example, the

¹ I am indebted to the Dean of the Faculty of Law, the Australian National University, for his great courtesy in extending to me the hospitality of the Law School to enable me to carry out the research for this lecture and other writings. I am also grateful for the advice and help which I have received from members of the Faculty and Staff of the Law School. However, none of them is responsible for any of my views.

² Senator Baden Teague, 'An Australian Head of State: the Contemporary Debate', *Republicanism, Responsible Government and Human Rights*, Papers on Parliament, Number 26, August 1995, Department of the Senate, Canberra, 1995, pp. 19–33.

³ *The Australian*, 23 June 1995.

⁴ *The Weekend Australian*, 24–25 June 1995.

opening sentence of an editorial in the *Canberra Times* in 1977 was ‘We shall have today a new Governor-General, Sir Zelman Cowen, as our Head of State’.⁵

On 7 June this year the Prime Minister finally revealed his proposals for the republic.⁶ He told the House of Representatives that Australia’s head of state should be an Australian, but by the time he was half-way through his speech he, too, was using the term ‘Head of State’ to refer to the Governor-General.

The fact is that under our Constitution we have two heads of state—a symbolic head of state in the Sovereign, and a constitutional head of state in the Governor-General. A Canadian Governor-General, Lord Dufferin, in a speech given in 1873, provides us with an early example of a Governor-General being described as a constitutional head of state.⁷ The most recent description of the Governor-General as an Australian head of state was by Professor Brian Galligan, Professor of Political Science at the University of Melbourne, in his book *A Federal Republic: Australia’s System of Constitutional Government*, published only a few months ago.⁸

I propose, therefore, to talk about the roles of both the Sovereign and the Governor-General under our Constitution, and to discuss some of the changes which have occurred in each of these roles since Federation.

Our first Sovereign was Queen Victoria: her first duties were to issue Letters Patent assenting to the *Commonwealth of Australia Constitution Act 1900*, and to sign two assent copies of the Act itself, on 9 July 1900. On 17 September 1900 she issued a Proclamation declaring the first day of January 1901 to be the day on which the Federal Commonwealth of Australia was to come into being.⁹

On 29 October 1900, Queen Victoria signed another two constitutional documents: Letters Patent constituting the Office of Governor-General,¹⁰ and Instructions to the Governor-General.¹¹ Some commentators writing at the time thought that the Letters Patent

⁵ The *Canberra Times*, 8 December 1977.

⁶ *Commonwealth Parliamentary Debates*, vol. H. of R. 201, 7 June 1995, pp. 1434–41.

⁷ Lord Dufferin, then Governor-General of Canada, in a speech delivered at Halifax, Nova Scotia, in August 1873, described the Governor-General as ‘the head of a constitutional State, engaged in the administration of Parliamentary government’. Quoted by John Quick and Robert Randolph Garran, *The Annotated Constitution of the Australian Commonwealth*, Angus and Robertson, Sydney, 1901, p.700, and by L.F. Crisp, *Australian National Government*, Longman Cheshire Pty. Limited, Melbourne, 1978, p.400.

⁸ Brian Galligan, *A Federal Republic: Australia’s Constitutional System of Government*, Cambridge University Press, Cambridge, 1995, pp.21–2 and 245–7.

⁹ *Commonwealth Statutory Rules 1901–1956*, vol. V, p.5300.

¹⁰ *ibid.*, pp.5301–3.

¹¹ *ibid.*, pp.5310–2.

and the Instructions were superfluous, or even of doubtful legality.¹² However, between 1902 and 1920, King Edward VII and King George V were to issue further Instructions to the Governor-General,¹³ and in 1958 Queen Elizabeth II amended the Letters Patent and issued further Instructions.¹⁴

In 1975 the Commonwealth Solicitor-General provided the Prime Minister with a legal opinion that the Governor-General's constitutional powers could not properly be the subject of Instructions. Even so, it took another nine years before the matter was resolved. On 21 August 1984, on the advice of Prime Minister Hawke, Queen Elizabeth revoked Queen Victoria's Letters Patent and the Instructions to the Governor-General, and issued new Letters Patent which, in the words of the Prime Minister, would 'achieve the objective of modernising the administrative arrangements of the Office of Governor-General and, at the same time, clarify His Excellency's position under the Constitution'.¹⁵

The 1958 documents, to which I have already referred, had dealt with matters of minor detail, but they were very significant in the context of the evolution of Australia's constitutional arrangements. Previously, Australia's constitutional documents requiring the Sovereign's signature had been recommended and counter-signed by a British minister of state and sealed with the Royal Great Seal of the United Kingdom. Queen Elizabeth was the first Sovereign to sign such documents on the advice of, and bearing the counter-signature of, one of her Australian ministers of state, namely, Prime Minister Menzies, and to have the documents sealed with the Royal Great Seal of the Commonwealth of Australia. The right to have Australian constitutional documents prepared and issued in this way had existed since 1926, but Menzies was the first Australian Prime Minister to exercise that right.

Queen Victoria's Letters Patent had ordered that there should be a Great Seal of the Commonwealth of Australia, and that it should be kept by the Governor-General and used on Commonwealth documents signed by the Governor-General: Australian documents signed by the Sovereign were sealed with the Royal Great Seal of the United Kingdom. On 19 October 1955, on the advice of Menzies, the Queen issued a Royal Warrant whereby she authorised the Great Seal of the Commonwealth of Australia to be used as the Royal Great Seal of Australia whenever she signed a document that was counter-signed by one of her Australian ministers of state.

¹² A. Inglis Clark, *Studies in Australian Constitutional Law*, Charles F. Maxwell (G. Partridge & Co.), Melbourne, 1901, pp.54–7, and W. Harrison Moore, *The Constitution of the Commonwealth of Australia*, Charles F. Maxwell (G. Partridge & Co.), Melbourne, 1910, p.162.

¹³ *Commonwealth Statutory Rules 1901–1965*, pp.5312–4.

¹⁴ *Commonwealth Statutory Rules 1958*, pp.494–5.

¹⁵ Statement by the Prime Minister to the House of Representatives, *Commonwealth Parliamentary Debates*, vol. H. of R. 138, 24 August 1984, p.380. The Prime Minister tabled a copy of the amended Letters Patent relating to the office of Governor-General, together with the text of a statement relating to the document, but for some unknown reason he did not read the statement to the House, nor did he seek leave to have it incorporated in Hansard. The statement was later issued by the Prime Minister's Press Office.

This was not the first step taken by Menzies to strengthen the role of the Sovereign as Queen of Australia, and to remove British ministers and British processes from Australia's constitutional arrangements. In 1953, Menzies had introduced two bills into the Australian Parliament which formally designated the Queen as Queen of Australia. The first of these was the *Royal Style and Titles Act 1953*, which added the word 'Australia' to the Queen's style and titles.

At the Commonwealth Prime Ministers' Conference held in London in December 1952, the prime ministers of the United Kingdom, Canada, Australia, New Zealand, South Africa, Pakistan and Ceylon had agreed that the royal style and titles then in use were no longer in accord with current constitutional relationships within the British Commonwealth, and they decided that each member country would adopt a form that suited its own purposes. And so, by decision of the Australian Parliament in 1953, the Queen became Queen of Australia.

Popular mythology has it that it was Prime Minister Whitlam who did this with his *Royal Style and Titles Act 1973*, but that is simply not true. What Whitlam did was remove the words 'United Kingdom' and 'Defender of the Faith' from the 1953 style and titles as being no longer appropriate for use in Australia, but he added nothing to what was already there. He had wanted also to remove the words 'by the Grace of God', but the Queen would not hear of it.

The second Menzies bill which affected the Queen's constitutional position in Australia was the *Royal Powers Act 1953*. In preparing for the 1954 royal visit to Australia—the first by a reigning monarch—the Government wanted to involve the Queen in some of the formal processes of government, in addition to the inevitable public appearances and social occasions. But the Government's legal advisers suddenly discovered what had been apparent to some writers at the time of Federation.¹⁶ They pointed out that the Constitution placed all constitutional powers, other than the power to appoint the Governor-General, in the hands of the Governor-General and that he exercised these constitutional powers in his own right, and not as a representative or surrogate of the Sovereign. It was further pointed out that the Governor-General's statutory powers, that is, those powers conferred on him by legislation passed by the Commonwealth Parliament, were also conferred on the Governor-General in his own right and could be exercised by no one else—not even the Sovereign.

And so by means of the *Royal Powers Act 1953*, Parliament empowered the Queen, when she was personally present in Australia, to exercise any power under an Act of Parliament that was exercisable by the Governor-General. The Act further provided that the Governor-General could continue to exercise any of his statutory powers, even while the Queen was in Australia, and in practice governors-general have continued to do so.

The *Royal Powers Act* has enabled the Queen to preside at three meetings of the Federal Executive Council at Government House, Canberra. She has also opened Parliament on three occasions, and held a Privy Council on five occasions. The Queen has also issued two assignments of powers to the Governor-General under section 2 of the Constitution, acting on each occasion with the advice of the Federal Executive Council. These documents were

¹⁶ See footnote 12.

countersigned by her Australian Prime Minister—Menzies in 1954 and Whitlam in 1973—and they were sealed with the Royal Great Seal of Australia.

It seems odd indeed that a Sovereign with such a record of direct involvement and participation in our processes of government, and all at the wish of the Australian Parliament and Australian prime ministers, from both sides of politics, could be described by the present Prime Minister as ‘not one of us’.

I turn now to an examination of the role of the Governor-General in Australia’s constitutional evolution. Professor L.F. Crisp, a former Professor of Political Science at the Australian National University, described it as the ‘keystone to the constitutional arch’.¹⁷ Sir Paul Hasluck, a former Governor-General, saw it as the highest office in the land¹⁸ and as the apex of Australian society.¹⁹ Sir Zelman Cowen, another former Governor-General, described it as the most exciting and the most challenging of all of his appointments in a lifetime of exciting and challenging appointments.²⁰ And former Senator and Minister of the Crown, Peter Walsh, has said that many members of the Australian Labor Party regard Bill Hayden’s outstanding record of service and leadership to the Party as having been tainted by his acceptance of the appointment as Governor-General.²¹ I find that a rather sad, if revealing, commentary.

Our early governors-general were British, and they were appointed by the Sovereign on the advice of British ministers. They were in reality British civil servants, and their principal duties and responsibilities were to the British Government. After Federation, the Governor-General’s office became the Australian Government’s channel of communication with Britain and with other nations.²²

In 1910 the Australian Government appointed its first High Commissioner to Britain. However, it was not until 1931, with the appointment of Sir Isaac Isaacs as our first Australian-born Governor-General, that the British Government appointed its first High

¹⁷ L.F. Crisp, *Australian National Government*, Longman Australia Pty Limited, Hawthorn, 1975, p.415. The description appeared in all editions and reprints from 1965 to 1975, but was omitted from the fourth edition published in 1978, its place being taken by an account of the 1975 constitutional crisis and criticism of the actions of Governor-General Sir John Kerr.

¹⁸ Sir Paul Hasluck, *The Office of Governor-General*, Melbourne University Press, Carlton, 1979, p.30.

¹⁹ *ibid.*, p.46.

²⁰ Sir Zelman Cowen, ‘Australia Day Address’, 26 January 1982; and ‘National Press Club Address’, 21 July 1982.

²¹ Peter Walsh, *Confessions of a Failed Finance Minister*, Random House Australia Pty. Ltd., Sydney, 1995, p.193.

²² Christopher Cunneen, *Kings’ Men: Australia’s Governors-General from Hopetoun to Isaacs*, George Allen & Unwin, Sydney, 1983, pp.12–13.

Commissioner to Australia: until that time its representative in Australia had been the Governor-General, who had often been compared to the head of a diplomatic mission.²³

In 1919 Prime Minister Hughes asserted that the time had come for Dominion governments not only to be consulted on the appointment of governors-general, but to have 'a real and effective voice in the selection of the King's representative'.²⁴ Prime Minister Barton had made a similar request nearly twenty years earlier, but Hughes went further, suggesting that Dominion governments should be able to submit their own nominations, including the names of their own citizens. Hughes' efforts met with some success when, in the following year, 1920, he was invited to choose Australia's next Governor-General from a list of three names provided by the Secretary of State at the Colonial Office. However, Hughes' choice was recommended to the King by the British Secretary of State.

In 1925 the appointment of Australia's eighth Governor-General was made in accordance with the procedure that Hughes had insisted upon in 1920, but by now all Dominion prime ministers were feeling dissatisfied with the process.

The matter of vice-regal appointments was raised again at the 1926 Imperial Conference. This time the prime ministers declared that the Governor-General of a Dominion was no longer to be the representative of His Majesty's Government in Britain, and that it was no longer in accordance with a Governor-General's constitutional position for him to remain as the formal channel of communication between the two governments. The Conference further resolved that, henceforth, a Governor-General would stand in the same constitutional relationship with his Dominion Government, and hold the same position in relation to the administration of public affairs in the Dominion, as did the King with the British Government and in relation to public affairs in Great Britain. It was also decided that a Governor-General should be provided by his Dominion Government with copies of all important documents and should be kept as fully informed of Cabinet business and public affairs in the Dominion as was the King in Great Britain.²⁵

The 1926 Imperial Conference also made another decision which is of direct relevance to the contemporary debate in Australia. The prime ministers recognised that the Sovereign would be unable to pay state visits on behalf of any Commonwealth country other than the United Kingdom, and it was agreed that governors-general of the various realms would pay and receive state visits in respect of their own countries. Buckingham Palace made it clear that it expected that governors-general would be treated as the heads of their respective countries and would be received by host countries with all the marks of respect due to a visiting head of state. Canada exercised this right almost immediately and its Governor-General began visiting other countries the following year, 1927, but Australia waited until 1971, forty-four years after Canada, to follow suit.

²³ *ibid.*, p.50.

²⁴ Quoted in *ibid.*, p.151.

²⁵ *ibid.*, p.168. See also (Sir) Zelman Cowen, *Isaac Isaacs*, Oxford University Press, Melbourne, 1967, p.191.

Early in 1930 Prime Minister Scullin was informed that the British Government would welcome an Australian indication of a suitable successor to the Governor-General.²⁶ The Cabinet considered the names of Sir Isaac Isaacs, then Chief Justice of the High Court, and Sir John Monash, a distinguished engineer and soldier who had been Australia's highest-ranking soldier in the First World War. The choice fell on Isaacs, formerly a member of the Victorian Legislative Assembly and State Attorney-General; a member of the 1897–98 Constitutional Convention; a member of the House of Representatives and Commonwealth Attorney-General; a Justice of the High Court; and now Chief Justice.

News of Cabinet's choice soon leaked out. Newspapers reported that the King would not accept the recommendation. Amid a welter of public controversy, objections were voiced to the appointment of an Australian rather than someone from the United Kingdom; to the appointment of someone who had been involved in politics in Australia; and to the promotion of a holder of judicial office, on the basis that judges should have nothing to hope for and nothing to fear from any government. The Leader of the Opposition in the Federal Parliament, Mr (later Sir John) Latham, took the view that, while the Commonwealth Constitution provided for Federal Executive Councillors to advise the Governor-General, there was no constitutional provision that would enable them to advise the King.

With some arguing that the 1926 Imperial Conference prevented the British Government from advising the King on the appointment of a Governor-General, and others arguing, as Latham did, that the Australian Government had no power to do so, it seemed that there was no one who could advise the King on the appointment. While all this was going on, the King himself was seeking a personal role in the appointment of governors-general which he had not possessed when the British Government had been responsible for these appointments, and which he would not have under the changes made by the 1926 Imperial Conference nor under the new arrangements which Australia was proposing to follow.²⁷ The fact that there were differences between the King and the Australian Government over the appointment of Isaacs was by now well known.

Against this background, the 1930 Imperial Conference resolved that, in appointing a Governor-General, the King should act on the advice of his ministers in the Dominion concerned. It was also resolved that the making of a formal submission should be preceded by informal consultation with the King to allow him the opportunity to express his views on the nomination.

While in London, Scullin had discussions with the British Prime Minister, the King's Private Secretary, and the King himself. It was clear that the King was unhappy with the prospect of being represented by a local man. The chief concern was that such a person would inevitably be, or would become, involved in local politics, whereas a nominee from Britain would have no such involvement and could stand aloof from all politics in the same way as the King did at home.

²⁶ I am indebted to Sir Zelman Cowen, *op. cit.*, at pp.191–207, for details of the events leading to the appointment of Sir Isaac Isaacs as Governor-General.

²⁷ Lord Stamfordham, Private Secretary to King George V, quoted in Cunneen, *op. cit.*, p. 175.

The particular criticisms of Isaacs were that he had been in politics, even though it was twenty-five years ago; that he was not known personally to the King; and that he was seventy-five years of age. With the King conceding that he had no personal objections to Isaacs, and with Scullin insisting that an Australian should have the appointment, the King finally acknowledged that, as a constitutional monarch, he had no alternative but to accept Scullin's advice. However, the Buckingham Palace announcement of the appointment departed from precedent and was carefully worded so as to indicate the King's displeasure. Isaacs was sworn in as Australia's ninth Governor-General, and the first Australian to hold the office, on 22 January 1931.

The (Melbourne) *Age* welcomed the appointment and spoke highly of Isaacs.²⁸ The *Sydney Morning Herald* took the opposite view, expressing concern about possible damage to the Empire link and the possible bias of an Australia appointee, though it too praised Isaacs' personal qualities.²⁹ But the mould had been broken and a new constitutional precedent set. Henceforth, in Australia and throughout the Commonwealth, the appointment of governors-general, whether imported or native-born, would be made by the Sovereign on the advice of the Prime Minister of the country concerned. The *Canberra Times* summed up the position in its editorial on 8 December 1930: 'The present appointment is one, therefore, which should be regarded by constitutionalists as a constitutional triumph.'³⁰

From the British point of view, the problem was that, if governors-general were not to be appointed on the advice of British ministers, and if the King himself could not select his representatives, then they would be the nominees of the party in power in Australia, and, if called upon to exercise their prerogatives, their political impartiality was likely to be impugned.³¹ This was an interesting point of view, particularly if it was feared in London that Australian appointees might unduly favour the party that had appointed them, for the Australian experience has been to the contrary.

Isaacs was called upon several times to exercise constitutional functions in potentially politically troublesome circumstances, but he handled each situation impeccably. He also had to cope with the coming to office of an Opposition which had opposed his appointment. He handled that successfully and set a pattern for future incumbents who would be so placed. His term as the first Australian in the post has been described as one of the most important in the history of the office.³²

²⁸ The *Age*, 4 December 1930.

²⁹ The *Sydney Morning Herald*, 4 December 1930.

³⁰ Quoted in Cunneen, *op.cit.*, p.182.

³¹ *ibid.*, p.178.

³² *ibid.*, pp.185–8.

In the words of Dr Christopher Cunneen, Deputy General Editor of the *Australian Dictionary of Biography* and author of *Kings' Men*:

As Hopetoun had been the model for Isaacs' predecessors, Isaacs was to set the pattern for subsequent Australian-born governors-general...(He) was the fore-runner of a series of appointments of Australians which significantly altered the nature of the institution. Prior to Stonehaven the monarchical element in the Australian Constitution, exercised by British officials, was overtly linked with the protection of British interests. The 1926 Imperial Conference removed from the formal structure the justification for this supposition, and the term of office of Isaacs completed the process. When Isaacs passed constitutional judgement in areas of political discretion, he was acting as a local constitutional monarch, not because of any inclination to further the interests of the British government.³³

The controversy which had surrounded the Isaacs appointment as Governor-General erupted once more at the end of 1946 with rumours that the Federal Government proposed to recommend the appointment of Mr William McKell, then Labor Premier of New South Wales. This time, the fact that McKell was still actively engaged in state politics added a certain edge to the controversy. Opposition Leader Menzies bitterly opposed the appointment. In his view the Crown's neutrality, and the neutrality of the Crown's Governor-General, had to be above suspicion. He was concerned that, if the office of Governor-General became simply a political plum to be handed out to a party colleague, it would lead to a change of incumbent with every change of government, and to the office being degraded by being made the direct product of Australian party politics.³⁴

But once the appointment was made, Menzies told his party that they should now treat the new Governor-General with all the respect due to his office.³⁵ In 1951 Menzies invited McKell to extend his term of office and recommended him for a knighthood, both of which were accepted. Notwithstanding Menzies' view of the initial error of the appointment, he came to value his regular talks with McKell. He regarded him as a successful Governor-General who had performed the duties of his office extremely well, and he was able to look back on McKell's term of office with personal pleasure.³⁶

The *Sydney Morning Herald*, which had been critical of McKell's appointment in 1947,³⁷ praised his performance as Governor-General when commenting on the award of the knighthood in 1951,³⁸ although it still maintained its earlier view that the appointment of an Australian as Governor-General weakened the personal link with the Crown.

³³ *ibid.*, p. 188.

³⁴ *Commonwealth Parliamentary Debates*, vol.190, 20 February 1947, pp.19–21. See also Sir Robert Menzies, *Afternoon Light*, Penguin Books Australia Ltd., Ringwood, 1969, p.254.

³⁵ Menzies, *ibid.*, pp.254–5.

³⁶ *ibid.*, p.255.

³⁷ The *Sydney Morning Herald*, 3 February 1947.

³⁸ *ibid.*, 12 November 1951.

McKell's great moment in our constitutional history came in 1951 when he was asked by Menzies to grant him a simultaneous dissolution of both Houses of the Parliament. Although the non-Labor parties had defeated the Labor Government at the December 1949 general elections, Labor continued to control the Senate. After the Government's Commonwealth Bank Bill had been passed by the House of Representatives, the Bill had been returned by the Senate with unacceptable amendments: after its second passage through the House of Representatives, the Senate had referred it to a Senate Select Committee for investigation and report. The Government took the view that this was a 'failure to pass' the Bill, in terms of section 57 of the Constitution, while the Opposition argued that it was no such thing, being merely part of the process of the Senate's consideration of the Bill.

Menzies waited on the Governor-General. His request for a double dissolution was supported by opinions provided by the Attorney-General and the Solicitor-General. In the light of last week's twentieth anniversary of a certain event, it is interesting to note that, in his advice to the Governor-General, Menzies made it clear that the Governor-General was not bound to follow that advice, but was entitled to satisfy himself that the conditions required by section 57 had been established.³⁹ This was only the second double dissolution since Federation, and the Labor Opposition bitterly opposed it. Their view, which is also interesting in the light of 1975, was that the Governor-General should not accept the Prime Minister's advice but should seek independent legal advice from the Chief Justice of the High Court.⁴⁰ McKell, however, saw no need to call for independent advice, and he accepted the advice of his ministers.

Menzies has left us with an account of his method of complying with the decision of the 1930 Imperial Conference that the formal nomination of a Governor-General to the Sovereign should be preceded by informal discussion. Menzies felt that the Governor-General should not be completely unknown to the Queen. Secondly, because the Governor-General might well have to deal with political crises and with applications by governments for dissolutions of Parliament, it was most important that there should be no doubt about his impartiality.⁴¹ Menzies was to recommend the next four governors-general to the Queen. The first three were Sir William (later Lord) Slim, Lord Dunrossil and Lord De L'Isle, all British, but by 1965 he felt able to recommend an Australian, Lord Casey. Despite Casey's long career in politics, the announcement of his appointment was received with general approval, and without the public rancour which had accompanied the appointments of Isaacs and McKell. I like to think that it was Menzies' experiences with McKell which enabled him eventually to overcome his reluctance to expose the office to a serving local party politician.⁴²

³⁹ Sir Robert Menzies, *The Measure of the Years*, Cassell Australia Ltd., Melbourne, 1970, p.40. See also J.R. Odgers, *Australian Senate Practice*, Royal Australian Institute of Public Administration (ACT Division), Canberra, 1991, p.43; and (Sir) Zelman Cowen, Introduction to the Second Edition of H.V. Evatt, *The King and his Dominion Governors*, Frank Cass & Co. Ltd., London, 1967, p.xxvii.

⁴⁰ Cowen, *ibid.*, p.xxiv.

⁴¹ Menzies, *Afternoon Light*, pp.257-8.

⁴² *ibid.*, p.258.

Since Casey we have had an unbroken line of Australians in the office, and it is now unthinkable that it should be any different. Casey was followed by another politician, Sir Paul Hasluck, and his appointment, too, was received with general approval. He was followed in turn by Sir John Kerr, Sir Zelman Cowen and Sir Ninian Stephen; three non-political appointments which received widespread and bipartisan approval. It was not until Mr Bill Hayden's appointment was proposed in 1988 that we saw the re-emergence of public criticism from former political opponents. But like Menzies before him, the then Leader of the Opposition, John Howard, ceased all public criticism once the Queen had accepted her Prime Minister's advice and had approved the appointment. Over the ensuing seven years, the initial respect for the Queen's representative has grown into respect for the man himself, for, like his political predecessors, he has remained true to his oath (or should I say affirmation) of office.

As we look back over the record of Australian-born governors-general who have had political affiliations, either directly or indirectly, we find no reasons for the initial fears that they would act partially in favour of those who had appointed them. What we do find, ironically enough, is that the abuse heaped on the heads of Sir William McKell, Sir John Kerr and, quite recently, Mr Bill Hayden, came from the side of politics that had recommended their appointments. And these criticisms were not founded upon any alleged dereliction of duty or other constitutional impropriety, but upon the utterly improper belief that they had acted or spoken contrary to the interests and expectations of their former 'mates'. But I am running ahead of myself.

The event in Lord Casey's term of office as Governor-General which is of special interest is his action in providing Australia with a new prime minister, following the disappearance of Prime Minister Harold Holt, who had entered the sea at Cheviot Beach, Victoria, on Sunday, 17 December 1967, and had not re-appeared. Casey was confronted by two urgent constitutional questions which only he could decide, for without a prime minister there was no one else with any constitutional authority to give him advice. The first question was when should he assume officially that Holt was dead and issue a commission to a new Prime Minister: the second was to whom should he give that commission?⁴³

William McMahon was Deputy Leader of the parliamentary Liberal Party and had claims to succeed to the leadership and through it to become Prime Minister. But this could not be assumed: there were other senior Liberal ministers who would be powerful contenders, should they decide to enter the contest. On the other hand, Holt's Deputy Prime Minister was John McEwen, Leader of the Country Party (later to become the National Party), and it was McEwen who had always acted as Prime Minister, at the request of Holt, whenever the Prime Minister had been absent from Australia.

The thirty-six hours between Holt's disappearance and the Governor-General's decision saw scenes of feverish activity, first among the several Liberal contenders—particularly once it

⁴³ I am indebted to Alan Reid, *The Power Struggle*, Shakespeare Head Press, Sydney, 1969, pp.24–8 and 105–123, for details of the events leading to the appointment of John McEwen as Prime Minister to succeed Harold Holt.

was known that McEwen had said that the Country Party would not serve in a Coalition Government under McMahon—and then at Government House as the Governor-General consulted as widely as possible with ministers, the Government Whip, and the Secretary to the Prime Minister's Department. There was some criticism at the time that these discussions had taken the Governor-General into an activist role that went beyond the functions of his office, but Casey seems to have taken the view that he had a responsibility to maintain stability of government. In the end it was the Governor-General, and he alone, who made the decision to commission McEwen as Prime Minister. The swearing in took place on 19 December 1967, little more than forty-eight hours after Holt had disappeared.

This was a classic example of the exercise, by the Governor-General, of the reserve powers of the Crown to deal with a constitutional issue for which there were no constitutional provisions. Just to complete the story, the parliamentary Liberal Party met on 9 January 1968 to elect a new leader. From a field of four candidates John Gorton emerged the victor, with McMahon re-elected as Deputy Leader. McEwen submitted his resignation as Prime Minister to the Governor-General and advised His Excellency to commission Gorton.

Lord Casey was succeeded by Sir Paul Hasluck, who served from 1969 to 1974. It was during Hasluck's term that Australian prime ministers finally overcame their reluctance to allowing governors-general to represent Australia overseas. First Gorton, then McMahon, then Whitlam, asked Hasluck to undertake this duty. Thus in 1971 did Australia begin to do what Canada had been doing since 1927, in fulfilment of the resolution of the 1926 Imperial Conference, namely, have its Governor-General represent it in a foreign country as constitutional head of state.

On Saturday 2 December 1972 Labor won government after 23 years in opposition. Caucus would not be able to meet to elect the Ministry until the count had been completed. But Whitlam was impatient for office: there were decisions that he wanted to take immediately, so he came up with a unique proposal. On the Monday he asked the Governor-General to commission him to head a two-man government with his deputy, Lance Barnard, and on the Tuesday Hasluck did just that, swearing Whitlam into thirteen portfolios and Barnard into fourteen portfolios.

The proposal for a two-man government had given the Governor-General pause for thought, but not for long. The things that Whitlam wanted to do straight away as Prime Minister were not matters that required the approval of Parliament, which in the event was not to meet until 17 February 1976, just over two months away: they could be achieved by obtaining the approval of the Governor-General in Council, in his role as constitutional head of state, acting with the advice of his executive councillors, who were also his ministers of state. Whitlam knew that a quorum for a meeting of the Federal Executive Council was the Governor-General plus two ministers,⁴⁴ and that his two-man government could thus immediately secure executive authority to implement its most pressing policy and administrative changes. The Second Whitlam Ministry, with its full complement of ministers, was sworn in by the Governor-General two weeks later.

⁴⁴ This figure was set by the first Federal Executive Council at its second meeting on 12 January 1901 and has not been varied.

Sir Paul Hasluck was succeeded as Governor-General by Sir John Kerr, who served from July 1974 to December 1977. Kerr, who was appointed on the advice of Whitlam, was the first Australian-born Governor-General not to have held political office, and his appointment was warmly applauded by both sides of politics.

Whitlam wanted to enhance the status of the vice-regal office, so when an invitation arrived for the Governor-General to attend the coronation of the King of Nepal, Whitlam asked Kerr to extend his journey to include state visits to India, Pakistan, Afghanistan and Iran. In all, Kerr was to make state or official visits to eight countries, seven of them on the advice of Whitlam. On Whitlam's instructions, the Department of Foreign Affairs commenced planning for a journey that was to include state visits to Canada and Ireland. When the Senate decided on 15 October 1975 to refuse passage of the Government's Appropriation Bills these plans were cancelled.

Head of state visits play a significant part in developing and enhancing relationships between countries, and Whitlam saw such visits as an important function for the Governor-General. In this way Whitlam laid the foundation for recognition, at long last, of the value to Australia of such visits, and paved the way for the more extensive programmes of state and official visits undertaken later by Sir Ninian Stephen and Mr Bill Hayden on the advice of their respective prime ministers.⁴⁵

The other matter of constitutional significance which occurred during Sir John Kerr's term as Governor-General has had more than a fair run this past week, so I shall limit myself to saying just two things about it. The Senate, as an equal part of the Parliament with the House of Representatives, sought to exercise powers which were specifically given to it under the Constitution. Whitlam, with the security of numbers in the House of Representatives, was determined to smash forever the power of the Senate to obstruct money bills and thereby force a government to an early election, a power, incidentally, which he had previously maintained that the Senate did possess, and which he and his party had tried to use no less than 170 times during their twenty-three years in opposition.⁴⁶

Had Whitlam succeeded, he would effectively have brought about an amendment of the Constitution, though without the approval of the people, as required by section 128 of the Constitution. Kerr exercised the reserve powers of the Crown to bring about a general election for both Houses of the Parliament and to allow the people to pass judgement on the

⁴⁵ Because of Sir Zelman Cowen's wish to apply what he described as 'a touch of healing' to the office of Governor-General after the 1975 Dismissal, he thought it important that he should concentrate on travelling widely throughout Australia. As a consequence his only state visit, to Papua New Guinea, was made during his last month in office, and at the special request of the Governor-General and Government of Papua New Guinea.

⁴⁶ See Sir David Smith, 'The 1975 Dismissal: Setting the Record Straight', in *Upholding the Australian Constitution*, Proceedings of the Fifth Conference of The Samuel Griffith Society, April 1995, The Samuel Griffith Society, East Melbourne, 1995, pp.139–66. See also Sir David Smith, 'Myths and Legends: The Stuff of History (or 1975 Revisited)', the Canberra & District Historical Society's Fourth Nan Phillips Memorial Lecture, in *Canberra Historical Journal*, Canberra & District Historical Society Inc., New Series No. 29, March 1992, pp.2–9.

dispute between the two Houses. The Governor-General's action served to remind us that the reserve powers do exist, and may be used in those crisis situations for which there is no constitutional provision.

An important by-product of the Dismissal came about as a result of the decision by the parliamentary Labor Party to have the Speaker of the House of Representatives write to the Queen to ask her to overrule the Governor-General, to halt the democratic election process which had already been set in train under Australian law, and to restore Whitlam to office as Prime Minister. Mr Speaker was reminded by Buckingham Palace that the Australian Constitution placed all constitutional matters squarely in the hands of the Governor-General in Canberra, and that the Queen had no part in the decisions which the Governor-General must take in accordance with our Constitution. That reply confirmed, if confirmation were needed, that the Governor-General is indeed the constitutional head of state, and that in the exercise of his powers and functions he does not act as the representative or surrogate of the Sovereign.

The office of Governor-General lacks the majesty of monarchy, and that is no bad thing in the Australian context. It also lacks the power of presidency, and that, too, is a good thing in the Australian context. After all, in how many republics would the media be allowed to rank the head of government before, and not after, the head of state, as protocol and respect both require? In how many republics would the media refer to the wife of the head of government as the First Lady? In what other country would a council employee be allowed to erect street signs pointing to Admiralty House and Kirribilli House on the same pole, with Kirribilli House on top? It doesn't even qualify alphabetically. Is it ignorance? Is it apathy? Is it toadying to the Prime Minister? Or is it simply disdain and contempt for public institutions and public office holders? I do not pretend to know the answers, but I may be able to provide some clues.

In his 7 June speech on the republic, the Prime Minister quoted with approval from a speech which Sir Zelman Cowen had given the previous week. What the Prime Minister did not tell the Parliament was that, in the same speech, Sir Zelman had also spoken of prime ministers, including the present one, who sought to diminish the status of the Governor-General in public as compared with that of the Prime Minister.⁴⁷

Last month a Sydney newspaper launched a bitter personal attack on Mr Hayden. The stories were false, and the inferences drawn and the imputations made were untrue. It was a calculated dishonest campaign to demean the office of Governor-General, and to punish Mr Hayden personally. He had recently expressed some personal views on a number of community issues, and responsible sections of the media had welcomed them as useful contributions to informed public debate. But apparently some of his former colleagues thought otherwise, so out came the knives. So insidious and unscrupulous was the attack that the Governor-General felt obliged to speak out, while still overseas, to protect his office and himself.⁴⁸

⁴⁷ Sir Zelman Cowen, 'Leadership in Australia: The Role of the Head of State', Williamson Community Leadership Lecture, 31 May 1995.

Both in accordance with constitutional principle and under the Government's own Administrative Arrangements Order, it is the responsibility of the Prime Minister to answer in Parliament, and to the people of Australia, for the actions of the Governor-General. No expenditure by the Governor-General's office can take place unless it has first been approved by the responsible minister, namely, the Prime Minister, and the money has been appropriated by Parliament at the request of the Treasurer. No overseas travel by the Governor-General can occur except on the advice, and with the approval, of the Prime Minister.

That is why it is totally unacceptable for the Governor-General to be dishonestly misrepresented in the media and to be left to defend himself. That is the role of his ministers and, in particular, the Prime Minister. A spokesman was reported as saying that the Prime Minister had strongly backed Mr Hayden through his press office and would respond if asked in Parliament or at media door-stops. But a ministerial press officer has no constitutional relationship to the Governor-General: the Governor-General's constitutional authority and the nation's respect for the office and its incumbent are not properly protected in the bear pit of Question Time or the street theatre of a media door-stop. One does not have to look far for the reason for society's lack of respect for its leaders, its national institutions and its traditions.

I propose now to look at the main points in the Prime Minister's statement on the republic and test them in the light of the roles of the Sovereign as our symbolic head of state and the Governor-General as our constitutional head of state, as I have already described them.

Contrary to the Prime Minister's assertion, the Queen is indeed one of us, having been given the title 'Queen of Australia' in 1953 by the Australian Parliament. Under Australian law, foreign-born Australian citizens may retain dual citizenship, a right which is denied to Australian-born citizens. In the Prime Minister's republic, we could even have as our head of state a person who is also a citizen of a foreign country and who therefore owes allegiance to a foreign head of state. But, apparently, the Queen of the United Kingdom, the Queen of Canada, the Queen of New Zealand, the Queen of Papua New Guinea, to name but a few of her titles, may not also be the Queen of Australia. Dual citizenship is OK for foreign-born Australians, but not for Australian-born Australians and not for the Monarch!

The Prime Minister's next point was that we must have an Australian as our head of state. As I hope I have demonstrated, the Governor-General has been acknowledged as our constitutional head of state since Federation,⁴⁹ and we have had no one but an Australian in the office for the past thirty years.

The Prime Minister reminded us that the Queen is head of state to fifteen countries; that when she travels abroad she represents only the United Kingdom; and that the role of representing

⁴⁸ Television interview with the Governor-General by Laurie Oakes, 'Sunday', Nine Network, 22 October 1995; and telephone interview with the Governor-General by Geoff Kitney and Michael Millett, the *Sydney Morning Herald*, 26 October 1995.

⁴⁹ See footnote 7.

us abroad is ‘a role only an Australian can fill’. The clear implication was that this role is vacant and waiting to be filled. In fact, the role is not vacant, has not been vacant since 1926, and has only ever been filled by an Australian. Since 1971 our governors-general have made forty-nine state and official visits to thirty-two foreign countries, so there is no new path waiting to be trodden by a republican president.

In his 1993 book on the republic, Malcolm Turnbull made much of the fact that, in 1987, Sir Ninian Stephen, acting on the advice of the Australian Government, cancelled arrangements to visit Indonesia because President Suharto had said that he would not be present at the welcome ceremony, but would instead send his Vice-President. That year Sir Ninian made state visits to Thailand, China, Malaysia and Singapore. In each of these countries the Governor-General was treated as a head of state. What Turnbull did not know was that the Indonesian Government said later that it had made a wrong decision, that it had been wrongly advised by its officials, and that it would treat our Governor-General as a head of state on any future visit. That promise was honoured during Mr Hayden’s visit earlier this year. In Turnbull’s view, the Indonesian President had quite rightly refused to treat the Governor-General as a head of state in 1987, but subsequent events had proved the wisdom of not allowing foreign governments, or Malcolm Turnbull, to interpret our Constitution for us.

The Prime Minister said that we are a sovereign nation in all respects bar one, and that the creation of an Australian republic would settle in our own minds, and in the minds of our neighbours, the question of who we are and what we stand for. He had obviously forgotten the findings of the Constitutional Commission which the Hawke Government had set up in 1985. It consisted of three very distinguished constitutional lawyers—Sir Maurice Byers, former Commonwealth Solicitor-General; Professor Enid Campbell, Professor of Law at Monash University; and Professor Leslie Zines, former Professor of Law at the Australian National University: and two former heads of government—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 asked to report on the revision of our Constitution to reflect Australia’s status as an independent nation.⁵⁰ In its final report, presented in 1988, the Commission traced the historical development of our constitutional and legislative independence, and concluded 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.⁵¹ The Commission found that the development of Australian nationhood did not require any change to our Constitution.⁵²

The Prime Minister spoke of the method of choosing a president. Popular election he dismissed as politicising the office, likely to result in a politician being chosen, and likely to give us a president who might be even more powerful than the Prime Minister. Instead, he opted for a president elected by a two-thirds majority of the Parliament. The Prime Minister

⁵⁰ *Final Report of the Constitutional Commission*, Australian Government Publishing Service, Canberra, 1988, p.1.

⁵¹ *ibid.*, p.75.

⁵² *ibid.*

seems not to understand the difference between a powerful office-holder who is appointed and one who is elected. Appointment, coupled with a sense of duty and obligation to the Crown, acts as a powerful restraint. Election, by whatever method, brings with it supporters, obligations, and the notions of a mandate and a power base. Warnings against this type of change were given in 1993 by former Prime Minister Bob Hawke and Governor-General Bill Hayden.⁵³

The Prime Minister has proposed that serving politicians, and those who have served within the preceding five years, would be ineligible for appointment as president. In these days of equal opportunity and non-discrimination, our Constitution would contain a provision which would discriminate against two categories of Australians, regardless of individual merit. We would also be entrusting the election of the president to the very people who had been deemed to be unfit to hold the office themselves.

None of the problems inherent in the Prime Minister's republican proposals exist under our present constitutional monarchy. Because of their sense of duty to the people and to the Crown, even politicians have been eligible to be governors-general. And because of their sense of duty to the people and to the Crown, governors-general nominated to the Queen by prime ministers have been acceptable to all sections of the community, whereas a president elected by whatever means would not be.

I should like to end with the words spoken by Sir Gerard Brennan at a ceremonial sitting of the High Court on 21 April 1995, following his swearing in as the tenth Chief Justice of Australia. Sir Gerard described the Oaths of Allegiance and Office which he had just taken as the making of two solemn promises for the performance of which he would be responsible to

the Court, to this country, and to his Creator, and then he said:

The first promise is a commitment of loyalty to Her Majesty the Queen, her heirs and successors according to law. It is a commitment to the head of State under the Constitution. It is from the Constitution that the Oath of Allegiance, which has its origins in feudal England, takes its significance in the present day. As the Constitution can now be abrogated or amended only by the Australian people in whom, therefore, the ultimate sovereignty of the nation resides, the Oath of Allegiance and the undertaking to serve the head of State as Chief Justice are a promise of fidelity and service to the Australian people. The duties which the oath imposes sit lightly on a citizen of the nation which the Constitution summoned into being and which it sustains. Allegiance to a young, free and confident nation, governed by the rule of law, is not a burden but a privilege.⁵⁴

Questioner — Would you like to comment on Mr Hayden being rejected as the Australian head of state by the Americans?

⁵³ Interview with the Governor-General by Mr. Bob Hawke, 27 July 1993.

⁵⁴ (1995) 69 *Australian Law Journal*, pp. 679–80.

Sir David — I have no knowledge myself, so I will have to rely on press reports. As I understand it, they sought some advice. If our Australian representatives abroad were doing their jobs, they would not have needed to. I think the Indonesian example is a classic case in point. The Indonesian Foreign Minister later apologised for the advice that he had been given by his officials.

Questioner — You have spoken at length of how quite independent we are now of the Queen and the United Kingdom and that the Governor-General is our effective head of state. Why don't we now take care of reality and catch up with the situation? We have been decades behind other countries. Why can't we be honest and truthful with the rest of the world and chop the Queen out of the Constitution?

Sir David — The great problem the republicans are having is in deciding by which method they will choose the president. Mr Keating has proposed that Parliament should make the choice. Polls tell us that an overwhelming majority of republicans would rather vote against the republic unless they get the choice.

In a speech here in Canberra last week, Mr Neville Wran, former Labor Premier of New South Wales, said the Prime Minister might have to rethink his proposal. Our Australian High Commissioner in London, Dr Neal Blewett, a former Labor minister, similarly said that the proposal might have to be reconsidered. The republicans are having a great argument about how they will get this president. For ninety-five years the monarch has provided us with an unarguable and uncontroversial method of getting that same person to do, as Mr Keating has said, precisely the same job.

Questioner — Isn't it the methodology that is the problem and not the objective?

Sir David — No. Again, I made the point that there is a difference between appointment to office and election to office. In an appointed constitutional head of state we have less to fear than we would have from an elected head of state, and Mr Hawke and Mr Hayden have agreed.

Questioner — I wonder if I could just follow up on that point. Are you saying that the monarch now selects the Governor-General?

Sir David — No, the Prime Minister selects; the monarch appoints.

Questioner — But you are saying that the justification for maintaining the links to the monarchy are through the Crown. Then you argue that the selection process, in terms of the republican argument, is the flaw in the argument. Surely the Queen acts on the advice of the Prime Minister and, therefore, what we do have, in effect, is a political appointment.

Sir David — Yes, we do have political appointments and the great magic of our present system is that we have been able to take five Australian former politicians out of politics and put them in a job. Then, to everyone's surprise, they acted non-politically. They were able to fulfil the job. You have a fair indication of what the problem would be if they were elected to office. The

Prime Minister's proposal is that former politicians should be barred for five years. We have not had to do that so far.

My point is that a person sitting at Yarralumla doing the constitutional head of state's duties day by day, knowing that he or she was responsible to a group of people—whether it was a small group or a large group—who had elected them, voted them into the job, would have a notion of a mandate, mates, people to please and people to satisfy. Someone who is appointed by the Crown, hitherto at least, has known that they do not have any of those obligations other than to the people of Australia.

It is the impact that the method of coming to office has on the person who sits at the desk at Government House that we ought to be worried about—the frame of mind of that person when they do their job on a day by day basis. Do you want them put there by a political process or do you want them put there by a process that keeps them honest? That is my point.

Questioner — I would like you to comment on Premier Bob Carr's intention to somehow change the relationship of the State Parliament to the role of Governor in New South Wales. I think the present Governor ends his appointment in February, and there is some speculation that Premier Carr would like not to appoint a Governor in the traditional sense but find a way of virtually phasing the Governor out and supplanting him with perhaps the State Chief Justice—all with the intention of moving towards a republic ahead of the people deciding whether they want a republic or not.

Sir David — I have expressed on other occasions, and I do not need to say it again now, my utter contempt for those who have a policy which they are not prepared to test by the proper method—that is, a referendum to change the Constitution—but who are, nonetheless, working assiduously to wind out the system.

If we are supposed to be a nation proud of our history and our culture and looking for our identity, I do not think we are going to gain that by subverting our Constitution. We have a right, as a sovereign people, to change it. We have made some changes and we have rejected other proposals. We have a right to change it, but I believe our politicians have a duty to observe the Constitution as it is, not as they would prefer it to be.

If they have a preference for a different constitution, they have a perfectly honest and open way of seeking our approval to change it. Until they do, I believe they have an obligation to live by our Constitution and not subvert it. I thought my final quote from the new Chief Justice of the High Court was appropriate to that point.

Questioner — I want to refer to the American situation at the present time where the government is without money and the public servants are not being paid. Would you like to comment on whether that situation could occur in a republic in Australia?

Sir David — I do not want to get involved in a debate on the American system of government, but I will repeat a comment that was made to me by a friend the other day. She said, 'I'll bet Bill Clinton wishes he had a Governor-General sitting in the wings.'

Majorities and Minorities: Evolutionary Trends in the Australian Senate

Senator the Hon. Michael Beahan

Shortly after becoming President of the Senate, I delivered a paper at a conference of presiding officers and clerks believing that in my position I should seek to say something of substance about the institution which I headed—albeit temporarily. I embarked upon a discussion of the strengths and weaknesses of Senate committees.

I take the view that the committees are the most significant and productive institutional development in the Senate probably since Federation. Certainly, committee work has been the most rewarding part of my career as a senator. Perhaps only the emergence of parties and the impact of proportional representation have been as significant in their impact. But like all evolving institutions, their progress has been uneven and occasionally it has disappeared up the odd evolutionary blind alley. I also made the observation that some of the uses of Senate procedures generally, and of committees specifically, had been influenced by considerations of political advantage. Controversial stuff!

My remarks were reasonable, certainly not partisan, and consistent with comment on the committees from other senators, clerks, committee staff and academic commentators. But when I returned to Canberra, I was somewhat taken aback to find myself under attack from the opposition parties for showing partisan bias, seeking to undermine the committee system and protecting the government from proper parliamentary scrutiny at the behest of the Prime Minister—that was the implication.

It was an early warning that the office of President was fair game politically. Clearly, being neutral was not enough. A president was required to be neuter and preferably mute as well. Unfortunately, such a position is both personally uncongenial and, I think, totally at odds with

the evolution of the Senate and its implications for the position of the presiding officer. The office of President is among the last parts of the institution to be affected by change, but it is not immune from the impact. I suggest that one result of that change is to produce a more public role for the office extending beyond presiding over the chamber. Many people assume that the presiding officers can and should be like their British counterpart in the House of Commons: independent of party support and unchallenged in their own electorates. This seems to me to ignore the fundamentally different directions our parliaments have taken since the beginning of this century. The modern position of the Speaker of the House of Commons is the product of at least four centuries of evolution in a different political environment from ours. Ironically, I think an older model of the Speaker—as spokesman for the rights and privileges of the parliament against the encroaching power of the executive—may be of more relevance to the changing role of the President of the Senate.

Professor Gordon Reid identified the ‘pre-eminence of executive values’¹ as the prevailing orthodoxy which shaped the early evolution of the parliament. By concentrating on the executive dominated lower house, this tended to emphasise the contribution of the Westminster model to our constitutional structures at the expense of other sources, particularly the influence of the US on the role of an upper house in a federal system. That pre-eminence has been under systematic and increasing challenge in the Senate for the last twenty-five years.

I would suggest that we are witnessing a fundamental change in Australian politics driven by an upper house which combines extensive constitutional authority, virtually coequal with that of the House of Representatives, and a multi-party character which makes it unlikely that a governing party can expect to secure a majority in the Senate at any time in the future under the current system. That this is happening without constitutional change does not make it any less permanent; it merely serves to demonstrate that our constitutional structure is extremely flexible.

The changes that are taking place are being locked into the standing orders and other orders and resolutions that govern the workings of the Senate. Perhaps equally important, they are becoming accepted by senators and by the community and are unlikely to be threatened even if a government party gains a secure majority in some future Senate.

Because we have a written constitution there is a tendency to contrast our situation with that of Britain with its piecemeal collection of precedent and statute, and assume that the roles and functioning of the various parts of our system are clearly defined and unchanging. For example, a recent letter to me complaining about the behaviour of some senators during question time asked me to remind senators that they were elected to represent states not as members of government or opposition parties.

In reality, the Constitution is a very patchy document. It is full of detail on the areas in which the Parliament may legislate but almost silent when dealing with the actual workings of the Parliament and makes no mention of either cabinet government or political parties. The Constitution gave little guidance about the reality of such key issues as how the business of

¹ G.S. Reid and Martyn Forrest, *Australia’s Commonwealth Parliament*, Melbourne University Press, 1989, p.17.

the Houses would be conducted, the relationship between the Houses and between the Parliament and the executive. It is interesting to note that one of the founding fathers, Alfred Deakin, made it quite clear in discussions before the Constitution was finalised that political parties would eventuate—and they have become a real part of the process. So there was an awareness there even though there was no mention of that reality.

Taken together with the various convention debates, there is a broad framework for the role of the Senate as a check on the popularly elected lower house and executive government and clear legislative responsibility. The various constitutional conventions did canvass a wide range of ‘possible’ senates. Election using proportional representation, which has profoundly changed the Senate in the last twenty-five years, was widely discussed and found numerous supporters in the early Senate as it debated what electoral system it would adopt. In fact, the first-past-the-post system that was adopted was a major but not the sole inhibition on the development of the Senate for much of its life.

A number of other factors militated against the emergence of a modern Senate. There were expectations that the Senate would develop a constructive role; for example, the precipitate and somewhat damning judgment of historian Henry Turner in 1911 was that:

As a chamber of review, as a check on hasty legislation, or as the originator of statesmanlike measures of national utility, it has been a failure.²

That in itself is a good short summary of a constructive role for the Senate, even though it was not achieving it at that time. In practice, models of a constructive and dynamic upper house in a Westminster system were few and far between. The colonial and later State upper houses were still elected on property and, in some cases, gender based franchises³ and were complacent and conservative. The Canadian upper house was appointed not elected and made no significant contribution to parliament in that country at that time.

In Britain, the role of the upper house in the early part of the century, admittedly hereditary rather than elected, was the subject of a profound controversy. After an extended dispute over the passage of the budget, the Lords were forced to accept restrictions on their power. In future, the upper house would have the power to delay but not defeat legislation. It is worth noting that this was the curtailment of a previously existing power, not the creation of a new role—the Lords was not converted to a house of review. Thus, in a sense, the model of a national parliament to which Australia was most likely to look was one in which the lower house had finally asserted its authority over an over-mighty second chamber.

If the Constitution offered little real guidance, and there were few models to follow, what of the senators themselves? Professor Reid described the majority of delegates to the constitutional convention as subscribing to an essentially backward looking ‘parliamentary ideal’, which had developed from the nineteenth century liberal theory of representation:

² Quoted in L. F. Crisp, *The Parliamentary Government of the Commonwealth of Australia*, 3rd edition, 1975, p.188.

³ In 1923, Victoria was the last state to give women the right to sit in parliament and in 1979 it was the last state to elect a woman to its upper house.

‘That the elected members must follow their own consciences, free of any obligation to government, patron or political party’.⁴

The emergence of political parties had already undermined that ideal elsewhere, and was to do so quickly in the new parliament as well. The oldest and, in electoral terms, the single largest party in Australia was also actively hostile to developing a constructive role for the Senate. The Australian Labor Party had a policy—which it has since abandoned—of abolishing upper houses, seeing them as essentially undemocratic bastions of privilege, which, based on the example of the colonial upper houses, was a perfectly understandable position. It succeeded in abolishing upper houses only in Queensland in 1921, although it came very close to success in New South Wales in the 1920s. It was only the defection of some Labor upper house members, who presumably enjoyed the perks of office too much to forego them willingly, which prevented its abolition. In New Zealand, the upper house was abolished in 1957.

It may also be that the major parties were quite happy to maintain the ‘government and opposition’ approach rather than seek to develop the potential of the Senate to act effectively as a house of review. Since the major parties both viewed themselves as parties of government, they had little incentive to develop an upper house which would limit their powers when in government.

Reid’s verdict on the impact of party politics on the Parliament was that it:

Has been relegated to a means rather than an end; the values incorporated in both the constitution and the standing orders have been subordinated to those associated with executive government.⁵

I am reminded at this point of an interesting little anecdote of when I met a Chinese delegation recently. A very articulate woman, Mme Hu Qiheng, Vice President of the China Academy of Sciences, was plying me with questions about the Australian political system. After I had told her that the government is formed by whoever has the majority in the House of Representatives and the Prime Minister is selected by that party, she said, ‘In other words, after the election is held, the House of Representatives is irrelevant.’ I thought to myself, ‘Hang on a minute. She’s actually got a point.’ After an election, the focus is then on the Senate because the numbers are there in the House of Representatives. The House of Representatives does do the will of the government; there might be a bit of argy-bargy on the way but that is what ultimately occurs. Mme Hu Qiheng was correct.

I might say in passing that I believe that an organised system of parties is a valuable adjunct to our representative system. It offers a structure for testing ideas and policies and their proponents, and it offers some collective protection against single issue extremists out in the electorate. I am a defender of the party system. The existing party system is not necessarily a failure of the intentions of the founding fathers—the effect of the Senate’s constitutional

⁴ Reid, *op.cit.*, pp.12–13.

⁵ *ibid.*, p.17.

make-up has been to ensure that only a party having a genuinely national spread of support can contemplate gaining a majority in that chamber.

It is too simple to divide the history of the Senate into pre and post-proportional representation phases. Many of the later developments were foreshadowed in the first half century. The first standing orders prepared by the Clerk of the Senate provided for the appointment of committees. The first committees of any significance, in terms of scrutinising executive activity, were the public works and public accounts committees—interestingly both were joint committees. In 1929 a select committee was set up to examine the establishment of a standing committee system, noting that such a system: ‘Has become an inseparable part of legislative and ... administrative procedure in the leading countries of the world.’ In the event, the committee achieved relatively little. Only the Regulations and Ordinances Committee became a permanent feature of the Senate as a result of that inquiry.

During the Second World War the inevitable enhancement of executive power was balanced by an increased use of parliamentary committees to involve the Parliament more fully in the war effort. These committees were all joint committees which, for the first time, sought to cover significant areas of government in a systematic way. Despite making a valuable contribution during that period, they were not re-established in peacetime.

In 1948 the electoral system was reformed by introducing proportional representation—cynics have suggested that the Labor Government facing defeat in the House of Representatives was seeking to ensure that it retained some influence in the Senate. This produced the Senate with which we are familiar—a chamber characterised by the lack of a clear majority for any single party and, increasingly, where minor parties and independents have an influential role. However, it did not happen immediately. It would be a mistake to consider the modern Senate solely as a product of numbers.

I am not totally cynical about politicians; all the changes have not been forced on unwilling major party hacks by principled, open-minded minor parties. The minors cannot get anywhere without the support of a major party, and the initiative for many significant changes has come from major parties. In fact, the introduction of a committee system for the Senate was supported by both sides of the chamber and represented the culmination of a decade of growing use of committees in a period before the emergence of the ‘progressive’ independents, who now hold the balance in the Senate.

The first beneficiary of the new electoral system was the Democratic Labor Party, which emerged out of the split in Labor ranks in the 1950s and was to hold the balance of power in the Senate for much of the period from the later 1950s to the mid-1970s. The DLP was not an innovative party offering an alternative view of how parliament should work; it was more concerned with maintaining a conservative status quo. Much of the initiative for change in this period was to come from the major parties themselves.

Rather than seeing the relationship between the electoral reform and parliamentary reform as simple cause and effect, I think a slightly more complex explanation is required. The 1960s and 1970s saw a significant change in attitudes to politics with the emergence of activism in a

variety of areas—Vietnam, feminism and the environment perhaps the most significant. Such attitudes both influenced the people who participated in the major parties and produced a generation more willing to pursue political objectives outside those traditional parties.

The process of change may be characterised as being at two levels:

- an increased willingness on the part of mainstream politicians to reform the parliamentary process to improve scrutiny of legislation, accountability and backbench involvement, while retaining Reid’s ‘executive values’; and
- a more radical movement prepared to challenge those values. To return to the comment of Gordon Reid, which I used earlier—to reverse the process whereby the parliamentarians had ‘been relegated to a means rather than an end’.

The presence of a minor party and independents who do not share the majoritarian approach of the larger parties has played a significant role in this by bringing different perspectives to the conduct of parliament. It should be remembered that to have any influence they need to be allied to a major party. In opposition, a major party may be willing to cooperate in establishing practices and precedence which they might regret when in government.

The Australian Democrats have a different set of expectations from the major parties. They do not realistically expect to be the governing party or the majority in the Senate. However, their commitment to improving standards of public behaviour—keeping the bastards honest, which was their initial catch cry—and improving the quality of parliamentary review of the administration while being a long-term player in the Senate has meant that they have played a generally constructive role in promoting changes to procedures, strengthening the scrutiny of legislation and improving committee work.

The Greens (WA) have brought a different sort of pressure to bear on the Senate. An article in the *Independent Monthly* described the WA Green senators as:

Primarily interested in the parliamentary system only to the extent that they can use the resources it provides to weaken it. They explicitly repudiate the notion of centralised government.⁶

The article also suggests that the processes of traditional politics mean very little to them with the result that they are not susceptible to many of the pressures which might be brought to bear on ‘conventional’ politicians. A recent speech by Senator Chamarette arguing for the retention of the Senate’s power to reject supply suggests that the Greens are neither naive nor totally unconcerned with the realities of traditional politics. In that speech the Senator put forward a very clear defence of the Senate’s current powers and evolving role as fundamental to real democracy in Australia.

It is a measure of how far the Senate had evolved as a party house that accommodating the independents has been a sometimes painful process. The diversity of views and the uncertainty minor parties introduce into the process can be very frustrating, particularly for the government party. The frustration is best caught in the comment of the Foreign Affairs

⁶ *ibid.*, p.38

Minister and Leader of the Government in the Senate, Senator Evans, when he said, ‘They have made my life an absolute and unequivocal misery. And as much as anything, that’s why I’m fleeing the Senate.’⁷ He went on to say that negotiating with them was, ‘the sort of thing that made grown men weep and jump off tall buildings’.⁸

I do not necessarily endorse these judgments, however they do indicate the changes wrought by the presence of independents who accept neither the traditions of the institution nor the conventional practices of political parties.

The most significant procedural changes in the chamber to accommodate minor parties and opposition have been in the handling of legislation. One of the more embarrassing features of the ‘old style’ Senate was the end of session rush to put through legislation without even a semblance of proper scrutiny. That has gone as a result of a Democrat initiative and legislation must now be introduced into the Senate with ample time for proper consideration. A subsequent development of this procedure, instigated by the Greens, also set deadlines for the introduction of legislation into the House of Representatives if it were to be considered by the Senate in the same sitting. The practice is now to introduce legislation in one period of sittings for passage in the next.

This has had repercussions throughout the bureaucracy, demanding much more efficient planning of the legislative program and acceptance by government that bills cannot be rushed through. The more measured consideration of bills in the Senate has been supplemented by the systematic reference of bills to committees for more detailed scrutiny under a procedure introduced in 1989.

There have been many other changes which generally have the effect of reducing the control of the governing party in the Senate. For example, in the conduct of question time there is:

- an imposition of time limits on answers by ministers;
- the use of supplementary questions; and
- the practice of taking note of answers immediately after question time—a practice which was formalised in 1992 and is now, in effect, a thirty-minute extension of question time, which the opposition uses almost exclusively.

These visible changes to procedures are paralleled by a whole range of practices behind the scenes. The meetings of ministers, whips and parliamentary staff to organise the programming of business in the chamber have grown over the years to accommodate the independents and minor parties. Contentious pieces of legislation also demand extensive informal negotiation before they appear in the chamber—and I refer you to Senator Evans’ comments.

⁷ The *Independently Monthly*, p.36.

⁸ *ibid.*, p.37.

The development of committees has been extensively discussed and analysed. Recent changes have seen the estimates and standing committees amalgamated, and, consistent with the theme of declining executive control, the acceptance that the government party should no longer control the general inquiry function, the reference function, of the standing committees means that these committees now have coalition or Democrat chairs. How this will all work out remains to be seen. We will be reviewing that probably next year.

These changes have not been without cost. They are open to abuse by those who wish to disrupt the chamber or 'beat up' partisan controversy. If there is a change of government, it will be very interesting to see how they are used by a new opposition or tolerated by a new government.

In the midst of all this, the President's role is changing. It used to be a position that rated high in protocol but low in real power. The changing nature and increased complexity of managing the chamber and the size and scope of the parliamentary departments have changed all this.

I suggested at the beginning of this paper that the President is no longer above the fray. The Senate has become a more combative chamber; the government has to work much harder to get its program through; it is more vulnerable to opposition scrutiny and attack; and the numbers make the whole process less certain and therefore more tense. In these circumstances, the perceived independence of the presiding officer can come under close scrutiny while at the same time he or she is denied the security of being supported by the majority party.

The party on the government benches in the Senate is that party which has a majority in the House of Representatives, irrespective of whether it has a majority in the Senate. Thus although the Senate has, so far, continued to elect a president from the government party that person does not have the security of knowing that he or she necessarily has the backing of the majority of senators in all situations. In practice this means that unlike my colleague in the House of Representatives I cannot easily remove a senator from the chamber for persistent interruption or other misbehaviour. I simply do not know that I have the numbers, and I certainly do not have that standing order which the Speaker refers to as the 'sin bin', which allows him to throw members out for an hour.

The presence of minor parties and independents has also added complexity. For example, the opportunity to ask questions is now subject to fairly complex arrangements seeking to balance the interests of the major and minor parties. The Government, in that process, has been forced to concede the fact that it asks fewer questions than it is proportionately entitled to—it has virtually given them to the minor parties and the independents.

The President's role as 'minister', jointly with the Speaker, for the five parliamentary departments will also increasingly expose him or her to controversy. There is a vast inequality in access to information between the government and non-government parties. Ministers are supported by their departments, and government backbenchers benefit from that as well. All senators and members expect first-class administrative support. However, for non-government members and senators, the resources of the Parliament itself are vital to their effectiveness. An independent may have virtually no organisational research or clerical support other than that provided; therefore they have a keen and critical interest in it.

Like every other area of public activity, the services which individual senators think they should receive far exceed the funds available. The application of computer technology to members' offices, the *Hansard*, the library and the internal operations of the Parliament is now a vast expense and, given the rate of change of technology, an open-ended commitment. For example, access to the Internet for all senators and members is a matter of current debate—it is, in fact, now a resolution which passed through the Senate just this week. The resolution was moved by the Greens and supported by everybody. It says that we have to put the Internet into everybody's office immediately despite the problems and costs.

The scope of these services is ever increasing; for example, the Department of Parliamentary Reporting Staff now has capital assets of more than \$100 million, mainly in the form of electronic equipment requiring progressive upgrading. In fact, the capital replacement program for this Parliament has now become a major problem.

A former senator once remarked that this building was a tourist attraction in which Parliament occasionally met. While exaggerated, the comment does point out the vast change in the responsibilities of the presiding officers brought about by the move to this building. The building itself now demands a level of management and operational skills and a budget unheard of in the Old Parliament House. Our responsibilities now embrace everything from privatisation of catering services to art acquisition programs; from maintaining the design integrity of the building to dealing with protesting loggers, farmers and opponents of US bases in Australia.

The 'good old days' of fairly lax public scrutiny of what used to be considered one of the peripheral areas of the public sector are gone. Thus the presiding officers may find themselves in conflict with the Minister for Finance on the one hand, who believes that parliamentarians should practice what they preach and control their budget, and their parliamentary colleagues on the other, who believe that budgetary restraint imposed by the executive represents an unwarranted interference in the working of the legislative arm of the Constitution.

Issues of procedural change and the provision of services are increasingly brought into the public arena. Matters relating to standing orders or the operations of committees or budgetary questions were, in the past, generally resolved pragmatically in one of the house committees—library, appropriations and staffing, procedure and joint house—which oversee the workings of parliament. Now it is not uncommon for these matters to be brought to the floor of the Senate and debated there or examined in an estimates committee. In either case, the presiding officer cannot be an aloof figure above the tumult; all too frequently, he or she is required to defend administrative or policy decisions in detail. The President of the Senate must appear before an estimates committee to answer questions relating to the appropriations of all the parliamentary departments except the House of Representatives. In practice, these committees can range over every aspect of the operations of the departments.

I suggested at the beginning of this paper that the kind of passive ceremonial role which some of my colleagues seem to think proper for the President of the Senate is not only personally uncongenial but also impractical. Like my colleague in the House of Representatives, I am a

member of the government party, I attend its caucus meetings and conferences and participate fully in factional activities and the workings of state and local branches in my electorate.

There are regular calls for an ‘independent’ presiding officer on the English model, free of party involvement and whose re-election is uncontested. I find this latter proposal particularly attractive, having had major problems with my own preselection. However, I question whether such a role is practical in Australian politics. A chamber of 630, as in the UK, may cheerfully write off one seat. I doubt whether one of 76 can do so, particularly where the outcome of votes is now so uncertain given the number of independents and minor party senators.

An alternative might be to make permanent a process whereby the President and his or her deputy are always selected from opposing major parties and are, thereafter, ‘paired’ for the life of the Parliament, thus cancelling out each other’s votes. Since I do not, as chairman of the Senate, have a deciding vote, this would not be a problem. It may not, however, be acceptable to members of minor parties or independents who may aspire to either position.

The continuing party involvement outside the chamber would also be difficult to overcome. Seats in the Senate are highly valued; it would require a major shift in attitude for one to be reserved for a figure who was to be denied any party or political role. Nor would it be realistic for a presiding officer to forgo all party activity for three or six years and then expect to be in a position to contest a preselection. Already the increasing demands of the President’s job make it progressively more difficult to meet one’s party obligations as well.

It seems to me that to look to the modern British speakership as a model is a mistake. Lack of bias in applying the standing orders is not difficult to achieve. Being freed from party allegiance is not really necessary. I do not think anybody in my position would seek to use it for partisan advantage: I do not believe I do—and I think the best test of that is that I get criticised equally by both sides of the chamber for being biased against them, so I must be doing something right, although I do not pretend to be doing everything right.

Political reality is more likely to lead to different sorts of presidents. I have suggested that the President’s role is expanding to the extent that soon he or she will no longer be a figure above the fray. The Senate, as an increasingly independent institution embracing parliamentary rather than executive values, does come into conflict with the executive and is occasionally subject to attack from members of the other place. The presiding officer in the future might be drawn into such conflicts as the spokesman of the Senate. As the chief executive of an agency with a budget comparable to some of the smaller departments of state, the presiding officer is already exposed to all the mechanisms of accountability. He or she will frequently be in conflict with the government of the day in seeking to maintain the institution’s budget. As the first among equals of an increasingly fractious chamber, he or she will frequently be drawn into controversy with his or her own colleagues on matters of procedure or the provision of services.

Thus, the days of the long-serving President, filling a largely ceremonial office prior to a well-earned retirement—which was the case until recently—are gone. A single-term president drawn from the non-government parties representing the Senate against the executive and

defending non-government party interests seems a more likely outcome than a British-style presiding officer.

Questioner — You said that the Constitution does not recognise political parties. I would suggest that the 1977 amendment to the Constitution was a far more important amendment than people generally recognise. For the most part, it is thought that no amendment can give constitutional status to what was called Convention 40. I would suggest that what previously existed was a gentlemen's agreement and that the real significance of the amendment was that it gave status to political parties and the States in the filling of casual vacancies—that is, we now have party machine appointments for casual vacancies.

The significance is that the Senate has the balance of the term. For example, Senator Christabel Chamarette would have been forced to face the 1993 election under the old arrangement but now fills the entire term, as does Senator Kay Denman who fills 95 per cent of the term for which Michael Tate was elected. Therefore, that amendment actually gave status to the proportional representation system because without proportional representation you would not have been able to justify such an amendment. It gave status to political parties and it therefore essentially said that the Constitution now says that the Senate is a states' house and a party house and is elected on the basis of proportional representation by a political party within each state. Therefore, I suggest that the Constitution does recognise political parties and does give status to them—much greater than most people realise.

Senator Beahan — You have made a good point—that the 1977 amendment to the Constitution does, in fact, recognise political parties in a de facto way. The explanation was very interesting.

Questioner — Could you tell us whether there is any device that would enable a government to spend money contrary to the wishes of the Senate, perhaps up to a limited amount of something like \$240,000? I ask this because many years ago when I was studying public administration under the highly respected Professor Bland, who subsequently was the Chairman of the Public Accounts Committee in this Parliament, I learned that there is a fund called the advance to the Treasurer in which every year in the Budget the Parliament provided a sum of money on which the Government could draw to meet any unexpected expenditure. I wonder whether a government could use this device to meet the debts of unhappy ministers who have found themselves saddled with enormous legal costs?

Senator Beahan — I do not pretend to be an expert on the Constitution, but I think the answer to that one is simple enough—the Government tried to use that device, but the Senate, rightly or wrongly, stopped it. I believe that the funding for the challenge to the Royal Commission was more important than the defence of Carmen Lawrence in the Royal Commission itself. What was at stake there was a fundamental attack on the executive and, more importantly, parliamentary privilege. I think that one has yet to be resolved. It is a pity that that case is not going to be pursued.

Questioner — I have been unhappy about the fall in the standard of conduct in debates in recent years, particularly in the House of Representatives. I wonder whether it might possibly be due to the falling away of the rule that members should address the Chair. They now often

seem to address each other across the floor. I think it is fair to say that in the Senate this rule has never been so strictly enforced. People have tended to address each other across the floor, and it has been accepted as part of the cut and thrust of debate. I wonder whether the President might have some comment on this.

Senator Beahan — I think it is a significant point. It is important to remind people regularly that they should address the chamber through the Chair. It immediately draws away from that tendency to attack the person and makes people think twice about what they are doing. But I think it goes much deeper than that. I think the behaviour in the chamber is partly a tradition of the Westminster system, which I think is a bad tradition that we have picked up and made worse; partly a product of the more serious nature of politics and of greater tension in the Houses; and partly a general breaking down of standards, which is hard to control from the Chair.

As much as possible, I try to exhort people to behave better, but have been attacked by many people in my own party—not everybody. It is only a minority in both parties who regard question time as a bit of a joke. They see it as a bit of fun—‘you have it for an hour and it has little impact’. My view is that it has a very big impact on the standing of the institution and the standing of the people in that institution because it is televised.

Many more people see it than I thought. I used to think it was only my mother who watched me at question time, but there are a lot of other people who watch question time. I was recently door knocking in Shark Bay when somebody said, ‘Hello, Mr President. Come on in and have a drink. I watch you every day’. This has happened to me several times at airports and elsewhere. Many people seem to watch it. The program ‘Ring the Bells’, which is shown at the end of a sitting week, rates at something like 22, which is a very high rating for a program screened at eleven p.m. So there is an interest in it. Given that there is this interest, the behaviour must have an impact, and it must have a deleterious impact. Getting that message across is very difficult and, as I said, the whole business of question time is a slightly anachronistic ritual.

This is an heretical thing to say. It is not a process that is very good for disseminating information. It is used politically, especially in this time of the electoral cycle. We really do need to look at it carefully and to question just how well it is working. That is something that there is not a great deal of willingness to do. The other point is that there are a few very rude and coarse people who are not going to be affected by any of these exhortations. That is another aspect of it that needs to be said.

Questioner — Senator Beahan, could you return to the standing of the Parliament and the points you were making about political parties? I am interested because generally there seems to be a decline in regard for the political process and its practitioners. I would like you to comment on how this might be improved.

Senator Beahan — At the outset, I should declare an interest. I am a member of a big political party. I have been a central member of that political party as state secretary of the party in Western Australia, national vice-president of the party and convenor of one of the

factions—the Centre Left faction—for a number of years. I am very much a party machine person, so you will have to account for these prejudices.

I happen to think that the big party systems work because they refine ideas. You cannot come into a big political party with crazy ideas and get them through to the policy level very easily. They have to go through a process. They are knocked about a bit and the people who put them up are knocked about a bit. The learning process is a very speedy one as that happens. So the policy proposals and the platform of my party that come out at the end of a conference are pretty well refined policies that have had a lot of discussion, compromise, debate and are proposals on which people have risen or fallen. That is a very good process, I think, for refining ideas.

Drawn from that platform is the manifesto which the party takes to the people. I think it is much more honest to go to the people with a manifesto drawn from a platform and backed by a platform which that party is committed to. Political parties commit themselves to those policies to a greater or lesser degree, but they do commit themselves to a platform in the main. The people know broadly what they are voting for.

If you vote for an independent, you are never quite sure what you are voting for. You know that you might be voting for a cluster of ideas or for an attitudinal position, but usually only on a small group of things. For example, Green senators—I am not criticising Green senators for this—by the very name, represent green issues, but they vote on all matters and participate very actively in debate on all matters. So the people who voted for them, I do not think, had any idea how they would vote on certain matters and yet they are able to do that freely once they get into power.

The second point is that I think there is a protection given by large political parties against those excessive groups—extremist groups—within society that would like to influence events but do not have enough base support to do so. They can make it very difficult for a member in a local constituency.

The American system suffers from this. Congressmen—more in America than here—tend to see themselves as local constituency representatives. Getting coalitions of those congressmen together to do some of the difficult things that need to be done in any nation to address the problems is always difficult because they are always looking over their shoulder at their constituency. So reducing defence expenditure, cutting the deficit and agricultural reform are extraordinarily difficult things in America because you have the vested interests of local constituent politicians fighting them at all times, and they are subject to the extremists. For example, groups like the Right to Life Association can put immense pressure on somebody who votes according to its view the wrong way. The political party gives you some protection against that and allows you to take unpopular decisions in the national interest with some protection against the fallout from that.

For those two reasons I am a strong supporter of big parties. I am not suggesting that minor parties and independents do not have a place, but I would hate to see a parliament made up of them. I do think that in parliament, even as it is, they can be quite a destabilising force.

Questioner — I would like to raise two points. Firstly, you expressed scepticism about the effectiveness of question time as a means of extracting information from the executive. I wonder whether you might care to speculate upon how the mechanism might be improved.

Secondly, in relation to parliamentary committee hearings, I have been struck by how their effectiveness is limited by the fact that members and senators have obviously not had time to do all the necessary preparation. I wonder whether their effectiveness might be increased by instituting the idea of counsel assisting the committees, which I understand happens in America.

Senator Beahan — On the first point, I do not see that change will occur because I think the political forum is important for other reasons. There is not much information drawn out of it, but it is important for other reasons—it is a showplace for the skills of the protagonists on either side and the gallery watches it and reports it with great interest. No, I do not have any suggestions as to how that might be improved, and I have never addressed my mind to it because I do not think it is going to change. I think we just have to put up with that. It is one of the imperfections of parliament which we probably have to put up with, although I do not think we have to put up with the level of behaviour which is, as somebody has already suggested, dropping.

On the other question, it is difficult for senators, particularly those who have heavy committee responsibilities with a number of committees to attend and very busy schedules, to do the full preparation that they need to do to address issues. Frankly, it would be a pity if that were solved by bringing in counsel. It moves too far away from the parliamentary ideal of local representatives representing the ideas of people out there.

I have not seen the American system in progress. There may be cases where it would be sensible to have that; for example where a highly technical issue is being discussed or something like that. Another solution offered was to increase the number of staff in the committees. While that might help things, the staff, as they are, present plenty of material to the senators. It is just turning that material into useful material for hearings that is difficult. The difficulty there is that they simply do not have the time to do it.

There are no simple answers to that issue except to take a more realistic view of how many committees there are. We have set up far too many select committees, for example, and we have sometimes set them up for the wrong reasons. All that does is dissipate the efforts or the energy of senators as they have to attend these meetings for, very often, purely political reasons. That just draws on the energy of the committee system generally.

I believe that we should be more sensible about the number of committees we maintain and should not keep setting up committees for whatever reason without concern for the fact that people are overloaded. One of the difficulties for the government party in the Senate now is that it has only twenty-nine members but has to have a full representation on all committees, including trying to make up the majority on half of those committees. That is an impossible task. People are just run ragged. A rationalisation of that has to occur, and that is currently under review. It will be discussed, but it is a difficult one to control.

Australia's Senate and Senate Reform in Canada

Professor Howard Cody

When Canada's current political system was established in 1867, the Fathers of Confederation took pains to make Canada's federal government conform as closely as possible to British practice—and to diverge as sharply as possible from the supposedly failed political system of the United States. As Britain was a unitary state and Canada was a federation like the United States, this proved a formidable assignment. John A. Macdonald and his colleagues did their best. For one thing, they patterned their federal Senate after the British House of Lords. The chamber's members were to be appointed for life by the Governor General in Council (that is, by the prime minister), each 'region' of Canada (Maritimes, Quebec, Ontario, and the West) would receive twenty-four senators, and the Senate was to provide a House of Lords-style 'sober second thought' (Macdonald's term) to House of Commons-passed legislation. The Senate enjoys a legislative veto, but not because the Fathers of Confederation considered scrutiny and review desirable for their own sake. They believed no such thing. Instead, the Senate was intended to protect wealthy Canadians from potentially 'unwise' legislation passed by an unpredictable people's chamber. The Senate still retains its original structure with only minor modifications.¹

Although Canada's Senate defeated many Commons-passed bills in the nineteenth century, its lack of democratic legitimacy has proved a serious hindrance in the twentieth. Canada's current Senators fully realise that most Canadians and the media believe that appointed officials should not overrule the democratic will of the people as expressed through an elective chamber. For this reason, Canada's Senate rarely asserts its legislative veto. This predicament places Canada's Senators in an awkward and apparently superfluous situation.

¹ The definitive treatment of Canada's Senate claims that the chamber now operates as a lobby for the business and commercial interests with which many Senators are associated. Colin Campbell, *The Canadian Senate: A Lobby From Within*, Macmillan of Canada, Toronto, 1978.

At this time, the few Canadians who care about their Senate divide into three categories concerning what to do with it. Some Canadians wish to keep the Senate as it is, if only because this option imposes the least aggravation. Others advocate abolition of the chamber, while still others want Senate reform. This paper addresses only the Senate reform argument, but acknowledges that many Canadians who are dissatisfied with their existing Senate perceive no compelling reason to reform the chamber.

Since the 1970s, the Senate reform movement has gained considerable public support in those regions of Canada which have shown the greatest alienation from federal government policies, especially the four western provinces. All eight provinces of 'outer' Canada carry a long history of resentment against federal policy making which allegedly serves the interests of the 'inner' provinces of Ontario and Quebec.² Ontario and Quebec always have dominated the majoritarian House of Commons and federal ministers. (As of early 1996, these provinces provided 174 of 295 Commons seats and fifteen of twenty-three ministers, including, as usual, the prime minister.³) The two large and wealthy westernmost provinces, Alberta and British Columbia, endure the strongest alienation. Unsurprisingly, they have supplied the greatest impetus for Senate reform. Western Senate reformers have reached a near-consensus that Canada needs a 'Triple E' Senate not necessarily for executive scrutiny but to extend to 'outer' Canadians their deserved participation in federal policy making. Such a chamber would be elected, effective, and feature equal representation per province. Senate reformers' formulas for electoral procedures and effectiveness vary, but reformers agree that a new Senate will require the power to override or at least delay Commons-passed legislation.⁴

Canadians who propose Senate reform should seriously consider several aspects of Australia's experience with a Triple E Senate. After all, Australia serves as the only other 'First World' Westminster federation. Because the Canadian Senate reform movement advances the perceived needs of 'outer' Canada, I interviewed sixteen Senators from Australia's four 'outer' states (all states but New South Wales and Victoria) in May and June 1994 in their Canberra offices.⁵ I also interviewed Mr Harry Evans, Clerk of the Senate. Issues raised in these interviews were those which Senate reformers consider most important for protecting 'outer' Canada: method of election, representation of provinces and specified groups, party discipline, Senate powers, Senators in the ministry, and provisions for resolving House-Senate disputes.

² For an excellent survey of the causes of western alienation, see David Kilgour, *Inside Outer Canada*, Lone Pine Publishing, Edmonton, 1991.

³ 'Outer' Canadians fully realise that a succession of Quebeckers have served as prime minister for all but twenty-one years of this century, and for all but two years since 1963. This is one of many components in the resentment of many English Canadians over French-speaking Quebec's alleged domination of Canada's political life.

⁴ For a discussion of the Senate reform issue in recent years, see Randall White, *Voice of Region: The Long Journey to Senate Reform in Canada*, Dundurn Press, Toronto, 1990.

⁵ A report of earlier Australian interviews is found in Howard Cody, 'Australian Small State MPs and Senators as Representatives', *The Australian Quarterly*, vol. 60, no. 2, Winter 1988.

This paper argues that Australia's Senate experience has much to teach Canadians about their own Senate, even if (as we shall see) the functions which Australia's Senate carries out best are not the services which Canadian reformers demand from their own Senate. Australia's Senate performs reasonably well in a rather unfavourable environment. The Australian politics literature somewhat misleadingly refers to the Commonwealth Parliament as a 'Westminster mutation'. It appears so structurally, and the Senate was intended to operate as a states house, but in operation Australia's Parliament works very differently. Australia features the British majoritarian parliamentary system in uneasy accommodation with some American and some uniquely Australian elements. Support for British majoritarianism (the majority rules), not American constitutionalism (minorities can defeat majority-endorsed policies through checks and balances and separation of powers), largely prevails in Australia. It is telling that even Tasmanian Senators—Labor and non-Labor alike—confessed their difficulty in defending equal Senate representation for their state given what Australians consider substantial population differences between the states.

In Australia one encounters strong evidence of the same majoritarian mind-set and (to a lesser extent) the unicameral mentality which one finds in Canada and Britain, but which is wholly absent in the United States. Conspicuously missing from both Westminster federations is the uncontested American principle that equal state representation in the upper house represents a desirable and a democratic check on the majoritarian tyranny of numbers which the large states can impose in and through the lower house. That is, in the United States, where population differences between large and small states are many times greater than in Australia, the Senate representational principle enjoys fully equal legitimacy with the House of Representatives representational principle. This still is not the case in Australia, after nearly a century of a powerful upper house with equal state representation. Instead, Australian Senators indicated that Australians justify upper houses primarily for their negative and reactive responsibilities, as devices to scrutinise arbitrary and corruption-prone executives and to review government legislation.

Surely to some extent this situation testifies to a political system's capacity to mould minds to its underlying norms. However, Australia also may provide another explanation for this phenomenon. Tight party discipline in the Senate, before and since the introduction of proportional representation, has prevented Senators from acting conspicuously and effectively as champions of their states. Even though small state Senators enjoy a 2:1 numerical advantage in the chamber and on its committees, the Senate's present operation empowers opposition parties rather than the states as such. Although proportional representation confers much legitimacy, the Senate and especially individual Senators can command less legitimacy and public support as a redundant second party house than as the only states house. It is not wholly coincidental that the Senate faces its familiar reactive 'veto or echo' dilemma as a party house.

If Australia's Senate redefined itself as more of a states house (not necessarily as a small states house) and less of a party house, its exercise of power might attract less criticism, and in time the Senate might impress Australians with some of the arguments for a proactive upper house. The Senate now endures attack for empowering what large party interviewees called the 'marshmallow left' (the Australian Democrats) and the 'lunatic fringe' (the Greens). Would any political leader, even Mr Keating, dare dismiss Western Australia and

Queensland in similar terms? One suspects not, from fear of electoral retribution if nothing else. However, it might take a major transformation of Australia's Senate and political culture to effect the confrontation of majoritarian norms which might prove necessary before Australia's Senate can truly become a states house.

Canada's Senate Reform Movement

Canadian Senate reform proponents desire their proposed Senate to perform four functions which they believe the House of Commons cannot carry out effectively:

- *representation* (the Senate should offer legislative participation to those Canadians who do not enjoy adequate representation in the Commons, especially residents of smaller provinces, women, aboriginals, and certain other minorities);
- *responsiveness* (the Senate must demonstrate clearly that it is advancing the interests of these Canadians);
- *accountability* (Senators must answer to these Canadians, if only through the electoral process but for some reformers also through a recall provision); and
- *legitimacy* (Canadians must perceive that the Senate is carrying out its intended responsibilities in an appropriate manner).

Note that the scrutiny function is conspicuously missing from this list.

The Triple E Senate movement should be assessed in light of these arguments. Consensus on the details of Triple E still eludes Canada's Senate reformers. The Calgary-based Canada West Foundation, which has spearheaded the struggle for a Triple E Senate for more than a decade, has conducted several studies which defend the argument that the Senate must differ conspicuously from the Commons, but declines to offer specific recommendations on the details of Triple E.⁶ Although Senate reformers traditionally have concentrated their efforts on attaining equal provincial representation, they now realise that changes in Canadian society over the past decade necessitate a more inclusive model of Senate representation. The 1982 Canadian Charter of Rights and Freedoms may well be transforming certain Canadians into entitlement-demanding citizens like their American counterparts. The Charter already has empowered so-called 'Charter' Canadians (women, aboriginals, official language minorities, gays and lesbians, ethnic minorities, and other groups) who now demand enhanced and assured access to policy makers through organised interests or direct participation in policy making.⁷

⁶ The Canada West Foundation published a series of papers on various aspects of the Senate reform issue in the early 1990s. The most useful are Dr David Elton and Dr Peter McCormick, 'Measuring Senate Effectiveness', Canada West Foundation, Calgary, December 1991; and Dr Roger Gibbins, 'An Elected Senate', Canada West Foundation, Calgary, November 1991.

⁷ For studies which make the claim that the Charter of Rights and Freedoms is transforming Canada into a rights-oriented society like the United States, see Alan C. Cairns, *Disruptions: Constitutional Struggles from the Charter to Meech Lake*, MacLelland and Stewart, Toronto, 1991; and Seymour Martin Lipset, *Continental Divide: The Values and Institutions of the United States and Canada*, Canadian-American Committee, Toronto, 1989.

Canada's failed Charlottetown accord constitutional amendment package, which lost an October 1992 referendum, included (amongst many provisions) a Triple E Senate of sorts. This Senate was not a major or an especially controversial component of the accord, and the referendum defeat probably was not greatly influenced by the public's evaluation of the Charlottetown Senate. Moreover, the Charlottetown Senate almost surely expired with the remainder of the package. When Senate reform negotiations resume, Charlottetown probably will be disregarded. Even so, it might be noted for the record that the Charlottetown Senate would have provided a chamber of some sixty Senators (six per province) in a Parliament with well over three hundred MPs, election by procedures to be determined later by each province separately, and a suspensive veto over most legislation which could be resolved by a joint sitting of both houses without a double dissolution feature and with a better than 5:1 ratio in the Commons' favour. Many westerners who had fought for a powerful Senate dismissed the Charlottetown Senate as worse than the present arrangement, largely because of the unpromising joint sitting provision.⁸

At present, Canada's Senate reform movement remains in its potentially lengthy post-Charlottetown intermission. The issue will re-emerge in constitutional talks scheduled for early 1997. The Charlottetown failure affords Canadians the time to consider with care how they can devise a Senate which can carry out the responsibilities which a new Canadian Senate will need. The Australian Triple E Senate can identify what may and may not contribute to meeting these requirements.

The Australian Senate in the Commonwealth Parliament

This section assesses how small state Australian Senators consider their situation with respect to the electoral system, the Senate's powers, party solidarity, representation by state, the Senate's relationship with the House of Representatives, the Senate committee system, and Senators in the ministry. These are the issues which preoccupy Senate reformers in 'outer' Canada. All Canadian Senate reformers can agree on one feature: the chamber must be elected. While proportional and first-past-the-post simple plurality systems have their champions, very few Canadians display an interest in a preferential ballot. Australia's proportional ballot for the Senate has advantages and deserves serious consideration in Canada. A party list system creates nearly anonymous Senators, but it does permit the Senate to respect gender and ideological balance and to accommodate Senators of diverse backgrounds, careers, and party factions. Australia's Senate shows markedly more balance than the Representatives only in regard to gender, but a party list system can facilitate much greater upper house distinctiveness than Australia practices.

Moreover, a proportional arrangement allows Senators to secure election from parties which cannot win House seats in a state or province remotely proportional to their support there. Australia's Senate performs well in this regard, but note the discussion of party solidarity below. The relative absence of MPs in the government caucus from important sections of

⁸ For a western evaluation of the Charlottetown Senate, see David Elton, 'The Charlottetown Accord Senate: Effective or Emasculated?', in Kenneth McRoberts and Patrick J. Monahan, (eds), *The Charlottetown Accord, the Referendum, and the Future of Canada*, University of Toronto Press, Toronto, 1993.

Canada (especially western Liberals) has presented a recurring problem in Canada, not least in the current Parliament. These representational issues speak to legitimacy: Canada's new Senate must show clearly that it is respecting the interests of all provinces and important provincial populations, as well as newly-active 'Charter' groups.

Australia's Senate is powerful, one of the half-dozen strongest elective upper houses in the world. Interviews made it clear that any Westminster-modelled upper house needs coercive power—namely, a veto over legislation—if it is to establish and maintain credibility as a chamber of legislative review with the ministry and the lower house. Australian interviews identified eight functions or contributions to Australian political life which the Australian Senate, and only the Senate, can carry out:

- independent *scrutiny* of the executive to impose accountability and to detect misconduct and expose wrongdoing,
- *review* of legislation to improve government bills with amendments and to defeat unwise legislation,
- *checks and balances* against an otherwise all-powerful executive,
- a sense of *legitimacy* as residents of small states and supporters of opposition parties receive better representation in the Senate than in the House of Representatives,
- a source of *power* in national policy making for small states,
- an opportunity for small parties to provide *innovation* through their ideas for new policies,
- small party representation which helps to respect Australian society's growing *pluralism*, and
- finally the *time for close study through committee work* on major issues in Australian life which the House of Representatives cannot provide.

Australian Senators generally agreed with academic and press observers that their Senate performs the first three of these functions (especially scrutiny and review) quite well, largely through its committee system. Most interviewees appear to believe that the first three functions are the most important. The remaining functions are carried out less effectively and in particular less visibly, especially when they endeavour to protect the small states. Here the powerful norms of party solidarity, where the Senate nearly replicates the House of Representatives, prevail and make Australia's Senate more of a small parties house than a small states house. Party solidarity prevents small state Senators from exploiting their 2:1 numerical advantage. Put differently, party solidarity usually rules out the election of Senators who maintain stronger loyalty to their states than to their parties, or who build personal reputations and followings in their states. Instead, it is the small parties which exploit proportional representation to advance their own agendas. While this scarcely makes Senators 'unrepresentative swill', it does leave the chamber open to the charge that it comprises a redundant second party house.

Despite all this, small state Senators often do advance interests with which their states—or more accurately, their state parties—are associated. However, the manner in which they must operate helps to ensure that Australians and the media generally give Senators little recognition and appreciation for their efforts. Small state Senators usually operate as inconspicuously as their large state colleagues. They realise that they must maintain party solidarity and publicly advance policies popular in the large states where the next election—which is never far off in Australia—will be won or lost. This raises the matter of

public perceptions. Australians can monitor few if any of their Senators' party room activities. In fact, Australians usually receive very limited exposure even to their Senators' *public* exertions, including their committee work. Amongst other complications, this near-invisibility of Senators' lobbying and legislative activity combined with their general anonymity helps to prevent the public from expressing strong disagreement when Senators are called bludgers or worse.

Even so, in the Hawke and Keating governments small state Labor Senators sometimes secured concessions for their states through private intercessions with ministers. Liberal and (especially) National Party Senators make vigorous public and (more often) private representations on behalf of distinctive state concerns such as the wine industry in South Australia, grazier and timber interests in Tasmania, and the sugar industry in Queensland. Often they have enjoyed some success. For example, some small state Liberals asserted that they had influenced their party's position on aboriginal land claims. However, the Liberals were out of power at the time. Although the Australian Labor Party is well known for its imposition of a Leninist 'democratic centralism' on MPs' and senators' recorded votes, Liberals almost never cross the floor either. Differences in Liberal and ALP small state legislators' success in influencing party policy behind the closed doors of party rooms do exist but may be smaller than some believe. Backbenchers everywhere enjoy the most influence over party policy and tactics when in opposition.

Small state Senators characterised equal state Senate representation as a discernible benefit to their states. Their defence of equal representation was largely negative, much like Australians' justification for an upper house. That is, in both cases the Senate prevents undesirable outcomes through reaction to government policies and practices more than it facilitates desirable outcomes through proactive policy initiation of its own. Senators conceded that the Senate's operation does not give small states great power, but they contended that their states would enjoy still less party room leverage if the Senate and its party caucuses were majoritarian like the Representatives. Also, they identified the combination of equal state representation and proportional representation as a powerful inducement to all parties to respect each state's sensitivities, if only to avert the loss of a potentially crucial Senate seat.

Still, small states derive remarkably limited benefits from equal state representation. The pervasiveness of majoritarian norms plays a role here. However, weaker party discipline and/or the emergence and success of small state-oriented parties in the Senate might advance small state interests more effectively—and much more visibly—than the present arrangement. At the same time, these changes would generate still greater executive annoyance with the Senate, as Senators would demand larger policy concessions than they do now. In fact, Senators who can be (even falsely) labelled 'unrepresentative swill' create fewer problems for governments than competent legislators who perform conspicuously as champions of constituencies whose interests the ministry does not advance effectively.

We must take care not to beg the question on this point. Australia is not Canada. Perhaps Australian society is insufficiently divided by distinctive state or cultural identities, and also is too supportive of majoritarian unicameral and Westminster norms, to justify an equal state representation Senate whose members advance state interests. Besides, Australian society is

somewhat more homogeneous than even English Canadian society; Australia's small states already enjoy access to power in the major parties and in the ministry (some of it from the Senate), small states exercise visible power through their own governments, and small states receive a generous subsidisation from the Commonwealth. Small state Australians express less alienation over New South Welsh and Victorian numerical domination than Albertans and British Columbians display over Ontario and Quebec's perceived power monopoly, although the relative state/provincial populations and apportionment of MPs in the two countries are strikingly similar.

The Australian Senate's relationship with the House of Representatives centres around the 2:1 House-Senate nexus, the double dissolution procedure, and the manner in which the Senate can maintain a public image and reputation manifestly distinct from the Representatives. Clearly, Australia's constitutionally-imposed nexus works to the Senate's advantage in some respects. Many upper chambers (including the United States Senate and Canada's abortive Charlottetown Senate) feature greater than 4:1 ratios in the lower house's favour. While this presents no difficulty in the United States, the numerical ratio between chambers in a parliamentary system with joint committees and sittings is crucial. A small party Senator observed that Australia's Senate needs as many small state (and small party) Senators 'rattling around' Parliament House as possible, in order to ensure that these states and parties command attention and influence.

Double dissolution helps the Senate, but not from the nexus, whose potential advantage in a joint sitting is negated by proportional representation. Because the executive usually wishes to avert double dissolution (if only because it tends to advantage the vexatious small parties in the subsequent election), the Senate enjoys a favourable negotiating position on disputed matters. On the question of how the Senate maintains a distinctive reputation, Australia's Senate experience offers a case study replete with practices to avoid—a reputation much more for reaction and review than for proaction and policy initiation, which can be too easily associated with obstruction where majoritarian norms prevail; Senators in the ministry; and replication of the lower house's partisan atmosphere producing the 'same debates and same question time' as the lower house. The experience of the Australian Senate also provides examples of practices to adopt—a unique electoral system; party balance in proportion to the public's actual preferences; a different party composition; a genuine legislative role for large and small opposition parties; no party majority in the Senate; a relatively large Senate; and a respected committee system.

Many Australians contend that their Senate's strongest feature is its committee system. While this may be correct, there are problems with the workings of Australia's Senate committees which Canadian Senate reformers should seek to avoid. Thanks to highly disciplined parties and to the executive's jealous monopolisation of policy initiative, Australian Senators (much like Australian and Canadian MPs) often feel little incentive to become highly knowledgeable on matters considered by their committees or to work diligently on committees. Behaviour generally follows rewards. Only when Senators perceive committee work as useful and rewarding, as playing a major role in making public policy and in advancing their own personal reputations and careers, will they covet committee chairs and commit themselves fully to the time-consuming drudgery that committee work entails.

On the other hand, the situation for Australian Senate committees could be worse, much like it was before proportional representation was introduced. The Senate's legislative veto,

combined with the absolutely crucial proportional electoral system which prevents the ministry from controlling a majority of Senators, does offer Senate committees all-important credibility. Committees often exploit these features, which allow opposition parties (large and small alike) occasionally to influence legislation. Note, however, that they do so to advance their own agendas, not the interests of small states or groups (other than their parties) which may receive little attention from or representation in the Representatives and the ministry.

For many Australian Senators, the presence of several Senators in the ministry affords their chamber prestige and access to policy makers, as through question time. However, the Senate and its members may pay too high a price for these perceived benefits. On the whole, the interviews suggest that Australia's Senate would gain from excluding Senators from the ministry, particularly if in the process the chamber could stop replicating the partisan and adversarial atmosphere of the Representatives. Removing ministers from the Senate would enhance the Senate's distinctiveness from the Representatives, possibly on several fronts at once. Scrutiny and review functions would command greater credibility and respect if they could be carried out in a less partisan manner. Perhaps most importantly, a Senate without ministers might find itself able to operate more proactively and less reactively; that is, it might prove capable of exercising greater influence over the legislative agenda.

The same observation applies, perhaps still more so, to the Senate's other responsibilities. Senate committees and their chairs (which are now rotated amongst the parties, a most constructive development which might be built upon) would gain prestige and desirability if diligent committee work were made less partisan and, as a consequence, more rewarding. Senators could champion state interests more openly than they do now. Individual Senators could create a personal profile and a distinctive reputation inside their states. Paradoxically, a career in a Senate which lacked ministers could become more attractive to ambitious and talented Australians than it is now. The brevity of Senate careers suggests that the chamber now fails to attract and to retain enough Australians (Senators' resignation rates are appalling) who meet the 'ambitious and talented' description.

Australian Lessons for Canadian Senate Reformers

Australia's experience with its Triple E Senate affords at least thirteen major lessons which Canadians should consider carefully. They include:

- the need for a unique electoral system which prevents the government from controlling the chamber;
- concern for the representation and legitimacy functions which only a chamber whose party balance is proportional to votes cast can supply;
- the desirability of a Senate as large as possible relative to the lower house;
- the usefulness of an arrangement in which individual Senators can devise personal reputations for effective legislative performance;
- the advantages of the checks and balances which a scrutiny and review chamber can offer;
- the importance of a strong, independent, and respected committee system;
- the anonymity of party list Senators on, and elected from, a preferential ballot;
- the advantages of a chamber which can champion small provinces' and specified groups' interests proactively and not almost exclusively in reaction to others' initiatives;

- the usefulness of a real legislative role for large and small opposition parties;
- the relationship of and differentiation between the two houses;
- the inadvisability of Senators in the ministry;
- the effect of tightly disciplined parties upon the fulfilment of Canadians' four desired functions; and
- the relative indispensability of strong legislative power and equal provincial representation.

In politics, perception is reality. Canada's Senate must be seen to represent and advance the views of 'outer' Canadians, and also the interests of identified groups which can be accommodated by informal agreement (such as women) or formal allocation of seats (such as aboriginals). At the same time, the public somehow must perceive that their Senate serves all provinces and all Canadians. The government must not control the chamber, especially if Charter-induced cultural changes (as some believe) are leading certain Canadians finally to perceive a need for checks and balances in their federal government. Only some form of proportional representation can fulfil these criteria with any assurance.

Australia's experience above all strongly commends proportional representation for Canada, but it calls into question whether Canada should accept certain other aspects of the Australian system. Canada must avert the anonymity of Australian Senators and their tight party control in regard to candidate selection, position on the ballot, and public statements and votes. Canada needs a proportional ballot, but probably without the exotic preferential component which surely would result in a proliferation of informal ballots. Canadians do not recognise or tolerate formal party factions; if Canadians accept proportional representation, they must be convinced that the electoral system will not encourage party factions to form and flourish. Party nominees could be selected by province-wide postal ballot of party members, as they are now for some Australian Senators, or through some other device to ensure wide public participation and maximum public familiarity with individual Senate candidates (to respect the representation and accountability functions). Party solidarity in the chamber itself will have to be relaxed compared to the Commons for two reasons. Senators must be able to speak, vote, and initiate legislation for their constituents as conspicuously as possible (to advance the responsiveness function and to establish personal reputations in their provinces); and Senators' anonymity somehow must be minimised in Canada for adequate performance of all four functions.

Many of the preceding remarks also apply to the representation of 'outer' Canadian interests. Once again, perception is the key. Residents of 'outer' provinces must observe their Senators forcefully, and on occasion successfully, advancing their interests if a new chamber is to enjoy legitimacy with those Canadians who experience the greatest alienation under the existing system. Moreover, smaller provinces probably would elect some Senators of regional or other smaller parties whose MPs enjoy no power in the majoritarian Commons. The proportional representation chamber's capacity to return legislators who accurately mirror the popular vote, which Canada's House of Commons signally fails to do in every election, combined with the other factors listed above finally would present an opportunity for Canada's smaller provinces and parties to exercise influence over policy far beyond previous experience.

A reformed Canadian Senate must quickly establish a reputation as a distinct chamber with many visible differences from the House of Commons—and the more differences the better. Composition and method of election have been discussed. In addition, Canada's Senate will require a unique reputation for its committees, for its roles and responsibilities, for its relationship with the ministry, and if desired for its scrutiny and review activities. Australia has much to offer here, especially with its respected committee system, its rotation of committee chairs, and its scrutiny and review functions. In other respects, Canadians can learn from Australian experience that their new Senate can best perform its needed functions if ministers are excluded from the chamber—provided that Senate committees can require ministers to appear and answer questions—and if party discipline is relaxed considerably.

Finally, in anticipation of the difficult choices facing future Senate reform negotiators, the Australian Senators were pressed to choose whether equal state representation or a legislative veto is more important for Australia's Senate. After some often agonised consideration, most interviewees of all states and parties concluded that only credible legislative power is indispensable for their chamber's performance and respect in regard to all of its activities. If Australia's Senate lacked a legislative veto, equal state and proportional electoral representation could accomplish little. Canadians must recognise that their new Senate cannot satisfactorily perform a single one of their four desired functions if the chamber lacks real power. For this reason, the Charlottetown Senate's modest powers and small relative size must not be replicated in the next round of negotiations. If Canadian Senate reformers are forced in the bargaining process to choose between equal provincial representation and effective power for their Senate, they should forsake their Triple E mantra in favour of a legislative veto and modified representation by population.