

Can Responsible Government Survive in Australia?

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Generally, Australians are very critical of politics; they tend to blame the politicians and not our political system. I would not for a moment claim that our politicians are blameless but that does not mean that we should not have a good look at our system to see whether it is working as it is supposed to or whether it could be made to work better.

People seem to live in an astonishing state of illusion about their political systems. Many people in the communist countries seem to believe that they are living in a ‘democratic republic’ when, in fact, it is neither democratic nor a republic. In nineteenth century England, people believed that their system was based on the separation of the executive and the legislative powers whereas, as Walter Bagehot and others pointed out, it was exactly the opposite — it was based on the *merging* of the two powers. These days in Australia, we talk as if we still have the Westminster system of responsible government, as so eloquently described by Walter Bagehot in 1867, whereas, the growth of party discipline since then has produced something quite different. The first step in the reform of anything is to look at it as it really is, and that is what I believe we should be doing with our system of government.

I served for a long time in each House of Parliament and I was by no means always impressed by what I saw. After I left Parliament I spent some time looking at twenty parliaments which claimed to use the Westminster system of responsible government — these included, the United Kingdom; Canada and the ten provinces; New Zealand; and Australia and the six states. I examined these parliaments to see whether any of them had useful solutions to our problems, a few do, and whether there were common unsolved problems which, if we want to improve, we will have to solve ourselves.

I would like to go through the functions of the various parts of our political system, using Canberra as the model, and describe them as I see them, listing their defects and qualities and suggesting practical ways in which we could — if we had the will — make some substantial improvements.

Possibly, the most important role in the lower house, the House of Representatives, is to decide who will form the government after an election; the electoral college role, to use the American expression. I suggest that what is wanted is for the chosen government to be the one preferred by a majority of voters and for the choice to be decisive. There is little to be said in favour of minority governments for they usually result in poor government — ministers constantly looking over their shoulders to see if they are going to survive rather than developing long-term policies. Minority governments also have to yield excessive power to small groups holding the balance of numbers.

The method of choosing this electoral college, the House of Representatives, is obviously important. In nineteen of the twenty parliaments it is done by single-member constituencies; the odd one out being Tasmania, where it is done by proportional representation. New Zealand, too, is about to become odd, for the next election it will use the German system of half the MPs being elected by single-member constituencies and the other half by proportional representation. Whether proportional representation is a sensible way of choosing an electoral college is a matter of opinion. I would point out that its track record is poor in achieving the objectives I have suggested — a decisive choice of government preferred by the majority of voters.

If you are going to use single-member constituencies to achieve the aim of choosing the government preferred by the majority of voters then some crucial rules must be followed. There must be no gerrymanders distorting the boundaries of an electorate to the advantage of a particular party. There must be no malapportionment, that is having small numbers of voters in particular electorates, such as country ones, to give those voters an increased say. And the boundaries must be redrawn if there are significant population shifts.

The Australian federal system meets these requirements excellently; better than any of the other nineteen parliaments but that is not to say it is perfect. It has made a decisive choice of government after every election since the Second World War but on at least four occasions the government chosen would not, by a small margin, have been the one preferred by a majority of voters.

Even if you accept that our electoral college works reasonably well, it still does have serious defects. The three-year term of Parliament is too short for good government. The only surviving three-year parliaments, among the twenty I looked at, are in Canberra, Queensland and New Zealand. The remaining seventeen have four or five-year terms. Even the three-year term can be cut short at the whim of the Prime Minister, to suit his political advantage, which seems to me to be quite unjustifiable. Certainly if, through by-elections or defections, no government possessing the confidence of the lower house can be formed then there has to be an election. Otherwise, the Parliament should see out its full term. Tasmania and New South Wales have taken some steps towards fixed-term parliaments and the referendum held at the time of the last state election put fixed-terms in the New South Wales Constitution. Tasmania has not yet done so.

Another defect is that in Canberra there is no arrangement for extending the life of Parliament if events, for example, a war, made an election very undesirable. The other three national parliaments — the UK, Canada and New Zealand — do have the power to extend their lives by prescribed majorities. If we wanted to extend the life of our federal Parliament we would have to have a referendum which would presumably be as divisive as having the election

which we are seeking to defer. What we need is an arrangement whereby, in certain specified circumstances, a parliament could extend its own life by, for example, a three quarter's majority of each house, the life of the Parliament otherwise being a four-year fixed term. These changes would require constitutional amendments. We should look at them because the present arrangements are very defective.

Unlike the American electoral college, our House of Representatives does not dissolve itself after it has chosen the government. What other things does it do? It is totally useless as a legislature, merely acting as a rubber stamp for the bills produced by the government party. As an example of its performance, during the twelve years from 1976 to 1987, under two different governments, when nearly 2,000 bills were passed, not a single opposition amendment to any of them was accepted — with the exception of two bills which were handled by an experimental procedure, an experiment that was soon stopped by government. That is not democracy; that is a form of party dictatorship. Bills were contemptuously bulldozed under a guillotine — ten bills taking a total of five minutes to pass all stages, for instance

It is almost unknown in the House of Representatives for a bill to be referred to a committee to hear input from the public, although this is quite common in Canada and New Zealand. Not only can the input from the public be valuable but it can also do something to reduce the alienation of the public from the political process. This does not happen in our House of Representatives which has become a mere rubber stamp for the bills wanted by the government party. Of course, the opposition can criticise and, if it wants to, can announce what it would do instead, but the bills will not be changed.

The House of Representatives also totally fails to do anything about the control of delegated legislation — regulations and so on made under the authority of an act of parliament. It leaves the control of this important area of potential government abuse of its powers entirely to the Senate; the House of Representatives has almost totally abandoned its role as a legislature.

In that case, what else does it do? It can set up committees of inquiry which do valuable work and are certainly much cheaper than Royal Commissions. However, as all the committees are controlled by the government party, they do not inquire into matters the government does not want inquired into and these are usually the very ones which should be inquired into. There is an extraordinary provision by which a minister can direct a committee of the house, to which he is supposed to be responsible, to undertake a particular investigation so that, effectively, the committee is working for him. This is a reversal of the principle of responsible government.

The House of Representatives is useful as a place where the government can make policy statements which can then be debated. In fact, far too many government policy statements are made, not to the Parliament as they should be, but directly to the public. Only in the House of Commons in London are there effective measures, enforced by the Speaker, to prevent this happening. It happens all too frequently here.

The House of Representatives provides a place where the opposition can initiate debates on policy or administrative matters — usually critical to the government, of course — and individual members can raise matters which concern them or their constituents. Quite

reasonable time is provided for these, but the ability of individual MPs to watch the interests of their constituents and to see that individuals get a fair go has been overtaken by the increasing complexity of our society. These days, we have a maze of administrative appeals tribunals, human rights committees, equal opportunity commissions and so on, all of which are very valuable but they have nothing to do with responsible government.

The answerability of the government to the House of Representatives is provided by its most public activity: question time. This is not a way of obtaining information — in fact, new members are often advised never to ask a question to which they do not know the answer, for they may be surprised by it. If you want information then put your question on notice as it is far better to receive a written answer. The delays in providing written answers, however, are substantially longer than in most overseas parliaments.

The attitude of the government to the daily oral question time was well summed up by the Prime Minister when he said that question time was not a right; it was a privilege extended by the executive government. It was an interesting comment on the answerability of the government to Parliament. In Canberra, the questions are taken alternately from each side of the House. The ones from the government side, frequently being ‘Dorothy Dixers’, permit ministers to make policy statements without having them debated.

In London, the questions are chosen by ballot. In Ottawa, it is almost unknown for a government MP to ask a question, for there question time is regarded as the opportunity for the opposition to cross-examine the government. In all of the other three national parliaments I looked at, supplementary or follow up questions could be asked if the initial answer was not satisfactory —they could pin the minister down if he was evading the question. Such supplementaries are never permitted in the House of Representatives in Canberra.

Our question time is essentially farcical and will not improve until we have an independent Speaker who is able and willing to enforce relevance and brevity on ministers and permit a reasonable number of supplementary questions. The Speaker must be confident his rulings cannot be challenged. This is the case in most of the overseas parliaments, but here the Speaker knows that if he makes a ruling the government does not like, it is very likely to be overturned —so he does not make them.

Speakers used to be, and still are in some parliaments, very prestigious figures. In 1597 the Speaker of the English Parliament described the requirements of his office as voice great, carriage majestic, nature haughty, and purse plentiful. These days the requirements might be better described as the ability to keep order in the house as best one can, but not to antagonise or frustrate the government, particularly the Prime Minister. It is highly desirable to develop an independent Speaker with the necessary power, independence and determination. The tradition of the job, being the important perk for the government party, is so entrenched that I do not see any chance of this happening in the future.

The dominant activity of the House of Representatives, after it has chosen the government, is, in fact, electioneering for the next election. You often hear criticisms of the length of the US presidential campaign, which is five months. Our election campaign starts from the first meeting of the Parliament after the previous election — that is nearly three years.

The fundamental problem is whether it is reasonable, with tight party discipline, to expect the same group of people to make a decisive choice of government, and then be an effective critic and scrutineer of the actions of that government. I submit it is not. That is the incisive change in responsible government since the middle of the nineteenth century.

What has developed, as far as the House of Representatives is concerned, is an elective party dictatorship. There is a certain attraction about an elected government being able to implement its programs without being delayed, frustrated or embarrassingly questioned by a legislature. 'Let the elected government govern; it is answerable to the voters at the next election and that', people say, 'is enough'. But is it enough? There are grave dangers in giving uncontrolled power to any group.

It is worth remembering that Adolf Hitler was elected and the powers he used were constitutional under the Weimar Republic. No-one would suggest that gross abuses of power practised by Hitler could happen here — the rule of law is too well established — but there are disturbing common features in all elective dictatorships. It is worth listing them.

Firstly, the answerability of the government to the electorate is defective with the government able to choose the time of the election and probably able to manoeuvre certain advantageous election issues to the fore at the time of the election.

Secondly, the government's answerability to the lower house is also defective, with its ability to suppress information and inquiries which are to its disadvantage; sometimes by refusing to provide information by invoking executive privilege, a very suspect concept; sometimes by using party numbers to head off threatening inquiries; and sometimes by throttling the parliamentary budget so the resources simply are not available for a proper investigation.

The third danger in an elective dictatorship is the power to make appointments to courts, to the senior ranks of the bureaucracy and to management positions in the hundreds of government-controlled organisations. There is grave danger in this power being used party politically and a prolonged elective dictatorship usually results in serious corruption which, once established, is very difficult to eradicate.

The fourth objection to an elective dictatorship is the inability of the Parliament to exert proper control over defence and foreign affairs. I will return to this point in a moment.

The fifth and final objection is the total government control of the legislative process. This may result not only in badly drafted and inefficient laws but also in discrimination against unpopular minorities. Conversely, elective dictatorships may sometimes give unreasonable benefits to pressure groups in the hope of recruiting their votes in the inevitable election.

These five objections to elective dictatorships, each bad enough in itself, are devastating in sum. Of course, the dictatorial power of a lower house is not absolute. There may be a constitution, though Britain does not have one and constitutions are not much of a defence unless they are entrenched. Constitutions which can be amended by Parliament itself are not much use against abuses of power. In Canberra, we do have an entrenched constitution, but it can now be amended by the government — without even consulting the Parliament; a point I will return to in a moment.

Then there are the constraints on the elective dictatorship of the lower house by the upper house, but these survive in only eight of the twenty parliaments I looked at and two of these — the House of Lords and the Canadian Senate — have their power effectively limited because they are not elected. On the whole, the upper houses have been surprisingly slow to move in to fill the gaps in the areas abandoned by the lower houses.

Our Senate performs relatively well. Its control of delegated legislation, which the Representatives totally ignore, is the best in the British Commonwealth. This all-party committee has high prestige, and when it proposes to disallow a regulation the government jumps. The Senate has also set up a Scrutiny of Bills Committee, with independent legal advice, which examines the legal aspects of all bills which are presented to Parliament. When the committee was proposed, it was not surprising that the government opposed it, saying in effect: 'the government and its advisers look carefully at all bills. Why should the Parliament want to get in on the act?' This is an interesting reflection on their attitude to a legislature. Fortunately, Liberal senators were prepared to revolt and the committee was set up. It is a great success, raising significant queries on about half the bills presented.

I mentioned earlier that public input into bills is an important part of the legislative process. About 20 per cent of bills are referred to Senate committees for public examination and as a result are frequently greatly improved. On the subject of inquiries and the matters of government policy or administration, Senate committees are prepared to examine matters which the government does not want examined which, as I said before, are usually the very ones which should be examined. Committees have been much less effective in supervising the many organisations. There are hundreds of them — government business enterprises, commissions, boards and so on — through which ministers exercise considerable power. The lack of effective parliamentary scrutiny in this area is a matter of concern.

The Senate does have weaknesses. Eighty per cent of bills are *not* sent to committees and these bills are often controversial ones which would benefit most from public examination by a committee. The government, of course, does not want its bills examined by a committee — get them through quickly without amendment are the instructions of Senate ministers. The government often manages to do deals with minor groups holding the balance of power in the Senate; the government will accept some of the groups' amendments in return for their support for *not* referring the bill to a committee.

I now refer to two things the Senate should not do. It should not try to take over the electoral-college role of the House of Representatives by forcing the government to a premature election by refusing supply. If there were fixed terms for Parliament this problem would disappear, for there would be no point in refusing supply if there could not be an election. If it is thought that the government party might be pressured into passing an artificial vote of no confidence in itself, then we should adopt the New South Wales solution of removing from the upper house — the Senate — any power over votes for the ordinary annual services of the government. 'Ordinary annual services' would require tight definition and this vote would have to be presented separately, neither of which has been done in New South Wales.

The Senate should also pass the budget as a package. The budget is such an interwoven mix of economic, political and social measures that to have a legislature tinker with it is a recipe for disaster. The Senate should insist on two conditions for this budget passage.

Firstly, the government must present its proposals in a comprehensible form so that the legislature and the public can see what particular activities actually cost. The present vote system of providing money to the government was introduced in the reign of King Charles II to prevent him spending the navy estimates on the appropriately named Duchess of Portsmouth. The system was changed in the reign of William III to prevent him spending money on his friends. The system has continued to the present day and it is marvellous at concealing the true cost of various government activities. It is true that the recent development of program budgeting has reduced some of the problems, but we still have some way to go.

Secondly, it should not be acceptable for a government to introduce in the budget completely new programs of revenue raising or expenditure and expect them to be automatically passed by the legislature. Such new programs should be considered in principle and agreed to by the legislature before being incorporated in the budget. The government would not like this at all. It likes the drama — the surprise and publicity — of a budget. Such a system is very bad, legislatively.

If the Senate is to take over the legislative role abandoned by the Representatives some changes must be made. The Senate was originally conceived as a states house with continuity achieved by fixed six-year terms, but it has never been an effective states house. If it is to become the sole legislature, it has to be elected at the same time as the government; that is, fixed four-year terms.

The proportional representation system by which the Senate is elected results in a house which is far more representative of the mix of community views than is the lower house which is elected for a different purpose. The constitutional requirement for equal representation from each state does create distortions, but not significant ones. If you regard the Liberal and National parties as a single party, the voting patterns across Australia are remarkably consistent — unlike Canada for instance — and if you eliminated the equal states representation requirement you would not make any significant difference to the composition of the balance of parties in the Senate.

If the Senate is going to become an effective legislature, there will have to be some better method of resolving deadlocks over legislation between the two houses or, more accurately, between the Senate and the government. The present system of a double dissolution just does not work. In such an election the cause of it is lost. If you ask most people during an election why an election is being held, they would not have the faintest idea. It would be a very brave or cheeky person who would claim that the re-election of a government, after such an election, meant that the community endorsed a particular piece of legislation which was the cause of the election.

Conferences between party-balanced delegations from each house — much used in America — is a useful system, far better than the government doing secret deals with minority groups in the Senate. Such conferences have been used only three times since Federation — successfully each time.

But such negotiations will not always work and there must be some way of resolving a conflict between the executive, if it wants a particular bill in a particular form, and the legislature which does not like it. The only effective way I can see to focus the voters'

attention on a particular bill is to have a referendum which would be a great deal cheaper and a great deal more effective than a double dissolution. This, however, assumes that the Senate has become an effective legislature, but it still has some way to go before it is. Why has it not gone further? One reason is that it does not sit nearly enough days.

The House of Representatives sits for about 65 days a year, compared to the 170 days of the British House of Commons, and the 175 days of the Canadian House of Commons. Bearing in mind that the electoral college role is quickly over; that committees making investigations, which are agreed to, accepted, or ordered by the government can meet while the house is not sitting; and that the only remaining role of the house is electioneering, many people might feel that 65 days are enough. The trouble is that this pattern of brief sittings is followed by the Senate which sits for a few more days, but not nearly long enough to get through its business in an efficient way. It is ridiculous for the Senate to kow-tow to the executive in this way. Of course ministers would much rather that the Senate did not sit longer, for the sittings provide publicity for the opposition and take ministers away from their administrative work. The trouble is that the aspiration of nearly all senators is to become a minister. The government does not want more than minimum scrutiny of its actions, and the opposition, which hopes and expects to be in government itself one day, does not want to have any new constraints when its turn comes. So they will never agree to go far enough in these areas.

The whole aspiration pyramid in the Senate is skewed in the wrong direction. There ought to be members of the government there to scrutinise and criticise. The Senate will not become an effective legislature until ministers are removed from it. If you think this would be a remarkable act of self-abnegation by senators, the compensation should be that the chairs of major Senate committees should be given the status and privileges of ministers, for they are, or they should be, at least as important. If the chairs were fairly divided between the various parties — and the Senate has made a start in that direction — you would have a situation where the major Senate figures owed their positions, not to the party in government, but to their own status in the Senate, and it would start to develop as an important legislature. But while ministers remain in the Senate, you will continue to see the Senate spending far too much of its time duplicating the electioneering role of the House of Representatives, and in the process handing far too much legislative power to the minor parties and the independents holding the balance of power.

If you think that obtaining these benefits for the chairs of major Senate committees would be difficult, it is worth noting that the Senate has to approve any increase in the number of ministers. This gives it considerable leverage.

That brings me to the question of the ministry, about which much could be said, but I have time to make only a few points. Bagehot thought that the cabinet was a House of Commons committee and responsible to that House which makes the presence of upper house ministers in the cabinet who are not personally answerable to the lower house something of an anomaly. There is no mention of the cabinet or the Prime Minister in the Australian Constitution, but the cabinet obtains its legal powers through its control of the Executive Council, and its administrative powers through its control of the Public Service. It also obtains its powers through its control, direct or indirect, of the hundreds of government business enterprises and so on over which Parliament keeps a very inadequate watch.

There are always worries about the quality of ministers. Some sub-standard ones remain in office because of the political embarrassment of removing them; others remain because they do more damage out of the ministry than in it. This particular problem was well summed up by President Lyndon Johnson who had a rather earthy turn of phrase. He was asked why he did not sack J. Edgar Hoover who was a rather troublesome head of the FBI and was becoming a serious nuisance. 'Sack Hoover?', said Johnson, 'I could never do that. I would much rather have that man inside my tent pissing out, than outside pissing in' which is very Johnson, from memory.

Of course, if a minister is becoming a political embarrassment he has to go. A good example is the removal of war minister Profumo in Britain who was forced to resign ostensibly because he had misled the House of Commons but actually it was because of the political damage caused by the revelation of his association with a prostitute named Christine Keeler. She was also being used by the Soviet Naval Attaché. A contemporary poem ran:

Now see what you have done, said Christine.
You've upset the whole party machine.
To lie in the nude is not at all rude,
But to lie in the House is obscene.

However you look at it, the pool from which ministers are drawn is rather small. The British and Canadian prime ministers have the useful ability to bring talented outsiders into the ministry by appointing them to the House of Lords or the Canadian Senate; our Prime Minister has no such option. Some countries such as Holland and Sweden allow ministers who are not MPs to be appointed, although they do attend and are responsible to Parliament for anything dealt with by their departments. The Dutch and the Swedes believe that answerability to Parliament is more important than voting membership of it. In fourteen of the twenty parliaments I looked at, the appointment of such outsiders as ministers would be constitutional, but it would have to be a brave prime minister or premier to do it, for he or she would face a very angry backbench. In Canberra, a constitutional amendment would be required but I cannot see it being attempted, whatever the attractions. I hope that one of the parliaments, where it is constitutional, will try it out and show the benefit of a constitutional amendment.

I would like to mention two other matters about the ministry. One concerns the cabinet's exclusive power over foreign affairs and defence — powers which historically are anomalies. With defence, if there is a surprise, something like a Pearl Harbour attack, of course the government must have power to act, and the actual conduct of a war has to be in the hands of a small body, whether it is called a war cabinet or not. If our defence force is being moved to a position of danger or involved in fighting, why should not parliamentary approval be sought — after all cabinet is supposed to be responsible to it. To take the Gulf War as an example, our ships were moved to the Gulf and engaged in active operations without Parliament being consulted at all. Parliament was only consulted after the war had started because the Senate, not controlled by the government, threatened to have a special meeting to consider the matter, otherwise Parliament would not have been consulted at all. Of the four countries I looked at, Canada is the only one which produced a procedure by which the government has adequate emergency power, but is required to get parliamentary approval at the first opportunity.

With foreign affairs, none of the four parliaments has yet taken action. Clearly the negotiation of a treaty is the responsibility of the government, but why should not the ratification of a treaty be subject to parliamentary approval? This is particularly important in Australia, for the High Court has held that, if an international treaty is entered into in good faith, this gives power to the federal Parliament to pass laws to implement the treaty, even though it has no such powers under the Constitution. This effective amending of the Constitution by the government, without reference to either the Parliament, the states, or the people, is an outrage.

Another important power of the government which needs review is the power of appointment. An enormous range of appointments is available to the government: judges, public servants, directors of business enterprises and so on. An ever-present danger is that these appointments will become politicised, but Canada is the only country which has set up a system of parliamentary review of such appointments. But even in Canada they do not review judicial appointments, and this is where the greatest danger lies. We talk about the separation of judicial power, but in fact all federal judicial appointments are made by politicians. I do not think anyone would like us to adopt the American system where nominees for the Supreme Court and other federal courts are questioned by a Senate committee, and the legal standing of the candidate is much less important than attitudes on controversial matters such as abortion. There are also quotas — a black judge, a Jewish judge, a female judge and so on — and a president would break the pattern at his peril.

When President Nixon was trying to win votes in the South, he nominated a Southerner for the Supreme Court. In its very open way, the American Bar Association examined the record of the nominee, Judge Carswell, and pronounced him a below-average lawyer. Nixon, nevertheless, persisted with the nomination, and in debate in the Senate one of Nixon's supporters said, 'Sure Judge Carswell is a below-average lawyer, but don't below-average lawyers have some right to representation on the US Supreme Court?' I do not think we would want to go that far, but I think we need some system whereby a list of appropriately qualified lawyers is produced by a non-political body, and the government is forced to choose from that list.

Another anomaly is that the government controls the resources available to the Parliament, which is, with a slight exaggeration, rather like a burglars' collective deciding what resources should be available to the police. The situation was put clearly by a minister for finance: 'I explicitly do not accept the proposition', he said to the Senate, 'that the Parliament determines how much money the Parliament will get. The executive government has the financial responsibility, and in the end the executive government will determine that question.'

Of the twenty parliaments I looked at, the only one which has solved this difficult problem is at Westminster. Their solution depends on MPs being prepared, if it comes to the crunch, to hack the institution of Parliament rather than their party.

Turning to the controversial question of the head of state, I think I should make it clear at the outset that I think an Australian republic is inevitable. The questions are not whether, but how and when. With the great conservatism of the Australian voters in referendums on constitutional matters, I am certain that the only practical solution is the minimalist one with a president taking over the role of the Governor-General. This is not without its problems,

notably, with the method of appointment and the powers of the new head of state. Despite suggestions going back to the 1930s, the powers of the Governor-General have never been codified, although he certainly must have some powers.

The questions we must decide are: whether the Governor-General has the right to reject a request from a Prime Minister, who has lost the vote of confidence, for an election; whether the Governor-General has the right and the duty to find someone else who might possess the confidence of the lower house if the Prime Minister has lost that confidence; whether the Governor-General should have the power to dismiss a Prime Minister should that Prime Minister persist in grossly unlawful or illegal conduct, or, if the Prime Minister refuses to ask for the summoning of Parliament within the statutory time. These are all vexed questions, but as we saw in 1975, the lack of clarity on them is dangerous.

But if we wait until we try to make the transition to a republic, and then put these proposed powers of the new head of state to referendum, I do not think it would have the slightest chance of passing, no matter how eminent the panel drafting the list. There would be such a constant quibble about the various powers and objections and events, that people would vote 'no'. I do not think there would be a chance of getting a new list through a referendum at that stage. I think the only workable solution is for the Parliament to draft a list of the necessary powers, for if the Parliament were prepared to act with commonsense, it should be able to draft a workable list of powers, although the power of dismissal would be a bone of contention between the parties. Yet even here there may be a window of opportunity. The Labor Party wants an easy transition to a republic and the coalition wants the retention of the power of dismissal in certain circumstances, so a deal may be possible.

If a resolution listing the necessary powers of the Governor-General was passed by both houses and supported by both the government and opposition, I am quite sure that the Queen would find no difficulty in incorporating that list into her instructions to her representative, the Governor-General. We could then have a number of years trial of these powers, so that when the time came to incorporate them into the Constitution, the conservatism of the voters would be recruited in favour of their adoption. They would be familiar with the powers.

It is clear that the President will have to be elected. Again, I believe that we should try out a system with the Governor-General. At the moment the Governor-General is personally selected by the Prime Minister, and can, in practice, be fired by the Prime Minister. The Prime Minister puts forward a single name to the Queen. But I believe we should work out a sensible method of election; the name of the person so elected being the one the Prime Minister puts forward to the Queen.

I personally favour having a panel of leading citizens to put forward a suitable person to be confirmed by a two-thirds vote of each house to eliminate blatant political selections. Also, the person must be prepared to serve. You would not want to have a situation like that when General Sherman was being considered for nomination as a United States presidential candidate. He telegraphed the meeting, 'If nominated I will not run. If elected I will not serve.' You would not want to elect someone on that basis. There are many different ways of electing a head of state. I accept that. Let us choose one, try it out with the Governor-General and make it part of our system before the transition to a republic. I admit that a lot of changes are necessary. How are they to be brought about? Some, such as the ending of appointments of Senate ministers, could be done by the government; others by negotiation between the

Senate and the government. Some would require acts of parliament, and others constitutional amendments.

How do we start? I believe the key is the elimination of ministers in the Senate because once that is done the rest will follow. The Senate is now a proud institution and would not accept obscure impotence. Once it started redefining its role, the path I have outlined would inevitably, I believe, be followed.

Winston Churchill is supposed to have said that the Westminster system of parliamentary democracy is the worst conceivable form of government, except for all the alternatives. Well, he may be right but that does not mean we should not try to improve what we have. Let us begin that now.

Questioner — What is your view of the possibility of the Speaker of the House of Representatives not being a member elected by the people? Would that in fact achieve what you wanted to do or would the Speaker have to have a sort of private police force to cope with Wilson Tuckey and a few of the other people?

Mr Hamer — Wilson Tuckey is a member of my party so I will not comment on that. There are others. The position the Speaker is in is a mess. The only parliament where it works reasonably well is at Westminster in London where the Speaker is chosen after consultation between the Leader of the Opposition and the Prime Minister. Once appointed, the Speaker — he or she, it is a woman at the moment — remains there until he or she chooses to retire. The Speaker is not opposed at elections. So they have enormous prestige and power and they can use discretion.

Take for example one of the problems I was suggesting which is that of supplementary questions. In the House of Commons they have a different system of questions whereby the member submits a written question and the minister gives a reply to that written question, and then supplementary questions are allowed. The first one goes to the member who asked the question, and they continue until, in the opinion of the Speaker, the subject is exhausted. If our Speaker tried that, there would be a riot everyday. The government would be saying, 'you let too many questions go'; and the opposition would be saying, 'you stopped just as we were getting somewhere'. The role of Speaker requires an enormous degree of prestige.

If you could use someone of adequate prestige from outside the chamber that would be good, but frankly, I cannot see it being done for the same reason that applies to an independent Speaker. It is regarded as such a perk for the government. In the Labor Party — by the way, both sides are responsible for doing this — the chair of a meeting is traditionally a position of enormous power at a trade union meeting and they more or less see the role of the Speaker in that way.

We should change but I do not see us doing it. It is a matter of deep regret that we do not. The other objectionable thing is alternating the questions from one side of the chamber to the other. If you ask a question of a minister and he is getting in trouble, of course, as soon as he sits down a member of the government party is called. If this member is in the least organised, he will ask a question of the most talkative minister. This minister will give a twenty minute discourse on something, by which time the other minister will have arranged

his briefing notes and be prepared to return to the theme — which by this stage has been lost. After twenty minutes on a different subject, you just cannot get any coherence.

Our question time is awful, and also very embarrassing because it is televised and it does not present a good image of Parliament, but you may accept that the House of Representatives has in fact a very small role — it has chosen the government, and thereafter it is merely a legislative rubber stamp, going through all the bills. You could probably put them all in a great heap and stamp the whole lot together — this is part of the electioneering process. I do not think it is desirable to have three years of electioneering but we have it. I do not know how to stop it. So what I am trying to do is work within the framework of what is possible and what I believe is possible.

Questioner — As a past Speaker of the Victorian Parliament, I have some interest in the question and answer that we have just had. It seems to me that it is not quite as simple as sometimes put and that it is very much a matter of the culture which develops in the particular chamber. For example, it is put that the Indian Speaker is the most powerful Speaker within the Westminster system and that really arises from the force of personality of the first Indian Speaker and the culture which developed from that. Certainly in Victoria, and I think it is true in other chambers, the extent to which the Speaker exercises his potential authority can have a major impact on how the house actually operates.

I will ask you a question about question time because, as you have indicated, our question time is a bit different from other nations in that ours are oral questions without notice and because they developed from a ruling that was made in the first House of Representatives in July 1901. The then Speaker said, apparently in response to a question about which he had no notice, that he would allow questions without notice and it was up to ministers if and how they answered them. That to me seems to be the basic weakness in our question time which leads to all the other problems we have. If we are serious about ministers being answerable to Parliament then there must be an obligation on ministers to answer and to answer directly rather than to avoid and evade, as now happens. I wonder if you could comment on that please?

Mr Hamer — I agree with nearly all of that. The system of oral answers to questions emerged in the UK House of Commons in the 1840s. They started to have a daily question time — oral questions — and that was adopted by all our state assemblies as they were set up from the 1850s onwards. But in the 1880s, the UK system was changed to have written questions produced, because the Irish Party was becoming very difficult and trying to disrupt proceedings. In order to reduce disruption they introduced a system of written questions. It has not been copied in many of the other parliaments. Canada has oral questions as we do.

I think the UK system is not bad but I do not want to criticise the Victorian Parliament because I think there are different traditions in the different parliaments — I was dealing specifically with the federal Parliament — but it does depend very much on how ministers see question time being used. If there is no serious attempt to answer questions and the Speaker is unwilling or unable to force the minister to be relevant, question time is going to continue as it is. I think if you go to the Senate here, where the President is not controlled by the government in the sense the government has not got the numbers in the Senate, and if the President made a blatantly political decision he could expect trouble from the Senate as a whole. I think question time in the UK runs much better; they do allow supplementaries

there. But the House of Representatives here is dug deep into what I believe is a very undesirable pit and I just do not know how they are going to get out of it. If you have any good suggestions I would like to hear them.

Questioner — In the context of all the manifest difficulties and inadequacies you pointed out in our parliamentary system, where in fact is the pay-off and who benefits? Is it sufficient to start to move the inertia that maintains the present status quo?

Mr Hamer — I argued, and I feel quite strongly about it, that you are not going to change the House of Representatives much. It is set in its ways. I think it is an insoluble problem. If you have a party majority in the lower house it is just unrealistic then to expect it subsequently to be an effective critic of the government it has just chosen; it will never do it. I do not see how you are going to break down party systems.

I would suggest that the way to get the Senate to take on the role that I have suggested — the role abandoned by the House of Representatives — and to stop duplicating unnecessarily the electioneering role of the lower house, which is a total waste of time and damages very much its performance as a legislature, is to remove the ministers from it. How you remove the ministers from the Senate is a thing that vexes me. You will not get the senators to volunteer. We can hope that discussion of the issue and the problem is getting sufficient community support to start academics, political societies and so on to apply some pressure. It is not impossible.

Of course senators want to remain ministers but there would be quite a lot of support among members of the House of Representatives stopping senators from being ministers, not slightly self-centred of course, but it would be possible to mobilise support. At the moment, however, there is no pressure because people really do not understand our system. They think it is something quite different. They do not like the manifestations of it, but they think there is something wonderful going on underneath. It is not bad but it is not good and I am trying to suggest ways it might be improved.

Questioner — You have traversed a number of very necessary reforms for our parliamentary system and touched briefly at the end on some issues associated with the republican debate. I hope I am wrong but I very much fear that if this talk is reported at all it will be reported as ‘Senior Liberal Thinks Republic Inevitable.’

Mr Hamer — That would be an accurate statement.

Questioner — It would be an accurate statement as far as it goes but, I submit, not an accurate summary of your remarks this afternoon. I wonder whether you would comment on this focus on the republican debate and the consequent polarisation of views. Those people who oppose the republic therefore have to argue that the present system is flawless; those who support a republic then have to argue that the present system needs to be radically reformed. This polarisation has made it much more difficult to talk sensibly about the kind of organic evolutionary rather than revolutionary changes to the parliamentary system that you have mentioned earlier.

Mr Hamer — I entirely agree. I do not want to enter into the republican debate. I merely mentioned that as the background to what I was saying. I think politicising the republican

debate is deeply regrettable. I think we should be looking at it very calmly and I do not think it is imminent in any way. I think it is a long way off but I feel we will eventually come to it.

What I want to do is get our system working better and I want to recruit both parties to it. I believe we need now to define the powers of the head of state, to leave them in their undefined state is wrong. I think the present system whereby the Governor-General, the head of state, is chosen by the Prime Minister and can be dismissed by the Prime Minister with no security of tenure is also wrong. Let us fix those things that need fixing. I was only trying to recruit those who want to see a republic by saying that such changes will make the transition to a republic later on easier, but the argument for such reforms is not the republican argument: it is the argument to make our system work better.

Questioner — There is an argument around which links the institution of monarchy and other institutions in the country with the general stability of Australia. Could you comment on that?

Mr Hamer — You mean the contribution the monarchy makes to our social stability?

Questioner — The institution of the monarchy, generally, to the stability of this country. Whether this is sometimes overlooked in the argument towards republicanism?

Mr Hamer — I think a badly conducted republic — a badly organised republic — could be extremely unstable. I think there is the real danger of deep divisions developing in our society as we go down that path — as we move towards becoming a republic.

The personality of the present Queen is very highly regarded by a large proportion of the Australian public and is a useful element in our social stability. I think the transition to a republic is inevitable because I do not believe the same thing will apply as generations move on. The present system will undoubtedly see out the present Queen's life. After she leaves I think the situation will be very different. She has made a great contribution to it. We also have to look at the changing nature of Australian society; when our Constitution was written, about 95 per cent of our people were of British origin. That is not so now and I do not know whether the people, for example, from southern Europe feel as strongly about the monarchy as do the people of United Kingdom origin.

Questioner — But they take all the benefits?

Mr Hamer — Yes, of course, you take the benefits of society. I am trying to be balanced on this. The present Queen has been an admirable monarch but I am not sure that the next generation will regard her as highly as she is today.